

Mar Acquisition Group v. Oparaji

Superior Court of New Jersey, Appellate Division

March 20, 2023, Submitted; April 21, 2023, Decided

DOCKET NO. A-2160-21

Reporter

2023 N.J. Super. Unpub. LEXIS 601 *; 2023 WL 3032156

MAR ACQUISITION GROUP, LLC, and TAG DEVELOPMENT, LLC, Plaintiffs-Respondents, v. MAURICE OPARAJI, Defendant/Third-Party Plaintiff-Appellant, and ME & YOU BIOTECH INC., Defendant, v. MAR ACQUISITION GROUP, LLC, and TAG DEVELOPMENT, LLC, Defendants-Respondents, and WFG NATIONAL TITLE INSURANCE COMPANY, VALLEY SURVEYING, PLLC, A ABSOLUTE ESCROW SETTLEMENT CO., INC., ACRES LAND TITLE AGENCY, INC., EXIT REALTY LUCKY ASSOCIATES, PETER A. UZZOLINO, JONATHAN TEOH, and RAPHAEL SALERMO, Third-Party Defendants-Respondents.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY [RULE 1:36-3](#) FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Certification denied by [Mar Acquisition Grp., LLC v. Oparaji, 2024 N.J. LEXIS 353 \(N.J., Apr. 2, 2024\)](#)

Prior History: [*1] On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-000120-21.

[Mar Acquisition Grp., LLC v. Oparaji, 2021 U.S. Dist. LEXIS 155124, 2021 WL 3630305 \(D.N.J., Aug. 16, 2021\)](#)

Counsel: Maurice Oparaji, appellant, Pro se.

Bendit Weinstock, PA, attorneys for respondents MAR Acquisition Group, LLC, and TAG Development, LLC, Jonathan Teoh, and Raphael Salerno (Joseph H. Tringali, on the brief).

Riker Danzig, LLP, attorneys for respondents WFG National Title Insurance Company (Michael R. O'Donnell, of counsel; Jorge A. Sanchez and Kevin E. Hakansson, on the brief).

Louis A. Chiafullo, attorney for Acres Land Title Agency, Inc., A Absolute Escrow Settlement Co., Inc., and Peter Uzzolino.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, attorneys for Exit Realty Lucky Associates (Michael P. Chipko, of counsel and on the brief).

Judges: Before Judges Mawla and Smith.

Opinion

PER CURIAM

Defendant, Maurice Oparaji, appeals from six March 8, 2022 orders compelling him to sell two properties in Newark and dismissing his counterclaim and third-party complaint alleging fraud, breach of contract and other claims. After considering the record in light of the applicable legal principles, we affirm.

I.

Oparaji entered into identical contracts on February 8, 2021, to sell Lot 50 to co-plaintiff TAG Development, [*2] LLC (TAG) and Lot 51 to co-plaintiff MAR Acquisition Group (MAR)¹. The purchase price for each agreement was \$120,000.00. Closing was scheduled for June 22, 2021. TAG and MAR incurred costs in preparation for the twin closings, including costs for surveys, environmental review, and removal of an oil tank.

On March 3, 2021, Oparaji conveyed the title of Lot 51 to Me & You Biotech, Inc. (Biotech), a business entity which Oparaji had incorporated and served as a director. On April 3, 2021, Oparaji conveyed the title of Lot 50 to Biotech.

Despite the conveyances to Biotech, Oparaji emailed TAG and MAR's representatives on June 21 at 1:02 p.m. that he "was prepared and ready for tomorrow's June 22, 2021, closing." By 8:45 p.m., Oparaji's attorney had contacted TAG and MAR's counsel to inform them Oparaji no longer was prepared to close on June 22, 2021. Oparaji's attorney informed TAG and MAR's counsel that he had discontinued his representation and intended to return their earnest money deposits. Oparaji refused to close on June 22, citing title concerns related to an adjacent property, Lot 49.²

On June 23, 2021, MAR and TAG paid \$16,100 towards survey and review costs which they incurred in [*3] preparation for closing. The next day, Oparaji entered into a contract to transfer Lot 49, a lot adjacent to Lots 50 and 51, to a nonparty.

Oparaji never sold MAR and TAG lots 50 and 51. MAR and TAG filed suit against Oparaji and Biotech seeking specific performance to compel completion of the sale. Oparaji filed an answer, counterclaim and third-party complaint seeking injunctive and declaratory relief and to undo the contracts for sale of Lots 50 and 51.³ His pleadings alleged a wide range of claims against the other parties, including: misrepresentation; breach of contract; bad faith; fraud; unjust enrichment; violations of the [New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to - 20](#); and due process violations under the New Jersey Constitution. Biotech never filed an answer and plaintiffs entered default against it.⁴

The trial court conducted a case management conference in December 2021, and issued an order which provided, in part, that motions to dismiss be filed by February 4, 2022. Plaintiffs and third-party defendants filed motions to dismiss Oparaji's various claims pursuant to [Rule 4:6-2\(e\)](#), and plaintiffs also filed a motion for summary judgment, seeking specific performance. Oparaji responded with a flurry of filings. They included: a "Motion [*4] to Dismiss and Amend the Caption Removing Me & You Biotech, Inc."; a "Notice of Cross Motion to Amend and to Dismiss/Dissolve Lis Pendens,"; a proposed form of amended pleading captioned "Verified Answer with Amended Counterclaim"; a response to the material facts included in plaintiffs' and third-party defendant's motions; a "Notice of Rejection"; and a memorandum of law.

After oral argument, the trial court issued an order and accompanying seventeen-page statement of reasons dated March 8, 2022. The trial court addressed the applications of the various parties in turn. First, the court: granted Oparaji's motion to file an amended counterclaim; denied his motion to dissolve a lis pendens on the disputed property; and denied Oparaji's motion to remove Biotech from the caption of his pleadings. Next, the court granted plaintiffs' applications for specific performance against Oparaji while dismissing his counterclaims against them. Finally, the trial court granted each third-party defendant's motion to dismiss.

In granting Oparaji's motion to amend his counterclaim, the court ensured it could consider that amended pleading in its [Rule 4:6-2\(e\)](#) and summary judgment analysis. The court then proceeded [*5] to make findings. It first found

¹ Lots 50 and 51 are known collectively as 71-73 Isabella Ave.

² This lot is located at 75 Isabella Ave.

³ Third-party defendants included business entities WFG National Title Insurance Company, Valley Surveying, PLLC, A Absolute Escrow Settlement Company, Acres Land Tile Agency, Inc., Exit Realty Lucky Associates, and individual defendants, Uzzolino, Teoh and Salerno.

⁴ Biotech neither entered an appearance before the trial court nor is it before us on appeal.

Oparaji's varied fraud allegations were insufficiently pled. Citing [Rule 4:5-8\(a\)](#), the trial court found Oparaji's fraud claims lacked particularity, noting that his allegations combined several parties without explaining which party did what. The court next found Oparaji's claims of civil conspiracy, breach of contract, fraudulent misrepresentation, and negligent misrepresentation were unsupported in the pleadings. The court examined Oparaji's claims for slander of title and defamation, linked to the disputed *lis pendens*, and concluded he had no cause of action. Having analyzed the counterclaim and third-party complaint as amended, the trial court dismissed all of Oparaji's claims against MAR, TAG, and the third-party defendants under [Rule 4:6-2\(e\)](#). The trial court, noting Biotech's default status, found moot Oparaji's motion to "amend the caption" to remove Biotech in light of its order dismissing his claims.

The trial court next addressed plaintiffs' summary judgment application for specific performance. It found MAR and TAG entered into agreements with Oparaji to buy lots 50 and 51. The court found the agreements included like terms for purchase price, seller's warranties [*6] regarding condition of the premises, and the buyer's right to inspect the premises prior to closing. The court reviewed the communications amongst the parties between April 13, 2021, and July 7, 2021, which included emails exchanged by legal counsel for Oparaji, MAR, and TAG, and also included emails authored by Oparaji himself. The court concluded there were no material facts in dispute, and that the express language and terms of the two contracts was such that it permitted the court to determine "the duties of each party and the conditions under which performance [was] due." Concluding evidence in the record showed the "parties were working toward closing," the court further found that enforcement of the two contracts of sale would be neither harsh nor oppressive. The court rejected Oparaji's claims that legal problems with Lot 49 represented a valid bar to him selling Lots 50 and 51 to plaintiffs.

Oparaji appeals, contending the trial court erred in multiple ways. We summarize his arguments: the court missed genuine issues of material fact that should have defeated summary judgment; Oparaji's amended complaint pled sufficient facts to support his diverse theories against MAR, TAG, [*7] and the third-party defendants; the trial court erred by rejecting his *lis pendens* claim; and the court failed to consider Oparaji's equitable arguments in opposition to specific performance.

Oparaji also argues that we should exercise our original jurisdiction under [Rule 2:10-5](#). We decline to do so. We turn to *Raji v. Sancedo* for our response to this argument, in which we held "[a]ppellate courts do not lightly exercise original jurisdiction . . . particularly when the trial judge has already found defendant[] failed to offer credible evidence to support their counterclaim. . . [461 N.J. Super. 166, 170, 218 A.3d 1192 \(App. Div. 2019\)](#)."

II.

We review the trial court's grant or denial of a motion for summary judgment *de novo*, "applying the same standard used by the trial court." *Samolyk v. Berthe*, 251 N.J. 73, 78, 276 A.3d 108 (2022). "To decide whether a genuine issue of material fact exists [we] must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" *Friedman v. Martinez*, 242 N.J. 449, 472, 242 N.J. 449, 472, 231 A.3d 719 (2020) (second alteration in original) (quoting *Globe Motor Co. v. Igdalev*, 225 N.J. 469, 480, 139 A.3d 57 (2016)). We must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540, 666 A.2d 146 (1995). "The court's function is [*8] not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Rios v. Meda Pharm., Inc.*, 247 N.J. 1, 13, 252 A.3d 982 (2021) (quoting *Brill*, 142 N.J. at 540). Summary judgment is not meant to "shut a deserving litigant from [their] trial." *Brill*, 142 N.J. at 540 (quoting *Judson v. Peoples Bank & Tr. Co. of Westfield*, 17 N.J. 67, 77, 110 A.2d 24 (1954)). We do not defer to the trial court's legal analysis. *RSI Bank v. Providence Mut. Fire Ins. Co.*, 234 N.J. 459, 472, 191 A.3d 629 (2018).

"[Rule 4:6-2\(e\)](#) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed *de novo*." *Baskin v. P.C. Richard & Son, LLC*, 246 N.J. 157, 171, 249 A.3d 461 (2021) (citing *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC*, 237 N.J. 91, 108, 203 A.3d 133 (2019)). In considering a [Rule 4:6-2\(e\)](#) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" *Ibid.* (quoting *Dimitrakopoulos* 237

[N.J. at 107](#)). The test for determining the adequacy of a pleading is "whether a cause of action is 'suggested' by the facts." [Printing Mart-Morristown v. Sharp Elecs. Corp.](#), 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting [Velantzas v. Colgate-Palmolive Co.](#), 109 N.J. 189, 192, 536 A.2d 237 (1988)).

III.

Turning to the merits, we affirm substantially for the reasons set forth in the cogent and detailed opinion of Judge James R. Paganelli. We offer the following brief comments.

Oparaji admitted in his pleadings that he contracted to sell lots 50 and 51 to plaintiffs. The parties engaged in a course of conduct evidencing their intent to close on June 22, 2021. Indeed, Oparaji emailed plaintiffs the day before closing communicating his intent [*9] to convey title to the properties to them, hours before he reneged. Plaintiffs incurred due diligence expenses in preparation for closing, including oil tank removal. Oparaji presented no material facts that would create a genuine issue for trial. Our review of the record leads us to conclude the terms of the contract were clear and that both contracts were enforceable and valid. The grant of specific performance on these facts was not "unduly oppressive." [Marioni v. 94 Broadway, Inc.](#), 374 N.J. Super 588, 600, 866 A.2d 208 (App. Div. 2005) (citing [Stehr v. Sawyer](#), 40 N.J. 352, 357, 192 A.2d 569 (1963)).

The causes of action set forth in both Oparaji's counterclaim and third-party action lacked merit. Oparaji failed to present facts sufficient to suggest a cause of action. [Printing Mart-Morristown](#), 116 N.J. at 746. The remainder of Oparaji's arguments not addressed here lack sufficient merit to warrant discussion in a written opinion. [R. 2:11-3\(e\)\(1\)\(E\)](#).

Affirmed.