

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

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_____AD3d_____

Argued - March 30, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2007-11046

DECISION & ORDER

Joemark Enterprises, LLC, appellant, v City of
Newburgh, respondent.

(Index No. 326/07)

Steven A. Kimmel, Washingtonville, N.Y., for appellant.

Burke, Miele & Golden, LLP, Goshen, N.Y. (Michael K. Burke and Dennis J. Mahoney III of counsel), for respondent.

In an action, inter alia, in effect, for specific performance of a contract for the sale of a dock, the plaintiff appeals from an order of the Supreme Court, Orange County (Giacomo, J.), dated October 26, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On its motion for summary judgment, the defendant demonstrated its prima facie entitlement to judgment as a matter of law by demonstrating that a condition precedent to the formation of a binding agreement was not met (*cf. Felipe v 2820 W. 36th Street Realty Corp.*, 20 AD3d 503, 504; *Bradenton Realty Corp. v United Artists Props. I Corp.*, 264 AD2d 405; *Grin v 345 E. 56th St. Owners*, 212 AD2d 504). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendant's motion.

RIVERA, J.P., COVELLO, DICKERSON and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 26, 2009

JOEMARK ENTERPRISES, LLC v CITY OF NEWBURGH