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Option to repurchase property ruled void

Terms too vague to be enforceable

■ ERIC T. BERKMAN

An option-to-purchase agreement that did not specifically describe the subject property's dimensions and lot lines was unenforceable, a Superior Court judge has ruled.

Plaintiffs Haven Realty Trust and Danielle and Justin O'Connell agreed to buy a 7.7-acre property in Dover from defendants Patrick and Karina Corrigan, with the Corrigans' company, defendant Corrigan Development Co., or CDC, slated to perform certain renovations.

The O'Connells eventually brought suit against the defendants over issues with the renovations and alleged misrepresentations the Corrigans made in connection with the sale.

Meanwhile, the Corrigans demanded specific performance of a $350,000 option to repurchase 3.838 acres of the property that the parties had agreed to as part of the initial sale.

The O'Connells argued that the terms of the option-to-purchase, which stated that the dimensions and future lot lines were to be "mutually agreed upon" at a later date, were too vague to create an enforceable contract.

Judge Michael P. Doolin agreed, applying the Supreme Judicial Court's 1972 decision in *Lucey v. Hero Int'l Corp*.

"In *Lucey*, as is the case here, the language of the OTP indicates that the O'Connells and the Corrigans contemplated a further agreement regarding the location and dimensions of the land subject to the option," Doolin wrote, quoting *Lucey* in an order of partial summary judgment. "It is well settled that an 'agreement to enter into a contract which leaves the terms of that contract for future negotiation is too indefinite to be enforced.'"

[The decision] strengthens the reliability of contract law in real estate disputes and allows our clients to move forward free from these baseless claims.

– J. NATHAN COLE, BOSTON

The 30-page decision is *Haven Realty Trust v. Corrigan, et al.*, Lawyers Weekly No. 12-046-25.

'HOPES AND PRAYERS'

Boston attorney J. Nathan Cole, litigation counsel for the plaintiffs, said the judge correctly rejected the defendants' claim of unilateral authority to exercise the option.

"[The decision] strengthens the reliability of contract law in real estate disputes and allows our clients to move forward free from these baseless claims," he added.

Jonathon D. Friedmann of Boston, who represented the defendants, said the case highlights the need for conveyancing attorneys to be precise in the language they use when dealing with rights of first refusal.

"Lack of specificity seems to be the issue that gets litigated over and over in these types of cas-

es," he said. "This is a message to real estate practitioners as to best practices, which is to make sure you're specific and, if you can, to put in a copy of the plot plan or other descriptive materials as part of the right of first refusal so there's no ambiguity as to the subject matter."

Boston real estate lawyer George J. Warshaw said no other result was possible given a line of cases holding that if the parties to an agreement do not know what they are buying or selling, an agreement to later agree to define the property being sold is nothing more than wishful thinking.

"Hopes and prayers are not enforceable by a court when it comes to real estate," Warshaw said.

Beverly attorney Andrew E. Goloboy said *Haven Realty* is an important case for transactional attorneys to read.

"[It is a reminder that, in a right-of-first-refusal], you need to specifically delineate the bounds of a subject property rather than saying, 'Well, we'll agree on that later.' Because it's not guaranteed that you will," he said.

Though Jenna R. Wolinetz of Waltham agreed with the decision, she noted that the defendants could still pursue a promissory estoppel claim against the plaintiffs.

"It is now up to a factfinder to determine whether it was reasonable for them to rely on the agreement [that they could purchase the 3.83 acres for $350,000] when they agreed to sell the O'Connells the property."

RIGHT OF FIRST REFUSAL

Before October 2020, the defendants owned 7.718 acres of land in Dover on which they kept their residence.

In spring 2020, the defendants were in the process of subdividing the property into lots that they planned to develop into additional residences.

By summer, the plaintiffs discussed with the defendants the possibility of using the defendants' company, CDC, to build them a residence in Dover.

But rather than proceeding with a custom-built home, the parties began negotiating the sale of the defendants' residence on the property.

Haven Realty Trust v. Corrigan, et al.

THE ISSUE: Was an option-to-purchase agreement that did not specifically describe the subject property's dimensions and lot lines enforceable?

DECISION: No (Norfolk Superior Court)

LAWYERS: J. Nathan Cole and Alexander R. Zwillinger, of Cole Law Partners, Boston (plaintiffs)

Jonathon D. Friedmann and Casey A. Sack, of Rudolph Friedmann, Boston (defense)

On Aug. 24, 2020, the plaintiffs made an offer to purchase the defendants' residence.

