

Publication of Favorable Appeals Court Decision

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MASSACHUSETTS APPEALS COURT RULES IN FAVOR OF BOYLE | SHAUGHNESSY CLIENT AFFIRMING BREACH OF OFFER TO PURCHASE REAL ESTATE

The Massachusetts Appeals Court recently issued a decision in *Assets Solutions, LLC v. Jose M. Quintero and Carlos R. Castillo (Rule 1:28 Decision)*, affirming a decision of the Massachusetts Land Court allowing the Motion to Dismiss filed by Boyle | Shaughnessy's client Carlos Quintero based upon Asset Solutions' change of a material term contained in the Offer to Purchase ("OTP") real estate when it presented its proposed purchase and sale agreement ("P/S"). In reaching its decision, the Appeals Court followed Boyle | Shaughnessy's analysis of the controlling principles of Massachusetts law.

In this matter, Assets Solutions approached Quintero about selling his three-family home located in Jamaica Plain, Massachusetts for \$850,000.00. Pursuant to the OTP, an executed P/S conforming to the terms of the OTP was to be delivered on March 21, 2017. After several extensions Assets Solutions' attorney provided Quintero's attorney with a draft P/S and Rider. The draft P/S changed the material terms to the OTP specifically, the Rider to the P/S indicated that "prior to the time for performance, and as a condition precedent to bias duty to tender the sale proceeds as set forth herein, the seller shall produce to the buyer for each and every tenant, a duly executed tenant estoppel certificate, signed by each tenant and dated within 10 days of the time of performance". The OTP however required the "seller will introduce buyer to tenants at signing of the purchase and sale agreement so that the buyer may obtain estoppel certificates, tenant will agreements and commence condition procedures before closing..." The draft P/S included statements that the property will be delivered "free of all tenants." Mr. Quintero declined to accept the draft P/S and because no P/S was executed prior to the P/S delivery date, the transaction was void. Asset Solutions then filed a motion for lis pendens in the Land Court seeking to enforce the OTP.

The Appeals Court found that the three proposed terms on the P/S relating to the condition of tenancy were conflicting and material with respect to the actions that Asset Solutions and Quintero must take to complete the sale of the property. The court relied on *Coldwell Banker/Hoonanon v. Shostack*, 62 Mass. App. Ct. 635, 640 (2004) wherein it affirmed a disagreement as to the vacancy of part of the property, determining that it was material and rendering an OTP non-binding. According to the court discrepancies between provisions in the P/S were material term rendering the OTP unenforceable as a matter of law, and therefore Mr. Quintero did not breach the OTP when he refused to execute the P/S and the OTP expired.

Read the decision: [ARW Appeals Court Decision \(PDF\)](#)