

266 A.D.2d 490, 698 N.Y.S.2d 731, 1999 N.Y. Slip Op. 10006  
(Cite as: 266 A.D.2d 490, 698 N.Y.S.2d 731)

## C

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

BAITING HOLLOW ACQUISITIONS, LLC, respondent,

v.

ESTATES OF BAITING HOLLOW, INC., et al., appellants, et al., defendants.

Nov. 29, 1999.

In mortgage foreclosure action in which a stipulated settlement was made, the Supreme Court, Suffolk County, *D'Emilio, J.*, denied mortgagors' motion to stay release of deeds held in escrow. Mortgagors appealed. The Supreme Court, Appellate Division, held that mortgagors were not entitled to reasonable adjournment of closing for settlement merely because the parties had not specified that time was of the essence.

Affirmed.

### West Headnotes

#### Mortgages 266 306

##### 266 Mortgages

266VII Payment or Performance of Condition, Release, and Satisfaction

266k306 k. Change in Time or Mode of Payment. **Most Cited Cases**

Mortgagors were not entitled to reasonable adjournment of closing for settlement of mortgagee's foreclosure action merely because the parties had not specified that time was of the essence, where terms of stipulation of settlement clearly indicated that mortgagors' payments were to be made within six months.

\*\*731 [Mark D. Mermel](#), Garden City, N.Y., for appellants.

Moritt, Hock & Hamroff, LLP, Garden City, N.Y. (Robert M. Tils, Michael Cardello III, and Marc Hamroff of counsel), for respondent.

LAWRENCE J. BRACKEN, J.P., SONDRAMILLER, WILLIAM C. THOMPSON and WILLIAM D. FRIEDMANN, JJ.

#### MEMORANDUM BY THE COURT.

\*490 In an action to foreclose a mortgage on 17 parcels of property, the defendants Estates of Baiting Hollow, Inc., and Schabse Gordon appeal from an order of the Supreme Court, Suffolk County (*D'Emilio, J.*), dated September 2, 1997, which denied their motion, *inter alia*, to stay the release from escrow of deeds for 15 parcels of the subject property.

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

In this action to foreclose a mortgage on 17 parcels of property, the parties entered into a stipulation of settlement, *inter alia*, for the appellants to receive a satisfaction of their mortgage obligation. In exchange, the appellants were to transfer title to two of the parcels, and pay \$500,000 and all real estate taxes plus interest within six months of the date of the stipulation of settlement. The stipulation of settlement provided that in the event that payment was not made within the six-month deadline, the deeds for the remaining 15 parcels were to be released from escrow to the plaintiff with no further notification to the appellants.

Contrary to the appellants' contention, they were not entitled to a reasonable adjournment of the settlement closing merely because the parties had not specified that time was of the essence. The terms of the stipulation of settlement clearly indicated the date by which payment was to be made and the parties were accordingly bound thereby (*see, Trustco Bank N.Y. v. Drake*, 195 A.D.2d 665, 599 N.Y.S.2d 763).

The appellants' remaining contentions are without merit.

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N.Y.A.D. 2 Dept., 1999.

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