

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 7
NASSAU COUNTY

EHUD MAOR, NAVA MAOR,
AVNER MAOR and MIRIAM MAOR,

Plaintiff(s),

-against-

ESTELLE SEAMON,

Defendant(s).

MOTION #001
INDEX #7034/2009
MOTION DATE:
August 25, 2009

The following papers read on this motion:

Order to Show Cause.....	1
Answering Affidavits.....	1

Upon the foregoing papers, it is ordered that plaintiffs' application for an order directing the return of plaintiffs' "downpayment" deposit pursuant to the parties' Contract of Sale, and for costs and disbursements together with attorney's fees, is determined as hereinafter set forth.

The plaintiffs commenced this action for rescission and the return of a downpayment, as well as for damages based upon the defendant's willful default.

On November 3, 2009, the parties entered into a residential contract of sale for the premises located at 486 Golf Court, North Woodmere NY 11581. The contract contained a mortgage contingency clause which required the plaintiffs to obtain a mortgage commitment from an institutional lender in the amount of \$434,000.00 within 45 days.

On December 9, 2008, counsel for plaintiffs notified the defendant that the plaintiffs were denied a mortgage loan commitment. The Notice of Loan Denial from Amtrust Bank states that the loan was denied due to credit application incomplete; value or type of collateral not sufficient; insufficient income for amount of credit requested; and that "we do not grant credit to any applicant on the terms and conditions you have requested."

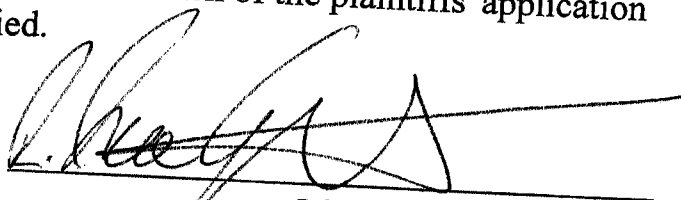
In support of the application, the plaintiffs maintain that they complied with the terms and conditions of the contract and seek the return of the \$62,000.00 downpayment.

In opposition to the application, the defendant maintains that this is a case of buyers' remorse and that the procuring of the denial was not in good faith but a pretext to cancel the contract. The defendant asserts, through the affidavit of the listing broker, that the plaintiffs sought to cancel the contract due to a mistake as to the school district. Further, the plaintiffs maintain that there are questions of fact regarding the notice of loan denial.

In the instant matter, the Court finds that the plaintiffs have complied with the mortgage contingency clause of the contract dated November 3, 2008, and properly cancelled the contract.

As such, the plaintiffs' application is granted to the extent that the defendant is directed to return to plaintiffs the \$62,000.00 downpayment. That branch of the plaintiffs' application for costs, disbursements and attorney's fees is denied.

Dated: **NOV 4 2009**



J.S.C.

ENTERED

NOV 12 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**