SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3194-20

DAVID BLUMBERG
and RIKKI BLUMBERG,

Plaintiffs-Appellants,

v.

AVRAM FRISCH and
ARIELA FRISCH,

Defendants-Respondents.

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Argued March 31, 2022 – Decided June 10, 2022

Before Judges Haas and Alvarez.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-000091-21.

Joseph H. Neiman argued the cause for appellants.

Barry J. Cohen argued the cause for respondents (Amster & Rosensweig, PC, attorneys; Barry J. Cohen, on the brief).

PER CURIAM

Plaintiffs David and Rikki Blumberg appeal from the Chancery Division's June 25, 2021, dismissal of their complaint against defendants Avram and Ariela Frisch for failure to state a claim. See R. 4:6-2(e). They also appeal the denial of their application to consolidate this proceeding with a landlord-tenant complaint defendants filed in the Special Civil Part. See R. 6:4-1(g). We affirm for the reasons stated by the Honorable Edward A. Jerejian, adding the following brief comments.

By way of background, plaintiffs signed a written lease agreement with the home's prior owners, who had been in default of their mortgage since 2007. The document, a "Standard Form of Residential Lease" promulgated by the New Jersey Realtors Association, allowed for the insertion after paragraph 45 of the pre-printed language, of "other lease provisions, if any[.]" Eight additional paragraphs were typed in below. One paragraph requires plaintiffs to cooperate with showings of the property once listed for sale or rent.

The eighth additional paragraph reads as follows:

> Additional addendum:
> a. Guaranty agreement
> b. Purchase option agreement

The addendum signed by plaintiffs included only a guaranty agreement, also signed by a third party, and a six-paragraph "Rider to Lease" regarding

obligations not relevant to the appeal. No addendum was attached about any "Purchase option agreement."

Citibank, the mortgage holder, sold the property to defendants at a sheriff's sale after foreclosure in September 2020. Defendants planned to occupy the premises and accordingly requested that plaintiffs vacate, but plaintiffs refused. Defendants filed a landlord-tenant action seeking immediate possession on March 1, 2021.

On April 19, 2021, plaintiffs filed this lawsuit, seeking in the first count to compel defendants to sell them the property. In the second count, plaintiffs demanded damages for "intentional and/or negligent infliction of emotional distress plus punitive damages, attorney's fees and costs of suit[.]"

Arguing before Judge Jerejian, plaintiffs' attorney acknowledged that the only mention of the asserted option to purchase in the signed lease was in the three words of paragraph 8b: "purchase option agreement." No addendum or attachment further referenced any option to purchase. Defendants argued that the language had been merely overlooked by the drafters of the agreement, and should never have been included.

Judge Jerejian reasoned that the absence of any relevant terms whatsoever meant no option to purchase or right of first refusal had been negotiated. Even

drawing conclusions in favor of plaintiffs, the allegations failed for lack of documentary support. Accordingly, the judge dismissed the complaint and denied the motion to consolidate.

Now on appeal, defendants allege the following errors:

> POINT I
>
> THE COURT ERRED WHEN IT DISMISSED PLAINTIFFS' FIRST CAUSE OF ACTION ON THE PLEADINGS.
>
> POINT II
>
> PLAINTIFFS' SECOND CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED.
>
> POINT III
>
> THE MATTERS SHOULD HAVE BEEN CONSOLIDATED.

Appellate courts "apply a de novo standard when reviewing an order dismissing a complaint for failure to state a claim." MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super. 307, 311 (App. Div. 2018). On appeal, plaintiffs remain entitled to "the most favorable inferences which may reasonably be drawn from" the allegations in the complaint. Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010) (quoting Rappaport v. Nichols, 31 N.J. 188, 193 (1959)).

"A complaint should be dismissed for failure to state a claim pursuant to Rule 4:6-2(e) only if 'the factual allegations are palpably insufficient to support a claim upon which relief can be granted.'" Frederick, 416 N.J. Super. at 597 (quoting Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). The court should search the complaint "in depth and with liberality to determine whether a cause of action can be gleaned even from an obscure statement." Ibid. (quoting Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002)).

"A privilege of first refusal does not give the holder of the privilege the power to compel the owner to sell. It merely requires the owner, if and when he decides to sell, to offer the property to the holder at a stipulated price." Madison Indus., Inc. v. Eastman Kodak Co., 243 N.J. Super. 578, 586-87 (App. Div. 1990). Nothing in the signed lease created such a right. Even if it had, defendants want to occupy the premises, not sell, so no right of first refusal exists.

Defendants assert that Andreula v. Slovak Gymnastic Union Sokol Assembly No. 223 is still the law. 140 N.J. Eq. 171, 174 (E. & A. 1947). There the Court of Errors and Appeals explained "[a]n option to purchase contained in

a written lease cannot be exercised after the expiration of the written lease by a tenant holding over since it is a collateral contract, independent of the lease."

"An option to purchase real estate embodied in a lease of that property is a contract for the 'sale of real estate,' and, therefore, within the statute of frauds[.]"[1] Sutton v. Lienau, 225 N.J. Super. 293, 299 (App. Div. 1988) (citations omitted). "The writing required by the statute of frauds must contain the 'essential terms of the contract.'" Id. at 300 (quoting Gilbert v. Gilbert, 66 N.J. Super. 246, 252-53 (App. Div. 1961)). An agreement to transfer interest in real estate is unenforceable unless detailed "in a writing signed by or on behalf of the party against whom enforcement is sought[.]" N.J.S.A. 25:1-13(a).

Alternatively, the agreement is enforceable if "a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement and the identity of the transferor and the transferee are proved by clear and convincing evidence." N.J.S.A. 25:1-13(b).

Nothing is known about any terms of the alleged purchase option, much less essential terms. Even ignoring the statute of frauds, the lease ended before plaintiffs attempted to exercise the option. The lease ran from March 1, 2019 to February 28, 2021, and by its own terms expired thereafter. Plaintiffs do not

[1] Neither party's brief discussed the statute of frauds.

allege any attempt to exercise an option prior to the expiration of the lease. An option to purchase cannot be exercised after a lease has ended. See Sheild v. Welch, 4 N.J. 563, 570 (1950).

Similarly, the court appropriately dismissed plaintiffs' second cause of action. Plaintiffs are not entitled to damages for eviction when they had no legal basis to remain.

Finally, the trial judge did not abuse his discretion in denying plaintiffs' motion to consolidate. The need for such consolidation evaporated with the dismissal of plaintiffs' complaint.

The complaint was properly dismissed under Rule 4:6-2(e). The factual allegations could not support the claims made.

Affirmed.