

In early 2006, plaintiffs decided that they wished to sell their business. In furtherance of this goal, they sought to secure an agreement to lease from defendants that would include rental terms applicable to a prospective purchaser. Without such an agreement, plaintiffs thought they would have difficulty finding a purchaser for the business.

By this time, defendants had authorized their son, Ron Choi ("Choi"), to make all decisions involving the Property. In March, 2006, plaintiffs' attorney, Jack M. Bernard, Esq. ("Bernard"), called Ron Choi to negotiate the terms of an agreement to lease. From March, 2006 through May, 2006, after the initial telephone call, Bernard and Choi negotiated exclusively via email.

On April 4, 2006, Ron Choi emailed Bernard as follows:

hi jack,
below are the rental terms that are acceptable to us should tenant sell his business.
1. oct 06 to oct 07: \$2,300
2. oct 07 to oct 08: \$2,500
3. oct 08 to oct 09: \$2,700
4. tenant shall remain liable under the lease for at least 2 years after sale of business. Afterward, new tenant shall be solely liable please call me if you have questions jack.
-ron

On April 20, Bernard submitted a counteroffer to Ron Choi as follows:

1. 1st 3 years of new lease \$2,300.00;
2. Next 3 years \$2,500.00;
3. Upon sale of business; seller will pay lump sum of \$12,500.00 to landlord;
4. Current tenant shall remain liable on new lease for 1.5 years (no change)

On April 29, Choi sent an email in response to Bernard's email of April 20, stating "all the terms look fine ...", but added:

let's look at new tenant's credit report
before we accept the offer in it's [sic]
entirety however.
please email me your fax number so I can fax
you the credit report consent form.
Also, we'd like both the husband and wife's
(new tenant's) name to be on the lease, as
well as any corporation they are using for
the business.

On May 1, Choi sent an email to Bernard in which he requested Bernard's fax number and asked, "when is the transfer/sale of business likely to occur?" On May 2, Choi transmitted a document titled "Rental Application for Married Couples" to Bernard.

At trial, Ron Choi testified that at the time of these emails, he had been under the impression that plaintiffs had already found a purchaser for the business and that a deal could be reached within one to two weeks. Bernard, by contrast, testified that the negotiations occurred with the understanding that plaintiffs would have a "reasonable period of time" to find a purchaser, which he estimated as extending from six to eighteen months from the date of Choi's email of May 2, 2006. The parties agree that at no point did they discuss a limit on plaintiffs' time to find a purchaser for whom these rental terms would potentially apply.

In any event, Ron Choi did not receive a response to his emails of April 29, May 1, and May 2, 2006 until over a year later. In May, 2007, plaintiffs finally located a prospective

purchaser for the business and entered into an asset purchase agreement under which plaintiffs would sell the business to the purchaser for \$150,000.00, with the applicable lease terms being those set forth in Bernard's email of April 20, 2006. Gerard McConeghy, Esq., the attorney for the prospective purchaser, then contacted Choi by telephone to advise him of the agreement. Choi sent a rental application to McConeghy which was completed by the prospective purchaser and returned to Choi.

On May 21, 2007, Choi sent McConeghy an email that stated:

we've received the financial statement and examined their credit. during this time however, we've inquired about the market rental in the area. we've discovered the market rental to be \$3,000.00 to \$3,500.00. as such, we are willing to offer \$2,700.00 per month for the first year, \$3,000.00 per month for the 2nd year, and a 7% increase each year afterwards for a lease term of 9 years. this should allow us to catch up to market value in the near future.

The prospective purchaser was unwilling to follow through with the purchase of the Restaurant in light of the increased rental terms. Since that time, plaintiffs have been unable to find a purchaser for the Restaurant and remain tenants on the Property. Plaintiffs, although not having obtained a formal appraisal, assert that their business has drastically decreased in value since 2006.

Plaintiffs are now suing defendants for breach of contract. They allege that Ron Choi's email of April 29, 2006

was an acceptance of their offer of April 20, 2006. They assert that the parties were subject to mutual obligations: defendants promised to lease the property, at the rates stated in Bernard's email of April 20, to a creditworthy new tenant in the event that plaintiffs produced one within a reasonable time after Choi's email of April 29. In return, plaintiffs promised to pay a lump sum of \$12,500 at the time of sale of the Restaurant, and also to guarantee the new lease for a period of time.

Defendants argue that their agent, Ron Choi, never accepted plaintiffs' offer. In the alternative they contend that the terms of the offer were not sufficiently definite to create an enforceable contract and that plaintiffs did not find a prospective purchaser within a reasonable time after Choi's email of April 29, 2006.

Under Pennsylvania law, a breach of contract claim requires the plaintiff to show "a contract between the parties, the essential terms of the contract, a breach of a duty under the contract, and resultant damages." MDNet, Inc. v. Pharmacia Corp. 147 Fed. Appx. 239, 243 (3d Cir. 2005) (citing Electron Energy Corp. v. Short, 597 A.2d 175 (Pa. Super. 1991), aff'd, 618 A.2d 395 (Pa. 1993)). "A valid, binding contract exists when the parties have manifested an intent to be bound, the terms are sufficiently definite, and there is consideration." Id. (citing In re Estate of Hall, 731 A.2d 617, 621 (Pa. Super. 1999), appeal denied, 751 A.2d 191 (Pa. 2000)). The existence of an intent to contract is a question of fact for the trier-of-fact. Hall, 731

A.2d at 621 (citing Yellow Run Coal Co. v. Alma-Elly-Yv Mines, 426 A.2d 1152, 1155 (Pa. Super. 1981)).

We find that defendants did not manifest an intent to enter into a bargain on the terms proposed in plaintiffs' offer of April 20, 2006. The defendants' agent, Ron Choi, replied to that email on April 29, 2006 by writing, "let's look at new tenant's credit report before we accept the offer in it's [sic] entirety however." This statement, despite expressing an optimism that a deal might eventually be reached, explicitly denied an intent to accept plaintiff's offer without first passing upon the credit of the new tenant. Absent such intent, the parties did not create a "valid, binding contract." MDNet, Inc., 147 Fed. Appx. at 243.

Further underscoring our conclusion that Choi did not intend to accept plaintiffs' offer is the importance of the major undefined terms, namely, the identity and creditworthiness of the lessee. Pennsylvania courts have adopted the Restatement (Second) of Contracts § 33(3), which states that "[t]he fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance." Reed v. Pittsburgh Bd. of Public Educ., 862 A.2d 131, 135 (Pa. Commw. Ct. 2004). Moreover, "[t]he more important the uncertainty, the stronger the indication is that the parties do not intend to be bound." Restatement (Second) of Contracts § 33, cmt. f. Here, the identity and credit of the potential lessee was an essential

element of the agreement to lease given the testimony that other terms were to be based upon that information. Choi typically sets the monthly rental rates for defendants' properties in accordance with the lessee's credit by demanding a higher rent from parties whose credit history is either problematic or simply not established to his liking.

Even if we were to hold that Ron Choi's email of April 29, 2006 was an acceptance, another consideration would prohibit the enforcement of the alleged contract. Pennsylvania courts have adopted the Restatement (Second) of Contracts, which states, "An offeree's power of acceptance is terminated at the time specified in the offer, or, if no time is specified, at the end of a reasonable time." Restatement (Second) of Contracts § 41; see Yaros v. Trustees of Univ. of Pa., 742 A.2d 1118, 1121 (Pa. Super. 1999). Likewise, "'where no time for performance is provided in the written instrument the law implies that it shall be done within a reasonable time ...' depending upon the nature of the business." Field v. Golden Triangle Broadcasting, Inc., 305 A.2d 689, 694 (Pa. 1973) (quoting Lefkowitz v. Hummel Furniture Co., 122 A.2d 802, 804 (Pa. 1956)). "What is a reasonable time is a question of fact, depending on all the circumstances existing when the offer and attempted acceptance are made." Restatement (Second) of Contracts § 41; Textron, Inc. v. Froelich, 302 A.2d 426, 427 (Pa. Super. 1973).

Here, the email exchange between the parties did not specify a time frame in which plaintiffs were required to produce

a new tenant for the Restaurant. Consequently, even if one characterizes the email exchange of April, 2006 as a contract requiring performance, plaintiffs would have had only a "reasonable time" in which to find a willing buyer.

The alleged contract in this case concerned a lease for a restaurant located in a commercial area in West Philadelphia. The market for property in this urban area is subject to sudden fluctuations, and adjustments in rentals are often made on an annual basis to account for inflation. Plaintiffs' statement that the value of their business has dropped precipitously in the several years following their attempted sale confirms the volatility of the relevant market. We also note that Ron Choi's email of May 2, 2006, in which he asked, "when is the transfer/sale of business likely to occur?", explicitly informed plaintiffs that Choi was concerned about the closing date.

The record reveals that plaintiffs did not respond to Ron Choi's email of May 2, 2006 until over a year later, in May, 2007. Based on the circumstances surrounding the transaction, plaintiffs did not respond to Choi's email within a reasonable time. Any opportunity on their part to perform by producing a prospective purchaser lapsed long before their email to Choi in May, 2007. Plaintiffs direct us to no case law or other authority suggesting that a "reasonable time" to accept an offer can be up to a year in length, either under similar circumstances or any other.

Because plaintiffs have failed to prove even the existence of a contract between them and defendants, we further find and conclude that their claim for tortious interference with contractual relations must fail as well. Indeed, they presented no argument or evidence as to that claim at trial.

In sum, plaintiffs have not proved their claims for breach of contract and tortious interference with contractual relations. Accordingly, we will enter judgment in favor of defendants Byong Jik Choi and In Sok Choi and against plaintiffs Pae Young Chung and Suk Chung.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAE YOUNG CHUNG, et al. : CIVIL ACTION
 :
 :
 :
 :
BYONG JIK CHOI, et al. : NO. 07-2187

JUDGMENT

AND NOW, this 18th day of August, 2008, based on the accompanying Findings of Fact and Conclusions of Law, judgment is entered in favor of defendants Byong Jik Choi and In Sok Choi and against plaintiffs Pae Young Chung and Suk Chung.

BY THE COURT:

/s/ Harvey Bartle III
C.J.