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Under TOPA, a Bona Fide Offer Cannot Be Based on Future Market Value

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On September 22, 2016, in *Parcel One Phase One Assoc.., LLP v. Museum Square Tenants Ass'n., Inc.*, No. 15-CV-609, the District of Columbia Court of Appeals affirmed the trial court's grant of summary judgment in favor of the tenants' association that Parcel One's offer of sale was not a bona fide offer under the Tenant Opportunity to Purchase Act ("TOPA"), *see* § 42-3404.02. The Court held that the offer was not bona fide as required under TOPA because it was not an "objectively, good faith, honest offer of sale" ; instead, it was based upon an estimated future post-development value," not reduced to a present value. *Id.* at 19, citing *Phillips*, infra.

The suit arose from the Museum Square Tenants Association's efforts to prevent Parcel One from requiring the residents of an apartment building located at 401 K Street, NW, in Chinatown to vacate involuntarily in response to a $250 million offer of sale. Parcel One based its $250 million offer to the tenants on future market value after construction of a mixed used development of apartments, condominiums, and commercial space and without any adjustment to present value. Museum Square argued that the offer was not bona fide under TOPA and that the proper valuation was present market value, which its expert determined to be $68 million. The trial court agreed and the Court of Appeals affirmed.

Relying upon *Twenty-First St. Tenants' Ass'n. v. Phillips Collection*, 829 A.2d 201 (D.C. 2003) ("*Phillips*"), Parcel One argued that TOPA required only a "good faith, honest offer." In a partial victory for the landlord, the Court agreed that the *Phillips decision* (a decision based on whether an offer was bona fide under TOPA in the absence of a third-party contract) means that an offer of sale under TOPA does not necessarily need to be based on current market value, but simply requires an objectively good faith, honest basis. The Court then concluded, however, that "no reasonable third party purchaser" would have been willing to pay $250 million at the time of Parcel One's offer of sale, noting that it did not need to accept Museum Square's expert opinion "to be confident that its [the building's] value was far less than the $250 million offer of sale." No. 15-CV-609 at 23.

The opinion can be found here.

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