Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-025

OCTOBER TERM, 2008

Christopher DiLello and Rhonda DiLello	}	APPEALED FROM:
	}	
v.	}	
	}	
	}	Chittenden Superior Court
Mary E. Parker Trust, Joyce Cromie, Trustee,	}	
Christina Parker Darish, Cheryl P. Roland,	}	
Patrice C. Parker-Metzler and Alan J. Parker	}	DOCKET NO. S0833-06 Cnc
		Trial Judge: Dennis R. Pearson

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal from the trial court's order granting summary judgment to defendants and dismissing their complaint with prejudice. They argue that summary judgment was inappropriate because material facts remain in dispute. We affirm.

The record indicates the following. Plaintiffs claimed that Mary Parker, their neighbor, intended to transfer a portion of her land to them before she died. Ms. Parker's land was part of a revocable trust, and following Ms. Parker's death, plaintiffs asserted that the trust's beneficiaries assured them that the land transfer would occur. The transfer did not occur, however, and in October 2005, the trust was disbursed to the beneficiaries at their request.

In July 2006, plaintiff filed a complaint against the trustee, Joyce Cromie, and the trust beneficiaries for breach of contract and tortious interference with contractual relations. Plaintiffs based their contract claim on a June 6, 2005 letter written by attorney Robert Perry. In the letter, Mr. Perry stated that while the beneficiaries wanted generally to respect Ms. Parker's wishes to give a parcel of property to plaintiffs, they had reservations about doing so. The letter proposed that plaintiffs conduct initial testing and obtain approval for the subdivision of the property and then the land would be conveyed subject to certain conditions. Attorney Perry concluded the letter by asking plaintiffs' attorney for his thoughts. Plaintiffs argued that this letter memorialized the terms of the parties' agreement for the transfer of the property and that they had orally accepted its terms. According to plaintiffs, defendants breached this agreement by failing to convey the land to them, and the beneficiaries interfered with the agreement by insisting that the entire trust be disbursed to them. Plaintiffs sought specific performance and damages.

Defendants moved for summary judgment, and the trial court granted their request. The court found no evidence of a final, enforceable, and binding contract to sell real estate,

sufficiently memorialized in a writing attributable to the trustee, who was the actual decision-maker at the time of the alleged offer. Moreover, the court continued, it was apparent that attorney Perry's letter was only a proposal. Even if plaintiffs had orally "accepted" it, it was nothing more than a preliminary agreement, subject to finalization and the addition of necessary details such as a price and a closing date. The court thus granted summary judgment to defendants and dismissed plaintiffs' complaint with prejudice. This appeal followed.

On appeal, plaintiffs argue that the court failed to take the evidence in their favor, and it decided disputed issues of fact in reaching its conclusion. According to plaintiffs, a fact-finder must decide whether attorney Perry was acting on behalf of the trust and whether the parties intended the June 6 letter to be binding. Plaintiffs point to their alleged conversations with the beneficiaries as additional support for their assertion that the June 6 letter was intended to be binding. Finally, plaintiffs argue: (1) the letter satisfied the statute of frauds; (2) it adequately described the property to be conveyed; (3) and the failure to include a closing date was immaterial.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Id. As discussed below, we conclude that summary judgment was appropriately granted to defendants.

Plaintiffs are correct that the question of whether a legally binding agreement exists is generally one of fact. See Quenneville v. Buttolph, 2003 VT 82, ¶ 17, 175 Vt. 444. In this case, however, only one conclusion can be drawn from the undisputed facts. Regardless of whether attorney Perry represented the trust, his letter was not a binding "offer" that could be accepted by plaintiffs. It was plainly a preliminary proposal, subject to discussion and change. See Starr Farm Beach Campowners Ass'n v. Boylan, 174 Vt. 503, 505 (2002) ("To be valid, an offer must be one which is intended of itself to create a legally binding relationship on acceptance.").

Contrary to plaintiffs' assertion, the letter fails to satisfy the basic requirements of a legal contract for the sale of land. Even assuming that the letter sufficiently described the real property to be conveyed, it set no price for the transaction. See State v. Delaney, 157 Vt. 247, 254 (1991) ("[T]he need to negotiate additional material terms in order to reach an agreement indicates that defendant did not make an offer."). Furthermore, "while a binding agreement need not contain each and every contractual term, it must contain all of the material and essential terms." Quenneville, 2003 VT 82, ¶ 16. Price is an essential term, and it is not one that can be supplied through parol evidence. See 14 R. Powell, Powell on Real Property, § 81.02[1][d], at 81-32 to -34 (To form a binding agreement, a writing must "(1) designate the parties; (2) describe the property[;] and (3) state the price . . . . A specifically required matter, such as the . . . price of the property, cannot be based solely on parol evidence."). The absence of any agreement on price, among other omissions, demonstrates that the parties did not reach "a meeting of the minds on all essential details of the proposed sale," and it precludes the formation of a contract.[*] Benya v. Stevens & Thompson Paper Co., 143 Vt. 521, 526 (1983); see also

[*] Plaintiffs do not argue on appeal that the alleged contract was supported by sufficient consideration. In any event, we note that the beneficiaries' proposal that plaintiffs obtain

Evarts v. Forte, 135 Vt. 306, 309 (1977) ("[I]f an instrument that purports to be a complete contract does not contain . . . the substantial terms of a complete contract, it is ineffective as a legal document."). Because the record contains no evidence of a binding agreement between the parties, summary judgment was appropriately granted to defendants. See Reynolds v. Sullivan, 136 Vt. 1, 3-4 (1978) ("In order to grant specific performance of a contract, there must be a valid contract, and its terms must be specific and distinct and leave no reasonable doubt of meaning." (citation omitted)).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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subdivision approval, conduct testing, and share the proceeds of any resale of the property, appear to be conditions of a gratuitous promise and not a recitation of consideration for the transaction. See generally R. Lord, 7 Williston on Contracts, § 7:18, at 343-364.