

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

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_____AD3d_____

Argued - October 10, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
ROBERT A. SPOLZINO
MARK C. DILLON, JJ.

2005-06816

DECISION & ORDER

Lisa Fanek, appellant, v Dutchess Properties, LLC,
respondent.

(Index No. 2951/03)

David A. Sears, Poughkeepsie, N.Y., for appellant.

Van DeWater & Van DeWater, LLP, Poughkeepsie, N.Y. (David D. Hagstrom of
counsel), for respondent.

In an action, inter alia, to compel specific performance of an option to purchase real property, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Pagonos, J.), dated June 13, 2005, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to compel specific performance of a purchase option in a lease. However, in support of its motion for summary judgment dismissing the complaint, the defendant demonstrated, prima facie, both that the lease had been terminated and that the purchase option had not been exercised in accordance with the terms and conditions of the lease (*see Raanan v Tom's Triangle*, 303 AD2d 668; *O'Rourke v Carlton*, 286 AD2d 427). In opposition, the

plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). Thus, the motion was properly granted.

MILLER, J.P., RITTER, SPOLZINO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court