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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-0914-21**

DIANA A. BARROS,

Plaintiff-Appellant,

v.

MARIA BARROS, and FTR
FIRST TEXAS REALTY, LTD.,

Defendants-Respondents.

Submitted October 18, 2022 – Decided December 9, 2022

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. DC-004521-21.

Mario M. Blanch, attorney for appellant.

Cole Schotz PC, attorneys for respondents (Steven R.
Klein, of counsel and on the brief).

PER CURIAM

This appeal arises out of a dispute between plaintiff Diana Barros and defendants Maria Barros, Diana's stepmother, and FTR-First Texas Realty, Ltd. (FT Realty) concerning the ownership of and right to use property located at 5502 Park Avenue, West New York, New Jersey (the Property). Diana appeals from orders granting summary judgment to defendants, ejecting her from the Property, and denying reconsideration.¹ Because the record establishes that FT Realty owns the Property and Diana had no colorable claim of title or possession, we affirm.

I.

Arnaldo Barros and Margaret Irizarry Ortiz were married in January 1963. They had two children, including Diana. In 1977, while Arnaldo and Margaret were still married, Arnaldo had a child with Maria. Margaret passed away in November 1980, and Arnaldo married Maria in April 1982.

In 1977, Arnaldo and Maria purchased the Property as tenants-in-common. The Property is a two-family home consisting of two floors, with an apartment on each floor, and an attached garage. In 2005, Arnaldo and Maria sold the Property to FT Realty, a Texas limited partnership, and that sale was

¹ Meaning no disrespect, we use first names because some of the parties and other relevant persons share the same last name.

memorialized in a deed executed on August 29, 2005. At the time of the sale, FT Realty was owned in equal parts by Arnaldo, as the general partner, and three other limited partners. In 2008, Arnaldo acquired fifty-one percent ownership of FT Realty and the remaining forty-nine percent was transferred to Dimaje LLC (Dimaje), a Florida limited liability company formed by Arnaldo in 2007. In 2012, Arnaldo created the Arnaldo Barros Irrevocable Credit Shelter Trust (the Trust) and transferred his fifty-one percent interest in FT Realty to the Trust. Consequently, FT Realty is currently owned by two entities: (1) the Trust, which owns fifty-one percent; and (2) Dimaje, which owns forty-nine percent.

Diana owns twenty percent of Dimaje and is a twenty-five percent beneficiary of the Trust. Maria is trustee of the Trust, and she, as well as two other Barros children, are each twenty-five percent beneficiaries of the Trust. At the time that Arnaldo created the Trust, he and Maria were living in Florida.

The Trust includes a right of purchase option, which states:

Notwithstanding anything to the contrary contained herein, in the event that [Maria] shall, at any time, as Trustee or as beneficiary of this [T]rust, direct the sale of any parcel of real property owned by the [T]rust, the Trustee may sell said real property to a third party pending the option to purchase hereinafter provided. Trustee shall deliver to each child of [Arnaldo] a notice, by certified or registered mail, return receipt requested ("Notice"), advising said children of their option to purchase the real property ("Option") for a purchase

price equal to fair market value as determined by a qualified MAI appraiser ("Purchase Price").

The Trust also states it "shall be construed under and regulated by the laws of the State of Florida, . . . and that the Trustee shall not be required to account in any court other than one . . . of the courts of [Florida]."

Arnaldo passed away in December 2018, and Maria has since replaced Arnaldo as the general partner of FT Realty. Before and after Arnaldo's death, Arnaldo, Maria, and FT Realty, permitted Barros family members and friends to stay at the Property's second-floor apartment when they were in the New York metropolitan area. Diana, who has Florida and California residences, has periodically stayed at the second-floor apartment. Diana has conceded that no landlord-tenant relationship has ever existed between her and Arnaldo, Maria, or FT Realty.

In 2021, FT Realty decided to sell the Property. On March 25, 2021, an attorney for FT Realty notified Diana of FT Realty's intention to sell the Property and coordinated a time for Diana to come to the Property to remove any of her personal belongings because the locks to the Property had been changed.

On April 20, 2021, Diana filed a verified complaint against defendants in the Law Division, Special Civil Part. Diana asserted a claim of unlawful entry

and detainer, and she sought to be restored to possession of the Property's second-floor apartment and garage space. That same day, the Special Civil Part entered an order temporarily restoring Diana to possession. On May 25, 2021, defendants filed an answer and a verified counterclaim for ejectment, claiming Diana deprived FT Realty of its unequivocal right to exclusive possession of the Property. Diana filed an answer to the counterclaim on June 9, 2021.

On August 30, 2021, the parties cross-moved for summary judgment. Defendants argued Diana's complaint should be dismissed because FT Realty owned the Property and Diana had no legal right to occupy or possess the Property. Diana contended defendants' ejectment counterclaim was beyond the Special Civil Part's jurisdiction and, therefore, the action had to be dismissed or transferred to the Law Division.

The Special Civil Part heard oral argument on September 24, 2021, and on September 30, 2021, entered an order granting defendants' motion and denying Diana's motion. The Special Civil Part found no issues of material fact existed and concluded FT Realty was the sole owner of the Property and Diana did not have a colorable claim of title or possession. Accordingly, the Special Civil Part dismissed Diana's complaint with prejudice, entered a judgment for

possession of the Property in favor of FT Realty, and ordered Diana to vacate the Property.

On October 15, 2021, Diana filed a motion for reconsideration or, in the alternative, for a stay of the ejectment pending appeal. On November 5, 2021, the Special Civil Part denied that motion, finding Diana failed to show that the court acted in an arbitrary, capricious, or unreasonable manner. The Special Civil Part also found Diana raised a new argument concerning her father's testamentary intent, which was not raised in her motion for summary judgment. The court therefore refused to consider Diana's new argument.

Diana now appeals from the September 30, 2021 order granting defendants' summary judgment motion and the November 5, 2021 order denying reconsideration. She does not appeal from the order denying her summary judgment motion.

II.

On appeal, Diana argues the Special Civil Part erred in granting defendants' motion for summary judgment because (1) it did not have jurisdiction given that Diana has a colorable claim of title or possession to the Property; and (2) there are disputed issues of material fact concerning Arnaldo's testamentary intent regarding the Trust's right of purchase option. Diana also

argues the Special Civil Part erred in denying her motion for reconsideration and should have considered evidence submitted regarding Arnaldo's testamentary intent.

We are not persuaded by any of Diana's arguments. FT Realty indisputably owns the Property and Diana has no colorable claim of title or possession to the Property. Her claim regarding an option to purchase the Property is not a colorable claim of current ownership; rather, it is a claim under the Trust and resolution of that claim must be addressed in a Florida court.

A. Our Standard of Review.

An appellate court reviews a grant of summary judgment de novo, using the same standard that governed the trial court's decision. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "'genuine issues of material fact and . . . the moving party is entitled to summary judgment as a matter of law.'" Grande v. Saint Clare's Health Sys., 230 N.J. 1, 23-24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)); accord R. 4:46-2(c). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate

inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Id. at 24 (quoting Bhagat, 217 N.J. at 38).

Regarding motions for reconsideration, an appellate court reviews a trial court's reconsideration decision for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). Absent "'a clear abuse of discretion[,]" an appellate court will not disturb the trial court's decision. Kornbleuth v. Westover, 241 N.J. 289, 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 302 (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002))).

B. The Jurisdiction of the Special Civil Part.

The jurisdiction of the Special Civil Part is limited. See R. 6:1-2. The Legislature "did not intend for the Special Civil Part . . . to determine disputed land titles and complex equitable issues in the context of a landlord-tenant dispossession action" Carr v. Johnson, 211 N.J. Super. 341, 347 (App. Div. 1986). Instead, the actions cognizable in the Special Civil Part include

"[s]ummary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1 et seq." R. 6:1-2(a)(4). A colorable claim is "[a] plausible claim that may reasonably be asserted, given the facts presented and the current law." Black's Law Dictionary 312 (11th ed. 2019); see Trs. of Amalgamated Ins. Fund v. Crown Clothing, Inc., 27 F. Supp. 2d 507, 514 (D.N.J. 1998) (explaining that "[a] claim is colorable if it is more likely than not to have some merit").

The record on summary judgment established that there were no material disputed facts concerning the ownership and right of possession of the Property. The deed to the Property establishes that it is wholly owned by FT Realty. Diana presented no documents or evidence raising a question about the validity of the Property's deed. Moreover, Diana did not present any evidence that she holds or has ever had held title to or a direct ownership interest in the Property. Furthermore, Diana did not present any lease or document showing that she was a legal tenant of the Property. Indeed, she conceded she had no lease. Finally, Diana has not used the Property as her primary residence for years. Instead, the material facts in the record establish that Diana was permitted to stay at the Property periodically and her primary residences were in Florida and California.

