



APPELLATE COURT DISMISSES LAWSUIT

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“...the Supreme Court should have granted the defendants’ motion pursuant to CPLR 3211(a) to dismiss the complaint.”

Pinnacle Realty of N.Y., LLC v 255 Butler, 2015 NY Slip Op 01623 (2nd Dep’t, 2015)

We are pleased to share this victory with our clients and colleagues, and look forward to the opportunity to continue to share good news.



MILLER LAW OFFICES, PLLC is a general practice law firm with an emphasis in Corporate Law and Civil Litigation in New York.

Unanimous Appellate Division Reverses Trial Court Miller Law Wins on Appeal; Pinnacle Bottoms Out

Pinnacle Realty, a commercial real estate broker, sued our clients, a corporation that owns a large warehouse in Brooklyn, and other related parties. Pinnacle alleged that it earned a commission when it brought a buyer who was ‘ready, willing and able’ to purchase the property on terms that were acceptable to the owner, even though the parties never actually closed title (let alone signed a contract of sale).

Under New York law, a court should dismiss a case when the documentary evidence is “unambiguous and of undisputed authenticity” and “utterly refutes the plaintiff’s allegations. Miller Law Offices moved to dismiss the complaint, arguing that the email exchanges between the lawyers for the buyer and seller – and the many proposed changes to the contract – constituted documentary evidence that there was never a meeting of the minds on the material terms, and therefore, no ‘ready, willing and able’ buyer.

The trial court denied our motion, holding that whether the term sheet prepared by the broker constituted an agreement on the material contract terms was an open issue of fact. We appealed.

Scott J. Farrell, Esq. argued the appeal for the firm. He convinced the Second Department to reverse the trial court and dismiss the lawsuit. In its succinct decision, the Appellate Division accepted Scott’s argument that the documentary evidence proved that the term sheet was little more than an offer to negotiate. The Appellate Court agreed with our analysis and held that “the parties’ submissions, which included printouts of emails and drafts of contracts, established that the defendants and the prospective purchaser did not come to a meeting of the minds as to the essential terms of the sale and, thus, disproved the plaintiff’s allegation that it procured a buyer who was ready, willing, and able to purchase the property.” The court added that “the Supreme Court should have granted the defendants’ motion pursuant to CPLR 3211(a) to dismiss the complaint.”

Miller Law Offices was certainly ready, willing and able to defend our clients at trial, but we appreciate that the unanimous Appellate Division spared our clients the uncertainty, time, and expense of litigation.

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