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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ADMIRAL'S WALK, INC.

Case No. 90-11401 K

Debtor

BOXHORN'S, INC., Individually and
on behalf of the Beneficiaries of
a certain fund arising under the
New York Lien Law

Plaintiffs

-vs-

AP 90-1150 K

JACK L. GETMAN, TRUSTEE, MONROE
ABSTRACT AND TITLE CORP. and
MARINE MIDLAND BANK, N.A.

Defendants

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MEMORANDUM OF DECISION

The Plaintiff, in its Summary Judgment Motion, argues that the "Escrow Agreement" is clear and unambiguous and that as a matter of law it is, by its own terms, a security device in favor of Monroe Abstract & Title, which lapsed.

The Intervenors, in their Cross-Motion (lodged orally in open Court), argue that the "Escrow Agreement," when considered in the undisputed context of the Debtor's need to obtain further loan proceeds and Marine's insistence on a mortgage interest that was insured against superior liens, clearly is a third-party beneficiary contract undertaken for their benefit.

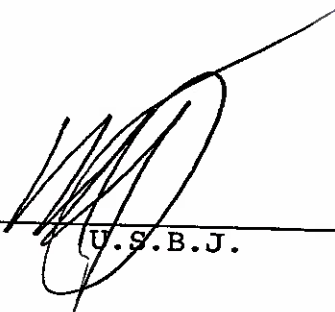
The "Escrow Agreement" and the record before the Court do not sustain either motion. The Plaintiff's motion fails because neither the "Escrow Agreement" nor anything it purports to do is clear or unambiguous. The Intervenor's motion fails because even if the purpose of the transaction between Admiral's Walk, Inc. and Monroe is clear (to induce Monroe to insure so that Marine will lend), the Court cannot presume that the parties intended to achieve that purpose by an "Escrow Agreement" which on its face fails of that purpose. (However clear one's purpose might be, one might "intend" a solution that turns out to be a wrong one and one can in fact achieve yet a third result.)

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Resort to evidence will be required. It is possible that an escrow or other third-party beneficiary contract in favor of the Intervenor was created despite the deficiencies in the "Escrow Agreement." It is also possible, however, that a "pledge" (or other security arrangement), an "agency," an "indemnity," or some other relationship was created instead. Only a full exposition of the disputed issues of fact will permit decision.

The Plaintiff's motion for Summary Judgment is denied, as is the Intervenor's cross-motion lodged in open Court.

This matter is placed on the Court's 11:00 a.m. Motion Calendar on December 23, 1992 for further scheduling.

Dated: Buffalo, New York
December 16, 1992



U.S.B.J.