

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

MICHAEL B. STANTON,

Plaintiff,

v.

Index No.: EFCA2020-000995

RJI No.: 32-20-0311

OMP PARK, INC.,

Defendant.

APPEARANCES:

MATTHEW J. FANELLI, ESQ.
Finer & Fanelli
510 Bleecker Street
Utica, New York 13501
Attorney for Plaintiff

RICHARD A. COHEN, ESQ.
Cohen & Cohen
258 Genesee Street, Suite 503
Utica, New York 13502
Attorney for Defendant

DECISION AND ORDER

MACRAE, P.F.

Before the Court is a motion by plaintiff, Michael B. Stanton, seeking summary judgment, awarding plaintiff specific performance on a contract for the purchase and sale of real property, and directing the defendant to set a closing date as early as possible; and a cross-motion by defendant, OMP Park, Inc., seeking summary judgment dismissing plaintiff's action.

NOW, on receiving and reading the Notice of Motion of plaintiff Michael B. Stanton (NYSCEF 14), dated June 22, 2020 by Stuart E. Finer, Esq., attorney for the plaintiff, and the Attorney Affirmation in Support of Motion for Summary Judgment (NYSCEF 15) by Mr. Finer, dated June 22, 2020, and the Memorandum of Law in Support of Motion for Summary Judgment (NYSCEF 16), dated June 22, 2020, and the Affidavit of Michael B. Stanton (NYSCEF 17), sworn to the 22nd day of June, 2020, together with exhibits A-M (NYSCEF 118-30, respectively), attached thereto; and the Notice of Cross-Motion of defendant OMP Park, Inc. (NYSCEF 32), dated July 6, 2020 by Richard A. Cohen, Esq., attorney for the defendant, and the Affidavit in Opposition to Plaintiff's Motion and in Support of Defendant's Cross-motion (NYSCEF 33), by Claudia Tenney, Esq., sworn to the 2nd day of July, 2020, together with exhibits A-K (NYSCEF 34-44, respectively), and the Affirmation of Mr. Cohen (NYSCEF 45), dated the 6th day of July, 2020; and Plaintiff's Reply Memorandum of Law in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-motion (NYSCEF 48) by Mr. Finer and Matthew J. Fanelli, Esq., and the Affidavit in Support of Plaintiff's Motion and in Opposition to Defendant's Cross-motion (NYSCEF 49); and said motion and cross-motion having duly come on to be heard; and after hearing Mr. Fanelli in support of plaintiff's motion, Mr. Cohen in opposition to plaintiff's motion and in support of defendant's cross-motion, and Mr. Fanelli in opposition to defendant's cross-motion, and after due consideration thereon, the following is the decision and order of the Court.

At issue in both motions is a provision in a contract for the purchase by plaintiff and sale by defendant of real property located at 28 Robinson Road, Clinton, NY. There is no disagreement between the parties that a contract between them was executed. The contract document (NYSCEF 18) contains some uncertainty as to whether defendant accepted the contract

before the offer to purchase was made, but neither party raises this as an issue and it will not be considered here.¹

The sole area of disagreement between the parties, in both motions, has to do with the significance of a provision contained in paragraph 7 of the contract, which states, "Lease back option for seller to occupy office space upto (sic) \$1500 in rent for upto (sic) 1 year." In substance, plaintiff contends that this provision creates a mere option available to defendant after closing of the sale of the property and, therefore, is severable from the ability of the parties to complete the sale; whereas defendant contends that it is a condition precedent to the completion of the sale, and that until the parties arrive at the specific terms for that lease, the sale cannot be completed.

Counsel for plaintiff did not cite to any specific authority that gives a succinct definition of either the term "option," or "lease back option." Instead, counsel argued for a common understanding that an option entitles the holder to choose whether to take advantage of whatever the option might be, or forsake that advantage, literally, at the option of the holder. That is a compelling argument. "The distinguishing characteristic of an option contract is that it imposes no binding obligation upon the person holding the option." *17 AmJur2d, Contracts* §55. Much of the reported history of litigation involving options has centered around options that have been built into leases. While that is not the specific situation here, the holdings in such matters are consistent with this definition, such as the statement by the Court of Appeals, in a case involving an issue of an option contained in a lease, that "an option grants to the holder the power to compel the owner of property to sell it whether the owner is willing to part with ownership or

¹ The date of the offer was handwritten and clearly indicates it was made on "10-12-19." The acceptance was electronically created and is not clearly reproduced, but appears to state the contract was accepted on "10/10/2019."

not.” *Metropolitan Transp. Auth. v. Bruken Realty Corp.*, 67 NY2d 156, 165 (1986); *see also*, *The Symphony Space v. Pergola Properties*, 88 NY2d 466, 478 (1996). Thus, it is clear that an option creates an entitlement to be exercised at the discretion of the holder, within the parameters given by the option, regardless of objection by the party that granted the option. However, notwithstanding the applicability of the foregoing, there is a significant distinction to be drawn between a lessee’s option to purchase property over which the lease is held, and a property owner’s option to lease a portion of property to be sold. In the former, the holder of the lease is already in possession of the property under the terms of the lease, whereas in the latter situation, the seller merely holds a right to the option, which does not come into being until the purchaser takes title. Until such time as the property changes hands, the seller cannot exercise an option as against the buyer because the buyer has no dominion over the property. As counsel for the plaintiff acknowledges, defendant here is entitled to exercise the option created by the purchase contract. But as noted, that option cannot be exercised until it exists, which will not occur until the sale is complete.

Thus, plaintiff has met the burden on his motion for specific performance under the contract. The question, then, is whether defendant has come forward with sufficient support to overcome this entitlement.

As noted, defendant’s argument is that the option is a condition precedent to the sale. “Most conditions precedent describe acts or events which must occur before a party is obligated to perform a promise made pursuant to an existing contract.” *Nationwide Affinity Insurance Co. of America v. Jamaica Wellness Medical, P.C.*, 167 AD3d 192, 197 (4th Dept. 2018). Thus, a subcontractor to a construction contract was denied recovery for extra work completed because it

had failed to submit a written notice of claim for additional payment prior to completing the extra work. *Doyle v. Nole*, 181 AD3d 1314 (4th Dept. 2020). The critical factor there was that the subcontractor was already operating under the terms of its contract with the general contractor and was, therefore, compelled to comply with the terms of the contract. Thus, where the subcontract required advance notice of a claim to be paid for work to be done, it failed to meet its contractual duty by completing the work before making claim for payment.

In the present matter, to construe the leaseback option provided for in the contract as a condition precedent to the sale would create an obligation that was impossible to meet. Plaintiff could not enter a lease as property owner when, in fact, he would not own the property until after the sale had been completed. By describing the leaseback as an option, the contract creates a two-fold agreement between the parties, the first of which being the purchase and sale, and the second being the leaseback. Because the former must occur before the latter, the two are also separable and must be accorded independent consideration. However, because this action is only to compel specific performance of the purchase and sale contract, any conflict that might arise surrounding the sufficiency of the leaseback option, and any question of whether there exists a duty of good faith negotiations between the parties, must await any litigation that might be required on that issue. It is not for the Court to consider here.

One further point on plaintiff's motion that must be addressed is that aspect of the motion in which plaintiff requests relief that would compel defendant to "set a closing date as soon as possible." In this respect, plaintiff states he is ready, willing and prepared to close, and has indicated that he has received all the documentation from defendant that are needed to complete the sale. Defendant has not refuted this assertion. However, neither counsel has suggested what

might constitute a "soon as possible date," thus apparently leaving this to the discretion of the Court. In light of the apparent readiness of both parties to complete the transaction, the Court will assume that this means that a closing can be held forthwith. Therefore, the parties are ordered to complete the sale within 30 days of service of this order with Notice of Entry.

Based upon the foregoing analysis, defendant's cross-motion for summary judgment is denied.

WHEREFORE, it is

ORDERED, that plaintiff's motion for summary judgment is granted, and it is further

ORDERED, that plaintiff shall have specific performance of the contract for purchase and sale of the property located at 28 Robinson Road, Clinton, New York, and it is further

ORDERED, that the closing on the purchase and sale contract shall be completed no later than 30 days after plaintiff has served defendant with a copy of this order, with Notice of Entry, and it is further

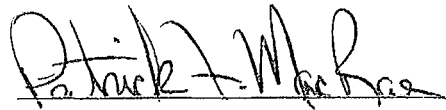
ORDERED, that defendant shall have preserved upon completion of the purchase and sale the option to lease to the extent provided in paragraph 7 of the purchase and sale contract, and it is further

ORDERED, that defendant's cross-motion for summary judgment is denied.

ENTER:

DATED:

September 29 2020.


HON. PATRICK F. MACRAE
Justice of the Supreme Court