

PUBLISH

SHORT FORM ORDER

INDEX NO.: 606831/2021

**SUPREME COURT - STATE OF NEW YORK  
PART 41 - SUFFOLK COUNTY**

PRESENT:

Hon. William J. Condon, J.S.C.-----  
REAL-X REALTY, LLC,

Plaintiff(s),

- against -

CREST BELLPORT, LLC and  
BELLPORT ASSOCIATES,Defendant(s).  
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**ORIG. RETURN DATE:**  
**FINAL RETURN DATE:**  
**MOT. SEQ. #:**

**PLTF'S ATTORNEY:****DEFT'S ATTORNEY:**

Upon the reading and filing of the following papers in this matter: (1) Order to Show Cause by Defendant dated June 4, 2021, and supporting papers; (2) Affirmation in Opposition by Plaintiff, dated June 28, 2021, and supporting papers; (3) Reply Affirmation by Defendant, dated July 2, 2021 and supporting papers; it is,

**ORDERED** that pursuant to CPLR §3212, the defendant's summary judgment motion is granted and the Notice of Pendency is cancelled.

This action is brought by plaintiff seeking damages for breach of contract and specific performance directing the defendants to: (1) convey a parcel of real property which the defendants own as tenants-in-common (each maintaining a 50% interest therein) to plaintiff in accordance with the parties' agreement for the purchase and sale of said parcel; or, alternatively (2) defendant Crest Bellport (owner of a ½ tenant-in-common interest in the subject parcel) to convey its one-half interest to Plaintiff in accordance with the parties' agreement for the sale of Crest's tenant-in-common interest in said parcel.

Defendants contend that there can be no action for specific performance or breach of contract where there has been no "meeting of the minds" between the parties and no valid and binding contract exists that has been executed and delivered by the parties.

An estate or interest in real property...over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. **General Obligations Law § 5-703(1).**

It is a general presumption of law that when two or more persons undertake an obligation they undertake jointly, words of severance being necessary to overcome this primary presumption. **United States Print. & Lithograph Co. v Powers**, 233 NY 143, 152 (1922).

If a contract contemplates "joint performance" and there are no "words of severance" in the contract, courts will not award specific performance against a signing party's non-severable interest in property. **Alexander v. Wheeler**, 64 A.D.2d 837 (4th Dep't 1978); **Feld v. Gordon**, 150 A.D.2d 425 (2d Dep't 1989).

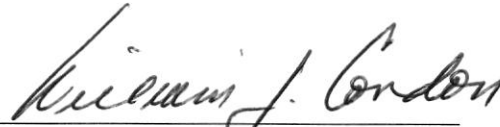
Here, with respect to defendant Bellport Associates, every draft of the contract includes a blank signature line where the defendant's signature would go. In addition, the two defendants herein are tenants-in-common, each maintaining a 50% interest therein. Courts will not grant specific performance to a plaintiff to compel the party who signed a contract to perform if the contract purports to convey the entire jointly owned property but is not signed by all of the joint owners because the signature of only one party to a non-severable contract is insufficient to create an enforceable agreement that would bind all.

The elements of a cause of action for specific performance of a contract are that the plaintiff substantially performed its contractual obligations and was willing and able to perform its remaining obligations, that defendant was able to convey the real property, and that there was no adequate remedy at law. **Twersky v Kazaks**, 25 Misc 3d 1228(A), 1228A, 2007 NY Slip Op 52661(U), \*2 (Sup Ct, Kings County 2007) (see **EMF General Contracting Corp. v Bisbee**, 6 AD3d 45, 51, 774 N.Y.S.2d 39; **Piga v Rubin**, 300 AD2d 68, 751 N.Y.S.2d 195).

Here, Plaintiff did not perform a single one of its would-be obligations under the contract, including paying the initial deposit, or the second deposit, both of which would have been due before this action commenced had a contract truly been formed on May 9, 2021. Plaintiff has failed to tender (or even attempt to tender) the downpayment as required under the proposed contract, in order for Plaintiff to fulfill its most basic conditions precedent to Defendants' obligation to convey the Property.

Dated: 7/28/21

Riverhead, New York

  
Hon. William J. Condon, J.S.C.

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FINAL DISPOSITION

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NON-FINAL DISPOSITION