

82 A.D.3d 954  
Supreme Court, Appellate Division,  
Second Department, New York.

Jacob SHAFRAN, appellant,  
Modesto PINEIRO, etc., et al., respondents.

March 15, 2011.

### Synopsis

**Background:** Purchaser sued vendors to recover a down payment made pursuant to a contract for the sale of real property. The Supreme Court, Kings County, [Saitta, J.](#), dated July 1, 2010, as granted a defense motion for summary judgment. Purchaser appealed.

**Holding:** The Supreme Court, Appellate Division, held that vendors satisfied the terms of the contract by providing proof that no certificate of occupancy was required.

Affirmed.

West Headnotes (1)

[1] **Vendor and Purchaser**  
🔑 **Conditions and provisos**

Vendors satisfied the terms of a contract for the sale of real property by providing proof that no certificate of occupancy was required, thus defeating purchaser's claim for return of his down payment.

[Cases that cite this headnote](#)

### Attorneys and Law Firms

**\*\*781** [Sol Mermelstein](#), Brooklyn, N.Y., for appellant.

[LaRocca Hornik Rosen Greenberg & Blaha, LLP](#), New York, N.Y. ([David N. Kittredge](#) of counsel), for respondents.

[DANIEL D. ANGIOLILLO, J.P.](#), [CHERYL E. CHAMBERS](#), [LEONARD B. AUSTIN](#), and [ROBERT J. MILLER, JJ.](#)

### Opinion

**\*954** In an action, inter alia, to recover a down payment made pursuant to a contract for the sale of real property, the plaintiff appeals, as limited by his brief, from so much an order of the Supreme Court, Kings County ([Saitta, J.](#)), dated July 1, 2010, as granted the motion of the defendants Modesto Pineiro and Vilma Lorenzi for summary judgment dismissing the complaint insofar as asserted against them and directed the defendant James A. Do Campo to release to those defendants the down payment being held in escrow.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff buyer and the defendants sellers, Modesto Pineiro and Vilma Lorenzi (hereinafter together the defendants), entered into a contract for the sale of the defendants' home, pursuant to which the plaintiff made a down payment which was deposited with the defendants' attorney, James A. Do Campo. The contract required the defendants to provide a certificate of occupancy indicating that the premises was a legal two-family dwelling or proof that none was required. The plaintiff refused to close on the sale of the property because the defendants had not provided a certificate of occupancy and subsequently commenced this action, inter alia, to recover his down payment.

The defendants moved for summary judgment dismissing the complaint insofar as asserted against them alleging that they satisfied their obligation under the contract to provide evidence that no certificate of occupancy was required. The Supreme Court granted the defendants' motion and directed the release from escrow of the plaintiff's down payment to them. We affirm.

The defendants demonstrated their prima facie entitlement to judgment as a matter of law by showing that they satisfied the contract requirements by providing evidence that no certificate of occupancy was required (*see generally Masi v. Iwanski*, 136 A.D.2d 609, 523 N.Y.S.2d 588; *compare Correnti v. Allstate Props., LLC*, 38 A.D.3d 588, 832 N.Y.S.2d 594; *Costello v. Casale*, 281 A.D.2d 581, 723 N.Y.S.2d 44). **\*955** In opposition, the plaintiff

failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment and directed Do Campo to release the down payment to them (*see Masi v. Iwanski*, 136 A.D.2d 609, 523 N.Y.S.2d 588).

**All Citations**

82 A.D.3d 954, 918 N.Y.S.2d 780, 2011 N.Y. Slip Op. 01993

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