

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
Daniel E. Schall, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Lori M. Sealy, as Personal Representative )  
for the Estate of Claude L. Mullwee a/k/a )  
Claude Lee Mullwee, and the Estate of )  
Deloris Robinson Mulwee, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2018-CP-42-02034

**ORDER**

**RECEIVED**  
**Nov 30 2023**  
**SC Court of Appeals**

This matter came before this Court for a two-day trial June 26, 2023. The issue before the Court was whether a contract between these parties for the sale of real property located in Spartanburg County, South Carolina had been validly terminated or whether an enforceable contract still existed between the parties. Present at the trial was the Plaintiff, Daniel E. Schall, and his attorney, A. Todd Darwin, as well as the Defendant, Lori M. Sealy, and her attorney, Ryan F. McCarty. Prior to the start of the trial, the parties made certain stipulations as to the facts and admission of certain exhibits used at trial. Based upon an examination of the pleadings, and after consideration of the testimony of the parties and their witnesses, along with consideration of the exhibits offered into evidence and the facts stipulated to by the parties, I make the following findings of fact and conclusions of law.

**PROCEDURAL BACKGROUND**

The real property that is the subject of this matter is located at 720 Beacon Light Road in Spartanburg County, South Carolina bearing Spartanburg County Tax Map No. 3-14-00-267.00 (the “Subject Property”). On March 23, 2018, Plaintiff and Defendant entered an

*Agreement/Contract: To Buy and Sell Real Estate (General Use and Lots/Acreage)* (the “Contract”) regarding the Subject Property. A copy of the Contract was admitted into evidence without objection as Plaintiff’s Ex. 1. Both parties were represented by real estate agents working through C. Dan Joyner Realtors with Matthew Thrift serving as the Broker-In-Charge. The Contract stated that the closing would occur on before May 23, 2018. On April 23, 2018, Plaintiff, through his real estate agent, notified Defendant via email, through her real estate agent, that the subject property had been damaged. A copy of Plaintiff’s real estate agent’s April 23, 2018, email was admitted into evidence without objection as Defendant’s Ex. 1. In that email, Plaintiff’s real estate agent specifically noted that “someone has been there and has removed several plants and vegetation from around the property,” and “it looks like someone went and just scattered trash around the floor.” Plaintiff’s real estate agent also noted in that email that “the lock on the side building looks like it has been damaged from more.”

On April 28, 2018, Defendant executed a *Notice of Termination and Release of Agreement/Contract to Buy and Sell Real Estate (Residential)* and delivered them, through Matthew Thrift, the Broker-In-Charge, to Plaintiff and his real estate agent on that same day. These documents along with Mathew Thrift’s email and the accompanying DocuSign tracker were admitted into evidence without objection as Plaintiff’s Ex. 5. Mr. Thrift’s email to Plaintiff and Plaintiff’s real estate agent states that “Seller is invoking section 13 of contract to buy and sell pursuant to buyer’s email to seller on Monday April 23<sup>rd</sup> where buyer notified seller of casualties to the property via email.” Section 13 of the Contract, found in Plaintiff’s Ex. 1 states, in pertinent part, as follows:

13. FIRE OR CASUALTY OR OTHER INJURY: In case the property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party.

The terms “other casualty” are not defined anywhere in the Contract.

On June 13, 2018, Plaintiff filed a Summons and Complaint in the Spartanburg County Court of Common Pleas alleging that Defendant’s termination of the Contract was not valid and asking this Court to order Defendant to specifically perform the Contract, or alternatively, for an Order finding for Plaintiff on his breach of contract allegation and awarding Plaintiff compensatory damages, attorney's fees, suit costs, and for such other and further relief as the Court deems just and proper. Defendant answered the allegations of Plaintiff’s Complaint on August 2, 2018. By way of Consent Order filed March 2, 2021, this case was referred to the Master-In-Equity for Spartanburg County pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I find that this Court has jurisdiction over the parties and the subject matter of this action, and that venue is proper in Spartanburg County.

I find that Defendant Sealy’s April 28, 2018, *Notice of Termination and Release of Agreement/Contract to Buy and Sell Real Estate (Residential)* were timely and proper. Plaintiff notified Defendant of casualties to the Subject Property by way of email dated April 23, 2018 (*see* Defendant’s Ex. 1). In a series of text messages exchanged between Plaintiff, his real estate agent, and Matthew Thrift, occurring on April 24 and April 25, 2018, Plaintiff demanded adherence to the Contract citing to Sections 3, 4, and 17 of the Contract which he believed were applicable. Plaintiff’s text message exchanges were admitted into evidence without objection as Defendant’s Ex. 3.

The evidence shows that Plaintiff identified the theft of the heirloom vegetation and damage to a lock on a building as casualties to the Subject Property that occurred following the formation of the Contract. The evidence shows that Plaintiff believed these losses to be of

significant monetary value. Specifically, Plaintiff sought contract concessions for the lost heirloom vegetation noting that the lost heirloom vegetation cannot be easily replaced and further stating that its removal affected “the beauty of the property and our ability to market the property in the way we intended when we submitted an offer to purchase the property” (*see* Defendant’s Ex. 3). In those same text messages, Plaintiff also demanded that Defendant repair the damages to the lock “and any other damage has been caused to the property since we went under contract” in order for the Contract to be fulfilled (*see* Defendant’s Ex.3). The testimony established that these damages were not caused by Defendant but rather caused by trespassers who vandalized the Subject Property. After listening to the testimony and reviewing the documents and other exhibits admitted in evidence, I find that the theft of the heirloom vegetation and damage to the lock on the building were sudden and unexpected losses caused by a third-party for which Defendant then had the right to terminate the Contract.

Black's Law Dictionary defines the term *casualty* as a "thing injured, lost, or destroyed." *Casualty*, Black's Law Dictionary (9<sup>th</sup> Ed. 2009). Black's Law Dictionary defines the term *loss* as "[a]n undesirable outcome of a risk; the disappearance or diminution of value, [usually] in an unexpected or relatively unpredictable way." *Loss*, Black's Law Dictionary (9<sup>th</sup> Ed. 2009). In Keenan v. Bowers, the United States District Court for the Eastern District of South Carolina found that the word *casualty* had already also been defined as “an event due to some sudden, unexpected, or unusual cause.” Keenan v. Bowers, 91 F.Supp.771. 773-774 (1950) (citing Matheson. v. Comm., 2 Cir., 54 F.2d 537, 539 (1931)). That court further explained that while the word *casualty* “embraces losses arising through the action of natural physical forces and which occur suddenly, unexpectedly, and without design on the part of the one who suffers the loss,” the court also

recognized that “a human agency can constitute or cause the sudden turn of events resulting in the loss.” Id. at 773-774 (citing Durden v. Commissioner, 3 T.C. 1 (1944)).

Plaintiff Schall asserted that his notification to Defendant about the theft and damage was nothing more than a record of his observations made about the property. The evidence, however, is contrary to his position. Plaintiff Schall believed those losses to be of significant monetary value. Plaintiff Schall specifically sought contract concessions for the lost vegetation and demanded repairs to the damaged lock and removal of trash discovered on the property following the formation of the Contract (*see* Defendant’s Ex. 3). Therefore, I find based on the testimony and exhibits in evidence that Defendant Sealy’s April 28, 2018, *Notice of Termination and Release of Agreement/Contract to Buy and Sell Real Estate (Residential)* given to Plaintiff were timely and proper, and that the Contract for the sale of the Subject Property was properly terminated.

### CONCLUSION

Because I find that the Contract was timely properly terminated, Plaintiff Schall’s request for specific performance of the Contract is denied. Because I find that the Contract was timely and properly terminated, Plaintiff Schall’s request for compensatory damages, attorney's fees, suit costs, and for such other and further relief is also denied. Therefore, having resolved all matters at issue before this Court:

**IT IS ORDERED** that the March 23, 2018, *Agreement/Contract: To Buy and Sell Real Estate (General Use and Lots/Acreage)* between Plaintiff Schall and Defendant Sealy for the sale of the real property located 720 Beacon Light Road in Spartanburg County, South Carolina bearing Spartanburg County Tax Map No. 3-14-00-267.00 is terminated. Further,

**IT IS ORDERED** that Plaintiff Schall’s Five Thousand and No/100 Dollars (\$5,000.00) earnest money deposit be returned to him forthwith, and Defendant Sealy shall execute whatever

documents are necessary or required to effectuate the transfer of these funds to Plaintiff Schall from the Wynn Law Firm's trust account. Further,

**IT IS ORDERED** that all matters raised in Plaintiff Schall's Complaint filed with this Court on June 13, 2018, are now resolved, and this matter is hereby ended and stricken from the calendar.

**IT IS SO ORDERED!**

**ELECTRONIC SIGNATURE PAGE TO FOLLOW**



Spartanburg Common Pleas

**Case Caption:** Daniel E. Schall VS Lori M. Sealy

**Case Number:** 2018CP4202034

**Type:** Order/Other

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087