VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 13th day of April, 2017.

LongView International Technology Solutions, Inc., et al., Appellants,

against Record No. 160228
Circuit Court No. CL2014-14312

Terry Lin, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the judgment below should be affirmed.

The trial court concluded that an informal "Term Sheet" the parties signed constituted a binding contract. LongView International Technology Solutions and the other defendants challenge this holding.[1] We similarly conclude, albeit on different reasoning, that the Term Sheet is a binding agreement. Therefore, we affirm the judgment of the trial court.

After a once profitable collaboration turned sour, LongView sued Terry Lin. Terry and his wife Sandra Lin responded with claims of their own. The dispute centered on whether Mr. Lin held an ownership interest in LongView and the value of Mrs. Lin's stock in the company. Four days before the trial date, the parties engaged in a mediation session which lasted twelve hours and which culminated in a document the parties called a "Term Sheet."

The Term Sheet is a typed two-page document that bears the parties' signatures. It provides that it was "made effective January 9, 2014, . . . to set forth the terms of the settlement of any and all claims by or between these parties." Three of the six numbered paragraphs state the following:

> 2. LongView shall pay to Sandra Lin the sum of three million dollars ($3,000,000.00) over a four-year period at an interest rate the equivalent of the prime rate plus two percent (2.0%).

[1] For the sake of brevity, we will refer to the defendants collectively as LongView.

> Payments shall be made on a quarterly basis.
>
> 3. At the time LongView is sold, LongView shall pay to Sandra Lin, out of the proceeds of such sale, the sum of twelve million dollars ($12,000,000.00);
>
> 4. The terms of the settlement are to be held in strict confidence by the parties and the parties hereby agree to injunctive relief and actual damages for breach of said confidentiality.

The following language appears above the signature line: "the undersigned have executed this Term Sheet intending to be fully bound by its terms."

Afterwards, for a period of approximately 10 months, the parties continued to negotiate and to trade drafts of a more formal settlement agreement. The negotiations centered on working out the details of what constituted a "sale" of LongView under paragraph 3 of the agreement and whether Mrs. Lin's rights should be subordinate to those of a bank. Negotiations reached an impasse, and the Lins filed suit to enforce the Term Sheet. LongView and the other defendants denied the existence of an enforceable agreement.

After hearing evidence, the trial court concluded that the Term Sheet was a binding contract. The court held that paragraph 2 was sufficiently definite to be enforced and determined that "[t]he start date [for the quarterly payments] was the date of the agreement," i.e. January 9, 2014, and that the first quarterly payment was due three months from the start date, i.e. April 9, 2014. *See id.* at 767-68. The court entered an order awarding judgment for Mrs. Lin in the amount of $1,534,536, which represented "the payments and interest due to date and the post-judgment rate of interest shall be 5.25% and . . . Longview shall pay this amount within 60 days." The court declined to construe paragraph 3, reasoning that the Lins were not claiming a breach of that provision and, therefore, the issue was "not ripe."[2]

Ordinarily, the question of whether a document constitutes a contract is a question of law. *Valjar, Inc. v. Maritime Terminals, Inc.*, 220 Va. 1015, 1018, 265 S.E.2d 734, 736 (1980). On appeal, we review such legal questions *de novo*. *Babock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 178, 788 S.E.2d 237, 243 (2016).

---

[2] The trial court did not sever paragraph 3, it declined to interpret the provision.

LongView contends that the trial court erred in concluding that the Term Sheet constituted an enforceable agreement. It argues that the parties explicitly contemplated negotiating additional material terms and that they never reached an agreement on those terms. LongView further argues that the trial court erred in concluding that it could enforce paragraph 2 of the Term Sheet when there was no mutual assent, certainty or completeness to the third paragraph of the Term Sheet.

The threshold question is whether the parties reached an agreement. "[T]he essential elements of a valid contract must exist to support a binding compromise settlement; there must be a complete agreement including acceptance of an offer as well as valuable consideration." *Snyder-Falkinham v. Stockburger*, 249 Va. 376, 381, 457 S.E.2d 36, 39 (1995). "Ultimate resolution of the question whether there has been a binding settlement involves a determination of the parties' intention, as objectively manifested." *Id.*

The language of the Term Sheet objectively indicates the existence of an agreement. It states that it is "a settlement agreement" that it is "made effective" on the date it was signed, and that the parties executed the agreement "intending to be fully bound by its terms." The Term Sheet "set[s] forth the terms of the settlement of any and all claims by or between these parties." The language of the Term Sheet makes manifest that the parties reached a complete and binding contractual settlement, rather than an agreement to negotiate toward an agreement at a later date.[3]

The Term Sheet does by its express terms contemplate that the parties would draft a more comprehensive agreement. However, where, "as here, the parties are fully agreed upon the terms of the settlement and intend to be bound thereby, 'the mere fact that a later formal writing is contemplated will not vitiate the agreement.'" *Id.* at 385, 457 S.E.2d at 41 (quoting *North America Managers, Inc. v. Reinach*, 177 Va. 116, 121, 12 S.E.2d 806, 808 (1941)). *See also*

---

[3] Although not necessary to our resolution, LongView's conduct also supports this reading of the Term Sheet. First, as found by the trial court, after the parties completed the Term Sheet, they persuaded the trial court to cancel the upcoming trial on the basis that they had reached a settlement. Second, LongView filed a counterclaim alleging the Lins had breached the confidentiality provisions of the Term Sheet. Finally, LongView contended in a motion to seal that the Lins were required to honor the confidentiality clause of the Term Sheet. In this motion, they represented the Term Sheet as a binding settlement agreement. These representations are consistent with the understanding that the Term Sheet is a binding agreement rather than a nullity.

Agostini v. Consolvo, 154 Va. 203, 212, 153 S.E. 676, 679 (1930) ("Where the minds of the parties have met and they are fully agreed and they intend to be bound there is a binding contract, even though a formal contract is later to be prepared and signed."). The Term Sheet makes clear that the contemplated formal contract was to set forth "more fully" the "terms of settlement" identified in the Term Sheet – not diverge from those terms.

LongView also argues that the Term Sheet is unenforceable because there was no mutual assent or certainty or completeness for paragraph 3 of the Term Sheet. The trial court concluded it need not reach the issue because it was not "ripe." We disagree with this approach. The provisions of the Term Sheet constitute interrelated parts of a comprehensive settlement. Paragraph 2, which calls for installment payments totaling $3 million, cannot be enforced if a material term in the contract, paragraph 3, is hopelessly vague. A contract is unenforceable when a material term in the agreement "is too vague and indefinite to be enforced." *Allen v. Aetna Casualty & Surety Co.*, 222 Va. 361, 364, 281 S.E.2d 818, 820 (1981). *See also Smith v. Farrell*, 199 Va. 121, 128, 98 S.E.2d 3, 7 (1957).

Consequently, we proceed to determine whether paragraph 3 is too indefinite for enforcement. In so doing, we are mindful that "the law does not favor declaring contracts void for indefiniteness and uncertainty, and leans against a construction which has that tendency." *Reid v. Boyle*, 259 Va. 356, 367, 527 S.E.2d 137, 143 (2000). The indefiniteness "must reach the point where construction becomes futile" for a court to declare the contract "meaningless" and to "justify the conclusion that in reality it accomplished nothing." *Heyman Cohen & Sons, Inc. v. M. Lurie Woolen Co.*, 133 N.E. 370, 371 (N.Y. 1921) (Cardozo, J.). Invalidating a contract on the ground that it is indefinite should be "a last resort." *Id.*

Paragraph 3 contemplates a payment of $12 million to Mrs. Lin when LongView is "sold." A contract calling for "sale" of an item of personal property is readily enforceable. What constitutes the sale of a closely held corporation presents a more difficult question. Nevertheless, we conclude that paragraph 3 is not so fatally indefinite as to be unenforceable. Certainly if LongView's stock is sold in its entirety to a new owner, there would be no dispute that the company had been sold. Other possibilities, such as the sale of some or all of the assets of the corporation, or a transfer of less than the entirety of LongView's stock, may call for extrinsic evidence concerning the parties' intent, or for expert testimony to determine whether

the act in question constitutes a sale. The term "sale" may be ambiguous as applied to certain factual situations, but we conclude that it is not indefinite as a matter of law. A sale of LongView is also qualified by the requirement in the Term Sheet that there be "proceeds" from the sale. There must be a "sale" and the sale must generate "proceeds" to qualify under paragraph 3.

It is also true that the parties' subsequent negotiations to amplify the spare language of paragraph 3 reached an impasse. The failure of these subsequent negotiations, in no small part due to LongView's insistence on a subordination clause not contemplated by the Term Sheet, does not alter the fact that the parties did reach an agreement on the essential terms of a settlement and, therefore, the settlement constitutes an enforceable contract. *Snyder-Falkingham*, 249 Va. at 385, 457 S.E.2d at 41.

We also conclude that *Golding v. Floyd*, 261 Va. 190, 539 S.E.2d 735 (2001), upon which LongView relies, is distinguishable. The agreement at issue in that case contained a specific clause which specified that the settlement was "subject to execution of a formal agreement." *Id.* at 193, 539 S.E.2d at 737. We concluded that this "subject to" clause evinced an intent by the parties to avoid being bound until a formal contract had been prepared, approved, and executed. *Id.* The Term Sheet does not contain such a clause and, therefore, it was not dependent for its efficacy upon the execution of a formal contract. Instead, the language of the Term Sheet repeatedly manifests an intent by the parties to effectuate a binding settlement agreement.

LongView also argues that the trial court erred in supplying a start date of January 9, 2014 for the payments due under paragraph 2 of the Term Sheet. The absence of a start date to begin payment of the first installment on the $3 million does not render the contract fatally vague. When no time is specified in an agreement to pay money, the law will presume an intent to pay the money on demand. *Young v. Ellis*, 91 Va. 297, 301, 21 S.E. 480, 482 (1895). If the agreement is to pay money on an annual basis, the law will presume that the parties intended to pay at the end of the year from the date of the agreement. *Id.* In *McDaniel v. Daves*, 139 Va. 178, 123 S.E. 663 (1924), we held that

> The mere fact that the time of payment of a sum of money is not mentioned in a contract, otherwise complete, does not

> render the contract void, but the omission may be supplied by legal intendment and the contract thereby rendered complete in that respect. Such is the rule applicable to a promise to pay money, where the time of payment is not expressed in the contract, and cannot be ascertained from the language of the contract.

Id. at 188, 123 S.E. at 666. We find no error in the trial court's construction of the contractual provisions regarding the timing and amounts of payments due under paragraph 2 of the Term Sheet.

The Lins assign cross-error to the trial court's refusal to order LongView to pay in one lump sum the entire $3 million sum due to Mrs. Lin under paragraph 2. "[The] object of the law in awarding damages is to make amends, or reparations, by putting the party injured in the same position, as far as money can do it, as he would have been if the contract had been performed." *Appalachian Power Co. v. John Stewart Walker, Inc.*, 214 Va. 524, 535, 201 S.E.2d 758, 767 (1974) (quoting *Lehigh Portland Cement Co. v. Virginia Steamship Co.*, 132 Va. 257, 270, 111 S.E. 104, 109 (1922)). As the Term Sheet makes clear, the parties contemplated payments in quarterly installments. The trial court's order faithfully accomplishes this object.

For these reasons, we affirm the judgment below.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Clerk