

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stevens Builders, LLC,

Plaintiff,

vs.

Michael C. Garraway, Alicia M. Garraway, and TD Bank, N.A.

Defendant(s)

IN THE COURT OF COMMON PLEAS

C/A No.: 2019-CP-07-01666

ORDER GRANTING TD BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

RECEIVED

Aug 12 2022

SC Court of Appeals

BCP No.: 20-40645

This matter is before the Court by way of a Motion for Summary Judgment filed by Defendant, TD Bank, N.A. ("**TD Bank**"). A hearing was held before this Court on May 23, 2022. Present at the hearing were J. Martin Page, Esq. for Defendant, TD Bank, Benjamin Coppage, Esq. for the Plaintiff, and James Wegmann, Esq. for Defendants Michael C. Garraway and Alicia M. Garraway. After considering the memoranda submitted by the parties, as well as oral arguments present by counsel, TD Bank's Motion for Summary Judgment is GRANTED.

### **FINDINGS OF FACT**

In 2016, Michael C. Garraway and Alicia M. Garraway (collectively, the "**Garraways**") entered into a contract with Stevens Builders, LLC ("**Stevens Builders**") for the construction of a new home in South Carolina ("**Construction Contract**"). After the Garraways and Stevens Builders entered their Construction Contract, they both made an agreement with TD Bank ("**Construction Loan Agreement**"). Specifically, on February 6, 2017, the Garraways made a loan agreement with TD Bank for a construction loan of \$280,000. Stevens Builders became a party and executed the Construction Loan Agreement as the "Contractor."

The Construction Loan Agreement contains several clear and unambiguous terms about TD Bank's rights and obligations concerning construction loan disbursements.

Importantly, the Construction Loan Agreement states that TD Bank would make construction loan disbursements only if certain conditions were met. Specifically, construction loan disbursements:

- Were not to be made “*unless and until. . . the Borrower presents proper written demand from the Contractor*” (emphasis added);
- Were to be made “based upon the percentage of work completed”;
- Were to be made “only for work already completed and deposits for supplies as approved by Lender on a case by case basis, and only for work contemplated in the original Construction Contract and contract price”; and
- Were to be made “only as long as construction progresses in accordance with the specifications, drawings and plans (as determined by the Lender in its sole discretion, and for the Lender's benefit only), and only provided that there are no violations of any terms of this documents of any other documents signed in connection with this loan”.

Construction Loan Agreement, Sect. III, ¶ 1

Moreover, as to the timing and amount of disbursements, TD Bank “retain[ed] the option, in its sole discretion, to change the timing and amounts of disbursements provided in any schedule established by or in connection with this loan . . . [t]he method by which it disburses the money shall be at the discretion of [TD Bank], based upon the percentage of work completed.”

Construction Loan Agreement, Sect. III, ¶ 1.

TD Bank properly disbursed funds to Stevens Builders in compliance with the Construction Loan Agreement. It is undisputed that TD Bank was never presented with a written demand or draw request from the Garraways to pay Stevens Builders the amount Stevens Builders seeks to recover in this action. Per the Construction Loan Agreement, TD Bank was unable to disburse funds until this prerequisite was met. The Construction Loan Agreement specifically states: “The

advances will not be made unless and until, in addition to meeting the other requirements of this Agreement, the Borrower presents proper written demand from the Contractor.”

The Construction Loan Agreement also provided that an inspector, of TD Bank’s choosing, would periodically inspect the property to determine the progress of the work. Section III ¶ 1 of the Construction Loan Agreement provides:

The advances will be paid out only for work already completed and deposits for supplies as approved by Lender on a case by case basis, and only for work contemplated in the original Construction Contract and contract price. ***The advances will be paid out only as long as construction progresses in accordance with the specifications, drawings and plans (as determined by the Lender in its sole discretion, and for the Lender’s benefit only)*** . . . . The Lender retains the option, in its sole discretion, to change the timing and amounts of disbursements provided in any schedule established by or in connection with this loan. ***In order to determine whether adequate progress has been made, an individual selected by the Lender will visit the site to determine that the project is being completed according to plans and specifications (as determined by the Lender in its sole discretion, and for the Lender’s benefit only).***  
(emphasis added)

The agreement does not specify any particular worksheet to be used in determining or tracking the progress made. *See generally id.* To the contrary, the Construction Loan Agreement clearly and unambiguously states that TD Bank retains the option, in its sole discretion, to change the timing and amounts of disbursements provided in any schedule. Construction Loan Agreement, Sect. III, ¶ 1.

