

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 21-00583

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, AND WINSLOW, JJ.

JUAN PAREDES, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ALEXANDER VORHAND AND INTERNATIONAL
REALTY OF WNY LLC, DEFENDANTS-APPELLANTS.

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP, BUFFALO (ROBERT C. CARBONE OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

JOHN J. FLAHERTY, WILLIAMSVILLE, FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Mark A. Montour, J.), entered April 19, 2021. The order, insofar as appealed from, denied the motion of defendants to dismiss the first, second and fourth causes of action.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting the motion in part and dismissing the fourth cause of action, and as modified the order is affirmed without costs.

Memorandum: Plaintiff commenced this action asserting causes of action for, inter alia, specific performance of an installment land contract, fraud in the inducement of that contract, and fraud in the execution of that contract. Defendants appeal from an order that, inter alia, denied their motion seeking to dismiss those causes of action pursuant to CPLR 3211 (a) (1) and (7) and 3016 (b).

We agree with defendants that Supreme Court erred in denying that part of their motion seeking to dismiss plaintiff's fourth cause of action, for fraud in the execution of the contract, and we therefore modify the order accordingly. Fraud in the execution of a contract occurs when a party "was induced to sign something entirely different than what [the party] thought [he or] she was signing" (*ABR Wholesalers, Inc. v King*, 172 AD3d 1929, 1930 [4th Dept 2019] [internal quotation marks omitted]; see *Whitehead v Town House Equities, Ltd.*, 8 AD3d 367, 368 [2d Dept 2004]). Here, the complaint fails to state a cause of action for fraud in the execution because it does not allege that plaintiff was induced to sign anything other than the installment land contract that he now seeks to enforce (see CPLR 3211 [a] [7]). We have considered defendants' remaining contentions concerning the specific performance and fraud in the inducement causes of action and conclude that they do not require further modification

or reversal of the order.

Entered: April 22, 2022

Ann Dillon Flynn
Clerk of the Court