

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

D54403
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_____AD3d_____

Argued - September 18, 2017

JOHN M. LEVENTHAL, J.P.
BETSY BARROS
VALERIE BRATHWAITE NELSON
LINDA CHRISTOPHER, JJ.

2015-04372

DECISION & ORDER

Shlomo Karpen, respondent, v Golden Jubilee Realty,
LLC, appellant.

(Index No. 501428/13)

Gregory L. Smith, Brooklyn, NY, for appellant.

Katsky Korins LLP, New York, NY (Elan R. Dobbs and Mark Walfish of counsel),
for respondent.

In an action, inter alia, for specific performance of a real estate contract, the defendant appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated April 2, 2015, as granted the plaintiff's cross motion for summary judgment on the cause of action for specific performance.

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

On April 25, 2012, the plaintiff, as prospective purchaser, and the defendant, as prospective seller, executed a contract for the sale of real property located in Brooklyn. The closing did not occur pursuant to the terms of the contract, and the plaintiff commenced this action, inter alia, for specific performance of the contract. Subsequently, the defendant moved for summary judgment dismissing the complaint, and the plaintiff cross-moved for summary judgment on the cause of action for specific performance. The Supreme Court denied the motion and granted the cross motion, and the defendant appeals.

On appeal, the defendant argues only that the plaintiff failed to proffer evidence establishing that the member of the defendant who executed the contract had the authority to bind the defendant. This argument is not properly before this Court, as the defendant has raised it for the

first time on appeal, and it does not involve a question of law that appears on the face of the record and could not have been avoided if raised at the proper juncture (*see Vargas v Crown Container Co., Inc.*, 114 AD3d 762, 764; *Chia v City of New York*, 109 AD3d 865, 866-867).

Accordingly, since the appellant raises no other issues warranting reversal, we affirm the order insofar as appealed from.

LEVENTHAL, J.P., BARROS, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur.

2015-04372

DECISION & ORDER ON MOTION

Shlomo Karpen, respondent, v Golden Jubilee Realty,
LLC, appellant.

(Index No. 501428/13)

Motion by the respondent on an appeal from an order of the Supreme Court, Kings County, dated April 2, 2015, inter alia, to strike the appellant's brief on the ground that it improperly raises issues for the first time on appeal. By decision and order on motion of this Court dated October 18, 2016, that branch of the motion which is to strike the appellant's brief was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which is to strike the appellant's brief is denied as academic in light of our determination on the appeal.

LEVENTHAL, J.P., BARROS, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court