Fountain Square Properties, LLC v. Grosvenor House Associates, LP et al. (motion for summary judgment, motion to compel production of documents, claims alleging fraud)

In *Fountain Square Properties, LLC v. Grosvenor House Associates, LP et al.*[1], the Circuit Court for Montgomery County, Maryland considered defendants' motion for judgment on two counts of plaintiff's second amended complaint alleging fraud.

Plaintiff is in the business of buying, renovating and then selling or leasing residential properties. Defendant Grosvenor House Associates, LP formerly owned Grosvenor House, the property at the heart of the dispute between the parties. Defendants NHP Multi-Family Capital Corporation and Apartment Investment and Management Company are general partners of Grosvenor House Associates. Holliday Fenoglio Fowler L.P. was hired by the defendants as the real estate broker for the sale of Grosvenor House.

By way of a letter of intent, which letter ultimately became the centerpiece of the dispute, plaintiff made an unsolicited offer to negotiate the purchase of Grosvenor House for $95 million. The letter of intent was subsequently edited and signed by a representative of the defendants and returned to plaintiff for consideration. Plaintiff initialed its agreement to defendants' revisions and returned the letter of intent. While the letter of intent stated that the parties intended only to be bound by a negotiated purchase and sale agreement, it also contained "exclusive negotiations" and "nature of letter of intent" provisions which were specified as binding and enforceable against the purchaser and seller regardless of whether a purchase and sale agreement was executed and delivered. In particular, the letter of intent stated that once it was accepted by the parties, the parties would enter into good faith negotiations towards a purchase and sale agreement and Grosvenor House Associates would negotiate exclusively with plaintiff. The letter of intent further stated that plaintiff would provide a form of purchase agreement within five days of the execution of thereof and that the parties would strive in good faith to enter into such agreement no later than twenty days thereafter. Whether either of the parties abided by the binding provisions of the letter of intent was at issue.

In denying defendants' motion for judgment, the Court considered all of the evidence in the light most favorable to plaintiffs and decided that defendants had not shown the absence of a genuine dispute as to the terms of and adherence by the parties to the letter of intent. Plaintiff contended that defendants never engaged in good faith negotiations and did not refrain from offering the subject property for sale to, and from negotiating with others during the exclusivity period. The Court acknowledged that the records before it indicated that defendants had solicited offers for the property through its broker only days after the letter of intent was signed. The record also indicated that the defendants received offers for the property during the twenty day exclusivity period and that it was sold to another buyer for a substantially higher price very shortly after defendants terminated the letter of intent and all negotiations with plaintiffs. From those occurrences, the Court held that a reasonable jury could find that plaintiff had presented enough evidence to support its fraud claims. The Court similarly held that the question of damages in this case could not be resolved on a motion for judgment.

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[1] Maryland Business and Technology Case Management Program, Case No. 257398-V (8/27/07, Rubin, J.), available at http://www.courts.state.md.us/businesstech/opinions/mdbt5_07.doc.