

Herzog v Marine

2021 NY Slip Op 32676(U)

December 15, 2021

Supreme Court, King County

Docket Number: Index No. 18069/2014E

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

JOEL HERZOG and NECHEMIA PERLSTEIN,

Plaintiff(s),

DECISION / ORDER

-against-

**Index No. 18069/2014E
Motion Seq. No. 5
Date Submitted: 12/9/21**

FRANCISCO A. MARINE,

Defendant(s).

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to appoint a special referee to effectuate the conveyance of defendant's real property

| Papers | NYSCEF |
|---|-------------------|
| Order to Show Cause, Affirmation and Exhibits Annexed | <u>2-11</u> |
| Answering Affidavits | <u> </u> |
| Reply Affidavits | <u> </u> |

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Plaintiffs move, by Order to Show Cause, for an order appointing a Referee to effectuate the court's decree of specific performance, issued on October 27, 2016, and affirmed by Decision and Order of the Appellate Division Second Department dated March 6, 2019, as defendant has failed to comply with the court's order. As stated in the affidavit of plaintiff Perlstein (Doc 6), a time is of the essence closing letter (Doc 8) was sent on May 22, 2019, setting the closing for September 3, 2019, and defendant failed to close. Further, defendant has failed to oppose this motion.

Therefore, the motion is granted and Gregory Cerchione, Esq., Subin Associates, LLP, 150 Broadway, FL 23, New York, NY 10038-4329 Tel. 212-285-3800, E-Mail:

gtcerchione@gmail.com, is appointed Referee, and is authorized and empowered to make, execute, and deliver to plaintiffs a bargain and sale deed of conveyance for and on behalf of defendant for the property known as 1183 Broadway, Brooklyn, New York, Block 3263, Lot 0004, a store with two apartments above it, for the same consideration recited in the Contract of Sale dated March 6, 2014, \$800,000, less the Contract Deposit of \$80,000, plus any adjustments as provided for in the Contract of Sale. The deed, when so made, executed, and delivered by the above-mentioned Referee, to plaintiffs, shall vest in plaintiffs all right, title, and interest of defendant, in and to the premises, which have been vested in defendant since he acquired title to the property on October 5, 2001 (copy annexed). The closing must be held within ninety (90) days of the date of this order.

The Referee is authorized to draw from the plaintiffs' funds tendered for the purchase price all sums necessary to pay any fees or expenses which would ordinarily be paid by the seller at a closing, unless modified by the contract of sale in this matter, dated March 21, 2014, copy annexed, including but not limited to any apportionment for real estate taxes or water and sewer charges, and to discharge any liens, judgments or other encumbrances necessary to deliver good title to plaintiffs in connection with the execution and delivery of the deed, and to deposit the balance of the funds with the court.

The Referee is also authorized to execute such other and further papers, documents, and writings as are necessary to accomplish the conveyance of all of defendant's right, title, and interest in and to the said real property to plaintiffs, for the same consideration contained in the Contract of Sale.

The escrow agent in the Contract of Sale, Jeanette Malaty, Esq.,¹ is authorized to turn over the Contract Deposit of \$80,000 to the defendant upon being notified by the Referee that title has closed. Defendant states in his affidavit dated August 9, 2016 in the court file that the deposit “was returned” when he “cancelled the contract” which may or may not be true, and that the plaintiffs “rejected my cancellation of the contract as well as the return of the down payment check.” The Referee will need to obtain an affidavit from the escrow agent if she states that the funds are no longer in her escrow account, and if the funds were in fact returned to plaintiffs, the plaintiffs will need to pay the full purchase price at the closing.

The Referee shall prepare a detailed report for the parties and the court as soon as possible after the closing, but no later than 30 days thereafter, which shall include a copy of the receipt for the deposit of funds with the court and copies of the checks disbursed at the closing. The report shall be e-filed, with account and social security numbers, if any, redacted.

The plaintiffs shall move to confirm the Referee’s report and for an order approving the conveyance and the Referee’s compensation, to be paid from the proceeds on deposit with the court, from defendant’s funds, no later than 60 days from the date of the Referee’s report.

With the submission of the Referee’s Report, the Referee shall include an affirmation of services rendered so the court may award the Referee compensation for his/her services.

The Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the

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Chief Judge, and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith.

By accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to, Section 36.2 (e) (“Disqualifications from appointment”), and Section 36.2 (d) (“Limitations on appointments based upon compensation”).

This shall constitute the decision and order of the court.

Dated: December 15, 2021

ENTER :



Hon. Debra Silber, J.S.C.