

TDW-CUM-12/1

Taylor v. Wachovia Securities Inc., CV-09-368 (Superior Ct. Cumberland)

The court has reviewed defendant's motion to dismiss and plaintiff's opposition to that motion.

Plaintiff acknowledges that Count I of the complaint (negligence) should be dismissed. He contends, however, that count II of the complaint (breach of contract) survives.


For purposes of a motion to dismiss, the material allegations of the complaint must be taken as admitted. The complaint must be read in the light most favorable to the plaintiff to determine if it sets forth elements of a cause of action or alleges facts that would entitle plaintiff to relief pursuant to some legal theory. A claim shall only be dismissed when it appears beyond doubt that a plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim. In re Wage Payment Litigation, 2000 ME 162 ¶ 3, 759 A.2d 217, 220.

Under that standard, count II of the complaint states a cognizable claim for breach of a contractual obligation owed to a third party beneficiary.

The entry shall be:

Defendant's motion to dismiss is granted as to count I of the complaint and is denied as to count II of the complaint. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 8, 2009



Thomas D. Warren
Justice, Superior Court

GEORGE M TAYLOR VS WACHOVIA

UTN:AOCSSr -2009-0066759

CASE #:PORSC-CV-2009-00368

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