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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-147-24

A2Z MANAGEMENT GROUP,
1316 ALLAIRE, LLC, and
3 FRANKLIN LANE, LLC,

Plaintiffs,

v.

SQUILLARE FAMILY TRUST;
and JOHN DOES 1-5,

Defendants.

OPINION

Decided May 13, 2025.

Milton Bouhoutsos, Jr., Esq., LLC (Milton Bouhoutsos, Jr., Esq., appearing), attorneys for plaintiffs.

David L. Chapman, Esq., for defendant.

FISHER, P.J.A.D. (t/a, retired on recall).

Last Summer, plaintiff A2Z Management Group LLC (buyer) and defendant Squillare Family Trust (seller) signed two one-page documents, the first labeled "Non-Binding Offer to Purchase," and the second labeled "Binding Offer to Purchase" (BOP) concerning the sale of real property in Ocean Township. The parties both contend their right to relief – buyer claims the BOP is an enforceable contract and seeks specific performance while seller claims the BOP isn't enforceable and seeks dismissal – is clear and free from doubt and, therefore, both have moved for summary judgment, requiring application of the standards set forth in Rule 4:46. The court need not bore the reader with a lengthy or even brief statement of the way this rule is applied; those principles are well understood by all and thoroughly explained in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), and its progency, all on which the court relies.

What is debated here is whether the BOP is sufficient to be enforced and whether the communications between the parties' representatives reveal a legal or equitable exit through which the seller might escape the consequences of its agreement or at least avoid a decree of specific performance. In that sense, while the seller, as the opponent of the application for specific performance, is certainly entitled to the benefit of inferences that may be drawn from the circumstances, the BOP states speaks for itself and what the parties' wrote in

emails to each other after execution of the BOP are also clear. Brill, 142 N.J. at 535. In short, the facts aren't in dispute; the legal and equitable significance of those facts is, however, hotly debated.

To put the parties' arguments in context it is helpful to consider the principles that guide a court of equity when asked to compel a seller's performance of a contract to convey real property.[1] To begin, a plaintiff seeking specific performance must demonstrate that: (1) "the contract is valid and enforceable at law," Marioni, 374 N.J. Super. 588, 598 (App. Div. 2005); (2) the contractual terms are "expressed in such fashion that the court can determine, with reasonable certainty,[2] the duties of each party and the conditions under which performance is due," Salvatore v. Trace, 109 N.J. Super. 83, 90 (App.

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[1] Buyers of real property are often entitled to specific performance because of the universally-appreciated proposition that "land is unique" and, therefore, an award of damages is an inadequate remedy. Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 600 n.5 (App. Div. 2005); Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104, 113 (App. Div. 1990). On the other hand, a seller is rarely, if ever, entitled to specific performance, see Fleischer v. James Drug Stores, Inc., 1 N.J. 138, 149 (1948), when the consideration bargained for is money because money isn't unique, and a money judgment would be an adequate remedy to redress a buyer's breach.

[2] Even though the need for "reasonable certainty" is a traditional element, this requirement has often been "overemphasized." See Marioni, 374 N.J. Super. at 599 n.4. In Barry M. Dechtman, Inc. v. Sidpaul Corp., 89 N.J. 547, 552 (1982), the Court observed that "[a]pparent difficulties of enforcement that arise out of uncertainties in expression often disappear in the light of courageous common sense and reasonable implications of fact."

Div. 1969), aff'd o.b., 55 N.J. 362 (1970); and (3) the remedy will not be "harsh or oppressive," Stehr v. Sawyer, 40 N.J. 352, 357 (1963). The parties' arguments mainly focus on the first and second aspects.

To be sure, the August 2024 BOP – what buyer contends is an enforceable contract and what seller argues is merely an offer – is not rich in detail, nor was its quite similar predecessor, the July 2024 nonbinding offer of purchase. But, in determining whether a contract has been formed, a court mainly looks for an offer and acceptance, and whether the expression of their agreement is sufficiently definite "that the performance to be rendered by each party can be ascertained with reasonable certainty." West Caldwell v. Caldwell, 26 N.J. 9, 24-25 (1958). So, if the parties "agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992).

Since the BOP concerns a transfer of real property, the Statute of Frauds' writing requirement must also be satisfied. The Statute of Frauds declares that an agreement "to transfer an interest in real estate . . . shall not be enforceable unless . . . a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement, and the identity of the transferor and the transferee are established in a writing signed by or on behalf of the party against whom enforcement is sought." N.J.S.A. 25:1-13(a).

Even though the BOP is simplicity itself, it contains everything the Statute of Frauds requires; it expresses the following and nothing but the following:

- the title states that it is "binding";
- the names of the buyer and seller are clearly stated;
- the property to be transferred is identified by its street address, which suffices[3];
- the purchase price of $400,000 (to be conveyed by the payment of an initial deposit of $10,000 "upon acceptance," a second deposit of $10,000 "after attorney review," and $380,000 "at closing") is clearly stated and in no way ambiguous;
- August 30, 2024 is the stated "closing date";
- the conveyance is declared to be "subject to oil tank sweep," a condition that has not been asserted as being either ambiguous or relevant to this dispute;
- the broker is identified; and
- the electronic signatures of the buyer and seller are included, as are the initials of the broker under the word "witness."

[3] Identification of property by its street address is enough. See Bernstein v. Rosenzweig, 1 N.J. Super. 48, 53 (App. Div. 1948); Matlack v. Arend, 2 N.J. Super. 319, 327 (Ch. Div. 1949). Indeed, it has been persuasively held that a description of property to be conveyed as "[t]he fifth house from the intersection of Joralemon and Jefferson streets" was adequate under the circumstances. Friedman v. Gold, 105 N.J. Eq. 177, 178 (Ch. 1929); see also Carlsen v. Carlsen, 49 N.J. Super. 130, 138-39 (App. Div. 1958). In any event, seller hasn't claimed the BOP fails to conform to the Statute of Frauds because it contains only the property's street address.

There is nothing else on this single-page document, but nothing else is required to render it enforceable. The BOP reveals an intention to be bound (by use of the word "binding"), identifies the parties to the agreement (buyer A2Z or its assignee, and seller, the Squillare Family Trust), contains all material terms, and is signed by the party to be charged.[4]

In arguing that this contract shouldn't be enforced, the seller focuses on the absence of a lengthier and more detailed, multi-page, separate document of the type normally seen in residential real estate transactions. But there is nothing in the BOP that would suggest the parties intended to be bound only by some other, more detailed document. To be sure, that could have been the case. The BOP allows for "attorney review," and the "attorney review" period would have been the time to call for greater detail, but not a discouraging word was expressed by the seller after the BOP was executed. Buyer's representative and the seller's attorney emailed each other on numerous occasions, and the seller's attorney never once suggested in his emails a need for some other writing. Whether within or without the three days following execution of the BOP – what would have been by operation of law the attorney-review period absent a contrary expression – never once did seller's attorney state or suggest in writing

[4] Two representatives of the family trust signed, respectively, on August 15 and 16, 2024. There is no argument that these two signors were not authorized by the trust to execute the document. The buyer signed on August 19, 2024.

seller's current complaint about the contract's content, form or sufficiency. See, e.g., Conley v. Guerrero, 228 N.J. 339, 341 (2017) (attorney review is understood as requiring an expression of disapproval within three days and in writing). Instead, the emails from seller's attorney unmistakably reveal that seller neither sought nor expected anything further to memorialize the parties' undertaking before being bound.

Indeed, on September 5, 2024, seller's attorney emailed his counterpart to mention he would call "to schedule closing." On September 9, 2024, seller's attorney expressed some "confusion" about certain ineffectual early-twentieth-century deed restrictions, but he received a response from buyer's representative later that day about the elimination of those antiquated restrictions. The day after that, seller's attorney – because the buyer signed the BOP as "A2Z Management Group LLC its Successor or assi[gn]s" – requested "the names or organization[s] to put on the deed and seller documents." Within minutes of that request, buyer's representative emailed and suggested a phone call so the two could "discuss a closing date and closing logistics" and, within the hour, buyer's representative emailed to confirm that, "as discussed," he and seller's attorney were "targeting closing on Monday . . . and can confidently say that this [transaction] will close by Wednesday, the latest."

The communications then became one-sided. Buyer's representative provided information and sent emails geared toward the anticipated closing, but he received no response from seller's attorney until, on September 16, seller's attorney – who mentioned in an email a week earlier that the seller had received a "higher" offer – advised "that the [seller] is removing the listing of the real estate property and as a result the property is not for sale." Their communications ended there, prompting this litigation.[5]

Returning to the concept urged by seller that the BOP is legally insufficient, there is no writing in the record by which seller or its attorney ever asserted at the time that the contract wasn't binding and wouldn't be binding until a more formal document memorializing their intentions was signed by the parties. The BOP's stipulation that there be "attorney review," by operation of law would only consist of a three-day period, Conley, 228 N.J. at 341; N.J. State Bar Ass'n v. N.J. Assoc. of Realtor Boards, 93 N.J. 470, 476-77, modified, 94 N.J. 449 (1983), during which seller would have been obligated to advise in writing that some part or all of the BOP was insufficient or had to be modified, amended, or replaced. That never happened, so the argument that the BOP is

[5] On November 18, 2025, the court restrained any transfer of the property pending this lawsuit's disposition.

ineffectual because of the absence of some other writing is without merit and cannot stand in the way of buyer's claim to specific performance.

Seller also argues that the BOP expired on August 30, 2024 – the BOP's stated closing date – or that the failure to close by that date excuses seller's performance. All the communications quoted above – all after the passage of this so-called expiration date – belie that contention. If seller believed the agreement had such a short life and that the deal would expire on August 30, then why was its attorney discussing deed restrictions and closing dates in September?

This same concept has been argued in a different way. That is, seller contends that the BOP's identified closing date of August 30, 2024, constituted a time-of-the-essence closing date and, when the transaction didn't close by that date, seller was no longer obligated to sell to buyer. This contention is also insufficient as a matter of law. First, the BOP does not state that the August 30 closing date was a time-of-the-essence closing date; that critical phrase does not appear in the document. Without a clear and unambiguous declaration or stipulation of a closing date as being a time-of-the-essence date, the court must assume – as the parties' later discussions make clear – that August 30 merely represented an estimate of when the closing would occur or an intention to close within a reasonable time of that date. See, e.g., Gorrie v. Winters, 214 N.J.

Super. 103, 105 (App. Div. 1986). Neither the BOP nor any other communications from seller to buyer ever attempted to set a time-of-the-essence closing date, let alone in a manner that would make it fair and equitable to conclude that the agreement should have no further force or effect if the closing did not occur on the date mentioned in their writing. See Marioni, 374 N.J. Super. at 602-03. Seller's arguments about the significance of the August 30 date in the BOP are without merit and insufficient to bar buyer's entitlement to a decree of specific performance.

Turning to the third and last aspect recognized by Marioni, 374 N.J. Super. at 599, for the issuance of a decree of specific performance – whether compelling performance will be "harsh or oppressive," Stehr, 40 N.J. at 357, or otherwise inequitable – the court concludes, in applying the Brill standard and giving the seller the benefit of all legitimate inferences that would benefit it, R. 4:46-2(c), that there is nothing about the imposition of specific performance here that might be viewed as harsh or oppressive. There is no contention that the terms of the agreement are unfair or unconscionable.

Incorporated within this third element is the requirement that the party seeking specific performance "must stand in conscientious relation to his adversary; his conduct in the matter must have been fair, just and equitable, not sharp or aiming at unfair advantage." Stehr, 40 N.J. at 357. Again, there is no

evidence offered in opposition to buyer's summary judgment motion that would support a claim that buyer was doing anything other than attempting to enforce a fair, arms-length transaction.[6] There is no assertion that the contract is unconscionable or that buyer has acted sharply or presently seeks to take unfair advantage of seller. If anything, the communications suggest that it may have been the seller that was acting somewhat "sharp" by leaving the property on the market after the BOP's execution – a circumstance that apparently made possible seller's receipt of a higher offer – that may have enticed seller to take the property off the market, at least for the time being.

And so, the decree of specific performance should issue because, when there is no legitimate or persuasive excuse for not performing, "equity regards and treats as done what, in good conscience, ought to be done." Marioni, 374 N.J. Super. at 600-01; see also Goodell v. Monroe, 87 N.J. Eq. 328, 335 (E. & A. 1917). There being no claim that the buyer is not ready, willing, and able to

[6] Seller's sworn statements appear to be critical of the fact that buyer was engaging in a transaction that might qualify for a 1031 IRS exemption. If that is so, and the court will assume under the Brill standard that it is, the court fails to see how participation in such a legally-authorized transaction would suggest that compelling the transaction would somehow be harsh or inequitable to the seller. The seller would still be receiving exactly what it had bargained for, even if the buyer's intent is to simultaneously or soon after transfer the property to some other entity to gain a tax advantage.

perform its end of the bargain, relief should be granted. Stamato v. Agamie, 24 N.J. 309, 316 (1957).

Judgment has been entered directing seller to go to closing and convey title to the property in exchange for the purchase price expressed in the BOP. The closing is ordered to occur no later than thirty days from today.