

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ARISTA REAL ESTATE SERVICES, LLC,

Plaintiff,

vs.

RYAN and LORI FRENCH,
HUNT REAL ESTATE CORPORATION,

Defendant.

Bench Decision
(Do Not Distribute)

Index #: 809859/2019

Plaintiff moves for summary judgment on its complaint, wherein it alleges Defendants breached a contract for the sale of real property. In its complaint, Plaintiff's sought specific performance on the contract. Defendant Ryan and Lori French have moved to dismiss the complaint against them based on documentary evidence pursuant to CPLR 3211(a)(1).

Plaintiff was the owner of vacant, unimproved real property located on Lapp Road in the Town of Clarence. Plaintiff and Defendant French entered into a contract, and subsequent addendum, wherein Defendant agreed to purchase the property for \$105,000. Defendants made a \$5,000 deposit, which was then to be transferred by Defendant Hunt Real Estate to M&T Bank. Plaintiff's allege Defendant French breached the contract when they failed to promptly apply for a loan commitment. Instead, Plaintiff's maintain that Defendant French allowed the contingency period to expire and thereafter cancelled the contract based on their inability to secure a loan. Defendants argue that the addendum to the

contract which provided contingencies that Plaintiff itself did not satisfy, namely providing 5 feet of fill. As such, Plaintiffs were precluded from entitlement to summary judgment and instead the complaint should be dismissed.

In moving for summary judgment, the proponent of such relief has the initial burden to 'make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.'" NY Professional Drywall of OC, Inc. v Rivergate Dev., LLC, 137 A.D.3d 1509; Alvarez v Prospect Hosp., 68 N.Y.2d 320. "Only when the movant bears this burden and the nonmoving party fails to demonstrate the existence of any material issue of fact will the motion be properly granted." Staunton v. Brooks, 129 AD3d 1371, 1372, 12 N.Y.S.3d 324 [2015]). On a motion for summary judgment, the facts are viewed in the light most favorable to the nonmovant. Tirse v. Andrews, 128 A.D.3d 1112 (2015).

"[T]o obtain specific performance, 'plaintiff is required to demonstrate that [he] substantially performed [his] contractual obligations and [was] ready, willing and able to fulfill [his] remaining obligations, that defendant[s] was able but unwilling to convey the property and that there is no adequate remedy at law.'" Quimet v. Fitzsimmons, 68 A.D.3d 1507. The equitable remedy of specific performance is routinely awarded in contract actions involving real property, on the premise that each parcel of real property is unique." EMF Gen. Contr. Corp. v. Bisbee, 6 A.D.3d 45). Although certain defenses do exist including, insofar as

is relevant here, 'the court's discretion to grant or deny specific performance of a contract for the sale of realty is not unlimited; unless the court finds that granting a decree of specific performance would be a drastic or harsh remedy, or work injustice.

Plaintiff's reference the Court's attention to Alba v. Kaufmann, 27 A.D.3d 816. However, the facts there are easily distinguishable. In Alba, the parties were prepared, willing and ready to complete the sale of real property until the seller's spouse, who was not a party to the contract, had a change of heart and alleged she suffered from 'remorse and dread' at the prospect of the sale, which was making her ill. Id. at 817. The Court agrees that under those circumstances, given that both parties were prepared and ready to close, that specific performance was appropriate. Here, however, the facts are different.

While this Court may ultimately find that the Plaintiff would otherwise prevail, to do so by directing specific performance is a drastic and unrealistic remedy. Though real property is considered unique, it would be bad precedent to promulgate a ruling that every real estate deal gone bad must result in specific performance. Instead, each case must be decided on the facts present instead of adopting a sweeping and broad rule. Here, it is certainly questionable if this property was unique, whether the failure to finance did violate the terms of the addendum, whether Plaintiff breached its own contingencies by failing to provide fill, and most importantly, can plaintiff's money damages can be proven

with reasonable certainty. It is this Court's position that in light of this ambiguity, specific performance cannot be granted on summary judgment here. Bt. Triple Crown Merger Co v. Citigroup Global Mkts., 2008 NYLJ Lexis 6186. The questions regarding fill also raise questions of fact that prevents this Court from deciding the instant motion. Further, as the Court has broad discretion in fashioning a remedy, and directing specific performance on this contract would, as the court noted, be somewhat drastic.

As such, Plaintiff's motion for summary judgment is DENIED. Similarly, Defendant's motion to dismiss is also DENIED, as the Plaintiff's have more than adequately pled a cause of action which survives the documentary evidence provided. Further, that documentary evidence does not resolve all factual claims or dispose of Plaintiff's causes of action. Murnane Building Contractors, LLC v. Cameron Hill Construction, LLC, 159 A.D.3d 1602.

Plaintiff shall submit an order together with a transcript of this decision and submit it on notice.