

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

D30291
H/prt

_____AD3d_____

Argued - February 14, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-02772

DECISION & ORDER

Robert Garone, respondent, v Stanley Morabito,
defendant, Kenneth Cartalemi, et al., appellants.

(Index No. 42385/08)

Certilman Balin Adler & Hyman, LLP, Hauppauge, N.Y. (Glenn B. Gruder and Leigh Rate of counsel), for appellants.

Eugene L. DeNicola, Sayville, N.Y. (Andrea DeNicola of counsel), for respondent.

In an action, inter alia, for specific performance of a contract for the purchase of an interest in real property, the defendants Kenneth Cartalemi and Kenneth J. Cartalemi, LLC, appeal from an order of the Supreme Court, Suffolk County (Emerson, J.), dated February 23, 2010, which denied their motion for summary judgment on the first and fifth counterclaims declaring that the plaintiff's rights in a certain option to purchase an interest in real property were time-barred and that the option was invalid and unenforceable against them and dismissing the complaint insofar as asserted against them and searched the record and awarded summary judgment to the plaintiff dismissing the first and fifth counterclaims and, in effect, declaring that the plaintiff's rights in a certain option to purchase an interest in real property were not time-barred and that the option and the contract of sale were valid and enforceable against them.

ORDERED that the order is affirmed, with costs, and the matter is remitted to the Supreme Court, Suffolk County, for the entry of an interlocutory judgment declaring that the plaintiff's rights in a certain option to purchase an interest in real property were not time-barred and that the option and the contract of sale were valid and enforceable against the defendants Kenneth Cartalemi and Kenneth J. Cartalemi, LLC.

March 8, 2011

GARONE v MORABITO

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For the reasons set forth in the decision and order in the companion appeal (*see Cartalemi v Garone*, _____AD3d_____, [decided herewith]), the order is affirmed.

Since the counterclaims sought declaratory relief, we remit the matter to the Supreme Court, Suffolk County, for the entry of an interlocutory judgment declaring that the plaintiff's rights in the option were not time-barred and that the option and the contract of sale are valid and enforceable against the appellants (*see Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).

MASTRO, J.P., SKELOS, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court