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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: July 9, 2008
Decided: August 1, 2008

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Re: *Rossi, et al. v. Ricks, et al.*
Civil Action No. 1747-CC

Dear Counsel:

As this Court has noted many times, "[u]nder Delaware law, courts interpret contracts to mean what they objectively say."[1] On September 27, 2003, Anthony and Mary Ann Rossi entered a contract for the sale and purchase of land with Jean Ricks. The transaction was never consummated, and on October 28, 2005, the Rossis filed a complaint seeking specific performance and damages. That complaint, however, was filed not only against the estate of the now-deceased Jean Ricks, but also against Dean and David Ricks in their capacities as co-trustees of the William Ricks Revocable Trust and the Jean T. Ricks Revocable Trust. Presently before the Court are motions for summary judgment filed by each side and a motion to strike filed by the Rossis. For the reasons explained below, I conclude that the Rossis never entered a contract with David and Dean Ricks either in their individual capacities or in their capacities as co-trustees.

[1] *Seidensticker v. Gasparilla Inn, Inc.*, C.A. No. 2555-CC, 2007 WL 4054473, at *1 (Del. Ch. Nov. 8, 2007).

The land at issue in the contract is one of four contiguous lots, and the land comprising these lots was held and controlled by the Ricks family, which consisted of William and Jean Ricks and their two sons, David and Dean. Since 1993, the land has been held in the Jean T. Ricks Revocable Trust and the William P. Ricks Revocable Trust. While alive, William and Jean served as trustees of their respective trusts; after William died in 1996, Jean, David, and Dean assumed the roles of co-trustees of the William Ricks Revocable Trust. In 1999, Jean, David, and Dean subdivided the land into the four lots in order to sell the individual lots to pay off family debts.

At that point, it becomes less clear who, exactly, was making decisions regarding the land. In December 1999, Jean Ricks entered into listing agreements for the four lots with Beverly B. Blades, a licensed real estate broker in Seaford, Delaware. The listing agreements are inconsistent; some list Jean as the sole owner of the lands and some list her as a co-trustee. Blades submitted an affidavit in connection with an earlier round of briefing in this case in which she averred that David and Dean appeared to have full knowledge that the lots were listed and being sold to pay off family debts. Moreover, two of the four lots were sold in transactions facilitated by Blades. In those cases, David and Dean apparently appeared at the settlement and signed the documents necessary to transfer the land to the buyers. Of the other two lots, one is no longer listed for sale and is apparently still controlled by David and Dean Ricks and the other, Lot 2, is the subject of this litigation.

On September 27, 2003, the Rossis submitted an offer on Lot 2 by and through Blades, who acted as a dual agent for the Rossis and Jean Ricks. Jean accepted this offer and entered into a "Residential Contract of Sale" (the "Purchase Agreement") to sell Lot 2 to the Rossis. The Rossis made a down payment of $1,000, which is currently being held in escrow. The Purchase Agreement identifies "Jean Ricks" as the seller. Nowhere does it mention the two trusts that actually held the land, nor does it specify that Jean was acting in her capacity as a trustee.[2] Furthermore, the Purchase Agreement provides that Blades was "not at any time authorized to make any representations about this Contract or the property other than those written in the Contract" and that "Buyers and Seller(s) acknowledge that they have not relied on any representations made." Finally, the Purchase Agreement also includes an integration or merger clause that provides the "Contract and any addenda hereto contain the final and entire contract between the

[2] *Cf., e.g.*, the purchase agreement for Lot 3, which lists Jean Ricks as a "co-trustee."

parties . . . ." The Purchase Agreement called for settlement to occur on January 6, 2004.

That did not happen. Jean Ricks contacted the Rossis and stated that she wanted to postpone settlement for a year due to tax considerations. The Rossis consented to this request, and on February 12, 2004 Jean Ricks and the Rossis executed an addendum to the Purchase Agreement that postponed settlement until January 2005. Although the addendum listed "Jean, David, and Dean Ricks" as the "seller," only Jean signed the addendum. The addendum does not mention either trust and does not refer to Jean, David, or Dean as a co-trustee. Moreover, the addendum itself specifies that it is an agreement between the "undersigned," and, as noted, it is signed only by the Rossis and Jean Ricks.

Although the addendum called for settlement by January 3, 2005, the Rossis did not attempt to contact Jean Ricks about settlement until March 16, 2005. Jean, who was very ill by that time, did not respond. In early April 2005, Jean Ricks died. Over six months later, the Rossis initiated this suit to specifically enforce the Purchase Agreement.

Central to the resolution of the pending motions is the question of whether the contract for the sale and purchase of land is enforceable. Because that is a question of contract interpretation, "summary judgment is appropriate only if the contract in question is unambiguous."[3] Consequently, "the threshold inquiry when presented with a contract dispute on a motion for summary judgment is whether the contract is ambiguous."[4] A contract provision is ambiguous only when it is fairly susceptible to two or more reasonable interpretations.[5] Importantly, a contract term is not ambiguous simply because the parties do not agree on its meaning.[6] This Court "adheres to an objective theory of contracts, under which [it] does not resort to extrinsic evidence 'to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity' when the contract terms are unambiguous."[7] Moreover, under this objective theory, the Court is

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[3] *United Rentals, Inc. v. RAM Holdings, Inc.*, 937 A.2d 810, 830 (Del. Ch. 2007).
[4] *Id.*
[5] *E.g., Concord Steel, Inc. v. Wilmington Steel Processing Co.*, C.A. No. 3369-VCP, 2008 WL 902406, at *3 (Del. Ch. Apr. 3, 2008).
[6] *E.g., JANA Master Fund, Ltd. v. CNET Networks, Inc.*, --- A.2d ---, C.A. No. 3447-CC, 2008 WL 660556, at *3 (Del. Ch. Mar. 13, 2008) ("[M]ere disagreement among the parties does not somehow create ambiguity."), *aff'd*, 947 A.2d 1120 (Del. 2008).
[7] *Seidensticker v. Gasparilla Inn, Inc.*, C.A. No. 2555-CC, 2007 WL 4054473, at *1 (Del. Ch. Nov. 8, 2007) (quoting *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232–

"constrained by a combination of the parties' words and the plain meaning of those words . . . 'Delaware courts will not destroy or twist contract language under the guise of construing it.'"[8]

The policy behind these rules of interpretation is not to somehow suppress the intent of the parties; on the contrary, "the court's ultimate goal is to determine the parties' shared intent."[9] Nevertheless, by the time the Court is presented with the issue, the parties no longer agree; "[t]hat is why they are in court."[10] Consequently, the Court must reconstruct the shared intent by reaching for evidence of it from before the fray of litigation. The fairest and most efficient source of such evidence is the contract itself. The Supreme Court has noted that "[w]hen the language of a contract is clear and unequivocal, a party will be bound by its plain meaning because creating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had not assented."[11] If this Court were to consult extrinsic evidence when interpreting an unambiguous contract, it would disincentivize careful, precise contract drafting.[12] Particularly in contracts containing integration or merger clauses that affirmatively represent that the written instrument is the exclusive and entire agreement between the parties, use of extrinsic evidence absent ambiguity would be manifestly inefficient and unfair.[13]

Here, the contract is only susceptible to one reasonable interpretation: it is an agreement between the Rossis and Jean Ricks alone. This conclusion is

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33 (Del. 1997)); *see also United Rentals*, 937 A.2d at 830 ("[E]xtrinsic, parol evidence cannot be used to manufacture an ambiguity in a contract that facially has only one reasonable meaning.").

[8] *AT&T Corp. v. Lillis*, --- A.2d ---, Nos. 490, 2007, 459, 2007, 2008 WL 2151436, at *8 (Del. May 22, 2008) (quoting *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006)).

[9] *Sassano v. CIBC World Markets Corp.*, 948 A.2d 453, 462 (Del. Ch. 2008).

[10] *John v. United States*, 247 F.3d 1032, 1041 (9th Cir. 2001).

[11] *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006) (quoting *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)).

[12] *Cf.* David Marcus, *Desperately Seeking Certainty*, THEDEAL.COM, July 18, 2008, at http://www.thedeal.com/newsweekly/features/desperately-seeking-certainty.php (noting that M&A lawyers have shifted their practice to emphasize contractual clarity in private equity deals in response to decisions of this Court).

[13] *Accord Far West Foresters, Inc. v. State, Through Dept. of Forestry*, 656 P.2d 374, 378 (Or. Ct. App. 1982) ("The purpose of the objective theory of contracts is to allow parties to rely on the written expression of intent and not one or the other party's later assertions of undisclosed subjective intent.").

compelled by the plain language of the agreement. Jean Ricks is listed as the seller, and nowhere is either trust mentioned.[14] Although the Rossis have proffered much by way of extrinsic evidence to suggest that Jean was acting on behalf of all trustees, they have failed to show any ambiguity in the written agreement. In a somewhat analogous case, this Court refused to allow a landowner, George Cartmell, to enforce a contract for the sale and purchase of land where the contract was executed not by the landowner but by his agent, Mary Cartmell.[15] Chancellor Wolcott's reasoning remains potently apropos today:

> Nowhere in the contract is George Edwin Cartmell mentioned as a party. He did not sign it nor did any one purport to sign for him . . . . [T]he contract on its face does not leave open the question of the capacity in which Mrs. Cartmell signed the agreement. In the body of the paper she is described as the owner and immediately following her signature she designates herself as owner. It is as though she specifically stipulated that she was entering into the agreement in behalf of herself alone as principal. The attempt to give her own signature a double aspect so as to make of her an agent as well as a principal, is to contradict the plain meaning of the written paper which, as stated, commits her to the role of a principal . . . . [T]o allow evidence to be given that the party who appears on the face of the instrument to be personally a contracting party, is not such, would be to allow parol evidence to contradict the written agreement; which cannot be done.[16]

Like the contract with Mary Cartmell, the Purchase Agreement only mentions Jean Ricks, and it describes her as the seller. The Rossis' suit is an "attempt to give [Jean's] own signature a double aspect so as to make of her an agent as well as a principal," and to allow this would be "to contradict the plain meaning of the written paper." The contract is unambiguous. For this reason, I

[14] David and Dean are listed on the addendum to the contract, but that addendum was signed only by Jean Ricks. The addendum—like the Purchase Agreement—does not mention either trust.
[15] *Cartmell v. Nigro*, 165 A. 625 (Del. Ch. 1933).
[16] *Id.* at 627.

grant summary judgment in favor of David and Dean Ricks with respect to the first three claims for relief in the second amended complaint.[17]

Alternatively, I grant summary judgment in favor of David and Dean Ricks pursuant to the statute of frauds. Delaware's statute of frauds provides that "[n]o action shall be brought to charge any person upon any agreement made upon . . . any contract or sale of lands . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith, or some other person thereunto by the party lawfully authorized in writing . . . ."[18] As the District Court for the District of Delaware noted, "[t]o determine if the writings satisfy the Statute of Frauds, the Court must examine whether the writings contain the necessary signatures."[19] Here, the necessary signatures would be those of David and Dean Ricks or "some other person thereunto the party lawfully authorized in writing." Neither David nor Dean signed the Purchase Agreement, and the record contains no evidence of any writing authorizing Jean Ricks to sign on their behalf. Because "[t]here is no question that the Delaware Statute protects the principal unless the agreement is made with him directly or with 'some other person thereunto by him lawfully authorized in writing,'"[20] I grant summary judgment in favor of David and Dean Ricks with respect to the first three claims for relief in the second amended complaint.

Finally, on July 2, 2008, the Rossis filed a motion to strike portions of defendants' reply brief in support of their motion for summary judgment because it raised an argument based on the fact that the contract was under seal. The Rossis contended that this argument was new and should not have been raised in a reply brief. The defendants dispute the characterization that this argument was new or inappropriate. Because, however, I have resolved the competing motions for

[17] The fourth and final claim for relief alleges fraud on the part of Jean Ricks. No party appears to have moved for summary judgment on this claim, which, in any event, is only properly stated against the estate of Jean Ricks.

[18] 6 *Del. C.* § 2714(a).

[19] *Kirschling v. The Lake Forest School Dist.*, 687 F. Supp. 927, 930 (D. Del. 1988).

[20] *Acierno v. McCall*, 264 A.2d 513, 514 (Del. 1970) (affirming summary judgment in favor of landowners who never signed sale agreement despite plaintiff's contention that landowners' attorney executed an agreement on their behalf because there was no writing authorizing attorney to do so).

summary judgment without recourse to this argument, the motion to strike is moot and need not be resolved.[21]

I have concluded that David and Dean Ricks were not parties either in their individual capacities or in their capacities as co-trustees to the Purchase Agreement and, therefore, that agreement cannot be specifically enforced against them.[22] This conclusion is compelled both by the plain language of the agreement and by the statute of frauds. As a result, the Rossis' motion for summary judgment is denied and David and Dean Ricks' motion is granted. The Rossis' motion to strike is denied as moot.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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[21] *See In re Transamerica Airlines, Inc.*, C.A. No. 1039-VCP, 2007 WL 1555734, at *1 (Del. Ch. May 25, 2007) ("Because the Court has not relied upon any of the contested paragraphs of the McCauley and Isyaku affidavits, Defendants' motions to strike those affidavits are denied as moot.").

[22] *See DeMarie v. Neff*, C.A. No. 2077-S, 2005 WL 89403, at *4 (Del. Ch. Jan. 12, 2005) ("The burden of proving that a valid contract existed—and its terms—is on the party seeking to enforce the contract, as well as the burden to convince this Court that specific performance is equitably warranted.").