

SUPREME COURT OF RHODE ISLAND

Fisher v. Applebaum

947 A.2d 248 (R.I. 2008) · No. No. 2005-215-A · Decided May 21, 2008

SUMMARY

The Rhode Island Supreme Court affirmed a Superior Court judgment granting specific performance of a purchase and sales agreement for real property. The court held that the parties' conduct postponed the closing while title defects were resolved, the purchaser remained ready and willing to perform, and no legitimate equitable defense precluded specific performance.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Justice Goldberg; Chief Justice Williams; Justice Suttell; Justice Robinson
JURISDICTION	Rhode Island
DECIDED	May 21, 2008
DOCKET	No. 2005-215-A
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant executor appealed from a Superior Court judgment granting the plaintiff specific performance of a purchase and sales agreement for real property.
STANDARD OF REVIEW	The grant of specific performance is reviewed for abuse of discretion; factual findings by a trial justice sitting without a jury are accorded great weight and will not be disturbed unless clearly wrong or based on overlooked or misconceived material evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Applebaum, Esq., as executor of the estate of Esther A. Aiello v. Hugh Fisher

TOPICS

- specific performance real estate
- specific performance remedy
- conditions precedent
- waiver of breach
- appellate procedure

PRACTICE AREAS

contracts

real estate

equitable remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court abused its discretion by granting specific performance of the real-estate purchase and sales agreement.
2. Whether the parties' conduct established an agreement to postpone the closing until the title impediments were resolved.
3. Whether the title problems and delayed closing constituted a legal or equitable defense to specific performance.
4. Whether time was of the essence under the agreement or had been waived by the parties' conduct.

HOLDINGS

1. The Superior Court properly granted specific performance because Fisher was ready and willing to perform and the defendant presented no legitimate and articulable equitable defense.
2. The parties mutually agreed through their conduct to postpone the closing until the Marketable Record Title Act barred claims affecting lot No. 463.
3. A party may waive a condition precedent included for that party's benefit, and filing suit for specific performance may implicitly waive sale conditions benefiting the party seeking relief.
4. Time was not of the essence in the contract, and any contrary provision or understanding was waived by the parties' express agreement or conduct, particularly because the seller contributed to the delay.
5. A real-estate contract may be specifically enforced only when its essential contractual provisions are clear, definite, certain, and complete; the purchase and sales agreement met that standard here.

KEY QUOTATIONS

“When a purchaser of real estate under a written contract can demonstrate that he or she was at all times ready and willing to perform the contract, specific performance is available in the absence of a legitimate and articulable equitable defense.” (252)

“Finally, we are of the opinion that specific performance was an appropriate remedy in this case. The plaintiff was ready and willing to perform the contract, and there was no legitimate and articulable equitable defense.” (253)

FACTUAL BACKGROUND

The parties entered into a purchase and sales agreement under which Applebaum, executor of Esther Aiello's estate, agreed to convey three unimproved Warwick parcels to Fisher for \$40,000, subject to Fisher obtaining a building permit. A title search revealed tax-sale and redemption problems, including a 1963 tax sale affecting one parcel; Fisher offered to lend the estate money to redeem two parcels and continued pursuing the required permit and approvals. The estate was unable to resolve the title issues or obtain financing, and the closing was

delayed until the Marketable Record Title Act became operative in August 2003. Fisher remained ready, willing, and able to perform, obtained a building permit, and ultimately sued for specific performance.

PROCEDURAL HISTORY

Fisher sued Applebaum, as executor, for breach of a purchase and sales agreement after title problems delayed the closing and the estate did not convey the property. The Superior Court found that Fisher remained ready, willing, and able to perform, that the delays were not attributable to him, and that specific performance was equitable. The Supreme Court affirmed and remanded the papers to the Superior Court.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The papers were remanded to the Superior Court. Consistent with the trial court's judgment, the closing was to occur within thirty days of entry of judgment, with the defendant to redeem outstanding taxes from the sale proceeds.

CASES CITED

- Eastern Motor Inns, Inc. v. Ricci, 565 A.2d 1265, 1269 (R.I. 1989)
- DePetrillo v. Lepore, 871 A.2d 907, 909 (R.I. 2005)
- Fracassa v. Doris, 876 A.2d 506, 509 (R.I. 2005)
- Burke-Tarr Co. v. Ferland Corp., 724 A.2d 1014, 1018 (R.I. 1999)
- Caito v. Juarez, 795 A.2d 533, 536 (R.I. 2002)
- Fracassa v. Doris, 814 A.2d 357, 362 (R.I. 2003)
- Wilkinson v. State Crime Laboratory Commission, 788 A.2d 1129, 1131 n. 1 (R.I. 2002)
- Yates v. Hill, 761 A.2d 677, 680 (R.I. 2000)
- Thompson v. McCann, 762 A.2d 432, 437 (R.I. 2000)
- State v. Hesford, 900 A.2d 1194, 1197 n. 3 (R.I. 2006)

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