

Fowler v Ibarra LLC

2025 NY Slip Op 34721(U)

December 3, 2025

Supreme Court, New York County

Docket Number: Index No. 659294/2024

Judge: Leslie A. Stroth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

JULIA FOWLER,

Plaintiff,

- v -

IBARRA LLC, JULIO E. PORTILLA, JULIO E. PORTILLA,
P.C.

Defendant.

-----X

INDEX NO. 659294/2024

MOTION DATE 02/25/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY.

FACTUAL BACKGROUND

This action concerns the Premises located at 228 West 136th Street, New York, New York. On August 25, 2023, Plaintiff Julia Fowler (“Purchaser”) and Defendant Ibarra LLC (“Seller”) executed a Contract of Sale for the Premises at a purchase price of \$1,850,000. Purchaser simultaneously tendered a \$185,000 downpayment, held in escrow by Seller’s counsel, Defendants Julio E. Portilla, Esq. and Julio E. Portilla, P.C.

Plaintiff, in Motion Sequence 001, moves for summary judgment on all claims.

The Contract and Riders contained multiple representations by Seller, including that the Premises complied with all applicable laws and building codes, that all additions and alterations were properly permitted, that no water leaks or toxic mold had existed within the prior twelve months and none would exist at closing, that the Premises would be delivered vacant and would not be re-leased during the pendency of the Contract, and that all systems were in working order. The Contract also included a mortgage contingency clause permitting Purchaser to cancel the

Contract and recover the downpayment should her lender decline to fund for reasons unrelated to Purchaser. Following a home inspection on July 31, 2023, Purchaser learned from a third-floor tenant that patchwork had been performed on the ceiling the day before. Subsequent inspections revealed active leaks and water damage, open ceilings and wet plaster, mold contamination identified by RTK Environmental Group (including toxic mold spore levels), and potential roof leaks noted by Manhattan Roofs.

On October 19, 2023, TD Bank (“Lender”) halted the mortgage underwriting process after determining that the Premises was configured as a three-family dwelling despite having a Certificate of Occupancy authorizing only two units. The lender required that the Premises be restored to legal two-family use, re-appraised, and certified as code-compliant by a licensed contractor. In February 2024, Purchaser issued notice to Seller alleging numerous contractual defaults, including misrepresentations concerning legal occupancy, the absence of leaks and mold, and the condition of various building systems. Purchaser also advised that her lender was unwilling to issue a mortgage commitment due to unresolved issues with the Premises. Purchaser asserts that Seller repeatedly represented that mold remediation and related repairs had been completed and that a clearance report would be provided, but no such report was ever produced.

On September 23, 2024, Purchaser issued a time-of-essence (“TOE”) notice scheduling a closing for November 8, 2024. Purchaser contends that Seller failed to complete the remediation work, did not provide access for the lender-required re-appraisal, re-leased portions of the Premises notwithstanding its contractual representations, and failed to appear for the TOE closing. On November 12, 2024, Purchaser issued a Termination Notice asserting material breach and demanding return of the downpayment; Seller refused to release the funds. Defendants dispute nearly all of Plaintiff’s allegations and maintain instead that remediation

work was performed using insurance proceeds and licensed contractors, that inspection documentation supports their position, that Plaintiff was not cooperative in scheduling the lender's re-appraisal, that Plaintiff lacked financing and was not ready, willing, and able to close, and that many of the alleged defects were either cured or never existed.

Defendants also assert timing and service objections pursuant to CPLR 2214(b).

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

DISCUSSION

Plaintiff has not demonstrated entitlement to judgment as a matter of law because the record contains numerous factual disputes bearing directly on liability and damages.

Plaintiff's submissions include evidence of leaks, mold, structural damage, and environmental hazards. Defendants, however, argue that remediation work occurred, that repairs were completed, and that some of the conditions cited by Plaintiff were either temporary in nature, had been addressed, or were overstated.

The scope, cause, and severity of the leaks and mold, and whether any remaining issues constituted material contractual breaches, are sharply disputed. These factual determinations cannot be resolved on summary judgment.

The parties dispute whether the Premises was being used illegally as a three-family dwelling and whether Seller cured this alleged noncompliance. Plaintiff cites lender communications flagging nonconforming use. Defendants maintain the structure was capable of two-family compliance and contend that any nonconformity was correctable or overstated. This factual dispute regarding material contractual representations raises issues of fact that preclude summary judgment.

Purchaser asserts that Seller's refusal to allow access for a re-appraisal prevented TD Bank from issuing a mortgage commitment. Defendants, however, contend that it was Purchaser's, not Seller's, lack of cooperation which caused the delay.

Given the contradictory accounts, the causes of the failed financing remain triable issues of fact requiring testimonial resolution.

Purchaser claims she was ready, willing, and able to close on the TOE date. Defendants assert the opposite, arguing that, purchaser lacked financing; that many alleged defects were cured or curable; and that Purchaser prematurely issued a TOE notice despite unresolved lender issues. Whether Purchaser or Seller defaulted in connection with the TOE closing is a factual question that cannot be resolved on the record provided.

Fraudulent Inducement

“The elements of a claim for fraudulent inducement are: 1) a false representation of material fact, 2) known by the utterer to be untrue, 3) made with the intention of inducing reliance and forbearance from further inquiry, 4) that is justifiably relied upon, and 5) results in

damages.” (*MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC*, 32 Misc 3d 758, 773 [Sup Ct 2011], *on reconsideration*, 33 Misc 3d 1208(A) [Sup Ct 2011], *revd.*, 102 AD3d 488 [1st Dept 2013], *citing Schumaker v. Mather*, 133 N.Y. 590, 595, 30 N.E. 755 [1892]).

Defendants deny these allegations and provide competing documentation suggesting repairs, remediation work, inspections, and the ability to configure the Premises as a legal two-family dwelling. Whether the cited conditions existed at the time of the alleged statements is a disputed factual question.

Plaintiff contends Seller knew its representations were untrue based on inspection findings and lender communications. Defendants dispute any knowledge of falsity and assert they believed remediation and compliance issues were addressed.

Plaintiff alleges Seller made the representations to induce her to sign the Contract and proceed toward closing. Defendants deny any fraudulent intent and contend they acted in good faith, provided access where appropriate, and undertook remediation. Nothing in the record definitively resolves this disputed element related to intent and knowledge.

Plaintiff asserts she justifiably relied on Seller’s pre-contract representations in entering into the Contract and depositing the downpayment.

Defendants argue Plaintiff undertook extensive inspections, was aware of or should have discovered certain conditions, and thus cannot establish justifiable reliance as a matter of law.

Whether Plaintiff’s reliance was justified in light of the inspection history and alleged disclosures presents a fact-intensive inquiry unsuitable for summary judgment.

Plaintiff alleges damages including loss of her downpayment, inspection costs, environmental testing costs, appraisal-related expenses, and attorneys’ fees.

Defendants counter that Plaintiff's alleged losses resulted from her own conduct, particularly her failure to cooperate with the lender's re-appraisal and not from any actionable misrepresentation.

For these reasons, Plaintiff has not made a prima facie case of entitlement to summary judgment as to her fraudulent inducement claim, and as such summary judgment is denied on that claim.

Though Defendants raise timing and service objections under CPLR 2214(b), the Court need not reach these arguments because the motion independently fails on the merits.

For all of the foregoing reasons, Plaintiff has not made a prima facie case demonstrating a entitlement to summary judgment and as such their motion is denied. The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly, it is hereby:

ORDERED that Plaintiff's Motion for Summary Judgment (Motion Seq. 001) is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

12/3/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

LESLIE A. STROTH, J.S.C.