

HAZEL & CO., INC. PENSION PLAN

v.

PAMELA W. BARNABY, AS TRUSTEE OF
THE GREENVILLE, MAINE REALTY TRUST

Submitted on Briefs October 2, 2008

Decided October 23, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, and
GORMAN, JJ.

MEMORANDUM OF DECISION

Hazel & Co., Inc. Pension Plan dated July 18, 1978 (Hazel) appeals from a judgment entered by the Superior Court (Piscataquis County, *Cuddy, J.*) in favor of Pamela W. Barnaby, as Trustee of the Greenville, Maine Realty Trust u/d/t dated July 18, 1995 (Trustee), following a bench trial. Hazel contends that the court erred in declining to order specific performance on a contract that it asserts compelled the Trustee to convey a parcel of real property. The Trustee cross-appeals, contending that the court erred in enforcing a choice of law clause in the contract requiring the application of New Hampshire law.

We do not reach the choice of law issue raised by the Trustee because on this record the Superior Court did not clearly err in finding that there was no meeting of the minds between the parties concerning the price to be paid for the property, which is an essential element for the formation of a valid contract.¹ Accordingly, the court correctly concluded that no enforceable contract was formed under either New Hampshire or Maine law. *See Glick v. Chocorua*

¹ The parties failed to specify a purchase price and otherwise define their respective obligations if the appraisal of the property was less than \$400,000.

Forestlands Ltd. P'ship, 949 A.2d 693, 703 (N.H. 2008) (stating that “[a] valid, enforceable contract requires . . . a meeting of the minds on all essential terms,” that “[t]he question of whether a ‘meeting of the minds’ occurred is a factual question to be determined by the trier of fact,” and that the New Hampshire Supreme Court “will sustain a trial court’s findings . . . unless they are lacking in evidentiary support” (quotation marks omitted)); *Rosenthal v. Rosenthal*, 543 A.2d 348, 354 (Me. 1988) (stating that whether a meeting of the minds existed must be determined as a matter of fact, and that “[t]he parties’ intent is a heavily fact-bound question which the jury must decide”).

Furthermore, contrary to Hazel’s contention, the trial court did not err in concluding that the remedy of specific performance was unavailable, because the record supports its finding that Hazel knew the Trustee lacked actual authority to convey the property on behalf of a trust beneficiary who was a minor. See N.H. RSA 564-B:10-1012(a) (2008) (“A person . . . who in good faith and for value deals with a trustee, *without knowledge that the trustee is exceeding or improperly exercising the trustee’s powers* is protected from liability as if the trustee properly exercised the power.”) (emphasis added); 18-B M.R.S. § 1012(1) (2007).

The entry is:

Judgment affirmed.

**Attorney for Hazel & Company, Inc., Pension
Plan Dated July 18, 1978:**

Michael J. Sullivan, Esq.
Pierce Atwood, LLP
One Monument Square
Portland, Maine 04101

Stephen L. Tober, Esq.
Tober Law Offices, P.A.
381 Middle Street
PO Box 1377
Portsmouth, New Hampshire 03802-1377

**Attorney for Pamela W. Barnaby, as
Trustee of the Greenville Maine Realty
Trust u/d/t Dated July 18, 1995:**

Mark E. Dunlap, Esq.
Norman, Hanson & DeTroy, LLC
415 Congress Street
PO Box 4600
Portland, Maine 04112-4600