

SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

Hon. Thomas Feinman
JusticeROBERT MINOTT and SHARON MINOTT,

Plaintiffs,

- against -

MICHAEL ROLNICK, YUDIF GERZON,
and ANNA GERZON,

Defendants.

TRIAL/IAS PART 9
NASSAU COUNTY

INDEX NO. 21641/10

X X X

MOTION SUBMISSION
DATE: 3/30/12MOTION SEQUENCE
NO. 8

The following papers read on this motion:

Notice of Motion and Affidavits.....	<u>X</u>
Memorandum of Law in Support of Motion...	<u>X</u>
Affirmation in Opposition.....	<u>X</u>
Reply Affirmation.....	<u>X</u>

The defendants move for an order pursuant to CPLR §3212 granting the defendants summary judgment dismissing the complaint. The defendants submit a Memorandum of Law in support of the motion. The plaintiffs submit opposition. The defendants submit a reply affirmation.

The plaintiffs initiated this action for breach of contract, alleging the defendants breached a lease agreement relative to the premises located at 19 Sandpiper Court, Old Westbury, New York.

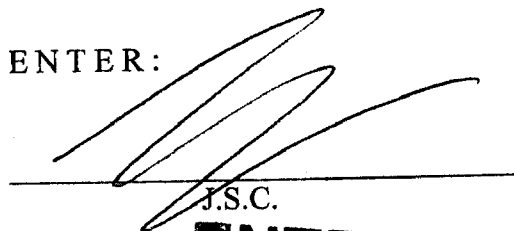
The plaintiffs, tenants thereto, alleged that the defendants breached the term and condition of a "right of first refusal" on the purchase of the property. The plaintiffs also seek enforcement of the lease agreement, filing of a *Lis Pendens*, and an order setting aside the sale and transfer of the subject property. The plaintiffs provide that the foregoing causes of action are now moot as plaintiffs are now record owners of the property. However, plaintiffs submit the first cause of action for breach of the lease agreement, the fifth cause of action for money expended on the home, and the sixth cause of action for breach of contract, are all viable causes of action.

It is well established that in order to recover damages for breach of a right of first refusal contained in a lease, the plaintiffs must show that they were ready, willing and able to purchase the property under the terms offered to the third party. (*Cipriano v. Glen Cove Lodge#1458, B.P.O.E.*, 1 NY3d 53; *Madison Investment, Inc. v. Cohoes Associates*, 176 AD2d 1021). The plaintiffs, in opposition, have failed to raise a genuine issues of fact as to whether they were ready, willing and able to purchase the property under the terms offered at that time. The plaintiffs offered no proof whatsoever in this regard, and plaintiffs' opposition is silent with respect to this item.

In any event, the plaintiffs have also failed to offer any reason whatsoever for plaintiffs' failure to produce the original purported lease and extension, or its unavailability as primary evidence. (*McCormick v. Bechtol*, 68 AD3d 1376; *Schozer v. William Penn Life Ins. Co. of N.Y.*, 84 NY2d 639).

In light of the foregoing, the defendants' motion is granted, and therefore, plaintiffs' complaint is dismissed.

ENTER:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

J.S.C.

ENTERED

MAY 11 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

Dated: May 4, 2012

cc: Stuart R. Berg, P.C.
Law Offices of Barry Manson