The offer apparently included an addendum providing specific renovations that CDC would complete.

Over the ensuing weeks, defendant Patrick Corrigan worked with plaintiff Danielle O'Connell to finalize the scope of the renovations.

In September, both parties instructed their respective attorneys to formalize the remodeling contract into a purchase and sale agreement.

On Oct. 6, 2020, the parties executed a P&S that incorporated a subdivision plan delineating six numbered lots and provided that the defendants would sell 3.88-acre "Lot 1" to the plaintiffs for $3.2 million.

Attached to the P&S was an agreement for CDC to remodel the residence for the total sale price of the property.

It soon became evident, however, that the property had not yet been subdivided.

That apparently meant that the defendants could not sell Lot 1 as depicted to the plaintiffs.

Accordingly, the parties negotiated an amendment to the P&S providing that the plaintiffs would buy the property's entire 7.718 acres for $3.5 million.

The amendment also provided the defendants with a unilateral right to buy back an option parcel.

Specifically, it stated that the defendants would

have a five-year right of first refusal post-closing for the property as a whole, and the unilateral right during the five-year period to purchase approximately 3.838 acres as depicted on an attached rough sketch plan.

The amendment additionally included information regarding future development of more residences on the property.

At the time the amendment was executed, the defendants had not provided the plaintiffs with the sketch plan purporting to depict the option parcel they would potentially buy back.

On Jan. 28, 2021, the defendants gave the plaintiffs a proposal for their option that would leave the plaintiffs with 3.838 acres instead of the agreed-upon 3.88 acres.

The proposal also included a land swap that would require the plaintiffs to take land from an abutting property. Meanwhile, the defendants' attorney at the time informed their architect that the proposed sketch was inaccurate.

That same day, plaintiff Danielle O'Connell, responding to an email from CDC, stated: "Here's how I see it. You are selling us 7.718 acres tomorrow. Our original deal was 3.88 acres so I think the Right of First Refusal should not include any pictures and instead should say that you have the right to purchase 3.838 acres from the 7.718 acres from us for 350k. We work out the lot lines later. You know?"

Both parties subsequently instructed their attorneys to finalize such an agreement.

A day later, the parties executed a right-of-first refusal and option-to-purchase stating that the defendants would have an option to purchase a "certain portion" of the premises "with dimensions and future lot lines to be mutually agreed to" by the parties for $350,000, but in no case would the plaintiffs' remaining land be less than 3.88 acres.

After execution of the agreement, Haven Realty Trust, of which the plaintiffs were trustees, became owners of the property.

At some point, the plaintiffs reportedly learned that the defendants and CDC were not properly registered as home improvement contractors, even though CDC allegedly advertised itself on its website as being licensed.

Before renovations on the property now owned by the plaintiffs were complete, the defendants and CDC allegedly abandoned the project, forcing the plaintiffs to hire a new contractor at an additional cost.

Ultimately, the parties became embroiled in litigation in Norfolk Superior Court, with the plaintiffs bringing assorted fraud- and contract-based claims against the defendants and the defendants bringing fraud- and contract-based counterclaims, including a claim that the plaintiffs breached the option-to-purchase agreement, for which the defendants demanded specific performance.

The defendants also alleged promissory estoppel, based on an assertion that they relied to their detriment on the plaintiffs' promise that if the defendants sold the plaintiffs their property, they could buy back 3.838 acres for future development.

The plaintiffs moved for summary judgment.

IMPERMISSIBLE VAGUENESS

Doolin granted the plaintiffs' motion, rejecting the defense argument that the offer-to-purchase's meaning could be ascertained with relative certainty.

"In *Lucey*, the Supreme Judicial Court held that the OTP at issue was 'too indefinite to be specifically enforced' because it did not contain a sufficient description of the land subject to the OTP," the judge said, noting that the parcel subject to the option in that case was left for future agreement. "The OTP here contains the exact language at issue in *Lucey*."

However, Doolin ruled that the defendants' promissory estoppel could proceed.

"The parties agreed to the size of the option area and the time period in which the option would remain open," Doolin observed. "This is evidence of an agreement, not mere negotiations. Therefore, whether the Corrigans reliance was reasonable is a question of fact for the fact finder to determine at trial."