

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

October 27, 2008

John F. Brady, Esquire
Brady, Beauregard and Chasanov
110 East Pine Street
P. O. Box 742
Georgetown, DE 19947

Norman C. Barnett, Esquire
Schab and Barnett, P. A.
9 Chestnut Street
P. O. Box 190
Georgetown, DE 19947

**RE: Daniel Wien v. Marianne Gould
Civil Action No. 07A-11-003 THG**

Dear Mr. Brady and Mr. Barnett:

This case involves an appeal from the Court of Common Pleas in and for Sussex County, Delaware. The decision below is affirmed.

The case involves a decision as to whether or not the deposit paid under the terms of a real estate contract that did not proceed to settlement should be returned to the prospective buyer or retained as damages to the seller.

Seller argues that the Court below erred in finding that a financing contingency existed and that because the financing contingency was ambiguous, the Court then used extrinsic evidence to determine the intent of the parties.

While Paragraph 7 of the contract pertaining to the type of financing contingency may have been blank, Paragraph 8 concerning the financing application and commitment sets forth the time required for the prospective buyer to make an application for financing.

Paragraph 8 references Paragraph 14 which permits the seller to retain the deposit as liquidated damages if the buyer does not comply with the mortgage loan application requirements.

John F. Brady, Esquire
Norman C. Barnett, Esquire
Page 2
October 27, 2008

Paragraph 8 clearly sets forth an intent by the parties that a written commitment for financing was necessary; and if it could not be obtained by a date certain, either buyer or seller could declare the contract null and void and with no further legal effect. Therefore, the Court below was correct in finding that a financing contingency existed and the Court below was correct in considering extrinsic evidence to determine the intent of the parties.

Therefore, for the reasons stated in the well-reasoned decision of the Court of Common Pleas of June 27, 2007, the judgment is affirmed.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj
cc: Prothonotary