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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present: HON. RALPH P. FRANCO, Justice**

**TRIAL/IAS, PART 11**

**AMOS GILAD and VARDA GILAD,**

**Plaintiff(s),**

**-against-**

**INDEX No.: 18314/02**

**MOTION SEQ. NO: 1& 2**

**JAHANGUIR YAGHOOBIAN and  
FARZANEH YAGHOOBIAN, individually  
and as husband and wife,**

**Defendant(s).**

**The following papers read on this motion:**

Notice of Motion/ Order to Show Cause.....\_\_\_\_\_

Answering Affidavits.....\_\_\_\_\_

Replying Affidavits.....\_\_\_\_\_

Motion (Seq. No.1) by attorney for plaintiffs for an order, enjoining defendants from excavation and construction upon the property abutting the western edge of Bayport Lane in Great Neck, New York (the "Bayport Site"), is denied.

Cross-motion (Seq. No.2) by attorney for defendants for judgment dismissing plaintiffs' complaint, discharging plaintiffs' *lis pendens* and

ordering plaintiffs to pay defendants' attorneys' fees pursuant to CPLR §6514 is granted in part and denied in part.

The complaint alleges causes of action for breach of an oral contract by defendants for the sale of the Bayport Site to plaintiffs, and specific performance. Plaintiffs admit that there is no written agreement between the parties for the sale of the Bayport Site. Defendants seek dismissal of the entire complaint on the grounds of the Statute of Frauds.

Few principles are better settled in law than the unenforceability of an oral agreement for the sale of real property on the grounds of the Statute of Frauds (*Jonestown Place Corp. v 153 West 33<sup>rd</sup> St. Corp.*, 53 NY2d 847; *Jee v BP Cleaners Inc.*, 215 AD2d 651; *Nicolaidis v Nicolaidis*, 173 AD2d 448). This principle is codified in New York in General Obligations Law §5-703(2). To satisfy the Statute of Frauds, the requisite writing must identify the parties and the subject matter, state all essential terms of the agreement, and be signed by the parties to be charged (*Urigo v Patel*, 297 AD2d 376). In the absence of such a writing, plaintiffs' claims herein for breach of contract and specific performance must be dismissed (*Jee*;

*Onorato v Lupoli*, 135 AD2d 693; *Riina v Bitterlich*, 114 AD2d 1023) .

Plaintiffs' reliance on cases arising under General Obligation Law §5-701 is misplaced as that is not the governing statute in this case.

Under these circumstances, the cross-motion for judgment dismissing the complaint is granted, and plaintiffs' request for injunctive relief is summarily denied. The notice of pendency has already been discharged, so the request for this relief is denied as moot. What remains is defendants' request for an order directing plaintiffs to pay defendants' attorneys' fees pursuant to CPLR 6514(c).

The court has discretion to award costs and expenses incurred by the filing and cancellation of the notice of pendency, in addition to any costs of the action pursuant to CPLR 6514(c). Precedent for the exercise of this discretion is found in a case involving a lack of "good faith" on the part of the plaintiff (*Josefsson v Keller*, 141 AD2d 700), and even a case where there was a lack of subjective bad faith on the part of the petitioner.

(*Lunney & Crocco v Wolf*, 180 AD2d 472). Without making any finding of subjective bad faith, the court finds that an award of costs and expenses,

including attorneys fees (see *Josefsson*) is appropriate here because of the relative procedural ease with which a plaintiff can cloud a defendant's title by use of the notice of pendency (see *5303 Realty v O&Y Equity*, 64 NY2d 313), and because of the clear lack of merit to plaintiffs' case. Accordingly this matter shall be set down for a hearing before a Court Attorney/Referee as to the amount of defendants' costs and expenses, occasioned by the filing and cancellation of the notice of pendency, in addition to the costs of this action.

Subject to the approval of the Justice there presiding and **provided a note of issue has been filed at least 10 days prior thereto**, this matter shall appear on the calendar of CCP for the **5th day of June, 2003, at 9:30 A.M.**

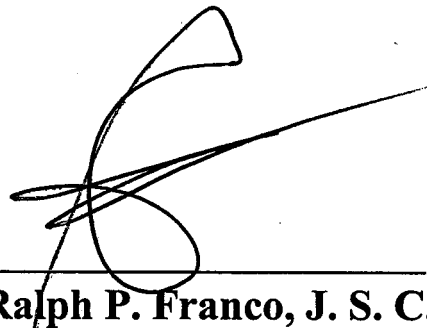
A copy of this Order shall be served on the Calendar Clerk and accompany the note of issue when filed. **The failure to file a note of issue or appear as directed may be deemed an abandonment of the claims giving rise to the hearing.**

The directive with respect to a hearing is subject to the right of the Justice presiding in CCP to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney/Referee as he or she deems appropriate.

**The Note of Issue shall be filed within 10 days of the entry of this order, and a copy of this order shall be annexed thereto.**

**Dated: April 29, 2003**

18314



Hon. Ralph P. Franco, J. S. C.

**ENTERED**

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NASSAU COUNTY  
COUNTY CLERK'S OFFICE