UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Chaya Shusterman and Eliezer Lever v. Zev Cadaner and Vilma Louise Johnson

Shusterman · No. 25-CV-04520 (OEM) · Decided February 4, 2026

SUMMARY

The United States District Court for the Eastern District of New York reviews an appeal from a bankruptcy court judgment concerning competing contracts to purchase residential real property. The court affirms the bankruptcy court's findings that the seller was ready, willing, and able to close, that liens and violations could be resolved at closing, and that the mortgage contingency was triggered despite delivery of the contract by email. The appeal is dismissed.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Orelia E. Merchant
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	February 4, 2026
DOCKET	25-CV-04520 (OEM)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a memorandum decision and order and judgment of the United States Bankruptcy Court for the Eastern District of New York in a removed state-court real-property contract dispute arising in a Chapter 13 bankruptcy.
STANDARD OF REVIEW	The District Court reviews bankruptcy-court legal conclusions de novo and factual findings for clear error. Mixed questions are reviewed according to whether the question entails primarily legal or factual work, and mixed questions are generally reviewed de novo. A bankruptcy-court order is final when it completely resolves all issues pertaining to a discrete claim, including the proper relief.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court with no published reporter citation in the supplied text.

PARTIES	Chaya Shusterman, Eliezer Lever v. Zev Cadaner, Vilma Louise Johnson

TOPICS

appellate procedure · standard of review · bankruptcy · contract interpretation · specific performance real estate

PRACTICE AREAS

bankruptcy · appellate procedure · contracts · real estate · specific performance

QUESTIONS PRESENTED

1. Whether the Bankruptcy Court clearly erred in finding that Johnson was ready, willing, and able to close on July 30, 2021.
2. Whether the liens, violations, and encumbrances affecting the property had to be cleared before closing rather than at closing or through closing-related escrow arrangements.
3. Whether email delivery of the fully executed Lever Contract triggered the mortgage-commitment contingency despite the contract's specified notice procedures, and whether any deviation prejudiced the appellants.
4. Whether the first-in-time doctrine or business-judgment rule required enforcement or assumption of the Lever Contract.

HOLDINGS

1. The Bankruptcy Court did not clearly err in finding that Johnson was ready, willing, and able to perform on the July 30, 2021 closing date. Because the appellants failed to appear for closing, they did not give Johnson the opportunity to perform.
2. The Lever Contract did not require all liens, violations, and encumbrances to be cleared before closing. The contract permitted Johnson to satisfy them at closing from the purchase proceeds or through acceptable title-company arrangements, and the Bankruptcy Court correctly concluded that the outstanding items did not prevent delivery of marketable title at closing.
3. Email delivery of the fully executed Lever Contract triggered the mortgage-commitment contingency because the appellants had actual notice of the contract and did not demonstrate prejudice from the deviation from the contract's specified notice method. The appellants' failure to obtain an unconditional mortgage commitment or timely request an extension placed them in default.
4. The appellants could not obtain specific performance because they were not ready, willing, and able to perform the Lever Contract and did not perform on the closing date.

KEY QUOTATIONS

> *"Because Appellants failed to appear for the closing, they did not give Johnson the opportunity to perform."*
> (R. at 677-78)

> *“Thus, liens, violations, and encumbrances could be cleared at closing without running afoul of the contract or the delivery of marketable title.”* (Discussion section B)

> *“Because the Mortgage Contingency was triggered and Appellants did not perform on the Closing Date, nor were they ready, willing, and able to, Appellants cannot seek specific performance of the Lever Contract.”* (Discussion section C)

FACTUAL BACKGROUND

In August 2020, Johnson agreed to sell the property at 1708 President Street, Brooklyn, to Lever for $1.2 million, subject to a mortgage-commitment contingency and contractual requirements concerning title, liens, violations, and delivery of the property. Johnson emailed a fully executed copy of the contract to Lever's attorney on August 12, 2020; Lever did not obtain an unconditional mortgage commitment within sixty days, and the purchasers did not complete the scheduled July 30, 2021 closing. Johnson later contracted to sell the property to Cadaner, while the competing purchasers asserted rights under the Lever Contract. The Bankruptcy Court found that Johnson was ready, willing, and able to close, that the contract's title-related conditions could be satisfied at closing, and that the mortgage contingency had been triggered.

PROCEDURAL HISTORY

Cadaner commenced a New York Supreme Court action seeking declaratory relief, specific performance, damages, and related relief concerning competing contracts to purchase Johnson's property. After Johnson filed for Chapter 13 bankruptcy, she removed the state-court action to the Bankruptcy Court, which conducted a trial and ruled that the Lever Contract was not enforceable, entering an order and judgment. Shusterman and Lever appealed to the District Court, which affirmed the Bankruptcy Court's decision and dismissed the appeal.

DISPOSITION

affirmed

CASES CITED

- Satti v. Nechadim Corp., 17-CV-683 (MKB), 2018 WL 1010206, at *3 (E.D.N.Y. Feb. 16, 2018)
- In re Pegasus Agency, Inc., 101 F.3d 882, 885 (2d Cir.)
- In re Bayshore Wire Prods. Corp., 209 F.3d 100, 103 (2d Cir.)
- Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir.)
- In re Zubair, 20-CV-8829 (VB) & 21-CV-4222 (VB), 2021 WL 4974811, at *5 (S.D.N.Y. Oct. 26, 2021)
- U.S. Bank Nat'l Ass'n ex rel. CWCap. Asset Mgmt. LLC v. Vill. at Lakeridge, LLC, 583 U.S. 387, 396 (2018)
- In re Vebeliunas, 332 F.3d 85, 90 (2d Cir.)
- Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19 (1982)
- In re White, 3:24-cv-442(AWT), 2024 WL 4850199, at *3 (D. Conn. Nov. 21, 2024)
- In re Casse, 198 F.3d 327, 341 (2d Cir.)
- In re Pisculli, 426 B.R. 52, 59 (E.D.N.Y.), aff'd, 408 F. App'x 477 (2d Cir. 2011)

- Voorheesville Rod & Gun Club, Inc. v. E.W. Tompkins Co. Inc., 626 N.E.2d 917, 920 (N.Y.)
- Reagan v. Lanze, 354 N.E.2d 818, 822 (N.Y.)
- DeJohn v. Mandelbaum, 505 N.Y.S.2d 659, 661 (2d Dep't)
- In re Ilana Realty, Inc., 154 B.R. 21, 25 (S.D.N.Y. Mar. 15, 1993)
- Schweizer v. Sikorsky Aircraft Corp., 634 F. App'x 827, 829 (2d Cir.)
- Fortune Limousine Serv., Inc. v. Nextel Commc'ns, 826 N.Y.S.2d 392, 395 (2d Dep't)
- Dellicarri v. Hirschfeld, 619 N.Y.S.2d 816, 817 (3d Dep't)
- Iskalo Elec. Tower LLC v. Stantec Consulting Servs., Inc., 916 N.Y.S.2d 373, 373-75 (4th Dep't)
- Thor 725 8th Ave. LLC v. Goonetilleke, 138 F. Supp. 3d 497, 509-11 (S.D.N.Y. 2015), aff'd, 675 F. App'x 31 (2d Cir. 2017)
- Gorey v. Allion Healthcare Inc., 18346-2004, 2008 WL 183721, at *6 (N.Y. Sup. Ct. Jan. 7, 2008)
- Fridman v. Kucher, 826 N.Y.S.2d 104, 106 (2d Dep't)
- Wallace v. 600 Partners Co., 658 N.E.2d 715, 717 (N.Y.)
- Vermont Teddy Bear Co. v. 538 Madison Realty Co., 807 N.E.2d 876, 879 (N.Y.)
- Schron v. Troutman Sanders LLP, 986 N.E.2d 430, 433 (N.Y.)
- Twentieth Century Fox Film Corp. v. Marvel Enters., 220 F. Supp. 2d 289, 293 n.4 (S.D.N.Y. 2002)