

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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

January 28, 2008

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Re: *The Reserves v. Crystal Properties*
C.A. No. 05C-11-011 -RFS

Dear Counsel:

I have reviewed the motion for reargument filed by Defendants as well as the response by Plaintiffs. After review, the Court did not overlook controlling precedent or legal principles or misapprehended the law or facts such as would have changed the outcome of the bench ruling on January 3, 2006. The motion, therefore, is denied.

Defendants claim that the bench ruling did not include a final disposition with respect to the construction entrance. This subject was in context with the question of the lost home sale on lot 6 that Defendants purchased for resale. Defendants knew of the defect which caused the loss of the sales contract and could not recover for that reason alone. The defect was the construction road affecting part of the lot which was used by all the parties for the duration of the project. There are conveyances of record to Reserves' predecessors concerning the right of way. The deed to lot 6 was subject to the record including the Declaration of Restrictions. The Restrictions referenced prior easements and rights of way placed on the property in the chain of title. Nevertheless, Defendants' injury was self-inflicted by their knowledge and failure to pay the expenses to develop the project to eliminate the need for access. The precise location and uses of the construction road across lot 6 were not issues necessary for decision. Nor will I consider new arguments on the reargument concerning the possible need for the parties to have recorded an

individualized easement for lot 6.

Defendants request reconsideration of the \$750,000 credit from the land swap transaction on grounds that the associated Court of Chancery case ended that particular determination. For sure, points were concluded which resulted in a stipulation between the parties. On the subject of the credit, the Superior Court did not lose its role to determine a legal damages award on a breach of contract claim as discussed below.

Defendants urge the Vice Chancellor's denial of Reserves' motion for reargument supports their position.¹ After review, however, the Vice Chancellor left this area open for the Superior Court to decide.

In this regard, consider the following excerpts of the opinion:

The possibility that there is less uncertainty today than previously as to the ramifications of Reserves' use of land swaps to pay Glenn for Fresh Cut invoices may impact the Superior Court's decision on the ultimate merits of the parties' underlying disputes. It does not support, however, an award of additional equitable relief in this case, . . . I considered that fact in fashioning appropriate equitable relief to address the situation of the parties in the interim before the adjudication of the merits of their underlying disputes in the companion litigation in Superior Court . . . I could not rule out the possibility of such continuing uncertainty without additional proceedings and expense in this action. . . . The cited developments may be important in the Superior Court action and in the ultimate resolution of the parties' disputes. In this case, however, Reserves relies on equitable principles to justify the Court's imposition of interim relief pending final disposition of the Superior Court action. Such relief is extraordinary . . . (Emphasis added).

Clearly, the Chancery Court did not foreclose the Superior Court's final judgment on damages as Defendants suggest. The Vice Chancellor chose his words carefully with this in mind. The cited developments (including calculation of the credit) were important here.

Obviously, there were no additional proceedings in the Chancery Court; the standards for legal and equitable relief are different; and the Vice Chancellor did not decide \$750,000 could not be included in Reserves' Superior Court contract damages claim. Quite the opposite was intended. The doctrines of *res judicata* or *collateral estoppel* did not forbid a damages award. The legal claims and conclusions were not the same; the facts about the amount of the \$750,000 credit were not actually litigated, essential, or necessary to the specialized nature of the Chancery

¹ *Reserves Development LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708 at *3, *4 (Del. Ch. Dec. 31, 2007).

Court judgment.²

Defendants acknowledge attorneys fees may be awarded under their contract with Reserves. However, they argue that because Plaintiffs' overall claim was reduced, there should be no award. Defendants' unreasonable attitude in refusing to pay for clearly proper expenses - or even to review them - made this litigation inevitable. Hoping to gain leverage, Defendants tested Plaintiffs' resolve. After adopting what became a losing strategy, Defendants bear the consequences and the risks of the ensuing litigation.

Finally, an argument is made that Defendants should receive a judgment rather than set off for the award of \$10,000 representing the additional well expense for the lot held for resale.³ Plaintiffs' larger award was reduced by \$10,000. Defendants received full credit. Typically, "judgments concerning claims and cross claims are generally offset, and there is only one final judgment for the balance owed the party with the larger judgment."⁴ Defendants do not have a tenable objection.

Plaintiffs shall file an affidavit and any supporting material for the Court to determine the attorneys fee award on or before **Thursday, February 7, 2008**.

The Defendants' motion for reargument is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

² See *Betts v. Townsends, Inc.*, 765 A.2d 531 (Del. 2000) (Different claims are not barred by *res judicata* on conclusions of law; unidentical issues are not barred by *collateral estoppel* on questions of fact); *Sanders v. Malik*, 711 A.2d 32 (Del. 1998) (As standards for proving ineffective assistance of counsel in criminal cases were equivalent to legal malpractice standards in civil proceedings, a former client was collaterally estopped from suing his trial defense lawyer after having lost post conviction relief alleging the same grounds).

³ In their response to Defendants' motion, Plaintiffs point out that the set off for the particular lot and the 30 others was asserted against the wrong party. The applicable deed of restrictions established the responsibility of the Declarant to put in a central water system. The Declarant is Reserves Development Corporation, a co-plaintiff. It appointed Reserves Management Corporation to carry out the responsibilities. Despite this, Reserves Development Corporation retained legal responsibility. Mr. Korotki controlled the corporations but chose not to modify the restrictions.

⁴ 47 Am. Jur. 2d *Judgements* § 828 (2006).

cc: Prothonotary