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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Trial Court Case No. 2019-CP-23-06187
Appellate Case No. 2022-001072

Taylors Mill Development, LLC f/k/a
Taylors Mill Development, LLP,

Respondent,

v.

Taylors Mill Events, LLC d/b/a Southern
Bleachery and Lawrence Black,

Appellants.

RESPONDENT'S FINAL BRIEF

M. Kevin McCarrell
SC Bar No. 76255
FOX ROTHSCHILD LLP
2 W. Washington Street, Suite 1100
Greenville, SC 29601
Phone: (864) 751-7652
Fax: (864) 751-7800
kmccarrell@foxrothschild.com
Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err by giving effect to the whole lease to determine that TMD did not breach Paragraph 19?

II. Is there any evidence to support the trial court's factual finding that TMD did not act in bad faith when it issued the stop work directive?

III. Based on the evidence submitted at trial, did the trial court commit a legal error in concluding that there was no meeting of the minds between the parties with respect to Phase 2 construction based on the evidence submitted at trial?

STATEMENT OF FACTS

This matter revolves around the revitalization of the historic Southern Bleachery and Piedmont Print Works textile mill in Taylors, South Carolina (the "Mill"). (R. p. 178, line 9-15). Like many of the old textile mills in the upstate, the once-abandoned Mill has taken on new life; it holds consumer-facing businesses including a brewery, a restaurant, an axe-throwing venue, and an arcade bar, while also offering commercial office, warehouse, and light industrial space, not to mention a plethora of artist studios and other small businesses. (R. p. 178, line 9 – p. 179, line 5).

Most of the Mill is owned by Respondent Taylors Mill Development, LLC ("TMD"). TMD is owned by Caleb Lewis, a native of Taylors and businessowner. (R. p. 178, line 9 – p. 179, line 24). Appellant Lawrence Black owns or controls a portion of the western end of the Mill through a business entity or entities known as "Taylors Village." (R. p. 181, line 18 – p. 183, line 5). TMD purchased its portion of the Mill in 2015. (R. p. 180, line 12 – p. 181, line 25). While there were some existing tenants at that time, TMD also grew the occupancy substantially, adding several consumer-facing businesses, for example. (R. pp. 178-181). Most of the consumer-facing businesses are located in an area known as "Dock 3" of the Mill. (R. p. 191, lines 18-25).

In addition to being a neighboring landowner, Mr. Black is also a tenant of TMD pursuant to a lease between TMD and Black dated June 1, 2015 ("the Lease"), whereby Mr. Black leased 16,000 square feet from TMD for use as an event space to host weddings and corporate events.

(R. p. 184, line 21 – p. 185, line 25, pp. 255-263).[1] Months after execution of the Lease, Mr. Black and his wife, Ashleigh Black formed a new entity, Appellant Taylors Mill Events, LLC ("TME"), to operate the business under the trade name "Southern Bleachery." (R. p. 46, line 9-25, p. 56, lines 1-7, p. 98, lines 3-5).

From the outset, the Blacks took issue with various aspects of their tenancy, including the way other tenants were operating their business, the lack of reserved parking for their customers, and the lack of a designated loading zone in Dock 3. (R. p. 67, lines 2-21, pp. 270-273, 283-287, 320-325, 549, lines 1-20). In particular, the Blacks believed that other tenants were using their leased spaces to host events, in violation of the exclusivity clause in the Lease.[2] (R. pp. 270-273, 283-287). This led to significant conflict around the Mill, resulting in many run-ins between the Blacks and TMD staff, and occasionally with other tenants. (R. pp. 193-194, 443-453). These conflicts often related to both the Blacks' leased space and their neighboring property.[3] (R. pp. 316-319). As a result, there were years of tension between the parties, leading to Appellants

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[1] Mr. Black was the first new tenant for TMD. In fact, Mr. Black had actually entered into a lease with the previous owner a few months prior, but the parties decided to negotiate a new lease, rather than relying on the existing lease. (R. pp. 184, line 21 – 185, line 19). The form of the new lease, including most of the language, was carried over from the lease between Mr. Black and the previous owner, Kenneth Walker/Taylors Mill Properties. *Id*.

[2] The Lease includes an exclusive use clause which prohibits TMD from leasing any space for "use as event space." (R. p. 260, ¶ 29). A significant percentage of this litigation was motivated by and centered around TME's belief that other tenants were using their leased spaces in violation of its exclusive use clause. Many of the conflicts between the parties were also motivated by this belief. The parties settled this issue before trial. (R. pp. 35-43).

[3] During the spring and summer of 2019, TMD and its tenants experienced multiple water disruptions, resulting in some tenants having to close their doors for business. At the time, the Blacks had been protesting events hosted by other tenants and were upset about TMD restriping an area they believed was their designated loading zone. A water shutoff valve for the Mill is located on Mr. Black's neighboring property. Evidence that Mr. Black turned off the water in retaliation was submitted at trial. (R. p. 173, line 13 – 175, line 24, p. 213, line 18 – 216, line 24).

initiating this lawsuit on October 13, 2019, alleging that TMD had violated various provisions of the Lease. (R. pp. 4-21).

Days before trial, the parties settled many of the claims. (R. pp. 35-43). The case proceeded to a non-jury trial before The Honorable Robin B. Stilwell on June 13, 2022 on the remaining issues, only one of which is the subject of this appeal: whether TMD had violated the Lease by not allowing TME to move forward with "Phase 2" construction.

Appellants alleged that they were improperly prevented from conducting so-called "Phase 2" of renovations to the leased space. (R. p. 12, ¶ 44). Paragraph 28 of the Lease provides:

> Lessors and Lessee acknowledge and agree that certain improvements will be required to be made to the premises in order to make the premises suitable for occupancy and use by Lessee[.] All improvements shall be handled by and through the Lessor, regardless of whether Lessee is bearing all or any portion of the costs of such improvements. Lessor and Lessee are entering into a separate agreement relating to the specifications for the improvements to be made to the premises and the responsibility for the costs thereof.

(R. p. 260).

Although the parties never entered into a formal written agreement for initial upfits to the leased space, TMD approved the initial phase of construction in 2015 which included renovation and repairs on the front half of the leased space only. (R. pp. 196, line 3 – p. 197, line 19, p. 239, line 13 – p. 243, line 6, 264-266, 408; Supp. R. pp. 2-5). Following the initial upfits, Appellants proceeded to successfully operate their event business out of the leased space for many years. (R. pp. 95, lines 17-24, p. 96, line 7 – p. 97, line 5).

Years later, in the spring of 2018, Appellants expressed interest in conducting a second phase of renovations to their leased space and asked TMD for permission to proceed with the renovations. (R. pp. 274-277). Appellants submitted the original approved plans approved by TMD in 2015 as well as updated plans. (R. pp. 196, line 3 – 197, line 19, pp. 274- 277). Notably,

the plans approved in 2015 did not contain any specifications for upfits to the back half of the leased space and only included notations like "future kitchen" or "future dining area" whereas the updated plans provided detailed specifications for various upfits to the back half of the space. (*Compare* R. p. 264-266 and p. 276 *with* R. p. 277). In a series of follow-up emails, TMD expressed several concerns with the proposed renovations. (R. pp. 405-407). For example, the proposed renovations added an exterior door, landscaping, and work on other areas outside Appellants' leased space. (R. pp. 405-407). Having received no response, TMD followed up with Appellants on July 2, 2018, and made clear that no construction could proceed unless it was approved. (R. pp. 405-407)("I sent the email below of 5/21/18 and did not receive a response. I want to make sure we're all on the same page, before any construction begins.").

On July 10, 2018, the parties met to discuss a number of issues with TME's tenancy. (R. pp. 402-404). The parties agreed that Mrs. Black would send TMD the specifications for Phase 2 construction and that they would need to enter into a separate agreement detailing the work to be performed. (R. pp. 402-404). Mrs. Black also agreed to work with TMD to draft a new events policy to address Appellants' concerns with the use of other leased spaces, and that a lease addendum would be drafted to clarify the meaning of the exclusive use clause and circulated for Appellants review. (R. pp. 402-404).

On August 28, 2018, TMD circulated a proposed lease addendum that would resolve most of the outstanding issues, along the lines the parties had been negotiating. (R. pp. 191, lines 1-17, 305-315). The proposed lease addendum would have provided approval for Phase 2 construction, among other things. (R. p. 99, line 2 – 100, line 15, p. 198, line 4 – 199, line 13). But Appellants rejected the offer and refused to sign the addendum. (R. p. 191, lines 1-17). Negotiations stalled. (R. p. 244, lines 9-18).

Later that year, Appellants proceeded with Phase 2 construction anyways. (R. p. 200, line 16 – 202, line 2, p. 244, line 9 – 245, line 23).

Since TMD circulated the lease addendum in August 2018, the parties had not engaged in any further discussion about additional renovations and upfits to the leased space. (R. p. 191, lines 6-17, p. 244 line 9 – 245, line 23). Then, in December 2018, TMD began receiving complaints from other tenants that an abrasive odor was coming from the Southern Bleachery. (R. p. 245, lines 1-6, pp. 408-424). TMD notified Appellants, instructing them to stop whatever activity was causing the odor. (R. p. 245, lines 1-6, pp. 408-424). Believing that the odor might be coming from a cutting torch or saw, TMD also reminded Appellants that construction projects required prior approval. (R. p. 245, lines 1-6, pp. 408-424).

In February 2019, during a routine walkthrough of the leased space with the Fire Marshall, TMD learned that Appellants had begun Phase 2 construction without its approval. (R. p. 201, line 22 – 202, line 2, p. 246, line 6 – 247, line 9, pp. 328-331). TMD again, and repeatedly, reminded Appellants that they lacked approval for their construction project, and expressed significant concerns about the work being done. (R. pp. 203, 248-250, 328-336, 426-436).

For example, the project would require additional fire alarm panels (a cost of roughly $10,000 that TMD would have to bear), would add to TME's total occupancy rating (putting additional strain on traffic, road, parking and millage on TMD's taxes), would apparently involve adding an exterior door. (R. p. 204, line 2 – 206, line 21, pp. 437-442). An additional concern was the floor drains. (R. pp. 328-331). Over the years, TMD had experienced issues with the plumbing system at the aging Mill, including issues with the sewer lines. (R. p. 251, line 15 – 252, line 12). When TMD performed their walkthrough of the leased space, it noticed that Appellants had been filling the drain lines with concrete. (R. p. 240, line 17 – 250, line 22, pp. 328-331, 425).

TMD requested multiple times that Appellants seek out confirmation from a professional engineer that pouring concrete in the floor drains would not create a drainage issue, but Appellants refused to comply with this request.[4] (R. pp. 105-107, 155-157, 176, 228-229, 249-250, 316-319, 426-436; Supp. R. p. 1). TMD then issued a stop work directive in February 2019. (R. p. 227, lines 7-14).

After years of conflict, the parties' tenuous relationship as both neighboring property owners and as landlord-tenant had come to a breaking point. (R. p. 194, lines 14-19). Each party had a number of issues they wished to see resolved. For TMD's part, it wished to resolve the dispute regarding Phase 2 construction, ongoing issues with the fire and water pits servicing both properties,[5] confirming access to the western docks of the Mill,[6] and Appellants' refusal to allow TMD or its tenants to use the back road.[7] (R. pp. 373-376). TME wished to secure approval to move forward with Phase 2 construction, be granted a designated loading zone and reserved

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[4] The purpose of filling the drain lines was allegedly to level the floors within the leased space. Notably, the settlement reached on June 10, 2022 specifically allowed Appellants to proceed with leveling the floors after confirmation from a professional that leveling the floors would not cause damage to the existing system. (R. p. 35, line 17 – 36, line 4). As of the filing of this brief, Appellants have never submitted any such confirmation or renewed discussions regarding levelling the floors.

[5] The properties had previously been a single parcel with one fire and water pit servicing both properties. When the properties were divided, the fire and water pit were required to also be split, but the parties disagreed about who should bear the cost of such division. (R. p. 148, line 14 – 150, line 5, p. 207, line 9 – 208, line 8).

[6] On several occasions, Mr. Black used an old school bus to block access to the western docks utilized by TMD's tenant, B&F Materials, despite the existence of an easement granting TMD and its tenants' access. (R. p. 207, line 24 – 209, line 21).

[7] At various points in time, vehicles had access to drive entirely around the Mill by use of a "back road" which utilized Taylors Village property. Mr. Black subsequently refused to allow vehicles to traverse his portion of this back road. (R. p. 211, line 7 – 212, line 11).

parking rights by TMD, and have TMD stop other tenants from hosting any event it believed violated the exclusive use clause in the Lease. (R. pp. 373-381, 386-390). Unfortunately, given the years of conflict, neither party wanted to agree to the other's requests unless its own requests were satisfied.

In an effort to end the conflict and wipe the slate clean, TMD sought to reach a global resolution of the various issues between the parties, including approval of Phase 2 construction. (R. pp. 327, 373-376, 386-390, 437-442). It was not uncommon for the parties to resolve disputes relating to both parcels simultaneously.[8] (R. p. 160, line 24 – 166, line 20, pp. 391-401, 317-319). Even though an agreement on all issues would allow TME to move forward with Phase 2 construction, Appellants refused to engage in these discussions with TMD. (R. pp. 213, 378-381, 426-442). Rather than continue to work through these issues with TMD, Appellants filed this lawsuit six months later.

Following trial, Judge Stilwell issued a written judgment in favor of TMD on July 5, 2022, finding that Appellants had failed to establish, by a preponderance of the evidence, that TMD had breached the Lease. The dispositive question was whether there was ever an agreement between the parties regarding Phase 2 construction. Judge Stilwell found that the "substantial amount of evidence" presented at trial, in the aggregate, demonstrated that the Parties never reached a meeting

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[8] For example, in or around May 2019, TMD and its tenants lost water access multiple times over the course of several days. (R. p. 213, line 18 – 216, line 24). It was discovered that the water was shut off by use of valves located on Taylors Village property, but which serviced TMD property as well due to the shared water pits. *Id*. Mr. Lewis questioned Mr. Black about whether he had intentionally turned off the water valves. *Id*. Mr. Black had recently expressed outrage at changes to what he perceived as "his" parking area in the Dock 3 parking lot (even though the Lease granted no exclusive parking rights), and there was concern that Mr. Black may have turned off the water for revenge over the perceived sleight. *Id*. Mr. Black responded "you fix my parking spaces, and I'll figure out who's turning off your water." (R. p. 215, line 22 – 216, line 13). Thus, Mr. Black had a history of mixing issues of the neighboring properties with landlord-tenant issues.

of the minds regarding the nature, the scope, or the specifics of Phase 2 construction. While there was a general understanding about what the parties, respectively, wanted to accomplish with Phase 2 construction, no formal agreement was ever reached, and TMD's questions and concerns were never resolved by Appellants.

Judge Stilwell recognized that both parties are honest and hard-working businesspeople, who had business issues beyond the scope of the Lease. However, the testimony and exhibits evidencing the parties' frequent discussions and negotiations do "not support [Appellants'] claims of nefarious conduct or bad faith." Instead, Judge Stilwell concluded that the parties had simply failed to communicate clearly, carefully, and deliberately. Therefore, the Court held that Appellant's had not satisfied their burden of proving that the parties had reached an agreement regarding Phase 2 construction.

STANDARD OF REVIEW

An action for breach of contract seeking money damages is an action at law. *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 471, 769 S.E.2d 242, 245 (2014). In an action at law, tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law. *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). The trial court's findings of fact will not be disturbed unless found to be without evidence which reasonably supports the court's findings. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

ARGUMENT

I. The trial court properly examined and gave effect to the whole Lease to determine that TMD did not breach Paragraph 19.

A. The trial court did not condition a breach of Paragraph 19 on a breach of Paragraph 28.

Appellants first argue that Judge Stilwell improperly interpreted Paragraph 19 of the Lease as "dependent" on Paragraph 28. Paragraph 19 provides: "*Subject to the conditions of this lease*, the lessor agrees that the lessee may peaceabl[y] have, hold and enjoy the premises, without hindrance by the lessor or lessor's agent." (R. p. 259) (emphasis added). Paragraph 28 of the Lase provides: "All improvements shall be handled by and through the Lessor, regardless of whether Lessee is bearing all or any portion of the costs of such improvements." (R. p. 260).

"In construing a contract, each and every part of it must be taken into account and, if possible, given effect. One part of the contract should not be interpreted so as to annul another provision of the same contract." *Richland-Lexington Airport Dist. v. Am. Airlines, Inc.*, 306 F. Supp. 2d 548, 565 (D.S.C. 2002), aff'd, 61 F. App'x 67 (4th Cir. 2003). A lease must be construed as a whole, and different provisions dealing with the same subject matter are to be read together. *Wise v. Picow*, 232 S.C. 237, 101 S.E.2d 651 (1958); *Buice v. WMA Sec., Inc.*, 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008) ("[I]n determining the intent of the contracting parties, the court should construe the contract as a whole, and read together different provisions dealing with the same subject matter.").

Appellants take issue with Judge Stilwell's statement that "[t]he dispositive question in this case is whether there was ever an agreement or meeting of the minds regarding Phase II construction." They believe that a finding of "hindrance" under Paragraph 19 does not depend on whether the parties reached an agreement with respect to Phase 2 construction, as required by the Lease. Essentially, Appellants argue that Paragraph 19 should be construed in a vacuum: if TMD's

stop work directive meets their definition of a "hindrance," then TMD breached the Lease, regardless of whether a different provision of the Lease authorized the directive.[9]

This argument ignores the well-established principle that the Lease must be construed as a whole, and that each and every part of the Lease must be considered and given effect, where possible. The trial court properly considered each part of the Lease, including Paragraph 28, to determine if TMD's conduct amounted to a breach of contract. Paragraph 19 recognizes that other provisions of the Lease may limit Appellants' right to quiet enjoyment of the premises. After all, Appellants' right to peaceably have, hold, and enjoy the premises without hindrance from TMD is *subject to the conditions of the Lease*. Therefore, because the stop work directive was issued in accordance with another condition of the Lease, Paragraph 19 was not breached.

B. Paragraph 28, a specific lease term addressing improvements to the premises, governs over Paragraph 19, a general, boilerplate lease term.

There is no tension between Paragraphs 19 and 28, since the former incorporates the rest of the Lease. If there were any conflict, Paragraph 28 would control anyway.

Where enforcement of different lease terms would lead to different results on a breach of contract claim, a specific lease term is subordinate to a general, boilerplate lease term such as a covenant of quiet enjoyment. For example, in *Richland-Lexington Airport Dist. v. Am. Airlines, Inc.*, American Airlines entered into a long-term lease agreement with the Richland-Lexington Airport. 306 F. Supp. 2d 548, 565 (D.S.C. 2002), aff'd, 61 F. App'x 67 (4th Cir. 2003) (applying South Carolina law). Specific articles of the lease addressed the circumstances under which the

[9] At trial, Mr. Lewis clearly testified that TMD never hindered Appellants use of the premises, never restricted Appellants' operations on the premises, and gave Appellants reasonable notice before entering the premises. (R. p. 188, line 23 – 189, line 18). Appellants offered no testimony to the contrary and neither Mr. Black nor Mrs. Black expressly testified that TMD had hindered their use of the premises.

airport could undertake capital improvement projects. Article VI.13 authorized the airport to undertake improvement projects if they were provided for in the master plan; Article VI.15 authorized improvement projects which were approved by the majority of other airlines servicing the airport under lease agreements similar to American's lease agreement. *Id*. at 553–54. The lease also contained a standard covenant of quiet enjoyment providing that American "shall peaceably have and enjoy the premises, appurtenances, facilities, rights, licenses and privileges granted herein." *Id*. at 554.

After ten years, American vacated its leased space in 1996 and the Airport filed suit to collect outstanding rent. *Id*. at 522. American argued, in part, that the airport's recent renovations constituted a breach of the covenant of quiet enjoyment. *Id*. In response, the airport argued that the renovations did not breach the covenant of quiet enjoyment because they only destroyed American's existing gate after a new one was constructed, and, in any event, the renovations were authorized under Article VI.13 and VI.15 of the lease. *Id*.

