

contract did not close by the date set in the contract due to Ferros' default. After the termination of the contract, the Ferros contracted to sell the Property to Plaintiff, on or about December 16, 2012. Defendants filed a lis pendens on the Property and a lawsuit against the Ferros for specific performance. The Plaintiff and the Ferros filed their own lawsuits against the Defendants to enforce the December 16, 2012 contract.

The Circuit Court consolidated the cases and found in favor of the Defendants. The Plaintiff and the Ferros appealed the Circuit Court's ruling. In 2017, the Court of Appeal enforced the Circuit Court's ruling and required the Ferros to sell the Property to the Defendants. Throughout this litigation (nearly five years), Plaintiff remained on the Property through a rental agreement with the Ferros. The Defendants and the Ferros closed on their contract on or about June 2, 2017. But, to take possession of the Property, Defendants had to get a writ of ejectment against the Plaintiff. The Defendants finally took possession of the Property in June 2017.

In 2012, after the Defendants had signed the contract, the Ferros added handwritten language to the contract that stated "buyer shall grant water and sewer easement to the adjacent 2-acres." Originally, the Property was an 8-acre tract, with a house and barn thereon. When Defendants contracted to buy the Property, the parties agreed that it would only be for the house and 6 of the 8 acres. The Ferros then subdivided the Property into a 6-acre tract and a 2-acre tract. The barn sat on the 2-acre tract of land. The 2-acre tract obtained a separate TMS number before December 31, 2013, according to the Register of Deeds of Dorchester County. While in litigation, the Ferros renovated the barn interior into living space. The Plaintiff bought the 2 acres and barn on January 30, 2015. Unknown to the Defendants until 2017, the water meter servicing the house also serviced the barn. As evidenced in the record, the Defendants did not ratify the Ferros' handwritten language in the contract.

As the owner of the 2-acre tract property (hereinafter “Barn”), Plaintiff used the Barn as an investment property to rent to tenants and never lived there. When the Defendants took possession of the Property, there were tenants living in the Barn. The Defendants hired Kessler Plumbing to install a cut-off valve at the recommendation of Dorchester County Water Authority, in the event of an emergency break or leak and the need to manually shut off the water to isolate and repair the damaged pipe. It did not become known to the Defendants until mid-to-late summer of 2017 that the Barn was piggybacking on their water meter due to a conversation with the then tenants of the Barn. The Defendants waited until the tenants moved out before moving forward with installing a bypass line to the Property.

Once the tenants moved out of the Barn, the Defendants, on February 16, 2018, sent a letter, by certified mail, to the Plaintiff informing her of the installation of the bypass line taking place in ten (10) days and they would be shutting off the water to perform the installation. The Defendants’ new pipe, from the house to the water meter, was approximately 500-feet in length. It took four (4) months to complete the root removal, trenching, and new line installation. The old waterline, which the Barn was using as its water source, was disconnected from the water meter, capped and remains in place and undisturbed. Defendants connected a new waterline to service the Property only. Once the Plaintiff became aware of the new waterline installed by the Defendants, Plaintiff filed this action to demand the water easement be upheld. Plaintiff made no effort or request to reconnect the waterline to County water service or install her own meter, or attempt to utilize the alleged easement. While this action has been in litigation, Plaintiff sold the Barn to Rick Willis’s company, Spartacus Holdings, LLC on March 13, 2020. Mr. Willis had installed his own waterline and meter to the Barn, as required by law under Dorchester County Code of Ordinances, Chap. 44, Art. 3, Div. 2, Sect. 44-60. On October 28, 2021, Spartacus

Holdings, LLC, transferred the Barn to Richard A. Willis via quit claim deed. The Plaintiff no longer holds possession over the Barn, nor has held any interest in the Property since March 2020.

1. Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Rule Show Cause and Continuance.

As to the Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Rule Show Cause, this Court denies the motion and points the Plaintiff to the Order issued by Judge Maite Murphy on August 23, 2021, where it ordered that "[t]he Defendants shall not be required to respond to the highlighted/circled requests, which were attached as an exhibit to the Defendants' Memorandum, filed June 3, 2021." The discovery sought in this current Motion to Compel was the same discovery Judge Murphy ordered the Defendants did not have to respond. Further, the issue presented was the same issue that Judge Murphy denied when addressing Plaintiff's Motion for Reconsideration on March 8, 2022, and again on March 25, 2022. Therefore, Plaintiff's Motion to Compel Discovery and Plaintiff's Motion for Rule Show Cause is denied.

2. Plaintiff's Motion for Default and Default Judgment, Plaintiff's Motion for Extension of Discovery, and Defendants' Motion to Compel Discovery.

As to the Plaintiff's Motion for Default and Default Judgment, this Court denies the motion because the Defendants complied with Judge Murphy's order issued on August 23, 2021, and filed an answer to the amended complaint within 15 days. The order was issued on August 23, 2021, and the Defendants timely filed their answer on September 9, 2021. Furthermore, Plaintiff's Motion for Extension of Discovery and Defendant's Motion to Compel Discovery were continued, and for the reason set forth below, are now moot.

3. Defendants' Motion for Summary Judgment against the Plaintiff.

Finally, Defendants' Motion for Summary Judgment is granted as to all six causes of

actions in the amended complaint: (1) trespass upon easement, (2) intentional interference with and obstruction to an easement; bad faith and fair dealings, (3) nuisance, (4) breach of contract; contempt, (5) negligence and strict liability, and (6) trespass to real property. There is no evidence presented from which there could be a finding of trespass upon easement or trespass to real property. There was no evidence presented regarding Plaintiff's damages. There was no evidence presented that would, or could, lead a fact finder to believe Plaintiff's property rights were breached. The Plaintiff has failed to file any affidavits or supporting evidence relating to the events surrounding the water line that gave rise to her claims against the Defendants. More specifically, Plaintiff does not own the subject water line. There was evidence presented that the property was sold and the new owners have complied with the Dorchester County Ordinance in Chap, 44, Art. 3, Div. 2. Sect. 44-60, by placing their own meter and waterline on their property. Additionally, there is no cause of action for unfair dealings on the allegations that have been set out. Although there may have been language in the purchase agreement between the Defendants and a third party regarding an easement, there is no easement on the plat of either property or on any deed. Furthermore, the consistency of deed and the plat indicate merger of purchase agreement in terms indicated on the deed.

Under the "merger doctrine," when a deed is executed and accepted in performance of a prior preliminary contract, the deed, if unambiguous in its terms must be looked in alone as the final agreement of the parties. South Carolina first recognized the merger doctrine in 1885, when the Supreme Court of South Carolina refused to enforce the prior contract provision, holding that the two agreements "merged, and that the conditions annexed to the lease were extinguished" by the subsequent document. *St. Philip's Church v. Zion Presbyterian Church*, 23 S.C. 297, 307 (1885). Since *St. Philip's*, South Carolina courts have expanded upon the merger doctrine, to wit:

“The execution, delivery, and acceptance of a deed varying from the terms of [an] antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed.” *Shoney’s, Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d 300, 303 (S.C. Ct. App. 1987) (quoting *Charleston & W. C. Ry. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187, 193 (1957)).

Further, if there had been an easement, it would be clearly violative of Dorchester County Code of Ordinances, Chap. 44, Art. 3, Div. 2, Sect. 44-60, which reads in part,

No water or sewer service shall be furnished to any lot from an existing service on another lot except as hererin provided or by special authorization, in writing, of the County Council. Any unapproved/unmetered connection to a new system, not yet approved for operation, shall be defined as illegal...

THEREFORE, IT IS ORDERED, for the reasons set forth above, this court

1. DENIES Plaintiff’s Motion to Compel Discovery, Plaintiff’s Motion for Default and Default Judgment, and Plaintiff’s Motion for Rule Show Cause and Continuance;
2. GRANTS Defendants’ Motion for Summary Judgment;
3. and Plaintiff’s Motion for Extension of Discovery and Defendants’ Motion to Compel Discovery are now rendered MOOT.

IT IS SO ORDERED!

The Honorable Diane S. Goodstein

_____, 2022

St. George, SC



Dorchester Common Pleas

Case Caption: Molly M Morpew VS Stephen Dudek , defendant, et al
Case Number: 2018CP1801661
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein