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

OPINION

PER CURIAM.

Defonte v Bockowski (2026 NY Slip Op 01766) Defonte v Bockowski 2026 NY Slip Op 01766 Decided on March 25, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 25, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS LILLIAN WAN JAMES P. MCCORMACK, JJ. 2021-02587 (Index No. 150776/17) [*1]Philip Defonte, et al., appellants, v Elizabeth Bockowski, etc., et al., respondents. Salvatore J. Sciangula, Windham, NY, for appellants. Lecour Law, P.C., Staten Island, NY (Elina Lecour of counsel), for respondents. DECISION & ORDER In an action, inter alia, for specific performance of a contract for the sale of real property, the plaintiffs appeal from an order of the Supreme Court, Richmond County (Kim Dollard, J.), dated August 25, 2020.

The order, insofar as appealed from, granted that branch of the motion of Paula Bockowski which was for summary judgment dismissing the complaint. ORDERED that the order is affirmed insofar as appealed from, with costs.

In August 2016, Philip Defonte, as purchaser, and Paula Bockowski (hereinafter Paula), as seller, entered into a contract of sale for the purchase and sale of certain real property located in Staten Island. Section 8 of the contract of sale, entitled "Mortgage Commitment Contingency," stated, under Section 8(a), that Defonte's obligation to purchase the subject property was "conditioned upon issuance... of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan to [Defonte], at [Defonte's] sole cost and expense, of $345,000 for a term of at least 25-30 years."

Section 8(h) of the contract of sale further stated that if Paula "has not received a copy of a commitment from an Institutional Lender accepted by [Defonte] by the Commitment Date, [Paula] may cancel this contract by giving Notice to the plaintiff after the commitment date."

The original "Commitment Date" under the contract of sale appears to have been October 9, 2016. On October 11, 2016, Defonte's application for a mortgage loan was denied. Thereafter, on November 22, 2016, Paula's real estate attorney notified Defonte's real estate attorney that Paula was exercising her right to cancel the contract of sale.

In January 2017, the plaintiffs, Defonte and Anthony Guglieri, entered into an amended contract of sale with Paula. Under the terms of the amended contract of sale, Guglieri was added to the agreement as a purchaser, and the commitment date for the obtainment of a written mortgage commitment was extended to February 10, 2017.

The plaintiffs failed to provide Paula a written mortgage commitment by February 10, 2017, and, on March 22, 2017, Paula's real estate attorney informed the plaintiffs' real estate attorney that Paula was exercising her option to cancel the amended contract of sale. Thereafter, in April 2017, the plaintiffs commenced this action, inter alia, for specific performance of the amended contract of sale and to recover damages for breach of contract.

In June [*2]2020, Paula moved, among other things, for summary judgment dismissing the complaint. In an order dated August 25, 2020, the Supreme Court, inter alia, granted that branch of Paula's motion. The plaintiffs appeal. During the pendency of the appeal, Paula died. By decision and order on motion of this Court dated July 11, 2025, Elizabeth Bockowski and George Onuhoa, as administrators of Paula's estate, were substituted for Paula.

The Supreme Court properly granted that branch of Paula's motion which was for summary judgment dismissing the complaint. "[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (Greenfield v Philles Records, 98 NY2d 562, 569). "A mortgage contingency clause is construed to create a condition precedent to the contract of sale" (Chahalis v Roberta Ebert Irrevocable Trust, 163 AD3d 623, 624 [internal quotation marks omitted]).

Here, Paula established, prima face, that the plaintiffs failed to obtain a written mortgage commitment by February 10, 2017, i.e., the date specified in the amended contract of sale. In opposition, the plaintiffs failed to raise a triable issue of fact as to whether Paula breached the amended contract of sale by exercising her right to cancel thereunder (see Toobe v Scarlato, 45 AD3d 759, 760; Gulotta v Ippolito, 296 AD2d 380; Goldport Props. v Taylor, 275 AD2d 761, 761-762).

Since the plaintiffs failed to offer any credible evidence demonstrating that Paula had not rightfully exercised the option to cancel the amended contract of sale, Paula was entitled to judgment as a matter of law (see Toobe v Scarlato, 45 AD3d at 760; Gulotta v Ippolito, 296 AD2d 380).

The plaintiffs' remaining contention is improperly raised for the first time on appeal. DILLON, J.P., CHAMBERS, WAN and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court