

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

D18907
Y/kmg

_____AD3d_____

Argued - March 17, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
MARK C. DILLON
RUTH C. BALKIN, JJ.

2007-01931

DECISION & ORDER

Mary S. Connella, et al., appellants,
v Robert Palombo, et al., respondents.

(Index No. 877/03)

Lynn M. Smookler, P.C., Poughkeepsie, N.Y., for appellants.

Corbally, Gartland and Rappleyea, LLP, Poughkeepsie, N.Y. (William W. Frame of counsel), for respondents.

In an action, inter alia, to recover damages for fraudulent inducement and breach of contract, the plaintiffs appeal from an order of the Supreme Court, Dutchess County (Pagones, J.), dated February 5, 2007, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting those branches of the defendants' motion which were for summary judgment dismissing the fourth cause of action insofar as it alleges that a defect in an oil pipe was actively concealed by the defendants, and the tenth and eleventh causes of action asserted against the defendant Robert Palombo, and substituting therefor a provision denying those branches of the motion; as so modified, the order is affirmed, without costs or disbursements.

In support of their motion for summary judgment dismissing the complaint, the defendants established their entitlement to judgment as a matter of law dismissing the fourth through ninth causes of action asserted in the complaint by demonstrating that such claims were barred by the specific disclaimer provisions contained in the contract of sale and its riders (*see Danann Realty*

April 22, 2008

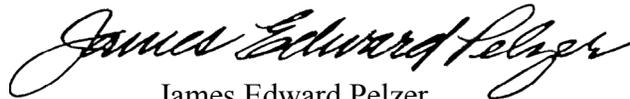
Page 1.

CONNELLA v PALOMBO

Corp. v Harris, 5 NY2d 317, 320; *Rigney v McCabe*, 43 AD3d 896; *Fabozzi v Coppa*, 5 AD3d 722, 723-724). In opposition, the plaintiffs raised a triable issue of fact only with respect to so much of the fourth cause of action asserted in the complaint as alleges that a defect in an oil pipe was actively concealed by the defendants (see *Simone v Homecheck Real Estate Services, Inc.*, 42 AD3d 518, 520; *Matos v Crimmins*, 40 AD3d 1053, 1054-1055; *Jablonski v Rapalje*, 14 AD3d 484, 485). The defendants failed, however, to establish their entitlement to judgment as a matter of law dismissing the tenth and eleventh causes of action asserted in the complaint, which allege that the defendant Robert Palombo breached a contract entered into after the closing. Therefore, the Supreme Court should have denied those branches of their motion which were for summary judgment dismissing these causes of action (see *Alvarez v Prospect Hosp.*, 68 NY2d 320).

RIVERA, J.P., SPOLZINO, DILLON and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court