IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GODSELL MANAGEMENT, INC.,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	C.A. No. 2222-MA
	)	
TURNER PROMOTIONS, INC.,	)	
	)	
DEFENDANT.	)	

MASTER'S REPORT

Date Submitted: May 31, 2007
Draft Report: November 20, 2007
Final Report: November 28, 2007

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AYVAZIAN, Master

On June 13, 2006, Petitioner Godsell Management, Inc. ("Godsell") filed a complaint seeking specific performance of an alleged oral agreement with Respondent Turner Promotions, Inc. ("Turner") involving a commercial lease at 1700 Augustine Cut-Off in Wilmington, Delaware. According to the complaint, Turner had agreed to phase out its dance school business within one year and to vacate the premises that the parties had leased in exchange for Godsell paying all the rent and utilities during the initial year of the three-year lease. Turner not only failed to vacate the leased premises within one year, but also allegedly poached some of Godsell's customers during this time period, for which loss Godsell now seeks monetary damages and an order requiring Turner to vacate the leased premises. In its answer, Turner denies that it agreed to the terms of the oral agreement alleged in the complaint, denies that it poached some of Godsell's customers, and raises numerous affirmative defenses, including the statute of frauds, 6 Del. C. § 2714.[1] A trial was held on May 31, 2007, on the threshold issue of whether an enforceable oral contract had been created.[2]

[1] Turner's Answer also contained several counterclaims that are not being addressed in this report.

[2] At the request of the parties, the trial was bifurcated to determine first whether an oral agreement existed, and then to determine damages, if any. Bifurcation was requested in order to avoid delaying the trial while Turner took exception to my ruling granting Godsell's Motion to Compel discovery of certain documents that were only relevant to the issue of damages.

This is my report following the trial and the submission of post-trial memoranda.

Factual Background

William Godsell, president of Godsell Management, Inc., testified at the trial on May 31, 2007. Mr. Godsell has been involved in the dance business since 1960. He operated an Arthur Murray franchise until 2003, and then operated his own business under the trade name Candlelight Dance Club. Prior to moving to 1700 Augustine Cut-Off, Mr. Godsell leased space for his business in the Independence Mall on Route 202. For 22 years, his dance facility was located on the second floor of the Independence Mall. During 2004, however, Mr. Godsell became embroiled in a dispute with the management of the mall over his business sign, and his lease was terminated.

In the fall of 2004, according to Mr. Godsell, he was approached by Marie Tonyes, who said she wanted to "phase out" her business, which was Turner Promotions, Inc. Since 1981, Ms. Tonyes had leased the premises at 1700 Augustine Cut-Off, where she operated a dance school. The school is housed in a single story building, which has large glass windows running approximately 100 feet across the front of the building. People dancing in the school's ballrooms are visible from the street. The ground floor location

was particularly attractive to Mr. Godsell because he has a handicapped daughter who is confined to a wheelchair. Mr. Godsell and Ms. Tonyes met once at the Independence Mall facility, and another time at the Augustine Cut-Off facility where, according to Mr. Godsell, Ms. Tonyes showed him the various items she planned on taking with her and the items that would remain on the premises. Mr. Godsell understood that Ms. Tonyes needed to remain in the studio for three to six months, possibly up to a year, to fulfill her obligations to her students. According to Mr. Godsell, it would be his responsibility to pay the entire rent and utility costs for the leased premises starting in January 2005.

On December 1, 2004, the parties signed a written lease agreement with the owners of 1700 Augustine Cut-Off for a three-year term starting January 1, 2005.[3] The rent was $1800/month for the first 18 months, and $2000/month for the next 18 months. The monthly rent at the Augustine Cut-Off location was nearly $400 less than Godsell's monthly rent at the Independence Mall. There was no statement in the lease document that Godsell was responsible for paying the rent and utilities or that Turner was to vacate within a year. According to the written lease agreement, Godsell and Turner were co-tenants for a three-year period.

[3] Joint Trial Ex. 1.

Godsell relocated to 1700 Augustine Cut-Off sometime at the end of December 2004, and within days began its operations in the fully equipped dance studio. At first, the two dance schools coexisted peacefully, but Mr. Godsell observed Ms. Tonyes "growing" her business during the first months of 2005. Later that year, he asked about her intentions. Ms. Tonyes told Mr. Godsell that she was not leaving the premises, and that she had never said that she was leaving. It was the first time he heard how she understood their agreement. The relationship soured between the two businesses, to the point where one of Godsell's employees was arrested for offensive touching after colliding with Ms. Tonyes.

Not surprisingly, Ms. Tonyes's trial testimony differed in several respects from Mr. Godsell's testimony. In 2003 and 2004, Ms. Tonyes had been involved in negotiations with a third party for the sale of her business for $300,000, but the deal was never consummated. She testified that she had wanted to spend more time with her family and to work less, but her intention was to continue in the dancing business as long as she was able. Ms. Tonyes had collaborated professionally with Mr. Godsell on several occasions in the past, and when she informed him about the unsuccessful sale negotiations he said, "Do not make any decision unless you first discuss it with me, talk to me about it." The two started talking about sharing space

because their businesses functioned in a similar manner.[4] According to Ms. Tonyes, Mr. Godsell told her that he was having difficulty with his landlord, and that the construction on Route 202 was affecting his business. He also was concerned about his handicapped daughter and wanted her to be able to work at the reception desk.

According to Ms. Tonyes' testimony, at first Mr. Godsell wanted to move his dance school to 1700 Augustine Cut-Off in March 2005, but then he called her in October and November 2004, asking if he could move sooner. Ms. Tonyes agreed, but told him that it was going to take her three to six months to rearrange her bookings so that she could take time off and he could have the space full time. To enhance her income, Ms. Tonyes had been renting out space in the leased premises for parties, weddings, and to independent teachers who taught salsa, yoga and ballet at her facility. In order for Godsell to move into the leased premises, Ms. Tonyes had to reduce the rentals, cancel events or move them to other schools; in other words, she had to "phase out" her business. However, she wanted to maintain her group classes several times a week. She testified that she had never expressed an intention to retire. According to Ms. Tonyes, even though Godsell was to pay the entire rent and utilities, Godsell benefited

[4] Ms. Tonyes started her training in an Arthur Murray dance studio, and later joined the Fred Astaire organization.

from sharing the leased premises because the location at 1700 Augustine Cut-Off was a "gold mine." As a result of the move to 1700 Augustine Cut-Off, Godsell's dance business had grown.

The Legal Issues

Godsell is seeking specific performance of an alleged oral contract to vacate leased premises. There are two issues at the heart of this matter: (1) did the parties enter into an oral contract as alleged whereby Godsell agreed to pay the entire rent and utility costs for the dance facility at 1700 Augustine Cut-Off in exchange for Turner's promise to vacate the premises within one year; and (2) if so, does the statute of frauds bar specific performance of the contract. After reviewing the record, the post-trial memoranda, and the pertinent case law, I find it unnecessary to address the second issue because resolution of the first issue disposes of the case.

"[I]t is well established that specific performance will not be decreed unless '*** the existence and terms of the contract sought to be enforced are established by that high degree of proof which has been variously characterized by the terms 'clear,' 'clear and convincing,' 'clear and satisfactory' or other equivalent expressions.'" *Durand v. Snedeker*, 177 A.2d 649, 652 (Del. Ch. 1962) (quoting 81 C.J.S. SPECIFIC PERFORMANCE § 143, p. 727). *See also Deene v. Peterman*, 2007 WL 2162570, at *5 (Del.

Ch. July 12, 2007); *Sargent v. Schneller*, 2005 WL 1863382, at *4 (Del. Ch. Aug. 2, 2005). The parties do not dispute that an oral contract exists, but they disagree on the specific terms of that contract, i.e., whether or not Turner was required to vacate the premises.

The legal question whether an enforceable agreement was formed here depends solely on the credibility of the parties. *See Morton v. Evans*, 1998 WL 276228, at *2 (Del. Ch. May 15, 1998). I observed Mr. Godsell and Ms. Tonyes during the trial and listened to their testimony, and I found the parties to be equally credible. Of greater significance to the legal issue to be determined, however, was Mr. Godsell's testimony that: (1) Ms. Tonyes never used the word "retire; (2) he never asked when Ms. Tonyes was going to retire; and (3) he did not feel that he had to ask what she meant when she used the phrase "phase out" her business. Mr. Godsell further testified that he "understood" from their conversations that she was going to vacate the premises.

William Godsell's subjective understanding notwithstanding, the plaintiff has failed to provide clear and convincing evidence that the parties reached a complete meeting of the minds on all material terms of the oral contract. *See Ramone v. Lang*, 2006 WL 905347, at *10 (Del. Ch. Apr. 3, 2006). Godsell, therefore, has failed to prove that an enforceable oral

contract was formed. *Morton*, mem. op. at *2, *supra*. Because a binding contract was never formed, Godsell is not entitled to specific performance based on breach of contract.

Conclusion

For the reasons stated above, the plaintiff has not shown that an enforceable oral contract was formed. Therefore, specific performance will not be granted. Once this report becomes final, counsel for the parties shall confer and inform the Court how they wish the matter to proceed.