

30 A.D.3d 575  
Supreme Court, Appellate Division, Second Department, New York.

Eric RICHMOND, appellant,  
v.  
Jean G. MIELE, et al., respondents.

June 20, 2006.

**Synopsis**

**Background:** Purchaser sued vendors to compel specific performance of an option to purchase real property. The Supreme Court, Kings County, Jacobson, J., dismissed, and the purchaser appealed.

**[Holding:]** The Supreme Court, Appellate Division, held that when the purchaser failed to appear at either the originally scheduled closing or for a rescheduled closing, he was in default under the contract, and thus, lost his right to seek specific performance or damages.

Affirmed.

West Headnotes (3)

[1] **Vendor and Purchaser** 🔑 Exercise

The general rule in regard to options to purchase real property is that the provisions of the contract must be complied with strictly, in the manner and within the time specified.

1 Cases that cite this headnote

[2] **Vendor and Purchaser** 🔑 Exercise

Time is of the essence with respect to an option contract to purchase real property, as it must be exercised within a specified time.

1 Cases that cite this headnote

[3] **Vendor and Purchaser** 🔑 Revocation, rescission, or other termination

When a purchaser under an option to purchase real property failed to appear at either the originally scheduled closing or for a rescheduled closing, he was in default under the contract, and thus, lost his right to seek specific performance or damages.

1 Cases that cite this headnote

### Attorneys and Law Firms

**\*\*157** Cantor, Epstein & Degenshein, LLP, New York, N.Y. (Dale J. Degenshein of counsel), for appellant.

Sinnreich Safar & Kosakoff, LLP, Central Islip, N.Y. (Patricia A. Rooney of counsel), for respondents.

ANITA R. FLORIO, J.P., THOMAS A. ADAMS, FRED T. SANTUCCI, and ROBERT J. LUNN, JJ.

### Opinion

**\*575** In an action, inter alia, to compel specific performance of an option to purchase certain real property, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated April 1, 2005, as granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The purchase option at issue here required the plaintiff to give notice to the defendants of his intent to exercise the option not less than 90 days prior to the one-year anniversary date of the agreement. It further provided that the closing would take place within 60 days from the date of such notice, with "time being of the essence." The plaintiff promptly notified the defendants of his intent to exercise the purchase option by letter dated December 5, 2003. However, he failed to appear on the closing date of February 3, 2004.

**\*\*158** The defendants provided the plaintiff with the opportunity to cure his default by rescheduling the closing date for February 6, 2004, but the plaintiff once again failed to appear. The defendants then notified the plaintiff that his purchase option had been extinguished. Thereafter, the plaintiff commenced this action seeking, inter alia, specific performance of the parties' agreement. The Supreme Court granted the defendants' motion to dismiss the complaint on the ground that the plaintiff had not come into court with clean hands. We affirm, but on different grounds.

[1] [2] [3] "The general rule in regard to options is that the provisions of the contract must be complied with strictly, in the manner **\*576** and within the time specified" (*Ittleson v. Barnett*, 304 A.D.2d 526, 528, 758 N.Y.S.2d 360). "Further, time is of the essence with respect to an option contract, as it must be exercised within a specified time" (*LaPonte v. Dunn*, 17 A.D.3d 539, 539, 793 N.Y.S.2d 493). When the plaintiff failed to appear at either the originally scheduled closing on February 3, 2004, or for the rescheduled closing on February 6, 2004, he was in default under the contract (*see Grace v. Nappa*, 46 N.Y.2d 560, 565, 415 N.Y.S.2d 793, 389 N.E.2d 107; *New Colony Homes, Inc. v. Long Is. Prop. Group, LLC*, 21 A.D.3d 1072, 1072–1073, 803 N.Y.S.2d 615; *Milad v. Marcisak*, 307 A.D.2d 281, 281–282, 762 N.Y.S.2d 282; *Ittleson v. Barnett, supra*). Consequently, the plaintiff lost his right to seek specific performance or damages (*see Alirkan v. Garcia*, 162 A.D.2d 571, 572, 556 N.Y.S.2d 759).

The plaintiff's remaining contentions are without merit.

### Parallel Citations

30 A.D.3d 575, 817 N.Y.S.2d 157, 2006 N.Y. Slip Op. 04995