IF YOU SAY IT, YOU'D BETTER MEAN IT:
When a Hypothetical Contract MAY Become a Binding Contract

By Stuart A. Cherry

"I am going to lease you 24 parking spots for 99 years at $20.00 per parking space in exchange for your dropping your lawsuit. You will maintain and repair the parking spaces, carry liability and property damage insurance for the parking spaces, and indemnify us for any claims related to the parking spaces."

"OK. We accept, on the condition that 2/3 of your board adopt these terms. You also need to draft a formal lease consistent with what we've agreed to. Deal?"

"Deal."

According to a recent decision by the Court of Special Appeals in *Falls Garden Condominium Association, Inc. v. The Falls Homeowners Association, Inc.*, 215 Md.App. 115 (2013) (the "*Falls* Case"), a communication like the one above, without equivocation or language expressing an intent not to be bound, is enough to form an enforceable contract upon the landlord's board approving the agreement's terms. This decision is a reminder that all Maryland business owners should be careful when dealing with other businesses not to accidentally enter into a binding and enforceable contract.

The *Falls* Case involved the Falls Garden Condominium Association, Inc. ("Falls Garden"), which mistakenly believed it had title to certain parking spaces for twenty-three years, only to discover that the neighboring association, The Falls Homeowners' Association, Inc. ("The Falls"), actually had title. Falls Garden sued, claiming title by adverse possession or an easement over the parking spaces. The Falls countersued for trespass.

When settling the case, the parties' lawyers exchanged a letter of intent, consisting largely of terms along the lines of those summarized above, with the Falls to be the parking space landlord, and Falls Garden to be the tenant. After-the-fact, Falls Garden tried to back out of the letter of intent, hiring new counsel and asking to return to "pre-litigation status." On a motion, the trial court found the letter of intent was an enforceable contract.

The Court of Special Appeals affirmed, finding that "there was no statement in the Letter of Intent regarding whether the parties did or did not intend to be bound by the document … The Letter of Intent did not point out any specific matters requiring further agreement," and that the "parties express[ed] definite agreement on all necessary terms," but said "nothing as to other relevant matters that are not essential, but that other people often include in similar contracts." Under the circumstances, the letter of intent was an enforceable contract.

In light of the *Falls* Case, a business person must remember to be careful when discussing potential agreements. In all likelihood, if Falls Garden had stated that the agreement was not binding or enforceable until and unless the parties entered into a formal lease, then the letter of intent would not have been considered a binding contract. It is easy, with the wrong turn of phrase, or by silence, to turn a hypothetical agreement into a legally binding obligation.

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