

The Appellate Advocate: A Recap of Recent Decisions by NJ's Appellate Courts



3305 Palisades Avenue, LLC v. Alfaro Enterprises, LLC A-2010-23

As the ol' adage goes: when it comes to contracts, the parties care about any number that has a dollar sign in front of it while the attorneys care about all the other numbers and words. Contingency clauses, especially when involving financing for real estate, are provisions that often grab the attention of the scrutinizing attorney. This case shows exactly why those provisions are critical.

In *3305 Palisades Avenue LLC, v. Alfaro Enterprises, LLC*, the New Jersey Appellate Division upheld a lower court's decision allowing the defendant-seller to terminate a real-estate contract after prolonged and unresolved negotiations over financing terms. The opinion leans heavily on the contract's plain terms—and the plaintiffs' failure to meet them.

At issue was whether the plaintiffs-buyers' evolving objections to loan terms amounted to a failure to secure mortgage financing, triggering the clause that allowed either party to walk away. The appellate court concluded they did, finding no ambiguity in the contract and no factual dispute sufficient to prevent summary judgment.

The plaintiffs, a group of investors led by 3305 Palisades Avenue, LLC, had agreed to buy a multifamily property in Union City for \$850,000. The deal included a common but consequential condition: the buyers had to obtain a mortgage, and if they did not, the contract was voidable by either side within ten days. What followed was a series of revisions, counterproposals, and late-stage acceptances that ultimately undermined the buyers' position.

The Appellate Division's analysis was unequivocal. Applying settled contract interpretation principles, it found the mortgage contingency clause to be clear and enforceable. "[T]he language in the mortgage contingency clause, given its plain meaning, unambiguously establishes a condition precedent," the panel wrote, emphasizing that the buyers had not secured financing and, crucially, had not pursued alternative financing when negotiations with the seller deteriorated.

The court rebuffed the plaintiffs' contention that the seller's actions—outsourcing the drafting of the mortgage, charging a \$2,000 fee, and requiring a \$10,000 interest escrow—constituted breach. Invoking N.J.S.A. 12A:2-210 and N.J.S.A. 46:10A-6, the panel affirmed the seller's legal right to delegate such tasks and impose reasonable charges under a commercial loan scenario.

Most damaging to the buyers' case was their delayed acquiescence. After rejecting the \$10,000 escrow term—one not included in the original contract—they later agreed to it, but only after the seller had issued a written termination. That reversal, the court concluded, came too late. "[T]hat's not how it works," the trial judge had stated, and the appellate panel concurred. The timing of consent, not just its content, was legally determinative.

The buyers also argued that summary judgment was inappropriate due to factual disputes. But the Appellate Division found the record clear: the judge had reviewed the submissions, cited applicable law, and made findings supported by the evidence. "[W]e discern no reason to disturb the ruling," the panel concluded, effectively closing the door on the plaintiffs' bid for specific performance.

In affirming the trial court, the appellate judges delivered a reminder with broader implications for property litigation: when contractual conditions are not met, and alternatives not pursued, courts will not rescue a party from the consequences. The plaintiffs had a right to secure their own financing. They didn't.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



973-540-7333
tjc@spsk.com

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