



...
[FINDLAW \(HTTPS://LPFINDLAW.COM/\)](https://lp.findlaw.com/) / [CASELAW \(HTTPS://CASELAW.FINDLAW.COM/\)](https://caselaw.findlaw.com/) /
[NEW YORK \(HTTPS://CASELAW.FINDLAW.COM/COURTS/NEW%20YORK\)](https://caselaw.findlaw.com/courts/new%20york/) /
[NY SUPREME COURT APPELLATE DIVISION \(HTTPS://CASELAW.FINDLAW.COM/COURT/NY-SUPREME-COURT-APPELLATE-DIVISION\)](https://caselaw.findlaw.com/court/ny-supreme-court-appellate-division/) /
MILLION GOLD REALTY CO INC V. CORP

MILLION GOLD REALTY CO INC v. CORP

[Print](#)

Font size:



[Reset](#)

Supreme Court, Appellate Division, First Department, New York.

MILLION GOLD REALTY CO., INC., Plaintiff-Appellant, v. S.E. & K. CORP., Defendant-Respondent. Action No. 1.

Million Gold Realty Co., Inc., Plaintiff-Appellant, v. S.E. & K. Corp., et al., Defendants-Respondents. Action No. 2.

Million Gold Realty Co., Inc., Plaintiff-Appellant, v. S.E. & K. Corp., et al., Defendants-Respondents. Action No. 3.

Decided: February 19, 2004

SAXE, J.P., LERNER, FRIEDMAN, MARLOW, JJ. Robin Nelson Wolfe, for Plaintiff-Appellant. Adam Leitman Bailey, for Defendants-Respondents.

Order, Supreme Court, New York County (Paula Omansky, J.), entered June 14, 2002, which granted defendants' motions for summary judgment dismissing Action No. 3 (Index No. 605898/01), unanimously affirmed, with costs. Appeal from order, same court and Justice, entered December 4, 2001, which granted defendants' motion for summary judgment dismissing Action No. 2 (Index No. 605656/00), unanimously dismissed as abandoned, without costs.

Plaintiff, who claims a right of first refusal to purchase certain real property owned by defendants, claimed in Action No. 2 that defendants' contract of sale with a third party should be enjoined as fraudulent since the third party has no assets. The IAS court dismissed Action No. 2 for lack of proof as to the third party's lack of means to meet the contract. In Action No. 3, which seeks specific performance of plaintiff's right of first refusal, plaintiff alleges that there were material differences between defendants' contract with the third party and the contract defendants forwarded to plaintiff when plaintiff exercised its right of first refusal, that defendants failed to provide plaintiff with a legible copy of the contract between them, and that defendants refused plaintiff's request to certify the authenticity of their contract with the third party. The IAS court dismissed Action No. 3 as barred by collateral estoppel. We concur that Action No. 3 should be dismissed, albeit on the ground of res judicata. Action No. 2 established defendants' right to enter into the contract with the third party; Action No. 3, arising out of the same transaction, seeks to destroy that right; and no reason appears why the issues plaintiff seeks to raise in Action No. 3 could not have been raised in Action No. 2 (see *Schuykill Fuel Corp. v. Nieberg Realty Corp.*, 250 N.Y. 304, 306-307, 165 N.E. 456; *Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 347, 690 N.Y.S.2d 478, 712 N.E.2d 647). We have considered and rejected plaintiff's other arguments.

[⬆️ BACK TO TOP](#)



Questions?

At FindLaw.com, we pride ourselves on being the number one source of free legal information and resources on the web. [Contact us.](#)

[ABOUT US > \(https://www.findlaw.com/company.html\)](https://www.findlaw.com/company.html)

[FIND A LAWYER > \(https://lawyers.findlaw.com/\)](https://lawyers.findlaw.com/)

[Our Team \(https://www.findlaw.com/company/our-team.html\)](https://www.findlaw.com/company/our-team.html)

[By Location \(https://lawyers.findlaw.com/lawyer/\)](https://lawyers.findlaw.com/lawyer/)

[By Legal Issue \(https://lawyers.findlaw.com/legal-issue/\)](https://lawyers.findlaw.com/legal-issue/)

[Accessibility \(https://www.findlaw.com/company/our-commitment-to-accessibility.html\)](https://www.findlaw.com/company/our-commitment-to-accessibility.html)

[By Lawyer Profiles \(https://lawyers.findlaw.com/profile/profiles/lawyer/\)](https://lawyers.findlaw.com/profile/profiles/lawyer/)

<https://www.findlaw.com/company/contact-us/contacts.html>

Contact Us
<https://www.findlaw.com/company/contact-us/contacts.html>

By Name
https://lawyers.findlaw.com/lawyer/lawyer_dir

SELF-HELP RESOURCES

Legal Forms & Services
<https://www.findlaw.com/forms.html>

Stay up-to-date with how the law affects your life. Sign up for our consumer newsletter.

ENTER YOUR EMAIL ADDRESS



<https://www.youtube.com/watch?v=WQINbzazOhw>
www.findlaw.com/

Copyright © 2022, Thomson Reuters. All rights reserved.

Terms (<https://www.findlaw.com/company/findlaw-terms-of-service.html>) | Privacy (<https://www.findlaw.com/company/privacy/privacy-statement.html>)

| Disclaimer (<https://www.findlaw.com/company/disclaimer.html>) | Cookies (<https://www.thomsonreuters.com/en/privacy-statement.html#cookies>)

| Do Not Sell My Information (<https://privacyportal-cdn.onetrust.com/dsarwebform/dbf5ae8a-0a6a-4f4b-b527-7f94d0de6bbc/5dc91c0f-f1b7-4b6e-9d42-76043adaf72d.html>)

