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## ***Offer to Purchase Residential Property Unenforceable Due to Absence of Agreement on Material Term***

In *McCarthy v. Young*, a buyer of residential property, Gregory McCarthy (“McCarthy” or “Buyer”), brought suit against the sellers, Jacob F. Young, III and Katherine Anderson Young (collectively, the “Youngs” or “Sellers”), seeking to compel the sale of the Youngs’ property. In January 2022, McCarthy submitted an offer to purchase (“OTP”) to the Sellers. Before the Sellers both executed the OTP, they informed the Buyer that they would need to reserve a maintenance easement on the property so that they could repair an abutting property they owned. The size of this proposed easement was a material term of the sale, given the narrow size of the lot in question, but the easement was not a part of the OTP and the parties anticipated that they would continue to negotiate that term. After continued discussions, the Sellers ended negotiations without signing a purchase and sale agreement. The Buyer then

initiated litigation. Following cross-motions for summary judgment, a Land Court judge found for the Buyer and entered an order compelling the Sellers to convey the property.

The Appeals Court reversed. The Court emphasized that, for an OTP to be enforceable, it must contain all material terms. Here, at the time the OTP was signed, the parties had not agreed on the existence, size, or duration of the maintenance easement. Therefore, the OTP did not reflect any agreement on the terms of the easement, was not a binding contract, and “it was error to conclude that it remained in force and imposed enforceable duties on the parties as they attempted to negotiate the easement and related issues in a purchase and sale agreement.”

The Appeals Court recognized that the OTP reflected agreement on certain other fundamental terms and that the parties had an implied understanding that they would seek to resolve the easement issue by mutual agreement. The Court concluded, however, that such an understanding “was aspirational, not binding.” The Court stated that, in the absence of an enforceable OTP, “the sellers were free to terminate negotiations with the buyer whenever they wanted” and had no duty to give the Buyer notice or a reasonable time to act before moving on to a different buyer.

This case serves as an important reminder to buyers that OTPs lacking agreement on all material terms will not protect them against a seller walking away from the transaction if negotiations fall apart.

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