



**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

LEO E. STRINE, JR.  
VICE CHANCELLOR

New Castle County Courthouse  
Wilmington, Delaware 19801

Submitted: January 13, 2005  
Decided: February 16, 2005

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**Re: BALE PROPERTIES, INC. v. ANDREW J. DIMEDIO  
C.A. No. 256-N**

Dear Counsel:

Plaintiff Bale Properties, Inc. has filed a motion for summary judgment seeking specific performance of its supposed contractual right to buy certain land. This is a case in which there was apparently never a single written contract having the same terms signed by both Bale and the defendant, Dimedio. Bale bases its motion in large measure on its own understanding of an ambiguous amendment to a proposed contract. The amended agreement was signed by Dimedio, but not by Bale. In short, there is no evidence suggesting the existence of a single completed contract executed by both parties.

Given the relative informality with which the parties conducted their discussions, it would be reckless to decide this case on a paper record. The parties

differ sharply as to their understanding of several issues, including whether Dimedio's obligation to sell was dependent on his ability to first sell the house adjacent to the property Bale seeks to buy. There are also genuine issues about whether Bale complied with its contractual obligations (if a contract was made) and the effect of that, in one instance undisputed (again, assuming a contract was made), non-compliance on its entitlement to relief. Indeed, on this record, it would be easier to justify the entry of summary judgment for Dimedio than for Bale. In view of the venerable principle that this court can deny summary judgment when it believes that the matter would be more justly and efficiently decided after a trial,<sup>1</sup> I deny Bale's motion for summary judgment.

A short trial shall be held at which the court can hear the relevant witnesses and make final determinations of fact and law. The parties shall collaborate on a schedule, which shall include the submission of a pre-trial order. The parties may use the summary judgment briefs as their pre-trial briefs if they choose, but only if the discovery record is closed. If it is not closed, pre-trial briefs shall be prepared, with each side filing an opening and answering brief. IT IS SO ORDERED.

Very truly yours,

*/s/ Leo E. Strine, Jr.*

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<sup>1</sup> See *In re Dairy Mart Convenience Stores, Inc.*, 1999 WL 350473, at \*11 (Del. Ch. May 24, 1999) (“[T]his Court has the discretion to deny summary judgment if it decides that a more thorough development of the record would clarify the law or its application.”); *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962) (“[U]pon examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances.”).