

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed October 21, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-2290

Lower Tribunal No. 08-15458

Terra-Adi International Bayshore, LLC.,
Appellant,

vs.

Kostandinos Georgarious, et al.,
Appellees.

An appeal from a non-final order from the Circuit Court for Miami-Dade County, Gisela Cardone Ely, Judge.

Greenberg Traurig and Elliot H. Scherker, Paul R. Lipton, Julissa Rodriguez and Kerri L. McNulty, for appellant.

Robert H. Cooper, for appellees.

Before COPE and SALTER, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The appellant-seller challenges an interlocutory order in an action involving a failed real estate deal in which the parties disputed which side had defaulted.

The order released to the appellees-buyers the portion of the real estate deposit to which they were unconditionally entitled even if they did not prevail in the litigation, that is, even if they were the ones in default.¹ Considering this proceeding as an authorized non-final appeal under Rule 9.130(a)(3)(C)(ii), from an order determining the right to the immediate possession of property, the portion of the deposits in question, see *Malek v. Bright*, 7 So. 3d 598 (Fla. 3d DCA 2009), the order is affirmed on the authority of *Pianeta Miami, Inc. v. Lieberman*, 949 So. 2d 215 (Fla. 3d DCA 2006).

Affirmed.²

¹ Paragraph 13 of the purchase agreement provides, in part:

If Buyer defaults after fifteen percent (15%) of the Purchase Price, exclusive of interest, has been paid, Seller will refund to the Buyer any amount which remains from the payments Buyer made after subtracting fifteen percent (15%) of the Purchase Price, exclusive of interest

² Any stay of the order is vacated, effective immediately.