IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-802

Filed: 31 December 2020

Swain County, No. 15-CVS-36

THOMAS M. ANDERSON, PERRY POLSINELLI, DORI DANIELSON, WILLIAM HANNAH, DEBORAH HANNAH, RICHARD F. HUNTER, ANDREW JUBY, THOMAS T. SCHREIBER, FRED R. YATES and wife, KAREN K. YATES, Individually and on behalf of MYSTIC LANDS PROPERTY OWNERS ASSOCIATION, a North Carolina Non-profit Corporation, Plaintiffs,

v.

MYSTIC LANDS, INC., a Florida Corporation, and AMI SHINITZKY, Defendants.

Appeal by Defendants from order entered 15 November 2018 by Judge Richard L. Doughton in Superior Court, Swain County. Heard in the Court of Appeals 3 March 2020.

Cannon Law, P.C., by William E. Cannon, Jr., Mark A. Wilson, Tiffany F. Yates, for Plaintiffs-Appellees.

Van Winkle, Buck, Wall, Starnes and Davis, P.A. by Craig D. Justus, for Defendants-Appellants.

McGEE, Chief Judge.

Mystic Lands, Inc. and Ami Shinitzky ("Defendants") appeal an order by Judge Richard L. Doughton entered 15 November 2018 ("Performance Bond Order")

granting Plaintiffs' Motion for Specific Performance Bond. For the reasons discussed below, we affirm the trial court's order.

I. Factual and Procedural Background

Defendant-Appellant Mystic Lands, Inc. ("Mystic Lands, Inc." or "Declarant") is a Florida corporation, and Defendant-Appellant Ami Shinitzky ("Shinitzky") is a citizen and resident of Palm Beach County, Florida. (Collectively, "Defendants") Shinitzky is the sole or majority shareholder in Mystic Lands, Inc. Plaintiffs-Appellees are property owners in Mystic Lands, a subdivision formed from what were originally three separate planned communities—Mystic River, Mystic Forest, and Mystic Ridge—and members of the Property Owners Association. The Mystic Lands communities are in Swain and Macon Counties, North Carolina.

Plaintiffs commenced the underlying action against Defendants by filing a complaint on 3 February 2015.[1] In their second amended complaint filed on 13 August 2015, Plaintiffs alleged, among other things, that "[a]s an inducement to Plaintiffs for the purchase of lots in the Mystic Lands Subdivisions, Mystic Lands, Inc. agreed to and represented in writing that it would complete and pave all roadways and complete a rotating dome astronomical observatory[.]" Plaintiffs represented they had performed their part of the contract by purchasing lots from

[1] A thorough presentation of the facts and procedure of the underlying case can be found in this Court's decision COA 19-801, *Anderson v. Mystic Lands, Inc.* ("*Mystic Lands I*")

Mystic Lands, Inc., but Mystic Lands, Inc. had not fulfilled the completion of amenities within a reasonable time.

Trial was held for *Mystic Lands I*, and Judge Mark E. Powell entered judgment on 22 February 2018 ("Powell Judgment") memorializing the jury's verdict. The jury found that Plaintiff Thomas T. Schreiber ("Schreiber") had entered into a contract with Mystic Lands, Inc. to pave the roads in Mystic Ridge, and Mystic Lands, Inc. had breached that contract ("Paving Claim"). The court set a hearing date to determine whether the court, in its discretion, would decree specific performance related to the Paving Claim.

The court entered an order on 10 July 2018 granting specific performance of the Paving Claim, requiring Mystic Lands, Inc. to pave the roads in Mystic Lands subdivision, and denying Defendants' post-trial motions and motion for stay of execution of the Powell Judgment ("Specific Performance Order"). Defendants appealed to this Court on 8 August 2018 both the Powell Judgment and the Specific Performance Order.

Shinitzky, on behalf of Mystic Lands, Inc., sent a letter to lot owners in Mystic Lands on 15 September 2018, announcing the retention of LFC, a real estate auction and market company, to "sell its lot inventory." Described as a "final push" effort, Shinitzky explained that he "must sell [his] lots at the best possible prices[,]" and said

that without "an investment to protect, Mystic Lands, Inc., will at last be able [to] relinquish its rights and duties as the Declarant[.]"

