T. GYIBLI COLLINS, Appellant, *v.* ELIAS BROTHERS, a Lebanese Firm doing Mercantile Business in Monrovia, by and through E. R. ELIAS, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 10, 1952. Decided December 12, 1952.

1. In order to sustain an action for specific performance of a contract, there must be a legally binding agreement.
2. Specific performance will not be enforced where there is an adequate remedy at law.
3. The court cannot go beyond the terms of a contract to enforce an understanding therein.

On appeal from denial of a suit for specific performance of a contract, *judgment affirmed.*

T. Gyibli Collins, appellant, *pro se.* *R. F. D. Smallwood* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

This matter is before us on appeal from the Circuit Court of the Sixth Judicial Circuit. A lease of two town lots in the City of Monrovia was entered into between Collins, as lessor, and Elias Brothers, as lessees, for a twenty-year term with an option for another twenty years.

This lease was duly registered according to law. Subsequently the lessor sued for specific performance of an alleged agreement by the lessees to build a house, or houses, on the demised premises, and predicated his demand for such equitable relief upon a provision contained in the said lease, which read as follows:

"It is also hereby agreed and understood that the lessees shall have the right to make such improvements on

the said lots hereinbefore demised to them in the nature of a house or houses suited to their own requirement, convenience and taste at their own proper cost and expense without any deductions from the rent money herein agreed upon to be paid to the lessor."

The lessees contended that the lease contained no binding stipulation for the lessees to build a house although a right was given them to do so.

There is no gainsaying that the lease in question lacks any stipulation by the lessees to build a house. During the hearing before us appellant yielded on this point but requested this Court to look beyond the terms and conditions of the lease to the written offer made by the lessees. However, when he read the written offer which contains the basic terms of the proposed lease, and was asked to read his acceptance thereof, he replied that he had made no formal acceptance. Upon comparison of the written offer with the lease agreement subsequently executed, we discovered that there apparently had been an effort made in the agreement to follow the terms suggested in the letter of appellees, but with a few alterations. We quote the following from the letter containing the offer:

"The lessees shall erect a permanent building (dwelling house) thereon at their own expense and for their own use and benefit, and they shall have a right to sublet said premises."

Nevertheless the lease itself contained no such undertaking, and reserved to the lessees only:

"[T]he right to make such improvements on the said lots hereinbefore demised to them in the nature of a house or houses suited to their own requirement, convenience, and taste, at their own proper cost and expense, without any deductions from the rent money herein agreed upon to be paid to the lessor."

We quote from the opinion of the trial judge:

"To say the least, the agreement in this respect is rather loosely drafted, and I am at a loss to even imag-

ine how a man like the plaintiff, a learned counsellor at law, would be willing to affix his signature to such an agreement, especially as he contends that, according to the preliminary negotiations, it was agreed and understood that the defendants were to construct a permanent dwelling house on said lot, and were not merely to have a right to do so. It seems to me that, upon the presentation to him of the agreement for his signature, and after carefully scrutinizing it, which I presume he did, and finding that it did not contain what they had agreed on, he should have withheld his signature. During the argument before this bar, the plaintiff tried to get the court to read into the agreement what they had discussed and agreed on in their preliminary negotiations. I cannot agree with the learned counsellor, for, when the intention of the parties to a contract can be readily ascertained, the occasion for construction or interpretation does not arise. It can readily be seen from the contract that the lessor intended to give the lessees a mere right to build said house or houses.

. . . . .

"It does not require much effort, therefore, to see that according to the agreement, the defendants have made no contract with the plaintiff to build a house or houses. Nor can this court read into a contract any extrinsic matter which is not stated therein; for courts do not make contracts for parties."

This decree of the trial judge is so much in harmony with settled principles that we are unwilling to disturb it. According to our own statutes,

"An action for the specific performance of a contract, other than for the payment of money, is an action in which it is sought, to compel a defendant to do any act other than the payment of money, *in pursuance of a contract into which he has entered.* It may be briefly

called an action of specific performance." 1841 Digest, pt. II, tit. II, ch. I, sec. 7, 2 Hub. 1525. (Emphasis added.)

The statutory definition finds agreement with common law definitions as stated in *American Jurisprudence.*

"Specific performance may be defined as the actual accomplishment of a contract by the party bound to fulfil it, for a decree for specific performance is nothing more or less than a means of compelling a party to do precisely what he ought to have done without being coerced by a court." 49 Am. Jur. 6, *Specific Performance,* § 2.

A fundamental prerequisite for enforcement of specific performance is that there must be a contract to be enforced. In addition, there must be no adequate remedy at law. 49 Am. Jur. 24, 25, *Specific Performance,* §§ 14, 15.

A careful study of the lease herein reveals no provision requiring appellees to erect a building on the demised premises. Rather, a right was reserved to the said appellees to erect such a building during the life of the agreement. Furthermore, there is no avenue in law whereby we can go beyond a contract in the enforcement of terms and conditions therein.

If, however, taking into consideration all the facts and circumstances in the matter, the appellant feels that he was unduly and inequitably taken advantage of by appellees in the elimination from the agreement of the provision for the construction of a house, which appellant claims was a condition unreservedly agreed upon by both parties, he may have recourse to the equitable remedy of reformation of the lease.

The decree is therefore affirmed with costs against appellant; and it is hereby so ordered.

Affirmed.