THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

RECEIVED
OCT 07 2024
SC Court of Appeals

Appellate Case No. 2024-001368

Casey Putnam and Arch Harrell.....Appellants,

v.

Jamie Marie McAdams, individually, and as (successor) Personal Representative of the Estate of Robin C. Winter, deceased, and as Personal Representative of the Estate of Scott F. McAdams, deceased; Dustin Winter TeBrugge; Greta Marie McAdams; and Tracy Christine McAdams,.....Respondents.

INITIAL BRIEF OF APPELLANTS

Daniel L. Draisen, SC Bar # 13536
2006 Main Street
Anderson, SC 29621
Phone: (864) 888-8887
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statute Code Sections:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in its application of basic contract law to the written "Additional Provisions" contained within the Standard Residential Lease Agreement?

A. When finding that an ambiguity exists and in interpreting the written Additional Provisions, whether the trial court failed to give any meaning to the $50,000 price term stated?

B. Whether the trial court failed to apply the well-established rule that contract provisions must be construed liberally and strongly in favor of the non-drafting party?

II. Whether the trial court erred in holding that the Appellants were in default under the terms of the Lease with Purchase Option when a) Respondent McAdams first breached the agreement and then repudiated the agreement, and b) Appellants had the right to cure any alleged default in payment?

III. Whether the trial court erred in failing to consider that the Respondent, Personal Representative, engaged in conduct giving rise to an anticipatory breach (i.e., by failing to make mortgage payments and allowing the property to go into foreclosure – at which point the Appellants filed the underlying lawsuit) prior to any alleged breach by the Appellants, and that Respondent McAdams, once she resolved the pending foreclosure, then expressly *repudiated* the contract and refused to allow the Appellants to exercise the purchase option?

STATEMENT OF THE CASE

This matter arises initially out of a Creditor's Claim filed on June 6, 2022, in the Anderson County Probate Court by the Appellants against the Estate of Scott F. McAdams seeking specific performance of a Lease with Purchase Option. On July 15, 2022, Respondent McAdams, as Personal Representative, filed a Notice of Disallowance of the Claim. Thereafter, on August 8, 2022, Appellants filed their Summons and Petition for Allowance of Claim. In addition to the Petition on the Creditor's Claim, Appellants filed a Summons, Complaint, and Lis Pendens in the instant matter on November 15, 2022, for breach of contract, specific performance, and damages arising out of the breach of a Lease with Purchase Option Agreement that is the subject of the Creditor's Claim. In the interest of judicial economy, Appellants then filed, pursuant to S.C. Code Ann. §62-1-302(d)(5) and (f), to remove the Creditor's Claim matter to the Circuit Court for the purpose of consolidating both actions. These matters were tried without a jury on July 23, 2024, before the Honorable R. Lawton McIntosh. On July 25, 2024, the trial court issued its Form 4CE Order finding in favor of the Respondents and against the Appellants. No formal Order was issued by the trial court. Appellants' Motion to Reconsider, Alter or Amend was filed on July 31, 2024, within ten (10) days of the date of the Form 4CE Order. On August 6, 2024, the trial court issued a Form 4CE Order denying Appellants' Motion to Reconsider. Respondent McAdams also filed a Motion to Alter or Amend on August 6, 2024 (more than 10 days after issuance of the Form 4CE Order on July 25, 2024), and Respondent's Motion was granted by the trial court without argument. On August 16, 2024, a formal Order on Respondents' Motion to Amend was issued. This appeal followed.

STATEMENT OF FACTS

On or about August 5, 2020, Appellants and Scott F. McAdams, individually, and as duly

appointed Personal Representative of the Estate of Robin C. Winter, deceased, acting with actual or apparent authority, entered into a Standard Residential Lease Agreement (with purchase option provision) (hereinafter the "Agreement") for the Property located at 109 Center Street, Williamston, South Carolina (hereinafter the "Property") (Agreement).

In relevant part, the Agreement provides as follows:

> LEASE TERM. This Agreement shall begin on the 1 day of August, 2020 and end on the 1st day of August, 2022, hereinafter known as the "Lease Term."
>
> PROPERTY. The Landlord agrees to lease the described property to the Tenant: Address: 109 Center St Williamston S.C. 29697 ("Premises").
>
> RENT: The rent to be paid by the Tenant to the Landlord throughout the term of this Agreement is to be made in monthly installments of $800 ("Rent") and shall be due on the 5th day of each month ("Due Date").
> The rent should be paid in the following manner: Direct Deposit Upstate Federal or Cash to Scott McAdams.
>
> ATTORNEYS' FEES. Should it become necessary for the Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, the Tenant agrees to pay all expenses so incurred, including a reasonable attorney's fee.
>
> ADDITIONAL PROVISIONS. Option to purchase, $50,000 negotiable.

The Agreement was drafted by or at the direction of Scott F. McAdams. Appellants did not write the Agreement. In her testimony at trial, Appellant Putnam stated:

A. So this agreement was drafted for me to purchase the house at the price we had spoken about previously. Contingent with him being able to get everything straight with the mortgage and probate.
Q. Okay. Let me kind of break that down a little bit. It's a lease agreement?
A. Correct.
Q. Did you write it?
A. No.
Q. Okay. Was that provided to you by Mr. McAdams?
A. Yes.

Q. And you didn't type it?
A. No.
Q. You don't know who typed it?
A. No.
Q. Okay. But it was provided to you for your signature?
A. Yes.
Q. And that's your signature that appears on it?
A. Yes.
Q. Okay. All right. And at the time that you were provided that, did you have anything to do with the typed wording or language that was in there regarding the option?
A. No.
Q. Did you specify that term that says $50,000 negotiable?
A. I did not specify that.

(Transcript, p.14, l.7 - p.15, l.9)

And in her testimony, Respondent McAdams stated:

Q. You would agree with me that this is the lease agreement that we're here talking about today; is that right?
A. Yes, sir.
Q. And if you recall, I asked you a series of questions in your deposition about whether or not you had anything to do with the creation of the lease.
A. I remember that. Yeas.
Q. And your answer was?
A. No. I did not have anything to do with the creation.
Q. And I asked you if you knew anything about how it was created or by whom, and your answer was?
A. I do not know who created the lease.
Q. Okay. I asked you if you had any evidence as to who printed it or typed the information that's on it, and your answer was?
A. I have no evidence.
Q. Okay. And I asked you if you had any evidence that suggests my client had anything to do with filling it out or completing what's typed in the document. Your answer was?

A. No.
Q. You don't know anything about how the lease came to be. Is that fair to say?
A. That is fair. Yes.
Q. You weren't present when it was negotiated; is that right?
A. That's right.
Q. Hadn't had any discussions with your father -- can't talk about them anyway, but you had no discussions with your father about the creation of this particular lease?
A. That's correct.
Q. Is it fair to say that even as of the date of his death, you didn't know what -- what leases existed?
A. Yes. That's fair.
Q. All right. So you were not involved in the negotiations, discussions with -- between Ms. Putnam and Scott McAdams about the lease or the optional language that's contained therein?
A. Right. I was not involved.
Q. And you don't have any evidence that supports any allegations that my client drafted the lease?
A. No, I do not.

(Transcript, p.64, l.14 – p.66, l.10)

Appellants timely made all monthly payments as required by the Agreement up until around July 2021 when Scott F. McAdams passed away. Upon the advice of counsel, Appellants ceased making payments until someone was appointed Personal Representative. In November 2021, Respondent McAdams was appointed Personal Representative (Certificate of Appointment). On December 10, 2021, Appellants paid Ms. McAdams the total sum of $3,900 for rent from July through December, less out of pocket repairs made by the Plaintiffs, as agreed by Respondent McAdams.

In her testimony, Appellant Putnam stated:

Q. Then what happened to Mr. McAdams?
A. He passed away.
Q. Okay. When he passed away, who were you

supposed to pay rent to?
A. I had no idea.
Q. Okay. So at -- at the time of his death, you had no idea who had the legal authority to accept the rent?
A. Correct.
Q. Okay. And so what did you do?
A. I reached out for legal counsel and asked what my options were, who I should pay, and I was advised to not pay anyone until someone was appointed representative over his estate.
Q. Okay. And did that take several months?
A. It did.
Q. Okay. And who was ultimately appointed to your knowledge?
A. Ms. McAdams.
Q. Okay. When she was appointed, what did you do?
A. I paid her the amount that was due.
Q. Okay. And that's the $3900 we talked about, which is the amount less some repairs?
A. Correct.
Q. Okay. All right. And that would've brought you current as of that time?
A. Correct.

