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

Defonte v. Bockowski

Defonte, 2026 NY Slip Op 01766 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-02587 · Decided March 25, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting summary judgment dismissing the plaintiffs' claims for specific performance and breach of contract concerning a real estate sale. The court held that the mortgage contingency clause was a condition precedent and that the plaintiffs failed to obtain a written mortgage commitment by the amended contract's deadline, permitting the seller to cancel the agreement.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lillian Wan, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 25, 2026
DOCKET	2021-02587
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from an order granting Paula Bockowski's motion for summary judgment dismissing their action for specific performance and breach-of-contract damages arising from a real-property sale agreement.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	precedential
PARTIES	Philip Defonte, Anthony Guglieri v. Elizabeth Bockowski, George Onuhoa, as administrators of the estate of Paula Bockowski

TOPICS

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

PRACTICE AREAS

contract law · real estate law · specific performance · summary judgment · appellate procedure

QUESTIONS PRESENTED

1. Whether the mortgage-contingency provision in the amended contract of sale created a condition precedent and authorized the seller to cancel when the purchasers failed to obtain a written mortgage commitment by the specified date.
2. Whether the plaintiffs raised a triable issue of fact concerning the seller's alleged breach of the amended contract of sale.
3. Whether the plaintiffs' remaining appellate contention was reviewable when it was raised for the first time on appeal.

HOLDINGS

1. The mortgage-contingency clause constituted a condition precedent to the contract of sale, and the seller established that the purchasers failed to obtain a written mortgage commitment by February 10, 2017, thereby supporting cancellation under the amended agreement.
2. The plaintiffs failed to raise a triable issue of fact or offer credible evidence showing that the seller improperly exercised the option to cancel; therefore, summary judgment dismissing the complaint was proper.
3. The plaintiffs' remaining contention was not reviewable because it was raised for the first time on appeal.

KEY QUOTATIONS

> *“"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms"”* ([*2])

> *“"A mortgage contingency clause is construed to create a condition precedent to the contract of sale"”* ([*2])

FACTUAL BACKGROUND

In August 2016, Philip Defonte and Paula Bockowski entered into a contract for the sale of Staten Island real property containing a mortgage-commitment contingency. The agreement was later amended in January 2017 to add Anthony Guglieri as a purchaser and extend the deadline for obtaining a written mortgage commitment to February 10, 2017. The plaintiffs did not provide a written mortgage commitment by that date, and Bockowski thereafter exercised the contractual option to cancel the agreement. The plaintiffs sued for specific performance and breach-of-contract damages.

PROCEDURAL HISTORY

Philip Defonte and Paula Bockowski entered into a contract for the sale of real property, later amended to add Anthony Guglieri and extend the mortgage-commitment deadline. After the plaintiffs failed to provide a written mortgage commitment by the amended deadline, Bockowski exercised the contractual cancellation option. The plaintiffs commenced this action in April 2017. The Supreme Court, Richmond County, granted Bockowski summary judgment dismissing the complaint, and the Appellate Division affirmed. During the appeal, Bockowski died and her estate administrators were substituted as respondents.

DISPOSITION

affirmed

CASES CITED

- Greenfield v. Philles Records, 98 N.Y.2d 562, 569
- Chahalis v. Roberta Ebert Irrevocable Trust, 163 A.D.3d 623, 624
- Toobe v. Scarlato, 45 A.D.3d 759, 760
- Gulotta v. Ippolito, 296 A.D.2d 380
- Goldport Props. v. Taylor, 275 A.D.2d 761, 761-762

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