

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Barry S. Ring,
Appellant-Plaintiff,

v.

Bharatkumar Patel,
Appellee-Defendant.

January 20, 2022

Court of Appeals Case No.
21A-CP-1367

Appeal from the Lake Superior
Court

The Honorable Bruce D. Parent,
Judge

Trial Court Cause No.
45D11-1808-CT-489

Altice, Judge.

Case Summary

[1] Sometimes, an executed letter of intent will constitute an enforceable contract between parties. At other times, such a letter amounts merely to an “agreement to agree” at some point in the future, which does not qualify as an enforceable contract under Indiana law. The circumstances here illustrate the latter scenario. Barry Ring appeals the grant of partial summary judgment in favor of Bharatkumar Patel, on the complaint he filed against Patel for breach of contract. Ring argues that the trial court erred in determining as a matter of law that a valid contract did not exist between the two and that Patel had not breached the purported agreement.

[2] We affirm.

Facts and Procedural History

[3] On October 15, 2017, Ring was interested in purchasing certain commercial real estate in the city of Hobart from Patel. That same day, Ring sent a letter of interest¹ (original letter) to Patel that included the following language:

This letter is being executed solely for the convenience and future reference of the parties and their counsel, and *it is not intended and shall not be construed as a binding contract between the parties*; rather, *it shall form the basis for negotiation of the Purchase Agreement, which*

¹ The parties use “intent” and “interest” interchangeably when referring to the letter. For purposes of consistency, we will use “intent” throughout the opinion.

shall constitute the sole contract between Seller and Buyer if and when executed and delivered.

...

7. Terms of Offer: The foregoing may be accepted by Seller by executing and returning a counterpart of this letter of interest to Buyer and upon the settlement of the purchase price pursuant to the firm offer.

Upon acceptance, Buyer would cause a Purchase Agreement, as specified herein, to be prepared and delivered to Seller within ten (10) business days after the date of execution and delivery hereof, which Purchase Agreement would incorporate the terms of this letter of interest and any other terms and conditions which Buyer may propose. This letter of interest is not intended to be and shall not constitute a contract or binding agreement and shall not create any legal rights or obligations between the parties. Further, neither party shall have the right to rely on this letter of interest for any reason whatsoever. It is intended that all legal rights and obligations between Buyer and Seller (if any) would be created under and governed solely by the Purchase Agreement if and when the same is fully executed by Buyer and Seller.

Appellant's Appendix Vol. II at 49-50 (emphasis added).

[4] After some negotiations, Patel submitted a “revised letter of intent” (revised letter) to Ring on January 12, 2018, stating in part that he was “only addressing the items [where] there may be a difference of terms.” *Id.* at 64. The revised letter provided for the payment of earnest money from Ring in the amount of \$25,000 “upon execution of a purchase and sale agreement.” *Id.* at 63. Patel further stated in the revised letter that the final terms were to be “formalized in

[a] sales contract and approved by attorneys for Purchaser and Seller.” *Id.*

Patel and Ring both signed the revised letter on January 19, 2018.

[5] Negotiations continued and “different purchase agreements [were] sent back and forth between the parties.” *Id.* at 57. Ring did not send the first proposed purchase agreement to Patel until May 10, 2018. Patel discovered that the terms set forth in that proposed purchase agreement differed in many respects from those contained in the revised letter executed on January 19, 2018. Consequently, on June 4, 2018, Patel’s counsel sent a letter to Ring’s attorney stating in part that the proposed purchase agreement “was not acceptable.” *Id.* at 68. Patel’s counsel pointed out that several issues remained unresolved including the material terms of a license agreement for an electric sign that would be placed on the property, along with a provision for an easement. Thus, Patel did not sign Ring’s proposed purchase agreement, and Ring did not tender any earnest money.

[6] On August 21, 2018, Ring filed a complaint for specific performance, alleging that Patel refused to convey the property and failed to execute a purchase agreement according to the material terms of the agreement. In the complaint, Ring alleged that Patel had agreed to a sale price of \$75,000 and to grant him the right to place an advertising sign on the premises. Ring further contended that the revised letter dated January 19, 2018, that he and Patel executed, constituted a binding and enforceable contract. Thus, Ring asserted that Patel’s failure to perform in accordance with the executed letter of intent amounted to

a breach of contract, and that specific performance is the appropriate remedy because of the property's unique characteristics.

- [7] Patel denied the material allegations of the complaint and filed a counterclaim against Ring, claiming that Ring's complaint was "unreasonable, groundless, and frivolous," and that he was entitled to reasonable attorneys' fees incurred in defending against the action. *Id.* at 42.
- [8] On September 30, 2019, Patel filed a motion for partial summary judgment, claiming that he was entitled to judgment as a matter of law because Ring's complaint was based entirely on an "unenforceable agreement to make an agreement," as there was no meeting of the minds as to the material elements of the proposed agreement. *Id.* at 48, 54.
- [9] Following Ring's opposition to the motion, the trial court heard argument on August 18, 2020. The next day, the trial court granted Patel's motion for partial summary judgment. In its order, the trial court determined that Patel's revised letter differed significantly from the terms of the original letter and concluded that the original letter and revised letter "were not a contract," that the "words of the documents clearly demonstrated each party's intent to reach an agreement to agree," and "at best the two documents constituted an agreement to agree." *Id.* at 24.

[10] Ring now appeals.²

Discussion and Decision

[11] We review summary judgment motions de novo, applying the same standard as the trial court. *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 161 N.E.3d 1218, 1220 (Ind. 2021). That is, we draw all reasonable inferences in favor of the non-moving party and summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 813 (Ind. 2021).

[12] Ring argues that the summary judgment order must be set aside because the trial court erred in finding as a matter of law that a contract did not exist between him and Patel. Ring asserts that because he and Patel signed the revised letter on January 19, 2018, Patel breached the alleged contract by refusing to proceed with the sale.

[13] We initially observe that a mere “agreement to agree” at some future time is not an enforceable contract. *Wolvos v. Meyer*, 668 N.E.2d 671, 674 (Ind. 1996). That is, “the so-called ‘contract to make a contract’ is not a contract at all.” *Id.* at 675. Parties may, however, enter into an enforceable contract that requires

² The trial court initially determined that Patel’s counterclaim was to remain pending. However, Patel filed a motion to dismiss the counterclaim on May 20, 2021, which the trial court granted on June 3, 2021. Ring then filed his notice of appeal on July 6, 2021.

them to execute a subsequent final written agreement. *Id.* at 674. But when one enters into an agreement with the understanding that neither party is bound until a subsequent formal written document is executed, no enforceable contract exists until the subsequent document is executed. *Id.* at 675.

[14] The difference between an enforceable contract and an unenforceable “agreement to make an agreement” is whether there is an agreement on all essential terms such that the final document is understood to be a mere memorial of the agreement. *See id.* at 674-75. If the document or contract that the parties agree to make is to contain any material term that is not already agreed upon, no contract has yet been made. *Id.* at 675. Although letters of intent can be enforceable contracts, it is a question depending on the facts of each case whether sufficient terms and language are included. *Block v. Magura*, 949 N.E.2d 1261, 1268 (Ind. Ct. App. 2011).

[15] To illustrate, in *Equimart Ltd., Inc. v. Epperly*, 545 N.E.2d 595 (Ind. Ct. App. 1989), a letter of intent stated the parties would “attempt, in good faith, to negotiate a definitive purchase agreement” for the sale of certain stock. *Id.* at 598. That letter further provided that “consummation of the transaction here contemplated . . . will be *subject to the execution of delivery of a Final Agreement in a form reasonably satisfactory to the parties and their respective counsel.*” *Id.* (emphasis added). We determined that the above language indicated that the parties merely “agreed to agree” after a period of negotiation, and that the letter of intent was not a binding purchase contract. *Id.*

[16] Like the circumstances in *Equimart*, various terms set forth in Ring’s original letter of intent—that were also incorporated in the revised letter that Ring and Patel executed on January 19, 2018—include similar statements regarding intent and enforceability:

On behalf of Dr. Barry Ring . . . (Buyer), this letter of interest sets forth certain business terms (*but not all of the material terms and conditions*) upon which Buyer is prepared to purchase the above-referenced Property from you, as the title holder of the Property (“Seller”), *subject to negotiation and execution of a formal Purchase and Sale Agreement* which would incorporate the business terms set forth herein among other terms and conditions (“Purchase Agreement”). *This letter is being executed solely for the convenience and future reference of the parties and their counsel, and it is not intended and shall not be construed as a binding contract between the parties; rather, it shall form the basis for negotiation of the Purchase Agreement, which shall constitute the sole contract between Seller and Buyer if and when executed and delivered.*

Upon acceptance, Buyer would cause a Purchase Agreement, as specified herein, to be prepared and delivered to Seller within ten (10) business days after the date of execution and delivery hereof, which Purchase Agreement would incorporate the terms of this letter of interest and any other terms and conditions which Buyer may propose.

This letter of interest is not intended to be and shall not constitute a contract or binding agreement and shall not create any legal rights or obligations between the parties.

It is intended that all legal rights and obligations between Buyer and Seller (if any) would be created under and governed solely by the Purchase Agreement if and when the same is fully executed by Buyer and Seller.

Appellant's Appendix Vol. II at 59, 61 (emphasis added). In turn, the revised letter stated that “[f]inal terms to be formalized in sales contract and approved by attorneys for Purchaser and Seller.” *Id.* at 64.

[17] It is readily apparent that once the revised letter of intent was executed, it was intended that Ring would submit a purchase agreement that would incorporate the agreed-upon terms. And the executed revised letter makes it clear that the parties’ rights and obligations would be governed “*solely* by the Purchase Agreement” after the parties were in final agreement in a form that was approved by their respective attorneys. Indeed, the parties specifically agreed that the executed revised letter was not “intended to be and *shall not constitute a contract or binding agreement and shall not create any legal rights or obligations between the parties.*” *Appellant's Appendix Vol. II* at 61 (emphasis added). Rather, the parties contemplated further negotiation and a future agreement *if* they could agree on all the material terms. And the designated evidence supports the conclusion that the parties never arrived at a final agreement as to what the various and material terms of a purchase agreement should be or were.

[18] Contrary to Ring’s contention, this is not an instance where the parties have agreed to the essential terms of the contract and the subsequent execution of a formal purchase agreement would merely memorialize the existence of that contract. Moreover, even had all material terms been agreed upon, Ring did not submit a proposed purchase agreement to Patel within ten days after the revised letter had been executed.

[19] In reviewing the documents exchanged by Patel and Ring, it is apparent that the revised letter executed by both on January 19, 2018, called for further negotiation. At most, there was an agreement to agree to buy and sell the real property; as such, under Indiana law, there was no enforceable contract. Therefore, we conclude that the trial court properly granted partial summary judgment for Patel.

[20] Judgment affirmed.

Bailey, J. and Mathias, J., concur.