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VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

CASE NO. SCT-CIV-2022-0119

GEORGE FRANCIS,

Plaintiff/Appellant,

v.

EDWARD A. FRANCIS and JAMES L. FRANCIS

Defendants/Appellees

An Appeal from the Superior Court of the Virgin Islands

Division of St. Thomas & St. John, Case No. ST-2020-CV-00190

**REPLY BRIEF OF THE APPELLANT
GEORGE FRANCIS**

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REPLY

I. George could not assent to a Contract for Sale by conduct when said Contract for Sale required a signature as consideration.

Appellees James and Edward continue to conflate the issues and relevant rights and obligations of the parties under the Mediated Settlement Agreement (the “Agreement”), and now ask this Court to affirm the Superior Court’s wrongful order to enforce the Mediated Settlement Agreement. Indeed, it is James and Edward’s position that performance of the Agreement would require that George enter into the Contract for Sale (“PSA”) because George “knowingly assented to Edward acquiring the property when he authorized his attorney to work with counsels for Edward and James to finalize [the PSA]” Appellees’ Brief, at Pg 10, ¶ 2. James and Edward attempt to support this position by proclaiming that George “affirmatively, willingly, and voluntarily accepted Edward’s offer” and therefore waived his right to performance of the Listing Provision. Appellee’s Brief, at Page 16, ¶ 1. This argument fails for several reasons.

Edward and James attempt to use an email by George’s former counsel as the basis for concluding that George waived performance of the listing provision. Indeed, James and Edward are correct in their analysis that a waiver occurs when a contract is “continued despite a known excuse.” Appellee’s Brief, at Page 16, ¶ 1 (citing *Rivera v. Sharp*, 2021 WL 2228492 , at *10 (D.V.I. 2021), aff’d No. 21-2254,

2022 WL 2712868 (3d Cir. July 13, 2022)). Edward and James also correctly assert that “an enforceable contract requires offer, acceptance, consideration [...], an the manifestation of mutual assent.” Appellee’s Brief at Page 8, ¶ 2 (citing *Arvidson v. Buchar*, 72 V.I. 500, 520-22 (V.I. Super. Ct. 2020)). However, what Edward and James fail to understand or acknowledge is that the Agreement was not continued “despite a known excuse.” Appellees’ Brief, Pg. 16, ¶ 1 (citing *Rivera*, at *10). George did not and could not assent to the offer made by Edward in the PSA through his conduct or that of his attorney. It is of particular significance contemplated PSA expressly states that:

“THIS CONTRACT OF SALE BECOMES A BINDING LEGAL CONTRACT WHEN EXECUTED BY ALL PARTIES, AND EACH PARTY SHOULD READ AND UNDERSTAND ITS TERMS AND CONDITIONS” JA062

The PSA proffered by James and Edward constitutes an offer, inasmuch as it represented a “manifestation of willingness to enter into a bargain, so as made to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Gardiner v. Virgin Islands Water and Power Authority*, 32 V.I. 408, 416 (D.V.I. 1995). Meaning, at the time George authorized his former attorney to enter into negotiations concerning Edward’s offer, namely, the PSA, he merely agreed to entertain Edward’s willingness to enter into a new bargain for the sale and purchase of the Property. Contrary to

James and Edward's assertion, George did not continue with the Agreement after their failure to perform the Listing Provision because, based on the terms of the PSA, George's conduct was not sufficient to constitute waiver.

It is a well-established principle of contract law that an offeror may stipulate the method in which an offeree may accept an offer. Indeed, "an offer is accepted if, and only if, the terms of the acceptance mirror those of the offer." *Id.* (citing *Paiewonsky Assocs. V. Sharp Properties, Inc.* 26 V.I. 228, 231-232, F. Supp. 1231, 1233 (D.V.I. 1991)). Here, Edward, the offeror/buyer, stipulated the terms under which George and James, the offerees/sellers, could accept the PSA. A signature! JA062. In other words, George could only accept the terms and conditions offered in the PSA by affixing his signature to the PSA, not by his conduct; more specifically, George could not assent to the PSA by and through an email from former counsel when the PSA specifically called for his signature as consideration. Here, James made an offer, but there certainly was no acceptance or consideration. As such, James and Edward could not reasonable believe that George had assented to (or accepted) the PSA when his former attorney forwarded an email indicating a willingness to negotiate. Thus, the Superior Court did in fact err when it granted James and Edwards' Motion to Enforce the Mediated Settlement Agreement, as there was no basis for concluding that George was obligated to sign the PSA.

II. Edward and James materially breached the Mediated Settlement Agreement because they entered into the Contract for Sale after actual notice that George had refused the offer contained in the Contract for Sale.

As explained above, Edward and James could not reasonably believe that George had assented to the PSA, and so their execution of the PSA constituted a material breach of contract. On February 11, 2022, James and Edward received actual notice that George had refused Edward's offer for purchase. JA057. Instead of acknowledging the refusal and that they were still bound by the terms of the Agreement, James and Edward, in an opportunistic manner, proceeded to execute the PSA and, on February 16, 2022, moved the Superior Court to enforce their PSA on the basis that they both signed said PSA. JA071. This, however, runs afoul of contract law.

As argued in the opening brief, a material breach of contract is determined by considering: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable

assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Stallworth Timber Co. v. Triad Bldg. Supply*, 968 F.Supp. 279, 282 (D.V.I. App. Div. 1997); citing Restatement (Second) of Contracts § 241 (1981); see also *George v. V.I. Lottery Comm'n*, 54 V.I. 533, 539 (V.I. 2010). Here, George was deprived of his reasonable expectation that the Property would be listed with Delrease Roberts. Contrary to Edward and James' assertion, George does not argue that the eligible pool of buyers "stopped short of including [Edward]." Appellees' Brief, Pg. 15, ¶ 2. Instead, George maintains that the eligible pool of buyers began at a public listing through a realtor, which would have carried the effect of maximizing economic returns by ensuring all potential offers were considered as opposed to the sole private offer that James and Edward now attempt to force upon George. Indeed, if Edward's offer remained the best offer after the Property was publicly listed, then and only then would enforcement of the Agreement be proper. To that end, James and Edward materially breached the Agreement when they entered into the PSA after actual knowledge that George had refused Edward's offer to purchase the property.

CONCLUSION

For the aforementioned reasons, George respectfully requests that this Court reverse the Superior Court's December 5, 2022 Order, and remand this matter to the Superior Court with instructions that the Parties adhere to the terms of the

Agreement, or, in the alternative, enter a Judgement granting George's request for rescission of the Agreement.

CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the United States Virgin Islands bar.

/s/ Jechonias S. James
Jechonias S. James

CERTIFICATE OF LENGTH

I hereby certify that the length of this brief complies with V.I.R. App. P. 22(f).
The word count for this brief is approximately 1,635 words.

/s/ Jechonias S. James
Jechonias S. James

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2023, I caused a true and exact copy of the foregoing *Reply Brief of the Appellant* to be filed electronic with the Clerk of the Court utilizing the VIJEFS system, which will send notification of such filing to the following:

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