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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP,	)	
Plaintiff,	)	
v.	)	**Case No. 21-0737-BC**
GOOD HORSE, LLC AND JIM REED AUTOMOTIVE, LLC,	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter came before the Court on August 17, 2021, pursuant to the Motion for a Temporary Injunction filed by Plaintiff, Hines Investment Management Holdings Limited Partnership ("Hines"). In its motion, Hines sought to temporarily enjoin Defendants, Good Horse, LLC and Jim Reed Automotive, LLC (collectively "JRA") from enforcing the current deadlines associated with the review period and Phase I closing date set out in the purchase and sale agreement between them. JRA opposes the requested relief, asserting that to grant the motion would be equivalent to the Court rewriting the negotiated agreement between the parties.

The parties submitted extensive materials for the Court to review and consider, and counsel argued the merits of their positions. Having considered the record in this matter, and the argument of counsel, the Court is now ready to rule.

PRELIMINARY FACTUAL FINDINGS BASED UPON THE RECORD

The Property

JRA is the owner of 11.4 acres in the midtown area of Nashville between Broadway, 16th Avenue, Church Street, and 15th Avenue, as well as a small section of three parcels located between

Broadway and 14th and 15th Avenues (collectively "the Property").[1] The Property is generally represented by the following image:

[1] The Property is described by Hines, in the declaration of its Senior Managing Director Vikram Mehra, as including the following 31 addresses:

110 15th Avenue
112 and 116 16th Avenue,
1406, 1408, 1500, 1502, 1504, 1506, 1510, 1512, 1516, 1518, and 1530 Broadway
1525 Church Street
1500, 1501, 1502, 1508, 1509, 1511, 1512, 1514, 1515, 1517, 1518, 1519, 1520, 1521, 1523 and 1616 Hayes Street

For many years, JRA operated Jim Reed Chevrolet on the Property, until it closed in 2009. In 2011, JRA entered an asset purchase agreement with Martin Management, Inc. ("Martin") to purchase some or all of its assets.[2] According to the complaint filed in the Martin Litigation, as a component of that transaction, Martin leased the portion of the Property described as "the city block formed by Broadway, Hayes Street, 15th Avenue and 16th Avenue" (the "Leased Property") for its operations. As part of that leasing arrangement, Martin and JRA entered a Right of First Refusal Agreement on December 16, 2011 (the "ROFR"). The ROFR, which defines the Grantor as JRA and the Grantee as Martin, provides in pertinent part:

> WHEREAS, Grantor owns certain real property located on the corner of Broadway and 15th Avenue with an address of 1408 Broadway, Nashville, Tennessee 37203, together with all improvements located thereon (the "Reed Property"); and
>
> WHEREAS, Grantor leases certain real property located at 1406 Broadway, Nashville, Tennessee 37203, together with all improvements located thereon (the "Hillsboro Property"), pursuant to a Lease Agreement Dated February 14, 2000, by and between Hillsboro Realty Company, as landlord, and Grantor, as tenant (the "Hillsboro Lease");
>
> WHEREAS, Grantor has an option to purchase the Hillsboro Property pursuant to the terms of the Hillsboro Lease;
>
> WHEREAS, in connection with that certain Asset Purchase Agreement dated September 1, 2011, between Grantor and Grantee, Grantor now desires to grant Grantee a right of first refusal to lease or purchase the Reed Property and/or the Hillsboro Property, all on the terms of this Agreement;
>
> NOW, THEREFORE, in consideration of the payment of Ten and 00/100ths Dollars ($10.00) and other good and valuable consideration, by Grantee to Grantor, the receipt of which is hereby acknowledged, the parties agree as follows:
>
> 1. *Right of First Refusal*. Grantor grants to Grantee a right of first refusal for the purchase and/or lease of grantor's interest in the Reed Property and/or, subject to the terms of the Hillsboro Lease, the Hillsboro Property, all on

[2] Though not filed by the parties for inclusion in the record, the Court has reviewed the pleadings in *Martin Management Group, Inc. v. Jim Reed Automotive, Inc., Jim Reed Automotive, LLC and Good Horse, Inc.*, Chan. Ct. No. 21-00014-IV (filed Jan. 6, 2021) (the "Martin Litigation"). The Court adopts some of the background information included in those pleadings that it believes to be undisputed.

the terms as more particularly set forth herein. Grantor and Grantee agree that if Grantor receives a bona fide offer from a third party for the purchase or lease of all or any portion of the Reed Property or the Hillsboro Property (such portion is hereafter referred to as the "Subject Property"), which offer Grantor is willing to accept, Grantor will give Grantee written notice thereof and will send Grantee a copy of the proposed contract of sale to, or proposed lease with, such third party. Grantee shall have the right for ten (10) days after the receipt of such notice to enter into a contract for the sale or a lease agreement, as applicable, of the Subject Property at the same price/rental rate and on the same terms as contained in the proposed contract of sale to, or proposed lease with, such third party, which right of Grantee shall be paramount to the rights of such third party. If Grantee fails or declines to exercise such right of first refusal within the time herein specified, Grantor may enter into the sale contract or lease agreement, as applicable, for the Subject Property with the third party at the same price/rental rate and on the same terms as contained in the proposed contract of sale/lease agreement sent to Grantee; provided that if such sale contract or lease agreement, as applicable, has not been executed by both parties within six (6) months of the expiration of Grantee's rights described herein, Grantee's right of first refusal shall be fully reinstated.

2. *Term of Right of First Refusal*. This right of first refusal shall continue in effect for the same term as that certain Lease Agreement of even date herewith between Broadway Realty Company, as landlord, and Grantee, as tenant, for certain real property consisting of the city block formed by Broadway, Hayes Street, 15th Avenue and 16th Avenue, in Nashville, Tennessee 37203, subject to the Subject Property having been conveyed in fee simple to Grantee or to a third party in accordance with the terms hereof. Upon the conveyance of the Subject Property in accordance with the terms of this Agreement, Grantee shall deliver to Grantor a signed and acknowledged document stating that this right of first refusal has terminated and that Grantee expressly relinquishes all rights under this Agreement to the Subject Property.

Martin's ROFR is not on the Leased Property, but covers 1408 and 1406 Broadway, which is illustrated as follows in red:

(the "ROFR Property").

The Transaction

Hines is a Texas limited partnership that is part of a privately owned global real estate investment, development, and management firm with a wealth of experience in real estate development, including in the Nashville area. In the summer of 2017, Hines and JRA began discussions regarding the sale of the Property. Those discussions culminated in a February 18, 2020 Purchase and Sale Agreement (the "First Agreement"). After several amendments to the First Agreement, the parties entered into the Amended and Restated Purchase and Sale Agreement that is the subject of this action on October 2, 2020 (the "Restated Agreement"). The Restated Agreement has been amended five times, most recently on July 12, 2021 (the "Amendment") to allow Hines additional time to inspect and conduct environmental testing on the Property. The Amendment extended the period to complete this inspection and testing as well as the closing date to August 31, 2021.[3] Hines also has the option to terminate the agreement by this date for any reason and is entitled to a return of its earnest money.

[3] Under the Restated Agreement and Amendment, the terms "Review Period," "Review Date," and "Closing Date" have all been collapsed into August 31, 2021. Prior versions of these documents had a gap between those dates so that the Review Period and Review Date was prior to the Closing Date. Because of access issues created by Martin

The Restated Agreement and Amendment provide for the sale of the Property in two different phases. The Property included in Phase I, at issue in this motion, is as follows:

The Restated Agreement and Amendment require several things to occur in order to close on Phase I on August 31, 2021. Additionally, they include remedial provisions if the closing does not occur, the applicability of each depending upon the circumstances. Those provisions are summarized as follows:

that prevented Hines from conducting the inspection it wanted to do, those dates have been collapsed on the same date. Rather than refer to them as separate dates for the purposes of this Memorandum and Order, the Court refers to August 31, 2021 as the relevant deadline in the various portions of these documents at issue in the injunction request.

Article 2 Title Requirements

2.1: JRA must provide a title insurance commitment and, at the time the Restated Agreement was entered, JRA did have a title commitment. Chicago Title Insurance Company had previously issued a title commitment; however, as of August 17, 2021, the title commitment has been revoked.

2.3(a): When there was a valid title commitment, Hines had until August 31, 2021 to object to any exceptions thereunder or to accept them. If accepted, they would become "Permitted Exceptions."

2.3(b): JRA has ten days to cure Hines' objections, and if it does not, Hines has the option to accept the Property with the Permitted Exceptions or terminate the deal and get the return of its earnest money.

2.4: JRA has the obligation at closing to provide Hines fee simple title to the Property.

2.5: Hines is to notify JRA of any objections to title, and JRA has the option to cure and Hines can accept title subject to the defects or terminate.

2.6: JRA is obligated to notify Hines of existing leases and the associated obligations. The leases with Martin are identified and addressed specifically in subparagraph (d) although the ROFR is not.

Article 3 Review Period

3.1: Hines agrees to purchase the Property "as is," but does have inspection rights that exist through August 31, 2021. Hines' right of inspection is subject to the rights of tenants and licensees of the Property, and JRA has the obligation to enforce these rights subject to the leases but is not obligated to sue a tenant to obtain access for inspection.

3.3: Hines has the right to terminate the Restated Agreement for any reason on or before August 31, 2021. Time is of the essence as to this provision.

Article 4 Closing Obligations

4.1: Hines may extend the closing of the Phase I parcels for one month, until September 30, 2021, for an additional non-refundable deposit, other than if JRA defaults, of $1,000,000.

4.2: JRA is to deliver, among other items, a closing certificate affirming the representations and warranties contained in Section 5.1, a title insurance affidavit sufficient for Hines to obtain title insurance, and possession and occupancy of the Property subject only to the "Permitted Exceptions."

4.6: If JRA fails to fulfill its closing obligations, Hines has the right to cancel the transaction and obtain a refund of its earnest money, and neither party has any further obligation to the other. If either party defaults on its obligations, the remedies in Article 6 are triggered.

Article 5 Seller's Representations and Warranties

5.1(a): JRA has the full right and authority to transfer the Property.

5.1(b): JRA has obtained all consents and permissions required by any encumbrance.

5.1(c): JRA is unaware of any pending lawsuit or arbitration regarding the Property.

5.1(h): JRA is unaware of any agreement binding on it in conflict with the Restated Agreement.

Article 6 Default

6.2: If JRA defaults, Hines' options are to either terminate and receive a refund of its earnest money or seek specific performance within sixty (60) days of default. Hines expressly waives all other remedies.

In addition, the ROFR parcels are not part of the Phase I properties; instead, Hines has the option to purchase these two parcels, described as the "Call Right Parcels," as part of the Phase II properties, at a later date. Specifically, in subparagraph (b) of Section 4.1, Hines may exercise its option to purchase the ROFR Property by December 31, 2024.

The Martin Litigation and Its Impact

Pursuant to 3.1 of the Restated Agreement, Hines sought to access and inspect the Leased Property to do environmental testing soon after entering the First Agreement. JRA initially contacted Martin regarding this matter, and then turned that responsibility over to Hines in July of 2020. These efforts continued through October of 2020, including October 2, 2020, when the Restated Agreement was executed.

On November 11, 2020, Martin notified JRA, through counsel, that it intended to exercise rights pursuant to the ROFR ("Martin Notice Letter"). JRA had apparently provided Martin a copy of the Restated Agreement that included the sale of 1408 and 1406 Broadway. In the Martin Notice Letter, the Court notes the following language:

> . . .According to the terms of the Right of First Refusal Agreement dated December 16, 2011 the offer to purchase what is referred to as 1408 Broadway which is under lease to Martin, should have been presented to Martin Management Group, Inc. before the original PSA was entered into February 18, 2020.
>
> 1408 Broadway was included in the original PSA as part of the Phase I property which as a whole was valued at $32,000,000. There is no delineation of the value attributed to that smaller parcel. In the Amended PSA 1408 Broadway is now designated as the Call Right Parcel. It has been moved out of the Phase I group into its own category with an assigned value of $13,600.000. However, the price for the Phase I property remains unchanged which raises the question of exactly why the Call Right Parcel was moved and what its real value is in this transaction.
>
> . . . Martin Management has the right to purchase 1408 Broadway on the same terms as the Hines offer. Since all the Phase I property was lumped together, the first refusal right may extend to the collective Phase I property. Please provide us with whatever information is available relating to the value ascribed to 1408

> Broadway in the original PSA. Martin is entitled to the same terms and conditions which will include a Review Period of 180 days unless that period is extended. . .
>
> Martin Management Group, Inc. hereby gives notice that it exercises the Right of First Refusal as to 1408 Broadway on all the terms and conditions set forth in the original Purchase and Sale document you provided. . . .

Just prior to the Martin Notice Letter, on November 5, 2020, JRA's counsel notified Hines' counsel of the Martin ROFR. In that correspondence, JRA counsel stated:

> Martin Management Group, Inc. has now brought a title matter to our attention that we need to disclose to you in connection with the above-referenced agreement. Enclosed please find the Right of First Refusal Agreement, dated December 16, 2011, that was entered into by Jim Reed Automotive, LLC at the time of the sale of its automobile dealership.
>
> Unfortunately, now we need to deal with this situation with Mr. Martin, who has requested a copy of the above referenced document.
>
> Please contact me once you have an opportunity to consider this revelation.

Following this notice, the parties executed five amendments to the Restated Agreement, up to and including the Amendment. In the meantime, on January 6, 2021, Martin filed the Martin Litigation, and as part of that filing, executed a Notice of Lien Lis Pendens and Abstract of Suit pursuant to Tenn. Code Ann. § 20-3-101, *et seq.* against 1408 and 1406 Broadway, on file with the Davidson County Register of Deeds as Instrument Number 20210106-0002929 (the "Lien Lis Pendens").

On March 26, 2021, the Part IV Chancellor entered an order granting JRA's motion to compel the Martin Litigation to arbitration. No further activity has occurred in the court in the Martin Litigation. JRA's counsel informed the Court at the argument on this motion that the arbitration is ongoing, and it is not anticipated that it will be concluded on or before September 30, 2021. Further, JRA disputes Martin's claim that the ROFR remains operable or that it confers upon Martin a claim to any of the Property.

Status of the Transaction and the Parties' Positions

Under the Restated Agreement and Amendment, the Review and Closing Dates remain August 31, 2021. The parties have been unable to negotiate for an extended date because of the Martin Litigation and the Lien Lis Pendens.

JRA states that it is ready and willing to close on August 31, 2021, subject to the Lien Lis Pendens, which should either become a Permitted Exception or provide Hines an excuse to refuse to close and obtain the return of its $500,000 earnest money. At the time of the hearing in this matter, JRA had a title commitment letter from Chicago Title Insurance Company dated July 28, 2021 listing the Martin Litigation and the Lien Lis Pendens as an exception to the title commitment. JRA's position was that this satisfied its obligations pursuant to Sections 2.4 and 4.2 of the Restated Agreement.

Hines' position, and the reason it seeks a temporary injunction, is that JRA cannot meet its closing obligations on August 31, 2021, because the Martin Litigation and Lien Lis Pendens prevent the provision of fee title as required by Sections 2.4 and 4.2. Further, that this constitutes default under the Restated Agreement and triggers the remedy of specific performance set out in Section 6.2. Senior Managing Director Vikram Mehra also asserts that Hines cannot and will not close without the opportunity to perform the environmental testing that necessitates the inspection set forth in Section 3.1. Additionally, Hines asserts that JRA is in default of its representations and warranties set out in Section 5.1(a), (b), (c) and (h).

Since the hearing, on August 17, 2021, Chicago Title Insurance Company has revoked the title commitment, "withdrawing from the . . . transaction" and stating that "Any title commitment issued by the Company in regard to the transaction or the subject property is hereby rescinded and should be deemed void." JRA asserts this development does not change its position that it has

fulfilled its obligations regarding closing, and that Hines can either move forward with closing with the Martin Litigation and Lien Lis Pendens as a Permitted Exception or Hines can withdraw from the transaction and receive a refund of its earnest money. JRA states it remains prepared to close on August 31, 2021.

LEGAL ANALYSIS

Injunctive Relief

Hines initially filed suit claiming breach of contract and anticipatory repudiation, seeking specific performance and injunctive relief. In its motion for injunctive relief, Hines seeks relief from the upcoming deadlines contained in the Restated Agreement and Amendment between the parties; most notably, the August 31, 2021 closing date for the Phase I parcels. The basis for this relief stems from 1) Hines' inability to obtain access to the Leased Property due to interference by Martin in order to complete its due diligence obligations; and 2) the ROFR and subsequent Martin Litigation that prevents JRA from providing fee simple title and meeting other obligations pursuant to the Restated Agreement. During oral argument, Hines' counsel admitted that the injunctive relief would be open-ended until the cloud on title from the Martin Litigation is cleared, if at all. Alternatively, JRA asserts that it is ready, willing, and able to close on August 31, 2021 and has not breached the contract.

In considering a request for a temporary injunction, a trial court must apply a four-factor test, adopted from the standard applied in federal courts. Those factors are: (1) the likelihood that the plaintiff will succeed on the merits; (2) the threat of irreparable harm to the plaintiff if the injunction is not issued; (3) the balance between the harm and the injury that granting the injunction would inflict on the defendant; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020). To demonstrate the factor of likelihood of success on the merits, the quantum of

proof is that the movant must "clearly show . . . that its rights are being or will be violated." Tenn. R. Civ. P. 65.04(2); *Moody v. Hutchinson*, 247 S.W.3d 187, 199 (Tenn. Ct. App. 2007).

Additionally, the Court recognizes that an injunction is an extraordinary and unusual remedy that should only be granted with great caution, *Malibu Boats, LLC v. Nautique Boat Co.*, 997 F.Supp.2d 866, 872 (E.D. Tenn. 2014), and that no irreparable injury exists to justify a temporary injunction if the movant has a full and adequate remedy, such as monetary damages, available for an injury. *Tennessee Enamel Mfg. Co. v. Hake*, 194 S.W.2d 468, 470 (Tenn. 1946); *Fort v. Dixie Oil Co.*, 95 S.W.2d 931, 932 (Tenn. 1936).

In a breach of contract case, "[t]he rights of the parties are to be determined from the contracts into which they entered and the consequences of those contracts and not from some generalized concepts of equity." *Bowers v. Est. of Mounger*, No. E2020-01011-COA-R3-CV, 2021 WL 2156929, at *11 (Tenn. Ct. App. May 27, 2021) (citing *Craft v. Forklift Systems, Inc.*, No. M2002-00040-COA-R3-CV, 2003 WL 21642767, at *3 (Tenn. Ct. App. July 14, 2003) (quoting *Norcomo Corp. v. Franchi Construction Co., Inc.*, 587 S.W.2d 311, 317 (Mo. Ct. App. 1979)). Where the remedies available to a litigant are circumscribed by the boundaries drawn "at law," such as in a breach of contract case, principles of equity cannot create rights outside those boundaries. *Craft v. Forklift Sys., Inc.*, No. M2002-00040-COA-R3-CV, 2003 WL 21642767, at *3 (Tenn. Ct. App. July 14, 2003) (citing *Swartz v. Atkins*, 315 S.W.2d 393 (Tenn. 1958); *Bedwell v. Bedwell*, 774 S.W.2d 953, 956 (Tenn. Ct. App. 1989)). In addition, the law in Tennessee provides that "courts will not make a new contract for parties who have spoken for themselves, *Petty v. Sloan*, 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955), and will not relieve parties of their contractual obligations simply because these obligations later prove to be burdensome or

unwise." *Vargo v. Lincoln Brass Works, Inc.*, 115 S.W.3d 487, 492 (Tenn. Ct. App. 2003) (citing *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 223 (Tenn. Ct. App. 2002)).

Pursuant to the terms of the contract at issue, the parties negotiated certain limited remedies. Relevant to the current issues presented, Section 2.3(b) provides that JRA "shall have the right, but not the obligation, to cure" any title defects that arise, and if JRA is unable or unwilling to cure, then Hines may either accept a conveyance of the property subject to the defects, without a reduction in price, or terminate the contract and receive a return of its earnest money. In addition, Section 6.2 provides that if JRA defaults and the parties fail to consummate the sale of the Property, then Hines may either terminate the contract and receive a refund of its earnest money or seek specific performance within sixty (60) days of default. The Court further notes that the Restated Agreement includes a time is of the essence clause in Section 10.18.

In seeking injunctive relief, Hines contends that it has not been able to complete its due diligence obligations because of interference by Martin, and that JRA is not in a position to close by August 31, 2021 because they can neither provide fee title to the Property nor abide by the representations and warranties under the agreement. In fact, JRA admits that the Martin Litigation and ROFR issues will not be resolved by the closing date of August 31, 2021, or even by September 30, 2021. Section 4.2(a) of the Restated Agreement provides that JRA is required to deliver a special warranty deed subject only to the "Permitted Exceptions," a closing certificate affirming certain representations and warranties, a title insurance affidavit, and possession of the Property, again, only subject to the "Permitted Exceptions." The representations and warranties in Section 5.1 require JRA to affirm that it has obtained all the consents related to any encumbrance on the Property, that there is no suit or arbitration against JRA pertaining to the Property, and that there is no agreement which JRA is a party that conflicts with the Restated Agreement. The Court notes

that "[t]itle refers to the legal ownership of a property interest so that one having title to a property interest can withstand the assertion of others claiming a right to that title," and a buyer possesses marketable title so long as he owns the property "free of any competing claims of ownership and free of liens or encumbrances." *Whaley v. First Am. Title Co. of Mid-West,* No. W2002-01940-COA-R3-CV, 2004 WL 316978, at *3 (Tenn. Ct. App. Feb. 19, 2004). Based on the facts presented thus far, it appears that JRA will not be able to fulfill the obligations set forth in the Restated Agreement by the closing date due to the outstanding issues related to the ROFR and Martin Litigation.

Based upon the foregoing, there is a likelihood that Plaintiff will be able to succeed on the merits. Despite this, however, the remedy of injunctive relief is not available under the terms of the contract as negotiated by the parties, and the Court is unable to re-write the contract and create such a remedy. *See Vargo*, 115 S.W.3d at 492; *see also Lewis v. Moore,* No. M2015-02473-COA-R3-CV, 2017 WL 2361949, at *3 (Tenn. Ct. App. May 31, 2017). The parties are sophisticated and negotiated for the specific remedies set forth in the Restated Agreement. Even though Hines is now in this position seemingly through no fault of its own, the Court cannot relieve it from the very contractual terms it drafted. *See Lewis*, 2017 WL 2361949, at *3. Thus, the Court declines to grant the injunctive relief Hines seeks.

Specific Performance

In its complaint, Hines also seeks specific performance and "demands that Seller be ordered to specifically perform its obligations under the Contract." Plaintiff's Complaint, ¶ 23. "Specific performance is regarded as appropriate when dealing with contracts for the conveyance of real property because real property is unique, and more often than not, an award of damages is simply not an adequate remedy." *GRW Enterprises, Inc. v. Davis*, 797 S.W.2d 606, 614 (Tenn. Ct.

App. 1990) (citations omitted). The determination of whether a contract should be specifically enforced lies within the discretion of the trial court and depends upon the particular facts of each case. *Hillard v. Franklin*, 41 S.W.3d 106, 111 (Tenn. Ct. App. 2000) (citing *Shuptrine v. Quinn*, 597 S.W.2d 728, 730 (Tenn. 1979)). However, "a decree for specific performance should enforce the contract as it was made by the parties." *Key v. Renner*, No. E2016-01049-COA-R3-CV, 2017 WL 5952915, at *7 (Tenn. Ct. App. Nov. 30, 2017) (citing *Inman v. Union Planters Nat'l Bank*, 634 S.W.2d 270, 272 (Tenn. Ct. App. 1982)).

Pursuant to the contract, specific performance is a remedy that is available to Hines when the seller defaults:

> **6.2 Default by Seller.** If the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, then Purchaser may either (i) terminate this Agreement and receive a refund of the Earnest Money, on-demand, or (ii) seek specific performance of this Agreement, provided that such a suit for specific performance is filed within sixty (60) days of the Seller's default hereunder. Purchaser hereby expressly waiving and relinquishing any and all other remedies than those set forth in this Section 6.2 at law or in equity.

Hines seeks specific performance to require JRA to perform its obligations under the contract and convey the property without the cloud on title created by the ROFR and the Martin Litigation. However, JRA has admitted that the Martin Litigation and ROFR issue will not be resolved by the closing date of August 31, 2021, or even by September 30, 2021. Moreover, during oral argument, JRA's counsel advised that the Martin Litigation is ongoing, and there is no foreseeable end date in sight.

Trial courts have discretion in awarding specific performance as a remedy based upon the circumstances of each case. *Hillard*, 41 S.W.3d at 111. Based upon the particular facts of this case, the Court finds that specific performance is unavailable as a remedy at this time. Since JRA cannot convey the Property pursuant to the terms of the Restated Agreement until the Martin Litigation is

finalized, the Court is unable to enforce Hines' request to "[order JRA] to specifically perform its obligations under the Contract." At this time, Hines can either move forward with closing subject to the Martin Litigation or terminate and receive a refund of its earnest money.

Hines' Request for a Special Master

After oral argument, Hines filed a Motion to Appoint Special Master to Procure a Title Insurance Commitment. This request does not change the Court's analysis in that the parties have specific remedies set forth in the contract that the Court cannot re-write. The Court further notes that any title commitment obtained will still have to deal with the title issues related to the ROFR and Martin Litigation. Hines should file a motion requesting a hearing for separate consideration by the Court.

CONCLUSION

The terms of the contract set forth the particular remedies that were negotiated by the parties, and injunctive relief is not included as an available remedy. As such, the Court declines to re-write the contract and grant Hines injunctive relief. In addition, although specific performance is an available remedy pursuant to the terms of the contract, it is not an available remedy at this time based upon the facts and circumstances of this case.

It is so ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, email, or efiling as applicable to:

Kate Skagerberg, Esq.
Woods Drinkwater, Esq.
Paul S. Davidson, Esq.
John E. Haubenreich, Esq.
Steven A. Riley, Esq.
John R. Jacobson, Esq.
Peter C. Sales, Esq.