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Supreme Court, Appellate Division, First Department,
 New York.
 YING-QI YANG, Plaintiff-Respondent,
 v.
 SHEW-FOO CHIN, Defendant-Appellant.

July 5, 2007.

Background: Intended purchaser brought action against intended seller for specific performance of the sale of real estate. The Supreme Court, New York County, [Walter B. Tolub, J.](#), denied seller's motion to dismiss. Seller appealed.

Holding: The Supreme Court, Appellate Division, held that intended buyer was not entitled to specific performance of agreement for the sale of real property. Reversed.

West Headnotes

Specific Performance  65

[358k65 Most Cited Cases](#)

Intended buyer was not entitled to specific performance of agreement for the sale of real property after vendor cancelled the contract due to an inability to clear a title problem, where vendor possessed under the agreement, an absolute and unconditional right of cancellation.

**90 [Adam Leitman Bailey, P.C.](#), New York ([Colin E. Kaufman](#) of counsel), for appellant.

[Kevin K. Tung](#), Flushing, for respondent.

[TOM, J.P.](#), [SULLIVAN](#), [WILLIAMS](#), [BUCKLEY](#), [MALONE](#), JJ.

*320 Order, Supreme Court, New York County (Walter B. Tolub, J.), entered March 29, 2006, which denied defendant's motion to dismiss the complaint pursuant to [CPLR 3211\(a\)\(1\)](#), unanimously reversed, on the law, with costs, the motion granted, and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

Plaintiff, as purchaser, and defendant, as seller, entered into an agreement, dated May 4, 2005, for the sale of real property, but three weeks later the seller cancelled the contract due to an inability "to clear a title problem," and returned the buyer's \$50,000 downpayment. The buyer commenced this action for specific performance, and the seller moved to dismiss the complaint on the ground of a complete defense based on the documentary evidence.

The "additional contract rider," dated the same day as the contract of sale, provides:

"Due to Seller's potential adverse economic and tax considerations, in order for Purchaser to induce Seller to enter into this contract, Purchaser grants Seller an absolute and unconditional right of cancellation. In the event Seller elects to cancel contract, upon Purchaser's receipt of the contract deposit returned by escrow agent, this contract shall be null and void and both parties release each other from any and all liabilities."

By the clear and unambiguous terms of the agreement, seller had an "absolute and **91 unconditional right of cancellation," and therefore is entitled to dismissal of the action. Unconditional contract termination clauses are enforceable (*see Red Apple Child Dev. Ctr. v. Community School Dists. Two*, 303 A.D.2d 156, 157-158, 756 N.Y.S.2d 527 [2003], *lv. denied* 1 N.Y.3d 503, 775 N.Y.S.2d 240, 807 N.E.2d 290 [2003]). Even if the contract were deemed illusory for lack of mutuality of obligation, that would render the contract as a whole void (*see *321 Curtis Props. Corp. v. Greif Cos.*, 212 A.D.2d 259, 265, 628 N.Y.S.2d 628 [1995]), leaving plaintiff without an agreement to specifically enforce.

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