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STATE OF MICHIGAN

COURT OF APPEALS

NORTHERN BIOMEDICAL RESEARCH, INC. and 1210 PONTALUNA, LLC, Plaintiffs/Counterdefendants-Appellees/Cross-Appellants,	UNPUBLISHED November 18, 2026 11:34 AM
v	No. 369662 Muskegon Circuit Court
NBR INVESTMENT PROPERTIES, LLC, Defendant/Counterplaintiff-Appellant/Cross-Appellee.	LC No. 2021-004490-CB

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

This case involves a lease between Northern Biomedical Research, Inc. and NBR Investment Properties, LLC (the Landlord). The dispute between the parties arose when Northern Biomedical exercised the option under the lease to buy the property and received an appraisal to determine the purchase price in accordance with the lease. Once Landlord learned of the appraised value, it refused to sell the property to Northern Biomedical. Northern Biomedical sued to complete the purchase, and Landlord countersued. Northern Biomedical moved for summary disposition on liability, which the trial court granted in Northern Biomedical's favor. Landlord now appeals, claiming errors with the trial court's grant of summary disposition and specific performance. Northern Biomedical filed a cross-appeal, arguing that the trial court erred when calculating damages and costs. Finding no reversible error, we affirm.

I. BACKGROUND

Founded in 1996, Northern Biomedical is a non-clinical research company for drugs, cell therapy, and medical devices; Landlord owned the property that Northern Biomedical used including a laboratory.[1] Robert Boyd was the principal owner of both entities.

In 2019, BHJW Biomedical Research Corporation showed interest in purchasing Northern Biomedical and bought Northern Biomedical's name and assets, thus becoming Northern Biomedical. At the time, BHJW could not afford to buy the company and the property, so Landlord leased 65,000 square feet of the real property to the newly-acquired Northern Biomedical.

In the lease agreement, Northern Biomedical obtained an option to purchase the real property from Landlord during the lease term:

> **22.1.** Landlord grants to the Tenant an option to purchase the Property, which shall not be severable from the remaining terms and conditions of this Lease and shall not survive the expiration or earlier termination of this Lease. The option to purchase shall be exercisable by written notice from Tenant to Landlord give [sic] at any time during the Lease term when the Lease is not in default.
>
> **22.2.** The purchase price shall be determined by appraisal conducted by a qualified appraiser mutually acceptable to Landlord and Tenant, the cost of which appraisal shall be born equally by the parties. In the event Landlord and Tenant are unable to agree upon a qualified appraiser, each party shall select one qualified appraiser and the 2 qualified appraisers so selected shall choose a third qualified appraiser who will conduct the appraisal. The purchase price [sic] payable by wire transfer of collected funds at the closing.

Although the lease did not provide an exhaustive definition of "default," the lease included the following provision pertaining to events of default:

> **18. EVENTS OF DEFAULT.** Each of the following will constitute a default by Tenant under this Lease: (a) if Tenant fails to pay Rent or any other payment when due hereunder within five (5) days after written notice from Landlord of such failure to pay on the due date; or (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any of the other obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of thirty (30) days after Landlord's delivery to Tenant of written notice of such default under this Section 18; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then Landlord will not exercise its remedies for so long as Tenant will have commenced cure within such thirty (30) days and will be diligently prosecuting the same to completion.

[1] Landlord originally owned real property and operated a biomedical research company on that property.

Pertinent here, the lease also provided the following provisions pertaining to assignment restrictions, Landlord's maintenance, option to lease vacant portions of the property, waiver of consequential damages, and confidentiality:

> **8.** **ASSIGNMENT AND SUBLETTING.** Tenant will not, without the prior written consent of Landlord, which consent may not unreasonably be withheld in Landlord's sole discretion, (a) assign, pledge or mortgage this Lease or any interest hereunder; (b) permit any assignment hereof by operation of law; (c) sublet the Premises or any part thereof; or (d) permit the use of the Premises by any party other than Tenant and its agents and business visitors.
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> * * *
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> **12.3.** Landlord shall, at its expense, keep and maintain all other portions of the Property, other than the Premises and the Common Areas, in a good and clean operating condition and in compliance with all applicable laws, ordinances and regulations.
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> * * *
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> **19.3.** **Waiver of Consequential Punitive, Exemplary Damages.** Landlord and Tenant each hereby waive their right to seek to recover any consequential, punitive, or exemplary damages.
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> * * *
>
> **23.1.** For purposes of this Lease, the term "Vacant Premises" shall mean all rentable portions of the Property, other than the Premises, that are vacant, and the term "Other Premises" shall mean all rentable portions of the Property, other than the Premises. During the Term, Tenant shall have the option to lease the Vacant Premises or any portion thereof. Tenant shall exercise this option, if at all, by submitting written notice of Tenant's exercise of the option ("Option Notice"), which shall include a description of the Vacant Premises to be leased ("Expansion Premises") and the date on which Tenant would like to add such Expansion Premises to the Premises ("Expansion Date"). If Tenant exercises this option, the Expansion Premises shall become part of the Premises on the Expansion Date. The rent per square foot of the Expansion Premises shall be the same as the rent per square foot of the Premises as of the Expansion Date. Effective as of the Expansion Date, the Tenant's Pro Rata Share shall be a fraction in which the numerator is the number of rentable square feet in the Premises including the Expansion Premises and the denominator is the total number of rentable square feet in the building on the Property.
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> * * *
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> **24.6** **Confidential Information.** Landlord and Tenant agree to maintain in strict confidence the economic terms of this Lease.

On July 1, 2021, Northern Biomedical communicated its exercise of the option to purchase the property in a written letter: "In accordance with Section 22.1 of the Lease, Tenant hereby exercises its right to purchase all of Landlord's right, title, and interest in and to the Property on the terms and conditions provided in the Lease." The parties subsequently entered into an "Agreement Regarding Lease Option to Purchase," which outlined that Northern Biomedical "exercised its option to purchase the Property," established a closing date for sale of the property, and provided that the agreement was binding on the parties and their "permitted assigns."

To determine the purchase price, according to the option provision, an appraisal had to be done. Northern Biomedical picked Stacey Broersma as its appraiser, and Landlord chose Jeff Genzink. Because the parties could not agree on an appraiser, a third appraiser had to be chosen. Broersma and Genzink both suggested Doug Adams, and Genzink agreed to the selection. Broersma sent an e-mail to Adams that the appraisal was for "the Fee Simple Estate Market Value of the property, excluding the current lease agreements."

Before the appraisal was conducted, Northern Biomedical's counsel sent an e-mail to Landlord's counsel that it was considering assigning the option to 1210 Pontaluna, LLC (a company with members who were shareholders of Northern Biomedical) and sent a proposed assignment document. Landlord's counsel told Northern Biomedical's counsel that the "assignment look[ed] good" and requested an executed copy of the assignment. When Northern Biomedical's counsel sent closing documents several days before the target closing date, including the assignment of the purchase option, Landlord's counsel stated it was going to "review the documents and get back to [Northern Biomedical] with any edits."[2]

The assignment from Northern Biomedical to 1210 Pontaluna was effective upon execution by each party; it was not made dependent on the prior consent of Landlord, though there was a signature page for Landlord to indicate its consent (this went unsigned). The assignment did include a proviso that Northern Biomedical remained committed to the purchase of the property "in the event that" 1210 Pontaluna "fails to do so." The proviso was added at the request of Landlord: "we would be comfortable with the tenant assigning its right under the agreement pursuant to a written assignment which specifically states that the tenant is not relieved of its obligation to purchase the property."

Adams submitted his appraisal. The appraisal outlined that the best use of the property was a warehouse because the demand for a life-science laboratory in the area was low. Because of this, the property's value was reduced by $1.1 million as an estimated cost of removing the laboratory. With that adjustment, the net appraised value was $8.87 million. Landlord conveyed its dissatisfaction with the appraisal to Northern Biomedical and requested an extension to the closing date to obtain a separate appraisal. Northern Biomedical refused to grant the extension, and Landlord refused to close the sale.

[2] Boyd testified that he had concerns that the option paperwork listed Northern Biomedical as a Michigan corporation when it had reincorporated as a Delaware corporation. Landlord mentions this in its brief as support that Boyd did not approve of the assignment.

Because of Landlord's refusal to close the sale, Northern Biomedical sued Landlord claiming in part breaches of the lease and option and seeking specific performance as well as monetary damages. Landlord counterclaimed, requesting declaratory relief regarding the option, appraisal, and purchase price, as well as breach of lease. Landlord claimed that Northern Biomedical materially breached the lease by assigning the option without consent, failing to disclose the appraisers' conflict of interest, being late in paying rent, using more space in the property than was leased, and being delinquent in reimbursing property taxes.

As the lawsuit ensued, Northern Biomedical sought to exercise the option to lease the vacant space. Landlord responded, "Given Tenant's multiple prior breaches of the lease as documented in our counterclaim, we cannot agree that the option [to lease vacant space] remains available to [Tenant]. Instead, Landlord will consider entering into a separate lease with Tenant related to the additional office space." The parties negotiated terms to lease the vacant space, but Northern Biomedical eventually executed a two-year lease at a separate, unrelated location (570 Seminole Road) at a higher rental rate. Northern Biomedical amended its complaint to include a claim regarding the option to lease and its Seminole Road lease, seeking monetary damages for breaches of the lease.

For consequential damages, the parties moved for partial summary disposition as to Northern Biomedical's claims for damages for lost profits, rent costs, and expansion costs. The trial court granted partial summary disposition in Landlord's favor barring Northern Biomedical from seeking monetary damages for lost profits, expansion costs, and lease costs, finding that such costs would amount to consequential damages if awarded, and these were precluded by the parties under the lease.

For liability, Northern Biomedical moved for summary disposition on the three counts in its complaint, "reserving questions as to damages and relief for trial or later adjudication." The trial court granted summary disposition in Northern Biomedical's favor, concluding that there were no genuinely disputed material facts. The trial court found that the appraisal was reasonably conducted, the assignment was not a default under the contract, and Landlord agreed to the assignment through counsel. The trial court granted Northern Biomedical's motion and stated that Landlord must complete the sale of the property at the appraised purchase price and that damages were still to be determined.

Landlord moved for reconsideration, arguing that specific performance was not raised by Northern Biomedical in its motion for summary disposition and that the trial court's grant of specific performance was a violation of Landlord's due-process rights; the motion also argued why specific performance was not appropriate. The trial court denied Landlord's motion for reconsideration, finding that specific performance was a cause of action and that Northern Biomedical styled its complaint and motion to put Landlord "on notice that the question of whether it must specifically perform the contract provision to sell the property was at issue in the motion."

The trial court conducted a bench trial on damages and entered judgment in favor of Northern Biomedical. The trial court referenced its orders in the prior opinions relating to the parties' motions for summary disposition, finding that Landlord breached the lease and Northern Biomedical's consequential damages were barred by the lease. The trial court ordered that the property be transferred, and the purchase price was the appraisal as adjusted for setoffs for

Landlord's costs of ownership. In its trial brief, Northern Biomedical argued that Landlord had no right to recoup ownership expenses but did not challenge the amount of the expenses being claimed.

Landlord moved for relief from judgment, citing newly discovered evidence. Landlord discovered that a former president of Northern Biomedical shared a copy of the unsigned lease with a potential investor in February 2021, before Northern Biomedical exercised its option, thereby breaching the confidentiality provision contained in the lease agreement. The trial court denied the motion, finding that the breach would not release Landlord from liability.

Landlord now appeals the trial court's decision on liability and specific performance. Northern Biomedical appeals the trial court's decision on damages.

II. ANALYSIS

A. LIABILITY

Beginning with liability, Landlord first argues on appeal that the trial court erred in granting summary disposition in favor of Northern Biomedical. We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020) (citations omitted). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the evidence submitted in a light most favorable to the nonmoving party. *Payne v Payne*, 338 Mich App 265, 274; 979 NW2d 706 (2021). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Sherman*, 332 Mich App at 632. The Court reviews de novo the interpretation of contracts, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003), such as the lease provision in this case, see *G & A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994).

Landlord argues that Northern Biomedical did not properly exercise the option to buy because Northern Biomedical was in default and the appraisal did not comply with the terms of the option.

1. DEFAULT

We turn first to whether Northern Biomedical was in default at the time it exercised the option to purchase the property. An option is an offer that requires certain compliance:

> An option is a preliminary contract for the privilege of purchase and not itself a contract of purchase. An option is basically an agreement by which the owner of the property agrees with another that he shall have a right to buy the property at a fixed price within a specified time. An option is, in effect, only an offer which requires strict compliance with the terms of the option both as to the exact thing offered and within the time specified. Failure to so comply results in loss of the rights under the option. [*Oshtemo Tp, Kalamazoo Co v City of Kalamazoo*, 77 Mich App 33, 37; 257 NW2d 260 (1977) (cleaned up).]

Once a party timely exercises an option and complies with its terms, then the option "ripen[s] into a binding bilateral contract of purchase and sale." *Le Baron Homes v Pontiac Housing Fund*, 319 Mich 310, 315; 29 NW2d 704 (1947). "An option becomes vested when the conditions and procedures specified in the contract are complied with in such a manner as to give the lessee an immediate right to exercise the option, i.e., . . . the lessee notifies the lessor at least 30 days prior to the termination of the contract that he intends to purchase the property for the contract price." *Amoco Oil Co v Kraft*, 89 Mich App 270, 275 n 3; 280 NW2d 505 (1979).

There were three requirements for Northern Biomedical to exercise the option: (1) written notice (2) given during the lease term (3) when the lease was not in default. It is undisputed that Northern Biomedical met the first two requirements; the focus here is on the third requirement.

For the third requirement, Landlord argues that the lease was in default when Northern Biomedical exercised the option. The exercise of an option is just an acceptance of an offer effectuated by meeting certain conditions: "The holder of an option to purchase land does not have any interest in the premises prior to exercising the option . . . No interest arises until the option has been accepted." *Oshtemo Tp*, 77 Mich App at 38. According to the lease agreement, the option was "exercisable," i.e., Northern Biomedical accepted the option offer, by providing Landlord written notice during the lease term when the lease was not in default.

The issue then becomes whether the lease was in default when Northern Biomedical gave written notice to Landlord. When Northern Biomedical sent written notice, there were only two alleged breaches of the lease agreement that had already occurred or were occurring: (1) the over-occupation of the property, and (2) the disclosure of the lease to a third party in violation of the confidentiality provision. The late rent payments, the late property tax payment, the appraisal, and the assignment all occurred after Northern Biomedical gave written notice. Although these may be breaches that constitute events of default, they are irrelevant to whether the lease was in default at the time of the option's exercise and do not affect the subsequent purchase agreement that ripened after the exercise. See *Le Baron Homes*, 319 Mich at 315.

Although the lease did not define "in default," it did have a section pertaining to events of default. For the defaults outlined in that section, a breach or failure of contractual obligations required written notice from Landlord to constitute a default, which indicates that Landlord must have been aware of a breach or failure for it to be a default. The provision also included an opportunity for Northern Biomedical to cure a default.

With regard to Landlord's claim of over-occupation, Landlord would have either known of any over-occupation or, at least, been on notice of such because Landlord had the duty to keep and maintain all portions of the property not leased by Northern Biomedical under § 12.3 of the lease. Put another way, Landlord should have known if Northern Biomedical was using unleased parts of the property because Landlord was supposed to maintain those unleased parts. Given that Landlord did not provide a written notice of default to Northern Biomedical related to any over-occupation, let alone give the tenant 30 days to cure, Northern Biomedical was not in default based on any purported over-occupation when it gave written notice of the option.

As to the disclosure of the lease to a third party, there seems little doubt that such disclosure did violate the lease's confidentiality provision. This provision did not cover each and every aspect

of the lease, but rather just "the economic terms" of it. By giving an unsigned copy of the entire lease to a third party, the economic terms were certainly disclosed to such party without Landlord's knowledge or consent. This seems a clear-cut breach of § 24.6 of the lease.

Whether this breach means that Northern Biomedical was "in default" when it exercised its option to buy is not as clear cut. On the one hand, there was a breach, and there is nothing in the record to suggest that Landlord knew or should have known about the breach so as to put Landlord on notice to provide written notice of default. On the other hand, there is no general definition of default in the lease, and the provision setting forth what can constitute a default does not plainly envision a "hidden" breach. Moreover, although it does not bear directly on whether a breach of the confidentiality provision amounts to a default, the sharing of the lease's economic terms would seem to have little-to-no relevance to the purchase price of the property, which was determined by appraisal of the property as a fee simple *without* the lease. The main driver of this dispute has been the purchase price, and the breach of confidentiality had no impact on the appraisal and purchase price.

Because the confidentiality breach is of a kind not clearly covered by the "Events of Default" provision, we conclude that Northern Biomedical was not materially "in default" by reason of its earlier sharing an unsigned copy of the lease with a third party. Had the parties wanted a more expansive understanding of "in default," they could have included a broader catchall provision in the "Events of Default" section. Instead, the parties tied "default" not just to the performance of contractual obligation but also to notice from Landlord. Understandably, such notice did not occur here, but that does not change the fact that Landlord must give notice and a chance to cure before the tenant could be deemed to be "in default." Thus, although Landlord might have had a claim for breach of contract based on the confidentiality provision, Northern Biomedical was not barred from exercising its option as a result of that breach.

2. APPRAISAL

Landlord next argues that the option did not convert into a contract when Northern Biomedical gave notice of its intent to exercise the option because there was no purchase price and the appraisal was a condition that was not properly satisfied. Landlord's argument fails to consider that there are different types of conditions under an option:

> Where the terms of the option require that payment of the purchase money, or a part thereof, accompany the election to exercise the option, such provision must ordinarily be complied with; on the other hand, its terms may merely require that notice be given of the exercise of the option and leave the matter of the payment of the purchase money to be thereafter settled as in the case of the ordinary executory contract of sale. In the first instance payment is a condition precedent to the creation of a contract. In the second, it is a condition subsequent to creation. [*Catsman v Eister*, 8 Mich App 563, 567; 155 NW2d 203 (1967).]

In support of its argument, Landlord cites *Holly Road Medical Associates v Ucer*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2006 (Docket No. 259173). We note first that *Holly Road* is unpublished, and therefore the only value it has here is its persuasiveness. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). As

can be seen by a review of that opinion, however, the circumstances there were materially different than those here. In *Holly Road*, the appraisal appeared to be a condition precedent to the exercise of the option. The entire lease agreement was not cited in the Court's opinion, but in its reasoning, the Court stated that "the lease agreement specifies that plaintiff, at its option, could purchase the property for the average of the two appraisals by notifying defendants of its intent to purchase within fifteen days after receiving defendants' appraisal." *Id.* at 3. Therefore, the plaintiff in that case had to obtain an appraisal before exercising the option, and the plaintiff was not bound to complete the purchase at the appraisal price. The plaintiff could choose not to purchase the property after the appraisal by failing to notify of its intent to purchase, which indicates that the option was not exercised before the appraisal was obtained.

Here, the appraisal was a condition subsequent to the option's exercise. Once Northern Biomedical gave its written notice to exercise the option, both parties were bound to the purchase agreement with the price to be determined by appraisal. The option gave Northern Biomedical the right to purchase the property at a fixed price determined by appraisal as long as Northern Biomedical's acceptance met the option's terms. See *Le Baron Homes*, 319 Mich at 313. Thus, although the purchase price had not yet been determined, the parties were bound to complete the purchase given that Northern Biomedical met all the conditions precedent to create the contract in accordance with the option. See *id.* at 315.

Because Northern Biomedical met the conditions to exercise the option, the parties were bound to complete the purchase. The trial court therefore did not err in granting summary disposition in relation to Landlord's claims that the option was not properly exercised.

