Circuit Court for Baltimore County
Case No. C-03-CV-20-001128

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1642

September Term, 2023

DALLAS WADDELL, *et al.*

v.

COX'S PROPERTIES, LLC, *et al.*

Reed,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: July 10, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In 2010, Dallas Waddell and Gale Waddell, the Appellants, entered into a commercial lease with Cox's Properties, LLC and the Maggie G. Cox Testamentary Trust, the Appellees, for 547A South Marlyn Avenue in Essex, Maryland. The contract included a section giving the Appellants the right of first refusal. In March of 2020, the Appellants learned that the Appellees were trying to sell the property and they filed a complaint for injunctive relief and to enforce the commercial lease. The Appellants tried to assert their right of first refusal, but the property was never sold. The dispute over the sale was eventually heard before Judge Michael S. Barranco of the Circuit Court for Baltimore County on February 21, 2023. Judge Barranco ruled in favor of the Appellees, finding that there was no enforceable contract between the parties. An order for the judgment was entered on September 25, 2023, and the Appellant timely appealed.

In bringing their appeal, the Appellants present one question for appellate review, which we rephrase as follows:

> I. Whether the Circuit Court erred when it concluded that there was no enforceable contract between the parties?[1]

Finding no error, we shall affirm the judgment of the Circuit Court for Baltimore County.

[1] The Appellants phrased the question presented as: "Whether the circuit court erroneously concluded that the Appellants failed to exercise their right of refusal regarding the subject real property despite their timely exercise of their option upon the exact terms of the third-party contract of sale that triggered such right of first refusal."

FACTUAL & PROCEDURAL BACKGROUND

On September 1, 2010, the Appellants and Appellees[2] signed a commercial lease for a property at 547A South Marlyn Avenue, Essex, Maryland (the "Property"). The property was owned by the Appellees and leased to the Appellants as tenants. This contract contained a provision for the right of first refusal at Section 30. This section stated that "when the Landlord desire[d] to sell the leased premises, that the purchase of [the Property] shall be offered first unto the Landlord at a fair and marketable price," and the Tenant must give thirty days' notice if they do not desire to purchase the property.[3] This lease remained in place for approximately a decade until the events that led to this case.

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[2] At trial, the parties stipulated that Cox's Properties, LLC and the Maggie G. Cox Testamentary Trust were collectively the sole fee simple owners of the property in dispute in the case. The trust was not explicitly a signatory to the original lease, but Judge Barranco found at trial that the contracts would be enforceable against both parties. The Maggie G. Cox Testamentary Trust was not added as a defendant in this case until February 3, 2023. For convenience, we will refer to both Cox's Properties, LLC and the Trust as the Appellees in the whole background section as the actions related to the properties reflect the interests of both related parties.

[3] The paragraph states in full:

> 30. **FIRST RIGHT OF REFUSAL:** It is mutually agreed and understood between the parties that in the event the Landlord desires to sell the leased premises, that the purchase of the same shall be offered first unto the Landlord at a fair and marketable price, and that the Tenant shall have the first right of refusal. In the event that the Tenant does not desire to purchase the property, Tenant must give the Landlord notice in writing within Thirty (30) days after the offer of purchase has been given by the Landlord.

The language that the purchase "shall be offered first unto the Landlord" was argued by both parties to be an error that should read "Tenant" instead of "Landlord." Judge Barranco found that no testimony was entered on the record as to whether this language should have been corrected, then concluded that the change does not "necessarily make[] a huge difference in the analysis."

In early March of 2020, the Appellees, through an agent, advised the Appellants that they intended to sell the Property to a third party. The Appellants then filed a complaint in the Circuit Court for Baltimore County for specific performance, a temporary restraining order, and injunctive relief to prevent the Appellees from selling the property.

