

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

1179

CA 09-00458

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

ABDUL AHMED, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JACK G. SMITH CORP., DEFENDANT-RESPONDENT.

JOHN J. LAVIN, P.C., BUFFALO (JOHN J. LAVIN OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

PATRICK W.H. WESP, BUFFALO, FOR DEFENDANT-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme Court, Erie County (Timothy J. Drury, J.), entered October 15, 2008 in a breach of contract action. The order and judgment granted defendant's motion and dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking specific performance of a contract for the sale of property, alleging that defendant had improperly refused to convey title to the property to plaintiff. Supreme Court properly granted the motion of defendant to dismiss the complaint based on the affirmative defense that, by its express terms, the contract was not binding because it was not signed by the escrow agent, thus rendering specific performance unavailable (*see King v Littman*, 22 AD3d 917, 919; *cf. Manning v Michaels*, 149 AD2d 897, 898). Contrary to plaintiff's contention, there is no evidence in the record before us that defendant waived the contractual provision requiring the signature of the escrow agent.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court