

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12863  
C/cb

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Submitted - October 17, 2006

THOMAS A. ADAMS, J.P.  
DAVID S. RITTER  
WILLIAM F. MASTRO  
ROBERT A. LIFSON, JJ.

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2005-06845

DECISION & ORDER

Phyllis G. Sternlicht, appellant, v Daniel R. Ferrara,  
et al., respondents.

(Index No. 3933-04)

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Steven A. Sternlicht, East Islip, N.Y., for appellant.

Mastroianni & Mastroianni, Westbury, N.Y. (Anthony Mastroianni of counsel), for respondents.

In an action, inter alia, for breach of a contract for the sale of real property, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated March 22, 2005, as denied those branches of her motion which were for summary judgment on the first and third causes of action in the complaint and to dismiss the defendants' first counterclaim.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the particular circumstances of this case, a triable issue of fact exists as to whether the plaintiff's notice on January 26, 2004, setting a closing for February 17, 2004, was reasonable (*see Ben Zev v Merman*, 73 NY2d 781, 783; *Miller v Almquist*, 241 AD2d 181, 185-186). The defendants also raised a triable issue of fact as to the reasonableness of selecting a law date for a time the defendants' attorney was known to be unavailable or whether the defendants' attorney was

acting unreasonably in failing to make himself available at the scheduled closing or any agreed-upon closing date.

ADAMS, J.P., RITTER, MASTRO and LIFSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court