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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-3088-16T4

DOMINIC B. FONTANA, SR.
and SHIRLEY ANN FONTANA,

Plaintiffs-Respondents,

v.

PETER J. PERONE and KAREN PERONE,

Defendants-Appellants.

Argued April 11, 2018 – Decided April 24, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Chancery Division, Union County, Docket No.
C-000021-16.

Fred S. Dubowsky argued the cause for
appellants (Fred S. Dubowsky, on the briefs).

Corrine LaCroix Tighe argued the cause for
respondents (Finestein & Malloy, LLC,
attorneys; Corrine LaCroix Tighe, on the
brief).

PER CURIAM

Defendants, Peter J. Perone and Karen Perone, appeal from a February 17, 2017¹ Chancery Division order denying their motion for reconsideration of a January 11, 2017 order. The earlier order terminated their rights under a "Land Installment Contract" dated September 8, 2005, and ordered them to immediately surrender possession of the property. Although defendants' appeal is taken from the order denying reconsideration, they attack several interim orders as well. We affirm.

This action's procedural history is undisputed. In September 2005, the parties entered into an Installment Land Contract, whereby plaintiffs-sellers, Peter and Karen Perone, agreed to sell defendants-buyers, Dominic and Shirley Fontana, property in Plainfield for \$440,000. The property included a six-bedroom house and garage and eleven sheds, which apparently generated rental income. According to the complaint, the parties entered into the installment contract because the buyers were unable to obtain "mortgage financing."

In February 2016, the sellers filed a verified complaint and order to show cause and alleged the buyers had breached the installment contract by failing to pay real estate taxes and by failing to make monthly installment and other payments. The

¹ The order erroneously lists the date as January 17, 2017. The motion hearing took place on February 17, 2017.

complaint further alleged that when the sellers exercised their right to declare a forfeiture under the installment contract, the buyers refused to vacate. The buyers filed an answer. The parties entered into negotiations and settled their dispute. The settlement agreement's terms required the sellers to forbear from pursuing legal remedies under the installment contract on conditions. The conditions included the buyers paying, among other things, three months of late charges and accrued sewer charges. The buyers also agreed to resume making monthly payments of \$4500.

According to the complaint, the buyers never made the first monthly payment. The sellers demanded the buyers vacate the property as required by the terms of the settlement agreement. The buyers refused. The sellers then filed their verified complaint and order to show cause.

During the proceedings on the order to show cause, and following the entry of some interim orders not relevant to this decision, the parties reached a second settlement agreement with the assistance of a court-appointed mediator. The terms of the settlement agreement were spread upon the record in open court and included in an October 3, 2016 consent order. The terms of the consent order required the buyers to pay sellers \$305,000 on or before November 6, 2016. Upon receipt of that sum, the sellers

were to deliver a Bargain and Sale Deed with Covenants Against Grantors' Act "along with any and all customary closing documents in order to convey good and marketable title."

Although the date for payment of the purchase price was deemed "of the essence" in the consent order, the date for performance fell on a Sunday. Consequently, the parties became embroiled in a dispute over when closing would take place. That dispute eventually evolved into a dispute over other issues as well.

On November 16, 2016, the sellers filed a motion to enforce settlement. Following oral argument, the trial court noted that because the time for closing was on a Sunday and neither party was apparently willing to close on a Sunday – as evidenced by no one showing up anywhere on the "of the essence" date to consummate the settlement – there was no breach. The court explained that because no one had designated a date certain other than the Sunday date contained in the consent order, and because no one honored that date, it would be inequitable to enforce the "time of the essence" term against one party.

The judge directed the sellers to specify a closing date, no sooner than seven business days from the date of oral argument. The judge specifically directed the buyers to appear on that date if they were willing and able to purchase the property. The court

made clear the exchange of the purchase money and the deed were to take place simultaneously at closing.

One of the sellers, Ms. Fontana, appeared at the designated time and place for closing with an executed Deed, Affidavit of Title, and Seller's Residency Certification. The buyers did not appear for the closing.

The sellers filed a motion to enforce the consent order, and the court granted the motion. The buyers filed a motion for reconsideration, which the court denied. This appeal followed.

The buyers argue the following points:

POINT I

PLAINTIFF AS RESPONDENT BREACHED THE SETTLEMENT ORDER OF OCTOBER 3, 2016.


POINT II

LESS THAN SIX WORKING DAYS TO HONOR AND PERFORM UNDER A "TIME OF THE ESSENCE" WAS UNREASONABLE UNDER THE CIRCUMSTANCES.

We have carefully considered buyers' arguments in light of the record and controlling legal principles and found them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION