2014 IL App (1st) 131386-U

FIRST DIVISION
SEPTEMBER 2, 2014

No. 1-13-1386

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DB REAL ESTATE ASSETS I, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 08 L 13455
	)	
DONATO DINATALE and ANGELA DINATALE,	)	Honorable
	)	Mary L. Mikva,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying lessee's claim for specific performance to enforce a purchase option against lessor in the parties' lease agreement; the trial court did not err in denying lessee's petition for damages against lessor.

¶ 2 This appeal arises from the August 13, 2012 opinion, January 7, 2013 order, and March 29, 2013 order entered by the circuit court of Cook County, which denied a claim for specific performance against plaintiff DB Real Estate Assets I LLC (DB), granted in part a declaratory judgment claim in favor of DB, but denied DB's petition for legal damages against defendants Donato DiNatale (Donato) and Angela DiNatale (Angela) (collectively, the DiNatales) in a

dispute over real property. On appeal, DB argues that: (1) the trial court erred in denying specific performance in favor of the DiNatales; and (2) the trial court erred in denying DB's petition for legal damages against the DiNatales. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In 1975, the DiNatales purchased real estate property located at 7201 West Grand Avenue in Elmwood Park, Illinois (the property), for $185,000. Also in 1975, the DiNatales quitclaimed the property to Chicago Title & Trust Company (Chicago Title) pursuant to a land trust agreement. Under the land trust agreement, the DiNatales remained as beneficiaries of the land trust until 2007, at which time they conveyed the property from the land trust back into their own names. In 1983, the property was partially destroyed by fire.

¶ 5 In the summer of 1984, Seventh Dunkin' Donuts Realty, Inc.,[1] offered to purchase the property for $170,000. The DiNatales, who were interested in selling the property for $325,000 according to real estate broker Peter Longi (Longi), rejected the offer. The parties then began discussing a possible lease of the property.

¶ 6 On December 18, 1984, Dunkin' Donuts of Illinois, Inc. (Dunkin' Donuts), as predecessor-in-interest to DB, entered into a lease agreement with Chicago Title, as land trustee for the DiNatales, for the purpose of operating a Dunkin' Donuts shop on the property.[2] Under the lease agreement, the property was leased to Dunkin' Donuts for an initial term of 20 years,

[1] Although unclear, it could be inferred that Seventh Dunkin' Donuts Realty, Inc. was a franchise or subsidiary of Dunkin' Donuts, Inc.

[2] According to the parties' stipulated facts, Dunkin' Donuts of Illinois, Inc. later merged into Third Dunkin' Donuts Realty, Inc., which assigned its interests and rights in the lease to Dunkin' Donuts Realty Investment, Inc. Dunkin' Donuts Realty Investment, Inc. later reorganized and changed its name to Dunkin' Donuts Realty Investment LLC before assigning its interests and rights in the lease to DB on May 26, 2006.

with the option of extending the lease for two additional successive 10-year terms.[3] The lease agreement stated that the lessee's obligation to pay rent and real estate taxes would begin once the Dunkin' Donuts shop is constructed on the premises and is open to serve the general public. Paragraph 14 of the lease agreement contained a purchase option clause, which granted the lessee a right to purchase the premises "at any time after the fifth anniversary for the sum of [$235,000]." According to Donato's testimony at trial, the DiNatales' attorney, I.H. Feldstein (Attorney Feldstein),[4] was present when the purchase option was first discussed in an August or September 1984 meeting involving Donato, Longi, and the manager of real estate and franchise development at Dunkin' Donuts of America, Inc., Patrick O'Brien (O'Brien). Although it is unclear in the record whether the DiNatales received a copy of the lease agreement containing the purchase option clause prior to its execution, the lease agreement was sent to the DiNatales' attorney, Attorney Feldstein, before it was signed by Chicago Title as land trustee for the DiNatales.

¶ 7 In January 1985, Dunkin' Donuts and Chicago Title, as land trustee for the DiNatales, executed a "notice of lease" which contained the purchase option provision as stated in the lease agreement. On March 6, 1985, the "notice of lease" was recorded with the recorder of deeds in Cook County.

¶ 8 Sometime after July 1985, Dunkin' Donuts demolished the existing structure on the property and constructed a donut store in its place. Dunkin' Donuts allegedly spent $330,000 on

[3] DB has exercised the first of the two options to extend the lease, which is currently in effect until January 19, 2016.

[4] Attorney Feinstein died before this case was filed and was never deposed.

the demolition and construction process. On January 20, 1986, when the donut shop opened, Dunkin' Donuts began making rent payments under the lease agreement.

¶ 9 On May 26, 2006, Dunkin' Donuts assigned its interests and rights in the lease agreement to DB. In 2007, the DiNatales conveyed the property from the land trust held by Chicago Title back into their own names.

¶ 10 On May 9, 2008, the DiNatales entered into a purchase agreement with Argent Group LLC (Argent Group) to sell the property for $1.7 million. In the purchase agreement, the DiNatales represented to Argent Group that no third party had any existing "options to purchase" the property. On July 7, 2008, Argent Group terminated the purchase agreement with the DiNatales, after learning about the $235,000 purchase option in the lease agreement between the DiNatales and Dunkin' Donuts, as predecessor-in-interest to DB.

¶ 11 On November 4, 2008, DB, through its counsel, notified the DiNatales in writing of its intent to exercise the purchase option pursuant to the terms of the lease agreement. It is stipulated by the parties that, as of November 4, 2008, DB had made approximately $608,932 in rent payments pursuant to the lease agreement. On November 24, 2008, the DiNatales notified DB that they refused to sell the property to DB for $235,000. The parties stipulated that from November 24, 2008 to June 12, 2012, DB had paid approximately $137,367.97 in rent to the DiNatales. It is also stipulated by the parties that, under the lease agreement, rent payments from November 4, 2008 until the end of the first optional 10-year extension period (January 19, 2016), would total $283,953.

¶ 12 On December 4, 2008, DB filed a two-count complaint against the DiNatales, requesting the trial court to enter a declaratory judgment (count I) that the lease agreement and purchase option were valid and enforceable; and alleging a claim for specific performance (count II) by

requesting the trial court to direct the DiNatales to sell the property to DB for $235,000 pursuant to the purchase option under the lease terms.[5] On February 9, 2009, DB's action was transferred from the law division to the chancery division of the circuit court of Cook County.

¶ 13 In July 2012, a two-day bench trial was held. At trial, the testimony of the DiNatales; the video deposition of O'Brien; Longi's discovery deposition; the testimony of Chicago Title's trust counsel David Lanciotti (Lanciotti); and the testimony of DB's director of retail development, Michael LaVigne (LaVigne), were presented. Documentary evidence presented at trial included the final version of the lease agreement; a September 1984 letter from O'Brien to Attorney Feldstein; the January 1985 "notice of lease"; an internal memorandum from O'Brien to Dunkin' Donuts' finance committee; a February 1985 "general direction" signed by Donato directing Chicago Title to sign the "notice of lease"; and a September 1983 letter from Longi to O'Brien.

¶ 14 In an August 13, 2012 opinion, the trial court denied DB's claim for specific performance (count II) in the complaint. Although the trial court found that the DiNatales failed to show either that the lease agreement between the parties was induced by fraud or that it was unconscionable, the trial court refused to award specific performance to enforce the purchase option on the basis that it would be inequitable under the circumstances of the case. Specifically, the trial court found that O'Brien "took advantage of his greater sophistication and experience to let [Donato] believe that they had entered into an agreement to 'meet his price' at the five-year mark for the lease." The trial court further found O'Brien to be hostile and uncooperative, while

[5] The record reveals that on April 23, 2009, the DiNatales filed a 6-count counterclaim and third-party complaint against DB and Longi, respectively. Count I of the counterclaim seeks a declaration that the purchase option was intended to be exercised during the *first five years* of the lease and that DB's purported exercise of the purchase option in 2008 was not valid or enforceable. Counts II to VI were dismissed by the trial court on July 30, 2010. Count I was resolved by the trial court's August 13, 2012 opinion.

it found Donato to be "quite credible" in his testimony that he did not leave his negotiations with O'Brien with any understanding that he had agreed to the fixed price purchase option as stated in the lease agreement. The trial court further found it clear that Donato was not shown a copy of the lease containing the purchase option clause during his negotiations with O'Brien, that the parties' "long-time expectations" were that they had entered into a lease rather than a purchase agreement, and that enforcing the purchase option under the lease terms would be inequitable where DB waited almost a quarter of a century to exercise the option. Further, the trial court found that Attorney Feldstein's role in the negotiations was limited and, thus, under the circumstances, his presence during the discussion of the purchase option did not render it equitable to enforce the purchase option. In its August 13, 2012 ruling, the trial court expressly stated it was "not a final judgment" and made no mention of DB's declaratory judgment claim (count I) in the complaint.

¶ 15 On August 22, 2012, DB filed a motion for clarification of the trial court's August 13, 2012 opinion (motion to clarify), seeking the court to declare that the purchase option under the lease agreement was valid and legally binding (count I), and to allow DB to file a petition for further legal and equitable relief under the Declaratory Judgment Act (735 ILCS 5/2-701(c) (West 2012)). On January 7, 2013, the trial court granted declaratory judgment in part by ruling that, given the court's factual findings, the purchase option was legally valid but not enforceable. In its January 7, 2013 order, the trial court also allowed DB to file a petition to seek further relief under the Declaratory Judgment Act (735 ILCS 5/2-701(c) (West 2012)).

¶ 16 On February 15, 2013, DB filed a "petition for damages and further relief" (petition for damages), requesting that the court award: (1) the difference between the actual value of the property on November 4, 2008, and the $235,000 purchase option price; (2) the rent DB had paid

since November 2008; (3) an equitable declaration that DB was excused from paying further rent to the DiNatales during the remainder of the lease term; and (4) any further legal or equitable relief that the court may deem just and appropriate.

¶ 17 On March 29, 2013, the trial court denied DB's petition for damages, finding that DB had suffered "no damage other than the loss of this very unfair (to the DiNatales) bargain"; that to give DB the monetary value of the purchase option that the court refused to enforce "would be to award [DB] and punish [the DiNatales] at least to the same extent as an award of specific performance"; that the result of a damage award would be a large money judgment that the DiNatales "would likely be unable to pay"; and that DB had offered "no real evidence of how it [had] been damaged other than it did not get the benefit of a bargain that this [c]ourt does not believe should have been enforced." The trial court further found that it would be "profoundly unfair" to reward DB and further punish the DiNatales where DB's assertion of its rights under the purchase option had already caused the DiNatales to lose an opportunity to sell the property to Argent Group for $1.7 million. The March 29, 2013 order expressly stated that it was a "final and appealable order."

¶ 18 On April 23, 2013, DB filed a timely notice of appeal. This court therefore has jurisdiction.

¶ 19 ANALYSIS

¶ 20 We determine the following issues on appeal: (1) whether the trial court erred in denying specific performance to enforce the purchase option under the lease agreement; and (2) whether the trial court erred in denying DB's petition for damages against the DiNatales.

¶ 21 We first determine whether the trial court erred in denying specific performance to enforce the purchase option under the lease agreement.

¶ 22 DB argues that the trial court erred in denying specific performance of the purchase option. Specifically, DB argues that there was simply no "unfairness" in requiring the DiNatales to convey the property to DB for $235,000 pursuant to the purchase option, where Attorney Feldstein had approved the lease terms and the court found that the lease agreement was neither induced by fraud nor was it unconscionable. DB further contends that because the trial court found the lease agreement to be legally valid and free from all defenses, the purchase option should have been enforced as written. DB also claims that, in denying specific performance, the trial court ignored the fact that the equities of the case was not limited to the DiNatales alone, but that DB's predecessor-in-interest had constructed a $330,000 donut shop on the property "based upon its right to purchase the property for a fixed rate of $235,000 plus paid rent," and that DB now has continuing obligations to pay rent and maintenance on the store and property for which DB will receive no recompense. DB further maintains that, because the DiNatales were only beneficiaries to the land trust and that Chicago Title, not the DiNatales, was a party to the lease agreement at issue, whether the DiNatales understood the terms of the lease was irrelevant and could not be a basis to deny specific performance. In seeking reversal of the court's denial of specific performance, DB requests that it be entitled to a credit of all rent paid by DB since the time it exercised the purchase option in November 2008 until the date of this court's ruling.

¶ 23 The DiNatales counter that the trial court properly denied specific performance to enforce the purchase option, where the court appropriately weighed the trial evidence and assessed the credibility of the witnesses in concluding that it was inequitable to enforce the purchase option. They specifically contend that DB's evidence at trial fell short of the requisite showing to prevail on its claim for specific performance; rather, they argue that the evidence at trial showed that the transaction giving rise to the lease agreement was marked by an "imbalance in bargaining

positions, evidence as to one side's lack of understanding of the agreement, and less than adequate consideration." The DiNatales further argue that their misunderstanding of the lease terms was relevant and warranted a denial of specific performance, where Chicago Title, as trustee of the land trust, could only have acted at their direction. The DiNatales also argue that this court should deny DB's invitation to reweigh the evidence, and that rent abatement was not required where the trial court properly exercised its discretion in denying specific performance.

¶ 24 As a preliminary matter, the parties disagree on the appropriate standard of review. DB argues for *de novo* review. DB reasons that the trial court should only have required DB to prove at trial that Chicago Title, as a contracting party to the lease agreement, fairly entered the contract. However, DB contends that because the trial court also required DB to prove whether the DiNatales, as beneficiaries of the land trust, fully understood the lease terms, "[w]hether or not such a standard exists and can be employed by a court of equity should be reviewed *de novo*." In contrast, the DiNatales urge this court to employ an abuse of discretion standard of review, arguing that the trial court properly made a factual determination that Chicago Title would not have entered the lease agreement in the absence of an instruction to do so by the DiNatales—who held the power of direction over the land trust. The DiNatales contend that whether they understood the lease terms prior to directing Chicago Title to sign the lease was a relevant consideration in the court's ruling. We agree.

¶ 25 The determination of whether to grant specific performance rests within the sound discretion of the trial court, and a trial court's decision will not be overturned absent an abuse of this discretion. *Omni Partners v. Down*, 246 Ill. App. 3d 57, 62 (1993); *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 477 (2004) ("[s]pecific performance is a matter of sound judicial discretion controlled by established principles of equity and exercised upon a

consideration of all the facts and circumstances of a particular case"). A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court. *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 706 (2010). As the trial court noted in its August 13, 2012 opinion, the evidence shows that "Chicago Title lost the original file for the DiNatales' land trust and therefore could not provide copies of any [] of the communications with them regarding the [lease agreement], including any directive to Chicago Title to sign the lease or the [land] trust agreement that set forth who had the authority to direct Chicago Title [regarding] the lease." However, Chicago Title's trust counsel, Lanciotti, testified at trial that Chicago Title would not have executed the December 1984 lease agreement without direction by someone with power to direct the land trust, whom Lanciotti surmised was Donato because, in February 1985, Donato had signed a document directing Chicago Title to execute a "notice of lease"—which was then recorded with the recorder of deeds in Cook County. Thus, because Chicago Title could not have executed the lease agreement or the "notice of lease" without a valid directive, and evidence showed that Donato had directed Chicago Title to sign the 1985 "notice of lease" containing the purchase option provision that was stated in the December 1984 lease agreement, it could be inferred that Chicago Title executed the December 1984 lease agreement at the direction of Donato as a beneficiary of the land trust. Thus, whether the DiNatales—particularly Donato—understood the terms of the lease prior to directing Chicago Title to execute it was a relevant consideration for the court. Therefore, we find no reason to deviate from the abuse of discretion standard of review.

¶ 26 Turning to the merits of the appeal, we examine whether the trial court abused its discretion in denying DB's specific performance claim.

¶ 27 Specific performance may only be granted where there is a valid and enforceable contract. *Schwinder*, 348 Ill. App. 3d at 473. "[W]here the parties have fairly and understandingly entered into a valid contract for the sale of real property, specific performance of the contract is a matter of right and equity will enforce it, absent circumstances of oppression and fraud." *Id.* at 477. "Specific performance is a matter of sound judicial discretion controlled by established principles of equity and exercised upon a consideration of all the facts and circumstances of a particular case"; thus, in this regard, the trial court should balance the equities between the parties. *Id.* Accordingly, "a court using its equitable powers may refuse to grant specific performance where the remedy would cause a peculiar hardship or inequitable result." *Id.* Moreover, "[t]o prevail, the plaintiff must show that as to every part of the transaction he was free from any imputation of deceit or sharp practice. He must stand in conscientious relations toward his adversaries, and must not have obtained the agreement by unscrupulous methods, by overreaching even though his conduct is not fraudulent." *Lucey v. Shelton*, 24 Ill. 2d 471, 475-76 (1962).

¶ 28 At trial, the parties presented two very different versions of how the terms in the lease agreement, including the purchase option, were negotiated in 1984. One of those versions was presented through the testimony of Donato, and the other was the admission into evidence of the video deposition of O'Brien, as the manager of real estate and franchise development at Dunkin' Donuts. O'Brien testified that initial conversations with Donato involved the purchase of the building, and relied upon a September 1983 letter from real estate broker, Longi, which advised O'Brien that the owner of the property wanted $325,000 but was willing to negotiate. O'Brien testified that this asking price that Donato wanted was more than the property was worth at the time. O'Brien testified that, at that time, the building on the property was empty due to fire

damage. According to O'Brien, he had in-person meetings with Donato over the course of several weeks in 1984, and that the meetings were held at the property, the DiNatales' home, or the home of the DiNatales' relative. O'Brien testified that Donato's wife, Angela, was present at one of those meetings. O'Brien stated that, at a second in-person meeting, he and Donato began discussing a lease with an option to purchase so that Dunkin' Donuts could purchase the property once it had made enough rent payments to meet Donato's asking price of $325,000. O'Brien described that Dunkin' Donuts' rental payments for the first five years of the lease term ($102,000), plus the $235,000 purchase option price, totaled $337,000, which exceeded Donato's original asking purchase price of $325,000. O'Brien did not describe how the purchase option was explained to Donato, other than to say that Dunkin' Donuts would "have the option to buy the property at [Donato's] price, once the rent met [Donato's asking] price." O'Brien further testified that, whenever he negotiated leases for Dunkin' Donuts, he generally gave the lessor a blank preprinted lease and would not type anything into the preprinted lease himself. O'Brien testified that the finalized lease containing the purchase option in the case at bar was prepared by Dunkin' Donuts' legal department, rather than by him. He emphasized that it was Dunkin' Donuts' attorneys who prepared the lease agreement for signature and typed the negotiated terms onto the standard lease document. O'Brien also testified that all of his negotiations for the property were with Donato directly.

¶ 29 Donato, who had a limited ability to read and write in English, testified that he had a fifth-grade education in Italy, and that he only went to school for one month after he moved to the United States. Donato testified that, in the United States, he worked pressing men's suits and assembling lawnmowers, before he and a partner opened a furniture store. In the furniture business, Donato's partner handled the paperwork while he made furniture. Later, Donato and

his wife, Angela, ran a similar business and she handled the paperwork in that business. Prior to negotiating the lease agreement at issue, Donato had sold two of his own personal residences in the Chicago area. He testified that he and Angela bought the subject property in a charity sale in 1975, and that some of the offices were damaged in the building as a result of a fire in 1983. However, he stated that after the 1983 fire, five of the offices were still being rented for a total of about $2,200 per month and the mortgage on the building had been paid off at that time. In the summer of 1994, Donato received a telephone call from O'Brien about the property. During that time, the DiNatales had moved from Chicago to Florida in order to operate a hotel. In 1984, Donato traveled to Chicago to meet with O'Brien because Donato liked the idea of one long-term lease now that he and Angela were living in Florida. Donato testified that, prior to receiving the telephone call from O'Brien, he was not making efforts to sell the property and knew nothing about the asking price of $325,000 that was expressed in the September 1983 letter from real estate broker Longi to O'Brien. According to Donato, he and O'Brien had one set of meetings, over a three-day period when Donato had traveled to Chicago, in August or early September of 1984. During the meetings, most of the negotiations were about lease terms, but that toward the end of the three-day meetings, he and O'Brien discussed an option to purchase. According to Donato, the purchase option that they discussed was an option for Dunkin' Donuts to purchase the property during the first five years of the lease. He testified that he was shown two drafts of the lease agreement. The first draft was just a preprinted standard Dunkin' Donuts lease that did not mention an option to purchase. The second draft contained an option to purchase during the first five years of the lease, which was typewritten in the preprinted lease above the paragraph setting forth Dunkin' Donuts' right to purchase. Donato testified that he and O'Brien both initialed the second draft of the lease. Donato testified that, at O'Brien's request, he came up

with a $235,000 sale price for the property because that seemed to be a fair price for 1984 and for the first five-years of the lease term. Donato further stated that, during his three-day visit in Chicago, all meetings with O'Brien were held at the property or at Attorney Feldstein's office located across the street from the property.

¶ 30 Angela testified that, in 1984, she and her husband, Donato, were living in Florida and that Donato traveled alone to Chicago to negotiate the lease terms. The DiNatales testified that they never received a copy of the finalized lease from Dunkin' Donuts until January 1985, after they had requested it several times from both Dunkin' Donuts and Chicago Title. They acknowledged that, prior to January 1985, they received copies of letters stating that the lease agreement was enclosed; however, no lease agreement was ever enclosed with those letters. In January 1985, after the DiNatales finally received a copy of the finalized lease agreement, they put it in a drawer and assumed that it contained an option to purchase only during the first five years of the lease term. The DiNatales testified that they first learned that DB believed that the purchase option extended beyond the first five years of the lease term, when DB tried to exercise the $235,000 purchase option after the Argent Group had offered to buy the property from the DiNatales for $1.7 million.

¶ 31 The discovery deposition of real estate broker, Longi, who died before trial, was admitted into evidence at trial. In his testimony, Longi had no memory of any discussion about the purchase option and recalled little of the parties' negotiations. Longi testified that he had meetings with O'Brien at Attorney Feldstein's office, in the absence of Donato, before the lease agreement was signed. However, Longi did not recall what was discussed at the meetings. Attorney Feldstein died before this lawsuit was filed and was thus never deposed.

¶ 32 Evidence at trial showed that the Argent Group offered to buy the property for $1.7 million in 2008. However, DB's director of retail development, LaVigne, testified that he estimated the then-current fair market value of the property to be about $650,000.

¶ 33 Documentary evidence presented at trial included the final version of the lease agreement. Paragraph 14 of the lease agreement is entited "Lessee's Right to Purchase." The preprinted part of paragraph 14 provided Dunkin' Donuts, as lessee, the right of first refusal if any offer is made on the property. At the end of paragraph 14 is the following typewritten words: "The Lessee has the *." At the bottom of the same page of the lease agreement is a continuation of the language for the purchase option clause: "*right to purchase the premises at any time after the fifth anniversary for the sum of Two Hundred Thirty-Five Thousand and no/100ths Dollars ($235,000)." In the margin to the left of paragraph 14, as well as the margin at seven other places in the lease agreement, is a square block. Each block is initialed by two signatories to the lease. The lease agreement also contains two round blocks, which contain the same initials, signifying two changes to the lease agreement—that the covenant by the lessor to "warrant" certain things were whited out and then typed back in, and that the notice required by the lessee to terminate the lease was extended from 120 to 180 days. Dunkin' Donuts, as lessee, was obligated under the lease agreement to obtain all permits and to pay all real estate taxes.

¶ 34 An "Agreement of Option to Lease," which was signed by Chicago Title as land trustee for the property, was also admitted into evidence at trial. This document, which did *not* include the purchase option clause, gave Dunkin' Donuts 120 days after Chicago Title signed the lease agreement to determine whether Dunkin' Donuts wanted to entered into the lease. At trial, DB presented evidence of a September 1984 letter from O'Brien to Attorney Feldstein, which stated that enclosed were four copies of the lease agreement "with the changes previously discussed"

and four copies of the "Agreement of Option to Lease." In his testimony, O'Brien stated that "the changes previously discussed" were the changes referenced in the two round signature blocks on the lease agreement, which he surmised were requested by Donato and Attorney Feldstein. The September 1984 letter noted that a copy of the lease agreement and the "Agreement of Option to Lease" had also been forwarded to Donato.

¶ 35 A January 1985 "notice of lease," which was signed by Chicago Title and Dunkin' Donuts, and a February 1985 "general direction" signed by Donato, were also presented as evidence at trial. The 1985 "notice of lease" contained the purchase option clause and was recorded with the recorder of deeds in Cook County in March 1985. The February 1985 "general direction" was signed by Donato directing Chicago Title to execute the 1985 "notice of lease." DB also introduced as evidence at trial a September 1983 letter from Longi to O'Brien, which brought the property to Dunkin' Donuts' attention and informed O'Brien that the owner was "asking for $325,000 and has indicated that he would negotiate." DB's documentary evidence at trial also included a July 1984 letter from O'Brien to Donato, which referenced an "agreement of sale" pursuant to which Dunkin' Donuts had offered to buy the property for $170,000.

¶ 36 The DiNatales offered evidence at trial as to how the lease terms at issue compared to other leases entered into by Dunkin' Donuts with third parties. Four leases containing a fixed-price purchase option clause, which were executed by Dunkin' Donuts in the United States since 1979, had been produced by DB in discovery. Out of the four leases, only one was at all similar to the fixed-price purchase option in this case.

¶ 37 Based on this trial evidence, the trial court held that ordering specific performance would be inequitable under the "many facts and circumstances" of this case. The trial court found O'Brien to be a hostile and uncooperative witness, while it found Donato's testimony to be

credible in that he did not understand from his negotiations with O'Brien that he had agreed to allow Dunkin' Donuts to buy the property at any time until the year 2026, for an amount that was the property's approximate value back in 1984. The trial court found the DiNatales to be "quite credible" in their testimony that Donato, not Angela, met with O'Brien in Chicago over a three-day period in 1984. The trial court specifically found incredible O'Brien's testimony that there were negotiations held several weeks apart at which Angela was also present. The trial court also did not believe O'Brien's testimony that there were no tenants in the premises at the time the lease agreement was executed, noting the DiNatales' testimony to be credible that some of the tenants continued to occupy parts of the premises after the 1983 fire had partially destroyed the building on the property.

¶ 38 The trial court did not find credible Donato's claim that he and O'Brien had entered into a written agreement for a fixed-price purchase option that *had to be* exercised during the first five years of the lease term. In rejecting this claim,[6] the trial court noted this scenario to be unlikely because: (1) according to Donato's own testimony, he had an extremely limited ability to read and write in English; (2) it was inconsistent with O'Brien's testimony that O'Brien neither signed nor initialed leases—which the court found credible in light of the corporate structure of Dunkin' Donuts; and (3) the DiNatales were unable to produce this alleged version of the lease agreement, despite their testimony that they kept copies of all significant documents. However, the trial court found Donato's testimony credible in that he did not have any understanding that he had agreed to allow Dunkin' Donuts to buy the property for $235,000 at anytime *beyond* the

[6] The trial court's rejection of the DiNatales' claim that the purchase option had to be exercised during the first five years of the lease essentially disposed of the remaining count (count I) of the DiNatales' April 23, 2009 counterclaim against DB and third-party complaint against Longi.

first five years of the 20-year lease period. Specifically, the court believed this aspect of Donato's testimony for several reasons: (1) O'Brien's testimony in no way suggested that he ever explained the fixed-price purchase option to Donato, but only described their agreement as giving Dunkin' Donuts "the option to buy the property at [Donato's] [asking] price once the rent [payments] met that price." The court found that the "price" would have been met at the five-year mark of the lease period and nothing in O'Brien's explanation suggested that there was an agreement to keep this price in place for 35 more years; (2) Donato had sold his own personal residences prior to the negotiation of the lease agreement at issue, and thus, understood that property appreciated in value over time. Although Donato was far less sophisticated in real estate than O'Brien, Donato knew enough not to agree to a fixed price that would preclude him from benefitting from any appreciation in the value of the property during the length of the lease term; and (3) Donato was not shown the fixed-price purchase option clause in writing at any time during his Chicago meetings with O'Brien, which was corroborated by O'Brien's testimony that any additional terms would have been typewritten by Dunkin' Donuts' legal department. The court noted that, because it credited Donato's testimony that the lease agreement was negotiated during a three-day period in Chicago, rather than over the period of several weeks as O'Brien claimed, O'Brien "clearly would not have had a copy of the lease to show [Donato] during the negotiations." Rather, the trial court found that Donato was only shown a copy of the standard preprinted Dunkin' Donuts lease, without the fixed-price purchase option filled in, during his meetings with O'Brien. The trial court found that, while it is unclear whether the DiNatales were actually sent a copy of the lease agreement containing the fixed-price purchase option at issue before it was executed by Chicago Title, it was clear that a copy of the lease agreement was sent to Attorney Feldstein.

¶ 39 Although the trial court found that the DiNatales failed to show that the lease agreement was either induced by fraud or was unconscionable, the court refused to award specific performance to enforce the purchase option on the basis that it would be inequitable. Specifically, the court found that O'Brien "took advantage of his greater sophistication and experience to let [Donato] believe that they had entered into an agreement to 'meet his price' at the five-year mark for the lease"; that Donato was not shown a copy of the lease containing the purchase option clause during his negotiations with O'Brien; that no evidence was presented at trial directing Chicago Title to enter into this lease agreement; that Donato had no understanding from the meetings with O'Brien that Donato had agreed to let Dunkin' Donuts buy his property for $235,000 at any time until the end of the lease terms in 2026; that the fact that DB waited almost a quarter of a century to exercise the purchase option militated against a finding that it would be equitable to enforce it; that the "long-time expectations" of the parties was that they had entered into a lease rather than a purchase agreement; and that only four other leases executed by Dunkin' Donuts since 1979 contained a fixed-price purchase option—of which only one had a fixed-price purchase option that lasted as long as the one at issue. Moreover, the trial court found that because Attorney Feldstein died prior to the filing of this lawsuit, it is unclear what role he played in the negotiations. The court specifically found that while Attorney Feldstein's presence "certainly makes this a closer case," this factor alone did not render it equitable to enforce the purchase option, in light of the O'Brien's own testimony that he did not negotiate with Attorney Feldstein but only negotiated with Donato directly. The court found Attorney Feldstein's role in the negotiations to have been a limited one.

¶ 40 We find that the trial court did not abuse its discretion in denying specific performance to enforce the purchase option under the lease agreement. The trial court, which was in the best

position to review and evaluate the evidence, properly weighed the evidence presented and determined the credibility of the witnesses at trial. See *Miranda v. Walsh Group, Ltd.*, 2013 IL App (1st) 122674, ¶ 16 (a reviewing court does not substitute its judgment for that of the trial court where the standard of review is abuse of discretion); *Lannon v. Lamps*, 80 Ill. App. 3d 318, 324 (1980) (trial court adjudicating actions for specific performance is in the best position to judge the credibility of the witnesses and to weigh their testimony). The evidence of record provides ample support for the trial court's conclusion that the "usual facts that require parties to adhere to a bargain that they have made are not present here." Viewing the totality of the circumstances in this case, we are unable to conclude that the trial court's refusal to award specific performance was contrary to logic, arbitrary, or that it exceeded the bounds of reason so that no reasonable person would take the view adopted by the trial court. As noted, there was an imbalance in bargaining positions between O'Brien and Donato, and Donato lacked the understanding that he was agreeing to a purchase option that allowed Dunkin' Donuts to buy his property for $235,000 at any time over a 40-year period. The evidence showed that the long-term expectations of the parties were that they had entered into a lease agreement, not a purchase agreement. Indeed, DB, as successor-in-interest to Dunkin' Donuts, acknowledged to the trial court that DB had been unaware of the purchase option provision in the lease agreement until the Argent Group offered to buy the property for $1.7 million in 2008. Neither DB nor Dunkin' Donuts, exercised the purchase option until nearly a quarter of a century after the lease agreement was executed. Certainly, enforcing the alleged purchase option to allow DB to buy the property for a fixed rate of $235,000, when it could have been sold for $1.7 million, would be an inequitable result. Moreover, evidence supported the trial court's finding that the specific terms of the purchase option were outside of Dunkin' Donuts' general business practice. See

Lannon, 80 Ill. App. 3d 318 (denying specific performance of an option to lease real estate, where there was an imbalance in bargaining positions, evidence of one side's lack of understanding of the agreement, and less than adequate consideration).

¶ 41 DB nevertheless argues that the trial court abused its discretion in denying specific performance, by arguing that the purchase option should be enforced as written because the lease agreement was legally valid, free from all defenses, and was neither induced by fraud nor unconscionable conduct. DB further posits that there was simply no "unfairness" in requiring the DiNatales to convey the property to DB for $235,000 pursuant to the purchase option, where Attorney Feldstein had approved the lease terms and the trial court ignored certain inequities to DB—such as that DB's predecessor-in-interest had allegedly expended $330,000 to construct a donut shop on the property and DB now has continuing obligations to pay rent and maintenance fees on the donut shop and property. We reject DB's arguments. While there are factors that seem to be unfavorable to DB, we are mindful of our standard of review. The question is not whether we would have resolved the specific performance claim as the trial court did; rather, our task is limited to determining whether the trial court abused its discretion. Under the facts and circumstances in this case, we cannot conclude that the trial court's ruling was arbitrary, unreasonable, illogical, or contrary to recognized principles of law. See *Miranda*, 2013 IL App (1st) 122674, ¶ 16.

