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

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

Appellants,

v.

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

Respondent.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

Effective June 1, 2015, Appellant Lawrence Black ("L. Black") and Respondent Taylors Mill Development, LLP (now known as Taylors Mill Development, LLC) ("TMD") entered into a lease (the "Lease") for a portion of TMD's property known as Taylors Mill. Various disputes arose under the Lease, and L. Black and Appellant Taylors Mill Events, LLC d/b/a Southern Bleachery ("TME") filed their complaint against TMD on October 23, 2019, alleging several violations of the Lease. TMD filed a counterclaim alleging a Lease violation by L. Black on March 10, 2020, to which TME and L. Black filed a reply on April 8, 2020. The parties settled several of the alleged claims prior to trial, and on June 13, 2022, commenced a non-jury trial on the following remaining issues: (1) Appellants' allegation that TMD breached the Lease by failing to allow "Phase II" construction to continue in the premises in violation of Paragraph 19 of the Lease and (2) TMD's allegation that TME was not a tenant and thus not a proper plaintiff with regard to the Lease. The Court conducted a three-day trial from June 13-15, 2022, and issued its ruling on the two trial issues on July 5, 2022. Appellants filed their notice of appeal on August 3, 2022.

FACTS

A. The Lease.

Since the late-2000s, extensive redevelopment efforts have occurred at the Southern Bleachery and Printworks in Taylors, South Carolina. Now broken into several parcels with distinct ownership, these neighboring properties last functioned as a working textile mill in the mid-1960s. These parcels are now being redeveloped as multi-tenant developments, often with an eye towards historic preservation and integrity. (*See* R. pp. 113-117, 178). Currently, the two main property owners of the old mill property are TMD and Taylors Village, LLC ("TV"). TMD owns the larger back parcel, and TV owns the smaller front parcel. (R. pp. 116, 181-182). L. Black is the managing member of TV. (R. pp. 79, 112, 116, 127). In addition to being involved with TMD's immediate neighbor, L. Black has also held a tenancy relationship with TMD by virtue of the Lease since June 2015, which was the first lease TMD entered into upon its purchase of its property. (R. pp. 112, 118-119).

The Lease defines the subject premises as "16,000 square feet" located at 250 Mill St. Suite 2-A Taylors, SC 29687 (the "Premises"). (R. p. 256, ¶ 1). The permitted use of the defined Premises is "for the purpose of operating an event space, restaurant and bar, and any customary and accessory uses thereto, and no other." *Id.* ¶ 4. The Lease contains Paragraph 19, which provides in full: "Subject to the conditions of this lease, the lessor agrees that the lessee may peaceable [sic] have, hold and enjoy the premises, without hindrance by the lessor or lessor's agent." (R. p. 259, ¶ 19). The Lease also contains a leasehold improvements paragraph at Paragraph 28, which provides in full: "Lessor 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, ¶ 28).

The Lessor is identified as Taylors Mill Development, LLP, and the Lease was executed on behalf of the Lessor by Caleb Lewis on July 22, 2015. (R. p. 261). Lewis is owner of TMD. (R. p. 178). The Lessee is identified as Lawrence Black, who executed the Lease also on July 22, 2015. (R. p. 261). The parties recognized changes in the identities of both Lessor and Lessee over time without any corresponding written change to the Lease. Taylors Mill Development, LLP ceased to exist, replaced by Taylors Mill Development, LLC. (R. p. 179). Taylors Mill Events, LLC was formed later in 2015, and TME's tenancy was ratified by TMD. (R. pp. 2, 56).

B. The leasehold improvements.

As shared with TMD both before and after the Lease was signed, Appellants intended to develop the Premises into the exclusive event venue at TMD to offer a premier event experience to clients. (R. pp. 49, 267-273). Appellants' "goal [was] to host first class events in the broader Greenville area ranging from weddings, church gatherings, community and seasonal celebrations to corporate and educational trainings, conferences, industry launches, expositions and regional festivals." (R. p. 272). To accomplish this goal, extensive work was required to bring the Premises up to various code requirements, in shape to serve as a premier event venue, and to get a certificate of occupancy for business to commence. (R. pp. 48, 186-187; *see also* R. p. 260, ¶ 28 (acknowledging agreement that certain improvements are *required* for occupancy and use by the lessee)). While Appellants' bore the entire financial burden of this extensive work (R. pp. 49, 67-68, 120-122, 153-154, 158, 194), TMD also had to accomplish overall development milestones,

such as its Final Development Plan, in order for TME to get a certificate of occupancy. (R. pp. 120-122, 125-126).

TME sought to develop the Premises in two phases. The first phase involved the front half (approximately 8,000 square feet) of the Premises, with additional extensive work contemplated for a second phase involving the back half (approximately 8,000 square feet) that would commence once the business was established. (R. pp. 49-51, 123-124). This Phase II work would be kitchen work (to build out the restaurant/catering component of the business plan and permitted use), an additional smaller event space to attract corporate clients, and additional storage and preparation rooms for events, such as changing rooms for wedding parties. (R. pp. 51, 265-266).

In September 2015, Ashleigh Black (the now-sole owner of TME), sent a schematic of the event space to TMD ownership that showed plans for the front 8,000 square feet along with contemplated plans for the back 8,000 square feet. (R. pp. 51-54, 265-266). TMD expressed no reservations whatsoever with the contemplated construction, approved the plans without any substantive inquiry or input, and the construction work soon commenced on Phase I. (R. pp. 54-55). TME opened for business in Phase I of the Premises later in 2016. (R. p. 47).

By the spring of 2018, TME was ready to move forward with Phase II construction in order to use its full Premises as reflected in the Lease. (R. p. 63). In May 2018, TME sent revised plans to TMD for review and comment, noting that the revisions consisted of "mostly cosmetic" changes to the plans that TMD had approved back in 2015. (R. pp. 58-59, 167-168, 275-277). Within a few days, TMD relayed some specific questions regarding piping and drain lines and elevator shafts, and also noted that any exterior doors and utilized space outside the Premises would need to be the subject of a lease amendment. (R. pp. 59-62, 279, 281-282). The parties also met in July 2018 to further discuss the plans. (R. pp. 289-290). TME sent the full set of construction plans to

TMD's representative on July 13, 2018, and asked TMD if they needed anything else before work commenced. (R. pp. 67-71, 220-221, 292-302). TMD did not respond with any other concerns, and as TME had resolved all of the concerns that TMD had expressed with regard to the plans by confirming some questions and eliminating other design features that TMD had questioned or wanted to renegotiate the Lease to accommodate, TME understood that it had everything in hand that it needed to move forward, including the requisite agreement with TMD regarding the specifications for the improvements and the responsibility for the costs of those improvements. (R. pp. 67-71, 74, 101-104, 128-130). As with all other construction work on the Premises, TME was always planning to (and did) pay for the construction. (R. pp. 67-68, 194). Phase II work thereafter commenced in the fall of 2018 with TME sticking as tightly to the construction schedule as possible in order to minimize the impact of the construction on TME's business and event bookings. (R. pp. 73, 128, 130, 360).

C. The stop work directive.

In mid-February 2019, after extensive construction work in Phase II had been progressing for months and was largely complete (R. pp. 78, 130, 227), TMD issued a stop work directive on the premise that the Phase II construction work had not been approved by TMD in writing. (R. pp. 202-203, 227, 230-231, 334, 341, 426).[1] The only improvement specification item identified as of potential concern to TMD at this time was the status of some old troughs in the concrete floors that were uneven and needed to be smoothed out for safety purposes as they constituted a tripping hazard. (R. pp. 171, 228, 338-342). TMD rejected invitations to view the troughs, failed to send a plumber to review the matter as it had said it would, and ignored both the engineered

[1] Notably, the Lease does not require a written agreement, though TMD repeatedly (and erroneously) stated to TME that it required a written agreement with regard to Phase II construction. (R. pp. 68, 138, 253-254, 290, 329).

plans sent to it by TME and the professional opinion of TME's general contractor that there were no plumbing or drainage concerns whatsoever. (R. pp. 66, 139-145, 172, 228, 338-344). TMD, however, stopped asking about the troughs within a few weeks, moving on to a few additional Phase II items that could have been, but were not, raised in mid-2018. (R. pp. 80-82, 231-232, 369-370). TME rapidly resolved those issues and repeatedly asked in February and March 2019 for additional information from TMD to fully and finally resolve any remaining construction concerns. (R. pp. 82-83, 234-235, 358-367, 369-371, 373-376, 386-390). TMD never provided any additional information pertaining to any remaining Phase II construction concerns. (R. pp. 83-85, 369-370).

By mid-March 2019, TMD had abandoned all Phase II construction-related concerns, instead "remain[ing] adamant that all items need to be resolved before moving forward with your build out." (R. pp. 235-236, 373). TMD identified "all" the items needing resolution as follows: " ·The fire and water pit. ·We need to address procedures for use of Taylors Mill western docks, and be certain we both have a clear understanding of the easement already in place. ·Taylors Village use of TMD's sewer lift station. There is not an agreement regarding the use and maintenance of the lift station. It's an additional expense TMD incurs, and we'd like to discuss this further." (R. p. 373). None of these three items related to the Premises at all—much less to Phase II construction at the Premises. (R. pp. 79, 84-85, 235-236).

TMD reiterated its non-construction (and non-Premises) demands on March 20, 2019: "We have made clear that any approval of Phase 2, which has never been approved before, is contingent on resolving other issues as set forth in my March 14 e-mail: - The Fire and water pit[.] – The western docks[.] – The sewer lift station[.]" (R. p. 378; *see also* R. pp. 86, 207-212, 235-236). On March 26, 2019, TME asked the pointed question of TMD: "What more do you need from me

to allow us to continue with our improvements and use of the event space?" (R. p. 387). TMD listed a laundry list of items in response, most of which had nothing to do with the Premises at all and *none* of which involved the improvement specifications. (R. pp. 233, 386). The last item (out of eight) stated: "TMD will release the cease and desist order on Phase 2 build out and a separate agreement will be drafted, per our lease agreement. SB will be responsible for all buildout costs, including all fire alarm costs.[2] SB will also begin paying an additional $0.75/sq ft toward triple net." (R. p. 386). By the end of March 2019, then, not only was TMD seeking more and more non-Lease related concessions in order to release the stop work directive, it was demanding a rent increase, as well. *No* improvement specifications are included in TMD's list of eight demands of what more was needed of TME to allow TME to continue with its improvements and use of the event space Premises. (R. pp. 233, 386). Despite ample opportunity to do so, TMD has never identified any Phase II construction-related concerns after mid-March 2019 and never lifted the stop work directive it imposed. (R. pp. 91-92, 146-151, 236; *see also* R. pp. 386-390).

Due to the stop work directive, TME was not permitted by its landlord to complete construction on half of its Premises to render them usable as an "event space, restaurant, and bar." (R. pp. 97, 202-203, 426-436). The back half of the Premises has been left with uneven and uncorrected floors, incomplete construction, and the complete inability to get a certificate of occupancy for that space. In addition to these basic health and safety issues, TME has been prohibited from carrying out the full use of the Premises as an event space, restaurant, and bar by not being able to construct kitchen and catering facilities or make use of additional event space

[2] As discussed above, TME (SB) has always paid for its construction improvements without controversy with TMD. (R. pp. 49, 67-68, 120-122, 153-154, 158, 194).

square footage to attract a larger variety of event space clients. (R. pp. 92-94, 110-111, 177). TME presented evidence of damages due to TMD's actions. (*See, e.g.*, R. p. 152).

D. The context of the stop work directive.

TMD's imposition of a stop work directive for construction work on half of the Premises and refusal to lift the stop work directive unless unrelated demands were met did not occur in a vacuum. In June 2018 (shortly after TME shared the Phase II updated plans with TMD but before work began), TME formally complained in writing to TMD regarding Lease violations centering on the Lease's exclusive use provision and TMD allowing other tenants (primarily 13 Stripes Brewery) to use their leased space and TMD's parking lot as event space in violation of that provision. (R. pp. 284-287; *see also* R. pp. 64-65, 189-190, 217-220). TMD thereafter failed to implement a set of agreed policies on which TME and TMD jointly worked to alleviate TME's concerns. (R. pp. 72, 306-311). Unbeknownst to TME, TMD also informed the owners of 13 Stripes Brewery that TMD had "some leverage here" in order to get concessions from TME on the events issue by connecting such concessions with the "Phase 2 buildout." (R. pp. 222-224, 304). TMD further advised 13 Stripes Brewery that "I've always had your back" and sought their trust that "I am doing what is in the best interest of the Taylors Mill community, which will greatly help 13 Stripes, The Farehouse and all new Retail moving forward." (R. p. 304).[3]

Lease-related tensions with TMD also increased, as TMD personnel began parking in the designated loading zone in front of Southern Bleachery, frustrating TME's ability to load and unload as it had based on its agreement to do so with TMD and investments TME put into the loading zone. (R. pp. 75-77, 192, 238, 327, 378-381). On March 22, 2019, and in apparent

[3] Conspicuously excluded from this list of who TMD's actions would help are TME and L. Black, which were not 13 Stripes (the brewery), the Farehouse (a restaurant), or new retail (as the Lease was already three years old). TMD personnel have also referred to the Blacks/TME in written correspondence in February 2019 as "[t]hose F'ers." (R. p. 422).

retaliation for TME and L. Black's position on a variety of issues, TMD paved over the loading zone, which allowed for regular parking in the dedicated loading zone. (R. pp. 87-88, 383, 385). TME notified TMD of the threat to its business. (R. pp. 89-90, 383).

As indicated in the March 2019 emails TMD used to try to extract non-Lease related concessions from L. Black, tensions were also running high between neighbors TMD and TV. (R. pp. 317-319, 358-367, 369-371, 373-376, 378-381, 386-390; *see also* R. pp. 131-137, 225-226, 237). TMD has admitted that these issues had nothing to do with the Lease or the Premises. (R. p. 233). As the tensions continued, TMD never lifted the stop work directive. The Phase II construction remained unfinished and the back half of the Premises remained unavailable for full use as an event space, restaurant, and bar as provided in the Lease.

STANDARD OF REVIEW

This Appeal concerns Appellants' claim that Respondent breached Paragraph 19 of the Lease by hindering Appellants' use of the entire leased Premises. (*See* R. p. 2). The Circuit Court interpreted Paragraph 19 as dependent on the "agreement" clause in Paragraph 28 of the Lease, which the Circuit Court interpreted as only applicable to the pre-Phase II construction timeframe. *Id.* The interpretation of a contract is a question of law for the court to decide. *See First S. Bank v. Rosenberg*, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016) (the interpretation of an unambiguous contract is a question of law); *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 467, 688 S.E.2d 597, 601 (Ct. App. 2010).[4] Appellate courts review questions of law *de novo*. *Milliken*

[4] No party has argued that the Paragraph 19 of the Lease is ambiguous.

& Co. v. Morin, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012); *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 12, 738 S.E.2d 480, 486 (Ct. App. 2013).

ARGUMENT

A. A finding of hindrance is not dependent on an agreement for construction specifications and cost allocation.

The July 5, 2022 Order held that:

> The Plaintiffs claim that the Defendant Breached the Contract by violating the Article 19, Quiet Enjoyment, provision of lease. Specifically, Plaintiffs complain that Defendants, without good cause and in bad faith, issued a Stop Work order shutting down Phase II construction projects that had been agreed upon by the Parties. Plaintiffs claim that damages flowed therefrom. Defendants deny that the Parties ever had a binding agreement with respect to Phase II construction and issued the Stop Work order because the required approvals under Article 28 of the lease had not been granted. *The dispositive question in this case is whether there was ever an agreement or meeting of the minds regarding the Phase II construction.* The Plaintiff has the burden of proving that there was an agreement by a preponderance of the evidence. The undersigned finds that Plaintiffs have failed to meet this burden of proof.

(R. p. 2) (emphasis added). This finding is legally erroneous as it imposes a dependency on a construction agreement that is not supported by the plain language of the Lease.

At the outset, Plaintiffs identified that the breach at issue for trial was "with regard to the breach of the quiet enjoyment provision of the lease, which states that in part the lessor agrees that the lessee may peaceably have, hold and enjoy the premises without hindrance by the lessor lessor's agent." (R. p. 44; *see also* R. p. 45) ("And we would submit, Your Honor, that all of the asks that Taylors Mill Development was putting on the condition to allow phase 2 work to go forward were not related to the lease. They were not related to the premises. They were not related to the subject work. They were related to things that they wanted from Mr. Black on behalf of Taylors Village. And our position, Your Honor, that – is that the withholding of allowing that work to go forward is a violation of the quiet enjoyment provision of the lease because they were not permitted to have, hold and enjoy the premises without hindrance by the landlord. The

landlord's position was a hindrance to my client's full use of the 16,000 square feet of the premises.").

Where, as here, the Court is called upon to determine the rights of parties pursuant to a lease, it must construe the provisions at issue under the rules of contract interpretation. *S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654-55, 667 S.E.2d 7, 12 (Ct. App. 2008). The Court must "ascertain and give effect to the intention of the parties," and, in doing so, "'must first look at the language of the contract.'" *Id.* at 655, 667 S.E.2d at 13 (citations omitted). Where a lease is unambiguous, the lease "must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." *Id.* (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 856 (1988)). The Court must enforce an unambiguous lease term "according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Id.* (citing *Lindsay v. Lindsay*, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997)).

It is legal error to conflate Paragraphs 19 and 28 of the Lease, as the Court did in the Order. Paragraph 28 limits the terms of the requisite agreement to those "[r]elating to the specifications for the improvements to be made to the premises and responsibility for the costs thereof." (R. p. 260, ¶ 28). Demands for items or concessions that have nothing to do with those agreement terms are thus not appropriately part of any Paragraph 28 agreement. *See Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.") (internal quotation omitted). Because the items that TMD was requesting of Appellants as of mid-March 2019 and beyond as necessary to allow construction to continue were

outside the scope of the improvements specifications and cost responsibility, any failure to reach agreement on those issues is not affected by Paragraph 28. Stated differently, reliance on Paragraph 28 for topics outside of that paragraph's specific scope is legally erroneous.

In contrast, the concept of "hindrance" in Paragraph 19 is far broader than the narrow agreement requirement in Paragraph 28. Hindrance means "the state of being interfered with, held back, or slowed down." Merriam-Webster, "Hindrance," https://www.merriam-webster.com/dictionary/hindrance (last accessed Dec. 8, 2022). The only restriction placed on the tenant's having, holding, and enjoying the Premises without hindrance by the landlord is "the conditions of this lease." (R. p. 259, ¶ 19). Thus, if TMD is acting outside of "the conditions of this lease" (as it was by conditioning this agreement on terms and issues outside of the two items listed in Paragraph 28 and also by not recognizing that all of the terms of the agreement envisioned by Paragraph 28 had been achieved by March 2019) and those actions interfere with, hold back, or slow down the tenant from having, holding, and enjoying the Premises,[5] then Paragraph 19 is implicated. The Court thus erred in absolutely conditioning any consideration of a breach of Paragraph 19 as dependent on a Paragraph 28 agreement, and due to this error, failed to consider that Appellants' complaints of breach of the Lease were not confined to a Paragraph 28 agreement.

B. TMD's non-Lease-based demands and conditioning of approval of Phase II construction on L. Black acquiescing to those demands is outside the scope of Paragraph 28 and amounts to hindrance under Paragraph 19.

Paragraph 28 is clear that the scope of that paragraph's "agreement" contains only two items: "the specifications for the improvements to be made to the [P]remises and the responsibility for the costs thereof." (R. p. 260, ¶ 28). No later than March 14, 2019 (several weeks after

[5] Enjoyment is legally defined as "[p]ossession and use, especially of rights or property." Black's Law Dictionary, 7th ed., p. 435. And, of course, the use of the entire 16,000 square feet of Premises is "for the purpose of operating an event space, restaurant and bar, and any customary and accessory uses thereto, and no other." (R. p. 256, ¶¶ 1, 4).

imposing a stop work directive on construction for half of the leased Premises), TMD's entire focus had turned away from these two items. On that date, Mrs. Black asked TMD if there was "any update on fire or any outstanding issues on the buildout." (R. p. 373).[6] TMD responded that "all items need to be resolved before moving forward with your build out," and lists three items: (1) "The fire and water pit;" (2) "We need to address procedures for use of Taylors Mill western docks, and be certain we both have a clear understanding of the easement already in place;" and (3) "Taylors Village use of TMD's sewer lift station ...." *Id.* On March 20, 2019, TMD wrote TME and L. Black that "[w]e have made clear that any approval of Phase 2, which has never been approved before, is contingent on resolving other issues as set forth in my March 14 e-mail: - The fire and water pit – The western docks – The sewer lift station." (R. p. 378). It is undisputed that none of these items have anything to do with the Premises or the Lease and that they all involve only the relationship between TMD and the neighboring TV property. To put a finer point on it, it is undisputed that none of these items have anything to do with "the specifications for the improvements to be made to the [P]remises and the responsibility for the costs thereof." (R. p. 260, ¶ 28). Indeed, in response to yet another follow up from TME for TMD to specify what more it needed to continue the improvements and use the Premises, TMD articulated zero concerns with

[6] Earlier in the email chain, TME addressed each and every Premises and Phase II construction-related item raised by TMD and repeatedly asked TMD if there were any outstanding construction-related issues to address. (*See* R. pp. 373-376). TMD lists no such issues in response. *Id.*

the construction specifications and added to their demands on TME. (R. pp. 386-390).[7] TMD's demands with regard to Paragraph 28 were thus outside of its prerogatives under that paragraph.

It is also undisputed that TMD never lifted its stop work directive and that TMD never allowed the work that Appellants had been pursuing for months to be finished. (R. pp. 91-92, 146-151, 236). The Phase II work comprised half of the leased Premises (including the kitchen), and, as a result, the full Premises were not able to be used as authorized in the Lease as "an event space, restaurant and bar, and any customary and accessory uses thereto, and no other." (R. p. 256, ¶ 4). Because the Court erroneously treated a Paragraph 28 agreement as dispositive of the Paragraph 19 alleged breach, the Court did not address the voluminous and undisputed evidence that TMD's TV-only related and coercive conditions hindered the use of the Premises as allowed pursuant to the Lease. *See supra* pp. 5-9. The Court's Order should be reversed and remanded for further proceedings accordingly.

C. Even if Paragraph 19 is dependent on a Paragraph 28 agreement, the Court erred by not finding that precondition was met by mid-to-late-March 2019.

The plain language of the Lease demonstrates that a finding of hindrance under Paragraph 19 is not dependent on the two-item agreement under Paragraph 28, but even if it was, the Court erred by not finding that such an agreement was made. "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 439 (Ct. App. 2003). As discussed above, the agreement requirement imposed by Paragraph 28 consists of two items: "specifications for the improvements to be made to the premises and the responsibility for the costs thereof." (R. p. 260, ¶ 28). The second prong was never disputed: TME and L. Black were, at all times, responsible

[7] While TME's responsibility for construction costs is mentioned by TMD, both parties have acknowledged that TME was *always* responsible for its construction costs. (R. pp. 49, 67-68, 120-122, 153-154, 158, 194).

for the costs of the construction improvements. (R. pp. 49, 67-68, 120-122, 153-154, 158, 194-195).

As to the first prong, by mid-March 2019, there were no further disputes regarding the "specifications for the improvements to be made." TMD's email correspondence conditioning approval for Phase II had shifted primarily to TV-only demands, and TMD remained silent in the face of TME's questions about what remained outstanding (if anything) with regard to the Phase II construction specifications. Given that TMD had listed various specification-related items in the past, all of which had been accepted or otherwise addressed by TME (R. pp. 59-62, 67-71, 74, 80-85, 101-104, 128-130, 279, 281-282, 358-367, 369-371, 373-376), there was nothing further for the parties to negotiate or agree on with regard to the specifications for the improvements to be made by mid-to-late-March 2019. Thus, to the extent there was a requirement of a Paragraph 28 agreement in order to trigger the hindrance issues in Paragraph 19, the evidence shows that that agreement existed as of mid-to-late-March 2019.[8]

CONCLUSION

The trial court's erroneous determination that a breach of Paragraph 19 of the Lease was dependent on a pre-work commencement agreement pursuant to Paragraph 28 of the Lease led to a series of reversible interpretive errors in the July 5, 2022 Order, as discussed above. The trial

[8] The Court held that the "agreement" it needed was a pre-work commencement agreement. *See* (R. p. 2) ("The Plaintiffs submitted proposed plans, permits, and drawings. In response, the Defendant clearly articulated remaining questions and concerns regarding the proposed construction. These questions and concerns were never resolved, and the Defendant issued the Stop Work order when it learned of the commencement of the construction."). It held that such an agreement was not shown by a preponderance of the evidence, and that such a showing was "dispositive" of the Paragraph 19 hindrance issue. *Id.* The Court thus erroneously interpreted the Lease to not allow for a post-work-commencement agreement to arise to the extent that any such agreement is required under Paragraph 19 (which by its plain language, it is not).

court's order finding in favor of Respondent on Appellants' breach of Paragraph 19 of the Lease claim should thus be reversed.

Respectfully submitted,

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