

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

WILLIAM A. MALONEY, AS TRUSTEE OF THE
WILLIMA A. MALONEY REVOCABLE LIVING
TRUST DATED APRIL 27, 2006, and
VIRGINIA MALONEY, AS TRUSTEE OF THE
VIRGINIA MALONEY REVOCABLE LIVING
TRUST DATED APRIL 27, 2006

Index No. 033862/2015

Plaintiffs,

-against-

PINE ISLAND CORP.,

Defendant and Counterclaimant.

PINE ISLAND'S PROPOSED JURY INSTRUCTIONS AND VERDICT SHEET

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A. Pattern Jury Instructions

Charges Prior to Trial

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PJI 4:1. Contracts—Elements (AS MODIFIED)

Both parties seek to recover damages for breach of contract. The parties entered into a written contract of sale of 69 Tweed Boulevard, Upper Grandview, NY. Plaintiffs claim that they performed all of the obligations on their part and that Defendant breached the contract by failing and refusing to close the transaction without justification. Defendant claims that the Plaintiffs because they could not deliver, at the time they set for closing, the property as described in the contract Schedule A with insurable or marketable title. If you find that Plaintiffs performed all of the obligations on their part and that Defendant breached the contract by failing and refusing to close the transaction without justification, you will find for the Plaintiffs and the Plaintiffs will be entitled to retain the down payment. If you find that the Plaintiffs because they could not deliver, at the time they set for closing, the property as described in the contract Schedule A with insurable or marketable title, you will find for the Defendant and the Defendant will be entitled to the return of its down payment.

B. Additional Jury Instructions

Instruction:

The seller of a property must be ready, willing, and able to close title in accordance with the contract.

Authority:

Purcell v. Harper, 52 Misc. 2d 75, 275 N.Y.S.2d 152 (Ct. App. City Court of Albany 1966);
Weintraub v. Rungmar Realty Corp., 231 N.Y.S.2d 241 (Sup. Ct. Westchester County 1962).

Instruction:

The seller of a property bears the burden of delivering title which a title company will approve and insure unconditionally and without exceptions.

Authority:

Gindi v. Intertrade Int'l Ltd., 12 Misc.3d 1182(A), 824 N.Y.S.2d 762 (Sup. Ct. New York County 2006). See also, Gargano v. Rubin, 200 A.D.2d 554, 606 N.Y.S.2d 314 (2d Dep't 1994); 6086 Strickland Associates, LLC v. SSJ Dev. of Mill Basin Viii, LLC, Index No. 601890/08 (Sup. Ct. New York County June 3, 2009); Lisenenkov v. Kaszirer, 13 Misc.3d 1184, 827 N.Y.S.2d 579 (Sup. Ct. New York County 2006).

Instruction:

A seller is obligated to provide insurable title to a purchaser as the purchaser's title company, alone, would be willing to insure.

Authority:

Kopp v. Barnes, 10 A.D.2d 532, 204 N.Y.S.2d 860 (2d Dep't 1960).

Instruction:

When a title company declines to insure title without an exception a purchaser is NOT required to prove that no other title company would insure the title without such exceptions.

Authority:

Kopp v. Barnes, 10 A.D.2d 532, 204 N.Y.S.2d 860 (2d Dep't 1960); Lisenenkov v. Kaszirer, 13 Misc.3d 1184, 827 N.Y.S.2d 579 (Sup. Ct. New York County 2006).

Instruction:

The words 'more or less' appearing in the legal description of said property do not permit a 13 foot or more differential in a boundary. To allow such words to cover any substantial alteration of boundary and measurements would be to defeat the true purpose of all legal descriptions affecting real property.

Authority:

Purcell v. Harper, 52 Misc. 2d 75, 275 N.Y.S.2d 152 (Ct. App. City Court of Albany 1966).

Instruction:

It is not material whether the refusal of purchaser's title company to insure title was erroneous or unreasonable.

Authority:

Kopp v. Barnes, 10 A.D.2d 532, 204 N.Y.S.2d 860 (2d Dep't 1960); Lisenenkov v. Kaszirer, 13 Misc.3d 1184, 827 N.Y.S.2d 579 (Sup. Ct. New York County 2006); Gittlitz v. Lewis, 9 Misc.2d 134, 215 N.Y.S.2d 290 (Sup. Ct. 1961).

Instruction:

A seller of property also bears the burden of conveying good and marketable title.

Authority:

Goldstein v. Stern, 32 Misc.2d 779, 781, 224 N.Y.S.2d 816, 819 (Sup. Ct. 1962); Wates v. Crandall, 144 N.Y.S.2d 211, 216 (Sup. Ct. Queens County 1955).

Instruction:

The seller's burden of producing insurable title must happen prior to the seller declaring 'time of the essence' or holding the purchaser in default.

Authority:

Gindi v. Intertrade Int'l Ltd., 12 Misc.3d 1182(A), 824 N.Y.S.2d 762 (Sup. Ct. New York County 2006); Purcell v. Harper, 52 Misc. 2d 75, 275 N.Y.S.2d 152 (Ct. App. City Court of Albany 1966); Weintraub v. Rungmar Realty Corp., 231 N.Y.S.2d 241 (Sup. Ct. Westchester County 1962).

Instruction:

If the seller is unable to meet its burden to provide insurable, good, and marketable title, then the purchaser is entitled to obtain the return of their deposit.

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