WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 10, 2004
Decided: December 20, 2004

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Re: *Vanguard Group, LLC v. Richards, et al.*
Civil Action No. 2222-S

Dear Counsel:

Plaintiff filed this motion, presumably pursuant to Court of Chancery Rule 59(f), seeking reargument of the Court's November 29, 2004 Order (the "Order") granting summary judgment in favor of the defendants. Having concluded that oral argument is not necessary, and for the reasons discussed below, plaintiff's motion is denied.

Plaintiff's first ground upon which its motion for reargument is based is that there are material facts still at issue which preclude the entry of summary judgment in favor of defendants. To begin, I note that plaintiff, on

September 2, 2004, filed its own motion for summary judgment in this case, in which plaintiff contended that, "there is no genuine issue as to any material fact and that Plaintiff is entitled to a judgment as a matter of law." Nevertheless, the material fact plaintiff believes to be at issue is whether a meeting of the minds took place as to which 39 acres of defendants' property were to be conveyed.

In so doing, plaintiff cites to an affidavit of July 8, 2003, by Dr. Robert C. Villare, a principal of plaintiff Vanguard Group, LLC, where Dr. Villare averred that there were discussions between himself and defendants' agent, Kathy Engel, regarding the western boundary of the property at issue. Plaintiff did not cite to this affidavit in its brief in support of its motion for summary judgment. The affidavit is vague as to whether these discussions occurred before or after the May 30, 2004 contract of sale was signed by the parties. The affidavit does appear clear, however, that no agreement was ever reached by the parties on the issue of the western boundary as a result of these discussions.

Though the existence and outcome of these discussions could be disputed facts, they are not *material* facts because if the discussions came about before the contract was entered into, they would have been rendered legally irrelevant by virtue of the merger clause contained in paragraph 25 of

the contract. If the discussions came after the contract was entered into, according to the explicit terms of the contract, those discussions cannot change the written contract, as the same paragraph 25 specifies that all amendments to the contract must be in writing and signed by the parties. Furthermore, the existence of these discussions and a corresponding lack of agreement, since ongoing discussions necessarily imply that an agreement has not yet been reached, either before or after the contract was signed, lend support to the Court's conclusion that there was no meeting of the minds necessary for the parties to form a valid contract.

In the alternative, the contract is void for mutual mistake because both plaintiff and defendants believed that 39 acres could be conveyed in a parcel shaped like the one drawn on the cross-hatched tax map attached to plaintiff's initial offer.[1] From the surveys and other evidence submitted in connection with the cross-motions for summary judgment, it is clear that 39 acres cannot be found in a parcel of the shape drawn on the map. As such, the contract was void *ab initio* for mutual mistake, notwithstanding the self-

[1] Nothing in the record leads the Court to believe that the portion of the parcel to be sold changed between the first offer attaching the tax map and the second offer that led to the operative contract. Plaintiff's insinuations in the motion for reargument that the Court improperly considered the tax map come with ill grace considering that plaintiff's reply brief in support of its motion for summary judgment explicitly stated at page 2 that the map was evidence for the Court to consider. That same page also correctly implies that without the tax map, it would not be possible to determine which 39 acres of defendants' lands would be sold.

serving and internally inconsistent statement of Dr. Villare in his affidavit of September 2, 2004, at paragraph 5 when he stated that at no time was plaintiff mistaken about the size of the property because plaintiff knew, without the benefit of a survey, that the size of the parcel was "Approx. 39 acres" and "at least 39 acres." Thus, even assuming that plaintiff and defendants thought they had agreed to buy and sell the same piece of property (that there was a meeting of the minds), which I still do not believe occurred, the parties were mutually mistaken as to the size of the portion of the property to be conveyed.

Plaintiff's second ground for reargument is that the sufficiency of the identity of the property to be conveyed was not properly before the Court because it was not raised in defendants' answer or their motion for summary judgment. It was plaintiff, however, that brought this issue before the Court in its motion for summary judgment by arguing that the description was legally sufficient, as sufficiency must be shown in order for plaintiff to be entitled to specific performance. As such, defendants were not "permitted to introduce such argument into the latter stages of the briefing," as plaintiff contends in its motion for reargument, but rather, plaintiff raised the issue, and both parties then briefed it accordingly. The Court concluded as a matter of law that because the description contained in the contract was

ambiguous as to whether the parcel must contain "approximately" 39 acres or "at least" 39 acres, specific performance was not appropriate.

Plaintiff's third ground for relief, relying on a dissent from the Idaho Supreme Court,[2] is that the description of the property was not ambiguous, but rather "indefinite." Regardless of how a dissenting voice of the Idaho Supreme Court characterized the property description at issue in that case,[3] which, in any event, is clearly different from the property description here, this Court is not bound to follow an Idaho Supreme Court dissent as precedent. This Court found the description ambiguous because it called for both "approximately" and "at least" 39 acres to be conveyed when the actual size of the property contemplated is somewhat greater than 32 acres, but much less than 39.[4]

Plaintiff then argues that partial specific performance, either with or without an abatement in purchase price, would be appropriate. As authority, plaintiff cites to a 1914 case relating to a wife's refusal to join in a deed to release her dower interest,[5] and a 1961 case from Maryland where the

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[2] *See White v. Rehn*, 644 P.2d 323 (1982).
[3] "[A]ll land west of road running south to the Rehn farmstead containing 960 acres, [e]xact acreage to be determined by a survey." 644 P.2d at 325.
[4] As noted in the Order, "it is clear that the parcel surveyed according to the instructions of the defendants does not exactly match the shape of the cross-hatched parcel on the tax map attached to plaintiff's original offer." Order at 5.
[5] *Long v. Chandler*, 92 A. 250, 259 (Del. Ch. 1914).

vendor was unable to transfer title to all of the land he contracted to sell.[6] Clearly, those two cases are markedly different from the situation presented here where the vendor could theoretically sell 39 acres, but the parties did not reach a meeting of the minds on exactly which part of defendants' lands (and how much) would be sold and conveyed to buyer. Even if there were authority for this position, partial specific performance in this case would be inappropriate because plaintiff's argument merely goes to reinforce the Court's conclusion that there was a mutual mistake as to the size of the parcel and an ambiguity in the contract as to its size and shape. Furthermore, requiring partial specific performance does not accord with the balance of equities in this case.

Plaintiff concludes the motion for reargument by arguing that the Court improperly rejected the conclusions made in the affidavits of Mr. Smith and, by implication, Mr. Engel. First, Mr. Engel's affidavit is clearly irrelevant, as Exhibit A to his affidavit makes clear that he is discussing a parcel shape much different from that contemplated by the parties when compared to the cross-hatched tax map he attaches at Exhibit B. As stated in the Order, Mr. Smith's affidavit suffers from the same fatal flaw. Any discussions that Dr. Villare might have had with Kathy Engel do not change

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[6] *Westpark, Inc. v. Seaton Land Co.*, 171 A.2d 736 (Md. Ct. App. 1961).

the tax map he submitted with his initial offer, or the terms of that contract that explicitly exclude both prior oral agreements and later oral amendments.

In conclusion, because there was no meeting of the minds or, alternatively, because the contract is void for mutual mistake, there is no valid contract to be specifically enforced, either in whole or in part. Plaintiff's motion for reargument is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:amf