SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1271-21

JOHN ARTHUR ROBINSON
and LUCILLE DINA COLUMBO
ROBINSON,

Plaintiffs-Respondents/
Cross-Appellants,

v.

160 SPRING VALLEY RD LLC,
and 47TH STREET GROUP, LLC,

Defendants-Appellants/
Cross-Respondents,

and

LAW OFFICE OF MARK J.
SOKOLICH, ESQ.,

Defendant.

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Submitted February 28, 2023 – Decided July 7, 2023

Before Judges Messano, Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-000053-21.

Graff Silverstein LLP, attorneys for appellants/cross-respondents (David Graff, on the briefs).

Meyerson, Fox, Mancinelli & Conte, PA, attorneys for respondents/cross-appellants (Andrew P. Bolson and Erik Topp, on the briefs).

PER CURIAM

In this residential-construction dispute, defendants 160 Spring Valley Rd LLC and 47th Street Group, LLC appeal and plaintiffs John Arthur Robinson and Lucille Dina Columbo Robinson cross-appeal an order granting summary judgment as to plaintiffs' breach-of-contract claim, dismissing with prejudice plaintiffs' fraud claims and defendants' counterclaims, and requiring the return of plaintiffs' $90,000 down payment. We affirm.

I.

We discern the material facts from the summary-judgment record, viewing the evidence in a light most favorable to the non-moving party. See Rivera v. Cherry Hill Towers, LLC, 474 N.J. Super. 234, 238 (App. Div. 2022).

At the time of the transaction at issue, plaintiffs were a married couple, residing in a house in Franklin Lakes. John was an equities trader, and Lucille was the community director of the Franklin Lakes Recreation and Parks

Department.[1] Their two children were attending the University of Miami. Plaintiffs owned two properties: their home in Franklin Lakes and a townhouse in Parkland, Florida. Defendants are developers of a series of condominium units in Montvale.[2]

On December 10, 2019, John executed a document entitled "THE ALEXA CONDOMINIUM AGREEMENT OF SALE OF REAL ESTATE" (the "Agreement"). In the Agreement, plaintiffs were identified as the buyer, and defendants were identified as the seller. Someone executed the Agreement on behalf of 47th Street Group, LLC. As set forth in the Agreement, plaintiffs were purchasing a "Unit" located in the Alexa Condominium in Montvale. The "TOTAL PURCHASE PRICE" was $900,000. As required by the Agreement, plaintiffs paid a $90,000 deposit, delivering it to defendant's attorney.

According to the Agreement, the "approximate location, size and layout of the Unit . . . may be found in Exhibit 'C' of the Condominium's Master Deed." In paragraph four of the Agreement, defendants "agree[d] to include in the

[1] Because plaintiffs have the same last name, we refer to them by their first names for ease of reading.

[2] The defendant law firm was dismissed for lack of prosecution pursuant to Rule 1:13-7(a) on June 14, 2021. Accordingly, we refer to 160 Spring Valley Rd LLC and 47th Street Group, LLC collectively as "defendants."

construction of the Unit the items set forth in the Standard Features Sheet, a copy of which is attached." In paragraph thirteen, the parties agreed:

> STANDARD CHOICES: SUBSTITUTION OF MATERIALS: All of the standard items are set forth in the attached Standard Features Sheet. If any standard item becomes unavailable or the Seller elects to replace it with a similar product, the Buyer authorizes the Seller to substitute these materials, appliances, equipment, etc. with others of equal or better quality. The Seller does not offer any options, upgrades or extras.

In paragraph fifteen, which was entitled "SELLER'S LIMITED WARRANTY," the parties agreed, among other things:

> (5) The Seller warrants that the Unit is fit for its intended use.
>
> . . . .
>
> (8) The Seller warrants that the Unit and the Common Elements will substantially conform to the sales models, display boards, Standard Features Sheet, descriptions or plans used to induce the Buyer to sign this Agreement, unless otherwise provided in this Agreement. THE BUYER UNDERSTANDS THAT THE SELLER'S SAMPLES MAY CONTAIN EXTRAS THAT ARE NOT INCLUDED IN THE BASE PRICE OF THE UNIT. THE SELLER WILL CLEARLY MARK THESE EXTRAS IN THE SAMPLES.