On or about 14 September 2018, LFC sent a letter to property owners stating: "Mystic Lands has retained the LFC Group of Companies to auction market its remaining inventory of lots. The lots will be sold on a quick time table [sic] at current market values." The letter described two phases for the lot sales: "The first phase of the Mystic Lands auction will include 19 lots (River, Forest and Ridge) and Mr. Shinitzky's estate home. A subsequent phase will include the remainder of the lots."

Plaintiffs filed a motion on or about 18 October 2018, requesting that the trial court order Mystic Lands, Inc. to post an appeal bond, or in the alternative, a performance bond. A consent order agreed to by the parties and entered by Judge Sharon Tracey Barrett on 24 October 2018 withdrew the motion and prohibited Mystic Lands, Inc. from disposing of any of its real property in Macon and Swain Counties prior to 29 November 2018.

Plaintiffs filed a new Motion for Performance Bond on or about 1 November 2018. Plaintiffs had also filed an affidavit of James Bateman's ("Bateman Affidavit") and an affidavit of Thomas Schreiber's ("Schreiber Affidavit") on 24 October 2018. According to the Bateman Affidavit, Bateman had worked in the road paving industry for the past 26 years, and "[he] prepared a quote for Mystic Ridge Subdivision . . . to pave the following roads: Mystic Ridge Way, Saturn Way, Neptune Way, Hubble

Way, Venus Way, East Mystic Ridge Way, Atlas Way, Andromeda Way, and Big Dipper Way." His quote was for $504,057.00. The Schreiber Affidavit also included the communications from Shinitzky and LFC as attachments.

In response, Defendants submitted a 13 November 2018 affidavit by Shinitzky ("Shinitzky Affidavit") stating that the lots constitute "all of the assets of Mystic Lands, Inc.[,]" that "[i]t does not have liquid assets, nor does it have a stream of income other than the sale of lots," and that the sale of lots "ha[s] been minimal to nonexistent during the Great Recession and in the last four years[.]" The Shinitzky Affidavit further revealed that 17 of the 38 lots were currently for sale, and the remaining lots were "not currently for sale." The debt secured by the Mystic Land lots was approximately $1,760,000, and Defendants claimed additional unsecured debt of approximately $1,000,000.

Defendants also submitted a 13 November 2018 affidavit of licensed insurance agent Jimmy Link Spicer ("Spicer Affidavit"). Spicer expressed, "[i]n [his] experience, bonding companies do not accept non-income producing land as collateral for a performance bond[.]" He further opined that Defendants would not be able to obtain a traditional performance bond with an insurance company.

Judge Doughton heard the matter on 13 November 2018, which was recessed until 15 November 2018, when it was completed. During a recess of the 15 November 2018 hearing, Mystic Lands, Inc. recorded a deed of trust in Swain County, North

Carolina, which encumbered a lot with "FIFTY THOUSANDS THOUSANDS AND 00/100 DOLLARS (55,000) [sic]" in indebtedness. Judge Doughton entered an order the same day granting the motion for the performance bond ("Performance Bond Order").

Defendants filed a Notice of Appeal to this Court on 17 December 2018, appealing Judge Doughton's Performance Bond Order. This Court ordered the above captioned case consolidated for hearing purposes with the *Mystic Lands I* companion case, which appeal addresses, among other claims, the merits of the Paving Claim.

II. Defendants' Performance Bond Claims

Defendants claim that the trial court lacked jurisdiction to grant Plaintiffs' Moion for Performance Bond, and that even if the trial court had jurisdiction over the matter, it abused its discretion in requiring a performance bond. We address each argument below.

A. Standard of Review

This Court examines various statutes surrounding questions of jurisdiction *de novo*. *See Silva v. Lowes Home Improvement*, 239 N.C. App. 175, 178, 768 S.E.2d 180, 183 (2015).

> Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal. Subject-matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. Subject-matter jurisdiction derives from the law that organizes a court and cannot be conferred on a court

> by action of the parties or assumed by a court except as provided by that law. When a court decides a matter without the court's having jurisdiction then the whole proceeding is null and void, *i.e.*, as if it had never happened. Thus, the trial court's subject matter jurisdiction may be challenged at any stage of the proceedings.

Rodriguez v. Rodriguez, 211 N.C. App. 267, 270, 710 S.E.2d 235, 238 (2011) (citation and quotation marks omitted).

"[W]hen a trial court makes its decision whether to grant equitable relief, the court should make appropriate findings of fact and conclusions of law, sufficient to allow appellate review for abuse of discretion." *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 401, 474 S.E.2d 783, 788 (1996).

B. Trial Court's Jurisdiction to Order the Performance Bond

Defendants contend that Judge Powell's Specific Performance Order was a "final judgment on the merits of the specific performance remedy . . . [leaving] nothing to be judicially determined between Schreiber and ML in the trial court" as to the grant of specific performance on the paving claim. According to Defendants, Judge Powell's "final" decision "resolved the terms and conditions of specific performance[,]" and thus, another superior court judge was without authority to modify his determinations.

A decree of specific performance is an equitable remedy. *McLean v. Keith*, 236 N.C. 59, 71, 72 S.E.2d 44, 53 (1952). Through its equitable jurisdiction "[a] court of equity may adopt all necessary, reasonable, and lawful means to make its decrees

fully effective, and to accomplish the objects intended." *Harborgate Prop. Owners Ass'n v. Mt. Lake Shores Dev. Corp.*, 145 N.C. App. 290, 296, 551 S.E.2d 207, 211 (2001) (citation and quotation marks omitted). Further,

> [T]he granting of the decree of specific performance of a contract is not a matter of absolute right. As the rule is usually stated, the granting of relief by a decree requiring specific performance of a contract rests in the sound discretion of the court before whom the application is made, which discretion is to be exercised upon a consideration of all of the circumstances of the case, with a view of subserving ends of justice.

Knott v. Cutler, 224 N.C. 427, 430-31, 31 S.E.2d 359, 361 (1944).

According to N.C. Gen. Stat. § 1-358 (2019), "[t]he court or judge may, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution." This allows for the exercise of authority to grant equitable remedies necessary to protect judgments. Furthermore, "to assure performance [of a specific performance action], it is not unusual to require a performance bond[.]" *Harborgate Prop. Owners Ass'n*, 145 N.C. App. at 296-97, 551 S.E.2d at 211 (citation and quotation marks omitted).

1. Statutory Jurisdiction

Judge Powell's Specific Performance Order mandated that certain roads in the Mystic Ridge subdivision in Mystic Lands be paved with "substantially the same construction . . . as the existing paved roads in the Mystic Forest and Mystic River

Subdivisions[.]" The Order provided that Defendants had two years from the issuance of the Order to complete the paving.

Defendants argue pursuant to N.C. Gen. Stat. § 1-294 that Judge Doughton lacked the "authority" to enter an order because once their appeal was filed on 8 August 2018, and later perfected, the trial court was divested of its jurisdiction. We disagree.

Pursuant to N.C. Gen. Stat. § 1-294:

> When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but *the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from*. (Emphasis added.)

Defendants effectively contend that the issue of a performance bond was "affected by" the judgment appealed from. Although Defendants admit that the issue of a performance bond was not addressed by Judge Powell, they assert that Judge Doughton lacked "authority" to hear the motion for the performance bond. Defendants challenge Judge Doughton's jurisdiction to "modify" Judge Powell's Specific Performance Order, where Judge Powell's decision was a "final one" that considered "all of the circumstances of the case[.]" According to Defendants, such "modifications" not originally mandated as part of specific performance included the requirement to post a $504,057 performance bond and further stipulated that

Defendants were not to place new encumbrances on lots until full compliance with the performance bond. Defendants also state that Judge Doughton's order "essentially turned Judge Powell's order from one for specific performance . . . into a money judgment for a sum certain."

In this case, the following exchange occurred before Judge Doughton:

> THE COURT: [Judge Powell] didn't consider it. Nobody even mentioned a performance bond, did they?
> [COUNSEL FOR DEFENDANTS]: No, not at the time of the post-trial motion.
> THE COURT: He didn't consider it and it wasn't ordered, and there wasn't a decision one way or the other by him. And he's no longer working, so somebody is going to have to make a decision. Isn't that right?
> [COUNSEL FOR DEFENDANTS]: Right. But given what he did order about when the obligation comes to fruition, I contend that the Court can't order now a performance bond without altering that order.

Questioned several times by the trial court Judge Doughton about how ordering the above remedies would alter Judge Powell's final judgment, Defendants answered:

> It modifies it in the sense that it's taking an obligation that Judge Powell ordered in two years from July of 2018 and now taking the next 4- to $500,000 of revenue of this company that is needed for immediate critical needs and freezing it for an obligation that's not due for another 20 months.

Defendants argue, therefore, that N.C. Gen. Stat. § 1-294 divests Judge Doughton of his "authority" to enter an order. Specifically, since a bond would no

longer be required upon Defendants' successful appeal of Judge Powell's Specific Performance Order, the order for an appeal bond is "affected by the judgment appealed from." *See* N.C. Gen. Stat. § 1-294.

Clarifying his perspective that he was not modifying Judge Powell's order, Judge Doughton stated:

> That's where I don't even understand your argument. I'm not being asked to review or modify [Judge Powell's] order at all. I'm merely being asked to issue a performance bond to make sure that his order can be carried out if the appeal is lost.
>
> And it's just to make sure that a person who's a resident of Florida and his company is a resident of Florida doesn't dispose of all the assets and go to Florida pending this two years. That's all the performance maintenance bond does.

N.C. Gen. Stat. § 1-294 applies such that if an issue was raised in the appeal of a judgment which would need to be decided by the trial court before deciding *whether* to require a performance bond, then the proceeding would be "affected by the judgment appealed from." *See id.* Conversely, if the issue raised in the post-appeal hearing does not require reconsideration of an issue in the pending appeal—as is the case here—then the judgment appealed from does not "affect" the post-appeal matter. *See id.* While it is true that a reversal would make the performance bond no longer necessary, the focus in the statute is on what impact Judge Powell's order—the judgment appealed from—would have on the subsequent decision by Judge Doughton. The sole issue before Judge Doughton was whether a security bond should

be required for performance of the Paving Contract. No factual issues were on appeal that the trial court needed to consider prior to rendering a decision on the motion for an appeal bond.

In *Songwooyarn Trading Co. v. Sox Eleven, Inc.*, a trial judge entered an order while an appeal was pending, prohibiting the defendant from transferring, disposing, or removing property or assets. *Songwooyarn Trading Co. v. Sox Eleven, Inc.*, 219 N.C. App. 213, 723 S.E.2d 569 (2012). The appellant argued that the appeal deprived the judge of jurisdiction to issue that order. *Id.* at 216, 723 S.E.2d at 571. This Court disagreed, however, holding that during the pendency of the appeal, the "trial court retained jurisdiction to enter a supplemental order . . . [because the supplemental order] did not concern the subject matter of the suit and was intended to aid in the security of plaintiffs' rights while the appeal was pending." *Id.* at 217-18, 723 S.E.2d 572. Consistent with N.C. Gen. Stat. § 1-294, this Court found that the post-judgment collection proceeding was separate and independent from the underlying judgment. *See id.* at 217, 723 S.E.2d at 572.

Similarly, in *Cox v. Dine-A-Mate, Inc.*, an employee filed suit against his employer, and the employer moved to dismiss the North Carolina action based upon a forum clause in the employment contract. *Cox v. Dine-A-Mate, Inc.*, 129 N.C. App. 773, 775, 501 S.E.2d 353, 354 (1998). During the pending appeal, the employer filed suit in New York seeking injunctive relief and damages. *Cox v. Dine-A-Mate, Inc.*,

131 N.C. App. 542, 543-44, 508 S.E.2d 6,7 (1998). The North Carolina trial court entered a preliminary injunction enjoining the employer from proceeding with the New York action, and the employer appealed. *Id.* at 544, 508 S.E.2d at 7. In that appeal, the issue was whether the trial court lacked subject matter jurisdiction to enter the injunction while the first appeal was pending. *Id.*, 508 S.E.2d at 7. This Court determined there was no identity of issues and upheld the injunction. *Id.* at 544-45, 508 S.E.2d at 7-8; *cf. Ross v. Ross*, 194 N.C. App. 365, 369, 669 S.E.2d 828, 831 (2008) (holding trial court was without jurisdiction to modify prior order by reducing amount of supersedeas bond because the bond amount was the subject matter on appeal); *McClure v. County of Jackson*, 185 N.C. App. 462, 471, 648 S.E.2d 546, 551-53 (2007) (determining a trial court should not have awarded attorney's fees while an appeal was pending to a party determined to be the prevailing party and that mootness of the primary appeal prevents an appellate court from reviewing an award of attorney's fees). Thus, "[t]rial courts are permitted to 'proceed upon any other matter included in the action and *not affected by the judgment appealed from*' . . . so long as they do not concern the subject matter of the suit." *Id.* at 544-45, 508 S.E.2d at 7-8 (emphasis in original) (*quoting Woodard v. Local Governmental Employees' Retirement Sys.*, 110 N.C. App. 83, 85-86, 428 S.E.2d 849, 850 (1993)).

In this case, the issue of Judge Powell's decree of specific performance of the Paving Contract that was awarded in Plaintiffs' favor was the issue pending before

this Court. No issue of performance bond or other security was raised at the hearing of the decree of specific performance. The post-judgment proceeding for a performance bond, heard by Judge Doughton, was separate and independent from—not a modification of—the underlying judgment and not affected by the judgment appealed from. *See* N.C. Gen. Stat. § 1-294. Thus, the appeal of the grant of specific performance by Judge Powell did not remove the trial court's jurisdiction for Judge Doughton to hear the matter of the performance bond. As in *Songwooyarn* and *Cox*, the trial court retained jurisdiction during the pendency of the appeal to enter a supplemental order granting Plaintiffs' request for a performance bond because the supplemental order did not concern the subject matter of the suit and was intended to aid in the security of Plaintiffs' rights while the appeal was pending. *See Songwooyarn* 219 N.C. App. at 217-18, 723 S.E.2d at 572; *Cox*, 131 N.C. App. at 544-45, 508 S.E.2d at 7-8.

2. Jurisdiction as to Court Term

Defendants also argue that since Judge Powell's court term ended after the Specific Performance Order was entered, he could not have modified his Order after the term. Thus, "Judge Doughton was not authorized to hear the motion for performance bond that effectively amended the Specific Performance Order, in the same vein that Judge Powell could not[,] after the adjournment of the session that he was assigned[.]" We disagree.

Judge Doughton was commissioned to preside over the term of Superior Court, Swain County when the motion for the performance bond was heard and the order entered. Based on our decision above that Judge Doughton's Performance Bond Order was not an amendment to or modification of Judge Powell's Specific Performance Order, we find Defendants' argument without merit.

C. Trial Court's Discretion to Order the Performance Bond

Defendants also argue that even if jurisdiction existed for the trial court to enter the Performance Bond Order, the court's findings were not supported by the evidence and conclusions of law were flawed as to weighing equities. More specifically, Defendants assert that "[n]o evidence in the record suggests the equities were weighed[,]" and "given the record and evidence . . . they were ignored." Judge Doughton's Order, according to Defendants, "fails to weigh equities and is based on shoddy speculation of [Defendant Shinitzky] fleeing the state." We disagree.

> It is well established that where matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion. A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason. A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that its decision was so arbitrary that it could not have been the result of a reasoned decision.

White v. White, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (internal citations omitted). Further, "when a trial court makes its decision whether to grant equitable

relief, the court should make appropriate findings of fact and conclusions of law, sufficient to allow appellate review for abuse of discretion." *Roberts v. Madison County Realtors Ass'n, Inc.*, 344 N.C. 394, 401, 474 S.E.2d 783, 788 (1996); *see also* N.C. Gen. Stat. § 1A-1, Rule 52 (a)(1).

Prior to entering a decision in this case, the trial court considered the facts and law submitted by counsel for the parties before rendering its decision. Along with Schreiber's affidavit, Plaintiffs submitted the letter from Shinitzky on behalf of Mystic Lands, Inc. announcing to lot owners that Defendants had retained LFC "to sell its lot inventory." Shinitzky also expressed his intent to end his involvement with the Mystic Lands, and to relinquish to the POA Mystic Lands, Inc.'s rights and duties as Declarant, since Mystic Lands, Inc. would have no further investment to protect.

Also submitted with Schreiber's affidavit was the letter from LFC confirming Defendants retained LFC "to auction market its remaining inventory of lots." LFC's letter explained that "the lots will be sold on a quick time table [sic] at current market values." According to the letter: "The first phase of the Mystic Lands auction will include 19 lots (River, Forest, and Ridge) and Mr. Shinitzky's estate home. A subsequent phase will include the remainder of lots."

Insurance Agent Spicer's affidavit submitted by Defendants expressed that Defendants would likely be unable to obtain a traditional performance bond with an insurance company. Although Defendants assert that all proceeds from lot sales are

encumbered by Judge Doughton's Performance Bond Order, the Order required that net proceeds would be paid towards the performance bond.

Defendants also submitted Shinitzky's affidavit in which he admitted that 17 of 38 lots were currently for sale but stated that "[t]he remaining 21 lots are not currently for sale[.]" While Defendants argue that the trial court erred in determining there was a risk of sale of all of the lots constituting the total assets of Mystic Lands, Inc., the letter from LFC indicated that the sale of the "remaining inventory of lots" would occur in two phases. Shinitzky's affidavit also revealed that Mystic Lands, Inc. has $1,760,000 in debt secured by its 38 lots with additional unsecured debt and obligations of approximately $1,000,000. By Shinitzky's own admission, the lots constitute all the assets of Mystic Lands, Inc.; it has no other stream of income other than the sale of lots. The sale was to be his "final push" for completing his Mystic Lands endeavor. On appeal, Defendants emphasize the need to sell assets to pay for "advertising, hiring contractors, lawyers, etc. in order to make money."

During a recess in the performance bond hearing, Defendants recorded a deed of trust on one of the lots for $50,000, despite the earlier consent order prohibiting conveyance of or encumbrance on the lots. When the hearing resumed, this evidence was brought to Judge Doughton's attention.

Judge Doughton verified a lack of mention or discussion of a performance bond before Judge Powell and heard a discussion of the need for the remedy requested. He expressed his concerns:

> What concerns the Court is you have a Florida developer, Florida corporation, and soon after the order was entered and was appealed from, [Shinitzky] starts trying to sell these lots. And even now there's been evidence you're showing that he's got a Deed of Trust on one of them since then. That concerns the Court.

Counsel for Defendants then responded, "but it doesn't constitute a substantial change in circumstances[,]" where "[t]his is a developer who's been a developer since day one." The "substantial change" language propounded by Defendants' counsel was grounded, however, in Defendants' perspective that Judge Doughton was modifying Judge Powell's order.

As to Defendants' modification argument, the trial court expressed his lack of understanding of the argument. He explained he was "not being asked to review or modify" Judge Powell's Order, but rather was being asked to issue a performance bond to assure specific performance could be carried out. He clarified that the performance maintenance bond assured the Florida resident and Florida company would not "dispose of all the assets and go to Florida" during the pending two years. He also recognized the millions of dollars' worth of real property, from which Defendants might obtain a performance bond.

Although Defendants reminded the trial court of Spicer's affidavit submitted as to Defendants' inability to get an insurance bond, Judge Doughton stated, "maybe [Shinitzky is] able to get enough money to borrow it on the property to set that much aside to make a bond in cash." The trial court concluded, explaining that its decision was not part of the "stay" under N.C. Gen. Stat. § 1-294, and that "the court of equity can adopt necessary and reasonable conditions to fully effectuate Judge Powell's order in [the] event the plaintiffs win."

The extensive evidence belies Defendants' baseless argument that the court did not weigh with careful consideration the evidence, law, and argument of counsel. Judge Doughton's Performance Bond Order contained ample findings of fact about the marketing of lots, auction, stream of income, paving estimate, and risk to Plaintiffs, as well as conclusions of law regarding the trial court's jurisdiction and its equitable powers to effectuate the court's decrees. *See Roberts*, 344 N.C. at 401, 474 S.E.2d at 788; N.C. Gen. Stat. § 1A-1, Rule 52 (a)(1). Defendants were proceeding with the sale of assets in North Carolina that could be used to secure the performance bond. Defendants' behavior indicated a willingness to convey and encumber lots. Indicating reasonable consideration of the arguments of both sides, Judge Doughton required *net* proceeds to be paid into court—not *all* proceeds—after payment of indebtedness of the lot. The trial court's decision is supported by ample evidence in

the record; accordingly, we hold the court did not abuse its discretion. *See White*, 312 N.C. at 777, 324 S.E.2d at 833.

III. Conclusion

The trial court had jurisdiction over granting a performance bond to secure the award of specific performance and did not abuse its discretion in ordering the performance bond.

AFFIRMED.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).