

EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

Moats Construction, Inc.,)
)
Plaintiff,)
v.)
Cecil R. Dyar,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2020-CP-04-01202

Order Granting Defendant’s
Motion for Summary Judgment

RECEIVED

Oct 26 2022

SC Court of Appeals

This matter is before the Court on a Motion for Summary Judgment filed by the Defendant, Cecil R. Dyar (“Dyar”). A hearing was held in this matter on April 13, 2021. Present at the hearing were Wendell Hawkins, as attorney for the Plaintiff, Moats Construction, Inc. (“Moats”) and James W. Logan, Jr., attorney for Defendant, Dyar. After a careful review of the pleadings, exhibits, memoranda filed by counsel and arguments of counsel, the Court finds that Dyar is entitled to summary judgment against Moats as a matter of law.

Findings of Fact

A. Moats did not reply to the Defendant’s Compulsory Counterclaim without good cause being demonstrated. However, Dyar would be entitled to summary judgment even if a reply had been timely filed by Moats.

B. Moats does not contest that foreclosure is appropriate in this case, although he disagrees as to the balance of the purchase price due and payable.

C. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is owned by Dyar.

D. On January 29, 2011, Dyar entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

E. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

F. Moats has failed and neglected to pay all amounts due, when due, under the Agreement, despite demand therefore and is thus in default. Therefore, Dyar, as legal owner of the real property that is the subject of the Agreement, can elect to declare the Agreement terminated and of no further force and effect and is entitled to immediate possession of the premises and to retain all amounts paid to date by Moats as rent and liquidated damages, or, in the alternative, Dyar can elect to declare the entire balance of the purchase price due and payable and seek a sale of the property and foreclosure of all rights of Moats to said property.

G. Dyar contends that the total amount owed under the Agreement, as of April 1, 2021 is \$216,047.42 based upon the Affidavit of Joshua Pruiett-Lange filed with his Memorandum in Support of his Motion which includes the principal amount of the indebtedness under the Agreement, plus

interest at the rate of six percent (6%), together with costs and expenses incurred by Dyar, fifteen percent (15%) of the balance owed as attorney's fees along with late payment fees of five percent (5%) and insurance premiums and City of Anderson taxed paid by Dyar.

H. The Agreement in question, contains the following additional provisions:

4. CONVEYANCE OF TITLE. Upon payment of Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:

- (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
- (b) Rights of way and easements for public utility distribution lines.
- (c) Restrictive covenants affecting the property.
- (d) State of facts which may be revealed by a recent and accurate survey of the premises.

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, as its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss of damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.
11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extent to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.
12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.
13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.
14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.
15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such to the indebtedness due to the Seller to bear interest at the same rate stated above.
17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to the Purchaser, wear and tear exempted.
18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any other improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."
19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the Premises or demolish any improvement or harvest any growing timber without the written consent of Seller. (Emphasis added).

I. In his deposition testimony, Moats offered the following defenses, none of which are legally sufficient to support his claims:

- (1) Believes he owes the real property based upon improvements and “sweat equity”;
- (2) Believes he has paid the purchase price;
- (3) The building on the property suffered damage from hurricane-related weather;
- (4) Discussions with Dyar regarding certain “issues” but denies having any letters/correspondence that memorialize those conversations, except for a letter from his attorney William Swent which clearly shows sums owed;
- (5) Claims to have paperwork that supports his disagreement with the amount Dyar claims is owed. However, no such documents/paperwork were produced;
- (6) Admits that he has never furnished Dyar with any documentation that would establish what he believes he owes Dyar under the terms of the Agreement.

Conclusions of Law

Under South Carolina law, courts have emphasized that “[c]ourts must enforce, not write, contracts, and their language must be given its plain, ordinary and popular meaning.” *Sloan Constr. Co. v. Central Nat’l Co. of Omaha*, 269 S.C. 183, 185, 236 S.E. 2d 818, 819 (1977). Further, when a contract is unambiguous, clear and explicit, it must be construed according to its terms. *BLG Enterps., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E. 2d 327, 330 (1999).

While now seeking to deny under oath that any amount of money is owed to Dyar under the Agreement, Moats previously retained attorney William B. Swent (“Swent”) of Smith Moore in Greenville, South Carolina, to determine the amount owed under the Agreement as of December

31, 2017 and to close the purchase of property in question. That analysis was memorialized in a letter from Swent dated January 5, 2018 in which it was stated that, as of December 31, 2017, the amount owed was \$83,338.98. That calculation included principal, interest, carrying costs, property taxes and insurance due pursuant to the Agreement. However, it did not include attorney's fees of fifteen (15%) percent of the then balance due. Further, while the transaction was not closed, the amount calculated to be owed by Moats' attorney did not include all amounts owed by Moats and no amount was paid by Moats, this letter constitutes an admission that, as of December 31, 2017, at least that amount was due and owed by Moats to Dyar. Finally, no payments have been paid by Moats to Dyar under the Agreement since December 31, 2017.

Accordingly, based upon the testimony of Moats, the written evidence of the amount of the unpaid indebtedness as of December 31, 2017 stated by Moats' then attorney which was never paid and the established fact that no payments have since been paid by Moats to Dyar under the Agreement since December 31, 2017 while Moats remained in possession of the property that is the subject of the Agreement, Moats is clearly in default under the Agreement. Thus, Dyar is entitled to exercise all of his rights and remedies under the Agreement.

Moats asserts that he is entitled to credits for "improvements" made, "sweat equity" and the cost of a "new roof". By the express terms of the Agreement, Moats is not entitled to any such "credits." Even if Moats made such improvements or engaged in any "sweat equity", the Agreement does not provide for any such credits. The Agreement provides, in Paragraph #10, that the "Risk of Loss" is "upon the Purchaser...." The Agreement further provides in Paragraph #18, that "the Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same AS IS, WITH ALL FAULT."

Accordingly, any improvements made, if any, “sweat equity”, if any, and/or the status of the roof, are totally irrelevant to the legal issues in this case, all of which are controlled by the terms of the Agreement. Moats took the building “as is” and nothing in the Agreement obligates Dyar to replace the roof, nor give any credit for any improvements or any “sweat equity.”

Additional amounts due have accrued under the Parties’ contract since the filing of the Counterclaim. While the amount claimed by Dyar appears to be correct (based upon the Affidavit of Joshua Pruiett-Lange), the Court is unable to make a definitive finding as to the amount presently due under the Contract which is necessary depending upon the remedy Dyar elects. Accordingly, a damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure shall be promptly held in order to determine the exact amount presently due under the Agreement.

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that Moats is in breach of the Agreement between Dyar and Moats and that said Agreement is thus hereby declared to be terminated and of no force and effect. Accordingly, Dyar is entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and at the option of Dyar, this Court orders and decrees that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, is immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to said property.

IT IS SO ORDERED this _____ day of May, 2021.

The Honorable R. Scott Sprouse
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Summary Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit