

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0950-08T1

CAPITAL FINANCE COMPANY OF
DELAWARE VALLEY, INC.,

Plaintiff-Respondent,

v.

MAUREEN BELL ASTERBADI,

Defendant-Appellant,

and

PNC BANK and BOTOOL M. HILNI,

Defendants.

Submitted July 7, 2009 - Decided September 30, 2009

Before Judges Fisher and Grall.

On appeal from Superior Court of New
Jersey, Chancery Division, Cape May
County, Docket No. C-100-05.

Holston, MacDonald, Uzdavinis, Eastlack,
Ziegler & Lodge, attorneys for appellant
(William F. Ziegler, on the brief).

Dembo & Saldutti, attorneys for respondent
(Anne S. Cantwell, on the brief).

PER CURIAM

This appeal arises from an ongoing dispute between plaintiff Capital Finance Company of Delaware Valley, Inc. and defendant Maureen Bell Asterbadi. The parties hold title to a residential property and the single family residence thereon as tenants in common. Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 389 N.J. Super. 219 (Ch. Div. 2006), aff'd and rev'd on other grounds, 398 N.J. Super. 299, 309 (App. Div. 2008), certif. denied, 195 N.J. 521 (2008), appeal after remand, No. A-2503-07 (App. Div. Dec. 4, 2008).

Because the issue raised by defendant on appeal from an order entered on our first remand is narrow, it is not necessary to restate the general facts and procedural history, which are detailed in the published decision of the Chancery Division and the prior decisions of this court. It suffices to state that on the first appeal arising from this dispute, the panel determined that defendant, who had retained possession of the property and excluded plaintiff-cotenant, had effectively ousted plaintiff. Capital Fin. Co., supra, 398 N.J. Super. at 312. For that reason, the panel concluded that while defendant remains in exclusive possession she is accountable to plaintiff "for one-half of the imputed rental value of the Property, subject, however, to an offset for any payments made to preserve the

Property, including payments made on both mortgages, as well as taxes, insurance, and repairs." Id. at 312-13. The panel remanded in order to permit a new determination of the parties' respective obligations in conformity with its decision. Id. at 313.

On remand, the trial judge issued a memorandum of decision dated August 8, 2008 addressing the parties' responsibilities. Reasoning that plaintiff "is entitled to partial relief in the form of the establishment of a process to review, periodically, the determination of the proper imputed rental value associated with [d]efendant's exclusive occupancy of the premises," the judge directed the parties "to confer upon the request of either (in any case not more frequently than once every 24 months), in a timely and responsible manner and, if possible, to agree from time to time on the establishment of an appropriate imputed rental value."

Without further explanation, the judge determined that "[i]n the event that the parties cannot agree upon an appropriate imputed rental value, the issue shall be submitted to binding arbitration before an arbitrator mutually satisfactory to the parties, with the costs thereof to be shared equally by the parties." In addition, the judge explained that the parties were also required to submit any disputes they could

not resolve over credits for principal and interest or other expenses to binding arbitration, with the costs of arbitrating those credit disputes to be borne by the party whose position the arbitrator did not accept. An order incorporating the judge's determinations compelling binding arbitration was entered on September 19, 2008.

On appeal from that order, defendant contends that the judge did not have the authority to compel the parties, who had no agreement to arbitrate any dispute, to submit their disputes to binding arbitration. We agree.

The law is well-settled. A court may not enter an order compelling arbitration sua sponte or on the request of one party absent a statute or an agreement of the parties compelling resolution of the dispute in that manner. Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001); Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282, (1993); Angrisani v. Financial Technology Ventures, L.P., 402 N.J. Super. 138, 148-49 (App. Div. 2008) (and cases cited therein); Paul v. Timco, Inc., 356 N.J. Super. 180, 185 (App. Div. 2002). Thus, the provisions of the order compelling arbitration exceed the authority of the court, and, for that reason must be reversed. Unresolved disputes between the

cotenants may be presented to the Chancery Division by appropriate application of either party.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION