

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

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_____AD3d_____

Argued - September 29, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-05223

DECISION & ORDER

Eugene Racanelli, Inc., et al., respondents, v Incorporated Village of Babylon, et al., appellants.

(Index No. 14164/07)

Miranda Sambursky Slone Sklarin Verveniotis LLP, Mineola, N.Y. (Michael A. Miranda of counsel), for appellants.

Barry V. Pittman, Bay Shore, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal from an order of the Supreme Court, Suffolk County (Molia J.), dated March 25, 2008, which granted the plaintiffs' motion for summary judgment dismissing their counterclaim for, among other things, specific performance of a contract for the sale of real property.

ORDERED that the order is affirmed, with costs.

The cover letter attached to an unexecuted contract of sale for the subject real property, which was sent to the attorney representing the defendants, specifically provided that the seller would not be bound until the contract of sale had been executed and delivered to the office of the defendants' attorney. Inasmuch as neither full execution nor delivery was accomplished prior to the time that the plaintiffs' attorney communicated his clients' desire not to go forward with the transaction, no binding contract was created (*see 219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 512; *Apostle v Kac*, 113 AD2d 912; *Beck v New York News*, 92 AD2d 823, 824-825, *affd* 61

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NY2d 620; *cf. Sorenson v Brahver*, 43 AD3d 903). Accordingly, the Supreme Court properly granted the plaintiffs' motion for summary judgment dismissing the counterclaim.

SKELOS, J.P., COVELLO, SANTUCCI and BALKIN, 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