

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

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_____AD3d_____

Argued - November 20, 2008

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
RUTH C. BALKIN
WILLIAM E. McCARTHY, JJ.

2007-10754

DECISION & ORDER

Raphial Fogarty, et al., respondents, v Elizabeth
Jordan, a/k/a Dorothy Jordan, etc., appellant.

(Index No. 6856/06)

Alexander Bursztein, New City, N.Y., for appellant.

Phillips & Millman, LLP (Thomas Torto, New York, N.Y. [Jason Levine], of
counsel), for respondents.

In an action, inter alia, to compel specific performance of a contract for the sale of real property, the defendant appeals from a judgment of the Supreme Court, Rockland County (Berliner, J.), dated September 17, 2007, which, upon an order of the same court dated August 8, 2007, granting the plaintiffs' motion for summary judgment on their cause of action to compel specific performance of the contract, is in favor of the plaintiffs and against her, directing her to convey the subject real property pursuant to the terms of the contract between the parties.

ORDERED that the judgment is affirmed, with costs.

The plaintiffs made a prima facie showing of their entitlement to judgment as a matter of law on their cause of action to compel specific performance of the contract by submitting proof of the validity of the contract of sale and their performance thereunder (*see Capece v Robbins*, 46 AD3d 589; *Moutafis v Osborne*, 7 AD3d 686, 687; *see generally Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). In opposition, the defendant failed, through the submission of her counsel's affirmation and her conclusory pleadings, to meet her burden of raising a triable issue of fact as to her affirmative defenses (*see Hearst v Hearst*, 50 AD3d 959, 961-962; *Cosh v Cosh*, 45

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AD3d 798, 799-800; *Whitehead v Town House Equities, Ltd.*, 8 AD3d 367; *Mandell v Finkel*, 298 AD2d 365, 366; *Warren Elec. Supply v Davidson*, 284 AD2d 869). Accordingly, the Supreme Court properly directed the defendant to convey the subject property pursuant to the terms of the contract between the parties.

MASTRO, J.P., MILLER, BALKIN and McCARTHY, 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