In paragraph twenty-four, which was entitled "ALTERATIONS," the parties agreed:

> Construction will be substantially in accordance with the plans and specifications of Seller, except for extras specifically authorized by Purchaser. The Seller will not accept any request from the Buyer to alter the construction plans and specifications. No one is permitted or authorized to commit the Seller to make any such alterations.

Paragraph twenty-six, which was entitled "BREACH OF A PROMISE BY THE BUYER," stated, among other things:

> The Buyer and the Seller acknowledge that the plans and specifications for the unit to be constructed have been specifically prepared for and approved by the Buyer that this unit is therefore unique by reason of this Buyer's specific requests and determinations.

Regarding closing, the Agreement provided:

> The Buyer will be under no obligation to close title unless the Seller provides a [t]emporary or [p]ermanent [c]ertificate of [o]ccupancy issued by the Borough of Montvale at or before the time of closing of title. The Buyer agrees that he/she and his/her selected lender will close title and pay all money due the Seller after the [c]ertificate of [o]ccupancy is issued even though certain outside work has not been completed, such as landscaping installation and the installation of the driveway. Under no circumstances shall any escrow be held at or prior to closing with respect to incomplete or "punchlist" items.

The parties agreed that in the event of a default, "the sole responsibility of [defendants] for non-performance under this [a]greement for reasons beyond

[defendants'] control shall be limited to the return of deposit monies . . . ." The Agreement also contained an integration clause:

> ENTIRE AGREEMENT: This Agreement, the [a]pplication for [r]egistration filed with the New Jersey Department of Community Affairs, and the [p]ublic [o]ffering [s]tatement contains the entire agreement between [defendants] and [plaintiffs]. Neither party has made any other agreement or promise which is not contained in this Agreement.

John's signature appeared on a page of the Agreement that was numbered thirteen. The signature of the representative of 47th Street Group, LLC appeared on the following page, which was numbered fourteen. On page fourteen, after the signature of 47th Street Group, LLC's representative and lines for information about the parties' attorneys, the following was set forth:

> Additional provisions and Pictures attached
>
> Buyer to pay $100,000 for Appliance upgrades AT CLOSING
>
> Ground Level
>
> - tiled basement
>
> -finished full bath
>
> -built in bar extended on side wall (pictures to relate)
>
> -paneled back wall

-6 high hats, 1 flushmount

-elevator shaft built out closet, coat closet built out

Second Floor

- 1 foyer wall paneled
- small mudroom in entry foyer
- full molding package
- built in breakfront for dining room
- powder room as per #203 no panel
- 42inch counter depth sub zero
- wolf 6 burner 36 inch induction cooktop
- 427 r sub zero wine cooler refrigerator
- mosaic backsplash within budget
- quartz countertop and quartz fireplace matching
- #402 center island (blue, light grey color)
- white porcelain farmhouse sink

Third Level

- TV built in with cabinets below as per #405 in Master bedroom alcove
- MDF makeup station as extension from double vanity in Master Bedroom
- kids bath as is
- shower glass doors on all showers or tubs
- full trim package crown in all hallways and bedrooms

4th level

- 2 single beds with built ins around window (as per photos)
- built in across back wall as in #201 and #405 (no glass doors in middle area, use for Television)
- hardwood floors in loft

The next page, which was numbered fifteen, contained one line:

- all soft closing hinges throughout home[.]

On September 9, 2020, Montvale's Construction Code Official, Christopher Gruber, conducted an inspection of the Unit. The Unit had been approved only as a three-bedroom townhome. Gruber refused to issue a certificate of occupancy with built-in beds on the fourth floor of the Unit. Gruber determined that the "[f]ourth[-]floor bedroom, must be removed, not ready" because

> This particular unit had two custom built-in beds . . . on each side with French doors closing off, making a bedroom on the left and the right side when you got to the top of the stairs into the loft area, and that's not allowed by code and it was not allowed – it was not approved by the planning board for bedrooms up there.

Gruber believed the fourth-floor "attic space" was uninhabitable because it did not comply with a section of International Residential Code requiring emergency escape and rescue openings. Gruber testified, "[i]t's a dangerous issue . . . . It's a code that you're not allowed to have a bedroom, any bedroom anywhere in your house that doesn't have any egress out of it." According to Gruber, project manager Felix Herrera advised him that "the homeowner that was purchasing that unit required these beds." Gruber told Herrera, "he can't have them up there as per the code."

In a September 10, 2020 email message, Herrera advised plaintiffs that "final building inspection [had] stop[ped] by to inspect the home and, unfortunately, they are not allowing any bedrooms in the loft." Herrera told plaintiffs he would "have to remove the beds to get the final inspection. Peter says that you guys can install [the beds] after the closing."[3] John responded to Herrera the next day, advising that the "inability to have bedrooms in the loft is a deal breaker. The sole reason we bought the place was because of the added bedrooms in the loft." He asked Herrera to "[w]ork with the town to get the necessary approvals. Without it we have no interest in living there." John asked Herrera to send his email message to "Peter" and stated, "[a]gain, without the approval for the bedrooms in the loft there is no way forward for us."

In an October 28, 2020 letter entitled "TIME OF ESSENCE NOTIFICATION," which was addressed to plaintiffs' counsel, defendants' counsel asserted "all closing conditions have been satisfied" and demanded the closing occur on November 12, 2020. Plaintiffs' counsel responded in an October 30, 2020 letter, stating that under the terms of the Agreement, "improvements" to the Unit included "two bedrooms on the upper level";

[3] Presumably, Herrera meant Peter Tiflinsky, who has described himself as "an owner of the developer for [defendants]."

plaintiffs had been advised the unit had been constructed with the two bedrooms but the bedrooms had been "dismantled" so defendants could obtain a certificate of occupancy; and plaintiffs were not willing to reinstall the bedrooms "without the appropriate permits and approval" after closing, as defendants had suggested. Counsel stated plaintiffs were willing to close but only if defendants obtained those permits and approvals for the bedrooms and reinstalled them and, if defendants failed to do so, plaintiffs would terminate the Agreement and seek the return of their deposit.

On March 4, 2021, plaintiffs filed a three-count verified complaint. In count one, plaintiffs alleged defendants had breached the parties' contract, specifically paragraphs four, twenty-four, and twenty-six and subparagraphs five and eight of paragraph fifteen of the Agreement, by failing to deliver a unit with a fourth-floor bedroom. In count two, plaintiffs asserted a cause of action based on common-law fraud, claiming defendants had "induced [p]laintiffs into contract with the misrepresentation that [d]efendants would deliver the [Unit] . . . as contractually agreed, which included the fourth-floor bedroom." In the third count, plaintiffs alleged defendants had violated the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, by committing "a deception in the sale of the [Unit] by representing in [the] contract that the [Unit] could be built and sold

with a bedroom on the fourth floor of the [Unit]." Plaintiffs claimed they had suffered an ascertainable loss, specifically expenses they had incurred "in connection with their intent to purchase the [Unit], including, but not limited to, legal expenses." Plaintiffs sought a rescission of the contract, a return of their $90,000 deposit, and compensatory, punitive, and treble damages.

Defendants answered the complaint and counterclaimed. In their counterclaim, defendants asserted plaintiffs had "conflate[d] two contracts: one contract to purchase the property at issue in the case for $900,000, and another to purchase certain 'upgrades' including fourth-floor built-in furniture for $100,000." Defendants conceded that the purported contract for upgrades appeared on the last page of the contract for the base unit. Defendants alleged plaintiffs had breached their contract by failing to purchase the Unit for $900,000 and had breached the implied covenant of good faith and fair dealing.

After discovery ended, plaintiffs moved for summary judgment. In support of plaintiffs' motion, John certified the parties had entered into a $1,000,000 contract "for the purchase of a new construction townhouse," attaching a copy of the contract as exhibit A. Exhibit A consisted of the parties' fifteen-page Agreement; two typewritten pages containing information about each floor of the Unit, including "[two] single beds with built in around window

as per photo," "[b]uilt in across back wall," and "[n]arrow opening in loft: [s]mall office or twin linear bunk beds" for the "4th Floor"; and twenty-six pages containing copies of photographs regarding various aspects of the Unit, including photographs of beds and built-in shelves for the "Loft Bedroom." John asserted that during the negotiations regarding the purchase of the Unit, he had "made clear that [he] needed a fourth-floor bedroom due to the size of [his] family" and that defendants had "raised no issues with [their] ability to build the [Unit] with the fourth-floor bedroom . . . ."

Defendants cross-moved for summary judgment. In support, they submitted certifications of Tiflinsky and the lawyer representing them in this lawsuit. The attorney attached to his certification a copy of what he called "the Contract for Base Unit" as exhibit C and a copy of what he called "the Contract for Upgrades" as exhibit D. Exhibit C consisted of the first fourteen pages of the Agreement, including page fourteen, which contained the signature of 47th Street Group, LLC's representative and the "[a]dditional provisions," including "[two] single beds with built ins around window (as per photos)" for the "4th level." Exhibit D consisted of the two typewritten pages containing information about each floor and the twenty-six pages of copies of photographs. Tiflinsky asserted he had informed plaintiffs about defendants' "two-contract approach."

After hearing argument, the judge placed a decision on the record granting plaintiffs' motion as to their breach-of-contract claim and otherwise denying plaintiffs' motion and defendants' cross-motion. In so ruling, the judge rejected defendants' two-contract theory, finding the parties had one contract, which defendants had breached and found plaintiffs had failed to establish their fraud claims. The judge issued an order granting summary judgment as to plaintiffs' breach-of-contract claims, dismissing with prejudice the remaining claims and counterclaims, and requiring the return of plaintiffs' $90,000 deposit.

Defendants appealed and plaintiffs cross-appealed the order. Defendants argue the judge erred in granting summary judgment as to plaintiffs' breach-of-contract claim because genuine issues of fact existed as to whether the parties had entered into one or two contracts and because defendants' failure to provide "the fourth-floor built-in beds" was not a material breach of the contract. Defendants also contend the judge erred in dismissing their breach-of-the-implied-covenant claim, faulting plaintiffs for not conveying to defendants they would terminate the contract for "the slightest deviation from a single upgrade (i.e., replacing the fourth-floor built-in bed with a futon or pullout couch)." In their cross-appeal, plaintiffs argue the judge erred in finding they had not established the scienter element of common-law fraud and in misapplying the

law concerning defendants' purportedly unlawful conduct under the CFA. Unpersuaded by those arguments, we affirm.

II.

We review a trial court's summary-judgment decision de novo, applying the same standard used by trial courts. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "A dispute 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.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). If there is no genuine issue of material fact, "we must then decide whether the trial court correctly interpreted the law." Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 530 (App. Div. 2019). We accord no deference to the trial judge's conclusions of law and review those issues de novo. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018).

To prevail on a breach-of-contract claim, the party asserting the claim must prove the following four elements:

> first, that the parties entered into a contract containing certain terms; second, that [the party making the claim] did what the contract required [that party] to do; third, that [the other party] did not do what the contract required [that party] to do, defined as a breach of the contract; and fourth, that [party's] breach, or failure to do what the contract required, caused a loss to the [party making the claim].
>
> [Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 512 (2019) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016)).]

Our analysis of the parties' respective breach-of-contract claims is guided by the "familiar rules of contract interpretation." Serico v. Rothberg, 234 N.J. 168, 178 (2017).

"Interpretation and construction of a contract is a matter of law for the court subject to de novo review." Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 190 (App. Div. 2008) (quoting Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998)). "A contract arises from offer and acceptance, and must be sufficiently definite [so] 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (quoting West Caldwell v. Caldwell, 26 N.J. 9, 24-25 (1958)); see also GMAC

Mortg., LLC v. Willoughby, 230 N.J. 172, 185 (2017). "[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Weichert, 128 N.J. at 435. When the terms of a contract are clear and unambiguous, there is no room for interpretation or construction, and a court must enforce the terms as written. See Impink ex rel. Baldi v. Reynes, 396 N.J. Super. 553, 560 (App. Div. 2007). "A basic tenet of contract interpretation is that contract terms should be given their plain and ordinary meaning." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 321 (2019). In addition, "[c]ontracts should be read 'as a whole in a fair and common sense manner.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014) (quoting Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009)).

Applying those legal principles and reviewing de novo the parties' submissions, we conclude the parties entered into a contract; a material term of that contract required defendants to build a unit having on the fourth floor a room with "2 single beds with built ins around window"; and defendants breached that material term, causing plaintiffs' a loss. We perceive no genuine issue of material fact that would prevent summary judgment from being entered on plaintiffs' breach-of-contract claim.

The parties may disagree as to whether they had one contract or two contracts and whether the contract contained the two typewritten pages with information about each floor of the Unit and the twenty-six pages of photographs, which plaintiffs included in the copy of the contract they submitted in support of their motion and defendants submitted as a separate "Contract for Upgrades" in their attorney's certification. But the contract plaintiffs submitted and the "Contract for Base Unit" defendants submitted both contain page fourteen of the Agreement. Set forth on that page are the signature of 47th Street Group, LLC's representative and the "[a]dditional provisions," including "2 single beds with built ins around window . . ." on the "4th level." Defendants highlight earlier terms in the Agreement, arguing they limit what defendants could offer; the Agreement, however, expressly provides for "extras specifically authorized by Purchaser."

In the event of a "breach of a material term of an agreement, the non-breaching party is relieved of its obligations under the agreement." Roach v. BM Motoring, LLC, 228 N.J. 163, 174 (2017) (quoting Nolan v. Lee Ho, 120 N.J. 465, 472 (1990)). "[A] breach is material if it 'goes to the essence of the contract.'" Ibid. (quoting Ross Sys. v. Linden Dari-Delite, Inc., 35 N.J. 329, 341 (1961)). To determine if a breach is material, courts consider:

> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
>
> (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
>
> (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
>
> (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; [and]
>
> (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.
>
> [Id. at 174-75 (quoting Restatement (Second) of Contracts § 241 (Am. Law Inst. 1981)).]

Each of those factors support a finding that defendants' failure to provide a unit with a fourth-floor room with "2 single beds with built ins around window" was a material breach. John certified that during negotiations for the purchase of the Unit, he had "made clear that [he] needed a fourth-floor bedroom due to the size of [his] family." Defendants do not dispute that assertion; they simply fault plaintiffs for not telling them they would terminate the contract if defendants failed to provide a fourth-floor room with "2 single beds with built ins around window." In fact, Gruber testified defendants' project manager had

advised him that "the homeowner that was purchasing that unit required these beds." According to Tiflinsky, after Gruber refused to issue a certificate of occupancy due to the fourth-floor bedroom, defendants offered plaintiffs "the potential for pull-out couches, or beautiful futons . . . ." A futon or pullout couch is not adequate compensation for a legal fourth-floor room with "2 single beds with built ins around window." And defendants' opinion that plaintiffs needed only a three-bedroom unit based on the size of their family is not enough to create a genuine issue of fact concerning the materiality of defendants' failure to provide a fourth-floor room with "2 single beds with built ins around window."

Defendants contend the motion judge erred in dismissing their claim based on the implied covenant of good faith and fair dealing. All contracts impose on the parties to the contract a duty of good faith and fair dealing. Id. at 175. That duty is an "implied covenant" under which "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." Ibid. (quoting Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997)). To prove a breach of the implied covenant, a party must show a contract exists between the parties and that the other party acted in bad faith and deprived the party asserting the claim of rights

or benefits under the contract. Pollack v. Quick Quality Rests., Inc., 452 N.J. Super. 174, 191-92 (App. Div. 2017). In terminating the contract after defendants had materially breached it, plaintiffs did not act in bad faith.

Turning to plaintiffs' cross-appeal, to prevail on a common-law fraud claim, a plaintiff must establish: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 147 (2015) (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 172-73 (2005)). The first element includes "promises made without the intent to perform since they are 'material misrepresentations of the promisor's state of mind at the time of the promise.'" Bell Atl. Network Servs. Inc. v. P.M. Video Corp., 322 N.J. Super. 74, 95-96 (App. Div. 1999) (quoting Dover Shopping Ctr., Inc. v. Cushman's Sons, Inc., 63 N.J. Super. 384, 391 (App. Div. 1960)); see also Chrisomalis v. Chrisomalis, 260 N.J. Super. 50, 56 (App. Div. 1992) (finding fraud "cannot be predicated upon representations involving [future] matters . . . [but a] false representation of an existing intention . . . is actionable" (quoting Piechowski v. Matarese, 54 N.J. Super. 333, 345 (App. Div. 1959))). "[F]raud is never presumed, but must be established by clear and

convincing evidence." Weil v. Express Container Corp., 360 N.J. Super. 599, 613 (App. Div. 2003).

As the motion judge found, the record is devoid of any evidence defendants knew they would not be able to deliver a unit with a fourth-floor room with "2 single beds with built ins around window." Plaintiffs speculate that defendants "ought to have known" they would not be able to deliver the unit as described in the Agreement. But speculation is not "clear and convincing evidence," ibid., and is not sufficient to establish fraud.

Moreover, John's testimony fails to support plaintiffs' fraud allegations. John testified he believed defendants had not intended to "misdirect" him and their "intentions were pure" when they entered into the contract. John testified the basis for plaintiffs' fraud claims was not anything defendants had done in the formation of the contract. Instead, John faulted defendants for a telephone conversation that took place much later in which he was advised defendants had obtained a certificate of occupancy but was not told until "a few minutes into the conversation" that the certificate of occupancy had been obtained without the "beds with built ins." That testimony fails to support and even contradicts plaintiffs' allegation that defendants "induced" them into entering the contract.

Although the record supports plaintiffs' breach-of-contract claim, we conclude that "breach of contract does not rise to the level of an 'unconscionable commercial practice' in violation of the [CFA]." Cox v. Sears Roebuck & Co., 138 N.J. 2, 20 (1994) (quoting N.J.S.A. 56:8-2). "The [CFA] is not violated absent any 'unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission of any material fact . . . .'" Di Nicola v. Watchung Furniture's Country Manor, 232 N.J. Super. 69, 72 (App. Div. 1989) (quoting N.J.S.A. 56:8-2). "[A] simple breach of . . . contract is not per se unconscionable." Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 122 (2014) (quoting Gennari v. Weichert Co. Realtors, 288 N.J. Super. 504, 533 (App. Div. 1996), aff'd as modified, 148 N.J. 582, 590 (1997)); see also Richardson v. Standard Guar. Ins. Co., 371 N.J. Super. 449, 470 (App. Div. 2004) (holding "the breach of an enforceable contract does not constitute a violation of the CFA").

And that is what this was: a simple breach of contract. "An unlawful practice under the CFA requires 'fraudulent, deceptive or other similar kind of selling or advertising practices.'" Manahawkin Convalescent, 217 N.J. at 122 (quoting Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 271 (1978)). We

recognize a breach of contract may constitute an unconscionable practice if "substantial aggravating circumstances [are] present in addition to the breach." Cox, 138 N.J. at 18. We do not, however, perceive those circumstances in this case such that defendants' conduct could be deemed "deplorable enough to constitute an 'unconscionable commercial practice' under the [CFA] . . . ." D'Ercole Sales, Inc. v. Fruehauf Corp., 206 N.J. Super. 11, 31 (App. Div. 1985) (quoting N.J.S.A. 56:8-2).

Affirmed.