

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL**

PHILADELPHIA WATERFRONT PARTNERS,	:	JANUARY TERM, 2007
L.P., PHILADELPHIA WATERFRONT	:	
DEVELOPMENT, LLC, CHARLES L. KAMPS,	:	NO. 03811
III, SCOTT A. BLOW, and PATRICK T.	:	
HANLEY,	:	COMMERCE PROGRAM
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CHURCHILL DEVELOPMENT GROUP, LLC,	:	
CHURCHILL RESIDENTIAL DEVELOPMENT,	:	
L.P., CHURCHILL COMMERCIAL	:	
DEVELOPMENT, L.P., JOSEPH F. LOGUE, JR.,	:	
And DOUGLAS T. HARRIS, ESQUIRE	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of April, 2010, after a non-jury trial in this matter and in accord with the Trial Opinion issued simultaneously, it is **ORDERED** as follows:

1. **JUDGMENT** is entered in favor of defendants Churchill Residential Development, L.P., Churchill Commercial Development, L.P., Churchill Development Group, LLC, and Joseph F. Logue, Jr. (collectively, "Logue/CDG") and against the remaining plaintiffs on Logue/CDG's counterclaims for breach of contract and tortious interference. The following relief is awarded to Logue/CDG:
 - a. Because the individual plaintiffs prevented Logue/CDG from timely performing under the parties' Purchase Agreement, Philadelphia Waterfront Partners, L.P., and Logue/CDG shall have one year from the date this judgment becomes final after

appeal to pay the individual plaintiffs the Purchase Price due under the parties' Purchase Agreement and the Notes dated December 14, 2006.

- b. Because the individual plaintiffs caused Logue/CDG to incur the following additional costs not contemplated in the parties' Purchase Agreement, such additional costs shall be deemed "Partnership Expenses" for purposes of calculating the "Purchase Price" under the parties' Purchase Agreement:
 1. The interest accruing and paid to the holders of the Class B Interests in Philadelphia Waterfront Partners, L.P. for the period from the filing of the *lis pendens* to the date that the payment obligations to the holders of the Class B Interests are satisfied.
 2. To the extent that they are paid, the default interest, fees, and penalties incurred on the Kennedy loan from the date it went into default to the date it is paid off.
2. Philadelphia Waterfront Partners, L.P. and Philadelphia Waterfront Development, LLC are **DISMISSED** as plaintiffs in this action since no reversion occurred.
3. **JUDGMENT** is entered in favor of all defendants and against the remaining plaintiffs on all of plaintiffs' claims.

BY THE COURT,

MARK I. BERNSTEIN, J.

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CHURCHILL DEVELOPMENT GROUP, LLC,	:	
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DEVELOPMENT, L.P., JOSEPH F. LOGUE, JR.,	:	
And DOUGLAS T. HARRIS, ESQUIRE	:	
	:	
Defendants.	:	

TRIAL OPINION

Plaintiffs Charles L. Kamps III, Scott A. Blow, and Patrick Hanley (the “Individual Plaintiffs”), Philadelphia Waterfront Development, LLC (“PWD”), and Philadelphia Waterfront Partners, LP (“PWP”) filed this action in January, 2007, against their former attorney, Douglas T. Harris, Esquire,¹ their business partner, Joseph F. Logue, Jr., and three entities controlled by Logue: Churchill Residential Development, L.P. (“CRD”); Churchill Commercial Development, L.P. (“CCD”); and Churchill Development Group, LLC (“CDG”).

Plaintiffs asserted claims against Logue, CDG, CRD and CCD for fraudulent conveyance, constructive trust, fraud, breach of fiduciary duty, conspiracy, breach of contract, and unjust enrichment in connection with the purchase by defendants of two parcels of real property located at 7777 State Road in Philadelphia, Pennsylvania (the “Property”). At summary

¹ Most of the claims against Harris were dismissed by the court at summary judgment. The remainder were discontinued by the plaintiffs. Since the claims against Harris did not survive until trial, they will not be further discussed in this Trial Opinion.

judgment, the court dismissed the claims for fraud and unjust enrichment, and limited the other claims as follows:

1. The claims for fraudulent conveyance, breach of fiduciary duty, and conspiracy² are limited to the claim that \$250,000 in loan proceeds was wrongfully paid by Logue/CDG to Harris.
2. The claims for constructive trust and breach of contract are limited to the claim that Logue/CDG failed timely to obtain a loan commitment and close on the Property, *i.e.*, that a reversion had occurred.

Logue/CDG filed counterclaims against the Individual Plaintiffs for breach of contract, tortious interference with prospective contractual relations, and conversion based on the Individual Plaintiffs attempts to impede Logue/CDG from purchasing and developing the Property.

These remaining claims were tried to the court sitting without a jury in August, 2009. The following facts were established at trial.

Until August 18, 2006, the Individual Plaintiffs owned 75 % of the membership interests in PWD. They were also the only Class C limited partners of PWP. PWD was PWP's managing partner. PWP's primary assets were the rights it held under two options to purchase the Property. The options to purchase expired in February, 2007.

On August 18, 2006, Logue/CDG purchased 100% of the membership interests in PWD and 75% of the Class C interests in PWP from the Individual Plaintiffs.³ Logue/CDG also

² The conspiracy count was subsequently dismissed by plaintiffs.

³ Purchase Agreement between CDG and Individual Plaintiffs (hereinafter "Purchase Agreement"), Trial Exhibit ("Ex.") C-46, ¶ 2(a).

became manager of PWD.⁴ In exchange for the transfer of their interests to Logue/CDG, PWP gave the Individual Plaintiffs Notes, a Mortgage on the residential portion of the Property as security for those Notes, and the option to sell their remaining 25% Class C interests to Logue/CDG nine months after the closing on the Property took place.⁵ The “Purchase Price” reflected in the Notes was defined in the Purchase Agreement as “\$12,000,000 less Fifty (50%) percent of the aggregate amount of Partnership Expenses paid by CDG in accordance with Exhibit A.”⁶

The Purchase Agreement contained specific deadlines that the parties were to meet as follows:

1. By October 15, 2006, the Individual Plaintiffs were required to provide Logue/CDG with PWP’s filed 2005 tax returns.
2. By November 15, 2006, Logue/CDG, acting through PWP, were required to obtain a loan commitment for the acquisition of the Property.
3. By December 15, 2006, Logue/CDG, acting through PWP, were required to close on the purchase of the Property “subject to reasonable extension as approved by [Individual Plaintiffs].”⁷

The Purchase Agreement provided that, if the Individual Plaintiffs failed timely to provide the tax returns, Logue/CDG had an additional thirty days in which to complete his/its

⁴ *Id.*, ¶ 2(c).

⁵ *Id.*, ¶ 6.

⁶ *Id.*, p.2. “Partnership Expenses” include both “Execution Date Expenses” and “Funding Expenses.” *Id.*, ¶ 2(b)(ii). Exhibit A contains a list of expenses, including payments to be made to the holders of Class A and B Interests in PWP.

⁷ *Id.*, ¶ 3(a).

tasks.⁸ The Purchase Agreement also required that:

Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of transactions contemplated hereby.⁹

The Purchase Agreement further provided that, if Logue/CDG failed timely to obtain the loan commitment or close on the Properties, 75% of the PWD membership interests and 50% of the PWP Class C interests would automatically revert to the Individual Plaintiffs.¹⁰ If the interests reverted, Logue/CDG could repurchase the reverted interests for an additional \$12 million.¹¹

On October 12th, the Individual Plaintiffs provided copies of PWP's 2005 tax return to Logue/CDG. However, the return that Plaintiffs provided was incomplete and improperly executed.¹² Logue/CDG requested additional financial records from Plaintiffs.¹³ Plaintiffs refused to turn over the requested financial information to Logue/CDG. Plaintiffs' correspondence reveals that they knew the tax returns were incorrect and they knew they had an obligation to turn over the requested financial information, but deliberately did nothing in the hope that a reversion would occur.¹⁴

⁸ *Id.*, ¶ 3(a)(iv).

⁹ *Id.*, ¶ 9(i).

¹⁰ *Id.*, ¶ 3(a).

¹¹ *Id.*, ¶ 3(b).

¹² Exs. C-67, C-128

¹³ *See id.*; Exs. C-75, C-78.

¹⁴ *See* Exs. C-68 through C-74, C-76, C-77, C-81, C-125.

Plaintiffs breached their obligations under the parties' Purchase Agreement by failing to provide complete, properly filed, tax returns and the other financial information requested by Logue/CDG. These breaches gave Logue/CDG an additional thirty days to complete his/its tasks under the Agreement. As a result, Logue/CDG had until December 14th to obtain a loan commitment and until January 13th to close on the Property.

In November, the Individual Plaintiffs informed Logue/CDG that a reversion had occurred due to his/its failure to timely obtain a loan commitment.¹⁵ No reversion occurred because the Individual Plaintiffs' breaches of the parties' Agreement extended Logue/CDG's deadlines under the Agreement.

Logue/CDG were unable to obtain a loan commitment in PWP's name due to the disarray of its finances. Logue had PWP assign its right to purchase the Property to CDG,¹⁶ which was able to obtain a loan commitment on December 6th.¹⁷ On December 4th, Logue/CDG informed the Individual Plaintiffs of this assignment, the financing obtained, and Logue/CDG's intention to close on the Property.¹⁸ The Individual Plaintiffs did not object to either the assignment to CDG or to the closing on the Property.¹⁹ Instead, their stated goal was to "help facilitate a closing."²⁰ The Individual Plaintiffs understood that, after the closing, the Property would be owned by two entities controlled by Logue, defendants CRD and CCD.²¹

¹⁵ Ex. C-83.

¹⁶ Ex. C-82.

¹⁷ Ex. C-88.

¹⁸ Ex. C-86.

¹⁹ Exs. C-89, C-92, C-94, C-97.

²⁰ Ex. C-89.

²¹ Exs. C-89, C-92, C-94, C-97.

In early December, the Individual Plaintiffs and their counsel worked with Logue/CDG and his/its counsel to draft replacement Notes to reflect CDG and CRD/CCD's ownership and control of the Property, as well as the Individual Plaintiffs' interest in the project.²² By assisting Logue/CDG to transfer the Property to CDG, plaintiffs waived any objection to the transfer from PWP to CDG.

On December 15, 2006, CCD closed title in escrow with respect to one portion of the Property.²³ Plaintiffs' correspondence reveals that they knew about this closing and wanted it to occur, so as not to lose their option on the Property.²⁴ In accordance with their plan to take back control once the Property was purchased, the Individual Plaintiffs waited until after the dry closing on the first portion of the Property had been completed to reassert that a reversion had occurred.²⁵ However, no reversion had occurred because Plaintiffs' failed to give Logue/CDG the necessary financial information to which he/it was entitled. As a result, under the term of the parties' Agreement, Logue/CDG had until January 13th to close on the Property.

Logue/CDG's lender required a survey of the Property before it would close on the loan. Plaintiff had an existing survey of the Property in their possession, which Logue/CDG requested from them.²⁶ Plaintiffs initially instructed their surveyor not to release the existing survey of the Property to Logue/CDG.²⁷ Logue/CDG eventually received the existing survey in the latter half of December and forwarded it to the lender.

²² Ex. C- 111. The Notes were payable within one year, on or before December 14, 2007.

²³ Ex. C-98.

²⁴ Ex. C-97.

²⁵ Exs. C-80, C-99.

²⁶ Ex. C-93.

²⁷ See Ex. C-94.

Based on the survey, the lender insisted upon a Phase I Environmental Study, which necessarily further delayed the loan closing.²⁸ Logue asked plaintiffs for a two week extension of the January 13, 2007 closing date, which plaintiffs refused.²⁹ Plaintiffs' initial refusal to turn over the survey, and their subsequent refusal to grant Logue/CDG a reasonable extension of the closing date, were unreasonable, in bad faith, and a breach of the Purchase Agreement.

On January 17, 2007, CRD closed on the remainder of the Property.³⁰ On January 25, 2007, Logue/CDG closed on the mortgage loan.³¹ All but \$572,057.34 of the \$12,300,000 in loan proceeds were used to pay legitimate expenses related to the purchase of the Property. None of the loan funds were paid to defendant Douglas Harris, Esquire. The remaining \$572,057.34 was paid to a title company owned by Logue. Logue/CDG subsequently disbursed those funds to cover legitimate expenses related to the purchase and development of the Property.

Once the closings occurred, the Individual Plaintiffs filed this litigation to enforce their claim of reversion. They intentionally waited until after Logue/CDG had done all the work to obtain financing and purchase the Property to try to wrest control of the project from Logue/CDG.³² By filing this action and a *lis pendens* against the Property,³³ Plaintiffs knowingly precluded any possibility that Logue/CDG would succeed in obtaining additional

²⁸ Ex. C-102. Since at least of portion of the Property was zoned industrial and had been used previously by a commercial waste disposal company, the lender's concerns regarding possible environmental contamination were understandable.

²⁹ *Id.*

³⁰ Ex. C-103.

³¹ Ex. C-104.

³² Exs. C-76, C-77, C-80, C-109.

³³ The *lis pendens* was subsequently stricken by the court.

funding to develop the Property.³⁴ Plaintiffs further hindered the development of the Property by sending a false and inflammatory letter to a potential development lender.³⁵ Having improperly retained control over website related to the development of the Property, they posted false information on it.³⁶ Plaintiffs also misled state senate staff into substituting the name of an entity Plaintiffs controlled in lieu of PWP in a draft bill needed to transfer the riverbed rights connected with the Property.³⁷ Individual Plaintiffs' interference with Logue/CDG's ability to develop the Property was tortious, in bad faith, and a breach of the parties' Purchase Agreement. Therefore, judgment must be entered for Logue-CDG and against the Individual Plaintiffs on Logue/CDG's claims for tortious interference with prospective contract and breach of contract.

On October 22, 2007, while this action was pending, Individual Plaintiffs sent a letter to Logue/CDG stating the following:

It is our position that Churchill Development Group's interest has reverted to 25% of the Class C interest in PWP and 25% interest in PWD under Paragraph 3(a) of the August 18, 2006 Purchase Agreement. If a jury ultimately decides there has been no interest reversion, to protect our rights, we are now giving notice, under Paragraph 6 of the Purchase Agreement, that we elect to exercise our option to sell to CDG the balance of our Class C interest in PWP . . . [for] the amounts listed in the [December 14, 2006] Notes . . . together with accrued interest.³⁸

Plaintiffs' claim of reversion was improper, but, by exercising their option in the alternative, they have preserved their right to be paid the Purchase Price due under the parties' Agreement and the Notes. Logue/CDG must, therefore, pay the Plaintiffs the money due to them, but its is

³⁴ See Ex. C-110.

³⁵ *Id.*

³⁶ See Ex. P-164.

³⁷ Ex. C-64. It was necessary for the development of the Property for the state to transfer the riverbed rights to the owner of the Property. The entity the Plaintiffs improperly substituted for PWP was named "PWP, LLC."

³⁸ Ex. C-114.

impossible to do so by December 14, 2007, the timeframe contemplated in the Agreement and Notes.

The Individual Plaintiffs' continued prosecution of this action: called into question Logue/CDG's ownership and control of PWP, PWD and the Property; prevented Logue/CDG from moving forward with the project contemplated in the parties' Purchase Agreement; and made it impossible for Logue/CDG to pay the Individual Plaintiffs the Purchase Price when it became due. Any appeal of this court's determination will continue to leave the question of ownership and control in doubt until finally resolved. Therefore, the Agreement must be reformed to give Logue/CDG sufficient additional time to comply with his/its obligations under the Agreement. Logue/CDG shall have one year from the date this court's judgment becomes final to pay the amounts due to the Individual Plaintiffs under the Purchase Agreement and Notes.

The delay in development of the Property caused by the Individual Plaintiffs also caused Logue/CDG to incur additional costs in connection with the Project, which costs were not expressly provided for in the parties' Purchase Agreement. Specifically, Logue/CDG will have to pay interest accruing during the pendency of this action to the Class B investors in PWP, and Logue/CDG will have to pay default interest, fees, and penalties on the mortgage loan it obtained to purchase the Property. Since the Individual Plaintiffs breached the parties' Agreement making development impossible, and those breaches caused Logue/CDG to incur these additional costs, these additional costs must be added to the list of deductible "Partnership Expenses" for purposes of calculating the "Purchase Price" under the parties' Purchase Agreement.³⁹ Within thirty days after all appeals of this court's judgment are final, "CDG shall compute and deliver by written

³⁹ Ex. 46, p. 2. Under the Agreement, the Purchase Price is \$12 million "less 50% of the aggregate amount of Partnership Expenses paid by CDG."

notice its calculation of the Purchase Price (including a detailed itemization of all Partnership Expenses paid by CDG).”⁴⁰

Since no reversion occurred, the Individual Plaintiffs had no authority to file this action on behalf of PWP and PWD. Accordingly, PWP and PWD are dismissed as plaintiffs. Since no reversion occurred, judgment must be entered for Logue/CDG, CCD, and CRD on Plaintiffs’ claims for breach of contract and constructive trust. Since Logue/CDG did not transfer \$250,000 of the loan proceeds to Harris, judgment must be entered for Logue/CDG on Plaintiffs’ claims for fraudulent conveyance and breach of fiduciary duty.

BY THE COURT,

MARK I. BERNSTEIN, J.

⁴⁰ *Id.*, ¶ 3(c). In the event that the Individual Plaintiffs dispute CDG’s calculation of the Purchase Price, the parties shall follow the dispute resolution provisions in that paragraph.