

**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: April 13, 2007
Decided: May 8, 2007

David J. Weidman, Esquire
Hudson, Jones, Jaywork & Fisher
100 N. Bedford St.
P.O. Box 359
Georgetown, DE 19947

Kashif I. Chowdhry, Esquire
Moore & Rutt, P.A.
122 West Market Street
P.O. Box 554
Georgetown, DE 19947

***RE: David A. Dittrick and Darlene Dittrick v. James Chalfant
C.A. No. 2156-S***

Dear Counsel:

I have considered the parties' submissions in connection with the Dittricks' motion for attorneys' fees in this matter. For the reasons that follow, I find the Dittricks do not come within the scope of the contractual provision which they contend entitles them to a fee award. Therefore, I will deny the motion.

The background of this case is more fully set forth in my post-trial opinion dated April 4, 2007, and I will only provide a brief overview of the facts relevant to the subsidiary question now presented.¹ The plaintiffs, David and Darlene Dittrick, filed a complaint on May 16, 2006 seeking specific performance of an installment land sale contract entered into with the defendant, James Chalfant. A glaring

¹*Dittrick v. Chalfant*, 2007 WL 1039548, at *1-3 (Del. Ch. Apr. 4, 2007).

deficiency in the contract was the omission of a specific rate of interest applicable to the purchase price of the land. Throughout the litigation, the Dittricks maintained that since the agreement was clear on its face and no interest provision was present, all of their monthly payments correspondingly reduced dollar-for-dollar the net principal balance outstanding on the loan. On the other hand, Chalfant argued that the parties agreed upon an 11.75% interest rate before executing the contract, and, given the patent ambiguity in the written agreement, extrinsic evidence established the Dittricks' liability for both principal and interest on the purchase.

In the April 4 opinion, I held that while the contract was incomplete due to the absence of an express interest rate term, it was nevertheless specifically enforceable because the missing element was not essential to an installment land sale contract and because a statute supplied the omitted rate.² Applying the legal rate of interest, 7.25%, to the purchase price, I found the Dittricks had an outstanding principal balance of \$58,384.15.³ Upon tender of such amount to Chalfant, the Dittricks were entitled to have Chalfant deliver title and execute a deed to the property.⁴

² *Id.* at *4-6.

³ *Id.* at *7.

⁴ *Id.*

The Dittricks filed this motion on April 9, 2007. Their argument is founded on paragraph 16 of the contract, which provides:

If either Buyer or Seller default under this Installment Land Contract, such defaulting party shall be liable for expenses incurred by the non-defaulting party, including reasonable attorney's fees in connection with this transaction and the enforcement of the subject Installment Land Contract.

According to the Dittricks, Chalfant defaulted on the contract, and they were compelled to bring suit to enforce the agreement. The Dittricks argue that I held in their favor by entering “an order requiring [Chalfant] to perform his contractual obligation”⁵ *Ergo*, the Dittricks say, paragraph 16 entitles them to an award of \$14,443.40 for their costs of counsel in pursuing their claim.

The Court of Chancery typically follows the American Rule with respect to attorneys' fees, whereby each party is responsible for the expense of employing its own counsel.⁶ A recognized exception to this rule applies when a contractual agreement exists between the parties regarding payment of attorneys' fees.⁷ In recognition that inclusion of such a clause may well have helped induce a party to

⁵ *Id.* at *1.

⁶ *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039, 1044 (Del. 1996) (citing *Walsh v. Hotel Corp. of Am.*, 231 A.2d 458, 462 (Del. 1967)).

⁷ *See Vaughan v. Creekside Homes, Inc.*, 1994 WL 586833, at *3 (Del. Ch. Oct. 7, 1994) (awarding attorneys' fees when the contract provided that in the event of breach, “the non-defaulting party is entitled to attorneys' fees in connection with the transaction and the enforcement of the contract for sale”).

sign an agreement, Delaware courts will “routinely enforce provisions of a contract allocating costs of legal actions arising from the breach of a contract.”⁸

The Dittricks’ claim for attorneys’ fees, however, simply fails to come within the plain meaning of the clause in question.

For paragraph 16 to apply, the factual scenario giving rise to the suit must involve an event of “default.” The contractual discussion of a “defaulting party” and a “non-defaulting party” necessarily contemplates exactly what it says—that attorneys’ fees are only available if one party has not fully (or, at least, not materially) met its obligations, while the other has. I held that the contract carried the legal rate of interest, not the 11.75% which Chalfant advocated, nor the 0% which the Dittricks supported. Chalfant, then, was no more in default within any sensible and reasonable meaning of that term than were the Dittricks. Indeed, the Dittricks never alleged or represented that they were ready, willing, and able to pay the \$58,384.15 balance outstanding on April 4.

Moreover, I regard the Dittricks’ selective quotation of a scant portion of the post-trial opinion as an obviously futile effort to contort that holding to fit their ends. In the opinion, the full sentence quoted above states, “Therefore, the court

⁸ *Knight v. Grinnage*, 1997 WL 633299, at *3 (Del. Ch. Oct. 7, 1997) (placing importance on the parties’ freedom of contract and noting that “parties who enter into a contract have the opportunity during the course of their negotiations to add to the contract any provision appropriately bargained for which would place the responsibility for payment of attorney’s fees on any party who either breaches the contract or fails to perform in accordance with the terms of the contract”).

will enter an order requiring the seller to perform his contractual obligation *as provided below.*”⁹ The Dittricks’ omission of these final three words, of course, completely alters the meaning of the sentence. I ordered Chalfant to deliver title to the land *only upon* the Dittricks’ simultaneous discharge of their concurrent obligation to tender the outstanding principal in full. The Dittricks’ use of this language in their motion seems to imply that I ordered relief in their favor on the terms and conditions they advanced in this litigation, which, most certainly, is not the case.

Finally, a determination that the Dittricks do not come within the ambit of paragraph 16 is consistent with our common law. The proper reading of that paragraph envisions one party—the non-defaulting party—prevailing in litigation to enforce the contract. This court has held that contractual provisions which contemplate fee shifting to the prevailing party should generally be applied on an “all-or-nothing” basis¹⁰ and, in any event, should not be applied where interests of justice and equity oppose shifting fees and costs.¹¹ As discussed at length above,

⁹ *Dittrick*, 2007 WL 1039548, at *1 (emphasis added).

¹⁰ *See, e.g., Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at *1-3 (Del. Ch. Apr. 27, 2004) (noting that the standard for determining a prevailing party is “predominance in the litigation”); *Brandin v. Gottlieb*, 2000 WL 1005954, at *28 (Del. Ch. July 13, 2000) (same).

¹¹ *Council of the Dorset Condo. Apts. v. Gordon*, 2002 WL 1335620, at *1-2 (Del. Ch. June 14, 2002).

the Dittricks cannot be viewed as having prevailed here, and it would be highly inequitable for Chalfant to shoulder all of the fees and expenses of this litigation.¹²

For the foregoing reasons, the plaintiffs' motion is DENIED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

¹² It is especially difficult to understand how the Dittricks prevailed in the litigation in light of their appeal of the April 4 decision, which followed the filing of their motion for attorneys' fees.