

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

D26151
O/kmg

_____AD3d_____

Argued - January 19, 2010

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2008-10501

DECISION & ORDER

St. Clare Development Corp., plaintiff-respondent,
v Michael Porges, et al., defendants third-party plaintiffs-appellants;
St. Clare Development Corp., et al., third-party defendants-respondents.

(Index No. 17672/03)

Claude Castro & Associates, PLLC, New York, N.Y. (Claude Castro of counsel), for
defendants third-party plaintiffs-appellants.

Murphy & Lynch, P.C., East Norwich, N.Y. (Nicholas J. Damadeo of counsel), for
plaintiff-respondent and third-party defendants-respondents St. Clare Development
Corp., Jay Monroe, and Barbara Monroe.

In an action to recover damages for breach of contract, the defendants third-party plaintiffs appeal from so much of an order of the Supreme Court, Nassau County (Martin, J.), entered October 1, 2008, as granted those branches of the motion of the plaintiff and the third-party defendants St. Clare Development Corp., Jay Monroe, and Barbara Monroe, which were for summary judgment dismissing their first, second, third, and fifth affirmative defenses, their third counterclaim to the extent that it seeks damages for breach of the Housing Merchant Implied Warranty, their fourth, fifth, sixth, and seventh counterclaims insofar as asserted against St. Clare Development Corp., and the first, second, third, fourth, fifth, and seventh third-party causes of action insofar as asserted against Jay Monroe and Barbara Monroe, and granted the separate motion of the third-party defendant Adam Chorzepa, d/b/a Diamond Custom Construction, for summary judgment dismissing the third-party complaint insofar as asserted against him.

ORDERED that the order is affirmed insofar as appealed from, with costs.

February 16, 2010

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The respondents established their prima facie entitlement to judgment as a matter of law with respect to the affirmative defenses, counterclaims, and third-party causes of action at issue. The only viable affirmative defenses and claims of the defendant third-party plaintiffs were against the respondent St. Clare Development Corp. for breach of the limited warranty issued by it to them and for breach of the escrow agreement entered into between it and them. In opposition, the defendants third-party plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557). Accordingly, the respondents were entitled to summary judgment dismissing the affirmative defenses, counterclaims, and third-party causes of action at issue.

FISHER, J.P., ANGIOLILLO, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court