STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: November 29, 2022)

MARK and DAWN QUILLEN	:	
Plaintiffs,	:	
v.	:	**C.A. No. WC-2021-0219**
CLINT COX	:	
Defendant.	:	

DECISION

THUNBERG, J. This matter is before the Court for decision following the conclusion of a bench trial on August 16, 2022. The Plaintiffs, Mark and Dawn Quillen, have alleged in their Complaint that the Defendant, Clint Cox, is in breach of a contract pertaining to a purchase and sale agreement entered into by the parties on February 25, 2021. Plaintiffs contend that the Defendant "failed to perform under the terms of the agreement by declining to move forward with the closing as set forth in the Purchase &Sales [*sic*] Agreement." (Compl. ¶ 11.) The Plaintiffs maintain that they have remained ready and willing as buyers of the subject property. Due to the Defendant's continuing refusal to convey the property, the Plaintiffs seek specific performance of the contract. Defendant has counterclaimed for breach of contract alleging that Plaintiffs breached the Purchase and Sales Agreement by failing to pay a $31,000 deposit before February 26, 2021. (Answer and Countercl. ¶¶ 10-17.) The instant Decision follows.

I

Facts and Travel

The Plaintiffs (Buyers) and Defendant (Seller) entered into a Purchase and Sales Agreement on February 25, 2021, for the conveyance of residential property located at 114 Montauk Road, Narragansett, R.I. *See generally*, Joint Ex. 1 (P&S Agreement). The purchase price was $632,000, and the closing was to take place on April 30, 2021 or "at such other time and place as may be agreed to by Buyer and Seller." *Id.* at 1. The real estate agent for the transaction was the Plaintiffs' daughter, Gianna Quillen (Gianna). (Prelim. Inj. Tr. 62:9-10, June 2, 2022.)[1] Mr. Quillen, "a financial advisor," testified that upon entering the agreement, he was a "ready, willing, and able purchaser of [the] property." (Prelim. Inj. Tr. 59:22; 61:23-25.) Mr. Quillen also explained that the conveyance was to be "a cash deal . . . [t]here was no financing contingency. [He] would have the funds available to close on the day of the agreed date." *Id.* at 62:3-6.

Mr. Quillen was instructed by Gianna, upon signing the agreement, to write a check for $5,000 to Beycome Brokerage Realty, identified in the contract as the escrow agent. *Id.* at 62:19-63:2. Mr. Quillen was subsequently informed by Gianna that "[he was] not able to use the check payable to Beycome Brokerage Realty because they did not accept escrow payments." *Id.* at 63:20-22. The parties agreed to an amendment on April 12, 2021, whereby the Plaintiffs wrote a check to Trusthill Real Estate Brokerage in the amount of $31,000. *Id.* at 62:10-65:5.

On the day of the closing, Plaintiffs had "the cash readily available," *see id.* at 70:16-19, and had "wired personal funds" to the escrow account of the closing agent, Attorney John J. Bevilacqua, Jr. *See id.* at 70:20-24. Attorney Bevilacqua confirmed in his testimony that he

[1] The parties agreed to "consolidate" the evidence produced at the Preliminary Injunction Hearing with the Trial evidence and testimony.

received funds in the amount of $115,000 on April 28, 2021 and additional funds, in the amount of $500,000, on April 29, 2021, "sent by Northeast Equity Partners on behalf of the Quillens in order for them to effectuate their closing." (Trial Tr. 6:10-17; 7:4-8, Aug. 16, 2022.) Attorney Bevilacqua recognized that at all times, "Plaintiffs, Mark and Dawn Quillen [were] ready, willing, and able to purchase the property," and "were actually very anxious to purchase the property." *Id.* at 8:21-23; 9:1-2.

Attorney Bevilacqua explained that the closing did not take place at the designated time because the Defendant contacted him and "delayed the closing from taking place" due to "an outstanding water bill . . . just over $700 . . . that was the tenant's bill . . . ." *Id.* at 9:12-20.

Attorney Daniel Carter, who represented the Defendant, as the seller of the property, also testified regarding the failed closing. Attorney Carter explained that he was engaged as counsel "very late in the game . . . [the] closing was scheduled for Friday, April 30th. It was either the Friday before, whatever date that would be, or the Monday of that week." *Id.* at 31:12-15. Attorney Carter asked the Defendant to send the lease for the property which was at the time rented to University of Rhode Island students. *Id.* at 31:16-18. According to Attorney Carter's testimony, the lease contained "errors and red flags." *Id.* at 31:23. He testified that, "that's what precipitated . . . the fallout, which was a water bill." *Id.* at 31:24-25. Specifically, "[t]he lease said that the students were supposed to transfer water services in their own name, and . . . be responsible for the bill." *Id.* at 32:1-3.

Attorney Carter also elaborated that "at the same time, the same month of April . . . [he was] dealing with a zoning violation that Mr. Cox had gotten hit with. And [he was] dealing with an eviction of other tenants that [Mr. Cox] has in property on Flintstone Road. So, [he had] three things going on with Mr. Cox at the same time. But, nonetheless, this [closing] was teed up and

ready to go until Mr. Cox pulled the plug on Friday." *Id.* at 32:21-33:3. Attorney Carter elaborated that "[he] spent the week of April fighting – the last week of April fighting with Mr. Cox trying to get him to do what [he] needed him to do to make this damn thing happen, occur – to make this thing happen on April 30th. Finally, we get all the ducks in a row, everything was a go, and then 11:30 in the morning, on April 30th, we get the e-mail from Mr. Cox saying, stop the presses, I'm not closing until I, until the water bill gets resolved. That's when it blew up." *Id.* at 40:10-18. Attorney Carter was convinced, in part through representations made by Attorney Bevilacqua, that the Plaintiffs were "[a]bsolutely" ready, willing, and able to close. *Id.* at 42:6. Pointedly, counsel for Plaintiffs posed the question to Attorney Carter, "And who was it that refused to have the closing take place?" to which Attorney Carter replied, "Mr. Cox." *Id.* at 42:11-13.

Mr. Cox, the Defendant, testified that he has been buying and selling houses since he was nineteen years old and considers himself a "real estate investor." (Prelim. Inj. Tr. 6:8-14.) He testified that he terminated Attorney Carter as his attorney because "he wasn't forthcoming with me on a lot of things."[2] *Id.* at 23:17-18. Mr. Cox also testified that, "Dan didn't really know what was going on," *see id.* at 27:10-11, a blatant falsehood, in the Court's estimation, based upon the credible evidence.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides, in pertinent part, that:

> "In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . . It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the

[2] There is absolutely no evidence of any lack of communication between these parties, whatsoever, in this record. Attorney Carter consistently conducted himself in a thorough, prompt, and professional manner throughout the course of his representation.

> close of the evidence or appear in an opinion or memorandum of decision filed by the court." Super. R. Civ. P. 52(a).

Pursuant to this rule, the trial justice, "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). However, "the rule does not demand discursive statements or an extensive analysis of the evidence." *Rowell v. Kaplan*, 103 R.I. 60, 71, 235 A.2d 91, 97 (1967). "Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." *Hilley v. Lawrence*, 972 A.2d 643, 651 (R.I. 2009) (internal quotation omitted).

III

Analysis

The Defendant contends that the P&S Agreement is not a valid and enforceable contract because "the Plaintiffs failed to pay the consideration . . . ." (Def.'s Post-Trial Mem. 7.) Defendant asserts that "the Plaintiff Buyers have no stake as they unilaterally decided not to pay the deposit to the Seller's broker as required in the purchase and sales agreement and did not . . . close on the closing date." *Id.* at 8.

As this Court has previously stated in pertinent part:

> "Mr. Cox argues that, because the $31,000 deposit was paid to buyers' own broker, that this act also constituted a fatal breach of the Purchase and Sales Agreement, thus, said contract is invalidated. . . . [T]he protective purpose of escrow is to prevent funds, so held, from being improperly released or applied to the detriment of the parties. There is absolutely no indication, in this case . . . that there was even a specter of the funds being in jeopardy because they were deposited with the Trust -- eventually with Trusthill instead of Beycome Realty . . . In addition to the Plaintiff's check, for the $31,000 to Trusthill, the Plaintiffs, on the day before the scheduled closing, forwarded wire transfers totaling $615,000 to Attorney Bevilacqua. It was Mr. Cox, the next day, who . . . refused to pay the $600 water bill of his tenants and who ordered the closing

> canceled." (Bench Decision at 17:20-18:20 (Thunberg, J.) (June 7, 2022).)

Attorney John J. Bevilacqua Jr. was engaged by Mr. and Mrs. Quillen as their closing attorney. (Trial Tr. 4:19-21.) Attorney Bevilacqua testified that, on April 28, 2021, he received a wire transfer of $115,000 from Mark Quillen. *See id.* at 6:10-17; Pl.'s Ex. 1. On the 29th of April, Attorney Bevilacqua received a second wire transfer of $500,000 from Northeast Equity Partners "on behalf of the Quillens in order for them to effectuate their closing." (Trial Tr. 7:4-8; Pl.'s Ex. 2.) Attorney Bevilacqua confirmed that "there were sufficient funds to effectuate the closing," adding that "it was actually a nice surprise because normally we're scrambling the day of closing to make sure funds hit escrow accounts. So to have them prior to closing was a nice comfort on our part." (Trial Tr. 7:20-25.)

As previously discussed in this Decision, Attorney Bevilacqua also reaffirmed that Mark and Dawn Quillen were, at all times, ready, willing, and able to purchase the property. *Id.* at 8:21-23. Counsel added that the Plaintiffs "were actually very anxious to purchase the property." *Id.* at 9:1-2. He added that they did not "take any action to impede the closing . . . ." *Id.* at 9:2-6. According to Attorney Bevilacqua, it was the Defendant who halted the closing due to his tenant's outstanding water bill. *Id.* at 9:12-20. On April 30, 2021, at 11:22 am, the Defendant, in an e-mail to Attorney Bevilacqua, referencing the bill stated, "[t]his will delay the closing. I do not agree with the sale until this is rectified." *See* Joint Ex. 6; Trial Tr. 28:8-15. Mr. Cox told Attorney Bevilacqua that he objected to rescheduling the closing to May 3, 2021 because "[he] did not feel comfortable about the transaction anymore because [he] didn't feel that [the Quillens] had the cash." (Prelim. Inj. Tr. 52:25-53:1.) In light of the credible testimony and the exhibits, this statement cannot be accorded any credence and is contrary to all other evidence pertaining to this

issue. Additionally, the Defendant is a very astute, savvy, and extremely successful businessman steeped with experience in real estate transactions.

The Court finds that the Plaintiffs, Mark and Dawn Quillen, have exceeded their evidentiary burden of proof for sustaining the claims upon which they seek relief. There exists, in the record, an abundance of credible evidence, in addition to documentary evidence, to support each of the Counts of their Complaint. The Court finds that the Defendant unilaterally and impermissibly breached the P&S Agreement. The Quillens are, unequivocally, entitled to specific performance of the P&S Agreement having satisfied, in a timely fashion, all of their obligations pursuant to the contract. *See Aloisio v. Hillview Realty, LLC*, No. PC-2018-7634, 2020 WL 4371513, at *9-10 (R.I. Super. July 23, 2020) (holding that specific performance was appropriate when the buyer demonstrated that he was ready, willing, and able to perform, by securing financing, but the seller unjustifiably refused to sell the property); *see also Fisher v. Applebaum*, 947 A.2d 248, 251-52 (R.I. 2008) (specific performance of a real estate contract may be granted when the essential contract provisions are clear, definite, certain, and complete, and when the buyer demonstrates that they were ready and willing to perform their obligations at all times).

IV

Conclusion

For the foregoing reasons, the Court enters judgment for the Plaintiffs on all counts (Counts I, II, and III) of their Complaint. Furthermore, Mr. Cox's counterclaim for breach of contract and request for judgment in the amount of $31,000 are hereby denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Mark and Dawn Quillen v. Clint Cox**
CASE NO:	**WC-2021-0219**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**November 29, 2022**
JUSTICE/MAGISTRATE:	**Thunberg, J.**
ATTORNEYS:	
For Plaintiff:	**Gregory J. Acciardo, Esq.**
For Defendant:	**Stephen Izzi, Esq.**