B. SUBSTANTIAL BREACH

Landlord further argues that there was a genuine issue of material fact on whether Northern Biomedical committed the first substantial breach of the lease by breaching the anti-assignment, confidentiality, payment, and appraisal provisions in the lease. "One who first breaches a contract cannot maintain an action against the other contracting party for [its] subsequent breach or failure to perform," if the "initial breach was substantial." *Able Demolition v Pontiac*, 275 Mich App 577, 585; 739 NW2d 696 (2007) (cleaned up). To be substantial, the breach must "effect[] such a change in essential operative elements of the contract that further performance by the other party is thereby rendered ineffective or impossible." *McCarty v Mercury Metalcraft Co*, 372 Mich 567, 574; 127 NW2d 340 (1964).

1. THE ANTI-ASSIGNMENT PROVISION

Here, the anti-assignment provision is not specific to any particular provision in the lease, but rather applies to the lease in its entirety, including "any interest hereunder." This language is broad enough to prohibit assignment (without prior written consent of Landlord) of the option-to-purchase provision, and the parties appeared to have understood as such when they were preparing the closing documents.

Northern Biomedical may very well have breached the non-assignment provision. The assignment was made without the express prior written approval of Landlord. There is nothing in the record suggesting that counsel for Landlord had the authority to execute a written consent

under the lease on Landlord's behalf, and the proposed written consent attached to the executed assignment was never signed by Landlord.

With that said, this breach was not substantial in that it did not make Landlord's further performance ineffective or impossible. Landlord's required performance was clear: to complete the purchase of the property. The assignment was made to an entity that shared ownership with Northern Biomedical, and the assignment clearly kept the latter liable for closing the deal in the event the assignee entity could not. Even though Landlord did not provide prior written consent, Landlord was on notice of the assignment, as evidenced by the provision keeping Northern Biomedical on the hook, added at Landlord's insistence, as well as the sharing of documents right before the expected closing date. Landlord has not pointed to anything in the record to show that this assignment somehow made it impossible for Landlord to close the purchase or otherwise made Landlord's further performance ineffective.

2. PAYMENT AND CONFIDENTIALITY PROVISIONS

As for the late payments and the breach of the confidentiality provisions, Landlord has failed to show how either of these breaches was a substantial breach. There has been no explanation, for example, how several late rent payments near to the time of the expected closing somehow made the sale impossible. In the normal course, such relatively incidental sums would be accounted for in the closing documents. As for the confidentiality agreement, as already explained, the economic terms of the lease had little-to-no relevance to the purchase of the property as a fee-simple without consideration of the lease. Neither of these breaches was substantial so as to excuse Landlord's performance.

3. APPRAISAL PROVISION

Finally, with respect to the appraisal: Had Northern Biomedical breached the lease when it sought an appraisal to set the purchase price, this breach could very well have been a substantial one. For a breach to be substantial, it must affect an essential part of the contract and must be material, which includes a consideration of whether the "nonbreaching party obtained the benefit it reasonably expected to receive." *Omnicom of Michigan v Giannetti Inv Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997). The appraisal went to one of the main aspects of the purchase—the price. See *Zurcher v Herveat*, 238 Mich App 267, 282; 605 NW2d 329 (1999) ("It is essential that an enforceable, real estate sales contract either set forth the price to be paid by the purchaser or furnish a basis from which the price may be ascertained."). A breach dealing with the price and appraisal could certainly be material, given that Landlord likely linked the price to an appraisal in order to receive the value of the property in the sale. See MCL 339.2601 (" 'Appraisal' means an opinion, conclusion, or analysis relating to the value of real property."); see also Black's Law Dictionary (12th ed) ("[Appraisal is] [t]he determination of what constitutes a fair price for something or how its condition can be fairly stated; the act of assessing the worth, value, or condition of something.").

Landlord has not, however, raised a genuine issue of material fact on whether Northern Biomedical actually breached the appraisal requirement. For its part, Northern Biomedical had to select a qualified appraiser, and this qualified appraiser would, with the agreement of Landlord's qualified appraiser, select "a third qualified appraiser who will conduct the appraisal."

Landlord has failed to show that any of the three appraisers were not qualified. A person is "qualified" if he possesses the necessary qualities or properties to be eligible for a position or to perform a function. Black's Law Dictionary (12th ed) (defining qualified as "[p]ossessing the necessary qualifications; capable or competent") (defining qualification as "possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function"). Although the Occupational Code does not define "qualified," a "certified" appraiser is an individual licensed under MCL 339.2610. MCL 339.2601(d), (e). To be licensed, a person must be at least 18 years old, of good moral character, and have provided proof of completion of the appropriate education, examination, and experience requirements. MCL 339.2610. MCL 339.2633 provides the duties of a licensed appraiser, including maintenance of an actual place of business and a system of books and records.

Landlord has failed to show that "qualified" means anything other than licensed and in good standing under the Occupational Code. Although there are certain prohibited acts that may result in suspension or revocation of a license, see MCL 339.2635, there was no evidence that Broersma or Adams participated in such conduct to have resulted in a license suspension or revocation. Even if they had, such disciplinary action would not have had a retroactive effect to somehow make them unqualified pre-appraisal.

For Broersma, Landlord argued that her prior work with Northern Biomedical created a conflict of interest which made her unqualified. Whether Broersma was required to disclose prior work is beside the point. Such disclosure would have related to whether the services she provided met a certain level of professionalism and had nothing to do with her then-status under the state's licensing regime.

Similarly for Adams, there is no question in this record that he was appropriately licensed to do the work and in good standing, and therefore he was qualified. Had Adams provided deficient services, Landlord might well have had a claim against him for professional malpractice. But whether, in this instance, Adams performed deficiently has no bearing on whether he had the appropriate qualifications to be a state-licensed appraiser. Qualifications relate to the person and are viewed prospectively, not in terms of the person's eventual work. See *Surman v Surman*, 277 Mich App 287, 308-309; 745 NW2d 802 (2007) (finding that an opposing party's disagreement with an expert's opinion does not present an issue of whether the expert is qualified).

Furthermore, even if Adams had performed deficiently, Landlord failed to show that this resulted from a breach on Northern Biomedical's part. "A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which *the other party breached* (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Const, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014) (emphasis added). Landlord needed to show that Northern Biomedical—not Broersma or Adams—breached the lease. Northern Biomedical and Landlord both selected their appraisers in accordance with the lease, and these appraisers selected Adams. If Adams's appraisal was in breach of the contract, then the breach was caused by both parties equally.

In conclusion, the trial court did not err when it rejected Landlord's substantial breach argument and granted summary disposition.

C. SPECIFIC PERFORMANCE

Landlord's final argument in its appeal is that the trial court deprived it of due process when it granted specific performance sua sponte and denied Landlord's motion for reconsideration. The Court reviews de novo the trial court's grant of specific performance. *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). The Court reviews for an abuse of discretion a trial court's denial of a motion for reconsideration. *Redding v Redding*, 214 Mich App 639, 642; 543 NW2d 75 (1995). "The trial court abuses its discretion when it makes an error of law or when its decision falls outside the range of reasonable and principled outcomes." *People v Owens*, 338 Mich App 101, 113; 979 NW2d 345 (2021).

A trial court can grant specific performance "where enforcement of [a] promise is necessary to avoid injustice," there is no adequate remedy at law, and monetary damages are insufficient to place the nonbreaching party "in as good a position as if the contract had not been breached." *Hai v CIG Capital Advisors, Inc*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 370517); slip op at 3. "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). Specifically, where a party properly and timely exercises an option to purchase real property, "specific performance is the proper remedy." *Id.* Further, when the trial court grants summary disposition, it must "render judgment without delay." MCR 2.116(I)(1).

In connection with its claim of breach of contract, Northern Biomedical requested specific performance as the remedy in its complaint. Thus, when Northern Biomedical moved for summary disposition on its breach-of-contract claim, the natural result if such motion was granted was to grant the requested relief that corresponded to the claim. By Northern Biomedical moving for summary disposition on that claim, Landlord was on notice that if the summary disposition motion was granted, the trial court may order specific performance as a result.

Regardless, Landlord was able to argue against specific performance in its motion for reconsideration. The trial court considered the merits of Landlord's argument and rejected them. Although the series of events was not the most ideal, it did not demonstrate that Landlord's due-process rights were violated. See MCR 2.613(A); see also *Boulton v Fenton Twp*, 272 Mich App 456, 463-464; 726 NW2d 733 (2006). Thus, the trial court did not err when it granted specific performance.

D. DAMAGES

In its cross-appeal, Northern Biomedical argues that the trial court erred when finding that its lease payments for an additional space was a consequential damage barred by the contract. "We review the trial court's factual findings after a bench trial and in an equitable action for clear error, and its legal conclusions de novo." *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007).

In the lease, consequential damages for both parties were waived. Although the contract did not provide a definition of consequential damages, the Court has described consequential damages in the context of the Uniform Commercial Code:

> While the distinction between the two is not an obvious one, the Code makes plain that incidental damages are normally incurred when a buyer (or seller) repudiates the contract or wrongfully rejects the goods, causing the other to incur such expenses as transporting, storing, or reselling the goods. On the other hand, consequential damages do not arise within the scope of the immediate buyer-seller transaction, but rather stem from losses incurred by the nonbreaching party in its dealings, often with third parties, which were a proximate result of the breach, and which were reasonably foreseeable by the breaching party at the time of contracting. [*Sullivan Indus, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 347; 480 NW2d 623 (1991), citing *Petroleo Brasileiro, S A, Petrobras v Ameropan Oil Corp*, 372 F Supp 503 (EDNY, 1974).]

Here, Northern Biomedical's rental of another space was a consequential damage. Northern Biomedical claims that it was forced to lease the Seminole Road space at a higher rate as a replacement. Northern Biomedical, however, was not without property; it was still able to use the property under the lease agreement. Although Northern Biomedical may have wanted to expand, the higher rent payment as a result of the lease was a consequential damage, even if the expansion was foreseeable. See *S C Gray, Inc v Ford Motor Co*, 92 Mich App 789, 811-812; 286 NW2d 34 (1979) ("While plaintiff attempts to characterize the interest it paid out [to maintain the business] as incidental damages, we think, assuming it was foreseeable, it falls within the category of consequential damages."). Furthermore, an inability to expand would have simply resulted in a hypothetical loss in profits, which is a consequential damage. See *Sullivan Indus*, 192 Mich App at 347. Thus, the trial court did not err when dismissing Northern Biomedical's claim for damages resulting from its lease on Seminole Road.

E. COSTS SET OFF

Finally, Northern Biomedical argues that the trial court erred when it set off Landlord's costs that it incurred as the owner of the property. Again, when a trial court grants equitable relief, the Court reviews de novo whether such relief was proper and reviews for clear error the factual findings. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

In a breach-of-contract dispute, damages should reflect "the pecuniary value of the benefits the aggrieved party would have received if the contract had not been breached." *Ferguson v Pioneer State Mut Ins Co*, 273 Mich App 47, 54; 731 NW2d 94 (2006). The injured party should be placed "in as good a position as would have been enjoyed had the contract been fully performed." *Om-El Export Co, Inc v Newcor, Inc*, 154 Mich App 471, 478; 398 NW2d 440 (1986).

Here, in attempting to make Northern Biomedical whole, the trial court considered the expenses not incurred by Northern Biomedical as a result of Landlord's breach. If the purchase of the property had been completed, Northern Biomedical would have been responsible for certain expenses that it avoided by the purchase not being completed. The trial court's consideration of these expenses in its analysis was not an error.

Northern Biomedical argues that the trial court erred in ignoring Northern Biomedical's equities such as lost profits, design costs, and control over property-maintenance costs. For the lost profits and design costs, as already discussed, those were consequential damages waived in

the lease so it would have been improper for the trial court to have considered them. For the property maintenance, Northern Biomedical's argument that it would have avoided those costs may have merit. Northern Biomedical, however, failed to support these contentions in the trial court, and so the trial court's factual findings were not clear error.

III. CONCLUSION

In its appeal, Landlord failed to show that the trial court erred by granting summary disposition and specific performance in Northern Biomedical's favor. In its cross-appeal, Northern Biomedical failed to show that the trial court erred when calculating damages. Therefore, the Court affirms the trial court's decisions.

Affirmed.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock