

**Switzer v Switzer**

2007 NY Slip Op 30072(U)

March 9, 2007

Supreme Court, New York County

Docket Number: 0112611

Judge: Leland G. DeGrasse

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. LELAND DEGRASSE

PART 25

Index Number : 112611/2006

SWITZER, LOU

vs

SWITZER, GREGORY

Sequence Number : 001

DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

\_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**DECIDED PER THE ACCOMPANYING MEMORANDUM DECISION**

MAR 09 2007

Dated: \_\_\_\_\_ [Signature] \_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LOU SWITZER and GINA ABANDONATO-SWITZER

Plaintiffs,

-against-

Index No. 112611/06

GREGORY SWITZER, HELENA SWITZER and CITY  
LIGHTS AT QUEENS LANDING, INC.

Defendants.

-----X

**DeGrasse, J.:**

Defendant Citylights at Queens Landing, Inc. s/h/a City Lights at Queens Landing, Inc. moves for an order dismissing the complaint pursuant to CPLR (a)(1), (5) and (7). Defendants Gregory Switzer and Helena Switzer cross-move for summary judgment. This action stems from a December 11, 1997 agreement between plaintiffs and the Switzer defendants. The agreement contemplated a \$45,239 loan by plaintiffs to the Switzer defendants for the purpose of purchasing an apartment at Citylights, a cooperative. The loan was to be secured by a promissory note. According to the agreement, the Switzer defendants were to own a 60% interest and plaintiffs a 40% interest in the apartment. It is alleged in the complaint that the Switzer defendants breached the agreement by failing or refusing to place plaintiffs in title. The relief prayed for in the complaint includes a judgment declaring that the rights of the parties, directing Citylights to cancel shares issued to the Switzer defendants and to issue new shares to plaintiffs as well as the Switzer defendants.

Citylights is not a party to the agreement and is therefore not bound by its terms. Citylights also correctly asserts that the agreement does not obligate its board of directors, in the exercise of

its discretion, to accept plaintiffs as shareholders. Plaintiffs do not refute the affidavit by which Gregory Switzer swears that the agreement was not supported by consideration (*see generally Von Bing v Mungione*, 309 AD2d 1038 [2003]). In all other respects, plaintiffs' opposition to the Switzer defendants is deficient because it consists solely of the affirmation of an attorney who lacks personal knowledge of the facts alleged (*see Warrington v Ryder Truck Rental*, 35 AD3d 455 [2006]). For the foregoing reasons the motion and cross motion are granted. It is adjudged and declared that the December 11, 1997 agreement is not binding upon Citylights. It is further adjudged and declared that the said agreement is void as against the Switzer defendants. Settle judgment.



Dated: March 9, 2007

J. S. C.