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

THE PARTNERSHIP CDC	:	
	:	AUGUST TERM 2004
	:	
v.	:	NO. 246
	:	
	:	CONTROL NO: 050065
APPLE STORAGE COMPANY, INC.	:	
	:	

O R D E R

AND NOW, this 29th day of July, 2005, upon consideration of Plaintiff's Partnership CDC's Motion for Summary Judgment, and response thereto, and in accordance with the Court's contemporaneously filed memorandum opinion, it is hereby ORDERED and DECREED that said Motion is GRANTED.

Defendant Apple Storage Company, Inc. shall effectuate settlement as contemplated by the Agreement of Sale between Apple Storage Company, Inc. and Partnership CDC within ten (10) days of the date of this Order. Defendant Apple Storage Company, Inc. shall execute all documents required to complete the transaction contemplated the Agreement of Sale and transfer title to the property at 780 South 52nd Street, Philadelphia, Pennsylvania, to Plaintiff Partnership CDC.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

Before the Court is plaintiff Partnership CDC's Motion for Summary Judgment against defendant Apple Storage Company, Inc. For the reasons set forth below, said Motion is granted.

Background

Plaintiff Partnership CDC ("CDC") is a non-profit Pennsylvania corporation. Defendant Apple Storage Company, Inc. ("Apple") is a Pennsylvania corporation with a place of business at 780 South 52nd Street in the City of Philadelphia. On December 3, 2003, CDC and Apple entered into an Agreement of Sale (the "Agreement") for the sale of commercial real estate at 780 South 52nd Street in the City of Philadelphia ("the Property"). Pursuant to the Agreement, CDC agreed to buy and Apple agreed to sell the Property for a purchase price of $500,000. As amended, the Agreement provided that settlement would take place on June 25, 2004. On June 18, 2004, Apple's Board of Directors and Equity Voting Shareholders adopted a corporate resolution authorizing the sale of the Property. See Exh. 4 to CDC's Motion for Summary Judgment. Thereafter, Apple's Board of Directors and Equity Voting Shareholders adopted a corporate

resolution rescinding the earlier resolution, and directed its counsel to inform CDC that Apple could not convey good and marketable title. See Exh. 5 to CDC's Motion for Summary Judgment.

On June 24, 2004, one day before the scheduled settlement, counsel for Apple sent CDC a facsimile advising that Apple would not attend the settlement because it was "unable to convey good and marketable title to the property." See June 24, 2004 facsimile from Apple's counsel, attached as Exh. C to CDC's Motion for Summary Judgment. In response, counsel for CDC sent a facsimile advising that CDC was "ready, willing, and able to settle on the Property" the following day, and that, pursuant to the Agreement, CDC would take such title as Apple could convey.[1] See June 24, 2004 facsimile from CDC's counsel, attached as Exh. D to CDC's Motion for Summary Judgment. Apple did not attend settlement on June 25, 2004.

CDC contends that Apple breached the Agreement in bad faith solely because Apple learned that it could get a better deal elsewhere. Specifically, CDC asserts that Apple repudiated the Agreement because Apple learned that the Property was worth at least $800,000, instead of the $500,000 selling price to CDC. In the present motion, CDC moves for summary judgment against Apple and requests specific performance of the Agreement. In the alternative, CDC requests money damages.

In response to CDC's Motion for Summary Judgment, Apple asserts that the Agreement was signed without proper corporate authorization from Apple, and that there was a mutual mistake of fact by the parties as to the true value of the Property at the time

[1] Paragraph 11(b) of the Agreement specifically provided that in the event that the Seller (Apple) was unable to give good and marketable title, the Buyer (CDC) had the option of taking such title as Seller can give without changing the price or of being repaid all monies paid from Buyer to Seller on account of purchase price.

the Agreement was signed. Therefore, Apple contends that the Agreement should be void or voidable.

Summary Judgment Standard

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, a party may move for summary judgment in whole or in part as a matter of law:

> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2. Summary judgment is granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact. Merriweather v. Philadelphia Newspapers, Inc., 453 Pa. Super. 464, 471, 684 A.2d 137, 140 (1996). Summary judgment may be entered only in those cases where the record clearly demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Dean v. Commonwealth of Pennsylvania, 561 Pa. 503, 507, 751 A.2d 1130, 1132 (Pa. 2000). The record must be viewed in the light most favorable to the opposing party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Id.

Discussion

The material facts are not in dispute in this matter. In order to establish a cause of action for breach of contract, the 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." Denny v. Primedica Argus Research Labs, Inc., Commerce Program, 2001 Phila. Ct. Com. Pl. LEXIS 16, *5, Sheppard, J. (May 2001), citing Williams v. Nationwide Mutual Ins. Co., 2000 Pa. Super 110, 750 A.2d 881, 884 (2000).

Here, CDC has sufficiently shown, and it is undisputed, that a written contract was formed between CDC and Apple for the sale of the Property. The essential terms of the contract are clearly laid out in the Agreement. It is also undisputed that Apple breached the contract. Indeed, Apple admits that it did not attend settlement on June 25, 2004 and refused to go through with the deal because it learned that the Property was worth more than the price at which it was selling the Property to CDC. See Barbara Johnson deposition at 31:12-19; 34:11-22; 41:8-18 (March 16, 2005).

Apple defends its breach on two grounds. First, Apple contends that Barbara Johnson ("Johnson"), who signed the Agreement on behalf of Apple, did not have proper corporate authorization to bind Apple to the Agreement. This argument is without merit. Johnson is the President, Secretary, and Treasurer of Apple. See Johnson depo. at 10:2-21 (March 16, 2005). She is the Chair of the Board of Directors, which consists of herself and her three sons. See Johnson depo. at 11:10-12:2; 36:8-9 (March 16, 2005). She is also the majority shareholder of Apple, owning 65 percent of company's stock. See Johnson depo. at 41:3-7 (March 16, 2005). Johnson admitted during her deposition that she signed the Agreement in this matter, and that CDC and Apple, *the corporation*, entered into the Agreement. See Johnson depo. at 7:13-9:8; 29:10-13 (March 16, 2005). Further, the corporation's name, "Apple Storage Company," is directly above Johnson's signature in the Agreement. Immediately above the corporation's name and Johnson's

signature is a paragraph that states:

> The undersigned acknowledges that he/she is authorized by the Board of Directors to sign this Agreement on behalf of the Seller corporation, and that this sale does not constitute a sale, lease, or exchange of all or substantially all the property and assets of the corporation, such as would require the authorization or consent of the shareholders pursuant to 15 P.S. §1311.

Johnson signed the Agreement on December 3, 2003, and signed the Addendum to the Agreement on May 6, 2004. On June 18, 2004, Apple's Board of Directors and Equity Voting Shareholders adopted a corporate resolution authorizing the sale of the Property to CDC. The resolution specifically stated the following:

> AND BE IT FURTHER RESOLVED, that the BOARD OF DIRECTORS/EQUITY SHAREHOLDERS DO UNANIMOUSLY AUTHORIZE AND DIRECT, MRS. BARBARA JOHNSON, AS PRESIDENT/MAJORITY SHAREHOLDER OF ASC [Apple Storage Company], TO SIGN AND EXECUTE ALL DOCUMENTS TO FULFILL THIS RESOLUTION WHICH CONSUMMATES THE SALE 780 SOUTH 52ND STREET AND ITS PHYSICAL CONTENTS.

It is well-settled that a corporation is a legal fiction which can act only through its officers, directors and other agents. Morrison v. Correctional Physician Services, Inc., Commerce Program, 2000 Phila. Ct. Com. Pl. LEXIS 80, *16, Sheppard, J. (December 2000), citing Biller v. Ziegler, 406 Pa. Super. 1, 6-7, 593 A.2d 436, 439 (1991). "A corporation is bound by its agents' acts where those acts are performed by any express grant of power, as well as those acts which are performed within the agent's implied or apparent authority." Id., citing Lokay v. Lehigh Valley Co-op. Farmers, Inc., 342 Pa. Super. 89, 97, 492 A.2d 405, 409 (1985). To show that a president of a defendant corporation has authorization to enter into a contract, a plaintiff may show any resolution of the corporation authorizing the execution of the contract or a valid ratification of the

act by the stockholders or directors. Leschinski v. W.C. Hack & Sons, 47 Pa. D. & C. 469, 474 (Ct. Cm. Pl. 1942).

Here, there was express authority by the Board of Directors and Equity Shareholders. There was a resolution adopted by Apple that expressly authorized the execution of the specific contract at issue. The contract was formed at this stage, and Apple is bound by the Agreement. Parties are bound by the terms of their own contract, and a court will not relieve a party from a bad bargain or a bargain improvidently made. See Situs Properties v. Peter Roberts Enterprises, Commerce Program, 2005 Pa. Phila. Ct. Com. Pl. LEXIS 20, *12, Jones, J. (January 2005); Turner v. Baker, 225 Pa. 359, 362, 74 A. 172, 173 (1909).

Apple's second defense is that there was a mutual mistake of fact as to the value of the Property, making the contract voidable. The Court finds this defense to be frivolous, so it will not address it.

Specific Performance

CDC requests that the Court grant specific performance of the contract. A decree of specific performance is a matter of grace and not of right. Hebrew School Condominium Association v. DiStefano, Commerce Program, 2004 Phila. Ct. Com. Pl. LEXIS 71, *9, Cohen, J., (October 2004), citing Clark v. Pennsylvania State Police, 496 Pa. 310, 313, 436 A.2d 1383, 1385 (1981). Specific performance should only be granted where the facts clearly establish the plaintiff's right thereto, where no adequate remedy at law exists, and where justice requires it. Id. at *9-10.

The remedy of specific performance is generally confined to sales of real estate and chattels of a unique nature. Schipper Bros. Coal Mining Co. v. Economy Domestic

Coal Co., 277 Pa. 356, 361, 121 A. 193, 194 (1926). "Contracts to convey an estate in real property have been traditionally regarded as being specifically enforceable in equity by the buyer." Petry v. Tanglwood Lakes, Inc., 514 Pa. 51, 56 522 A.2d 1053, 1055 (1987). A plaintiff has the burden of proving all the essential elements of their cause of action in a suit for specific performance. Antonietta v. Patsch Brothers, Inc., 31 Pa. D. & C.3d 44, 48 (Ct. Cm. Pl. 1984). Specifically, in a contract action seeking specific performance, a plaintiff must prove the existence of the contract, the actual terms of the agreement, and its willingness and readiness to perform. Id. "In decreeing or refusing to require specific performance of a contract to convey real property, a great deal depends upon the wise exercise of judicial discretion, in light of all circumstances appearing in the transaction." Wagner v. Estate of Rummel, 391 Pa. Super. 555, 561, 571 A.2d 1055, 1058 (1990).

After careful consideration, the Court concludes that CDC is entitled to specific performance of the Agreement. The Agreement was for the sale of real estate. Traditionally, money damages are seldom adequate when a seller breaches a land sales contract because land is unique. Eckman v. Commonwealth, Dep't of General Services, 526 Pa. 623, 625, 587 A.2d 1389, 1390 (1991). Thus, "an aggrieved real estate buyer can usually insist on specific performance of the purchase agreement if the equities are otherwise in his favor." Id.

Further, CDC has proved that a valid contract exists and has shown the essential terms of the contract. CDC has also proved that it was ready and willing to perform its part of the deal. In fact, CDC's counsel sent a facsimile to Apple informing Apple that it was still ready, willing, and able to settle on the Property, despite being told that Apple

was not going to settle on the Property. See June 24, 2004 facsimile from CDC's counsel, attached as Exh. D to CDC's Motion for Summary Judgment. Additionally, Johnson testified that she had no reason to believe that CDC was not willing to go through with the Agreement. See Johnson depo. at 47:21-24, 48: 1-5 (March 16, 2005). Therefore, based on all the circumstances, the Court finds that CDC is entitled to specific performance of the Agreement.

CONCLUSION

For all the foregoing reasons, plaintiff CDC's Motion for Summary Judgment is granted.

BY THE COURT,

HOWLAND W. ABRAMSON, J.