Third District Court of Appeal
State of Florida

Opinion filed September 2, 2020.
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-1068
Lower Tribunal No. 15-13820
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Lupetto, Inc.,
Appellant,

vs.

South Bay Developers Group, LLC, etc., et al.,
Appellees.

An appeal from the Circuit Court for Miami-Dade County, Abby Cynamon and Samantha Ruiz Cohen, Judges.

Crabtree & Auslander, and Charles M. Auslander, John G. Crabtree, Brian C. Tackenberg, Emily Cabrera, and Linda Ann Wells; and Jorge L. Guerra, P.A., and Jorge L. Guerra, for appellant.

Waldman Barnett, P.L., and Glen H. Waldman, and Michael A. Azre; Kula & Associates, P.A., and Elliot B. Kula, and William D. Mueller, for appellees.

Before SCALES, MILLER, and GORDO, JJ.

MILLER, J.

Appellant, Lupetto, Inc., challenges an adverse final judgment entered in favor of appellee, South Bay Developers Group, LLC, following a nonjury trial. The lower tribunal declined to decree specific performance of an option to repurchase certain real property, finding the proof was not "clear, competent, and satisfactory." Humphrys v. Jarrell, 104 So. 2d 404, 410 (Fla. 2d DCA 1958). Perceiving no error, we affirm.

The law is well-settled that

> in a suit for specific performance of an alleged contract for the sale of real estate the plaintiff must do more than merely prove his case by a preponderance of the evidence, but he must prove the contract as alleged in his complaint by competent and satisfactory proof which must be clear, definite and certain.

Miller v. Gardner, 144 Fla. 339, 343-44, 198 So. 21, 23 (1940) (citations omitted). Further, "[e]ven where the terms of the contract are clear, certain, and unambiguous, specific performance is not a matter of right, but rests in the sound discretion of the court to be determined from all the facts and circumstances." Mann v. Thompson, 100 So. 2d 634, 637 (Fla. 1st DCA 1958).

Ordinarily, where there is an option to purchase, the act of furnishing notice of the decision to purchase the property "is all that is required to exercise that option." Twelfth Ave. Invs., Inc. v. Smith, 979 So. 2d 1216, 1219 (Fla. 4th DCA 2008) (citation omitted). Once notice is provided, "the option [becomes] a bilateral

contract, binding on both parties." Doolittle v. Fruehauf Corp., 332 So. 2d 107, 109 (Fla. 1st DCA 1976).

However, as was aptly observed by our high court in South Investment Corp. v. Norton, 57 So. 2d 1, 2 (Fla. 1952) (citation omitted,

> An option contract is not a contract of sale within any definition of the term; it is a unilateral contract which gives the option holder the right to purchase under the terms and conditions of the option agreement. Thus, if such terms and conditions are not met by the option holder, the unilateral contract does not become a bilateral contract, binding on both parties, and susceptible of enforcement by a court of equity in a suit for the specific performance thereof.

Accordingly, the option holder "must strictly comply with the applicable provisions of the contract," necessarily accepting "the terms of the option unqualifiedly." Mathews v. Kingsley, 100 So. 2d 445, 446 (Fla. 2d DCA 1958) (citing Orlando Realty Bd. Bldg. Corp. v. Hilpert, 93 Fla. 954, 113 So. 100 (1927)).

Here, Lupetto furnished notice of intent to exercise the repurchase option, as authorized under the original purchase contract. Nonetheless, the trial court found a dearth of proof that Lupetto stood "ready, willing, and able" to tender payment, along with a lack of compliance with certain contractually stipulated terms and conditions. Shapiro v. Jacobs, 948 So. 2d 880, 882 (Fla. 3d DCA 2007) ("[I]t is the plaintiffs' burden of proof to show they were ready, willing, and able to perform the contract in order to establish a prima facie case for specific performance.") (citation omitted); see Smith v. Crissey, 478 So. 2d 1181, 1182 (Fla. 2d DCA 1985) ("To

obtain specific performance, . . . the purchaser [must] establish[] that he was ready, willing and able to do so or that he has been excused from so doing.") (citation omitted). The factual findings below, "clothed with a presumption of correctness on appeal," lend adequate support for this conclusion. Invego Auto Parts, Inc. v. Rodriguez, 34 So. 3d 103, 105 (Fla. 3d DCA 2010) (citation omitted); see Universal Beverages Holdings, Inc. v. Merkin, 902 So. 2d 288, 290 (Fla. 3d DCA 2005) ("When a cause is tried without a jury, the trial judge's findings of fact are clothed with a presumption of correctness on appeal, and these findings will not be disturbed unless the appellant can demonstrate that they are clearly erroneous.") (citations omitted).

Thus, observing that "[s]pecific performance is an equitable remedy and is not granted as a matter of right or grace but as a matter of sound judicial discretion vested in the chancellor governed by principles of law and equity," Humphrys, 104 So. 2d at 410, and finding no "manifest error clearly demonstrated," we decline to embrace the assertion of error. Mann, 100 So. 2d at 637.

Affirmed.