



Fogarty v. Jordan

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WILLIAM F. MASTRO, J.P., HOWARD MILLER, RUTH C. BALKIN and WILLIAM E. McCARTHY, JJ.

(Index No. 6856/06)

DECISION & ORDER

ORDERED that the judgment is affirmed, with costs.

The plaintiffs made a prima facie showing of their entitlement to judgment as a matter of law on their cause of action to compel specific performance of the contract by submitting proof of the validity of the contract of sale and their performance thereunder (see *Capece v Robbins*, 46 AD3d 589; *Moutafis v Osborne*, 7 AD3d 686, 687; see generally *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). In opposition, the defendant failed, through the submission of her counsel's affirmation and her conclusory pleadings, to meet her burden of raising a triable issue of fact as to her affirmative defenses (see *Hearst v Hearst*, 50 AD3d 959, 961-962; *Cosh v Cosh*, 45 AD3d 798, 799-800; *Whitehead v Town House Equities, Ltd.*, 8 AD3d 367; *Mandell v Finkel*, 298 AD2d 365, 366; *Warren Elec. Supply v Davidson*, 284 AD2d 869). Accordingly, the Supreme Court properly directed the defendant to convey the subject property pursuant to the terms of the contract between the parties.

MASTRO, J.P., MILLER, BALKIN and McCARTHY, JJ., concur.

