

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

POINTE DEVELOPMENT, LLC

RESPONDENT,

v.

ENTERPRISE BANK AND TRUST

APPELLANT.

DOCKET NUMBER WD71591

DATE: August 10, 2010

Appeal From:

Jackson County Circuit Court
The Honorable W. Stephen Nixon, Judge

Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin,
Judges

Attorneys:

Steven W. White, Independence, MO, for respondent.

Michael S. Cessna and Leonard B. Rose, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

POINTE DEVELOPMENT, LLC,

RESPONDENT,

v.

ENTERPRISE BANK AND TRUST,

APPELLANT.

No. WD71591

Jackson County

Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Enterprise Bank and Trust appeals from the trial court's judgment in favor of Pointe Development, LLC in the amount of \$51,469.92. Enterprise claims that the trial court erred in granting judgment to Pointe on its claim for breach of contract because Enterprise's loan commitment included a condition subsequent that the cost of construction could not exceed the loan amount, which condition was not satisfied by Pointe, relieving Enterprise of the obligation to provide the loan.

AFFIRMED.

Division One holds:

- (1) Enterprise failed to assert (and preserve) the affirmative defense that the loan commitment contained an express condition subsequent that was not performed by Pointe.
- (2) The provision of the loan commitment on which Enterprise relies is not a condition subsequent. The provision includes no words of limitation typically associated with express conditions subsequent. Nor does the provision expressly or clearly articulate that the occurrence or nonoccurrence of an event will terminate Enterprise's duty to fund the construction loan.
- (3) Even if the provision on which Enterprise relies could be construed to express a condition subsequent, there is no evidence in the record to suggest the condition was not satisfied by Pointe.

Opinion by: Cynthia L. Martin, Judge

August 10, 2010

This summary is UNOFFICIAL and should not be quoted or cited.

