

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

1308

CA 09-00397

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PERADOTTO, AND GORSKI, JJ.

BASS DEVELOPMENT OF NEW YORK, INC.,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

NEIL D. BAISCH, ET AL., DEFENDANTS,
AND SODUS MARINA, LLC, DEFENDANT-APPELLANT.

BOYLAN, BROWN, CODE, VIGDOR & WILSON, LLP, ROCHESTER (MARK A. COSTELLO OF COUNSEL), FOR DEFENDANT-APPELLANT.

WOODS OVIATT GILMAN LLP, ROCHESTER (ROBERT D. HOOKS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Wayne County (Kenneth R. Fisher, J.), entered May 30, 2008. The order, insofar as appealed from, denied in part the motion of defendant Sodus Marina, LLC seeking partial summary judgment dismissing the first cause of action against it.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion is granted in its entirety and the first cause of action against defendant Sodus Marina, LLC is dismissed in its entirety.

Memorandum: Plaintiff commenced this action seeking, inter alia, specific performance of a contractual addendum for the conveyance of "two separate dock condominium units," as well as related easements and rights-of-way. Supreme Court denied in part the motion of Sodus Marina, LLC (defendant) seeking partial summary judgment dismissing the first cause of action against it (*Bass Dev. of N.Y., Inc. v Baisch*, 20 Misc 3d 522), and we agree with defendant that the court should have granted the motion in its entirety. Plaintiff has no equitable interest in any portion of the townhouse and marina project (project) inasmuch as the addendum does not constitute a valid purchase and sale agreement for real property (see generally *Nesbitt v Penalver*, 40 AD3d 596, 597-598; *EMF Gen. Contr. Corp. v Bisbee*, 6 AD3d 45, 55, lv dismissed 3 NY3d 656, lv denied 3 NY3d 607). Further, we conclude that specific performance is not an available remedy under the circumstances of this case. The addendum provided that plaintiff would accept either conveyance of the real property or \$50,000 as payment for its services on the project, and thus plaintiff has an adequate remedy at law (see *T.F. Demilo Corp. v E.K. Constr. Co.*, 207 AD2d 480, 481; see generally *Pecorella v Greater Buffalo Press*, 107

AD2d 1064, 1065).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court