IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JAMES DEENE, Individually, and DEBORAH DEENE, Individually,	)	
Plaintiffs,	)	C.A. No. 1718-VCS
v.	)	
JUDITH ANN PETERMAN,	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: May 15, 2007
Date Decided: July 12, 2007

Laura F. Browning, Esquire, and Stephen A. Hampton, Esquire, GRADY & HAMPTON, LLC, Dover, Delaware, *Attorney for Plaintiffs.*

Alexander W. Funk, Esquire, and Sean M. Lynn, Esquire, HUDSON, JONES, JAYWORK & FISHER, LLC, Dover, Delaware, *Attorney for Defendant.*

STRINE, Vice Chancellor.

I. Introduction

Plaintiffs James and Deborah Deene allege that defendant Judith Ann Peterman entered into an oral agreement with them in February 2002 whereby they would receive a one-acre parcel of land owned by Peterman known as "Lot 1" in exchange for mowing and maintaining roughly five of the nearly twenty-one acres that Peterman owned while she lived on that land but was unable to care for it because of her age. The Deenes say they relied on that oral agreement and performed their side of the bargain by doing the grass cutting and other yard work required of them, by purchasing various equipment and supplies to complete those tasks, by moving their family from Severn, Maryland to Hartly, Delaware where the land was located, and by working with Peterman and the relevant authorities to subdivide Peterman's property so she could convey Lot 1 to them. In early 2004, all was in order to finalize the conveyance. But, throughout that year, Peterman stalled and put off closing the transaction. Ultimately, just before Christmas, Peterman told the Deenes that she had had a change of heart and was unwilling to sign over the deed to Lot 1. In this action, the Deenes seek specific performance of the February 2002 oral agreement.

In defense, Peterman says she never entered into a contract with the Deenes. Rather, she contends that the events that unfolded were merely the product of gratuitous acts performed by family members. James Deene, she points out, is her nephew, and the land in question is a portion of the nearly 21-acre family farm previously owned by her parents (James's grandparents). Thus, Peterman says that when her nephew cut the grass and performed other work on her property it was due solely to familial affection.

Likewise, to the extent she ever indicated a willingness to convey Lot 1 to the Deenes, Peterman claims that conveyance was to be a gift. Further, Peterman claims that even if a valid oral contract was created during the February 2002 telephone conversation, it is unenforceable under Delaware's Statute of Frauds because it was never reduced to writing.

In this post-trial opinion, I conclude that a valid oral contract was entered into by the parties in February 2002 and that the Statute of Frauds does not bar enforcement of that agreement because the Deenes substantially performed their side of the agreement and Peterman accepted the benefits of that performance for nearly two years without objection. I also find that Peterman breached her contractual promise to convey Lot 1 to the Deenes and that specific performance is the most equitable remedy to redress that breach. Consequently, I award title to Lot 1 to the Deenes.

II. Factual Findings

This is a family land dispute. James and Deborah Deene are married. Peterman is James's aunt, and Deborah's mother and James's father (Peterman's brother) both testified at trial. The land in question is part of a 21-acre family farm that was acquired in 1968 by James's grandparents (Peterman's parents) and bequeathed to Peterman in 1996. Although the entirety of the property spans nearly 21 acres in Hartly, Delaware, Peterman only maintained approximately 5 of those acres, including the acre of land known as Lot 1.[1]

[1] *See* JX 3 (survey of the entire Peterman property); JX 1 (describing Lot 1).

Peterman lived on the property, but she was unable to maintain it herself. As a result of his sentimental attachment to his family's homestead and his affection for his aunt, James gratuitously cut the grass and did other yard work on the property for his aunt from 1996 through 2001. During that period, he lived with his family in a suburb of Baltimore and commuted over an hour each way to tend to Peterman's landscaping. In July 2001, James stopped volunteering his services because maintaining Peterman's property in combination with his full time job and his responsibilities to maintain his own home had become too burdensome. Specifically, James told Peterman that the commute from Maryland to Delaware was too arduous and that she would have to give him a piece of her property to live on if she wanted him to resume tending to the rest of her land. Peterman initially refused that arrangement, but, before the next year's yard work needed to be done, she reconsidered.

During a phone call with her nephew in February 2002, Peterman recognized that she needed help caring for her property. As such, she agreed to deed the one acre piece of property known as Lot 1 to the Deenes in exchange for their promise to maintain during her tenancy the portion of her land that James had previously worked on by cutting the grass and trimming the trees and bushes as needed. Although the Deenes admit that it was never formally discussed in that conversation, they say that Peterman understood that it was their intention to build a house on Lot 1 and to live there once their new home was constructed.

The February 2002 oral agreement was never memorialized in writing, but the parties performed under the agreement for several years. In March 2002, the Deenes

commissioned a "perk test" to see if Lot 1 would support the sewage and septic systems essential to building a residence. Peterman consented to the test, and the Deenes paid for the assessment.[2] After that test came back indicating that a home could be constructed on Lot 1, the Deenes began to perform their contractual promises. They bought a $900 riding lawn mover (even though their property in Severn, Maryland was only a quarter of an acre) as well as other tools to clean up and maintain Peterman's property. James spent several days performing an initial cleanup of the fields, trees, and bushes which had been left to grow unattended, and, in the months that followed, he returned to cut the grass and maintain the landscaping at least once every other week. Given the extensive area to be maintained, each of these trips took several hours.[3] Using the credible estimates of the plaintiffs' expert, Marvin Adams, comparable services would have cost over $10,000.[4]

During this period, the Deenes began the process of getting the Peterman property subdivided so that they could obtain title to Lot 1. Because it was her property, Peterman was intimately involved in this process and consented to it. She selected the surveyor, she made changes to the first survey to reconfigure the boundaries of Lot 1, and she made at least one trip with the Deenes to the Department of Planning regarding the subdivision

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[2] *See* JX 5 (documenting payment).

[3] James testified that it normally took him roughly four hours to mow the area and about two hours to trim the bushes and trees that needed attention. Trial Transcript (May 15, 2007) ("Tr.") at 34-36, 39-43 (explaining scope of services).

[4] *See* JX 9 (reflecting initial cleanup costs of $2,820, mowing charges of $60 per acre per cut, and additional fees for tree trimming, bush clipping and weed eating). Since James cut the grass on four acres of land in addition to Lot 1 twice a month for at least six months each year during 2002, 2003 and 2004 before learning that Peterman did not intend to fulfill her side of the oral agreement, those mowing services alone would have been worth more than $8,640 and combined with the initial cleanup, more than $11,460.

process. In the summer of 2002, that process hit a snag. Peterman's property was not in compliance with local zoning ordinances because it had too many dwellings on it. As a result, one of the mobile homes located on the property had to be demolished. Peterman was informed of this fact by letter dated June 25, 2002.[5] The Deenes, however, paid the $1,350 fee to have this nonconforming mobile home (which was in very poor shape) demolished.[6]

On Labor Day weekend of 2002, the Deenes moved into the farm house located on Peterman's property in anticipation of construction of their own home on Lot 1, timing the move to coincide with the start of the new school year to minimize the disruption of their daughter's middle school education. In December 2002, they sold their house in Severn, Maryland, and throughout 2003 they continued to pursue the subdivision of Lot 1 and their ownership of that property.

By early 2004, the Deenes informed Peterman that the subdivision process had been completed and their attorney had finished drafting the necessary transfer documents. Peterman, however, stalled and made excuses not to close the transaction. After having cancelled multiple scheduled closing dates, Deborah Deene testified that she delivered the completed paperwork to Peterman to go over with her own attorney and to sign. But Peterman never completed the paperwork nor signed the transfer deed.

In September 2004, Peterman was hospitalized with a leg infection that had been exacerbated by the presence of fleas in the trailer in which she lived. The Deenes took

[5] JX 7.
[6] JX 6.

Peterman to the hospital for this condition, and they visited her regularly during her month-long period of incapacitation. While Peterman was hospitalized, she requested that the Deenes feed the nearly 60 cats she had accumulated. In the same conversation, the Deenes asked Peterman's permission to clean out her trailer to deal with her flea infestation. That permission was granted.

When the Deenes entered Peterman's trailer, the conditions were appalling. Fleas were rampant in the house. Trash was strewn about everywhere. There were at least 20 cats inside the home and as many as 40 more outside. Two dead cats were found, their corpses stuck in among feces-ridden refuse. The furniture was shredded. The carpets were soaked in urine, and feline excrement was everywhere.[7] The photographic evidence alone is vomit-inducing; to have confronted these conditions in actuality could not have been less than disgusting.

Over a period of many days, the Deenes cleaned out Peterman's trailer. They disposed of furniture infected with fleas and threw out a plethora of garbage. All told, they took four truckloads and two trailers full of trash to the dump totaling over 3400 pounds.[8] Simultaneously, they fought an uphill battle to keep the multitude of cats fed and their litter box clean.[9]

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[7] *See* JX 27-41 (photographs of conditions); Tr. at 56-68 (description of conditions).
[8] *See* JX 42-43 (photographs); Tr. at 65-67 (description).
[9] *See* Tr. at 66 (stating that the Deenes changed the litter twice a day and still could not keep up with the animals); JX 41 (depicting the condition of the litter box when the Deenes arrived at Peterman's trailer); JX 46 (presenting receipts for hundreds of cat care items gratuitously purchased by the Deenes including cat food and litter).

When Peterman returned home from the hospital, she was upset rather than grateful. She was angry with the Deenes for throwing out her furniture. She claimed that they had destroyed her house, and she believed that they had mistreated her cats. She was also upset because, despite the Deenes' best efforts, the flea problem persisted in her trailer and she had to move into the farm house where the Deenes were living because another flea bite could have caused her infection to return.

Once Peterman moved in with the Deenes, tensions escalated. They bickered over issues like the temperature at which the thermostat was set, the multitude of cats Peterman kept as pets in her trailer, and other day-to-day items. The hostility was palpable, as Peterman refused to eat at the same table as the Deene family. But, it never escalated to anything close to physical violence.

In December 2004, Peterman told the Deenes that she was not going to buy Christmas presents for anyone and that she wanted the family to start looking for other places to live. When the Deenes inquired when Peterman would sign the papers transferring ownership of Lot 1 to them so they could begin construction of their home there and move out of the farm house, Peterman for the first time told them that she had changed her mind and would not be conveying Lot 1 to them after all. Peterman told the Deenes that they could stay in the farm house during the holidays while they searched for a new home but was clear that she wanted them out soon thereafter.

On January 7, 2005, Peterman accelerated the process by filing a Protection from Abuse ("PFA") action in Family Court against her nephew, James. The Commissioner granted the PFA on January 11, stating that James was a trespasser on Peterman's

property and had abused her by arguing with her. The Family Court vacated the PFA on April 25, 2005. In that opinion, the court found there was "no unlawful trespass" and that "under the circumstances [James's] arguing with [his] Aunt d[id] not rise to the level of abuse as defined by the statute."[10] The Family Court did not comment on the terms of the oral contract between the Deenes and Peterman, explaining that it lacked jurisdiction to undertake that inquiry. The court stated:

> [T]he dispute brought before the Commissioner centered on property rights and contract law rather than protection from abuse. The Court finds that Family Court is without jurisdiction to determine what, if any, rights Nephew has in Aunt's property. Likewise, Family Court is without jurisdiction to determine the existence of and the terms of an oral contract between the parties.
> . . . While the Court refrains from making a determination as to the enforceability of an oral contract between the parties, the Court has enough information to determine that there was some type of arrangement between the parties whereby the Nephew moved to Delaware to help Aunt and Aunt allowed Nephew to live on her property. The court finds that alone is enough information to find that there was no unlawful trespass on Aunt's property. Therefore, absent any other find of abuse by the Commissioner, a Protection from Abuse Order should not have been granted.[11]

During the nearly four months that the PFA was in effect, the Deene family was forced to leave the farm house and move to a rental property in Dover, Delaware. They stayed there for 15 months until they located another home to purchase.

Although they are now settled in their new home and have no intention to build a home on Lot 1 or occupy it while Peterman is alive, the Deenes continue to assert their

[10] JX 8 at 4-6.
[11] *Id.* at 4.

right to Lot 1 under the terms of the February 2002 oral agreement. It is to their minds unique and valuable as part of their family's homestead. As such, they filed this action for specific performance of the oral agreement on October 15, 2005.

Regrettably, the procession of the lawsuit was not smooth. Peterman did not retain an attorney when the suit was filed and was delinquent in meeting her obligations to file pleadings and respond to discovery. The court encouraged her to get counsel and afforded her additional time to meet deadlines, delaying trial in the case. Fortunately for Peterman, her current counsel took on her case despite having been contacted at a time when it was no longer equitable or reasonable to brook further delay. Peterman's counsel was thus charged with the task of representing her as best as he could, given pleadings and a discovery record that were shaped before his arrival. He was, however, granted the chance to amend Peterman's answer to frame legal issues fairly raised by her previous factual and legal arguments.[12]

III. Legal Analysis

The principles of contract law against which the Deenes' claim must be evaluated are well settled. 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

[12] The record in the case reflects that Peterman is a very strong-willed person who forcefully expresses her opinions and has a view of matters that is not easily influenced even by undisputed facts (e.g., at trial, Peterman refused to admit that she had an unreasonable number of cats that resulted in unsanitary and unhealthy living conditions for her and them). Her counsel candidly admitted that it was at times a struggle to pursue her defense because she was not ideally cooperative. But Peterman's counsel vigorously represented her interests, making the best that he could of a difficult situation in order to protect her interests.

equities favors specific performance.[13] In that analysis, "[t]he party seeking specific performance has the burden of proving entitlement by clear and convincing evidence."[14] In other words, the court must be certain of the essential elements of the contractual obligation it is asked to enforce.[15] Uncertainty as to subsidiary contract terms, however, will not defeat a request for this equitable remedy.[16]

When a real estate contract to be specifically enforced is oral rather than written, the agreement must also fit within an exception to the statute of frauds to be valid.[17] "One well-rooted exception [to the statute of frauds] is the equitably-derived principle that a partly performed oral contract may be enforced by an order for specific performance upon proof by clear and convincing evidence of actual part performance."[18] Thus, the validity of the Deenes' alleged oral contract with Peterman concerning Lot 1 as well as the Deenes' partial performance thereof must be established by clear and convincing evidence.

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[13] *E.g.*, *Walton v. Beale*, 2006 WL 265489, at *3 (Del. Ch. 2006).
[14] *Peden v. Gray*, 886 A.2d 1278 (table), 2005 WL 2622746, at *3 (Del. 2005); *accord* DONALD J. WOLFE & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 12-3 (2005).
[15] *E.g.*, *Carteret Bancorp, Inc. v. Home Group, Inc.*, 1988 WL 3010, at *9 (Del. Ch. 1988).
[16] *E.g.*, *Lee Builders, Inc. v. Wells*, 92 A.2d 710, 714 (Del. Ch. 1952), *rev'd on other grounds*, 95 A.2d 692 (Del. 1953).
[17] *E.g.*, *Sargent v. Schneller*, 2005 WL 1863382, at *4-5 (Del. Ch. 2005). The Delaware Statute of Frauds provides, in relevant part:

> No action shall be brought to charge any person . . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are properly signed by the person to be charged therewith . . . .

6 *Del. C.* § 2714(a).
[18] *Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988).

The Deenes have met their heavy burden to show by clear and convincing evidence that they formed, and partially performed, an enforceable oral contract with Peterman. At trial, the Deenes testified that they exchanged valuable promises with Peterman during a February 2002 telephone call. At that time, the Deenes say that they covenanted to maintain Peterman's property during her tenancy, and that Peterman promised to deed Lot 1 to them in consideration of their efforts. I find their version of events convincing and credible. Although Peterman now says that she never intended to enter into a contract and instead conceived of this exchange as one of mere gifts, I do not find her story persuasive.

Peterman's assent was evidenced by her course of dealing with the Deenes. She accepted the landscaping and maintenance services James provided knowing that he had refused to provide those services unless she agreed to give his family an acre of her property. Moreover, she worked jointly with the Deenes to subdivide her property, even altering the proposed boundaries of the Lot 1 parcel and demolishing an old trailer to clear the lot. Finally, despite her recent protestations that there was no contract, Peterman admitted in her answer that she had "conceded" to the Deenes' request for property and "agreed" to convey Lot 1 to the Deenes.[19] Further, Peterman stated, "There were verbal agreements, but plaintiffs did not hold up there [sic] end [o]f the bargain."[20]

[19] Defendant's Second Amended Answer (Apr. 30, 2007) at ¶¶ 1, 3. These statements responded to allegations in the Deenes' complaint that "Plaintiffs in 2002 entered into an oral contract with the Defendant to obtain one acre of land in exchange for help around her house" and that "Defendant promised to give the Plaintiffs what has been described as Lot One." Complaint (Oct. 13, 2005) at ¶¶ 1, 3. For the sake of completeness, I reiterate that Peterman was proceeding

The Deenes' subsequent actions and partial performance of their obligations also helps demonstrate the contractual nature of the February 2002 conversation. The Deenes moved their family to a different state many miles from their home. Deborah changed jobs and James moved farther away from this trucking outfit's headquarters. They made their daughter change schools. They rendered over $10,000 in grass cutting and other landscaping services to Peterman on land they never hoped to own, and they spent their own funds on equipment to perform that work, on tests to determine if Lot 1 could support a home, and on other items necessary (such as the costs of demolishing the trailer) to bring the Peterman property into compliance with local regulations in order to subdivide it. This behavior is far too extensive, material, and life-altering to be motivated by the mere prospect of a gratuitous conveyance.

Alternately, to the extent that Peterman now claims that she offered a mere gift (a claim I find unpersuasive), principles of promissory estoppel would render her promise enforceable because of the Deenes extensive reliance and partial performance.[21] To

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pro se at the time she filed her original answer and did not retain counsel until the eve of (an already once postponed) trial. When counsel attempted to temper these responses by amending Peterman's answers, the Deenes objected and the court ordered that the original answers be reinstated to prevent prejudice to the Deenes who had reasonably relied on Peterman's representations in shaping their approach to discovery and developing their litigation strategy since January 2006. *See* Transcript of Scheduling Telephone Conference (Mar. 23, 2007) (discussing amendments and objections); Order (May 1, 2007) (striking amendments and reinstating original answers).

[20] *Id.* at ¶ 28.

[21] *See McKee v. McKee*, 2007 WL 1378349, at *2 (Del. Ch. 2007) ("In order to establish a claim for promissory estoppel, a plaintiff must show by clear and convincing evidence that: (i) a promise was made; (ii) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (iii) the promisee reasonably relied on the promise and

excuse her from conveying Lot 1 to the Deenes would work an injustice against them because they reasonably relied on Peterman's promise and fundamentally reordered their lives to conform with that pledge.

Peterman's belated suggestion the Deenes' "work and services could be explained as [their] way of paying to live on [her] property in lieu of having to pay rent" rather than as partial performance of an oral contract is also without factual support.[22] For starters, it is ridiculous to think that the Deenes sold their house in Maryland, uprooted their daughter, caused Deborah to change jobs, moved farther from James's work, spent large amounts of time and money on the subdivision effort, and devoted many, many hours to yard maintenance for Peterman for the chance to live as tenants on her property and at her sufferance. Further, the joint activity of the Deenes and Peterman in obtaining subdivision approval for Lot 1 — action that only makes sense if Peterman was going to transfer title — would be both unnecessary and illogical if free rent was the only fruit of the bargain for the Deenes.

Contrary to Peterman's assertions, the existence and terms of the February 2002 oral agreement were clear. It was a simple exchange of property for services. The Deenes were to provide grass cutting and landscaping services during Peterman's tenancy in exchange for a one acre parcel of land. The nature of the services provided by the Deenes was well known due to the five years during which those services were

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took action to his detriment; and (iv) such promise is binding because injustice can be avoided only by enforcement of the promise.").

[22] Defendant's Reply Brief at 9-10 (Apr. 6, 2007).

gratuitously provided before 2001. Further, they were confirmed by the lack of objection from Peterman during the three years post-contracting, from 2002 to 2004, that the Deenes rendered those services. Likewise, the contours of the one acre parcel are not disputed as Peterman and the Deenes jointly shaped Lot 1 during the subdivision process. As such, the essential terms of the contract have been established by clear and convincing evidence.

The only term not explicitly stated was the timeframe during which performance must be rendered. Timing provisions, however, are subsidiary terms that will not defeat an oral agreement's enforceability.[23] Thus, courts may imply a reasonable term for performance.[24] More important, on this record, there is clear and convincing evidence that the parties understood that the conveyance of Lot 1 would take place once the subdivision process was complete and that the lawn care services would be rendered for the duration of Peterman's tenancy.[25]

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[23] *See Wells*, 92 A.2d at 714 ("Uncertainty in a subsidiary part of an agreement whose main particulars are sufficiently certain will not prevent a decree of specific performance."); *Hazen v. Miller*, 1991 WL 244240, at *2 (Del. Ch. 1991) ("[T]ime, unlike price and quantity, is not invariably a material element of a contract. In a proper case the Court may infer a reasonable time for performance.").

[24] *Hazen*, 1991 WL 244240, at *2.

[25] No other term has been suggested by the parties, and there is nothing unreasonable about this bargain. Peterman was unable to care for her property herself and wished to be freed of the maintenance of other of her lands during the remaining time she personally owned the relevant property, but would have no reason to contract for anything more. Likewise, having balked at continuing to provide services in 2001 unless Peterman transferred an acre of land to them, the Deenes demonstrated their expectation that Lot 1 would be theirs soon by uprooting their family and moving to Delaware in 2002. Peterman's willingness to allow the Deenes to reside in the farm house until the transfer was made and her acceptance of the services rendered by the Deenes both confirm these understandings.

Delaware's Statute of Frauds does not prevent enforcement of this oral agreement. As an initial matter, this defense was not raised by Peterman in her pleadings and is therefore waived.[26] Moreover, even if this defense were properly raised, the part performance exception to the statute of frauds would save the February 2002 agreement.[27] Thus, the February 2002 oral agreement is valid and enforceable.

Based on the Deenes' performance under the oral agreement from 2002 through 2004 and their testimony that they would have continued to have performed under the agreement had they not been ousted by Peterman, the second element of the specific performance test is also met.[28] The only reason the Deenes have not continued to

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[26] *See* Court of Chancery Rule 8(c) ("[A] party shall set forth affirmatively . . . [a] statute of frauds [defense]. . . and any other matter constituting an avoidance or affirmative defense."); *see also In the Matter of The Real Estate of Havens*, 1981 WL 88264, at *1 (Del. Ch. 1981) ("[S]ince petitioner did not assert that as an affirmative defense in her reply to the counterclaim, reliance on the Statute of Frauds as a defense has been waived.").

[27] Peterman suggests that this exception would not apply because doing yard work and clearing debris were found to be of too little value to support an oral agreement in *Sargent v. Schneller*, 2005 WL 1863382 (Del. Ch. 2005). Her reliance on that case is misplaced. As the *Sargent* court specifically noted, the yard work in that case was not part of the consideration for acquisition of the property. *Id.* at *6 n.42. Further the work itself took only "a few hours on two days" and "did not add measurable value to the Property" or "cause sufficient detriment to Sargent" to give the court confidence that an oral agreement had been reached. *Id.* at *6. In contrast, the Deenes rendered services worth thousands of dollars over a three year period. Furthermore, contrary to the situation in *Sargent* where the party only did yard work on the very land it sought to acquire by specific performance, the Deenes performed work for Peterman on 5 acres of property, 4 of which they had no expectation of acquiring by conveyance. It was their agreement to maintain that additional property during Peterman's tenancy that was the consideration for Peterman to convey to them the much smaller Lot 1. As such, these services provide ample evidence that a contract between the parties actually existed. *See Quillen v. Sayers*, 482 A.2d 744, 747-48 (Del. 1984) (recognizing that payment in kind through personal services in lieu of cash if accepted may constitute payments pursuant to an oral agreement not barred by the statute of frauds).

[28] *See Safe Harbor Fishing Club v. Safe Harbor Realty Co.*, 107 A.2d 635, 638 (Del. Ch. 1953) ("Specific performance is a matter of grace and not of right and rests in the sound discretion of the court. That power will not be exercised in favor of a complainant who fails to show either

perform under the agreement is Peterman's demand that they stay off her property and her filing of a PFA against James.

As noted previously, the Deenes experienced great inconvenience and expense because of Peterman's material breach. They had moved their family to a new state, had transferred their young daughter to a new school, had expended time and funds to change the subdivision boundaries to form Lot 1, and had performed several years of lawn care and other landscaping services for Peterman. Further, after Peterman informed them that she no longer intended to perform, they had to expeditiously locate a new residence and move their family to another new home, while simultaneously defending against the PFA action Peterman filed against James. Ultimately, of course, they had to file this lawsuit to gain the benefit of their February 2002 bargain. As important, Peterman's hostility toward the Deenes and her prior filing of a PFA have made it impracticable for the Deenes to maintain Peterman's land, as they cannot enter the land without her permission, and as Peterman's feelings about them suggest a genuine danger of future conflict if such maintenance services were to resume. As a result of these circumstances, it is equitable not to require any further performance by the Deenes of grass cutting or other yard work for Peterman.[29]

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substantial performance on his part or that he offered to discharge the duty imposed upon him by his contract.").

[29] In fact, Peterman did not raise a claim for continued performance by the Deenes in her pretrial briefs or at the trial itself. Perhaps the rationale for that decision is that such a claim would have been unlikely to succeed given Peterman's material breach of the agreement and other conduct which together excuse the Deenes from future performance. As important, the equities of this case weigh heavily against requiring the Deenes to render future performance without receiving additional compensation because they have already suffered damages because of Peterman's

The final inquiry is whether the balance of the equities favors a grant of specific performance. This balancing "reflect[s] the traditional concern of a court of equity that its special processes [in fashioning equitable remedies] not be used in a way that unjustifiably increases human suffering."[30] Although it can be the case that requiring a defendant to perform on a contract would present a greater hardship to the defendant than paying money damages or some alternate remedy for a contractual breach, that is not the case here. Peterman's primary asset is the 21-acre property she owns. She is retired, disabled, and $23,000 in debt.[31] At trial, Peterman said that if she were to specifically perform, she would have to move or would become homeless. This is far-fetched. Peterman's debts were not caused by the Deenes and will not be exacerbated by a transfer of Lot 1. Even if, as Peterman says, she would have to sell a portion of her property to pay her debts, conveying Lot 1 would still leave her with many acres to live on or to sell. Notably, Peterman's dire predictions appear more likely to become realities if this court were to order Peterman to satisfy a money judgment. Whether calculated by valuing the Lot 1 parcel or by accounting for the costs the Deenes incurred in performing on the February 2002 agreement, monetary damages would be substantial and would require liquidation of at least a portion of Peterman's real property.

As important, given the unique nature of the land at issue as a part of James Deene's family homestead, it is unlikely that he and his wife would be fully compensated

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refusal to allow them to take timely possession of Lot 1 and because of the attorneys' fees they have expended to litigate this case and the PFA proceeding.

[30] *Bernard Personnel Consultants, Inc. v. Mazarella*, 1990 WL 124969, at *3 (Del. Ch. 1990).

[31] Tr. at 187, 215.

for his aunt's breach through even the transfer of a large number of American dollars.[32] Further, a monetary award would leave the Deenes chasing Peterman and having to incur even more costs to collect on a money judgment, with a substantial prospect of never being made whole. Those reasons, combined with the realities that Lot 1 is already subdivided and is distinct from the parcel on which Peterman actually resides, make a conveyance of Lot 1 the most equitable remedy available.

IV. Conclusion

For the foregoing reasons, judgment will be entered for the Deenes requiring Peterman to convey to them Lot 1 in fee simple. The parties shall bear their own costs. Counsel shall confer and submit a form of final order consistent with this opinion within 10 days.

[32] In this inquiry, it is of no moment that the Deenes have indicated that they will not build a home on Lot 1 while Peterman is alive because of the unfortunate degeneration in their relationship with her. Tr. at 82. They have expressed a preference for the property because of its sentimental value and have denounced any intent to acquire and flip the property for cash. Tr. at 111-12. That representation will not prevent the Deenes from selling the property should they decide to do so after title is transferred to them from Peterman.