

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

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,	:	Control No. 061347
	:	
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 21<sup>st</sup> day of January, 2009, it is **ORDERED** that the Motion for Partial Summary Judgment of defendants, Churchill Development Group, LLC, Churchill Residential Development, L.P., Churchill Commercial Development, L.P., and Joseph F. Logue, Jr. (collectively, the “Churchill Defendants”), is **GRANTED in part** and **DENIED in part**. In accord with the Opinion issued simultaneously, summary judgment is **GRANTED** as to Count I for Fraudulent Conveyance, Count IV for Fraud, and Count IX for Unjust Enrichment against the Churchill Defendants.

Count III for Fraudulent Conveyance, Count V for Breach of Fiduciary Duty, and Count VII for Conspiracy are limited to the claim that \$250,000 in loan proceeds was wrongfully paid by the Churchill Defendants to defendant Douglas T. Harris, Esquire.

Count II for Constructive Trust and Count VIII for Breach of Contract are limited to the claim that the Churchill Defendants failed timely to obtain a loan commitment and close on the Property.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**

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

**OPINION**

This action arises out of the parties’ failed attempt to develop property on the Delaware River (the “Property”) for residential and commercial use. The failure of the project may be due to market conditions and this litigation.

The transaction between the parties constituted a sale of the individual plaintiffs’ interest in the Property to defendants, Churchill Development Group, LLC (“CDG”) and Joseph F. Logue, Jr.,<sup>1</sup> with the contingency that the Property would revert to plaintiffs if certain deadlines were not met. In this action, plaintiffs argue a reversion has occurred. Defendants argue that any failure of conditions was caused by plaintiffs, or, if not caused, then enforcement was waived. Defendants move for summary judgment on plaintiffs’ claims.

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<sup>1</sup> Logue, CDG, and defendants Churchill Residential Development, L.P. (“CRD”) and Churchill Commercial Development, L.P. (“CCD”) are hereinafter collectively referred to as the “Churchill Defendants.”

Prior to August 18, 2006, individual plaintiffs, Charles L. Kamps III, Scott A. Blow, and Patrick Hanley owned 75 % of the membership interests in plaintiff Philadelphia Waterfront Development, LLC (“PWD”) and were the only Class C limited partners of plaintiff Philadelphia Waterfront Partners, LP(“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 three individual plaintiffs.<sup>2</sup> Logue/CDG also became manager of PWD.<sup>3</sup> In exchange for their transfer of interests to Logue/CDG, PWP gave the individual plaintiffs Promissory Notes in the amount of \$10,500,025,<sup>4</sup> a Mortgage on the residential portion of the Property as security for those Notes, and the option to convert this debt into 25% of the profits from the development of the Property.

The Purchase Agreement between plaintiffs and defendants had specific deadlines as follows:

1. By October 15, 2006, plaintiffs were required to provide PWP’s filed 2005 tax returns.
2. By November 15, 2006, PWP was required to obtain a loan commitment for the acquisition of the Property.

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<sup>2</sup> Purchase Agreement between CDG and individual plaintiffs dated August 18, 2006, ¶ 2(a), attached to Logue Defendants’ Motion for Summary Judgment as Exhibit 4 (hereinafter “Purchase Agreement”).

<sup>3</sup> *Id.*, ¶ 2(c).

<sup>4</sup> This amounts reflects the \$12 million purchase price less expenses.

3. By December 15, 2006, PWP was required to close on the purchase of the Property.<sup>5</sup>

The Purchase Agreement further provided that, if the individual plaintiffs failed timely to provide the tax returns, PWP had an additional thirty days in which to complete its tasks.<sup>6</sup> The Agreement further provided that, if PWP failed timely to complete either of its tasks, 75% of the PWD membership interests and 50% of the PWP Class C interests would automatically revert to the individual plaintiffs. If the interests reverted, Logue/CDG could repurchase the reverted interests for an additional \$12 million.<sup>7</sup>

On October 12<sup>th</sup>, the individual plaintiffs provided copies of PWP's 2005 tax return to Logue/CDG. The return was not filed until sometime after October 15<sup>th</sup>. On November 17<sup>th</sup>, the individual plaintiffs notified Logue/CDG of their claim of reversion.<sup>8</sup> Logue/CDG refused to acknowledge the claim because of plaintiffs' failure to provide filed tax returns and other necessary documents.<sup>9</sup>

Logue claims that, because he was unable to obtain a loan commitment in PWP's name due to the disarray of its finances, he caused PWP to assign its right to purchase the Property to CDG, which was able to obtain a loan commitment.<sup>10</sup> On December 4<sup>th</sup>, Logue/CDG informed the individual plaintiffs of this assignment, the financing obtained, and Logue/CDG's intention

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<sup>5</sup> Purchase Agreement, ¶ 3(a).

<sup>6</sup> *Id.*, ¶ 3(a)(iv).

<sup>7</sup> *Id.*, ¶ 3(a) & (b).

<sup>8</sup> Letter from counsel for individual plaintiffs to CDG/Logue dated November 17, 2006, attached to Churchill Defendants' Motion for Summary Judgment as Exhibit 42.

<sup>9</sup> Letter from CDG/Logue to counsel for individual plaintiffs dated November 21, 2006, attached to Churchill Defendants' Motion for Summary Judgment as Exhibit 43.

<sup>10</sup> Letter from CDG/Logue to individual plaintiffs dated December 4, 2006, attached to Churchill Defendants' Motion for Summary Judgment as Exhibit 40.

to close on the property.<sup>11</sup> The individual plaintiffs did not object to either the assignment to CDG or to the closing on the Property.<sup>12</sup> Instead, their stated goal was to “help facilitate a closing.”<sup>13</sup> The plaintiffs understood that, after the closing, the Property would be owned by two entities controlled by Logue, defendants CRD and CCD.<sup>14</sup>

Prior to the closing, the individual plaintiffs and their counsel worked with Logue/CDG and 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.<sup>15</sup> On December 14, 2006, CCD obtained title to a portion of the Property,<sup>16</sup> and on January 17, 2007, CRD obtained title to the remainder.<sup>17</sup> On December 28, 2006, after the dry closing on the

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<sup>11</sup> *Id.*

<sup>12</sup> Email from counsel for individual plaintiffs to counsel for CDG/Logue dated December 8, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 45; Email from counsel for CDG/Logue to counsel for individual plaintiffs dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 48; Email from counsel for individual plaintiffs to counsel for Logue/CDG dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 52.

<sup>13</sup> Email from individual plaintiff Kamps to Logue and other individual plaintiffs dated December 6, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 44.

<sup>14</sup> Email from counsel for individual plaintiffs to counsel for CDG/Logue dated December 8, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 45; Email from counsel for CDG/Logue to counsel for individual plaintiffs dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 48; Email from counsel for individual plaintiffs to counsel for Logue/CDG dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 52.

<sup>15</sup> *Id.* Replacement Notes from PWP, CDG, and CRD dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 49.

<sup>16</sup> Deed from Northern Associates to CCD, dated December 14, 2006, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 53.

<sup>17</sup> Deed from Waste Management to CRD dated January 17, 2007, attached to Churchill Defendants’ Motion for Summary Judgment as Exhibit 58. Apparently, the funds to purchase the Property were not received by CDG/Logue until January 25, 2007, so both the December 14<sup>th</sup> and January 17<sup>th</sup> closings were “dry.” *See* Settlement Statement dated January 25, 2007, attached to plaintiffs’ Response to Harris’ Motion for Summary Judgment as Exhibit B.

commercial portion of the Property, the individual plaintiffs again insisted that a reversion had occurred.<sup>18</sup>

The individual plaintiffs waited to begin litigation to enforce their claim of reversion until Logue/CDG exercised its options to purchase the Property in CRD/CCD's name. On January 30<sup>th</sup>, two and a half months after the alleged reversion took place, plaintiffs filed a Writ of Summons and a *lis pendens* against the Property.<sup>19</sup>

In their Amended Complaint, plaintiffs assert eight causes of action against the Churchill Defendants based on five wrongful acts they allegedly committed:

1. Plaintiffs assert claims for fraudulent conveyance, constructive trust, breach of fiduciary duty, conspiracy, breach of contract, and unjust enrichment based on Logue/CDG's transfer of PWP's interest in the Property to CCD/CRD.
2. Plaintiffs assert claims for fraudulent conveyance and breach of fiduciary duty based on the Churchill Defendants' misuse of \$3,172,500 in loan proceeds
3. Plaintiffs assert claims for fraud in the inducement and civil conspiracy<sup>20</sup> based on Logue's misrepresentation that he had the financial wherewithal to purchase the Property.
4. Plaintiffs assert a claim for breach of contract based on the Churchill Defendants' failure to pay Class A and B interest holders and to fund expenses as required under the Agreement.
5. Plaintiffs assert a claim for breach of contract premised on Logue/CDG's failure to sign reversion documents, to acknowledge that a reversion occurred, and to get a loan commitment and close on the Property within the time set forth in Agreement.

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<sup>18</sup> Letter from counsel for individual plaintiffs to counsel for CDG/Logue dated December 28, 2006, attached to Churchill Defendants' Motion for Summary Judgment as Exhibit 54.

<sup>19</sup> The *lis pendens* was subsequently stricken by the court.

<sup>20</sup> Plaintiffs claim that Logue conspired with plaintiffs' own counsel, defendant Douglas Harris. Harris has filed a Motion for Summary Judgment with respect to all of the claims asserted against him.

## **I. The First Alleged Wrongful Act**

Plaintiffs have failed to point to any evidence that the transfer of PWP's interests in the Property to CRD/CCD was improper. Such a transfer does not violate the Purchase Agreement. The Agreement recognizes that "the Partnership" is a party to two Real Property Purchase Agreements with respect to the Property and states

Upon purchasing the Real Property pursuant to the Real Property Purchase Agreements, the Partnership plans to develop the Real Property with certain commercial and residential improvements.<sup>21</sup>

"The Partnership" is defined as "PWP."<sup>22</sup>

Nothing in the Agreement prohibits PWP from assigning its rights and duties to another entity, such as CDG, CRD and CCD. Thus, assignment is permitted.

Absent an express provision against assignment, the rights and duties under an executory bilateral contract which does not involve personal skill, trust, or confidence may be assigned without the consent of the other party so long as it does not materially alter the other party's duties and responsibilities.<sup>23</sup>

Plaintiffs were informed of the assignment of PWP's interests to CDG and then CRD/CCD and agreed to it. Summary judgment as to plaintiffs' claims premised on the wrongful transfer of PWP's interest in the Property to CCD and CRD is granted.

## **II. The Second Alleged Wrongful Act**

The only evidence of record that Logue misappropriated proceeds from the loan secured by the Property is the notation on the Settlement Statement from the loan closing that \$250,000 was paid to Harris.<sup>24</sup> Plaintiffs' claims for fraudulent conveyance and breach of fiduciary duty

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<sup>21</sup> Purchase Agreement, Background ¶ C.

<sup>22</sup> *Id.*, Background, ¶ A.

<sup>23</sup> Smith v. Cumberland Group, 455 Pa. Super. 276, 285, 687 A.2d 1167, 1172 (1997).

<sup>24</sup> Settlement Statement dated January 25, 2007, attached to plaintiffs' Response to Harris' Motion for Summary Judgment as Exhibit B.

against Logue are, therefore, limited to a determination of whether \$250,000 was wrongfully paid to Harris at closing.

### **III. The Third Alleged Wrongful Act**

Plaintiffs have not produced any evidence that Logue misrepresented his ability to purchase the Property. The evidence shows that Logue obtained the necessary funding to purchase the Property. Since there was no misrepresentation regarding Logue's financial wherewithal, summary judgment as to plaintiffs' claims for fraud and conspiracy that are premised on such a misrepresentation is granted.<sup>25</sup>

### **IV. The Fourth Alleged Wrongful Act**

In their response to the motion for summary judgment, plaintiffs do not discuss their claim that defendants failed to pay Class A and B interest holders and fund expenses as required under the Agreement, nor do they present any evidence to support this claim. In the Class B Interest Holders' verified Intervention Complaint filed in this matter, the interest holders state that they have not been paid the sums due to them. Plaintiffs cannot rely upon the Intervention Complaint as sole support for their claim.<sup>26</sup> Summary judgment is, therefore, granted on plaintiffs' claim for breach of contract based on non-payment of the interest holders.

### **V. The Fifth Alleged Wrongful Act**

Plaintiffs claim Logue/CDG failed to obtain a loan commitment to fund the purchase of the Property by November 15, 2006, and failed to close on the Property by December 15, 2006, as required by the Purchase Agreement. As a result of Logue/CDG's breach of these provisions, plaintiffs claim the majority interest in PWP and PWD reverted to them. As a result of the

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<sup>25</sup> See, e.g., Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999) (falsity is a required element of fraud).

<sup>26</sup> Pa. R. Civ. P. 1035.3(a). No motion was filed with respect to the interest holders claims. Such claims are unaffected by the court's decision with respect to plaintiffs' claim.

reversion, plaintiffs claim it was improper for Logue/CDG to continue acting on behalf of PWP and to close on the Property.

Although plaintiffs assert that the Logue Defendants' purchase of the Property was improper, plaintiffs do not seek to rescind the purchase. Instead, they seek to seize the fruits of Logue's efforts and benefit from the acquisition themselves. In the court's decision to strike the *lis pendens* plaintiffs filed against the Property, the court previously noted that plaintiffs' desire to have it both ways was inequitable.

Logue/CDG claims no reversion occurred, so that they continue to own the majority interest in PWP and PWD and rightfully control the development of the Property. Logue/CDG claim they are entitled to summary judgment on the issue of reversion because their failure timely to obtain a loan commitment and close on the Property was excused under the express terms of the Purchase Agreement: it was excused because plaintiffs failed to deliver copies of PWP's filed tax returns to Logue/CDG on or before October 15, 2006; it was excused because plaintiffs breached the Purchase Agreement's "Further Assurances" provision; or it was excused because it had been expressly waived by plaintiffs.

The Purchase Agreement gives Logue/CDG an additional thirty days to obtain a commitment and close on the Property if plaintiffs "have not provided CDG with filed 2005 tax year returns for [PWP] by October 15, 2006."<sup>27</sup> There is no dispute that plaintiffs provided CDG with unfiled 2005 tax returns prior to October 15<sup>th</sup> and then subsequently filed those returns. Since the Purchase Agreement does not specify when the tax returns had to be sent to the IRS to constitute "filed" tax returns, plaintiffs have complied with the letter, if not the spirit, of the Agreement.

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<sup>27</sup> Purchase Agreement, ¶ 3(a)(i).

Logue/CDG objects that the filed tax returns were incomplete or inaccurate, that plaintiffs failed to provide Logue/CDG with necessary books and records for PWP, and that PWP's finances were in such disarray that it was impossible to obtain a loan commitment in PWP's name. If Logue/CDG's claims prove true, plaintiffs may have breached the "Further Assurances" provision in the Agreement, which states:

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.

Plaintiffs claim they provided all necessary required documents. There are, therefore, questions of fact whether Logue/CDG reasonably requested the additional documents and information and whether they were necessary for Logue/CDG to obtain a loan in PWP's name and close on the Property.

Logue/CDG claims that even if plaintiffs did not breach the Agreement and a reversion did occur, the reversion and any breach of the Agreement by Logue/CDG was waived by plaintiffs. Plaintiffs argue that they never waived their claim of reversion because they asserted it on November 17, 2006, which was before the loan commitment was obtained by Logue/CDG, and again on December 28, 2006, which was before Logue/CDG obtained the loan funds and closed on the entire Property.

Waiver is a voluntary and intentional abandonment or relinquishment of a known right. Waiver may be established by a party's express declaration or by a party's undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary.<sup>28</sup>

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<sup>28</sup> Samuel J. Marranta General Contracting Co. v. Amerimar Cherry Hill Assoc. Ltd. Partnership, 416 Pa. Super. 45, 49, 610 A.2d 499, 501(1992).

Between plaintiffs' two assertions of a reversion, and just before the dry closing on the first half of the Property, plaintiffs told Logue that their "agenda here is to help facilitate a closing."<sup>29</sup> Their counsel advised Logue's counsel that it was "okay to forward originals [of documents reflecting plaintiffs' interest in the new purchaser CRD] after closing."<sup>30</sup> While plaintiffs did not explicitly state they were waiving their claim of reversion, waiver may be implied from their statements that they wanted the closing to proceed.

"[W]hen implied waiver is relied upon as a defense . . . the elements of estoppel must be present."<sup>31</sup> "The two essential elements of equitable estoppel are inducement and justifiable reliance on that inducement."<sup>32</sup> The meaning of plaintiffs' December statements regarding the closing and whether Logue/CDG was justified in interpreting them as a waiver of plaintiffs' claim of reversion are questions of fact.

### CONCLUSION

For the foregoing reasons, the Churchill Defendants' Motion for Summary Judgment is granted in part and denied in part.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**

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<sup>29</sup> Email from individual plaintiff Kamps to Logue and other individual plaintiffs dated December 6, 2006, attached to CDG/CCD/CRD/Logue's Motion for Summary Judgment as Exhibit 44.

<sup>30</sup> Email from counsel for individual plaintiffs to counsel for Logue/CDG dated December 14, 2006, attached to CDG/CCD/CRD/Logue's Motion for Summary Judgment as Exhibit 52.

<sup>31</sup> Bollinger v. Palmerton Area Communities Endeavor, Inc., 241 Pa. Super. 341, 354, 361 A.2d 676, 682-83 (1976).

<sup>32</sup> Novelty Knitting Mills, Inc. v. Siskind, 500 Pa. 432, 436, 457 A.2d 502, 503 (1983).