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This opinion is uncorrected and subject to revision before
publication in the New York Reports.

No. 132
St. Lawrence Factory Stores,
Appellant,
v.
Ogdensburg Bridge and Port
Authority,
Respondent.

David C. Buran, for appellant.
A. Paul Britton, for respondent.

SMITH, J.:

In this breach of contract case, we hold that plaintiff is entitled to recover the expenses, if any, that it reasonably incurred in preparing to perform the contract.

Defendant agreed to sell, and plaintiff to buy, approximately 12 acres of land, on which plaintiff intended to build a shopping center. Supreme Court found that defendant breached the contract by failing to close, and defendant does not now challenge that finding.

Plaintiff sought damages in three categories: lost profits (money it claims it would have made if the shopping center had been built); the "benefit of its bargain" (the alleged difference between the agreed-upon price of the property and its market value); and reliance damages (money allegedly spent in preparing for performance including, among other things, efforts to arrange financing and obtain tenants for the shopping center). Supreme Court dismissed the claims for lost profits and reliance damages before trial, and the Appellate Division affirmed (St. Lawrence Factory Stores v Ogdensburg Bridge and Port Authority, 26 AD3d 700 [3d Dept 2006]). Plaintiff's benefit of bargain claim was rejected at trial, and the Appellate Division again affirmed (St. Lawrence Factory Stores v Ogdensburg Bridge and Port Authority, 49 AD3d 1069 [3d Dept 2008]). We granted leave to appeal from the Appellate Division's 2008 order, bringing up for review also its 2006 order.

As to the lost profits and benefit of bargain claims, we affirm the rulings below. The lost profits claim was speculative, and the record supports the findings of the lower courts that the market value of the property at the time of the

aborted closing did not exceed the contract price.

However, the dismissal before trial of plaintiff's claim for reliance damages was error. The Appellate Division held that, under "a contract for the sale of land requiring plaintiff to tender defendant the sale price upon closing," reliance damages are limited to "only those ordinarily incurred regarding such a contract, such as a title search, survey and attorney's closing fees" (St. Lawrence Factory Stores v Ogdensburg Bridge and Port Authority, 26 AD3d at 702). This is incorrect. In land transactions, as in other contracts, the rule is the one stated in the Restatement (Second) of Contracts § 349: as an alternative to expectation-based damages (which would include lost profits and benefit of bargain), a plaintiff may recover "damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered had the contract been performed." The principle expressed in the Restatement has long been part of New York law (Friedland v Myers, 94 Sickels 432, 436-437 [1893]; Bernstein v Meech, 85 Sickels 354, 359 [1891]; see also Freund v Washington Square Press, Inc., 34 NY2d 379, 383 [1974] ["reliance losses suffered . . . in making necessary preparations to perform" would be recoverable "if foreseeable and ascertainable"]).

Accordingly, the order of the Appellate Division should

be modified to reinstate plaintiff's claim for reliance damages, and as modified affirmed, without costs, and the case remitted to Supreme Court for further proceedings in accordance with this opinion.

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Order modified, without costs, by remitting to Supreme Court, St. Lawrence County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided October 20, 2009