SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3613-20

AHMED ELSAYED and
IZZA JIADI,

Plaintiffs-Appellants,

v.

MOHAMMED ELSAYED and
HALAH ELKASHEF,

Defendants-Respondents.

HALAH ELKASHEF,

Plaintiff-Respondent,

v.

AHMED ELSAYED and
IZZA JIADI,

Defendants-Appellants.

Submitted May 2, 2022 – Decided June 3, 2022

Before Judges Firko and Petrillo.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket Nos. LT-0940-19 and C-000044-19.

Lawrence M. Centanni, attorney for appellants.

Londa & Londa, Esqs., attorneys for respondents (Raymond S. Londa, on the brief).

PER CURIAM

In these back-to-back matters, which have been consolidated for the purpose of writing one opinion, Ahmed Elsayed[1] and Izza Jiadi, his wife, appeal the June 25, 2021 final judgment pursuant to Rule 4:42-2 entered by the Chancery Division denying their motion for partial summary judgment seeking legal and equitable rights to property located at 127 Marion Avenue in Linden. They also appeal the July 23, 2021 order denying their motion for reconsideration. The judge granted Mohammed Elsayed and his wife Halah Elkashef's[2] motion for summary judgment and dismissed Ahmed and Izza's

[1] Ahmed Elsayed and Izza Jiadi are plaintiffs in the matter bearing docket number UNN-C-0044-19 and defendants in the matter bearing docket number UNN-LT-0940-19. Mohammed Elsayed and Halah Elkashef are defendants in the matter bearing docket number UNN-C-0044-19 and plaintiffs in the matter bearing docket number UNN-LT-0940-19. For ease of reference, we will refer to the parties by their first names in this opinion. By doing so, we intend no disrespect.

[2] Halah is also referred to as "Heidy T. Kashef" in the record. We will refer to her as "Halah" in this opinion to be consistent.

complaint with prejudice. The property is owned by Mohammed Elsayed and his wife Halah Elkashef. Ahmed and Mohammed are biological brothers. For the reasons that follow, we reverse and remand the final judgment granting summary judgment to Mohammed and Halah and the order denying reconsideration. We are satisfied the judge erred by not considering N.J.S.A. 25:1-13 of the Statute of Frauds as it pertains to a purported note handwritten by Mohammed in Arabic and whether it raises a material issue of fact or is an enforceable agreement as a matter of law.

I.

We conduct a de novo review of an order granting a summary judgment motion, Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016), and we apply the same standard as the trial court, State v. Perini Corp., 221 N.J. 412, 425 (2015). In considering a summary judgment motion, "both trial and appellate courts must view the facts in the light most favorable to the non-moving part[ies]," which in this case are Ahmed and Izza. Bauer v. Nesbitt, 198 N.J. 601, 604 n.1 (2009) (citing R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)); see also H.C. Equities, L.P. v. Cnty. of Union, 247 N.J. 366, 380 (2021).

Summary judgment is proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)). Issues of law are subject to the de novo standard of review, and the trial court's determination of such issues is accorded no deference. Kaye v. Rosefielde, 223 N.J. 218, 229 (2015) (quoting Borough of Harvey Cedars v. Karan, 214 N.J. 384, 401 (2013)).

Our review of an order granting summary judgment requires our consideration of "the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law." Bhagat v. Bhagat, 217 N.J. 22, 38, (2014). Here, we discern the following facts from our review of the parties' Rule 4:46-2 statements and the record of the proceedings before the Chancery Division.

On January 12, 2005, Mohammed and Halah purchased a two-family home in Linden (the property) for $525,000. The deed, dated December 4, 2004, was recorded in the Union County Clerk's office on January 27, 2005. Consideration for the purchase price and settlement charges was comprised of:

(1) an initial deposit of $1,000 paid on August 25, 2004; (2) a second deposit of $24,000 paid on October 12, 2004; (3) a check in the sum of $80,000 dated January 12, 2005; (4) a check in the sum of $16,987.34 dated January 12, 2005; and (5) a $412,000 mortgage from Majestic Mortgage Corporation (Majestic). All of these sums were paid by Mohammed and Halah.

Included in Mohammed and Halah's statement of money origin to Majestic was a check listed for $7,500 representing three months' advance rent from Ahmed and Izza, who were going to be tenants at the property. The rent was $2,000 per month and the security deposit was $1,500, equating to the $7,500 amount. The parties entered into a lease dated October 23, 2004,[3] providing for a month-to-month tenancy, with a start date of February 1, 2005. Ahmed and Izza maintained the original lease in their possession, and a copy was kept by Mohammed and Halah and provided to Majestic. In response to discovery requests, a loan officer working for Majestic relative to the purchase of the property confirmed Ahmed and Izza were not involved with the transaction.

On December 23, 2004, Mohammed and Halah formally acknowledged they were the purchasers of the property in a notarized document to the City of

[3] The lease was incorrectly dated December 23, 2005, and should have been dated December 23, 2004.

Linden, which acknowledged they "cannot and will not create an additional apartment or rooming or boarding house." The record also shows on March 14, 2005, Mohammed and Halah sold a condominium they owned and netted $175,953.81 from the sale, supporting their claim they had assets.

According to Ahmed, in 2004, he and Mohammed decided to "identify and purchase" a piece of real property "for investment and residential purposes" at the behest of their father, who lived in Egypt at the time. It is Ahmed's contention that since he was not a United States citizen, he believed he could not own real property in this country. When the Linden property was located, Ahmed asserts the brothers agreed title to the property would be held in Mohammed's name because he is a United States citizen, along with Halah. In addition, Ahmed claimed he contributed $50,000 in cash from his life savings and a portion of the closing of title costs, and an agreement was ostensibly reached between the brothers that they would own the property "equally and jointly."

Ahmed also averred this "joint purchase" was confirmed by Mohammed in a "handwritten outline" written in Arabic and forwarded to their father, who is now deceased. The "handwritten outline," annexed as Exhibit "A" to Ahmed and Izza's complaint, along with a certified translation in English, was allegedly

prepared by Mohammed to show the father expressed an interest in assisting Ahmed purchase a residence for himself. According to Mohammed, the outline set forth the proposed cost utilizing the closing figures from the purchase of the subject property for illustrative purposes only. The unsigned outline serves as the basis for Ahmed and Izza's claims. Ahmed, his wife, and family would live on the second floor of the house, and Mohammed, his wife, and family would reside on the first floor. Ahmed posited that the brothers agreed to contribute to the payment of the mortgage and other expenses related to the property. In addition, Ahmed contended that as per his "agreement" with Mohammed, and notwithstanding the deed naming Mohammed and Halah as sole owners, the brothers were actually "joint co-owners," each seized of an undivided one-half interest in the property as tenants in common.

In contrast, Mohammed and Halah contended the parties have always treated the property as if they were the sole owners. They cited the following examples:

> (1) On September 26, 2011, Ahmed filed a homeowner's insurance claim with Encompass Property & Casualty Insurance Company (Encompass) for water damage to an automobile owned by him as a "tenant" at the property. The vehicle was parked inside the garage. Encompass is Mohammed and Halah's homeowner's insurance company. The claim was denied based

on Ahmed's status as a tenant, which precluded him from homeowner coverage under the Encompass policy.

(2) On March 29, 2017, City of Linden fire officials inspected a food truck owned by Ahmed, which was situated at the subject premises. Deputy fire chief Lawrence Kolesa confirmed in a March 30, 2017 email to various individuals that he informed Ahmed "to remove all the propane tanks from inside the garage area and to not store gasoline in the residence." Kolesa noted the food truck had a "New York license plate," and that Ahmed "informed [him] that his brother is the owner" of the house.

(3) On February 27, 2018, Izza filed a Chapter 7 petition in bankruptcy. In her individual petition, Izza certified she rented her residence; her landlord had not obtained a judgment of eviction against her; and she did not "own or have any legal or equitable interest in any residence, building, land, or similar property."

On February 1, 2019, Mohammed and Halah filed a summary dispossession action in the Law Division, Special Civil Part against Ahmed and Izza alleging they owed four months of rent at $2,400[4] per month for a total of $9,600, plus attorney's fees and filing costs, for a grand total of $10,257. Ahmed and Izza claimed they were unaware of the tenancy action until they were served with a warrant for possession.

[4] Beginning January 1, 2016, the rent was raised to $2,400 per month.

On March 29, 2019, Ahmed and Izza filed a complaint in the Chancery Division seeking: (1) a fifty-percent ownership interest in the property; (2) reformation of the deed to reflect their fifty-percent ownership interest; (3) damages for breach of contract; (4) a partition sale of the property; (5) unjust enrichment; or (6) the creation of a constructive trust for the property. They alleged to have contributed more than $50,000 to purchase the property "as consideration for their ownership interest." Ahmed averred Exhibit "A" "evidences an agreement between him and his brother . . . that they had an agreement to purchase the [p]roperty jointly and equally." Exhibit "A" set forth "a breakdown of the [h]ome [e]xpenses and closing costs of both [brothers] for the purchase of the [p]roperty" according to Ahmed.

Thereafter, on April 23, 2019, after the complaint was filed, a Linden police officer was dispatched to the property "for a report of a family dispute." Upon arrival, Ahmed told the officer "[t]he home owner is his brother's wife." The dispute arose when Halah refused to open the garage door for Ahmed.[5] On March 16, 2019, the order of eviction was granted. On May 24, 2019, Ahmed

[5] Halal explained to the investigating officer that the parties were involved in "ongoing court litigation," and she and Mohammed were trying to get Ahmed and Izza evicted. Halah also reported Ahmed "was running a business from her garage" and the City of Linden issued "[three] separate fines that she now has to pay" as a result thereof.

called the police again and "stated that his landlord . . . blocked his side of the driveway and changed the locks to the laundry room." Ahmed acknowledged the ongoing tenancy litigation and efforts to get him and his family evicted from the home.

On May 28, 2019, Mohammed and Halah filed an answer and counterclaim. They denied the allegations in the complaint. In their counterclaim, Mohammed and Halah sought possession of the second-floor apartment based on terroristic threats as well as "damages for slander against [Halah] to her employer by" Ahmed and Izza. Mohammed and Halah alleged every dollar paid for the property came from themselves or sources other than Ahmed and Izza, with the exception of the $7,500 prepaid rent check from Izza. Mohammed and Halah asserted no documentation was presented by Ahmed and Izza to substantiate their purported $50,000 contribution.

On September 5, 2019, a prior judge consolidated the Chancery Division and tenancy matters. The order also required Ahmed and Izza to pay the $2,400 monthly rent to Mohammed and Halah's counsel until further order of the court. Out of the $2,400 payment received, counsel was to release $1,650 to Mohammed and Halah to apply towards mortgage payments. The remaining $750 was to be held in escrow pending a further court order.

Since January 12, 2005, Mohammed and Halah "reported the rents received from [Ahmed and Izza] on their federal and state income tax returns as income," as well as the interest paid on the mortgage. On July 29, 2020, more than two years after filing her Chapter 7 bankruptcy petition, Izza filed a motion in the Bankruptcy court to reopen her bankruptcy matter. Izza alleged she "had an interest in certain real property that she was not aware of at the time of the initial filing." Prior to marrying Ahmed, Izza was married to Basdeo J. Mahadeo on January 4, 1994. She divorced him on January 13, 2006, a year after the subject property was purchased. At the time the judgment of divorce was entered, Izza resided at 30-73 49th Street, second floor, Long Island City, New York. Ahmed and Izza were not married until March 10, 2006, more than a year after closing of title on the subject property took place.

In their 1040 individual income tax returns, Ahmed and Izza represented they lived at 30-73 49th Street, Astoria, New York[6] and not the subject property. They never claimed an interest deduction for any mortgage payments for the property. Additionally, Ahmed and Izza applied for Medicaid benefits in New York City. In 2013, they claimed to live at 30-73 49th Street in Long Island

[6] Astoria and Long Island City are used interchangeably throughout the record, but both correctly refer to the same property.

City. The New York Human Resources Administration (NYHRA) requested confirmation of their tenancy status in New York for calendar year 2013. In response, Izza sent a letter confirming she and Ahmed shared the second-floor apartment at 30-73 49th Street and paid $500 monthly for their room. In a 2014 renewal reminder, the NYHRA again requested confirmation of their tenancy status in New York. In 2015, Ahmed and Izza filed a joint New York resident income tax return and claimed they resided at 30-73 49th Street, second floor. They also claimed to have lived at that New York address for twelve months in 2015.

Following a period of discovery, on May 5, 2021, Mohammed and Halah filed a motion for summary judgment; Ahmed and Izza simultaneously filed a motion for partial summary judgment. In their moving papers, Mohammed and Halah alleged the amount required to purchase the property was $534,075.78. The mortgage amount was $412,000; the tax adjustment was $88.44, leaving a balance owed of $121,987.34. One-half of that amount would have been $60,993.67, rather than the $50,000 sum Ahmed and Izza claim to have paid towards the purchase price.

According to Mohammed and Halah, there was no claim made as to an ownership interest in the property by Ahmed and Izza until the eviction action

was instituted against them. And, Mohammed and Halah argued Izza was still married to Mahadeo at the time of closing of title, making it impossible for her to take title with Ahmed as her husband because they were not married until March 10, 2006. In addition, Mohammed and Halah asserted Izza was "disingenuous" when she "falsely" claimed an interest in certain real property in July 2020, and sought to reopen her bankruptcy case after she initially certified she did not "own or have any legal or equitable interest in any residence, building, land, or similar property."

In opposing the motion, Ahmed certified that he and Mohammed expressly agreed to jointly purchase the property, with his contribution totaling more than $50,000 in cash. In support of his argument, Ahmed referred to Exhibit "A" attached to the complaint. Ahmed contended that because Exhibit "A" listed and confirmed his contribution toward the down payment was $51,500, and was in Mohammed's "own handwriting," a genuine issue of material fact was raised to preclude the grant of summary judgment to Mohammed and Halah. According to Ahmed, these allegations required "cross-examination" of the parties. Since they "did not understand their legal rights," Ahmed and Izza contended they mistakenly referred to themselves as "tenants" and used the "wrong or improper address in certain filings."

In their motion for partial summary judgment, Ahmed and Izza also asserted they were regularly paying the monthly $2,400 rent to opposing counsel as ordered, and Mohammed and Halah failed to proffer any slanderous statement made by them against Halah to her employer. Therefore, Ahmed and Izza asserted the tenancy action should be dismissed with prejudice pursuant to N.J.S.A. 2A:18-55, along with the slander claim.

The Chancery Division judge conducted oral arguments on June 11 and 25, 2021. In his written opinion, the judge found Mohammed and Halah were entitled to summary judgment because Ahmed and Izza failed to provide any evidence supporting their claims for right to possession, reformation of the deed, breach of contract, a partition sale, unjust enrichment, or for the creation of a constructive trust. The judge found Mohammed's purported handwritten outline—Exhibit "A"—failed to satisfy the requirements of the Statute of Frauds, N.J.S.A. 25:1-10 to -16. In his opinion, the judge solely relied on only one section of the Statute of Frauds, N.J.S.A. 25:1-11(a), which provides that a transaction intended to transfer ownership in real property shall not be effective unless contained in a writing and satisfies the criteria.

Furthermore, the judge concluded the deed was not the product of a "mutual mistake" and Ahmed's argument Exhibit "A" "lists and confirms his

contribution towards the down payment of the [p]roperty" was nothing "more than a bald self-serving assertion that does not create a material disputed fact." And, the judge highlighted that at the time of oral argument, the parties stipulated the contract for the sale of the property only listed Mohammed and Halah as purchasers. Mohammed and Halah's tenancy action and counterclaims were severed and transferred to the Special Civil Part because "the parties had not more than a landlord/tenant relationship," and their resolution required a determination of the amount of rent owed. The slander counterclaim was later withdrawn. Therefore, that issue is moot and not before us. A memorializing judgment was entered.

On July 7, 2021, Ahmed and Izza moved for reconsideration of the June 25, 2021 order. The judge denied the motion for reconsideration on July 23, 2021, because the movants failed to raise any new issues, present any new evidence, or demonstrate the summary judgment decisions were "palpably incorrect" or required modification of his prior judgment.

On appeal, Ahmed and Izza present the following arguments:

> (1) the judge erred in granting Mohammed and Izza's motion for summary judgment given the clear issue of material fact presented by the claim of contract or agreement;

> (2) the judge erred in denying their motion for partial summary judgment dismissing Mohammed and Izza's originally filed and consolidated tenancy action, given the clear fact of payment of all rents claimed owing up to and as of the motion hearing date; and
>
> (3) the judge erred in denying their motion for reconsideration and abused his discretion by overlooking their claims of the existence of a material fact on the issue of contract.

II.

We first address Ahmed and Izza's argument that the judge erred in granting Mohammed and Halah's motion for summary judgment by analyzing the following theories pertinent to the facts of record.

A. The Statute of Frauds

The Statute of Frauds, which governs the writing requirements for conveyances of interest in real estate, states:

> A transaction intended to transfer an interest in real estate shall not be effective to transfer ownership of the interest unless:
>
> (1) a description of the real estate sufficient to identify it, the nature of the interest, the fact of the transfer and the identity of the transferor and the transferee are established in a writing signed by or on behalf of the transferor; or
>
> (2) the transferor has placed the transferee in possession of the real estate as a result of the transaction and the transferee has paid all or part of the

> consideration for the transfer or has reasonably relied on the effectiveness of the transfer to the transferee's detriment.
>
> [N.J.S.A. 25:1-11(a).]

"The writing required by the Statute of Frauds must contain the essential terms of the contract, but such terms may be written at different times in different places." Metrobank for Sav., FSB v. Nat'l Cmty. Bank of N.J., 262 N.J. Super. 133, 141 (App. Div. 1993). A document "evidencing the contract must be signed by the party sought to be bound." Ibid.

Here, Exhibit "A" does not describe the property or the nature of Ahmed's (or Izza's) interest. Saliently, Exhibit "A" is not signed by any of the parties. Thus, no signed document granting Ahmed and Izza an ownership interest in the property exists as defined by N.J.S.A. 25:1-11(a)(1). The judge articulated, the "[d]eed is final" and merges "all executed real estate contract terms." And, Ahmed and Izza were never placed "in possession of the real estate as a result of the transaction." See N.J.S.A. 25:1-11(a)(2). However, the analysis does not end there.

The section relied on by the judge, N.J.S.A. 25:1-11 (a), sets forth that a transaction intended to transfer ownership in real estate shall not be effective unless contained in a writing, which must set forth certain features. And,

whether an agreement, which is not in writing, is enforceable requires the court to consider N.J.S.A. 25:1-13, entitled "Enforceability of Agreement Regarding Real Estate" and states:

> An agreement to transfer an interest in real estate or to hold an interest in real estate for the benefit of another shall not be enforceable unless:
>
> a. a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement, and the identity of the transferor and transferee are established in a writing signed by or on behalf of the party against whom enforcement is sought; or
>
> b. a description of the real estate sufficient to identify it, the nature of the interest to be transferred, the existence of the agreement and the identity of the transferor and the transferee are proved by clear and convincing evidence.
>
> [(Emphases added).]

We addressed the issue of an absence of a writing in McBarron v. Kipling Woods, L.L.C., 365 N.J. Super. 114, 115 (App. Div. 2004), where we stated "[e]ffective January 5, 1996, the Statute of Frauds was amended to eliminate the requirement that a contract for the sale of real property must be in writing." Further, we recognized an exception to the "in writing" requirement if the terms of an oral agreement can be proven "by clear and convincing evidence." See N.J.S.A. 25:1-13(b). Morton v. 4 Orchard Land Tr., 180 N.J. 118, 124-25

(2004), further states that the Statute of Frauds "sanctions oral agreements for the sale of real estate" because of the 1996 amendments to the law.[7]

Viewing the facts in the light most favorable to Ahmed and Izza, a fact finder could conclude the existence of the unsigned writing—Exhibit "A"—might serve as evidence that the parties agreed to be bound by the document. The judge mistakenly relied on the shortcomings of Exhibit "A" without considering other means potentially available to prove the existence of a valid agreement, even perhaps an oral agreement, as required by the enforceability section of the Statute of Frauds, namely N.J.S.A. 25:1-13.

As we held in McBarron, "whether a valid oral contract was made or whether oral agreements were intended not to bind the parties until a written contract was executed, is solely a matter of intent determined in large part by a credibility evaluation of witnesses." Caution must be exercised by trial courts when deciding motions for summary judgment in a matter that turns on the intent and credibility of the parties. Ricciardi v. Weber, 350 N.J. Super. 453, 470 (App. Div. 2002) (citing Shebar v. Sanyo Bus. Sys. Corp., 111 N.J. 276, 291 (1988)).

[7] We decided McBarron in January 2004. Our Court decided Morton in June of that year.

We also note that a "transfer" of real estate is not at issue in the matter under review. Instead, Ahmed and Izza allege Ahmed and Mohammed made a deal to be their partners in the purchase of property from a seller and that the contemplated property would be held in Mohammed's name only. On remand, the judge must consider N.J.S.A. 25:1-13 in the context of this case because the enforceability language in this section of the statute applies to "an agreement . . . to hold an interest in real estate for the benefit of another" as well as a "transfer [of] interest in real estate." (Emphasis added). The purported agreement between the brothers is more akin to "holding" rather than "transferring" property according to Ahmed and Izza, because any acquired property would be held in Mohammed and Halal's names only.

Accordingly, the final judgment and reconsideration orders under review are reversed and the matter is remanded to the judge. Nothing in our opinion should be construed as suggesting our view on the outcome of the remanded proceedings. The judge must also reconsider his decision to sever counts one, two, and three of Mohammed and Halah's counterclaim for adjudication in the Special Civil Part of the Law Division. We add the following brief remarks on the other causes of action addressed by the judge.

B. Reformation

"The traditional grounds justifying reformation of an instrument are either mutual mistake or unilateral mistake by one party and fraud or unconscionable conduct by the other." Dugan Const. Co. v. N.J. Tpk. Auth., 398 N.J. Super. 229, 242-43 (App. Div. 2008) (quoting St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden, 88 N.J. 571, 577 (1982)). Courts view reformation as an "extraordinary remedy," requiring "[c]lear, convincing proof of facts pertinent to the remedy." Martinez v. John Hancock Mut. Life Ins., 145 N.J. Super. 301, 312 (App. Div. 1976).

Our Supreme Court has stated that mutual mistake exists only when "both parties were laboring under the same misapprehension as to [a] particular, essential fact." Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989) (alteration in original) (quoting Beachcomber Coins, Inc. v. Boskett, 166 N.J. Super. 442, 446 (App. Div. 1979)); see also Dugan Const. Co., 398 N.J. Super. at 243 (stating "[t]he problem normally arises when the agreement fails to specify correctly the terms that the parties agreed upon"). Additionally, "New Jersey law also requires for reformation for mutual mistake that the minds of the parties have met and reached a prior existing agreement, which the written document fails to express." Bonnco Petrol, 115 N.J. at 608.

Where reformation is appropriate, its purpose "is to restore the parties to the status quo ante and prevent the party who is responsible for the misrepresentation[s] from gaining a benefit." Ibid. at 612 (citing Enright v. Lubow, 202 N.J. Super. 58, 72 (App. Div. 1985)). In the matter under review, the judge noted,

> [Ahmed and Izza] have not provided substantiated evidence demonstrating that the [d]eed . . . should be reformed. In conjunction with the aforesaid . . . there is [not] any corroborated evidence that the [d]eed came into existence based upon the mistake that [Ahmed and Izza] were to be entitled to an undivided one-half interest in the subject [p]roperty.

The judge concluded Ahmed and Izza failed to offer any evidence they contributed money entitling them to an ownership interest, whereas Mohammed and Halah produced evidence demonstrating Ahmed and Izza were simply tenants at the property.

Based upon our mandate, on remand the judge shall consider whether there was a meeting of the minds warranting reformation of the deed. Bonnco Petrol, 115 N.J. at 608. The judge shall also determine whether Ahmed and Izza established mutual mistake by clear and convincing evidence.

C. Breach of Contract

The "essential elements for [a] breach of contract claim [are] 'a valid contract, defective performance by the defendant[s], and resulting damages.'" Globe Motor Co., 225 N.J. at 482 (quoting Coyle v. Englander's, 199 N.J. Super. 212, 223 (App. Div. 1985)). "Each element must be proven by a preponderance of the evidence." Ibid. To satisfy this standard, "a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met." Ibid. (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)).

Here, the judge found Ahmed and Izza failed to prove a valid contract conveying Ahmed a fifty percent ownership interest was conveyed to him. On remand, the judge shall address whether Ahmed and Izza's breach of contract claim was established in light of our decision after analyzing N.J.S.A. 25:1-13.

D. Partition

Partition is an equitable remedy by which property, held by at least two people or entities as tenants in common or joint tenants, may be divided. See Newman v. Chase, 70 N.J. 254, 261 (1976); see also N.J.S.A. 2A:56-1 to -44; R. 4:63-1. When property is subject to partition, a physical division of the property is one possible remedy. N.J.S.A. 2A:56-2 provides "[t]he [S]uperior

[C]ourt may, in an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein." The manner in which property is partitioned "is within the discretion of court." Greco v. Greco, 160 N.J. Super. 98, 102 (App. Div. 1978) (citing Newman, 70 N.J. at 263). On remand, the judge shall determine whether the equitable remedy of partition is available to Ahmed and Izza if they are determined to be co-owners of the property.

E. Unjust Enrichment

"The doctrine of unjust enrichment rests on the equitable principle that a person shall not be allowed to enrich himself [or herself] unjustly at the expense of another." Goldsmith v. Camden Cnty. Surrogate's Off., 408 N.J. Super. 376, 382 (App. Div. 2009) (quoting Assocs. Com. Corp. v. Wallia, 211 N.J. Super. 231, 243 (App. Div. 1986)). "To establish a claim for unjust enrichment, 'a [party] must [demonstrate] both that the [opposing party] received a benefit and that retention of that benefit without payment would be unjust.'" Illiadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 110 (2007) (quoting VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994)). A party must additionally "show that it expected remuneration from the [opposing party] at the time it performed or conferred a benefit on [the opposing party] and that the failure of remuneration

enriched [the opposing party] beyond its contractual rights." Ibid. (quoting VRG Corp., 135 N.J. at 554). In light of our reversal, on remand the judge shall consider whether Ahmed and Izza have proven a legal or equitable interest in the property entitling them to unjust enrichment.

F. Constructive Trust

A constructive trust on property is appropriate in order to "prevent unjust enrichment and force a restitution to the plaintiff of something that in equity and good conscience [does] not belong to the defendant." Flanigan v. Munson, 175 N.J. 597, 608 (2003) (alteration in original) (quoting Dan B. Dobbs, Remedies, § 4.3 at 246 (1973)). A two-prong test, however, must be satisfied to impose a constructive trust. Ibid. A court must first find one of the parties "has committed a 'wrongful act.'"[8] Ibid. (quoting D'Ippolito, 51 N.J. at 589). "Second, the wrongful act must result in a transfer or diversion of property that unjustly enriches the recipient." Ibid. On remand, we direct the judge to consider whether a constructive trust should be imposed on the property.

[8] A "wrongful act" includes not just fraud but "mistake, undue influence, or breach of a confidential relationship, which has resulted in a transfer of property." D'Ippolito v. Castoro, 51 N.J. 584, 589 (1968).

III.

Next, Ahmed and Izza assert, pursuant to N.J.S.A. 2A:18-55, "the tenancy complaint [and the related counterclaims] filed and pursued by [Mohammed and Halah] should have been and must be dismissed as a matter of law, given that all rents have been fully paid to date" in accordance with the September 5, 2019 consolidation order.

N.J.S.A. 2A:18-55 states in its entirety:

> If, in actions instituted under paragraph "b" of section 2A:18-53 of this title,[9] the tenant or person in possession of the demised premises shall at any time on or before entry of final judgment, pay to the clerk of the court the rent claimed to be in default, together with the accrued costs of the proceedings, all proceedings shall

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> [A]ny lessee or tenant at will or at sufferance, or for a part of a year, or for one or more years, of any houses, buildings, lands or tenements, and the assigns, undertenants or legal representatives of such tenant or lessee, may be removed from such premises by the Superior Court, Law Division, Special Civil Part in an action . . .
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> . . . .
>
> . . . [w]here such person shall hold over after a default in the payment of rent, pursuant to the agreement under which the premises are held.
>
> [N.J.S.A. 2A:18-53(b).]

> be stopped. The receipt of the clerk shall be evidence of such payment.
>
> The clerk shall forthwith pay all moneys so received to the landlord, his agents or assigns.

In short, "when a tenant, before the entry of final judgment" in summary dispossess proceedings, "pays the outstanding rent together with the accrued costs of the proceedings, he or she may have the proceedings dismissed." Cmty. Realty Mgmt., Inc. v. Harris, 155 N.J. 212, 235 (1998). But, Ahmed and Izza have not "paid" the outstanding rent due because the exact amount owed is unknown.

According to the lease, the tenancy "[a]rrangement was month to month." In their tenancy complaint, Mohammed and Hallah maintained four months of rent at $2,400 a month was owed. Ahmed and Izza argue their obligation has been satisfied under N.J.S.A. 2A:18-55 because they made payments in accordance with the consolidation order. Nevertheless, the consolidation order did not specify how much rent was definitively due and owing. Instead, the order directed money to be held in escrow until the correct amount of rent owed was determined. The order is interlocutory in nature and does not comport with the requirements set forth in N.J.S.A. 2A:18-55 to mandate dismissal of the tenancy matter. Moreover, the record is unclear as to the status of the severed

tenancy matter. On remand, the Chancery judge shall determine how to address the tenancy matter, if it is still pending, or how to otherwise adjudicate the tenancy matter.

IV.

Finally, we address Ahmed and Izza's argument that the judge improvidently denied their motion for reconsideration. "Motions for reconsideration are governed by Rule 4:49-2, which provides that the decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). Reconsideration "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). In light of our reversal and remand, we need not address the reconsideration argument.

Reversed and remanded. We do not retain jurisdiction.