STATE OF MICHIGAN

COURT OF APPEALS

JAMES ALLEN and DEANN ALLEN,

Plaintiffs-Appellees,

v

ROBERT R. DESLAURIERS and FELICIA M. GONIEA,

Defendants-Appellants.

UNPUBLISHED
June 20, 2024

No. 366365
Oakland Circuit Court
LC No. 2021-188580-CH

Before: YATES, P.J., and BORRELLO and GARRETT, JJ.

PER CURIAM.

In this dispute over the sale of real property between family members, defendants appeal as of right the trial court's order granting judgment to plaintiffs for specific performance of the parties' purchase agreement and ordering defendants to convey the subject parcel of real property to plaintiffs. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Defendant Felicia Goniea is defendant Robert DesLauriers's "[g]irlfriend of 27 years," and plaintiff DeAnn Allen is DesLauriers's sister. Plaintiff James Allen is DeAnn's husband.[1]

Defendants lived on a five-acre parcel of property in White Lake, Michigan, which they had purchased in 2007. In approximately October 2017, after learning that defendants' neighbor was selling her 23-acre property, plaintiffs discussed purchasing the 23-acre parcel with defendants' neighbor. DeAnn testified in her deposition that she and James offered to purchase the parcel for $401,000 but subsequently withdrew the offer because their daughter required brain surgery. DeAnn acknowledged that this offer was not made in writing. DesLauriers testified that

[1] We will refer to DeAnn and James by first name because they share the same last name.

the original asking price for the property was $401,000 and that plaintiffs never made an offer for the parcel.

In June 2018, defendants purchased the adjacent 23-acre parcel from their neighbor for $365,000. At that time, the company that gave defendants a mortgage on the property appraised the 23-acre parcel's value at $325,000. When defendants purchased the 23-acre parcel, they each paid $20,000 toward the down payment and they borrowed $15,000 from DeAnn to use toward the purchase. Defendants subsequently borrowed $35,000 more from DeAnn "a few weeks" later to purchase certain equipment from the seller of the 23-acre parcel. This equipment included a tractor, golf cart, pickup truck, and "44-foot horse trailer/motor home." The two loans from DeAnn were not documented in writing, but DesLauriers told her that he would pay her 5% annual interest on the loans. At the time of his deposition in March 2022, DesLauriers had only made one interest payment to DeAnn. He stated that he made that payment in 2019.

At some point in 2019, DesLauriers and DeAnn discussed the possibility of plaintiffs purchasing all or a portion of the 23-acre parcel from defendants. In October 2019, plaintiffs moved into the house on the 23-acre parcel and began living in the home while the parties continued to discuss the terms of a potential sale. DesLauriers testified that plaintiffs lived in the home as family guests, not tenants. Plaintiffs completed work on the house while they were living there, including painting, remodeling the bathroom, replacing screen doors, and building "a room downstairs." About a year after plaintiffs moved onto the property, defendants decided to sell plaintiffs approximately 13.5 acres of the 23-acre parcel, along with the house on that parcel, for $230,000. DeAnn testified that she believed at the time that the 13.5-acre parcel was worth approximately $230,000. DesLauriers commissioned a survey for purposes of splitting the 23-acre parcel so defendants could sell the 13.5-acre parcel with the house to plaintiffs and add the remainder of the 23-acre parcel to defendants' 5-acre parcel.

The parties executed a document dated November 2, 2020, and titled "EARNEST MONEY RECEIPT or Loan Agreement[:] Purchase Agreement/Loan."[2] In general terms, this document purported to evidence an agreement for defendants to sell the 13.5-acre parcel to plaintiffs for $250,000 while treating the $50,000 that defendants had previously borrowed from plaintiffs as earnest money already received for the purchase of the parcel. The parties' current dispute centers around the precise language of this agreement, which will be quoted below.

Regarding the apparent change in the purchase price, DesLauriers explained as follows during his deposition:

> The initial price of the sale of the property and the house between DeAnn and I was 230,000. She wanted money back at closing to help her out, so we raised the price to 250 and I was going to give her 20,000 at closing.

[2] DesLauriers testified that the purchase agreement was executed before the survey was completed and that the survey was commissioned to configure the parcels in a manner consistent with the parties' understanding when they executed the purchase agreement.

DesLauriers testified that he set the sale price of the 13.5-acre parcel. His testimony about his process for calculating the price is somewhat confusing, but it appears that he determined a price per acre and a value for the house and other out buildings, based on his 2018 purchase price and related appraisal for the entire 23-acre parcel, to calculate the sale price for the 13.5-acre parcel.

DeAnn testified, with respect to the November 2, 2020 purchase agreement, that she believed the property was worth no more than $250,000 when she signed that document. She also testified that before signing the purchase agreement, she was concerned that the appraisal value would be less than $250,000 and expressed this concern to DesLauriers. James thought the property was worth approximately $250,000 when he signed the agreement.

The November 2, 2020 purchase agreement provided in relevant part as follows:

> Received from ***James Allen and DeAnn (DesLauriers) Allen***, aka BUYER, vested in as Buyer(s) the exact sum of:
>
> ***Fifty Thousand Dollars and no/cents*** ($***50,000.00***), receipt of which is hereby acknowledged in the form of ***Cash, Farm Equipment and this signed agreement*** as earnest money to be deposited upon acceptance of this offer and to be applied to the purchase price of the property . . .
>
> * * *
>
> THE TOTAL SUM is exactly:
>
> ***Two Hundred Fifty Thousand Dollars and no/cents*** ($***250,000.00***), hereinafter called the purchase price.
>
> ***NOTE;*** If I ***James and DeAnn Allen*** do not end up purchasing the above mentioned property, the ***$50,000.00*** is then considered a loan at ***5%*** interest and is to be paid back when the above mentioned property is sold or earlier.
>
> That the monies herein receipted for will be applied to the purchase price under the terms and conditions as herein set forth, it being agreed that in the event that the seller does not accept this offer upon presentation, then and in that event, all monies shall be returned to the buyer, canceling this sale without damage to the undersigned.
>
> I/We agree to the purchase of the herein described property on the terms and conditions as set forth above.[3]

[3] If the agreement seems odd, it is because it was prepared by DesLauriers who was "looking up purchase agreements on the Internet," and apparently thought this agreement would suffice.

The agreement was signed by both defendants as "Seller[s]" and by both plaintiffs as "Purchaser[s]."

An appraisal of the 13.5-acre property with the house was subsequently performed as part of plaintiffs' mortgage application process. Plaintiffs were notified by e-mail that the property had been appraised at $298,000. DeAnn apparently initially informed DesLauriers that the appraisal value was $251,000, but she explained during her deposition that he knew she was "joking" when she provided that value. DeAnn then told DesLauriers that the property had been appraised at $276,000, although she claimed during her deposition that she also told him at the time that she was unsure about that figure and would confirm the actual value. Finally, DeAnn forwarded the actual appraisal report to DesLauriers indicating the actual $298,000 appraisal value. Plaintiffs' loan application was approved.

DesLauriers testified that he attempted to renegotiate the sale price for the property with DeAnn because the property "appraised much higher than either one of us expected." DesLauriers suggested that "since the contract already said 250, we should keep it at 250 and not 230 with 20,000 back." DeAnn contacted the appraiser and the lender, and she apparently raised various issues with the appraisal in what appears to have been an attempt to have the appraisal value lowered. She expressly testified that she contacted the appraiser to "see if he could adjust, lower the price of the appraisal because the basement and the acreage and the age was incomparable." However, DeAnn also testified that she "had no intentions on the price" when she contacted the lender and was merely attempting to make factual corrections. It appears that no changes were made to the appraisal value as a result of DeAnn's communications. The parties were unable to reach an agreement to amend the November 2, 2020 purchase agreement. DesLauriers contacted the lender and indicated that "the sale was no longer valid."

