

FOL LIQUIDATION TRUST

v.

WILLIAM F. FARLEY

Submitted on Briefs November 16, 2004
Decided January 5, 2005

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, and LEVY, JJ.

MEMORANDUM OF DECISION

William F. Farley appeals from a summary judgment entered in the Superior Court (York County, *Fritzsche, J.*) in favor of the Fruit of the Loom Liquidation Trust (FOL).

Contrary to Farley's contentions, the court did not err in finding, either expressly or implicitly, that (1) he defaulted on his obligations under the clear terms of the parties' letter of credit reimbursement agreement, *see, e.g., Conn. Nat'l Bank v. Kendall*, 617 A.2d 544, 548 (Me. 1992); (2) there were no genuine issues of material fact with respect to his claims that he was excused from

performance and that there was no implied covenant that FOL would subordinate its mortgages to facilitate replacement of the letter of credit, *see Top of the Track Assocs. v. Lewiston Raceways, Inc.*, 654 A.2d 1293, 1295 (Me. 1995); (3) because FOL had no contractual obligation to negotiate with him, his argument that FOL's conduct violated the Uniform Commercial Code's implied covenant of good faith was without merit, *see* 11 M.R.S.A. § 1-203 comment (1995) ("This section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, *a specific duty or obligation under the contract*, constitutes a breach of that contract") (emphasis added); and (4) his waiver and equitable estoppel arguments fail because FOL did not clearly evince its intent to relinquish its right to enforce his deadline, *see Nuccio v. Nuccio*, 673 A.2d 1331, 1334 (Me. 1996); *Medomak Canning Co. v. York*, 143 Me. 190, 196, 57 A.2d 745, 748 (1948).

The entry is:

Judgment affirmed.

Attorney for plaintiff:

Peter S. Plumb, Esq.
Michael D. Traister, Esq.
Murray Plumb & Murray
P O Box 9785
Portland, ME 04104-5085

Attorneys for defendant:

Robert J. Keach, Esq.
Daniel J. Murphy, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
P O Box 9729
Portland, ME 04104-5029