

CAUSE NO. 2024-00038

SVETLANA A. PESTOVA and
LUIS ESCOBEDO,
Plaintiffs,

V.

LJC FINANCIAL, LLC
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**DEFENDANT AND COUNTER-PLAINTIFF, LJC FINANCIAL, LLC'S
MOTION FOR SUMMARY JUDGMENT ON ITS CLAIM FOR
BREACH OF CONTRACT AND FOR SPECIFIC PERFORMANCE OF THE
MEDIATED SETTLEMENT AGREEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Texas Rule of Civil Procedure 166a(c), Defendant and Counter-Plaintiff, LJC FINANCIAL, LLC ("**LJC**") hereby moves the Court for summary judgment in its favor on its claim for Breach of Contract/Specific Performance of Mediated Settlement Agreement against Plaintiffs and Counter-Defendants, SVETLANA A. PESTOVA ("**Pestova**") and LUIS ESCOBEDO ("**Escobedo**") (collectively, "**Plaintiffs**") jointly and severally, and in support thereof, will show onto the Court as follows:

I. REQUESTED RELIEF

1. Defendant/Counter-Plaintiff, LJC seeks to enforce the Mediated Settlement Agreement ("**MSA**") that the parties reached at the court-ordered mediation on September 23, 2024 with the mediator, Eric Carter. Under the MSA, LJC agreed to sell and Pestova and Escobedo agreed to buy the property at 7802 Ford Street, Houston, Texas 77012 ("**Property**") for \$145,000.00. In exchange for the \$145,000.00, LJC agreed to provide Pestova and Escobedo with a warranty deed for the Property and the parties would sign a mutual release of claims.

2. After the mediation, Pestova and Escobedo wholly failed to comply with the MSA. They have “ghosted” LJC’s counsel and have continued to possess LJC’s Property without paying for it.

II. SUMMARY OF ARGUMENT

3. The MSA reached by the parties at the September 23, 2024 court-ordered mediation with Eric Carter is a binding settlement agreement pursuant to Tex. Civ. Prac. & Rem. Code § 154.071(a) and Tex. R. Civ. P. 11. Pestova and Escobedo breached the MSA by failing and refusing to purchase the Property for the agreed upon price of \$145,000. LJC has been, and still is, ready, willing, and able to honor its obligations under the MSA. LJC is entitled to summary judgment on its claim for specific performance of the MSA.

III. FACTUAL BACKGROUND

4. Plaintiffs Pestova and Escobedo have filed this lawsuit *pro se*. Plaintiffs’ claims arise from the January 2, 2024 foreclosure sale of the property at 7802 Ford Street, Houston, Texas 77012 (“**Property**”). Plaintiffs alleged that the foreclosure was wrongful. LJC disputes Plaintiffs’ claims.

5. On August 20, 2024, this Court ordered the parties to participate in a court-ordered mediation with mediator, Eric Carter. See **Exhibit 3**.

6. On September 23, 2024, LJC, Pestova, and Escobedo participated in the court-ordered mediation with Eric Carter via Zoom. The parties reached a settlement at the mediation. That day, on September 23, 2024, Mr. Carter drafted the MSA, captioned “Binding Settlement Agreement,” which was circulated for signature by the parties via DocuSign. Attached as **Exhibit 1** is a true and correct copy of the fully executed MSA.

LJC signed the MSA on September 23, 2024 via DocuSign. Escobedo and Pestova signed the MSA on September 25, 2024 via DocuSign. *See **Exhibits 1 and 3.***

7. Under the MSA, LJC agreed to sell, and Pestova and Escobedo agreed to purchase, the property at 7802 Ford Street, Houston, Texas 77012 (“**Property**”) for \$145,000.00. Pestova and Escobedo agreed to pay LJC (1) \$2,500.00 in earnest money by September 30, 2024; and (2) the remaining \$142,500.00 by October 23, 2024. In exchange for the \$145,000.00, LJC agreed to provide Pestova and Escobedo with a warranty deed for the Property and the parties would sign a mutual release of claims. *See **Exhibits 1 and 3.***

8. To date, Pestova and Escobedo have failed to pay the \$2,500.00 in earnest money and have failed to complete the purchase of the Property. No funds have been tendered by Pestova or Escobedo. Pestova and Escobedo have “ghosted” the undersigned counsel for LJC and have failed to respond to her phone calls and emails. On October 23, 2024, LJC’s attorney, Alicia Matsushima, sent Pestova and Escobedo a demand letter related to their failure to comply with the MSA. *See **Exhibit 2.*** No response was received to the demand letter. Pestova and Escobedo continue to possess LJC’s Property without paying for it. *See **Exhibit 3.***

9. LJC stands ready, willing, and able to close the sale of the Property and will provide Pestova and Escobedo with the warranty deed to the Property, as well as a full release of claims, in exchange for the \$145,000.00 purchase price. *See **Exhibit 3.***

IV. SUMMARY JUDGMENT EVIDENCE

10. This Motion is supported by the following evidence which LJC incorporates into the Motion by reference:

Exhibit 1 Binding Mediated Settlement Agreement (“MSA”).

Exhibit 2 Demand Letter to Pestova and Escobedo dated October 23, 2024.

Exhibit 3 Declaration of Jerry Cohen of LJC Financial, LLC.

V. SUMMARY JUDGMENT STANDARD

11. A party moving for traditional summary judgment has the burden to prove that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). When the plaintiff moves for summary judgment on its own action, it must prove it is entitled to summary judgment by establishing each element of its claim as a matter of law. *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986); *Fry v. Commission for Lawyer Discipline*, 979 S.W.2d 331, 334 (Tex. App. – Houston [14th Dist.] 1998, pet. denied).

12. Once the moving party establishes its right to a traditional summary judgment, the burden shifts to the nonmoving party to present evidence raising a genuine issue of material fact, thereby precluding summary judgment. See *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam); see *Navy v. Coll. of the Mainland*, 407 S.W.3d 893, 898 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

13. When reviewing a traditional summary judgment, the court takes as true all evidence favorable to the nonmoving party and indulges every reasonable inference in the nonmoving party’s favor. *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). *Sheller v. Corral Tran Singh, LLP*, 551 S.W.3d 357, 362 (Tex. App. – Houston 2018, pet. denied). A matter is conclusively established if reasonable people could not disagree as to the conclusion to be drawn from the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802, 815-16 (Tex. 2005).

VI. ARGUMENT AND AUTHORITY

A. The Mediated Settlement Agreement is enforceable under Tex. Civ. Prac. & Rem. Code § 154.071 and Rule 11.

14. As provided by Section 154.071 of the Texas Civil Practices & Remedies Code, “If the parties reach a settlement agreement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.” Tex. Civ. Prac. & Rem. Code Ann. § 154.071(a) (Vernon 2011). After a settlement agreement is accepted, enforcement is by a suit upon the contract, either for breach or for specific performance. *Stevens v. Snyder*, 874 S.W.2d 241, 243 (Tex. App.—Dallas 1994, writ denied) (“Once a party accepts a settlement offer, he cannot withdraw from the agreement arbitrarily.”). To be entitled to specific performance, an agreement must be valid and enforceable. *Abraham Inv. Co. v. Payne Ranch, Inc.*, 968 S.W.2d 518, 527 (Tex. App.—Amarillo 1998, pet. denied). *Fontenot v. Hanus*, No. 11-10-00016-CV, 2011 Tex. App. LEXIS 7234, at *4-5 (Tex. App.—Eastland Aug. 31, 2011, no pet.) (affirming summary judgment for the specific performance of the mediated settlement agreement that provided for conveyance of real property).

15. Enforcement of a settlement agreement is particularly appropriate because permitting one party to repudiate a settlement agreement unilaterally would defeat the purpose of the ADR statute. *In re Marriage of Banks*, 887 S.W.2d 160, 163 (Tex. App.—Texarkana 1994, no writ). *Lype v. Watkins*, NO. 01-98-00051-CV, 1998 Tex. App. LEXIS 6626, at *6 (Tex. App.—Houston [1st Dist.] Oct. 22, 1998, no pet.).

B. A party seeking specific performance of a settlement agreement must (1) plead and prove the agreement under Section 154.071; and (2) provide adequate notice and opportunity to be heard. LJC has met this burden.

16. The enforceability of the Mediated Settlement Agreement is controlled by Rule 11 of the Texas Rules of Civil Procedure and *Padilla v. LaFrance*, 907 S.W.2d 454 (Tex. 1995).¹ A party seeking specific performance of a settlement agreement must: (1) plead and prove the agreement under Section 154.071; and (2) provide adequate notice and opportunity to be heard to the breaching party. *See Padilla*, 907 S.W.2d at 461. Provided these safeguards are met, a trial court properly enforces the agreement, despite post agreement withdrawal of consent by one party. *Id.*; *Lype v. Watkins*, No. 01-98-00051-CV, 1998 Tex. App. LEXIS 6626, at *6 (Tex. App.—Houston [1st Dist.] Oct. 22, 1998, no pet.).

17. In this case, there is no dispute as to the existence of (1) the Mediated Settlement Agreement under Section 154.071, which was breached by Pestova and Escobedo (*see Exhibits 1-3*); and (2) the adequacy of notice or opportunity to be heard. Here, LJC followed the same procedures as the party seeking enforcement in *Padilla*—a motion for summary judgment on a counterclaim for specific performance of the agreement. *See Padilla*, 907 S.W.3d at 462; *Lype v. Watkins*, NO. 01-98-00051-CV, 1998 Tex. App. LEXIS 6626, at *7 (Tex. App.—Houston [1st Dist.] Oct. 22, 1998, no pet.).²

¹ In *Padilla*, the supreme court held that an agreement was binding and enforceable because it recited a consummated settlement concerning the pending lawsuit and all material terms relating to that settlement. 907 S.W.2d at 460-61. The agreement also complied with Rule 11, which requires that any agreements concerning a pending suit be filed with the court as a prerequisite to enforcement. *Padilla*, 907 S.W.2d at 461. *Lype v. Watkins*, 1998 Tex. App. LEXIS 6626 at *4-5.

² The Court in *Lype v. Watkins* held: “We conclude that Watkins properly pled and proved an enforceable settlement agreement under section 154.071 of the Texas Civil Practice and Remedies Code. We further conclude that Watkins established her right to summary judgment on her claim for specific performance of the settlement agreement, by asserting the claim in her motion for summary judgment and supporting the motion with a properly authenticated copy of the agreement.” *Lype v. Watkins*, 1998 Tex. App. LEXIS 6626, at *7.

C. Specific performance of the MSA is also proper because it is a contract or the sale of real property, which is unique.

18. Specific performance of the MSA is proper as LJC has no adequate remedy at law. The MSA is for the sale of real property, which is unique. LJC is entitled to specific performance, an equitable remedy, which is appropriate for contracts involving the sale of real property. While specific performance is not a matter of right, specific performance of a MSA for the sale of realty is ordinarily granted where the suit is based on a valid contract. *Kress v. Soules*, 261 S.W.2d 703, 704 (Tex. 1953); *Pickard v. LJC Enters., Inc.*, No. 01-07-01105-CV, 2010 Tex. App. LEXIS 2727, at *3 (Tex. App.—Houston [1st Dist.] Apr. 15, 2010, no pet.) (noting breach of agreement to sell real property generally may be enforced by specific performance due to unique nature of real property) (mem. op.); *Scott v. Seabee*, 986 S.W.2d 364, 370 (Tex. App.—Austin 1999, pet. denied).

D. LJC is ready willing and able to honor its obligations under the MSA.

19. LJC has been, and still is, ready, willing, and able to honor its obligations under the MSA, as LJC will deliver a warranty deed conveying the Property to Pestova and Escobedo and will sign a mutual release of claims after it receives the \$145,000.³ See **Exhibit 3.**

20. For the above reasons, LJC is entitled to summary judgment in its favor. The Court should compel Pestova and Escobedo to specifically perform the MSA.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff LJC FINANCIAL, LLC respectfully requests that the Court grant summary judgment in its favor as requested herein and

³ To the extent that Pestova and Escobedo claim that LJC failed to comply with the MSA by failing to tender the warranty deed to the Property and sign a release of claims, LJC's performance of these obligations is excused due to Plaintiffs' breach of the MSA. *DiGiuseppe v. Lawler*, 269 S.W.3d 588, 593-94, 601 (Tex. 2008) (proof of compliance with the contract including tender of performance is required unless compliance or tender is excused by the defendant's breach or repudiation).

such other and further relief, at law or in equity, to which Counter-Plaintiff shows itself justly entitled.

Respectfully submitted,

INVICTA LAW FIRM.

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ATTORNEY FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2024, the above Motion for Summary Judgment was served in accordance with the Texas Rules of Civil Procedure to all parties and/or counsel of record as follows:

Via Texas eFile:

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PRO SE PLAINTIFFS

/s/ Alicia M. Matsushima
Alicia M. Matsushima

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Alicia Matsushima on behalf of Alicia Matsushima

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Envelope ID: 94531954

Filing Code Description: Motion (No Fee)

Filing Description: Defendant And Counter-Plaintiff, Ljc Financial, Llc's Motion For Summary Judgment On Its Claim For Breach Of Contract And For Specific Performance Of The Mediated Settlement Agreement

Status as of 11/20/2024 4:10 PM CST

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