

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1082

CA 09-00610

PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, CARNI, AND GORSKI, JJ.

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LEGACY DEVELOPMENT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

VICTOR LIBERATORE AND V.V.M.M., LLC,  
DEFENDANTS-APPELLANTS.

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DAMON MOREY LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

LEWANDOWSKI & ASSOCIATES, WEST SENECA (BRIAN N. LEWANDOWSKI OF  
COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered January 22, 2009 in a breach of contract action. The order denied defendants' motion for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the complaint is dismissed.

Memorandum: Plaintiff commenced this breach of contract action seeking specific performance of the purchase and sale agreement pursuant to which defendants agreed to convey to plaintiff a parcel of real property in fee simple and free and clear from all liens or other encumbrances. As the result of a title examination, plaintiff discovered that the property was separated from the main road by a one-foot-wide easement. According to plaintiff, defendants then failed to "perform the necessary steps to convey a good and marketable title . . . ."

Supreme Court erred in denying defendants' motion for summary judgment dismissing the complaint. We reject plaintiff's contention that title to the property was unmarketable because the property was not accessible by the main road. A marketable title "is one [that] can be readily sold or mortgaged to a person of reasonable prudence, the test of the marketability of a title being whether there is an objection thereto such as would interfere with the sale or with the market value of the property" (*Regan v Lanze*, 40 NY2d 475, 481). Here, defendants established that the main road in question was not the only means of accessing the property, inasmuch as the property was accessible by way of several driveways on an adjoining street (*cf. Pollak v State*, 41 NY2d 909, 910). We therefore conclude that title to the property was marketable because there was in fact legal access

to the property, although it may not have been plaintiff's preferred route (see *Janian v Barnes*, 294 AD2d 787, 789).

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court