

Case No. 2019-1322  
THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
On appeal from the Court of Common Pleas  
Charleston County  
Wade H. Logan, III, Special Judge

**RECEIVED**

**Jan 17 2023**

S.C. SUPREME COURT

---

CHICORA LIFE CENTER, LLC,  
Petitioner,

v.

Fetter Health Care Network Inc.,  
NBSC Corp., and John and Jane Does 1-100,  
of which  
FETTER HEALTH CARE NETWORK INC. is the  
Respondent.

---

**RETURN TO PETITION FOR CERTIORARI**

Kevin R. Eberle  
Eberle Law Firm, LLC  
367 President Street  
Charleston, South Carolina 29403  
(843) 853-5355

Armand G. Derfner  
Jonathan S. Altman  
Derfner & Altman  
575 King Street, Suite B  
Charleston, South Carolina  
(843) 723-9804

ATTORNEYS FOR RESPONDENT

## **STATEMENT OF THE ISSUE**

Landlord (Chicora Life Center, LLC) agreed to satisfactorily build out its premises for Tenant's (Fetter Health Care Network LLC's) medical clinic as a prerequisite to Tenant's tenancy. After hearing many witnesses' testimony during the trial, the Special Judge ruled that Landlord's work was "far from completed." The Issue Presented is whether the Special Judge correctly ruled that Landlord's breach eliminated Tenant's obligation to accept the tenancy and begin paying rent on the unfinished and unusable premises?

## **INTRODUCTION**

This case involves nothing more than a routine reading of a routine lease.

The Special Judge ruled in favor of Tenant, and the Court of Appeals unanimously affirmed in full and denied a rehearing. There is no reason for this Court to give Landlord a fourth bite at the apple.

This Court has the following to guide its decision to hear a further appeal:

(1) Where there are novel questions of law. (2) Where there is a dissent in the decision of the Court Appeals. (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court. (4) Where substantial constitutional issues are directly involved. (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

S.C. R. App. P. 242(b). This appeal has no novel issues, produced no dissenting opinions below, does not involve a conflict with this Court's decisions, presents no constitutional issues, and involves no federal question.

The only basis given by Landlord is its baseless claim that *both* the Special Judge *and* the Court of Appeals misread the lease and in doing so disregarded this Court's decisions that leases mean what they say. Landlord's Petition is a bootstrapping—a reargument of the merits to justify the chance to reargue the merits. However, the Special Judge correctly decided this case, and the Court of Appeals unanimously affirmed (and then denied a request to rehear the case).

The merits of Landlord's appeal are no stronger now.

### **FACTS**

Landlord and Tenant executed a lease which provided for the build out of the premises with a term ensuring Tenant's satisfaction with the improvements. The improvements were never completed by Landlord, and Tenant terminated the agreement. Landlord, however, claimed that Tenant was nonetheless obligated to accept and begin paying rent for the incomplete and unsatisfactory premises; according to Landlord, Tenant's only option was a lawsuit for damages.

The Special Judge heard the case and ruled in favor of Tenant that the work had not been completed—certainly not satisfactorily and that Tenant had no obligation to accept the premises and start paying rent.

On appeal, the Court of Appeals reviewed not only what it described as the “real issue”—whether Chicora complied with its contractual obligation to provide satisfactory improvements—but carefully considered all of Landlord’s subsidiary points. The Court of Appeals rejected each and focused on the clear fact proved to the Special Judge: The work was poor and incomplete. The Court of Appeals cited the uncontradicted testimony of Tenant’s executives who inspected the premises and found what they described as “a wreck,” “a mess,” “a disaster,” and “Friday the 13th,” stating things were “completely unfinished” and noting there were broken walls, unfinished ceilings, broken floors, missing doors, locks not on doors, missing sinks, missing toilets, leaks from the plumbing into exam rooms, a mildew smell, and inoperable elevators.

Because none of Landlord’s positions had merit, the Court of Appeals affirmed the Special Judge’s ruling in a unanimous opinion.

Landlord does not argue that Tenant was ever satisfied with the incomplete work, or that the work was satisfactory, or that satisfaction was unreasonably withheld. Rather, Landlord’s entire position is that Tenant was obligated to accept whatever was presented to it by Landlord as long as it met the building code.

Landlord’s failure to complete the improvements defeated the purpose of the contract: to prepare the premises for a medical clinic. The lease conditioned the tenancy on obtaining *both* a certificate of occupancy (CO) from the City of North

Charleston *and* completing the Tenant Improvements to Tenant's satisfaction. The fact that Landlord obtained a CO (which certified only that Landlord's incomplete work did not violate the building code) was insufficient because Landlord did not complete the Tenant Improvements and certainly not to Tenant's satisfaction, either subjective or objective.

The Special Judge ruled not only that Tenant was not satisfied but that the work was "far from completed" and "unready for [Tenant]'s use." Landlord's shortcomings amounted to almost 150 defects that remained.

### **REASONS FOR DENYING CERTIORARI**

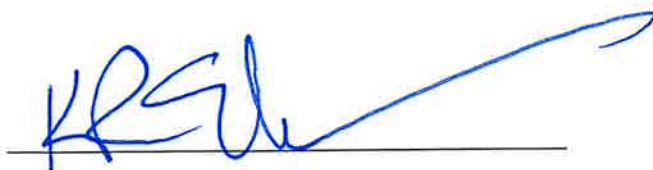
The decision of the Special Judge got it right, and the Court of Appeals affirmed unanimously.

Having lost before the Special Judge and before the Court of Appeal unanimously, Landlord asked the Court of Appeals to rehear the case. Exactly like the present Petition for Certiorari, the request to have the case heard again was the same argument already made to the Special Judge and to the Court of Appeals the first time. The Court of Appeals declined to rehear the case without dissent.

There is no basis for this Court to exercise its discretion to give Landlord a fourth chance to try its unjustified interpretation of the lease's terms.

### **CONCLUSION**

For these reasons, the Court should deny Landlord's Petition for Certiorari.



Kevin R. Eberle  
Eberle Law Firm, LLC  
367 President Street  
Charleston, South Carolina 29403  
(843) 853-5355

Armand G. Derfner  
Jonathan S. Altman  
Derfner & Altman  
575 King Street, Suite B  
Charleston, South Carolina  
(843) 723-9804

ATTORNEYS FOR RESPONDENT