

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

D15706  
X/hu

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Submitted - May 25, 2007

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

2006-08284

DECISION & ORDER

Jason Barlia, appellant, v Murcott Realty Corp., respondent.

(Index No. 23627/05)

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Anthony M. Dattoma, Maspeth, N.Y., for appellant.

Edward I. Sussman, New York, N.Y., for respondent.

In an action, inter alia, for specific performance of an option agreement for the sale of real property, the plaintiff appeals from an order of the Supreme Court, Queens County (Dorsa, J.), entered August 24, 2006, which, among other things, denied his motion, in effect, for summary judgment on the complaint and granted the defendant's cross motion, inter alia, for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On its cross motion, inter alia, for summary judgment dismissing the complaint, the defendant made a prima facie showing of its entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The defendant established that the granting of an easement was an essential term of the alleged agreement. Since the parties never agreed to the nature and extent of the easement, the alleged agreement was unenforceable (*see Joseph Martin, Jr. Delicatessen v Schumacher*, 52 NY2d 105, 109; *Red Hook Marble, Inc. v Herskowitz & Rosenberg*, 15 AD3d 560, 561; *Danton Constr. Corp. v Bonner*, 173 AD2d 759, 759-760). Since, in response, the plaintiff failed to raise a triable issue of fact, the court correctly granted the defendant's cross motion (*see Alvarez v Prospect Hosp.*, *supra* at 324).

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The plaintiff's remaining contention is without merit.

MASTRO, J.P., DILLON, COVELLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court