IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ROBERT J. SMITH COMPANIES, INC.,	)	
Defendant Below–Appellant,	)	
5.	)	C.A. No. 01A-06-004 HDR
JACQUELINE A. THOMAS,	)	
Plaintiff Below–Appellee.	)	

Submitted: September 10, 2001
Decided: December 10, 2001

Michael W. Arrington, Esq. of Parkowski & Guerke, P.A., Dover, Delaware, for Defendant Below-Appellant.

Constantine F. Malmberg, III, Esq. of Young & Malmberg, P.A., Dover, Delaware, for Plaintiff Below-Appellee.

O P I N I O N

Upon Appeal from the
Court of Common Pleas
AFFIRMED IN PART; REVERSED IN PART

RIDGELY, President Judge

This is an appeal by Defendant Robert J. Smith Companies, Inc. ("Smith") from a judgment of the Court of Common Pleas which awarded the Plaintiff Jacqueline A. Thomas ("Thomas") her deposit on a real estate sales contract plus interest. Smith argues on appeal that the trial court erred in its interpretation of the contractual provisions, made errors of fact in finding that Thomas complied with the contract, and improperly admitted testimony or improperly interfered with Smith's case. Alternatively, Smith seeks the reversal of the trial court's calculation and award of interest. I find that the judgment is supported by substantial evidence and free of legal error with the limited exception of the date for the accrual of interest. Accordingly, the judgment is affirmed and the case is remanded for the recalculation of pretrial interest from June 13, 2000.

I. BACKGROUND

This appeal arises from a contract between Thomas and Smith for the purchase of a newly constructed home in the residential housing development of Sheffield Farms. The contract provisions in dispute pertain to Lot 81 in Sheffield Farms, however, Lot 81 was not the only lot over which these parties negotiated.

On September 21, 1999, in anticipation of purchasing a home in Sheffield Farms, Thomas applied for a mortgage with American Family Mortgage Corporation. This mortgage was for a loan amount of $100,000 on a home value of $140,000 in Sheffield Farms. The mortgage company issued a loan commitment agreement for a loan of $100,000 set to expire in six months, on March 21, 2000. Additionally, the mortgage company issued a lock-in agreement. This lock-in agreement had two options for the interest rate. Thomas selected the option that allowed the interest rate to float until she

decided to lock-in.

On October 5, 1999, Thomas contracted with Smith for the purchase of a home to be built upon Lot 22. Thomas made the initial deposit of $1,000.00 at this time. Subsequent deposits totaling $7,225 were made between October 21, 1999 and October 24, 1999, bringing the total deposits at October 24, 1999 to $8,225.00. This original contract was contingent upon Thomas selling the home she then owned.

Thomas was unable to quickly sell the home in which she resided, therefore was unable to purchase Lot 22 on the originally designated date. Smith then sold Lot 22 to a different purchaser. On December 1, 1999, Thomas and Smith executed the contract that is currently in dispute. This second contract was for Lot 81, and all previous deposits made on Lot 22 were transferred to the Lot 81 contract. On March 21, 1999, the mortgage commitment that Thomas had with American Family Mortgage Corp. expired. On April 28, 2000, Thomas sold her previous home. On May 1, 2000, Thomas made an additional deposit on Lot 81, bringing the total deposit to $10,775.00, the amount currently in dispute.

In early June 2000, Thomas was informed by American Family Mortgage Corp. that due to changes in her financial condition she was no longer eligible for a mortgage sufficient to purchase a home in Sheffield Farms. Thomas unsuccessfully attempted to add her roommate to the mortgage in hopes of purchasing a home in Sheffield Farms. Thomas then applied for a smaller mortgage, most likely for a modular home. On June 8, 2000 the

second mortgage application was denied.

In early June, Smith declared the contract between Smith and Thomas void, and on June 13, 2000, Smith sold Lot 81 to a different party. By letter dated June 19, 2000, Thomas requested the return of the down payment of $10,775.00. The construction on Lot 81 began in early July and was completed and sold by September 6, 2000.

Smith refused to return any portion of the down payment, claiming it as liquidated damages provided for under the contractual provisions. Thomas filed her complaint against Smith on October 13, 2000, seeking return of the down payment plus interest. The Court of Common Pleas conducted a trial and awarded Thomas the return of the entire deposit, plus interest from October 5, 1999. Smith filed this timely appeal.

II. STANDARD OF REVIEW

The standard of review by the Superior Court for an appeal from the Court of Common Pleas is the same standard applied by the Supreme Court to appeals from the Superior Court.[1] Upon an appeal from the Court of Common Pleas, a civil action is "reviewed on the record and shall not be tried de novo."[2] In addressing appeals from a trial court, this Court is limited to correcting errors of law and determining whether substantial evidence exists to support factual findings.[3] Substantial evidence is relevant evidence that

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[1] *See State v. Cagle,* Del. Supr., 332 A.2d 140, 142 (1974).

[2] 10 *Del. C.* § 1326(c); Super Ct. Civ. R. 72(g).

[3] *See Shahan v. Landing,* Del. Supr., 643 A.2d 1357, 1359 (1994).

a reasonable mind might accept as adequate to support a conclusion.[4] It is not the duty of the reviewing Court to weigh the evidence, determine the questions of credibility, or make its own factual findings.[5] When the determination of facts rests on a question of credibility and acceptance or rejection by the trial judge of live testimony, the trial Judge's findings will be approved on review.[6] Factual findings in this case will not be overturned on appeal if they are "sufficiently supported by the record and are the product of an orderly and

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[4] *See Oceanport Ind. v. Wilmington Stevedores,* Del. Supr., 636 A.2d 892, 899 (1994).

[5] *See Johnson v. Chrysler Corp.,* Del. Supr., 213 A.2d 64, 66 (1965).

[6] *See Levitt v. Bouvier,* Del. Supr., 287 A.2d 671, 673 (1972).

logical deductive process."[7] Questions of law are reviewed *de novo.*[8]

III. DISCUSSION

The disposition of this appeal revolves around three issues. First, Smith seeks reversal of the judgment based on the trial court's interpretation of the contract. Smith offers three grounds for finding that Thomas breached the contract and has forfeited the return of the deposit: Thomas failed to apply for a mortgage as required by the mortgage contingency clause, Thomas failed to lock-in an interest rate as required by the contract, and Thomas failed to act in good faith. In the alternative, Smith seeks to have the award of interest reversed. Lastly, Smith seeks reversal based upon either the lower court's improper admission of testimony or the improper interference with Smith's case.

Smith first argues that the trial court made both a legal and factual error in the interpretation of the contractual language regarding the mortgage contingency clause.

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[7] *Id.; State v. Cagle,* Del. Supr., 332 A.2d 140, 142-43 (1974); *Ensminger v. Merritt Marine Constr., Inc.,* Del. Supr., 597 A.2d 854, 855 (1988).

[8] *See Rohner v. Niemann,* Del. Supr., 380 A.2d 549, 552 (1977).

Smith contends that the contract language is clear and unambiguous and the trial court should have enforced the contract according to those terms. Paragraphs 3(a) and 3(d) of the Agreement of Sale provide:

> 3. Mortgage Contingency. (a) Within seven (7) banking days of acceptance of this Agreement by both PURCHASER and SELLER, PURCHASER shall apply, at a qualified lending institution (the "LENDER"), for mortgage financing. SELLER agrees that this Agreement is contingent upon Purchaser obtaining an unconditional commitment from said LENDER, for a mortgage in the amount of $100,000.00, at the prevailing interest rate, and for a term not to exceed 30 years, within 15 days from the execution of this Agreement (the "Commitment").
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> * * *
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> (d) If PURCHASER fails to make application for the mortgage financing within the specified fifteen (15) banking days then SELLER, at SELLER's sole option, may declare this Agreement null and void and all deposit monies shall be forfeited by PURCHASER to SELLER as liquidated damages, in which case SELLER and PURCHASER shall be relieved from any further liability or claims hereunder.

Smith argues the court committed legal error in interpreting the word "apply" in paragraph 3(a) to include the application for a lower priced home prepared two months prior to the signing of the December 1, 1999 contract. Testimony from William Schaefer ("Schaefer"), the loan officer established that Thomas originally applied for a mortgage in September 1999, on a home with a purchase price of $140,000 in Sheffield Farms. The December 1999 contract provided for a purchase price of $151,050. Smith claims that the difference in purchase price evidences separate contracts. Therefore, Smith argues that

allowing the application for the $140,000 home to fall within the definition of application under paragraph 3(a) of the December 1999 contract was a violation of the clear and unambiguous terms of the contract.

Smith claims that the trial court committed an error when it found Thomas to have fulfilled the requirement to make an application within seven days. Smith argues that the court's findings are based upon a misstatement of Schaefer's testimony. Smith asserts that contrary to the trial court's statement, Schaefer's testimony was contradicted and points to the testimony of Thomas, where she conceded that she did not file a new application for a mortgage on Lot 81.

Thomas labels Smith's contentions as a hyper-technical argument. Thomas argues that the modification of the Agreement of Sale from Lot 22 to Lot 81 although technically a new contract, did not negate her then pending application or require her to go through the meaningless exercise of filing a new application. In support, Thomas notes that her mortgage company did not consider it necessary to reapply. Schaefer acknowledged that it was not necessary for a new application to be made because the original application was for a lot and home in Sheffield Farms. Additionally, Schaefer stated that he met with Thomas several times to follow up on her application.

The interpretation of contractual language involves questions of law and fact.[9]

[9] *See Klair v. Reese*, Del. Supr., 531 A.2d 219, 222 (1987) (citing the *Restatement (Second) of Contracts* § 212).

While this Court may draw its own conclusions as to the written terms of the contract, I defer to the trial court on findings of fact based on evidence beyond the four corners of the document, assuming those findings are the product of an orderly and logical deductive process.[10] The issues as raised by Smith require both a review of the contractual terms of the contract and the factual findings of the trial court.

The contention by Smith that paragraphs 3(a) and 3(d) clearly and unambiguously required Thomas to reapply is not supported by this Court's interpretation. Smith states that "the clear and unambiguous language of the contract required Thomas to apply for her mortgage on the $151,000 home." Paragraph 3(a) requires that Thomas merely apply for a mortgage in the amount of $100,000. There is no mention in paragraph 3(a) or 3(d) of the purchase price of the home. The only dollar amount stated in paragraph 3(a) is the mortgage balance, which was inserted by hand. It appears that the intention of the parties was for Thomas to provide the difference between the purchase price and the mortgage amount.

In making its determination, the trial court relied upon the testimony of the

[10] *See id.* (citing *E.I. du Pont de Nemours v. Shell Oil Co.*, Del. Supr., 498 A.2d 1108, 1113 (1985); *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671, 673 (1972)).

mortgage loan officer that Thomas made an application for a home in Sheffield Farms. His testimony also established that from the lender's perspective, Thomas was not required to reapply for a mortgage when she switched lots. This decision appears to rest significantly upon Schaefer's testimony. This reliance is reasonable because the mortgage company is the entity to which the application must be made. It was reasonable to infer that a party would not be expected to force a new application upon a lender who does not require it. Therefore, the trial court's factual finding that Thomas complied with the contract is supported by the record and is the product of an orderly and logical deductive reasoning process.

Smith asserts that Thomas also violated paragraph 3(f) by failing to lock-in an interest rate and this breach should preclude any recovery of her deposit. Paragraph 3(f) of the Agreement of Sale provides:

> If, subsequent to the issuance of the Commitment, PURCHASER fails to "lock-in" an interest rate with LENDER and, as a result, interest rates change such that PURCHASER no longer qualifies for mortgage financing with said LENDER, then SELLER may, at SELLER's sole option, declare this Agreement null and void and all deposit monies shall be forfeited by PURCHASER to SELLER as liquidated damages, in which case SELLER and PURCHASER shall be relieved from any further liability or claims hereunder.

Thomas executed a Lock In Agreement which allowed the interest rate to float until Thomas took some action to lock it in. Smith contends that the above provision required

Thomas to lock-in an interest rate and her failure to do so is a breach.

However, Thomas argues that paragraph 3(f) should be interpreted to apply only where a party is denied a mortgage due to an increase in interest rates. Paragraph 3(f) is merely intended to prevent Thomas from using the mortgage contingency as an excuse if rates go up. Thomas contends the trial court followed this interpretation. The trial court then made a factual determination regarding the issue of why Thomas was denied a mortgage. Based on testimony of Schaefer the trial court determined that Thomas was not denied a mortgage based on an increase in interest rates, but was denied the mortgage solely as a result of her asset and credit situation.

I am not persuaded by Smith's argument that paragraph 3(f) required lock-in and the failure to do so was a breach. The wording "and, as a result, interest rates change such that PURCHASER no longer qualifies for mortgage financing with said LENDER," supports Thomas's interpretation. Paragraph 3(f) only applies where a party has been denied a mortgage due to an increase in interest rates.

The trial court made a factual finding that there was no evidence that an interest rate change had any effect on Thomas being denied a mortgage. The trial court relied upon Schaefer's testimony that Thomas was denied a loan based solely on her credit and assets. The trial court further determined that paragraph 3(f) did not apply to Thomas because her failure to lock-in an interest rate did not cause her mortgage denial. The trial court's factual determination regarding the reason Thomas was denied a mortgage is supported by

the record and is the product of an orderly and logical deductive reasoning process.

Smith argues that Thomas breached the contract by acting in bad faith. Case law and paragraph 16 of the contract require both parties to act in good faith.[11] To support the allegation that Thomas acted in bad faith Smith contended: Thomas failed to make

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[11] Paragraph 16 provides:

Time of the Essence; Default. Time is of the essence of this Agreement. If PURCHASER fails to make any payment as specified herein, knowingly furnishes false or incomplete information to SELLER, SELLER's broker, any agent or employee of SELLER's broker or PURCHASER's or SELLER's lending institution concerning Buyer's legal or financial status, fails to make application or cooperate in the processing of the mortgage loan application, which act(s) would result in failure to obtain a mortgage financing commitment, or violates or fails to perform any of the terms or conditions of this Agreement, the SELLER shall have the right and option to declare this Agreement null and void, to retain any all deposit monies as liquidated damages for such default by PURCHASER, or to exercise any legal or equitable right or remedy to which SELLER may be entitled and in connection therewith to apply any deposit monies either on account of the purchaser price or on account of damages, as SELLER may elect. Formal tender of deed and tender of purchase monies are waived.

application or provide any information to the mortgage company between December 1st and December 8th; Thomas failed to sign or return the commitment letter; Thomas deceived Smith by presenting the commitment letter as a valid commitment; and Thomas applied for a mortgage on a modular home while still under contract with Smith.

Thomas denied any acts of bad faith and contends that Smith's examples are merely an incorrect characterization of the record below. Thomas argues she did not fail to make application or provide any information to the mortgage company between December 1st and December 8th, and relies upon Schaefer's testimony about the many times they met regarding the mortgage. Thomas contends that her failure to sign or return the commitment letter was not an act of bad faith, and as discussed above paragraph 3(f) did not require her to do so. Thomas asserts she did not deceive Smith in any way and took no steps to purchase other property prior to being denied the ability to purchase in Sheffield Farms. To the contrary, Thomas asserts good faith supported by her attempts to obtain financing by including her roommate on the mortgage application.

Smith is correct that both parties are bound to act in good faith. "Every contract imposes a duty of good faith in its performance. A breach of the obligation of good faith in performance 'may be overt or may consist of inaction.' The requirement of good faith extends to the satisfaction of contractual conditions or contingencies."[12] The determination

[12] *Rehoboth Resort Realty, Inc. v. Brittingham Enterprises, Inc.,* Del. Super., C.A. No. 91C-03-035, Lee, J., 1992 WL 207262, *2 (July 21, 1992) (Mem. Op.) (citations omitted) (aff'd *Skip and Judy, Inc. v. Rehoboth Resort Realty, Inc.*, Del. Supr., No. 551, 1992, Veasey, C.J., 1993 WL 445480

of whether a party acted in good faith is a factual finding and will not be overturned if it is the product of an orderly and logical deductive process, and are supported by sufficient evidence in the record.[13]

This Court's review is to determine if the decision below was the product of an orderly and logical deductive process, and is supported by sufficient evidence in the record. The trial court considered this issue and did not find that Thomas acted in bad faith. Thomas has put forth sufficient evidence in the record to refute all examples of bad faith. Under the facts and circumstance of this case, and in light of the applicable standard of review, the trial court's finding that Thomas met her duty of acting in good faith is entitled to deference.

(Nov. 1, 1993) (ORDER)).

[13] *See Skip and Judy, Inc. v. Rehoboth Resort Realty, Inc.*, Del. Supr., No. 551, 1992, Veasey, C.J., 1993 WL 445480 *1 (Nov. 1, 1993) (ORDER) (citing *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671, 673 (1972)).

Next, Smith alleges the trial court improperly admitted testimony of an undisclosed witness and improperly and materially interfered with the defendant's case. Thomas's first witness, Barbara Jarvis ("Jarvis"), was the on site salesperson of Smith when Thomas attempted to purchase a home. Jarvis was not on the pretrial stipulation, however the court allowed her testimony, which touched on the amount and date of the resale of Lot 81. Smith contends this was a violation of the Court of Common Pleas Civil Rule 16 and created a manifest injustice and prejudice against Smith.[14] Additionally, Smith claims the

[14] **CCP Civ. R. 16. Pretrial procedure; formulating issues.**
In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider: (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) The limitation of the number of expert witnesses; (5) The advisability of a preliminary reference of issues to a Commissioner for findings to be used as evidence at trial; (6) Such other matters as may aid in the disposition of the action. The Court shall make

lower court interfered with the case by discouraging cross-examination of Jarvis, in discounting direct testimony before it was offered of Smith's witness, and through faulty evidentiary rulings permitting cross examination beyond the scope of direct examination of Smith's witness. Smith requests this Court to find reversible error. Thomas contends that if any error occurred it was harmless.

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an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

Case law interpreting Civil Rule 16 of this Court is relevant here. In, *Furek v. University of Delaware*, this Court held that the phrase "to prevent manifest injustice" in Superior Court Civil Rule 16(e), would allow the testimony of ten witnesses not identified in the pretrial stipulation.[15] Federal courts, under the counterpart to Rule 16(e), have applied a four-factor test in assessing whether to permit a party to depart from its pretrial submissions. These factors require a trial court to consider: (1) the prejudice or surprise in fact of the party against whom the excluded witnesses would have testified, (2) the ability of the party to cure the prejudice; (3) the extent to which waiver of the rule against calling unlisted witnesses would disrupt the orderly and efficient trial of the case or of other cases in the court; and (4) bad faith and willfulness in failing to comply with the court's order.[16] The Court in *Furek*, cites *Galard v. Johnson*, a case from the Seventh Circuit, where a witness not listed in the pretrial order was allowed to testify.[17] The Court reasoned that since the defense knew the plaintiff intended to call the witness, and the subject of her testimony, a new trial was not warranted because prejudice was not shown.

Civil Rule 16 for the Court of Common Pleas includes the same phrase "to prevent manifest injustice" as discussed above. The facts in the case before this Court are identical

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[15] Del. Super., C.A. No 82C-09-030, Gebelein, J., 1987 WL 18118 (Sept. 25, 1987) (ORDER).

[16] *See Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 904-05 (3d. Cir. 1977).

[17] 7th Cir., 504 F.2d 1198 (1974).

to those in *Galard v. Johnson.* The trial from which this appeal was taken occurred on Tuesday, May 29, 2001. When Smith first objected to Jarvis being called, counsel stated that they were not made aware that she would testify until the Friday before trial. Jarvis was a past employee of Smith, therefore Smith would have knowledge of her expected testimony. Analogous to *Galard*, Smith knew Thomas intended to call the witness prior to trial, and the subject of her testimony, accordingly a new trial is not warranted because prejudice has not been shown.

Smith also requests that this Court consider various events in the trial below to find reversible error. Under Court of Common Pleas Civil Rule 61 an error or defect will be disregarded unless it affects a substantial right of the party.[18] First, Smith claims the lower court interfered with the case by discouraging cross-examination of Jarvis. The record reflects the trial court stated "Now, are we pretty near the end of the cross-examination? It's getting very long, laborious and tedious." Second, Smith alleges the lower court discounted direct testimony before it was offered by Smith's witness. The record reflects the trial court stated in response to an objection about allowing a witness to testify from a

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[18] **CCP Civ. R. 61. Harmless error.**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

letter, "Well, she can testify if she wants, but it just seems like a waste of time." Third, Smith contends the lower court, through faulty evidentiary rulings permitted cross examination beyond the scope of direct examination of Smith's witness. The court allowed questions of a witness on cross-examination regarding the construction and sale of Lot 81. The direct testimony of this witness touched on Lot 81, but only in regard to Thomas's attempt to purchase it.

This Court can find no example of an error that affects a substantial right of a party. In both the first and second alleged error the court did not prohibit testimony. The trial court has a responsibility to administer an efficient and speedy trial. This may at times warrant encouragement to counsel regarding the elimination of superfluous testimony. The first two items cited were merely the court's attempt to encourage efficiency and not a direct ruling to exclude testimony. Smith's third contention regarding cross examination questioning beyond the scope of direct is not a reversible error. The direct testimony touched on Lot 81, the cross examination questions were also about Lot 81. Therefore, no substantial right has been violated and no reversible error exists.

Finally, Smith contends in the alternative that the trial court erred in awarding interest relating back to October 5, 1999. Smith argues that the contract was silent on interest and this should be interpreted as a plain direction to preclude an award of interest. Alternatively, Smith contends that any award of interest that predates the contract between the parties is incorrect. Finally, at a minimum Smith claims the interest should run from

the date of each deposit not October 5, 1999, the date of the initial $1,000 deposit. Thomas agrees that the pre-judgment interest should run from the date each deposit was made.

Under Delaware law, a party is entitled to prejudgment interest when the amount of damage is calculable, and such interest has been awarded in a breach of contract case.[19] Such interest is calculated from the date payment is due.[20] Where the underlying obligation to make payments arises out of a contract, a Court should look to the contract to determine when interest begins to accrue.[21] When the contract does not specify an interest rate, 6 *Del. Code* § 2301(a) states that "the legal rate of interest shall be 0.5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due."[22]

The Agreement of Sale does not provide a date from which interest should accrue, therefore it should be calculated from the date payment became due. Paragraph 3(b) required that all monies be returned when the contract becomes null and void.[23] Testimony

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[19] *See F.E. Meyers Co. v. Pipe Maintenance Services, Inc.*, 3rd Cir., 599 F. Supp. 697, 704 (1984); *Citadel Holding Corp. v. Rosen*, Del. Supr., 603 A.2d 818, 826 (1992).

[20] *See Citadel Holding Corp.*, 603 A.2d at 826.

[21] *See id.*

[22] 6 *Del. C.* § 2301(a).

[23] Paragraph 3(b) provides:

> Subject to the provisions of paragraphs 3 (d), (f), and (g) below, if said commitment is not obtained by the above date, this Agreement shall become null and void, and all deposit monies shall be returned to PURCHASER.

has provided that Smith first declared the contract null and void when Melissa Toms sent a letter to Thomas around June 13, 2000. In summation Thomas also requested the award of interest to run from June 13, 2000. The record establishes that both parties agree the contract became null and void on June 13, 2000. The trial court's award of interest from October 5, 1999 is reversed and this matter is remanded with instructions to award pretrial interest on the deposit amount of $10,775.00 beginning June 13, 2000 to the date of this judgment, at the rate specified in 6 *Del. C.* § 2301(a).

IV. CONCLUSION

For the foregoing reasons, the judgment of the Court of Common Pleas is *AFFIRMED* and the case is remanded for the recalculation of pretrial interest from June 13, 2000.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely
President Judge

cmh
oc: Prothonotary
xc: Order distribution