

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Scott Randolph, LLC v. Gholis of Brooklyn Corp.

2026 NY Slip Op 02687 · No. 2021-01764 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting summary judgment against the plaintiff in an action involving specific performance of a commercial real estate contract. The court held that the seller demonstrated readiness and ability to close, while the plaintiff defaulted by failing to appear at the scheduled closing, entitling the seller to retain the down payment. The court also upheld dismissal of tortious-interference and fraud claims against additional defendants and remitted the matter for entry of declaratory judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; William G. Ford; Donna-Marie E. Golia; Susan Quirk
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 29, 2026
DOCKET	2021-01764
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendants' separate motions for summary judgment dismissing the amended complaint, denying the plaintiff's motion for summary judgment, and denying the plaintiff's cross-motion for summary judgment dismissing certain counterclaims.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the appellate court reviewed the Supreme Court's summary-judgment determinations.
PRECEDENTIAL VALUE	published

PARTIES

Scott Randolph, LLC v. Gholis of Brooklyn Corp., Bethpage Federal Credit Union, Bushwack 10, LLC, Bushwack 5, LLC, Dawson Stellberger

TOPICS

specific performance remedy

specific performance

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the plaintiff established that it was ready, willing, and able to close and that Gholis was in default, thereby warranting specific performance.
2. Whether Gholis established that it was ready, willing, and able to perform, that the plaintiff defaulted by failing to appear at the scheduled closing, and that Gholis was entitled to retain the down payment.
3. Whether Bushwack and Stellberger were entitled to summary judgment dismissing the plaintiff's tortious-interference and fraud claims.
4. Whether the matter should be remitted for entry of a declaratory judgment concerning the plaintiff's rights in the premises and Gholis's entitlement to retain the down payment.

HOLDINGS

1. A party seeking specific performance must establish both that it was ready, willing, and able to close on the scheduled closing date and that the opposing party was in default. The plaintiff failed to make that prima facie showing, and Gholis was entitled to summary judgment dismissing the specific-performance claim.
2. A seller seeking to establish the purchaser's breach and retain a down payment must show that the seller was ready, willing, and able to perform on the time-of-the-essence closing date and that the purchaser lacked a lawful excuse for failing to close. Gholis satisfied that burden and was entitled to retain the down payment.
3. Bushwack and Stellberger were entitled to summary judgment dismissing the plaintiff's tortious-interference and fraud claims because the plaintiff failed to raise a triable issue of fact.

KEY QUOTATIONS

"A party seeking specific performance of a contract for the sale of real property is required to establish not only that he or she was ready, willing, and able to close on the scheduled closing date, but also that the other party was in default" ([*1]-[*2])

"[W]hen a party to a real estate contract declares time to be of the essence in setting a closing date, each party must tender performance on that date, and a failure to perform constitutes a default" ([*2])

*“Where a seller seeks to hold a purchaser in breach of contract [and retain the down payment], the seller must establish that he or she was ready, willing, and able to perform on the time-of-the-essence closing date, and that the purchaser failed to demonstrate a lawful excuse for his or her failure to close” ([*2])*

FACTUAL BACKGROUND

Scott Randolph, LLC contracted to purchase commercial real property in Brooklyn from Gholis of Brooklyn Corp. for \$8,325,000, with an all-cash purchase price. Gholis provided a title policy indicating that it could deliver marketable and insurable title, while the plaintiff failed to appear at the scheduled time-of-the-essence closing. The plaintiff also asserted claims concerning a later deed transferring the premises to Bushwack and a mortgage held by Bethpage Federal Credit Union, as well as tortious-interference and fraud claims against Bushwack and Dawson Stellberger.

PROCEDURAL HISTORY

The plaintiff commenced an action seeking specific performance and damages for breach of a contract to purchase commercial real property. After the complaint was amended to add the other defendants and claims involving tortious interference, fraud, the validity of a deed, and a mortgage, the parties completed discovery and filed competing summary-judgment motions. The Supreme Court, Kings County, granted the defendants' motions and denied the plaintiff's motions; the Appellate Division affirmed and remitted for entry of a declaratory judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The matter is remitted to the Supreme Court, Kings County, for entry of a judgment declaring that the plaintiff does not possess any rights to, title to, or interest in the subject property and that Gholis of Brooklyn Corp. is entitled to retain the down payment.

CASES CITED

- Latora v. Ferreira, 102 AD3d 838, 839
- Aliperti v. Laurel Links, Ltd., 27 AD3d 675, 676
- Perelmutter v. LRM Bldrs., LLC, 230 AD3d 1165, 1166-1167
- Grace v. Nappa, 46 NY2d 560, 565
- Martocci v. Schneider, 119 AD3d 746, 748-749
- Donerail Corp. N.V. v. 405 Park LLC, 100 AD3d 131, 138
- Ashkenazi v. Miller, 190 AD3d 668, 672
- Ferdinand v. Siegel, 236 AD3d 861, 862
- Ginsburg Dev. Cos., LLC v. Carbone, 134 AD3d 890, 892-893
- Lanza v. Wagner, 11 NY2d 317, 334

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