

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Montgomery v. Emanon S. Corp.

2026 NY Slip Op 01050 (N.Y. Ct. App. 2026) · No. 2024-11194 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order denying defendants’ motion to dismiss a breach-of-contract claim arising from an alleged oral agreement for staging services and home furnishings. The court held that, accepting the complaint’s allegations as true, the agreement was predominantly for services rather than the sale of goods and therefore was not shown at the pleading stage to be barred by the UCC statute of frauds.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 25, 2026
DOCKET	2024-11194
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their pre-answer motion under CPLR 3211(a) to dismiss the breach-of-contract cause of action on statute-of-frauds grounds.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) motion based on the statute of frauds, the court accepts the complaint's factual allegations as true and affords the plaintiff the benefit of every possible favorable inference.
PRECEDENTIAL VALUE	Published
PARTIES	Emanon South Corp., et al. v. Cindy L. Montgomery, etc., et al.

TOPICS

- breach of contract
- statute of frauds
- uniform commercial code
- motions to dismiss
- civil procedure

PRACTICE AREAS

Contracts

Commercial law

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the alleged oral agreement was subject to the statute of frauds in UCC 2-201 because it was predominantly an agreement for the sale of goods.
2. Whether the complaint sufficiently pleaded a breach-of-contract cause of action to survive defendants' CPLR 3211(a) motion to dismiss.

HOLDINGS

1. The complaint sufficiently alleged that the agreement was predominantly for the furnishing of services, with the transfer of personal property merely incidental; therefore, defendants failed to establish at the pleading stage that the agreement was barred by UCC 2-201's statute of frauds.
2. The Supreme Court properly denied defendants' branch of the CPLR 3211(a) motion seeking dismissal of the breach-of-contract cause of action.

KEY QUOTATIONS

"If service dominates the transaction and the transfer of personal property is merely incidental to that transaction, then it is deemed to be predominantly service oriented" ([*2])

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) based on the statute of frauds, the court is required to accept the facts as alleged in the complaint as true and accord the plaintiff the benefit of every possible favorable inference" ([*1])

FACTUAL BACKGROUND

Plaintiffs alleged that in June 2020 they entered into an oral agreement with defendants to provide staging services for defendants' Southampton property in exchange for a design fee equal to one percent of the property's gross sale price. Plaintiffs allegedly supplied home furnishings that the eventual purchaser could elect to buy, with defendants agreeing to pay an additional price for those furnishings if the option was exercised. The property sold on February 23, 2022, for \$4,925,000, the purchaser elected to buy it with the furnishings, and defendants allegedly failed to pay either the design fee or the furnishings charge.

PROCEDURAL HISTORY

Plaintiffs commenced an action seeking, among other relief, damages for breach of an alleged oral agreement concerning staging services, a design fee, and home furnishings. Defendants moved before answering under CPLR 3211(a) to dismiss the contract claim, arguing that the alleged agreement violated the statute of frauds under UCC 2-201. The Supreme Court, Suffolk County, denied that branch of the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- 374-76 Prospect Place Tenants Assn., Inc. v. City of New York, 231 A.D.3d 911, 913
- Olden Group, LLC v. 2890 Review Equity, LLC, 209 A.D.3d 748, 750
- Dreamco Dev. Corp. v. Cranesville Block Co., Inc., 229 A.D.3d 1187, 1188
- Vitolo v. Dow Corning Corp., 234 A.D.2d 361, 362
- Newport E. Inc. v. Sviba Floral Decorators, Inc., 202 A.D.3d 482, 483
- Golisano v. Vitoch Interiors Ltd., 150 A.D.3d 1629, 1630

OPINION

Montgomery v. Emanon S. Corp. 2026 NY Slip Op 01050

PER CURIAM.

Montgomery v Emanon S. Corp. (2026 NY Slip Op 01050) Montgomery v Emanon S. Corp. 2026 NY Slip Op 01050 Decided on February 25, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

WILLIAM G. FORD

HELEN VOUTSINAS

LAURENCE L. LOVE, JJ. 2024-11194

(Index No. 206385/22) [*1]Cindy L. Montgomery, etc., et al., respondents, v Emanon South Corp., et al., appellants. McAuliffe Law, PLLC, East Hampton, NY (E. Timothy McAuliffe, Jr., of counsel), for appellants. Blangiardo & Blangiardo, Riverhead, NY (Frank J. Blangiardo of counsel), for respondents. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the defendants appeal from an order of the Supreme Court, Suffolk County (Joseph Farneti, J.), dated September 18, 2024. The order, insofar as appealed from, denied that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the cause of action to recover damages for breach of contract. ORDERED that the order is affirmed insofar as appealed from, with costs. The plaintiffs allege that in June 2020, they entered into an oral agreement with the defendants to provide staging services for a property owned by the defendants in Southampton in exchange for a design fee of one percent of the gross sale amount when the property was sold. As part of the service, the plaintiffs allegedly provided all the home furnishings to be placed in the property, which the eventual purchaser of the property had the option to purchase. Pursuant to the alleged oral agreement, if the purchaser of the property elected that

option, the defendants were to pay the plaintiffs an additional agreed-upon price for the home furnishings. The plaintiffs further allege that the property sold on February 23, 2022, for \$4,925,000 with the purchaser electing to buy the property with the home furnishings. The defendants allegedly failed to pay the plaintiffs either the design fee or for the home furnishings. The plaintiffs commenced this action, inter alia, to recover damages for breach of contract based on the alleged oral agreement. Thereafter, the defendants moved, pre-answer, pursuant to CPLR 3211(a) to dismiss the complaint, contending, among other things, that the purported oral agreement violated the statute of frauds under UCC 2-201. In an order dated September 18, 2024, the Supreme Court, inter alia, denied that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the cause of action to recover damages for breach of contract. The defendants appeal. "'On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) based on the statute of frauds, the court is required to accept the facts as alleged in the complaint as true and accord the plaintiff the benefit of every possible favorable inference'" (374-76 Prospect Place [*2]Tenants Assn., Inc. v City of New York , 231 AD3d 911 , 913, quoting Olden Group, LLC v 2890 Review Equity, LLC , 209 AD3d 748 , 750). Contrary to the defendants' contention, they failed to establish that the cause of action to recover damages for breach of contract is barred by the statute of frauds. Article 2 of the UCC only applies to agreements that are predominantly for the sale of goods, as opposed to the furnishing of services (see Dreamco Dev. Corp. v Cranesville Block Co., Inc. , 229 AD3d 1187 , 1188; Vitolo v Dow Corning Corp. , 234 AD2d 361, 362). "If service dominates the transaction and the transfer of personal property is merely incidental to that transaction, then it is deemed to be predominantly service oriented" (Vitolo v Dow Corning Corp. , 234 AD2d at 362). Accepting the allegations in the complaint as true and according the plaintiffs the benefit of every favorable inference, the complaint sufficiently alleged that the defendants breached the oral agreement and that the agreement was predominantly service oriented (see Newport E. Inc. v Sviba Floral Decorators, Inc. , 202 AD3d 482 , 483; see also Golisano v Vitoch Interiors Ltd. , 150 AD3d 1629, 1630). Accordingly, the Supreme Court properly denied that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the cause of action to recover damages for breach of contract. In view of the foregoing, we do not address the remaining contentions. BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court