

Memo

To: John D'Agostino, Town Manager
From: Thomas Baird, Esq. and Brett Lashley, Esq.
Date: January 26, 2024
Subject: Contract for purchase and sale of real property located at 1100 2nd Court, Lake Park, Florida 33403 ("Property")

Background

The Town of Lake Park ("Town") owned the Property and entered into a contract for the sale and purchase of it on or about November 2, 2022. The buyers are Igor Jose Oliveira De Almeida and Natasha Allen Quiza ("Buyers"). The total purchase price is \$151,000.00. The original closing date was November 15, 2022. The closing date was twice extended with the closing occurring on November 28, 2022. In an addendum attached to the contract, the Buyers agreed to the following conditions:

- 1) Demolish, with the exception of the concrete block system, and construct a new single-family home in accordance with the Town Code and Florida Building Code;
- 2) Apply for permits for the demolition and construction within 60 days of assuming ownership of the Property, and all associated construction work, along with the issuance of a certificate of occupancy, shall be completed on or before one year following the issuance of the building permit for construction of the single-family home; and
- 3) Occupy the home for a period of at least five years from the date of issuance of the certificate of occupancy.

Thus far, the Buyers have failed to comply with conditions 1 and 2, above. The analysis below sets forth the Town's remedy for the Buyers' failure to comply with the conditions of the contract.

Analysis

Before the Town can file a lawsuit, pursuant to Section 16 of the contract, the parties must submit the dispute to mediation. Pursuant to the contract, the parties split the costs of mediation. If a settlement is not reached during mediation, the Town may then file a lawsuit.



Should the Town file a lawsuit, the Town's remedies pursuant to the contract are to (1) to recover and retain the deposits Buyers made in connection with the purchase of the property and (2) proceed in equity to enforce the Town's rights under the contract.

As to (1), the Town has already received the deposits by virtue of having closed on the contract and receiving the full contract price, which included the deposit. This leaves the Town with (2), an action in equity for specific performance to enforce the conditions of the contract that the Buyers have not met. Real property is considered unique and the court may grant specific performance when dealing with land-sale contracts. *DiMauro v. Martin*, 359 So. 3d 3, 9 (Fla. 4th DCA 2023). Specific performance is an appropriate remedy only when there is no adequate remedy at law. *Id.* Accordingly, the Town's remedy under the contract is specific performance to compel Buyer's to meet the conditions of the contract which requires them to demolish and rebuild the house. The Town would be asking the court to grant an affirmative injunction to compel the specific performance of the contract. Although the court can order the Buyers to comply with the conditions, the Buyers can only comply if they have expended funds to obtain all necessary permits and to pay the contractors to carry out the work. If they do not, the Town could pursue a contempt of court proceeding for the Buyers' failure to comply with the court's final order.

Finally, we note that if the Town files a lawsuit, and the court finds that the Buyers have failed to meet the conditions of the contract, it will be entitled to recover the reasonable attorney's fees it incurred in preparing and prosecuting the lawsuit.