

**Yerushalmi Holdings, LLC v Olumo Real Estate Corp.**

2017 NY Slip Op 30855(U)

April 24, 2017

Supreme Court, Kings County

Docket Number: 506829/2014

Judge: Sylvia G. Ash

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Comm-11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 24<sup>th</sup> day of April, 2017.

P R E S E N T:

**HON. SYLVIA G. ASH,**

Justice.

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**YERUSHALMI HOLDINGS, LLC,**

Plaintiff(s),

- against -

**DECISION AND ORDER**

Index # 506829/2014

**OLUMO REAL ESTATE CORP. and OLUFEMI FALADE,**

Defendant(s).

**Mot. Seq. 1**

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The following e-filed papers numbered 27 to 54 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	<u>27-50</u>
Opposing Affidavits (Affirmations)_____	<u>52</u>
Reply Affidavits (Affirmations)_____	<u>53-54</u>
_____Affidavit (Affirmation)_____	_____

Upon the foregoing papers, the motion by Plaintiff YERUSHALMI HOLDINGS, LLC for summary judgment on its claim for specific performance is hereby GRANTED.

***Background***

On or around August 1, 2013, the parties herein entered into a contract of sale whereby Plaintiff was to purchase real property known as 63 New York Avenue in Brooklyn, New York (hereinafter referred to as the "Property") from Defendant OLUMO REAL ESTATE CORP. ("Olumo"), the owner of the Property, for the purchase price of \$1,700,000.00. Plaintiff tendered \$170,000.00 as a down payment for the Property. Defendant OLUFEMI FALADE ("Falade") is the sole owner of Olumo.

With respect to the transaction, both parties were represented by counsel - Eial Girtz, Esq. ("Girtz") represented Plaintiff and Ingrid Wyllie, Esq. ("Wyllie") represented Defendants. The contract reflected a closing date of "on or about September 20, 2013," but did not contain a "time of the essence" clause. On or around May 6, 2014, Girtz sent a letter to Wyllie demanding a time of the essence closing on June 9, 2014. However, according to Plaintiff, Defendants did not appear for the closing and refused to schedule a closing date any time thereafter. Plaintiff commenced this action on July 25, 2014 seeking specific performance of the contract.

Now, after the completion of discovery, Plaintiff moves for summary judgment pursuant to CPLR 3212 contending that it was ready, willing and able to perform pursuant to the contract but that Defendants, despite being able to convey the Property, refused to close.

Plaintiff submits that, under the contract, it was required to pay the down payment and order title insurance for the Property, which it did, as evidenced by Wyllie's deposition testimony confirming same. Also, that the final version of the contract contained handwritten changes requiring Defendants to pay all monetary obligations on the Property such as penalties, judgments, fines, liens and outstanding bills, regardless of the amount. It is undisputed that some of the monetary obligations on the Property include approximately \$613,000.00 in outstanding real estate taxes and about \$45,000.00 in transfer taxes. Plaintiff contends that the only "title issues" that Defendants were "working to clear up were negotiating down the monetary obligations so that Defendants could maximize his proceeds from the sale."

Plaintiff further submits that despite Defendants' claim that the contract terminated in November 2013, Wyllie sent Plaintiff multiple emails between February 2014 and June 2014 stating that Defendants were working on title issues in preparation for the closing. Further, that Wyllie testified, at her deposition, that her understanding at the time of those emails was that the contract had not been terminated. In addition, Plaintiff proffers an affidavit from Yanni Simantov, the broker for the sales transaction, stating he was never advised that Defendants intended to terminate the contract. Plaintiff also states that email correspondence shows that Mr. Simantov was working with

Defendants as late as May 2014 to clear up title issues for the purpose of selling the Property to Plaintiff.

In opposition, Defendants contend that the contract signed by Falade did not contain the handwritten changes or other typed changes made by Plaintiff to the contract and rider. Defendants contend that the contract signed by Falade capped the amount he would pay for violations and other charges at half of 1% of the purchase price. Falade contends that he never agreed to the handwritten paragraphs and never saw the changes until November 30, 2013, at which point he notified Wyllie to cancel the contract.

Defendants also argue that the contract is invalid because Plaintiff's attorney signed the contract without a power of attorney, instead of the two partners comprising Plaintiff.

#### *Discussion*

The standards for summary judgment are well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action sufficiently to warrant the court as a matter of law in directing judgment in his favor (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Once such proof has been offered, to defeat summary judgment, the opposing party must show facts sufficient to require a trial of any issue of fact (*Id.*).

“Before specific performance of a contract for the sale of real property may be granted, a buyer must demonstrate that it was ready, willing, and able to perform” (*Weiss v Feldbrand*, 50 AD3d 673, 674 [2d Dept 2008]). Said demonstration must relate to the original law day or, if time was not of the essence, on a subsequent date fixed by the parties (*see Zev v Merman*, 134 AD2d 555, 557 [2d Dept 1987]). If a contract does not contain a time of the essence clause, a party may convert a non-time-of-the-essence contract into one making time of the essence by giving the other side clear, unequivocal notice and a reasonable time to perform (*Id.*).

Here, Plaintiff converted a non-time-of-the-essence contract into one making time of the essence by way of its May 6, 2014 letter setting a closing date of June 9, 2014. Further, there is no dispute that Plaintiff possessed the financial wherewithal to perform under the contract. In addition,

aside from Defendants' conclusory denials, the record evidence indicates that Plaintiff performed as required under the contract by tendering the down payment and ordering title insurance. Plaintiff also established that the contract the parties agreed to contained the handwritten changes requiring Defendants to pay down all monetary obligations on the Property. Defendants' contention to the contrary is not supported by any evidence.

Finally, the only other issue raised by Defendants' opposition, that the contract is invalid because it was only signed by Plaintiff's counsel is without merit. "An agent's power to bind his principal is coextensive with the principal's grant of authority" (*Ford v Unity Hospital*, 32 NY2d 464, 472 [1973]). Here, there is no dispute that Girtz signed the contract on behalf of Plaintiff Yerushalmi Holdings LLC and that Girtz was granted such authority by Plaintiff.

Based on the foregoing, Plaintiff's motion for summary judgment is GRANTED and Plaintiff is awarded specific performance of the contract to purchase the subject property from Olumo.

This constitutes the Decision and Order of the Court.

E N T E R,



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SYLVIA G. ASH, J.S.C.