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

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SCUDERI REAL ESTATE GROUP, LLC, : OCTOBER TERM 2021  
and ZOUBEK PROPERTIES, LLC, :  
Plaintiffs, : No. 02429  
v. :  
: COMMERCE PROGRAM  
EARL V. ROSS, JR., EARL V. ROSS, III :  
IN TRUST FOR RONALD C. ROSS, :  
EARL V. ROSS, III, :  
C&K ENTERPRISES CO., LLC, :  
and KEVIN DUGGAN :  
Defendants. :

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DOCKETED  
FEB 10 2025  
R. POSTELL  
COMMERCE PROGRAM

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of February 2025, as set forth in the accompanying Findings of Fact and Conclusions of Law entered today, it is **ORDERED** that:

1. Judgment is entered in favor of:
  - a. Plaintiffs Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against defendants Earl V. Ross, III, in trust for Ronald C. Ross, and Earl V. Ross, III, for breach of contract;
  - b. Plaintiffs Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against defendant Kevin Duggan for abuse of process;
  - c. Plaintiffs Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against defendants Kevin Duggan and C&K Enterprises Co., LLC for tortious interference with contract; and
  - d. Plaintiffs Scuderi Real Estate Group, LLC, and Zoubek Properties, LLC on the declaration that C&K Enterprises Co., LLC, is not a bona fide purchaser

WSFFP-Scuderi Real Estate Group Llc Etal Vs C



21100242900205

of the subject property located at 4724-28 Parkside Avenue (the "Parkside Property").

2. The Court grants specific performance of the Agreement of Sale dated August 17, 2021, among Scott Scuderi and Brian Zoubek, Earl V. Ross, III, in trust for Ronald C. Ross, and Earl V. Ross, III, for the contracted amount of \$525,000 (P-48). The deed dated October 25, 2021, from Earl V. Ross, III, in trust for Ronald C. Ross and Earl V. Ross, III, to C&K Enterprises Co., LLC (P-15), is stricken and a closing on the Parkside Property, conveying it to Scuderi Real Estate Group, LLC, and Zoubek Properties, LLC, shall take place within 45 days of the docketing of this order.

**BY THE COURT:**

*Abbe F. Fletman*

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**ABBE F. FLETMAN, J.**

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

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SCUDERI REAL ESTATE GROUP, LLC,	:	OCTOBER TERM 2021
and ZOUBEK PROPERTIES, LLC,	:	
Plaintiffs,	:	No. 02429
v.	:	
	:	COMMERCE PROGRAM
EARL V. ROSS, JR., EARL V. ROSS, III	:	
IN TRUST FOR RONALD C. ROSS,	:	
EARL V. ROSS, III,	:	
C&K ENTERPRISES CO., LLC,	:	
and KEVIN DUGGAN	:	
Defendants.	:	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**February 7, 2025**

Plaintiffs Scuderi Real Estate Group, LLC (“Scuderi”), and Zoubek Properties, LLC (“Zoubek”), brought this action against defendants Earl V. Ross, Jr. (“Ross Jr.”), Earl V. Ross, III, in trust for Ronald C. Ross (“Ross III in trust for Ronald Ross”), Earl V. Ross, III (“Ross III”), C&K Enterprises Co., LLC (“C&K”), and Kevin Duggan. Scuderi and Zoubek seek specific performance of an agreement to buy a property located at 4724-28 Parkside Avenue (the “Parkside Property” or the “Property”) for the originally contracted price or lost profits, including interest, for breach of contract, abuse of process, tortious interference with contract, declaratory judgment, fraud, and civil conspiracy.<sup>1</sup>

For the reasons discussed below, the Court finds for: 1) Scuderi and Zoubek and against Ross III and Ross III in trust for Ronald Ross for breach of contract; 2) Scuderi and Zoubek and

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<sup>1</sup> The Court granted a nonsuit on the civil conspiracy claim after the close of the plaintiffs’ case. 2/23/24 Trial Tr. at 147:15-25. The Court also granted a nonsuit on the fraud claim, but only as to Mr. Duggan and C&K. *Id.*

against Mr. Duggan for abuse of process; 3) Scuderi and Zoubek and against C&K and Mr. Duggan for the tortious interference with contract; and 4) Scuderi and Zoubek on the declaratory judgment claim that C&K was not a bona fide purchaser of the Property.<sup>2</sup> The Court grants specific performance of the agreement of sale among Scuderi, Zoubek, Ross III in trust for Ronald C. Ross, and Ross III for the contracted amount of \$525,000. The deed among C&K and the Rosses is stricken and the closing conveying the Property to Scuderi and Zoubek shall take place within 45 days of the entry of the judgment.

### **FINDINGS OF FACT**

#### **A. The Parties**

1. Plaintiff Scuderi is a limited liability company owned by Scott Scuderi. 2/20/24 Trial Transcript ("Trial Tr.") at 37:7-8 (Scuderi testimony).
2. Plaintiff Zoubek is a limited liability company owned by Brian Zoubek. *Id.* at 37:6-7.
3. Defendant Ross Jr. is the father of five children, including Ross III and Ronald Ross. 2/21/24 Trial Tr. at 74:3-15 (Ross Jr. testimony).
4. Defendant Mr. Duggan is a longtime friend and business associate of Ross Jr. 2/20/24 Trial Tr. at 216:2-24 (Duggan testimony); Ex. C&K-25 (Right of First Refusal (Plaintiff0062)).

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<sup>2</sup> Scuderi and Zoubek pursued their fraud claim in the alternative to their claims of breach of contract, for specific performance and for a declaration that C&K was not a bona fide purchaser of the Property. Because the Court finds for Scuderi and Zoubek on the breach of contract claim, is awarding specific performance and is entering a declaratory judgment that C&K was not a bona fide purchaser of the Property, it need not address the fraud claim. Plaintiffs' Proposed Findings of Fact and Conclusions of Law VI, Dkt. 6/13/24.

5. Mr. Duggan and Cormac McAleer own defendant C&K, which is a limited liability company that invests in, fixes, and sells properties. 2/20/24 Trial Tr. at 145:20-146:1 (Duggan testimony).

6. Ross Jr. owns a snow removal company and a construction business. 2/21/24 Trial Tr. at 74:3-15 (Ross Jr. testimony).

7. Over a period of 40 years, Ross Jr. bought more than 50 properties and sold all but five of them, including the Parkside Property. *Id.* at 93:1-10.

8. The Parkside Property is located at 4724-28 Parkside Ave, Philadelphia, PA 19131. Ex. P-28 (Parkside Deed (Tiana D. Coleman, Trustee for Ronald C. Ross and Ross III to Ross III in Trust for Ronald C. Ross and Ross III) Dated 5-22-12 ).

9. Ross Jr. frequently titles companies and properties in his children's names. 2/21/24 Trial Tr. at 74:3-15 (Ross Jr. testimony).

10. The deed to the Parkside Property was in the names of Ross III in trust for Ronald Ross and Ross III. Ex. P-15 (Parkside Deed (Ross to C&K) Dated 10-25-21 CK181-189); 2/20/24 Trial Tr. at 28:23-29:3 (Scuderi testimony); 2/21/24 Trial Tr. at 103:20-23 (Ross Jr. testimony).

**B. Earl V. Ross, Jr., and Kevin Duggan**

11. Mr. Duggan owns a construction company called Tir-Eoghain Construction. 2/20/24 Trial Tr. at 146:2-6 (Duggan testimony).

12. Mr. Duggan and Ross Jr. started working on construction projects together in 2007. *Id.* at 216:2-24.

13. In 2007, Mr. Duggan started using the Parkside Property, mostly for storage. *Id.* at 148:22-149:5.

14. There was no written lease, and Mr. Duggan paid no rent on the Property until 2021. *Id.* at 149:8-12.

**C. Earl V. Ross, Jr., Scott Scuderi, and Brian Zoubek**

15. Mr. Scuderi became acquainted with Ross Jr. when he was providing concrete for the foundation of one of Mr. Scuderi's real estate projects. 2/20/24 Trial Tr. at 20:23-21:7 (Scuderi testimony).

16. Ross Jr. was hoping to partner with Mr. Scuderi to develop the Parkside Property into a multimillion-dollar project, but Mr. Scuderi was more interested in buying it from Ross Jr. to develop it himself. *Id.* at 20:23-21:7, 21:20-22:22.

17. The mixed-use development Mr. Scuderi envisioned for the Parkside Property was bigger in scope than any project he has previously been involved in, so he contacted his friend and colleague, Mr. Zoubek, to partner with him. *Id.* at 22:23-23:11.

18. Together, Mr. Scuderi and Mr. Zoubek intended to develop the Property into 150 or more residential units with more than 50 parking spaces. *Id.* at 24:7-25:2.

19. They decided initially to lease the Property to Mr. Duggan or another tenant for one to two years while development was underway. *Id.* at 23:18-24:6, 30:20-31:8.

**D. The Parkside Property and Scuderi and Zoubek's Agreement of Sale**

20. Before Scuderi and Zoubek entered into an agreement to buy the Property, there were multiple offers from other buyers. *See* 2/20/24 Trial Tr. at 26:9-27:10 (Scuderi testimony); Ex. P-32 (Text Messages (Ross Jr. and Scuderi) Start Date 8-15-21 at Plaintiff0069-0071). Mr. Duggan made offers in the range of \$425,000 to \$450,000. 2/20/24 Trial Tr. at 27:5-10 (Scuderi testimony). Another potential buyer offered \$500,000 for the Parkside Property. *Id.* at 26:9-15; Ex. P-32 (Text Messages (Ross Jr. and Scuderi) Start Date 8-15-21 at Plaintiff0069-0071).

21. Mr. Scuderi and Mr. Zoubek offered \$525,000 for the Parkside Property and waived all contingencies, which Ross Jr. accepted. 2/20/24 Trial Tr. at 28:9-11 (Scuderi testimony).

22. Ross Jr. instructed Mr. Scuderi that the next step was for him to communicate with Ross III. *Id.* at 29:6-11.

23. On August 17, 2021, Mr. Scuderi and Mr. Zoubek signed an agreement of sale (the "Agreement") for the Parkside Property with Ross III in trust for Ronald Ross and Ross III. *Id.* at 32:8-35:13; Ex. P-48 (Email DocuSign Receipt with Fully Executed Scuderi Agreement of Sale Dated 8-17-21 at Plaintiff0026-0041).

24. Mr. Scuderi and Mr. Zoubek waived the mortgage contingency in the Agreement because they had the ability to close on the Property in cash, but they wanted to explore financing options. 2/20/24 Trial Tr. at 44:22-45:3 (Scuderi testimony). Mr. Zoubek was in talks with Meridian Bank to obtain financing. *Id.*

25. Mr. Scuderi sent the signed Agreement to Ross III and to Ronald Ross via DocuSign, an electronic platform that facilitates signing legal documents. 2/20/24 Trial Tr. at 32:8-35:18 (Scuderi testimony).

26. Before the Agreement was signed, Ross Jr. informed Mr. Scuderi that Mr. Duggan was a tenant at the Parkside Property without a written lease. *Id.* at 30:20-31:8. Thus, Mr. Scuderi and Mr. Zoubek planned to speak to Mr. Duggan about signing a lease with them. *Id.*

27. Ross III and Ronald Ross would not sell or sign contracts to sell properties without Ross Jr.'s permission. 2/21/24 Trial Tr. at 105:9-16 (Ross Jr. testimony).

28. Ross Jr. not only gave his sons permission to sign the Agreement but instructed them to do so. *Id.* at 94:3-8 and 118:23-119:1.

**E. Scuderi and Zoubek Pay Deposits, Form a Joint Venture Entity,  
and Complete a Phase I Environmental Analysis**

29. The buyers listed on the Agreement are "Scuderi Real Estate Group, LLC and Zoubek Properties, LLC or Assignee Entity." Ex. 48 at 3 (Email DocuSign Receipt with Fully Executed Scuderi Agreement of Sale Dated 8-17-21 Plaintiff0026-0041).

30. In 2021, Mr. Scuderi and Mr. Zoubek tried to form SSBZ Parkside Ave., LLC ("SSBZ Parkside Ave."), a single-purpose entity into which they planned to transfer the Parkside Property. 2/20/24 Trial Tr. at 37:1-7 (Scuderi testimony).

31. Closing was scheduled for October 18, 2021. *Id.* at 39:21-23; Ex. 48 at 4 (Email DocuSign Receipt with Fully Executed Scuderi Agreement of Sale Dated 8-17-21 Plaintiff0026-0041).

32. The Agreement required two deposits. Mr. Scuderi made the first deposit of \$10,000 on August 23, 2021, and emailed confirmation to Ross III. *Id.*; Ex. P-33 (Email Scuderi to Ross III re: First Deposit Dated 8-23-21 Plaintiff0042-0043).

33. Mr. Scuderi told Ross Jr. and Ross III that he had made the first deposit. 2/23/24 Trial Tr. at 52:12-19 (Ross III testimony); 2/21/24 Trial Tr. at 112:15-24 (Ross Jr. testimony).

34. On September 17, 2021, Mr. Scuderi paid the second \$10,000 deposit and emailed confirmation to Ross III. 2/20/24 Trial Tr. at 52:12-25 (Scuderi testimony); Ex. P-34 (Email Scuderi to Ross III re: Second Deposit Dated 9-17-21 Plaintiff0044).

35. Scuderi and Zoubek completed a Phase I Environmental Site Assessment of the Parkside Property on September 16, 2021. 2/20/24 Trial Tr. at 203:11-204:12 (Scuderi testimony); Ex. P-52 (Parkside Phase I Environmental Site Assessment for Plaintiffs Dated 9-16-21 Plaintiff00248-535).



**F. Mr. Duggan Is Notified of the Agreement of Sale**

36. On August 19, 2021, while discussing Mr. Duggan's tenancy at the Parkside Property, Ross Jr. told Mr. Scuderi that he preferred to wait until September 2021 to speak with Mr. Duggan about the Agreement. 2/20/24 Trial Tr. at 47:12-48:24 (Scuderi testimony); Ex. P-42 (Text Messages (Scuderi and Zoubek) Start Date 8-19-21 Plaintiff0072-0078).

37. At the time, Mr. Duggan was paying rent substantially below market rate, and Ross Jr. told Mr. Scuderi he was concerned that Mr. Duggan might stop paying rent to Ross Jr. if Mr. Duggan anticipated a rent increase under new ownership. 2/20/24 Trial Tr. at 48:18-49:9 (Scuderi testimony).

38. On September 28, 2021, Ross Jr. told Mr. Scuderi that he would inform Mr. Duggan about the Agreement. *Id.* at 53:10-55:3, 111:14-17; Ex. P-42 (Text Messages (Scuderi and Zoubek) Start Date 8-19-21 Plaintiff0072-0078).

39. Later that day, Ross Jr. confirmed to Mr. Scuderi that he had informed Mr. Duggan about the Agreement and Mr. Scuderi advised Mr. Zoubek via text message. 2/20/24 Trial Tr. at 54:24-55:6 (Scuderi testimony); Ex. P-42 (Text Messages (Scuderi and Zoubek) Start Date 8-19-21 Plaintiff0072-0078).

40. On September 29, 2021, Scuderi and Zoubek ordered a title search on the Parkside Property. Ex. P-56 (Philadelphia Closing Company Title Order Confirmation for Plaintiffs Dated 9-29-21 PCC003); 2/21/24 Trial Tr. at 217:14-218:22 (Brian Zoubek testimony).

41. Scuderi and Zoubek obtained an appraisal report for the Parkside Property on October 1, 2021, which valued the property at \$590,000. Ex. P-51 (Parkside Appraisal Report for Meridian/Plaintiffs Dated 10-1-21 Plaintiff00162-00247); 2/21/24 Trial Tr. at 210:24-211:10, 211:25-213:16 (Zoubek testimony).

42. Scuderi and Zoubek intended to use a \$400,000 loan from Meridian Bank to finance part of the purchase of the Parkside Property. 2/21/24 Trial Tr. at 212:15-213:6 (Zoubek testimony); Ex. P-61 (Meridian Loan Analysis Spreadsheet Plaintiff00640).

43. On October 1, 2021, Scuderi and Zoubek obtained a letter from civil and environmental engineers about the Phase I Environmental Analysis they had completed, which Meridian Bank found satisfactory to fund the loan. Ex. P-53 (Email Poulson to Zoubek with Reliance Letter re: Tanks Dated 10-1-21 Plaintiff00624-00629); 2/21/24 Trial Tr. at 215:5-217:13 (Zoubek testimony).

44. In October 2021, Ross Jr. coordinated a meeting among Mr. Scuderi, Mr. Zoubek, and Mr. Duggan. 2/20/24 Trial Tr. at 59:25-60:8, 61:7-15 (Scuderi testimony); 2/20/24 Trial Tr. at 169:23-25 (Duggan testimony).

45. Before the meeting, Ross Jr. told Mr. Duggan about the Agreement with Scuderi and Zoubek. 2/23/24 Trial Tr. at 67:14-70:11 (Ross III testimony).

46. On October 11, 2021, Mr. Scuderi texted Ross Jr. to confirm the meeting with Mr. Duggan. Ex. P-32 (Text Messages (Ross Jr. and Scuderi) Start Date 8-15-21 Plaintiff0069-0071).

47. On that same day, Ross Jr. told Mr. Scuderi that Mr. Duggan would offer Scuderi and Zoubek \$100,000 to give him the rights to buy the Parkside Property, which Mr. Scuderi relayed to Mr. Zoubek via text message. Ex. P-42 (Text Messages (Scuderi and Zoubek) Start Date 8-19-21 Plaintiff0072-0078); 2/20/24 Trial Tr. at 60:9-22 (Scuderi testimony).

48. On October 12, 2021, Mr. Duggan, Mr. Scuderi, and Mr. Zoubek met at the Parkside Property. 2/20/24 Trial Tr. at 61:16-21 (Scuderi testimony); 2/21/23 Trial Tr. at 229:11-17 (Zoubek testimony).

49. Mr. Scuderi and Mr. Zoubek introduced themselves to Mr. Duggan as the buyers of the Parkside Property. 2/20/24 Trial Tr. at 61:22-62:7 (Scuderi testimony); 2/21/23 Trial Tr. at 230:9-15 (Zoubek testimony).

50. According to Mr. Scuderi and Mr. Zoubek, Mr. Duggan was not happy, but he did not seem surprised. 2/20/24 Trial Tr. at 62:8-17 (Scuderi testimony); 2/21/23 Trial Tr. at 230:16-21 (Zoubek testimony).

51. Mr. Duggan showed Mr. Scuderi and Mr. Zoubek around the Property and they then told Mr. Duggan they were going to charge him rent after they closed on the purchase. 2/20/24 Trial Tr. at 61:25-62:7 (Scuderi testimony); 2/21/23 Trial Tr. at 230:22-231:24 (Zoubek testimony); 2/20/24 Trial Tr. at 170:12-16 (Duggan testimony).

52. As Ross Jr. had predicted, Mr. Duggan offered Mr. Scuderi and Mr. Zoubek \$100,000 to sell him their contractual rights to buy the Property. 2/20/24 Trial Tr. at 62:21-63:7 (Scuderi testimony); 2/21/23 Trial Tr. at 230:24-231:12 (Zoubek testimony).

53. When Mr. Scuderi and Mr. Zoubek rejected the offer, Mr. Duggan continued to offer more money or to swap various sites in Brewerytown for the Property, but they rejected all of Mr. Duggan's offers. 2/20/24 Trial Tr. at 63:8-15 (Scuderi testimony); 2/21/23 Trial Tr. at 231:7-12 (Zoubek testimony).

54. Mr. Duggan never mentioned a right of first refusal during that meeting. 2/20/24 Trial Tr. at 64:8-19 (Scuderi testimony); 2/21/23 Trial Tr. at 232:3-5 (Zoubek testimony).

55. Mr. Duggan did not ask to see the Agreement. 2/20/24 Trial Tr. at 173:2-4, 189:7-13 (Duggan testimony); 2/21/24 Trial Tr. at 232:6-8 (Zoubek testimony).

56. After the meeting, Mr. Scuderi texted Mr. Duggan so that Mr. Duggan would have his telephone number and Mr. Scuderi could send him a formal lease proposal, Ex. P-23 (Text

Message (Scuderi to Duggan) Dated 10-12-21 Plaintiff0047); 2/20/24 Trial Tr. at 65:5-20 (Scuderi testimony).

57. Mr. Scuderi also texted Ross Jr. to thank him for organizing the meeting and to share his belief that Mr. Scuderi and Mr. Zoubek would work out a new lease with Mr. Duggan. Ex. P-32 (Text Messages (Ross Jr. and Scuderi) Start Date 8-15-21 Plaintiff0069-0071).

58. Ross Jr. testified initially at trial that Mr. Duggan did not call him after the October 12, 2021, meeting with Mr. Scuderi and Mr. Zoubek and only admitted that he spoke to Mr. Duggan shortly after the October 12 meeting after he was impeached by his contrary deposition testimony. 2/21/24 Trial Tr. at 145:25-147:9 (Ross Jr. testimony). Ross Jr. then explained that he spoke with Mr. Duggan a couple of days after the October 12 meeting and told him he had a contract with Scuderi and Zoubek to buy the Property but the contract had expired without any extension. *Id.* at 148:7-9. The Court finds that this representation was false.

59. At trial, Mr. Clinton admitted that Mr. Duggan learned that Scuderi and Zoubek were buying the Property at the October 12 meeting. 2/23/24 Trial Tr. at 198:25-199:5, 201:22-202:6 (Clinton testimony).

**G. Ross Jr. Instructs His Sons to Grant an Extension to Scuderi and Zoubek, Moving Closing from October 18 to November 1, 2021**

60. On October 12, 2021, Mr. Scuderi asked Ross Jr. to extend Scuderi and Zoubek's closing date from October 18, 2021, to November 1, 2021, because there was a delay in receiving the SSBZ Parkside Ave. corporate documents from the Commonwealth of Pennsylvania. 2/21/24 Trial Tr. at 119:13-120:10 (Ross Jr. testimony); Ex. P-41 (Text Messages (Scuderi and Ross III) Start Date 10-15-21 Plaintiff0070).

61. Ross Jr. agreed to extend closing by two weeks. 2/20/24 Trial Tr. at 67:12-16 (Scuderi testimony).

62. Ross Jr. told Ross III to expect to receive extension-related documents from Mr. Scuderi. 2/23/24 Trial Tr. at 58:3-59:15 (Ross III testimony).

63. On October 15, 2021, Mr. Scuderi texted Ross III that he would be receiving an extension form because the corporate entity documents for SSBZ Parkside Ave. were delayed by the state. Ex. P-41 (Text Messages (Scuderi and Ross III) Start Date 10-15-21 Plaintiff0070); 2/20/24 Trial Tr. at 68:4-69:10 (Scuderi testimony).

64. Ross III responded that he was aware of the extension because his father had told him about it. Ex. P-41 (Text Messages (Scuderi and Ross III) Start Date 10-15-21 Plaintiff0070); 2/20/24 Trial Tr. at 68:4-69:10 (Scuderi testimony).

65. Mr. Scuderi emailed to Ross III and Ronald Ross via DocuSign a Change in Terms Addendum to Agreement of Sale (the "Extension Addendum") to move closing from October 18 to November 8, 2021. 2/20/24 Trial Tr. at 69:11-71:22 (Scuderi testimony); Ex. P-36 (Email DocuSign Receipt with Fully Executed Extension of Scuderi Closing Date Dated 10-16-21 Plaintiff0048-0051).

66. All the parties signed the Extension Addendum by October 16, 2021. 2/20/24 Trial Tr. at 69:11-71:22 (Scuderi testimony); Ex. P-36 (Email DocuSign Receipt with Fully Executed Extension of Scuderi Closing Date Dated 10-16-21 Plaintiff0048-0051).

67. Ross Jr. and Ross III told Ronald Ross to sign the Extension Addendum. 2/20/24 Trial Tr. at 241:16-243:20 (Ronald Ross testimony); 2/23/24 Trial Tr. at 60:17-21 (Ross III testimony).

68. Both Ronald Ross and Ross III understood that signing the Extension Addendum would delay closing from October 18, 2021, to November 1, 2021. 2/20/24 Trial Tr. at 245:14-22 (Ronald Ross testimony); 2/23/24 Trial Tr. at 60:4-8 (Ross III testimony).

69. Ross Jr. was aware that Ross III and Ronald Ross signed the Extension Addendum. 2/21/24 Trial Tr. at 157:12-158:4 (Ross Jr. testimony); 2/23/24 Trial Tr. at 59:16-60:3 (Ross III testimony).

70. Scuderi and Zoubek could have closed on the Property in cash on October 18, 2021. 2/21/24 Trial Tr. at 218:23-219:16 (Zoubek testimony).

**H. The First Time Mr. Duggan Offers to Buy the Parkside Property for \$650,000**

71. Unbeknownst to Mr. Scuderi and Mr. Zoubek, Mr. Duggan tried to buy the Parkside Property from the Rosses for \$450,000 in September, after the Scuderi and Zoubek Agreement was signed. Ex. P-1 (Email Clinton to e\_ross50@yahoo.com with \$450,000 Duggan Offer Dated 9-15-21 CK1-14); Ex. P-48 (Email DocuSign Receipt with Fully Executed Scuderi Agreement of Sale Dated 8-17-21 Plaintiff0026-0041); 2/20/24 Trial Tr. at 158:22-160:22 (Duggan testimony).

72. Mr. Duggan claims that Ross Jr. rejected the \$450,000 offer and told Mr. Duggan a week later that he would accept \$650,000 for the Parkside Property. Ross Jr. claimed at trial he has no recollection of this conversation. 2/20/24 Trial Tr. at 161:1-4 (Duggan testimony); 2/21/24 Trial Tr. at 137:1-8 (Ross Jr. testimony).

73. In September, Mr. Duggan was unwilling to pay \$650,000 for the Parkside Property. 2/20/24 Trial Tr. at 163:7-164:4 (Duggan testimony).

74. On October 1, 2021, Mr. Duggan decided he was willing to pay \$650,000 for the Parkside Property, and Mr. Clinton sent Ross Jr. a signed agreement of sale with a \$650,000 purchase price. Mr. Clinton copied Mr. Scuderi on the email with the attached agreement of sale. 2/20/24 Trial Tr. at 166:8-167:8 (Duggan testimony); Ex. P-42 (Text Messages (Scuderi and

Zoubek) Start Date 8-19-21 Plaintiff0072-0078); Ex. P-4 (Email Quality Abstract to Clinton with \$650,000 Duggan Offer Dated 10-1-21 CK35-48).

75. The Rosses did not accept Mr. Duggan's \$650,000 offer. 2/20/24 Trial Tr. at 167:23-168:4 (Duggan testimony).

### **I. The Rent Letter**

76. In January 2021, Ross Jr. sent Mr. Duggan a letter (the "Rent Letter") that Ross Jr. prepared informing him that as of January 1, 2021, he would begin collecting rent for his use of the Property "for the foreseeable future or until the property is sold." Ex. P-43 (Email Duggan to McAleer with Kevin Duggan Rent Letter Dated 10-15-21 CK311); 2/20/24 Trial Tr. at 150:18-151:9 (Duggan testimony).

77. The Rent Letter stated that the Rosses' goal was "to sell the property as quickly as possible. . . ." Ex. P-43 (Email Duggan to McAleer with Kevin Duggan Rent Letter Dated 10-15-21 CK311). The letter "implore[d]" Mr. Duggan to make an acceptable offer so they could sell the property to him, "a longtime friend and business associate." *Id.*

78. The Rent Letter further made clear, however, "If a 3<sup>rd</sup> party were to offer us the correct amount to buy the property, we will not hesitate to sell," *Id.*

79. The letter concluded that Ross Jr. would inform Mr. Duggan "in a timely manner if and when an offer is brought to our table out of respect for our friendship and history of working together." *Id.*

80. On October 15, 2021, Mr. Duggan emailed his business partner to ask their lawyer if the Rent Letter could be used to force the Rosses to sell the Parkside Property to him, instead of to Scuderi and Zoubek. Ex. P-43 (Email Duggan to McAleer with Kevin Duggan Rent Letter

Dated 10-15-21 CK311); Ex. P-37 (Email Scuderi to e\_ross50@yahoo.com with Kevin Duggan Rent Letter Dated 10-19-21 Plaintiff0061-0062).

**J. Mr. Duggan Sues Ross III and Ronald Ross, Files a Lis Pendens, and Notifies Mr. Scuderi**

81. On October 18, 2021, Mr. Duggan filed a writ of summons against Ross III and Ronald Ross and a *lis pendens* on the Parkside Property, docketed at No. 211001378. Ex. P-6 (Email Clinton to e\_ross50@yahoo.com Dated 10-18-21 CK51-56); *see* 2/20/23 Trial Tr. at 74:5-75:2 (Scuderi testimony).

82. That same day, Mr. Clinton emailed notice of the lawsuit and *lis pendens* to Mr. Scuderi and Ross Jr. Ex. P-6 (Email Clinton to e\_ross50@yahoo.com Dated 10-18-21 CK51-56); 2/20/23 Trial Tr. at 74:8-75:2 (Scuderi testimony).

83. Mr. Clinton stated in the email:

I understand that you have received an offer to purchase the above property and that you executed that Agreement without presenting that offer to Mr. Duggan as previously promised. Kindly alert the title company and the buyer that my client has a legitimate claim to the property and that he will seek to have any executed Agreement declared void and of no consequence, unless and until my client has been presented with the opportunity to match the executed Agreement.

Ex. P-6 (Email Clinton to e\_ross50@yahoo.com Dated 10-18-21 CK51-56).

**K. Ross Jr. and Ross III Give Mr. Scuderi the Impression that the Closing on the Property Will Move Forward on November 1**

84. After receiving Mr. Clinton's email, Mr. Scuderi called Ross Jr. and he agreed with Mr. Scuderi that Mr. Duggan's claimed right of first refusal was meritless and they would work together to strike Mr. Duggan's *lis pendens*. Ex. P-32 (Text Messages (Ross Jr. and Scuderi) Start Date 8-15-21 Plaintiff0069-0071); Ex. P-37 (Email Scuderi to



e\_ross50@yahoo.com with Kevin Duggan Rent Letter Dated 10-19-21 Plaintiff0061-0062); 2/20/24 Trial Tr. at 76:14-77:1 (Scuderi testimony).

85. In response to Mr. Scuderi's email, Ross Jr. emailed a copy of the Rent Letter to Mr. Scuderi. Ex. P-37 (Email Scuderi to e\_ross50@yahoo.com with Kevin Duggan Rent Letter Dated 10-19-21 Plaintiff0061-0062); 2/20/24 Trial Tr. at 77:2-23 (Scuderi testimony).

86. After receipt of the Rent Letter, Mr. Scuderi called Ross Jr. and Ross III to talk more about how to address Mr. Duggan's *lis pendens* and Ross Jr. told Mr. Scuderi to have his lawyer contact Mr. Clinton. 2/20/24 Trial Tr. at 79:6-80:21 (Scuderi testimony); Ex. P-38 (Email e\_ross50@yahoo.com to Scuderi Dated 10-19-21 Plaintiff0063).

87. Ross Jr., Ross III, and Mr. Scuderi agreed that Mr. Duggan's claimed right of first refusal was baseless and they would fight it together. 2/20/24 Trial Tr. at 79:10-20, 80:16-21 (Scuderi testimony).

88. Despite Mr. Clinton's email, Scuderi and Zoubek were still planning to close on the Property on November 1, 2021. 2/20/24 Trial Tr. at 81:3-10 (Scuderi testimony).

89. Scuderi and Zoubek did not file a lawsuit immediately because they believed that they were working with the Rosses to resolve any issues with Mr. Duggan. *Id.* at 81:11-17.

**L. Mr. Duggan Pressures the Rosses to Accept His Offer and Breach Scuderi and Zoubek's Contract**

90. On October 18, 2021, Mr. Clinton sent an email to Ross Jr. requesting to see a signed copy of the Agreement, to which Ross Jr. did not respond. 2/23/24 Trial Tr. at 213:22-214:5 (Clinton testimony).

91. On October 19, 2021, after receiving notice that Mr. Duggan had sued his sons, Ross Jr. called Mr. Duggan to tell him that he would accept the \$650,000 offer Mr. Dugan made

on October 1, 2021. Ex. P-7 (Email Clinton to e\_ross50@yahoo.com Dated 10-19-21 CK57-58); 2/20/24 Trial Tr. at 190:5-8 (Duggan testimony); 2/21/24 Trial Tr. at 77:1-7 (Ross Jr. testimony).

92. Ross Jr. denies making this call to Mr. Duggan. 2/21/24 Trial Tr. at 80:7-15, 139:15-20 (Ross Jr. testimony). The Court finds this testimony incredible.

93. On October 20, 2021, Mr. Clinton texted Ross Jr. to schedule a phone call to discuss the situation. Ex. P-18 (Text Messages (Clinton and Ross III) Starting Date 10-24-21 CK234-237); 2/21/24 Trial Tr. at 69:15-70:4 (Ross Jr. testimony).

94. Ross Jr. claims he did not know what Mr. Clinton meant by "the situation." 2/21/24 Trial Tr. at 70:5-12 (Ross Jr. testimony). The Court finds this testimony incredible.

95. When Mr. Clinton spoke with Ross Jr., Mr. Clinton never asked for a copy of the Agreement, even though Mr. Clinton had received no response to his October 18 email requesting to see it. 2/23/24 Trial Tr. at 213:10-214:9 (Clinton testimony); Ex. P-8 (Email Clinton to e\_ross50@yahoo.com Dated 10-21-21 CK59-61).

96. Before Mr. Duggan signed the \$650,000 agreement of sale (the "C&K Agreement") for the Parkside Property, a lawyer named Richard Slavin, representing Mr. Scuderi and Mr. Zoubek, called Mr. Clinton and notified him of the Agreement, but Mr. Clinton did not request to see a copy. 2/23/24 Trial Tr. at 180:16-181:22, 215:2-8, 223:10-17 (Clinton testimony).

97. Mr. Clinton did not communicate to Mr. Slavin, Mr. Scuderi, Mr. Zoubek, or any other lawyer representing Mr. Scuderi and Mr. Zoubek that C&K was going to close on the Parkside Property unless Mr. Clinton received a copy of the Agreement. *Id.* at 223:2-224:16, 224:22-225:21.

98. On October 21, 2021, Mr. Clinton emailed a second \$650,000 offer for the Parkside Property and a copy of a bank check in that amount to Ross Jr. Ex. P-10 (Email Clinton

to e\_ross50@yahoo.com with \$650,000 Offer Dated 10-21-21 CK79-93). The only difference between the two \$650,000 offers was that the second offer reduced the time between execution and closing from 60 days to six days from the day of signing, so that closing would happen on October 27, 2021, before Scuderi and Zoubek's closing date of November 1, 2021. 2/20/24 Trial Tr. at 166:12-21, 195:11-196:24 (Duggan testimony).

99. Ross Jr. would not sell the Parkside Property to Mr. Duggan unless the full \$650,000 was in escrow before closing. 2/23/24 Trial Tr. at 225:22-226:1 (Clinton testimony).

100. Mr. Duggan does not typically place the entire purchase price in escrow before buying real estate. 2/20/24 Trial Tr. at 192:18-20 (Duggan testimony).

101. On October 22, 2021, Mr. Clinton spoke to Scuderi and Zoubek's lawyer, Jordan Rand, but Mr. Clinton did not advise him that C&K intended to close on the Parkside Property on October 25, 2021. 2/23/24 Trial Tr. at 226:2-17, 230:21-232:7, 234:7-16 (Clinton testimony).

102. Before October 25, 2021, Mr. Clinton never notified Mr. Scuderi, Mr. Zoubek, Mr. Slavin, or Mr. Rand about C&K's closing on the Parkside Property. *Id.* at 241:4-18.

103. Ross III and Ronald Ross did not sign the C&K Agreement until October 25, 2021, the date of C&K's closing on the Parkside Property. Ex. P-14 (C&K Enterprises Co., LLC Executed Standard Agreement for the Sale of Vacant Land Dated 10-25-21 CK139-151); 2/20/24 Trial Tr. at 197:6-198:25-200:23-201:20 (Ronald Ross testimony); 2/23/24 Trial Tr. at 90:17-92:11 (Ross III testimony).

104. Ross Jr. told Ronald Ross that the Parkside Property was being sold to Mr. Duggan because Mr. Duggan offered more money. 2/20/24 Trial Tr. at 257:20-258:3 (Ronald Ross testimony).

105. Ross III corroborated that they sold the Parkside Property to Mr. Duggan because he offered the highest amount. 2/23/24 Trial Tr. at 77:7-20, 94:9-95:24 (Ross III testimony).

106. At the C&K closing on October 25, 2021, a deed was executed transferring title to the Parkside Property from Ross Jr. and Ronald Ross to C&K for \$650,000 with no title insurance. Ex. P-15 (Parkside Deed (Ross to C&K) Dated 10-25-21 CK181-189); 2/20/24 Trial Tr. at 199:24-200:15 (Duggan testimony).

107. Mr. McAleer cannot recall any other time he went to a closing, paid in cash, and had no signed agreement of sale until the parties were sitting at the closing table. 2/23/24 Trial Tr. at 158:13-160:9 (McAleer testimony).

108. Mr. Duggan wanted to obtain title insurance, could not get it, claims he does not know why he could not obtain it, but nevertheless closed without it. 2/20/24 Trial Tr. at 204:2-206:5 (Duggan testimony).

109. Mr. Duggan has purchased many parcels of real estate, always with title insurance. *Id.* at 143:6-145:19.

110. Ross III and Ronald Ross did not submit to C&K's title insurer a signed seller's or mortgagor's affidavit and indemnity for the purpose of enabling C&K to purchase title insurance. Ex. P-54 (Stewart Title Guaranty Company Unsigned Mortgagor/Seller's Affidavit for Ross/C&K Transaction CK133-135); 2/23/24 Trial Tr. at 217:2-218:21 (Clinton testimony). A signed seller's or mortgagor's affidavit and indemnity contains a sworn statement "[t]hat there are no agreements of sale of any nature outstanding, executed by or on behalf of the owner(s) of said premises other than those executed in connection with the present transaction." Ex. P-54 (Stewart Title Guaranty Company Unsigned Mortgagor/Seller's Affidavit for Ross/C&K Transaction CK133-135).

111. At closing, Mr. Clinton drafted a document titled "Agreement" (the "Indemnification Agreement"), which C&K required Ross Jr. and Ronald Ross to sign before C&K would close on the Parkside Property. Ex. P-20 (C&K/Ross Indemnification Agreement Dated 10-25-21 CK256-257); 2/23/24 Trial Tr. at 95:25-96:22 (Ross III testimony); 2/23/24 Trial Tr. at 219:7-221:11 (Clinton testimony); 2/23/24 Trial Tr. at 161:18-162:11 (McAleer testimony).

112. The Indemnification Agreement states: "Seller agrees to indemnify Buyer and/or satisfy any liens or judgments which appear of record against the Property and which were caused by Seller between today and the date the title insurance is obtained for the Property." Ex. P-20 at ¶ 1 (C&K/Ross Indemnification Agreement Dated 10-25-21 CK256-257).

113. The Indemnification Agreement also states that "Seller agrees to cooperate with Buyer's attempts to have the title properly insured including but not limited to, cooperating with Buyer in any action, including a Quiet Title action that Buyer may file to assist in obtaining title insurance." *Id.* at ¶ 2.

114. Ross III and Ronald Ross signed the Indemnification Agreement at the C&K closing. *Id.*

115. Mr. Duggan understands the Indemnification Agreement requires the Rosses to indemnify him against a judgment in this case. 2/20/24 Trial Tr. at 207:1-5 (Duggan testimony).

