IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY LLC, D/B/A SATICOY BAY LLC SERIES 3834 WINDANSEA ST, A NEVADA LIMITED LIABILITY COMPANY; AND IYAD HADDAD,
Appellants,
vs.
FARAH FEDA; AND NIMRATDIP DEO,
Respondents.

No. 84451

FILED

OCT 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment, certified as final under NRCP 54(b), in a real property and contract action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm.[1]

Appellants Saticoy Bay and Iyad Haddad (collectively, Saticoy) contracted with respondents Farah Feda and Nimratdip Deo (collectively, Feda) to sell a residential property. The contract was contingent on Saticoy obtaining title insurance. Saticoy sought title insurance from one insurer, but that insurer refused to issue a policy based on its belief that the property was encumbered by a second deed of trust in addition to a first deed of trust.[2] Unable to obtain title insurance, Saticoy returned Feda's earnest

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

[2]Neither Saticoy nor Feda dispute that this was the reason for the refusal, so for purposes of our disposition, we assume this was the reason. Also, Saticoy maintains that it sought title insurance from a second insurer, but that position is belied by the record.

money deposit and canceled the contract. Thereafter, Feda filed the underlying action seeking, among other things, specific performance of the contract. The district court granted summary judgment and ordered Saticoy to convey the property to Feda per the terms of the contract. Saticoy appeals.

Saticoy contends that the district court erred in rejecting its frustration-of-purpose defense. We disagree. This defense "does not apply if the unforeseen contingency is one which the promisor should have foreseen, and for which he should have provided." *Graham v. Kim*, 111 Nev. 1039, 1041, 899 P.2d 1122, 1124 (1995) (internal quotation marks omitted). Here, Saticoy should have provided for the possibility that a single title insurer would not provide insurance, and it could have easily rectified this situation by consulting a second or even third insurer.[3] Or, as Feda points out, Saticoy could have filed third-party claims against the first title insurer and the second deed of trust beneficiary in the underlying action seeking a declaration that the second deed of trust was no longer secured by the property. *Cf. Carcione v. Clark*, 96 Nev. 808, 810-11, 618 P.2d 346, 348 (1980) (observing that "subjective impossibility" does not excuse a party from complying with a contractual condition).

In any event, Saticoy's frustration-of-purpose defense lacks merit because "[i]t is not enough that the transaction has become less profitable for the affected party." Restatement (Second) of Contracts § 265

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[3]Although Saticoy did reach out to a second title insurer, it did so in an effort to obtain title insurance for *another* prospective purchaser while it was still under contract with Feda. Relatedly, to the extent that Saticoy argues that specific performance was not an appropriate remedy, we disagree. *See Carcione v. Clark*, 96 Nev. 808, 811, 618 P.2d 346, 348 (1980) ("Equity regards as done what in good conscience ought to be done.").

cmt. a (1981). Here, the record indicates that even if Saticoy paid off the loan securing the second deed of trust, it still would have stood to make a roughly $112,000 profit based on its acquisition of the subject property for roughly $10,000 at the HOA foreclosure sale. Accordingly, we are not persuaded that the district court erred in rejecting Saticoy's frustration-of-purpose defense. We therefore

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Hon. Mark R. Denton, District Judge
Thomas J. Tanksley, Settlement Judge
Roger P. Croteau & Associates, Ltd.
Jesse M. Sbaih & Associates, Ltd.
Eighth District Court Clerk