

DAVID F. RIVERS

v.

JERRY AMATO et al.

Submitted on Briefs December 20, 2001

Decided April 12, 2002

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, ALEXANDER, and
CALKINS, JJ.

MEMORANDUM OF DECISION

David F. Rivers appeals from the judgment entered in the Superior Court (York County, *Brennan, J.*) granting a motion for summary judgment in favor of Jerry Amato, Estate of Phyllis Amato, and Little A., Inc. (hereinafter Amato). Contrary to Rivers's contention, he could not pursue breach of contract damages once he canceled the purchase and sale agreement. *See Harmony Homes Corp.*, 390 A.2d 1033, 1035 (Me. 1978); *Listman Mills Co. v. Dufresne*, 111 Me. 104, 106-07, 88 A. 354, 355 (1913). Notwithstanding Rivers's understanding that Amato had repudiated the contract, the Superior Court did not err in concluding that Rivers elected the remedy of rescission by expressly canceling the purchase and sale agreement and obtaining the return of the earnest money.

The entry is:

Judgment affirmed.

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