J-A32007-12

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HAROLD TROWBRIDGE,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
RICHARD AND MARY McCAIGUE,	:	
v.	:	
SYLVAN GLEN, INC.	:	No. 1935 WDA 2011

Appeal from the Judgment entered on November 21, 2011,
in the Court of Common Pleas of Potter County,
Civil Division, No. 257 of 2008

BEFORE: MUSMANNO, WECHT and COLVILLE*, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: March 18, 2013

Harold Trowbridge ("Trowbridge") appeals from the Judgment[1] entered against him and in favor of Richard and Mary McCaigue ("the McCaigues") and Sylvan Glen, Inc. ("Sylvan Glen"), in this contract dispute. We affirm.

The trial court has thoroughly recited the pertinent facts underlying this appeal, which we adopt herein by reference. ***See*** Findings of Fact, 7/6/11, at 1-8.

[1] Although Trowbridge purports to appeal from the trial court's July 6, 2011 Order entering a non-jury verdict against him and the court's subsequent Order denying Trowbridge's Motion for post-trial relief, an appeal properly lies from the entry of judgment. ***See, e.g., Johnston the Florist, Inc. v. Tedco Constr. Corp.***, 657 A.2d 511, 514 (Pa. Super. 1995) (*en banc*). Since the trial court's docket reveals that the Prothonotary entered Judgment on November 21, 2011, and Trowbridge timely filed a Notice of appeal, there is no jurisdictional impediment to our review. We have corrected the caption accordingly.

*Retired Senior Judge assigned to the Superior Court.

In April 2008, Trowbridge filed a Complaint against the McCaigues, asserting that they had breached the purported contract to sell the real property in question (hereinafter "the Property") to Trowbridge. Trowbridge sought specific performance of the "Purchase Offer" executed by the parties, which, according to Trowbridge, was a final, binding agreement for the sale of the Property.[2] Subsequently, Sylvan Glen filed a Petition to intervene, seeking to protect its equitable interest in the Property. The trial court granted Sylvan Glen permission to intervene in the case.

In August 2008, Sylvan Glen filed a Motion, in which the McCaigues joined, requesting the trial court to enter a judgment on the pleadings and dismiss Trowbridge's Complaint with prejudice. Following a hearing, the trial court granted the Motion for judgment on the pleadings, finding that there was no enforceable contract between Trowbridge and the McCaigues. Trowbridge timely filed an appeal.

On appeal, a panel of this Court held that the trial court had erred in granting the Motion for judgment on the pleadings because, "given the preliminary state of the record, we cannot state that the law bars recovery absolutely, or that the case is so free and clear from doubt that a trial would prove fruitless." ***Trowbridge v. McCaigue***, 992 A.2d 199, 203 (Pa. Super. 2010) (citation, quotation marks, and ellipses omitted) (hereinafter

[2] Pertinent to this case, the Purchase Offer provided that "[i]f Sellers Richard & Mary McCaigue accept this offer, than [*sic*] both buyer[, *i.e.*, Trowbridge,] & sellers will enter into a sales agreement." Purchase Offer, 3/29/08, ¶ 5.

"***Trowbridge I***"); ***see also id.*** (stating that, "[a]ccepting as true [Trowbridge's] well-pled facts and the adverse facts admitted by [Trowbridge], [Trowbridge] has alleged the essential terms of a contract for the sale of real estate."). Accordingly, the panel reversed the trial court's Order and remanded the case for further proceedings. ***Id.***

On remand, the trial court scheduled the case for a non-jury trial to commence in May 2011. Following the trial, on July 6, 2011, the trial court entered a verdict in favor of the McCaigues and Sylvan Glen and issued an Opinion (hereinafter "Trial Court Opinion/Verdict"). Trowbridge thereafter timely filed a post-trial Motion asserting, *inter alia*, that the trial court judge should have recused himself from presiding over the trial due to a conflict of interest between the judge and counsel for Trowbridge, thus entitling Trowbridge to a new trial. On November 17, 2011, the trial court entered an Order denying Trowbridge's post-trial Motion and issued a supplemental Opinion explaining the court's reasons for determining that recusal was unnecessary. On December 12, 2011, Trowbridge timely filed a Notice of appeal.

On appeal, Trowbridge raises the following issues for our review:

> Did the trial court err as a matter of fact and law when it:
>
> a. Failed to find [that] a contract [existed] when the overwhelming evidence clearly demonstrates that there was a meeting of the minds between the parties [and] that [the McCaigues] actually had objectively acted upon the belief that the "agreement of sale" formed the basis of a contract to sell real property and that all [of]

the requirements of the statute of frauds w[ere] satisfied?

b. Failed to apply the objective standard in [*sic*] as opposed to the [McCaigues'] subjective intent and actions in determining if there was a meeting of the minds necessary to form a contract and the terms of the contract of March 29, 2008[,] were clear and unequivocal as they appear on the four corners of the contract?

c. Failed to find that the [McCaigues'] agent was the drafter and creator of the agreement of sale[, which document] at all times is to be construed against the [McCaigues,] and there were no terms lacking that would have terms [*sic*] that were unclear or to be resolved at a future time?

d. Failed to apply the prior Superior Court['s decision on] remand and finding that the necessary elements of a contract were present[,] as opin[]ed in ***Trowbridge*** [***I***,] and determine that absent any factor that would vitiate or prevent the formation or [*sic*] meeting of the mind[s] necessary to determine a contract existed between the parties?

e. Failed to recuse itself *su[a] []sponte* or on post[-]verdict motion or declare a mistrial after the close of trial and before publishing its verdict when the trial court [judge who presided at trial] was the Commonwealth's chief complainant in [an] unrelated criminal matter concerning [Trowbridge's] trial counsel as the named Defendant[, and this information] was not known to any party until approximately ten [] days after the evidentiary record closed[, thus depriving Trowbridge of his right to] a fair and impartial tribunal?

Brief for Appellant at 34.

Our standard of review following a non-jury trial is as follows:

> Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court

> committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law. However, where the issue concerns a question of law, our scope of review is plenary.
>
> The trial court's conclusions of law on appeal originating from a non-jury trial are not binding on an appellate court because it is the appellate court's duty to determine if the trial court correctly applied the law to the facts of the case.

Allegheny Energy Supply Co., LLC v. Wolf Run Mining Co., 53 A.3d 53, 60-61 (Pa. Super. 2012) (citation, brackets, quotation marks, and ellipses omitted).

We will address Trowbridge's first four issues simultaneously, as they are closely related and each challenge the trial court's determination that no contract existed between Trowbridge and the McCaigues.[3] According to Trowbridge, the "Purchase Offer" is a legally binding agreement that the McCaigues would convey the Property to Trowbridge for the specified purchase price of $250,000. ***See*** Brief for Appellant at 59-77. In support of this claim, Trowbridge initially points out that this Court, in ***Trowbridge I***, held that the Purchase Offer satisfied the requirements for a contract for the

[3] We note that Trowbridge's brief is 81 pages long, and many of the arguments raised therein are lengthy and redundant.

sale of real property under the Statute of Frauds.[4] Brief for Appellant at 60. Additionally, Trowbridge argues that the trial court, in determining whether the parties mutually assented to an agreement for the sale of the Property, erred in failing to apply the applicable legal standard, which provides that, "[i]n ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter." ***Ingrassia Constr. Co. v. Walsh***, 486 A.2d 478, 483 (Pa. Super. 1984). According to Trowbridge,

> [t]he trial court's [] verdict … simply ignores the entire trial record and the numerous inconsistencies and predicates it[s] decision on the subjective intention and beliefs of the [McCaigues]. … The trial court failed to view [Mary McCaigue's] overwhelming overt manifestations and repeated conduct affirming her mutual assent in an objective realm.

Brief for Appellant at 62. Trowbridge further asserts that the fact that the McCaigues refused to sign the "Standard Sales Agreement" that the realtor, Willis Garman, Jr., had prepared following the execution of the Purchase Offer was "wholly irrelevant and [] legally insignificant as [it] did not alter []or modify the party's [*sic*] contract of March 29, 2008[,]" *i.e.*, the Purchase Offer. ***Id.*** at 64. Finally, Trowbridge contends that the trial court erred on remand in its application of this Court's decision in ***Trowbridge I***, since,

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[4] The ***Trowbridge I*** Court stated that "[a] writing required by the Statute of Frauds need only include an adequate description of the property, a recital of the consideration and the signature of the party to be charged[,]" and the Court found that the Purchase Offer satisfied each of these requirements. ***Trowbridge I***, 992 A.2d at 201-02 (citation omitted).

Trowbridge asserts, this Court "reversed and remanded with a clear legal directive to find that a contract existed." Brief for Appellant at 70.

In the Trial Court Opinion/Verdict, the trial court addressed the arguments of the parties, aptly set forth the applicable law, and thoroughly explained its rationale for determining that no enforceable contract existed between Trowbridge and the McCaigues. ***See*** Trial Court Opinion/Verdict, 7/6/11, at 8-18. After review, we agree with the trial court's sound rationale, which is supported by competent evidence in the record, and affirm on this basis as to Trowbridge's first four issues. ***See id.***

As an addendum, we note our disapproval of Mary McCaigue's actions and her misleading representations made to Trowbridge during their discussions regarding the potential sale of the Property. However, we are compelled to conclude that Trowbridge had no actionable claim against the McCaigues, since the "Purchase Offer" was not a legally binding contract for the sale of the Property given the lack of a "meeting of the minds" between the parties. Moreover, we discern no error by the trial court on remand in its application of the ***Trowbridge I*** decision. Contrary to Trowbridge's assertion, the ***Trowbridge I*** Court did not conclude that a contract existed between the McCaigues and Trowbridge. Rather, the Court simply concluded that, "given the preliminary state of the record," under the limited standard of review applicable to an order granting a motion for judgment on the pleadings, the Court "cannot state that the law bars recovery absolutely, or

that the case is so free and clear from doubt that a trial would prove fruitless." ***Trowbridge I***, 992 A.2d at 203 (citation, quotation marks, and ellipses omitted).

As to Trowbridge's final issue on appeal, concerning the trial court judge's purported obligation to recuse himself from this case, we note that this issue is raised after page 70 of Trowbridge's appellate brief. Pennsylvania Rule of Appellate Procedure 2135(a)(1) explicitly states that an appellate brief must not exceed 70 pages. However, "[a] litigant may always seek [an appellate court's] permission to extend the page limits for briefs by making an application for relief under Pa.R.A.P. 123." ***Commonwealth v. Briggs***, 12 A.3d 291, 343 n.49 (Pa. 2011). Here, Trowbridge did not seek leave of court to exceed the page limit. Accordingly, Trowbridge's brief violates the Rules of Appellate Procedure. ***See*** Pa.R.A.P. 2101 (stating that "[b]riefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed …."); ***see also Briggs***, 12 A.3d at 343 (stating that "[t]he briefing requirements scrupulously delineated in our appellate rules are not mere trifling matters of stylistic preference; … compliance with these rules by appellate advocates who have any business before our Court is mandatory."). Nevertheless, despite this defect, we have reviewed Trowbridge's claim and determine that the learned trial court judge properly

found that it was unnecessary to recuse himself from presiding over this case. In this regard, we affirm based on the rationale advanced in the trial court's supplemental Opinion dated November 17, 2011, which we adopt herein by reference. ***See*** Trial Court Opinion, 11/17/11, at 1-4 (unnumbered).

Judgment affirmed.

J-A32007/12

HAROLD B. TROWBRIDGE Plaintiff	:IN THE COURT OF COMMON PLEAS :OF POTTER COUNTY, PENNSYLVANIA
Vs.	:No. 257 of 2008
RICHARD and MARY MCCAIGUE Defendant	
Vs.	
SYLVAN GLEN, INC. Defendant	:CIIVIL DIVISION

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POTTER COUNTY

MEMORANDUM OPINION AND ORDER
ON ALL OUTSTANDING POST TRIAL MOTIONS

A two day non-jury trial was held in the above captioned matter in early May, 2011. On July 6, 2011, the undersigned Court issued findings of fact, conclusions of law, discussion and verdict in this matter. On July 18, 2011, plaintiff filed a post verdict motion containing a motion for a new trial. On July 22, defendant McCaigue filed objections to plaintiff's post trial motion, which were joined by intervenor Sylvan Glen at argument.

Before dealing with specific alleged trial errors, the court will address the recusal and related aspects of plaintiff's motion, including the corresponding request to set aside the verdict and award a new trial. The gravamen of this aspect of plaintiff's motion is that the undersigned Senior Judge, while president judge of the 55th Judicial District, in the spring of 2009, received unsolicited information from an attorney indicating that plaintiff's counsel, Jarett Smith, was allegedly involved in criminal activity concerning a specific adoption pending before the Court. Upon receipt of this information, and with no independent collaboration or information, the Court in turn promptly forwarded this information to the Pennsylvania State Police, Coudersport Borough Police, and then Potter County District Attorney Dawn Fink. A brief meeting was held

at which time the Court gave the participants the information previously provided by the other attorney. At the time that proceedings were to be held on an adoption filed at number 3 of 2009, Potter County Adoption Docket, the Court informed everyone in the courtroom that information had been received concerning possible financial irregularities in the case, and that the State Police officers were present. With the consent of everyone, the matter was continued, although further hearing was never held.

Later that same evening, June 18, 2009, the Court was informed by Coudersport Borough Police that the baby in question had been returned to its birth mother by Jarett Smith and his brother, who was the potential adoptive father. This Court had no further involvement in the matter, and assumed with the passage of time that the matter was in some manner resolved.

Nearly two years later, local attorneys representing Jarett Smith informed this court that Jarett Smith was about to be arrested on charges relating to the failed adoption, and, in fact, that arrest occurred several days later. At about the same time, the Court was contacted by Corporal Murray of the Pennsylvania State Police asking for some information about the adoption file in question. On or about May 20, in the days following the non-jury trial in this case, Jarett Smith was arrested.

The affidavit of probable cause in the Smith criminal case does refer to the Court and the meeting previously referenced. Plaintiff's present motion and related argument are premised on Mr. Jarett Smith's belief that the court should have divulged the meeting to him, apparently back at the time the meeting took place.

Attorney Smith also claims that while he has no personal animosity toward the Court, there should have been a disclosure so his clients could decide if they wish to proceed before this Court or seek recusal or other relief. Mr. Smith has indicated that he is not aware of any

personal animosity between the Court and himself, and indicates that the named plaintiff, Harold Trowbridge, is upset about the information forwarded by the Court to the police back in 2009. At least from the Court's perspective, the Court has been on pleasant ~~turns~~ terms with Plaintiff Harold B. Trowbridge and his family for a number of years on professional, personal, and business levels.

Against this backdrop, Pennsylvania law provides relative to recusal "...whenever there is a substantial doubt as to a jurist's ability to preside impartially...." recusal is warranted. Dennis v. Southeast Pennsylvania Transportation Authority, _____Pa. Cmlth._____, 833 A. 2d 348, 353, (2003). The same case indicates that recusal is appropriate where the behavior in question appears to be biased or prejudiced. Before a recusal is mandated however, the record must clearly show "prejudice, bias, capricious disbelief, or prejudgment" Id; citing Rohm and Haas Company v. Continental Casuality Company, _____Pa. Super. _____, 732 A. 2d 1236 (1999), affirmed 566 Pa. 464, 781 A. 2d.1172 (2001).

Here there is no allegation of prejudice or bias of any type toward Mr. Trowbridge. Rather, Mr. Trowbridge argues that this Court should not have heard this case at all based solely on the 2009 discussion concerning Attorney Smith. As pointed out by the parties opposing plaintiff's post trial motion, the instant motion was filed long after Mr. Smith was arrested, and only after an adverse verdict was received by plaintiff in this case. Attorney Smith was well aware of the affidavit of probable cause in this criminal case at the time of his arrest on May 20, yet no action was taken for approximately 47 days.

This Court is mindful of the Code of Judicial Conduct, especially ~~Cannins~~ Cannons 2 and 3 as they related to an appearance of impropriety or a conflict of interest. Mr. Smith argues unconvincingly that he could have not taken action on recusal sooner, as there was nothing pending before the Court until the verdict was entered. This is clearly not the case as Mr. Smith

could have raised the issue at any time after his May 20, arrest and review of the affidavit of probable cause.

It is also noteworthy that Mr. Smith was the subject of disciplinary proceedings in a matter filed at number 1716 Disciplinary Docket No. 3, No. 4, DB 2011, order of May 4, 2011, shortly before trial in this matter. It is apparent from a review of the per curiam order issued that date, and the joint petition for discipline on consent which accompanied it, that this court, and several other courts, had raised various matters concerning Mr. Smith with the Disciplinary Board. Mr. Smith acknowledged those matters, and consented to the disciplinary order of May 4, 2011. At no time, however, during the trial in this matter or after, did Mr. Smith raise any questions concerning this Court's involvement in several aspects of the disciplinary proceeding. The court can only assume that Mr. Smith, as well as his client, Mr. Trowbridge, were content with this court's involvement in the disciplinary matter and sought no pretrial relief on that basis.

At no time has it been alleged that this Court has any personal animosity for Mr. Smith, or his client, Mr. Trowbridge. Given this Court's extremely limited role and lack of any independent knowledge, coupled with the fact that there is no allegation of any prejudice against plaintiff, the court must deny relief on this request. While no animosity with Mr. Smith has been alleged, this ruling is consistent with case law, which further notes that "any animosity between a lawyer and a judge, standing alone is irrelevant in the absence of allegations of bias toward the party." Further, judges are presumed to not be biased. Reilly by Reilly v. Southeast Pennsylvania Transportation Authority, 507 Pa. 204, 489 A. 2d 1291, 1295 (1995). Under the circumstances, there is no impropriety, or appearance thereof.

The Court will not dismiss plaintiff's motion, and will deny the motion of defendant and intervenors to the contrary, as this matter needs a resolution. While it can strongly be argued that the plaintiff has waived any potential issues in this regard, the Court felt it best to address them.

Turning to the other aspects of plaintiff's motion, the court has essentially addressed all of those grounds in its July 6, 2011, filing. While this was a hotly contested matter, with some contradictions in testimony, the matter was given careful consideration. It is further recognized that reasonable minds can differ on the evidence, and, in particular, on the conduct and understanding of Mrs. McCaigue.

While certain of Mrs. McCaigue's actions may have encouraged Mr. Trowbridge's belief that he was the successful buyer, it is also evident that a further, more comprehensive final agreement was always contemplated by both parties. After careful review, the Court affirms its previous findings and verdict. Plaintiff's post trial motions will be dismissed in accordance with the following order.

HAROLD B. TROWBRIDGE
Plaintiff

Vs.

RICHARD and MARY MCCAIGUE
Defendant

Vs.

SYLVAN GLEN, INC.
Defendant

:IN THE COURT OF COMMON PLEAS
:OF POTTER COUNTY, PENNSYLVANIA
:
:No. 257 of 2008
:
:
:
:
:
:
:CIIVIL DIVISION

ORDER

AND NOW, November 14, 2011, in accordance with the foregoing, Plaintiff's Post Verdict Motion including a motion for a new trial is denied. Defendant and Intervenor's motion to dismiss plaintiff's post verdict motions are denied.

BY THE COURT:

John B. Leete, Senior Judge
55th Judicial District

Cc: Jarett Smith, Esq.
Bruce Cahilly, Esq.
William Hebe, Esq.

J-A32001/12

HAROLD B. TROWBRIDGE Plaintiff	: IN THE COURT OF COMMON PLEAS : OF POTTER COUNTY, PENNSYLVANIA
Vs.	: No. 257 of 2008
RICHARD and MARY McCAIGUE Defendant	:
Vs.	:
SYLVAN GLEN, INC. Intervenor	: CIIVIL DIVISION

FINDINGS OF FACT, CONCLUSSIONS OF LAW, DISCUSSION AND VERDICT FOLLOWING NONJURY TRIAL

FINDINGS OF FACT

1. Plaintiff Harold B. Trowbridge is an adult individual residing at Kidney Road, Genesee, Potter County, Pennsylvania.

2. Defendant Mary McCaigue is an adult individual residing on South Main Street, Coudersport, Potter County, Pennsylvania. She was married to the late defendant Richard McCaigue, who died during the pendency of this Action.

3. Intervenor in this matter is Sylvan Glen, Incorporated, a Pennsylvania Corporation maintaining offices in Gaines, Tioga County, Pennsylvania.

4. Mary McCaigue, and her late husband Richard McCaigue, owned certain parcels of land situated in Eulalia Township, Potter County, Pennsylvania consisting of the following:

a. Approximately 128.8 acres as described more fully in deed book 203 page 283 of the land records of Potter County.

b. The parcel of 37.13 acres more or less described more fully in Deed Book 231 Page 521 of the land records of Potter County.

c. A parcel of 3.6 acres more or less described more fully in Deed Book 255 Page 948 of the land records of Potter County.

d. A parcel of 62.7 acres more or less described more fully in Deed Book 200 Page 1032 of the land records of Potter County.

e. These four parcels comprised approximately 231 acres and contained a house as well as various barns, sheds and out buildings.

4. In November of 2007, the McCaigues hired Willis Garman, Jr., a realtor with God's Country Real Estate, Incorporated, to do a comparative market analysis on the various McCaigue properties. Mr. Garman suggested probable sales prices of $1,300.00 per acre for the largest parcel, and $1,000.00 per acre for the balance. If the parcels were sold separately, the expected total sales price would be about $350,000.00 or $300,000.00 if the four parcels were sold as a unit.

5. Mr. Garman received a fee of $150.00 from Mrs. McCaigue on or about November 16, 2007 for his work.

6. As evidenced by Defendants/Intervenor exhibits G and H, the McCaigues received offers from various individuals to purchase the property. One offer was from Dr. Howard Miller in the amount of $260,000.00 and the other was from Joe and Tula Majot for $300,000.00, which included an additional 84 acres.

7. In both cases, Mrs. McCaigue wrote out the offer as well as the history of events leading up to the offer. In each case the proposed purchaser signed the offer as did Mr. and Mrs. McCaigue.

8. The McCaigues did not accept either of these two offers.

9. In accordance with plaintiff's Exhibit 15, on or about March 18, 2008, Gary Kelsey, writing on behalf of himself and "...a few friends" made an offer to purchase the property in question for $205,000.00; Mr. Kelsey indicated that the property was being sought as an investment. Mr. Kelsey suggested to Mr.s McCaigue that she might receive a higher offer if the property was listed for sale with a realtor.

10. The Kelsey offer was likewise not accepted, and the McCaigues did not sign any documents concerning the same.

11. There were also various discussions about the property between the McCaigues and their daughter and son-in-law, Alexander and Patricia Barry, who currently reside in Port Charlotte, New York.

12. At all times relevant to this matter, the Barrys had a 20 acre parcel that had been given to them previously by the McCaigues, subject to certain rights of ways to the remaining McCaigue properties.

13. The Barrys hoped to purchase or inherit the remaining McCaigue properties, which were located adjacent to their property. However, no final arrangement was ever concluded to transfer the property to the Barrys.

14. On or about March 24, 2008, Mrs. McCaigue contacted Mr. Garman and inquired about property values. He indicated that there had been a drop in property values since he had done his comparative market analysis about five months before. Mrs. McCaigue asked him if he could find a buyer.

15. Due to complications from Mr. McCaigue's health problems, the McCaigues owed approximately $100,000.00 to the Citizens and Northern Bank in Coudersport, with a note due at the end of April, 2008.

16. While the McCaigues had a positive and ongoing business relationship with the bank, and in particular, its trust officer, Justin Krellner, Mrs. McCaigue was concerned about this obligation. The bank, however, was unconcerned according to the trust officer. The bank was willing to refinance the note for a longer term.

17. Mrs. McCaigue also seemed anxious to proceed with the sale because her daughter and son-in-law were returning from Florida in the near future.

18. Mr. Garman spoke to Plaintiff Bruce Trowbridge and described the property in general terms without disclosing the owners. When Mr. Trowbridge indicated an interest in purchasing a recreational property, the discussion proceeded and eventually Mr. Trowbridge learned the location and the identity of the owners. Mr. Garman made no other effort to locate other potential buyers beyond this one inquiry and a brief conversation with another individual.

19. Throughout this time, Mr. Garman felt that he was a dully authorized sellers' agent working for the McCaigues, although he had no listing agreement or anything else in writing.

20. On or about March 29, 2008, Mr. Garman, Mary McCaigue and a local surveyor, Robert Tingly, met at the property to discuss boundaries and rights-of-way. Mr. Tingly had come to the

property promptly at the request of Mrs. McCaigue, who furnished maps to him. It was noted that rights-of-way to some sections of the property cross the Barry property's front corner.

21. Without consulting the McCaigues, Mr. Garman established a sales price of $250,000.00 with Mr. Trowbridge, to pay all cost and expenses, as well as a realtors commission. Inexplicably, Mr. Garman did not prepare a regular sales agreement, but rather created a document admitted as plaintiff's Exhibit 4 and entitled "Purchase Offer." The "Purchase Offer" generally described the land and its location, and indicated a purchase price of $250,000.00 with settlement to be on or before April 30, 2008. This document was prepared entirely by Mr. Garman with no input from the McCaigues.

22. The "Purchase Offer" indicated that the buyer was accepting the property in the Clean and Green tax program, and was also accepting the CREP (Conservation Resource Planning) project located on some of the land.

23. Paragraph 5 of the "Purchase Offer" read as follows: "if sellers Richard and Mary McCaigue accept this offer than both buyer and sellers will enter into a sales agreement. This to be made out by God's County Real Estate Inc."

24. Mr. Trowbridge and both of the McCaigues signed the "Purchase Offer" on March 29, 2008.

25. On or about March 31, Mrs. McCaigue made a key available to Mr. Trowbridge for him to look at the property more, and also to show it to his wife, Sherri.

26. Mrs. McCaigue seemed pleased with the offer, and Mr. Trowbridge felt he was committed to purchasing the property.

27. No money changed hands at the time the "Purchase Offer" was signed by the respective parties.

28. The Barrys used portions of properties in question, storing various items in building and cutting firewood.

29. The Barrys returned from Florida and met with the McCaigues. Mrs. McCaigue indicated that she was selling the farm to Bruce Trowbridge, although she asked Mr. Barry if he was interested in meeting Mr. Trowbridge's price of $250,000.00. Mr. Barry indicated he did not want to purchase at that price, and offered $100,000.00.

30. Mrs. McCaigue indicated she had an agreement, and then said: "if you want it we can do something."

31. The Barrys were offended by this exchange as they had hoped to acquire the property and felt Mrs. McCaigue had indicated to them that some day they would own that property. The Barrys testified against Mrs. McCaigue without subpoenas and have had no contact with Mrs. McCaigue since their meeting which followed their return from Florida.

32. Mr. Barry understood from this discussion that if he could match the Trowbridge price the property would be sold to him and his wife.

33. After March 29, but before April 4, 2008, Mrs. McCaigue contacted Trust Officer Krellner at the bank and indicated that she had "an offer" from Bruce Trowbridge for $250,000.00. During this or another conversation occurring before March 30, she referenced "other possible offers" on the McCaigue property.

34. In the meantime, there were numerous contacts between Mrs. McCaigue and Mr. Trowbridge, largely initiated by Mr. Trowbridge.

35. In view of the phone records offered as plaintiff's exhibit 3, Mr. Trowbridge initiated most of the calls despite his testimony that Mrs. McCaigue initiated most of the calls.

36. On or about April 4, 2008, Mr. Garman received $1,000.00 escrow from "H. Bruce Trowbridge and Sherri Trowbridge" in cash. That same day the Trowbridges executed document entitled "Standard Agreement for the Sale of Real Estate" consisting of ten pages with supplements relating to "property and environmental inspection notices," "information regarding the home inspection law," "information regarding recreational cabins," "lead warning statement," "information regarding mediation," "residential lead based paint hazards disclosure and inspection contingency addendum to agreement to sale," as well as "sellers statement of estimated return at settlement" and "sellers property disclosure statement." The $1,000.00 down payment was required by the "Sales Agreement."

37. The "Purchase Offer" did not specifically mention timber, oil and gas rights, although Mr. Garman testified that he felt they were included based on his conversations with Mrs. McCaigue.

38. Mr. Garman referred to the subsequent "Standard Sales Agreement" as a "continuation" of the "Purchase Offer."

39. The "Standard Sales Agreement" contained numerous terms and conditions that were lacking in the "Purchase Offer." In Mr. Garman's words, the latter document "spells out more."

40. The "Standard Sales Agreement" contains the following provisions which are either inconsistent with the Purchase Offer or simply not referenced in the Purchase Offer but are essential for there to be a closing:

a. Garman identifies himself as a "dual agent."

b. The agreement calls for cash or check at the time of signing in the amount of $1,000.00. According to Trowbridge, no such payment was ever made by him.

c. The Agreement calls for the Sellers' written approval to be obtained on or before April 4, 2008. That has never occurred.

d. Paragraph 4 deals with items of personal property in detail, whereas the Purchase Offer indicates that Buyer is buying at "as-is" condition.

e. Paragraph 5 states that at all times referred to are of the essence and binding which would include the time for obtaining Sellers' written approval, i.e., April 4, 2008.

f. Paragraph 16 refers to home warranties but goes on to state that warranties do not alter disclosure requirements of Sellers despite the fact that the "Purchase Offer" describes the term of sale "as-is."

g. Paragraph 19 provides that, rather than "as-is," Sellers will be obligated to convey good and marketable title as is insurable by a title insurance company free and clear of all liens, encumbrances and easements and further required Sellers to pay for any survey or surveys required by the title insurance company or abstracting attorney to prepare a legal description. That section goes on to provide Buyer with certain options in the event Sellers are unable to provide good and marketable title.

h. Paragraph 21 imposes the risk of loss upon Sellers, requiring that Sellers maintain the property in its present condition and that Sellers will be responsible for repairing or replacing any failed systems or appliances before settlement; or, in the alternative, it provides Buyer with certain options. Risk of loss in connection with fire and other

casualties is placed on Sellers, totally inconsistent with the concept of "as-is" as set forth in the Purchase Offer.

i. Paragraph 27 contains a release which reserves to the Buyer specific remedies available under law or equity. There is no evidence that the release was ever presented to the McCaigues and no evidence that they agreed to a release which would provide the Buyer a right to sue.

j. The "Standard Sales Agreement" contains an integration clause in Paragraph 28 which states: "This Agreement contains the whole agreement between Seller and Buyer, and there are no other terms representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. This Agreement will not be altered, amended, changed or modified except in writing executed by the parties."

k. Paragraph 29 contains a default provision providing Sellers and Buyer remedies upon default; but, importantly it limits Buyer to retaining deposit monies as liquidated damages in the event of default by Buyer.

l. Paragraph 32 commits the parties to mediation in the event a legal dispute should arise between Buyer and Sellers.

m. Paragraph 34 states: "The following are part of this Agreement if checked..." None of the boxes are checked nor did anyone indicate that the Purchase Offer would be part of the Agreement. The Standard Sale Agreement is specific as to oil, gas and mineral rights as well as timber rights despite the fact that said rights are not referenced in Purchase Offer.

n. One of the boxes to be checked is a confirmation that Buyer has received Sellers' Property Disclosure Statement before signing the Agreement. That is an obligation of the Real Estate Seller Disclosure Law.[1]

[1] See *68 Pa.C.S. §§ 7301 et. seq.*

41. Mrs. McCaigue made a variety of statements to Mr. Trowbridge and others leading him to believe that the McCaigues were going to proceed with the transaction, although Mrs. McCaigue was not prepared to finalize matters if she received a better offer.

42. On or about April 4, 2008, when presented with the "Standard Sale Agreement" signed by Mr. Trowbridge, Mrs. McCaigue refused to sign, and in fact had signed a sales agreement for $450,000.00 with intervenor, Sylvan Glen, Incorporated. Several days later, Mr. Trowbridge encountered Mrs. McCaigue at a local grocery store parking lot and Mrs. McCaigue indicated to him that she had signed another agreement.

43. In soliciting offers previously, Mrs. McCaigue had given various persons interested in the property a packet of information on the property as she did with Mr. Trowbridge.

44. From late March through early April, Mrs. McCaigue had various communications with Gary Kelsey, who in the meantime had become affiliated with Sylvan Glen, Inc.

45. The procedure utilized by the realtor in this matter violated several sections of the Pennsylvania Code relating to the necessity of an agreement as well as written agency agreement.

46. In her own words, Mrs. McCaigue "sort of used" Mr. Trowbridge as she was open to other offers even though she led him believe that she would accept his offer.

47. Mrs. McCaigue and her late husband signed the "Purchase Offer" to indicate that an offer was received although she never believed that she had signed a binding sales agreement. It clearly was her intent, however, to sell to Mr. Trowbridge if nothing else intervened.

DISCUSSION AND CONCLUSIONS OF LAW

In order for a contract for the sale of land to be valid, it must comport to the Statute of Frauds. *33 P.S. §1.* "A writing required by the Statute of Frauds need only include an adequate description of the property, a recital of the consideration and the signature of the party to be charged." *Hessenthaler v. Farzin*, 388 Pa. Super. 37, 45, 564 A.2d 990, 994 (1989), citing *American Leasing v. Morrison Company,* 308 Pa.Super. 318, 454 A.2d 555 (1981). Here, the

"Purchase Offer" recites a description of the disputed property, states the purchase price, and bears the signatures of the Plaintiff and Defendants.

The Plaintiff, in reliance of the Superior Court's prior decision in this case, argues that the Purchase Offer is an enforceable contract even though a future formal document was forthcoming to consummate the agreement. This is because "[a]n agreement to make and execute a certain written agreement, the terms of which are mutually understood and agreed on, is in all respects as valid and obligatory as the written contract itself would be if executed." *Trowbridge v. McCaigue*, 992 A.2d 199, 202 (Pa.Super. 2010), quoting *Mastroni-Mucker v. Allstate Ins. Co.*, 976 A.2d 510, 523 (Pa. Super. 2009). Conversely, The Defendant and Intervenor argue that the "Purchase Offer" did not constitute a meeting of the minds evidenced by the subsequent drafting of the "Sales Agreement", which contained terms not enumerated in the "Purchase Offer", and because the language of the "Purchase Offer" stated that the parties were to enter into a future sales agreement. Specifically, "An agreement to agree is incapable of enforcement, especially when it is stipulated that the proposed compact shall be mutually agreeable." *Highland Sewer and Water Authority v. Forrest Hills Mun. Authority*, 797 A.2d 385, 390 (Pa. Cmwlth. 2002), quoting *Onyx Oils & Resins, Inc. v. Moss,* 367 Pa. 416, 419, 80 A.2d 815, 816 (1951).

The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties with the capacity to contract. *Shovel Transfer and Storage, Inc. v. PA. Liquor Control Bd.*, 559 Pa. 56, 62-63, 739 A.2d 133, 136 (1999), citing *Taylor v. Stanley Co. of America,* 305 Pa. 546, 553, 158 A. 157 (1932). Furthermore,

> It is settled that for an agreement to exist, there must be a "meeting of the minds," ...; the very essence of an agreement is that the parties mutually assent to the same thing,.... The principle that a contract is not binding unless there is an offer and an acceptance is to ensure that there will be mutual assent.... *Schreiber v. Olan Mills*, 426 Pa. Super. 537, 541, 627 A.2d 806, 808 (1993), quoting *Accu-Weather, Inc. v. Thomas Broadcasting Co.*, 425 Pa. Super. 335, 625 A.2d 75 (1993).

However, "[i]f the parties agree upon essential terms and intend them to be binding, 'a contract is formed even though they intend to adopt a formal document with additional terms at a later date.'" *Shovel*, 739 A.2d at 136, quoting *Johnston v. Johnston,* 346 Pa.Super. 427, 499 A.2d 1074, 1076 (1985).

The Plaintiff argues that he and the Defendants had agreed to the essential terms of a contract for the sale of land, as evidenced in the language of the "Purchase Offer." The "Purchase Offer" contained a description for four parcels of land, the signatures of the Plaintiff and Defendants, a purchase price of $250,000.00, and stated the following terms:

> (1) Buyer to pay all sellers closing costs including the commission to God's Country Real Estate Inc.
>
> (2) Buyer is buying the property in as is condition.
>
> (3) Buyer accepts the property in clean and green tax basis
>
> (4) Buyer accepts certain areas of crep. Program.
>
> (5) If Sellers Richard & Mary accept this offer, than both buyer & sellers will enter into a sales agreement. This is to be made out by God's Country Real Estate Inc.[2]

The Plaintiff argues that this document contains an adequate description of the land, the purchase price of $250,000.00, and the signatures of Mr. and Mrs. McCaigue, who were the

[2] *"Purchase Offer."*

parties to be charged. Because the necessary elements of a contract for the sale of land were present in the "Purchase Offer," a contract existed between the Plaintiff and Defendants even though the parties intended to adopt a formal document with additional terms a short time later.

The Plaintiff also argues that Defendant Mary McCaigue's assent to sell her land to the Plaintiff was exhibited by her conduct following the signing of the "Purchase Offer." The Plaintiff looks to the Superior Court's opinion in *Mountain Properties, Inc. v. Tyler Hill Realty Corp.*, 767 A.2d 1096 (Pa. Super. 2001), wherein the Court states: "[a]n offer may be accepted by conduct and what the parties do pursuant to the offer is germane to show whether the offer is accepted." *Mountain Properties,* 767 A.2d at1101, citing *O'Brien v. Nationwide Mut. Ins. Co.*, 455 Pa. Super. 568, 689 A.2d 254, 259 (1997).

In *Accu-Weather, Inc. v. Thomas Broadcasting Co.*, 425 Pa. Super.335, 625 A.2d 75 (1993), the Superior Court was asked to determine whether an offer made by the plaintiff in the form of a written contract was enforceable against the defendant in the absence of a acceptance by executing the document. Specifically, the plaintiff corporation had made its services available to the defendant television company upon the request of the defendant even though no agent of the defendant had executed the written agreement submitted by the plaintiff. Subsequently, the defendant utilized the services provided by the plaintiff with reason to know that the plaintiff expected the terms of the contract to be honored because plaintiff had indicated as much both orally and by letter.

In acknowledging that acceptance of an offer may be established through the conduct of the parties, the Court analyzed the conduct of the parties to assess the presence of a contract between the parties. *Accu-Weather*, 625 A.2d at 78. The Court found that over a three month

period, there was a course of conduct where the defendant received a benefit from the plaintiff consistent with the terms of the written contract. For this reason, the defendant's "course of dealings" with the plaintiff manifested an inherent acceptance of the contract. *Id.* at 79, quoting *Westinghouse Elec. Co. v. Murphy, Inc.*, 425 Pa. 166, 228 A.2d 656 (1967).

Similarly, the Plaintiff argues that the actions of the Defendant Mary McCaigue following the signing of the "Purchase Offer" further evidence her belief tnat that the "Purchase Offer" was a binding contract and that there was a "meeting of the minds." Particularly, the Plaintiff points to the Defendant's visit to the CREP Office, her alleged statement to the ~~Defendant~~ Plaintiff telling him he could do as he wished with the buildings because they belonged to him, and the Defendant conveying knowledge to Plaintiff regarding the difficulty he would have in securing building or fire insurance for the structures on the property.[3]

However, this case is distinguishable from *Accu-Weather* because there is no evidence that Plaintiff had bestowed a benefit on the Defendants or vice versa. In *Accu-Weather*, over a three month period, the defendant broadcasting company had engaged in a course of conduct wherein the defendant received a benefit from the plaintiff consistent with the terms of the written contract. It was because the defendant had received this benefit the Superior Court found that defendant's "course of dealings" with the plaintiff manifested an inherent acceptance of the contract. *Id.* at 78-79.

[3] The Court also notes that on March 29, 2008, the Defendant commissioned a local surveyor to determine the boundaries and rights-of-way concerning the subject property; that on March 31, the Defendant made a key available to the Plaintiff so that he could look at the property more and show it to his wife, Sherri; and, that Defendant seemed pleased with the offer.

In the case at bar, the Plaintiff furnished Mr. Garman with a down payment of $1,000.00 as per the terms of the "Sales Agreement." However, this down payment was not a term designated in the "Purchase Offer" and it is not disputed that the Defendants did not agree to the "Sales Agreement." Additionally, even though there is evidence that Defendant Mary McCaigue commented to the Barrys that she had struck a deal with the Plaintiff, there is no evidence that indicates the Defendants ever made an affirmative step towards closing on the property or conveying the property to the Plaintiff.

The Court's holding is consistent with past case law of the Commonwealth. In *Westinghouse Electric Co. v. Murphy, Inc.*, 425 Pa. 166, 228 A.2d 656 (1967), plaintiff company had filed an action in assumpsit against the defendant corporation to recover money paid to settle a personal injury claim brought against the company. The personal injury plaintiff had been engaged in work at plaintiff's plant as an employee of the defendant. The plaintiff company argued that the defendant corporation was required to repay it because of an indemnification clause under plaintiff and defendant's work contract. However, because in the present instance no written agreement existed between the parties, the defendant corporation argued that the indemnification clause was not a part of the current agreement because the parties had not specifically agreed to it. This contention was brought in spite of the fact that every previous work contract struck between the parties specifically contained an indemnification clause.

The Supreme Court held: "[t]he fact that there is no evidence of record showing explicit reference to [the indemnification clause] in the parties' negotiations ... does not preclude us from concluding it to have been included." *Westinghouse*, 228 A.2d at 659. This is because "[t]he existence of a contractual term may be shown by acts of the parties..." *Id.*, citing Yezbak v. Croce, 370 Pa. 263, 266, 88 A.2d 80, 81 (1952). Specifically,

> Given the frequency of the issuance by Westinghouse of its purchase order forms referring to [the indemnification clause], we think there can be little doubt that Westinghouse intended this particular contract to include [the indemnification clause]. If by no other means, Murphy's assent to the inclusion of [the indemnification clause] is shown by the statement in its letter ... that it was 'fully covered' with insurance coupled with the fact that it had obtained insurance covering the contingency which actually occurred. *Id.*

In other words, the Court reasoned that through the clear and consistent actions of the parties, there existed an inherent intention to include the indemnification clause in the work contract, unlike the case at bar where the actions of Defendant Mary McCaigue are inconsistent and ambiguous at best.

In *Wilson v. Pennsy Coal Co.*, 269 Pa. 127, 112 A. 135 (1920), the defendant sought to have a litigation settlement agreement enforced. The terms of the settlement had allegedly been agreed to in principal by the parties. However, the plaintiff refused to sign the agreement after it had been reduced to writing. The issue before the Supreme Court was whether a contract had been struck by the parties prior to its reduction to writing.

In quoting *Maitland v. Wilcox*, 17 Pa. 231 (1851), the Court reasoned: "An arrangement of terms, in contemplation of a written contract, is not a perfect agreement upon which an action can be maintained." *Wilson*, 112 A. at 136, quoting *Maitland*, supra. "To produce this effect, it must be shown, by the acts or declarations of the parties, that they intended the agreement to be operative before execution, and without regard to the writing." *Id.* However, the Court held that because in the case before it, "there [was] neither act nor declaration of either party alleged showing an intention that the agreement should be operative before [its] execution," the alleged oral settlement agreement was not enforceable. *Id.*

The one factor shared by these cases is the courts' analysis of the actions of the parties' and their intent manifested in their actions. In *Accu-Weather*, the intention of the parties was gleaned from the bestowing of a benefit on the defendant. In *Westinghouse*, the parties acknowledged the existence of the indemnification clause through communications and because the defendant had purchased insurance policies to cover indemnification. In the present case, there is no clear and unambiguous course of conduct showing that Defendant Mary McCaigue accepted the "Purchase Offer" as a binding contract. To view the actions of Defendant Mary McCaigue as evidence that she considered the "Purchase Offer" to be a binding contract, the Court would have to completely ignore all other contrary actions of Mary McCaigue. Notably, four days after the Defendants signed the "Purchase Offer," Mrs. McCaigue provided Al and Patty Berry, her daughter and son-in-law, an opportunity to match the Plaintiff's offer. Additionally, after March 29, Defendant Mary McCaigue contacted a trust officer at her bank and indicated that she had "an offer" from Bruce Trowbridge for $250,000.00. During this or another conversation occurring before March 30, she also referenced "other possible offers" on the McCaigue property.

The Defendants had, in fact, received offers from prospective buyers beginning in 2007 and continuing into 2008. On June 8, 2007, the Defendants received an offer to purchase the disputed property from Howard T. Miller for the amount of $260,000.00. This offer was contained in a document referenced as "Purchase Offer" and signed by Mr. Miller and the Defendants. On September 20, 2007, the Defendants received a similar offer of $300,000.00 from Joseph Majot, also recorded on a "Purchase Offer" signed by Mr. Majot and the Defendants. Upon receiving these prior offers, Mrs. McCaigue had given the interested parties a packet of information on the property as she had with Mr. Trowbridge. On April 8, 2008, the Defendants

agreed to sell the disputed property with an additional 83 acre parcel to the Intervenor for the purchase price of $450,000.00.

From the actions of Defendant Mary McCaigue prior to the execution of the "Purchase Offer" of March 29, as well as her actions immediately following the execution, the only conclusion the Court can draw is that Mrs. McCaigue and her late husband signed the "Purchase Offer" to indicate that an offer was received but did not believe she had signed a binding sales agreement, although apparently, she could have sold the property to Plaintiff if nothing better had come along. This finding is supported by the testimony of Defendant Mary McCaigue, who stated she "sort of used" the Plaintiff as she was open to other offers even though she led him believe that she would accept his offer.

The Plaintiff further argues that the Court **must** find that a contract exists between Plaintiff and Defendants because the "Purchase Offer" encompasses the essential terms to satisfy the Statue of Frauds. To support this contention, Plaintiff directs the Court to the language used by the Superior Court in interpreting the "Purchase Offer."[4] Specifically:

> The essential terms required to satisfy the Statute of Frauds are present in the Agreement signed by Appellant and Appellees. While the trial court acknowledges this, it concluded that the Agreement was nonetheless not a contract because it indicated "an intention of the parties to come to an agreement at a later time." ... [T]he Agreement here does not indicate an intention to agree upon any essential terms in the future. In fact, contrary to the trial court's assertion, the Agreement does not imply that there was anything left to agree upon in the future. Rather, the only future occurrence contemplated by the Agreement is the execution of a sales agreement. *Trowbridge*, 992 A.2d at 202 (citations omitted).

While it is true that the "Purchase Offer" contains terms that would seemingly satisfy the Statute of Frauds, and, the Court acknowledges that parties agreeing to essential terms that intend

[4] In *Trowbridge v. McCaigue*, 992 A.2d 199 (Pa Super. 2010), the Superior Court overturned this Court's Judgment on the Pleadings in favor of Defendants and Intervenor.

to be bound by said terms form a contract even if a formal document with additional terms is forthcoming,[5] the evidence on the record simply does not support the contention that the "Purchase Offer" was ever intended by the Defendants to constitute a binding contract. This is evident by the subsequent drafting of the "Standard Sale Agreement," a document not only significantly larger and containing many more additional terms than the "Purchase Offer,"[6] but also including terms that outright contradict the terms of the "Purchase Offer."

The "Purchase Offer" incorporates the condition that Buyer is accepting the property in "as-is condition." However, the "Standard Sales Agreement" obligates the Sellers to accept a $1,000.00 down payment as liquidated damages; sets forth the nature of the legal title the Sellers must tender; and, provides remedies for Buyers in the event Sellers cannot tender the proffered title. Furthermore, the "Standard Sales Agreement" contains an integration clause indicating that all representations and claims of any type made by seller or brokers are not "...a part of this agreement unless expressly incorporated or stated in this agreement. This agreement contains the whole agreement between the buyer and sellers and there are no other terms, obligations, covenants, representations, statements, or conditions oral or otherwise of any kind whatsoever concerning this sale."

In this case, the "Sales Agreement" was not a formalization of the "Purchase Offer," the "Sales Agreement" went far beyond the terms and conditions of the "Purchase Offer." This contention is supported by term (5) of the document which states: "If Sellers Richard & Mary accept this offer, than both buyer & sellers will enter into a sales agreement..." Drafting a

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[5] *Shovel*, supra.

[6] The "Purchase Offer" is approximately one and one half pages containing terms typed in what appears to be 18 point font, whereas the "Standard Sale Agreement" is 10 pages typed in what appears to be 8 to 10 point font.

"purchase Offer" is consistent with Mrs. McCaigue's prior handling of offers to buy her land where she, along with the prospective purchasers, would sign a similar document titled "Purchase Offer." These documents were only acknowledgements that Mrs. McCaigue had received an offer from a particular buyer and the terms of the offer. Similarly, the Defendants' signatures at the end of "Purchase Offer" merely signify that the Defendants acknowledged the offer and the terms of that offer, forwarded by the Plaintiff.

For an agreement between parties to exist, there must be a "meeting of the minds," whereby the parties mutually assent to the same thing. *Schreiber*, supra. Presently, the Court finds that Defendant Mary McCaigue did not agree to sell her land to the Plaintiff but merely acknowledged his offer in the "Purchase Offer." Because there was no mutual assent between the parties to the sale of land, there was no meeting of the minds and, ultimately, no binding contract. For the reasons stated above, the Court will find for the Defendants and Intervenor.

An appropriate order follows.

HAROLD B. TROWBRIDGE Plaintiff	: IN THE COURT OF COMMON PLEAS : OF POTTER COUNTY, PENNSYLVANIA
Vs.	: No. 257 of 2008
RICHARD and MARY McCAIGUE Defendant	:
Vs.	:
SYLVAN GLEN, INC. Intervenor	: CIIVIL DIVISION

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PROTH. & CLERK OF COURTS
POTTER COUNTY

ORDER

AND NOW this 6th day of July, 2011, for the reasons stated above, because the Plaintiff has not proved his case by a preponderance of the evidence, the Court enters a Verdict in Favor of Defendant and the Intervenor, and against the Plaintiff.

BY THE COURT

John B. Leete, Specially Presiding
55th Judicial District

cc. Jarett Smith, Esq.
D. Bruce Cahilly, Esq.
William A. Hebe, Esq.