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States Court of Appeals  
for the Third Circuit

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3-16-2007

## Buck Consul Inc v. Glenpointe Assoc

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-4685

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BUCK CONSULTANTS, INC.

v.

GLENPOINTE ASSOCIATES,  
Defendant/Third-Party Plaintiff

v.

MELLON FINANCIAL CORPORATION,  
Third-Party Defendant

Glenpointe Associates,  
Appellant

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Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil No. 03-00454)  
District Judge: Jose L. Linares

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Argued November 28, 2006

Before: RENDELL and AMBRO, Circuit Judges  
PRATTER,\* District Judge

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\*Honorable Gene E.K. Pratter, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

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ORDER AMENDING OPINION

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AND NOW, this 16<sup>th</sup> day of March, 2007, the above Opinion and Judgment filed on February 9, 2007 is amended as follows:

**Opinion:**

Page 2, par. 2 replace first sentence with “For the reasons below, we affirm the finding with respect to unreasonableness and vacate and remand the District Court’s finding that Glenpointe acted in bad faith.”

Page 22, par. 1 add footnote at the end of second sentence: “By noting the inadequacy of the record presented to us, together with the District Court’s use of the incorrect standard for determining bad faith, we are not foreclosing the District Court’s possible determination on remand to undertake a closer re-examination of the full record in the new light of our opinion (and permit additional evidence if it should desire to do so) and, on the basis thereof, consider whether summary judgment should be awarded to one party or the other. Of course, if that re-examination continues to disclose any genuine issue of material factual disputes concerning bad faith, the resolution of such disputes must be left to a jury.”

Page 23, par. 2 replace sentence with “We affirm the District Court’s finding with respect to the unreasonableness of Glenpointe’s withholding of its consent, but vacate and remand the Court’s decision with regard to bad faith, and reverse its decision to terminate

the Lease.”

**Judgment:**

Page 2, par. 2, first sentence should be “ORDERED and ADJUDGED by this Court that the Order of the District Court entered on September 20, 2005 is hereby Affirmed in part, Vacated and Remanded in part, and Reversed in part.”

BY THE COURT:

S/Gene E.K. Pratter  
Gene E.K. Pratter  
United States District Court Judge

CMD/cc: John J. Gibbons, Esq.  
David M. Kohane, Esq.  
Michael S. Meisel, Esq.  
B. John Pendleton, Esq.