Diana argues that she has a colorable claim of title or possession to the Property through her interests in the Trust and Dimaje. Diana's minority interests in the entities that own FT Realty do not, as a matter of law, establish that she has a direct colorable claim of ownership in the Property. See Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 83-84 (2008) (explaining that property acquired by a partnership belongs to the partnership and not the partners individually).

Diana cites C.N. v. S.R., 463 N.J. Super. 213 (Ch. Div. 2020), for the proposition that a deed alone is not dispositive of ownership. C.N. is not binding on this court and, in any event, involved different factual circumstances. In C.N., the issue was whether plaintiff, defendant's former boyfriend, was engaged in a joint venture with defendant to purchase their residence such that plaintiff was entitled to partition of the residence despite plaintiff's name not being on the deed. Id. at 222-23. Here, the record does not suggest Diana was part of a joint venture to purchase the Property or that Diana contributed to the upkeep and maintenance of the Property. Moreover, Diana admitted there was never a landlord-tenant relationship between her and Arnaldo, Maria, or FT Realty. Rather, Diana, like others, was permitted to use the second-floor apartment when she visited the New York metropolitan area. See Francis v. Trinidad Motel, 261

N.J. Super. 252, 258 (App. Div. 1993) (recognizing that plaintiff did not achieve tenant status merely by staying weekly at a motel room for an indefinite time and paying reduced rent).

Diana also argues she has a colorable claim of title or possession to the Property through her option to purchase described in the Trust. In connection with that argument, Diana contends that there were issues of fact concerning Arnaldo's testamentary intent. We reject these arguments for two reasons.

First, any option to purchase the Property in the Trust was an option. In other words, until the option was exercised, it did not give Diana title to or the right to possess the Property. See Am. Dream, Inc. v. Township of Franklin, 130 N.J. Super. 546, 550 (App. Div. 1974) (explaining that "one who has an option to purchase real estate has no estate in the land but acquires merely inchoate rights therein" that "do not vest in an optionee until" he or she exercises the option). Moreover, the purchase option in the Trust states that if Maria, as trustee or beneficiary, directs the sale of "real property owned by the [T]rust," she must notify the Barros children of their options to purchase the property. Therefore, the plain language of the Trust states that the purchase option applies to real property owned by the Trust. The Trust, however, does not own the Property.

Second, Arnaldo's testamentary intent is an issue that must be resolved in a Florida court. The Trust includes choice-of-law and forum-selection provisions stating that the Trust shall be construed under the laws and regulations of Florida and that Maria "shall not be required to account in any court other than one . . . of the courts of [Florida]." Indeed, the record reflects that Diana has filed suit against Maria in Florida and that the purchase option provision is at issue in that litigation. Accordingly, we need not and will not address that issue. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 461 (App. Div. 2008) (noting that comity "is applied to achieve 'uniformity of decision' and to discourage 'repeated litigation of the same question'" (quoting Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 488 (1900))).

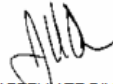
In summary, whatever right Diana has to purchase the Property is an issue that will be decided in a Florida court. The material undisputed fact is that the purchase option has not been exercised and, therefore, when the Special Civil Part granted summary judgment to defendants and ejected Diana from the Property, she did not have an ownership interest in the Property.

C. Reconsideration.

The Special Civil Part denied Diana's motion for reconsideration after finding Diana did not show that the court had acted arbitrarily, capriciously, or unreasonably. Diana argues that the court erred in declining to consider newly submitted evidence concerning Arnaldo's testamentary intent. Reconsideration is not an opportunity for a litigant to present new facts or arguments that could have been raised before the order being challenged was filed. See Medina v. Pitta, 442 N.J. Super. 1, 18 (App. Div. 2015); Cap. Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). Furthermore, as we have already noted, the evidence concerning Arnaldo's testamentary intent does not establish that Diana had a colorable claim of title or possession to the Property at the time that the Special Civil Part ejected her. At best, that evidence may, depending on what the Florida court determines, give Diana a right to purchase the Property sometime in the future.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION