

A seller owns a 400-acre tract of land with 5,000 feet of frontage on a county highway. The seller and a buyer entered into a written agreement for the sale of a portion of the tract identified only as "a parcel of land, containing not less than 100 acres and having not less than 1,000 feet of frontage on the county highway, whose exact location and dimensions are to be determined by the parties hereto, at a price of \$8,000 per acre."

Shortly after the execution of the agreement, the parties met to stake out the parcel of land to be sold, but they could not agree. The disagreement intensified, and the seller repudiated the contract.

The buyer has sued the seller for specific performance. The seller has asserted all available defenses.

Is the buyer entitled to specific performance of the contract?

- A. No, because a contract for the sale of real property that requires further agreement on an essential element cannot be specifically enforced.
- B. No, because the purchase price was not fixed by, nor determinable under, the contract terms.
- C. Yes, because the contract bound the parties to act in good faith and to agree upon the specific land to be conveyed.
- D. Yes, because the equity powers of the court enable the court to appoint a master, or to take other appropriate action, to identify the land to be conveyed.

Explanation:

Under the **statute of frauds**, contracts for the **sale of land** (ie, real estate contracts) are enforceable only if they are in writing, are signed by the party against whom enforcement is sought, and **contain all essential terms**. Essential terms include:

the identity of the parties

words of intent to buy or sell

a **description of the property** and

the sales price.

Although courts may liberally construe the property-description requirement, the writing must contain some **evidence** of the **specific property to be sold**. Here, the writing expressly stated that the parties had yet to agree on what land was to be conveyed. Therefore, the statute of frauds makes the contract unenforceable.

(Choice B) The sales price is also an essential term. It can be listed in gross (eg, at a set price) *or* determined by the actual quantity of land sold (eg, at a per-acre price). Therefore, the agreement to purchase the land "at a price of \$8,000 per acre" satisfies this requirement.

(Choices C & D) The statute of frauds requires that a contract for the sale of land identify the land to be sold. Good faith and equity cannot provide relief for this omission.

Educational objective:

The statute of frauds requires that land-sale contracts contain all essential terms—ie, the identity of the parties, words of intent to buy or sell, a description of the property, and the sales price.

References

73 Am. Jur. 2d Statute of Frauds §§ 289, 305, 325, 329 (2020).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Essential terms for real estate contracts

