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ARTICLE

California Supreme Court Reduces Terms Required To Specifically Enforce A Real Property Sales Contract To Three P's: Parties, Price, And Property Description

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When is a contract to purchase real property sufficiently certain to be specifically enforced? A contract is not specifically enforceable if "the terms are not sufficiently certain to make the precise act which is to be done clearly ascertainable."[1] In other words, the parties must have a meeting of the minds on all essential terms. With respect to the sale of real estate, at least, courts historically declined to supply material terms upon which the parties had not expressly agreed. "An agreement for the sale of real property will not be specifically enforced unless it not only contains all the material terms, but also expresses each in a reasonably definite manner."[2] "If something is reserved for the future agreement of both parties, the promise can give rise to no obligation until such future agreement. Since either party, by the very terms of the promise, may refuse to do anything to which the other party will agree, it is impossible for the law to affix any obligation to such a promise."[3] "The legal principles requiring that material terms be set forth in a reasonably definite manner have been applied in denying specific performance of agreements which are incomplete, indefinite or uncertain with respect to the terms of payment of deferred balances or the terms of encumbrances representing such deferred balances."[4]

The usual list of "essential terms" for specific enforcement of a contract for purchase and sale of real estate comes from a decision by the

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California Supreme Court in *King v. Stanley*: "The material factors to be ascertained from the written contract are the *seller*, the *buyer*, the *price* to be paid, *the time and manner of payment*, and the *property* to be transferred, describing it so it may be identified."[5]

It now appears that the list of "essential terms" has grown somewhat shorter. In December 22, 2008, the California Supreme Court in *Patel v. Liebermensch*[6] decided that a specifically enforceable contract arises when the contract identifies the *parties*, the *price*, and a reasonably certain description of the *property*. If the parties do not agree on "non-essential" terms which might typically be included in a real estate transaction—such as closing date, title insurance, financing terms, due diligence periods and the like—the court will supply reasonable terms.[7]

PRIOR CASE LAW

Civil Code section 3390 provides that specific enforcement will not lie as to an "agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."[8] Historically, courts seemed to impose a more exacting degree of specificity relative to contracts for the sale of real estate than that enunciated in *Patel*. In *Mueller v. Chandler*,[9] for example, the defendant agreed that the sum of $10,000.00 contained in her promissory note could be recorded against the subject property and that she would repay the note if she sold the property prior to its due date. Plaintiff sued for specific performance requiring defendant to execute a deed of trust. The court of appeal held that the writing was "wholly insufficient" to support the claim because it failed to specify the "nature of any additional document which is to be executed, whether it is a mortgage or trust deed or what any of the terms of the mortgage or trust deed may be..."[10] As stated by the court:

> In order to warrant a decree of specific performance thereof, a contract must be definite and certain, and, further, a contract must be free from doubt, and vagueness, as well as from ambiguity, in its essential elements and in all, or at least all its material, terms. Clearness is required. *The terms of the contract must be so clear, definite, certain, and precise, and free from obscurity or self-contradiction, that neither party can reasonably misunderstand them, and the court can understand and interpret them, without conjecture and with-*

> *out supplying anything or supplanting vague and indefinite terms by clear and definite ones through forced or strained construction*. The terms must be so clear that the court can determine what the contract is and be able to require that the specific thing agreed to be done shall be done. A greater degree of certainty is required in a suit in equity for specific performance than in an action at law for damages.[11]

The *Mueller* court cited a "legion" of cases denying specific enforcement for lack of specificity expressed in a reasonably definite manner, including seven prior court of appeal decisions and one prior supreme court decision. (*Bonk v. Boyajian*, *Colorado Corp., Ltd. v. Smith*, *Gould v. Callan*, *Berven v. Miller*, *Federated Income Properties v. Hart*, *Roberts v. Lebrain*, *Bruggeman v. Sokol*, and *Buckmaster v. Bertram*.)[12] The *Mueller* court also held that "these principles have been applied in denying specific performance of agreements which are incomplete, indefinite or uncertain with respect to the terms of payment of deferred balances or the terms of encumbrances representing such deferred balance."[13]

Courts have also refused to specifically enforce contracts which contained a subordination clause for a deed of trust that was not sufficiently certain. In *Magna Development Co. v. Reed*,[14] the court of appeal held that a contract by which buyers took the property in exchange for a deed of trust that was to be subordinated to a construction loan was not sufficiently certain. Before reaching this conclusion, the court summarized the applicable rules as follows:

> "the modern trend of the law is to favor the enforcement of contracts, to lean against their unenforceability because of uncertainty, and to carry out the intentions of the parties if this can feasibly be done… . It is well established, however, that where a party seeks specific performance of a contract, the terms of the contract must be complete and certain in all particulars essential to its enforcement. An agreement for the sale of real property will not be specifically enforced unless it not only contains all the material terms, but also expresses each in a reasonably definite manner… .These principles have been applied in denying specific performance of agreements which are incomplete or uncertain with respect to the terms of payment of deferred balances or the terms of

> encumbrances representing such deferred balances.... Neither law nor equity, however, requires that every term and condition of an agreement be set forth in the contract. The usual and reasonable terms found in similar contracts can be looked to, unexpressed provisions of the contract may be inferred from the writing, external facts may be relied upon, and custom and usage may be resorted to in an effort to supply a deficiency if it does not alter or vary the terms of the agreement."[15]

The *Magna* court then went on to find that the expression of the terms of the subordination was incomplete and the omissions could not be supplied by reference to custom and usage.

This is not to say that the absence of any clearly defined term routinely defeated specific performance prior to *Patel*, and certainly the courts had not drawn bright lines regarding the required specificity. In *King v. Stanley*,[16] the California Supreme Court upheld specific performance of a contract of sale of two lots. The subject contract arose from correspondence between the parties. The court held that an "agreement for the purchase or sale of real property does not have to be evidenced by a formal contract drawn with technical exactness in order to be binding. A memorandum of the agreement is sufficient, and this may be found in one paper or in several documents, including an exchange of letters or telegrams or both, or in a letter from the vendor to the purchaser which is accepted and acted upon by the latter.[17] As stated by the court, "Equity does not require that all the terms and conditions of the proposed agreement be set forth in the contract. The usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement. In the absence of express conditions, custom determines incidental matters relating to the opening of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like."[18] "The material factors to be ascertained from the written contract are the seller, the buyer, the price to be paid, the time and manner of payment, and the property to be transferred, describing it so it may be identified." The court held that all of these terms were clearly identified, and rejected the assertion that a failure to agree on a certificate of title or title insurance were essential terms.[20]

Thus, before *Patel*, it was clear that usual and customary terms could be inferred as to non-essential elements of the contract. *Patel*, how-

ever, appears to define the essential terms more narrowly than did its predecessors.

THE *PATEL* DECISION

Factual Background

The Liebermensches owned a condominium in San Diego. On July 25, 2003, Mr. Liebermensch sent Mr. Patel the following proposal:

> We propose to rent our condominium at 7255 Navajo Road, Apt. # 370, San Diego, CA 92119 at a monthly rate of $1,400.00 starting August 7, 2003 for one year ending August 6, 2004; with a security deposit of $1,200.00 and the following option to buy: [¶] Through the end of the year 2003, the selling price is $290,000. The selling price increases by 3% through the end of the year 2004 and cancels with expiration of your occupancy. Should this option to buy be exercised, $1,200.00 shall be refunded to you. [¶] Please indicate your acceptance by signing below and returning to me at the above referenced fax.

Patel signed the proposal. The parties signed a rental agreement which referenced and incorporated the signed proposal. In July 2004, Patel sent Liebermensch notice that he was exercising his purchase option for $298,700, and that he wished to complete the transaction as soon as possible because interest rates were low. Liebermensch sent Patel a purchase agreement that referenced Patel's exercise of the option. The proposed purchase agreement included an "as is" clause, a 10 percent deposit, and a 90 day close of escrow with a 30 day extension for a 1031 exchange (which the parties had not discussed). Patel modified the "as is" clause by giving himself an option to cancel if not fully satisfied, and shifted the burden of escrow expenses to the seller if escrow went beyond 30 days, including a reduction of the deposit (because Patel would bear the risk of interest rates increasing). Liebermensch rejected the proposed amendment and insisted on his own terms. Patel filed suit for specific performance.

The jury found for Patel and the trial court ordered specific performance within 60 days of notice of entry of judgment. The court of appeal reversed, holding that the alleged contract did not contain all material terms of a contract to purchase real property, including the time or manner of payment. The Supreme Court granted review.

The Court's Decision

The court noted that under Civil Code section 3390, specific performance is only available if the contract to be enforced is sufficiently certain. "Settled principles of contract law govern this case. The equitable remedy of specific performance cannot be granted if the terms of a contract are not certain enough for the court to know what to enforce."[21] The court also noted that courts will avoid interpretations that destroy the contract, and will "construe agreements in such a manner as to carry into effect the reasonable expectations of the parties if [they] can be ascertained."[22]

The court cited in its prior decision in *King v. Stanley*[23] for the proposition that:

> "[A]n agreement for the purchase or sale of real property does not have to be evidenced by a formal contract drawn with technical exactness in order to be binding. Equity does not require that all the terms and conditions of the proposed agreement be set forth in the contract. The usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement. In the absence of express conditions, custom determines incidental matters relating to the opening of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like. The material factors to be ascertained from the written contract are the seller, the buyer, the price to be paid, the time and manner of payment, and the property to be transferred, describing it so it may be identified."24

Although the court acknowledged that the contract did not contain terms specifying the time and manner of payment, the court said there was "no substantial dispute or uncertainty over the manner of payment by Patel", *i.e.*, in the court's view, parties intended the full price to be paid at close of escrow. The court went on to state that the conflicting proposals as to the timing and amount of a *deposit* were "merely incidental matters that had no effect on the ultimate payment to be received by the Liebermensches at the close of escrow." It said it was the "length of the escrow period, unspecified in the contract, that was the sticking point," and expressly disapproved of *King*'s inclusion of "time and manner of payment" as an essential term,[25] holding that "the escrow period is not a necessary term in a contract of sale, and that

in any event 'time of payment' is a contract term determinable by implication as a matter of law" (emphasis added).[26] The court held that "while parties are obviously free to include escrow specifications in the contract of sale, they are not necessary terms" stating that in the absence of another date for payment of the purchase price, the contract is presumed to require payment upon recordation of the deed, *i.e.*, "closing." The court equated the escrow period with the "time of payment" and held that under Civil Code section 1657 and a "legion of cases," the purchase price is payable "upon delivery of the deed," and the time for "delivery of the deed," *i.e.*, close of escrow, is determined by reference to a reasonable period of time if not otherwise specified.[27] In other words, a reasonable time for close of escrow could be determined by the court.

The court disregarded the subsequent dispute of the parties over the amount of deposit and timing of closing, noting that although such conduct may be relevant in determining which terms the parties considered essential, "few contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached."[28] The court concluded that the seller was bound by the written contract and could not insist on an extended escrow which they omitted from the contract since their undisclosed intentions could not affect contract formation. It distinguished other cases in which the contract on its face left a term for future agreement, stating that nothing was left to future agreement in the current contract as construed by the court.[29] "Measured by any reasonable standard there is here mutual assent to a contract which is sufficiently certain so that the court was within its power in decreeing specific performance."[30]

Summarized in its most stark terms, therefore, *Patel* stands for the following principles:

(1) A written contract of sale of real estate is both formed and specifically enforceable if it contains the identity of the parties, the property and the purchase price; all other terms are incidental and may be established by reference to custom or what is "reasonable."

(2) A written contract which contains no escrow closing date and no statement of the time and manner in which the purchase price is to be paid will be construed *as a matter of law* as contemplating a close of escrow "within a reasonable period of

time" as decided by the court and as an all-cash closing on that date. In other words, the court supplies *both* the time of closing *and* the terms of payment.

(3) Evidence that the parties themselves never came to a meeting of the minds on time and manner of payment—unless clearly stated as an "agreement to agree" in the four corners of the written agreement—is essentially irrelevant and inadmissible as a matter of law.

The Cases Relied Upon And Overlooked By The Court

The court's decision in *Patel* is most strongly supported by the Third District Court of Appeal's decision in *House of Prayer v. Evangelical Assn. for India*.[31] *House of Prayer* had similarly analyzed that time of payment was not an essential term and concluded (1) all cases containing the oft-quoted assertion that time of payment of the purchase price is an essential term, including *King v. Stanley* and *Buckmaster v. Bertram*, had not actually turned upon an omission of time of performance, and therefore all these statements (and secondary authority relying on them) were dictum, and (2) citing these cases and Civil Code Section 1657, which pertains to the formation of a contract, not whether it is specifically enforceable, concluded that a reasonable period of time could be inferred for the time of payment in an action for specific performance.[32]

A number of other cases cited by the Supreme Court in *Patel* support the proposition that the time for payment may be inferred. Oddly, however, the court cited almost no contrary authority—including its own prior decisions on the same point. As noted above, the court relied heavily on its prior decision in *King v. Stanley*, but overruled its statement that the time and manner of payment were essential terms.[33] The court failed to note that its earlier decision in *Buckmaster v. Bertram*,[34] which it cited for the general proposition that a contract must be sufficiently certain for the court to know what to enforce,[35] had stated, if not held, that the time of payment was an essential term.[36] The court also did not mention its earlier decision in *Breckinridge v. Connor*,[37] which had held that the essential terms of a contract for the sale of realty were the parties, a property description, the price and "when it is to be paid."[38] The court seemed impatient with the suggestion that prior case law had required specification of the time and terms of payment in order for a contract to be specifically enforceable, holding

that it was "settled" law that neither the time of closing nor the time for payment is so material as to preclude specific performance,[39] but failed to explain how these contrary authorities could be reconciled with the prior decisions or why they were being tacitly overturned or rejected.[40]

The court also relied on several cases for the proposition that courts will construe contracts in such a way so as to preserve the parties' intent if they can be ascertained, but it is questionable whether any of these cases support the court's ultimate holding. The first was *McIllmoil v. Frawley Motor Co*.[41] In that case, the defendant was an auto dealer who sold plaintiff's trade-in, but retained the funds because plaintiff refused to purchase a new car, as he had agreed to do. Plaintiff alleged that the contract was unenforceable because it was an agreement to agree because the model and price had not been agreed upon. The court held, however, that plaintiff could determine all of the uncertain factors by simply selecting one of three models of the cars available, all of which were sold at set prices. The court stated: "Where one buys *personal* property at an agreed price, by implication of law he agrees to pay the price; and if no time of payment is agreed upon the law fixes the time of delivery as the time of payment."[42] Since the sale of fungible goods is markedly different from the sale of real property and the processes by which such sales are achieved, it is questionable whether this decision has any bearing on *Patel*. Likewise, *Bohman v. Berg*[43] involved a suit for recovery of the value of services performed by a contractor, and *Okun v. Morton*[44] involved investment in the "Hard Rock Café" restaurant chains. Both cases seem to have limited applicability to a real estate contract. *Blackburn v. Charnley*[45] involved the purchase and sale of real property, but there the issue was whether the property description was sufficient, not whether the terms of payment were specified.

The court further did not cite, comment on or reconcile the prior decisions of courts of appeal in *Mueller* and *Magna Development*, or the many cases relied upon in these decisions, which had seemingly stood for the proposition that the time and manner of payment are one of the essential terms required to be specified for specific performance of a contract for sale of real estate. It also did not cite other court of appeal decisions relied upon by the court in *House of Prayer*, all of which dealt solely with unspecified *escrow* dates rather than "time of payment," as such.[46] The court thus seemed to broaden "close of es-

crow" into "time of payment," in dismissing both of them as necessary terms of a specifically enforceable contract. Among other things, the court cited in passing but did not discuss its only prior decision which had actually held the time for payment of the purchase price under an option agreement can be inferred as a reasonable period of time. This case, *Copple v. Aigeltinger*,[47] could have been dispositive if the court had wished to confine its holding to the inference of a reasonable time for close of escrow of a contract which already was partially performed by the payment of substantial option consideration or lease-option rent. However, the Court's opinion in *Patel* seems intent on establishing the overarching rule that time of payment, not solely time of closing, is not an essential term *because* an all-cash closing payment will be inferred.

Unstated Effects Of The Decision On Existing Case Law

One could argue that *Patel* does little more than clarify that the time for close of escrow is not an essential term in the formation of a contract. However, while the court could have limited its holding, it did not. Instead, it went beyond this to state that if the time for payment is unstated, it is deemed to be upon delivery of the deed *as a matter of law*,[48] and that if the parties fail to state when the deed is to record, *i.e.*, when close of escrow is to occur, the court will infer a reasonable period of time *as a matter of law*.[49] Thus, a contract which merely states a price is deemed to be *all cash on a date established by the court*. This is the essential message of *Patel*.

In this respect, *Patel* appears to be a departure from a long line of older cases requiring more in the sale of real property than the identity of the parties, the price, and a property description. If applied retroactively, *Patel* would potentially alter the decisions in several specific performance cases cited in *Mueller* as examples of the required specificity under section 3390.

For example, in *Colorado Corp., Ltd. v. Smith*,[50] the contract specified that the buyer would construct residences on the subject property of not less than 1,200 square feet. The court held that the contract was too uncertain to be enforced because the construction of residences, an essential term, did not specify location, size other than the minimum, cost, type, appearance, or other details of construction.[51] Would the *Patel* decision render this contract enforceable, implying reasonable terms based on custom and usage in the construction of subdivisions?

In *Berven v. Miller*[52] the landlord gave a right of first refusal to a tenant in exchange for performing certain improvements to the property. The court held that the contract was unenforceable because it did not specify the terms and time of payment, or sufficiently identify the property to be sold (though from the facts in the decision, it would appear that the property to be purchased was the same as that leased).[53] Presumably, under *Patel*, this contract could be enforceable if the property could be ascertained, because any subsequent offer that triggered the right of first refusal would be enforceable even without specifying the time and terms of payment.

In *Roberts v. Lebrain*,[54] a tenant gave the landlord a $40,000 deposit and received a receipt that showed the deposit was a down payment and that the balance was $80,000 owing for the purchase of property on a particular street. Thereafter the tenant made payments and received receipts stating the payments were to be applied to the purchase price. The landlord died and his wife disputed the enforceability of the contract. The court held that the contract was unenforceable because it failed to specify the time and manner of payments, whether interest was to be paid or an interest rate, whether the grant would be clear of any encumbrances, who would pay for taxes, and that the property was not sufficiently identified (the landlords owned another house on the same street).[55] Again, assuming a court would find that the property was identified as the same house the tenant was renting, *Patel* might compel a different result since the parties and price were identified clearly.

In *Buckmaster v. Bertram*,[56] a prior panel of the Supreme Court itself invalidated a contract for the sale of real property, even though the contract identified the parties, the land to be sold, and the purchase price. The court held that the contract was unenforceable because it stated that the purchase price was to be paid "at the times and in the manner hereinafter mentioned," which was described as a mortgage to an identified person at seven percent per annum, payable semiannually.[57] It seems likely that *Patel* would compel a different result.

The Future Impact of *Patel*

The intent of *Patel* would seem to be to forestall litigation attempts by sellers to avoid contracts that are no longer desirable in a rising real estate market (though arguably buyers would be just as motivated to avoid contracts in a falling market). However, it is questionable wheth-

er such litigation will be avoided as opposed to merely altered by the *Patel* decision. Terms which the *Patel* court (and others) seem to think can be resolved by reference to "custom" (such as the length of the escrow, responsibility for transfer taxes, amounts and refundability of deposits or option consideration, and the terms of payment at closing) in fact are often vigorously negotiated and can be vigorously litigated as well. If *Patel* stands for the proposition that courts on a greater scale than before may interject reasonable terms that the parties have omitted, it seems likely that parties will still need to litigate the terms of the contracts rather than the enforceability of the contract.

It is also possible to read *Patel* as addressing only the timing of an *escrow* and not the timing of payment *over time*. If so, its reach may be less invasive of the fundamental bargain between the parties. As it stands, however, the sweeping manner in which the opinion is stated leaves room for continued confusion in this area.

Patel could also impact those cases which hold that a letter of intent can create a binding contract.[58] While these cases are distinguishable from the *Patel* line of cases (in the latter, the issue is whether a contract that is entered into is sufficiently definite to be enforceable, while in the former the issue is whether a contract is formed in the first place), *Patel* is not completely irrelevant to these issues. It is reasonable to assume that if parties are now more likely to enter into enforceable contracts despite the absence of an agreement on collateral terms such as escrow periods, financing and the like, they are likewise more likely to find themselves in a contract in the first place, even if they expressly leave such "collateral terms" unstated or for future agreement in a letter of intent that contains insufficient disclaimers of contractual intent.

Finally, the court's decision in *Patel* can be expected to flavor, if not control, the disposition of a controversial decision by the Third District Court of Appeal in *Steiner v. Thexton*.[59] This case held that a purchase agreement obviously intended as a contract by the signatories was in fact an unenforceable option void for want of consideration due to the buyer's retention of absolute discretion to terminate the contract and not to proceed with the purchase based on the results of its due diligence investigation. If such a contract, carefully prepared by counsel to set forth the actual agreement of the parties on all terms, is found in fact to be unenforceable by the California Supreme Court, then one might wonder whose intent—the courts' or the parties'—is really at issue in these cases.

It is clear, in any event that a fairly common assumption of real estate practitioners, that the time and manner of payment is an essential term that must be specified in order to compel specific performance of any contract for purchase and sale of real estate, is no longer viable.

NOTES

1. Civ. Code, §3390, subd. (5).
2. *Mueller v. Chandler*, 217 Cal. App. 2d 521, 524, 31 Cal. Rptr. 646 (4th Dist. 1963).
3. *Gould v. Callan*, 127 Cal. App. 2d 1, 5, 273 P.2d 93 (2d Dist. 1954).
4. *White Point Co. v. Herrington*, 268 Cal. App. 2d 458, 465-466, 73 Cal. Rptr. 885 (2d Dist. 1968).
5. *King v. Stanley*, 32 Cal. 2d 584, 588, 197 P.2d 321 (1948) (disapproved of by, *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008)).
6. *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008).
7. 32 Cal.2d at 588 (internal citations omitted).
8. Civ. Code, §3390, subd. (5).
9. *Mueller v. Chandler*, 217 Cal. App. 2d 521, 31 Cal. Rptr. 646 (4th Dist. 1963).
10. 217 Cal.App.2d at 524.
11. Id. at 523-524.
12. *Bonk v. Boyajian*, 128 Cal. App. 2d 153, 274 P.2d 948 (2d Dist. 1954); *Colorado Corp. v. Smith*, 121 Cal. App. 2d 374, 376, 263 P.2d 79 (2d Dist. 1953); *Gould v. Callan*, 127 Cal. App. 2d 1, 4, 273 P.2d 93 (2d Dist. 1954); *Berven v. Miller*, 86 Cal. App. 2d 39, 40, 194 P.2d 80 (2d Dist. 1948); *Federated Income Properties v. Hart*, 84 Cal. App. 2d 663, 665, 191 P.2d 59 (2d Dist. 1948); *Roberts v. Lebrain*, 113 Cal. App. 2d 712, 716, 248 P.2d 810 (2d Dist. 1952); *Bruggeman v. Sokol*, 122 Cal. App. 2d 876, 881, 265 P.2d 575 (4th Dist. 1954); *Buckmaster v. Bertram*, 186 Cal. 673, 676, 200 P. 610 (1921).
13. *Mueller v. Chandler*, supra, 217 Cal. App. 2d at 523.
14. *Magna Development Co. v. Reed*, 228 Cal. App. 2d 230, 39 Cal. Rptr. 284 (1st Dist. 1964).
15. 228 Cal.App.2d at 235-36.
16. *King v. Stanley*, 32 Cal. 2d 584, 197 P.2d 321 (1948) (disapproved of by, *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008)).
17. 32 Cal.2d at 588 (internal citations omitted).
18. Id. at 588-589.
19. Id.
20. Id.
21. 45 Cal.4th at 349.
22. Id.
23. *King v. Stanley*, 32 Cal. 2d 584, 588-589, 197 P.2d 321 (1948) (disapproved of by, *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008)).
24. 45 Cal.4th at 349 (internal citations omitted).
25. 32 Cal.2d at 588.
26. 45 Cal.4th at 350.
27. 45 Cal.4th at 351.
28. 45 Cal.4th at 352.
29. Id.
30. Id.

31. *House of Prayer: Renewal and Healing Center of Yuba City v. Evangelical Ass'n for India*, 113 Cal. App. 4th 48, 53-54, 7 Cal. Rptr. 3d 24 (3d Dist. 2003).
32. 113 Cal.App.4th at 53-54. These cases were *Breckinridge v. Crocker*, 78 Cal. 529, 535, 21 P. 179 (1889); *O'Donnell v. Lutter*, 68 Cal. App. 2d 376, 381, 156 P.2d 958 (2d Dist. 1945); *Fara v. Wells*, 156 Cal. App. 2d 322, 327-328, 319 P.2d 394 (4th Dist. 1957); *King v. Stanley*, 32 Cal. 2d 584, 589, 197 P.2d 321 (1948) (disapproved of by, *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008)); *Roller v. California Pac. Title Ins. Co.*, 92 Cal. App. 2d 149, 156, 206 P.2d 694 (1st Dist. 1949). As stated in House of Prayer, "In none of these cases was the absence of a term specifying the time of performance an issue. Accordingly, the statements are dicta, and secondary sources relying on such cases are not controlling here." (113 Cal. App. 4th at 54.)
33. *King v. Stanley*, 32 Cal. 2d 584, 588-589, 197 P.2d 321 (1948), criticized and overruled on this point in *Patel v. Liebermensch*, 45 Cal. 4th 344, 86 Cal. Rptr. 3d 366, 197 P.3d 177 (2008).
34. *Buckmaster v. Bertram*, 186 Cal. 673, 676, 200 P. 610 (1921).
35. 45 Cal.4th at 349.
36. 186 Cal. at 676.
37. *Breckinridge v. Crocker*, 78 Cal. 529, 21 P. 179 (1889).
38. 78 Cal. at 535.
39. 45 Cal.4th at 346.
40. The court, without discussion, included in a string-cite with several other cases its earlier decision in *Copple v. Aigeltinger*, 167 Cal. 706, 709, 140 P. 1073 (1914), in which a similar option, also partially performed by the optionee, was specifically enforced despite the absence or a designated closing date. The court did not discuss the narrowness of the holding in *Copple* or differentiate it from other "time of payment" decisions.
41. *McIllmoil v. Frawley Motor Co.*, 190 Cal. 546, 549, 213 P. 971 (1923).
42. 190 Cal. at 549 (emphasis added).
43. *Bohman v. Berg*, 54 Cal. 2d 787, 8 Cal. Rptr. 441, 356 P.2d 185 (1960).
44. *Okun v. Morton*, 203 Cal. App. 3d 805, 817, 250 Cal. Rptr. 220 (2d Dist. 1988).
45. *Blackburn v. Charnley*, 117 Cal. App. 4th 758, 766, 11 Cal. Rptr. 3d 885 (2d Dist. 2004).
46. The three cases cited in *Copple v. Aigeltinger*, 167 Cal. 706, 709, 140 P. 1073 (1914); *San Francisco Hotel Co. v. Baior*, 189 Cal. App. 2d 206, 213, 11 Cal. Rptr. 32 (4th Dist. 1961) (disapproved of on other grounds by, Ellis v. Mihelis, 60 Cal. 2d 206, 32 Cal. Rptr. 415, 384 P.2d 7 (1963)); and *Hastings v. Matlock*, 171 Cal. App. 3d 826, 830, 217 Cal. Rptr. 856 (6th Dist. 1985). In *Copple*, a case strikingly similar to Patel, an option contract failed to specify the time for payment of the remaining portion of the purchase price, and the court inferred a reasonable period of time and granted specific performance. In *San Francisco Hotel*, a deposit receipt contract provided for a 30-day escrow and all-cash payment of the purchase price, but did not state when the escrow should be opened, and the court inferred a reasonable period of time to open the escrow based on *Copple*. *Hastings* involved enforcement of an oral settlement agreement outside the statute of frauds, and concluded that there was credible evidence of an agreement on the time for performance, and that this time was reasonable in light of the general principle that if the time for payment is unstated, the court will infer a reasonable period of time. It, too, included a partially paid price in the form of a lease-option structure.
47. *Copple v. Aigeltinger*, 167 Cal. 706, 140 P. 1073 (1914), cited as part of a string cite but not discussed in *Patel*. See 45 Cal.4th at 351 n.4.
48. 45 Cal.4th at 351.
49. 45 Cal.4th at 351.
50. *Colorado Corp. v. Smith*, 121 Cal. App. 2d 374, 263 P.2d 79 (2d Dist. 1953).
51. 121 Cal.App.2d at 377.

52. *Berven v. Miller*, 86 Cal. App. 2d 39, 194 P.2d 80 (2d Dist. 1948).
53. 86 Cal.App.2d at 40.
54. *Roberts v. Lebrain*, 113 Cal. App. 2d 712, 248 P.2d 810 (2d Dist. 1952).
55. 113 Cal.App.2d at 716.
56. *Buckmaster v. Bertram*, 186 Cal. 673, 200 P. 610 (1921).
57. 186 Cal. at 676.
58. See, e.g., *California Food Service Corp. v. Great American Ins. Co.*, 130 Cal. App. 3d 892, 897, 182 Cal. Rptr. 67 (4th Dist. 1982); *City of Santa Cruz v. MacGregor*, 178 Cal. App. 2d 45, 2 Cal. Rptr. 727 (1st Dist. 1960); *Mann v. Mueller*, 140 Cal. App. 2d 481, 295 P.2d 421 (2d Dist. 1956); *Gavina v. Smith*, 25 Cal. 2d 501, 504, 154 P.2d 681 (1944).
59. *Steiner v. Thexton*, 77 Cal. Rptr. 3d 632 (Cal. App. 3d Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 36, 193 P.3d 281 (Cal. 2008).

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