

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
C/A #2020-CP-38-01433

**RECEIVED**  
**Sep 24 2024**  
**SC Court of Appeals**

Elaine C. Rice and Whitnee Dash-Brathwaite, )  
 )  
 ) Plaintiffs, )  
 )  
 ) vs. )  
 )  
 ) SC Home Holdings, LLC, )  
 )  
 ) Defendant. )  
\_\_\_\_\_ )

**ORDER**

HEARING DATE: July 19, 2023  
JUDGE: The Honorable James B. Jackson, Jr.  
ATTORNEY FOR PLAINTIFFS: Russell A. Blanchard IV  
ATTORNEY FOR DEFENDANT: Spencer Andrew Syrett

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case. A hearing was held on the 19<sup>th</sup> day of July, 2023, at 10:00 AM. Present at the hearing were Plaintiff Elaine C. Rice, Russell A. Blanchard IV as attorney for Plaintiffs, Spencer Andrew Syrett as attorney for Defendant, Julie Henline, Anthony Rice, and Benjamin Cognata.

The testimony was taken, which is reported herewith, and based on the pleadings, testimony, and evidence, I find and conclude as follows:

**FINDINGS OF FACT**

1. The Summons, Complaint, and Lis Pendens were filed on December 10, 2020.
2. Defendant timely filed its Answer and Counterclaim on January 18, 2021.
3. Plaintiffs timely filed their Reply on February 11, 2021.
4. This matter was referred to the Master in Equity by Order of Reference signed and

*CPA #1*

filed April 25, 2022.

5. All parties were properly notified of the date and time of the hearing.
6. In December of 2018, Defendant purchased the real property at 389 Lake Edisto Road, Orangeburg, South Carolina, at the Orangeburg County Delinquent Tax Sale.
7. Plaintiffs and Defendant entered into a Contract of Sale on March 26, 2020, wherein Plaintiffs agreed to purchase and Defendant agreed to sell for \$21,900.00 the real property located at 389 Lake Edisto Road, Orangeburg, South Carolina.
8. On March 25, 2020, when Plaintiffs signed the Contract of Sale, they gave a check for earnest money in the amount of \$1,000.00. The earnest money check was made payable to Palmetto State Title, and the funds remain in their possession.
9. The real property was listed for sale by Julie Henline of Your Midlands Real Estate Services, LLC. Prior to listing the real property for sale, Defendant informed Ms. Henline that it did not yet have the deed for the property from Orangeburg County.
10. The Contract of Sale indicates in paragraph 18 that "This is a TAX DEED Property." And further states that "Closing may take Longer Due to Coronavirus must be willing to move closing Dates, Due to closures of county offices." (sic).
11. In paragraph 25 of the Contract of Sale, stated that the offer will expire on September 27, 2020, at 5:30 PM. Ms. Henline testified that this was a typographical error on her part.
12. This error caused Plaintiffs to believe that the Contract of Sale did not expire until September 27, 2020.
13. After the Contract of Sale was executed by all parties, the documentation was turned over by Ms. Henline to attorney Dennis Wayne Catoe to handle the closing.

QBM #2

14. In paragraph 7, the Contract of Sale indicates that closing shall take place on or before May 11, 2020. Prior to this date, Mr. Catoe informed Ms. Henline that Defendant still did not have a tax deed from Orangeburg County for the real property.

15. Defendant decided in May of 2020 that it did not intend to go forward with the sale of the real property when it did not close on May 11, 2020.

16. Mr. Cognata testified that he informed Ms. Henline in May of 2020 that Defendant did not intend to go forward with the sale and wanted to get a Release of Agreement signed. Mr. Cognata claims he signed a Release of Agreement in June of 2020, but the testimony of Ms. Henline creates a lack of certainty regarding when Defendant may have signed the Release. Ms. Henline testified that she altered parts of the Release of Agreement and used a Release from a different transaction.

17. Plaintiffs never signed a Release of Agreement, and they were not presented with one until September of 2020. Neither Defendant nor its agent, Julie Henline, informed Plaintiffs that Defendant did not intend to go forward with the sale until September of 2020.

18. In early September of 2020, Plaintiffs consulted with attorney Jerry L. Finney and asked him to assist them with finalizing the purchase of the real property. Mr. Finney emailed Ms. Henline on September 14, 2020, to ask for the status of the closing.

19. In response, Mr. Catoe sent a letter dated September 17, 2020, to Mr. Finney letting him know that Defendant did not intend to move forward with the sale and notifying Plaintiffs that Defendant still did not have a deed for the property.

20. Mr. Finney notified Mr. Catoe by letter dated September 24, 2020, that Plaintiffs still desired to purchase the real property and would allow Defendant additional time to get the deed from Orangeburg County.

ABM #3

21. As a result of the communication between the attorneys, Plaintiffs were made aware that Defendant did not intend to go forward with the sale.

22. Mr. Cognata testified that he was not aware of the September 2020 communication between Mr. Finney and Mr. Cato until after the lawsuit was filed in this case.

23. Defendant made improvements to the real property, but no evidence was entered to show the value or extent of the improvements.

24. In late September of 2020, Ms. Henline turned the power on at the real property on behalf of Defendant and prepared the real property to be occupied by a tenant.

25. With the assistance of Ms. Henline and Your Midlands Real Estate Services, LLC, Defendant entered into a lease agreement to lease the real property to Charles Dyson and Karie Britton for \$850.00 per month beginning on November 25, 2020.

26. Mr. Cognata testified he spent in excess of \$75,000.00 to renovate the property in question and that he thought the contract at issue had expired.

#### ANALYSIS AND CONCLUSIONS OF LAW

1) The contract was impossible to perform from its outset until August 25, 2020, when the Defendant received the tax deed from Orangeburg County. At that point, the contract could have been closed but the Defendant had moved on because he thought the contract had expired.

2) However, the contract had not expired because, in large part, the earnest money had not been and has never been returned.

3) The contract automatically allowed for extensions of time but both parties were negligent for not extending the contract in writing.

4) The Plaintiffs were not made aware of the Defendant's decision to move on until September of 2020.

QBM #4

5) As a result, the Defendant did breach the contract. He obtained no release from the Plaintiffs nor did he return the earnest money.

6) The question now becomes what the remedy should be in view of the fact that the Defendant had spent considerable money improving the house and had rented it since November of 2020. The principles of equity must come into play at this point.

7) It is inequitable for the Plaintiffs to be allowed to complete the contract and thereby receive a free renovated house that was not there when the contract was entered into by the parties. Additionally, the Betterment statute, 27-27-10 et. seg., Code of Laws of South Carolina 1976, as amended, comes into play.

8) Therefore, I find the Plaintiff should be allowed to try and negotiate a new price for the property in question. If they cannot agree, then they should agree on an appraiser to determine the increase in value of the property over \$21,900.00 which occurred due to the efforts of the Defendant in renovating the property in question pursuant to the Betterment statute.

9) It is equitable that the rent received by the Defendant in the intervening years should be his since he spent the money and took the risk of renovating the property.

10) Each party should be responsible for own attorneys' fees and costs in this matter.

11) Plaintiffs seek to purchase the property at the original contract price. This is clearly inequitable. Plaintiffs should not obtain a windfall due to her delay in seeking specific performance. Defendant seeks to have the contract declared to have expired when it did not close on May 11, 2020. This request must be denied.

12) The Court finds that Plaintiffs should have an opportunity to purchase the property for \$21,900 plus the value of the improvements made by the Defendant. This will give the Defendant the benefit of the value it added to the property.

QJM #5

ORDER

Unless the parties can agree on the fair market value of the property, the parties shall have the property appraised by a licensed appraiser. Within 15 days of receiving the report of the appraiser, the Plaintiffs through their attorney shall notify the Defendant through its attorney as to whether or not they intend to purchase the property at the appraised value found by the appraiser. If they elect to do so, the closing shall occur not later than 30 days from the date of their election.

If the closing does not occur as provided herein, the contract shall be declared expired and the Plaintiffs shall receive a refund of their earnest money. The action shall then be dismissed with prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Unless the parties can agree on the fair market value of the property, the parties shall have the property appraised by a licensed appraiser. Within 15 days of receiving the report of the appraiser, the Plaintiffs through their attorney shall notify the Defendant through its attorney as to whether or not they intend to purchase the property for its appraised value. If they elect to do so, the closing shall occur not later than 30 days from the date of their election.

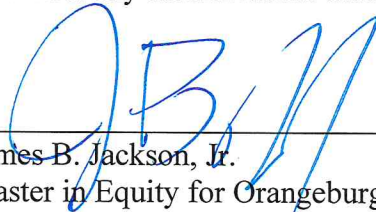
If the closing does not occur as provided herein, the contract shall be declared expired and the Plaintiffs shall receive a refund of their earnest money. The action shall be then dismissed with prejudice.

Each party shall bear its own attorney fees. The parties shall each pay one-half of the cost of the Court Reporter.

This Court shall retain jurisdiction to deal with any further issues that may arise.

AND IT IS SO ORDERED.

September 21, 2023

  
\_\_\_\_\_  
James B. Jackson, Jr.  
Master in Equity for Orangeburg County

*CP#6*

**FORM 4**

**STATE OF SOUTH CAROLINA**  
**COUNTY OF ORANGEBURG**  
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2020-CP-38-01433**

Elaine C. Rice and Whitnee Dash-Braithwaite

SC Home Holdings, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James B. Jackson, jr

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Elaine C. Rice and Whitnee Dash-Braithwaite	SC Home Holdings, LLC	To be determined
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

