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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

_____

Case No. 2023-CP-10-01790

Appellate Case No.: 2024-000293

_____

Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021,_____ Respondent,

v.

Lawrence E. Miller, _____ Appellant.

_____

FINAL BRIEF OF APPELLANT

_____

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July 3, 2024

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STATEMENT OF THE CASE

On April 12, 2023, Respondent filed the instant action against Appellant, raising claims for 1) "Breach of Contract/Specific Performance- Settlement Agreement"; 2) "Violation of S.C. Code Ann. § 27-50-10, et. seq.; § 27-50-40; & § 27-50-65 -Knowing Disclosure of False or Misleading Information"; 3) "Fraudulent Misrepresentation" related to a sale of real property. *See* Complaint (R. pp. 7-22). Appellant timely filed an Answer on May 19, 2023, denying the allegations raised in the Complaint and raising numerous affirmative defenses. *See* Answer (R. pp. 29-29). On June 2, 2023, Respondent filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c), SCRCP. *See* Motion for Judgment on the Pleadings (R. pp. 40-41). On January 25, 2024, both parties submitted written memoranda of law pertaining to the Motion. *See* Memorandum in Support of Motion for Judgment on the Pleadings (R. pp. 42-54); Memorandum in Opposition to Motion for Judgment on the Pleadings (R. pp. 58-66).

On February 1, 2024, the Trial Court held a hearing on Respondent's Motion for Judgment on the Pleadings. At the hearing, Respondent argued that the Court should first address his Motion for Judgment on the Pleadings as to his claim for "Breach of Contract/Specific Performance-Settlement Agreement" and submitted that a favorable ruling on that cause of action would resolve the case in its entirety. *See* Transcript p. 3, lines 24-25 (R. p. 80, lines 24-25); p. 4, lines 1-3 (R. p. 81, lines 1-3); p. 16, lines 16-25 (R. p. 93, lines 16-25); p. 17, lines 1-9 (R. p. 94, lines 1-9). Moreover, later in the hearing, Respondent's Counsel specifically clarified that that he was only moving for Judgement on the Pleadings as to this Claim for "Breach of Contract/Specific Performance- Settlement Agreement" and not as to the other claims raised in his Complaint. *See* Transcript p. 16, lines 16-25 (R. p. 93, lines 16-25); p. 17, lines 1-9 (R. p. 94, lines 1-9). The Court agreed and found that Respondent was entitled to Judgment on the Pleadings as to the claim for "Breach of Contract/Specific Performance- Settlement Agreement" after concluding that

Appellant's *pro se* communications with Appellant's counsel constituted a valid and enforceable settlement agreement in the amount of $8,000.00.[1] *See* Transcript p. 16, lines 16-25 (R. p. 93, lines 16-25); p. 17, lines 1-25 (R. p. 94, lines 1-25); p. 18 lines 1-20 (R. p. 95, lines 1-20). On February 2, 2024, the Court entered a written Order granting Respondent's Motion for Judgment on the Pleadings and providing that its Order ended the case. *See* Order of February 2, 2024 (R. pp. 1-3). On February 12, 2024, Respondent filed a Motion to Reconsider, Alter, or Amend pursuant to Rule 59(e), SCRCP, which the Trial Court denied on February 20, 2024. *See* Motion to Reconsider, Alter, or Amend (R. pp. 70-77); Order of February 20, 2024 (R. pp. 4-6). On March 1, 2024, Appellant served the Notice of Appeal on Respondent.

[1] As such, the Trial Court made no ruling related to the other two claims raised by Respondent in his Complaint and such claims are not at issue on appeal.

STANDARD OF REVIEW

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP." *See Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445 (Ct. App. 2019) (quoting *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000)). On review of the motion, "the court must regard all properly pleaded factual allegations as admitted" and "may not consider matters outside the pleadings." *Id.* Furthermore, the Court must also construe the facts and inferences in the light most favorable to the non-moving party. *See Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); *see also Lewis v. Excel Mech., LLC*, No. 2:13-CV-281-PMD, 2013 WL 4585873, at *1 (D.S.C. Aug. 28, 2013) ("The court must accept all well pleaded factual allegations in the non-moving party's pleadings as true and reject all contravening assertions in the moving party's pleadings as false.").[2] In other words, judgment on the pleadings is only warranted if "the moving party has clearly established that no material issue of fact remains to be resolved and the [moving] party is entitled to judgment as a matter of law." *Lewis*, 2013 WL 4585873, at *1; *see also Russell*, 305 S.C. at 89, 406 S.E.2d at 339. A motion for judgment on the pleadings is "drastic procedure" which should only be used in limited circumstances. *See Russell*, 305 S.C. at 89; *Lewis*, 2013 WL 4585873, at *2. Relatedly, this Court has explicitly cautioned against prematurely granting motions for judgment on the pleadings "before discovery has been fully completed." *Falk*, 341 S.C. at 290, 533 S.E.2d at 354.

"If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and

[2] In light of the limited authority directly addressing the appropriate standard of review when a Plaintiff files a Rule 12(c) Motion, Appellant directs the Court to the United States District Court of South Carolina's Order in *Lewis v. Excel Mech. LLC* for guidance. *See e.g., Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.").

disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(c), SCRCP. Summary judgment is "drastic remedy" that is only appropriate when there are no genuine issues of material fact and when the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP; *Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (recognizing that summary judgment must "be cautiously invoked to ensure that a litigant is not improperly deprived of a trial."). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing the motion", *Spence*, 395 S.C. at 156, 716 S.E.2d at 925, and "[a]ll ambiguities, conclusions and inferences arising in and from the evidence must be construed most strongly against the movant for summary judgment." *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976). Summary judgment is not warranted "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). It is also inappropriate even when the evidentiary facts are not in dispute "if there is disagreement concerning the conclusion to be drawn from those facts." *Id.* "Moreover, summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

"Whether reviewing a grant of summary judgment or a judgment on the pleadings, [appellate courts] apply the same legal standards as the trial court." *Ziegler v. Dorchester Cnty.*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019). Moreover, the appellate court must "review questions of law *de novo*." *Id.*

FACTS

Appellant Lawrence Miller is an elderly retired Navy Veteran, who resides in Summerville, South Carolina. Prior to 2021, Appellant was the owner of real property, located at 1642 Clyde Street, Charleston South Carolina (the "Property"). *See* Complaint p. 1-2 (R. pp. 7-8). On or about March 12, 2021, Appellant entered into a real estate contract with Respondent to sell his home. *See* Complaint p. 2 (R. p. 8, line 6). On or about May 7, 2021, the parties closed on the property and Appellant conveyed title to Respondent. *See* Complaint p. 3 (R. p. 9, line 10).

Over six months after the closing and living in the house, on or about September 13, 2021, Respondent, after retaining an attorney, sent Appellant a demand letter, alleging that Appellant failed to properly disclose alleged property defects, including alleged defects related to the Property's chimney, and threatening litigation regarding the same. *See* Complaint p. 5 (R. p. 11, line 23); Answer p. 3 (R. p. 31, line 14). While adamantly denying the various allegations raised by Respondent, Appellant, an elderly retired man, attempted to engage in *pro se* negotiations with Respondent's Counsel in order to avoid litigation and the significant costs associated with the same, which comprised numerous emails, letters, and correspondence between Appellant, Respondent, and their real estate agents over the course of months. *See* Answer p. 3 (R. p. 31); Transcript p. 3, lines 22-23 (R. p. 80, lines 22-23). On October, 24, 2021, Appellant sent a *pro se* letter to Respondent's counsel disputing Respondent's allegations and specifically outlining numerous factual issues regarding Respondent's reliance on an improper and unsolicited repair estimate from an unlicensed chimney company; the Respondent's attempt to get Appellant to pay for additional alleged foundation/structural repairs; and the fact that Respondent was either aware of or should have been aware of many of the purported defects and/or issues. *See* Complaint Ex. 4 p. 2-3 (R. pp. 23-25). In light of these numerous issues and in attempt to resolve the entire dispute,

Respondent offered $8,000.00, which he noted covered the chimney company's estimate and half of the alleged attorney's fee but not any other alleged damages associated with purported foundation/structural issues. *See id.* In response, on Friday, November 12, 2021, shortly before the close of business, Respondent Counsel's sent a letter to Appellant specifically providing in relevant part:

> I am in receipt of your letter dated October 24, 2021, containing your counter-offer of an $8,000.00 settlement payment to Mr. Crites in exchange for a complete resolution of this matter. I've discussed this offer with my client, and although **we disagree with most of the assertions contained in your letter**, Mr. Crites has elected to accept your offer to resolve and release **all claims regarding this chimney dispute matter** completely and entirely for a settlement payment in the amount of $8,000.00.

See Complaint Ex. 5 p. 2 (R. p. 27) (emphasis added). Immediately thereafter, on the following day, Saturday, November 13, 2021, Appellant sent an email response to Respondent's letter, at which time he made unequivocally clear that he did not agree to terms of Respondent's purported acceptance letter, noting that the "tone and **content** of [the] letter is unprofessional and unacceptable", that he was seriously considering with withdrawing his offer, and that a follow-up letter regarding the same would be forthcoming. *See* Memorandum In Support of Motion for Judgment on the Pleading, Ex. 1 p. 2 (R. p. 56); Memorandum in Opposition of Motion for Judgment on the Pleadings, Ex. 1 p. 2 (R. p. 68) (emphasis added). Within the next 48-hours, on Sunday, November 14, 2021 and Monday, November 15, 2021, Appellant confirmed in email correspondence that there was no settlement agreement and that that any alleged offer made by him was withdrawn. *See* Memorandum in Opposition of Motion for Judgment on the Pleadings, Ex. 1 p. 1-2 (R. pp. 67-68). Thereafter, Respondent filed the instant action against Appellant, and Appellant retained the undersigned counsel.

ARGUMENTS

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS, IN THAT IT FAILED TO PROPERLY ACCEPT THE FACTS ALLEGED IN APPELLANT'S ANSWER AS ADMITTED AND CONSTRUE THE FACTS AND INFERENCES IN LIGHT MOST FAVORABLE TO APPELLANT.

The Trial Court erred in Granting Respondent's Motion for Judgment on the Pleadings, in that it failed to properly accept the allegations of Appellant's Answer as true and construe all inferences in the light most favorable to Respondent as the non-moving party. *See Russell*, 305 S.C. at 89, 406 S.E.2d at 339; *see also Lewis*, LLC, 2013 WL 4585873, at *1.

As a general matter, South Carolina courts view settlement agreements as contracts. *See Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). In order to prevail on a cause of action for a breach of contract, a plaintiff has the burden to prove: 1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage as a direct and proximate result of the breach. *See, e.g., Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). For there to be a contract, there must be an offer, acceptance, and consideration. *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 368, 593 S.E.2d 170, 173 (Ct. App. 2004). Notably, "a contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound." *See id.* at 368; *see also Ozyagcilar v. Davis*, 701 F.2d 306, 308 (4th Cir. 1983) (recognizing that there must be a "meeting of the minds" to create an enforceable settlement agreement). Further, there is no contract or mutual assent when a purported acceptance varies or modifies the terms of an offer, which instead constitutes a counter-offer which may be accepted or rejected by the other party. *See, e.g., Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124,

127 (1963). Notably, a grant of judgment on the pleadings, or summary judgment for that matter, is not appropriate if the terms of contract at issue are ambiguous. *See Pee Dee Stores, Inc.*, 381 S.C. at 242, 672 S.E.2d at 803 (reversing trial court's grant of summary judgement when the terms of a settlement agreement were ambiguous). "Whether the language of a contract is ambiguous is a question of law for the court." *Id.* (citing *Auten v. Snipes*, 370 S.C. 664, 669, 636 S.E.2d 644, 646 (Ct. App. 2006)). "A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation." *Id.* (citations omitted). "The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." *Id.* (citing *Hann v. Carolina Cas. Inc. Co.*, 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969)). "Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement." *Id.* (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975)).

In his Answer to the Complaint, Respondent specifically and explicitly denied that any settlement agreement was entered into between the parties or that the proposed settlement terms were agreed upon by the parties. *See* Answer p. 3-4 (R. pp. 31-32). Furthermore, Respondent specifically raised the lack of mutual assent/meeting of the minds as a defense. *See* Answer p. 7-8 (R. pp. 35-36); *see Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (providing that mutual assent is requirement to proving an enforceable contract). Moreover, Appellant raised numerous other contract-related defenses, including, but not limited to, unconscionability, mistake, and waiver, laches, estoppel, unclean hands, which should be resolved on the merits following appropriate discovery. *See* Answer p. 6-11 (R. pp. 34-39); *See Lewis*, 2013 WL 4585873, at *1 (finding that the plaintiff's motion for judgment on the pleadings was not appropriate in light of the factual issues that needed to be resolved, including the applicability of the affirmative defenses raised by

the defendant); *see also State Acc. Fund v. S.C. Second Inj. Fund*, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct. App. 2010) (providing that unilateral mistake can provide grounds for contract recission when the mistake is induced "by fraud, deceit, misrepresentation, concealment, or imposition ..., without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement."); *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 471 (2007) (Laches, Waiver, and Equitable Estoppel); *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000) (Unclean Hands). Furthermore and notably, Appellant further alleged in his Answer that:

> [W]ithin 24-hours after Plaintiff's purported acceptance letter, made unequivocally clear that Defendant did not agree to Plaintiff's proposed settlement terms. Further answering, Defendant's *pro se* communications to Plaintiff's counsel, made within 24-hours after Plaintiff's purported acceptance letter, confirmed that any alleged offer that was made by the Defendant had been unequivocally withdrawn.

See Answer p. 3 (R. p. 31, line 17). Such allegations, at the very least, go to the issue of mutual assent and an elderly *pro se* litigant's understanding and comprehension of the terms of the purported agreement, as well as his understanding as to finality of the settlement negotiations. *See Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (discussing mutual assent); *see also State Acc. Fund*, 388 S.C. at 77 (discussing defense of mistake).

While these allegations alone are sufficient to render the grant of judgment on the pleadings improper, Appellant further contends, that contrary to Respondent's assertions, the terms of the purported settlement agreement were not mutually agreed upon and were otherwise ambiguous. *See Electro-Lab of Aiken, Inc.*, 357 S.C. at 368; *see also Pee Dee Stores, Inc.*, 381 S.C. at 242, 672 S.E.2d at 803. In Appellant's October 24, 2021 *pro se* letter to Respondent's Counsel, Appellant outlined numerous factual issues with Respondent's assertions, claims, and purported damages

and specifically noted that in order to completely resolve the entire "situation" and avoid litigation, he would pay $8,000.00 to cover the chimney company's estimate and half of the alleged attorney's fees, but that he would not pay for any other alleged damages associated with purported foundation/structural issues at the property. *See* Complaint Ex. 4 p. 2-3 (R. pp. 24-25). In response, Respondent's Counsel purported to accept Appellant's offer by specifically stating "although we **disagree with most of the assertions contained in your letter**, Mr. Crites has elected to accept your offer to resolve and release **all claims regarding this chimney dispute matter** completely and entirely for a settlement payment in the amount of $8,000.00." *See* Complaint Ex. 5 p. 2 (R. p. 27). Notably, there is clear ambiguity regarding the terms and the scope of the purported settlement agreement as well as the *pro se*, elderly Appellant's intentions, comprehension, and understanding regarding the same. *See Pee Dee Stores, Inc.*, 381 S.C. at 244, 672 S.E.2d at 804. Specifically, there was not only a clear disagreement regarding whether Respondent agreed to all relevant terms in Appellant's letter, but there also exists a clear ambiguity as to whether the purported agreement extended to all potential claims related to the sale of the subject property, including claims related to the alleged foundation issues, or whether the purported settlement only applied to the "claims regarding the **chimney dispute matter.**" *See* Complaint Ex. 5 p. 2 (R. p. 27) (emphasis added). This language in Respondent's purported acceptance letter is reasonably suspectable to more than one interpretation regarding the claims covered, the scope of purported agreement, and the parties' intentions regarding the same. *See Pee Dee Stores, Inc.*, 381 S.C. at 243, 672 S.E.2d at 803 (finding that trial court committed reversible error in granting summary judgment and enforcing a settlement agreement which was ambiguous as to the scope, meaning, and application of the language releasing "landlord/tenant claims", in that reasonable minds could differ as to the scope of the release and what claims were covered by this language). Moreover,

this further establishes the lack of mutual assent to **all terms** of the purported settlement agreement and, notably, Respondent's purported acceptance letter, which modified and/or varied the terms of the purported agreement, was not, in fact, an acceptance but was instead another counter-offer which Appellant was free to accept or reject. *See Sossamon*, 241 S.C. at 486, 129 S.E.2d at 127. In any event, there are clear factual issues as to whether there was mutual assent to create a binding settlement agreement and as to the parties' intentions and understanding of the same, all of which should have precluded the summary disposition of this matter at this early stages of the proceedings. *See Pee Dee Stores, Inc.*, 381 S.C. at 244-45, 672 S.E.2d at 804; *see also Electro-Lab of Aiken, Inc.*, 357 S.C. at 368.

In sum, when properly viewing the allegations in Appellant's answer as true and while construing all inferences in his favor pursuant to the Rule 12(c)'s restrictive standard, it is clear that the trial court erred in granting the "drastic" remedy of a summary disposition of this matter at this early stage of the proceedings before Appellant received any documentation in response to his initial discovery requests and prior to any oral discovery or depositions. *See Russell*, 305 S.C. at 89; *Falk*, 341 S.C. at 290 (finding a "grant of a judgment on the pleadings, before discovery has been fully completed, [to be] premature" when the non-moving party's pleading "contained several allegations which, if true," would have entitled the non-moving party to relief); *Lewis*, 2013 WL 4585873, at *2 (recognizing that such motions are subject to a restrictive standard in light of the fact that "hasty or imprudent use of this summary procedure by the courts violates the policy in favor of ensuring to each litigant a full and fair hearing on the merits of his or her claim or defense.").

II. TO THE EXTENT THE TRIAL COURT CONVERTED RESPONDENT'S MOTION INTO A MOTION FOR SUMMARY JUDGMENT, THE TRIAL COURT ERRED IN NOT GIVING PROPER NOTICE AND A REASONABLE OPPORTUNITY TO PRESENT AND DEVELOP EVIDENCE.

To the extent the Trial Court converted the Respondent's Motion for Judgment on the Pleadings into a Motion for Summary Judgment, it erred in failing to give Appellant proper notice and a reasonable opportunity to present or develop evidence. As noted above, Rule 12(c) provides in relevant part:

> If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and ***all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.***

Rule 12(c), SCRCP (emphasis added). Rule 12(b) contains identical language related to the procedure for converting 12(b)(6) motions to dismiss into summary judgment motions. *See* Rule 12(b), SCRCP. Notably, the South Carolina Supreme Court, in analyzing the conversion of a 12(b)(6) motion, has held that a trial court erred when it failed to provide any notice to the parties that it was going to consider evidence outside the pleadings and convert the motion to dismiss into a motion for summary judgement. *See Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). Similarly, in *Baird v. Charleston County*, the Supreme Court held that a trial court erred in converting a motion to dismiss into a motion for summary judgment when the Defendant filed a memorandum with a supporting affidavit two days before the motion hearing and "the trial court did not give notice to the parties prior to the hearing that it was going to consider affidavits and hear the 12(b)(6) motions as motions for summary judgment." *Baird*, 333 S.C. at 528, 511 S.E.2d at 74.

Here, much like the trial courts in *Brown* and *Baird*, the Trial Court erred in converting Respondent's motion into a motion for summary judgment without providing any notice or a reasonable opportunity to present "all material made pertinent to such a motion by Rule 56". *See* Rule 12(c), SCRCP. As an initial matter, nowhere in Respondent's Motion for Judgment on the

Pleadings or his Supporting Memorandum did he move for summary judgment. *See* Motion for Judgment on the Pleadings (R. pp. 40-41); Memorandum in Support of Motion for Judgment on the Pleadings (R. pp. 42-54). In any event, Respondent did, however, attach to his Supporting Memorandum a redacted, incomplete copy of the email correspondence which he claimed constituted a portion of the purported settlement negotiations in this case on January 25, 2024, the deadline for filing memorandum and affidavits. *See* Memorandum In Support of Motion for Judgment on the Pleading, Ex. 1 (R. pp. 55-57). In response, Appellant, on the same date, filed his Memorandum in Opposition, at which time he attached an unredacted copy of the same email exchange as an exhibit.[3] *See* Memorandum In Opposition to Motion for Judgment on the Pleading, Ex. 1 (R. pp. 67-69). Thereafter, the Trial Court held a hearing in this matter and granted the Respondent's Motion for Judgment on the Pleadings. Notably, at no time prior to, during or after the hearing, or in his February 2, 2024 and February 20, 2024 Orders, did the Trial Judge indicate to the parties that he was considering materials outside the pleadings, that he would be converting the motion into one for summary judgment, or otherwise provide Respondent a reasonable opportunity to present "all material" pertinent to such a motion. *See* Transcript p. 3-18 (R. pp. 90-95); Order of February 2, 2024 (R. pp. 1-3); Order of February 20, 2024 (R. pp. 4-6); *see Baird*, 333 S.C. at 528, 511 S.E.2d at 74; *Brown*, 291 S.C. at 367, 353 S.E.2d at 699. Indeed, as referenced in further detail below, Respondent was not given the opportunity to conduct any meaningful discovery in this case, which would been directly relevant to the various genuine issues of material fact related to the existence of a valid and enforceable settlement agreement, the existence of

[3] Appellant attached two other exhibits related to the other two counts of Respondent's complaint in the event the Respondent attempted to prematurely move for summary judgment on those counts at the hearing on his motion. As noted above, Respondent's counsel specifically clarified at the hearing, and the trial court agreed, that those counts were not before the court. As such, and to reiterate, those counts are not at issue in this appeal.

mutual assent, ambiguities in the purported settlement agreement, and also to applicability of the various affirmative defenses raised by Appellant. *See, e.g., Johnson v. RAC Corp.*, 491 F.2d 510, 513 (4th Cir. 1974) ("It seems fair to include within the term 'reasonable opportunity' some indication by the court to 'all parties' that it is treating the 12(b)(6) motion as a motion for summary judgment', with the consequent right in the opposing party to file counter affidavits or to pursue reasonable discovery.") (emphasis added); *see also Lanham*, 349 S.C. at 362.

Based on the foregoing, to the extent it converted Respondent's motion into a motion for summary judgment, the Trial Court erred in failing to give Appellant proper notice and a reasonable opportunity to present or develop all materials pertinent to the motion. *See* Rule 12(c), SCRCP.

III. TO THE EXTENT THE TRIAL COURT CONVERTED THE RESPONDENT'S MOTION INTO A MOTION FOR SUMMARY JUDGMENT, THE COURT ERRED IN GRANTING THE MOTION BECAUSE THERE EXISTED GENUINE ISSUES OF MATERIAL FACT AND THE MOTION WAS OTHERWISE PREMATURE.

To the extent the Trial Court properly converted Respondent's motion into a motion for summary judgment, the Trial Court erred in granting the motion, in that there is a clear issues of material fact and because any grant of summary judgment in this case was otherwise wholly premature.[4] *Spence,* 395 S.C. at 156, 716 S.E.2d at 925*; Baird.*, 333 S.C. at 529, 511 S.E.2d at 74 ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

Here, when properly viewing the evidence and all reasonable inferences in the light most favorable to Appellant as the non-moving party, there are numerous clear issues of material fact which preclude summary judgment in this matter, especially at this early stage of proceedings prior

[4] Appellant incorporates by the reference the legal standards and arguments contained in Part I.

to the completion of any adequate discovery. *Spence*, 395 S.C. at 156, 716 S.E.2d at 925; *see also Baird*, 333 S.C. at 529, 511 S.E.2d at 74. To reiterate, and as discussed in detail above, there are clear issues of fact regarding whether a binding settlement agreement or mutual assent existed based on Appellant's *pro se* communications with Respondent's counsel. *See Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (providing that mutual assent is requirement to proving an enforceable contract); *see also Ozyagcilar*, 701 F.2d at 308 (recognizing that there must be a "meeting of the minds" to create an enforceable settlement agreement). Specifically, there exist clear material issues of material fact regarding whether the parties actually agreed to all the material terms of the purported agreement and whether Respondent's Counsel's November 12, 2021 letter constituted an acceptance or a counter-offer which modified and/or varied the terms of the purported agreement. *See* Complaint Ex. 5 p. 2 (R. p. 27); *see also Electro-Lab of Aiken, Inc.*, 357 S.C. at 368; *Sossamon*, 241 S.C. at 486, 129 S.E.2d at 127 (recognizing that a purported acceptance which modifies or varies terms of an offer is, in actuality, a counter-offer which the other party is free to accept or reject). Moreover, Appellant's correspondence sent in immediate response to Respondent's November 12, 2021 letter, in which Appellant unequivocally confirmed that he did not agree to terms of Respondent's letter, noting that the "tone and **content** of [the] letter [was] unprofessional and unacceptable", and that any alleged offer made was withdrawn, further evidence the lack of mutual consent and as well as Appellant's intentions and understanding regarding the existence of an agreement. *See* Memorandum In Support of Motion for Judgment on the Pleading, Ex. 1 p. 2 (R. p. 56); Memorandum in Opposition of Motion for Judgment on the Pleadings, Ex. 1 p. 2 (R. p. 68) (emphasis added). In addition, any grant of summary judgment was inappropriate in light of the clear ambiguities and questions of fact regarding the material terms of any purported agreement, including the clear ambiguity as to whether the purported agreement

extended to all potential claims related to the sale of the subject property, including claims related to the alleged foundation issues, or whether the purported settlement only applied to the "claims regarding the **chimney dispute matter**." *See* Complaint Ex. 5 p. 2 (R. p. 27) (emphasis added); *see also Pee Dee Stores, Inc.*, 381 S.C. at 243, 672 S.E.2d at 803 (finding that trial court committed reversible error in granting summary judgment and enforcing a settlement agreement which was ambiguous as to the scope, meaning, and application of the language releasing "landlord/tenant claims", in that reasonable minds could differ as to the scope of the release and what claims were covered by this language). Moreover, Appellant raised numerous other contract-related defenses, including but not limited to unconscionability, mistake, and waiver, laches, estoppel, unclean hands, all which created clear issues of material fact which Respondent should have been given the opportunity to address or develop following appropriate discovery. *See State Acc. Fund*, 388 S.C. at 77, 693 S.E.2d at 446 (providing that unilateral mistake can provide grounds for contract recission); *Strickland*, 375 S.C. at 85, 650 S.E.2d at 471 (Laches, Waiver, and Equitable Estoppel); *Ingram*, 340 S.C. at 107, 531 S.E.2d at 292 (Unclean Hands); *see also Baird*, 333 S.C. at 529, 511 S.E.2d at 74.

Most notably, despite the clear issues of material fact already evident on this limited record, it is clear that Appellant, at the very least, should have had some opportunity to develop and address these clear factual issues through appropriate written and oral discovery. *See Baird*, 333 S.C. at 529, 511 S.E.2d at 74; *see also Lanham*, 349 S.C. at 362. Regrettably, the trial court clearly erred in prematurely ruling on Respondent's motion before giving Appellant any reasonable opportunity to conduct appropriate discovery. *See id.* Notably, at the time of the trial court's ruling, Respondent had not sent any written discovery requests to the Appellant and had failed to produce responsive documentation to Appellant's initial discovery requests, which were sent two months

prior to the hearing on Respondent's motion. *See* Transcript p. 12, lines 13-25 (R. p. 89, lines 13-25); p. 13, lines 1-13 (R. p. 90, lines 1-13); Motion to Reconsider, Alter, or Amend p. 7 (R. p. 76). Indeed, Respondent's Counsel refused to respond to these requests prior to the hearing on the grounds that he was moving for Judgment on the Pleadings and that discovery was not necessary. *See id.* Moreover, there had been no deposition testimony taken to date, which would have directly addressed many of the issues of fact related to the existence of a binding agreement, mutual assent, the parties intentions and understanding regarding the purported agreement, the meaning of ambiguous terms contained in the purported agreement, and the affirmative defenses raised by Appellant. *See id.*

In sum, to the extent the Trial Court converted Respondent's motion into a Motion for Summary Judgment, the Trial Court erred in granting the "drastic" remedy of Summary Judgment, in that there were clear issues of material fact and the summary resolution of this matter was otherwise wholly premature where the parties were not given any an adequate opportunity to conduct sufficient discovery regarding the merits of the case. *See Spence*, 395 S.C. at 156, 716 S.E.2d at 925*; Baird*, 333 S.C. at 529, 511 S.E.2d at 74.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and remand the case for further proceedings on the merits.

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

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Case No. 2023-CP-10-01790

Appellate Case No.: 2024-000293

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Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021,_____ Respondent,

v.

Lawrence E. Miller, _____ Appellant.

_____

CERTIFICATE OF COUNSEL

_____

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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