COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE , ss. SUPERIOR COURT
DOCKET NO. 2072CV00083

CROWN COMMUNITIES, LLC

vs.

PHILIP AUSTIN, TRUSTEE OF THE CHARLES W. AUSTIN TRUST & another[1]

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER FOR JUDGMENT

I. Introduction

This controversy concerns the attempted sale of a manufactured home park (also known as a mobile home park) in Pocasset, Massachusetts, and specifically whether the park residents validly exercised their right of first refusal under the controlling statute, G. L. c. 140, § 32R, to purchase the park. On November 15, 2019, the park's owner, the Charles W. Austin Trust ("Austin Trust"), executed a purchase and sale agreement to sell the park to the plaintiff, Crown Communities, LLC ("Crown"). After the Austin Trust notified the park residents of that agreement, some of the residents formed an association, the Pocasset Park Association, Inc. ("Association"), which attempted to exercise the statutory right of first refusal and to purchase the park. In January of 2020, the Austin Trust executed a purchase and sale agreement to sell the park to the Association.

On February 20, 2020, Crown filed this action against the Association and the Austin Trust. Its verified complaint contains the following counts: breach of contract against the Austin Trust (Count I); a declaratory judgment that the Austin Trust is obligated to sell the park to Crown and not to the Association (Count II); and a claim for detrimental reliance against the Austin Trust (Count III).

[1] Pocasset Park Association, Inc.

The Association has counter-claimed against Crown and cross-claimed against the Austin Trust. The Association asserts that it is entitled to a declaratory judgment that it exercised its right of first refusal in compliance with G. L. c. 140, § 32R (Count I); and seeks a declaratory judgment that the Austin Trust unreasonably delayed the Association's ability to close on its purchase and sale agreement (Count II). The Association further alleges that Crown tortiously interfered with the Association's contract to purchase the park (Count III); that Crown committed unfair and deceptive acts in violation of G. L. c. 93A by trying to persuade park residents to withdraw their support for the Association's purchase of the park in favor of Crown's acquisition of it (Count IV); and that Crown's alleged interference with the rights of Association members to exercise the statutory right of first refusal violated the Massachusetts Civil Rights Act, G. L. c. 12, § 11H-11I ("the MCRA") (Count V). For its part, the Austin Trust, having executed separate purchase and sale agreements with both Crown and the Association, seeks a declaration as to which of those agreements is valid.

The matter was tried jury-waived on August 15-22, 2022. The court heard testimony from 15 witnesses, took 43 exhibits into evidence, and took a view of the park. Based upon the credible evidence and all the reasonable inferences fairly drawn therefrom, the court makes the following findings of fact and rulings of law.

II. Subsidiary Findings of Fact

Crown is a Wyoming limited liability company in the business of acquiring and managing manufactured housing communities. It has a principal place of business in Santa Barbara, California, and it is owned and operated by Alexander Cabot and Heath Biddlecom. The Trust acquired title to the park in about 2015. The recent past has occasioned some troubles for the park. It went into a court ordered receivership over a failed septic system and although it

is a pleasant and homey "slice of the Cape," it has fallen into some level of disrepair and has a massive and expensive backlog of deferred maintenance and requires numerous much needed upgrades. An immediate injection of capital and a more professional level of management is necessary before the park slides any further into disrepair.

On November 15, 2019, the Austin Trust and Crown entered into a purchase and sale agreement for the park (the "Crown PSA") in the amount of $3,800,000, in an all-cash sale. The contemplated sale to Crown would not change or discontinue the use of the park. At that time, there was no homeowner's association. Paragraph 7B of the Crown PSA obligated the Austin Trust to "send the required notice (under Chapter 140 Section 32R) of such pending sale to each resident" of the park. Commencing 45 days after the last notice, Crown thereafter would have a period of 75 days to "review and to inspect or cause to be inspected all aspects of the physical and economic condition of the Subject Premises."

On November 20, 2019, the Austin Trust sent notices of the proposed sale and a copy of the Crown PSA by certified mail to the persons known by the Austin Trust to be residing in the park. Prior to that time, no statutory request for information had been made by any entity, organization, or persons eligible to do so. The information as to the recipients for the certified letter notice was derived from the rent roll maintained by Philip Austin, the trustee of the Austin Trust.

Upon receipt of the notice, several of the residents of the park became alarmed, fearing that a change would disrupt their housing situation. To be clear, this apprehension and alarm was not occasioned by any acts or omissions of Crown or its agents. Rather, in the court's judgment, some of the residents were reasonably apprehensive about the unknown. For as long as they had

resided at the park, they had been tenants of the Austin Trust, or its predecessor. Crown was completely unknown and an "outsider."

By early December of 2019, a small number of the residents had begun to meet, formally and informally, to commiserate and discuss options. Some of the residents, including Justine Shorey, were put in contact with a non-profit organization called the Cooperative Development Institute ("CDI"). CDI assists manufactured home communities in purchasing and operating their communities as cooperatives. The principal contact at CDI was Andrew Danforth. Mr. Danforth engaged with some residents to form an association cooperative and to assist them in their effort to exercise their putative statutory right of first refusal and to purchase the park.

ROC USA ("ROC") is affiliated with CDI and provides niche financing to manufactured homeowners desiring to acquire parks and become community owners. CDI provided Ms. Shorey, Ms. Robin Harris, and others a form to be used to gather park residents' signatures. This form was entitled "PETITION OF RESIDENTS TO INVOKE RIGHT OF FIRST REFUSAL UNDER GENERAL LAWS CHAPTER 140 SECTION 32R."

No effort was made by any of the signature gatherers to verify whether the park residents who were asked to sign the petition were owners or simply tenants, subtenants or guest residents at the park. Ms. Shorey and others gathering signatures were modestly aggressive, sometimes calling upon and visiting individual homeowners and residents many times asking that the form be signed. Some park residents were enthusiastic and readily signed, some refused to sign, and still others signed to be left alone. As will be discussed further, a small but statistically significant number of park residents signed the petition but later changed their minds.

Nora Gosselin was at all relevant times an employee of CDI. In early December of 2019, she was introduced to the park community in Pocasset. That month, Gosselin attended several

meetings on behalf of CDI at the park. She provided forms to the residents to secure resident owner signatures for the petition but did not personally participate in gathering those signatures. Gosselin testified that generally and, in this case, there would be a process to gather resident owners to sign the petition and thereafter members for the homeowner's association would be recruited.

By the end of December 2019, the small group of residents had coalesced. On December 23, 2019, some of the park's residents and owners formed the Association, a Massachusetts corporation, and elected officers. Some residents signed "Membership Agreements" to join the Association, but there was no credible evidence as to how many signed Membership Agreements were signed and collected. It is therefore unclear and unproven whether the members of the Association represented more than half of the resident owners. The Association has a functioning, well-meaning board of directors. Gosselin testified credibly that the Austin Trust cooperated fully with its obligations to the Association during the due diligence period.

CDI provided a small loan in the approximate amount of $100,000 to the Association. There is no evidence that the loan was approved by the Association's board of directors. The Association hired Attorney Philip Lombardo using some of the loaned funds.

On January 2, 2020, Attorney Lombardo notified the Austin Trust by letter that he was writing on behalf of the "residents" purportedly trying to "exercise their statutory right of first refusal to purchase the Community." Attorney Lombardo attached to the letter a purchase and sale agreement (the "Association PSA") signed by Ms. Shorey as president of the Association and containing terms similar to the Crown PSA. One difference between the two purchase and sales agreements, however, was that the Association PSA contained a mortgage contingency clause, in contrast to the all-cash purchase contemplated in the Crown PSA. Also attached to

Attorney Lombardo's letter were several sheets of the form petition provided by CDI with various signatures on it. Attorney Lombardo stated in his letter, without further verification or explanation, that those signatures represented "at least 51% of the residents of the Community indicating a desire to move forward with the purchase." The court does not find as a matter of fact that the representation was accurate. It is thus unproven.

There is no credible evidence that a majority of the members of the Association approved the Association PSA signed by Ms. Shorey or even knew of its terms. The evidence left considerable doubt that many members outside of the Association's board of directors have ever seen or read the Association PSA to this day.

The court finds that the petition did not contain valid signatures of at least 51% of the resident owners of the park. That is, the Association has not met its burden of proof. At the time, there were 81 units in the park. Each unit gets one vote. The required vote therefore needed to be forty-one (41) signatures or more. A total of forty-nine (49) purported to sign. A total of four (4) votes were duplicates, meaning that more than one person signed for a particular unit. A total of five (5) signatures were of subtenants who were residents but not owners on the units. A total of five signatures were owners but not residents.

The number of purportedly valid signatures was further diluted because on January 30 and February 1, 2020, a total of four owner residents (McDonald, Bernard, Harris, and Strehle) freely rescinded their prior approval and withdrew. Ms. Shorey, the president of the Association and the principal organizer of the Association's efforts to purchase the park, was not able to verify credibly under oath that at least forty-one resident owners of the 81 units in the park "joined the effort" to purchase the park. There was not otherwise any credible evidence that at least forty-one resident owners signed.

On January 7, 2020, based upon inaccurate legal advice, Philip Austin, as trustee of the Austin Trust, and Lila Austin, as beneficiary, signed the purchase and sale agreement ("the Association PSA") to sell the park to the Association and sent the signed Association PSA back to Attorney Lombardo.

The Austin Trust informed Crown of the situation. The court infers that Crown sought legal advice. Thereafter, Crown sent letters to park residents and Crown representatives personally went to the park and began speaking to residents. Some park residents had previously signed the petition and thereby indicated a desire to move forward with the Association's purchase of the park.

There is no credible evidence that the tactics or efforts of Crown and its agents were illegal, unfair, or deceptive in any way. Crown's visits were purely informational. The court rejects the Association's position that Crown engaged in "scare tactics" or acted wrongfully or illegally in any way. No more or less pressure tactics were used by the Crown representatives than had previously been employed by the residents affiliated with CDI and purporting to act on behalf of the Association. Crown's agents were advocating for their position and attempting, with varying success, to convince residents that Crown was a better option for them than a cooperative ownership arrangement. The court does not find that Crown used any type of coercive pressure, intimidation tactics, or threats on the residents. Crown used bona fide efforts to educate and persuade park residents that the Crown option was more beneficial to them.

The Crown representatives asked various owner residents to rescind or withdraw their earlier approval of the decision to proceed with the first refusal rights. There was nothing misleading, untruthful, or immoral about Crown's efforts to persuade residents to withdraw their support from the Association's efforts to purchase the park. Some residents agreed and withdrew

support for the Association's efforts, while others did not. The court finds that these withdrawals were all freely executed without duress or pressure. Those residents who changed their minds, are all intelligent, reasonable people who thought deeply about the issues and came to a different conclusion than they had reached in late 2019, and individually determined that Crown owning and operating the park would be in their best interests. Likewise, those that elected to proceed to attempt to purchase the park through the Association are all intelligent reasonable people as well. This is a small community, and everyone acted in their own best interests in good faith.

On February 20, 2020, Crown filed this lawsuit. The court credits the testimony of Crown's President, Alexander Cabot, that the sole and exclusive purpose of the lawsuit was to enforce Crown's contractual right to purchase the property. Crown's actions in filing the lawsuit were core petitioning activities, nothing less or more. Parties like Crown with legitimate legal disputes are entitled to seek redress and a remedy in our courts.

The court heard testimony from Joseph Hogan, who conducted a property condition assessment of the park in February 2020. The court finds that Mr. Hogan lacks the expertise to provide reliable figures for actual construction work to be done at the property. He did not demonstrate or even claim any expertise in this area. His report (Exhibit 43) is full of caveats that actual construction figures should be sought from construction professionals. Both his opinions from 2020 as to construction cost estimates and his subsequent highly generalized opinion regarding the increase in these costs since then are unreliable and not credible.

III. Ultimate Findings of Fact and Rulings of Law

A. General Right of First Refusal Principles

> "A right of first refusal is not an option to purchase property at a certain price, but a limitation on the owner's ability to dispose of property without first offering the property to the holder of the right at the third party's offering price."

Uno Restaurants, Inc. v. Boston Kenmore Realty Corp., 441 Mass. 376, 382 (2004); *Frostar Corp. v. Malloy*, 63 Mass. App. Ct. 96, 103 (2005). "The owner's obligation under a right of first refusal is to provide the holder of the right seasonable disclosure of the terms of any bona fide third-party offer." *Uno Restaurants, Inc.*, 441 Mass. at 382-383. "On notice of receipt of a bona fide offer from a third party, a right of first refusal ripens into an option to purchase according to its terms." *Greenfield Country Estates Tenants Ass'n., Inc. v. Deep*, 423 Mass. 81, 89 (1996); *Frostar Corp.*, 63 Mass. at 103. "[An] option to purchase . . . is an irrevocable offer by the [property title holder] to the [ultimate purchaser] to sell to him on the terms stated." *Kelley v. Ryder*, 276 Mass. 24, 26–27 (1931). The exercise of an option to purchase constitutes an acceptance of the "irrevocable offer" that the option represents. *Stapleton v. Macchi*, 401 Mass. 725, 729 n.6 (1988).

B. Statutorily Required Notice and Right of First Refusal for Sales of Manufactured Housing Parks

1. Statutory Notice Provisions

Before a manufactured housing community or park may be sold, the park owner must provide notice and, where certain conditions have been met, a right of first refusal under G. L. c. 140, § 32R. Section 32R(a) mandates that the owner of a manufactured housing community

> "shall give notice to each resident . . . of any intention to sell . . . all or part of the land on which the community is located for any purpose. Such notice shall be mailed by certified mail . . . within fourteen days after the date on which any advertisement, listing, or public notice is first made that the community is for sale . . . and, in any event, at least 45 days before the sale . . . occurs; provided, that such notice shall also include notice of tenants' rights under this section."

Because the Austin Trust gave notice to each resident of the Crown PSA at least 45 days before the sale, which sale has not occurred, the Association cannot show that the Austin Trust failed to comply with the notice requirement in § 32R(a).

The parties next debate what notice the Austin Trust was required to give park residents under § 32R(b). The requisite notice depends upon whether the sale would result in a change of use of the park or not. Pursuant to § 32R(b), before a manufactured housing community may be sold for any purpose that would result in a change of use or discontinuance,

> "the owner shall notify each resident of the community . . . of any bona fide offer for such a sale . . . that the owner intends to accept. Before any other sale . . . the owner shall give each resident such a notice of the offer only if more than fifty percent of the tenants residing in such community or in an incorporated homeowners' association or group of tenants representing more than fifty percent of the tenants residing in such community notifies the . . . owner. . . that such persons desire to receive information relating to the proposed sale . . . . "

"Before any other sale" refers to a sale which would *not* result in a change of use or discontinuance, as is the case here. Therefore, the Austin Trust was required to give each resident notice of Crown's offer to purchase the park *if* the Austin Trust received notice of a request for such information from (1) more than 50% of the tenants residing in the park, or (2) more than 50% of an incorporated homeowners' association or group of tenants representing more than 50% of the tenants residing in the park. See § 32R(b)

There is no evidence that the Austin Trust ever received a request from any of these categories of tenants or a homeowners' association for information relating to a bona fide offer for the sale of the park. Instead, the only request made by any such entity was the Association's January 2, 2020, letter with the Association PSA and the signed petition. The January 2nd communication was not a request under § 32R(b) (as by that time, the Austin Trust had disclosed the Crown PSA to park residents) but was an effort to assert a right to purchase the park under § 32R(c). It follows that the Austin Trust did not violate the notification requirements of § 32R(b). That does not, however, defeat the Association's ability to exercise a right to purchase the park.

2. Statutory Right to Purchase Provisions

General Laws c. 140, § 32R(c), provides that a group or association of residents

> "representing at least fifty-one percent of the manufactured home owners residing in the community which are entitled to notice under paragraph (b) shall have the right to purchase . . . the said community. . . . provided it (1) submits to the owner reasonable evidence that the residents of at least fifty-one percent of the occupied homes in the community have approved the purchase of the community by such group or association, (2) submits to the owner a proposed purchase and sale agreement. . . . on substantially equivalent terms and conditions within 45 days of receipt of notice of the offer made under subsection (b) of this section, (3) obtains a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement . . . . and (4) closes on such purchase . . . within an additional 90 days after the end of the 90 day period under clause (3)."

Therefore, for the Association to have a right to purchase the park in accordance with § 32R(c), the Association must have: (1) represented at least 51% of the manufactured home owners residing in the community; (2) given the Austin Trust reasonable evidence that at least 51% of the occupied homes in the park approved the Association's purchase of the park; (3) submitted to the Austin Trust a proposed purchase and sale agreement with substantially the same terms as the Crown PSA; (4) obtained a financing commitment within 90 days of executing the PSA; and (5) closed on the purchase within a certain period. Of these elements, the first and second are dispositive.[2]

With respect to the first element, there is no credible evidence that the Association represents at least 51% of the park's owner residents. The Association submitted no credible evidence as to how many signed Membership Agreements were collected and whether they were signed by resident owners. Therefore, the Association has not proven that it even had authority under § 32R(c) to assert a right to purchase the park. See § 32R(c).

[2] The court need not reach the issue raised belatedly by Crown of whether the Association satisfied the 90-day finance commitment deadline.

As a result, it matters less whether the Association met its burden on the second element by submitting to the Austin Trust reasonable evidence that at least 51% (at least 41 of the 81) of the occupied homes in the park approved of the Association's purchase of the park. The court notes, however, that the Association does not dispute that those signatures must be of resident owners. Of the 49 signatures originally submitted, only 35 were resident owners. Of those 35 resident owners, four later rescinded their approval for the Association to purchase the park, leaving the total number of resident owners in favor of the Association's purchase down to 31.

Under any view of the credible evidence, the Association did not successfully exercise its right of first refusal pursuant to G. L. c. 140, § 32R. Because the Association did not lawfully exercise its right of first refusal pursuant to G. L. c. 140, § 32R, the purchase and sale agreement executed between it and Austin Trust is not valid.

C. The Association's Remaining Claims

The invalidity of the Association PSA and the absence of any evidence that the Crown PSA is defective compels the conclusion that the purchase and sale agreement executed between the Austin Trust and Crown is valid. Furthermore, because the defect underpinning the Association PSA was the Association's noncompliance with G. L. c. 140, § 32R, the Association cannot prevail on its claim that the Austin Trust unreasonably delayed the ability of the Association to close on its purchase and sale agreement.

The Association's counterclaims against Crown fail for related reasons. The Association complains that Crown is liable for tortious interference with the Association PSA with the Austin Trust. To prevail on its claim of tortious interference with a contract, the Association must establish that it had a valid contract with the Austin Trust; that Crown knowingly induced the Austin Trust to break that contract; that Crown's interference was intentional and improper in

motive or means; and that the Association was harmed by Crown's actions. See *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 715-716 (2011). Fatal to this claim is the Association's inability to establish the core element, the validity of its PSA with the Austin Trust, or that acts or omissions by Crown caused harm to the Association. Therefore, Crown is entitled to judgment on the Association's counterclaim for tortious interference with a contract.

Nor has the Association proven that Crown violated G. L. c. 93A. As found above, Crown spoke directly with park residents during informational visits and exerted no more pressure than that employed by CDI. Crown did not provide misleading information to park residents and used bona fide efforts to inform and persuade some park residents to withdraw their support from the Association's efforts to purchase the park. In sum, there was no credible evidence that Crown or its agents engaged in any unfair or deceptive practices. Consequently, the Association is not entitled to judgment on its counterclaim against Crown for violation of G. L. c. 93A.

The Association's final claim is that Crown violated the MCRA by intimidating and coercing park residents into withdrawing their support for the Association's purchase of the park, and thereby interfering with the Association's right of first refusal to purchase the park. To prevail on its MCRA claim, Association had to prove that Crown interfered with or attempted to interfere with the Association's exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth through the use of threats, intimidation or coercion. See *Swanset Dev. Corp. v. Taunton*, 423 Mass. 390, 395 (1996).

> "Threat . . . involves the intentional exertion of pressure to make another fearful or apprehensive of injury or harm . . . . Intimidation involves putting in fear for the purpose of compelling or deterring conduct . . . [and coercion] is the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done."

Planned Parenthood League of Massachusetts v. *Blake*, 417 Mass. 467, 474 (1994) (internal citations and quotations omitted).

As explained above, Crown did not engage in any coercive, threatening, or intimidating conduct when its agents informed park residents of the benefits of Crown's ownership of the park and the risks of the Association's ownership of the park. As a result of Crown's legitimate, bona fide efforts, some park residents withdrew their signatures from the Association's petition. The Association lacked sufficient support (and authority) to exercise lawfully its right of first refusal and to purchase the park. The Association has not proven that Crown used intimidation, coercion, or threatening tactics or that it interfered with the rights of the Association. Crown is, therefore, entitled to judgment on the Association's MCRA counterclaim.

ORDER

For the foregoing reasons, it is **DECLARED** and **ADJUDGED** that

(1) the Pocasset Park Association, Inc. did not lawfully exercise a statutory right of first refusal pursuant to G. L. c. 140, § 32R (Count I of Pocasset Park Association, Inc.'s counterclaim against Crown Communities, LLC and crossclaim against Philip Austin, as Trustee of the Charles W. Austin Trust);

(2) the purchase and sale agreement, which was executed between Philip Austin, as Trustee of the Charles W. Austin Trust, and Crown Communities, LLC is valid and enforceable (crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.);

(3) the purchase and sale agreement executed between Philip Austin, as Trustee of the Charles W. Austin Trust and Pocasset Park Association, Inc. is not valid or enforceable

(crossclaim and counterclaim of Philip Austin, as Trustee of the Charles W. Austin Trust, against Crown Communities, LLC and Pocasset Park Association, Inc.);

(4) Philip Austin, as Trustee of the Charles W. Austin Trust, is obligated to sell Pocasset Park to Crown Communities, LLC, and not to Pocasset Park Association, Inc. (Count II of Crown Communities, LLC's complaint); and

(5) Pocasset Park Association, Inc. has not proven that Philip Austin, as Trustee of the Charles W. Austin Trust, unreasonably delayed the ability of Pocasset Park Association, Inc. to close on its purchase and sale agreement (Count II of Pocasset Park Association, Inc.'s cross-claim against Philip Austin, as Trustee of the Charles W. Austin Trust).

It is **ORDERED** that judgment shall enter in favor of Crown Communities, LLC and against Pocasset Park Association, Inc. on the latter's counterclaims that Crown Communities, LLC: (1) tortiously interfered with Pocasset Park Association, Inc.'s contract to purchase Pocasset Park (Count III), (2) violated G. L. c. 93A (Count IV), and (3) violated the Massachusetts Civil Rights Act (Count V).

It is further **ORDERED**, consistent with the prayers for relief of Crown Communities, LLC that its claims against Philip Austin, as Trustee of the Charles W. Austin Trust, for breach of contract (Count I) and detrimental reliance (Count III) are **MOOT**.

No party shall be entitled to costs.

MICHAEL K. CALLAN
Justice of the Superior Court

DATE: December 28, 2022