

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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**COURT OF CHANCERY COURTHOUSE
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Date Decided: September 15, 2026

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RE: *NVR, Inc. v. Osprey Point Preserve, LLC*,
C.A. No. 2025-0581-BWD

Dear Counsel:

On August 19, 2026, the Court issued a Post-Trial Memorandum Opinion (the “Opinion”) in the above-referenced matter. The Opinion noted that Count V of OPP’s Counterclaims,¹ which asserts that NVR breached its obligation under Section 3(g) of the Lot Purchase Agreement (“LPA”) to construct appropriate sidewalks in the Osprey Point Community, appeared to be moot in light of the Court’s other findings. *See* Post-Trial Mem. Op. at 41 n.144, Dkt. 93 (“Based on the rulings herein, it appears that this issue is moot. If the parties disagree, they

¹ Capitalized undefined terms herein have the definitions set forth in the Opinion. The parties’ Joint Pre-Trial Stipulation and Order is cited as “PTO ¶ ____”. Dkt. 82. The trial transcript is cited as “Tr. (Witness) at ____”. Dkts. 84, 85. Joint exhibits are cited as “JX ____” unless otherwise defined. Dkt. 77.

should notify the Court by letter within two weeks.”). On August 26, OPP informed the Court that it believes Count V is not moot and also asked the Court to decide several new issues. Dkt. 98. NVR responded on September 1 in opposition. Dkt. 99.

Among the newly raised issues, OPP asks the Court to enter an order “compelling NVR to satisfy its open . . . Mortgage against the remaining lots in Osprey Point.” Dkt. 98 at 4. OPP cursorily raised this issue in the Joint Pre-Trial Stipulation and Order but failed to brief the issue thereafter. *See* PTO ¶ IV.B.4. It would be unfair to NVR and the Court to entertain this belatedly-raised issue and I therefore decline to do so here. *See Walker v. Res. Dev. Co., L.L.C. (DE)*, 791 A.2d 799, 811 n.43 (Del. Ch. 2000).

Additionally, OPP asks the Court to lift the status quo order entered on February 12, 2026 (the “SQO”). Dkt. 98 at 4; *see* Order Granting Pl./Countercl. Def., NVR, Inc.’s Emergency Mot. for Status Quo Order [hereinafter SQO], Dkt. 68. To clarify, the SQO will remain in place “pending resolution of this litigation,” *i.e.*, until entry of an order and final judgment, unless NVR files a motion seeking additional relief during the pendency of an appeal. SQO at 3.²

² OPP also asked that “if the Court concludes that Count V of OPP’s counterclaims is moot, OPP respectfully requests that the Court clarify that its disposition of Count V does not

The remainder of this letter opinion supplements the Opinion to resolve Count V of the Counterclaims, finding that NVR breached Section 3(g) of the Lot Purchase Agreement but OPP failed to prove damages.

I. BACKGROUND

The following facts are as the Court finds them after a two-day trial held on March 9 and 10, 2026. I write for the parties familiar with this matter and refer readers to the Opinion for a more complete description of the pertinent background facts. *See NVR, Inc. v. Osprey Point Preserve, LLC*, 2026 WL 2445038 (Del. Ch. Aug. 19, 2026).

In February 2021, OPP and NVR entered into a Lot Purchase Agreement. *See* JX 10. Section 3(g) of the Lot Purchase Agreement requires NVR to “install sidewalks and driveway aprons on Lots that it purchases” in the Osprey Point Community. *Id.* § 3(g); *see also* PTO ¶ II.F.49. The parties agree that “NVR is required to construct sidewalks in Osprey Point in conformance with the Sussex County Code[,]” which provides that “[a]ll sidewalks must have a minimum cross slope of 1% and a maximum cross slope of 2%.” PTO ¶¶ II.F.50–51. However, at

adjudicate or impair any rights or obligations that survive termination of the LPA, including the indemnification rights under section 8(d) of the LPA.” Dkt. 98 at 3–4. Because this letter opinion resolves Count V on the merits, I do not reach this alternative request.

least some sidewalks that NVR has constructed in the Osprey Point Community “have a cross slope of less than 1% or greater than 2%.” *Id.* ¶ II.F.52.