(Transcript, p.18, l.13 - p.19, l.14)

Respondent McAdams testified:

Q. All right. And did you have a discussion with her about who was authorized to collect rent payments?
A. Yes.
Q. Did she tell you that she was concerned about paying rent until somebody was appointed?
A. She did.
Q. Okay. And that was -- you had that discussion before -- like early on before she's not paying rent; is that right?
A. Yes.
Q. Okay. All right. And then -- so you were aware that she had concerns about paying rent until somebody had legal authority to collect the rent?
A. Yes.
Q. Okay. All right. And then once you were

appointed, which I believe was in October or November, I assume you made her aware?
A. Yes, I did.
Q. And then you guys made arrangements for her to pay up the rent in December?
A. Yes.
Q. For what was owed?
A. Yes, sir.
Q. Now, during that period of time, it's my understanding that she made some repairs and that you had agreed to deduct the repairs from the total that was owed?
A. Yes. That's correct.
Q. Okay. And that's why it's $3900 that was paid?
A. Yes, sir.
Q. Do you agree that when that $3900 was paid, it brought it current as of that time?
A. Yes, I do.

(Transcript, p.67. l.9 – p.68, l.17)

In July, October, November and December 2021, Appellant Putnam had verbal discussions with Respondent McAdams wherein she notified McAdams that she wished to exercise the purchase option and to buy the subject Property per the terms of the Agreement. On December 7, 2021, Respondent McAdams sent a text to the Appellants and said that she and Dustin had decided to keep the home as a rental and had no intention of selling it to the Appellants. (Text Message) Appellant Putnam continued to ask about purchasing in January, March, and April 2022.

The Appellants made timely monthly rent payments in the amount of $800.00 and had otherwise acted substantially in compliance with the terms of the Agreement up until such time as Appellants received notification in late March 2022 that Respondent McAdams had not been making the monthly mortgage payments on the Property and that the Property had gone into foreclosure (Complaint for Foreclosure). Appellants immediately contacted Respondent McAdams after an attempt was made to serve the foreclosure pleadings at the Property, advised

that they would not make any additional payments on the Property due to the foreclosure and the risk of loss of the Property until the Property was out of foreclosure, and again stated that they wanted the sale of the Property to them arranged.

Respondent McAdams testified at trial:

Q. And then after that, I think you testified that she made four months payments, which would've been January -- January, February, March -- December, January, February, March?
A. Right. December through March.
Q. Okay. All right. And what happened in March of 2022 with regard to the property?
A. I -- when I was appointed personal representative of Robin Winters' estate, the mortgage company had intended to foreclose on it, and the home went into foreclosure.
Q. Okay. And that happened in March of 2022?
A. Yes, sir.
Q. 2022?
A. Yes.
Q. Okay. And did you have a discussion with Ms. Putnam at that time? I think I asked you that about the home being in foreclosure.
A. Yes.
Q. So y'all talked about it?
A. We did.
Q. And do you recall how that conversation went?
A. Yeah, we discovered it was in foreclosure, and I was actually at her home. We discussed it in person. She told me she wanted to purchase, and I said, "I'm not sure how things are going to work out yet, so I can't agree to anything."
Q. Okay. So -- so you -- you're acknowledging that as of March '22 when you were served with the foreclosure papers, even at that point my client had said, "I want to purchase"?
A. Yes, sir.
Q. And because of the foreclosure and I assume probate and other things, you weren't sure about how you could make that happen or if it could?
A. That's correct.
Q. All right. But she told you she wanted to

purchase?
A. She did.
Q. Okay. And did y'all talk about rent and what would happen while the property was in foreclosure?
A. Not that I recall.
Q. Okay. At any point in time -- I assume you realize that at some point she had stopped paying the rent?
A. Yes.
Q. Did you have a discussion about that?
A. We did.
Q. Okay. I assume you contacted her and said, why are you not paying rent?
A. Yes.
Q. And what do you recall that conversation was?
A. She said that she did not want to be put out on the streets and she was afraid that if the home went into foreclosure, she wouldn't have anywhere to go.

(Transcript, p.68, l.18 - p.70, l.22)

Thereafter, in an effort to protect their purchase option interest in the Property, on June 6, 2022, Appellants filed a Creditor's Claim in the Anderson County Probate Court against the Estate of Scott F. McAdams seeking specific performance of the Lease with Purchase Option (Creditor's Claim). In response, on July 15, 2022, Respondent McAdams, as Personal Representative, filed a Notice of Disallowance of the Claim (Disallowance of Claim). Appellants then filed a Summons and Petition in Probate Court on August 8, 2022, seeking allowance of their Claim (Summons and Petition). Appellants also filed a Motion to Intervene in the Foreclosure action on October 3, 2022 (Motion to Intervene) and, in addition to the Creditor's Claim and Motion to Intervene, Appellants filed the Summons and Complaint in the instant matter on November 15, 2022, for breach of contract, specific performance, and damages arising out of the breach of a Lease with Purchase Option Agreement (Summons and Complaint). Despite the purchase option, Respondent's anticipatory breach, and Respondent's repudiation of the Agreement, Respondent McAdams' response was to

then attempt to have the Appellants evicted from the Property on November 17, 2022 (Rule to Vacate or Show Cause).

At the time of filing the initial Creditor's Clam, Appellant Putnam also sent written notice to Respondent McAdams on June 6, 2022, confirming that she wished to exercise the purchase option and to purchase the Property, asked for a payoff statement from the bank to determine what amount of the proceeds from the purchase price would have to be paid to get the Property released from the mortgage and requested a closing (Letter dated June 6, 2022). At that time, Respondent McAdams responded via text message and advised that she and Dustin were working out the legal end of things and would work out a purchase transaction after then (Text Message).

Respondents Dustin Winter TeBrugge, Greta Marie McAdams, and Tracy Christine McAdams were named as party Defendants in this matter because, upon information and belief, they may claim some right, title or interest in and to the subject Property by virtue of being heirs or beneficiaries of the Estate of Robin C. Winter or the Estate of Scott F. McAdams, any such interest, if any, being junior to and subject to the rights of the Appellants created by the Agreement giving them the option to purchase the subject Property.

In their Complaint, Appellants sought specific performance of the Agreement because each parcel or tract of land is distinct and unique, has a specific geographic location, and no amount of money damages would place the Appellants in the same position they would have been had Respondents not breached the Agreement and completed the sale of the Property to the Appellants. Further, the Appellants asked that the trial court require Respondent McAdams, individually, and as Personal Representative of the Estate of Robin C. Winter and Personal Representative of the Estate of Scott F. McAdams, to transfer good and marketable fee simple title to the Property to the Appellants

for the sum of $50,000, free and clear of any liens or encumbrances, as required by the Agreement (Complaint).

Of note, at no point have the Appellants ever asked or attempted to "negotiate" the purchase price down from the $50,000, have consistently demanded that they be allowed exercise the purchase option paying the full $50,000 to purchase the Property, and the record is devoid of any evidence to the contrary.

STANDARD OF REVIEW

In South Carolina, an action for breach of contract is an action at law. On appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law. The trial court's findings of fact will not be disturbed on appeal unless found to be without evidence which reasonably supports the court's findings. Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, 357 S.C. 363, 593 S.E.2d 170 (Ct.App. 2004).

ARGUMENT

I. Did the trial court err in its application of basic contract law to the written Additional Provisions contained within the Standard Residential Lease Agreement?

Stated simply, "[a] contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." Ellie, Inc. v. Miccichi, 358 S.C. 78, 94, 594 S.E.2d 485, 494 (Ct.App. 2004). "An ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." Bruce v. Blalock, 241 S.C. 155, 160, 127 S.E.2d 439, 441 (1962). ***Accordingly, when a court makes a finding of ambiguity, it must set forth either how a provision is capable of more than one meaning or is obscure in meaning. A simple finding of ambiguity, absent any reasoning, is insufficient.***

Without more, an appellate court is unable to review the validity of a circuit court's conclusion that a provision is ambiguous. Bardsley v. Gov't Emps. Ins. Co., 405 S.C. 68, 747 S.E.2d 436 (2013). ***A contract must be read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity.***" Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 579 S.E.2d 132 (2003), citing Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). ***"It is a well-settled principle of contract interpretation that absent a contractual definition to the contrary, contract language is given its ordinary and plain meaning.*** See, e.g., Dean v. Am. Fire & Cas. Co., 249 S.C. 39, 41, 152 S.E.2d 247, 248 (1967)..." Bardsley v. Gov't Emps. Ins. Co., 405 S.C. 68, 747 S.E.2d 436 (2013).

Generally, if the terms of a contract are clear and unambiguous, this Court must enforce the contract according to its terms regardless of its wisdom or folly. Ellis v. Taylor, 316 S.C. 245, 449 S.E.2d 487 (1994). ***Ambiguous language in a contract, however, should be construed liberally and interpreted strongly in favor of the non-drafting party.*** Myrtle Beach Lumber Co., Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981). ***"After all, the drafting party has the greater opportunity to prevent mistakes in meaning. It is responsible for any ambiguity and should be the one to suffer from its shortcomings.***" Bazzle v. Green Tree Financial Corp., 351 S.C. 244, 262, 569 S.E.2d 349, 358 (2002), vacated on other grounds, 123 S.Ct. 2402, 156 L.Ed.2d 414 (2003) (emphasis added).

A. When finding that an ambiguity exists and in interpreting the written Additional Provisions, the trial court failed to give any meaning to the $50,000 price term stated.

The provision of the Standard Residential Lease Agreement at issue in this matter is as follows:

ADDITIONAL PROVISIONS.

option to purchase, $50,000 negotiable

In its ruling, the trial court focuses solely on the word "negotiable." The Court finds that the term "negotiable" as used in the Additional Provisions is ambiguous, is not defined in the Lease, and therefore correctly gives the word its plain and ordinary meaning as defined by Merriam-Websters Dictionary as "open to discussion or dispute." However, the trial court does not determine or set forth in its ruling what the "$50,000" stated price term means, or why such amount is specifically set out in the written provision.

In her testimony Appellant Putnam stated:

THE COURT: You can say what you understood it to be, but you cannot say any conversation you had with ---
THE WITNESS: Yes, sir.
THE COURT: --- the deceased. Okay.
BY MR. DRAISEN:
Q. Don't use the word "he." It means you can't say anything he said. Okay. So it's what you understood.
A. So it was my understanding that if I could pay 50,000 right then, that the house would be mine.
Q. All right. So it was your understanding at the time that you had the ability to purchase for 50,000 immediately?
A. Correct.
Q. Okay. And did you want to do that?
A. I did.
Q. Okay. And why didn't you do that or why couldn't you do that?
A. Because none of the mortgage information could be provided to me at the time.

(Transcript, p.16. ll. 1-21)

Respondent McAdams testified:

Q. Other than Ms. Putnam and Scott McAdams, are you aware of anybody else who can help us or tell us what the $50,000 negotiable means in the lease agreement?
A. No, sir.
Q. You haven't named anybody else that I'm aware of, so I just want to make sure that those are the only two people who could tell us what the agreement was, correct?
A. Yes.

(Transcript, p.81, ll. 4-13)

Even if, arguendo, Appellant Putnam's above testimony is barred by the Dead Man's, which is denied, Ms. Putnam had the right to testify regarding her understanding of what the provisions of the Agreement meant to her at the time she signed same, and the "$50,000" price term included in the wording of the Agreement must be given some meaning or import. Appellants respectfully assert that the trial court's ruling on the interpretation of the Additional Provision is essentially the same as if the drafter had written: "*price to be determined at the time option to purchase is exercised*" and nothing more. Yet, those were not the words chosen or used. The trial court's interpretation gives no import or meaning to the $50,000 price amount stated.

In fact, the trial court held that Appellants' position is not supported by the evidence in the record. This is, respectfully, incorrect. To the contrary, Appellants' position is entirely supported by *the only evidence in the record* regarding what the Additional Provisions meant to Appellant Putnam at the time she executed the Agreement. Appellant Putnam testified at trial, and her testimony is unrefuted by any other evidence or witness testimony in the record, that $50,000 was the maximum price she would pay but that the parties could negotiate a lower price depending on when the option

was exercised and how much was owed on the mortgage at that time. She further testified that she did not seek, and has never requested, to negotiate the price down from the $50,000 price. Appellants assert that the written provision meant something more akin to *"$50,000, or best offer."*

As set forth above, when a court makes a finding of ambiguity, it must set forth either how a provision is capable of more than one meaning or is obscure in meaning. A simple finding of ambiguity, absent any reasoning, is insufficient. Without more, an appellate court is unable to review the validity of a circuit court's conclusion that a provision is ambiguous. Bardsley v. Gov't Emps. Ins. Co., 405 S.C. 68, 747 S.E.2d 436 (2013). In the instant case, the trial court has given no import or meaning to the "$50,000" price term included in the wording. Appellants assert that the trial court erred by failing to construe the meaning of the phrase "$50,000 negotiable" as a whole by giving meaning and import to both the $50,000 price term as well as to the word "negotiable", and that the trial court failed to construe the wording liberally and to interpret the phrase strongly in favor of the non-drafting party.

B. The trial court failed to apply the well-established rule that contract provisions must be construed liberally and strongly in favor of the non-drafting party.

With regard to the well-settled rule that ambiguous contract provisions must be construed most favorably to the non-drafting party, the *only* evidence in the record regarding who drafted the Standard Residential Lease Agreement is the testimony of Appellant Putnam who testified that Scott F. McAdams brought the Agreement to her for her to sign, and that she did not type the lease or have anything to do with the words that appear in the typed Agreement. Respondents submitted no evidence by way of witness testimony, documents, or otherwise that refutes that the Agreement was drafted by or for Scott F. McAdams and provided to the Appellants, and Respondent McAdams

testified quite candidly that she did not know anything about the circumstances surrounding the drafting or execution of the Agreement. Absent any evidence to the contrary, Appellants, respectfully, must be deemed to be the non-drafting party. ***Ambiguous language in a contract, however, should be construed liberally and interpreted strongly in favor of the non-drafting party.*** Myrtle Beach Lumber Co., Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981). ***"After all, the drafting party has the greater opportunity to prevent mistakes in meaning. It is responsible for any ambiguity and should be the one to suffer from its shortcomings."*** Bazzle v. Green Tree Financial Corp., 351 S.C. 244, 262, 569 S.E.2d 349, 358 (2002), vacated on other grounds, 123 S.Ct. 2402, 156 L.Ed.2d 414 (2003) (emphasis added).

Rather than construing the provisions "liberally and strongly in favor of" the Appellants, the trial court instead held that there was a lack of a meeting of the minds as to Appellants' right to purchase the Property, and that there is no valid and enforceable contract for Appellants to purchase the property. This holding is contrary to the well-established rule regarding contract interpretation in South Carolina. The trial court erred in failing to construe the Additional Provisions of the Agreement liberally or strongly in favor of the non-drafting party, the Appellants, and instead construed the provisions conservatively and most favorably to the drafting party, Respondents, in contravention of South Carolina contract law.

II. Did the trial court err in holding that the Appellants were in default under the terms of the Lease with Purchase Option when a) Respondent McAdams first breached the agreement and then repudiated the agreement, and b) Appellants had the right to cure any alleged default in payment?

In its ruling, the trial court held that the Appellants are in default for failure to pay rent on three separate occasions. The trial court held:

THE FIRST BEING FROM JULY OF 2021 TO DECEMBER OF 2021. ALTHOUGH PLAINTIFF DID NOT PAY FOR THIS TIME PERIOD, THE COURT AGREES THAT PLAINTIFF COULD NOT PAY RENT UNTIL A PERSONAL REPRESENTATIVE WAS APPOINTED. THE SECOND OCCASION PLAINTIFF FAILED TO PAY RENT WAS FROM APRIL OF 2022 TO DECEMBER OF 2022. THE THIRD OCCASION WAS FROM JANUARY OF 2023 TO JUNE OF 2023. FURTHER, PLAINTIFF LAST MADE A RENT PAYMENT IN JUNE OF 2023, AND HAS CURRENTLY BEEN LIVING AT THE PROPERTY FOR 13 MONTHS WITHOUT MAKING A RENT PAYMENT. ACCORDINGLY, PLAINTIFF WOULD HAVE NO RIGHT TO ENFORCE THE LEASE OPTION IN THE EVENT THAT IT WERE ENFORCEABLE DUE TO BEING IN DEFAULT CURRENTLY AND ON MULTIPLE OCCASSIONS PRIOR.

The undisputed evidence in the record is that the Appellants began giving notice to Respondent McAdams as early as October or November 2021 that they wanted to exercise the option to purchase the property pursuant to the terms of the Additional Provisions of the Lease. The text messages introduced into evidence and the testimony of Respondent McAdams corroborate these facts. In addition, in June 2022 Appellant Putnam filed a Creditor's Claim and provided written notice to Respondent McAdams to express her intention to exercise the option to purchase the Property.

As to the first event, **Death of Lessor.** Appellants assert, and the trial court correctly held, that performance and payment of rent was rendered impossible by the death of Scott F. McAdams until a Personal Representative was appointed. In fact, Appellants assert that this "first event" did not constitute a "default" on the part of the Appellants due to impossibility of performance. Once a Personal Representative was appointed, Appellants paid the rent that accrued, less repairs made by the Appellants (that should have been made by Respondents at their expense) as agreed between the parties.

As to the second event, **Foreclosure filed.** The trial court held that the Appellants failed to pay rent from April 2022 to December 2022 after the foreclosure action was filed. Appellants made rent payments through April 2022 when Appellants learned that the Property had gone into

foreclosure. Appellants were current on the rent as of April 2022, had notified Respondent McAdams on multiple occasions that they intended to exercise the option to purchase, but had not been allowed purchase the Property. When the Property went into foreclosure, Appellants again requested to exercise the purchase option; however, Respondent McAdams advised she was not sure what she was going to do at that point. With the property in foreclosure, Appellants assert that an anticipatory breach of contract occurred. The act of allowing the property to go into foreclosure occurred before Appellants stopped paying rent, before Appellants were allowed to exercise the purchase option, and the outcome of foreclosure (if completed) would be that Respondents could not perform and would not be able to perform in the future. In fact, Respondent McAdams testified at trial that she, individually, had to use her own funds to pay off the mortgage to get the property out of foreclosure, presumably because the estate did not have sufficient funds to do so. In her testimony, Respondent McAdams stated:

Q. And when you ultimately paid to get this property out of foreclosure, my recollection is the amount was somewhere around $26,000?
A. Yes, sir.
Q. Did that -- was that just for the mortgage foreclosure, or did that have -- did it get rid of any of the other expenses that were on the property?
A. It was only for the foreclosure and attorney's fees.

Q. Okay. But you're the only one that paid off the mortgage?
A. Correct.
Q. Do they owe you for that?
A. Not in my mind.
Q. So you paid $26,000 out-of-pocket to pay off the mortgage, there's still creditors on the property, but yet the other three owners don't owe any part of it to you?
A. We haven't really discussed that yet.

(Transcript, p.76, ll.15-23, p.89, ll.15-24)

In general, an anticipatory breach of contract is one committed before the time has come when there is a present duty of performance and is the outcome of words or acts evincing an intention to refuse performance in the future. 30 S.C. Jur. Contracts § 66 (1999)

Accordingly, Appellants were current on the rent until the Respondents a) allowed the property to go into foreclosure, b) refused to allow Appellants to exercise the purchase option, and c) Respondent McAdams told Appellants that she decided that she did not want to sell the Property and wanted to keep the Property as a rental. Appellants assert that such constitutes an actual breach of the terms of the Agreement with regard to the Additional Provisions, and an anticipatory breach by Respondents *occurring prior* to any alleged breach by the Appellants for failure to pay rent.

As to the third event, **Prior Breach by Respondents.** The trial court held that Appellants failed to pay rent from January 2023 to June 2023, and that Appellants have not made any rent payments since that time. However, Appellants submitted evidence into the record that Appellants paid money into escrow at their attorney's office during the pendency of this litigation on two separate occasions, despite Respondents' prior breach and repudiation of the purchase option (and the fact that Appellants were not required to do so). More importantly, the Respondent McAdams had a) committed an anticipatory breach of the Agreement, and b) repudiated the Additional Provisions of the Agreement, both constituting prior breaches by the Respondents *before* any alleged breach by the Appellants.

The trial court erred in failing to recognize and to apply the law applicable to anticipatory breach and repudiation of a contract, all of which occurred prior to any alleged breach by the Appellants.

III. Did the trial court err in failing to consider that Respondent McAdams, Personal Representative, engaged in conduct giving rise to an anticipatory breach (i.e., by failing to make mortgage payments and allowing the property to go into foreclosure – at which point Appellants filed the underlying lawsuit) prior to any alleged breach by Appellants, and that Respondent McAdams, once she resolved the pending foreclosure, expressly *repudiated* the Agreement and refused to allow Appellants to exercise the purchase option?

In the matter of Hampton v. Supreme Lodge K. P, 161 S.C. 540, 159 S.E. 923 (1931) the Supreme Court held:

> "Where a contract embodies mutual and interdependent conditions and obligations, and one party either disables himself from performing, or prevents the other from performing, or repudiates in advance his obligations under the contract, and refuses to be longer bound thereby, communicating such repudiation to the other party, ***the latter party is not only excused from further performance on his part, but may at his option treat the contract as terminated for all purposes of performance, and maintain an action at once for damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant.***"...(emphasis added)

From Ervin's South Carolina Request to Charge - Civil, §22-23 Repudiation:

> The plaintiff claims the defendant breached the contract by refusing to acknowledge the contract as a valid agreement. The law calls such a refusal repudiation of the contact.
>
> The absolute repudiation of a valid contract by one of the parties to the contract is considered a breach of the agreement and the repudiating party is liable to the other in damages.
>
> The refusal of a party to recognize the existence of a contract or the doing of something inconsistent with its existence may be treated as a breach if it happens after the time for the performance of the contract.
>
> Of course, the repudiation of a contract that has by its own terms expired is not a breach of contract.
>
> If you should find that there was a valid, enforceable contract and that the plaintiff proved that the defendant repudiated it, then your verdict must be for the plaintiff.

In accordance with the law as set forth in Hampton (1931), ***the latter party is not only excused from further performance on his part but may at his option treat the contract as terminated for all purposes of performance, and maintain an action at once for damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant.***

Accordingly, Appellants assert that as a result of Respondents' repudiation of the purchase option and anticipatory breach, Appellants were excused from further performance and could maintain an action for damages occasioned by such repudiation. It was, in fact, the Respondents who first engaged in anticipatory breach, repudiated the purchase option, and that such prior breaches by the Respondents excuses any subsequent or later alleged breach by the Appellants.

CONCLUSION

For the reasons set forth herein above, the Appellants assert that the trial court erred in its interpretation of the ambiguous provisions of the Agreement, did not give any meaning or import to the $50,000 price term, did not construe the Agreement most favorably to the non-drafting party, the Appellants, and held that there was "no meeting of the minds between the parties" when such holding is contrary to well-established contract law. Further, the trial court erred in holding that the Appellants breached the Agreement by failing to pay rent when the Respondents had first engaged in anticipatory breach and repudiation of the Agreement prior to any alleged breach by the Appellants. Accordingly, this Court should, respectfully, reverse the trial court's Order, correct the errors of law, and remand the matter for further proceedings consistent with this Court's findings.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar # 13536)
2006 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com
ATTORNEY FOR THE APPELLANTS

October 2, 2024
Anderson, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

RECEIVED
OCT 07 2024
SC Court of Appeals

Appellate Case No. 2024-001368

Casey Putnam and Arch Harrell.....Appellants,

v.

Jamie Marie McAdams, individually, and as (successor) Personal Representative of the Estate of Robin C. Winter, deceased, and as Personal Representative of the Estate of Scott F. McAdams, deceased; Dustin Winter TeBrugge; Greta Marie McAdams; and Tracy Christine McAdams,.....Respondents.

PROOF OF SERVICE

I certify that I served copies of the **Initial Brief of Appellants and Appellants' Designation of Matter to be Included in the Record on Appeal** by e-mail and by United States Mail, postage paid, addressed to:

Scott@talleylawfirm.com

Scott F. Talley, Esquire
TALLEY LAW FIRM, P.A.
291 S. Pine Street
Spartanburg, South Carolina 29302

s/Daniel L. Draisen
Daniel L. Draisen, SC Bar# 13536)
The Injury Law Firm, P.C.
2006 N. Main Street
Anderson, South Carolina 29621
(864) 888-8887
Daniel@injuredSC.com
Attorney for Appellants

October 3, 2024

THE INJURY LAW FIRM, P.C.

2006 N. MAIN STREET
ANDERSON, SOUTH CAROLINA 29621
(864) 888-8887
daniel@injuredSC.com
www.injuredSC.com

DANIEL L. DRAISEN, ESQ.
Licensed in SC and OK

October 3, 2024

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Casey Putnam v. Jamie Marie McAdams
Appellate Case No. 2024-001368

Dear Mrs. Kitchings:

Enclosed for filing in the referenced matter please find the Initial Brief of Appellants, Appellants' Designation of Matter to be Included in Record on Appeal, and a Proof of Service. Due to the hurricane, my office is still without phones or internet, and our computer network is down. Consequently, I was unable to file these documents electronically.

With kind regards,

THE INJURY LAW FIRM, P.C.

Daniel L. Draisen

DLD
Enclosures
cc: Scott F. Talley, Esq.

FIRST-CLASS

US POSTAGE PITNEY BOWES

ZIP 29621 $ 002.87⁰
02 7H
0000180853 OCT 03 2024

THE INJURY LAW FIRM.rc
2006 North Main Street
Anderson, South Carolina 29621

RECEIVED
OCT 07 2024
SC Court of Appeals

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211