

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: October 11, 2005

Decided: October 13, 2005

Jeffrey M. Weiner, Esquire
Fox Rothschild LLP
919 N. Market Street, Suite 1300
Wilmington, DE 19801

Thomas C. Grimm, Esquire
Patricia R. Uhlenbrock, Esquire
Morris, Nichols, Arsht & Tunnell
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

***RE: Cover & Rossiter, P.A. v. Flickinger-McConnell, L.P.
C.A. No. 1224-N***

Dear Counsel:

Having reviewed the briefs and considered the arguments of counsel advanced at the hearing held October 11, 2005, I have concluded that the defendant's motion for judgment on the pleadings must be denied. The defendant may ultimately prevail on its argument that the claim for specific performance of the purchase option in question cannot succeed. Nevertheless, I am not persuaded that the circumstances alleged in the complaint, together with the inferences therefrom the court must draw in favor of the plaintiff, could never support that or some related form of relief. That may ultimately depend on facts relating to the defendant's alleged representations to municipal authorities or its performance of the obligation under the option agreement to obtain approval of the necessary subdivision. In view of the uncertainty of these issues, the better course is to deny the threshold motion and revisit the matter on a more complete record.

Cover & Rossiter, P.A. v. Flickinger-McConnell, L.P.

C.A. No. 1224-N

October 13, 2005

Page 2

In light of this conclusion, the parties should proceed with discovery, after which the court will either conduct a brief trial or decide the matter on summary judgment. Counsel are directed to confer on a form of scheduling order, contemplating a final disposition before the end of 2005. Please contact Ms. James (255-0510) for available trial dates.

IT IS SO ORDERED.

/s/ Stephen P. Lamb

Vice Chancellor