On or about July 18, 2019, Stevens Builders filed its Complaint. On or about April 13, 2021, the case was referred to the undersigned. Thereafter, on or about December 2, 2021, TD Bank filed its Motion for Summary Judgment. I find that this matter is properly before the Court and the Motion is ripe for adjudication at this time.

## SUMMARY JUDGMENT STANDARD

“Summary judgment shall be granted ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Loflin v. BMP Development, LP*, 2016 WL 11597897 \*Mullen, J. (citing SCRCP 56(c)); *see also ARB, Inc. v. Integrated Recycling Group of SC, LLC*, 432 S.C. 545, 551, 854 S.E.2d 171, 174 (Ct. App. 2021), *reh’g denied* (Feb. 12, 2021).

When the moving party demonstrates no evidentiary basis for nonmoving party’s claims, the nonmoving party must “come forward with specific facts showing there is a genuine issue for trial.” *Id.* (citing *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 Se.E.2d 196, 203 (Ct. Appl. 2008)). “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.* (citing *Evans. v Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)) (internal quotations omitted).

## CONCLUSIONS OF LAW

### **1. TD Bank is Entitled to Summary Judgment on Stevens Builders’s Breach of Contract Claim.**

It is black letter contract law in South Carolina that, if the language of a contract is unambiguous, then the contract’s language determines the force and effect. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). Courts “are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. A court must enforce an unambiguous contract according to its terms . . .” *S.C. Dep’t of Transp. v. M & T Enters. Of Mt. Pleasant*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

In its Complaint, Stevens Builders asserted a breach of contract claim against TD Bank on the basis that Stevens Builders “demanded payment from TD as required by the Construction Loan Agreement, but TD has failed and refused to disburse the same.” However, this claim fails as the Construction Loan Agreement is unambiguous in its requirement, among others, that the Garraways present a proper written demand to TD Bank for any disbursement to Stevens Builders, and there is no evidence in the record that the Garraways presented such a demand on TD Bank for the amount Stevens Builders seeks in this action.

In response to the Motion, Plaintiff has submitted (among other things) a series of emails, the contents of which do not meet the clear disbursement request requirements of the unambiguous contract. In fact, had T.D. disbursed on the documents submitted, it could be argued that T.D. could be subject to claims by the borrowers.

Viewing the facts in a light most favorable to the non-moving party, Stevens Builders has failed to submit evidence that TD Bank breached any contractual provision in this case. Because there is no genuine issue of material fact regarding Stevens Builders’s breach of contract claim, TD Bank is entitled to judgment as a matter of law.

### **CONCLUSION**

For the reasons set forth above, this Court hereby orders, adjudges, and decrees that TD Bank’s Motion for Summary Judgment is GRANTED. Therefore, all cause of action asserted in the Complaint against TD Bank are hereby dismissed with prejudice.

AND IT SO ORDERED.

**[JUDGE’S ELECTRONIC SIGNATURE PAGE TO FOLLOW]**

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF Beaufort

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-07-01666

Stevens Builders, LLC

Michael C. Garraway, Alicia M. Garraway and TD Bank, N.A.

PLAINTIFF

DEFENDANT(S)

<p><b>Submitted by:</b> Bell Carrington Price &amp; Gregg, LLC</p> <p>339 Heyward Street, 2<sup>nd</sup> Floor, Columbia SC 29201</p>	<p><b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant</p>
	<p>or</p> <p><input type="checkbox"/> Self-Represented Litigant</p>

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. .
- ACTION DISMISSED** (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN** (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER GRANTING TD BANK, N.A.’S MOTION FOR SUMMARY JUDGMENT**

This order  ends  does not end the case.

Additional Information for the Clerk : Dismisses TD Bank, N.A. from the case

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
<b>Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.</b>		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
Judge Marvin H. Dukes

\_\_\_\_\_  
Judge Code

\_\_\_\_\_  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney’s box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Copping, Esq.  
\_\_\_\_\_  
\_\_\_\_\_

J. Martin Page, SC Bar No. 100200  
\_\_\_\_\_  
\_\_\_\_\_

James Wegmann, Esq.  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

\_\_\_\_\_  
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Beaufort Common Pleas

**Case Caption:** Stevens Builders Llc VS Michael C Garraway , defendant, et al

**Case Number:** 2019CP0701666

**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069