

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

D17842
X/kmg

_____AD3d_____

Submitted - November 13, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2006-08501

DECISION & ORDER

John Thompson, et al., respondents,
v Jenny Rampersaud, appellant.

(Index No. 7500/04)

Lester & Associates, P.C. (Roy J. Lester of counsel), for appellant.

Garnett H. Sullivan, Elmont, N.Y., for respondents.

In an action, inter alia, for specific performance of a contract for the sale of real property, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Polizzi, J.), dated June 23, 2005, as granted that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought to recover damages for breach of contract.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought to recover damages for breach of contract is denied.

In light of our determination on a companion appeal from an order of the Supreme Court, Queens County, dated January 12, 2006, upon renewal, in effect, granting that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought specific performance (*see Thompson v Rampersaud*, _____AD3d_____ [Appellate Division Docket No. 2006-02037, decided herewith]), under the circumstances of this case, where the plaintiffs sought damages only if they were not granted specific performance, the plaintiffs may not recover the

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alternative relief sought by them of damages for breach of the contract of sale.

CRANE, J.P., RIVERA, ANGIOLILLO and DICKERSON, 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