IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALBERT S. WALTON,	)	
	)	
Petitioner/Counterclaim Defendant,	)	
	)	
v.	)	Civil Action No. 19749
	)	
BARRY S. BEALE and BETH BEALE,	)	
	)	
Respondents/Counterclaimants.	)	

MEMORANDUM OPINION

Submitted: October 19, 2005
Decided: January 30, 2006

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PARSONS, Vice Chancellor.

This case stems from an alleged oral contract for the sale of land between Respondents/Counterclaimants, Barry and Beth Beale (collectively referred to as the "Beales"), and Petitioner/Counterclaim Defendant, Albert Walton ("Walton"). Walton has sued for specific performance of a contract to buy undeveloped land from the Beales in Newark, Delaware as negotiated between the parties between 1998 and 2001. The Beales counterclaimed to quiet title. Although neither party signed any agreement, Walton paid taxes on the disputed property for three years and provided a deposit of $20,000 to the Beales in anticipation of the sale.

Based on the evidence presented, it is my opinion that Walton's partial performance combined with the unambiguous nature of the oral agreement justifies an exception to the statute of frauds. I also conclude that Walton is entitled to specific performance. Thus, the Beales must sell the disputed parcel of land to Walton for the agreed upon price, as described in this memorandum opinion.

I. FACTS

Walton and the Beales are neighbors in Newark. They have lived next to each other for more than 15 years. This action relates to three parcels of land that are identified informally by the handwritten numbers 1, 2 and 3 placed during discovery on a record plan filed by the Beales.[1] At one time all three parcels combined with other adjoining land comprised a large farm.[2] Over time parts of the farm were sold and now

[1] DX A. A simplified drawing showing the configuration and relative location of the three parcels involved is set forth in the text as Figure 1.

[2] Tr. at 4-5 (Walton).

what is listed in Figure 1 as lots 2 and 3 make up the rear portion of a property owned by the Beales.[3] The Beales residence is on an adjacent parcel to the immediate left of lot 3 and above lot 1 on Figure 1. Walton owns lot 1 and until 1996 owned lot 2. Currently, Walton does not actively farm his land, and the Beales board horses on their property.[4]

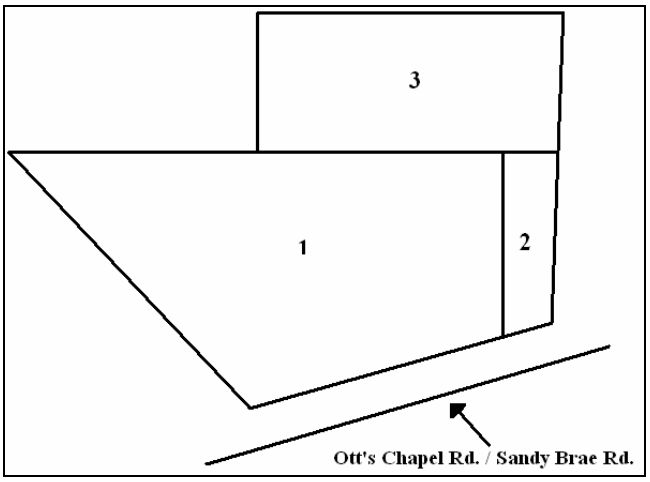

Figure 1

The parties' first transaction regarding any of these properties occurred in 1995 or 1996, when the Beales contacted Walton about purchasing lot 2.[5] The Beales sought to purchase the small strip of property designated as lot 2 because they wanted to obtain a mortgage in conjunction with building a new house on or in the vicinity of lot 3 in Figure 1. To facilitate their obtaining that mortgage, the bank suggested that the Beales create a subdivision. To do so, however, they needed "front footage" on Ott's Chapel Road. The Beales obtained such front footage by purchasing lot 2.[6] Walton agreed to

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3 Tr. at 7 (Walton).

4 Tr. at 5 (Walton), 86 (Mr. Beale).

5 Tr. at 8-9 (Walton).

6 Tr. at 8-9 (Walton), 70 (Mr. Beale).

sell lot 2 to the Beales for $6,600 cash.[7] Before the settlement neither party reduced their agreement to writing.[8] As part of the sale, Walton and the Beales informally agreed that if the Beales ever decided to sell the back lot,[9] they would first offer it to Walton. The evidence also showed that Walton's first option to buy the property included purchasing the back lot for a negotiated price and lot 2 for the original price of $6,600.[10]

In 1998, Mr. Beale offered to sell Walton lots 2 and 3, so that the Beales could purchase a property in Baltimore.[11] The parties negotiated the terms of the sale for a few weeks. Thereafter, Walton accepted the Beales' offer of $11,000 per acre for lot 3 and a total of $6,600 for lot 2.[12] In reliance on the agreement Walton took out a $65,000 loan from Mellon Bank to purchase the property.[13]

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7 Tr. at 10-11 (Walton). The parties agreed to a per acre price of $9,000. *Id.* Because lot 2 is just over seven tenths of an acre, they calculated the purchase price to be $6,600. *Id.*

8 Tr. at 10-11 (Walton), 83 (Mr. Beale). Both parties signed the settlement papers at Walton's attorney's office in Wilmington. *Id.*

9 At this point the Beales had not ordered a survey of their property; however, the evidence demonstrates that the back lot included what became lot 3 in Figure 1.

10 Tr. at 11 (Walton), 69-70 (Mr. Beale).

11 Tr. at 71 (Mr. Beale). On direct examination Walton stated that the Beales first contacted him in the summer or fall of 1998. On cross, however, he purported to correct this statement, asserting that the first contact occurred in spring or early summer of 1998. *Compare* Tr. at 12-13 (direct) with Tr. at 39 (cross).

12 Tr. at 12-13, 37-38 (Walton), 72, 82 (Mr. Beale). Lot 3 is approximately 8.7 acres. DX B.

13 Tr. at 13 (Walton). According to Walton he informed the Beales about the loan both before he took it out and after he had secured the financing. *Id.*

Later, in August of 1999 the Beales asked Walton to pay them $20,000 in earnest money.[14] In response, Walton gave the Beales a check for $20,000 either the same day or within the next few days, and Mrs. Beale gave him a receipt.[15]

Sometime in the summer of 1999 Walton called Mrs. Beale and asked if she would send him something in writing as proof of the transaction.[16] As a result Mrs. Beale contacted an attorney, obtained a standard form real estate contract of sale for land, filled it out and sent it to Walton.[17] The draft agreement listed the settlement date as November 2, 1999,[18] but did not list the price per acre or discuss the purchase of lot 2.[19] Neither party signed the document.[20]

According to Walton, the parties recognized that a survey and a subdivision plan would be needed in connection with the sale. In September 1999, the Beales contracted for a survey of the property to facilitate the sale.[21] The survey was not completed,

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14 Tr. at 13 (Walton), 73 (Mr. Beale).

15 Tr. at 14, 57 (Walton).

16 Tr. at 14 (Walton).

17 Tr. at 14-15 (Walton), 73 (Mr. Beale); DX B.

18 DX B, ¶ 4. In terms of timing, the draft agreement stated: "Settlement shall be held in New Castle County, Delaware, on November 2, 1999, or before, if mutually agreed upon." *Id.*

19 Tr. at 50 (Walton); DX B.

20 Tr. at 15 (Walton). Walton asserted that he did not sign the document because he believed a signature was not necessary. *Id.*

21 Tr. at 13 (Walton).

however, until January 2000.[22] Upon completion of the survey, Walton signed the record plan on January 15, 2000. The Beales also signed the plan, and filed it with New Castle County in March 2000.[23] Walton advised the Beales of his readiness to settle on several occasions between January and early November 2000.[24]

In November 2000 Mrs. Beale called Walton and requested that he come in and settle the property.[25] Four or five days before the scheduled settlement, however, a dispute arose between the parties.[26] In particular, Walton, visited the Beales a few days before the settlement, and Mr. Beale asked him to pay $20,000 of the sale price in cash.[27]

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22 Tr. at 14 (Walton).

23 Tr. at 14, 16-17 (Walton), 76 (Mr. Beale). The plan was approved on March 22, 2000. Tr. at 17; DX A.

24 Tr. at 59-60 (Walton).

25 Tr. at 17 (Walton), 98 (Mrs. Beale).

26 Tr. at 18 (Walton).

27 Tr. at 18 (Walton). Walton testified that Mr. Beale wanted $20,000 in cash so that he could avoid capital gains taxes. Tr. at 18-19. The Beales dispute this allegation, contending that they sought more money not to avoid taxes but because "the thing was dragging on, and we had talked about tax issues, and you know, prior, and I just wanted some extra money." Tr. at 78, 86-87 (Mr. Beale), 96 (Mrs. Beale). The Beales further assert that they did not request that Walton pay them $20,000 in cash but rather only requested $6,600 in cash because the Beales had given Walton cash for lot 2, and therefore, wanted cash back. Tr. at 72, 87-89 (Mr. Beale), 95 (Mrs. Beale).

In either case, a dispute arose as to how much cash, if any, Walton would need to pay at the time of settlement. To the extent it is necessary to resolve the conflict among the parties' recollections, I credit Walton's testimony because it is more internally consistent and comports better with the limited documentary evidence.

Walton did not like this idea and told Mr. Beale he wanted to discuss the cash payment with his own attorney.[28]

In the same month, November 2000, Walton's attorney prepared a settlement sheet which lists the sale price of the property at $105,600.[29] Walton gave the settlement sheet to the Beales.[30] In addition, beginning in mid-2000 Walton started paying what he believed were property taxes on lots 2 and 3.[31] A few days later, when Walton called Mr. Beale to finalize the settlement, Mr. Beale became agitated at Walton and hung up on him.[32] Subsequently, on November 24, 2000, Walton's attorney sent a letter to the Beales proposing that the parties set a new settlement date.[33]

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28 Tr. at 19 (Walton).

29 Tr. at 20 (Walton); DX F. I find that the listed price of $105,600 is an estimate based on the parties' agreement to a price of $11,000 per acre for lot 3 and $6,600 for lot 2. From the beginning of their discussions in 1998, the parties understood that lot 3 would be approximately 9 acres. *See* Tr. at 81-82 (Mr. Beale).

30 Tr. at 20 (Walton).

31 Tr. at 34 (Walton); PX C. At trial the Beales objected to the testimony regarding payment of taxes on the ground that it was unsupported and lacked foundation. Respondents further asserted that Walton was unqualified to testify as to what he paid money for because there is a woodland exemption from taxes on the properties. Tr. at 31-32. The Beales later agreed to stipulate that PX C shows that Walton paid taxes as reflected on those documents. In my opinion, whether or not there is a woodland exemption has no bearing on this case. Consequently, I will admit Walton's testimony to show that he thought taxes were due on the property and paid those perceived taxes.

32 Tr. at 21 (Walton), 76 (Mr. Beale).

33 Tr. at 22-23 (Walton); PX A. At trial the Beales objected to this exhibit on hearsay grounds. Having considered that objection, I admitted the letter solely for the purpose of proving that it was a letter sent to the Beales on or around

The next contact between the parties occurred in April 2001.[34] At that time Walton told Mr. Beale that he understood his tax concerns and offered to increase the price by $6,400, to a total of $112,000, to accommodate those concerns.[35] Walton also told Mr. Beale that he believed they still had a deal at the original price, but he would increase the offer and hold it open for a short period to move the deal along and get it done.[36] Following their discussion Mr. Beale told Walton he would have to discuss the proposition with his wife before he made a decision.[37] Later that evening Mr. Beale called Walton back and told him that because his wife believed the tax rate would be closer to 30 percent as opposed to 20 percent they would accept the terms if he increased his offer by another $3,000, to a total of $115,000.[38] Walton responded that he was not sure about the increased price and asked Mr. Beale to contact his accountant and determine the actual tax burden.[39] According to Walton Mr. Beale agreed to contact his accountant, but never responded further.[40]

November 24, 2000, and not for the truth of the matters asserted in the letter. Tr. at 23.

34 Tr. at 24 (Walton). Walton did not receive his $20,000 deposit back until January 2002. Tr. at 84-85 (Mr. Beale).

35 Tr. at 25 (Walton).

36 *Id*.

37 Tr. at 25-26 (Walton).

38 Tr. at 26 (Walton).

39 *Id*.

40 Tr. at 26-27 (Walton).

Walton's next contact with the Beales occurred when he received a letter from them dated November 12, 2001.[41] The letter states that Walton had not notified the Beales whether he would accept their offer of the original price plus an additional $10,000 for taxes and that if Walton still had an interest in purchasing the property the Beales wished to finalize the deal in the near future.[42] Walton was preparing a reply to the November 12 letter when he received another letter from the Beales.[43]

In that letter, dated January 31, 2002, the Beales notified Walton that they believed the time had passed by which the sale of the property might occur and revoked their offer.[44] Walton disagreed and filed this suit for specific performance of the original agreement on July 12, 2002. Trial was held on May 9, 2005.

II. ANALYSIS

A. Applicable Standards

A party seeking specific performance of an agreement relating to real estate has the burden of proving by clear and convincing evidence that they have "a valid contract to purchase real property and that [they were] ready, willing, and able to perform [their]

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41 Tr. at 27 (Walton); DX G.

42 Tr. at 80-81 (Mr. Beale); DX G. Walton contends that this letter distorts what actually occurred, and asserts that the Beales were not waiting to hear back from him, but rather he was waiting for the Beales to tell him what their accountant said. Tr. at 28.

43 Tr. at 30 (Walton).

44 DX H. According to Walton he did not receive his deposit back with the letter. Tr. at 29.

obligations under the contract."[45] In addition the court must determine whether the balance of equities favors specific performance.[46] Specific performance will not be granted to a party who is in default of a material obligation under the contract, unless that party is excused from performance of that obligation.[47] Further, specific performance will not be granted if the terms of the contract are unclear or if the court has to supply the meaning to essential elements of the contract.[48]

A series of acts or words constitute a contract if the parties acted as if they intended to create, and did succeed in creating, rights and duties in themselves that a court would recognize and enforce. There are four primary elements of a contract; they are:

> (1) a promise on the part of one party to act or refrain from acting in a given way; (2) offered to another, in a manner in which a reasonable observer would conclude the first party intended to be bound by acceptance, in exchange for; (3) some consideration flowing to the first party or to another; (4) which is unconditionally accepted by the second party in the terms of the offer, which may include (a) a verbal act of acceptance; and (b) performance of the sought-after act. In some circumstances detrimental reliance by the second party upon the act or statement constituting the offer, which reliance is reasonable in the circumstances and which ought to have been anticipated by the offeror, may be effective to act as acceptance to form a contract.[49]

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45 *Peden v. Gray*, 886 A.2d 1278, 2005 WL 2622746, at *3 (Del. 2005) (table).

46 *Word v. Johnson*, 2005 WL 2899684, at *3 (Del. Ch. Oct. 28, 2005).

47 *Id.*

48 *Mehiel v. Solo Cup Co.*, 2005 WL 1252348, at *7 (Del. Ch. May 13, 2005).

49 *Hunter v. Diocese of Wilmington*, 1987 WL 15555, at *4 (Del. Ch. Aug. 4, 1987).

The agreement also must satisfy the statute of frauds.

B. Was There a Valid Contract for the Purchase of Real Property?

1. Applicability of the statute of frauds

The Beales assert that the contract is invalid because it violates the statute of frauds. Walton responds that the agreement does not violate the statute of frauds because it satisfies the partial performance and estoppel exceptions to the statute.

Delaware's statute of frauds provides that "[n]o action shall be brought to charge any person . . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are properly signed by the person to be charged therewith . . . ."[50] The purpose of the statute is to protect against fraud in land transactions.[51] To prevent injustice, however, "one well-rooted exception [to the statute of frauds] is the equitably-derived principle that a partly performed oral contract may be enforced by an order for specific performance upon proof by clear and convincing evidence of actual part performance."[52]

In general, the act relied on as part performance should be an act that would not have occurred absent a contract or agreement relating to the land.[53] Further, the actual part performance must be a joint act, or an act which "clearly indicates mutual assent" of

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50 6 *Del. C.* § 2714(a).

51 *Sargent v. Schneller*, 2005 WL 1863382, at *4 (Del. Ch. Aug. 2, 2005).

52 *Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988).

53 *Sargent*, 2005 WL 1863382, at *5.

the parties to the oral contract.[54] Courts generally have found that taking possession of the land, making partial or full payment for the land, rendering services that were agreed to be exchanged for the land, or making valuable improvements on the land in reliance on an oral contract demonstrates part performance.[55] Likewise, courts have found preparatory acts, such as giving directions for conveyances, taking a view of the property or putting a deed in the hands of a solicitor to prepare a conveyance, insufficient to satisfy the partial performance exception.[56]

In this case Walton took several steps demonstrating his belief in and reliance on the existence of the contract. First, he submitted a $20,000 deposit to the Beales in August of 1999 in anticipation of the sale, and the Beales accepted it.[57] The court has historically accepted deposits on sales of land as sufficient to enforce a contract notwithstanding the absence of a written agreement.[58] In Delaware part payment of the purchase price, if shown in writing or admitted by the seller, is such part performance as removes the bar of the statute of frauds.[59] Walton also obtained a bank loan of $65,000

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54 *Id.*

55 *Id.*

56 *Id.* (internal quotations omitted).

57 Tr. at 13 (Walton), 73 (Mr. Beale).

58 *See Hamilton v. Traub*, 51 A.2d 581, 584 (Del. Ch. 1947) ("The theory behind the recognition of part performance as a substitute for the statute of frauds is that [a deposit] constitutes substantial evidence of the existence of a contract and affords protection against fraud otherwise supplied by the statute of frauds. So viewed, the fact that the check was returned . . . is unimportant.").

59 *See Matthes v. Wier,* 84 A. 878, 882 (Del. Ch. 1912).

to purchase the property and advised the Beales that he had done so. Further, the Beales had a survey made of the property involved and filed a subdivision plan based on that survey with the County. Walton and the Beales signed that record plan. Consequently, there is ample evidence of partial performance in this case to warrant an exception to the statute of frauds.

Walton also contends that the statute of frauds does not apply to this case due to the exception for equitable estoppel. The doctrine of equitable estoppel may be invoked "when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment."[60] The party claiming estoppel must show, however, that they lacked knowledge or the means to obtain knowledge of the truth of the facts in question, relied on the conduct of the party against whom the estoppel is claimed, and suffered a prejudicial change of position as a result of that reliance.[61]

Heckman v. Nero provides an example of the application of equitable estoppel to avoid the statute of frauds.[62] In that case the court determined that improvements plaintiff made to the lot he believed he had a contract to purchase combined with his payment of rent to defendant supported application of the equitable estoppel exception.[63] Similarly, in this case Walton has taken actions to his detriment in reliance on the

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60 *Wilson v. Am. Ins. Co.*, 209 A.2d 902, 903-04 (Del. 1967).

61 *Heckman v. Nero*, 1999 WL 182570, at *3 (Del. Ch. Mar. 26, 1999).

62 1999 WL 182570.

63 *Id.* at *3.

agreement. Particularly, Walton paid $20,000 in earnest money in or around August 1999 and has paid what he believes were property taxes on lots 2 and 3 since 2000.[64] Based on this evidence, I conclude that the equitable estoppel exception to the statute of frauds applies in the circumstances of this case. Having found that both exceptions apply, I must now determine whether, as the Beales contend, the contract lacked an essential term.

2. Does the contract lack an essential term?

The Beales argue that the agreement lacked essential terms necessary to enforce it as a contract. Specifically, they contend that the unexecuted agreement of sale[65] does not adequately describe the expected transaction, because it contains only estimations. For example, the Beales rely on the following language in the unexecuted agreement of sale: "Seller has sold and agrees to convey to Buyer . . . the land known as 8.7 +/- acres as shown on Survey to be provided by Seller . . . . Buyer shall pay Seller $95,700 +/- for the property . . . ."[66] The Beales further assert that the numerous configurations of the property Walton suggested to the Beales[67] show that the parties never agreed on the configuration of the lot to be sold.

Although the parties must agree on all the essential terms of a transaction for the court to grant specific performance, "a court will not upset an agreement where [an]

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64 Tr. at 34; PX C.

65 DX B.

66 *Id.*

67 *See* DX D.

indefinite provision is not an essential term."[68] Further, "[e]ven if aspects of the agreement are obscure, the agreement will be enforceable if the Court is able to ascertain the terms and conditions on which the parties intend to bind themselves. Indeed, an agreement may be enforceable even where some of its terms are left to future determination."[69] Courts have found the essential terms of a real estate contract to be the price, date of settlement, and the property to be sold.[70]

Even though the purported contract between Walton and the Beales had some approximations as to the sale price, both parties understood the price for which the Beales would sell lots 2 and 3 to Walton.[71] In fact on cross examination, Mr. Beale agreed that he and "Walton walked away from the first set of conversations in the summer of '99 [with] a firm price, 11,000 an acre for the nine acres and $6,600 for the dog leg."[72]

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68 *River Enters., LLC v. Tamari Props., LLC*, 2005 WL 356823, at *1 (Del. Ch. Feb. 15, 2005) (internal quotations omitted).

69 *Id.* at *12.

70 *Id*. at *2.

71 Tr. at 12-13, 37-38 (Walton), 81-82 (Mr. Beale).

72 Tr. at 82-83 (Mr. Beale). When the Beales purchased lot 2 from Walton in 1996 they told him the lot was worth $9000 an acre. Tr. at 10-11 (Walton). Without further researching the value of the property Walton agreed to sell the lot at that price. *Id*. Walton and the Beales did not reduce their 1996 agreement to writing until the settlement, which is not in evidence. *Id*. The parties also agreed that they would give Walton first refusal if the Beales ever sold the back parcel which included lot 2. They further agreed that if Walton ever repurchased lot 2 the Beales would sell it to him for what they paid for it, $6,600. In fact the record demonstrates that even if the Beales had not sold lots 2 and 3 until 1999 they would have sold lot 2 to Walton at the 1996 price. This demonstrates the informal manner in which the parties dealt in the past and supports Walton's version of the facts.

Moreover, I do not find persuasive Beale's argument that Walton's property configuration drawings show that the parties had not determined the configuration that would be involved in the sale. "A property description is adequate if it renders with sufficient certainty the grantor's intention respecting the quantity and location of the land to be conveyed."[73] In this case both parties understood that the configuration of the property would be as drawn in the record plan. That plan was signed by both Walton and the Beales, and it was filed in March 2000.[74] Regarding the date of settlement, the evidence shows that, at all times after the Beales prepared the draft contract and before this dispute arose, the parties either had or planned to set a settlement date. Thus, I find the agreement contained all the essential terms, and reject the Beales' argument that it is void for lack of an essential term.

C. Was Walton Ready, Willing and Able to Perform the Contract?

The Beales assert that the numerous delays in settling the contract demonstrate that Walton was not ready, willing and able to perform his obligations under it. Walton responds that he was ready to close the transaction at any time.

Generally time is not of the essence in a contract for the sale of land and will not be deemed of the essence unless it is specifically stated in the contract.[75] Courts also will find that time is of the essence if the course of dealing between the parties clearly implies

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73 *Vanguard Group, LLC v. Richards,* 2004 WL 3052382, at *2 (Del. Ch. Nov. 29, 2004); Tr. at 13 (Walton).

74 DX A.

75 *Bryan v. Moore*, 863 A.2d 258, 260 (Del. Ch. 2004).

that time has become of the essence.[76] If, however, the defendants' actions cause the plaintiff to fail to meet the contractual settlement date, the plaintiff will not be held liable for the breach induced by the defendants.[77]

In *Turchi v. Salaman*, for example, the plaintiffs were held not liable for a breach induced by defendants.[78] The *Turchi* case dealt with a contract that contained a "time is of the essence" clause. Nevertheless, the plaintiffs could not settle on the specified settlement date because the stock certificates the contract required defendant to transfer to plaintiff were not ready by that date.[79] Consequently, plaintiffs refused to settle until the next day. Based on the facts of that case, the court ruled that defendants, not plaintiffs, caused the agreement not to settle on the specified date and plaintiffs were ready, willing and able to close the transaction. Therefore, the court held that plaintiffs still could maintain an action for specific performance.[80]

Similarly, in this case the draft contract contains a "time of essence" clause which specifies that if buyer does not perform any of the conditions of the contract, seller has the option of rendering the agreement void and can keep any deposit.[81] The agreement

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76 *Bryan*, 863 A.2d at 260-61.

77 *Turchi v. Salaman*, 1990 WL 27531, at *7-8 (Del. Ch. Mar. 14, 1990).

78 *Id.*

79 *Id.*

80 *Id.*

81 DX B, ¶ 14.

further specifies that settlement must occur on or before November 2, 1999.[82] According to the Beales, Walton's failure to settle on November 2, 1999 allowed them to void the contract. That reasoning fails because the Beales caused Walton not to meet the November 2 settlement date in that Mr. Beale attempted to change the terms of the transaction by demanding payment of a portion of the money for the land in cash and becoming angry at Walton when he resisted the change.[83] The evidence also indicates that both sides anticipated developing a subdivision plan before the closing, and the Beales did not make that plan available until January 2000. Moreover, the record shows that at all relevant times Walton was ready to close the deal.

Walton also had the financial ability to purchase the property after he obtained the bank loan. He gave the Beales $20,000 in earnest money and obtained a $65,000 bank loan to purchase lots 2 and 3.[84] Walton testified that after acquiring the bank loan he had all the money he needed to purchase the property.[85] Based on these facts, I find that Walton was ready, willing and able to perform the contract.

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82 *Id.*

83 Tr. at 21 (Walton), 76 (Beale).

84 Tr. at 13. *See Morabito v. Harris*, 2001 WL 1269334, at *3 (Del. Ch. Oct. 10, 2001) (finding evidence that plaintiff had a financing commitment in place persuasive in demonstrating they were ready, willing and able to complete the purchase of the property). According to Walton, he informed the Beales about the loan in 1999 both before he took it out and after he secured the financing. Tr. at 13.

85 Tr. at 13.

D. Do the Equities Favor Specific Performance?

The Beales contend the equities tip in their favor because it is inequitable to make them sell lots 2 and 3 in 2006 at 1999 prices. Walton replies that any delay in the transaction should be measured against the parties prior dealings. Additionally, he asserts that the Beales delayed settlement.

In some circumstances, when specific enforcement of a validly formed contact would cause even greater harm than it would prevent, courts of equity will decline a petition for specific enforcement.[86] Thus, the remedy of specific performance is limited to instances where special equities call for it.[87] The balance of the equities issue "reflect[s] the traditional concern of a court of equity that its special processes not be used in a way that unjustifiably increases human suffering."[88]

In this case the balance of the equities favors Walton. I find unconvincing the Beales' argument that it is unfair to make them sell the property in 2006 at 1999 prices. The record demonstrates that the Beales agreed to sell lot 2 to Walton in 1999 or even later at the 1996 price.[89] Further, between 1999 and 2002 the Beales never told Walton that they wanted more money because the property value had risen. Moreover, as noted

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86 *Morabito*, 2002 WL 550117, at *2.

87 *Id.*

88 *Id.* (internal quotations omitted).

89 Indeed, the Beales apparently agreed in 1996 to give Walton the option to purchase lot 2 back at the same price they purchased it for (i.e., $6,600), whenever the Beales decided to sell the rear portion of their property.

previously, the Beales themselves caused much of the delay in consummating the transaction.

I also have concluded that if I do not grant specific performance Walton will be harmed to a greater degree than the Beales. In particular, Walton wants to purchase lots 2 and 3 to prevent development around his own property, lot 1.[90] Both Walton and the Beale's properties were once part of a several hundred acre farm, at least part of which has been owned by Walton's family since the 1880s.[91] Thus, lots 2 and 3 are uniquely valuable to Walton, because they provide a means to avoid development of property immediately adjacent to his home. If I did not grant specific performance in these circumstances, Walton likely would be irreparably harmed.[92] Therefore, the equities favor Walton.

E. Laches

The Beales also argue that the doctrine of laches should defeat Walton's claim, because he did not file this litigation until July 12, 2002, over two years after the recording of the record plan and three years after Walton believed that an agreement had been reached. Walton responds that he had no need to file this suit earlier because he had no reason to expect that the Beales would breach the agreement until he received a note from the Beales' counsel on January 31, 2002 informing him that the deal was off.

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90 Tr. at 85 (Mr. Beale).

91 Tr. at 4-5 (Walton).

92 *Morabito*, 2002 WL 550117, at *2-3 (finding the equities weighed against specific performance because the plaintiff could purchase other similar properties).

The affirmative defense of laches generally requires proof that: (1) the claimants knew or should have known of the invasion of their rights and (2) unreasonably delayed in bringing suit to vindicate them, and (3) that the respondents suffered injury or prejudice as a result of the delay.[93] Determining whether or not these three elements exist involves a fact-based inquiry.[94] "In applying laches, a plaintiff is chargeable with such knowledge of a claim as he or she might have obtained upon inquiry, provided the facts already known to that plaintiff were such as to put the duty of inquiry upon a person of ordinary intelligence."[95]

According to the Beales, Walton should have known from the numerous delays in the settlement date that he had a claim for breach of contract against them. None of the communications between the parties, however, reasonably would have led Walton to believe that the Beales would not sell him the property. There is no evidence that either of the Beales ever communicated to Walton, either expressly or in substance, before late January 2002 that because he had not signed the draft contract they sent him in the summer of 1999, they had no deal.[96] Indeed, even when things became heated between the parties, the Beales never told Walton the deal was off; rather, they continued to

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93 *Homestore, Inc. v. Tafeen*, 2005 WL 3091887, at *5 (Del. Nov. 17, 2005).

94 *Id.*

95 *Grand Lodge of Del., I.O.O.F. v. Odd Fellows Cemetery of Milford, Inc.*, 2002 WL 31716359, at *7 (Del. Ch. Nov. 18, 2002).

96 *See* Tr. at 84.

negotiate in a way that appeared calculated to settle the matter out of court.[97] Further, neither party ever stated until the January 2002 letter that the property needed to be settled on an expedited basis. Therefore, I find that Walton did not have knowledge of his claim until January 2002 or shortly before then.

Having found that Walton did not have knowledge of his claim until approximately January 2002, I find nothing unreasonable in his having taken a few months to file this lawsuit. Additionally, I do not believe the short delay caused any prejudice to the Beales. Thus, I reject the Beales' laches defense.

III. CONCLUSION

For the reasons stated, I conclude that a valid contract exists between Walton and the Beales for the sale of lots 2 and 3 for a price of $11,000 per acre for the land designated as lot 3 in Figure 1 above and a total of $6,600 for lot 2[98] and that Walton has demonstrated that he is entitled to specific performance of that contract. Based on those holdings, I GRANT Walton's request for specific performance.

Walton's counsel shall prepare a proposed form of judgment consistent with this Memorandum Opinion and promptly submit it, upon notice to the Beales, for the Court's consideration.

IT IS SO ORDERED.

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97 Tr. at 21 (Walton), 76 (Mr. Beale).

98 In the record plan filed with New Castle County, the combination of lots 1 and 3 and lot 2, which provides access to Ott's Chapel Road, is formally referred to as "Parcel 2." DX A.