March 30, 2013 — The measure of damages for breach of a real estate contract by a buyer is to be determined by the difference, if any, between the contract price and the fair market value of the property at the time of the breach.

Although many may believe that a seller may recover from a buyer the shortfall between the resale price obtained by the Seller and the contract price, in the matter of White v. Farrell, the New York Court of Appeals adopted the “fair market rule” and decline to “put aside settled law and adopt a new” rule. The opinion sets out a “Cook’s tour of appellate decisions” which, according to the majority on the Court, “seems to be the rule everywhere.”

In this case, the buyers signed a contract in 2005 to purchase the sellers’ Skaneateles lakeside home for the asking price of $1.725 million and deposited $25,000 as a down payment. As things went, a dispute arose as to the contract terms and contingencies. The sellers served a time-is-of-the-essence notice. The buyers failed to appear at closing and in fact went on to purchase another home.

The buyers brought this action to recover their $25,000 down payment, asserting that among other things that the sellers were not ready, willing and able to close on the contract closing date. The sellers counterclaimed for breach of contract. The home was later resold in by the sellers in 2007 for $1,376,550. In addition to asserting their “actual” damages at $348,450 (the difference between the resale price and the contract price), the sellers also sought consequential damages.

The lower courts found that the buyers breached the contract and were not entitled to a return of their down payment. However, based on the proof presented, the sellers had no actual damages. The claim by the sellers for consequential damages was also held as not valid.

While the resale price may be a factor of value, the Court of Appeals remanded the case back to the Supreme Court for a determination of the fair market value at the time of the breach.

If, as a seller, you find yourself involved in a real estate breach of contract dispute, keep in mind that the “fair market rule” will require more than presenting a “resale” contract in order to recover damages.
If you have any questions about this case or to schedule a consultation on any real estate related matter, please feel free to contact Lucien A. Morin, II at lmorin@mccmlaw.com or (585) 546-2500.

Mr. Morin, in addition to representing both buyers and sellers, is a frequent lecturer to both attorneys and Realtors® on various matters of interest.

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