IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN H. McDOWELL, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1420-MA
	)	
NORMAN H. GREENFIELD, JR., and NORMAN H. GREENFIELD, JR. t/a ALLIED ASSOCIATES, LTD.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER AFFIRMING THE MASTER'S REPORT

Submitted: June 23, 2008
Decided: August 1, 2008

William B. Wilgus, Esquire, Millsboro, Delaware, *Attorney for John H. McDowell, Jr.*

Steven Schwartz, Esquire, SCHWARTZ & SCHWARTZ, Dover, Delaware, *Attorney for Norman H. Greenfield, Jr.*

LAMB, Vice Chancellor.

The seller of residential real estate in Dover, Delaware raises three exceptions to a Master's report ordering specific enforcement of a lease purchase agreement. The seller challenges (1) the Master's ruling that the agreement is ambiguous, (2) that the extrinsic evidence demonstrates that a $2,000 initial payment made in accordance with the agreement was to be applied toward the sale price, and (3) that the evidence supported specific performance of the agreement. Reviewing the Master's factual and legal findings *de novo*, the court agrees with the Master's finding that the lease purchase agreement is ambiguous, that the extrinsic evidence supports the Master's finding as to the $2,000 payment, and that specific performance was warranted.

I.[1]

In early 2003, the plaintiff, John W. McDowell, wanted to purchase a home for himself. When McDowell noticed an advertisement for the sale of a piece of real estate identified as 331 North Bradford Street, Dover, Delaware ("the property"), he made an appointment to meet the owner, defendant Norman H. Greenfield, Jr., trading as Allied Associates, Inc. As soon as McDowell saw the property, he liked it and told Greenfield he would purchase it. Greenfield agreed,

[1] The Master thoroughly addressed the facts underlying the parties' dispute in her July 6, 2007 draft report and her August 30, 2008 final report. The court merely recapitulates those facts, summarized and modified where appropriate. *See McDowell v. Greenfield*, 2008 WL 1952169 (Del. Ch. Apr. 30, 3008), *McDowell v. Greenfield*, No. 1420-MA, Draft Rep. 7-8 (hereinafter referred to as "Draft Rep.")

but told McDowell that for tax purposes he could not sell the property for two years.[2] Although McDowell wanted to buy the property at that time, he agreed to a two-year lease purchase arrangement because "for tax purposes, that's the way [Greenfield] did things."[3]

Greenfield prepared a document entitled "Lease Purchase Agreement" ("Agreement") that he and McDowell signed on March 19, 2003. The Agreement provides in pertinent part:

> Lease purchase agreement for 331 North Bradford Street, Delaware. Full sales price of $92,500 . . . .
>
> I, John W. McDowell, Jr., agree to begin purchasing this property on or before two years and three months from the date of commencement of my lease with Allied Associates, Ltd. I have paid a Non-Refundable $2,000 (two thousand dollars) for a purchase option to this property. I understand this is not a rent deposit.
>
> I understand that Allied Associates, Ltd. has required a two-year lease for this agreement at a monthly rent of $790 . . . . Allied Associates, Ltd. has agreed to a rent rebate of $395 . . . for a period of not more than 24 . . . months, if purchase proceeds under the terms set forth. No rebate is to be given, nor expected if purchase is not made. Allied Associates, Ltd. will then collect the full rent of $790 per month. I understand that this rebate is to be used exclusively for the price reduction of this property and is not considered a down payment. Allied Associates, Ltd. further agrees to pay $2,000 . . . towards attorney and document fees at settlement. It is understood that there is no interest on these monies.[4]

[2] Tr. 7-8.
[3] *Id*. at 8.
[4] JX 1 (emphasis omitted).

On the same date, the parties signed a separate document entitled "Lease Agreement" ("Lease") that Greenfield had prepared.[5] The Lease provided for a rental rate of $790 per month and a 12-month term starting April 1, 2003, with an option to renew on the date of termination or to continue occupancy on a month-to-month basis. On the day that the parties signed these documents, McDowell paid Greenfield $2,790.[6]

McDowell moved into the property several weeks later. Over the following two years, McDowell paid Greenfield $790 at the start of each month.[7] During this time McDowell made roughly $45,000 in improvements to the property, not including the cost of his own labor. He installed electric garage doors and new gutters, re-landscaped the property, replaced the roof and windows, and painted both the interior and exterior of the house. McDowell made these improvements because he intended to purchase the property.

As the end of the two-year period approached, McDowell sent Greenfield some notes with his monthly checks to indicate that he still intended to purchase the property. The notes reflect that McDowell's intention was for settlement to occur in May 2005.[8] McDowell, however, had miscounted the number of months

[5] *Id.* at 9.
[6] Tr. 9.
[7] There was a dispute about a payment in July 2004, but that is not relevant to this opinion.
[8] JX 10: "Just a short note to recomend [sic] a May settlement. I'll be paying you off – settlement by mail. My Attorney William Wilgus 302 934-7777[.]" JX 11: "Please find enclosed my last payment, and will close on May 1, 2005."

he had paid rent. He had already made 25 payments to Greenfield. Since McDowell was only entitled to a rent rebate for 24 months, his April 2005 payment of $790 was wholly attributable to rent, and the 90-day period during which he could exercise the option had begun to run on April 1, 2005. After discovering this error, McDowell, therefore, decided to settle on the property in April rather than May.

McDowell attempted to contact Greenfield about a settlement date, but without success. McDowell's attorney, William B. Wilgus, Esquire, then sent both parties a letter dated April 18, 2005, scheduling settlement to take place on Friday, April 22, 2005, and enclosing a copy of the proposed Settlement Statement for their review.[9] On April 21, 2005, Greenfield called Wilgus and informed him that he had not received any paperwork and would not be able to settle the following day. McDowell appeared at his attorney's office on April 22, 2005, having borrowed funds in order to purchase the property.[10] Greenfield did not appear for the scheduled settlement, and Wilgus sent Greenfield another letter, dated April 22, 2005, enclosing additional copies of the settlement documents.[11] In his letter, Wilgus asked Greenfield to take the documents to his attorney for review and stated that, upon receipt of the signed documents, Wilgus would forward an escrow

[9] *Id*. at 2.
[10] According to the Settlement Statement, plaintiff's mother was his lender. *Id*. at 8.
[11] *Id*. at 3.

check in the amount of $78,899.48 to Greenfield. Wilgus sent two more letters to Greenfield, the first one dated April 30, 2005, and the second one dated May 13, 2005, reminding Greenfield to execute, acknowledge, and return the settlement documents.[12]

On May 25, 2005, Greenfield telephoned McDowell's attorney. The substance of their conversation is in dispute. As described in the attorney's letter dated May 25, 2005,[13] during their conversation Greenfield complained that he had been given insufficient notice of the closing, and requested that: (1) the settlement statement be pro-rated as of May 31, 2005; (2) McDowell pay rent through May 31 at the rate of $790 per month; and (3) a new check be issued to replace the July 2004 check sent by plaintiff's mother, which Greenfield had never cashed and now considered stale. McDowell, according to the letter, offered to replace the check but declined to make any adjustments to the settlement sheet because he, not Greenfield, had the right to choose the settlement date, and a later date would give Greenfield a windfall, i.e., approximately $1,000 in additional rents.[14] During their conversation on May 25, Greenfield testified that he told Wilgus to correct the settlement sheet, and then he would sign it. Greenfield never signed the settlement

[12] *Id*. at 4, 5.
[13] *Id*. at 6.
[14] At trial, however, Greenfield testified that the settlement sheet confused him; he knew there should have been more money. Tr. at 67-70.

sheet. Since May 1, 2005, McDowell has been in possession of the property without paying rent.

A. The Master's Draft Report

On June 15, 2005, McDowell filed a complaint against Greenfield for specific performance of the Agreement. Greenfield counterclaimed for possession of the property and a money judgment for unpaid rents and late fees.[15] Trial was held before Master Kim Ayvazian on January 3, 2007. After the submission of post-trial legal memoranda, the Master issued her draft report.

Since McDowell sought specific performance of the Agreement,[16] he had the burden of demonstrating by clear and convincing evidence that he was ready, willing and able to perform his contractual duties at the April 22, 2005 settlement. McDowell contended that "he satisfied all the obligations of the Agreement, i.e., he paid $2,000 when the contract was signed, he made timely monthly payments of $790 for two years, and he scheduled settlement on the property between the 24th and 27th month of the lease."[17] Greenfield argued that McDowell failed to meet his burden because he owed $2,000 more than he was prepared to pay on April 22. According to Greenfield, the initial non-refundable $2000 payment called for in

[15] Each party also requests the costs of this action to be assessed against the other party.
[16] As the Master noted, "'[t]o grant specific performance, there must be proof of a valid contract to purchase real property and proof that the plaintiff was ready, willing and able to perform his contractual obligations. In addition, the Court must determine whether the balance of equities tips in favor of specific performance.'" Draft Rep. 7-8 (quoting *Demarie v. Neff*, 2005 WL 89403, at *4 (Del. Ch. Jan. 12, 2005)).
[17] Draft Rep. 8.

the Agreement was a purchase option. In other words, this payment was not credited towards the purchase price of the property. In response, McDowell asserted that the initial non-refundable payment was always intended to serve as a down payment on the property. In order to determine if McDowell was ready, willing, and able to purchase the property on April 22, the Master examined the Agreement to determine the purpose of the initial non-refundable payment. The Master noted that the Agreement seems to clearly explain that McDowell "paid a non-refundable $2,000 (two thousand dollars) for a purchase option to this property." However, the following sentence in the Agreement inexplicably states "I understand this is not a rent deposit."[18] The Master found that these two sentences render the purpose of the initial non-refundable $2,000 payment ambiguous under the Agreement, stating:

> If the parties had intended the $2,000 payment to reflect merely the price of the option, why would the Agreement have provided by way of clarification the statement that the payment was not a rent deposit, and then not further clarified the matter by stating it was not a deposit or down payment on the full sales price? The Agreement's failure to provide such language is puzzling in light of the subsequent reference to a rent rebate of $395 per month, where the Agreement explicitly states, "I [McDowell] understand that this rebate is to be used exclusively for the price reduction of this property and is not considered a down payment." Thus, the Agreement's failure to state explicitly that the $2,000 payment is neither a "rent deposit" nor a "down payment" renders the Agreement ambiguous.[19]

[18] JX 1.
[19] Draft Rep. 11.

Turning to the extrinsic evidence, the parties' testimony at trial was conflicting. McDowell testified that the initial payment was a down payment on the property and Greenfield testified that the payment represented the cost of the right to purchase the property and should not be applied to the sale price. The Master noted the testimony, but, instead of determining "whose testimony [was] more credible" looked to the facts and circumstances of the transaction.[20] The Master recognized that McDowell "offered to purchase the property outright upon first seeing" it and that Greenfield only agreed to sell the property after two years for tax purposes.[21] Given the lack of any evidence that McDowell derived a benefit from this agreement, while Greenfield enjoyed a superior tax position, the Master found that it was illogical to conclude that McDowell would pay $2,000 for the right to purchase a property two years in the future that he wanted to buy immediately. The Master also concluded that Greenfield could not have "reasonably expected a willing buyer like McDowell to pay more than the full sales price of the property to accommodate Greenfield's own financial stratagem."[22]

In addition, the Master noted that Greenfield drafted the Agreement and is bound by the general rule of construction that ambiguous contracts should be

[20] *Id*. at 12.
[21] *Id*. at 13.
[22] *Id*.

construed against the drafter. As a result, the Master found that McDowell had tendered sufficient funds and, thus, had been ready, willing, and able to purchase the property on April 22, 2005, the date scheduled for settlement.

Finally, the Master found that the balance of the equities favored McDowell because he had made substantial improvements to the house, garage, and grounds with the expectation that he was going to own the property. On the other hand, the property was an investment for Greenfield that he planned to sell after two years before proceeding to his next real estate transaction. Forcing Greenfield to fulfill an agreement to sell an investment property would impose no special hardship on him. Therefore, the Master concluded that McDowell was entitled to specific performance of the Agreement.

B. The Master's Final Report

Greenfield took exception to the draft report on five grounds, but only raises three of these exceptions to this court.[23] As previously noted, Greenfield challenges the following rulings: (1) that the agreement is unambiguous and (2) that the interpretation of the extrinsic evidence demonstrates that the $2,000 initial payment in the agreement was to be applied toward the sale price, and

[23] Greenfield argued: (1) if the Agreement is ambiguous, it is ambiguous with respect to an essential term, i.e., the purchase price, and thus specific performance is unavailable to McDowell; (2) even if an Agreement is unambiguous with respect to an essential term, specific performance is unavailable if judicial discretion is required to determine what is "reasonable" for the parties; (3) the Agreement is unambiguous; (4) the draft report erroneously analyzed the extrinsic evidence; and (5) the draft report fails to provide Greenfield with certain payments to which he is entitled even under the court's interpretation of the Agreement.

(3) that there is sufficient evidence to justify specific performance. In her Final Report, the Master did not disturb the findings she reached in her Draft Report on these issues.[24]

II.

In his submissions to the court, Greenfield focuses almost entirely on the Master's finding that the purpose of the initial non-refundable $2,000 payment was ambiguous. Greenfield argues that the Agreement unambiguously provides that the initial non-refundable $2,000 payment was not attributable to the purchase price of the house, but to the settlement costs. Greenfield insists that the initial payment constitutes the seller's obligation "to pay $2,000 . . . towards attorney and document fees at settlement." In other words, Greenfield contends that his obligation to pay $2,000 in settlement costs is merely a repayment of the initial non-refundable $2,000 payment.

In addition, according to Greenfield, the Master found the Agreement to be ambiguous because it did not explicitly state that the initial non-refundable payment was either a "rent deposit" or a "down payment." Therefore, Greenfield argues, the Master's finding of ambiguity pertained to an essential term, the price, making specific performance impermissible.

[24] The Master supplemented her Draft Report with a ruling granting Greenfield reimbursement "for all the real estate taxes he paid on the property since April 22, 2005 because the property taxes would have been the responsibility of the plaintiff if the contract had been fully performed on that date." *McDowell*, 2008 WL 1952169, at *9.

In response, McDowell relies exclusively on the Master's finding in the Draft and Final Reports. According to McDowell, the Master "correctly rejected" Greenfield's characterization of the initial non-refundable payment based on the "nature of the Agreement."[25] McDowell notes that the Master recognized "it was the defendant who (1) insisted upon the two-year lease purchase arrangement; (2) bore no discernable financial risk if the purchase option was not exercised because he would retain the property, the non-refundable $2,000 and rents paid, and (3) received favorable tax treatment."[26]

III.

"When considering objections to a master's report, this Court reviews *de novo* the master's legal and factual conclusions."[27] Significantly, the "master's 'rulings are not final until reviewed and adopted by a judge.'"[28]

IV.

This court must first address the Master's finding that the Agreement was ambiguous as to the purpose of the initial non-refundable payment. "[A] contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."[29]

---

[25] Pl.'s Answering Br. 9.
[26] *Id*.
[27] *Aveta, Inc. v. Colon*, 942 A.2d 603, 607 (Del. Ch. Jan. 15, 2008) (quoting *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999)).
[28] *DiGiacobbe*, 743 A.2d at 181.
[29] *Rhone-Poulenc Basic Chems Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

Greenfield's characterization of the initial non-refundable payment, while maybe a reasonable interpretation, does not make the terms of the Agreement unambiguous. Greenfield argues that the Agreement "clearly provided that the $2,000 option payment was to provide . . . McDowell with $2,000 in seller's help for attorney and document fees at settlement."[30] Greenfield relies on two aspects of the Agreement for this assertion. First, he vaguely contends that since the "option payment was $2,000 and the seller's assistance towards buyer's closing costs was also $2,000 . . . a reasonable third party would likely conclude that was no coincidence."[31] Second, Greenfield argues that "even if the identical dollar amounts were not conclusive," the provision in the Agreement stating "[i]t is understood that there is no interest on these monies" clearly means "the $2,000 option payment made two years earlier would not draw interest to be applied for the buyer's attorney and document fees at settlement."[32] While Greenfield insists that "no other reasonable interpretation can be attached to that language," this court cannot agree.[33]

In order to find the terms of the Agreement unambiguous, they must be "'unmistakably clear.'"[34] The mere fact that the dollar amount of the initial

[30] Def.' Opening Br. 10.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] Draft Rep. 10 (quoting *Dittrick v. Chalfant*, 2007 WL 1039548, at *4 (Del. Ch Apr. 4, 2007)).

non-refundable payment and the buyer's assistance is the same does not render Greenfield's interpretation unmistakably clear. There is nothing in the Agreement that suggests these provisions relate to each other. They are in separate paragraphs of the Agreement and preceded by unrelated terms.

Similarly, the language in the second paragraph stating "there is no interest on these monies" does not refer to the initial non-refundable payment in the first paragraph and, thus, does not support Greenfield's interpretation. The provision providing for no interest follows a description of the monetary terms of the two-year lease arrangement between the parties. Therefore, it is clearly intended to pertain only to those payments. Indeed, since the Agreement provides that half of McDowell's rent over a two-year period would be attributed to the sale price, it would be reasonable for McDowell to conclude that those payments might incur interest. Greenfield, as the drafter, undoubtedly sought to make clear that these payments would not accrue interest through the "no interest" provision.

The fact that the "no interest" provision follows the term obligating Greenfield to pay $2,000 in settlement costs does not change the analysis. In order for this fact to be meaningful, there would have to be a clear relationship between the initial non-refundable payment and Greenfield's obligation to pay $2,000 at the time of settlement, which is not the case.

The Master addressed Greenfield's argument in her Final Report as follows:

> This argument . . . renders the Agreement even more ambiguous than before when the defendant claimed that the payment was consideration for the purchase option. If, as the defendant now argues, no interest was to accrue on this payment, was the initial non-refundable $2,000 payment intended to function as a two-year loan (without interest) to the defendant?

While this court does not rely on the Master's analysis, it reflects the uncertainty and conflict inherent in Greenfield's reading. Thus, the Master properly found that the purpose of the initial non-refundable payment is ambiguous.

With respect to the Master's analysis of the extrinsic evidence, Greenfield only indirectly addressed it in his reply brief. Greenfield listed several benefits that McDowell supposedly received in return for paying $2,000 for an option to purchase the property. Specifically, Greenfield argues that:

> (1) McDowell was permitted to postpone for two years payment of the purchase price, (2) McDowell was permitted to live in the house for half the rent payment for two years, with the other half being applied to reduce the purchase price, (3) The amount of McDowell's purchase payment was protected by the agreed upon purchase price. If property values were to skyrocket over the following two years, McDowell was nevertheless guaranteed the house at the agreed upon price. On the other hand, if prices were to have plummeted (such as we see now in the current real estate market), McDowell could refuse to exercise his purchase option and his loss would be limited to the $2,000 he had paid for the purchase option, (4) upon exercising his purchase option and going to final settlement, the $2,000 McDowell had paid would be applied toward his settlement costs.[35]

[35] Def.' Reply 5-6.

"The intent of the parties is paramount in determining the meaning of an ambiguous contract."[36] Nothing in the record suggests that the parties considered these purported benefits at the time of the Agreement. To the contrary, all the extrinsic evidence indicates that McDowell eagerly wanted to purchase the property immediately, but that Greenfield refused. While Greenfield is a real estate investor, McDowell merely wanted to purchase a home and it is unlikely he ever considered the possible benefits of structuring the transaction in the manner that Greenfield required. Therefore, this court is not persuaded that these supposed benefits justify overturning the Master's well-reasoned analysis of the extrinsic evidence.

Finally, Greenfield's contention that the Master supplied an essential term in the Agreement is also unavailing. In her final report the Master addressed this argument as follows:

> I supplied no term of the contract, essential or non-essential. It was the defendant who drafted the Agreement that states: "Lease Purchase Agreement for 331 North Bradford Street, Delaware. Full sales price of $92,500 . . . . My decision recommending specific performance in this case was premised on the principle that the defendant, having drafted the written Agreement, must bear the consequences of ambiguous language employed therein.[37]

As the Master noted, after determining the proper interpretation of the initial non-refundable payment, the Agreement clearly provides for the sale price of the

[36] *Lills v. AT&T Corp.*, 2007 WL 2110587, at *17 (Del. Ch. July 20, 2007).
[37] *McDowell*, 2008 WL 1952169, at *5.

property. In light of the above findings, it is clear that the Master did not supply an essential term of the Agreement.

V.

For the foregoing reasons, the Master's findings are AFFIRMED. IT IS SO ORDERED.