Bhatia v Reddy
2024 NY Slip Op 35533(U)
March 4, 2024
Supreme Court, Nassau County
Docket Number: Index No. 612684/2020
Judge: Sarika Kapoor
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF THE SUPREME COURT

AMARJIT S. BHATIA, MANJOT SINGH & SURINDER KAUR,

Plaintiffs,

- against -

NARASIMHA REDDY & ANUJA REDDY,

Defendants.

TRIAL/IAS PART 34
Index No.: 612684/2020

DECISION AND ORDER

Motion Seq. No.: 002
Motion Submission Date: 12/21/2023

NYSCEF documents 1-6, 24-39 were read and considered in deciding this motion.

Upon the foregoing papers, the motion of plaintiffs, Amarjit S. Bhatia, Manjot Singh and Surinder Kaur (together "the plaintiffs"), pursuant to CPLR 3212, granting them partial summary judgment and ordering defendants, Narasimha Reddy and Anuja Reddy (together "the defendants") to specifically perform the contract between the parties dated August 14, 2019, and ordering that the net proceeds be held in escrow pending the determination of the plaintiffs' damages claim, is determined as set forth hereinafter.

Background and facts

Plaintiffs and defendants entered into a contract for sale of the real property located at 35 Juniper Lane, Muttontown, New York on August 14, 2019 ("the contract") (doc. 2). The contract called for a purchase price of $1,150,000 of which $50,000 ("the downpayment") was paid upon signing (*id*). Counsel for defendants continue to hold the $50,000 down payment in escrow. The contract set a closing date for on or about June 30, 2020 (doc. 2). The contract also required, at paragraph 16d, that the defendants deliver the premises broom clean and vacant of any tenancies (*id*). It is undisputed that, at the time of the signing of this contract, there were tenants residing at the subject premises.

Plaintiffs commenced this action by filing a Summons and Verified Complaint on November 5, 2020 (doc. 1) along with a Notice of Pendency of the same date (docs. 4 and 5). The complaint seeks both specific performance of the contract and damages as a result of the defendants' breach of the contract. Issue was joined with the filing of an Answer on February 12, 2021 (doc. 6).

Notably, prior to the commencement of this action, the defendants' tenants, Diaa Elmaddah and Hiba Fathallah commenced an action against Narasimha Reddy and Anuja Reddy in this Court under Index No. 608155/2020 alleging that the tenants' lease for the property included a right of first refusal (the "Tenant action"). Ultimately, after extensive litigation, by Decision and Order dated June 29, 2023, this Court dismissed the Tenant action finding that no right of first refusal existed (doc. 29).

Sequence 002

Upon the instant motion, the plaintiffs seek, inter alia, an Order granting them partial summary judgment and directing the defendants to specifically perform the contract. Plaintiffs submit that with this court having dismissed the Tenant action, there is no longer any impediment to title preventing the defendants from conveying same to the plaintiffs herein. Thus, the plaintiffs argue that the defendants' continued refusal to convey title on account of their purported inability to perform on the obligation to deliver the premises vacant and free of tenancies is wholly meritless. Plaintiffs argue that this position is simply not an impediment to title and does not prevent the defendants from conveying title. Additionally, plaintiffs argue that it does not appear that the defendants have taken any steps whatsoever to evict their tenants in the last three years, instead utilizing the continued tenancy as a sham argument to prevent the closing from taking place.

In further support of their position, plaintiffs argue that as the tenants had already filed a complaint and notice of pendency in the Tenant action, no "time of the essence letter" was sent or needed. Furthermore, plaintiffs argue that, by e-mail dated October 29, 2020 from the defendants' then real estate transactional attorney, it was affirmatively stated that the seller would not tender title (doc. 3). Therefore, a setting of a time of the essence closing would have been a futile gesture. Counsel for plaintiffs also avers that defendants current counsel has informed him, including at the recent conference held before this Court on October 2, 2023, that the defendants' continue to refuse to convey title despite the dismissal of the Tenant action. Based on the foregoing, counsel for plaintiffs argue that it is clear that the defendants are simply utilizing the Tenant action and the delay in closing to extract a higher purchase price from the plaintiffs. Counsel for plaintiffs argue that not only is a higher purchase price not warranted, but since the defendants have taken no discernable action to evict the tenants and provide the premises vacant, the defendants owe damages to the plaintiffs for their breach of the contract.

In opposition, counsel for the defendants argues that the plaintiffs improperly seek specific enforcement of a contract that is non-enforceable and is null and void. Defendants argue that plaintiffs wish to proceed to closing on a residential contract of sale that was formed over four years ago, and whose time for performance long ago expired. Additionally, defense counsel argues that plaintiffs already know that performance by the defendants was rendered impossible by virtue of the notice of pendency filed by the Tenant action; yet the deadlines for defendants to perform their obligations under the contract all expired long ago, and that too without the plaintiffs themselves having satisfied said their own obligations under the contract. Additionally, defense counsel argues that "[p]laintiffs present no legal authority for the untenable position they assert by this lawsuit, let alone the preposterous one they seek to advance on this wholly premature and legally unavailing motion. Tellingly, they cite not a single statute, nor a single case anywhere in their motion papers, save for one that defeats rather than supports their position" (doc. 36, ¶5). It is defense counsel's position that this motion "is an attempted shortcut to obtain a windfall for the Plaintiffs for which they have no legal right" (*id.*, ¶6).

Specifically, as to defendants' claims that the plaintiffs failed to perform their own obligations under the contract, counsel for defendants assert two principal arguments. First, consistent with and as obligated by paragraph 8(a) of the contract or paragraph 58 of the Rider to the contract, the plaintiffs failed to obtain a mortgage commitment on or before 45 days after the contract was signed—i.e., 45 days after August 14, 2019, which was September 30, 2019, or even by March 15, 2020 as arguably permissible pursuant to the Rider. Defendants argue that the mortgage commitment appended to the plaintiffs papers is dated July 6, 2020, four months beyond the time required by the contract. This, they submit, constituted a failure to perform on the plaintiffs' part. Second, consistent with and as obligated by paragraph 58 of the contract, the plaintiffs also failed to apply for financing within 10 days of the contract, i.e., by August 29, 2019, something that plaintiffs likewise fail to indicate that they did.

With respect to their argument relating to impossibility, defense counsel asserts that had the plaintiffs ordered and produced a title report as required by paragraph 21 of the contract, they would have learned that a notice of pendency had been filed on the subject property by the defendants' tenants, which fact not only made performance of the contract by defendants impossible, but also precluded plaintiffs from being ready, able and willing to close since such lis pendens would have been an objection to title and preclude their own mortgage financing. Defense counsel argues that the tenants' lis pendens and still pending lawsuit made impossible the performance of the contract, and that that time period to perform expired long ago. Additionally, defendants argue that performance was made impossible because the closing contemplated delivery of possession to a house vacant of tenancies, but that the tenants, at all times for performance, remained in the house under the protection of their lawsuit and lis pendens.

Defense counsel also argues that pursuant to paragraph 21 of the contract, the defendants had the option, at their "sole election" to either attempt to remove defects or to cancel the contract, and that even if the defendants had attempted to remove defects, the June 30, 2020 closing date could only be extended for a period not exceeding 60 days in the aggregate. This, defense counsel argues, further establishes that the time for performance of this contract expired years ago.

Analysis

It is well established that summary judgment may only be granted when it is clear that no triable issue of fact exists (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). A party seeking summary judgment bears the initial burden of demonstrating its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If the movant fails to meet its burden to establish a prima facie case, tendering sufficient evidence to eliminate material issues of fact, the motion must be denied "regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d at 324).

The essential elements of a breach of contract cause of action are "the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages" (*JP Morgan Chase v J.H. Elec. of N.Y., Inc.*, 69 AD3d 802, 803 [2d Dept 2010]; *see Elisa Dreier Reporting Corp. v Global NAPS Networks, Inc.*, 84 AD3d 122, 127 [2d Dept 2011]). "To prevail on a cause of action for specific performance of a contract for the sale of real property, a ... purchaser must establish that it substantially performed its contractual obligations and was ready, willing, and able to perform its remaining obligations, that the vendor was able to convey the property, and that there was no adequate remedy at law" (*1107 Putnam, LLC v Beulah Church of God in Christ Jesus of the Apostolic Faith, Inc.*, 152 AD3d 474, 475 [2d Dept 2017]; *see ADC Orange, Inc. v. Coyote Acres, Inc.*, 7 NY3d 484, 490 [2006]; *Cipriano v Glen Cove Lodge # 1458, B.P.O.E.*, 1 NY3d 53, 62 [2003]).

Based upon the papers presented herewith, this Court finds that the defendants improperly repudiated the contract -- the existence of which is not in dispute -- and which contract provided for a closing date on or about June 30, 2020. The documentary evidence submitted herewith plainly establishes that defendants were never ready to close because the premises were never made vacant as required under paragraph 16d of the contract. Indeed, this Court cannot overlook the fact that defendants have failed to offer any proof that they ever sought to evict the tenants from the premises. Furthermore, with their submissions including their supporting bank statements showing the necessary and available funds to close on this transaction at all times necessary, the plaintiffs have demonstrated that they have been ready, willing, and able to close title at all times.

Defendants' argument that the contract is unenforceable and null and void because it was signed more than four years ago, lacks merit. The mere fact that the contract is more than four years old does not make it unenforceable or null and void. Rather, there must be a mechanism in the contract which allows cancellation by the defendant/seller, and here, there simply is none. It remains undisputed that at all relevant times there existed a valid subject contract binding the parties thereto to the promises contained therein.

The defendants' claim that the purchasers' inability to obtain financing renders their (the purchasers) specific performance claim meritless, itself lacks merit. It is plain that the mortgage commitment contingency cited in paragraph 8 of the contract, is for the benefit of the purchaser and allows the purchaser/plaintiff to cancel the contract in the event that purchaser fails to obtain a mortgage (*see generally*, *Kapur v Stiefel*, 264 AD2d 602 [1st Dept 1999]; *Lunning v 10 Bleecker St. Owners Corp.*, 160 AD 2d 178 [1st Dept. 1990]). Nothing in paragraph 8 of the contract requires the plaintiff/purchaser to obtain a mortgage and nothing in said paragraph allows the defendant/seller to cancel for the plaintiffs' failure to obtain a mortgage. The only recourse the defendant/seller has is to require the plaintiff to purchase the property without a mortgage if plaintiff fails to meet the requirements of the mortgage contingency. Thus, there is no obligation burdening the plaintiff in paragraph 8 of the sales contract.

In the end, this Court finds that paragraph 16d of the contract requires "the delivery of the premises and all buildings and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with the keys to the premises." Defendants' argument that they have no obligation to deliver the premises vacant because this is an objection to title and therefore they have no obligation to take any actions or proceedings or expend any money to remove such objection to title, is also meritless.

This Court finds the Second Department's holding in *W Equities Acquisitions LLC v Wyckoff Heights Properties, LLC* (190 AD3d 881 [2d Dept 2021]) to be squarely on point. In *W Equities*, the Appellate Division was faced with a similar provision requiring a seller in a real estate contract to claim that the inability to deliver the premises free of all tenancies constitutes a title defect enabling the cancellation of the contract. There, the Second Department held that in order to trigger the application of such a section of the contract "the defendant was required to prove the existence of a situation beyond the parties' control, coupled with proof that the defendant acted in good faith in attempting to convey title in accordance with the terms of the contract" (*id.* at 881 [citations omitted]).

Here, too, defendants have failed to provide any such proof of either the existence of a situation beyond the parties' control or proof that the defendants acted in good faith in attempting to convey title in accordance with the terms of the contract. In fact, defendants have provided no proof documenting any attempt on their part to deliver the premises vacant and free of all tenancies as required under the contract. Thus, this Court finds that the ongoing tenancy does not create an impediment to title, but rather an impediment to closing pursuant to paragraph 16d. Indeed, this would not be an objection to title; rather it is a curable condition that the defendants have admittedly taken no steps to comply with since the signing of the contract. This Court will not permit the defendants to claim that their inaction to meet this obligation, which they have failed to show is impossible to perform, somehow renders this contract unenforceable.

Finally, although defendants contend that plaintiffs' motion should be denied as premature since they have not been afforded a reasonable opportunity to conduct discovery, they have failed to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion are in plaintiffs' exclusive knowledge or control (*see Morales v Amar*, 145 AD3d 1000, 1003 [2d Dept 2016]). On the contrary, no discovery is required to provide proof of, inter alia, their attempts to evict the tenants, as all of this proof is completely within the defendants' own control and possession.

Conclusion

Accordingly, it is now hereby,

ORDERED that plaintiffs' motion for partial summary judgment is **GRANTED** in its entirety; and it is further,

ORDERED, that defendants, Narasimha Reddy and Anuja Reddy, specifically perform on the subject contract within thirty (30) days of the date of this Decision and Order with Notice of Entry; and it is further,

ORDERED, that the defendants, Narasimha Reddy and Anuja Reddy, shall take immediate steps -- within thirty (30) days of the date of this Decision and Order with Notice of Entry -- to vacate the premises and deliver title to the premises at a closing to be held within thirty (30) days of the date of this Decision and Order with Notice of Entry; and it is further,

ORDERED, that if the defendants fail to vacate and deliver title to the premises at a closing within and no later than thirty (30) days of the date of this Decision and Order with Notice of Entry (above decretal), the Sheriff of the County of Nassau is herewith directed to deliver a deed to the subject proper to the plaintiffs, upon proof of payment of the purchase price less the downpayment, and the balance of the sales proceeds after all appropriate encumbrances and liens have been paid shall be held in escrow pending completion of all the defendants' obligations under the contract including the delivery of the premises free of tenancies; and it is further,

ORDERED that all applications not specifically addressed herein are **DENIED**.

The parties' remaining contentions have been considered and do not warrant discussion.

This shall constitute the Decision and Order of the Court.

Dated: Mineola, New York
March 4, 2024

ENTER:

HON. SARIKA KAPOOR, A.J.S.C.

ENTERED
Mar 06 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE