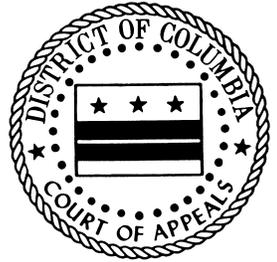


No. 21-CV-662

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS



Clerk of the Court
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MAHMOOD NAWAZ,

Appellant,

v.

BNSIC TITLE HOLDING CORPORATION, ET AL.,

Appellees.

Appeal from the Superior Court of the District of Columbia,
Civil Division, No. 2020 CA 003226 B
(Hon. Florence Pan)

BRIEF OF APPELLEE

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IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MAHMOOD NAWAZ,)
)
 Appellant,)
)
 v.) **No. 21-CV-662**
)
 BNSIC TITLE HOLDING) **2020 CA 003226 B**
 CORPORATION, ET AL.)
)
 Appellees.)

**CERTIFICATE REQUIRED BY RULE 28(a)(2)(A) OF THE
 RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS**

The undersigned, counsel of record for Appellee BNSIC Title Holding Corporation, hereby certifies that the following listed parties appeared below and appear on appeal:

<i>Defendant/Appellant</i> Mahmood Nawaz	<i>Represented by</i> Richard Bianco, Esquire Nicholas T. Loch
<i>Plaintiff/Appellee</i> BNSIC Title Holding Corporation	<i>Represented by</i> Jason A. Pardo, Esquire
<i>Defendant/Appellee</i> 1265 Raum Street NE Tenants Association	<i>Represented by</i> Terrance L. Frierson, Esquire

/s/ Jason A. Pardo

Jason A. Pardo (#452393)
Counsel for Appellee BNSIC Title Holding
Corporation

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MAHMOOD NAWAZ,)
)
 Appellant,)
)
 v.) **No. 21-CV-662**
)
 BNSIC TITLE HOLDING) **2020 CA 003226 B**
 CORPORATION, ET AL.)
)
 Appellees.)

**STATEMENT REQUIRED BY RULE 26.1(a) OF THE
 RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS**

The undersigned, counsel of record for Appellee BNSIC Title Holding Corporation, hereby states that there are no parent corporations or publicly held corporations that own 10% or more of its stock.

/s/ Jason A. Pardo

Jason A. Pardo (#452393)
Counsel for Appellee BNSIC Title Holding
Corporation

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**ASSERTION REQUIRED BY RULE 28(a)(5) OF THE
RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS**

This appeal is from a final order or judgment that disposes of all parties' claims.

STATEMENT OF THE ISSUES

1. Did the trial court properly grant summary judgment to the Plaintiff on Plaintiff's Complaint and Defendant's Counterclaim with respect to the priority of the tenant association contract under the Tenant Opportunity to Purchase Act?
2. Did the trial court properly deny Defendant Nawaz's motion for reconsideration?
3. Did the trial court properly award Plaintiff its attorney's fee pursuant to the terms of the contract between Plaintiff and Defendant Nawaz?

STATEMENT OF THE CASE

Plaintiff BNSIC Title Holding Corporation ("Plaintiff") is the owner of the real property and improvements located at 1256 Raum Street, N.E., Washington, D.C. ("Property"), which Property is occupied by residential tenants ("Tenants"). Plaintiff entered in a contract to sell the Property to Defendant Nawaz on April 25, 2019. Pursuant to the District of Columbia Tenant Opportunity to Purchase Act ("TOPA"), Plaintiff provided Tenants with their applicable rights under TOPA. Thereafter, the Tenants formed the 1265 Raum Street NE Tenants Association ("Association"). Plaintiff subsequently entered into a contract to sell the Property to the Association pursuant to TOPA ("Tenant Contract"). Defendant Nawaz challenged the legitimacy of the Tenant Contract and threatened to initiate litigation to set aside the Tenant Contract.

Plaintiff filed a Complaint for Declaratory Judgment and related relief asking the trial court to confirm that the Tenant Contract had priority over the Nawaz Contract. Defendant Nawaz filed a Counterclaim seeking confirmation that the Association's rights under TOPA had expired and that Defendant Nawaz had the right to purchase the Property. Following cross motions for

summary judgment on both the Complaint and Counterclaim, the trial court agreed with the Plaintiff and entered summary judgment for Plaintiff on both the Complaint and Counterclaim. The trial court further awarded Plaintiff its attorney's fees pursuant to the terms of the Nawaz Contract. The trial court subsequently upheld its ruling by way of its denial of Defendant Nawaz's motion for reconsideration. The instant appeal ensued.

STATEMENT OF FACTS

On April 25, 2019, Plaintiff ratified a contract for the sale of the Property to Defendant Nawaz ("Nawaz Contract"). (JA0086-120). On April 29, 2019, Plaintiff issued offer of sale notices to the Tenants pursuant to the Tenant Opportunity to Purchase Act, codified at D.C. Code § 42-0304.01, *et. Seq.* ("TOPA") ("TOPA Notices"). (JA0122-166)

Pursuant to the TOPA Notices, each of the Tenants had 22 days from the date of delivery of the TOPA Notices to provide Plaintiff with a written statement of interest to acquire the Property ("Statement of Interest"). (JA0122 at ¶2). On May 20, 2019, Plaintiff received a Statement of Interest from the Tenant Lia Summers. (JA0168).

On September 9, 2019, Plaintiff received a contract offer from the Association for the purchase of the Property ("Tenant Contract"). (JA0170-176). On October 28, 2019, Plaintiff and Association ratified the Tenant Contract. (JA0178-220). Closing under the Tenant Contract originally was scheduled for February 25, 2020 ("Closing"). (JA220).

Pursuant to D.C. Code § 42-3404.04, the rights of Defendant Nawaz to purchase the Property are conditional upon the exercise of tenant rights under TOPA. Additionally, the time periods for negotiations of a contract of sale and settlement under TOPA are minimum periods and the Plaintiff may offer Tenants reasonable extensions of time without liability under the Nawaz Contract. Id.

On January 17, 2020, Defendant Nawaz sent Plaintiff a letter dated January 15, 2020 stating that the Association had failed to exercise timely its rights under TOPA and such rights had expired. Defendant Nawaz, therefore, demanded that Plaintiff proceed to closing under the Nawaz Contract. (“Nawaz Letter”) (JA224-225).

Following receipt of the Nawaz Letter, Plaintiff contacted Defendant Nawaz in order to secure a release of the Nawaz Contract as a result of the Tenant Contract. Pursuant to such release, the deposit under the Nawaz Contract would be returned to Defendant Nawaz and the parties would have no further obligations to one another. (JA227-233). Defendant Nawaz refused to execute the Release.

Eisen and Rome, P.C. is the designated settlement agent under the Tenant Contract (“Settlement Agent”). (JA0103 at ¶12). The Settlement Agent advised Plaintiff that it was aware of the Nawaz Letter and associated claims. (JA0236 at ¶12). The Settlement Agent confirmed that the refusal of Defendant Nawaz to release the Nawaz Contract along with the claims in the Nawaz Letter raise Property marketability and insurability issues. (JA0237 at ¶13). The Settlement Agent further confirmed that it would not be able to close the Tenant Contract pursuant to its terms without (i) the release of the Nawaz Contract; and (ii) the claims made in the Nawaz Letter either having been irrevocably withdrawn or decided with finality by the court. (JA0237 at ¶14).

Despite repeated requests, Defendant Nawaz continued to refuse to execute a release of the Nawaz Contract. In making such requests, Plaintiff confirmed that the release of the Nawaz Contract would only be effective as of the time of closing under the Tenant Contract. Plaintiff was unable to convey title to the Property as required by the Tenant Contract without a release of the

Nawaz Contract and resolution of the claims made in the Nawaz Letter. (JA0188 at ¶16; JA0237 at ¶14).

ARGUMENT

I. STANDARD OF REVIEW

The standard of review for the granting of a motion for summary judgment is *de novo* review. Johnson v. District of Columbia, 144 A.3d 1120, 1125 (D.C. 2016).

The standard of review for the denial of a motion for reconsideration is abuse of discretion. Dist. No. 1 – Pac. Coast Dist., Marine Eng'rs' Ben. Ass'n v. Travelers Cas. & Sur. Co., 782 A.2d 269, 278 (D.C. 2001).

The standard of review for trial court's decision to award Plaintiff its legal fees and costs is abuse of discretion. Valentine v. Elliott, 819 A.2d 968, 994 (D.C. 2003).

II. DEFENDANT NAWAZ'S IMPROPERLY ASSERTED RIGHT OF FIRST REFUSAL ARGUMENT SHOULD BE DISREGARDED

In filing his motion for summary judgment as well as opposing Plaintiff's motion for summary judgment, Defendant's Nawaz's sole substantive argument was that the Plaintiff and the Association failed to close on the Tenant Contract by February 25, 2020. The trial court properly rejected this argument based on the fact that closing did not occur under the Tenant Contract solely as a result of the conduct of Defendant Nawaz.

In filing his motion for reconsideration, Defendant claims that the trial court committed an error of law because (i) the 90 day negotiation period was not extended properly; and (ii) the trial court did not consider that the TOPA statutory 15 day right of first refusal ("ROFR") is unable to be extended as a matter of law. These arguments properly were disregarded as Defendant Nawaz failed to raise these positions in both his motion for summary judgment and his opposition to Plaintiff's motion for summary judgment.

It is universally held that a motion under Rule 59(e) may not be used to raise matters or present legal theories that were not raised and could have been raised prior to judgment. See White v. New Hampshire Dept. of Employment Security, 455 U.S. 445, 451 (1982) (Rule 59(e) motions are aimed at *reconsideration*, not initial consideration); Kattan v. District of Columbia, 301 U.S. App. D.C. 374, 995 F. 2d 274, 276 (D.C. Cir. 1993) (“[a] losing party may not use a Rule 59 motion to raise new issues that could have been raised previously.”). The Court of Appeals also adheres to this rule. See Wolff v. Washington Hospital Center, 938 A.2d 691, 695 (D.C. 2007) (“Super. Ct. Civ. R. 59 (e) does not give a party license to complete presenting [its] case after the court has ruled against [it].”) (internal citations omitted).

Here, despite Defendant Nawaz’s pleas that his pleadings should be construed liberally, it is undisputed that Defendant Nawaz’s pleadings are not at issue. Instead, the record is clear that after summary judgment was entered against Defendant Nawaz on both the Complaint and the Counterclaim, he sought the assistance of counsel in connection with the filing of a motion for reconsideration. It was only after judgment was entered against him and counsel was retained, that Defendant Nawaz raised the extension arguments set forth in the motion for reconsideration. Not surprisingly, Defendant Nawaz fails to cite any authority supporting his argument that the trial court erred in not considering these matters in denying his motion for reconsideration.

III. PLAINTIFF AND ASSOCIATION DID NOT EXTEND THE RIGHT OF FIRST REFUSAL PERIOD UNDER TOPA

Setting aside the untimeliness of the ROFR argument, it also fails on its merits. The ROFR time period exists after the parties have exhausted their initial contract negotiations. This did not occur in this instance and, despite Defendant Nawaz’s new assertions to the contrary, there is no requirement that the Plaintiff and the Association were required to document any extension of the initial negotiation period.

It is undisputed that upon execution of the Nawaz Contract, Plaintiff issued TOPA Notices to Tenants on April 29, 2019 and received a Statement of Interest 21 days later on May 20, 2019. The Statement of Interest was provided within the applicable 22 day TOPA time period. D.C. Code § 42-3404.10(1).

Plaintiff and the Association began negotiations on the Tenant Contract and ratified the same on October 28, 2019. The negotiation and ratification of the Tenant Contract occurred within the applicable TOPA time period, which only requires a minimum period of ninety (90) days. D.C. Code § 42-3404.10(2)(A); D.C. Code §42-4305.11 (noting that the purpose of TOPA favors resolution of any ambiguity “towards the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law.”).

As Plaintiff and the Association ratified the Tenant Contract, the parties never entered into the ROFR period. Accordingly, Mr. Nawaz’s argument to the contrary must fail.

IV. THE PARTIES COULD NOT SETTLE DUE TO CLAIMS OF DEFENDANT NAWAZ

Plaintiff and Association agreed to settle under the Tenant Contract on February 25, 2020. Under the terms of the Tenant Contract, Plaintiff is required to convey to Association fee simple title to the Property, which is to be good of record, marketable and insurable.

On January 17, 2020, Defendant Nawaz asserted that the Tenant Contract had expired and advised counsel for Plaintiff and the Association that he intended to file suit to protect his interests in the Property. It is undisputed that Plaintiff and the Association were prepared to close the Tenant Contract on February 25, 2020. Defendant Nawaz’s claims regarding the Nawaz Contract created a cloud on title that prevented the closing on the Tenant Contract on February 25, 2020. Defendant Nawaz cannot create the issue that prevented closing on the Tenant Contract and then claim that the Tenant Contract is void due to the delay in closing.

V. THE TRIAL COURT PROPERLY AWARDED ATTORNEY’S FEES TO PLAINTIFF

In seeking reconsideration of the Plaintiff’s award of attorney’s fees, Defendant Nawaz completely ignores the terms of the Nawaz Contract as well as the undisputed facts of this matter.

Pursuant to Paragraph 22 of the Nawaz Contract, the prevailing party in any dispute related “in whole or in part” to the Nawaz Contract is entitled to recoup its attorney’s fees and expenses. There can be no doubt that the instant dispute is related to the Nawaz Contract and Defendant Nawaz’s attempt to enforce the same. Indeed, Plaintiff was forced to file its Complaint (and defend Mr. Nawaz’s subsequent Counterclaim) due to Defendant Nawaz’s improper assertion that the Nawaz Contract maintained priority over the Association Contract. As the trial court properly determined that the Nawaz Contract was not enforceable over the Association Contract, Plaintiff was entitled to an award of attorneys’ fees.

CONCLUSION

Plaintiff respectfully requests that this Court affirm the trial court in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2022, I caused a copy of the foregoing to be served through this Court's electronic filing system upon:

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/s/ Jason A. Pardo

Jason A. Pardo

District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Jason A. Pardo
Signature

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21-CV-662
Case Number(s)

February 16, 2022
Date