

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

D26392
O/kmg

_____AD3d_____

Argued - February 9, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2009-05899

DECISION & ORDER

HSM Real Estate, Inc., respondent, v Hafeez Khan,
et al., appellants.

(Index No. 10517/08)

William V. DeCandido, P.C., Forest Hills, N.Y., for appellants.

Robert M. Blakeman, Valley Stream, N.Y., for respondent.

In an action to recover liquidated damages for breach of a contract for the sale of real property, the defendants appeal from a judgment of the Supreme Court, Nassau County (Martin, J.), dated May 8, 2009, which, upon an order of the same court dated April 20, 2009, granting the plaintiff's motion for summary judgment on the complaint and denying their cross motion for summary judgment dismissing the complaint, is in favor of the plaintiff and against them in the principal sum of \$45,000.

ORDERED that the judgment is affirmed, with costs.

The plaintiff made a prima facie showing that the defendants failed to promptly apply for, and diligently pursue, a mortgage loan, as required by the mortgage contingency provision of the parties' real estate sales contract (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *cf. Binks v Farooq*, 178 AD2d 999). In opposition to the plaintiff's motion, the defendants failed to raise a triable issue of fact (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint, awarding it the down payment under the parties' contract pursuant to its liquidated

March 9, 2010

Page 1.

HSM REAL ESTATE, INC. v KHAN

damages provision, and properly denied the defendants' cross motion for summary judgment dismissing the complaint.

DILLON, J.P., FLORIO, MILLER and AUSTIN, 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