

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 0342

CENTER ACQUISITION CORPORATION

VERSUS

BRUCE BOOTH AND COLLEEN BOOTH

Judgment Rendered: December 23, 2008.

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2005-14689

The Honorable Donald M. Fendlason, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

CARTER, C. J.

This is an appeal of a judgment ordering specific performance of a contract to sell commercial property. The trial court determined that the sellers, Bruce and Colleen Booth, did not timely exercise their right to terminate the contract. After review of the record in this matter, we find no error in the trial court's determination. Hurricane Katrina and its aftermath neither extended the contractual time period for the sellers to exercise their option to terminate the contract, nor rendered the sellers' performance impossible so as to negate the contractual terms. Accordingly, the judgment of the trial court is affirmed.

The defendant purchaser, Center Acquisition Corporation (CAC), has answered this appeal, requesting additional relief. First, CAC seeks to have this court amend the trial court's judgment to increase the amount credited for mold remediation. The trial court awarded the amount reflected in the proposal that triggered the Booths' time delays for terminating the contract. We find no error in the trial court's decision to award that amount rather than the higher amount reflected in the proposal submitted months later.

Second, CAC asks for an award of attorney's fees associated with this appeal as provided in the contract. Attorney's fees are not allowed except where authorized by contract or statute. **Smith v. State, Dept. of Trans. & Dev.**, 04-1317 (La. 3/11/05), 899 So.2d 516, 527. The contract between the parties provides that a party who does not comply with the contractual terms agrees to pay all reasonable attorney's fees and costs incurred by the other party in enforcing their rights. Accordingly, CAC is awarded an additional \$2,500.00, representing reasonable attorney's fees incurred in enforcing their rights on appeal. The trial court's judgment is amended accordingly.

Finally, CAC asks this court to dissolve an injunction issued by the trial court at the same time the trial court set the amount of the suspensive appeal bond. This court lacks jurisdiction over the trial court's order issuing the injunction, which was rendered after the judgment now before the court on appeal. Review of an injunction is by appeal of the judgment or order issuing the injunction. LSA-C.C.P. art. 3612.

For the foregoing reasons, the trial court's judgment is amended to reflect a \$2,500.00 increase in the attorney's fees previously awarded. The judgment, as amended, is affirmed. Costs of this appeal are assessed to Bruce and Colleen Booth. This memorandum opinion is issued in compliance with URCA Rule 2-16.1B.

**JUDGMENT AMENDED; AFFIRMED AS AMENDED;
ANSWER TO APPEAL GRANTED IN PART AND DENIED IN
PART.**