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COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 21, 2007
Decided: February 7, 2008

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Re: *Haase v. Grant*
Civil Action No. 3041-CC

Dear Counsel:

This case requires consideration and application of basic principles of land conveyance and contract law to determine the enforceability of an alleged promise, which was purportedly either oral or embodied in a document, to refrain from obstruction of an ocean view. For the following reasons, I conclude that there is no enforceable promise and therefore grant defendant's motion for summary judgment.

I. BACKGROUND

On September 14, 2006, plaintiff Barry L. Haase and defendant Walter W. Grant entered into a contract for the purchase and sale of certain real estate,[1] described as 3 Sandpiper Lane, Bayberry Dunes, Bethany Beach, Delaware and further identified by Sussex County, Delaware tax map parcel number 1-34-9-487 (the "Property" or "Lot 3"). Plaintiff alleges that

[1] *See* Def.'s Ex. A to Def.'s Br. in Supp. of Mot. for Summ. J. (Sept. 14, 2006 agreement).

he was concerned that construction on an adjacent lot owned by defendant ("Lot 4") would obstruct plaintiff's ocean view to the north. Plaintiff further alleges that, as a result of this concern and before he entered into the contract, defendant orally represented to plaintiff that the house he constructed on Lot 4 would not impair plaintiff's view[2] and, in response to plaintiff's request, provided plaintiff with a copy of the proposed footprint of defendant's house to be erected on Lot 4 (the "Footprint").[3] The contract specifically stated:

> Seller acknowledges that Buyer intends to use Seller's anticipated construction of a 5,000 square foot residence upon Seller's adjoining lot in Buyer's calculation of Buyer's anticipated residence pursuant to [Department of Natural Resources and Environmental Control ("DNERC")] requirements, and that such computation will not be allowed by DNERC until such time as Seller's adjacent residence is walled and under roof.[4]

The contract also gave plaintiff the option to terminate the agreement before settlement if defendant did not have pilings in place on Lot 4 for construction of the house by November 15, 2006.[5] The contract was later amended (the "addenda") to increase the square footage of defendant's house to 6000 square feet and extend the termination option date to April 20, 2007.[6] The contract's integration clause provided that "[t]he parties agree that neither they nor their Agents shall be bound by any terms, conditions,

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[2] Defendant denies that there was any discussion between the parties about any right of plaintiff to an ocean view, but does not deny that he provided the Footprint to plaintiff. On this motion for summary judgment, the Court may make all reasonable inferences in favor of the non-moving party. Here, I determine that it is reasonable to infer that such a discussion occurred.

[3] *See* Def.'s Ex. B to Def.'s Br. in Supp. of Mot. for Summ. J. (proposed Grant residence footprint).

[4] *Id.*

[5] *Id.* (Sept. 14, 2006 addendum).

[6] *See* Def.'s Ex. A to Def.'s Br. in Supp. of Mot. for Summ. J. (Nov. 8, 2006 and Nov. 21, 2006 addenda). The integration clause in the contract states: "This Contract and any addenda hereto contain the final and entire Contract between the parties and may not be modified or changed except by written agreement signed by all the parties." *Id.* (Sept. 14 agreement) at p. 5.

statements, warranties or representations, oral or written, not contained herein."[7]

The Property was conveyed by deed dated April 9, 2007 from defendant to plaintiff.[8] Despite defendant's failure to have pilings in place on Lot 4 by April 20, 2007, plaintiff proceeded to settlement on April 16, 2007. Plaintiff alleges that he did so only in reliance on defendant's verbal representations, the Footprint, and the contract and its addenda. Construction by defendant on Lot 4 that differed from the Footprint resulted in plaintiff's application to this Court for a temporary restraining order, which was withdrawn on September 10, 2007 when defendant agreed to suspend construction and maintain the status quo pending resolution of the permanent injunction sought by plaintiff.[9] Thereafter, defendant moved for summary judgment.

In an attempt to demonstrate that a genuine issue of material fact exists to withstand defendant's motion for summary judgment, plaintiff contends that defendant fraudulently induced plaintiff to enter the contract (enforcement of which is not barred, plaintiff argues, by the integration clause in the contract, the parol evidence rule, or the Statute of Frauds) and that defendant then breached the contract. Plaintiff argues that the contract and the addenda reflect defendant's promise to plaintiff to build a house measuring between 5000 and 6000 square feet, not 7000 square feet.[10] Plaintiff also argues that the Footprint represents, essentially, defendant's promise to plaintiff to refrain from construction that would impair plaintiff's ocean view from Lot 3.

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[7] *Id.* (Sept. 14 agreement) at p. 5.

[8] *See* Def.'s Ex. C to Def.'s Br. in Supp. of Mot. for Summ. J. (Apr. 9, 2007 deed).

[9] Plaintiff's complaint contains two counts: breach of contract and misrepresentation or fraud. I assume, without deciding, that plaintiff has sufficiently pleaded fraud with particularity as required by Rule 9(b). *See Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1050 (Del. Ch. 2006) ("To satisfy Rule 9(b), a complaint must allege: (1) the time, place, and contents of the false representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by making the representations."). State of mind and knowledge may be averred generally. *Id.*

[10] Plaintiff alleges (and defendant does not deny) that the revised footprint, which was approved by the Division of Soil and Water Conservation on October 2, 2006, indicates that defendant was constructing a 7000 square foot house with an addition that would block plaintiff's view of the ocean. *See* Pl.'s Ex. C. to Compl. (Oct. 2, 2006 Grant residence footprint).

II. ANALYSIS

A. Legal Standards

Under Rule 56(c), summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[11] In ruling on the pending motion for summary judgment, I examine the facts in a light most favorable to the non-moving party.[12] For the reasons stated below, I conclude that, even construing the facts and drawing all reasonable inferences in a light most favorable to plaintiff, plaintiff has failed to meet his burden to demonstrate a genuine issue of material fact necessary to survive the motion for summary judgment.

B. The Merger Doctrine and Exceptions to Its Applicability in Land Conveyances

Land conveyance consists of two distinct writings: first, the contract for the purchase and sale of land; and second, the deed at settlement. Title passes if a deed is validly executed and delivered, as it was here on April 9, 2007. At that point, under the doctrine of merger by deed, the contract typically is extinguished.[13] This means that, after title has passed via the deed, the contract generally ceases to be a viable basis upon which plaintiff may sue.[14] Fraud or misrepresentation, however, precludes application of the merger doctrine.[15]

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[11] Ct. Ch. R. 56(c).

[12] *See, e.g.*, *HIFN, Inc. v. Intel Corp.*, No. 1835-VCS, 2007 WL 1309376, at *9 (Del. Ch. May 2, 2007).

[13] *Carey v. Shellburne, Inc.*, 215 A.2d 450, 504 (Del. Ch. 1965) (discussing the "general rule" that an executed and delivered deed of contract of sale of land merges with the contract and contract becomes void). It may be more accurate to describe the original contract as discharged by accord and satisfaction or by a substituted contract. *See Pryor v. Aviola*, 301 A.2d 306, 308 (Del. Super. 1973) (citing 6 CORBIN ON CONTRACTS §1319).

[14] The doctrine of merger is not infinite in scope and applies only to "land questions of title, quantity, and land use." *Allied Builders, Inc. v. Heffron*, 397 A.2d 550, 552–53 (Del. 1979) (citations omitted).

[15] *Clarke v. Quist*, 560 A.2d 489 (Table) (Del. 1989). *See also Bonczek v. Helena Place, Inc.*, No. 9501, 1990 WL 105766, at *7 (Del. Ch. July 24, 1990) ("But the plaintiff here is not attempting to enforce any promise; he is seeking to rescind the transaction because of a material misrepresentation. Merger by deed is not a defense to that claim.").

1. Assumption of Reasonable Reliance to Support Plaintiff's Fraudulent Inducement Argument Operates to Revive the Contract

Plaintiff alleges that he was fraudulently induced to enter into the contract and to complete settlement of the property by defendant's purported representations regarding the ocean view from Lot 3. To prevail on his fraudulent inducement claim, plaintiff must satisfy the elements of common law fraud: (1) a false representation of material fact; (2) the defendant's knowledge of or belief as to the falsity of the representation or the defendant's reckless indifference to the truth of the representation; (3) the defendant's intent to induce the plaintiff to act or refrain from acting; (4) the plaintiff's action or inaction taken in justifiable[16] reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance.[17] Representations are only actionable if false at the time made.[18] Whether defendant's subjective intent was to deceive plaintiff is a disputed question of fact[19] that would generally preclude me from deciding this case on summary judgment. Here, however, I will assume that defendant did in fact

[16] Delaware courts use "justifiable" interchangeably with "reasonable." *See, e.g.*, *Browne v. Robb*, 583 A.2d 949, 955 (Del. 1990) ("The general elements of common law fraud under Delaware law [include] . . . action or inaction [that] resulted from a reasonable reliance on the representation . . . .").

[17] *See, e.g.*, *Mark Fox Group, Inc. v. E.I. duPont de Nemours & Co.*, No. 20081, 2003 WL 21524886, at *5 (Del. Ch. July 2, 2003) (citation omitted). Though "intent to defraud or deceive is an essential element to a recovery for fraudulent misrepresentations in an action at law, such intent is not essential if a false statement has in fact been made, and rescission may be an available remedy in equity even where the false representation was made innocently." *Craft v. Bariglio*, No. 6050, 1984 WL 8207 (Del. Ch. Mar. 1, 1984) (citing *In re Brandywine Volkswagen, Ltd.*, 306 A.2d 24 (Del. Super. 1973), *aff'd*, 312 A.2d 632 (Del. 1973); *Norton v. Poplos*, 443 A.2d 1 (Del. 1982)).

[18] *Kosachuk v. Harper*, No. 17928, 2002 WL 1767542, at *5 (Del. Ch. July 25, 2002.) *See also Berdel, Inc. v. Berman Real Estate Mgmt., Inc.*, No. 13579, 1997 WL 793088 (Del. Ch. Dec. 15, 1997) (concluding that misrepresentation and fraud claims were deficient as a matter of law where a party failed to adduce any evidence showing that an alleged oral promise falsely represented either a past or contemporaneous fact or a future event that falsely implied an existing fact). That "[a] party's failure to keep a promise does not prove that the promise was false when made," *id.* at *8, underscores the difference between a breach of contract claim and one for fraud.

[19] Defendant's denial that the parties discussed any purported right of plaintiff to an ocean view necessarily includes a denial that any such discussion occurred with the intent to defraud plaintiff.

act with the requisite intent at the time the alleged promise was made. As articulated later, even this assumption does not preclude entry of summary judgment in favor of defendant.

Plaintiff alleges that defendant made two material misrepresentations: first, that defendant told plaintiff that defendant was going to build a house measuring between 5000 and 6000 square feet that would not obstruct plaintiff's ocean view from Lot 3; and second, that defendant, in providing plaintiff with the Footprint, indicated that his house on Lot 4 would not impair plaintiff's view. Plaintiff contends that he was induced to rely on these representations, that he then did rely, and that such reliance was reasonable. As with the issue of whether defendant acted with the requisite intent, the question of whether plaintiff's reliance was reasonable is a question of fact. Though there may be compelling arguments on both sides, I need not determine whether plaintiff's reliance was or was not—as matter of law—reasonable. It is at least of questionable reasonableness for plaintiff to rely on an oral, gratuitous promise made by defendant (though defendant denies making such a representation) that prohibits defendant from building on his own land as he desires. Perhaps plaintiff's reliance was naïve but reasonable or perhaps the aid of testimony from both parties might convince this Court that plaintiff's reliance was unreasonable. Here, however, I need not decide whether plaintiff's reliance was or was not unreasonable because, even with these suppositions that hypothetically enable plaintiff to prevail in his fraudulent inducement claim, plaintiff still is not entitled to the injunctive relief he seeks.

2. Plaintiff's Breach of Contract Argument Fails Because the Contract Did Not Confer on Plaintiff a Right to an Ocean View

Again, even assuming that there was a fraud or misrepresentation such that the contract was not extinguished via the merger doctrine, plaintiff still cannot withstand the entry of summary judgment against him. The contract contains no reference whatsoever to an ocean view. Therefore, even if the contract were "revived" under the fraud exception to the merger doctrine, no term in the contract provides plaintiff a basis upon which his requested relief may be granted. Plaintiff appears to contend that the 6000 square foot restriction represents defendant's promise to refrain from construction on Lot 4 that would obstruct plaintiff's ocean view. Certainly nothing in the language of the contract supports this interpretation. The parties included a

restriction that limited defendant's ability to construct beyond a certain square footage on his land. If the parties had intended to also include a restriction on the ability of defendant to construct on his land if such construction would impair plaintiff's ocean view, one reasonably would expect to see this explicitly memorialized and recited in the contract in the form of a contractual term that prohibited obstruction of plaintiff's ocean view. They did not do so, however, and the inclusion of one term restricting defendant's use of his land (by setting the maximum square footage of his house) demonstrates that the parties knew how to refer to and restrict defendant's use of his land if, and when, they so desired. In addition, the contract is not ambiguous; the parol evidence rule does not permit the introduction of the Footprint or any alleged oral promise related to the Footprint to create ambiguity where none otherwise exists.[20] Therefore, I conclude that plaintiff's breach of contract claim affords him no relief.[21]

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[20] *United Rentals, Inc. v. RAM Holdings, Inc.*, __ A.2d __, No. 3360-CC, 2007 WL 4591849, at *15 (Del. Ch. Dec. 21, 2007) ("[E]xtrinsic, parol evidence cannot be used to manufacture an ambiguity in a contract that facially has only one reasonable meaning.") (citations omitted). *See also Gibney v. Stockdale Corp.*, 174 A. 117 (Del. Ch. 1934) (offer of representation from defendant's agent to plaintiff regarding use of land in a development was barred by the parol evidence rule). The court determined that such an offer amounted to "an attempt to graft a covenant upon the deed binding on the grantor and supported solely by parol evidence." *Id.* at 118.

[21] Though plaintiff does not specifically allege a breach of a covenant in the deed, this claim might be inferred from his breach of contract claim. Examination of the deed indicates that the property was encumbered by "the Restrictive Covenants . . . of Bayberry Dunes," the "restrictions appearing on Subdivision Plat of record," and "all other covenants, conditions, restrictions and easements of record." *See* Def.'s Ex. C to Def.'s Br. in Supp. of Mot. for Summ. J. (Apr. 9, 2007 deed). Neither party provided the Court with these restrictions; presumably, they have no bearing on the issue raised in this case. Plaintiff does not contend that defendant's alleged promise to refrain from construction on Lot 4 that would obstruct plaintiff's ocean view from Lot 3 is reflected in any covenant in the deed. Under Delaware law, "a property owner has no right to an unobstructed view unless an easement, covenant or statute provides otherwise." *Russo v. Nelson*, No 01C-08-005, 2003 WL 1689592, at *5 (Del. Super. Mar. 31, 2003) (citing *Law v. Lee*, No. 84C-OC-16, 1988 WL 67851, at *1 (Del. Super. June 21, 1988); *see also Reeder v. Teeple*, No. 12128, 1993 WL 211825, at *2 (Del. Ch. June 8, 1993). As a matter of public policy, restrictions on the free use of property are not favored by law and, as such, "all doubts are to be resolved against the person seeking to enforce them." *Carey*, 215 A.2d at 507. Thus, as with the contract, the deed and any covenants contained therein do not support plaintiff's request for injunctive relief.

3. The Footprint Is Not a Collateral Agreement Under Which Plaintiff Is Entitled to an Ocean View

As discussed above, in this case either the merger doctrine extinguishes the contract and renders its terms legally inoperative or fraud revives the contract but its terms provide no support to plaintiff's argument. Attempting to prevail in opposing the motion for summary judgment, plaintiff tethers his claims for relief to an alternate theory: plaintiff contends that the Footprint is a separate, collateral agreement that is unaffected by merger of the contract into the deed.[22] Even assuming that this is the case (which I think is beyond what is required of me even when deciding a motion for summary judgment),[23] plaintiff's argument is fatally flawed in at least two separate ways. Plaintiff asserts that defendant provided the Footprint to plaintiff in response to plaintiff's concerns about obstruction of the ocean view and that it allegedly embodies or represents defendant's promise not to construct a home that would obstruct plaintiff's view. First, the integration clause in the contract specifically states that any representations not contained in the contract or its addenda are not binding on the parties. Neither the Footprint document nor the alleged oral representation by defendant to refrain from construction that would impair plaintiff's ocean view was specifically mentioned in the contract or its

[22] The rationale behind this "collateral" agreement principle is that "there are certain kinds of promises that have a close relationship to the function that deeds perform and are customarily dealt with by deed provisions or other closing papers, and there are other promises that do not fall into this category." Lawrence Berger, *Merger By Deed–What Provisions of a Contract for the Sale of Land Survive the Closing?* 21 REAL EST. L.J. 22, 32 (Summer 1992). The former are "deed-related" and the latter are not.

[23] In arguing that defendant's alleged promise was a collateral covenant unaffected by the merger doctrine, plaintiff relies on *Re v. Magness Construction Co.*, 117 A.2d 78 (Del. Super. 1955). *Re* involved a single contract that contemplated two separate acts: the conveyance of land improved by a dwelling and the construction of a house on that land in accordance with plans and specifications. Here, however, there is a single contract contemplating only the conveyance of land. Moreover, as the Court in *Carey v. Shellburne, Inc., supra* n.13, observed, the plaintiff in *Re* relied on a representation expressly included in the contract of sale. 215 A.2d at 504. Here, as in *Carey*, plaintiff purports to rely on an oral representation made during the negotiations leading to the contract. Thus, as did the *Carey* Court, I conclude that *Re* is distinguishable and the merger doctrine exception applied to the facts of that case has no application to the facts here before me.

addenda.[24] Second, even if the Footprint and defendant's purported oral representation together are a separate agreement outside the scope of the integration clause, the Footprint fails to satisfy the Statute of Frauds and therefore cannot be enforced. The Statute of Frauds provides that "[n]o action shall be brought to charge any person . . . upon any contract or sale of lands . . . or any interest in or concerning them . . . unless the contract is reduced to writing . . . [and] signed by the party to be charged therewith."[25] The Footprint, which depicted the anticipated construction on defendant's land, cannot satisfy the writing requirement because it was not signed by either party. Thus, to the extent that plaintiff alleges that defendant's representation that plaintiff's view of the ocean would not be obstructed was somehow implicit in the writing, I am not at all convinced that this satisfies the Statute of Frauds. The preservation or creation of a covenant not to obstruct an ocean view concerns real property and its use and is therefore within the Statute. Plaintiff has not produced anything that would satisfy the Statute so as to permit this Court to enforce what is otherwise an unenforceable oral promise restricting the use of real property.

III. CONCLUSION

Even assuming the truth of plaintiff's assertions regarding defendant's statements purportedly motivated to induce plaintiff's reliance thereon, and the reasonableness of such reliance, I conclude that plaintiff is not entitled to the relief sought—a permanent injunction—under either breach of contract claim: the contract itself or the alleged collateral agreement, the Footprint. Therefore, for all the reasons stated above, summary judgment must be entered for defendant and the complaint is dismissed.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:mpd

[24] Though, as noted above, the contract did contain reference to a maximum square footage. One reasonably would expect the reservation of a right to an ocean view to be included in this section of the agreement.

[25] 6 *Del. C.* § 2714(a).