

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

D35035
G/kmb

_____AD3d_____

Submitted - April 20, 2012

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-04547

DECISION & ORDER

Tanya Isaacs, respondent, v Prospect Park, LLC,
appellant.

(Index No. 470/10)

Arrufat Gracia, PLLC, New York, N.Y. (Christie M. Delbrey of counsel), for
appellant.

Eric Nelson, Staten Island, N.Y., for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant
appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated September 21, 2010,
which denied its motion pursuant to CPLR 7503(a) to compel arbitration.

ORDERED that the order is affirmed, with costs.

The defendant is not entitled to arbitration, as the parties did not agree that the
arbitration clause in the contract at issue was to survive the delivery of title (*see 527 Smith St.
Brooklyn Corp. v Bayside Fuel Oil Depot Corp.*, 262 AD2d 278; *cf. Matter of Praetorian Realty
Corp. [Presidential Towers Residence]*, 40 NY2d 897).

In light of our conclusion, we need not reach the parties' remaining contentions.

MASTRO, A.P.J., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

May 23, 2012

ISAACS v PROSPECT PARK, LLC