

Brooks v Regan

2025 NY Slip Op 33403(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 153517/2025

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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ANDREA BROOKS,	INDEX NO. <u>153517/2025</u>
Plaintiff,	MOTION DATE <u>03/17/2025</u>
- v -	MOTION SEQ. NO. <u>001</u>

BASIL P REGAN, and STEVEN DOUENIAS, ESQ., as
Escrow Agent,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, through 27
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Appearances:

Plaintiff: JH Heiberger, PLLC (Jamie Heiberger Harrison, Esq.)

Defendant Basil P. Regan: Marks DiPalermo Wilson PLLC (Adam Love, Esq.)

Defendant Steven Douenias, Esq.: Steven Douenias, Esq. (*pro se*)

Upon the foregoing documents, and after oral argument, which took place on June 10, 2025, Plaintiff Andrea Brooks' ("Plaintiff") motion for a preliminary injunction against Defendants is denied.

I. Background

Allegedly, on December 19, 2024, Plaintiff agreed to purchase the shares for a cooperative unit located at 875 Park Avenue, New York, New York, Apartment PH C/D (the "Apartment") from Defendant Basil P. Regan ("Regan") pursuant to a written contract (the "Contract"). Defendant Steven Douenias, Esq. ("Douenias") represented Regan during the transaction and is the escrow agent pursuant to the Contract. Plaintiff alleges the agreed purchase price was \$6,800,000.00, with an initial deposit of \$680,000.00 at execution of the contract. However, the contract erroneously stated that \$612,000,000.00 would be tendered at the contract's closing.

Plaintiff also alleges that prior to closing, she learned that nearby Lenox Hill Hospital would be undergoing a construction project. Plaintiff claims this should have been disclosed to her. Plaintiff subsequently demanded the return of the deposit, but Defendants have not returned the \$680,000.00.

Plaintiff now sues Defendants seeking a declaration that she is entitled to cancel the contract and return of the downpayment, damages in the amount of the unreturned downpayment, an injunction barring Defendants from releasing and/or disbursing the escrowed funds, and attorneys' fees. In this motion, Plaintiff seeks a preliminary injunction prohibiting Regan from enforcing the contract of sale and enjoining Defendants from releasing or disbursing any of her deposit held in escrow pending a final determination of this matter. Defendants oppose.

II. Discussion

Plaintiff's motion for a preliminary injunction is denied. A preliminary injunction is an extraordinary provisional remedy requiring a special showing, including a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of the equities tipping in favor of the moving party (*Second on Second Café, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255 [1st Dept 2009]). The Court must exercise great caution and only grant an injunction upon the clearest evidence (*Spectrum Stamford, LLC v 400 Atlantic Title, LLC*, 162 AD3d 615 [1st Dept 2018] quoting *Xerox Corp v Neises*, 31 AD2d 195 [1st Dept 1968]).

The contract of sale, which explicitly instructed Plaintiff to "CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT" clearly states:

"Purchaser acknowledges that Seller has made no representations, and held out no inducements to Purchaser, other than those expressed in the Contract, and Seller is not liable or bound in any manner by express or implied warranties, guarantees, promises, statements, representations, or information pertaining to the Unit as to the physical condition, income, expense, operation, or to what use the Unit can be applied, including but not limited to any matter or thing affecting or relating to the

Unit except as herein specifically set forth. Seller is not liable or bound in any manner by any verbal or written statements, representations, real estate broker, agent, employee, servant or other person, unless the same are specifically set forth herein....Purchaser acknowledges that the Purchaser has inspected the Unit and knows the condition thereof and that Seller is not obligated to install any equipment, appliances, or personal property in the Unit or otherwise make any alterations, repairs, improvements or decorations to the Unit or its existing equipment, appliances or fixtures included in this sale, except as may be required of Seller by the Corporation pursuant to the Lease and the provisions of the Contract and Riders. Purchaser agrees to purchase the unit “as is.” (NYSCEF Doc. 7 at Rider ¶ 33).

Plaintiff further agreed that “neither Party is relying upon any statement, representation, covenant or agreement by any person which is not specifically embodied in this Contract.” (NYSCEF Doc. 7 at ¶ 14.1). The First Department has held based on a similar “as is” and merger clause that a seller had no duty to disclose the discovery of asbestos in the cooperative building (*see Suber v Churchill Owners Corp.*, 228 AD3d 414, 414-15 [1st Dept 2024] citing *TIAA Global Invs., LLC v One Astoria Sq. LLC*, 127 AD3d 75, 85 [1st Dept 2015]). So too here Defendants were under no affirmative obligation to disclose to Plaintiff a potential construction project at Lenox Hill hospital.

Nor is there any evidence that the Lenox Hill construction project was concealed by Defendants. The project had been widely publicized in the media, New York City Council hearings, and was the topic of discussion at numerous community groups in the area who have published online their opposition to the project. It was Plaintiff’s duty as a purchaser of property to exercise ordinary due diligence into the building and neighborhood where she decided to purchase a \$6,800,000.00 apartment (*see, e.g. Garner v Lowe*, 299 AD2d 198 [1st Dept 2002] *see also Howard v Weaver*, 244 AD2d 225 [1st Dept 1997] [no basis for fraud or misrepresentation with respect to real estate transaction where allegedly concealed information was published in the public domain, and plaintiff failed to make any inquiries]). Thus, Plaintiff’s failure to conduct due diligence into potential construction projects in the vicinity of the Apartment prior to entering the

contract of sale does not provide any basis for her to cancel the contract and recoup her deposit (681 Chestnut Ridge Road LLC v Edwin Gould Foundation for Children, 73 AD3d 624, 625 [1st Dept 2010]).

Nor does the alleged mistake in the total purchase price, which is clearly a scrivener's error of adding two extra zeroes, constitute grounds to render the contract unenforceable (*see, e.g. Lehman Bros. Holdings, Inc. v Matt*, 34 AD3d 290, 291 [1st Dept 2006]). Both parties agreed on the correct purchase price and Defendants provided Plaintiff with an amended contract to correct the scrivener's error (NYSCEF Doc. 22). Thus, Plaintiff has failed to meet her burden of showing a likelihood of success on the merits. Moreover, if the injunction is not granted, Plaintiff will suffer only monetary damages, which she may recoup if she is able to prevail ultimately on her causes of action. Thus, Plaintiff also failed to establish irreparable harm (*see, e.g. Uber Technologies, Inc. v American Arbitration Association, Inc.*, 204 AD3d 506, 509-10 [1st Dept 2022]). Therefore, Plaintiff's motion for a preliminary injunction is denied.

Accordingly, it is hereby,

ORDERED that Plaintiff Andrea Brooks' motion for a preliminary injunction against Defendants is denied; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in on event shall the proposed preliminary conference order be submitted any later than October 22, 2025¹; and it is further

¹ This date is for the submission of a proposed order only, it is not to appear in-person for a conference. If the parties have a serious discovery dispute requiring Court intervention, they shall notify the Court via e-mail at SFC-Part33-Clerk@nycourts.gov to be scheduled for a conference.

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/11/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE