

In a breach of contract action, Plaintiff must prove each of three elements by a preponderance of the evidence.¹ A preponderance of the evidence exists when the body of evidence supporting a conclusion is greater than the body of evidence that does not support that conclusion.² First, Plaintiff must show that a contract existed. Second, Plaintiff must establish that Defendant breached an obligation imposed by the contract. Finally, Plaintiff must prove that she suffered damages as a result of Defendant's alleged breach.

The Court finds that a contract existed between the parties with respect to the timeshare at issue. Specifically, the parties contracted in January 2009 to purchase a timeshare located in South Carolina for \$14,299.01. Consistent with the agreement, Plaintiff paid a down payment in the amount of \$4,987.16. The parties entered into a loan agreement to finance the remaining \$9,261.85. The loan was to be repaid in monthly payments of \$147.66. The parties agreed that Defendant would make the \$147.66 monthly payments, and Plaintiff would pay \$37.17 per month for the required maintenance fees.

From July 2009 through February 2010, Defendant performed his obligations under the terms of the agreement by making monthly payments of \$147.66. Defendant breached the contract in March 2010 by failing to make the

¹ *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. 2005); *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

² *Reynolds*, 237 A.2d at 711.

monthly payments \$147.66. Plaintiff made the monthly payments of \$147.66 for the following 24 months, from March 2010 through March 2012. Plaintiff also paid the \$37.17 per month for the required maintenance fees, per the agreement between the parties.

Thereafter, Defendant demanded that Plaintiff remove his name from the timeshare agreement. To facilitate the removal of Defendant's name from the timeshare deed, Plaintiff paid \$100.00 in administrative fees. Nevertheless, Defendant refused to execute the necessary documents to have his name removed from the deed. Therefore, both parties are still identified as owners of the timeshare and both remain liable on the loan and for the property. In an effort to mitigate her losses, Plaintiff has advertised the property for sale, incurring \$984.00 in expenses.

Therefore, the Court finds there was a contract; Defendant breached the contract; and Plaintiff suffered damages of \$4,133.84, as follows: \$3,543.84 in monthly loan payments ($\$147.66 \times 24$ months); \$100.00 in fees to remove Defendant's name; and \$492.00 (representing half of the expenses to sell the property).

**NOW, THEREFORE, judgment is hereby entered in favor of Plaintiff
against Defendant in the amount of \$4,133.84.**

IT IS SO ORDERED this 12th day of March, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli