

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

JEFFREY GLASS, <i>et al.</i> ,		:	September Term 2018
		:	
	Plaintiffs,	:	
		:	
v.		:	No. 3763
		:	
KENT GUSHNER, <i>et al.</i> ,		:	Commerce Program
	Defendants.	:	
		:	
		:	<b>99 EDA 2025</b>
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RALPH YAFFE, <i>et al.</i> ,		:	December Term 2017
		:	
	Plaintiffs,	:	
		:	
v.		:	No. 3238
		:	
BOYDS GENERAL PARTNER, INC., <i>et. al.</i> ,		:	
	Defendants.	:	<b>100 EDA 2025</b>
		:	

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CYNTHIA YAFFE, <i>et al.</i> ,		:	August Term 2018
		:	
	Plaintiffs,	:	
		:	
v.		:	No. 51
		:	
KENT GUSHNER, <i>et al.</i> ,		:	Control Nos. 23113652/ 24023639/24023674
	Defendants.	:	
		:	
		:	<b>101 EDA 2025</b>
		:	

**Fletman, J.**

**March 3, 2025**

**OPINION**

These appeals arise from (1) this Court's order dated and docketed August 29, 2024, granting in part and denying in part a Motion to Enforce the Pennsylvania Mediation Privilege and (2) an order and opinion dated and docketed on December 11, 2024, granting a motion to

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enforce settlement and denying as moot motions for summary judgment that were pending at the time the order and opinion were docketed.<sup>1</sup>

These consolidated cases involve Boyds, a landmark retail business based in Center City Philadelphia. This family-owned enterprise is the subject of three cases before this Court concerning the leadership and control of the business and related real estate.

Cynthia Yaffe and Ralph Yaffe (“the Yaffes”) filed the motion to enforce settlement, claiming that a settlement agreement negotiated by the parties during mediation proceedings is enforceable. Jeffrey Glass and Lisa Glass (“the Glasses”) joined in the Yaffes’ motion. Defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust and Boyds LP (collectively, “the Boyds Defendants”) opposed the motion to enforce, claiming that the settlement agreement lacks all essential terms and therefore is unenforceable.

The Boyds Defendants also filed a related motion to enforce the Pennsylvania Mediation Privilege, seeking a court ruling that all documents and communications that were part of the mediation process that led to the settlement are confidential, inadmissible for any purpose, and absolutely privileged in this litigation. The Court granted the motion and applied the mediation privilege to all mediation documents and communications except for the settlement agreement the Yaffes sought to enforce. The Court also granted the motion to enforce the settlement, denied the pending summary judgment motions as moot, and marked the case settled, discontinued and ended. The Court requests that the Superior Court affirm its decisions.

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<sup>1</sup> This opinion supplants this Court’s order with footnote dated August 29, 2024, and the opinion dated December 11, 2024, so that the orders appealed maybe addressed in one opinion.

## BACKGROUND

Boyd's is a retail clothing business that the Gushner family has owned and operated for more than 80 years. (*Glass v. Gushner, et al.*, Case No. 1809-3763, Docket ("Dkt.") at 9-28-18, Complaint ¶ 14 and at 7-15-19, Answer ¶ 14; *Yaffe v. Boyds General Partner, Inc. et al.*, Case No. 1712-3238, Dkt. at 3-14-18, Amended Complaint ¶ 11 and at 10-8-18, Answer ¶ 11). Siblings Kent Gushner, Lisa Glass and Cynthia Yaffe, Ms. Glass's spouse, Jeffrey Glass, and Ms. Yaffe's spouse, Ralph Yaffe, are parties in the three related and consolidated cases on appeal: *Yaffe v. Boyds General Partner, Inc., et al.*, Case No. 1712-3238, *Yaffe v. Gushner, et al.*, Case No. 1808-51, and *Glass, et al. v. Gushner, et al.*, Case No. 1809-3763. (*Glass v. Gushner*, Docket ("Dkt.") at 6-16-20, Consolidation Order.)

On February 28, 2023, the Court appointed the Honorable John W. Herron (Retired) as Judge *Pro Tempore* to mediate the consolidated cases. (*Glass v. Gushner*, Dkt. at 2-28-23, Order.) On April 20 and 21, 2023, Jeff and Lisa Glass and their counsel and the Boyds Defendants and their counsel executed a document titled, Boyds Mediation (Privileged) Term Sheet (the "Term Sheet"). (*Id.*, Dkt. at 2-19-24, Praecipe to Attach Exhibits Under Seal, Exhibit 13 Term Sheet).

On April 24, 2023, the Yaffes were presented with a settlement offer, the terms of which were outlined in the Term Sheet already signed by the Glasses and the Boyds Defendants. (*Id.*, Dkt. at 11-14-24, Motion to Enforce Settlement ¶ 35 and at 12-15-23 Response to Motion to Enforce Settlement, ¶ 35.) The Term Sheet required the Yaffes to sign it on or before April 28, 2023. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet, ¶ 5.) The Term Sheet expressly gave Kent Gushner the right to cancel it without any liability or exposure if the Yaffes did not join and

execute the agreement or refused the same terms and conditions on or before April 28, 2023. (*Id.* at ¶ 5.)

On April 27, 2023, the Yaffes signed the Term Sheet with the notation, “Subject to the execution of settlement and related documentation satisfactory to the Yaffes,” and transmitted it to the other parties the same day. (*Id.* at p. 4, Yaffes’ signature line.)

The parties in the Term Sheet agreed to:

- Settle, discontinue, and end all pending litigation among the parties “upon signing a Final Settlement Agreement including the following terms and conditions and additional terms as the parties and their counsel deem appropriate to end and settle the litigation.” (*Id.* at Introductory Paragraph.)
- Payment of a specific sum of money by Kent Gushner and the Boyds interests to the Yaffes and Glasses for their respective ownership interests in Boyds. (*Id.* at ¶ 1.)
- The creation of two escrow funds with specific dollar amounts to be funded at closing for the benefit of the Boyds Defendants, the Glasses and the Yaffes to promote good behavior and safeguard the reputation of Boyds. (*Id.* at ¶¶ 2 and 3.)
- Distribution of the assets of the estate and trust of Gerald Gushner in accordance with a Family Settlement Agreement to be submitted to Orphans Court for approval. (*Id.* at ¶ 4.)
- Final Approval by the bank (which already had preliminarily approved the terms and conditions in the Term Sheet) of the final settlement agreement before execution in accordance with the loan agreement. (*Id.* at ¶ 6.)
- Designation of Judge Herron to draft the final agreement with drafting disputes to be resolved by Judge Herron. (*Id.* at ¶ 7.)

On November 14, 2023, the Yaffes filed a Motion to Enforce Settlement Agreement and for a Limited Stay of Proceedings (the “Settlement Motion”). (*Id.*, Dkt. at 11-14-23, Settlement Motion.) On December 14, 2023, the Glasses joined the Yaffes’ motion. (*Glass v. Gushner*, Dkt. at 12-14-23, Joinder Motion.) On December 14, 2023, the Boyds Defendants filed their response

in opposition to the Settlement Motion. (*Id.* at 12-15-23, Response.) On June 12, 2024, the Court issued a rule on the Boyds Defendants to show cause why the relief the Yaffes and the Glasses sought should not be granted and scheduled the matter for an evidentiary hearing on July 2, 2024. (*Id.* at 6-12-24, Order.)

On June 21, 2024, the Boyds Defendants filed a Motion to Enforce the Mediation Privilege (“Mediation Privilege Motion”), seeking to exclude from consideration at the upcoming hearing all documents and communications that were part of the mediation process, including the Term Sheet. (*Id.* at 6-21-24, Motion.) The Boyds Defendants relied upon the Mediation Privilege codified at 42 PA. STAT. and CONS. STAT. ANN. § 5949 (West, Westlaw through 2024 Act 13) and a Confidentiality and Mediation Agreement signed by the parties on July 27, 2021.

On August 29, 2024, the Court granted the Mediation Privilege Motion in part and denied it in part, holding that the Pennsylvania mediation privilege applied to all mediation documents and communications except for the Term Sheet. (*Id.* at 8-30-24, Order). The Court held that it could consider the Term Sheet itself to determine if it is a valid and enforceable contract. (*Id.* at fn. 1.)

Due to scheduling conflicts, the hearing on the Settlement Motion was not held until September 5, 2024. (*Id.* at 6-12-24 and 6-28-24, Orders.) On the day of the hearing, after the parties agreed on the record that the Term Sheet was unambiguous and that there were no disputed issues of fact, the Court heard oral argument on whether the Term Sheet is enforceable. (Notes of Testimony (“N.T.”) 9/7/24 (sic)<sup>2</sup> 4:22-14:13, 17:20-18:11, 42:15-19, 43:19-44:2.)

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<sup>2</sup> A scrivener error occurred when the transcript was prepared. The transcript identifies the date of the hearing/argument as “September 7, 2024,” a Saturday, and not the actual date of September 5, 2024.

On December 11, 2024, the Court granted the motion to enforce the settlement agreement, denied the motion for limited stay and denied as moot the summary judgment motion filed by defendants Kent Gushner, Boyds Holding Company, Inc., Boyds General Partner, Inc., KJR General Partner, Inc., KJR Holdings, L.P., Kent Gushner as Trustee on behalf of the Kent Gushner 2004 Irrevocable Trust and the summary judgment motion of Boyds LP. (*Yaffe v. Boyds General Partner, Inc., et al.*, Case No. 1712-3238, *Yaffe v. Gushner, et al.*, Case No. 1808-51, and *Glass, et al. v. Gushner, et al.*, Case No. 1809-3763 Dkts.<sup>3</sup> at 12-11-24, Order and Opinion.) Additionally, the Court ordered that the cases be marked settled, discontinued and ended. (*Id.*)

On January 7, 2025, the Boyds Defendants timely appealed the order dated December 11, 2024. (Dkts. at 1-7-25, Notice of Appeal.) Additionally, the Boyds Defendants appealed the order dated August 29, 2024, which granted in part and denied in part the Mediation Privilege Motion. (*Id.*)

On January 8, 2025, the Court ordered the Boyds Defendants to file a Statement of Errors Complained of on Appeal pursuant to Rule 1925 (b) of the Pennsylvania Rules of Appellate Procedure. (Dkts. at 1-8-25, Order.) On January 24, 2025, the Boyds Defendants complied. (Dkts. at 1-24-25, Statement of Errors.)

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<sup>3</sup> “Dkts.” refers to the three individual dockets of the consolidated cases because the December 11, 2024, Order and Opinion, notice of appeal, 1925(b) order and the 1925(b) statement were separately filed on the individual dockets of each of the three cases.

## DISCUSSION

### **A. The August 29, 2024, Order**

#### **1. General principles of law**

The Pennsylvania mediation privilege is codified and the statute states in part:

(a) General Rule.

Except as provided in subsection (b), all mediation communications and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding . . . .

42 PA. STAT. and CONS. STAT. ANN. § 5949 (West, Westlaw through 2024 Act 13.)

The only exceptions are set forth in § 5949(b), one of which provides, “A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.” *Id.* at § 5949 (b) (1).

The parties signed a Confidentiality and Mediation Agreement (the “Mediation Agreement”) on July 27, 2021, which the Boyds Defendants rely upon to argue that the Term Sheet is inadmissible to prove a settlement in this case. ((Dkt. *Glass v. Gushner*, at 8/8/24, Boyds Defendants’ Reply Exhibit 1.) The Mediation Agreement applies only to the mediation process and statements made during the process. It provides:

In order to promote communication among the parties, counsel and the mediator and to facilitate settlement of the dispute, each of the undersigned agrees that the entire mediation process is confidential and absolutely privileged as to any pending or future litigation case, including but not limited to those cases pending presently in the Philadelphia County Court of Common Please (sic) and/or the Philadelphia Orphans’ Court.

All statements made during the course of the mediation are privileged settlement discussions, and are made without prejudice to any party's legal position, and are inadmissible for any purpose in any legal proceeding. These offers, promises, conduct and statements (a) will not be disclosed to third parties except other counsel of record (who shall be bound these terms) and persons associated with the participants in the process, and (b) are absolutely privileged and shall be inadmissible for any purposes, including impeachment, under inter alia Rule 408 of the Federal Rules of Evidence and the Pennsylvania Rules of Evidence, and any applicable federal or state statute, rule or common law provisions, including but not limited to 42 Pa. C. S. A. § 5949.

(Dkt. *Glass v. Gushner*, at 6-21-24, Exhibit B (1).)

**2. Neither the Mediation Privilege nor the Mediation Agreement apply to the Term Sheet.**

The Boyds Defendants argue that the Court erred when it declined to apply the mediation privilege or protection of the Mediation Agreement to the Term Sheet.

Settlement agreements, even those reached through mediation, can be binding and enforceable if all the elements of a valid contract exist and a meeting of the minds on the terms and subject matter exists. *See, Field v. Golden Triangle Broadcasting, Inc.*, 305 A.2d 689 (Pa. 1973) (a letter agreement was enforceable, even though it was “subject to agreement on a formal contract,” because the parties agreed to the essential terms that were set forth in the letter agreement); *see also, Toppo v. Passage Bio, Inc.*, 285 A.3d 672 (Pa. Super. 2022) (the fact that the agreement was informal instead of a signed release did not render the agreement unenforceable because the essential terms were stated in an email).

Pennsylvania's codified mediation privilege contemplates introducing a document in a proceeding to enforce the settlement expressed in the document, unless the document by its terms states it is unenforceable or not intended to be legally binding. *See*, 42 PA. STAT. and CONS. STAT. ANN. § 5949 (b) (1). (West, Westlaw through 2024 Act 13.)



Nowhere does the Term Sheet state that it is either unenforceable or not intended to be legally binding. Therefore, nothing prevented the Court from considering the Term Sheet to determine if it was a valid and enforceable contract.

## **B. The December 11, 2024, Order and Opinion**

### **1. General principles of law**

There is a strong judicial policy in favor of voluntarily settling lawsuits. *Step Plan Services, Inc. v. Koresko*, 12 A.3d 401, 408–09 (Pa. Super. 2010).

Settlement agreements are enforced according to the principles of contract law. *Id.* Interpretation of a contract is a question of law. *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740, 744 (Pa. Super. 2000). When the language of a contract is unambiguous, such as the Term Sheet in this case, the court is constrained to interpret its meaning based solely on the contents within the four corners of the writing. *Hahalyak v. A. Frost, Inc.*, 664 A.2d 545, 549 (Pa. Super. 1995).

### **2. The Term Sheet is an enforceable contract because there was an offer, acceptance and consideration**

To form an enforceable contract, there must be an offer, acceptance, and consideration or mutual meetings of the minds. *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995), *allocatur denied*, 666 A.2d 1056 (Pa. 1995). The Term Sheet in this case satisfies all these essential elements.

The Boyds Defendants and the Glasses made an offer to the Yaffes that was specific and definite. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet at ¶¶ 1, 3.) The Boyds Defendants agreed to buy the Glasses' and the Yaffes' ownership interests in Boyds for a specific price with specific payment terms. (*Id.*) The Yaffes accepted the offer before it expired, which is a manifestation of assent to the terms of the offer made by the Boyds Defendants and the Glasses.

(*Id.*, p. 4 at signature page.) Finally, the Term Sheet is supported by adequate consideration as it provides for specific benefits to the Yaffes and Glasses for their respective interests in Boyds.

(*Id.* at ¶¶ 1, 3.) *See, Weavertown Transp. Leasing, Inc. v. Moran*, 834 A.2d 1169, 1172 (Pa.Super.2003)(consideration consists of a benefit to the promisor or a detriment to the promisee.)

**3. The Term Sheet is an enforceable contract even though a final agreement and additional terms were contemplated**

**a. Contemplation of a more formal final agreement does not negate enforceability of the Term Sheet**

The Boyds Defendants argue that the Court should deny the Settlement Motion because the Term Sheet contemplated the signing of a “Final Settlement Agreement.” (*Glass v. Gushner*, Dkt. at 12-15-23, Response to Motion, Memorandum of Law (“MOL”) at pp. 37-40.) In support of this argument, the Boyds Defendants rely upon a provision of the Term Sheet referring to a “Final Settlement Agreement” that includes the Term Sheet provisions and any additional terms to which the parties may agree. It provides:

Jeff and Lisa Glass and Kent Gushner and Boyds interests hereby agree to settle, discontinue, and end all pending litigation and disputes of any kind whatsoever **upon signing a Final Settlement Agreement** including the following terms and conditions and **additional terms as the parties and their counsel deem appropriate to end and settle the litigation.**

(N.T. 21:6-14; *Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet, Introductory Paragraph) (emphasis added).

The fact that the parties intended to formalize their agreement at some later date does not render the Term Sheet unenforceable. As long as the Term Sheet contained all the essential terms, which it did, and the parties agreed to those terms, which they did, the agreement is enforceable. *See, e.g., Field v. Triangle Broadcasting, Inc.*, 305 A.2d 689 (Pa. 1973) (a letter

agreement was enforceable, even though it was “subject to agreement on a formal contract,” because the parties agreed to the essential terms that were set forth in the letter agreement.) *See also, Bredt v. Bredt*, 326 A. 2d 446 (Pa. Super. 1974)(the fact the parties intended to formalize their agreement at some later date or omitted some material terms and conditions is not controlling as long as the parties agreed to all the essential terms and intended the contract to bind them); and *Toppy v. Passage Bio, Inc.*, 285 A.3d 672 (Pa. Super. 2022)(the fact that the agreement was informal instead of a signed release did not render the agreement unenforceable because the essential terms were stated in an email).

In this case, the Term Sheet is enforceable even though it contemplated a more formal agreement because, as discussed below, it contained all the essential terms to make it binding on the parties.

**b. The Term Sheet contains all the essential terms necessary to a binding contract**

The Boyd Defendants argue that the Term Sheet lacks essential terms, such as a non-disparagement clause, bank consents, escrow agreements, indemnification clauses, and the termination of a related pending Orphans Court case. (N.T. 19:3-20:24.) The terms the Boyds Defendants have identified as missing, however, are not essential. Essential terms of a contract include time or manner of performance and price or consideration. *See Lackner v. Glosser*, 892 A.2d 21, 31 (Pa. Super. 2006)(“[w]here ... there is no agreement or even a discussion as to *any* of the essential terms of an alleged bargain, such as time or manner of performance, or price or consideration, the ‘agreement’ is too indefinite for a party to *reasonably* believe that it could be enforceable in an action at law”); *see also, Lombardo v. Gasparini Excavating Co.*, 123 A.2d 663, 666 (Pa. 1956) (“The essential terms of a contract ... include the time and manner of performance and price or other consideration.”)

Not every term of a contract must be stated in complete detail. *Snaith v. Snaith*, 422 A.2d 1379, 1382 (Pa. Super. 1980). If parties agree on the essential terms, the contract is enforceable even though recorded only in an informal memorandum that requires future approval or negotiations of nonessential terms. *See, Yellow Run Coal Co. v. Alma-Elly-Yv Mines, Ltd.*, 426 A.2d 1152, 1155 (Pa. Super. 1981).

For example, in *Field*, 305 A.2d 689, the Pennsylvania Supreme Court held that a letter agreement was an enforceable contract even though the letter did not include a closing date, a date for required approval from the Federal Communications Commission, a provision for warranting and furnishing financial statements, mention of covenants pertaining to the operation of the business pending the closing of the transaction, an inventory of the assets being sold, or a provision discussing an assumption of contract obligations. *Id.* at 694 n. 4, 5 and 6. Despite these missing terms, the Court enforced the letter agreement because the parties had agreed to the essential terms, the assets to be purchased and the obligations to be undertaken. *Id.* at 694.

Similarly, in *Toppy*, 285 A.3d 672, the Superior Court enforced an email in an employment dispute as a contract even though the employer added two additional terms, identified in the email as “tweaks,” to the settlement provisions. *Id.* at 684-685. The Court held that the email contained the essential terms of the parties’ agreement: the quantity of stock to be issued, and the amount of severance and bonus to be paid. *Id.*

The Term Sheet in this case includes the price to be paid to the Glasses for their ownership interest in Boyds. (*Glass v. Gushner*, Dkt. at 2-19-24, Term Sheet at ¶ 1.) It states how and when payments are to be made. The Term Sheet also states that the terms and conditions for the Glasses apply to the Yaffes with one modification that the payments would be made in accordance with the parties’ respective ownership interests in Boyds. (*Id.* at ¶ 3).

The Term Sheet, as instructed by *Field* and *Toppy*, is an enforceable contract.

#### **4. The parties manifested an intent to be bound by the terms in the Term Sheet**

The fundamental rule in contract interpretation is to ascertain the intent of the contracting parties. *Lesko v. Frankford Hospital-Bucks Cnty.*, 15 A.3d 337, 342 (Pa. 2011). In cases concerning a written contract, the intent of the parties is manifested by the writing itself. *Id.* In determining the intent of the contracting parties, all provisions in the agreement will be construed together and each will be given effect. *Id.* This Court will not interpret one provision of a contract in a manner that results in another portion being annulled. *Id.* (citing *LJL Transportation, Inc. v. Pilot Air Freight Corporation*, 962 A.2d 639, 647–48 (Pa. 2009)). An act or event designated in a contract will not be construed as a condition unless that clearly appears to be the intention of the parties. *Id.* (citing *Shovel Transfer and Storage, Inc. v. Pennsylvania Liquor Control Board*, 739 A.2d 133, 139 (Pa. 1999) (citations omitted)).

In this case, the parties explicitly agreed at the start of the Settlement Motion hearing that the Term Sheet is unambiguous. (N.T. 5:1-5; 5:23-6:2; 7:21-23, 42:16-18). There is no language contained within its four corners stating that the Term Sheet was not binding on the parties while further negotiations occurred or that it would be binding only if additional terms were added and a formal agreement signed. *Cf.*, *GMH Assocs., Inc. v. The Prudential Realty Group*, 752 A.2d 889,894 (Pa. Super. 2000) (agreement not binding because it stated, “IN NO EVENT WILL THIS LETTER BE CONSTRUED AS AN ENFORCEABLE CONTRACT. . .”); *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995)(agreement not binding because it stated that the “proposal is not accepted until the Board of County Commissioners takes official action on the lease”); *Philmar Mid-Atlantic, Inc. v. York St. Assocs. II*, 566 A.2d 1253, 1255 (Pa.

Super. 1989)(agreement unenforceable when it stated that it was non-binding and subject to the approval of a mutually satisfactory lease.)

In this case, the parties knew how to create a condition for enforceability of the Term Sheet when they intended to do so. Paragraph 5 of the Term Sheet expressly creates such a condition and states:

Kent expressly reserves the right to cancel this Term Sheet with the Glasses without any liability or exposure, if the Yaffes do not join and execute this agreement or refuse the same terms and conditions on or before April 28.

(*Glass v. Gushner*, Dkt. 2-19-24, Term Sheet, ¶ 5). Since the Yaffes accepted the Term Sheet one day before the expiration of the offer, this condition was satisfied. (*Id.*)

The Yaffes also placed a condition on the enforceability of the Term Sheet when they noted next to their signatures, “Subject to the execution of settlement and related documentation satisfactory to the Yaffes.” (*Id.*, p. 4 at Signature Line.) The Yaffes, however, abandoned that condition when they filed this Motion. Beyond these two instances, the parties placed no other conditions on the enforceability of the Term Sheet and it is therefore enforceable.

**5. The Court did not err in denying the summary judgment motions as moot.**

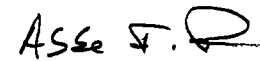
The Boyds Defendants filed motions for summary judgment in *Glass v. Gushner* (*Id.*, Dkt. at 2-15, 2024, Motions). Since the Court held that the Term Sheet is an enforceable settlement agreement, the case is over, and the pending summary judgment motions were properly denied as moot.

**CONCLUSION**

For all the foregoing reasons, the Court requests that the Superior Court affirm the order dated August 29, 2024, and the order and opinion dated December 11, 2024.

**Date: March 3, 2025**

**BY THE COURT:**



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**ABBE F. FLETMAN, J.**