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

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_____AD3d_____ Argued - November 2, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
DANIEL D. ANGIOLILLO, JJ.

2009-00027 DECISION & ORDER

Alfred Shasha, respondent, v Patricia Gillard, appellant.

(Index No. 15928/05)

Traub Lieberman Straus & Shrewsberry LLP, Hawthorne, N.Y. (Jonathan R. Harwood of counsel), for appellant.

William L. Barish, White Plains, N.Y., for respondent.

In an action to recover damages for breach of an escrow agreement, the defendant appeals from a judgment of the Supreme Court, Westchester County (Loehr, J.), entered December 3, 2008, which, upon an order of the same court entered November 21, 2008, granting the plaintiff's motion for summary judgment on the complaint, is in favor of the plaintiff and against her in the principal sum of $61,000.

ORDERED that the judgment is reversed, on the law, without costs or disbursements, that branch of the plaintiff's motion which was for summary judgment on the issue of damages is denied, the order entered November 21, 2008, is modified accordingly, and the matter is remitted to the Supreme Court, Westchester County, for a trial on the issue of damages.

The plaintiff made a prima facie showing that he had an escrow agreement in place with the defendant (*see Great Am. Ins. Co. v Canandaigua Natl. Bank and Trust Co.,* 23 AD3d 1025, 1027-1028), which the defendant breached by violating the conditions imposed upon disbursement of the escrowed funds (*id.; see Iannizzi v Seckin,* 5 AD3d 555, 556-557; *Takayama v Schaefer,* 240 AD2d 21, 25). In response, the defendant failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.,* 68 NY2d 320).

However, the plaintiff failed to make a prima facie showing of the extent of the damages he suffered as a result of the defendant's breach of the escrow agreement. Accordingly, we reverse the judgment, modify the order entered November 21, 2008, so as to deny that branch of the plaintiff's motion which was for summary judgment on the issue of damages, and remit the matter to the Supreme Court, Westchester County, for a trial on the issue of damages.

DILLON, J.P., FLORIO, MILLER and ANGIOLILLO, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court