

**Ishmael v Chandra**

2009 NY Slip Op 31869(U)

August 18, 2009

Supreme Court, Richmond County

Docket Number: 12388/04

Judge: Joseph J. Maltese

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

**DCM PART 3**

**SHAFFIATE KASIM ISHMAEL,**

*Plaintiff,*

*-against-*

**RAMESH CHANDRA,**

*Defendant.*

**Index No: 12388/04**

**Calendar No: 1167-001**

**DECISION & ORDER  
HON. JOSEPH J. MALTESE**

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The following papers numbered 1 to 2 were submitted on this motion on the 25<sup>th</sup> day of June, 2009:

	Pages Numbered
Notice of Motion for Summary Judgment by Defendant Ramesh Chandra, with Supporting Papers and Exhibits (dated April 10, 2009).....	1
Affirmation in Opposition (dated June 9, 2009).....	2

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Upon the foregoing papers, the motion of defendant RAMESH CHANDRA for summary judgment dismissing plaintiff's first and third causes of action is granted.

Plaintiff SHAFFIATE KASIM ISHMAEL commenced this action seeking specific performance of a rider to a lease agreement, which provided plaintiff with the option to purchase the leased property from defendant RAMESH CHANDRA. According to the papers submitted to the Court, the lease was executed on March 29, 2001 and provided for a month-to-month tenancy beginning on April 1, 2001. The lease contained a rider which provided plaintiff with an option to buy the property for \$240,000.00 if the closing took place by April 1, 2002. Plaintiff agreed to pay rent in the amount of \$1,800.00 and defendant agreed to credit plaintiff at the closing \$501.00 for each full month he remained as the tenant until the closing date. Plaintiff also paid a security deposit of \$3,600.

According to plaintiff, in February 2002, he advised defendant that he wished to exercise his option to purchase the property. Plaintiff allegedly applied for a mortgage and expended \$3,887. in order to commence the mortgage process. According to plaintiff, the mortgage company required a written contract of sale in order to complete the mortgage process. Plaintiff alleges that defendant refused to

provide him a contract until he obtained a firm mortgage commitment. Plaintiff was unable to obtain the mortgage and close on the property by April 1, 2002. From that point forward, plaintiff remained on the premises as a tenant but paid only \$1,300.00 per month instead of the agreed \$1,800 in rental payments. By October 2002, plaintiff had stopped paying rent altogether.

In November 2002, defendant commenced a non-payment eviction proceeding in the Civil Court of the City of New York, Housing Department, in Richmond County. Plaintiff obtained a stay of the civil court action by commencing an action in Supreme Court, Richmond County in November 2002 for specific performance in accordance with the terms of the rider in the lease, and/or the recovery of fees expended in connection with his mortgage application. It appears that the Supreme Court action was subsequently marked off the calendar, and the parties agreed to negotiate a new contract of sale for the subject property. A contract of sale was executed on September 3, 2003, for the agreed price of \$350,000. However, plaintiff was unable to obtain a mortgage commitment on or before September 30, 2003 as required by the contract, and after numerous extensions were granted, defendant eventually cancelled the contract in January 2004.

The Civil Court action then proceeded, which resulted in a court-ordered stipulation that granted defendant possession of the premises and provided for the money deposited by plaintiff pursuant to the 2003 contract be distributed to cover rental arrears. The agreement further declared that all claims between the parties were now to be deemed settled and the sale of the property deemed cancelled. Nevertheless, in July 2004 plaintiff commenced the within action, seeking to enforce the original rider to the lease agreement of March 2001 to purchase the property for \$240,000.

In moving for summary judgment to dismiss the first and third causes of action in the complaint (for specific performance and attorneys' fees, respectively), defendant contends that there are no issues of fact with respect to these causes of action since any and all claims arising out of the original lease were settled pursuant to the court-ordered stipulation executed in Civil Court on July 31, 2004. In addition, defendant contends that plaintiff surrendered his opportunity to purchase the property at the lower price when he entered into a new contract of sale in the amount of \$350,000., and was unable to obtain a mortgage under the new contract. Thus, defendant contends that the only issue is whether plaintiff is entitled to the return of his security deposit.

In opposition, plaintiff contends that he was unable to close on the property in accordance with the lease provision allowing plaintiff to purchase the property for \$240,000 because defendant deliberately refused to provide plaintiff with a contract of sale which was required by the lender in order to obtain a firm mortgage commitment. According to plaintiff, the fact that he expended \$3,887.00 in fees and expenses in order to apply for the mortgage is certainly evidence of his intention to purchase the property, but his efforts were frustrated by defendant's repeated refusal to provide plaintiff with a signed contract, claiming that he wanted a pre-qualification certificate for a mortgage commitment first. According to plaintiff, a pre-qualification certificate was ultimately provided to defendant, but it is not clear when.

Plaintiff further contends that the Supreme Court action was marked off the calendar without prejudice, and that the subsequent inability of the parties to settle the matter between themselves does not void or invalidate the rider of the lease granting plaintiff the option to purchase the property in accordance with its terms. Therefore, plaintiff contends that the rider remains valid and binding, as it was never his intention or that of the Court to rule upon its validity, which is why the matter was marked off the Court's calendar.

Finally, plaintiff contends that the so-ordered settlement agreement reached in Civil Court settled only the claims arising out of plaintiff's tenancy and the distribution of the money held by defendant in escrow by using that money to pay for rental arrears. According to plaintiff, the Civil Court Housing Part does not possess the jurisdiction to rule over real property matters as stated in the subject action, and that he remains ready, willing and able to purchase the subject property. However, he also claims that the property remains vacant and visibly neglected, resulting in numerous violations, and its market value has been substantially reduced. He also claims that since he vacated the premises in May 2004, defendant is obligated to return his remaining security deposit of \$3,600.

The motion is granted.

On these papers, it is the opinion of this Court that defendant has submitted sufficient proof to establish its prima facie entitlement to judgment dismissing plaintiff's first and third causes of action. In opposition, plaintiff failed to raise triable issues of fact (*see* Zuckerman v. City of New York, 49 NY2d 557).

While it could be argued that defendant's refusal to provide plaintiff with a signed contract contributed to the denial of plaintiff's original application for a mortgage, there is no dispute that instead of pursuing his claim in the Supreme Court, the plaintiff and defendant attempted to settle the matter and, with their attorneys present, negotiated and executed a contract of sale at the higher price of \$350,000. Notably, this contract contained a merger clause specifically providing that "all prior understandings, agreements, representations and warranties, oral or written, between seller and purchaser are merged in this contract; [which] completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract" (*see* Defendant's Exhibit G, Contract of Sale, No. 28). Having done that, any prior agreement, including the terms contained the rider to the lease, are deemed merged into the subsequent contract of sale (*see* Jarecki v. Shung Moo Louie, 95 NY2d 665, 699). In addition, while plaintiff states that he was unable to obtain a mortgage at the \$350,000.00 purchase price, the contract so-providing was cancelled by the terms of the July 31, 2004 stipulation executed by the parties in Civil Court, each of them again being represented by counsel. It is undisputed that said stipulation expressly provided that the sale of the property was cancelled and that all claims between the parties were settled. Under these circumstances, plaintiff cannot now attempt to reinstate the terms of the option to buy contained within the rider to the lease.

To the contrary, plaintiff has offered no opposing evidence, and has failed to cite any controlling authority for the proposition that a triable issue of fact exists regarding the intent of the parties as expressed in the so-ordered agreement entered into in Civil Court.

Accordingly, it is hereby:

ORDERED that the motion for summary judgment of defendant RAMESH CHANDRA dismissing plaintiff's first and third causes of action is granted; and it is further

ORDERED that the first and third causes of action in plaintiff's complaint are hereby severed and dismissed; and it is further

ORDERED that the clerk enter judgment accordingly.

All parties shall appear for a status conference in DCM Part 3 on **Wednesday, September 23, 2009 at 9:30 a.m.**

E N T E R,

DATED: August 18, 2009

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Joseph J. Maltese  
Justice of the Supreme Court