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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-993**

Auntie Ruth's Furry Friends' Home Away from Home, Ltd.,
Appellant,

vs.

GCC Property Management, LLC,
Respondent,

Peerless Water Treatment and Pollution Control, Inc., et al.,
Defendants.

**Filed December 14, 2010
Affirmed
Huspeni, Judge***

Hennepin County District Court
File No. 27-CV-07-3683

Ned E. Ostenso, Thomas K. Cambre, Merrigan, Brandt, Ostenso & Cambre, P.A., Hopkins,
Minnesota (for appellant)

Wynn Curtiss, Steiner & Curtiss, P.A., Hopkins, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Huspeni,
Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn.
Const. art. VI, § 10.

UNPUBLISHED OPINION

HUSPENI, Judge

Appellant tenant challenges the district court's denial of specific performance as a remedy for respondent landlord's failure to honor appellant's right of first refusal under the parties' lease. Appellant argues the district court erred by finding specific performance to be an unconscionable remedy and by denying appellant any remedy for respondent's failure to honor the right of first refusal. Because the district court did not abuse its discretion by denying appellant specific performance, we affirm.

FACTS

This case comes before the court after our remand in *Auntie Ruth's Furry Friends' Home Away From Home, Ltd. v. GCC Prop. Mgmt.*, No. A08-1602, 2009 WL 2926485 (Minn. App. Sept. 15, 2009) (*Auntie Ruth I*), review denied (Minn. Dec. 15, 2009). The facts of this matter are more fully set forth in that opinion.

Appellant Auntie Ruth's Furry Friends' Home Away from Home, Ltd. (Auntie Ruth) entered into a commercial lease with Peerless Water Treatment and Pollution Control, Inc. (Peerless) in November 2000. *Auntie Ruth I*, 2009 WL 2926485, at *1. Peerless operated its water-treatment business out of a commercial building, and it leased extra space in the building to Auntie Ruth. *Id.* Gary Capone owned 85% of Peerless, and the other 15% was owned by Capone's brother and brother-in-law. *Id.* Peerless's assets included the building. *Id.*

The lease granted Auntie Ruth a right of first refusal if during the term of the lease Peerless decided to sell any or all of the property. *Id.* In 2005 Peerless's stock was sold to a

third party. *Id.* The building in which Auntie Ruth was a tenant was not part of this sale. *Id.* Capone created GCC Property Management, LLC (GCC) and transferred the building from Peerless as seller to GCC as buyer by way of a “purchase agreement” for \$1,350,000. *Id.* Auntie Ruth was not notified of the purchase agreement. *Id.*

In January 2007, GCC agreed to sell the building to a third party; again Auntie Ruth did not receive written notice of the proposed sale, but upon learning of the plan, notified Capone that the right of first refusal might be triggered. *Id.* The proposed sale was cancelled. *Id.* GCC refused to sell the building to Auntie Ruth, arguing that the right of first refusal was not triggered. *Id.*

Auntie Ruth sued Peerless and GCC and in moving for summary judgment sought the following: (1) a declaration that the lease gives Auntie Ruth a valid right of first refusal to purchase the property; (2) a determination that the right was triggered by the 2005 transfer of the property from Peerless to GCC; and (3) a determination that the right was again triggered in 2007 by the signing of the purchase agreement between GCC and a third party. *Id.* at *2. Auntie Ruth also sought specific performance of the right of first refusal “as to the 2005 sale or, alternatively, the 2007 sale.” *Id.* GCC also moved for summary judgment, seeking a finding that Auntie Ruth was not entitled to specific performance for either transaction. *Id.* The district court granted summary judgment in favor of Auntie Ruth, but the district court declined to order summary judgment on the issue of specific performance. *Id.* The district court set the matter for trial as to remedies only. *Id.*

Auntie Ruth’s action was ultimately concluded after a four-day bench trial in which the district court determined that the 2005 transaction had not triggered the right of first

refusal but the 2007 action had triggered that right. *Id.* Auntie Ruth appealed the district court's decision regarding the 2005 transaction.¹ *Id.*

On appeal, this court found the right of first refusal in the parties' lease to be clear and unambiguous, held that Auntie Ruth's right of first refusal was triggered by the 2005 transaction, and reversed the district court's decision to the contrary. *Id.* at *3, *5.

In remanding the question of whether specific performance was the appropriate remedy, this court directed:

On remand, the district court has discretion to order specific performance. But if the district court determines that specific performance is appropriate, such an award must be consistent with the terms of the right-of-first-refusal provision; in other words, Auntie Ruth must be allowed to purchase the property 'on such terms' as were contained in the 2005 purchase offer.

Id. at *6.

On remand, the district court denied Auntie Ruth's request for specific performance in a December 31, 2009 order, but invited the parties to brief the issue of alternative remedies. Both parties submitted memoranda. Auntie Ruth suggested attorney fees as a remedy but did not provide briefing on this or any alternative remedy. Auntie Ruth's attempt to appeal the district court's December 31 order was declared by this court to be premature. In a subsequent order, the district court declared its December 31 order to be a final decision and denied Auntie Ruth's request for specific performance. This appeal follows.

¹*Auntie Ruth I* also involved an unjust enrichment issue based on Auntie Ruth's unpaid electricity costs. This issue is not relevant to this appeal and has been omitted from the facts.

DECISION

I.

Auntie Ruth argues that the district court abused its discretion by finding that specific performance would be unconscionable and inequitable. Specific performance is an equitable remedy within the sound discretion of the district court. *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993). “Only a clear abuse of . . . discretion will result in reversal.” *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979).

The district court concluded that an award of specific performance would “be unconscionable, unjust, and an abuse of discretion, based upon the facts in this case.” The district court based this conclusion on Capone’s belief that the 2005 transaction did not trigger the right of first refusal. Capone and his wife are the sole owners of GCC and Capone used the 2005 transfer of the building to GCC to separate the building from Peerless stock. The district court also based the conclusion on its determination that specific performance would result in a windfall to Auntie Ruth. Auntie Ruth argues that there is no evidence that specific performance would be unconscionable.

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. In applying rule 52.01, “[appellate courts] view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction

that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

In *Auntie Ruth I*, this court, in directing the district court to determine whether specific performance was an appropriate remedy, stated that “if the district court determines that specific performance is appropriate . . . Auntie Ruth must be allowed to purchase the property ‘on such terms’ as were contained in the 2005 purchase offer.” *Auntie Ruth I*, 2009 WL 2926485, at *6. On remand the district court determined that a sale price of \$1,350,000 would result in an unjust windfall of \$670,000 to Auntie Ruth, thus making specific performance an inappropriate remedy.

Auntie Ruth cites “a precipitous drop in real estate valuations” and a January 2, 2008 Hennepin County assessment listing the property value as \$1,425,000 to bolster the claim that specific performance would not result in a windfall. While Auntie Ruth includes the assessment value in a memorandum of law to the district court, no other support for this amount is present in the record. The “precipitous drop in real estate valuations” is similarly unsupported. Because the value of the property and the state of the real estate market require more foundation than provided by Auntie Ruth, judicial notice is not appropriate. *See State v. Pierson*, 368 N.W.2d 427, 434 (Minn. App. 1985) (stating judicial notice is appropriate for “facts of common knowledge not in dispute, and those for which neither expertise nor foundation is needed”).

Based on the district court’s findings and conclusions of law, the district court did not abuse its discretion by refusing to grant Auntie Ruth specific performance.

II.

Auntie Ruth argues that the district court's reliance on *Peterson v. First Nat'l Bank of Ceylon*, 162 Minn. 369, 203 N.W. 53 (1925) in reaching its decision to deny specific performance was misplaced. "An appellate court is not bound by, and need not give deference to, the district court's decision on a question of law." *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

The district court found the facts of *Peterson* to be "particularly analogous" to Auntie Ruth's case. We agree with Auntie Ruth, however, that reliance on *Peterson* was misplaced. That case involves an action by a mortgagee and purchaser at a foreclosure sale to vacate the foreclosure sale and reinstate a mortgage. *Peterson*, 162 Minn. at 370, 203 N.W. at 53. The plaintiff's attorney failed to make use of the mortgage's acceleration clause. *Id.* at 370-71, 203 N.W. at 53. Defendants, realizing plaintiff's mistake, then proceeded to purchase the \$15,000 security for only \$835.50. *Id.* at 372, 203 N.W. at 54. The supreme court ultimately held that equity was available to relieve the plaintiff of his mistake. *Id.* at 374-79, 203 N.W. at 55-57. Auntie Ruth, unlike the defendants in *Peterson*, did not realize Capone's mistake and then attempt to make a bargain for itself. Auntie Ruth sought to determine whether it should have been permitted to purchase the property in 2005. In remanding we directed that should the district court find specific performance to be the appropriate remedy, Auntie Ruth must be permitted to purchase at the 2005 price.

Notwithstanding the misplaced reliance on *Peterson*, however, the district court articulated other persuasive bases to support the conclusion that specific performance was an

inappropriate remedy in this case. *See Dakota Cnty. HRA v. Blackwell*, 602 N.W.2d 243, 244 (Minn. 1999) (cited by the district court for the proposition that “[a] party does not have an automatic right to specific performance as a remedy for breach of a contract; the district court must balance the equities of the case and determine whether the equitable remedy of specific performance is appropriate”); *Hilton v. Nelsen*, 283 N.W.2d 877, 881 (Minn. 1979) (cited by the district court for the proposition that specific performance of a contract to convey real estate is not an absolute right, and if enforcement would be unconscionable or inequitable, it will not be decreed); *Johnson v. Johnson*, 272 Minn. 284, 292, 137 N.W.2d 840, 847 (1965) (cited by the district court for the proposition that specific performance is generally not afforded where it will work a hardship or injustice on either party); *Buckley v. Patterson*, 39 Minn. 250, 250 n.1, 39 N.W. 490, 490 n.1 (1888) (cited by the district court for the proposition that “[a] bill to compel the specific performance of a contract is an application to the sound discretion of the court, and such performance will not be decreed when, for any reason, it would be inequitable or unconscionable”).

The district court’s refusal to grant specific performance based on unconscionability is also supported by the district court’s factual findings and conclusion of law regarding Capone’s mistaken belief that the 2005 transaction did not trigger Auntie Ruth’s right of first refusal. The district court noted, in its conclusions of law, “[i]t is . . . clear that Capone did not understand upon entering into the 2005 transaction, that such an arrangement would trigger [Auntie Ruth’s] right of first refusal. Capone intended a simple restructuring of his investments” The caselaw, aside from *Peterson*, and the factual findings support the district court’s refusal to grant Auntie Ruth specific performance on unconscionability

grounds. Therefore, any misplaced reliance on *Peterson* is harmless error. “[W]e will not reverse a correct decision simply because it is based on incorrect reasons.” *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987).

III.

Auntie Ruth cites the Minnesota Constitution and caselaw to support the proposition that every right must also have a remedy and argues that in failing to grant any remedy here the district court clearly abused its discretion. *See* Minn. Const. art. 1, § 8 (stating, “[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws”); *Lucas v. Med. Arts Bldg. Co.*, 207 Minn. 380, 386, 291 N.W. 892, 895 (1940) (stating, “[i]f the plaintiff has a right, he must of necessity have a means to vindicate and maintain it. It is a vain thing to imagine a right without a remedy”) (quotation omitted); *Brown v. Maplewood Cemetery Ass’n*, 85 Minn. 498, 514, 89 N.W. 872, 879 (1902) (stating, “[t]he very origin of equity in Rome and in England was that there was never a wrong for which there was no remedy, or no adequate relief at law”). But Auntie Ruth has not been denied every remedy in this case—only the remedy of specific performance.

In its December 31 order the district court explicitly asked the parties to brief remedies other than specific performance. Auntie Ruth submitted a memorandum which stated it was “unaware of alternate remedies available in this matter,” and only suggested that attorney fees could be a remedy. The district court’s order seems to rule out damages based on the difference between the 2005 specific-performance price and the fair market value at a later

day. The district court determined that such damages would be inappropriate as Auntie Ruth “has not proven such loss. At most, [Auntie Ruth] is out the opportunity to obtain a substantial windfall. Such a windfall, however, is one to which [Auntie Ruth] is not entitled as it was not contemplated by the parties at the time they entered into the [l]ease.”

The district court did, however, indicate that damages based on the harm caused to the lease interest and Auntie Ruth’s ability to recoup the amounts invested to improve the property may be appropriate. Auntie Ruth did not brief this issue, despite indication from the district court that it would consider this type of damages. Our review of the issue of appropriate damages that might be due Auntie Ruth causes us to conclude that the court did not abuse its discretion in deciding as it did. While Auntie Ruth devotes a portion of its brief to arguing that lack of any relief from the district court was an abuse of discretion, no remedy other than specific performance is sought on appeal.

Finally, Auntie Ruth’s constitutional claim need not be addressed because “[courts] do not decide constitutional questions except when necessary to do so in order to dispose of the case at bar.” *State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981).

Affirmed.