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2002 Survey of Rhode Island Law: Cases: Property/Agency

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Property/Agency. *731 Airport Associates, LP v. H & M Realty Associates, LLC*, 799 A.2d 279 (R.I. 2002). The Rhode Island Supreme Court held that a property owner's oral agreement to the essential terms of a sales transaction, together with an e-mail message from the owner to the prospective buyer's representative, did not amount to a satisfaction of the statute of frauds. The court also held that the buyer had failed to demonstrate the reasonableness of the belief that the owner's attorney possessed the apparent authority to bind the seller to the purchase and sales agreement.

FACTS AND TRAVEL

The plaintiffs, 731 Airport Associates, LP, and 747 Airport Associates, LP (collectively referred to as buyer), filed an action against the defendant, H & M Realty Associates, LLC (seller), through its Member, Donald L. Leef (Leef), asserting claims for specific performance and breach of contract "arising from an aborted sale of property" (property) owned by the seller.¹ The parties began negotiations for the sale of the property in March 2000, and in May the buyer offered to purchase the property for \$1,060,000.² The offer was rejected by seller, who submitted a counteroffer of \$1,100,000.³ The buyer rejected the counteroffer.⁴ After more negotiations between the parties, they reached an oral agreement to sell the property.⁵

The seller's counsel, James L. Truslow (Truslow), prepared a complex purchase and sale agreement that underwent several amendments, which resulted in two duplicate originals of a "final agreement" in October 2000.⁶ Truslow sent the agreement to the buyer, including instructions to sign and return the documents.⁷ A cover letter mailed with the agreement did not contain a limitation that had been included in previous drafts declaring the agreement was subject to approval by seller.⁸ Between the dates October 6 and October 10, 2000 the buyer submitted a check of \$5,000 to

1. *731 Airport Assocs., LP v. H & M Realty Assocs., LLC*, 799 A.2d 279, 281 (R.I. 2002).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

Truslow, which the seller accepted, but never cashed or deposited.⁹ On October 13, 2000 the buyer was ready to complete the transaction, but the seller, claiming he was not bound to perform, refused to sign any of the transactional documents.¹⁰ The seller also expressed his intention to accept a better offer in the event that one was made.¹¹ The check in the amount of \$5,000 was returned to the buyer on October 20, 2000 and negotiations between the buyer and the seller continued throughout October.¹² It was apparently during these negotiations that the seller sent an e-mail message to the buyer's representative in which the seller stated that the buyer was "changing the deal your dad and I had . . ." ¹³ Subsequently, the seller entered into a purchase and sale agreement for the property with another buyer for the sale price of \$1,100,000.¹⁴

The buyer initiated this action for specific performance on November 8, 2000.¹⁵ At the end of the buyer's case, the court granted the seller's motion to dismiss the action.¹⁶ Judgment for the seller was entered in the superior court on January 18, 2001, and the buyer appealed.¹⁷

On appeal, the buyer argued the trial justice erred in finding that (1) no binding contract existed between the parties and (2) Truslow did not have apparent authority to contract on behalf of the seller.¹⁸ The seller maintained the trial justice did not err.¹⁹

ANALYSIS AND HOLDING

Statute of Frauds

The Rhode Island Supreme Court stated a contract for the sale of land need not be in writing to satisfy the statute of frauds as long as there is a memorandum, signed by the party against whom the contract is sought to be enforced, that contains the substance of

9. *Id.*

10. *Id.* at 282.

11. *Id.*

12. *Id.*

13. *Id.* at 284.

14. *Id.* at 282.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

the contract and each party has manifested an objective intent to be bound thereby.²⁰ In the case at hand, however, the supreme court denied and dismissed the buyer's appeal and affirmed the judgment of the superior court, holding that the trial justice was correct in concluding "the parties reached a preliminary oral agreement but that certain terms remained disputed and the agreement was not memorialized by a writing sufficient to overcome the statute of frauds."²¹

The buyer argued that the seller's oral agreement to the essential terms of the transaction, together with communications from the seller's attorney, Truslow, and the seller's e-mail message to the buyer's representative, amounted to a satisfaction of the statute of frauds.²² As a basis for this conclusion, the buyer asserted that the duplicate originals of the "final agreement," along with the cover letters that accompanied Truslow's communications, signified the seller's intent to be bound by the agreement.²³

The court stated the trial justice was correct in holding, however, that "no writing from Truslow suggested that seller agreed to the terms of the sale or intended to be bound absent seller's signature."²⁴ In addition, the court stated the trial justice was correct in holding that the seller had manifested no intent to be bound because "the purchase and sales agreement was not signed by either party, [the] deposit of \$5,000 was delivered to seller but never deposited, . . . no closing date was ever agreed upon by the parties and certain items that would have been required before the closing never were provided to buyer."²⁵ Further, the court stated the trial justice was correct in holding there was no "meeting of the minds,"²⁶ since the seller refused to agree to the terms of the contract because he was aware he might be offered a more attractive deal by another party.²⁷ Finally, the court stated the trial justice was correct in finding the e-mail message from the seller to the buyer's representative did not amount to a writing sufficient to satisfy the statute of frauds, because the e-mail was "evidence that

20. *Id.* at 284.

21. *Id.*

22. *Id.* at 283.

23. *Id.* at 284.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

the parties did not have a binding agreement, but rather a transaction that evolved and evolved and changed and changed, and was never finalized”²⁸

Accordingly, the supreme court concluded that the trial justice did not err in finding that no binding contract existed between the parties.²⁹

Principal and Agent

The buyer also argued that seller’s attorney, Truslow, had the apparent authority to bind the seller to the contract that the buyer claimed existed between the parties.³⁰ The court stated, “Apparent authority to contract on behalf of a principal ‘arises from the principal’s manifestation of such authority to a [third party].’ Such apparent authority can come from ‘indicia of authority given by the principal to the agent’ and does not have to be direct communication to the third person.”³¹ In addition, “the third party with whom the agent is dealing must believe that the agent has the authority to bind its principal to the contract.”³²

The court stated the buyer had failed to demonstrate the reasonableness of the belief that Truslow possessed the apparent authority to bind the seller to the purchase and sales agreement.³³ Thus, in addition to holding that there was no contract between the parties, the court held that the trial justice did not err in concluding that Truslow lacked the apparent authority to bind the seller to a contract.³⁴

CONCLUSION

The Rhode Island Supreme Court denied and dismissed the appeal of the plaintiff buyer, and affirmed the judgment of the superior court for the defendant seller. The court held a contract for the sale of land need not be in writing to satisfy the statute of frauds, as long as there is a memorandum, signed by the party

28. *Id.*

29. *Id.*

30. *Id.* at 283.

31. *Id.* (citing *Menard & Co. Masonry Bldg. Contractors v. Marshall Bldg. Sys., Inc.*, 539 A.2d 523, 526 (R.I. 1988)).

32. *Id.*

33. *Id.*

34. *Id.*

against whom the contract is sought to be enforced, that contains the substance of the contract and each party has manifested an objective intent to be bound thereby. Under this rule, the seller's oral agreement to the essential terms of the sales transaction, together with an e-mail message from the owner to the prospective buyer's representative, did not amount to a satisfaction of the statute of frauds.

The court also held that apparent authority to contract on behalf of a principal arises from the principal's manifestation of such authority to a third party, but such apparent authority can come from indications of authority given by the principal to the agent and does not have to be direct communication to the third person. In addition, the third party with whom the agent is dealing must reasonably believe the agent has the authority to bind its principal to the contract. Under this rule, the buyer had failed to demonstrate the reasonableness of the belief that the seller's attorney possessed the apparent authority to bind the seller to the purchase and sales agreement.

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