

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: January 5, 2017

523282

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MARK L. REYNOLDS,  
Appellant,

v

TOWN OF GREENVILLE,  
Respondent.

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MEMORANDUM AND ORDER

Calendar Date: November 22, 2016

Before: Garry, J.P., Egan Jr., Rose, Clark and Mulvey, JJ.

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Biscone Law Firm, Ravena (Carmen M. Warner of counsel), for  
appellant.

Tal B. Rappleyea, Valatie, for respondent.

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Clark, J.

Appeal from an order and judgment of the Supreme Court  
(Fisher, J.), entered September 11, 2015 in Greene County, which  
granted defendant's motion for summary judgment dismissing the  
complaint.

Pursuant to a contract dated December 23, 2011, defendant  
hired plaintiff as an independent contractor to operate its  
wastewater treatment facility. In March 2013, defendant  
terminated its contract with plaintiff "for cause" on the basis  
that plaintiff or his employee allegedly "failed to properly  
complete and[/]or file the reports, inspections, testing and  
calibration of test equipment," as required by the contract.  
Plaintiff then commenced this action alleging that defendant had  
improperly discharged him from his duties under the contract.  
Following joinder of issue and disclosure, defendant moved for

summary judgment dismissing the complaint, asserting that there were no triable issues of fact as to the reasons for the termination and, therefore, dismissal of plaintiff's breach of contract claim was warranted. Plaintiff opposed the motion, and his counsel stated, in his affirmation, that defendant had "addresse[d] the completely wrong cause of action" of breach of contract and that "the cause of action plead[ed] by . . . [p]laintiff [was] one for wrongful termination." Supreme Court granted defendant's motion and dismissed the complaint, stating that defendant had "succeed[ed] both procedurally as [p]laintiff ha[d] failed to state a cause of action and as a matter of law on the merits."

We affirm. The contract between the parties expressly stated that plaintiff was an independent contractor. Although the complaint was ambiguous on its face as to the specific cause of action pleaded, plaintiff's counsel asserted – in response to defendant's argument on its motion for summary judgment that plaintiff's breach of contract claim lacked merit – that the cause of action pleaded in the complaint was one for wrongful termination, rather than breach of contract. Accordingly, as there is no claim for wrongful termination of an independent contractor, Supreme Court properly dismissed the complaint for failure to state a cause of action (see DeCapua v Dine-A-Mate, Inc., 292 AD2d 489, 492-493 [2002]).<sup>1</sup>

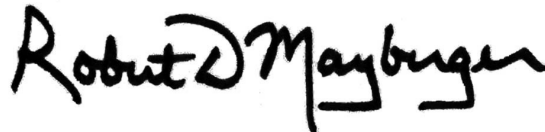
Garry, J.P., Egan Jr., Rose and Mulvey, JJ., concur.

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<sup>1</sup> In light of this conclusion, we need not address Supreme Court's further finding that, had a cause of action for breach of contract actually been stated, defendant would have been entitled to dismissal of that claim on the merits. Were we to do so, we would deny defendant's motion for summary judgment dismissing the complaint, as our review of the record reveals that plaintiff raised questions of fact in opposition to the motion.

ORDERED that the order and judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court