

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
 Anderson Discount Housing, LLC)
)
 Plaintiff,)
)
 -vs-)
)
 John M. Hornbeck III and)
 Christina L. Hornbeck,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

ORDER

2021-CP-04-00685

RECEIVED
 JUN 26 2023
 SC Court of Appeals

DATE OF HEARING	May 4, 2023
PRESIDING JUDGE:	R. Lawton McIntosh
PLAINTIFFS' ATTORNEY:	Townes B. Johnson III
DEFENDANT'S ATTORNEY:	Joshua B. Raffini
COURT REPORTER:	Lisa M. Scott

THIS MATTER comes before the Court for a non-jury trial. The Plaintiffs filed its Summons and Complaint on April 12, 2021 seeking the Court's Order seeking specific performance of a Contract with Defendants concerning sale of certain real estate. Plaintiff also sought the alternative relief of damages for alleged breach of contract. The Defendants filed their Answer. Defendants' responsive pleading filed *Pro Se* on August 21, 2021, while not denominated as a Counterclaim, also included requests for both damages and attorney's fees pursuant to the same contract with Plaintiff.

At the call of the case, Chris Cox was present on behalf of Plaintiff together with Plaintiff's counsel. Defendant John Hornbeck appeared with his counsel. Defendant Christina Hornbeck did not appear, but Defendants' attorney confirmed that she did not intend to appear at trial in this matter. The Plaintiff called witnesses and presented exhibits in support of the relief requested in the pleadings. At the conclusion of Plaintiff's case, Defendants moved for a

directed verdict on various grounds. Defendants' motions were denied. Defendants called one witness in support of their claim for attorney's fees.

Having heard the witness, and reviewed the exhibits admitted into evidence, the Court denies Plaintiff's Claim for Breach of Contract and Specific Performance. In support thereof, I make the following Findings of Fact and Conclusions of Law derived therefrom:

FINDINGS OF FACT

1. I find that the Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County.
2. I find that the Defendants are both citizens and residents of the County of Anderson, State of South Carolina.
3. I find that this action concerns real property situated in Anderson County, South Carolina, and more specifically Lot Numbers sixty-one (61) and seventy-seven (77) Pinion Lane having Anderson County tax map numbers 146-03-01-040 and 146-03-01-039 respectively.
4. I find that this Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Anderson County.
5. I find that the parties previously entered into an agreement (hereinafter "Contract") concerning the lots identified herein above. A copy of the Contract was identified and admitted into evidence as Plaintiff's Exhibit Number 2 at trial.
6. I find that, based on undisputed testimony from both parties, Plaintiff drafted the Contract.
7. I find that the Contract contained, *inter alia*, the following terms:
 - a. Purchase price of \$55,000.00, pursuant to paragraph 2 of the Contract;

- b. Pursuant to paragraph 33 of the Contract, “[b]oth lots to be paid for by buyers within (24) months of contract date; no interest to be charged to buyer by seller.”
8. I find that, based on the testimony from both parties, the Defendants agreed to the purchase price set forth in the Contract at a reduction from the asking price for each individual lot.
9. I find that Plaintiff informed Defendant John Hornbeck on or about March 24, 2021 that he intended to proceed with purchase of one (1) of the lots that was part of the parties’ Contract. Plaintiff introduced into evidence communications between Chris Cox, on behalf of Plaintiff, and Defendant John Hornbeck by both text message and e-mail as Plaintiff’s Exhibit Numbers 1 and 4, respectively.
10. I find that Defendant John Hornbeck informed Chris Cox, on behalf of Plaintiff, that he would not proceed with the Contract on the morning of March 25, 2021, with that information communicated by e-mail and contained in Plaintiff’s Exhibit Number 4.
11. I find that the parties dispute whether they communicated outside of their written communications between March 24, 2021 and March 25, 2021. However, Defendant John Hornbeck testified that he met with Chris Cox, on behalf of Plaintiff, on the evening of March 24, 2021 and Mr. Cox insisted that the parties close on only one (1) of the lots in the Contract. Mr. Cox confirmed in his own testimony that he wanted to close on one (1) lot and pay a portion of the price specified in the Contract.
12. I find that the Contract between the parties did not provide any provision allowing Plaintiff to purchase a portion of the property covered by that agreement in

exchange for partial payment. Rather, the Contract specified a single price for two (2) separate lots together with remaining terms as set forth therein.

13. I find that Defendant Hornbeck was justified in treating Plaintiff's demand to alter the terms of the Contract as a breach of that agreement and delivering notice to Plaintiff that he was terminating the Contract.
14. I find that Plaintiff failed to present any evidence that he was ready, willing, and able to perform the terms of the parties' Contract prior to initiating this action.
15. I find that both parties acknowledged continued discussions of closing on the properties identified in the Contract. However, any such offers to close were offers to compromise as Defendants had already terminated the Contract.
16. I find that the Plaintiff is not entitled to specific performance as Defendants were justified in declaring default and terminating the Contract.
17. I find that Plaintiff is not entitled to the alternative relief of damages due to breach of contract. I find that the Plaintiff committed the first breach of the Contract and that, therefore, Plaintiff may not recover for any subsequent damages allegedly caused by Defendants' subsequent nonperformance. Furthermore, even if the Court had found Defendants committed the first breach Plaintiff failed to present any evidence of its damages such that Plaintiff would not be entitled to an award of damages.

CONCLUSIONS OF LAW

I conclude that "[b]asic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract's force and effect. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (S.C. 2002); citing *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 373 S.E.2d 584 (1988). It is not the function

of the court to rewrite contracts for parties. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983).

Parties to a contract may not insist on changes that vary from the terms embodied in the agreement. *See, e.g., Silver v. Abstract Pools & Spas, Inc.*, 658 S.E.2d 539, 376 S.C. 585 (Ct.App. 2008) (party “not permitted to reinterpret written contract terms midstream because he is unhappy with the contract he executed”); *citing Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct.App. 2007). Similarly, interpretation of contracts “is governed by the objective manifestation of the parties’ assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.” *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct.App. 1984).

I conclude that Plaintiff’s conduct in seeking to compel only partial performance of the Contract constituted the first full breach in this matter. Accordingly, Defendants were justified in sending notice of termination. “Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” *Willms Trucking Co., Inc. v. JW Constr. Co., Inc.*, 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App. 1994).

I conclude that the parties shall each be responsible for their own attorney’s fees and costs. “Attorney’s fees are not recoverable unless authorized by contract or statute.” *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *citing Blumberg v. Nealco., Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). In this case, the Contract allowed either party to seek an award of attorney’s fees if the other party breached. However, while the Contract authorized recovery of fees the language did not mandate an award of fees. An award of attorney’s fees is, therefore, in the discretion of the Court. I conclude that under all facts and circumstances of this action, as set forth above, neither party shall be entitled to recover fees.

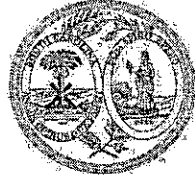
IT IS, THEREFORE, ORDERED ADJUDGED and DECREED:

1. Plaintiff's claim for specific performance of the Contract is denied.
2. Plaintiff's alternative claim for damages arising from breach of contract is denied.
3. Each party shall be responsible for their own attorney's fees and costs.
4. Plaintiff shall file cancellation of Lis Pendens previously filed in association with this case, said Lis Pendens filed under Case No. 2021-LP-04-00063.

IT IS SO ORDERED this _____ day of May, 2023.

R. Lawton McIntosh
Presiding Circuit Court Judge
Tenth Judicial Circuit

Anderson, South Carolina



Anderson Common Pleas

Case Caption: Anderson Discount Housing Llc VS John M. Hornbeck III , defendant,
et al
Case Number: 2021CP0400685
Type: Order/Other

S/R. LAWTON McINTOSH

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