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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0700-21**

MARLESE JOHNIKEN,

Plaintiff-Respondent,

v.

FRANK BEEBE and
SUSAN BEEBE,

Defendants-Appellants.

Submitted November 10, 2022 – Decided November 29, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Camden County, Docket No.
C-000098-20.

Frank Beebe and Susan Beebe, appellants pro se.

John C. Penberthy, III, attorney for respondent.

PER CURIAM

Defendants appeal from a September 3, 2021 final judgment granting plaintiff specific performance of a real estate contract and ordering that closing of the subject property occur by November 15, 2021. Because the court did not issue findings of fact and conclusions of law to support the decision, we vacate and remand pursuant to Rule 1:7-4(a).

We discern the following facts from the record. In July 2020, plaintiff, Marlese Johniken, entered into a contract with defendants, Frank and Susan Beebe, to purchase the property for \$340,000. The contract of sale specified a closing date of August 31, 2020. The parties agreed to extend the closing twice, September 14, 2020, then to October 2, 2020. A third extension to October 9, 2020, was discussed and eventually rejected by defendants. A final closing date and walk-through of the property was scheduled for 5:30 p.m., October 2, 2020.¹

Neither the walk-through nor the closing occurred on October 2, 2020. The reasons why are in dispute. Plaintiff and plaintiff's witnesses testified that they were at the property for the 5:30 p.m. walk-through, that they attempted to enter the property for over an hour, and that defendants were not at the property

¹ A time of the essence clause was included in the original contract of sale but was not carried over in the amendments.

to allow entry or to close the sale. Defendants testified that their daughter was at the property at the designated time.

On October 18, 2020, following the attempted walk-through and closing, defendants communicated to plaintiff that the contract was terminated. Plaintiff, on October 20, 2020, through counsel, indicated that she would sue for specific performance if closing did not occur by October 30. Defendants responded, indicating that they had no intention of closing.

On November 19, 2020, plaintiff filed a complaint for specific performance, for damages, and to quiet title. Defendants answered, arguing that they "fulfilled their obligations during the terms of the Contract and amendment that expired on Oct. 2."

On February 25, 2021, plaintiff moved for an order granting summary judgment, requiring that the parties close title by a certain date and prohibiting defendants from re-listing or otherwise conveying the property. Defendants cross-moved to dismiss the complaint on March 6, 2021. The motion was denied.

After a plenary hearing on August 12, 2021, the judge reserved her decision, indicating that she would "get a decision out to [the parties] shortly."

No decision was provided, however, and on September 3, 2021, the judge entered judgement for plaintiff, ordering in part:

1. Plaintiff's Complaint for specific performance is hereby GRANTED;
2. The settlement will occur on November 15, 2021 and Time is of the Essence.

I.

On appeal, defendants raise the following issues:

POINT I

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S COMP[L]AINT FOR SPECIFIC PERFORMANCE.

POINT II

THE PROCEEDINGS WERE BIASED AND PARTIAL TO THE PLAINTIFF.

POINT III

THE PLAINTIFF'S ATTORNEY FAILED TO PROVIDE EVIDENCE TO SUBSTANTIATE SPECIFIC PERFORMANCE.

II.

"The scope of appellate review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). "[W]e do not disturb the

factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting In re Trust Created By Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). "Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare, supra, 154 N.J. at 411-12). "Because a trial court hears the case, sees and observes the witnesses, and hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Ibid. (quoting Cesare, supra, 154 N.J. at 411-12). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. State v. Parker, 212 N.J. 269, 278 (2012); Mountain Hill, L.L.C. v. Twp. Comm. of Twp. Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008).

To aid us in our analysis, Rule 1:7-4(a) requires that "[t]he court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right" "Naked conclusions do not satisfy the purpose of [Rule] 1:7-4." Curtis v. Finneran, 83 N.J. 563, 570 (1980). "Meaningful appellate review is inhibited unless the judge

sets forth the reasons for his or her opinion." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990).

Unfortunately, in this case our review is hampered because the judge did not render the promised decision and issued only an order. We need not delve into the substantive issues implicated in the appeal because the trial court did not provide findings of fact or conclusions of law as required by R. 1:7-4(a). At trial, the judge began to communicate the basis of her September 3 order.

I'm denying the motion to dismiss the complaint based on the reliance [on] the time of the essence clause by the seller. And my reason is that I believe that the behavior and conduct of the parties, especially of the seller at this point, indicated to me that time really wasn't of the essence. It was never of the essence.

However, there remain disputed issues of fact and law with respect to what actions defendant took on October 2, 2020, and whether defendants breached the contract on October 2, 2020. In addition, while indicating why she denied defendant's motion to dismiss the complaint, she did not explain why plaintiff was entitled to specific performance. Unsure of the legal and factual basis for the order, and in order to facilitate a meaningful review, we are constrained to vacate the September 3, 2021 final judgement and remand for further findings of fact and conclusions of law pursuant to R. 1:7-4.

Vacated and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION