

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT
Civil Action No.

<p>***** * ***** ,</p> <p style="text-align: center;">plaintiff</p> <p>v.</p> <p>***** * ***** and ***** * ***** and ***** * ***** Company,</p> <p style="text-align: center;">defendants</p>

COMPLAINT

Parties

1. The plaintiff, ***** * ***** , is an individual of majority age, residing at ** ***** ** , ***** , Middlesex County, Massachusetts.
2. The defendants are ***** * ***** and ***** * ***** , husband and wife, who reside at *** ***** **** , ***** , Framingham, Middlesex County, Massachusetts.
3. ***** * ***** Company is a real estate company, which has a principal place of business at ** ***** **** , ***** , Middlesex County, Massachusetts. It is named as a defendant only because it holds the \$25,000.00 deposit at issue as escrow agent.

Cause of Action

3. On December 30, 2005, the parties entered into a Purchase & Sale Agreement, relative to property located at *** ***** **** , ***** , Framingham, Middlesex County, Massachusetts.
4. Pursuant to said Purchase & Sale Agreement, the plaintiff, who was the purchaser, provided a \$25,000.00 deposit to the defendants, who were the sellers. A true and accurate copy of said Purchase & Sale Agreement is appended hereto as **Plaintiff's Exhibit A**.
5. Said deposit was given to and is held by ***** * ***** Company.
6. The Purchase & Sale Agreement provided, in relevant part:

Paragraph 26- Mortgage Contingency Clause: In order to help finance the acquisition of

said premises, the BUYER shall apply for a conventional bank or other institutional mortgage loan of \$3000,000.00 at prevailing rates, terms and conditions. If, despite the BUYER's diligent efforts a commitment for such loan cannot be obtained on or before January 12, 2006 the BUYER may terminate this agreement by written notice to the SELLER and/or the Broker(s), as agent(s) for the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. In no event will the BUYER be deemed to have used diligent efforts to obtain such commitment unless the BUYER submits a complete mortgage loan application conforming to the foregoing provisions on or before January 2, 2006.

Paragraph 20- Deposit: All deposits made hereunder shall be held in escrow by ***** Company as escrow agent... In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instruction mutually given by the SELLER and BUYER or by a court of competent jurisdiction. The deposit shall be placed in an insured interest bearing account with interest to be paid 50% to the Buyer and 50% to Seller if title passes from Seller to Buyer; otherwise interest shall follow the deposit.

Rider A / Paragraph 49- With respect to Paragraph 26 of the Purchase and Sale Agreement, application to one institutional lender shall be deemed sufficient to satisfy the "diligent efforts" requirements of said Paragraph 26.

Rider A / Paragraph 31- Notices: All notices required or permitted to be given hereunder shall be in writing and delivered by hand... or by facsimile transmission, in the case of the Seller, to **** *, Esq., **** *, Framingham, MA 01702 ...

Rider B / Paragraph 8- At the closing, the SELLER shall allow the BUYER a credit against the purchase price in the amount of \$2,075.00 towards the BUYER'S closing costs.

7. On or before January 12, 2006, the plaintiff gave timely notice to the defendants that he was unable to obtain mortgage financing and that he was therefore exercising his rights under the "mortgage contingency clause" of the Purchase & Sale Agreement. Attached as **Plaintiff's Exhibit B** is a true and accurate copy of said notice.

8. Despite written demands that they do so, the defendants have failed, refused and neglected to agree to the return to the plaintiff's of his \$25,000.00 deposit.

Count I - Breach of Contract

9. The plaintiff reavers paragraphs 1 - 8, above, as if fully set out herein.

10. The defendants have breached their contract with the plaintiff by failing, refusing and neglecting to agree to the return to him of his \$25,000.00 deposit.

Count II - Breach of the Implied Covenant of Good Faith and Fair Dealing

11. The plaintiff reavers paragraphs 1 - 8, above, as if fully set out herein.

12. The defendants have breached the implied covenant of good faith and fair dealing implicit in the contract between the parties, by advancing reasons for their retention of the plaintiff's \$25,000.00 deposit they know or should know are utterly lacking in factual and legal merit, with the intent that the plaintiff relinquish his right to the return of said deposit rather than incur the time and expense of litigating for a vindication of his rights.

WHEREFORE, the plaintiff prays

1.) that his damages be established and awarded him, together with interest thereon and costs, including the legal fees he had to incur to obtain justice in this matter;

2.) that a hearing be held pursuant to G.L.c. 231, s. 6F to determine if the claims and/or defenses of the defendants were wholly insubstantial, frivolous and not made in good faith, in which case the plaintiff should be awarded costs, including the legal fees he had to incur to obtain justice in this matter.

Respectfully submitted,
the plaintiff,
***** * *****,
by his attorney:

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date: ***** * * *****