

Rel: October 16, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0203

Tony Lee and Emily Boles

v.

Diana Sue Vest

Appeal from Talladega Circuit Court
(CV-25-900090)

SELLERS, Justice.

Tony Lee and his wife Emily Boles ("Lee and Boles") appeal from a judgment of the Talladega Circuit Court ("the trial court"), ordering

specific performance of an option to purchase contained in a lease agreement executed by Lee and Boles and Diana Sue Vest. We affirm with instructions.

I. Facts

Lee and Boles leased to Vest a mobile home and property ("the property") located in Lincoln for a term beginning on October 5, 2022, and ending on June 5, 2024, for \$1,500 per month. The lease agreement contained the following option to purchase:

"OPTION TO PURCHASE: Tenant, upon satisfactory performance of this Lease, shall have the option to purchase the real property described herein for a purchase price of \$275,000.00 provided that the Tenant timely executes the option to purchase and is not in default of the Lease Agreement. Thereafter, each of the parties shall promptly execute any and all further instructions or other documents including a Sale Agreement which may be reasonably required for purchase of the real property.

"....

"OPTION CONSIDERATION: Non-refundable option consideration in the amount of \$30,000.00 paid by the Tenant as consideration for this Option to Purchase Agreement shall be credited to the purchase price at closing if the Tenant timely exercises the option to purchase. If the Tenant doesn't exercise the option to purchase, the Tenant shall forfeit the nonrefundable option consideration."

The lease agreement also contained a holdover clause, providing:

"HOLDOVER: If Tenant maintains possession of the Premises for any period after the termination of this Lease ('Holdover Period'), Tenant shall pay to Landlord lease payment(s) during the Holdover Period at a rate equal to 150% of the most recent rate preceding the Holdover Period. Such holdover shall constitute a month-to-month extension of this Lease."

Vest timely exercised her option to purchase the property and tendered the nonrefundable option consideration of \$30,000, and the closing was scheduled for June 5, 2024, and extended until June 10, 2024. According to Lee and Boles, Vest failed to tender the required funds to close the sale of the property as scheduled, thus voiding the option to purchase. Lee and Boles thereafter commenced an action against Vest, asserting claims of breach of contract, ejectment, and unjust enrichment. Vest responded with a counterclaim alleging breach of contract and seeking specific performance of the option to purchase. At the request of Lee and Boles, the trial court entered an order requiring Vest to pay \$2,000 per month into an escrow account, beginning June 2024, for the use and occupancy of the property pending the outcome of the litigation. See, e.g., Coan v. Championship Prop., LLC, 404 So. 3d 237 (Ala. 2024) (noting that the trial court's escrow order was designed as an equitable remedy to maintain the status quo and to protect the parties' competing

interests to property, pending a final ruling on the issue of right to possession). For their part, Lee and Boles continued paying the note on the property, along with property taxes and homeowner's insurance, pending a bench trial.

The evidence presented during the bench trial was largely undisputed. In early spring 2024, Vest exercised her option to purchase the property and, as required by the lease agreement, tendered the nonrefundable option consideration of \$30,000 to be credited to the purchase price of the property; the closing was scheduled for June 5, 2024, the last day of the lease term. According to Lee, he had insisted that Luke Henderson handle the closing, and he acknowledged that Henderson owed the same duty to Vest that he owed to Lee and Boles. Lee and Boles did not attend the closing; rather, they signed the closing documents a couple of weeks beforehand. Vest also intended to close remotely, because she was scheduled to fly out of the country on the day of the closing.

On May 31, 2024, five days before the closing, Vest sent Henderson an email, apparently one of several, informing him that she would be out of town the following week and requesting that he send an accurate

closing statement so that she could arrange for the payment to close the transaction. Henderson responded to that email, apologizing for the delay and stating that he would send the final closing documents later that afternoon for her review and signature. Henderson thereafter sent Vest an email attaching the final closing documents, reflecting an amount due of \$226,246.20 and informing her that she could wire the funds via the instructions included in the closing package or send a cashier's check made payable to Luke A. Henderson, LLC. On that same date, Vest deposited \$226,246.20 into her checking account.

On June 1, 2024, Vest sent Henderson an email attaching the signed closing documents. In that email, Vest reminded Henderson, among other things, that she would be out of the country the following week, that she felt Lee was trying to cancel the parties' contract, and that she felt rushed to close on the property because she had only received the closing documents on May 31, 2024. She therefore requested that the closing be postponed until she returned from her trip on June 9, 2024.

On June 4, 2026, the day before Vest left to go out of the country, she informed Henderson that she had been unsuccessful in getting a cashier's check for the closing because, she said, her bank either limited

the amount of money she could wire or because the funds she had previously deposited to purchase the property were still "pending." Vest read the lease and noted that it did not require certified funds; she informed Henderson that she was overnighting a personal check and that, if he had not cashed her check by the time she returned from her trip, she would send the certified funds to close to transaction.

On June 5, 2024, Henderson sent Vest an email informing her that he had received her check and that he had gone to her bank and requested that the check be converted to a cashier's check, but that the bank had declined his request because he was not the account holder; the bank further advised that the check would not clear for 14 days. Henderson also informed Vest that Lee and Boles had agreed to extend the closing until June 10, 2024, and that to conclude the closing, she would need either a cashier's check or a wire transfer in the amount of \$226,246.20 by the end of the business day on June 10, 2024.

On June 8, 10, and 12, 2024, Vest sent emails to Henderson asking whether her check had been destroyed and informing him that she felt uncomfortable wiring additional funds until she knew the disposition of her check. Vest received no response.

On June 10, 2024, after receiving no response from Henderson, Lee, or Boles for two days, Vest stopped payment on her check. On that same date, Vest sent an email to Lee stating that she had not heard from him and that Henderson had never responded to her email about the whereabouts of her check. Vest further indicated that, because Henderson was no longer communicating with her, she needed to know how to proceed with closing the transaction.

On June 11, 2024, without Vest's authorization or consent, Lee went to Henderson's office and demanded that he indorse Vest's check over to him so that he could deposit it into his account. When questioned by Vest's attorney, Lee candidly testified:

"Q. All right. Anyway, you changed your mind [about the personal check] and you went to [Henderson's] office, didn't you?

"A. I did.

"Q. Okay. And you went down there and you instructed that attorney to endorse that check over to you and -- so you could deposit it in the bank; correct?

"A. Correct.

"Q. Okay. And tell me by what authority do you have to go to the attorney and instruct him to endorse that check when he owes her the same duty that he owes you?

"A. Well, it was the check meant to pay for the house that she's living in that belongs to me, so the check was coming to us anyhow, so --

"Q. What do you mean --

"A. -- it was my money.

"....

"Q. So if certified funds were required, then why are you changing your mind to deposit a personal check that you said could not be used to consummate a real estate closing transaction? You testified to that previously, didn't you?

"A. Yeah.

"Q. Well, then, why were you getting her personal check and putting it in the bank?

"A. Well, we needed the money. I mean --

"Q. You needed the money, but you said a personal check could not be used on a conveyance of property. Those are your words. I guess they were going to be if you were going to put it in the bank, the personal check; correct?

"A. Yeah."

According to Lee, Henderson also gave him the entire closing file.

On June 12, 2024, Vest informed Lee about the stop-payment order, adding that she was uncomfortable with Henderson's "sitting on her check" because he had been unresponsive. Vest further expressed her willingness to wire the funds directly to Lee and Boles if acceptable. On

that same date, Boles responded to that email, informing Vest that, because she had stopped payment on the check, the location of her check was irrelevant and had no bearing on her ability to wire the certified funds. Nonetheless, Boles informed Vest that Henderson had indorsed the check over to her and Lee for deposit. In that same email, Boles also informed Vest that she and Lee were in the process of taking legal steps to secure the property and that if Vest wanted to bring everything to a closure, she could simply wire the funds to their personal account the following day by 10:00 a.m. Although Vest expressed in one of her emails a willingness to wire the certified funds directly to Lee and Boles, she nonetheless testified that she did not feel comfortable doing so without an attorney being involved.¹ Lee and Boles thereafter sent Vest a letter informing her that the option to purchase had expired and that the lease would not be renewed. Notably, Boles testified in her deposition that, after she and Lee commenced this action, they continued to discuss closing the real-estate transaction with Vest because, according to Boles, they were desperate to do so.

¹Some of the emails referenced herein were sent by Dennis Flannagan, on Vest's behalf. It appears that Dennis was Vest's friend and/or roommate.

At the conclusion of bench trial, the trial court expressed its opinion that the closing would have occurred but for the conduct of Henderson and Lee and Boles. The trial court asked Vest if she remained ready, willing, and able to close the real-estate transaction, to which she responded "yes." At that point, the trial court asked counsel for the parties whether they could agree to a closing date if the court ordered specific performance and, if so, whether they could provide certain documentation allowing the trial court to make necessary calculations. The parties agreed to a closing date and provided the trial court with the requested documentation.

On January 21, 2026, the trial court entered a judgment ordering specific performance of the option to purchase and directing the parties to close on the sale of the property no later than February 20, 2026. The judgment further ordered that the \$40,000 held in escrow be credited against the balance of the purchase price that would have been due at closing, \$228,246.20. Finally, the judgment directed that Vest reimburse Lee and Boles for their payment of interest on their note, homeowner's insurance, and property taxes, each accruing per diem through the date of closing. Vest thereafter learned that Lee and Boles had retained new

counsel and intended to file a postjudgment motion to alter, amend, or vacate that portion of the trial court's judgment regarding the \$40,000 held in escrow. Accordingly, the parties jointly moved the trial court to extend the February 20, 2026, closing date pending a ruling on the postjudgment motion to alter, amend, or vacate and to appoint Shaw Gaines as the closing attorney. Lee and Boles specifically claimed that the February 20, 2026, closing would need to be extended because the issue raised in their postjudgment motion directly related to the purchase price to be paid at closing.

On March 16, 2026, following a hearing, the trial court entered an order denying the postjudgment motion filed by Lee and Boles; directing that a closing take place no later than 21 days from the date of its order, pursuant to the terms forth in the January 21, 2026, judgment; and appointing Shaw Gaines to conduct the closing. This appeal followed.

II. Standard of Review

A decision to grant or to deny specific performance "rests largely in the discretion of the trial judge." Stringfellow Materials, Inc. v. Lee, 438 So. 2d 1387, 1390 (Ala. 1983). When, as here, the trial court's decision to grant specific performance is based on ore tenus evidence, its decision

will not be overturned on appeal unless it is unsupported by the evidence or plainly and palpably wrong. Id.

III. Discussion

A. Specific Performance of the Option to Purchase

Lee and Boles argue that the trial court erred in ordering specific performance of the option to purchase because, they say, Vest breached that option by providing a personal check, rather than certified funds, at closing. Lee and Boles further assert that the trial court's decision to order specific performance of the option to purchase was based on its conclusion that Vest's personal check delivered on June 5, 2024, constituted a "timely and legally cognizable payment" for the property. However, that portrayal of the trial court's rationale for ordering specific performance appears inaccurate. According to the trial transcript, the trial court ordered specific performance of the option to purchase based on its finding that the closing would have occurred as scheduled but for the conduct of Henderson and Lee and Boles:

"All right. And just a comment, I'm not sure how in the world this thing got so sideways. Perhaps if [Henderson] would have done, in the Court's opinion, a much better job dealing with the parties and/or in the alternative the Court is extremely confident [that] had he not given [the] check to [Lee], whether it was reasonable to demand or not demand,

this transaction would have closed in June rather than result[ing] in an eviction notice. I'm that confident in that."

During the hearing on the postjudgment motion to alter, amend, or vacate, the trial court reiterated on the record that, based on the testimony presented, "there was nothing unreasonable that [Vest] did in light of the facts and circumstances that were presented to her." Thus, in the trial court's opinion, it was not the presentation of a personal check that derailed the closing; rather, it found, it was what Henderson and Lee and Boles did after receiving it. As previously indicated, the closing was extended until June 10, 2024, so that Vest could obtain the certified funds needed to close the transaction upon returning from her trip abroad. That was, however, dependent upon whether Henderson cashed the personal check. Moreover, although Lee acknowledged that Henderson owed a duty to both sides to the real-estate transaction and claimed that a personal check could not be used to close the transaction, he, nonetheless, went to Henderson's office and demanded that Henderson indorse the check made payable to his law firm over to him. Not only did Henderson indorse the check to Lee, he also turned over the entire closing file to Lee and ceased all communication with Vest. Lee, in turn, deposited the check into Boles's account. Those events, which

were performed without Vest's knowledge and/or consent, directly contributed to Vest's failure to wire the required funds on June 10, 2024. As Vest testified, she did not feel comfortable wiring additional funds when she did not know the whereabouts of her personal check. Finally, Lee acknowledged that, under the circumstances presented, it was not unreasonable for Vest to have wanted to know the disposition of the check. Based on the evidence adduced at trial, the trial court's finding that the closing would have occurred but for the conduct of Henderson and Lee and Boles is well supported by the evidence. Stringfellow, supra. Thus, the trial court did not err in rejecting Lee and Boles's claim for ejectment and ordering specific performance of the option to purchase.

B. Distribution of Escrow Money

Lee and Boles also challenge the trial court's judgment ordering that the \$40,000 held in escrow be credited against the balance of the purchase price to be paid at closing. In its judgment, the trial court indicated that

"[t]he sum of \$40,000 is presently being held in an escrow account, which represents deposits made by [Vest] in monthly payments of \$2,000 per month from June of 2024 through January of 2026, in order to maintain the status quo and to protect the parties' competing interests in the property, pending the final ruling on the issues. At closing, [Vest] shall

remit to [Lee and Boles] the sum of \$40,000 and all additional amounts deposited in escrow prior to closing. However, the sum of \$40,000 and any additional amounts deposited in escrow prior to closing, shall be credited against the balance which would have otherwise been due at closing in the sum of \$228,246.20, due to [Lee and Boles's] failure to convey title to the subject real estate and to execute a bill of sale on the [property] in June of 2024."

Lee and Boles assert that, when the lease expired on June 5, 2024, Vest became a holdover tenant and, thus, was required to pay month-to-month rent of \$2,250, plus late fees. Relying on Hiett v. Brady, 371 So. 3d 848 (Ala. 2022), Lee and Boles further claim that, because title to the property never passed to Vest, she was not entitled to any credit for her use and possession of the property after the expiration of the original lease term. Stated differently, Lee and Boles contend that the purchase price for the property should not be offset by \$40,000 or any other amount of partial rent. Lee and Boles's reliance on Hiett is misplaced. In Hiett, the lease term between the landlord and the tenants ended on August 31, 2016. Before that date, the tenants exercised their option to purchase the landlord's property, with a closing date scheduled for October 30, 2016. The following month, the tenants informed the landlord that they were having trouble obtaining financing. In response, the landlord sent the tenants an email extending the option to purchase, with a closing

date of April 30, 2017. That option required that the tenants pay holdover rent for each month that they remained in possession of the property. The tenants claimed that they accepted the landlord's option to purchase and began paying the monthly holdover rent. In April 2017, the tenants informed the landlord that they had obtained financing and were ready to close on the property. However, the landlord refused to convey title because, she claimed, the tenants had never responded to her email extending the option to purchase and that the option had therefore expired. Believing that the landlord had breached the lease agreement by failing to convey title to the property, the tenants unilaterally stopped paying the agreed-upon holdover rent and continued to occupy the property. The jury returned a verdict in favor the landlord and against the tenants on the landlord's breach-of-contract claim and assessed damages. On appeal, the tenants argued that the judgment based on the jury's verdict in favor of the landlord on her breach-of-contract claim was due to be reversed because, they said, once they timely exercised their option to purchase the property and indicated that they were ready, willing, and able to close on the agreed-upon date, they were vested with "equitable title" to the property and, therefore, relieved of any further

obligation to pay rent under the lease agreement. See, e.g., Kennedy v. Herring, 270 Ala. 73, 75, 116 So. 2d 596, 598 (1959) ("An option to purchase real estate is, by its nature, unilateral when entered into. However, when the option is exercised in accordance with its terms mutuality of obligation is created and the option becomes a binding contract of purchase and sale enforceable in equity by specific performance."). This Court disagreed, explaining:

"[W]hile the relationship between a landlord and a tenant may be altered when an option to purchase is exercised, the obligation to remit payment for the use of the property continues until title to the property is vested and the tenant becomes the owner thereof. Although a court may apportion damages against a landlord for failure to convey title by offsetting any loss of rental payments, the landlord cannot be stripped of his or her right to earn rental income as a self-help remedy when the tenant feels that the landlord has failed to perform under the lease or has otherwise allegedly breached the lease."

Hiett, 371 So. 3d at 854.

Thus, our holding in Hiett stemmed from a factual scenario in which the tenants had unilaterally stopped paying agreed-upon monthly holdover rent while continuing to occupy the property, claiming "equitable title" as justification for their self-help remedy. Id. at 853. This Court rejected the tenants' notion that they could strip the landlord of

rental income on their own whim without judicial authorization merely because the tenants had exercised their option to purchase the property. The scenario presented here is different. As the trial court properly noted, Vest was not a holdover tenant. She timely exercised her option to purchase the property, paid the nonrefundable option consideration of \$30,000, and agreed to close the transaction on June 5, 2024, the last day of the lease term -- extended to June 10, 2024. More importantly, unlike the tenants in Hiett, who stopped paying the agreed-upon monthly holdover rent and continued to occupy the property, Vest continued to make monthly rental payments for her use and possession of the property, pursuant to the trial court's escrow order. As previously indicated, at the request of Lee and Boles, the trial court ordered Vest to remit \$2,000 per month in an escrow account pending the outcome of the litigation. Vest paid that amount from June 2024 until January 2026. The trial court expressly stated in its escrow order that, upon conclusion of the issues relating to the property, the court would determine who, if anyone, was entitled to the "escrow monies and the appropriate amounts." At the conclusion of the litigation, the trial court found that the closing would have occurred in June 2024 but for the conduct of

Henderson and Lee and Boles. Thus, the trial court did not err in directing that the \$40,000 held in escrow be deducted from the balance of the purchase price due at closing. See American Fam. Care, Inc. v. Irwin, 571 So. 2d 1053, 1061 (Ala. 1990) ("The trial court is authorized in equity proceedings to mold its judgment so as to adjust the equities of all the parties and to meet the obvious necessities of each situation."), and Alabama Power Co. v. Drummond, 559 So. 2d 158, 162 (Ala. 1990) (noting that the trial court has "broad power to fashion judgments"). Finally, we recognize that the latest closing date set by the trial court in its March 16, 2026, order has passed. Thus, the trial court is instructed to set a new closing date and, if the trial court deems it appropriate, to adjust the calculations set forth in the January 21, 2026, judgment accordingly.

IV. Conclusion

We affirm the judgment entered by the trial court in favor of Vest on her specific-performance claim and against Lee and Boles on their ejectment claim. However, we instruct the trial court to set a new closing date and, if the trial court deems it appropriate, to adjust the calculations set forth in the January 21, 2026, judgment accordingly.

AFFIRMED WITH INSTRUCTIONS.

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Stewart, C.J., and Wise, Cook, and Parker, JJ., concur.