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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3805-22**

THE MOIRAI GROUP LTD.,

Plaintiff-Respondent,

v.

**TEFFERI MELAKU and
AMSALE MELAKU,**

Defendants-Appellants.

Submitted May 28, 2024 – Decided June 4, 2024

Before Judges Sabatino and Mawla.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
C-000029-21.

Law Office of Barry E. Janay, PC, attorneys for
appellants (Andrew Zeitz and Barry E. Janay, on the
briefs).

Pyfer Law Group, LLC, attorneys for respondent (Scott
C. Pyfer, on the brief).

PER CURIAM

Defendants Tefferi and Amsale Melaku appeal from a July 26, 2023 order granting plaintiff The Moirai Group, Ltd. summary judgment on its complaint for specific performance of a real property contract. We affirm.

In May 2020, defendants contracted to sell plaintiff a residential property located on South Jefferson Street in Orange for \$340,000. Plaintiff paid an initial deposit of \$500. The contract stipulated the closing would occur within thirty days after the execution of the contract, unless the contract entered attorney review, in which case the closing would occur "on or before thirty . . . days after the conclusion of attorney review."

Plaintiff had fourteen days after the attorney review period to conduct inspections of the property, and if satisfied with the inspections, would purchase the property in "as-is" condition. Section fifteen of the contract stated: "If [defendants] fail[ed] to close title to the [p]roperty in accordance with this [c]ontract, [plaintiff] shall be entitled to receive a full refund of their deposit."

Defendants retained an attorney, Mitchell Berger, Esq., who reviewed and disapproved of the proposed contract. In June 2020, the parties, through their attorneys, agreed to certain amendments, including increasing the deposit to \$5,000, which would be held in defendants' attorney's trust account. The closing was scheduled for July 2, 2020.

On July 2, 2020, Tefferi¹ sent a letter to Berger informing him that he was in Ohio caring for his sick brother. He explained he wanted to focus on his brother, and it would "take a while before [he could] get back to New Jersey." He therefore requested the attorney cancel the contract.

According to Tefferi "when [defendants] instructed . . . [their attorney] to terminate the contract, [their] understanding was that this correspondence constituted a failure to provide title to [plaintiff], effectively terminating the contract validly under its terms, and necessitating the return of [plaintiff's] deposit, which [they] anticipated [defendants' attorney] would carry out without issue." Plaintiff elected to proceed with the closing. Berger advised plaintiff that he withdrew as defendants' attorney and would continue to hold the deposit in his trust account. In December 2020, plaintiff executed a written agreement assigning the contract, as amended, to Zvi Brisk.

On February 21, 2021, plaintiff filed a verified complaint seeking specific performance of the amended contract and the assignment; compensatory, consequential, and incidental damages; pre-judgment and post-judgment interest; and attorney's fees. On April 15, 2021, defendants filed a pro se

¹ We use Tefferi's first name because he shares a surname with Amsale. We intend no disrespect.

response in the form of a letter to the court. They noted section fifteen of the contract "clearly states" if defendants fail to close title of the property in accordance with the contract, plaintiff's rights were limited to a full refund of its deposit.

The parties appeared for a case management conference on May 19, 2021. At this point, defendants were unrepresented. The court entered a case management order the following day, scheduling a pretrial conference for November 3, 2021. On October 25, 2021, defendants' daughter emailed the court, stating defendants could not attend court because they were "out of the country due to a family emergency," and requested a new court date. Defendants also called and sent a letter to the court on November 15, 2021, explaining the family emergency that kept them out of the country. Their letter requested a trial as well.

On May 6, 2022, the court entered default judgment in favor of plaintiff because defendants failed to answer the complaint and missed the pretrial conference. Defendants retained new counsel and moved to vacate the default judgment. The court granted the motion conditioned upon defendants paying plaintiff's counsel fees in connection with obtaining the default judgment.

On May 26, 2023, plaintiff moved for summary judgment. The motion recounted the procedural history, including that plaintiff had served defense counsel with discovery requests on January 31, 2023, which defendants failed to answer. Plaintiff pointed out the closing should have occurred on July 2, 2020. "However, [d]efendants repeatedly and wrongfully refused to complete the [c]losing, initially explaining that [d]efendants wanted to attend the [c]losing in person but that one or both of [them] were away from New Jersey . . . and thereafter ceas[ed] all communications with [p]laintiff and then with their attorney."

Defendants opposed the summary judgment motion and generally denied plaintiff's claim that they did not have grounds to terminate the contract or had refused to participate in the litigation. Tefferi certified he instructed Berger to cancel the contract because while he was in Ohio caring for his brother, "it became clear . . . that [his] attention would need to be entirely focused on tending to [his] brother's health and medical needs." This required him to spend "more time than anticipated out of . . . New Jersey and would occupy the entirety of [his] concentration and attention."

Following oral argument, the motion judge made detailed oral findings and granted plaintiff summary judgment. The judge noted the terms of the

contract were "uncomplicated" because the property was to be sold in as-is condition. "Defendant[s] had no obligations under the contract except to sit down at closing and transfer title and receive the purchase price. . . . [T]here would [not] have been any hardship under this contract for . . . defendants to have complied with it" Compelling specific performance would not "be harsh or oppressive to . . . defendants."

The judge found no basis under the contract for defendants to terminate the transaction. Although the judge acknowledged "defendants had personal matters," she found "there is no indication as to how those would have affected the enforceability of the contract." Moreover, there was no allegation plaintiffs acted in bad faith. The evidence pointed in the opposite direction, given defendants' failure to answer discovery or appear in court.

The motion judge noted there was no dispute of material facts to thwart granting summary judgment. Defendants conceded "there is a valid contract, they just do not want to go through with it." The judge rejected defendants' argument that she order something other than specific performance. She found defendants' conduct "concerning [whereas] . . . plaintiffs have [not] done anything that would undermine the enforceability of the . . . contract." Plaintiff "substantially performed its part of the bargain and was ready, willing, and able

to close . . . and . . . defendant[s] . . . failed to do so and provided no basis to terminate the contract." Citing Friendship Manor, Inc. v. Greiman, 244 N.J. Super. 104 (App. Div. 1990), she concluded as follows: "Although specific performance is a discretionary remedy, there is a virtual presumption, because of the uniqueness of land and the consequent inadequacy of money damages[,] that specific performance is the [real property] buyer's appropriate remedy"

I.

We review 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 may be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (quoting R. 4:46-2(c)); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "When no issue of fact exists, and only a question of law remains," the reviewing court owes no special deference to the trial court's decision. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016).

While specific performance is generally an appropriate remedy for breach regarding real property contracts, Friendship Manor, 244 N.J. Super. at 113, determining if specific performance is appropriate is a matter of discretion for the trial court, Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 600 (App. Div. 2005). An abuse of discretion exists where a decision is "made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." U.S. Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

On appeal, defendants argue the motion judge should have relaxed the Rules of Court during the period in which they were self-represented. They claim the judge did not afford them "any consideration when they attempted to communicate with the court" about their inability to attend the November 3, 2021 conference. Therefore, it was improper for the court to enter the default judgment.

Defendants claim the motion judge was biased and became hostile to them after they retained new counsel, which impacted her ability to consider their arguments about why specific performance should not be granted. Further, the judge read a remedy of specific performance into the contract, which they claim was not expressed within it. Defendants aver they did not have "a precise

understanding" of the consequences for breach, or that specific performance was a possible remedy for breach and thought section fifteen of the contract would be the extent of their liability. They argue granting specific performance was inequitable because they entered the initial contract without the advice of an attorney.

Defendants further claim summary judgment was improperly granted because discovery was not completed, and there were still material facts that were not presented to the court. Moreover, certain material facts that were in the record were disputed, namely: whether a negotiation provision was in the contract; the contents and terms of the contract rider; the closing date of the transaction; plaintiff's assertions that defendants "repeatedly and wrongfully" refused to close or failed in communicating; and the applicability of the contract to the assignee. They also assert the judge misconstrued the law when she granted specific performance.

II.

At the outset, we note defendants' argument the entry of default judgment, which was later vacated, had something to do with the ultimate outcome of their case lacks merit. "A judge may make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard." Code of Jud.

Conduct r. 3.7 cmt. 1. The motion judge did just that; she vacated the default judgment and defendants had their day in court.

Defendants' assertion the motion judge was biased against them because they were self-represented and then retained counsel also lacks merit. The record readily shows the judge afforded defendants every opportunity to present their defenses, including scheduling more than one conference to manage the case and affording the parties discovery. The transcript of the summary judgment oral argument shows the judge exercised great restraint, despite defendants' attorney interrupting the judge while she was making her findings.

III.

A plaintiff seeking specific performance must show

the contract in question is valid and enforceable at law, . . . the terms of the contract are "expressed in such fashion that the court can determine, with reasonable certainty, the duties of each party and the conditions under which performance is due," and that an order compelling performance of the contract will not be "harsh or oppressive."

[Marioni, 374 N.J. Super. at 598-99 (internal citations omitted) (first quoting Salvatore v. Trace, 109 N.J. Super. 83, 90 (App. Div. 1969), aff'd o.b., 55 N.J. 362 (1970); and then quoting Stehr v. Sawyer, 40 N.J. 352, 357 (1963)).]

The remedy of

specific performance turns not only on whether plaintiff has demonstrated a right to legal relief but also whether the performance of the contract represents an equitable result. That is, after determining that the purchaser has a legal right to recovery, a court of equity must make a further determination that has been said to be discretionary.

[Id. at 599 (citing Friendship Manor, 244 N.J. Super. at 113).]

"[S]pecific performance is a discretionary remedy resting on equitable principles and requiring the court to appraise the respective conduct and situation of the parties." Friendship Manor, 244 N.J. Super. at 113.

Marioni explained "the party seeking specific performance 'must stand in conscientious relation to [their] adversary; [their] conduct in the matter must have been fair, just and equitable, not sharp or aiming at unfair advantage.'" 374 N.J. Super. at 600 (quoting Stehr, 40 N.J. at 357). "This weighing of equitable considerations must represent, in each case, a conscious attempt on the part of the court of equity to render complete justice to both parties regarding their contractual relationship." Ibid. "[W]hen there is no excuse for the failure to perform, equity regards and treats as done what, in good conscience, ought to be done." Id. at 600-01.

It is axiomatic that "an action for breach of contract is properly understood to seek enforcement of contract obligations." Rhodes v. Davis, 628 Fed. Appx.

787, 791 (2d. Cir. 2015). "A court's objective in construing a contract is to determine the intent of the parties." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 320 (2019). "A basic principle of contract interpretation is to read the document as a whole in a fair and common sense manner." Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009).

"[E]very contract in New Jersey contains an implied covenant of good faith and fair dealing." Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997). "The implied covenant applies to 'both the performance and enforcement of the contract.'" Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 443 (App. Div. 2016) (quoting Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 224 (2005)). It follows, therefore, that specific performance is an implied and accepted means of enforcing a contract.

Defendants' claim that the judge improperly read a specific performance remedy into the contract is misplaced. Initially, we note defendants' brief concedes there is a "virtual presumption" that specific performance is an adequate remedy in property contracts.

More importantly, as the motion judge found, the terms of the contract were clear and unambiguous. Defendants intended to sell the property in as-is

condition to plaintiff and failed to keep their end of the bargain. It was, therefore, for the court to enforce the contract as written. The remedy of specific performance was a well-established means of enforcing the contract and did not have to be recited in the contract for plaintiff to seek relief from the court.

Further, defendants had ample opportunity to submit evidence to persuade the judge why it was inequitable to grant specific performance. The motion judge noted as follows:

The discovery end date has passed and the case management order required that dispositive motions, if any, were to be filed by May 26, 2023. The plaintiff complied with that deadline and filed its motion for summary judgment on May 26, 2023.

The defendants failed to timely respond to that motion and filed papers immediately before . . . the June 23rd, 2023 return date of the 8 summary judgment motion. The [c]ourt thus carried the return date and made the matter returnable [on July 26, 2023]. . . . So, the [c]ourt, notwithstanding the fact that the opposition to summary judgment was filed well out of time, has permitted the opposition to be considered and gave the [defendant]s additional time to respond to it.

Moreover, none of the alleged disputed facts raised by defendants on appeal convince us summary judgment was improperly granted. The arguments regarding whether there was a negotiation provision in the contract and the contents and terms of the contract rider were not raised before the motion judge,

and we decline to consider them for the first time on appeal. Nieder v. Royal Indem. Ins., 62 N.J. 229, 234 (1973). Defendants never disputed the closing date or its applicability to Brisk. Additionally, defendants' failure to communicate was not dispositive because summary judgment did not turn on the lack of communication. The motion judge's recitation of defendants' lack of communication was to explain defendants' conduct during the proceedings before the default judgment was vacated. However, plaintiff was appropriately granted summary judgment as a matter of law because the judge rejected defendants' central argument that they could pull out of the contract by simply not proceeding with the closing.

Our de novo review of the record convinces us the parties' contract was clear and unambiguous. The parties' respective conduct in fulfilling (or not fulfilling) the contract terms demonstrate the equities favored plaintiff in its request to enforce the contract through specific performance. Therefore, granting plaintiff specific performance was neither harsh nor oppressive, but instead a proper exercise of the motion judge's discretion and enforcement authority.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

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