



Specific Performance: Still the Law of (the) Land

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A new California Court of Appeal decision – *Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463 – affirmed the long-standing statutory presumption in California law that land is unique and clarified that acquisition of real property for an investment purpose does not automatically transform a contract for sale of land into a mere business opportunity, compensable in breach by monetary damages alone. (Civ. Code, § 3387.)

In *Vallas*, an investment company contracted with a property owner to purchase a large parcel of coastal property in northern San Diego county. After the seller cancelled the contract to pursue a higher offer, the buyer sued for breach of contract and sought specific performance, i.e. an order requiring the land to be sold to the buyer in accordance with the breached contract. The trial court found that the seller had breached the contract but refused to force the sale. The trial court decided that monetary damages were sufficient because the primary motivation of the buyer was to quickly turn the property for a profit.

The California Court of Appeal disagreed, finding the seller did not make the showing necessary to overcome the presumption of land as unique (i.e. that the property was essentially interchangeable with other parcels based on location, physical attributes and other factors). Although the California appellate courts have provided little guidance on the scope of a breaching party's burden to disprove the presumption of uniqueness, one commentator has pointed out that a seller must show more than "abstract replaceability but concrete availability of reasonably interchangeable property at terms within the buyer's means." (Bird, "Toward Understanding California's Rebuttable Presumption that Land is Unique," *California Real Property Journal*, No. 3 (Summer 1983).)

Finding the seller's burden to rebut the presumption of uniqueness unsatisfied, the Court decided that a buyer's motivation to profit from resale did not make monetary damages an adequate substitute for the property. In fact, "[t]he property was unique not *merely* because of its physical attributes and location, but

also because of its investment potential and reasonableness of the agreed upon contract price." (*Vallas*, at p. 23, italics added.) The Court further found little evidence that the buyer could have contracted for another similar parcel and directed the trial court to order the sale.

This decision is significant in that it embraces property's investment potential as a reason to validate its unique value to a buyer, not to deny it. By doing so, the court bolsters the strength of California's statutory presumption of land as unique. Importantly, in the current market, recalcitrant sellers may try to point to available properties on the market in order to overcome the presumption of uniqueness. According to *Vallas*, the existence of other similar properties *alone* would not decide the matter. A seller would also have to show that those available properties would offer the buyer the same opportunity to profit as the parcel in dispute. This requirement presents a considerable obstacle to a seller and reinforces the buyer's right to use the remedy of specific performance to enforce a contract for the sale of land.

To view a copy of the decision, please [click here](#).