¶ 42 The defendant further maintains that any confusion by the DiNatales over the lease terms did not warrant denial of specific performance because the DiNatales were only beneficiaries to the land trust and that Chicago Title, not the DiNatales, was a party to the lease agreement at issue. We reject this argument. As this court has already noted, it can be inferred from the evidence presented that Chicago Title executed the lease agreement at the direction of Donato as

a beneficiary of the land trust. Indeed, DB admits in its brief on appeal that the DiNatales "unquestionably" directed Chicago Title to sign the lease agreement and the 1985 "notice of lease." However, DB insists that the DiNatales' misunderstanding of the terms of the lease agreement had no legal effect because Chicago Title was the actual contracting party to the lease agreement. We find DB's cited authority to be unpersuasive. *Amcore Bank, N.A. v. Hahnaman-Albrecht, Inc.*, 326 Ill. App. 3d 126, 135 (2001) involved a situation in which a trustee had the right pursuant to a durable power of attorney to act without the beneficiary's direction and, thus, provides no guidance on whether a beneficiary's knowledge and understanding of the terms of an agreement was relevant. DB's other cited cases actually support the DiNatales' position that a beneficiary's understanding of an agreement is relevant where the beneficiary retains the power to direct the trust. See *National Super Markets v. The First National Bank of Springfield*, 72 Ill. App. 3d 221, 224 (1979) (enforcing an extension to the option period where the evidence clearly demonstrated that the beneficiaries authorized the execution of the original option agreement and the subsequent modifications by *personally signing* the written statement indicating approval of these modifications to extend the option period); *Kessler, Merci & Lochner, Inc.*, 101 Ill. App. 3d 502, 505-06 (1981) (enforcing arbitration clause where beneficiaries negotiated an architectural services contract and *saw* the final version of the agreement before directing trustee to execute it). Here, as the trial court found, it is clear that Donato was not shown a copy of the lease containing the purchase option clause during his negotiations with O'Brien. Thus, the DiNatales, as beneficiaries of the land trust, could not have "fairly and understandingly" agreed to the alleged fixed-price purchase option that DB now seeks to specifically enforce. See *Schwinder*, 348 Ill. App. 3d at 477 (specific performance enforced only where "the parties have fairly and understandingly entered into a valid contract"). Accordingly, we hold that the trial

court did not abuse its discretion in denying specific performance to enforce the alleged purchase option under the lease agreement.

¶ 43 We next determine whether the trial court erred in denying DB's petition for damages against the DiNatales.

¶ 44 DB argues that the trial court erred in denying legal damages to DB, where the court impermissibly used notions of fairness and equity in making its ruling. Specifically, DB contends that legal damages must be granted or denied by a court based upon legal—not equitable—principles, and that the trial court's refusal to award legal relief to DB was improperly based upon equitable grounds. Further, DB argues that just because the trial court denied its claim for specific performance did not require legal damages to also be denied.

¶ 45 The DiNatales argue that the trial court properly denied DB's petition for damages. They point out that had the trial court awarded monetary damages sought by DB (for all rent payments made by DB since November 2008, and the difference between the $235,000 purchase option price and the property value in November 2008), DB would have gained a windfall of almost $1 million more than it would have gained had the purchase option been enforced by specific performance. The DiNatales contend that the damages claimed by DB are a consequence of its own wrongful conduct. They further maintain that there was no requirement that damages be awarded to DB after the court had denied specific performance, that the trial court made factual determinations that DB had suffered no recoverable damages, and that the court properly granted relief under equitable principles where DB only sought equitable relief in the trial court.

¶ 46 We initially note that the parties disagree on the proper standard of review. DB urges this court to employ *de novo* review, arguing that the trial court's error in using "equitable discretion" to deny DB's claim for legal damages suffered as a result of the DiNatales' breach of contract,

was a "clear error in law." The DiNatales argue that the trial court's ruling should be made under a manifest weight of the evidence standard, where the trial court made specific factual findings that DB suffered no damages apart from the loss of an inequitable bargain. Based on our examination of the trial court's March 29, 2013 order denying DB's petition for damages, we agree with the DiNatales' assessment that "a manifest weight of the evidence" is the proper standard of review. By DB's own assertions on appeal, DB sought damages under the theories of breach of contract and unjust enrichment. The theory of unjust enrichment is an *equitable* remedy based upon a contract implied in law. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005). We further note that, in its February 15, 2013 petition for damages, DB sought not only relief for monetary damages, but also "an equitable declaration" that DB was excused from paying further rent to the DiNatales for the remainder of the lease term, as well as "any further legal or equitable relief." Thus, any use of "equitable discretion" by the trial court in denying the petition for damages was not a "clear error in law." Moreover, our examination of the trial court's March 29, 2013 order reveals that, as the DiNatales argue, the trial court made factual conclusions that DB suffered no damages. Therefore, we employ a manifest weight of the evidence standard of review. A finding is against the manifest weight of the evidence "only where the opposite conclusion is apparent, or when findings appear arbitrary, unreasonable, or not based on the evidence." *Garden View, LLC v. Fletcher*, 394 Ill. App. 3d 577, 583 (2009).

¶ 47 Section 2-701(c) of the Declaratory Judgment Act (the Act) provides:

> "If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose

> rights have been determined by the declaration to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order." 735 ILCS 5/2-701(c) (West 2012).

