

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LOUIS CAPANO & ASSOCIATES, §	
INC., ARCHITECTURAL §	No. 35, 2008
ALLIANCE, KEVIN WILSON, §	
DAVIS, BOWEN & FRIEDEL, INC., §	Court Below—Superior Court
GERALD FRIEDEL and §	of the State of Delaware in and
REHOBOTH BEACH §	for New Castle County
ASSOCIATES, §	
§	
Defendants Below, §	
Appellants, §	
§	
v. §	
§	
CANAL LANDING TOWNHOUSE §	
CONDOMINIUM ASSOCIATION, §	
et al., §	
§	
Plaintiffs Below, §	C.A. No. 07C-09-162
Appellees. §	

Submitted: January 18, 2008

Decided: January 25, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of January 2008, upon consideration of the notice of interlocutory appeal filed pursuant to Supreme Court Rule 42, it appears to the Court that:

(1) This interlocutory appeal arises from a complaint brought by a condominium association and its members (“Plaintiffs”) against the builder, developer and designers of the condominium for damages Plaintiffs

allegedly sustained as a result of the defendants' alleged negligence. On November 8, 2007, the builder and developer defendants (collectively "Defendants") filed a motion to dismiss the complaint for Plaintiffs' failure to state a claim.¹ By order dated December 19, 2007, the Superior Court notified the parties that Defendants would have to pursue the motion to dismiss as a motion for summary judgment. Thereafter, Defendants filed a motion to reargue the December 19 order, which the Superior Court denied on December 28, 2007.²

(2) On January 4, 2008, Defendants applied to certify an interlocutory appeal of the Superior Court's orders of December 19 and 28, 2007.³ By order dated January 16, 2008, the Superior Court denied the application for certification.⁴

(3) On January 18, 2008, Defendants petitioned this Court to accept an interlocutory appeal from the Superior Court's December 19 and 28, 2007 orders. Defendants also sought to appeal the Superior Court's

¹ Designer/defendant-Architectural Alliance filed a similar motion to dismiss on December 4, 2007. On November 21, 2007, designer/defendant-Friedel filed a motion for summary judgment, which it later withdrew in favor of joining the motion to dismiss, filed by designer/defendant-Architectural Alliance.

² Designer/defendant-Friedel filed a separate motion for reargument, which was also denied.

³ Designer/defendant-Friedel filed a joinder in the application for certification.

⁴ Del. Supr. Ct. R. 42(c).

interlocutory order of January 8, 2008, which denied Defendants' motion to dismiss without prejudice.⁵

(4) Applications for interlocutory review are addressed to the sound discretion of this Court.⁶ The Court concludes, in the exercise of discretion, that the Superior Court's orders of December 19, 2007, December 28, 2007, and January 8, 2008, do not fit the requirements and criteria for accepting an interlocutory appeal.⁷

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ The "January 8, 2007" decision date appears to be an error.

⁶ Del. Supr. Ct. R. 42(d)(v).

⁷ Del. Supr. Ct. R. 42(b).