CAROL ANN NASH ET AL. *v.* BETSEY N. STEVENS ET AL.
(AC 33958)

DiPentima, C. J., and Alvord and Lavery, Js.

Argued October 10, 2012—officially released July 9, 2013

(Appeal from Superior Court, judicial district of Middlesex, Morgan, J.)

Sheila J. Hall, with whom, on the brief, was *Lawrence C. Sgrignari*, for the appellants (plaintiffs).

Timothy W. Crowley, for the appellee (named defendant).

Philip C. Pires, with whom was *Barbara M. Schellenberg*, for the appellee (defendant Evelene N. Rabou).

Opinion

DiPENTIMA, C. J. The plaintiff, Carol Ann Nash, appeals from the summary judgment rendered in favor of the defendants, Betsey N. Stevens and Evelene N. Rabou.[1] On appeal, the plaintiff claims that the trial court improperly granted the defendants' motions for summary judgment as a result of (1) its misapplication of General Statutes § 47-33a and (2) its failure to consider the intent of the parties in its analysis of § 47-33a. We are not persuaded, and, therefore, affirm the judgment of the trial court.

The following undisputed facts were set forth in the court's memorandum of decision and are relevant to this appeal. On May 16, 1977, Chary D. Nash executed a warranty deed conveying a parcel of property to her son, H. Franklin Nash, Jr. This parcel has been described by the parties and the trial court as the "first piece." In that same transaction, Chary D. Nash also conveyed an option to purchase parcels of property referred to as the "second piece" and "third piece" for $1.[2] On the same day, H. Franklin Nash, Jr., executed a warranty deed conveying the first piece, and the option to purchase the second piece and third piece, to himself and his wife, the plaintiff. These transactions occurred at the office of an attorney who conducted the real estate closing. On September 22, 2009, H. Franklin Nash, Jr., and the plaintiff executed a quitclaim deed conveying their ownership of the first piece and the option to purchase the second piece and third piece to the plaintiff as trustee of the Carol Ann T. Nash revocable trust.

On November 22, 2009, Chary D. Nash died and left her estate to her children, H. Franklin Nash, Jr., and the defendants, all of whom were appointed as coexecutors of her estate. On February 6, 2010, H. Franklin Nash, Jr., died and left his entire estate to the plaintiff, who was appointed executrix of his estate. On or about April 27, 2010, the plaintiff informed the defendants of her intention to exercise the option to purchase the second piece and third piece. The defendants responded that they would not honor the attempt to exercise the option to purchase. The plaintiff submitted a notice of claim for specific performance against the estate of Chary D. Nash; that was denied.

On July 15, 2010, the plaintiff commenced this action with a complaint seeking specific performance of the option contract. In March, 2011, the defendants separately filed motions for summary judgment.[3] The defendants argued that they were entitled to judgment as a matter of law pursuant to § 47-33a. On April 26, 2011, the plaintiff filed an opposition to the motions for summary judgment. The plaintiff attached a memorandum of law and her affidavit. Rabou filed a reply to the plaintiff's opposition.

On August 9 2011, the plaintiff filed a motion for permission to file a supplemental memorandum of law. The plaintiff stated that, during discovery, she had obtained a document that was relevant to the matters pending before the court: "Specifically, the [p]laintiff was provided a handwritten document which bears the signature of Chary D. Nash, the grantor of the option which is the subject of the complaint, which is dated the same day as the deed granting the option to her son, H. Franklin Nash, Jr., and which related directly to the date of the performance of the option." The plaintiff further claimed that the court should consider this handwritten note in order to fully and fairly decide the motions for summary judgment. Rabou objected, arguing that the option contract was unambiguous and, therefore, it was not necessary for the court to consider the plaintiff's claims regarding intent. She further contended that the exhibit was inadmissible because it was not authenticated. The court denied the plaintiff's motion for permission to file a supplemental memorandum of law and sustained Rabou's objection. It stated: "The exhibit is a handwritten note purportedly bearing the signature of Chary D. Nash, who is now deceased. The plaintiff has not submitted to the court any documentation attesting to the authenticity of the exhibit. Absent admissible supporting documentation, the court cannot consider the exhibit."

On October 4, 2011, the court issued a memorandum of decision granting the defendants' motions for summary judgment. It stated that there was no dispute that the option to purchase the second piece and third piece, executed on May 16, 1977, did not provide a date for the option's performance, nor were there any extensions of the option. Applying the language of § 47-33a (a), the court determined that the option to purchase expired on November 16, 1978, eighteen months after the execution of the option contract. The court rejected the plaintiff's argument that the intent of the parties should be considered, stating that such an approach was not permitted by § 47-33a (a). The court ruled that even if it were free to consider the intent of the parties, there was no ambiguity in the language of the option to purchase the second piece and third piece. Finally, the court distinguished, both factually and legally, the two cases cited by the plaintiff, *Texaco Refining & Marketing, Inc.* v. *Samowitz*, 213 Conn. 676, 682–83, 570 A.2d 170 (1990) (*Texaco*), and *Battalino* v. *Van Patten*, 100 Conn. App. 155, 917 A.2d 595, cert. denied, 282 Conn. 924, 925 A.2d 1102 (2007). The court concluded: "More than thirty-three years have passed since the date the contract to purchase the '[s]econd [p]iece' and the '[t]hird [p]iece' was granted. The court finds that the undisputed material facts establish that the plaintiff did not commence this action within the required statutory time period. This action for specific performance is therefore time barred by . . . § 47-33a." This appeal

followed.

We begin our analysis by setting forth our standard of review and certain legal principles regarding summary judgment. "Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact decided by a [fact finder] . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Citation omitted; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 534–35, 51 A.3d 367 (2012); see also Practice Book § 17-49. "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant [the defendants'] motion for summary judgment is plenary. . . . Issues of statutory construction . . . are also matters of law subject to our plenary review." (Internal quotation marks omitted.) *Plato Associates, LLC* v. *Environmental Compliance Services, Inc.*, 298 Conn. 852, 862, 9 A.3d 698 (2010). Guided by these principles, we turn to the issues raised by the plaintiff's appeal.

This appeal requires the resolution of two separate, yet related, matters. The first is a determination of the temporal limitations for commencing an action for specific performance as set forth in § 47-33a.[4] Second, we must decide, under the facts and circumstances of this case, whether the trial court properly refused to consider evidence of the intent of Chary D. Nash and H. Franklin Nash, Jr., that was not included in the deed and option contract as recorded on the land records.

I

The appropriate starting point for our analysis is the relevant language of § 47-33a (a), as this statute is at the core of the appeal and provides: "No interest in real property existing under an executory agreement for the sale of real property or for the sale of an interest in real property *or under an option to purchase real property shall survive longer than one year after the date provided in the agreement for the performance of it or, if the date is not so provided, longer than eighteen months after the date on which the agreement was executed*, unless the interest is extended as provided herein or unless action is commenced within the period

to enforce the agreement and notice of lis pendens is filed as directed by section 52-325." (Emphasis added.)

We now set forth the relevant language from the May 16, 1977 deed. The first part of the deed recorded on the land records[5] detailed the transaction between Chary D. Nash and H. Franklin Nash, Jr., for the sale of the first piece. The deed then established the option contract: "Together with the option to purchase for One Dollar ($1.00) the following described pieces or parcels of land herein called Second Piece and Third Piece . . . ."[6] No date was provided for the performance of the option contract, and the option contract was not extended pursuant to § 47-33a (b).

This court has stated that "[g]enerally, a claim for specific performance of a contract for the sale of realty must be brought within one year of the specified date of closing or no more than eighteen months from the date of the contract's execution." *McNeil* v. *Riccio*, 45 Conn. App. 466, 471, 696 A.2d 1050 (1997). In this case, the contract was executed on May 16, 1977, and it does not contain a specific time for performance. Accordingly, we agree with the trial court that, pursuant to § 47-33a (a), the plaintiff needed to commence the action for specific performance by November 16, 1978. In support of our conclusion, we note that the statutory language "eighteen months after the date on which the *agreement was executed*"; (emphasis added) General Statutes § 47-33a (a); refers to when the executory contract was executed and not to when the option was exercised. In this case, the eighteen month time period commenced on May 16, 1977, when Chary D. Nash and H. Franklin Nash, Jr., executed the contract for the purchase of the first piece and the option contract with respect to the second piece and third piece. The plaintiff's attempt in 2010 to exercise the option contract, therefore, was untimely pursuant to § 47-33a.

The plaintiff argues that *Texaco Refining & Marketing, Inc.* v. *Samowitz*, supra, 213 Conn. 676, and *Battalino* v. *Van Patten*, supra, 100 Conn. App. 155, support her claim that the eighteen month time period did not begin until she attempted to exercise the option contract in 2010. The trial court determined that these cases were inapposite. We agree that these cases are factually and legally distinguishable.

In *Texaco*, the named plaintiff and the defendants had entered into a long-term lease relationship. *Texaco Refining & Marketing, Inc.* v. *Samowitz*, supra, 213 Conn. 677–78. Under the lease agreement, the plaintiff had the exclusive opportunity to purchase the premises for $125,000 after the fourteenth year of the lease's initial term. Id., 678. On August 14, 1987, the plaintiff provided notice of its exercise of the option to purchase. Id. The defendants refused to proceed with transfer of the property, and the plaintiff commenced an action for specific performance on December 30, 1987. Id.,

678–79. The trial court found in favor of the plaintiff and rejected the defendants' statutory and common-law defenses. Id., 679.

On appeal, the defendants argued that the eighteen month time period embodied in § 47-33a (a), which they construed as a statute of limitations, commenced either eighteen months after the lease had been executed or on the fourteen year anniversary of its execution. Id., 680. Our Supreme Court rejected the defendants' broad interpretation of § 47-33a (a) in the context of an option to purchase real property in a commercial lease. Id., 681–82. Instead, it concluded that a more reasonable interpretation of the legislature's intent was that it applied "more narrowly as a constraint only upon the performance of the option once the lessee has exercised its right to convert the option into a binding executory agreement of the purchase . . . ." Id., 682. Accordingly, the court held that the time constraints set forth in § 47-33a (a) did not apply until the plaintiff exercised the option to purchase contained in the lease between the parties. Id., 683.

This court applied the holding of *Texaco* in *Battalino* v. *Van Patten*, supra, 100 Conn. App. 155. In *Battalino*, the parties entered into a lease and option to purchase agreement for a parcel of unimproved land located between their homes. Id., 157. The lease commenced on May 1, 1989, ran for a period of four years and could be renewed for an additional four year term and then a two year term. Id. The option to purchase stated that after the initial lease period, the plaintiff had the right to purchase the property and that he would be eligible to receive certain monetary credits. Id., 157–58. In February, 2004, the parties extended the lease until March 31, 2004. Id., 158. At that time, the defendant indicated that the plaintiff retained the option to purchase. Id. In March, 2004, the plaintiff exercised his option to purchase, and the defendant refused to sell him the property. Id., 159. The plaintiff commenced an action for specific performance in June, 2004. Id. The trial court determined that the plaintiff validly had exercised the option to purchase and ordered the defendant to convey the property to him. Id.

On appeal, the defendant argued that § 47-33a (a) precluded the plaintiff's claim for specific performance. Id., 160. The defendant contended that the right to specific performance terminated one year after the final lease renewal period had ended. Id., 161. Citing *Texaco*, we stated: "The statute does not apply to an option contained in a long-term lease until the option has been exercised." Id. We rejected the defendant's attempt to distinguish *Texaco* and determined that § 47-33a (a) did not bar the plaintiff's action for specific performance. Id., 162.

The present case, however, is distinguishable from both *Texaco* and *Battalino*. Those cases involved long-

term leases. The facts here involve a 1977 contract between Chary Nash and H. Franklin Nash, Jr., for the sale of one parcel of land and an option to purchase two additional parcels. Moreover, in *Texaco* and *Battalino*, the contract between the parties contained a "waiting" period before the option to purchase could be exercised. In *Texaco*, the option to purchase did not ripen until fourteen years after the lease was executed. *Texaco Refining & Marketing, Inc.* v. *Samowitz*, supra, 213 Conn. 678. Additionally, the option to purchase remained in effect as long as the lease did. Id. In *Battalino*, the option to purchase was not effective until four years after the commencement of the lease. *Battalino* v. *Van Patten*, supra, 100 Conn. App. 157. Thus, in those cases, the explicit terms of the leases prevented the time periods of § 47-33a (a) from running at the time the lease was executed. Additionally, both options remained valid so long as the lease was in effect. Thus, the only starting point or trigger for § 47-33a (a) was when the option to purchase was exercised. Such considerations are absent in the present case.

We agree, therefore, with the trial court that *Texaco* and *Battalino* are inapposite to the present case. Instead, the general rule of *McNeil* v. *Riccio*, supra, 45 Conn. App. 471, applies. The drafters of the option contract could have included a specific future event to trigger the time period of § 47-33a (a). See *Funaro* v. *Baisley*, 57 Conn. App. 636, 638–39, 749 A.2d 1205 (time period for performance of option to purchase was triggered by death of grantor), cert. denied, 254 Conn. 902, 755 A.2d 218 (2000). The option in the present case lacks such a provision. Therefore, we conclude that the court properly determined that, under the facts and circumstances of this case, the time limitation of § 47-33a (a) was triggered by the execution of the contract in May, 1977, and because the option to purchase contained no date for performance, the plaintiff had eighteen months to commence an action for specific performance.

II

We now turn to the issue of whether the trial court properly refused to consider evidence of the intent of Chary D. Nash and H. Franklin Nash, Jr., that was not included in the warranty deed and option contract as recorded on the land records. The plaintiff attached an affidavit to her opposition to the defendants' motions for summary judgment. That affidavit contained the following: "The reason that the parcels identified as the second piece and the third piece were not conveyed outright when the first piece was conveyed in 1977 was to allow Chary D. Nash to continue to receive favorable tax status for those parcels . . . . My late husband, H. Franklin Nash, Jr., and I acquired the parcel identified as the first piece and the option to acquire the second piece and third piece upon the death of Chary D. Nash,

with the understanding that said parcels would be conveyed to us upon the death of Chary D. Nash pursuant to the deed that she signed in 1977. It was always our understanding that my late husband and I would own the parcels subject to the option upon Chary D. Nash's death." The plaintiff subsequently submitted a supplemental affidavit that included the following: "I have personal knowledge of all facts stated in the affidavit dated April 26, 2011 . . . . My personal knowledge is from statements made by Chary D. Nash and her husband, Harold Nash to both me and my late husband, H. Franklin Nash Jr. The statements were made at the time of the real estate closing at the office of the Attorney who conducted the closing. . . . At the time of the closing, both Chary D. Nash and Harold Nash told my late husband and me that they did not want us taking any action on owning the land until they had both passed away, and that this was due to tax reasons."

In August, 2011, during the pendency of the motions for summary judgment, the plaintiff moved for permission to file a supplemental memorandum of law, stating that "she [had] obtained through discovery a document that is relevant to the issues pending before the [c]ourt, which document should be considered by the [c]ourt . . . ." Attached as an exhibit to the plaintiff's proposed supplemental memorandum of law was "a handwritten document which bears the signature of Chary D. Nash, the grantor of the option which is the subject of the complaint, which is dated the same day as the deed granting the option to her son, H. Franklin Nash, Jr., and which relates directly to the date of the performance of the option." This document provides in relevant part: "Also Franklin [H. Nash, Jr.] has option to buy for $1.00 a remaining 46½ acres if house is sold or when both Harold & Chary [D. Nash] are dead."

The court denied the plaintiff's motion for permission to file a supplemental memorandum of law in opposition to the defendants' motions for summary judgment. Specifically, it stated: "The exhibit is a handwritten note purportedly bearing the signature of Chary D. Nash, who is now deceased. The plaintiff has not submitted to the court any documentation attesting to the authenticity of the exhibit. Absent admissible supporting documentation, the court cannot consider the exhibit."

The court also rejected the plaintiff's argument that it should consider the intent of the parties at the time that the option to purchase the second piece and third piece was granted. It noted that the statutory language of § 47-33a did not permit the court to consider the intent of the parties where the agreement is silent as to the date of performance of the option. The court further concluded that even if the parties' intent were an issue, the option to purchase was clear and unambiguous and that a determination of the intent would be made by a fair and reasonable construction of the writ-

ten words of the contract executed on May 16, 1977.

On appeal, the plaintiff argues that due to the absence of the date for performance of the option, the court should have considered the intent of the parties. She also claims that the court should have examined the signature of Chary D. Nash on the handwritten note and compared it with her signature on the deed to establish the note's authenticity. We are not persuaded.

We begin with the plaintiff's claim that the court should have considered the handwritten note that purportedly bore the signature of Chary D. Nash. Procedurally, this matter was presented to the trial court by way of a motion for permission to file a supplemental memorandum of law in opposition to the defendants' motions for summary judgment. The handwritten note at issue was attached to the plaintiff's proposed supplemental memorandum of law filed with her motion for permission to file the supplemental memorandum of law. The court concluded that in the absence of admissible supporting documentation attesting to the authenticity of the handwritten note, it could not consider it, and therefore denied the plaintiff's motion.

"[A] party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . Mere assertions of fact . . . are insufficient to establish the existence of [an issue of] material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment]." (Internal quotation marks omitted.) *Taylor* v. *Barberino*, 136 Conn. App. 283, 287–88, 44 A.3d 875 (2012). "[W]e note that [o]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment. . . . Practice Book § [17-45], although containing the phrase *including but not limited to*, contemplates that supporting documents to a motion for summary judgment be made under oath or be otherwise reliable. . . . [The] rules would be meaningless if they could be circumvented by filing [unauthenticated documents] in support of or in opposition to summary judgment. . . . Therefore, before a document may be considered by the court [in connection with] a motion for summary judgment, there must be a preliminary showing of [the document's] genuineness, i.e., that the proffered item of evidence is what its proponent claims it to be. The requirement of authentication applies to all types of evidence, including writings . . . . Conn. Code Evid. § 9-1 (a), commentary." (Emphasis in original; internal quotation marks omitted.) *Gianetti* v. *Anthem Blue Cross & Blue Shield of Connecticut*, 111 Conn. App. 68, 72–73, 957 A.2d 541 (2008), cert. denied, 290 Conn. 915, 965 A.2d 553 (2009); see also *Great Country Bank* v. *Pastore*, 241 Conn. 423, 436, 696 A.2d 1254 (1997). Last, we are mindful that the

decision to reject the handwritten note in this case presents an evidentiary issue, subject to the abuse of discretion standard of review by this court. See *Bruno* v. *Geller*, 136 Conn. App. 707, 716, 46 A.3d 974, cert. denied, 306 Conn. 905, 52 A.3d 732 (2012).

The plaintiff, citing *New Milford Savings Bank* v. *Jajer*, Superior Court, judicial district of Litchfield, Docket No. CV-92-0061073 (August 30, 2005), argues that the trial court could have compared the signature on the handwritten note with Chary D. Nash's signature on the deed to determine the handwritten note's authenticity. The defendants counter that (1) this argument is raised for the first time on appeal, (2) the plaintiff failed to seek an articulation as to whether the court could have made a finding regarding the signatures on the deed and handwritten note, (3) the plaintiff failed to provide authority that the court may authenticate a signature on a document in the context of a motion for summary judgment, and (4) the plaintiff failed to supply any foundational information such as who wrote the handwritten note, the note's purpose or what property is referenced. We conclude that the court did not abuse its discretion in denying the plaintiff's motion for permission to file a supplemental memorandum of law in opposition to the defendants' motions for summary judgment.

We note that the plaintiff never specifically requested the trial court to compare the signature of Chary D. Nash from the deed with the signature on the handwritten note. Although the court *may* compare signatures to determine authorship, the plaintiff has not cited any case or treatise for the proposition that it *must* do so. See, e.g., C. Tait & E. Prescott, Connecticut Evidence (4th Ed. 2008) § 9.6.3, pp. 628–29. As observed by the trial court, the plaintiff failed to produce a certified copy or an affidavit by a person with personal knowledge that the handwritten note was a true and accurate representation of what the plaintiff claimed it to be. Although there may have been other methods to establish authenticity of the note, we note that it was the plaintiff's burden to do so. The plaintiff elected to seek to file a supplemental memorandum of law in opposition to the motions for summary judgment. The plaintiff's motion for permission to file the supplemental memorandum of law stated that the note bore the signature of Chary D. Nash and was signed on the same date on which the warranty deed was executed. Notably, she failed to request the court to compare the signature on the note with the one on the warranty deed, provide an affidavit attesting to its authenticity, or in any way attempt to make a preliminary showing of its genuineness to the court. As a result, the court concluded that the plaintiff had failed to establish the authenticity of the handwritten note. This conclusion was not an abuse of the court's discretion. See, e.g., *Wilderman* v. *Powers*, 110 Conn. App. 819, 828, 956 A.2d 613 (2008).

Finally, we address the plaintiff's claim that the court should have considered the intent of the parties. The plaintiff argues that the option contract was ambiguous, due to the absence of a date for performance, and that therefore the court was free to consider evidence outside of the four corners of the contract. The defendants counter that the court correctly determined that the parties' intent was clearly and unambiguously expressed in the option contract and that the court therefore properly limited its analysis to the language contained in the option contract. They further contend that the court properly concluded that nothing in § 47-33a (a) permitted the use of extrinsic evidence to determine the intent of the contracting parties.

"[W]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [T]he interpretation and construction of a written contract present only questions of law, within the province of the court . . . so long as the contract is unambiguous and the intent of the parties can be determined from the agreement's face. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion." (Citations omitted; internal quotation marks omitted.) *Christian* v. *Gouldin*, 72 Conn. App. 14, 20, 804 A.2d 865 (2002). "[T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) *Niehaus* v. *Cowles Business Media, Inc.*, 263 Conn. 178, 188–89, 819 A.2d 765 (2003); see also *Milford Paintball, LLC* v. *Wampus Milford Associates, LLC*, 137 Conn. App. 842, 852 n.8, 49 A.3d 1072 (2012). Put another way, "[i]n Connecticut, while the interpretation of a contract is generally a question of fact, when the language of a contract is capable of only one interpretation the court need not look outside the four corners of the contract or make any findings of fact and, therefore, the interpretation of the contract involves only questions of law." *Hedberg* v. *Pantepec International, Inc.*, 35 Conn. App. 19, 28, 645 A.2d 543, cert. granted on other grounds, 231 Conn. 927, 648 A.2d 879 (1994) (appeal withdrawn February 21, 1995); see also *Poole* v. *Waterbury*, 266 Conn. 68, 88–89, 831 A.2d 211 (2003).

We conclude that the option contract contained definitive language as to the parties' commitments.[7] The fact that Chary D. Nash and H. Franklin Nash, Jr., did not include a time frame for performance of the option to purchase the second piece and third piece does not result in an ambiguous contract requiring extrinsic evidence to determine intent. The definite and precise meaning of the language of the option contract, about which there is no reasonable basis for a difference of opinion, was that the parties did not include a date for performance. See *Paul Revere Life Ins. Co.* v. *Pastena*, 52 Conn. App. 318, 322, 725 A.2d 996, cert. denied, 248 Conn. 917, 734 A.2d 567 (1999). The trial court, therefore, correctly limited its analysis to the language contained in the option contract when it considered the application of § 47-33a (a).

In closing, we acknowledge the nature of claims for specific performance. "[A]n action for specific performance of a contract to sell real estate is an equitable action and is to be determined by equitable principles. . . . The granting of specific performance of a contract to sell land is a remedy which rests in the broad discretion of the trial court depending on all of the facts and circumstances when viewed in light of the settled principles of equity. . . . If, under the circumstances, specific performance would be inequitable, the relief to be accorded rests in the trial court's sound discretion, to be exercised in light of the equities of the case and using reason and sound judgment." (Citations omitted; internal quotation marks omitted.) *Webster Trust* v. *Roly*, 261 Conn. 278, 284, 802 A.2d 795 (2002). Our legislature, however, has enacted § 47-33a. This statute acts as a temporal limitation on when a party may seek specific performance. General Statutes § 47-33a (c). In deciding these cases, we must consider both the common-law rules regarding the equitable nature of specific performance and the text of the applicable statutes from the legislature.

Finally, we agree with following statement found in the trial court's well reasoned memorandum of decision: "[T]he court notes that the legislative history of General Statutes § 47-33a reveals that the statute was designed to prevent unexercised interests in real property from remaining on title indefinitely and to render title to property encumbered by such interests marketable within a reasonable period of time." See 8 H.R. Proc., Pt. 10, 1959 Sess., pp. 4109–10 and 4112–13; Public Acts 1959, No. 59-550; Conn. Joint Standing Committee Hearings, Judiciary and Governmental Functions, Pt. 5, 1959 Sess., pp. 1966–69.[8]

The judgment is affirmed.

In this opinion ALVORD, J., concurred.

[1] The plaintiff commenced this action individually and in her capacity as the executrix of the estate of H. Franklin Nash, Jr., and as trustee of the Carol Ann T. Nash revocable trust. We refer to Carol Ann Nash in both

capacities as the plaintiff. The plaintiff brought the action against the defendants as individuals and as coexecutors of the estate of Chary D. Nash.

[2] "An option is a continuing offer to sell, irrevocable until the expiration of the time period fixed by agreement of the parties, which creates in the option holder the power to form a binding contract by accepting the offer." *Smith* v. *Hevro Realty Corp.*, 199 Conn. 330, 336, 507 A.2d 980 (1986); see also *Cutter Development Corp.* v. *Peluso*, 212 Conn. 107, 112, 561 A.2d 926 (1989) (distinguishing feature of option contract is that there is no binding obligation on option holder to complete purchase); *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 815–16, 3 A.3d 992 (2010) (option contract merely gives right to purchase within limited time without imposing any obligation to purchase).

[3] Rabou filed her motion for summary judgment on March 2, 2011, and Stevens filed her motion two days later. Stevens, in her motion, expressly adopted the motion, memorandum of law and exhibits filed by Rabou.

[4] The only remedy sought by the plaintiff is specific performance. We note that the time limitations set forth in § 47-33a apply only to actions for specific performance. Section 47-33a (c) provides: "Nothing in this section shall be construed to limit or deny any legal or equitable rights a party may have under the agreement except the right to have the agreement specifically enforced."

[5] "Our legislature has expressed a clear preference for recording real property conveyances." *Trumbull* v. *Palmer*, 104 Conn. App. 498, 509, 934 A.2d 323 (2007), cert. denied, 286 Conn. 905, 944 A.2d 981 (2008).

[6] The May 16, 1977 warranty deed is the only agreement signed by Chary D. Nash, the grantor, and H. Franklin Nash, Jr., the grantee. We confine our analysis to this document. Contrary to the suggestion in the dissent, we do not read § 47-33a to require the date to exercise the option to be found in the recording deed. Under the facts of this case, the deed is simply where the agreement is located.

[7] The dissent agrees with our conclusion that the terms of the deed are clear and unambiguous. It then turns to the issue of whether the deed was an integrated agreement. This claim, however was not raised in the plaintiff's brief to this court. The plaintiff, in passing, mentioned when the use of parol evidence is appropriate and cited to law for the general proposition that the intent of the parties is garnered in light of the parties' situation.

Our Supreme Court recently stated: "We have long held that, in the absence of a question relating to subject matter jurisdiction, the Appellate Court may not reach out and decide [an appeal] before it on a basis that the parties never have raised or briefed. . . . To do otherwise would deprive the parties of an opportunity to present arguments regarding those issues." (Citations omitted.) *Sabrowski* v. *Sabrowski*, 282 Conn. 556, 560, 923 A.2d 686 (2007). "If the Appellate Court decides to address an issue not previously raised or briefed, it may do so only after requesting supplemental briefs from the parties or allowing argument regarding that issue. *State* v. *Dalzell*, 282 Conn. 709, 715, 924 A.2d 809 (2007)." (Internal quotation marks omitted.) *Haynes* v. *Middletown*, 306 Conn. 471, 474, 50 A.3d 880 (2012). Even if we were to read the plaintiff's brief with an expansive eye and conclude that she raised the issue of an integrated contract, we would decline to reach the merits as a result of an inadequate brief.

[8] The dissent takes the view that this concern is alleviated by General Statutes § 47-33f. We note that burdening the title to property for forty years runs contrary to the purpose of § 47-33a, which is, in part, to make property interests marketable in a reasonable amount of time.