116. Mr. Duggan anticipated that there might be litigation following C&K's purchase of the Parkside Property. *Id.* at 207:14-16.

117. On October 28, 2021, Mr. Scuderi emailed Ross Jr., Ross III, and Ronald Ross to coordinate the Scuderi and Zoubek closing and to confirm that they were ready, willing, and able to close on November 1, 2021. Ex. P-40 (Email Scuderi to Rosses re: Closing November 1, 2021 Dated 10-28-21 Plaintiff0068); 2/20/24 Trial Tr. at 81:18-82:18 (Scuderi testimony).

118. Scuderi and Zoubek were ready, willing, and able to close in cash on November 1, 2021, with 50 percent of the purchase price to be contributed by Mr. Scuderi and 50 percent by Mr. Zoubek. 2/20/24 Trial Tr. at 82:22-83:5 (Scuderi testimony); 2/21/24 Trial Tr. at 219:17-220:13 (Zoubek testimony). The Court found the testimony that Scuderi and Zoubek were ready, willing, and able to close on November 1, 2021, credible.

119. When none of the Rosses responded to Mr. Scuderi, he became worried. 2/20/24 Trial Tr. at 84:21-23 (Scuderi testimony).

120. Mr. Scuderi and Mr. Zoubek filed this action on October 29, 2021, seeking specific performance of their Agreement to buy the Property because they had heard nothing from the Rosses and were unaware that the Parkside Property had been sold to C&K. Ex. P-16 (Email e\_ross50@yahoo.com to Clinton with Complaint Dated 10-30-21 CK190-230).

121. Ross Jr. testified that he does not read or compose emails, but C&K produced an email dated October 30, 2021 from Ross Jr.'s email address, e\_ross50@yahoo.com, forwarding Scuderi and Zoubek's complaint to Mr. Clinton and stating: "Take a look at what he sent me yesterday, oh boy." 2/21/24 Trial Tr. at 70:13-71:11 (Ross Jr. testimony); Ex. P-16 (Email e\_ross50@yahoo.com to Clinton with Complaint Dated 10-30-21 CK190-230).

122. Ross Jr. claims he did not send that email. 2/21/24 Trial Tr. at 71:12-16, 76:21-22 (Ross Jr. testimony). Ross III testified that he did not send that email. *Id.* at 99:22-100:18 (Ross III testimony). There was no trial testimony that anyone else had access to Ross Jr.'s email account. The Court finds Ross Jr.'s claim that he did not send the October 30, 2021, email to Mr. Clinton incredible.

**M. Mr. Scuderi and Mr. Zoubek Present Evidence of Lost Profits**

123. Mr. Scuderi and Mr. Zoubek intended to construct a “by-right” 153-unit apartment building on the Parkside Property, composed of 33 two-bedroom units, 120 one-bedroom units, and 54 parking spaces (the “Parkside Project”). *See also* Ex. P-58 (Gnome Architects Parkside Development Drawings for Plaintiffs Plaintiff00637-00640); 2/21/24 Trial Tr. at 9:2-7 (Peter Angelides testimony).

124. “By right” means that Scuderi and Zoubek could have constructed the Parkside Project without obtaining any zoning variance, making the project much easier to develop than if a variance were needed. 2/21/24 Trial Tr. at 10:2-11, 62:2-63:6, 199:10-16, 201:16-23 (Zoubek testimony).

125. Gnome Architects, the architecture firm that Mr. Scuderi and Mr. Zoubek planned to use for the Parkside Project and have used in the past, completed a zoning analysis and project feasibility report on the Project. *Id.* at 220:14-221:2; Ex. P-58 (Gnome Architects Parkside Development Drawings for Plaintiffs Plaintiff00637-00640).

126. Gnome Architects determined that there were two options for by-right projects, one that had single-family homes and a 98-unit apartment building and another that had the 98-unit apartment building in addition to a second 55-unit apartment building for a total of 153 apartments. 2/21/24 Trial Tr. at 222:1-223:19 (Zoubek testimony); Ex. P-58 (Gnome Architects Parkside Development Drawings for Plaintiffs Plaintiff00637-00640).

127. By combining their experience and resources, Mr. Scuderi and Mr. Zoubek could have developed the Parkside Project. 2/21/24 Trial Tr. at 200:10-201:1 (Zoubek testimony).

128. At trial, Scuderi and Zoubek presented the testimony of an expert witness in real estate development economics, Peter Angelides. The Court qualified Mr., Angelides as an expert

in this field with no objection from defense counsel. 2/21/24 Trial Tr. at 4:19-5:5. The defendant presented no expert testimony at trial.

129. According to Mr. Angelides, the value of the completed Parkside Project would have been \$30 million. 2/21/24 Trial Tr. at 25:18-28:4 (Angelides testimony).

130. Mr. Angelides testified that once a building is built, it usually takes about a year to stabilize an apartment development, meaning that 95 percent of the apartments in a building are leased. *Id.* at 28:8-29:10.

131. Mr. Angelides projected that, in the third year of operations, the net cash flow of the building would be \$688,969. *Id.* at 25:16-26:18. Net cash flow takes into consideration expenses and revenues, which Mr. Angelides calculated for each year from year one to year eight. *Id.* at 30:21-31:11.

132. Mr. Scuderi and Mr. Zoubek were unsure how long they intended to keep the Property, and Mr. Angelides made projections of their profits if they were to sell at four, six, or eight years. *Id.* at 229:4-10 (Zoubek testimony); 2/21/24 Trial Tr. at 36:19-44:15 (Angelides testimony).

133. Mr. Angelides projected that Mr. Scuderi and Mr. Zoubek would have earned a “developer fee” of \$765,000 upon completion of the Parkside Project. 2/21/24 Trial Tr. at 42:25-43:17 (Angelides testimony); 2/21/24 Trial Tr. at 228:19-229:3 (Zoubek testimony).

134. According to Mr. Angelides’s projections, if Scuderi and Zoubek sold the Parkside Project at four years after obtaining the property, accounting for the value of cash flow and the developer fee, they would have earned \$3 million. *Id.* at 43:9-21 (Angelides testimony).

135. If Scuderi and Zoubek sold the Parkside Project at six years, they would earn \$2,700,000 without the developer fee and \$3,300,000 including the developer fee. *Id.* at 44:1-8.



136. If they sold the Parkside Project at eight years, they would earn \$2,900,000 without the developer fee and \$3,500,000 including the developer fee. *Id.* at 44:12-18.

### **CONCLUSIONS OF LAW**

#### **I. ROSS III AND RONALD ROSS BREACHED THE AGREEMENT WITH SCUDERI AND ZOUBEK**

1. To establish a breach of contract, a plaintiff must show “[1)] the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.” *Discover Bank v. Booker*, 259 A.3d 493, 495 (Pa. Super. 2021).

2. “Generally, in order for a contract to be formed, there must be three requisite elements: an offer, acceptance, and consideration.” *Est. of Caruso v. Caruso*, 322 A.3d 885, 896 (Pa. 2024).

3. Mr. Scuderi and Mr. Zoubek made an oral offer to Ross Jr. to buy the Parkside Property for \$525,000. 2/20/24 Trial Tr. at 28:9-29:3 (Scuderi testimony).

4. Ross Jr. orally accepted the offer and had his sons, Ross III and Ronald Ross, sign the Agreement, which formalized the offer and acceptance. *Id.* at 28:9-29:3, 33:4-6.

5. In consideration of the Agreement, Scuderi and Zoubek made two \$10,000 deposits. *Id.* at 51:2-16, 53:5-9.

6. Thus, Scuderi and Zoubek’s agreement of sale with Ross III in trust for Ronald Ross and Ross III is a valid and binding contract. *See Michael and Linda, LLC v. Smith*, 216 A.3d 262 (Pa. Super. 2019) (holding that a breach of an agreement of sale is a breach of contract).

7. After Ross III and Ronald Ross signed the Agreement for the Parkside Property with Mr. Zoubek and Mr. Scuderi, they signed the C&K Agreement in breach of the contract

with Scuderi and Zoubek. Ross III as trustee for Ronald Ross and Ross III then closed on the sale of the Property to C&K.

8. Consequently, Mr. Scuderi and Mr. Zoubek could not purchase the Parkside Property, which they had contracted to buy for \$525,000, because it was sold to C&K for \$650,000.

**II. MR. DUGGAN COMMITTED AN ABUSE OF PROCESS  
BY FILING A FRIVOLOUS *LIS PENDENS* TO PRESSURE THE ROSSES  
TO BREACH SCUDERI AND ZOUBEK'S CONTRACT**

9. Scuderi and Zoubek claim that C&K and Mr. Duggan committed an abuse of process by filing a frivolous *lis pendens* to pressure the Rosses to breach Scuderi and Zoubek's Agreement. Ex. C&K-5 (Fourth Amended Compl.) at ¶¶ 57-62.

10. Abuse of process is "the use of legal process against another primarily to accomplish a purpose for which it is not designed." *Lerner v. Lerner*, 954 A.2d 1229, 1238 (Pa. Super. 2008) (*quoting Shiner v. Moriarty*, 706 A.2d 1228, 1236 (Pa. Super. 1998), *allocatur denied*, 729 A.2d 1130 (1998)).

11. "To establish a claim for abuse of process it must be shown that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff." *Id.*

12. A *lis pendens* is "a notice . . . to warn all persons that certain property is the subject matter of litigation." *Barak v. Karolizki*, 196 A.3d 208, 221 (Pa. Super. 2018).

13. While "a third party remains free to buy the property" subject to the *lis pendens*, *id.* at 222, "[l]is pendens is notice to the world that a cloud over the title to a property exists." *Janus Management Services, Inc. v. Schlessinger*, 810 A.2d 637, 642 (Pa. Super. 2002).

14. Mr. Clinton and Mr. McAleer claim that the *lis pendens* was filed to protect Mr. Duggan's right of first refusal. 2/23/24 Trial Tr. at 149:15-24 (McAleer testimony); 2/23/24 Trial Tr. at 173:13-17 (Clinton testimony).

15. A right of first refusal gives the designee the exclusive opportunity to buy a property before the owner can negotiate with other potential buyers. *Power Gas Marketing & Transmission, Inc. v. Cabot Oil & Gas Corp.*, 948 A.2d 807, 810 (Pa. Super. 2008).

16. If a potential buyer has a right of first refusal, the owner must give notice of the terms of an offer to let the holder of the right of first refusal purchase the property on those terms before selling to a third party. *Gateway Trading Co. v. Children's Hosp. of Pittsburgh*, 265 A.2d 115, 119 (Pa. 1970).

17. Rights of first refusal "are reviewed under the standard principles of contract construction." *Delaware River Preservation Co., Inc. v. Miskin*, 923 A.2d 1177, 1181 (Pa. Super. 2007) (citing *CBS Inc. v. Capital Cities Communications, Inc.*, 448 A.2d 48, 56 (Pa. Super. 1982)). There are three requisite elements of a contract – an offer, an acceptance, and consideration. *Caruso*, 322 A.3d at 896.

18. Mr. Duggan has no right of first refusal, because the Rent Letter, which he claims established the right, does not promise to give Mr. Duggan the opportunity to buy the Property before the Rosses would negotiate with any other prospective buyer. *See* Ex. P-37 (Email Scuderi to e\_ross50@yahoo.com with Kevin Duggan Rent Letter Dated 10-19-21 Plaintiff0061-0062).

19. The Rent Letter merely undertakes to inform Mr. Duggan if the Rosses receive an offer. *Id.* ("you will be informed in a timely manner if and when an offer is brought to our table out of respect for our friendship and history working together.")

20. Moreover, the Rent Letter is not a contract as it manifests no offer, no acceptance, and no consideration.

21. Without a right of first refusal or any rightful ownership interest in the Property, Mr. Duggan filed a frivolous *lis pendens* for the improper purpose of pressuring the Rosses to breach Scuderi and Zoubek's Agreement. C&K committed no abuse of process as it did not file the *lis pendens*.

### III. C&K IS NOT A BONA FIDE PURCHASER OF THE PARKSIDE PROPERTY

22. Mr. Duggan and C&K argue they are bona fide purchasers of the Parkside Property. Defendants C&K Enterprises and Kevin Duggan's Post-Trial Proposed Findings of Fact and Conclusions of Law § II(A) Dkt. 6/13/24. Scuderi and Zoubek counter that Mr. Duggan and C&K are not bona fide purchasers and seek a declaration of that fact. Ex. C&K-5 (Fourth Amended Comp.) at ¶¶ 107-114.

23. Pennsylvania law dictates that a buyer who signs an unconditional agreement for the sale of land "acquires an equitable interest in the land." *Long John Silver's, Inc. v. Fiore*, 386 A.2d 569, 572 (Pa. Super. 1978).

24. Where an agreement is not recorded, a subsequent conveyance of the same property to a different buyer is invalid unless the subsequent buyer is a bona fide purchaser for value without notice of the prior agreement. *Id.* at 572-73.

25. "Either actual or constructive notice is sufficient to prevent the subsequent purchaser from acquiring the status of a bona fide purchaser." *Id.* at 573.

26. Constructive notice includes "what [a subsequent purchaser] could have learned by inquiry of the person in possession and of others who, they had reason to believe, knew of the

facts which might affect the title.” *Volunteer Fire Co. of New Buffalo v. Hilltop Oil Co.*, 602 A.2d 1348, 1354 (Pa. Super. 1992).

27. It is not necessary for a subsequent purchaser to see an agreement of sale to be on constructive notice. *See Ohio River Junction R. Co. v. Pennsylvania Co.*, 72 A. 271, 273 (Pa. 1909) (subsequent purchaser had constructive notice where grantor informed subsequent purchaser of prior agreement); *see also Fiore*, 386 A.2d at 573 (subsequent purchasers had notice where they learned of prior agreement from grantor).

28. Mr. Scuderi, Mr. Zoubek, Ross Jr., Ross III, and Mr. Slavik all told Mr. Duggan or Mr. Clinton that the Parkside Property was under contract for sale before the C&K Agreement was signed. 2/20/24 Trial Tr. at 54:24-55:6 (Scuderi testimony); Ex. P-42 (Text Messages (Scuderi and Zoubek) Start Date 8-19-21 Plaintiff0072-0078); 2/23/24 Trial Tr. at 67:14-70:11 (Ross III testimony); 2/21/23 Trial Tr. at 230:9-15 (Zoubek testimony). Mr. Duggan admitted that on October 12, 2021, Mr. Scuderi and Mr. Zoubek had introduced themselves to Mr. Duggan as the buyers of the Parkside Property. 2/20/24 Trial Tr. at 170:17-20, 174:19-22, 226:25-227:2 (Duggan testimony).

29. Mr. Duggan offered them money and other properties in exchange for selling him the Parkside Property or allowing him to buy it from the Rosses. 2/20/24 Trial Tr. at 62:21-63:7 (Scuderi testimony); 2/21/23 Trial Tr. at 230:24-231:12 (Zoubek testimony).

30. On October 18, 2021, Scuderi and Zoubek’s original closing date, Mr. Duggan commenced a lawsuit against Ross III and Ronald Ross and filed the *lis pendens*, which effectively prevented the sale of the Property to anyone else. Mr. Clinton admitted that when he filed the *lis pendens*, Mr. Duggan knew that the Rosses had signed a contract for the sale of the

Property. 2/23/24 Trial Tr. at 174:19-175:7, 212:5-213:4 (Clinton testimony); Ex. P-44 (Letter (Clinton to Rand) Dated 11-22-21).

31. On October 18, 2021, Mr. Clinton stated in an email to Ross Jr., "I understand that you have received an offer to purchase the above property and that you executed that Agreement without presenting that offer to Mr. Duggan as previously promised. Kindly alert the title company and the never that my client...will seek to have any Agreement declared void and of no consequence, unless and until my client has been presented with the opportunity to match the executed Agreement." Ex. P-6 (Email Clinton to e\_ross50@yahoo.com Dated 10-18-21 CK51-56).

32. Then, on October 25, 2021, C&K and the Rosses closed on C&K's purchase of the Parkside Property. Ex. P-14 (C&K Enterprises Co., LLC Executed Standard Agreement for the Sale of Vacant Land Dated 10-25-21 CK139-151); 2/20/24 Trial Tr. at 197:6-198:25-200:23-201:20 (Ronald Ross testimony); 2/23/24 Trial Tr. at 90:17-92:11 (Ross III testimony).

33. C&K is not a bona fide purchaser because it had constructive notice through Mr. Duggan of Scuderi and Zoubek's prior Agreement to buy the Parkside Property as Mr. Duggan had been informed of it multiple times by multiple people in advance of C&K's contract and closing.

**IV. C&K AND MR. DUGGAN TORTIOUSLY INTERFERED  
WITH THE AGREEMENT BY FILING A FRIVOLOUS *LIS PENDENS*  
AND BUYING THE PROPERTY WITH KNOWLEDGE  
OF SCUDERI AND ZOUBEK'S AGREEMENT**

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34. Scuderi and Zoubek claim that C&K and Mr. Duggan tortiously interfered with the Agreement by filing a frivolous *lis pendens*, paying the Rosses \$125,000 more for the Property than Scuderi and Zoubek had contracted to pay, and engineering a closing for C&K

before the scheduled closing of Scuderi and Zoubek. Ex. C&K-5 (Fourth Amended Comp.) at ¶¶ 49-56.

35. The elements of a tortious interference claim are:

(1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.

*Walnut St. Associates, Inc. v. Brokerage Concepts, Inc.*, 982 A.2d 94, 98 (Pa. Super. 2009), *aff'd*, 20 A.3d 468 (Pa. 2011).

36. Scuderi and Zoubek have a contractual relationship with Ross III in trust for Ronald Ross and Ross III by virtue of the Agreement. Ex. P-48 (Email DocuSign Receipt with Fully Executed Scuderi Agreement of Sale Dated 8-17-21 at Plaintiff0026-0041).

37. "The second element requires proof that the defendant acted 'for the specific purpose of causing harm to the plaintiff.'" *Phillips v. Selig*, 959 A.2d 420, 429 (Pa. Super. 2008) (*quoting Glenn v. Point Park College*, 272 A.2d 895, 899 (Pa. 1971)). Tortious interference is an intentional tort where the actor must be acting "for the purpose of causing harm to the plaintiff." *Glenn*, 272 A.2d at 899.

38. The Pennsylvania Supreme Court has held that "when the purpose of the defendant's conduct is, in whole or in part, to protect a legitimate right or interest that conflicts with the interests of the plaintiff, 'a line must be drawn and the interests evaluated.'" *Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.*, 71 A.3d 923, 934 (Pa. Super. 2013) (*quoting Glenn*, 272 A.2d at 899).

39. Mr. Duggan has been interested in the Property since before Scuderi and Zoubek signed the Agreement. 2/20/24 Trial Tr. at 219:16-23 (Duggan testimony).

40. After meeting Mr. Scuderi and Mr. Zoubek on October 12, however, Mr. Duggan was put on notice that they were the buyers for the Parkside Property. 2/20/24 Trial Tr. at 174:10-22 ("He came on to -- he came into my yard where I'm doing business, tells me he's taking over the property . . . .") (Duggan testimony).

41. Even so, Mr. Duggan filed a frivolous *lis pendens* with no legitimate right of first refusal, offered Ross Jr. \$125,000 more than Scuderi and Zoubek were contracted to pay for the Parkside Property, and concealed the sale to C&K until after it had taken place before the scheduled closing with Scuderi and Zoubek.

42. While Mr. Duggan wanted to buy the Parkside Property before Scuderi and Zoubek had the Agreement, his actions after learning about their position as the buyers support the finding that Mr. Duggan and C&K acted with the specific purpose of harming Mr. Scuderi and Mr. Zoubek.

43. Mr. Duggan has no legitimate right or interest in the Property to justify his conduct or C&K's conduct.

44. The resulting damage was that the C&K Agreement supplanted Scuderi and Zoubek's Agreement, preventing Mr. Scuderi and Mr. Zoubek from developing their multimillion-dollar project.

45. In offering \$650,000 for the Parkside Property, and concealing the sale to C&K, Mr. Duggan and C&K tortiously interfered with Scuderi and Zoubek's Agreement. Mr. Duggan also tortiously interfered with the Agreement through the filing of his frivolous *lis pendens*.

46. Thus, Scuderi and Zoubek established that C&K and Mr. Duggan tortiously interfered with the agreement of sale.



**V. SCUDERI AND ZOUBEK ARE ENTITLED TO SPECIFIC PERFORMANCE BUT NOT DAMAGES**

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47. Scuderi and Zoubek are entitled to specific performance but not damages as discussed below.

**A. Specific Performance**

48. Scuderi and Zoubek are entitled to specific performance as the remedy for breach of contract, abuse of process, and tortious interference with contract.

49. “The law is clear that, ‘[a] party who purchases real estate with notice that his grantor has a prior obligation to convey to another is subject to an action for specific performance by a prior purchaser.’” *Frankel v. Northeast Land Co.*, 570 A.2d 1065, 1068 (Pa. Super. 1990) (quoting *Chorba v. Davlisa Enterprises, Inc.*, 450 A.2d 36, 37-38 (Pa. Super. 1982)).

50. In *Frankel*, the court held that “if it should be determined ultimately that [the first buyers] are entitled to specific performance of the alleged sales agreement, the [subsequent buyers]...will be deprived of their interest in the condominium in order to provide [the first buyers] with a complete remedy.” *Id.* at 1069.

51. Pennsylvania law “makes clear that the remedy of specific performance in realty contracts derives from the proposition that all land is unique” and not adequately compensated by money damages. *Petry v. Tanglewood Lakes, Inc.*, 522 A.2d 1053, 1055 (Pa. 1987) (“Contracts to convey an estate in real property have traditionally been regarded as being specifically enforceable in equity by the buyer.”); *Oliver v. Ball*, 136 A.3d 162, 167-69 (Pa. Super. 2016).

52. As a result of the wrongful actions of Ross III in trust for Ronald C. Ross, Ross III, Mr. Duggan and C&K, the conveyance of the Parkside Property to C&K will be stricken, and

the Property shall be conveyed to Scuderi and Zoubek for the original purchase price of \$525,000.

**B. Damages**

53. “[C]ourts ordinarily do not grant damages in addition to specific performance, in large part because such an award would constitute an inequitable windfall for the promisee, at least where specific performance alone of the contract affords the promisee the full benefit of his bargain.” *Ebright v. Shutter*, 386 A.2d 66, 68 (Pa. Super. 1978).

54. Scuderi and Zoubek can recover their claimed lost profits, including the developer fee and profits from the development of the Property, after the Parkside Property is conveyed to them at the original purchase price of \$525,000.

55. In addition, Scuderi and Zoubek requested damages as an alternative remedy to specific performance, which has been awarded.

56. Thus, Scuderi and Zoubek are not entitled to damages.

**CONCLUSION**

57. For all the foregoing reasons, the Court finds for:

- a. Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against Earl V. Ross, III, in trust for Ronald C. Ross, and Earl V. Ross, III, for breach of contract;
- b. Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against Kevin Duggan for abuse of process;
- c. Scuderi Real Estate Group, LLC and Zoubek Properties, LLC and against Kevin Duggan and C&K Enterprises Co., LLC for tortious interference with contract; and

- d. Scuderi Real Estate Group, LLC and Zoubek Properties, LLC on the declaration that C&K is not a bona fide purchaser of the Parkside Property.

58. The Court grants specific performance of the Agreement among Scott Scuderi and Brian Zoubek, Earl V. Ross, III, in trust for Ronald C. Ross, and Earl V. Ross, III, for the contracted amount of \$525,000. The deed from Earl V. Ross, III, in trust for Ronald C. Ross and Earl V. Ross, III, is stricken and a closing on the Parkside Property, conveying it to Scuderi Real Estate Group, LLC and Zoubek Properties, LLC shall take place within 45 days of the docketing of the accompanying order.

BY THE COURT:

*Abbe F. Fletman*

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ABBE F. FLETMAN, J.