

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

USA HOUSE SOLUTIONS, INC.,)	
)	
Petitioner,)	
)	
v.)	C.A. No. 12939-VCMR
)	
FRANCIS A. ZABOROWSKI,)	
)	
Respondent.)	

ORDER RESOLVING CROSS MOTIONS FOR SUMMARY JUDGMENT

WHEREAS, on April 10, 2015, USA House Solutions, Inc. and Francis A. Zaborowski entered into an agreement (the “Contract”) for the sale of property located at 21 Anchor Inn Road, Townsend, Delaware 19734 (the “Property”);

WHEREAS, the Estate of Christine A. Zaborowski (the “Estate”) owned the Property at the time of the execution of the Contract;

WHEREAS, the Estate closed with the New Castle County Register of Wills on November 30, 2016;

WHEREAS, on September 22, 2016, Respondent entered into an agreement to sell the land to a third party for twice the price of the Contract;

WHEREAS, Petitioner moves for summary judgment and asks for specific performance of the Contract;

NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has reviewed the parties' briefs, supporting submissions, and the applicable law.

2. I grant Petitioner's Motion for Summary Judgment and order specific performance of the Contract.

3. Under Delaware law, the Court grants summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Twin Bridges Ltd. P'ship v. Draper*, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007) (citing Ct. Ch. R. 56(c)). When considering a motion for summary judgment, the evidence and the inferences drawn from the evidence are to be viewed in the light most favorable to the nonmoving party. *Judah v. Del. Tr. Co.*, 378 A.2d 624, 632 (Del. 1977).

4. Petitioner moves for summary judgment and seeks specific performance of the Contract. "A party seeking specific performance of a real estate contract must prove three elements: (i) that it had a valid contract; (ii) that it was ready, willing, and able to perform its obligations under that contract; and (iii) that the balance of the equities favors specific performance." *Deene v. Peterman*, 2007 WL 2162570, at *5 (Del. Ch. July 12, 2007) (citing *Walton v. Beale*, 2006 WL

265489, at *3 (Del. Ch. Jan. 30, 2006)). The party “seeking specific performance has the burden of proving entitlement by clear and convincing evidence.” *Id.* (quoting *Carteret Bancorp, Inc. v. Home Gp., Inc.*, 1988 WL 3010, at *9 (Del. Ch. Jan. 13, 1988)).

5. Respondent argues that the Contract is void for violating the rule against perpetuities. Resp’t’s Answering Br. 10. Petitioner disagrees. Assuming the rule against perpetuities applies in this context, I conclude that the Contract does not violate the rule against perpetuities.

6. The rule against perpetuities states:

[N]o interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest. The purpose of the rule is to promote free alienation of land and therefore it should be rigidly enforced. The rule is not concerned with the duration of an interest in land, but rather the time of vesting of that interest. It is not enough that the contingent event may happen or even probably will happen within the time limit of the rule; if it can possibly happen beyond a permissible period, the grant is void.

Robinson v. Carriage House Assocs., Inc., 1990 WL 212278, at *3 (Del. Ch. Dec. 21, 1990) (citations omitted) (internal quotation marks omitted).

7. The Contract contains a provision stating that “[t]his [C]ontract shall close on or before 21 business days following the execution and receipt of the agreement by all parties . . . [and the] [s]eller grants any extensions needed to clear title or complete closing documentation.” Pet’r’s Reply Br. Ex. A, at 2. Respondent

contends that this term violates the rule against perpetuities because repeated extensions to clear title or complete closing documentation can extend the time to close indefinitely. Pet'r's Reply Br. 11-12. In *Wilkes v. German*, the Delaware Supreme Court found that a substantially similar provision providing for extensions only to clear title did not violate the rule against perpetuities. 316 A.2d 200, 204 (Del. 1974) (upholding a provision stating that the "time for settlement shall be automatically extended for such length of time as shall be necessary to obtain said insured title in the normal course of business"). There is no dispute that the cause of the delay was the time for the Estate to close, which Petitioner and Respondent considered and understood at the time of execution of the Contract. Respondent does not offer the Court a compelling explanation as to why the similarly narrowed extension provision in the instant case should violate the rule against perpetuities, especially because the extensions are allowed only for the purposes of clearing title or completing the closing documentation. Thus, I conclude that the Contract does not violate the rule against perpetuities.

8. Respondent also argues that there is a material issue of fact as to whether Petitioner was ready, willing, and able to perform under the Contract. Resp't's Answering Br. 12-13. First, Respondent argues that "there are multiple periods between August[] 2015 and October[] 2016 in which Petitioner took no action towards purchasing the [P]roperty." *Id.* at 13. Petitioner does not contest

Respondent's factual allegation regarding the periods of no action. Pet'r's Reply Br. 11. Instead, Petitioner responds that the periods of no action occurred between August 2015 and October 2016, but the Estate did not close until November 2016.

Id. Second, Respondent argues that he "no longer felt [the Contract] was in effect" because, in the last conversation between Petitioner and Respondent before the Estate closed, Petitioner stated that he was "still interested in buying the house . . . if [Respondent] was still interested in selling it." Resp't's Answering Br. 6 (second alteration in original) (citations omitted). Petitioner's statement does not by itself mean that the Contract is cancelled. Moreover, Petitioner notes, and Respondent does not dispute, that (a) Petitioner met all of the requirements of the Contract, including writing a deposit check following execution of the Contract; (b) there is no evidence that the Contract was cancelled; (c) Petitioner contacted Respondent after the Estate closed to complete settlement of the Contract; and (d) the only reason the parties have yet to complete the sale is that Respondent is unwilling to close. Petitioner was ready, willing, and able to satisfy its obligations under the Contract when they came due. Respondent offers the Court no other explanation as to why Petitioner might not have been ready, willing, and able to perform under the Contract, and there are no genuine material issues of fact that prohibit the Court from resolving the instant case at the summary judgment stage. Thus, I conclude that Petitioner is entitled to specific performance of the Contract.

9. For the reasons stated above, Petitioner's Motion for Summary Judgment is GRANTED. I order specific performance on the Contract.

/s/ Tamika Montgomery-Reeves

Vice Chancellor

Dated: January 24, 2018