

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RYAN WYLAND,		: NO. 15 – 00,570
	Plaintiff	:
vs.		:
		: CIVIL ACTION
KIMBERLY BROWNING, CAROL,		:
COOPER AND BETTY		:
STEINBACHER CENTURY 21,		:
	Defendant	: NON-JURY TRIAL

**OPINION and VERDICT**

After a non-jury trial held on September 25, 2016, the Court enters verdict in favor of Kimberly Browning and against Ryan Wyland. The Court makes the following findings of fact and conclusions of law.

**Findings of Fact**

1. Plaintiff Ryan Wyland signed a real estate sales agreement (RESA) on November 4, 2011 for property located at 611 S Rt. 15, South Williamsport, Pennsylvania.
2. RESA was admitted into evidence as Plaintiff's Exhibit 1.
3. Plaintiff learned about the property from a multi-list which stated that all offers must have short sale approval from Chase Bank.
4. Carol Cooper of Betty Steinbacher, Century 21, was the real estate sales agent for Defendant Kimberly Browning.
5. Defendant Kimberly Browning needed to sell because she could not afford the home which would go into foreclosure without a sale.
6. Chase held the mortgage on the property.
7. Chase needed to give approval for the sale.
8. At all relevant times, Plaintiff knew that the property was at risk of foreclosure and that any sale of the property required the acceptance of a short sale by Chase Bank.

9. Plaintiff's real estate broker, Kandy Fausnaught, drafted the information on the RESA.
10. RESA is dated November 4, 2011.
11. RESA required written acceptance of all parties on or before November 8, 2016.
12. There was not written extension of the acceptance date.
13. At the direction of Chase, Defendant Kimberly Browning signed the RESA on November 26, 2011.
14. The purchase price is \$48,000.
15. Plaintiff was required to pay a \$1,000 earnest money deposit at signing of the agreement.
16. The \$1,000 earnest money was never received, cashed or returned by seller's broker, Betty Steinbacher, Century 21,
17. The settlement date was to be held December 20, 2011.
18. The settlement did not occur on December 20, 2011.
19. There was never a written extension of settlement date or deposit date.
20. The Settlement date was not extended by any other provision of the Agreement and could only be extended by mutual **written** agreement of the parties. (Plaintiff's Exhibit 1, emphasis added).
21. The agreement was contingent on buyer obtaining mortgage financing and delivering a mortgage commitment to seller by December 6, 2011.
22. The property could not be sold without approval of Chase Bank.
23. Plaintiff intended to purchase the property either for his own residence or as a rental.
24. Plaintiff was aware that the closing did not occur on the settlement date and that no written extension was provided.
25. Plaintiff did not demand that the closing occur on the settlement date.

26. Instead, Plaintiff was made aware that his offer was being submitted to Chase as a back-up offer.
27. Another offer with a deposit earnest money came in for the property.
28. Chase Bank never approved a short sale to Plaintiff.
29. The closing on the property was March 30, 2012, to Alan Fiorettie as a short sale for the amount of \$48,100.
30. The Court finds Carol Cooper credible.

### **Conclusions of Law**

31. Plaintiff failed to establish a breach of a contractual duty by Kimberly Browing or that Plaintiff suffered damages.
32. There was no written acceptance of the agreement by November 8, 2011 as required by the terms of the agreement.
33. Defendant's broker never received a \$1,000 earnest money deposit at signing of the agreement or any time thereafter, which was a condition precedent to enforcement of the contract.
34. The settlement did not occur on December 20, 2011 which was a condition precedent to enforcement of the contract.
35. Chase Bank did not approve the short sale to Plaintiff which was required for sale to Plaintiff.
36. Plaintiff did not establish that he could have purchased the property for the purchase price without Chase's approval.
37. Defendant did not commit fraud upon Plaintiff or act in bad faith as to her inability to sell the property without Chase's approval.

## Discussion

A breach of contract requires the existence of a contract, a breach of a duty imposed by the contract and damages. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 716 (Pa. Super. 2005). "In order to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss." Logan v. Mirror Printing Co. of Altoona, Pa., 410 Pa. Super. 446, 600 A.2d 225, 226 (1991) (citation omitted). To recover damages, the party "must be able to prove such damages with reasonable certainty." Wilcox v. Register, 417 Pa. 475, 484, 207 A.2d 817 (1965). If a purchaser seeks to recover damages for loss of his or her bargain, he or she has the burden of proving fraud on the part of the vendor. 42 P.L.E. SALES OF REALTY § 194; *see also*, Seidlek v. Bradley, 293 Pa. 379 (1928); Kargiatly v. Provident Trust Co., 338 Pa. 358 (1940); Delvitto v. Schiavo, 370 Pa. 299, 304 (1952); Frey v. Nakles, 380 Pa. 616, 622, 623 (1955); Altman v. Arata, 129 Pa. Superior Ct. 229 (1937); Craven Estate, 169 Pa. Superior Ct. 94 (1951); Britsch v. Allebach, 2 Bucks 248 (1952).

In the present case, there was no valid contract to enforce: acceptance was not within the deadline, the settlement date expired without a written extension, the earnest money was not received; approval by Chase was never obtained. Plaintiff failed to establish that Plaintiff was ready, willing and able to purchase the property for the contract price without Chase's approval. Dates and times were of the essence. Plaintiff knew that the sale was for a short sale that required Chase's approval which he did not have.

Plaintiff failed to show damages. Plaintiff testified he intended to purchase the home for a rental or his own residence. Plaintiff failed to establish that he suffered damages as a result of not being able to use that property for his home or as a rental property. Plaintiff knew all along that Chase was required to approve the sale; without their approval the full mortgage would

remain on the property. Absent fraud or bad faith, Plaintiff is entitled only to his down-money or deposit money. Plaintiff did not claim that he was owed any down-money or deposit money.

Accordingly, the Court enters the following Order and Verdict.

ORDER AND VERDICT

AND NOW this 29<sup>th</sup> day of **September, 2016**, following a non-jury trial in this matter, it is ORDERED and DIRECTED that verdict is entered in favor of Defendant, Kimberly Browning, and against Ryan Wyland.

BY THE COURT,

September 29, 2016  
Date

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Richard A. Gray, J.

cc: Timothy A.B. Reitz, Esq. (for Plaintiff)  
Joseph F. Orso, III, Esq. (for Defendant – Browning)