In March 2025, NVR asserted that OPP had breached the Lot Purchase Agreement by failing to obtain NVR’s approval before submitting a site plan to the Sussex County Planning & Zoning Department. *See* JX 32. In response, OPP claimed that NVR was in breach of the Lot Purchase Agreement by failing to construct sidewalks in compliance with the Sussex County Code. *Ans. and Countercls. of Osprey Point Preserve, LLC [hereinafter Countercls.] at 74–76, Dkt. 13; see* JX 45.

NVR responded to OPP’s concerns by engaging an engineering firm, Morris and Richie Associates, to inspect sidewalks throughout the community. *See* JX 34 at 1; JX 35 at 2. Additionally, NVR met with an inspector for the Sussex County Engineer to assess whether the sidewalks were acceptable to the County. *See* JX 48 at 1. After reviewing the results of the inspections, NVR determined that one portion of the sidewalks should be replaced. *See* JX 35 at 1; JX 37 at 1. NVR agreed to replace that portion of the sidewalks, as well as nine other areas that Morris and Richie identified during its inspection. *See* JX 37 at 1. NVR also assured OPP that “[i]n the future, if the County raises a concern for the sidewalks we poured, we will stand behind our work[.]” *Id.*

Months later, on July 11, Sussex County Engineer Mike Harmer confirmed to OPP that the County’s inspection team agreed that “the sidewalks are in general acceptable” and “random checks were within tolerance.” JX 48 at 1. At trial, Harmer testified that the County’s “ultimate conclusion was that [the sidewalks] were generally acceptable” and the County agreed it would release a substantial portion of OPP’s performance bond. Tr. (Harmer) at 78:1–3; *see also* JX 48 at 1.

II. ANALYSIS

In Count V of its Counterclaims, OPP claims that NVR breached the Lot Purchase Agreement by failing to construct appropriate sidewalks in the Osprey Point Community. Countercls. at 74–76; *see* Def./Countercl. Pl. Osprey Point Preserve, LLC’s Post-Trial Opening/Answering Br. [hereinafter DOB] at 53, Dkt. 90. OPP asserts that this purported breach “provided an additional basis for termination of the [Lot Purchase Agreement]” and “created additional liabilities for NVR.” Dkt. 98 at 2. OPP does not seek equitable relief in connection with the breach.³ Because the Opinion found that OPP validly terminated the Lot Purchase Agreement for other reasons, I decline to provide an advisory ruling opining on

³ The Counterclaims seek an order “finding that NVR has breached its obligations under paragraph 3(g) of the LPA, in so far as NVR has failed to install Sussex County Code compliant sidewalks in the Osprey Point development.” Countercls. at 80.

alternative bases for termination and consider only OPP's request for damages arising from NVR's alleged breach.

To prove a claim for breach of contract, a plaintiff must show: "(1) the existence of a contract; (2) a breach of an obligation imposed by that contract; and (3) resultant damages." *Thomas v. Am. Midstream GP, LLC*, 2024 WL 5135828, at *5 (Del. Ch. Dec. 17, 2024) (quoting *Wenske v. Blue Bell Creameries, Inc.*, 2018 WL 3337531, at *9 (Del. Ch. July 6, 2018), *interlocutory appeal refused*, 339 A.3d 752 (Del. 2025)). "A party seeking to enforce a contract must prove each element of its breach of contract claim by a preponderance of the evidence." *Kuramo Cap. Mgmt., LLC v. Seruma*, 2024 WL 1888216, at *29 (Del. Ch. Apr. 30, 2024).

Section 3(g) of the Lot Purchase Agreement requires NVR to construct sidewalks throughout the Osprey Point Community:

In accordance with the "Sidewalk Plan" to be attached hereto as Exhibit "F", [OPP] shall complete paving of streets and alleys and pipestem driveways; install sidewalks, curbs and gutters adjacent to, but off, each Lot; provide water and sewer distribution systems and street lighting; and install street signs. [NVR] *shall install sidewalks and driveway aprons on Lots that it purchases.*

JX 10 § 3(g) (emphasis added); *see also* PTO ¶¶ II.F.49–50. Section 3(g) does not impose specific standards for the construction of sidewalks, but the parties have stipulated that "NVR is required to construct sidewalks in Osprey Point in

conformance with the Sussex County Code” and “Section 99-18E.(9)(g) of the Sussex County Code provides that “[a]ll sidewalks must have a minimum cross slope of 1% and a maximum cross slope of 2%.” PTO ¶¶ II.F.50–51. The parties have further stipulated that “[c]ertain sidewalks constructed by NVR in Osprey Point have a cross slope of less than 1% or greater than 2%.” *Id.* ¶ II.F.52. Based on those stipulations, OPP has demonstrated that NVR breached Section 3(g), however slight. Although the Sussex County Engineer informally approved the sidewalks, NVR notably does not argue that it received a waiver from the County.

However, OPP failed to prove at trial that it suffered harm from NVR’s breach of Section 3(g). Under Delaware law, “a slight breach by one party . . . will not necessarily terminate the obligations of the injured party to perform under the contract[,]” but may “giv[e] rise to an action for damages.” *BioLife Sols., Inc. v. Endocare, Inc.*, 838 A.2d 268, 278 (Del. Ch. 2003) (quoting *E. Elec. and Heating, Inc. v. Pike Creek Prof. Ctr.*, 1987 WL 9610, at *4 (Del. Super. Ct. Apr. 7, 1987)). OPP argues that it has been harmed because (1) “OPP placed a performance bond with the County for all of the sidewalks in the community” and (2) NVR’s breach has exposed OPP to “potential civil liability to homeowners or third-party claimants as a result of delivering unacceptable sidewalks to the community.” DOB at 49, 51–52 (emphasis omitted); *see* Def./Countercl. Pl. Osprey Point Preserve, LLC’s Post-

Trial Reply Br. [hereinafter DRB] at 35, Dkt. 92. OPP failed to prove by a preponderance of the evidence that its performance bond with the County is at risk, given the County's position that the sidewalks are acceptable and agreement to release the performance bond,⁴ as well NVR's commitment to reconstruct any sidewalk that the County rejects.⁵ OPP also failed to prove that any minor variations in the sidewalks will expose it to liability. While OPP claims that it "remains the record owner" of the sidewalks,⁶ NVR acknowledges that "since NVR built the sidewalks, [NVR] is the party that holds liability for construction defects or liability." Pl./Countercl. Def. NVR, Inc.'s Answering/Reply Post Trial Br. at 31–32, Dkt. 91. In light of NVR's admission, OPP has not demonstrated that it faces any risk of liability from imperfect sidewalks.

OPP suggests that NVR should be required to pay "all reasonable costs and expenses ultimately incurred in correcting the non-compliant sidewalks[.]" to be determined "through later damages inquisition." DOB at 53–54. I am unwilling to hold a second trial on damages. "I most likely would have denied even a timely-

⁴ Tr. (Harmer) at 78:1–3; JX 48 at 1.

⁵ Tr. (Neuberger) at 294:3–11 ("We'll remove that sidewalk and redo it so that it's built to code."); *id.* (Neuberger) at 362:17–24 ("[NVR] want[s] to gain alignment with Sussex County on any repairs that are required and go into the project one time and do the work.").

⁶ DRB at 35.

made request to bifurcate the trial of the issues of liability and damages because this case did not present any difficulty in trying all issues at once.” *Walker*, 791 A.2d at 811 n.43. “[I]t would be highly unfair to [NVR] and unduly burdensome to the court to reconvene trial in order to hear evidence that [OPP] has already had a full and fair opportunity to present.” *Id.*

III. CONCLUSION

For the reasons explained above, the Court finds that NVR breached Section 3(g) of the Lot Purchase Agreement, but OPP failed to prove damages. The parties are directed to submit a proposed form of final order and judgment to implement this letter opinion and the Opinion.

Sincerely,

/s/ Bonnie W. David

Bonnie W. David
Vice Chancellor

cc: All counsel of record (by File & ServeXpress)