

<b>Postler v Piedilato</b>
2018 NY Slip Op 33469(U)
December 26, 2018
Supreme Court, Richmond County
Docket Number: 150243/2017
Judge: Jr., Orlando Marrazzo
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**  

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**KATE POSTLER and BRIGID KELLY,**

**DECISION/ORDER**

DCM PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 150243/2017  
Motion No. 3

*Plaintiff(s),*

*-against-*

**JANET R. PIEDILATO.**

*Defendant(s)*

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The following numbered 1 to 1 were fully submitted on 20<sup>th</sup> day of December 2018

Papers  
Numbered

Defendant's motion for summary judgment, with Supporting Papers and Exhibits,  
dated, July 23, 2018..... 1

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Defendant moves for an order pursuant to CPLR 3212 seeking summary judgment to dismiss the complaint. As is set forth below, defendant's motion is granted, and the complaint is dismissed.

Defendant, owner of the real property designated Block 285, Lot 10 on the Tax Map of the City of New York, Richmond County, commonly known as 600 Forest Avenue, Staten Island, New York ("Subject Property").

On or about February 1, 2007, defendant leased the subject property to plaintiffs.

According to the terms of the 2007 lease plaintiffs were obligated to remit monthly rent payments to defendant commencing September 1, 2012. In 2012 the parties renewed the 2007 Lease pursuant to its terms for an additional 5 (five) years.

The controversy in this action is the "right of first refusal," in the Rider to the Lease ("Rider"). According to the Rider,

"The landlord hereby agrees that, in the event of a sale of the premises herein, known as 600 Forest Avenue, the tenant shall have the right of first refusal to purchase the premises before it is placed on the open market."

Defendant retained a broker. On or about October 6, 2016, the broker on defendant's behalf personally informed defendant that the subject property will be put up for sale and presented defendant an offer to purchase the property for \$975,000. On or about November 9, 2016 defendant sent a letter to plaintiffs reiterating her offer to plaintiffs. Plaintiffs declined defendant's offer to purchase the property for \$975,000.00. This deal fell through however.

In 2017, defendant placed the subject premises on the market, but defendant received no acceptable offers to purchase the subject property as they were lower than the price defendant desired to sell the property, and it was shortly thereafter taken off the market.

In accordance with the express terms, the 2012 Lease expired on August 31, 2017. Plaintiffs declined to exercise an option upon written notice to defendant, to extend the same. In May 2018, defendant received an unsolicited offer from a third party to purchase the subject property for \$950,000. Shortly thereafter, defendant conveyed the offer to plaintiffs to match the third-party offer. Plaintiffs' response was to decline. Plaintiffs

argues that they retained an appraiser who advised them that the subject property was worth \$675,000 and that should be the purchase price.

A motion for summary judgment serves the laudatory purpose of promoting efficient case resolution, (*Dunham v Hilco Construction Co., Inc.*, 89 NY2d 425, 429 [1996].) “Summary judgment is a highly useful device for expediting the just disposition of a legal dispute for all parties” and to conserve limited judicial resources (*In re Suffolk Co. O/b/o Mivhael V.*, 83 AD2d 178, 182 [App Div, 2nd Dept, 1994].)

The purpose of summary judgment is to expedite the resolution of civil cases by resolving them as a matter of law where there is no dispute of fact between the parties to a litigated matter. The movant must make some prima facie showing of entitlement to summary judgment as a matter of law.

It is well settled that a motion for summary judgment is a drastic remedy which will be granted only when there are no triable issues of fact (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]; *Andre v. Pomeroy*, 35 NY2d 361, 362 [1974]; CPLR §3212 (b).]

Once the proponent seeking summary judgment has established a prima facie showing of entitlement to summary judgment as required by CPLR § 3212; the burden shifts to the party opposing the motion for summary judgment to lay bare its proofs and to produce evidentiary proof in proper admissible form in opposition to the motion that is sufficient to establish the existence of material issues of fact which require a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Davenport v. County of Nassau*,

279 AD2d 497 [App Div, 2<sup>nd</sup> Dept, 2001]; *Maviglia v. Inapart Properties Corp., et.al.*, 149 AD2d 482 [App Div, 2<sup>nd</sup> Dept, 1991].)

In arriving at the decision whether to grant or to deny such a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, which requires it to give that party all the reasonable inferences which can be drawn from the evidence (*Fundamental Portfolio Advisors, Inc., v Tocqueville Asset Mgt., Lp.*, 7 NY3d 96, 105 [2006]; *McGill v. Bohack Corp.*, 69 AD2d 853 [App Div 2<sup>nd</sup> Dept, 1979]; *Negri v. Stop & Shop, Inc.*, 65 NY2d 625 [1985].)

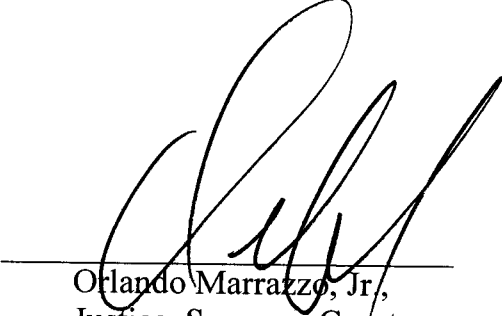
In regards to the right of first refusal it is well settled that, A right of first refusal is “an agreement that should the owner receive a bona fide offer to purchase the property during the term of the option, he [or she] will not accept the offer without giving the [holder of the right of refusal] the right to buy it on the same terms” (*Quigley v. Capolongo*, 53 A.D.2d 714, 715, 383 N.Y.S.2d 935 [1976], *affd* 43 N.Y.2d 748, 401 N.Y.S.2d 1009, 372 N.E.2d 797 [1977] [citations omitted]; *see LIN Broadcasting Corp. v. Metromedia, Inc.*, 74 N.Y.2d 54, 60, 544 N.Y.S.2d 316, 542 N.E.2d 629 [1989] ). When the owner has conveyed such a bona fide offer to the holder, the right of first refusal will be extinguished if the holder declines to purchase the property or fails to match the terms of the offer (*see Yudell Trust I v. API Westchester Assoc.*, 227 A.D.2d 471, 473, 643 N.Y.S.2d 161 [1996]; *Story v. Wood*, 166 A.D.2d 124, 129, 569 N.Y.S.2d 487 [1991] ). Sighted by *Clifton Land Co. LLC., v Magic Car Wash, LLC.* 165 AD3d 1455, 1456 [App Div. 3<sup>rd</sup> Dept. 2018].)

Here, plaintiffs waived their right of first refusal when they declined to meet the third-party offer presented to them in May of 2018. A lessee's right of first refusal is extinguished when, after being notified of the prospective sale of the property and given the exact terms and purchase price of the third-party offer, the lessee refuses to match the third-party offer. (*F&T Management & Parking Corp. v Flushing Plumbing Supply Co., Inc.*, 68 AD3d 920, 923-924 [App Div. 2<sup>nd</sup> Dept. 2009]; *LIN Broadcasting Corp.* 74 NY2d at 60; *Finlay*, 47 AD3d at 883).] Here, defendant notified plaintiffs that she received an offer to purchase the subject property in May 2018, including the purchase price. Plaintiffs subsequently rejected defendant's offer to match the third-party offer and thereby permitted defendant to entertain the sale of the subject premises to any other purchasers.

Accordingly, defendant's motion is granted, and the complaint is dismissed.

This constitutes the decision and order of the court.

Dated: December 26, 2018  
Staten Island, New York



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Orlando Marrazzo, Jr.,  
Justice, Supreme Court

Hon. Orlando Marrazzo, Jr.  
Acting Supreme Court Justice