



RECENT DECISION CONFIRMS THAT PARTIES TO REAL ESTATE CONTRACT CAN SUE FOR SPECIFIC PERFORMANCE

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A recent decision from the Wisconsin Supreme Court reaffirmed the long-standing principle that parties to a contract to purchase real estate enjoy unique remedies in the event either party breaches the purchase contract. Though the case involved two sophisticated commercial real estate developers, its principles apply to all real estate contracts executed in Wisconsin.

The case, Ash Park, LLC v. Alexander & Bishop, Ltd., involved the purchase of a large vacant parcel of real estate in Ashwaubenon, Wisconsin. Alexander & Bishop agreed to purchase the property for \$6.3 million pursuant to an offer to purchase the parties had negotiated. The original offer to purchase contained a contingency that allowed Alexander & Bishop to walk away from the transaction if it could not secure an anchor tenant to occupy the proposed development by a certain date. However, Alexander & Bishop failed to invoke this contingency by the deadline contained in the offer and Ash Park prepared for closing. Prior to closing, Alexander & Bishop notified Ash Park that it failed to secure an anchor tenant and Alexander & Bishop requested a termination of the offer to purchase. Ash Park declined, noting that the parties had a valid purchase contract with no remaining contingencies.

Alexander & Bishop failed to purchase the property on the closing date and Ash Park sued for specific performance of the contract (Ash Park could have sued for money damages, but elected to seek specific performance instead). The trial court found that Alexander & Bishop did breach the purchase contract and granted an order for specific performance requiring Alexander & Bishop to purchase the property under the terms of the contract. The trial court also awarded 12% post-judgment interest on the \$6.3 million purchase amount.

Alexander & Bishop appealed the decision to the Court of Appeals, which affirmed the trial court's ruling. Alexander & Bishop then filed an appeal with the Wisconsin Supreme Court, requesting that the Court reexamine Wisconsin law on the proper remedies for breached real estate contracts. The Wisconsin Supreme Court granted review.

On June 3, 2010, the Wisconsin Supreme Court issued a 40-page decision in favor of Ash Park. The Court found that the trial court properly applied long-standing Wisconsin law allowing either party to a real estate purchase contract to sue for specific performance in the event the other party breaches the purchase contract. It rejected Alexander & Bishop's argument that the proper remedy in such a case is an award of money damages. The Court also upheld the award of 12% post-judgment interest on the purchase price (as the ruling was issued approximately two and a half years after the original closing date, this sum totaled nearly \$2 million).

Though Ash Park, LLC v. Alexander & Bishop Ltd. reaffirms long-standing Wisconsin real estate law, it should remind all potential purchasers and sellers of real estate that breaching real estate purchase contracts carries substantial risks. In particular, a non-breaching buyer or seller may sue to enforce the specific terms of the contract.