

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

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_____AD3d_____

Argued - April 24, 2007

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2007-00289

DECISION & ORDER

Home Sales Realty, Inc., et al., appellants,
v Unity Bank, respondent.

(Index No. 8184/06)

Howard R. Birnbach, Great Neck, N.Y., for appellants.

Canfield Madden & Ruggiero, LLP, Garden City, N.Y. (John P. Ruggiero of counsel), for respondent.

In an action to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Lally, J.), dated November 17, 2006, as, upon converting that branch of the defendant's motion which was to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7) to a motion for summary judgment dismissing the complaint, granted that branch of the motion.

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

The defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that the contract of sale, which specifically provided that the seller made no representations other than those expressly made in the contract, did not represent that there was no additional tax liability for tax arrears (*see Valassis Communications v Weimer*, 304 AD2d 448, 449; *Nancy Neale Enters. v Eventful Enters.*, 238 AD2d 322, 324; *Home Owners' Loan Corp. v Wood*, 170 Misc 74; *see also Citibank v Plapinger*, 66 NY2d 90; *Danann Realty Corp. v Harris*, 5 NY2d 317; *Rodas v Manitaras*, 159 AD2d 341). In opposition, the plaintiffs failed to raise a triable issue

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of fact. Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was for summary judgment dismissing the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

SPOLZINO, J.P., FLORIO, SKELOS and McCARTHY, 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