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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Case No. 2024-000009

Christ Fellowship Church, d/b/a
a Church in St. Stephen, South Carolina,

Respondent,

v.

William H. Johnson and Dustin Kyle Johnson,

Appellants.

INITIAL BRIEF OF RESPONDENT

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OVERVIEW

Appellant William "Lucky" Johnson purchased a property in 1998 for $12,000. It had been devastated by Hurricane Hugo. He entered a contract with Respondent Christ Fellowship Church in 2012 whereby "the Party of the First Part agrees to sell and the Party of the Second Part agrees to buy" the real estate. The property was in in "horrible" and "unusable" shape in 2012 when the contract was made. The parties intended the Church to restore the main building. The congregation then would use it as their central place of worship. The Church was to pay a total of $250,000. The Church paid $232,745.00. (The Church made a down payment of 12,500.00 and then paid $220,245.00 in monthly payments.) As intended by the parties, the Church put tens of thousands of dollars and great efforts into repairing the dilapidated property so that now it is beautiful, but was unable to make a "balloon" payment. Citing a cancellation clause, Appellants sought to retain all of the Church's payments, improvements, and repairs, and deny the Church title to the property. Following a bench trial, the court below found that Appellants could not do so. He ordered the Church to pay the amount outstanding within thirty days and for Appellants to then execute a quitclaim deed to the Church.

Appellants ask this Court to overrule the lower court who heard the witnesses and observed their demeanor. Chiefly, they ask this Court to hold that this contract, for land, to be paid via installments, "is not an installment land

contract." Because Appellants' arguments have no merit and have been abandoned or waived, the Order of the Court below should be affirmed.

FACTS

Appellant William "Lucky" Johnson bought the property for $12,000. (Tr. p. 82, lines 9-11) (Testimony of William "Lucky" Johnson). It "wasn't worth" that much when he bought it. (*Id.* line 13). It is "in or near the northern limits" of St. Stephen. (Order p. 2).

He acquired the property "around 1998" (Tr. p. 59, lines 22-23). Three or so years later, Respondent Christ Fellowship Church was looking for a permanent home. (Tr. p. 60, lines 7-12). In the interim, Appellant "Lucky" Johnson had deeded a life estate in the property to his son,[1] and says he then procured a letter from his son which he says allows "Lucky" to sell the property. (Tr. p. 62 line 24 - p. 63, line 7; p. 81, line 22 - p. 23, line 4). "Lucky" Johnson and the Church entered an installment contract in September 2012. After identifying the parties, the contract begins, "*the Party of the* First Part *agrees to sell* and the Party of the Second Part agrees to buy" the property at issue. (Contract p.1).[2]

The Church has now paid "Lucky" $232,745.00. (Order p. 4). The Church has been ordered to pay Appellants another $26,411.68. (*Id.*) That totals $259,156.68.

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[1] His son, Dustin Kyle Johnson, is the other Appellant.

[2] "WITNESSETH: *That the Party of the* First Part *agrees to sell* and the Party of the Second Part agrees to buy, subject to the right of tenants, the real estate described as follows, upon the conditions as set forth below." (Contract p. 1).

Appellants want more.

The bulk of their claim is for a $250,000 tax deduction[3] that Appellants never claimed. Appellants blame Respondent for Appellants' failure to claim the deduction, arguing that Respondent failed to provide (false) contribution letters that are not mentioned in the contract. The letters Appellants want would falsely state that Appellants had contributed $50,000 each year to the Church.

The Church was informed it could not ethically provide such letters (Tr. p. 11, lines 15-21), and so informed the Seller (*id.*). Appellants did not object or protest. "[T]he [Church's] accountant said that if he ["Lucky"] wanted to do that, that would be on him." (Tr. p. 40 lines 10-11).

A tax deduction is different from a tax credit. A tax credit of $50,000 is worth $50,000[4] to anyone whose taxes are more than $50,000. The value of a tax deduction depends on one's tax rate. Appellants provided no evidence, not even a guess, as to their tax rate or the value to Appellants of the deductions Appellants never claimed.

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[3] The contract stated that "Lucky" was entitled to

> a tax deductible contribution of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS BEING DEDUCTED IN INCREMENTS OF FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS PER YEAR FOR FIVE YEARS.

(Contract p. 2).

[4] Technically, a bit less, due to the time value of money, but that can be ignored for present purposes.

In the time between the signing of the contract and the court proceedings, the Church made substantial repairs and improvements to the property, as contemplated by the parties. (Tr. p. 46, lines 5-12, p. 47, lines 9-13, p. 60, lines10-11, p. 64, lines 4-5, p. 84, lines 5-8, p. 88, lines 19-22; *see also* Contract pp. 2-3). The parties agree that the building was in "horrible" and "unusable" shape when the contract was signed. The Church testified, "The condition of [the building] was horrible." (Tr. p. 46, line 7) (Testimony of Deacon William Middleton). "It had the aftereffects from Hurricane Hugo." (*Id*. lines 7-8). "Lucky" Johnson agreed. (Tr. p. 88, lines 19-22) (emphasis added),

> Q: Deacon Middleton testified that the condition of the property in 2012 was horrible and unusable for business or services. Do you recall that?
>
> A: Yes, it was.

The congregation spent at least $54,570.47 on contractors, based on the receipts the Church still has (Tr. p. 36, lines 4-20; Pl's Ex. 6); and the estimates of what was actually spent are much higher (Tr. p. 47, line 23 - p.48, line 5).

But the bulk of the work improving the building was not the $55,000 spent on contractors. It was intensive labor on the part of the congregation. (Tr. p. 58, lines 6-10). The Church members had the skills to do most of the work. (Tr. p. 47, lines 18-20). "We had a crew from the church, and some outside help to come in and give us assistance." (Tr. p. 49, lines 7-9).

Now it is greatly improved. The parties agree on this, too. "Q: . . . Okay. How does it look on the inside now? A: It's beautiful." (Tr. p. 49, lines 10-12) (testimony of Church Deacon Middleton).

Q: But after they put all these improvements ---

A: Yes, they improved the church. They did.

Q: It made it a lot more valuable.

A: Yeah. The building, yes, they improved it, but they was improving it for their self, not for me.

(Tr. p. 84, lines 4-8) (Testimony of "Lucky" Johnson).

The contract is an installment contract. (E.g., Contract pp. 2-3).[5] It required one (1) down payment, sixty (60) installment payments, and one (1) balloon payment. The parties provided conflicting figures as to how much the Church had paid. A bookkeeper for the Church testified the amount was $249,395. (Tr. p. 37 lines 1-7). Appellants' expert witness testified he could find only $232,745 paid by the Church. (Tr. p. 87, lines 8-10). The trial court adopted Appellants' expert's figure. (Order p. 4). Appellants' own expert characterized it as "a substantial amount of money." (Tr. p. 100, lines 2-4).

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[5] The contract states that the "unpaid balance" of $237,500.00 will be paid in five installments at one amount, until the Church finishes completing construction of the ceilings, and fifty-five installments at another, with a final balloon payment. (Contract pp. 2-3).

More specifically, the Contract notes a down payment of $12,500.00, and states, "Unpaid Balance: TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 ($237,500.00) DOLLARS" which

> will be repaid as follows: FIVE (5) equal <u>installments</u> of ONE THOUSAND SIX HUNDRED AND NO/ 100 ($1,600.00) per month beginning on October 1, 2012, or upon completion of the construction of the ceilings in the building on the property known as 1055 Graham Street, St. Stephen, South Carolina, 29479 OR on or before March 1, 2013, FIFTY-FIVE (55) equal <u>installments</u> of TWO THOUSAND FOUR HUNDRED AND NO/ 100 ($2,400.00) DOLLARS with a final balloon payment[.]

(*Id.*) (underscoring added).

No notice of a right to cure was ever provided.

STANDARD OF REVIEW

In reviewing a case heard by a Master-in-Equity, appellate courts are not to disregard the factual findings of the Master, who saw and heard the witnesses and was in a better position to judge their credibility. Moreover, the burden is on the Appellant.

"Our scope of review for a case heard by a Master-in-Equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989) (quoting *Wigfall v. Fobbs,* 295 S.C. 59, 60-61, 367 S.E.2d 156, 157 (1988)).

> We may review the evidence to determine facts in accordance with our own view of the preponderance of the evidence. While this permits us a broad scope of review, we do not disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility.

Id. (emphasis added) (citing *Duckett v. Payne,* 279 S.C. 94, 96, 302 S.E.2d 342, 343 (1983); *Klutts Resort Realty, Inc. v. Down'round Development Corp.,* 268 S.C. 80, 91, 232 S.E.2d 20, 26 (1977)).

"[W]e do not disregard the findings of the trial court. Moreover, the appellant carries the burden of convincing this Court that the trial court erred." *Duckett by Duckett v. Payne,* 279 S.C. 94, 96, 302 S.E.2d 342, 343 (1983) (emphasis added) (citing *Georgia R.R. Bank & Trust Co. v. Doolittle,* 272 S.C. 249, 252 S.E.2d 556 (1979)). "The burden of proof is on the appellant to convince

this Court that the lower court was in error." *Conran v. Joe Jenkins Realty, Inc.*, 263 S.C. 332, 334, 210 S.E.2d 309, 310 (1974).

ARGUMENT

I. *CONTRA* APPELLANT'S ARGUMENT I, THE TRIAL COURT DID NOT ERR IN FINDING THE CONTRACT HERE IS AN INSTALLMENT LAND CONTRACT.

A. The Contract Here Is an Installment Land Contract.

Appellants' Argument I attempts to convince the Court that this contract, for the sale of land, via a series of installments, is not an installment land contract.[6] The Supreme Court disagrees. As explained in *Lewis v. Premium Investment Corp.*, 351 S.C 167, 170-71, 568 S.E.2d 361, 363 (2002), contracts that contemplate a sale of realty via installment payments can be called "'poor man's mortgage[s]," but are "usually termed installment land contracts."

> Real property is often sold under contracts that provide for the payment of the purchase price in a series of installments. These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid ... Also typically, the purchaser is entitled to immediate possession ... Installment contracts almost always contain forfeiture clauses.

Id. (quoting 15 RICHARD R. POWELL, REAL PROPERTY ′84D.01 (2000)).

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[6] Their argument is, "I. The trial court erred in ruling the contract was an installment contract instead of a lease with purchase option."

The contract here meets the *Lewis* definition. It concerns "[r]eal property" and "provide[s] for the payment of the purchase price in a series of installments." Additionally, it has the typical features: the vendor retains legal title; the purchaser is entitled to immediate possession; and it contains a forfeiture clause.[7]

The contract here is an installment land contract, per *Lewis*.[8] Dictionaries agree with the Supreme Court.

> **Definition of "land installment contract"**
>
> 1. An agreement for the purchase of land in which the seller keeps ownership or maintains some interest in the property until the buyer has paid the full price or the agreed-upon amount through

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[7] Even the operative language regarding forfeiture in the *Lewis* contract and in the contract here are remarkably similar. *Compare* the language in the *Lewis* contract, 351 S.C. at 169, 568 S.E.2d at 362 (emphasis added),

> In the event the Purchaser should fail to make any due installment, and such default shall continue for a period of thirty (30) days, the Seller shall have the right to declare this contract terminated and all amounts previously paid by the Purchaser will be retained by the Seller as rent,

with the similar language here (Contract p. 3) (emphasis added),

> In the event the Purchaser becomes delinquent in payments over Ninety (90) days, the seller will have the right to cancel this contract and all monies previously paid to the seller will be kept by the seller as liquidated damages and said monies will be considered as rent monies.

[8] Moreover, Appellants argued below that the agreement as signed was an agreement to purchase (Order p. 3) ("Defendant asserted the agreement was initially an agreement to purchase"). It was for land. (Contract p. 1) ("real estate). The purchase was to be paid in installments (Contract pp. 2-3)). Thus, Appellants have effectively conceded that this contract is an installment land contract.

> installment payments. This is sometimes referred to as a contract for deed or a land contract

Land installment contract Definition, Meaning & Usage | Justia Legal Dictionary, https://dictionary.justia.com/land-installment-contract. *Merriam-Webster's Law Dictionary: Legal Terms in Plain English*, https://www.merriam-webster.com/dictionary/contract#legalDictionary, similarly defines a "land installment contract" as

> a contract for the purchase of real property in which the seller retains the deed to the property or otherwise continues to have an interest in it until the buyer makes payments in installments equal to the full purchase price or as much of the purchase price as agreed upon.[9]

Appellants' argument to the contrary is simply wrong.

Given that common sense, *Lewis*, and other authorities all say this is an installment land contract, Appellants' argument to the contrary fails.

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[9] Justia similarly states,

> **Definition of "installment contract"**
>
> 1. An accord where obligations such as payments of money, delivery of goods or performance of services are fulfilled over a series of sequenced dates or specific events.

Https://dictionary.justia.com/installment-contract. *Merriam-Webster's Law Dictionary: Legal Terms in Plain English* similarly defines "installment contract" as "a contract in which performance is tendered in installments (as by separate periodic delivery of goods)." Https://www.merriam-webster.com/dictionary/contract#legalDictionary.

1.

B. Additional Errors in Appellants' Analysis

1. Appellants' Argument I Misstates the Record.

Appellants twice claim, incorrectly, that this contract is or was "clearly and unambiguously" a "rental contract" or a "lease agreement with an option to purchase" and claim once that it is "not a land installment contract." Their factual contentions misstate the record.

Appellants erroneously write that "The Contract clearly and unambiguously states that it is . . . not a land installment contract." (App. Br. p. 6) (emphasis added). But the contract does not state that it is not a land installment contract. Nor does it otherwise disavow being an installment contract.

Moreover, it is simply wrong to claim the contract is "clearly and unambiguously" not an installment land contract, as the contract states, on page one, "*WITNESSETH: That the Party of the* First Part *agrees to sell* and the Party of the Second Part agrees to buy" the real estate at issue. (Contract p. 1) (italics in original, underscoring added). That is in the first operative paragraph of the contract, immediately after identifying the parties. Pages 2-3 of the contract sets forth that payments will be by installments. (Contract pp. 2-3). The contract is clearly a contract for the purchase and sale of land, with payments stretched out over time—i.e., an installment contract.

Appellants also erroneously write (*id.*), "First, the contract in *Lewis* was on its face an installment contract for land. As stated above, the Contract in this case was clearly and unambiguously a lease agreement with an option to

purchase." (App. Br. p. 6). Appellants again err because the contract explicitly states it is for the sale of land by installments, as described in the paragraph immediately above. Appellants also err because there is no way to tell what the contract in *Lewis* stated on its face. Whether it was entitled "Installment Land Contract," "Lease with Option to Buy," "Rental Agreement with Purchase Option," or something else, is simply not discussed in *Lewis*. All we know about the text of the *Lewis* contract is that the *Lewis* contract stated,

> In the event the Purchaser should fail to make any due installment, and such default shall continue for a period of thirty (30) days, the Seller shall have the right to declare this contract terminated and all amounts previously paid by the Purchaser will be retained by the Seller as rent.

Lewis, 351 S.C at 170-71, 568 S.E.2d at 363 (quoting the contract). As noted above in footnote 7, this is virtually identical to the language in the contract here.[10]

2. Appellants' Assumption Is Abandoned.

Read generously, Appellants' Argument seems to assume that if the contract is a "lease with an option to buy," it cannot also be a "land installment contract," and similarly that if the contract is "a rental contract," it cannot also be a land installment contract. But Appellants do not argue this point. Nor do

[10] Appellants even write, "The Contract further states that upon default by the Respondent, all monies paid to that point would be retained as rent." (App. Br. p. 7). This is virtually identical to the contract in *Lewis*: "In this case, the contract provides that, upon default, all amounts previously paid will be retained by Seller as rent." 351 S.C. at 173 n.4, 568 S.E.2d at 364 n.4.

they cite any authority for the proposition that a contract can only be one or the other.[11] Thus they have abandoned the point.

An issue "not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (citing *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App.1992)). *See also Ellie, Inc. v. Miccichi,* 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App.2004) (holding that even an argued issue is abandoned if the argument consists only of "conclusory statements.").

The failure to provide any authority would constitute abandonment even had the point been argued. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)) (citing *State v. Howard,* 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App.2009); *see also Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505-06, 812 S.E.2d 438, 441 (Ct. App. 2018) (following *Lindsey*); *Bryson v. Bryson,* 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (similar).

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[11] Appellants do cite two cases for the proposition that option contracts are construed against the optionee, but none for the proposition that an option contract cannot be an installment land contract. Appellant's cases are *Cotter v. James L. Tapp Co.*, 267 S.C. 647, 230 S.E.2d 715 (1976) and *Southern Silica Min. & Mfg. Co. v. Hoefer*, 215 S.C. 480, 56 S.E.2d 321 (1949). Neither involved contracts for purchase of land. Neither says anything about what makes a contract an "installment land contract" or that a contract cannot be both an option contract and an installment land contract. Additionally, both were decided well before *Lewis*, so even had those cases said something relevant to the issue, they would have been superseded by *Lewis*.

If Appellants intend to argue that a contract must be one or the other, and not both (or all three) they should have argued the point and provided authority in their opening brief, so that Respondents would have a chance to counter it. Appellants should not be heard to argue in Reply what they should have argued in their opening Brief. *Fields*, 312 S.C. at 106 n.3, 439 S.E.2d at 285 n.3 (explaining that appellants are not allowed to use Reply briefs to argue points abandoned in the Brief of Appellant).[12]

With no support for their central proposition, Appellants have abandoned the argument.

In sum, under the *Lewis* definition, the contract here is clearly an "installment land contract," and Appellants have abandoned any argument that because the contract is also a "rental agreement" or the like it cannot also be an installment land contract.

II. APPELLANTS' ARGUMENT II FAILS.

Appellants' Argument II[13] fails in at least three ways.

A. Appellants Have Abandoned the Issue.

The Supreme Court has explained that a provision is a "penalty" if "it is not based upon actual damages in the contemplation of the parties." *Tate v. Le*

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[12] If the Court nevertheless were to consider argument on this point in Reply, the Court should ensure Appellants have explained why a contract can be both "a rental agreement" (App. Br. p. 6) and "a lease agreement with an option to purchase" (*id*.) but cannot be either of those and a "land installment contract."

[13] Appellants' Argument is, "II. The trial court erred in finding the option cancellation provisions of the contract constituted an unenforceable penalty."

Master, 231 S.C. 429, 441, 99 S.E.2d 39, 46 (1957).[14] Thus, to challenge the trial court's holding that the provision is a penalty, Appellants would have had to show the provision is based upon actual damages in the contemplation of the parties. Appellants have not even attempted to do so, and so have abandoned the issue, under the same authorities cited in Section I.B.II (pages 10-11) of this brief regarding the abandonment of their assumption in their Argument I, and should not be allowed to argue it for the first time on Reply.

B. If the Court Is Nevertheless Interested in Argument on the Substantive Issue, the Church Offers the Following.

1. Appellants' Argument II Fails for Reasons Discussed Above Re Appellants' Argument I.

Appellants' Argument II rests on the claim that "the contract in this case is not an installment contract but a lease containing a purchase option." (App. Br. 7-8). This is a repeat of its Argument I that the contract is not an installment contract. It fails for the same reasons addressed above.

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[14] More fully, *Tate* held,

> [W]here the sum stipulated is reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reason of nonperformance, the stipulation is for liquidated damages; and where the stipulation is not based upon actual damages in the contemplation of the parties, but is intended to provide punishment for breach of the contract, the sum stipulated is a penalty.

Tate v. Le Master, 231 S.C. 429, 441, 99 S.E.2d 39, 45-46 (1957).

2. The Provision Here Is a Penalty.

"[I]f the stipulation is a penalty, it will not be enforced." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 22, 738 S.E.2d 480, 491-92 (Ct. App. 2013) (citing *Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon,* 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011); *Tate,* 231 S.C. at 442, 99 S.E.2d at 46).[15] As noted above, a provision is a penalty if it "is not based upon actual damages in the contemplation of the parties." *Tate.*

"Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice." *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 (quoting *Lane v. New York Life Ins. Co.*, 147 S.C. 333, 374, 145 S.E. 196, 209 (1928) citing *Bangert v. John L. Roper Lumber Co.*, 169 N.C. 628, 86 S.E. 516, 517 (1915)). "[N]o state today is likely to condone a purchaser forfeiture that greatly exceeds the vendor's loss." *Id.* at 173, 568 S.E.2d at 364

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[15] More fully, *Baugh* stated,

> "Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of" breach. *Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon,* 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011). They likewise may stipulate that a breaching party will lose a right to which the party is entitled under the agreement. *Tate v. Le Master,* 231 S.C. 429, 441-42, 99 S.E.2d 39, 45-46 (1957) (providing that parties may stipulate to the "forfeiture" of rights under a contract). However, if the stipulation is a penalty, it will not be enforced. *Foreign Academic,* 394 S.C. at 204, 715 S.E.2d at 334; *Tate,* 231 S.C. at 442, 99 S.E.2d at 46.

Baugh v. Columbia Heart Clinic, P.A., 402 S.C. 1, 22, 738 S.E.2d 480, 491-92 (Ct. App. 2013) (emphasis added).

(quoting 15 Richard R. Powell, Real Property ′84D.01, "the authoritative treatise on real property law").

Here, the amount of the forfeiture is well beyond any harm to Appellants by the missed payment.[16] In addition to the payments made to Appellants, the Church would lose hundreds of thousands of dollars in out-of-pocket payments and labor expended in transforming the "horrible" and "unusable" property to "beautiful." As "Lucky" Johnson complained, the Church "made it a lot more valuable. . . . but they was improving it for their self, not for me."

That is true. The congregation put in that time and money to improve it for services and church functions, not for Appellants to acquire and sell.

The parties contemplated when they signed the contract that the Church would put in extensive work to improve the property. (Tr. p. 46, lines 5-12, p. 47, lines 9-13, p. 60, lines10-11, p. 64, lines 4-5, p. 84, lines 5-8, p. 88, lines 19-22). That, in addition to the lack of any reason to believe that actual damages would approximate Appellants' loss from missing the balloon payment, make the provision here a penalty, as the Master properly found. Loss of all sums paid **is** a

[16] The failure of Appellants to claim the tax deduction is discussed in Part III of this Brief. As described more fully there, the contract did not call for "contribution letters;" the failure of Appellants to request the tax deductions should not be laid at the Church's feet; and even if the failure of Appellants to obtain the tax deductions is Respondent's fault, Appellants presented no evidence as to the value of the deductions. As the value of the deductions to Appellants was a matter solely within the knowledge of Appellants, and could have been easily determined by them, Respondent should not be penalized for Appellants' failure to value the supposed breach.

penalty, and Appellants have made no attempt—none—to explain why this forfeiture provision is reasonable.

Accordingly, Appellants' Argument II should be rejected.

III. APPELLANTS' ARGUMENT III FAILS AS IT MAKES NO ATTEMPT TO GRAPPLE WITH THE LOWER COURT'S REASONING NOR TO SHOW ANY RESULTING PREJUDICE.[17]

A. Appellants Waive the Issue by Not Addressing the Trial Court's Reasoning.

Appellants never address the reasons the trial court provided for not holding the tax deductions issue against the Church. The court found that Appellants never claimed the deduction[18] and never quantified what it would have been worth had it been claimed.[19] (Order p. 4). Appellants do not dispute either of these reasons. They do not contend that they claimed the deduction. They do not contend that they quantified what the deduction would have been

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[17] Appellants' Argument is, "III. The trial court erred in finding that the sales price of the property was $250,000.00 instead of the $500,000.00 sales price enumerated in the contract."

[18] The court wrote (Order p. 4),

> Defendants' claim that Plaintiff failed to provide the benefit of a tax deduction. Based on the testimony Defendants did not appear to have sought a tax deduction as contemplated in the contract. Defendants did not show it was claimed, rejected or disallowed. The contract merely allows the Defendants to claim a deduction over five (5) years.

[19] The court wrote (Order p. 4),

> Defendants did not establish a specific amount of loss resulting from the purported inability to claim such a deduction. Therefore, the Court will not consider such a loss as part of the redemption amount.

worth. They do not explain why their failure to claim the deduction should not matter. They do not claim that a litigant may demand judicial consideration of damages the litigant refuses to quantify.

Because they presented no grounds to conclude the trial court's reasoning was incorrect, they have waived or abandoned the contention. For reasons and cases presented on pages 10-11 of this brief, Appellants should not be able to explain in Reply what they see as the errors in the trial court's reasoning. The Court can and should refuse to consider their argument.

Appellants' Argument III should not be considered.

Were the Court to reach the merits despite Appellants' abandonment of the issue, Respondent's anticipated counter would be along the lines presented in the note attached to this sentence.[20]

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[20] Were the Court to reach the merits despite Appellants' abandonment of the issue, Respondents would argue:

1. The trial court is correct: There is no evidence that Appellants ever claimed the deduction.

2. The trial court is again correct: Appellants made no effort show the value to them of the deductions, had they been claimed.

3. Appellants' brief may leave the unfortunate misimpression that the contract is "unambiguous, clear and explicit" in calling for "five equal annual contribution letters showing $50,000.00 contributions for each of the five years." (App. Br. 7-8). But the contract says not a word about contribution letters.

4. The Church was informed it could not ethically provide such letters (Tr. p. 11, lines 15-21).

5. The Church so informed Appellants. (*Id*.). Appellants did not object; did not say "in that case, the deal is off," but accepted that the contribution letters could not ethically be provided.

Continued . . .

B. Appellants Claim No Prejudice from the Alleged Error.

The court below was also clear that "that the essence of the agreement was that Plaintiff pay $250,000.00 in installments and thereafter to receive title to the real property." (Order p. 3).[21] The Order similarly noted that "The parties agreement provided that Defendant is entitled to claim a charitable deduction of $250,000.00 in addition to the contract sale price." (Order p. 4). Appellants do not allege any prejudice resulting from the supposed mischaracterization of the sales price. Because Appellants allege no prejudice, their argument fails. They were required to allege any prejudice in their Brief of Appellants, so that Respondent could rebut in the Brief of Respondent. Appellants should not be

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6. If the contract had stated that the Church was to provide false contribution letters as Appellants say it states, the provision would be void as against public policy. "A provision that is against public policy is void *ab initio* and, because it is deemed legally never to have come into existence, it is incapable of being enforced by courts." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 608, 762 S.E.2d 705, 717 (2014) (citing 16 Richard A. Lord, Williston on Contracts § 49:12 (4th ed.2000)). The Court may affirm under Rule 220(c), SCACR by striking the offending provision. *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 552, 707 S.E.2d 397, 399 (2011) ("This Court can affirm for any reason appearing in the record") (citing Rule 220); *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993) (similar). (Rule 220(c) does not empower the Court to strike the entire contact, as that would not result in affirmance.)

[21] The contract in this case unambiguously, clearly, and explicitly sets the amount Respondents were to pay at $250,000. It sets a "Down Payment" of "TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($ 12,500.00)" and an "Unpaid Balance" of "TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 ($237,500.00) DOLLARS." (Contract p. 2). Twelve thousand, two hundred and fifty plus $237,500 unambiguously equals $250,000. The Church paid $232,745.00. (Order p. 4).

allowed to claim prejudice in their Reply Brief if they did not claim prejudice in their main Brief. *Fields*, 312 S.C. at 106 n.3, 439 S.E.2d at 285 n.3.

Were the Court nevertheless to reach the substance of any claim of prejudice Appellants were to make in their Reply Brief, Respondent's anticipated counter would be along the lines presented in the note attached to this sentence.[22]

IV. APPELLANTS' ARGUMENT IV FAILS AS IT IGNORES THE LOWER COURT'S REASONING AND CITES NO AUTHORITY.

The lower court wrote, "(10) Defendants assert that Plaintiff failed to pay insurance as required by the parties agreement. However, the evidence presented by the Defendant in this regard is contradictory and not credible therefore will not be considered." (Order p. 4). Appellants' Argument IV maintains the lower court erred,[23] but never explains why it was error. Instead, Appellants write, "Despite testimony to this effect, the trial court chose to

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[22] Were the Court to nevertheless reach the merits of the prejudice issue, Respondent would argue: There was no prejudice. Regardless of whether the judge used the term "sales price" in the same way as the contract does, the judge was clear that the amount the Church was to pay was $250,000 and that there was to be a tax deduction for another $250,000.

Regardless of what the "sales price" was, the only relevant question re the tax deduction is the amount of loss suffered by Appellants.

Agreeing with everything Appellants state in their Argument III would not be enough to reverse. Were the Court to agree with everything Appellants write there, the holding should be along the lines, "The 'sales price' was technically $500,000, but for reasons stated by the lower court and unchallenged on appeal, $250,000 of that does not count against the Church."

[23] Appellants write, "IV. The trial court erred in denying Appellants reimbursement for insurance premiums paid."

disregard this information when rendering its final judgment. This was error." (App. Br. p. 9). Appellants' opening brief makes no attempt to show their evidence was not contradictory. It makes no attempt to show their evidence was credible. *See Tiger, Inc.*, 301 S.C. at 237, 391 S.E.2d at 543 ("[W]e do not disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility.") Appellants made no Rule 59 motion. They have not carried their burden of demonstrating error. *Duckett,* 279 S.C. at 96, 302 S.E.2d at 343 ("the appellant carries the burden" in equity cases); *Conran*, 263 S.C. at 334, 210 S.E.2d at 310 ("The burden of proof is on the appellant" in equity cases); *Georgia R. R. Bank & Tr. Co.*, 272 S.C. at 251, 252 S.E.2d at 557 (same).

Appellants should not be allowed to provide their missing reasoning in their Reply Brief, as that would not allow Respondent to present its counter-reasoning in rebuttal. *Fields* 312 S.C. at 106 n.3, 439 S.E.2d at 285 n.3 (explaining that appellants are not allowed to use Reply briefs to argue points abandoned in the Brief of Appellant). This is especially so as Appellants made no Rule 59 motion, which might have provided Respondent at least a general idea of what Appellants' expected argument in their Reply Brief might be.

Additionally, Appellants' argument about insurance is not supported by a single authority. It is therefore abandoned. *Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558 ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority"); *Equivest Fin.,*

LLC, 422 S.C. at 505-06, 812 S.E.2d at 441 (similar); *Bryson,* 378 S.C. at 510, 662 S.E.2d at 615 (similar).

Because Appellants' Argument IV neither addresses the lower court's rationale nor provides any authority in support, it should be rejected.

V. IN THE ALTERNATIVE, THE COURT MAY AFFIRM THE RESULT BASED ON THE STATUTORY RIGHT TO CURE.

South Carolina statutes provide that, regardless of what a contract says, a debtor has the right to cure any default by paying the unpaid balance up until 20 days after notice of a right to cure has been provided by the creditor to the debtor. S.C. Code Ann. Sections 37-5-102, -110, -111. These provisions apply to sales of land without an official mortgage, and the statutory rights are in addition to, not instead of, the common-law rights discussed above. *In re Kingsmore*, 295 B.R. 812, 819 (Bankr. D.S.C. 2002). They constitute an alternate means to a result similar or identical to the result reached in *Lewis*. 295 B.R. 819-20.

Under Section 37-5-111 (emphasis added),

> Until expiration of the minimum applicable period after the notice [of the right to cure] is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

As Appellants have not provided notice of the right to cure, the time in which the Church may cure the default has not expired. There is no need to

remand for determination of the amounts owed, as the trial court has already determined these matters.[24]

The Court may affirm on these grounds. Rule 220(c), SCACR; *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 552, 707 S.E.2d 397, 399 (2011) ("This Court can affirm for any reason appearing in the record") (citing Rule 220); *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993) (similar). The Court should do so if it is not inclined to affirm on other grounds.

CONCLUSION

For the above reasons, and such other reasons as may be apparent to the Court, the decision below should be AFFIRMED.

Respectfully submitted,

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[24]Apparently these statutes were not brought to the *Lewis* court's attention, or the creditor had properly sent notice of the right to cure to the debtor there. For whatever reason, the *Lewis* court said nothing about these provisions, which provide an alternate way to reach the result the trial court reached here. *In re Kingsmore*, 295 B.R. 812, 819 (Bankr. D.S.C. 2002).

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Case No. 2024-000009

Christ Fellowship Church, d/b/a
a Church in St. Stephen, South Carolina,

Respondent,

v.

William H. Johnson and Dustin Kyle Johnson,

Appellants.

Proof of Service

I certify that the replacement for Respondent's Initial Brief is being served today on Respondent via email to its counsel of record, Roman V. Hammes, via email to:

roman@charpialaw.com.

s/Brooks R. Fudenberg
LAW OFFICES OF BROOKS R. FUDENBERG, LLC

July 14, 2024