The further relief contemplated by this section is not limited to further declaratory relief. *Pacemaker Food Stores, Inc. v. Seventh Mont Corp.*, 143 Ill. App. 3d 781, 785 (1986). Rather, further relief may include assessment for damages or other affirmative relief. *Id.* The statute is not limited to relief previously requested but contemplates something further based upon a declaration of right. *Burgard v. Mascoutah Lumber Co.*, 6 Ill. App. 2d 210, 219 (1955). "[T]he statute permits a party to petition for such further relief as may be appropriate after the declaration of rights, although not previously prayed for by a complaint or counterclaim." *Id.*; *Myers v. Mundelein College*, 331 Ill. App. 3d 710, 715-16 (2002) (holding that a plaintiff who succeeded in obtaining a declaratory judgment was permitted to seek additional relief in the form of money damages).

¶ 48 In the case at bar, in its January 7, 2013 order, the trial court granted declaratory judgment in part by ruling that the purchase option was legally valid but not enforceable, and the court allowed DB to file a petition to seek further relief under the Act. On February 15, 2013, DB filed a petition for damages pursuant to section 2-701(c) of the Act. In the petition for damages, DB alleged that it was entitled to damages for the DiNatales' alleged breach of the lease agreement in refusing to convey the property for $235,000 pursuant to the purchase option. The petition for damages also alleged that the DiNatales were unjustly enriched because, in refusing to convey the property to DB pursuant to the purchase option, they retained the benefit of ownership in the property to DB's detriment. In its petition for damages, DB sought monetary

damages for the difference between the actual value of the property on November 4, 2008 and the $235,000 purchase option price, as well as the rent that DB had paid since November 2008. Further, DB sought an equitable declaration that DB was excused from paying further rent to the DiNatales during the remainder of the lease term, and sought "any further legal or equitable relief" that the court may deem just and appropriate. On March 29, 2013, the trial court denied DB's petition for damages, finding that DB had suffered "no damage other than the loss of this very unfair (to the DiNatales) bargain"; that to give DB the monetary value of the purchase option that the court refused to enforce "would be to award [DB] and punish [the DiNatales] at least to the same extent as an award of specific performance"; that the result of a damage award would be a large money judgment that the DiNatales "would likely be unable to pay"; and that DB had offered "no real evidence of how it [had] been damaged other than it did not get the benefit of a bargain that this [c]ourt does not believe should have been enforced." The trial court further found that it would be "profoundly unfair" to reward DB and further punish the DiNatales where DB's assertion of its rights under the purchase option had already caused the DiNatales to lose an opportunity to sell the property to Argent Group for $1.7 million.

¶ 49 We find that the trial court's findings were not against the manifest weight of the evidence and, thus, the trial court did not err in denying DB's petition for damages. First, we note that DB repeatedly argues, and cites to various cases of this and other jurisdictions for support, that the court's denial of specific performance did not also require the denial of an award for legal damages. However, DB has failed to cite a single source of legal authority on appeal that suggests that a court *must* award a plaintiff legal damages following the denial of specific performance. Indeed, the trial court's March 29, 2013 order noted that "[a]lthough this [c]ourt believes that it has discretion to award [DB] damages, after having denied [DB] specific

performance, it does not believe that it is *required* to do so." (Emphasis added.) Moreover, this was not a situation in which specific performance was denied solely because the equitable remedy is unavailable due to the hardship it would cause on an innocent third-party, such that money damages are then awarded to compensate the plaintiff.

¶ 50 Second, based on our review of the record, we agree with the trial court's findings that DB had "suffered no damage other than the loss of this very unfair (to the DiNatales) bargain" and that DB had offered "no real evidence of how it [had] been damaged other than it did not get the benefit of a bargain that [the trial court] [did] not believe should have been enforced." DB complains of certain statements made by the trial court, which suggested the use of "equitable discretion" in making its March 29, 2013 ruling on the breach of contract claim, by arguing that legal damages must be granted or denied by a court based upon legal, not equitable, principles. While the trial court made certain statements echoing notions of equity—such as that it would be "profoundly unfair" to reward DB and further punish the DiNatales if monetary damages were awarded to DB—such semantics did not deter from the fact that DB had shown no real evidence as to how it had been damaged. DB further argues that it should be entitled to legal damages because the "loss of the benefit of the bargain" is the "very definition of contract damages." While it is true that the "loss of the benefit of a bargain" is generally how damages are calculated in breach of contract cases, this proposition in no way aides DB where the award of monetary damages on this basis would result in the absurdity of essentially enforcing a bargain which the trial court had determined was not enforceable. See generally *Foster Enterprises, Inc. v. Germania Federal Savings & Loan Ass'n*, 97 Ill. App. 3d 22, 32 (1981) ("[t]he general measure of damages for a contract breach *** gives the injured party the loss of its bargain, plus consequential damages ***"). In its reply brief, DB contends that, even if it had not proven

damages, this fact could not defeat its claim for monetary damages where DB was deprived of due process to present such proof because no evidentiary hearing was held on DB's petition for damages. We reject DB's due process arguments as forfeited, where DB raises it for the first time in its reply brief, in violation of Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶ 51 DB argues in the alternative that, if breach of contract damages were not warranted, DB should be entitled to an award against the DiNatales for unjust enrichment. We disagree. As discussed, the claim for unjust enrichment is an equitable remedy. See *Guinn*, 361 Ill. App. 3d at 604. Based on our review of the record, we cannot conclude that the trial court's findings, including findings expressing notions of fairness and equity as they relate to the unjust enrichment claim, were arbitrary, unreasonable, or not based on the evidence. Therefore, we find that the trial court's findings were not against manifest weight of the evidence. Accordingly, the trial court did not err in denying the petition for damages.

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.