

result in a breach of the purchase, financing and mortgage of said property and PROMISSOR AGREES TO IMMEDIATELY QUIT CLAIM SAID PROPERTY BACK TO THE TRUST AND THE PARTIES HERETO SHALL SUBSEQUENTLY RESOLVE THEIR DIFFERENCES THROUGH ARBITRATION OR MEDIATION IN THE SOLE DISCRETION OF THE TRUST. Promissor further agrees that upon his failure to immediately provide the Trust with a Quit Claim Dee, that this promissory note may be filed in lieu thereof and for a Quit Claim Deed transferring said property back to the Trust until the matter is arbitrated or mediated.

Note, Ex. A to Complaint.

It is also undisputed that Defendants made payments totaling \$13,511.52 on the Note. Defendants seek dismissal of this action based upon the arbitration provision in the Note. Plaintiffs respond that the arbitration provision provides for the discretion of the Trust and it is not applicable to the current case because the Trust chose to pursue litigation.

Plaintiffs seek summary judgment based on Defendants' admitted failure to pay the amount due under the Note. Defendants oppose summary judgment on the grounds that Plaintiffs have failed to account for a transfer of possession of the property that they claim should be in a foreclosure action.

II. LAW AND ANALYSIS.

Under Ohio law, arbitration provisions are favored and are generally enforceable:

(A) A provision in any written contract, except as provided in division (B) of this section, to settle by arbitration a controversy that subsequently arises out of the contract, or out of the refusal to perform the whole or any part of the contract, or any agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or arising after the agreement to submit, from a relationship then existing between them or that they simultaneously create, shall be valid, irrevocable, and enforceable,

except upon grounds that exist at law or in equity for the revocation of any contract.

R.C. 2711.01.

In reviewing the terms of the contract, “[c]ommon words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.” *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146, paragraph two of the syllabus (1978).

In this case, Plaintiffs’ use of the phrase “until the matter is arbitrated or mediated” when considered in its ordinary meaning and in light of the overall contents of the Note, is sufficiently clear to permit the Court conclude the parties intended their disputes to be resolved through mediation or arbitration exclusively. Plaintiffs’ efforts to construe “until the matter is arbitrated or mediated” to also include litigation adds a meaning to the Note which does not appear on the face or in the overall contents of the contract. *Lawrence R. Barker Co. v. Overseas Development Corp.*, 64 Ohio App. 3d 545, 548, 582 N.E.2d 27 (8th Dist. 1989).

The parties expressly agreed to arbitration or mediation in the sole discretion of the Trust. A plain reading of the Note, including the final provision that the Quit Claim Deed would be held until resolution by mediation or arbitration, demonstrates that the discretion of the Trust is limited to choosing either mediation *or* arbitration.¹

III. CONCLUSION.

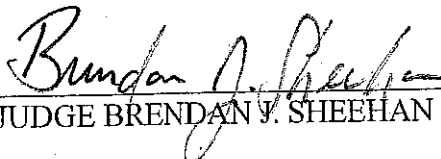
For the foregoing reasons, the Court finds that the parties agreed in writing to resolve disputes related to the Note by arbitration or mediation.

¹ Agreements to refer matters to “binding mediation” have been construed similar to clauses requiring binding arbitration. See, e.g. *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St. 3d 352, 2008-Ohio-938, 884 N.E.2d 12, *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983).

DEFENDANT KEVIN YAGER'S MOTION TO DISMISS IS GRANTED AND PLAINTIFFS JAMES M. LYNCH'S AND MARGORIE J. LYNCH'S, AS TRUSTEES UNDER THE JAMES M. LYNCH LIVING TRUST, MOTION FOR SUMMARY JUDGMENT IS DENIED.

The dismissal shall be without prejudice to allow the parties to seek confirmation of the arbitrators' or mediators' decision upon the completion of alternate dispute resolution.

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 2.7.14

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed and faxed to the following this 7th day of February, 2014:

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