

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
Civil Action No. 2020-CP-26-06909

Parsons Garden Center, LLC, )  
Plaintiff, )

FINAL ORDER OF ARBITRATOR  
CHARLES B. JORDAN, JR.

vs. )

Parcon Holdings, LLC, )  
Defendant. )

This matter comes before me pursuant to that Consent Order to Submit to Binding Arbitration filed on June 2, 2022. A hearing was held on this matter on November 22, 2022. The parties submitted both pre-trial and post-trial briefs in this matter. Pursuant to the testimony and documents submitted, the undersigned hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Defendant Parcon Holdings, LLC is the owner of that property located at 11157 Highway 707, Murrells Inlet, South Carolina, consisting of approximately 1.97 ac., and bearing Horry County PIN 464-05-04-0006 (the "Property"). On or about May 16, 2014, Defendant leased the Property to Plaintiff Parsons Garden Center, LLC pursuant to a written Commercial Lease Agreement (the "Lease"). The Lease sets forth the various rights and responsibilities of the parties. The Lease contains an option to purchase provision which provides that:

[Defendant] hereby grants to [Plaintiff] the option to purchase the property described herein at any time during the initial term of this lease or any extension hereof. The purchase price shall be determined by a current appraisal of the

property at the time of the request to purchase. The appraisal shall be conducted by a certified MAI Certified Appraiser mutually agreed upon by the parties.

The Lease was for a six-year term, terminating on May 15, 2020.

On or about April 15, 2020, Plaintiff delivered written notice to Defendant of its intent to exercise its option to purchase the real property. Thereafter, on or about May 6, 2020, Plaintiff's counsel sent an email to Defendant's counsel nominating E. F. "Buddy" Hucks as the appraiser. Mr. Hucks is an MAI Certified Appraiser. Defendant's counsel responded that "We are in agreement with utilizing Buddy Hucks, for his opinion as to the highest and best use valuation analysis of the property. We do have concerns, however, that the property is not currently being utilized as was agreed in the parties' lease. Assuming that your client purchases the property that should not be problematic."

On June 25, 2020, Mr. Hucks produced his appraisal to Plaintiff. He appraised the market value of the fee simple interest in the property at \$239,000. The appraisal states that it is a "Restricted Appraisal Report" and that it "is for the sole use of [Plaintiff] for verification of the property value on the date of the appraisal." Defendant refused to sell the Property to Plaintiff on the grounds that the appraisal was not for the use of Defendant.

On November 25, 2020, Plaintiff brought this lawsuit requesting the equitable relief of requiring Defendant to sell the property to Plaintiff at the appraised value and for damages resulting from Defendant's failure to timely sell the property to Plaintiff. Defendant answered the Complaint with a general denial and brought a counterclaim on the grounds that Plaintiff had been in default under the Lease and therefore could not lawfully exercise the option to purchase itself.



## CONCLUSIONS OF LAW

### A. Option to Purchase:

Under South Carolina law, lease provisions are construed under the general rules of contract interpretation. *S.C. DOT v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct.App.2008). One cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties which is determined by the language of the contract itself. *Id.* Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. *Id.*, 379 S.C. at 655, 667 S.E.2d at 12. A court is without authority to alter an unambiguous contract by construction or to make new contracts for the parties. *Id.*

The undersigned finds that the lease terms regarding the option to purchase are unambiguous and must be enforced accordingly. There are three constituent parts to the Lease's option to purchase. First, the option must be exercised during the initial term of the lease or any extension. The Lease term ended on May 15, 2020, and Plaintiff made its election to purchase on April 15, 2020. The purchase price was to be determined by (i) the "current appraisal of the property" and (ii) the appraisal shall be conducted by a certified MAI Certified Appraiser mutually agreed upon by the parties. The parties mutually agreed to hire Mr. Hucks, an MAI Certified Appraiser, and Mr. Hucks delivered an appraisal that determined the market value of the fee simple interest in the subject property. The unambiguous terms of the lease were met. Therefore, Plaintiff is entitled to purchase the Property for \$239,000.

In its pleadings and at the hearing in this matter, Defendant raised two substantive issues in defense of its failure to comply with the option to purchase. First, Defendant raises the issue that

Plaintiff was not in compliance with the Lease and therefore could not exercise the option. Defendant also raises the issue of the appraisal being a "Restricted Appraisal Report" and therefore the appraisal could not be used to set the purchase price. The undersigned concludes that neither of these issues overcomes Defendant's obligation to sell the Property to Plaintiff at the appraised value of \$239,000.

First, the undersigned finds that the various alleged breaches of the Lease by Plaintiff are insufficient to prevent Plaintiff from exercising its rights under the option to purchase. The Lease itself does not provide that Plaintiff must be in strict compliance with the Lease in order to exercise the option to purchase, only that the option be exercised during the term of the lease. Although some evidence was submitted that Plaintiff was not in strict with the Lease, Defendant had not taken any steps to enforce the provisions of the Lease against Plaintiff prior to Plaintiff exercising its option. Further, Defendant waived any non-compliance by affirmatively agreeing to Mr. Huck to perform the appraisal in the option to purchase. If Defendant had reason to believe that the option to purchase was unenforceable by Plaintiff because Plaintiff failed to comply with the Lease, Defendant should have raised that issue in its May 6, 2020, email. Its failure to do so waived any objection it may have had to the enforceability of the option to purchase.

The closer question is whether the appraisal of Mr. Hucks can be used to set the purchase price. Defendant argues that under the Uniform Standards of Professional Appraisal Practices (USPAP), Mr. Huck's Restricted Appraisal Report cannot be used to establish the appropriate purchase price. Mr. Hucks restricted his report for the use of Plaintiff only and for the purpose of the verification of the property value on the date of the appraisal. In support of its argument, Plaintiff cites the USPAP provisions and several cases from other jurisdictions.

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This issue, however, must be resolved in light of the plain language of the Lease. The Lease does not provide the type of appraisal report that must be produced. The Lease simply requires a current appraisal of the property performed by an MAI Certified Appraiser. No evidence was produced that would show a "Restricted Appraisal Report" or a report "for verification of the property value" would have produced a different property value. Defendant did submit other appraisals of the property which did show different valuations, but appraisers often do disagree.

The undersigned has reviewed the cases cited by Defendant. Those cases are not as clear-cut as they first appear. For example, in *Hardy v. United States*, 141 Fed. Cl. 1 (2018), the court held that a restricted appraisal did not comply with the Yellow Book guidelines which govern the appraisal of real property in federal land acquisitions. Compliance with Yellow Book guidelines are not a term of the Lease. Further, in *Omaha Country Club v. Douglas Cty. Bd. Of Equalization*, 645 N.W.2d 821 (Neb.Ct.App.2002), the court upheld the determination of the lower tribunal that the proffered restricted appraisal was not credible. The proffered appraisal had several other deficiencies besides being restricted, which caused the tribunal to reject the appraisal. The appellate court simply held that the tribunal's decision to reject the appraisal was not in error. The cases cited do not establish a bright-line rule that restricted appraisal report cannot be used to determine value.

Therefore, the undersigned finds that Mr. Huck's appraisal is in compliance with the requirements of the Lease and may be used to set the selling price of the Property.

B: Lease Payment Credits:

Plaintiff argues that it should receive credit for the rent it has paid since Defendant failed to comply with the option to purchase. Plaintiff contends that had Defendant complied with the

option to purchase, Plaintiff would have purchased the Property from Defendant within a reasonable time after June 25, 2020, and therefore all of the lease payments made thereafter should be credited to the sales price. Once more, this issue must be resolved in light of the plain language of the Lease. The Lease specifically provides that the parties “agree that no portion of lease payments shall apply to the purchase price of the property.” The undersigned notes that Plaintiff has been receiving the benefit of the bargain of the Lease since June of 2020, with Defendant allowing Plaintiff to hold over until the resolution of this matter.

Therefore, the undersigned finds that Plaintiff is not entitled to any credit in the purchase price for any lease payments made at any time.

C. Other Matters:

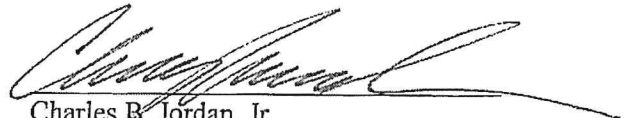
As to the other matters raised in the pleadings, these are denied including all claims for damages, attorney’s fees, and prejudgment interest.

THEREFORE, IT IS HEREBY ORDERED:

1. That pursuant to the terms of the Lease, Defendant shall sell and Plaintiff shall purchase the Property for the price of \$239,000, with all closing costs allocated according to law. This closing shall take place within six weeks of the date of this order. Rent shall be prorated as of the date of closing.
2. That all other claims and requested relief by the parties are denied.
3. The undersigned retains jurisdiction to resolve any dispute that may arise regarding closing cost allocations.

MSJ

AND IT IS SO ORDERED



Charles B. Jordan, Jr.  
Appointed Arbitrator

Myrtle Beach, South Carolina  
March 14, 2023