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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3180-22**

**MARY ANN MUNRO and
MATTHEW MUNRO,
wife and husband,**

Plaintiffs-Appellants,

v.

**KATHERINE PEPE, a/k/a
KATHERINE MAURER,**

Defendant-Respondent.

Submitted May 20, 2024 – Decided June 25, 2024

Before Judges Mawla and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Sussex County, Docket No.
C-000014-22.

Law Offices of Steven J. Sico, LLC, attorneys for
appellants (Steven J. Sico, on the briefs).

Ehrlich, Petriello, Gudín, Plaza & Reed, PC, attorneys
for respondent (John J. Petriello, on the brief).

PER CURIAM

Plaintiffs Mary Ann Munro and Matthew Munro appeal from the Chancery court's May 12, 2023 order granting summary judgment in favor of defendant Katherine Pepe.¹ Based on our review of the record and the applicable legal principles, we vacate and remand for trial.

I.

On June 19, 2019, defendant entered into a lease agreement with plaintiffs for the residential property located on Violet Trail in Lafayette. Plaintiffs leased the property for a period of one year—from July 15, 2019 to July 14, 2020. An addendum to the lease gave plaintiffs the option to purchase the property during the course of the lease but was silent on the terms of the purchase. The addendum further indicated plaintiffs must notify defendant in writing to exercise the option no later than ten days prior to the expiration of the lease. No such notice was ever sent.

In May 2020, the parties entered into a contract for the sale of the property. The closing date in the contract was August 31, 2020. Thereafter, the parties extended the closing date to January 30, 2021, but the closing never took place.

¹ Plaintiffs do not challenge the trial court's denial of their motion for summary judgment entered on May 12, 2023.

In March 2022, plaintiffs filed a complaint and order to show cause for specific performance to compel the sale of the property. Thereafter, defendant moved for summary judgment, which the court granted on May 12, 2023. The court noted the parties entered into a contract to sell the property with closing to take place on August 31, 2020, which was later extended to January 30, 2021. However, the parties did not "close on the [p]roperty on the original or on the extended date." Although plaintiffs insisted they were ready, willing, and able to close on the property, defendant contended plaintiffs failed to demonstrate they had the proper financing to purchase the property.

The court determined,

even in considering the extended closing date in the [c]ontract, the [c]ontract had expired by over two years. Additionally, although [p]laintiffs maintain that they are ready, willing, and able to close on the [c]ontract at its original price, [p]laintiffs have not proffered evidence to the [c]ourt to demonstrate this assertion. The [c]ourt does not find that specific performance under these circumstances is justifiable or equitable. Accordingly, . . . [d]efendant's motion for summary judgment is granted.

II.

Plaintiffs principally argue the court erred in granting summary judgment because there are issues of material fact that warranted a trial. Notably, plaintiffs filed a certification stating they were ready and able to close, contrary

to defendant's representations. Mary Ann² certified she was a mortgage broker and obtained repeated mortgage commitments and appraisals in support of closing on the property. Moreover, plaintiffs sold their home in reliance on the contract to purchase the property. Plaintiffs assert they were never advised prior to selling their home that defendant would not close on the property.

Plaintiffs further argue their certification established a loan was ready from Mary Ann's brokerage firm. Moreover, they completed the title work completed, purchased title insurance, and obtained the appraisals required to keep the loan up to date. Although defendant disputed plaintiffs' certification, plaintiffs maintain this merely created a fact issue that could not be resolved on summary judgment. Plaintiffs also assert that defendant submitted conflicting certifications, initially stating her readiness and ability to close throughout the contract period, but later noted there were tax liens on the property that prevented her from closing. Although defendant argues these liens were only placed on the property after the expiration of the closing date in the contract, the text messages between the parties indicate defendant was aware of an "older loan" as early as February 8, 2021, and that she would not "have agreed to sell

² We refer to Mary Ann by her first name because she shares the same last name as Matthew. We intend no disrespect.

the house" if she had known sooner about the loan suggesting it had existed for some time prior to the January 30, 2021 closing date. Plaintiffs also rely on other text messages exchanged between the parties, which raise a fact issue as to whether they were continuing to work toward a closing, even after the proposed closing date.

We review summary judgment motions de novo, using the same standard employed by the trial court. Hinton v. Meyers, 416 N.J. Super. 141, 146 (App. Div. 2010). Rule 4:46-2 provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file," along with any affidavits, show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Whether a genuine issue of material fact exists "requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A plaintiff seeking specific performance³ must show

³ While specific performance is generally an appropriate remedy for breach regarding real property contracts, Friendship Manor, Inc. v. Greiman, 244 N.J.

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.]

Super. 104, 113 (App. Div. 1990), 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)). Although we apply an abuse of discretion standard in reviewing a court's decision in granting or denying specific performance, at this juncture, there are fact issues that need to be resolved before the Chancery Division judge can determine whether specific performance is an appropriate remedy.

"[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.

We part company from the Chancery Division regarding its conclusion that plaintiffs have not proffered any evidence to demonstrate they were ready and able to close on the property. Viewing the facts in the light most favorable to plaintiffs, the conflicting certifications before the court created a fact issue that must be resolved by a trial. Accepting plaintiffs' certification as true, it demonstrated they had obtained repeated mortgage commitments and appraisals in support of closing on the property. Moreover, plaintiffs sold their home in

reliance on the contract and certify they "remained ready, willing, and able to close on the contract." Plaintiffs further contend they had also obtained a title search and title insurance, which supports their position they were prepared to close.

We further observe that the text messages in the record suggest the parties were still in discussions as late as April 2021—nearly three months after the previously extended January 30, 2021 deadline—regarding whether there was still a chance to move forward with the closing and how long the parties would need to close on the property. Plaintiffs advised defendant in the same text exchange that they had "updated" their application. In February 2021, defendant advised plaintiffs about an issue regarding an "older loan" that had caused an issue and that it was not clear whether it could be resolved. In short, viewing these facts in a light most favorable to plaintiffs, there are fact issues as to whether plaintiffs were ready, willing, and able to close pursuant to the contract and whether the parties were working towards an agreement to close beyond the January 2021 closing date.

That being said, however, it is unclear why plaintiffs—if they were in fact ready, willing, and able to close—did not take legal action prior to March 2022 to compel defendant to close. The resolution of that issue on remand will further

inform the court's decision as to whether specific performance is warranted under the facts of this case.

In sum, there were genuine issues of material fact that should not have been resolved on summary judgment. Accordingly, we vacate the trial court's May 12, 2023 summary judgment order entered in favor of defendant and remand for a trial. We intimate no views as to how this matter should be decided on remand.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION