EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
BEFORE THE EQUITY DIVISION

C/A No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC,
Plaintiff,

vs.

Limetrade, LLC and Limehouse Produce, LLC,
Defendants.

FINAL ORDER

This matter came before this Court pursuant to a Consent Order of Reference entered March 11, 2022. In its broadest sense this case is a landlord-tenant dispute. As such it is a contract dispute. Although this Court is the Equity Division of the Court of Common Pleas, once a matter is referred to this Court it has the same powers and authority as a Circuit Court. To this end, the case before the Court is a matter at law in that the case is a dispute in contract seeking damages for an alleged breach in a term of the underlying Business Lease (the Lease).

Plaintiff is the landlord. Defendant Limetrade, LLC, is the Tenant by assignment from Easy Tray, LLC, and Limehouse Produce, LLC, dated May 24, 2007[1]. Defendant Limehouse Produce, LLC operated within the demised property from May 24, 2007 until it vacated at the

[1] Within a few months of Easy Tray's occupancy, it began to fail. By 2007 Easy Tray was done. A national auction house liquidated the processing equipment. The Defendant Limehouse Produce, LLC, took an assignment of the Lease from Easy Tray with the consent of the Plaintiff. In May 2007, Limehouse Produce, LLC assigned the lease to the single purpose limited liability company, Limetrade, LLC. Exhibit 2. The same individuals owning the membership interest in Limehouse Produce LLC own the membership interests in Limetrade, LLC. Limehouse Produce, LLC, operated within the facility during the entire occupancy of Limetrade. Limetrade exercised several options under the lease. It vacated at the end of the optioned Lease term in 2017. Limetrade, LLC, shortly after vacating the warehouse, terminated by dissolution.

end of the term in the spring of 2017. Limetrade and Limehouse Produce are sister limited liability companies. The same members own or owned each entity.

Plaintiff alleges that the Defendants breached a lease agreement by failing to return a modified concrete slab to its condition at the outset of the Lease, and prior to modifications to the concrete slab. Defendants assert they returned the slab to its condition at the outset of the Lease. Defendant further asserts the Plaintiff is seeking to recover a "betterment."

In this Court's view, after consideration of all of the documentary evidence, the testimony of the parties and their respective witnesses, the facts bear out that the parties lacked mutual assent to the Remedy Clause (defined below) of the Lease on which this case turns. In other words, the Plaintiff's take on the remedy it contemplated by the Lease upon termination is one result and the Defendant's take on the remedy is quite another result. Where there is a lack of mutual assent to all the terms of a contract in South Carolina, the contract cannot be enforced. In short, Defendant is not liable under the contract for the remedy the Plaintiff seeks. To this end, this Court will make specific findings of fact and conclusions of law by which it will dismiss Plaintiff's claims with prejudice.

A brief history of the undisputed facts of the Lease reveals that the Plaintiff leased a warehouse described as "a grate-high facility, concrete slab, tilt-up concrete panels, and a steel roof system[.]"to Easy Tray, LLC, a start-up vegetable processing company on April 22, 2004. T V-I, p15,10-11 and Exhibit 1. Easy Tray made several significant modifications to the warehouse facility that involved changes in the concrete slab floor of the warehouse to operate its vegetable processing plant.

Plaintiff's representative, David Simmons, described the improvements: "Easy Tray installed a refrigerator/freezer that was approximately 18, 19,000 square feet inside of the building. Inside of the freezer or refrigerator portion of the unit, they also installed a vegetable washing plant. They -- basically, the concept was that they were going to process vegetables and package them and then distribute them to different companies." T V-I, Page 17, lines 3-10

He continued, "they cut the drain systems in throughout the cooler." T V-I, lines 2-3

And ,

> 9 They soft cut a slab throughout
> 10 the cooler. Roughly two, two and a half feet wide. And
> 11 then they put a factory-designed composite drain system
> 12 in, which was probably about 8 inches wide, 12 inches, 16
> 13 inches deep, with a metal grate on it. And then they
> 14 poured concrete back around it with no structural support,
> 15 just buried the drain into the dirt, and then just poured
> 16 concrete back. Did not install any rebar or any
> 17 reinforcement. Approximately 350 linear feet of drain.
> 18 So it was teed off in a lot of different places and it was
> 19 connected into the sanitary sewer in multiple locations.
> T V-I, Page 18, lines 9-19

Continuing Mr. Simmons explained, "The major cutting of the slab to install the floor drain system." T V-I Page 18, lines 19-20. Then Mr. Simmons states, "We did know they were gonna [sic] have to put the trench drains in, so we added a clause in our lease that the floor had to be restored at the termination of the lease back to its original condition." (the Court's emphasis) T V-I, Page 18, lines 24 – Page 19, line 1.

The clause to which Mr. Simmons alludes is Paragraph 14 of the Lease. Paragraph 14[2] entitled "**IMPROVEMENTS"** of the Business Lease states, in part, as follows:

[2] The next paragraph of the Business Lease in numbered 14, as well. That paragraph is entitled "Liens." The Liens paragraph is not an issue in this lawsuit.

> Lessee at its own cost and expense shall fully equipped the Demised Premises with furniture, operating equipment, and all other equipment necessary for the proper operation of the lease business. Modifications to the floors and special electrical and lighting requirements contemplated by the Lessee and acknowledged by the Lessor that are necessary to operate the Lessee's business will be made at the Lessee's expense except for the "step down" transformer required for other tenants. Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted. Special lighting and electrical equipment and related cooler plant panels and fixtures will be property of the lessee at termination of the lease. Lessee shall not do any alterations or construction work or install any equipment without first obtaining lessors written approval and consent which consent shall not be unreasonably withheld or delayed lessee shall present to lessor plans and specifications for such work at the time approval is sought. . . . Exhibit 1, paragraph 14

The sentence within Paragraph 14, "Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted[.]"is the term of the Contract over which the parties lacked mutual assent. For ease in reading this Order, the foregoing sentence of paragraph 14 of the Lease will be referred to as the "Remedy Clause."

Additional changes Easy Tray made were described by Mr. Simmons:

> 5 The refrigerator/freezer unit panels were
> 6 anchored to the floor using what is called a ThunderStud
> 7 or a wedge anchor. And then inside and out of the cooler,
> 8 the tenant installed an angle iron that was also fastened
> 9 with ThunderStuds, half-inch in diameter, about every 16
> 10 inches to keep their forklift from pushing pallets into
> 11 the freezer wall. So it was a bumper system mounted to
> 12 the concrete slab. T V-I P 21

And "spacing of those anchor bolts was every 16 inches[3]." T V-I Page 21, line 20

Plaintiff produced no documentary evidence of the contemplated modifications described in Paragraph 14. Further, Plaintiff produced no evidence of the condition of the concrete slab of

[3] That there were 1,000 bolts is not controverted.

the demised property immediately prior to these modifications. Also, Plaintiff produced no evidence of the specifications of the described modifications. At best, this Court finds the Plaintiff's focus of remedial action according to his testimony was "The major cutting of the slab to install the floor drain system[4]." T V-I 18, 19-20.

Plaintiff failed to produce any objective evidence of what "floor modifications must be remedied at the termination of the lease." Id. Exhibit. 1 paragraph 14. Mr. Simmons's testimony on its condition is summed up in a subjective statement, "The slab was in good condition." T V-1, page 105, line 13. Notwithstanding, the Defendant in an effort to remedy the slab deficiencies hired Southeastern Construction Corp., a reputable local commercial general contractor, to fill in the trench drains. Southeastern Construction Corp came in and filled in the trench drains after the refrigeration units were removed. T V-2 Page 98, line 25. Mrs. Limehouse, Defendants' representative, stated she asked Mr. Willis[5] to "Do whatever he thought he needed to do, to put the floors in -- as -- back to as good a condition as he could, including filling all of the areas of subsidence[6]." T V-2, Page 98, lines15-20.

The parties' lack of mutual assent to the Remedy Clause is best observed by the divergence of what the Defendants did to remedy the deficiencies in the concrete slab floor of the demised premises and what the Plaintiff described as necessary to meet the remedy. First, the Court addresses the findings of what the Plaintiff described as being done by the Defendants.

[4] The floor drain system is also referred to as a "trench drain."
[5] David Willis is the licensed commercial contractor that operates Southeastern Construction.
[6] During the ten year occupancy by Defendants, the evidence reveals the tenant experienced multiple failures of the slab. Plaintiff alleges these failures were caused by Defendants. Defendants allege the failure was a latent defect in the construction of the warehouse, particularly an insufficient sub-surface. In my view, the cause of the slab failures is not dispositive of the case.

Then the Court addresses the finding of what the Plaintiff specified as necessary to satisfy the Remedy Clause.

Mr. Simmons testified that Defendants removed the refrigerator/freezer, including the angle irons on the floor, removed the steel plates, the refrigeration lines, electrical lines, water lines, and that the water lines that were feeding into the cooler were cut off. No wire were capped. The thunder bolts were grinded off somewhat to the slab, but some were not, leaving a tripping hazard. T V-1 Page 49, line 17 – Page 50, line 4. The Defendants did not controvert this description. Defendants explained they hired a company to remove the refrigerator/freezer. That company grinded down the thunderbolts. Vol 2 Page 91, Line 20. Further, the Defendants hired David Willis' company, Southeastern Construction, to fill in the trench drains and return the floor back to its original condition, wear and tear excepted. T V-2, Pages 53, line 15, 58:8, 71:17, 77:6, 85:17, 92:9, 93:15, 97:13, 14, 16 and 128:11.

The Plaintiff, after the Defendant vacated, and after Defendant had made its attempt to comply with the Remedy Clause, had the clarity to specify what the Remedy Clause meant. He spells this out in an email to Defendants found in Exhibit 9, dated July 19, 2017. Plaintiff published the terms of the email through Mr. Simmons:

> 24 Yes. "Remove floor drainage system
> 25 complete" -- should be "completely" -- and cap drain line
> 1 at connection point beneath slab. Remove concrete around
> 2 drainage system back to original concrete at saw cut.
> 3 Install rebar every 16 inches on center, furling 6 inches
> 4 into both sides of existing concrete cuts. Install
> 5 moisture barrier and pour 4,000 PSI concrete and finish
> 6 concrete to the finish of existing slab and to industry
> 7 practices."

T V-1, Page 56, line 24 – Page 57, line 7

8 Q Okay. And then number 2, just for the sake of
9 thoroughness.
10 "Remove all sawed-off steel pipes that were on
11 the corners of the cooler, saw cut 12-by-12 squares, and
12 install rebar drilling into existing slab" -- it should
13 say "slab" -- six inches, install moisture barrier, and
14 pour 4,000 PSI concrete, and finish concrete to the finish
15 of the existing slab and to industry practices." T V-1, Page 57, lines 10-14

1 Q Okay. All right; after -- item number 3, can
2 you read that out loud for us.
3 A Yes. "Remove all anchor studs used to connect
4 cooler to the concrete floor that had been ground off.
5 Repair holes using an epoxy filler." T V-1, Page 56, lines 1-5

Despite the clarity of the Remedy Clause after the tenant has vacated and has remedied, as it understood the Remedy Clause meant, the Plaintiff failed to produce sufficient evidence at the outset of the Lease what the Remedy Clause meant. It follows, that since the Defendants are only provided the clarity of the Plaintiff's Remedy Clause after the fact, the Defendant could not have assented to the Remedy Clause from the outset of its tenancy. Therefore, the Plaintiff's understanding of the Remedy Clause cannot be enforced against the Defendant.

CONCLUSION OF LAW

The Plaintiff and the Defendants did not have mutual assent to all of the terms of the Contract in that the Remedy Clause specifically lacked mutual assent. "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms. Kitchens v. Lee, 221 S.C. 59, 69 S.E.2d 67. Furthermore, the assent must be as to all of the terms of the contract. Lee v. Travelers' Insurance Company of Hartford, Conn., 173 S.C. 185, 175 S.E. 429. Some terms are considered indispensable to a binding contract. Among these are price, time and place. 17 C.J.S. Contracts, s 36(2). Where a contract does not fix price, there must be a definite method for ascertaining it. 17 C.J.S.

Contracts, s 36(2)(c). Edens v. Laurel Hill, Inc., 271 S.C. 360, 364, 247 S.E.2d 434, 436, 1978 WL 497885 (1978)

Plaintiff's claims against the Defendant should be, and are hereby, dismissed because the Plaintiff and Defendants did not have mutual assent as to all of the terms of contract in that the Remedy Clause specifically lacked mutual assent. Id. NOW THEREFORE IT IS

ORDERED, ADJUDGED AND DECREED that the Plaintiff's claim against the Defendants is hereby dismissed with prejudice. AND IT IS

ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Defendants.

Electronic Signature of the Court Follows

Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078