

NJ Real Estate Alert: Buyers Cannot Turn to Mortgage Contingency Clause When They Have "Cold Feet"

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Buyers who develop “cold feet” after attorney review is complete should avoid relying upon the mortgage contingency clause to back out. Recently, in Duong v. Stein, Superior Court of New Jersey, Appellate Division, Docket No. A-5043-16T2, the Court upheld an award of damages to the sellers where the buyers’ mortgage commitment was withdrawn two days before the scheduled closing because additional information concerning the source of certain deposited cash was not met. Since the sellers were willing to extend the time to close title and the information needed could be obtained and provided within the extended time, the Court found the buyers breached the mortgage contingency clause and awarded sellers the difference between the selling price and the amount realized from the sale to the subsequent buyer. The Court found that because all of the other mortgage commitment requirements were met, and the buyers ultimately bought another property with mortgage funds obtained from the same lender, the income sourcing information was not the real reason the buyers could not proceed since the sellers offered sufficient time to meet the condition.

The Court also went on to note that even if the failure to meet all of the mortgage commitment conditions was in good faith, the buyers would still be liable for damages to an unknowing and blameless seller even where the buyer lost a mortgage commitment – such as where the buyer lost his job two days before closing. Accordingly, buyers should think twice before resorting to the mortgage contingency clause as a sword to cut out of a bad deal.