At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of January, 2022.

PRESENT:

HON. LAWRENCE KNIPEL,

Justice.

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PARKWAY TRADING GROUP CORP.,

Plaintiff,

- against - Index No. 522411/17

YEHUDA BLESOFSKY,

Defendant.

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| The following e-filed papers read herein: | NYSCEF Doc Nos. |
|---|---|
| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed | 93-101 |

Upon the foregoing papers in this action for specific performance of a contract of sale for defendant's real property at 328 Kingston Avenue in Brooklyn (Property), defendant Yehuda Blesofsky (defendant or Blesofsky) moves (in motion sequence [mot. seq.] four) for an order, pursuant to CPLR 2221 (d), granting him leave to reargue the February 10, 2020 order of this court (Dear, J.), which denied his summary judgment motion and granted plaintiff's summary judgment cross motion, on the grounds that the court overlooked or misapprehended the law and facts, and, upon reargument, denying plaintiff's summary judgment cross motion and granting his summary judgment motion dismissing the complaint.

***This Action for Specific Performance***

On January 17, 2017, plaintiff Parkway Trading Group Corp. (Parkway) commenced this action for specific performance against Blesofsky by filing a summons, a verified complaint and a notice of pendency against Blesofsky's Property. The complaint alleges that on or about February 20, 2008, Blesofsky, as seller, and Parkway, as purchaser, entered into a contract for the purchase of the Property for $640,000.00 (Contract) with a closing date of *on or about* August 15, 2008 (complaint at ¶¶ 7 and 9). The complaint further alleges that:

> "The Contract provided, in part, that the transaction was subject to a right of first refusal held by non-party Scholom Raskin ('Raskin'), which granted Raskin the right of first refusal to purchase the Property on the same terms and conditions as set forth in the Contract.
>
> "After the Seller agreed to sell the Property to the Purchaser, Raskin commenced proceedings in the Supreme Court and subsequently the Rabbinical Court to enforce his right of first refusal with regard to the Property.
>
> "The proceedings brought by Raskin to enforce his right of first refusal endured for several years following the execution of the Contract, thereby preventing Plaintiff from completing the transaction.
>
> "In or about June 2017, Raskin and Plaintiff entered into a settlement agreement that allows Plaintiff to purchase the Property notwithstanding any right of first refusal held by Raskin" (*id.* at ¶¶ 10-13).

On September 11, 2017, plaintiff allegedly sent a letter to Blesofsky's counsel scheduling a closing for October 17, 2017, *time being of the essence*, and "warned that if

the Defendant failed to consummate the transaction on said date and time, he would be deemed in default ('TOE Letter')" (*id.* at ¶ 14). The TOE Letter informed Blesofsky that Parkway and Raskin "had resolved their differences in favor of allowing Plaintiff to close on the Property notwithstanding any right of first refusal held by Raskin" (*id.*). The complaint alleges that Parkway appeared for the October 17, 2017 closing "ready, willing and able to tender the balance of the purchase price" but Blesofsky did not appear and is in default (*id.* at ¶¶ 15-16). The complaint alleges that Blesofsky "has failed and/or refused to tender the deed to the Property in accordance with the Contract" (*id.* at ¶ 17).

On December 18, 2017, Blesofsky answered the complaint and asserted several affirmative defenses, including that the Contract was cancelled and terminated, "[p]laintiff's claims are barred under the applicable statute of limitations as the closing date on the subject property was in 2008" and the Contract "was a result of duress and/or fraud" (answer at ¶¶ 1-12).

***The Summary Judgment Motion and Cross Motion***

On September 15, 2019, Blesofsky moved for summary judgment dismissing the complaint. Blesofsky affirmed that "Raskin never sought to exercise or enforce the Right of First Refusal, and there was no impediment to Plaintiff closing on the Contract on the Closing Date of August 15, 2008." Blesofsky also affirms that Raskin's right of first refusal was "revived" for 45 days in Raskin's 2009 Rabbinical Court proceeding against Parkway, after which "Plaintiff failed to request a new closing for the next eight years,

until 2017." Blesofsky sought to dismiss the complaint on the ground that Parkway's unreasonable delay in tendering performance under the Contract precludes its 2017 claim for specific performance of the Contract.

On November 15, 2019, Parkway opposed Blesofsky's summary judgment motion and cross-moved for summary judgment on its claim for specific performance of the Contract. Parkway submitted supporting affirmations from Meryl Wenig (Wenig), Raskin's attorney, and Samuel Stern (Stern), Parkway's principal. Wenig and Stern affirmed that "[o]n or about February 21, 2008, Defendant Blesofsky notified Raskin that he accepted a *bona fide* offer to sell the Premises subject to [a] 30-year tenancy and afforded Raskin 45 days to exercise his [right of first refusal] upon the same terms." Wenig and Stern describe two Supreme Court actions that Raskin commenced against Blesofsky in April 2008 and July 2008 to enforce his right of first refusal, after which Raskin and Blesofsky agreed to have their dispute decided by the Rabbinical Court. The Rabbinical Court issued a November 9, 2008 award, which was amended by a February 24, 2011 Clarification of Verdict. Wenig and Stern affirmed that the Rabbinical Court clarified that "the 45-day period within which Raskin had to exercise his [right of first refusal] did not begin to run until Defendant Blesofsky was able to convey the Premises 'free and clear' of encumbrances and judgments."

Wenig and Stern further affirmed that Blesofsky was unable to convey title to the Property "free and clear" of all encumbrances because the Property was encumbered by

money judgments against Blesofsky, a mortgage lien and 40 Environmental Control Board (ECB) violations. Wenig asserted that "Blesofsky fails to establish as a matter of law that Raskin's time to exercise his [right of first refusal] lapsed and, as such, [Parkway] was not inhibited from seeking specific performance prior to the commencement of this action." Stern similarly asserted that "[t]he Court must deny Defendant Blesofsky's motion for summary judgment because he failed to establish as a matter of law that he was capable of conveying the Premises 'free and clear' of judgments and liens in accordance with the [Rabbinical Court's] Clarification of Verdict."

Stern further affirmed that Parkway was ready, willing and able to proceed with its purchase of the Property on October 17, 2017, the time of the essence closing date. Stern affirmed that on the October 17, 2017 closing date, he appeared for the closing and produced certified checks for the balance of the purchase price and the transfer fee.

***The Court's Decision and Order***

On February 10, 2020, the court (Dear, J.) issued a decision and order denying Blesofsky's summary judgment motion on the ground that "under the circumstances of this case . . . Plaintiff sought to perform under the contract within 'a reasonable time.'" Essentially, the court held that Parkway established that it could not close until the expiration of Raskin's option, which was still in force until Parkway and Raskin resolved their dispute by a 2017 agreement. The court noted that Wenig's affirmation and the appended exhibits "reflect behavior by [Blesofsky] and Raskin consistent with continued

applicability of the option and an attempt to comply with the [Rabbinical Court's] conditions." The court also noted that "this property has been tied up in litigation throughout, largely based on [Blesofsky's] actions." The court granted Parkway's summary judgment cross motion because Parkway established its prima facie entitlement to specific performance of the Contract by demonstrating that it was ready, willing and able to perform under the Contract, Blesofsky was able to convey the Property and that there was no adequate remedy at law.

***Blesofsky's Instant Motion to Reargue***

Blesofsky now moves to reargue this February 10, 2020 order and, upon reargument, Blesofsky seeks an order denying Parkway's summary judgment cross motion and granting his summary judgment motion dismissing the complaint. Defense counsel argues that "[t]he Court incorrectly found that the Clarification of the second Rabbinical Court 'extended Raskin's option and enjoined [Parkway] from closing until conditions were met . . .' and "the Court was wrong to have found that the second Rabbinical Court's Clarification imposed 'conditions' on Blesofsky, to wit, delivery of a 'Deed Free and Clear,' because Blesofsky was not a party to the second Rabbinical Court."

Parkway, in opposition, submits a memorandum of law arguing that "[d]efendant's motion merely reiterates the facts and arguments he previously raised . . . and fails to identify specific facts or law that the Court misapprehended." Parkway asserts that "[i]t

is black-letter law that whether an amount of time is reasonable is determined on the 'facts and circumstances of the particular case.'" Parkway argues that it could not close until Raskin's right of first refusal expired, and the Rabbinical Court "extended Raskin's time to exercise his option until Defendant Blesofsky was able to deliver 'free and clear' title." Parkway further asserts that "[o]n his motion for summary judgment, Defendant Blesofsky failed to demonstrate that he was ever capable of complying with the [Rabbinical Court's] conditions thereby triggering the clock on Raskin's option." Parkway explains that the court correctly held that its 2017 "time of the essence" notice was reasonable because "Raskin's [right of first refusal] remained an impediment to [Parkway's] closing until it was resolved by an agreement between Raskin and [Parkway] in 2017." Parkway asserts that "[c]ontrary to Defendant Blesofsky's argument, his absence from the second rabbinical proceeding did not terminate Raskin's option."

***Discussion***

"A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (*Markovic v J&A Realty, LLC*, 124 AD3d 846, 847 [2015] [internal quotation marks omitted]). "While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments

different from those originally presented" (*Ahmed v Pannone*, 116 AD3d 802, 805 [2014] [internal quotation marks omitted]).

Here, Blesofsky merely reiterates the same arguments that he previously made before the court and fails to identify any specific facts or law that the court overlooked or misapprehended when it denied Blesofsky's summary judgment motion and granted Parkway's summary judgment cross motion for specific performance of the Contract. The court (Dear, J.) correctly determined that the approximately seven-year-period between the 2008 Contract and Parkway's attempt to schedule a "time of the essence" closing in 2017 was reasonable under the unique circumstances of this case. As the court expressly noted, Wenig's cross-moving affirmation and the appended exhibits "reflect behavior by [Blesofsky] and Raskin consistent with continued applicability of the option and an attempt to comply with the Beth Din's conditions." The court also noted that "this property has been tied up in litigation throughout, largely based on [Blesofsky's] actions." Based on these undisputed facts, the court properly determined that Parkway sought to perform under the Contract within a reasonable time. Accordingly, it is hereby

**ORDERED** that Blesofsky's motion (in mot. seq. four) is only granted to the extent that leave to reargue is granted, but, upon reargument, the court adheres to the February 10, 2020 decision and order.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE