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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-04-00685
Appellate Case No. 2023-001033

Anderson Discount Housing, LLC .... Appellant

v.

John M. Hornbeck III and Christina L. Hornbeck, ... Respondents.

INITIAL BRIEF OF RESPONENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COUR ERR IN FINDING APPELLANT WAS NOT ENTITLED TO ANY RELIEF AS THE PARTY COMMITTING THE FIRST FULL BREACH OF THE PARTIES' AGREEMENT?

2. DID THE TRIAL COURT ERR IN REFUSING SPECIFIC PERFORMANCE OF AN AGREEMENT CONCERNING REAL ESTATE WHERE THE PARTY SEEKING SPECIFIC PERFORMANCE COMMITTED THE FIRST BREACH OF THE SUBJECT CONTRACT?

STATEMENT OF THE CASE

Plaintiff/Appellant Anderson Discount Housing, LLC ("Appellant") filed this action on April 12, 2021. Appellant asserted two (2) causes of action against Defendants John M. Hornbeck, III and Christina L. Hornbeck (collectively "Respondents"). First, Appellant sought specific performance of a contract to sell certain real estate. Second, Appellant sought damages for breach of contract arising out of the same agreement for which Appellant sought specific performance.

Respondents, acting *Pro Se* at the time, filed their Answer and Counterclaim seeking damages which they characterized and stress and hardship from the filing of a frivolous Complaint. Respondents, like Appellant, also sought an award of attorney's fees based on contractual language allowing for such recovery.

Prior to trial, Appellant filed a motion seeking summary judgment as to all causes of action. Following a September 1, 2022 hearing on Appellant's Motion, the Court denied the motion by Order dated March 2, 2023. On April 4, 2023, the case proceeded to trial, non-jury, before the Honorable R. Lawton McIntosh. On April 5, 2023, the Court issued a form Order denying Plaintiff's claims and directing preparation of a formal

order. On May 22, 2024, the Court issued a formal Order denying any relief to Plaintiff and denying both parties' requests for attorney's fees. Appellant timely filed its Notice of Appeal on June 21, 2023.

STANDARD OF REVIEW

A breach of contract claim is an action at law. *Barnacle Broad., Inc., v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct.App.2000). In an action at law tried without a jury, "our scope of review extends merely to the corrections of errors of law." *Id.* Therefore, [the]… court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). *South Carolina Elec. & Gas Co. v. Hartough*, 654 S.E.2d 87, 375 S.C. 541 (S.C. App. 2007).

[O]ur appellate courts have traditionally viewed the main purpose of a cause of action seeking specific performance as the pursuit of equitable relief and thus have found such a claim to be equitable in nature." *Lollis v. Dutton*, 421 S.C. 467, 479, 807 S.E.2d 723 (Ct.App. 2017) (*citing Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290-91 (2000). "However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the [circuit court] was in a better position to assess the credibility of the witnesses." *Id.* (*quoting Laughon v. O'Braitis*, 360 S.C. 520, 524-525, 602 S.E.2d 108, 110 (Ct.App. 2004).

STATEMENT OF FACTS

The parties entered a contract on August 25, 2020. (the "Contract"). The agreement between the parties called for sale of two (2) lots (the "Properties") within the Charping Farms subdivision in Anderson County, recited a purchase price of $55,000.00, and called for performance within twenty-four (24) months. (R. _____, Plaintiff's Ex.2). It is undisputed, based on the trial testimony of both parties, Respondent reduced the purchase price in exchange for selling two (2) lots together. (R. _____). Respondent previously listed the Properties for sale at a higher amount, with the individual lots each having a higher asking price. (R. ______). Appellant drafted the contract. (R. _____, Order at p.2).

In March of 2021, with the time for performance of the Contract, Appellant discussed the Contract with Respondent. The parties discussed the Contract by both text and e-mail on March 24, 2021 and March 25, 2021. (R. _____, Plaintiff's Ex. 1 and 4). The parties disputed whether they had additional, in-person communications between their written communications. Appellant informed Respondent that he intended to purchase one (1) lot referenced in the Contract for one-half the purchase price. (R. ______). Respondent declined to alter the Contract to accommodate Appellant's request invitation to partial performance. Instead, Respondent notified Appellant he would not proceed based on Appellant's insistence on partial performance. (R. _____). Respondent notified Appellant in writing, effectively terminating the Contract. (R. _____).

Within hours of termination, Appellant retained counsel to continue communications with Respondent. (R. ______, Plaintiff's Ex.5). Respondent acknowledged some communications with counsel but refused to proceed with the prior Contract. (R. _____). The Appellant then filed the underlying lawsuit. (R. ______, Complaint). At no time, prior to filing the underlying action, did Appellant seek to comply with the Contract. Rather, the undisputed trial testimony of both parties reflected their disagreement about whether Appellant could add terms to the Contract. As written, the Contract did not provide for separating purchase of the two (2) lots covered by the parties' agreement.

ARGUMENT

The parties entered a clear, unambiguous Contract. The relationship between the parties soured when Appellant sought to materially alter the terms and insisted on his insertion of terms not within the four corners of the Contract. In response, Respondent justifiably terminated the Contract. The trial court heard testimony from both parties, reviewed all relevant exhibits, and issued a well-reasoned Order. Appellant argues on appeal, as at trial, that he had the right to add terms to the parties' agreement. For the reasons that follow, that view is erroneous, and this Court should summarily affirm.

1. The Trial Correct Correctly Found Appellant Committed First Breach

The Contract at issue in this case is simple. Appellant agreed to purchase Properties for a specified price. (R. ____, Plaintiff's Ex. 2). The Contract, drafted by Appellant, contained no provision for purchase of a single lot in exchange for partial payment. (R. _____, Order at p. 3-4). This Court need not belabor the point, as "[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) [additional citations omitted].

Parties to a contract may not insist on changes that vary from the terms embodied in the agreement[1]. From Appellant's trial testimony, through its principal Chris Cox, it is clear Appellant asserted just such a right to unilateral modification. (R. ______). Appellant may have subjectively believed that the Contract he drafted allowed him to proceed as he alleged. Respondent makes no suppositions as to any subjective intentions. Rather, this Court need only acknowledge that 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).

The Court's analysis in *Silver v. Aabstract Pools & Spas, Inc.* is instructive here. [2] In that case, the contracting parties entered a five-page agreement concerning installation of a pool.[3] As part of the parties' agreement in *Aabstract*, Contractor was due certain progress payments. However, when a payment milestone was reached the homeowner refused payment and argued that insufficient work was complete.[4] In reviewing, the Court found the subject contract unambiguous and refused the invitation to rewrite an

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1 *See, e.g., Silver v. Aabstract 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)

2 658 S.E.2d 539, 376 S.C. 585 (Ct.App. 2008).

3 *Id.* at 540

4 *Id.* at 543

unambiguous agreement.[5] In the instant case, the Contract reflects the converse. More specifically, there are no terms for partial, periodic payments upon partial performance. Rather, the Contract recites one payment amount for the Properties. Whatever Appellant's subjective intention concerning the Contract, his insistence on new terms constituted a breach of such agreement rather than an offer to perform.

Acknowledging that our courts may not re-write contracts, Appellant relies on *Gambrell v. Travelers Ins. Co.*[6] In *Gambrell*, the insurance carrier asserted that standard provisions for underinsurance did not apply where a liability policy afforded coverage beyond minimum limits.[7] The Court refused to create a provision by interpretive extension as to either the specific policy at issue or the statutory scheme from which it arose.[8] The contract in *Gambrell*, as it should be in this case, was interpreted as written.

Finally, the trial Court correctly determined that Appellant committed the first full breach. (R. ______). The record supports the determination of the trial court. Appellant has failed to direct this Cout's attention to anything specific beyond perceived deficiency in applying the law to largely undisputed facts. As the breaching party, Appellant was not entitled to any relief. "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).

5 *Id.*
6 280 S.C. 69, 310 S.E.2d 814 (1983)
7 *Id.* at 815-816.
8 *Id.* at 816-817.

2. The Trial Court Correctly Denied Specific Performance to the Breaching Party

As to remedies, Appellant offers only conclusory assertions that it did not breach the Contract in this case. Indeed, Appellant divides its argument into section; first, specific performance, and second, breach of contract. However, both sparse lines are argument are premised on the same flawed view that Appellant did not breach the Contract.

Our courts have outlined the requirements for a court, in equity, to decree specific performance of appropriate contracts.

> In order to compel specific performance, a court of equity must find: (1) clear evidence of an agreement; (2) that the agreement has been partly carried into execution on one side with the approbation of the other; and (3) that the party who comes to compel performance has performed on his part, or has been and remains able and willing to perform his part of the contract.

Shirey v. Bishop, 431 S.C. 412, 848 S.E.2d 325 (Ct.App. 2020) (*quoting Gibson v. Hrysikos*, 293 S.C. 8, 13-14, 358 S.E.2d 173, 176 (Ct.App. 1987).

As the trial court found Appellant breached the Contract, the Court could not compel specific performance in favor of the breaching party. Indeed, the evidence adduced at trial was clear that Appellant was not willing to perform his part of the contract. Rather, Appellant sought to compel Respondent to allow partial performance not envisioned by the Contract.

In the alternative, even if this Court were to overrule the trial court's rulings as to the legal cause of action for breach of contract, this Court should still deny specific performance. "Specific performance should be granted only if there is no adequate remedy at law and specific performance of the contract is equitable between the parties." *Cambell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d at 627 (Ct.App. 2004) (*quoting Ingram v. Kasey's Assocs.,* 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). In this case, no evidence

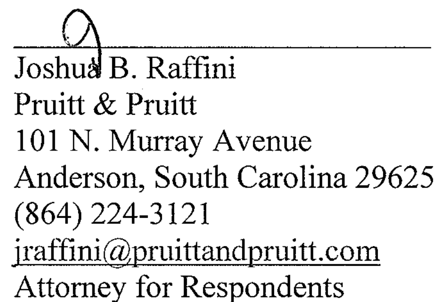
was presented that Appellant was willing to perform the Contract prior to initiating action for its specific performance. Appellant sought equitable relief as a sword to rewrite an agreement rather than a shield from the consequences of another party's breach.

The trial court correctly found Appellant responsible for breach. This Court should affirm, with the natural and unavoidable consequence being equitable relief is unavailable where liability fails.

CONCLUSION

The trial court heard the evidence, listened to witnesses, and correctly ascertained that Appellant sought to enforce provisions of a Contract he failed to include in his drafting. As such, Appellants unilateral insistence on additional terms constituted breach of Contract for which Appellant was not entitled to any relief. This Court should similarly deny equitable relief. The Order below should be AFFIRMED.

Respectfully submitted,



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