

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

D30385  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 15, 2011

DANIEL D. ANGIOLILLO, J.P.  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2010-06778

DECISION & ORDER

Jacob Shafran, appellant, Modesto Pineiro,  
etc., et al., respondents.

(Index No. 13087/08)

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Sol Mermelstein, Brooklyn, N.Y., for appellant.

LaRocca Hornik Rosen Greenberg & Blaha, LLP, New York, N.Y. (David N.  
Kittredge of counsel), for respondents.

In an action, inter alia, to recover a down payment made pursuant to a contract for the sale of real property, the plaintiff appeals, as limited by his brief, from so much an order of the Supreme Court, Kings County (Saitta, J.), dated July 1, 2010, as granted the motion of the defendants Modesto Pineiro and Vilma Lorenzi for summary judgment dismissing the complaint insofar as asserted against them and directed the defendant James A. Do Campo to release to those defendants the down payment being held in escrow.

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

The plaintiff buyer and the defendants sellers, Modesto Pineiro and Vilma Lorenzi (hereinafter together the defendants), entered into a contract for the sale of the defendants' home, pursuant to which the plaintiff made a down payment which was deposited with the defendants' attorney, James A. Do Campo. The contract required the defendants to provide a certificate of occupancy indicating that the premises was a legal two-family dwelling or proof that none was required. The plaintiff refused to close on the sale of the property because the defendants had not provided a certificate of occupancy and subsequently commenced this action, inter alia, to recover

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his down payment.

The defendants moved for summary judgment dismissing the complaint insofar as asserted against them alleging that they satisfied their obligation under the contract to provide evidence that no certificate of occupancy was required. The Supreme Court granted the defendants' motion and directed the release from escrow of the plaintiff's down payment to them. We affirm.

The defendants demonstrated their prima facie entitlement to judgment as a matter of law by showing that they satisfied the contract requirements by providing evidence that no certificate of occupancy was required (*see generally Masi v Iwanski*, 136 AD2d 609; *compare Correnti v Allstate Props., LLC*, 38 AD3d 588; *Costello v Casale*, 281 AD2d 581). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment and directed Do Campo to release the down payment to them (*see Masi v Iwanski*, 136 AD2d 609).

ANGIOLILLO, J.P., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court