

<b>Victory M LLC v Frederic</b>
2015 NY Slip Op 31279(U)
July 7, 2015
Supreme Court, Kings County
Docket Number: 507085/14
Judge: Debra Silber
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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : PART 9**

VICTORY M LLC,

Plaintiff,

**DECISION / ORDER**

-against-

Index No. 507085/14

SANDRA FREDERIC,

Motion Seq. No. 1 & 2

Motion Sub. 6/18/15

Defendant.

*Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion and defendant's cross-motion for summary judgment.*

Papers	Numbered
Notice of Motion Affidavit in Support and Exhibits Annexed .....	<u>1-8</u>
Notice of Cross-Motion Annexed .....	<u>9</u>
Affirmation in Further Support of Motion and in Opposition To Cross Motion.....	<u>10</u>
Affirmation in Further Support of Cross-Motion and in Opposition to Plaintiff's Motion for Summary Judgment.....	<u>11</u>
Other: _____	_____

**Upon the foregoing cited papers, the Decision/Order on this application is  
as follows:**

After oral argument, both sides represented by counsel, summary judgment is awarded to plaintiff and defendant's motion is denied, for the reasons herein.

The parties entered into a contract of sale for the property known as 410A Hancock Street, Brooklyn, New York 11216, Block 1841, Lot 27. The contract is dated August 30, 2013 and is signed by both parties. There is no mortgage

contingency, and there is no broker listed. It is a standard residential contract form. The downpayment is held in escrow by defendant's attorney. The closing date is stated as "no later than December 31, 2013." The space for Seller's attorney is blank although the escrow provision (¶6) states that Seller's attorney will hold the downpayment in his/her escrow account. The downpayment check (Plaintiff's Exhibit E) was dated August 30, 2013 payable to "Alan Gerson as attorney." There is no dispute that this check cleared and is in the attorney's escrow account.

Plaintiff's Exhibit F is a copy of the title report ordered by plaintiff. It indicates that defendant is the sole owner of the property.

In support of plaintiff's motion, plaintiff provides the pleadings, the contract of sale, the notice of pendency, a copy of the downpayment check, a copy of the title report, and bank information for plaintiff's principal, Rotem Victor Moyal, to demonstrate that he has the funds to close. In addition, there is an affidavit in support from Mr. Moyal which indicates that plaintiff was and still is ready, willing and able to close but defendant continues to refuse to close. He notes that defendant's answer alleges the contract was conditioned on her finding a "replacement home," and points out that this alleged condition is not in the contract, which has a standard merger clause, so is unenforceable. He concludes that he is entitled to summary judgment and an order compelling defendant to close. The court finds plaintiff has made out a prima facie case for summary judgment.

In opposition to plaintiff's motion and in support of defendant's cross-motion for summary judgment dismissing the complaint, there is an affirmation of counsel, a copy of the contract of sale identical to the copy in plaintiff's motion, a copy of the complaint and answer, a copy of the plaintiff's affidavit and a copy of the downpayment check. There is no affidavit from defendant, nor is there an affirmation from the attorney who is the escrow agent. Defendant's counsel claims that plaintiff breached the contract by tendering a downpayment check drawn on an account of an LLC that is not plaintiff. He does not dispute that the check cleared and remains in the escrow account of defendant's "transactional attorney."

Defendant's opposition fails to overcome plaintiff's motion and raise a triable issue of fact. Defendant's opposition doesn't provide any indication of the basis for her cross-motion for summary judgment dismissing the complaint pursuant to CPLR 3212.

Accordingly, it is hereby

**ORDERED AND ADJUDGED**, that defendant is hereby directed to execute a deed and any other documents necessary to effectuate the transfer of her interest in the real property known as 401A Hancock Street, Brooklyn, New York, to the plaintiff, within 60 days from the service of this order with notice of entry; and it is further

**ORDERED AND ADJUDGED**, that defendant's counterclaim is hereby dismissed.

This shall constitute the decision, order and judgment of the court.


Dated: July 7, 2015

ENTER:



Hon. Debra Silber, A.J.S.C.

Hon. Debra Silber  
Justice Supreme Court



NANCY T. SUNSHINE  
Clerk

FILED  
2015 JUL 22 AM 9:15  
KINGS COUNTY CLERK  
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