



The South Carolina Court of Appeals

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July 23, 2024

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Levi Grantham, LLC v. Kathy Wright Mitchell
Lower Court Case No. 2021CP1004342
Appellate Case No. 2022-000470

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: E. Brandon Gaskins, Esquire
Donald Jay Budman, Esquire

The South Carolina Court of Appeals

Levi Grantham, LLC, Appellant,

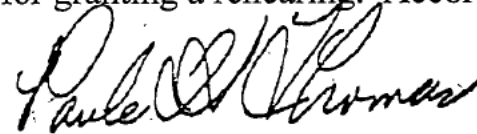
v.

Kathy Wright Mitchell, Respondent.

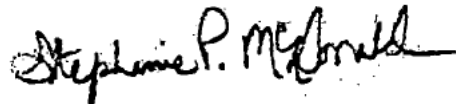
Appellate Case No. 2022-000470

ORDER


After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:
E. Brandon Gaskins, Esquire
Donald Jay Budman, Esquire
The Honorable Frank R. Addy, Jr.

FILED
Jun 14 2024

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Levi Grantham, LLC, Appellant,

v.

Kathy Wright Mitchell, Respondent.

Appellate Case No. 2022-000470

Appeal From Charleston County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-185
Submitted April 1, 2024 – Filed May 22, 2024

REVERSED

E. Brandon Gaskins, of Moore & Van Allen, PLLC, of
Charleston, for Appellant.

Donald Jay Budman, of Solomon Budman & Stricker,
LLP, of Charleston, for Respondent.

PER CURIAM: In this action for breach of contract, Levi Grantham, LLC (Grantham) appeals the circuit court's grant of summary judgment in favor of Kathy Wright Mitchell. On appeal, Grantham argues the circuit court erred in finding its failure to close on the purchase of real estate within approximately one year was unreasonable, time was of the essence to close on the purchase, and

Grantham had a full and fair opportunity to conduct discovery prior to the circuit court's grant of summary judgment. We reverse pursuant to Rule 220(b), SCACR.

We hold the circuit court erred in granting summary judgment in favor of Mitchell because, regardless of whether the "time is of the essence" provision applied to the entire purchase agreement, a genuine issue of material fact existed regarding the reasonableness of Grantham's actions. *See Town of Summerville v. City of North Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) ("When reviewing a grant of summary judgment, an appellate court applies the same standard used by the [circuit] court."); *id.* at 109-10, 662 S.E.2d at 41 ("A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party."); *Bishop v. Tolbert*, 249 S.C. 289, 300, 153 S.E.2d 912, 918 (1967) ("Generally, time is not of the essence of a contract to convey land unless made so by express terms, or by implication from the nature of the subject matter, the object of the contract, or the situation or conduct of the parties."); *Hobgood v. Pennington*, 300 S.C. 309, 314, 387 S.E.2d 690, 693 (Ct. App. 1989) ("Where time is not originally of the essence, it may be made so by one party giving notice to the other that he will insist on performance by a certain date, provided the time allowed by the notice is reasonable, which is a question of fact for the jury depending on the circumstances of the particular case."); *Faulkner v. Millar*, 319 S.C. 216, 219, 460 S.E.2d 378, 380 (1995) ("When the contract does not include a provision that 'time is of the essence,' the law implies that it is to be done within a reasonable time.").¹

REVERSED.²

THOMAS, MCDONALD, and VERDIN, JJ., concur.

¹ Because Grantham's first two issues are dispositive, we decline to address whether he was afforded a fair and full opportunity to conduct discovery. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that when a prior issue is dispositive of an appeal, the appellate court does not need to address any remaining issues).

² We decide this case without oral argument pursuant to Rule 215, SCACR.