UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1451

September Term, 2013

PATRICK S. RIDLEY

v.

MADLYN RIDLEY FISHER

Kehoe,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 29, 2015

This appeal presents a family dispute as to the ownership of real estate. Appellant, Patrick S. Ridley, has appealed from a grant of summary judgment in favor of appellee, Madlyn Ridley Fisher, his mother, by the Circuit Court for Anne Arundel County. Following a hearing on the parties' cross motions for summary judgment, the court granted Fisher's motion, denied Ridley's motion, denied a subsequently-filed motion to alter or amend, and ordered Ridley to execute a quit claim deed in favor of Fisher.

Appellant raises two questions for our review, which we have recast for clarity:

> Does the record support the circuit court's grant of summary judgment on the basis that, as a matter of law, a contract for the transfer of title of real estate was established?

For reasons that follow, we shall reverse the circuit court's grant of summary judgment and remand this case for further proceedings.

FACTUAL BACKGROUND

The parties, together with Virginia Ridley, were the owners, as joint tenants, of the property at issue in this appeal.[1] Virginia Ridley was the mother of appellee and the grandmother of appellant. Upon Virginia's death in 2002, title passed to Fisher and Ridley, as joint tenants.

The genesis of this litigation is a hand-written note sent by Ridley to his mother in March 2010 stating:

[1] The property consists of six waterfront lots known as "Tall Oaks" and located in Shady Side, also known as Columbia Beach, in Anne Arundel County.

> To My Dear Mother,
>
> I know it might seem strange that I am leaving this short message for you; however, I felt it necessary.
>
> If recent events are any indication, then this moment was sure to come eventually. I request that my name be removed from the deed to "Tall Oaks". My financial situation at this time demands it. My only interests are and still remain 3rd Street and Newport News, Virginia only; that includes my land in North Carolina.
>
> Be aware that you will be receiving a check from me toward my portion of the property-taxes for Columbia Beach for this year only. Afterwards, if I receive a bill regarding this property, it will only be returned to you. I expect you to follow suit and I want it in writing, please. I love you, regardless of this situation, however, know that the love you hold back is the pain you carry.
>
> –*Patrick* (3/2010)

(Emphasis in original).

There is no dispute that Ridley wrote the note or that it was received by Fisher. Nor is there dispute as to legal title to the property.

Fisher did not respond in writing as Ridley had requested, and the record contains no evidence that she undertook the preparation of a deed to convey Ridley's interest to her. As promised in his note, Ridley issued a check for his one-half share of the 2010 real estate taxes. The record suggests that the parties subsequently discussed the matter around Christmas, 2011.[2] At that time Ridley indicated that he no longer wished to give up his

[2] There was no testimony offered at the motions hearing; thus, the record is silent as to what the parties may have discussed or agreed upon.

ownership interest in the property, but wished to have the land partitioned. The record does not reveal how, or if, Fisher responded to that proposal.

The 2011 real estate taxes were not paid during 2011, and the record reveals Anne Arundel County bills showing unpaid taxes and accumulated interest for 2011, together with a Tax Sale Notice dated May 11, 2012, for delinquent taxes.

THE LAWSUIT

On April 29, 2012, Ridley filed a complaint for sale or partition of the property pursuant to Md. Code Ann.(2003 Repl. Vol.) Real Property ("Real Prop."), § 14-107, alleging that the property should be sold in its entirety and the net proceeds divided between the owners according to their respective interests. In her answer, and supplemental answer, Fisher asserted that Ridley's writing to her in March 2010, had unilaterally severed their joint ownership and conveyed full ownership to her.

In response, Ridley moved for partial summary judgment seeking a sale of the property because the configuration of the lots (four lots with one house on them, and two contiguous lots), precluded partition without substantially lessening the property's value. The motion was supported by relevant deeds and a real estate broker's affidavit.

Fisher argued that Ridley conveyed his joint ownership interest to her by virtue of the note; thus, he was not entitled to summary judgment. She also filed a cross-motion for summary judgment, arguing that, based on Ridley's note and the parties' actions, the court

should find an enforceable contract to convey. She concluded that, as a matter of law, the note was "a contract, grant, or surrender of [his] interests in the Property."

At a hearing on July 29, 2013, the court took up the parties' summary judgment motions, during which it addressed the legal effect of the note. The hearing consisted only of the arguments of counsel - no evidence was taken.

Counsel for Ridley argued, *inter alia*, that the note could not have formed a valid contract because Fisher had not accepted his offer, as set out in the note. As a result, he concluded, there was "no mutual intent to be bound."

Although in the note Ridley specifically requested that Fisher respond in writing and prepare a deed, "nothing of that nature was ever done" before Ridley's later revocation. Granting that the note contained a valid offer, Ridley's counsel emphasized that Maryland law is consistent that such an offer can be revoked prior to acceptance and that the filing of his partition action amounted to revocation.

Counsel for Fisher argued that the terms of the note were clear, and agreed with Ridley that the "document speaks for itself." After acknowledging that the note contained the specific request, "'I want it in writing please,'" she contended that the note was a completed contract upon delivery, as the following colloquy illustrates:

> **[Fisher's Counsel]:** We're not pretending like this was a deed, but we are saying that it is a writing completed by the Plaintiff and has legal effect. Deal done. Transaction completed.

The Plaintiff subsequently exchanged his check for taxes, which is what he said he would do. The Defendant never asked the Plaintiff again to contribute to any of the expenses, maintenance, taxes, anything to do with the property.

Now the Plaintiff in his response to our last filing. . . wants to make an issue of the fact that this transaction was never reduced to a deed.

And the case law is clear, the mere fact that the parties understood that the transaction should be reduced to writing does not leave the transaction incomplete. It was completed when he wrote to his mother, I want my name taken off the deed, period. There was no terms, no conditions, nothing else left to be decided.

THE COURT: But wouldn't it have required a deed to be executed by the purported grantor?

[**Fisher's Counsel]:** It would have required a deed as a ministerial act meaning that didn't constitute the transaction, we just want you to commit it to writing and let the public know that the interest has been –

THE COURT: So that is only with respect to third parties, but not with respect to the parties?

[**Fisher's Counsel]:** Right. The parties were real clear.[3]

[3] The colloquy continued as follows, suggesting a potential dispute regarding a material fact:

[Fisher's Counsel]: The parties acted in accordance with that documentation. Now to say that – I think Your Honor has to understand the circumstances that set the stage for how this transaction occurred. To say that mother and son get along, that they communicate, that they –

THE COURT:I don't mean to cut you off, but I don't want to go beyond the very limits that I can in conjunction with the summary judgment. I don't want to cloud my judgment by potentially factual disputes.

(continued...)

When asked whether "this was a revokable document" and that, by filing the lawsuit, Ridley had effectively revoked any intention to convey the property, Fisher's counsel stated that once Ridley signed his name to the note, he affected an immediate transfer of his interest in the property, and a deed was not going to say any more than the handwritten note had provided.[4]

The motions court issued a memorandum opinion which denied Ridley's motion and granted Fisher's motion for summary judgment.[5] After concluding that the note failed to meet the legal definition of a deed, the court cautioned that "that is not the end of the analysis." Referring to Real Prop. § 5-104 (2010) and the common law requirements for a document to be enforceable under the Statute of Frauds, the court concluded that the note represents an enforceable contract, reasoning as follows:

> The letter, signed by the Plaintiff names the parties to the contract, i.e., "Patrick (Plaintiff) and "My Dear Mother" (Defendant), describes the land to which the contract relates, i.e., "Tall Oaks", and sets forth the terms and conditions of all promises constituting the contract made between the parties.

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[3](...continued)
[**Fisher's Counsel**]: Okay.

THE COURT: Because that is the kind of stuff that sounds an awful lot like they are going to say something different.

[4] Whether that writing would pass muster as an effective deed is problematic; however, that issue was not argued.

[5] Two days later the court issued a Second Amended Memorandum Opinion and Order which correctly cited the parties' names in the headnote.

> Therefore, this Court concludes that the March 2010 letter satisfies the statute of frauds requirements.

Next, the court addressed the requirement that "for a contract to be binding, it must be supported by consideration," and concluded that the consideration in the contract between the parties was Fisher's forbearance, writing as follows:

> [F]ollowing the March 2010 correspondence, which included a check for half of Plaintiff's taxes, the Defendant assumed the full financial responsibility of "Tall Oaks" as demanded by Plaintiff. Under these circumstances, the Court finds, as a matter of law, that Defendant's assumption of complete financial responsibility for "Tall Oaks", without making demand for contribution on the Plaintiff, was a forbearance to exercise a legal right, constituting sufficient legal consideration to support a contract between the parties.

In its further analysis, the court compared Fisher to the "contract purchaser" and Ridley to the "vendor" in a contract for the sale of real estate, concluding that, through the doctrine of equitable conversion, Fisher "obtained the complete equitable ownership of 'Tall Oaks' via the March 2010 letter. Plaintiff retains nothing more than bare legal title."

Ridley moved to alter or amend the judgment, raising several reasons why no offer contained in the note had ever been accepted. On September 13, 2013, the court denied Ridley's motion, and ordered him to immediately execute a quit claim deed conveying the property to Fisher. This appeal followed.

DISCUSSION

I. Was there an acceptance of Ridley's offer?

Ridley argues that because the court had no evidence of an acceptance of the offer made by him in the March 2010 note, there was no enforceable contract. By moving for summary judgment, he argues, Fisher bore the burden of proof of an enforceable contract. A valid contract must include an offer, acceptance, and consideration, but when Ridley wrote the March 2010 note, acceptance was merely a possible future event. The offer contained in the note made clear that both a written acceptance and a new deed were required to conclude the transfer of title. Because Fisher never transmitted her acceptance in writing, as demanded, or prepared a deed, he concludes that there is no specifically enforceable contract.

Fisher contends that "this informal agreement was immediately effective," so that a specifically enforceable contract existed immediately upon Ridley's delivery of the March 2010 note, without more. At the same time, she maintains that her acceptance of the offer "was clear from the record," regardless of Ridley's demand for a written response or that a formal deed be prepared.

"[W]hether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). The entry of summary judgment is governed by Md. Rule 2-501, which provides in relevant part:

> (f) **Entry of judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

When reviewing a trial court's decision regarding a motion for summary judgment, "we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Myers* at 203. In considering a trial court's grant of a motion for summary judgment, this Court reviews the record in the light most favorable to the non-moving party, and we "construe any reasonable inferences that may be drawn from the facts against the moving party." *Id*.; *Blondell v. Littlepage*, 413 Md. 96, 110 (2010).

"The interpretation of a written contract is generally a question of law for the court, subject to *de novo* review." *Carroll County v. Forty West Builders*, 178 Md. App. 328, 376, *cert. denied*, 405 Md. 63 (2008). "When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *John L. Mattingly Const. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 326 (2010)(citation and internal quotations omitted); *100 Investment v. Columbia Town Ctr. Title*, 430 Md. 197, 234 (2013).

"The question of whether a contract was formed is central to this appeal. 'A contract is formed when an unrevoked offer made by one person is accepted by another.'" *Forty West Builders*, 178 Md. App. at 377 (quoting *Prince George's County v. Silverman*, 58 Md.

App. 41, 57 (1984)). The validity of the contract depends on the existence of both offer and acceptance. *Id*. "An essential element with respect to the formation of a contract is 'a manifestation of agreement or mutual assent by the parties to the terms thereof; in other words, to establish a contract the minds of the parties must be in agreement as to its terms.'" *Id*. (quoting *Safeway Stores, Inc. v. Altman*, 296 Md. 486, 489 (1983)). "If the offer requires a certain manner of acceptance, then acceptance must be performed in that manner." 101 Am. Jur. Proof of Facts 3d. 285, 303 (2008, 2015 update); *Foster & Kleiser v. Baltimore Co.*, 57 Md. App. 531, 536 (1984) (where council approval required to approve contract, there was no enforceable contract without such condition precedent). "If one party makes an offer in a letter and that offer is certain and definite, and the other party replies accepting that offer on the terms in which it is made, a valid contract ensues." *Dalton v. Real Estate & Imp. Co.*, 189 Md. 210, 216 (1947) (citing *Buffalo Pressed Steel Co. v. Kirwan*, 138 Md. 60 (1921)). If an offer requires that an acceptance be made in a particular manner, "there can be no binding contract until such approval is forthcoming." *Silverman*, 58 Md. App. at 57.

Thus, in order to have a binding contract, two prerequisites of mutual assent -- a valid, unrevoked offer and an acceptance – must be present. *Forty West Builders*, 178 Md. App. at 377; *Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531, 541 (1977) (Essential

mutual assent is "crystallized when there is a knowing and sufficient acceptance to a certain and definite offer.")[6]

"'In construing a contract, each clause must be given effect if reasonably possible.'" *Forty West Builders*, 178 Md. App. at 379 (quoting *Arundel Fed. Sav. & Loan Ass'n v. Lawrence*, 65 Md. App. 158, 165 (1985)). Courts will, to the extent possible, construe a written contract in order to "'carry into effect the reasonable intention of the parties if that can be ascertained.'" *Id*. (quoting *Quillen v. Kelley*, 216 Md. 396, 407 (1958)). The doctrine of equitable conversion may be enforced in a real estate transfer only if the contract is one under which the vendor would be subject to a decree for specific performance. *Watson v. Watson*, 304 Md. 48, 61 (1985).

In the case *sub judice*, the plain language of Ridley's March 2010 note is a proposal that Fisher remove his name from the deed to the property in order to alleviate him of financial burdens *at that time*, and contained Ridley's specific request that she "respond in writing, please." His request for a written response created the requirement that the offer contained in the note be accepted in a particular manner. A binding contract cannot exist "until such approval is forthcoming." *Silverman*, 58 Md. App. at 57. The record contains no evidence of a response in writing by Fisher, or her agent. Indeed, it is not disputed that

[6] We assume that the note constituted an offer, although "a general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer." *Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531, 539 (1977).

there was no response. Because each clause must be given effect, we cannot ignore Ridley's specific request for a response *in writing*. Without such a response, there was no acceptance of the offer, and no valid contract was formed. We agree that, no response having been made, the filing of this action constituted a revocation of Ridley's offer. An unaccepted offer may be withdrawn at any time. *See Hall v. Prince George's Co. Dem. Central Com.*, 431 Md. 108, 131-32 (2013).

Fisher argues that the trial court correctly determined that she "took sole responsibility for the property," paying all taxes and other bills; thus, she concludes, when she refrained from requesting contribution from Ridley for his share of the taxes, she accepted his offer through the act of forbearance.

It is true that "[a]cceptance may be manifested by acts as well as by words." *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). Indeed, it is possible for silence or even inaction following an offer to be construed as acceptance, "but this is the exception and not the general rule." *Id*. Here, the offer specifically requires that it be responded to in writing, which was not done. Moreover, the record fails to indicate that Fisher took any actions that differ from those that she would have taken in the absence of an alleged contract. When forbearance is offered as evidence to support a contract, it must be such as would not ordinarily have taken place in the absence of the alleged contract. *See Mann v. White March Properties, Inc.*, 321 Md. 111, 117 (1990) (to demonstrate part performance of a contract, an action must be one of such character that places the parties in unequivocally different

legal positions than before the contract). In any event, Fisher would have had to pay the real estate taxes to avoid foreclosure.

We do not agree that Fisher took on all financial responsibilities, as the record shows non-payment of the 2011 property tax bill at the time the partition action was initiated. When Ridley filed his partition complaint on April 29, 2012, the taxes remained unpaid, and on May 11, 2012, a Tax Sale Notice was sent to Fisher based on these unpaid 2011 property taxes. Forbearance under these circumstances is not factually significant. *Beall v. Beall*, 291 Md. 224, 230 (1981) (forbearance is far less "evidential in character than when it consists of affirmative action."). Although the trial court correctly noted the fact that Real Prop. § 5-104[7] is applicable to a contract involving the transfer of real estate, we conclude that the record does not support the conclusion that a valid contract was formed. Section 5-104 provides that all real estate contracts must be in writing. However, the law assumes that there first be an enforceable contract, containing the essential minimum contractual elements of an offer and an acceptance in order to form a mutual meeting of the minds.

The court focused on the individual requirements contained in the Statute of Frauds,[8]

[7] "No action may be brought on *any contract* for the sale or disposition of land or of any interest in or concerning land unless the contract on which the action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or some other person lawfully authorized by him." (emphasis added).

[8] For a contract to comply with the Statute of Frauds, "the required memorandum must be (1) a writing (formal or informal); (2) signed by the party to be charged . . . (3) naming each party to the contract with sufficient definiteness . . . (4) describing the land or (continued...)

but did not take into account the preliminary requirement that a basic contract must exist before the technical details of the writing are analyzed.

Dispute of material fact

The focus of our analysis, as was the motions court's, was whether the events that we have described sufficed to form an enforceable contract. At the same time, the record suggests the existence of a dispute of material fact. Referring to our footnote 3, we recall the court's observation that "I don't want to cloud my judgment by potentially factual disputes . . . [b]ecause that is the kind of stuff that sounds an awful lot like they are going to say something different." Moreover, there is referenced in the hearing transcript a discussion between mother and son that occurred sometime near Christmas, 2011. However, the court did not hear from the parties the essence of that discussion.

Summary judgment is not appropriate where there exists a dispute of material fact. A "material fact is a fact the resolution of which will somehow affect the outcome of the case. The moving party bears the burden of establishing the absence of a genuine issue of material fact." *Carter v. Aramack Sports and Entertainment Services, Inc.*, 153 Md. App. 210, 224-25 (2003) (citations and internal quotations omitted), *cert. denied*, 380 Md. 231 (2004). Maryland law provides that summary judgment is only appropriate where "there is

[8](...continued)
other property to which the contract relates; and (5) setting forth the terms and conditions of all the promises constituting the contract made between the parties." *Beall*, 291 Md. at 228-29.

no genuine dispute as to any material fact" and "the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). In making such a determination, "the circuit court does not resolve disputed issues of fact but makes rulings as a matter of law." *Mohammad v. Toyota*, 179 Md. App. 693, 701 (2008) (citations and internal quotations omitted). As a result, the court's "threshold task is to determine whether there is any genuine issue of material fact." *Mohammad*, 179 Md. App. at 703. "[I]f there is a genuine dispute as to any material fact, summary judgment is improper." *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007).

> Because "this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and [appellant's] version of events (unsurprisingly) differs substantially from [appellees'] version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the [summary judgment] motion."

Mohammad, 179 Md. App. at 702 (quoting *Scott v. Harris*, 550 U.S. 372, 378 (2007)).

In our *de novo* review of the circuit court's decision, we "'review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.'" *Hill v. Cross Country*, 402 Md. at 294 (quoting *Myers v. Kayhoe*, 391 Md. at 203)). Even where the underlying facts are undisputed, if they are susceptible of more than one inference, then summary judgment must be denied to enable the trial court or jury to determine which inference of those facts is appropriate. *Id*. at 294. Because the parties' intentions regarding Ridley's handwritten note

differ, and because his filing of the partition action creates evidence for the record regarding Ridley's interpretation, this case contains a genuine issue of material fact.

Therefore, for the reasons we have discussed, we shall vacate the trial court's decision to grant summary judgment and remand for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS;

COSTS TO BE PAID BY APPELLEE.