After months of negotiations, the Appellees sent a letter on September 28, 2020, to the Appellants offering to sell the Property to the Appellant at the price of $725,000.00. This letter included an attachment for a contract (the "Agreement of Sale") that was signed on September 24, 2020, by Cox's Properties, LLC and Bay Capital Group, LLC ("Bay Capital"). This contract included the Property and a neighboring property at 549 South Marlyn Avenue being purchased for $725,000.00. The agreement included a financing contingency and guaranty from Wilson Contreras ("Mr. Contreras"), the Managing Member of Bay Capital. The Appellees' letter placed the Appellants on thirty days' notice to accept the offer under their right of first refusal. If the Appellants chose to purchase the property, the Appellees requested that the Appellants provide written confirmation from a lender that they were pre-qualified to purchase the properties.

The Appellants responded on October 23, 2020, and indicated their intent to exercise the right of first refusal for both properties for the purchase price of $725,000.00. The Appellant's response included a pre-qualification letter for the Property and the Appellants said they would use seller financing for the 549 South Marlyn Avenue property. The Appellees acknowledged the letter on November 3, 2020, but said they would not be providing seller financing to the Appellants since they had "a ready willing and able buyer" for the $725,000.00 purchase price for both properties. The Appellees then offered to instead separate the two properties and sell only the Property to the Appellants for $500,000.00. The Appellants responded on November 13, 2020, disputing the Appellee's position on the right of first refusal and claiming that the Appellees would have breached their September 28 letter if they do not proceed to settlement.

On December 8, 2020, the Appellants filed an amended complaint also asking for specific performance, a temporary restraining order, and injunctive relief. The next day, the Appellees sent a letter claiming the original lease was vague and ambiguous. Subsequent discussions ensued between the parties and Bay Capital, but no agreement was reached, and the Appellees still own the Property.

After the amended complaint, the Appellees did not file a timely response, so the Appellants filed a Request for Order of Default on March 23, 2021, which was granted the next day.[4] The Appellees moved to vacate the order of default on April 22, 2021. The court granted this motion, finding excusable neglect on behalf of the Appellees, on June 4, 2021.

After nearly two years, the Appellants filed a second amended complaint on February 3, 2023, which added the Maggie G. Cox Testamentary Trust as a party to the matter and removed the request for a temporary restraining order. The Appellees answered the complaint on February 20, 2023. The next day, the matter was heard in a bench trial before the Honorable Michael S Barranco of the Circuit Court for Baltimore County.

[4] There was an earlier Request for Order of Default filed on February 16, 2021. This order was denied because it did not indicate that the amended complaint from December 2020 was properly served. This was corrected in the March Order of Default.

At the bench trial, both the Appellants testified to their dealings with the Appellees regarding the Property. Both parties entered documentary evidence establishing the timeline of negotiations detailed above. Additionally, Mr. Contreras testified to his purchases of other properties from the Appellees and failed negotiations with the Appellants for the Property.

After both parties rested, Judge Barranco made multiple findings in an oral ruling from the bench. First, he found there was a right of first refusal established in Section 30 of the lease between the parties. Next, he found that the September 28, 2020, letter from the Appellees was the offer that triggered the right of first refusal. Judge Barranco then found that the parties' disagreement over the financing provision of the contract meant there was no meeting of the minds, and therefore no contract. As a result, he ruled in favor of the Appellees.

The judgment in favor of the Appellees was recorded on September 25, 2023. The Appellants timely appealed the decision on October 19, 2023.

STANDARD OF REVIEW

For a trial heard without a jury, we "will review the case on both the law and the evidence." Md. Rule 8-131(c). "[We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* There is clear error when the trial court's factual findings are not supported by competent evidence. *EBC Properties, LLC v. Urge Food Corp.*, 257 Md. App. 151, 165 (2023) (citing *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 339 (2017)). Factual findings will not be clearly erroneous "[i]f there is any competent and material evidence to support" them. *Carroll Indep. Fuel Co. v. Wash. Real Est. Inv. Tr.*, 202 Md. App. 206, 224 (2011) (internal quotation omitted). By contrast, conclusions of law are analyzed under "a *de novo* standard of review to determine whether the court's conclusions are legally correct." *Id.* "We will disturb conclusions of the trial court, 'founded upon sound legal principles and based upon factual findings that are not clearly erroneous . . . only if there has been a clear abuse of discretion.'" *EBC Properties, LLC*, 257 Md. App. at 166 (quoting *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013)).

DISCUSSION

A. Parties' Contentions

The Appellants argue that Section 30 of the lease, interpreted objectively, establishes a right of first refusal. They argue the right was triggered by the Appellees' acceptance of a third-party offer to purchase the property. The Appellants claim that they accepted the offer and matched all terms, including the financing provisions. The Appellants dispute the trial court's finding that the Appellants were not entitled to seller financing and argue that the Appellees' inclusion of the financing clause in the Agreement of Sale violated the right of first refusal. Despite the Appellees' violation, the Appellants argue they complied with the financing terms, and it was the Appellees who breached the lease.

The Appellees agree that the lease established a right of first refusal. The Appellees argue that the right of first refusal did not require them to extend seller financing to the Appellants. Additionally, they argue that they acted in good faith in adding the seller financing provision. As a result, the Appellees agree with the lower court's finding that there was no enforceable contract because the Appellants did not meet an express condition of the offer. The Appellees say they were under no duty to perform because no contract came into existence.

B. Analysis

The first issue is whether the parties agreed to a valid right of first refusal, and the rights that arose as a result. This case has an interesting twist, because the right of first refusal here was a right to purchase the single leased property at 547A South Marlyn Avenue. When the option to purchase or right to purchase was triggered, the property in dispute related to two properties, *i.e.*, the seller added a second parcel located at 549 South Marlyn Avenue. We hold that the Appellants' right of first refusal, and the option it ripened into, extended only to 547A South Marlyn Avenue, and that the trial court did not clearly err in finding that the Appellees acted in good faith in structuring the Bay Capital transaction.

A right of first refusal is a type of option contract. *David A. Bramble Inc. v. Thomas*, 396 Md. 443, 456 (2007) (citing *Ferrero Const. Co. v. Dennis Rourke Corp.*, 311 Md. 560, 567 (1988)). An option contract is a "continuing offer to sell during the duration [of the option agreement] which on being exercised by the optionee becomes a binding and enforceable contract." *Id.* at 455 (quoting *Straley v. Osborne*, 262 Md. 514, 521 (1971)). To effectively exercise an option contract, the exercise "must be unequivocal and in accordance with the terms of the option." *Id.* (quoting *Katz v. Pratt St. Realty Co.*, 257 Md. 103, 118 (1970)).

A right of first refusal differs slightly, where the right is "an agreement between the property owner ('grantor') and a holder ('preemptioner') whereby the receipt of an offer from a third-party purchaser to buy the subject property 'triggers' the right of first refusal which, in turn, 'ripens' into an option to buy on part of the preemptioner." *Id.* at 456 (quoting 3 Corbin on Contracts § 11.3 (rev. ed. 1996)). The right of first refusal is analogous to options based on a condition precedent, where that condition is that the owner wants to sell the property and receives an offer from a third-party to sell. *Id.* (quoting Restatement of Property § 413, cmt. b (1944)). The holder of the right of first refusal has no power to require the property owner to sell; the power only arises once the owner decides to sell the property. *Straley*, 262 Md. at 522.

Maryland contract law imposes an obligation "to act in good faith and deal fairly with the other party or parties to a contract." *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 273 (2009). However, this requirement is balanced against the right of the property owner to dispose of the property as they deem appropriate. *Bramble*, 396 Md. at 465. The terms upon which a seller decides to sell their property "remains [their] exclusive prerogative so long as [they] act[] in good faith and without any ulterior purpose to defeat the right of the opitionee." *Bramble,* 396 Md. at 462 (quoting *Weber Meadow–View Corp. v. Wilde,* 575 P.2d 1053, 1055 (Utah 1978)).

When interpreting contracts in Maryland, courts follow the principle of the objective interpretation of contracts. *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019). The primary goal of this interpretation is "to ascertain the intent of the parties in entering the agreement and to interpret 'the contract in a manner consistent with [that] intent.'" *Id.* (quoting *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 88 (2010)). "[W]e interpret a contract's plain language in accord with its ordinary and accepted meaning." *Id.* (quoting *Ocean Petroleum*, 416 Md. at 88) (internal quotations omitted).

In *David A. Bramble, Inc. v. Thomas*, the respondents entered into a contract of sale in 2004 for land owned by the Lanes. 396 Md. 443, 447 (2007). The respondents' offer had an addendum that made the contract contingent on the petitioner releasing its right of first refusal. *Id.* The offer also contained a provision that the buyers would agree not to mine the property. *Id.* In 1992, the Lanes granted the right of first refusal to a development company, who subsequently conveyed the right to the petitioner. *Id.* at 447–48. The petitioner was mining land adjacent to the property at issue. *Id.* at 466. The petitioner delivered an Agreement of Sale to the Lanes, attempting to exercise his right of first refusal, but the agreement omitted the "no mining" provision. *Id.* at 448–49. The Lanes negotiated a new deal with the respondents that included a higher price. *Id.* at 449. The petitioner argued that a binding land sale contract had been formed and the Lanes responded that since there was not exact mirroring, the petitioner's agreement was merely a counteroffer that the Lanes rejected. *Id.* The petitioner then sent a new offer including the "no mining" provision, but at the initial price. *Id.* at 450. The respondents sued the Lanes and the petitioner to determine their rights related to the property. *Id.*

The Supreme Court of Maryland defined the right of first refusal, as described above, and then turned to the materiality of an omitted provision. *Id.* at 456–57. The Court came to no conclusion on literal matching on the right of first refusal, finding that the case law in Maryland and other jurisdictions was "ambiguous at best" *Id.* at 460. The Court then turned to a dispute of material fact, whether the Lanes or the respondents inserted the "no mining" clause as a "poison pill" to frustrate the petitioner's exercise of their right of first refusal. *Id.* The Court imposed an implied duty on the property owner and third-party purchaser. *Id.* at 463. The property owner or the third-party purchaser "must not be allowed to add in bad faith terms to the triggering offer which are intended to nullify the right of first refusal." *Id.* at 462 (citing *W. Texas Transmission, L.P. v. Enron Corp.*, 907 F.2d 1554 (5th Cir. 1990); *Weber Meadow-View Corp. v. Wilde*, 575 P.2d 1053 (Utah 1978)). The issue of whether a party acted in good or bad faith is a question of fact. *Id.* at 465 (citing *Rite Aid Corp. v. Hagley*, 374 Md. 665, 684 (2003). "If an aggrieved holder of a right of first refusal satisfies a court that the property owner's and/or third-party's actions are arbitrary or performed in bad faith, the owner of the property encumbered by the preemptive right must articulate a 'reasonable justification' for its actions." *Id.* at 467 (citing *Prince v. Elm Inv. Co.*, 649 P.2d 820, 825 (Utah 1982)).

Applying these rules to the *Bramble* case, the Court concluded that, at the summary judgment stage, there were insufficient findings of fact on the issue of good faith. *Id.* at 466. Importantly, the issue of good or bad faith was not what the parties argued before the Court, the parties were focused on whether there was proper acceptance based around the "no mining" clause being omitted. *Id.* at 454. The Court could not conclude whether the "no mining" clause was inserted for a legitimate reason or as a "poison pill" to prevent the petitioner's exercise of their right of first refusal. *Id.* The parties knew that the petitioner was engaged in mining on neighboring land, and therefore the "no mining" clause could have frustrated any efforts to mine on the Lanes' property. *Id.* As a result, the court remanded the case for further proceedings to determine whether the parties acted in good or bad faith. *Id.* at 467–68.

Turning to this case, the right of first refusal comes from Section 30 of the lease signed between the parties, which states:

> 30. **FIRST RIGHT OF REFUSAL:** It is mutually agreed and understood between the parties that in the event the Landlord desires to sell the leased premises, that the purchase of the same shall be offered first unto the Landlord[5] at a fair and marketable price, and that the Tenant shall have the first right of refusal. In the event that the Tenant does not desire to purchase the property, Tenant must give the Landlord notice in writing within Thirty (30) days after the offer of purchase has been given by the Landlord.

We agree with the trial court that this paragraph granted the Appellants as the Tenant the right of first refusal against the Appellees as Landlord.

The parties disputed at different times what this right actually grants. The Appellees argued that the provision means the Appellants had "the opportunity to purchase the Property at the same fair and marketable price as had been set by the third party offer." The Appellants respond that this argument means this section only gave the Appellants the right to negotiate for the purchase, which would render the section a nullity. Based on our reading of *Bramble* and Maryland cases on rights of first refusal, a proper right of first refusal ripens an offer from a third-party purchaser into an option to buy by the holder of the right. *Bramble*, 396 Md. at 456. As a result, the contract that the third-party Bay Capital sent would ripen into an option for the Appellants to buy.

[5] See *supra* footnote 3 for additional discussion of the use of the word "Landlord" in the paragraph and whether it should be substituted for "Tenant" as both parties proposed.

Turning to the timeline of the case, the Appellees expressed to the Appellants that they had a desire to sell the property in March of 2020, which led to the first complaint in this case. On September 24, 2020, Bay Capital and the Appellees signed an Agreement of Sale for both 547A and 549 South Marlyn Avenue with Bay Capital.[6] To comply with the right of first refusal, on September 28, 2020, the Appellees sent a letter to the Appellants with the Agreement of Sale for both properties for the "fair and marketable price of $725,000.00." The letter stated that the Appellants needed to respond in writing by October 28 and settlement needed to occur before November 16. The Appellees wrote: "In addition if you confirm your intent to purchase the properties, my client would request you simultaneously provide written confirmation from a lender of your choice, that you are pre-

[6] As part of the Agreement of Sale, there was a section describing the sale of the property that included how the sale should be financed. This section stated:

> Five Thousand Dollars ($5,000.00) to be paid simultaneously with the execution of this Agreement and an additional Forty-Five Thousand Dollars ($45,000.00) to be paid at settlement. This Agreement of Sale is expressly contingent upon the Seller taking back from Buyer a First Purchase Money Mortgage or First Purchase Money Deed of Trust in the Amount of Six Hundred Seventy Five Thousand Dollars ($675,000.00) with monthly payments of interest only at the rate of seven per cent per annum (7%) with a balloon payment at the end of five (5) years for the outstanding principal and accrued interest. First Purchase Money Mortgage or First Purchase Money Deed of Trust shall be guaranteed individually by Wilson Contreras. Buyer shall pay the annual real estate and hazard insurance premium as each becomes due and present to Seller verification of payment. In the event Seller is unable to provide financing to Buyer, then it shall be at Buyer's option to declare this Agreement of Sale null and void or secure financing within sixty (60) days through a lender of Buyers choice. In the event Buyer chooses to declare this agreement null and void, all deposits paid hereunder shall be refunded to Buyer.

qualified to purchase the property." The September 28, 2020 letter was an offer to the Appellants that complied with the right of first refusal.

The Appellants responded on October 23, 2020. The Appellants said they were exercising the right of first refusal as to 547A South Marlyn Avenue, and purchasing the other parcel, 549 South Marlyn Avenue, in accordance with the Agreement of Sale. While both parties had agreed on the price, there was then disagreement over how the sale would be financed. The Appellants included a pre-qualification letter for commercial financing for the 547A South Marlyn property, as requested by the Appellees.[7] The Appellants then said they would "utilize seller financing upon the equivalent terms [to the Agreement of Sale] if their application for commercial financing is denied" for the 547A South Marlyn property and "with regard to the 549 S[outh] Marlyn Avenue parcel, the [Appellants] will require seller financing on the terms set forth in the Agreement of Sale." When the Appellees responded to this letter on November 3, 2020, they refused to use seller financing with the Appellants, stating they were "not required to provide financing."[8]

[7] The pre-qualification letter from the bank said that the Appellants were pre-qualified for a purchase price of $391,000 for only one of the properties. The Appellants testified that this number was chosen over the total sale amount because the commercial lender needed more information about the sale.

