

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