The Court held that under South Carolina law, any inconsistency between a general clause and a specific clause in a lease must be resolved in favor of the specific. *Id*. at 564. Articles VI.13 and VI.15 of the lease were "specific, custom-drafted provisions" whereas the covenant of quiet enjoyment was a "general boilerplate provision." *Id*. (citations omitted). Therefore, the Court held that the covenant of quiet enjoyment was "subordinate" to the provisions of Articles VI.13 and VI.15, and renovations permitted by those articles did not violate the covenant of quiet enjoyment because they did not unreasonably interfere with the lessee's use of the airport. *Id*.

Here, Paragraph 19 of the Lease is a general, boilerplate provision establishing the covenant of quiet enjoyment. Paragraph 28, on the other hand, is a specific provision that requires improvements be approved by TMD. Applying the reasoning of the *Richland* court, Paragraph 19

is subordinate to Paragraph 28. As such, conduct permitted under Paragraph 28 does not violate the covenant of quiet enjoyment because it did not unreasonably interfere with Appellants' use of the premises.[10]

II. The trial court's finding that TMD did not act in bad faith in issuing the stop work directive is supported by evidence and cannot be disturbed on appeal.

Appellants next allege that the trial court erroneously ignored "voluminous and undisputed evidence" that TMD's demands were only related to Taylors Village, and therefore, TMD was acting outside the scope of Paragraph 28 when it issued the stop work directive.

But that is not the question on appeal. The question on appeal is whether the trial court's *finding* that TMD did not act in bad faith is supported by evidence. It is. (R. p. 2). That is the end of the inquiry. *McGill*, 381 S.C. at 185, 672 S.E.2d at 574 (findings of fact will not be disturbed unless found to be without evidence which reasonably supports the court's findings).

Besides, Judge Stilwell did not ignore evidence. His Order specifically addressed Appellants' argument that "Defendants' exceptions were pretextual, offered in bad faith, *and only concerned adjacent property*." (R. p. 2) (emphasis added). A significant amount of evidence was submitted by both parties about the negotiations following the stop work directive. The evidence shows that the negotiations included items related to Taylors Village, the scope of work for Phase 2, and other Lease-related issues between the parties.

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[10] To the extent Appellants claim that the stop work directive prevented them from using the premises as a restaurant and bar, TMD submitted substantial evidence at trial that Appellants had abandoned their intention to build out a full kitchen capable of sustaining a restaurant or bar. (R. p. 108, line 22 – 109, line 7, p. 159, line 23 – 160, line 23, pp. 275-277, 348, 353). Notably, the settlement reached on June 10, 2022, left open the option for TME to undertake Phase 2 construction after TMD approval. As of the filing of this brief, TME has not renewed its requests for approval.

Nor was there anything wrong with TMD seeking a global resolution of the parties' respective concerns. The parties' history of conflict and on-going disputes led TMD to believe that a resolution of all the issues was preferable to the piecemeal negotiations that had been occurring since the outset of TME's tenancy. As noted by Judge Stilwell, there is nothing nefarious about businesspeople working to resolve multiple issues between their businesses at the same time. Because Mr. and Mrs. Black owned or otherwise managed both Taylors Village and TME, the parties routinely discussed issues between their properties at the same time as they discussed issues with TME's tenancy. In fact, Mr. Black himself made it a point of discussing issues with Taylors Village and TME at the same time. (R. pp. 160-166, 391-401). As the trial court correctly concluded, the fact that the parties' discussions included items not related to Phase 2 construction is not evidence that TMD improperly withheld its approval for the construction to proceed. (R. p. 2). Instead, the parties had simply failed to reach an agreement as to the specifications and scope of work to be performed during Phase 2. *Id*.

III. Based on the evidence submitted at trial, the trial court correctly held that there was no meeting of the minds between the parties with respect to Phase 2 construction.

Lastly, Appellants contend that the parties had reached an agreement as to the specifications for improvements to be made to the Southern Bleachery mid-March 2019, and the trial court wrongfully concluded that an agreement had not been reached. Not so.

The trial court's conclusion that there was no meeting of the minds is based, in part, on its factual findings, which remain unchallenged and unchallengeable on appeal. *See McGill*, 381 S.C. at 185, 672 S.E.2d at 574. The record shows that Judge Stilwell carefully considered all the evidence presented to him at trial. As noted in the Order, the parties submitted a substantial amount of evidence at trial, including emails, text messages, documents, and testimony regarding Phase 2 construction. (R. p. 2). Judge Stilwell concluded that a review of all the evidence submitted, in

the aggregate, showed that the parties never reached an agreement or a meeting of the minds regarding Phase 2 construction.[11] *Id*. While Appellants may disagree with the trial court's conclusions, the Order shows that the Court's findings of fact were evidence-based, well-reasoned decisions that cannot be disturbed on appeal.

Moreover, Appellants' argument that Paragraph 28 requires only a "two-item agreement" is an oversimplification of that provision in the Lease. *See* Final Brief of Appellants, p. 14. The last sentence of Paragraph 28 states that the parties will be entering into a separate agreement relating to the specifications for the improvements and the responsibility for the costs. However, that sentence in no way limits the requirement under the preceding sentence of Paragraph 28 that TMD approve all improvements to the premises. Appellants' interpretation of Paragraph 28 ignores its plain language that "[a]ll improvements shall be handled by and through the lessor." TMD's right to provide or withhold consent is in no way limited by the remainder of Paragraph 28.

Notwithstanding the fact that trial court's findings cannot be disturbed on appeal, Appellants' assertion that any period of silence equated to TMD's consent to Phase 2 construction contradicts the evidence. As an initial matter, had Appellants truly believed that TMD had consented to Phase 2 construction as of mid-March 2019, they would have proceeded with Phase

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[11] Appellants' contention that the Court "erroneously interpreted the Lease to not allow for a post-work-commencement agreement" is incorrect. *See* Final Brief of Appellants, p. 14, fn 8. The trial court did not limit its conclusions to the period of time before TMD issued the stop work directive in February 2019. As discussed below, substantial evidence was submitted by both parties regarding their continued negotiations in March 2019, all of which was considered by the trial court. Judge Stilwell concluded that "a mutual understanding and agreement was never reached regarding Phase II construction." (R. p. 2). Nowhere does the Court suggest that this finding is limited to the time before Appellants wrongfully began Phase 2 construction without TMD's consent. Instead, the Court concluded that an agreement was *never* reached, at any time, between the parties regarding Phase 2 construction.

2 construction. Instead, Appellants filed this lawsuit six months later, alleging that TMD "ha[d] wrongfully withheld approval on certain 'Phase 2' construction plans[.]" (R. p. 11, ¶ 37). This post-trial argument is contradicted by Appellants' own conduct and unsupported by the evidence.

Moreover, Appellants are unable to pinpoint a date in March 2019 on which this alleged agreement was reached. Instead, the evidence submitted at trial shows that the parties were actively engaged in negotiations regarding Phase 2 construction as well as other disputes between their neighboring properties well through March 2019. On March 29, 2019, TMD sent Appellants an email with a lengthy list of proposals aimed at a global resolution of the issues between the parties. (R. pp. 386-390). With regard to Phase 2 construction, TMD proposed the following: "TMD will release the cease and desist order on the Phase 2 build out *and a separate agreement will be drafted, per our lease agreement*." *Id*. (emphasis added)[12]. The email went on to state "[a]fter negotiations are complete, TMD and [Taylors Village] will share the cost in drawing up contract." *Id*. Thus, not only had negotiations not concluded, but further action was required before Appellants could proceed with Phase 2 construction. That is, a separate agreement regarding the specifications and scope of work for Phase 2 still needed to be drafted and signed. Appellants' argument that "there was nothing further for the parties to negotiate or agree on with regard to the specifications" for Phase 2 construction is unsupported by the evidence, particularly in light of this exchange.

[12] This was not the first time that TMD offered to enter into an agreement with Appellants that would allow them to move forward with Phase 2 construction. In August 2018, TMD circulated a lease amendment that provided consent for Phase 2 construction. (R. pp. 306-315). However, Appellants refused to sign the agreement and, rather than continue to negotiate approval for Phase 2, proceeded with the construction without TMD's permission. (R. p. 99, line 2 – 100, line 15, p. 191, lines 1-17, p. 198, line 21 – 199, line 13).

The trial court disagreed with Appellants' argument that as of March 2019, all of TMD's concerns had been "accepted or otherwise addressed by TME." After a review of all the evidence, Judge Stilwell concluded that the evidence, in the aggregate, showed that TMD's "questions and concerns were never resolved." (R. p. 2). The evidence shows that TMD did, in fact, have outstanding concerns that had not been addressed by March 2019. Following the stop work directive in February 2019, TMD repeatedly asked Appellants to provide a professional opinion as to whether filling the drains with concrete would cause damage to the existing plumbing system.[13] (R. pp. 105-107, 155-157, 176, 228-229, 249-250, 316-319, 426-436; Supp. R. p. 1). As of March 2019, Appellants had not provided a professional opinion and still have not to this day. (R. pp. 155-157; Supp. R. p. 1). Similar to their other arguments, Appellants' belief that they had addressed or accepted all of TMD's concerns by March 2019 is unsupported by the evidence and contrary to the trial court's well-reasoned conclusions.

Lastly, Appellants claim that the stop work directive caused significant damage and harm to their business. (R. p. 152, lines 6-18). Having already been forced to stop construction in February 2019, a reasonable tenant in Appellants' position would not move forward with Phase 2 construction without a clear expression of consent from its landlord. TMD's consent to Phase 2 construction cannot and should not have been inferred from its silence, especially when the ease expressly required TMD's pre-approval. Any damages caused by Appellants' erroneous assumption that it had secured TMD's consent are of their own making.

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[13] The purpose of filling the drain lines was allegedly to level the floors within the leased space. Notably, the settlement reached on June 10, 2022 specifically allowed Appellants to proceed with leveling the floors after confirmation from a professional that leveling the floors would not cause damage to the existing system. (R. p. 35, line 20 – p. 25, line 4). As of the filing of this brief, Appellants have never submitted any such confirmation or renewed discussions regarding levelling the floors.

CONCLUSION

For the reasons stated above, TMD respectfully requests that this Court affirm the ruling of the trial court.

Respectfully submitted this the 10th day of April, 2023.

/s/ M. Kevin McCarrell
M. Kevin McCarrell (SC Bar No. 76255)
FOX ROTHSCHILD LLP
2 W. Washington Street, Suite 1100
Greenville, South Carolina 29601
Phone: (864) 751-7652
Fax: (864) 751-7800
kmccarrell@foxrothschild.com
Attorneys for Respondent

PROOF OF SERVICE

I hereby certify that on April 10, 2023, a true and correct copy of RESPONDENT'S FINAL BRIEF, was served via email and US Mail on all Appellants as follows:

Elizabeth H. Black
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, Suite 220
Post Office Box 11889 (29211-1889)
Columbia, SC 29201
eblack@hsblawfirm.com
Attorneys for Appellants Taylors Mill Events, LLC d/b/a Southern Bleachery and Lawrence Black

/s/ M. Kevin McCarrell
M. Kevin McCarrell (SC Bar No. 76255)
FOX ROTHSCHILD LLP
2 W. Washington Street, Suite 1100
Greenville, South Carolina 29601
Phone: (864) 751-7652
Fax: (864) 751-7800
kmccarrell@foxrothschild.com

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Trial Court Case No. 2019-CP-23-06187
Appellate Case No. 2022-001072

Taylors Mill Development, LLC f/k/a
Taylors Mill Development, LLP,

Respondent,

v.

Taylors Mill Events, LLC d/b/a Southern
Bleachery and Lawrence Black,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 10, 2023.

/s/ M. Kevin McCarrell
M. Kevin McCarrell
SC Bar No. 76255
FOX ROTHSCHILD LLP
2 W. Washington Street, Suite 1100
Greenville, SC 29601
Phone: (864) 751-7652
Fax: (864) 751-7800
kmccarrell@foxrothschild.com
Attorneys for Respondent