[8] Judge Barranco found that the parties never "had a meeting of minds as to the . . . financing issue." We do not hold that finding was clearly erroneous. While the parties had come to an agreement on the price, there was a dispute on how the sale would be financed. This dispute remained unresolved beyond the proposed settlement date of November 16, 2020. Even after this point there was no evidence that the Appellants had drawn up a comparable contract or had taken any further steps to move the deal forward or secure independent financing. As discussed above, the Appellees had no legal obligation to provide financing.

The Appellants argue that the financing terms were "render[ed] impossible to match" by the Appellees. The financing options in the Agreement of Sale between the third-party buyer and the Appellees first said that the Seller would take back from the Buyer "a First Purchase Money Mortgage or First Purchase Money Deed of Trust in the Amount of Six Hundred Seventy Five Thousand Dollars," which would be guaranteed individually by Mr. Contreras, the owner of Bay Capital.[9] The document continues to say that "In the event Seller is unable to provide financing to Buyer, then it shall be at Buyer's option to declare this Agreement of Sale null and void or secure financing within sixty (60) days through a lender of Buyers choice."

The Appellees argue they made it clear that the Appellants needed to provide their own financing for the purchase. This is first shown in the offer email on September 28, 2020, where the Appellees requested that the Appellants "simultaneously provide written confirmation from a lender of [the Appellant's] choice, that [the Appellants] are pre-qualified to purchase the property." The Appellants did provide a pre-qualification statement, but it was only for 547A South Marlyn Avenue and was only for $391,000 and not the total requested price of $725,000, or for the later discussed price of $500,000. The Appellees' response on November 3, 2020, again made it clear that they would not be

[9] While the names in the Agreement of Sale were those of the third party, "proper names need not be matched because to hold otherwise would require the preemptioner to change its name in order to exercise the first option of purchase." *Bramble*, 396 Md. at 462 (citing *Miller v. LeSea Broad., Inc.*, 87 F.3d 224, 227 (7th Cir. 1996)).

providing financing to the Appellants, and, in the alternative, offered $500,000 for the 547A South Marlyn Avenue property.[10]

The Appellants argued that the Appellees rendered the right of first refusal into a nullity by offering the Property with a larger tract. They rely upon *Straley v. Osborne,* 262 Md. 514 (1971). In that case, the lessee had a lease on approximately seven acres of a ten-acre tract owned by the property owner. *Id.* at 516. The lessee had a "first option of purchase" if the owner wanted to sell. *Id.* When the owner decided to sell the whole tract, the lessee was contacted multiple times, but the lessee declined to exercise the right of first refusal on the land. *Id.* at 517–18. Even though the lessee did not exercise the right, the court held that "the lessor cannot act in derogation of the lessee's 'first option' rights in the leased premises." *Id.* at 524. The court said that a lessor may not "render the lessee's bargained for 'first option' a nullity by merely including it in a larger tract being offered for sale." *Id.* However, the lessee then failed to take an affirmative course of action to try and negotiate a purchase and the court therefore found he was not entitled to specific performance. *Id.* at 525–26.

The *Straley* court contained an informative discussion of a right of first refusal, explaining as follows:

> "First, it is generally held that, when a lessor receives an offer for purchase of a larger tract which includes the leased parcel, the lessee holding

[10] The parties disputed the fair and marketable price for 547A South Marlyn Avenue standing alone. The Appellee offered the property for $500,000, while the Appellant estimated a purchase price of $375,000 after discussions with the third-party buyer. Both parties disputed the number arrived at by the other party, though neither contended that the $725,000 price for both properties was not fair and marketable.

> the first option to purchase cannot require the lessor, by means of specific performance, to convey to him the leased portion alone. The reasoning of such cases is that the contemplation (or even the acceptance) by the lessor of an offer for the larger tract is no manifestation of an intention on his part to sell the smaller (leased) portion separately. *Aden v. Estate of Hathaway*, 427 P. 2d 333, 334 (Colo. 1967); *Guaclides v. Kruse*, 170 A. 2d 488, 493 (N. J. Super. 1961); *New Atlantic Garden v. Atlantic Garden Realty Corp*., 194 N.Y.S. 34, 40 (App. Div. 1922), *affd*. 143 N. E. 734 (N.Y. 1923). *Cf*. *Anderson v. Armour and Co*., 473 P. 2d 84, 88, 89 (Kan. 1970). We are of the opinion that these cases represent the better-reasoned decisions, and it therefore becomes apparent that Straley cannot compel Haugh to sell the seven acres to him by virtue of the fact that Haugh accepted an offer for the ten acre plot from the Osbornes.
>
> On the other hand, the lessor cannot act in derogation of the lessee's 'first option' rights in the leased premises, and accordingly it has been held that the lessee may prevent a sale of the leased premises without regard to his rights by means of injunction. *Guaclides v. Kruse*, *supra*, at 494-495. If a sale is made in violation of the lessee's rights, a subsequent purchaser with actual or constructive notice of these rights takes subject to them. *Guaclides v. Kruse*, *supra*, at 496, *Atlantic Refining Co. v. Wyoming Natl. Bank*, *supra*, footnote 8, on 724. And this is as it should be, for to rule otherwise would be to allow a lessor to render the lessee's bargained for "first option" a nullity by merely including it in a larger tract being offered for sale."

Id. at 523-25.

The triggering offer covered both parcels, but the right of first refusal itself, and therefore the option it ripened into, extended only to the leased premises. The real issue here is whether the clause at issue in the lease between the parties created an enforceable right. The clause created a right in the lessee/Appellants, to purchase 547A South Marlyn Avenue if the lessor/Appellees chose to sell that property alone. But what right did lessee have, if any, when lessor decided to sell the two parcels to a third party?

There are some lessons to be learned from *Straley* that are applicable here. The lessee does not have a right to compel the owner/lessor to convey the smaller leased premises to him. The lease clause gave lessees a right of pre-emption for purchase of the single parcel, 547A South Marlyn Avenue. The evidence reflects that the lessees/Appellants did (eventually) get the opportunity under the option or right to purchase the single property for $500,000. Under the lease, Section 30, the lessees/Appellants had *no* right to purchase the entire property, nor, under the lease, a contract, did the lessees/Appellants have any right to compel financing for any portion of the purchase. And as for good faith or bad faith, the trial judge found no bad faith, and significantly, the lessor, the owner and landlord, had a bona fide offer from a third-party purchaser, who although he needed some owner financing, offered a personal guaranty as security. The Appellants never offered a guaranty, and in any case, the Appellees were not required to accept it even if it had been offered, which it had not. On this factual finding, we review for clear error, and Judge Barranco's finding of no bad faith is well supported by the record.[11]

Under the facts here, after the lessor/Appellees received a bona fide offer to purchase both tracts on South Marlyn Avenue, they gave the lessees/Appellants the opportunity to purchase both tracts. As the trial court found, the parties engaged in

[11] Judge Barranco, on this issue, stated:

> But, but then the Plaintiffs have cited case law that says that the, the terms upon which the property owner would sell the property remains their prerogative. I, I think certainly with respect to financing, now, regardless of what the cases say about the, the, the offer for the property, when you talk about substituting in one party for the other and one guarantor in for another, you know, the Court certainly doesn't find any bad faith in the, the Defendant here stating that they, that they did not find seller financing acceptable in, in this particular case.

negotiations, to no avail and to no agreement. The lessors/Appellees then offered to sell the single specified property under the lease to the lessees/Appellants for $500,000. Again, the lessees/Appellants declined to accept that offer.

The Appellants were not entitled to specific performance or injunctive relief. The trial court did not err or abuse its discretion in finding no enforceable agreement between the parties and finding in favor of the Appellees.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Circuit Court for Baltimore County.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.