SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3946-21

KARINA GARCES and KEVIN ROSALES,

Plaintiffs-Appellants,

v.

RUI SOUSA,

Defendant-Respondent.

Argued October 11, 2023 – Decided November 6, 2023

Before Judges Rose and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-000095-21.

Joseph L. Garrubbo argued the cause for appellants (Garrubbo & Capece, PC, attorneys; Joseph L. Garrubbo, of counsel; Jeffrey Zajac, on the brief).

Ricardo J. Monteiro argued the cause for respondent (Law Office of Ricardo Monteiro, LLC, attorney; Ricardo J. Monteiro, on the brief).

PER CURIAM

Plaintiffs appeal from the Chancery Division's order denying specific performance of an option to purchase commercial real estate. Concluding the trial judge engaged in a proper exercise of discretion, we affirm.

I.

In June 2014 plaintiffs, Karina Garces and her son Kevin Rosales, signed an agreement to rent commercial property in Newark owned by defendant, Rui Sousa. The parties previously had done business in 2011 when Garces purchased the equipment of Sousa's defunct poultry business.

The 2014 lease agreement was for a term of ten years, expiring May 31, 2024. The monthly rental payment was $6,066.08. The lease terms included option language, specifically paragraph 36, which states, in pertinent part:

> [T]he tenant shall have the option to purchase the leased premises.
>
> a. The option shall be for a term of five years, terminating on May 31, 2019.
>
> . . . .
>
> c. The purchase price, pursuant to the option shall be $500,000.00 less a credit to be calculated as follows:
> With respect to each net monthly rent check paid by the Tenant to the Landlord, Tenant shall receive a credit against the purchase price in an amount equivalent to the principal reduction of a

loan in the amount of $500,000 amortized over a term of 10 years with an annual interest rate of 8%. An amortization schedule is attached as Exhibit A . . . .

d. The Tenant may not make additional payments to reduce the principal (for the purpose of the purchase price under the option) without the written consent of the landlord. Any excess moneys received will be credited towards rent or held as additional security pursuant to paragraph 34.

e. The Tenant must exercise the option on written notice to the Landlord, which notice must be received not later than May 31, 2019. Failure to do so shall void the option.

f. Tenant agrees to close title within 30 days of exercising the option. Failure to do so shall void the option.

The parties don't dispute that plaintiffs repeatedly expressed their desire to buy the property from Sousa in the years after they signed the lease. According to plaintiffs, Sousa never engaged in sale negotiations with them, each time giving excuses why he was not prepared to sell. Eventually, he drifted out of contact. Plaintiffs attempted to secure a mortgage in 2017 to buy the property, and Sousa provided them a bank referral. Plaintiffs' efforts to obtain a mortgage were ultimately unsuccessful.

On February 27, 2018, plaintiffs forwarded a one-page document to Sousa entitled "Lease Attachment." The document cites paragraph 36(d) of the 2014 lease, and stated the following:

> 1. Tenants give [sic] fifty thousand dollars ($50,000.00) to the Landlord.
>
> 2. This payment will be applied to the principal towards the purchase of the Real State [sic] property, located at 191-193 Miller Street Newark, N.J. 07114. With this letter we want to pay off with bank loan purchase amount, the owner offers to give all the necessary documents to process the loan in the bank and pay off the balance and start immediately paperwork for transfer ownership.
>
> 3. The Landlord accepts this lease attachment as a written consent to apply this payment to the principal of the purchase price.
>
> 4. Landlord will adjust the principal amount to reflex [sic] the payment applied to the principal reduce from 8% to 5%.
>
> 5. Landlord certifies that this payment is NOT used towards to rent of [sic] held as security. By signing this document all the parties certify they agree that the information in this document is true and correct.

Although plaintiffs signed the "lease attachment," Sousa never did so.

In August 2020, after the purchase option expired, plaintiffs forwarded another nearly identical "lease attachment" to Sousa. Sousa did not reply to

plaintiffs' communication, nor did he respond to plaintiffs' repeated efforts to contact him to facilitate sale of the property.

Plaintiffs filed a verified complaint on June 1, 2021, seeking specific performance of the purchase option as well as a declaratory judgment that they were entitled to purchase the property under the lease terms. Plaintiffs filed an amended complaint on September 21, 2021, alleging an additional claim of promissory estoppel.

After a one-day bench trial, Chancery Division Judge Jodi Lee Alper issued an order denying specific performance, supported by findings in a cogent oral opinion. Judge Alper found the "lease attachment" sent by plaintiffs was not an effective exercise of the purchase option, and that even if it had been, plaintiffs had not established that defendant received the document. Additionally, Judge Alper found plaintiffs failed to demonstrate they were ready and willing to purchase the property.

On appeal, plaintiffs argue the judge erroneously denied specific performance because the 2018 lease attachment was served on Sousa and operated as a valid exercise of the purchase option. Plaintiffs also advance arguments not raised below, including that Sousa breached the covenant of good faith and fair dealing.

II.

A.

"We may not overturn the trial court's factfindings unless we conclude that those findings are 'manifestly unsupported' by the 'reasonably credible evidence' in the record." Balducci v. Cige, 240 N.J. 574, 595 (2020) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." State v. Elders, 192 N.J. 224, 252 (2007) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)); see also Marioni v. Roxy Garments Delivery Co., Inc., 417 N.J. Super. 269, 275 (App. Div. 2010) ("the Chancery judge is required to apply accepted legal and equitable principles").

When deciding a remedy, "a judge sitting in a court of equity has a broad range of discretion to fashion the appropriate remedy in order to vindicate a wrong consistent with principles of fairness, justice and the law." Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999). Review of a trial court's decision regarding application of an equitable doctrine is "limited" and we "will not substitute our judgment for that of the trial judge in the absence of a clear abuse of discretion." N.Y. Mortg. as Trustee v. Deely, 466 N.J. Super. 387, 397

(App. Div. 2021); see also Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993) (applying the abuse of discretion standard upon reviewing equitable remedies). "It is perfectly clear that specific performance is an equitable remedy which a court awards with discretion." Weisbrod v. Lutz, 190 N.J. Super. 181, 186, (App. Div. 1983) (citing Barry M. Dechtman, Inc. v. Sidpaul Corp., 89 N.J. 547, 551 (1982)).

B.

"In a real estate transaction, an option contract is a unilateral agreement requiring a party to convey property at a specified price, provided the option holder exercises the option 'in strict accordance' with the terms and time requirements of the contract." Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 223, (2005) (emphasis added) (quoting State By and Through Adams v. New Jersey Zinc Co., 40 N.J. 560, 576, (1963)). Acceptance of an offer must be clear and unequivocal, not ambiguous. Looman Realty Corp. v. Broad Street Nat'l Bank of Trenton, 74 N.J. Super. 71, 82 (App.Div.1962) (citing Johnson & Johnson v. Charmely Drug Co., 11 N.J. 526, 538 (1953)). "Because the property owner cannot withdraw the offer, we require the option holder, who is 'free to accept or reject,' to adhere strictly to the terms of the contract." Brunswick Hills Racquet Club, Inc., 182 N.J. at 223 (quoting

Goodyear Tire and Rubber Co. v. Kin Properties, Inc., 276 N.J. Super. 96, 105 (App. Div. 1994)).

III.

Plaintiffs argue that the judge's denial of specific performance was an abuse of discretion. We are not persuaded.

The judge's finding that plaintiffs did not provide written notice to Sousa is supported by substantial evidence in the record. The plain language of the lease required plaintiffs to submit "written notice to the Landlord, which notice must be received not later than May 31, 2019." The judge correctly noted that the "lease attachment" was not signed by Sousa, thus plaintiffs' assertion that they transmitted the lease attachment does not in itself support a finding that Sousa received it. Plaintiffs argue this finding imposed an additional signature requirement not included in the original lease. We disagree and conclude the judge's comments about Sousa's missing signature simply underscore plaintiffs' failure to show proof of receipt. The judge weighed the conflicting testimony of Rosales and Sousa on the question of whether Sousa received the "lease attachment," and found Sousa never received the document. A trial court receives substantial deference in weighing conflicting testimony. See In re J.W.D., 149 N.J. 108, 117 (1997) ("[d]eference to a trial court's fact-findings is

especially appropriate when the evidence is largely testimonial and involves questions of credibility"). We discern no reason to disturb the judge's determination as to witness credibility and weight of the evidence in this regard.

We turn to the adequacy of the so-called option. After a thorough review of the record, we see no error in the judge's finding that the lease attachment, even if received, did not serve as valid written notice of plaintiffs' intent to exercise their option. The judge found the "[lease attachment] actually establishes that the option, as written, is not being accepted . . . ." The attachment does not include language which clearly states its purpose as an exercise of the purchase option. Indeed, a plain reading of the attachment language reveals plaintiffs' attempt to change material terms in the original lease. We conclude there is ample credible evidence in the record to support Judge Alper's finding that the "lease attachment" was not a valid exercise of the purchase option.

We are not persuaded by plaintiffs' argument that equity nonetheless compelled strict performance. We review the grant or denial of an equitable remedy for abuse of discretion. N.Y. Mortg. as Trustee, 466 N.J. Super. at 397. "Equitable relief is not available merely because enforcement of the contract causes hardship to one of the parties. A court cannot 'abrogate the terms of a

contract' unless there is a settled equitable principle, such as fraud, mistake, or accident, allowing for such intervention." Brunswick Hills Racquet Club, Inc., 182 N.J. at 223-24 (citation omitted) (quoting Dunkin' Donuts of America, Inc. v. Middletown Donut Corp., 100 N.J. 166, 183–84 (1985)). Additionally, "the general rule is that he who seeks performance of a contract for the conveyance of land must show himself ready, desirous, prompt, and eager to perform." Stamato v. Agamie, 24 N.J. 309, 316 (1957) (quoting Meidling v. Trefz, 48 N.J. Eq. 638 (E. & A. 1891)).

In addition to finding the "lease attachment" failed to serve as an exercise of their purchase option, the judge determined plaintiffs had not shown they were ready and willing to perform. The judge noted plaintiffs did not send a time-of-the-essence letter to Sousa. Although plaintiffs argue the absence of such letter does not defeat their claim, this was only one piece of evidence considered by the judge. The judge specifically noted that plaintiffs unsuccessfully applied for a mortgage and rejected their claim that they could afford to make a cash purchase. See In re J.W.D., 149 N.J. at 117. Plaintiffs submitted no other evidence to support their claim they were ready and able to buy.

We do not address plaintiffs' arguments as to breach of the implied covenant of good faith and fair dealing or anticipatory breach as they were not raised below, and there is nothing in the record to suggest plain error. R. 2:10-2; Nieder v. Royal Indemnity Ins. Co., 62 N.J. 229, 234 (1973). To the extent we have not addressed any of plaintiffs' remaining arguments, it is because they lack sufficient merit discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.