

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO J.S.C.

.....
JOHN J. DELANEY and DIANA PROBST,
Plaintiffs,

- against -

Index No. 14145/08
Sequence #001
7/7/2009
Part 39

BARBARA MARTOCCI,

Defendants.

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Notice of Motion.....	1
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Upon the foregoing papers, defendant's motion pursuant to CPLR § 6514(b) cancelling plaintiff's notice of pendency filed with the Clerk of Nassau County on or about July 30, 2008 with respect to real property designated SBL 3-009-53, Town of North Hempstead and permitting defendant's counsel to retain plaintiff's down payment in escrow pending the resolution of this action is granted.

This is an action based on a contract for sale of real property that did not close. Plaintiff's are seeking the return of their down payment, currently held in escrow as liquidated damages defined in the contract. Each party claims the other defaulted and/or did not act in good faith.

Plaintiffs subsequently purchased another property.

In support of the motion defendant maintains that the action is one for money damages since it does not seek specific performance or the transfer of title. Consequently, the action is not one in which a notice of pendency can be properly secured (CPLR § 6501; Richards v Chuba, 195 Misc. 732, 91NYS 2d 197).

The undersigned agrees.

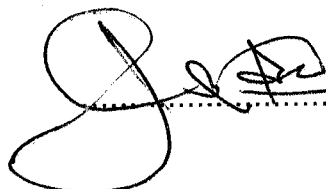
Permitting the notice to stand under these circumstances essentially prevents defendant selling the property in which plaintiffs do not want to reside.

Accordingly, the motion is granted and the notice of pendency is cancelled (Bark v Kann, 2007 WL4693360, (Nassau Co. LaMarca J.); Cf. 5303 Realty Corp. V. O & Y Equity Corp., 64 NY 2d 313).

The down payment shall remain in escrow.

Plaintiffs are directed to schedule a preliminary conference forthwith.

Dated: July 20, 2009

.....J.S.C.

**ENTERED**

JUL 22 2009

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**