

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

Latora v. Ferreira

2022 N.Y. Slip Op. 00857 (App. Div. 2022) · No. 2019-04957 · Decided February 9, 2022

SUMMARY

The Appellate Division, Second Department, affirmed an order enforcing a judgment that required the defendant to specifically perform a contract for the sale of real property. The court rejected the defendant’s arguments that enforcement was unnecessary in light of an earlier appellate decision and that the plaintiff had committed fraud on the court.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Angela G. Iannacci, J.; Cheryl E. Chambers, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	February 9, 2022
DOCKET	2019-04957
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Kings County, granting the plaintiff's motion to enforce an unappealed judgment directing the defendant to specifically perform a contract for the sale of real property by executing and delivering a deed.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	Victor Ferreira v. John Latora

TOPICS

- specific performance remedy
- specific performance
- contracts
- remedies
- appellate procedure

PRACTICE AREAS

- real estate
- contracts
- remedies
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff's motion to enforce the judgment through a directive requiring the defendant to execute a deed was unnecessary in light of the Appellate Division's earlier reversal of a specific-performance order in the prior action.
2. Whether the plaintiff perpetrated a fraud on the court by seeking enforcement of the judgment through a directive requiring execution of a deed.

HOLDINGS

1. The plaintiff's motion to enforce the judgment through a directive requiring the defendant to execute a deed was not unnecessary, notwithstanding the Appellate Division's earlier reversal of a specific-performance order in the prior action.
2. The plaintiff did not perpetrate a fraud on the court by seeking enforcement of the judgment directing execution and delivery of a deed.

FACTUAL BACKGROUND

In 2004, John Latora, the buyer, and Victor Ferreira, the seller, contracted for the sale of real property in Brooklyn. After an earlier specific-performance ruling was reversed, Latora scheduled a time-of-the-essence closing, but Ferreira failed to appear. Latora obtained a judgment directing Ferreira to execute and deliver a deed, and when Ferreira did not comply, Latora sought enforcement of that judgment.

PROCEDURAL HISTORY

The parties entered into a 2004 contract for the sale of Brooklyn real property, but no closing occurred. In an earlier action, the Supreme Court awarded the plaintiff specific performance, but the Appellate Division reversed because no time-of-the-essence closing had been scheduled and the plaintiff had not demonstrated tender of performance. The plaintiff then scheduled a time-of-the-essence closing, which the defendant failed to attend, and obtained a new judgment directing specific performance; after the defendant failed to comply, the Supreme Court granted the plaintiff's motion to enforce that judgment by directing conveyance of the property.

DISPOSITION

affirmed

CASES CITED

- Latora v. Ferreira, 102 A.D.3d 838

OPINION

PER CURIAM.

Latora v Ferreira (2022 NY Slip Op 00857) Latora v Ferreira 2022 NY Slip Op 00857 Decided on February 9, 2022 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 February 9, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

ANGELA G. IANNACCI CHERYL E. CHAMBERS LINDA CHRISTOPHER, JJ. 2019-04957 (Index No. 512079/15) [*1]John Latora, respondent, vVictor Ferreira, appellant. McKinley Onua & Associates, PLLC, Brooklyn, NY (Nnenna Onua of counsel), for appellant. Cuddy & Feder, LLP, White Plains, NY (Johua E. Kimerling of counsel), for respondent. DECISION & ORDER In an action, inter alia, for specific performance of a contract for the sale of real property, the defendant appeals from an order of the Supreme Court, Kings County (Francois A. Rivera, J.), dated January 31, 2019.

The order granted the plaintiff's motion to enforce a judgment of the same court dated August 14, 2017, and directed that the property be conveyed to the plaintiff. ORDERED that the order is affirmed, with costs. In 2004, the plaintiff buyer and the defendant seller entered into a contract for the sale of real property located in Brooklyn. No closing occurred and the plaintiff commenced an action for specific performance.

Although the Supreme Court awarded the plaintiff that relief, this Court reversed, as a time of the essence closing had never been scheduled and the plaintiff did not demonstrate that he had tendered performance under the terms of the contract (see *Latora v Ferreira*, 102 AD3d 838).

The plaintiff thereafter scheduled a time-of-the-essence closing at which the defendant failed to appear. The plaintiff then commenced the instant action, inter alia, seeking specific performance of the contract. By judgment dated August 14, 2017, the Supreme Court, among other things, directed the defendant to specifically perform the contract by, inter alia, executing and delivering to the plaintiff a deed within 10 days of the date the judgment was served with notice of entry.

The defendant did not appeal from the judgment. Upon the defendant's failure to comply, the plaintiff moved to enforce the judgment. By order dated January 31, 2019, the Supreme Court granted the plaintiff's motion, and directed that the property be conveyed to the plaintiff.

The defendant appeals from the January 31, 2019 order. Contrary to the defendant's contention, in light of this Court's decision reversing the order in the prior action granting the plaintiff specific performance, the plaintiff's motion to enforce the judgment obtained in the instant action, through a directive to execute a deed, was not unnecessary (see *id.* at 839).

Nor did the plaintiff perpetrate a fraud on the court by seeking such relief. Accordingly, we affirm the order. BARROS, J.P., IANNACCI, CHAMBERS and CHRISTOPHER, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court

