

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Spring Valley Interests, LLC,

Plaintiff,

v.

The Best for Last, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2019CP4006914

**ORDER GRANTING DEFENDANT’S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

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Jun 13 2022

SC Court of Appeals

This matter came before the Court upon the parties’ cross-motions for summary judgment – Defendant The Best for Last, LLC’s Motion for Partial Summary Judgment, filed on April 16, 2021, and Plaintiff’s Motion for Summary Judgment, which was filed on April 29, 2021. A hearing was conducted on these motions via WebEx on August 26, 2021. Plaintiff was represented by Kenneth R. Raynor and Defendant The Best for Last, LLC (“TBFL”) was represented by Kirby D. Shealy, III, and Luke M. Allen.

For the reasons set forth below, Defendant’s motion is GRANTED, and Plaintiff’s motion is DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from the parties’ arguments regarding the enforceability of the purchase option contained in a loan agreement between Plaintiff and TBFL. Specifically, on May 3, 2017, Plaintiff entered into a written agreement to loan TBFL a total of \$800,000 to assist TBFL in acquiring real property. That agreement contained a purchase option in which TBFL granted Plaintiff a freely assignable and perpetual option to purchase a co-tenancy interest in the property.

On April 16, 2021, TBFL filed a motion for partial summary judgment arguing that the perpetual nature of the purchase option is unenforceable because it violates the rule of perpetuities. The Court agrees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court agrees that the purchase option included in the loan agreement violates the common law rule against perpetuities. At common law, any interest is valid only if it is certain to vest, if ever, within the lifetime of a person at creation of the interest plus twenty-one years. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 369-70, 628 S.E.2d 902, 917 (Ct. App. 2006). The co-tenancy interest contemplated by the parties is a “perpetual” purchase option that is not certain to vest in the future; nor, is the interest conditioned to vest on an event certain to occur in the future. Therefore, the purchase option is unenforceable because it violates the common law rule of perpetuities.

The Uniform Statutory Rule Against Perpetuities (USRAP) does apply in this case. Generally, USRAP supersedes the common law rule against perpetuities. S.C. CODE ANN. §27-6-80 (2021). However, USRAP does not apply to nonvested property interests arising out of a nondonative transfer. S.C. CODE ANN. §27-6-50(1) (2021). Here, the basis of the parties’ arguments concerns—a nondonative transfer—the commercial transaction involving the purchase option. Because USRAP does not apply to nondonative transfers, the USRAP cannot supersede or replace the common law, thus the common law is the appropriate legal standard to conclude that the purchase option is unenforceable.

IT IS, THEREFORE, ORDERED that Defendant’s Motion for Partial Summary Judgment is GRANTED, and Plaintiff’s claims for declaratory relief and specific performance are dismissed.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Spring Valley Interests Llc vs Best For Last Llc

Case Number: 2019CP4006914

Type: Order/Summary Judgment

So Ordered

Jocelyn Newman