



[Back to News](#)

Trial Court Rules In Favor Of Warehouse Owner

APRIL 3RD, 2006

In March, 2006, Novack and Macey partner Mitchell L. Marinello successfully defended Tires, Ltd., LLC (“Tires”) in an action tried in state court in Fort Lauderdale, Florida.

Tires owned a commercial warehouse that it had contracted to sell to GG/DH, Inc. (“GG”). GG sued for specific performance as well as certain damages. Tires denied liability on the ground that GG had not been ready, willing and able to close the transaction at the time of the scheduled closing and subsequently had settled its claims by entering into an informal agreement to “walk away” from the transaction.

After a three-day trial in the Circuit Court of Broward County, the trial court ruled in favor of Tires, holding that GG had failed to carry its burden of proving that it was ready, willing and able to perform on the date of the parties’ “time of the essence” closing. The court also ruled that the equities rested with Tires, not GG. As a result, specific performance was denied, and judgment was entered in favor of Tires.

The decision enables Tires to resell the property, which has appreciated in value significantly. The appreciation is partly the result of a shortage of warehouse space in the Fort Lauderdale area due to damage inflicted by last year’s hurricanes.

For further information please contact Don Tarkington, Managing Partner at 312.419.6900.