DeAnn testified that while she and her family lived in the house on the subject parcel, they never paid rent to defendants and they did not pay the property taxes. DeAnn believed that defendants paid the property taxes for the subject property. However, she explained that there was an understanding that she would maintain the home and "fix[] the place up." She also testified that she had offered to pay rent.

Plaintiffs initiated the present action against defendants, alleging breach of contract. Plaintiffs alleged that the parties entered into a purchase agreement on November 2, 2020, for plaintiffs to purchase the 13.5-acre parcel from defendants for $250,000, that plaintiffs paid the $50,000 earnest money deposit, that plaintiffs continued to live on and maintain the property, and that defendants had retained the earnest money deposit and refused to close and transfer title to plaintiffs. Plaintiffs maintained that they had fully performed their obligations under the purchase agreement and that defendants had breached the agreement by refusing to close on the sale. Plaintiffs sought specific performance of the purchase agreement compelling transfer of title to the property upon tender of the balance of the purchase price. Plaintiffs argued that they were entitled to such relief because the subject property was unique. Plaintiffs sought damages in the alternative.

Defendants asserted, as an affirmative defense, that the "document executed between the parties must be rescinded due to a mutual mistake of fact regarding the actual value of the real property identified in Plaintiffs' Complaint."

Both parties eventually moved for summary disposition under MCR 2.116(C)(10). The trial court denied defendants' motion for summary disposition and granted plaintiffs' motion for summary disposition in part. The court specifically ruled: "the Court finds there is an enforceable contract and that there is no mutual mistake of fact[.]"

Plaintiffs subsequently moved for entry of a judgment for specific performance of the purchase agreement, arguing that they were entitled to specific performance of the contract as the proper remedy for defendants' breach because real property is presumed to be unique. Defendants opposed the motion, arguing that return of the earnest money deposit was the sole remedy under the contract for not completing the sale and that specific performance would be inequitable under the circumstances of this case.

The trial court granted plaintiffs' motion for specific performance and ordered defendants to convey the property pursuant to the terms of the parties' contract. The trial court denied defendants' motion for reconsideration, and this appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's ultimate determination whether to grant the equitable relief of specific performance. *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). The trial court's underlying factual findings are reviewed for clear error, which occurs if the reviewing court is "left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

Furthermore,

> the power to grant specific performance rests within the sound discretion of the court. The court, however, is not justified in withholding a decree for specific performance merely because of the exigencies of a case. . . . [S]pecific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable. [*Zurcher v Herveat*, 238 Mich App 267, 300; 605 NW2d 329 (1999) (quotation marks and citation omitted).]

"This Court reviews de novo issues of contract interpretation." *Dep't of Agriculture & Rural Dev v Engle*, 344 Mich App 213, 221; 999 NW2d 73 (2022).

III. ANALYSIS

"Specific performance of a contract is an equitable remedy of very ancient origin, and has been declared to be the most useful one of the various equitable remedies." *Keys v Hopper*, 270 Mich 504, 507; 259 NW 319 (1935) (quotation marks and citation omitted). "The specific performance of contracts must always rest in the sound discretion of the court, to be decreed or not as shall seem just and equitable under the peculiar circumstances of each case." *Smith v Lawrence*, 15 Mich 499, 501 (1867).

As an initial matter, defendants argue that plaintiffs were not entitled to the remedy of specific performance, and defendants do not challenge the trial court's earlier ruling granting

partial summary disposition in favor of plaintiffs on the issue that there was an enforceable contract. "In an agreement to purchase real estate, specific performance will not be granted where the agreement is so vague that the minds of the parties did not meet on the essential particulars, or if the Court cannot determine upon what terms the parties agreed." *Brotman v Roelofs*, 70 Mich App 719, 726; 246 NW2d 368 (1976). "The material terms of the contract which must be clearly established are the identification of the property, the parties, and the consideration." *Id*. at 726-727.

Given the nature of defendants' appellate arguments and the unchallenged ruling of the trial court that an enforceable contract existed, we accept as established the existence of a valid and sufficiently definite contract and the only issue for this Court to resolve on appeal is whether plaintiffs were entitled to the remedy of specific performance of the contractual agreement, thereby requiring defendants to complete the sale of the subject property pursuant to the terms of the parties' agreement.

"It is a well-settled rule that relief by specific performance is not a remedy of right, but rests in the sound discretion of the court and will be refused when it is clearly inequitable to grant it." *Keys*, 270 Mich at 507 (quotation marks and citation omitted). " 'The court, however, is not justified in withholding a decree for specific performance merely because of the exigencies of a case.' " *Zurcher*, 238 Mich App at 300, quoting *Foshee v Krum*, 332 Mich 636, 643; 52 NW2d 358 (1952). " '[S]pecific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable.' " *Zurcher*, 238 Mich App at 300, quoting *Foshee*, 332 Mich at 643. "Specific performance is a remedy of grace and not of right, resting within the sound discretion of the court, the granting of which depends upon the peculiar circumstances of each case." *Dep't of Agriculture & Rural Dev*, 344 Mich App at 223 (quotation marks and citation omitted). "Courts of equity have been granted broad discretion in determining requests for specific performance of contracts." *Brotman*, 70 Mich App at 727.

"Jurisdiction to decree the specific performance of agreements rests on the ground of the inadequacy and incompleteness of the remedy at law." *Keys*, 270 Mich at 507 (quotation marks and citation omitted). "Where the remedy at law is not plain, adequate and complete, but is difficult or doubtful, equity will entertain jurisdiction." *Jaup v Olmstead*, 334 Mich 614, 617; 55 NW2d 119 (1952) (quotation marks and citation omitted). For example, "if the specific property is not obtainable on the market and damages will not provide adequate compensation, equity may take jurisdiction." *Id*. A contract may be enforced through an order for specific performance if the subject property has a "peculiar" or "unique" value beyond its mere pecuniary value. *Kent v Bell*, 374 Mich 646, 652; 132 NW2d 601 (1965) (quotation marks and citation omitted). "Land is presumed to have a unique and peculiar value, and contracts involving the sale of land are generally subject to specific performance." *In re Smith Trust*, 480 Mich 19, 26; 745 NW2d 754 (2008); accord *Kent*, 374 Mich at 651 ("Land, traditionally presumed to have a peculiar value, is subject to specific performance.").

Here, the parties entered into a contract for defendants to sell the subject parcel of real property to plaintiffs for $250,000. The general rules of contract interpretation have been stated as follows:

> In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties. [*In re Smith Trust*, 480 Mich at 24 (citations omitted).]

The contract at issue in this case stated that "I/We agree to the purchase of the herein described property on the terms and conditions as set forth above" and the contract was signed by both plaintiffs and defendants. Defendants were expressly designated as sellers and plaintiffs were expressly designated as purchasers and buyers in the contract. However, defendants argue on appeal that plaintiffs were not entitled to specific performance because the parties' contract provided that return of the $50,000 earnest money deposit would be the sole remedy for failing to close on the sale, regardless of the reason for that failure. The relevant provisions of the parties' contract stated as follows:

> ***NOTE;*** If I ***James and DeAnn Allen*** do not end up purchasing the above mentioned property, the ***$50,000.00*** is then considered a loan at ***5%*** interest and is to be paid back when the above mentioned property is sold or earlier.
>
> That the monies herein receipted for will be applied to the purchase price under the terms and conditions as herein set forth, it being agreed that in the event that the seller does not accept this offer upon presentation, then and in that event, all monies shall be returned to the buyer, canceling this sale without damage to the undersigned.

Defendants maintain that these provisions provided defendants with a right to decline to complete the sale and return the $50,000 earnest money deposit to plaintiffs as an adequate remedy at law, thereby precluding plaintiffs from obtaining specific performance of the real estate purchase contract.

"It is a well settled rule in this State that the parties to a contract can agree and stipulate in advance as to the amount to be paid in compensation for loss or injury which may result in the event of a breach of the agreement," and "[s]uch a stipulation is enforceable, particularly where the damages which would result from a breach are uncertain and difficult to ascertain at time [sic] contract is executed." *Curran v Williams*, 352 Mich 278, 282; 89 NW2d 602 (1958). However, a "stipulation in regard to liquidated damages does not preclude a suit for specific performance unless it appears from the whole contract that it was the intention of the parties that the right to pay the stipulated sum or perform the contract should be optional." *Milner Hotels v Ehrman*, 307 Mich 347, 356-357; 11 NW2d 914 (1943). Moreover, "[i]t would be a misnomer to refer to the return of a deposit as the payment of damages." *Id*. at 357. "Where a stipulation for the payment of a certain sum is in reality a penalty, it furnishes no obstacle to a specific performance of the contract," but "[w]here the stipulation is in reality for liquidated damages, it will be held to be in lieu of specific performance only where it appears from the whole contract to have been the intention of the parties that the right to pay the stipulated sum or perform the contract should be optional." *Hedrick v Firke*, 169 Mich 549, 553-554; 135 NW 319 (1912).

"*If the amount stipulated is reasonable with relation to the possible injury suffered*, the courts will sustain such a stipulation." *Curran*, 352 Mich at 282 (emphasis added). As our Supreme Court explained:

> The purpose in permitting a stipulation of damages as compensation is to render certain and definite that which appears to be uncertain and not easily proven. The courts recognize that the parties, particularly at the time of execution of the instrument, are in as good a position as anyone to arrive at a fair amount of damages for a subsequent breach. In the event they are not unconscionable or excessive courts will not disturb it. *Just compensation for the injuries sustained is the principle at which the law attempts to arrive. Courts will not permit parties to stipulate unreasonable sums as damages, and where such an attempt is made have held them penalties and therefore void and unenforceable*.
>
> * * *
>
> But the court will apply this principle, and disregard the express stipulation of parties, *only* in those cases where it is obvious from the contract before them, and the whole subject matter, that the principle of compensation has been disregarded, and that to carry out the express stipulation of the parties, would violate this principle, which alone the court recognizes as the law of the contract.
>
> The violation, or disregard of this principle of compensation, may appear to the court in various ways,—from the contract, the sum mentioned, and the subject matter. Thus, where a large sum (say one thousand dollars) is made payable solely in consequence of the non-payment of a much smaller sum (say one hundred dollars), at a certain day; or where the contract is for the performance of several stipulations of very different degrees of importance, and one large sum is made payable on the breach of any one of them, even the most trivial, the damages for which can, in no reasonable probability, amount to that sum; in the first case, the court must see that the real damage is readily computed, and that the principle of compensation has been overlooked, or purposely disregarded; in the second case, though there may be more difficulty in ascertaining the precise amount of damage, yet, as the contract exacts the same large sum for the breach of a trivial or comparatively unimportant stipulation, as for that of the *most* important, or of *all of them together*, it is equally clear that the parties have wholly departed from the idea of just compensation, and attempted to fix a rule of damages which the law will not recognize or enforce. [*Id*. at 283-284, quoting *Jaquith v Hudson*, 5 Mich 123, 134 (1858). (first emphasis added).]

Here, at the root of defendants' appellate argument, is a disagreement with the trial court's determination that the parties' contract did not make the return of the earnest money deposit a remedy for defendants' refusal to perform the contract and sell the property. The trial court ruled that plaintiffs may have been entitled to return of the deposit if defendants had not accepted the offer to purchase but that defendants had accepted the offer by signing the purchase agreement.

The contract states that "If I ***James and DeAnn Allen*** [i.e., plaintiffs] do not end up purchasing the above mentioned property, the ***$50,000.00*** is then considered a loan at ***5%*** interest and is to be paid back when the above mentioned property is sold or earlier." The most natural reading of this language seems to only contemplate a situation where plaintiffs decide not to purchase the property. However, defendants argue that the contract language demonstrates that the parties agreed that this remedy would apply regardless of which party was responsible for terminating the transaction before completion. Defendants maintain that they had a right under the contract to cancel the sale and return the earnest money deposit without damage to the parties, citing the contract language that states, "That the monies herein receipted for will be applied to the purchase price under the terms and conditions as herein set forth, it being agreed that in the event that the seller does not accept this offer upon presentation, then and in that event, all monies shall be returned to the buyer, canceling this sale without damage to the undersigned." Defendants' proposed reading of the pertinent contract language is not entirely illogical. If defendants refused to sell the property, then plaintiffs would "not end up purchasing the above mentioned property."

Nonetheless, even assuming that defendant is correct that the contract provided for return of the earnest money deposit as a remedy regardless of which party breached the agreement, that does not mean that plaintiff is barred from obtaining specific performance of the contract for defendants' breach. *Milner Hotels*, 307 Mich at 356-357. Although defendants seem to characterize the return of the earnest money deposit as a liquidated damages provision constituting an adequate remedy at law to plaintiffs for defendants' breach, it is apparent upon closer inspection that this provision does no more than purport to place plaintiffs back in the position they occupied before entering into the purchase agreement with defendants by returning plaintiffs' earnest money deposit. Hence, this provision is more akin to a remedy for unjust enrichment than a stipulation of liquidated damages.

"Unjust enrichment . . . doesn't seek to compensate for an injury but to correct against one party's retention of a benefit at another's expense." *Wright v Genesee Co*, 504 Mich 410, 419; 934 NW2d 805 (2019). The remedy for unjust enrichment is "restitution," which is a remedy that "restores a party who yielded excessive and unjust benefits to his or her rightful position." *Id*. Restitution is a remedy that protects different interests than the compensatory damages ordinarily available in a breach-of-contract action, in which "an injured party may seek damages for an injury caused by another party's breach of a contractual obligation." *Id*. In general, the compensatory damages available for breach of contract are "those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made." *Id*. (quotation marks and citation omitted).

Accordingly, to the extent the provision returning plaintiffs earnest money deposit could be considered an attempt by the parties to stipulate to liquidated damages in the event defendants refused to complete the sale and convey the property to plaintiffs, this provision did not provide "just compensation" for the injury suffered by plaintiffs when they did not receive the real property

for which they bargained because it merely amounts to a stipulation to return the parties their respective pre-contract positions and does not even purport to compensate plaintiffs for their loss in being denied the conveyance of the subject real property; the provision was therefore unreasonable and unenforceable. *Curran*, 352 Mich at 282-283. "The law, following the dictates of equity and natural justice, in cases of this kind, adopts the *principle of just compensation* for the *loss* or *injury actually sustained*; considering it no greater violation of this principle to confine the injured party to the recovery of *less*, than to enable him, by the aid of the court to extort *more*." *Id*. (quotation marks and citation omitted).

As previously stated, "[i]t would be a misnomer to refer to the return of a deposit as the payment of damages." *Milner Hotels*, 307 Mich at 357. There is nothing in the contractual language prohibiting plaintiffs as buyers from seeking specific performance. Further, there is not an enforceable liquidated damages provision that could have clearly shown the parties' intent to provide defendants with the option of choosing not to perform on the contract without being subject to liability for specific performance. *Id*. at 356-357; *Hedrick*, 169 Mich at 553-554. Thus, defendants' reliance on the contract provision regarding returning the earnest money deposit to plaintiffs does not demonstrate that specific performance was unavailable as a remedy for breach or that the trial court erred by granting specific performance.

This conclusion is bolstered by our Supreme Court's decision in *Powell v Dwyer*, 149 Mich 141; 112 NW 499 (1907). In that case, the parties had executed a written contract in which they agreed that the defendant would convey a parcel of land owned by him to the complainant in exchange for the complainant conveying a different parcel of land owned by her to the defendant. *Id*. at 142-143. The contract also contained a provision that stated, "And for the true performance of all and every of the covenants and agreements aforesaid, each of the said parties bindeth themselves their heirs, executors and administrators unto the other his or her executors, administrators and assigns in the penal sum of one hundred dollars, to be paid to the party not in default." *Id*. at 143. The defendant refused to perform on the contract, tendered $100 to the complainant, and claimed that he was relieved from his obligation to perform under the contract. *Id*. at 143-146.

The trial court granted specific performance to the complainant. *Id*. at 143-144. The trial court stated as follows:

> " 'Under the proof it cannot be claimed that it was agreed upon between the parties as liquidated damages. It seems to be more in the nature of a penalty to be paid by the defaulting party, should anything occur by which either could not perform, and can in no sense apply to the situation as shown by the proof in this case, when it is shown specific performance can be made, but is refused by defendant because of a conception or belief that a more advantageous disposition of the property can be made than by complying with the terms of the contract.' " [*Id*. at 144.]

On appeal, our Supreme Court cited the following rule with approval:

> " 'With respect to the effect of a penalty upon the equitable rights of the parties, while a court of equity will relieve the party who has thus bound himself against a penalty or will restrain its enforcement against him at law, it will not, on the other

> hand, permit such party to resist a specific performance of the contract by electing to pay the penalty. When a person has agreed to do a certain act or to refrain from doing a certain act, and has added a penalty for the purpose of securing a performance, a court of equity will, if the contract is otherwise one which calls for its interposition, compel the party to specifically perform or restrain him from committing the act, as the case may be, notwithstanding the penalty. If the sum stipulated to be paid is really a penalty, the party will never be allowed to pay it, and then treat such payment as a sufficient ground for refusing to perform his undertaking.' " [*Id*. at 144-145 (citations omitted).]

Our Supreme Court further stated that a penalty provision does not preclude granting specific performance and that "[i]t is very clear that the parties did not suppose they would be relieved from performing the contract by paying $100 . . . ." *Id*. at 146. The Court affirmed the order of specific performance. *Id*.

Here, the trial court did not err by determining that defendants could not avoid performing on the contract and conveying the property—after the appraisal led them to believe that they should have received a higher price for the property—by merely returning plaintiffs' earnest money deposit. *Id*. at 144-146.

Next, defendants argue that the trial court erred because the equities weighed against granting specific performance to plaintiffs and ordering the sale to proceed at the price set forth in the agreement. Defendants further argue that plaintiffs had been living on the property since October 2019 without paying rent and it was inequitable to order defendants to sell the property at a price significantly below the appraised value because plaintiffs received a windfall in both property value and free rent.

However, the mere fact that defendants may have been able to sell the subject property for a higher price does not automatically make specific performance of the contract inequitable. Our Supreme Court addressed a similar factual scenario in *Al-Oil, Inc v Pranger*, 365 Mich 46, 54; 112 NW2d 99 (1961), reasoning as follows:

> It is further claimed on behalf of defendants that specific performance would be inequitable if decreed in plaintiff's favor. The record does not support such contention. Defendants accepted the offer with full knowledge of the situation, and apparently at the time considered that they were receiving fair value for the property. No claim is made that they were in any respect deceived either by their own broker or by representatives of plaintiff corporation. The fact that they were led to believe subsequently that they might realize a better price for the property if afforded an opportunity to do so does not justify refusal to grant the relief sought under the bill of complaint.

Here, defendants argue that ordering specific performance was inequitable because it gave plaintiffs a windfall in obtaining the property for almost $50,000 less than the appraised value and another windfall in the form of living on the property without paying any rent for a significant period of time. Of these facts bearing on the weighing of the equities, the only one that was not within the parties' awareness at the time they executed the purchase agreement in November 2020

was the property's assessed value. When the parties executed the contract, they agreed to the $250,000 sale price. DesLauriers testified that he calculated this price as representative of the property's value, and plaintiffs each testified that they thought the price reflected the property's value. Furthermore, when the parties executed the contract in November 2020, plaintiffs had already been living on the property for about a year without paying rent. There is no evidence that defendants were unaware of this fact. The record reflects that defendants allowed plaintiffs to live on the property as family guests. Hence, defendants have not shown on appeal that the trial court erred by finding that specific performance was equitable under these circumstances. *Id*.

Affirmed. Plaintiffs having prevailed in full are entitled to costs. MCR 7.219(A).

/s/ Christopher P. Yates
/s/ Stephen L. Borrello
/s/ Kristina Robinson Garrett