

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

D56067
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_____AD3d_____

Argued - April 2, 2018

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2016-03316

DECISION & ORDER

John Dowling, appellant, v Terrace City
Lodge 1499 IBPOE, respondent.

(Index No. 71275/14)

Harris Beach, PLLC, White Plains, NY (John J. Phelan of counsel), for appellant.

Einig & Bush LLP, New York, NY (Dan M. Rice of counsel), for respondent.

In an action, inter alia, for specific performance, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lawrence H. Ecker, J.), dated March 29, 2016. The order, insofar as appealed from, denied that branch of the plaintiff's motion for summary judgment which was for specific performance of a contract of sale of real property, and, in effect, upon searching the record, directed cancellation of the contract.

Motion by the defendant, inter alia, to dismiss the appeal. By decision and order on motion of this Court dated October 5, 2017, that branch of the defendant's motion which is to dismiss the appeal on the ground that the right of direct appeal from the order terminated with the entry of a judgment of the same court on July 15, 2016, was held in abeyance and referred to the panel of Justices hearing this 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 dismiss the appeal from the order is granted; and it is further,

July 18, 2018

DOWLING v TERRACE CITY LODGE 1499 IBPOE

Page 1.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of a judgment in the action on July 15, 2016 (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*Dowling v Terrace City Lodge 1499 IBPOE*, ___ AD3d ___ [Appellate Division Docket No. 2016-08669; decided herewith]; *see CPLR 5501[a][1]*; *Matter of Aho*, 39 NY2d at 248).

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court