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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

Civil Action No.: 2021-CP-04-00685

Anderson Discount Housing, LLC,.....Appellant,

v.

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

BRIEF OF APPELLANT ANDERSON DISCOUNT HOUSING, LLC

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STATEMENT OF ISSUES ON APPEAL

- I. **THE COURT ERRONEOUSLY FOUND THAT APPELLANT ANDERSON DISCOUNT HOUSING, LLC WAS NOT ENTITLED TO SPECIFIC PERFORMANCE OF ITS CONTRACT WITH RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK.**

- II. **THE COURT ERRONEOUSLY FOUND THAT APPELLANT ANDERSON DISCOUNT HOUSING, LLC BREACHED ITS CONTRACT WITH RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK INSTEAD OF RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK BREACHING SAID CONTRACT.**

STATEMENT OF THE CASE

On or about April 12, 2021, Plaintiff/Appellant Anderson Discount Housing, LLC (“Appellant”) brought this action against Defendants/Respondents John M. Hornbeck III and Christina L. Hornbeck (collectively hereinafter “Respondents”). Appellant brought causes of action against Respondent for specific performance and breach of contract.

On or about August 21, 2021, Respondents filed their Answer and Counterclaim against Appellant seeking compensation for stress and hardships and the recovery of attorneys’ fees. On July 22, 2022, Appellant filed for summary judgment on both of its causes of action against Respondents. A hearing on Appellant’s motion for judgment was held on September 1, 2022 before the Honorable J. Cordell Maddox Jr. and, on March 2, 2023, the Court issued its Order denying Appellant’s motion.

On or about April 4, 2023, this matter came before the Honorable R. Lawton McIntosh for a non-jury trial and, on May 23, 2023, the Court issued its Order denying Plaintiff’s causes of action. This appeal ensued June 21, 2023.

STATEMENT OF FACTS

On August 25, 2020, Appellant and Respondents entered into a valid and binding contract deemed to have been executed under, and governed by, the laws of the State of South Carolina (hereinafter referred to as “Contract”) wherein Defendants agreed to sell Plaintiff the following real property: Lots #61 and #77 Pinion Lane, Anderson, SC 29621 (collectively hereinafter the “Properties”), having TMS Nos. of 1460301040 and 1460301039, respectively. (R. pp. 13-20).

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.” (R. p. 33). In March of 2021, Appellant attempted to separate the purchase of the lots within the Twenty-Four (24) month

period and buy one at a time. (R. pp. 60, 92). On March 24, 2021, a dispute arose between Appellant and Respondents regarding whether Appellant could buy one at a time or whether Appellant was required to buy both at once. (R. p. 35, ln. 1-5, R. p. 111). At trial Appellant's Chris Cox testified that he was willing to purchase both lots at the same time if needed. (R. p. 63, ln. 7-10).

On March 25, 2021, Respondent John M. Hornbeck III sent an email to Appellant's Chris Cox stating that Respondents "I'm not selling the lots". (R. p. 111). In response, Appellant, by and through its counsel, sent Respondents a written notice of default and demand for mediation in accordance with the Contract. (R. p. 112). Appellant attempted to schedule several closings for the Properties during the Twenty-Four (24) month contractual time period, but was never successful. (R. p. 42, Ln. 23 – p. 43, Ln. 3, R. p. 45, Ln. 15 – p.47, Ln. 7). At no time did Respondents provide Appellant with a Notice of Default as required by paragraph 27 of the Contract.

ARGUMENT

I. THE COURT ERRONEOUSLY FOUND THAT APPELLANT ANDERSON DISCOUNT HOUSING, LLC WAS NOT ENTITLED TO SPECIFIC PERFORMANCE OF ITS CONTRACT WITH RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK.

There is no dispute that the Contract was a valid and binding agreement between the parties. The Court's finding that Appellant breached the agreement first by attempting to separate the purchase of the lots withing the Twenty-Four (24) month period and buy one at a time is patently erroneous. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983) (*It is not the function of the court to rewrite contracts for parties*). The Contract did not specify whether or not a party could separate the purchase of the lots withing the Twenty-Four (24) month period and to conclude that seeking that possibility is a breach of contract is not logical and not based on any

precedent in this State. Moreover, the evidence clearly supports that Appellant was willing, ready and able to perform and close on both lots within the contractual time period and attempted to do so but Respondents refused; initially because Respondents' erroneously believed that there was not a contract between the parties. As the remedy of specific performance is one in equity, "the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence" *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) and *See Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004) (*An action for specific performance is one in equity*).

The Court additionally erroneously found that Respondents had delivered notice to [Appellant] that he was terminating the Contract when Mr. Hornbeck's testimony was clear he did send a notice of default to Appellant in accordance with the Contract and did not testify at all about terminating the Contract. As the Contract was enforceable, was not breached by Appellant and was not terminated by Respondents, Appellant is entitled to the remedy of specific performance pursuant to the terms of the Contract.

For the foregoing reasons, Appellant respectfully asks this Court to reverse the Circuit Court and remand this matter back to the Circuit Court for findings consistent therewith.

II. THE COURT ERRONEOUSLY FOUND THAT APPELLANT ANDERSON DISCOUNT HOUSING, LLC BREACHED ITS CONTRACT WITH RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK INSTEAD OF RESPONDENTS JOHN M. HORNBECK III AND CHRISTINA L. HORNBECK HORNBECK BREACHING SAID CONTRACT.

Appellant incorporates its argument from Section I as if fully restated herein. As the Contract was enforceable, was not breached by Appellant and was not terminated by Respondents, Appellant is entitled to the recovery of its attorneys' fees pursuant to the terms of the Contract.

For the foregoing reasons, Appellant respectfully asks this Court to reverse the Circuit Court and remand this matter back to the Circuit Court for findings consistent therewith.

CONCLUSION

For the foregoing reasons, Appellant respectfully asks this Court to reverse the Circuit Court and remand this matter back to the Circuit Court for findings consistent therewith.

Respectfully submitted,



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