



April 2019

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Contracts of Sale / Liquidated Damages

Closing under a contract of sale was to take place on or about thirty days after the contract vendee's attorney received a fully executed contract. The closing did not take place; the sellers sought an Order allowing the seller to retain the down payment. The Supreme Court, Nassau County, denied the Plaintiffs'-sellers' motion for summary judgment and granted the Defendant's motion for summary judgment, dismissing the complaint and directing the return of the down payment. The Appellate Division, Second Department, modified the Order of the lower court by deleting the provision which dismissed the complaint and directed the return of the down payment.

The Appellate Division found that the seller was ready, willing and able to transfer title on the date set for closing, but the Court also found that there was a triable issue of fact as to whether the contract vendee defaulted. The contract of sale provided that the vendee would be in default, and the seller could retain the down payment, if the vendee "willfully" defaulted under the contract. Because the Defendant received a letter from its lender denying his application for an extension or renewal of credit, "a triable issue of fact existed as to whether the defendant had a lawful excuse for defaulting...or whether he willfully defaulted".

Goetz v. Trinidad, 2019 NY Slip Op 00099, decided January 9, 2019.



Mortgage Foreclosures / Property Description

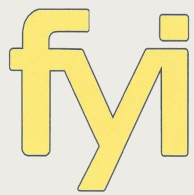
A mortgage being foreclosed against Lots 4, 5 and 6 identified the mortgaged property as Lot 5; however, the metes and bounds description in Schedule A annexed to the mortgage described Lots 4, 5 and 6. The Defendant moved for an Order dismissing the complaint on the ground that the mortgage only encumbered Lot 5. The Supreme Court, Dutchess County, granted the Plaintiff's motion for summary judgment and denied the Defendant's cross-motion for summary judgment dismissing the complaint. The Appellate Division, Second Department, affirmed, holding that "when there is a discrepancy between the legal address and the legal description of a piece of property, the legal description controls [citations omitted]".

SRP 2012-5, LLC v. Carrao, 2018 NY Slip Op 08524, decided December 12, 2018.

Integrity

Commitment

Reliability




Deeds / Fraud in the Inducement

In *Holder v. Folsom PL Realty Inc.*, the Plaintiffs sued to recover title to real property in Brooklyn. The Supreme Court, Kings County, found that the Plaintiffs had transferred their property to the Defendant for \$6,000 in reliance on the Defendant's promise that the Defendant would assist the Plaintiffs in effectuating a short sale because their mortgage was in default. The Court granted the Plaintiffs' motion for summary judgment and held that the deed from the Plaintiffs to the Defendant was null and void. According to the Court,

"the evidence shows that defendant misrepresented the transaction to plaintiffs to induce them to transfer the property, that plaintiffs justifiably relied on defendant, and that plaintiffs have been injured as a result".

The Court also found that the Plaintiffs had proved a claim for unjust enrichment; the Defendant was enriched at their expense and it was "against equity and good conscience for defendant to retain the property...". The Court, however, denied the Plaintiffs' claim for an accounting because there was no evidence that the Defendants received income from the property.

Holder v. Folsom Pl. Realty Inc., 2018 Ny Slip Op 33122, decided December 4, 2018.

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