

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

D19351
C/kmg

_____AD3d_____

Argued - April 17, 2008

ROBERT A. SPOLZINO, J.P.
EDWARD D. CARNI
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-06483

DECISION & ORDER

In the Matter of Ellen Piterniak, deceased.
Robert J. Piterniak, et al., appellants;
Ellen Cinque, respondent.

(File No. 654 P 02)

Robert J. Piterniak, Center Moriches, N.Y., appellant pro se, and Laura Piterniak,
Center Moriches, N.Y., appellant pro se (one brief filed).

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Stephen R. Angel, Lisa J. Ross, and
Carmen DiTalia of counsel), for respondent.

In a probate proceeding, in which Robert J. Piterniak and Laura Piterniak petitioned for specific performance of an alleged agreement for the sale of real property, the petitioners appeal from an order of the Surrogate's Court, Suffolk County (Czygier, S.), dated June 11, 2007, which granted the motion of Ellen Cinque for summary judgment dismissing the petition.

ORDERED that the order is affirmed, with costs.

The writings relied upon by the petitioners to establish the alleged agreement among the parties were insufficient to satisfy the statute of frauds, as they left for future negotiations certain essential terms of the contemplated contract and were subject to the execution of a more formal contract of sale (*see Nesbitt v Penalver*, 40 AD3d 596, 597-599; *Sabetfard v Djavaheri Realty Corp.*, 18 AD3d 640, 641; *Rahimzadeh v M.A.C. Assoc.*, 304 AD2d 636; *Checkla v Stone Meadow Homes*, 280 AD2d 510; *O'Brien v West*, 199 AD2d 369, 370; *Dutchess Dev. Co. v Jo-Jam Estates*, 134

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MATTER OF PITERNIAK, DECEASED

AD2d 478).

The petitioners' remaining contentions are without merit.

SPOLZINO, J.P., CARNI, DICKERSON and ENG, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court