

SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA

JUSTICE

-----X PART 8

ALLEGRA CAPRA,

Plaintiff,

INDEX NO. 2409/11

-against-

MOTION DATE: 06/27/11

SEQUENCE NO. 001

JANELLE DEFREITAS and CHRISTOPHER
RIDINI, ESQ., as Escrowee,

Defendants.

-----X

Notice of Motion, Affs. & Exs..... 1

Upon the foregoing papers, it is ordered that the motion by plaintiff for default judgment against the defendant, JANELLE DEFREITAS, pursuant to CPRL §3215, and for an order directing defendant Christopher Ridini, Esq., as Escrowee, to turn over to plaintiff the sum of \$50,000 presently being held by said defendant, as Escrowee, is granted without opposition.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is an action to recover damages in the amount of the \$50,000 down payment deposit relating to a cancelled contract of sale for real estate. On or about March 30, 2010, plaintiff and defendant Janelle Defreitas entered into a real estate contract of sale wherein the defendant Janelle Defreitas contracted to buy a parcel of real estate in Upper Brookville for \$2.1 million from the seller, plaintiff Allegra Capra. The defendant remitted to plaintiff's real estate attorney, defendant Christopher Ridini, Esq., the sum of \$50,000.00 as and for the earnest money deposit (down payment) under said contract of sale. Defendant Christopher Ridini, Esq. deposited said \$50,000.00 in his attorney trust account, where said funds remain pending receipt of an Order permitting him to release the funds. Plaintiff alleges that notwithstanding defendant Defreitas's obligations under the contract of sale, defendant Janelle Defreitas failed to perform her

obligations and was notified in writing of a "time is of the essence" closing, at which she failed to appear, despite notifications to defendant Defreitas, as well as to the attorney representing her for said transaction.

On or about February 16, 2011, plaintiff commenced the within action seeking retention of the \$50,000.00 down payment. Defendant Christopher Ridini, Esq. acknowledged receipt of service of the summons and verified complaint by letter to counsel for plaintiff dated February 11, 2011.

In support of plaintiff's application for default judgment against Janelle Defreitas, movant submits a Summons and Verified Complaint, along with an Affidavit of Service documenting timely service upon defendant Janelle Defreitas, by substituted service, on April 8, 2011. Plaintiff attempted service of the summons and complaint upon defendant Defreitas at the address listed in real estate contract of sale, but the process server spoke to a "Christine Garcia" who resided at that address and who stated that defendant Janelle Defreitas was unknown and did not live there. Thereafter, plaintiff contends that searches were performed on her behalf by the plaintiff's process server, including a U.S. Postal search and a New York State Department of Motor Vehicle search, in order to locate the proper address of defendant Defreitas. The services of a skip tracer were also utilized. Said searches revealed addresses for defendant Defreitas, which matched her date of birth, in both Brooklyn and Uniondale. As noted *supra*, plaintiff effectuated service of the summons and complaint on said Brooklyn address on April 8, 2011, by "nail and mail" service after four unsuccessful attempts to serve said defendant at that address, but was not able to serve defendant at the Uniondale address, as the residence at the Uniondale address was an abandoned structure. Plaintiff also mailed a courtesy copy of the summons and complaint to the attorney listed as defendant Defreitas's attorney in the real estate contract of sale.

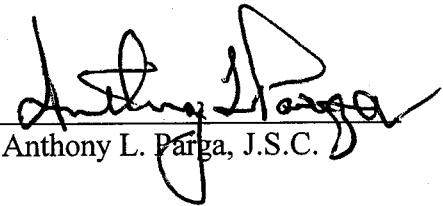
Plaintiff has demonstrated the necessary "due diligence" required by CPLR 308(4) in her attempts to locate the address of the defendant's actual residence, and in making four attempts to serve the defendant at said address before effectuating service on defendant Defreitas by "nail and mail" service on April 8, 2011. Accordingly, defendant Defreitas's time to serve an answer to said complaint has expired, and, to date, defendant Janelle Defreitas has not served an answer or otherwise appeared in the action.

Accordingly, plaintiff is granted a default judgment against defendant Janelle Defreitas in the amount of \$50,000.00, the full down payment provided for in the contract of sale. The Court notes that the contract of sale at issue herein specifically states that if the purchaser defaults under the terms of the contract, the seller's sole remedy shall be to receive and retain the down payment as liquidated damages.

It is further ordered that defendant Christopher Ridini, Esq., as Escrowee, turn over the sum of \$50,000.00, representing the down payment pursuant to the subject real estate contract of sale dated March 30, 2010, by and between Allegra Capra, as seller, and Janelle Defreitas, as purchaser, to plaintiff Allegra Capra by her attorneys herein, Gordon, Sibell & Iannone, PLLC., within thirty (30) days of this Order.

This shall constitute the Decision and Order of this Court.

Dated: July 29, 2011


Anthony L. Parga, J.S.C.

Cc: Gordon, Sibell & Iannone, PLLC
300 Garden City Plaza, Suite 450
Garden City, NY 11530

Christopher Ridini, Esq.
4 Morahapa Road
Centerport, NY 11721

Ms. Janelle Defreitas
609 East 40th Street
Brooklyn, NY 11203

Ms. Janelle Defreitas
1130 Gerald Street
Uniondale, NY 11553

Ms. Janelle Defreitas
9610 Avenue N
Brooklyn, NY 11236

ENTERED
AUG 03 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE