

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-02006

Eastwood Construction Partners, LLC and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-
Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River
Falls, a North Carolina Limited Liability
Company, and AF-River Falls, LLC, a
North Carolina Limited Liability
Company, Greenhawk Corporation, Inc.,
and TRI Pointe Homes Holdings, Inc.,

Defendants.

ORDER GRANTING TRI POINTE
HOMES HOLDINGS, INC.'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

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Mar 11 2022

SC Court of Appeals

This matter is before the Court on a Motion for Partial Summary Judgment filed by Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe") against Plaintiffs Eastwood Construction Partners, LLC ("Eastwood Construction") and Eastwood Development Corporation ("Eastwood Development"). In its Motion, TRI Pointe asks this Court: (i) to enter summary judgment in favor of TRI Pointe on Plaintiffs' claims for specific performance of a contract for a tract of real property known as "Brooks Creek" and (ii) to cancel the *lis pendens* that TRI Pointe has filed against Brooks Creek.

The Court held a hearing on TRI Pointe's Motion on December 10, 2021. Present on behalf of TRI Pointe were Stephen M. Cox, Amanda Pickens Nitto and Timothy P. Misner of Robinson Bradshaw & Hinson, P.A. Present on behalf of Plaintiffs were James Edward Bradley of Moore Bradley Myers Law Firm and James C. Adams, II and William O. Walker of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Present on behalf of the Defendants other than TRI



Pointe were John I. Mabe, Jr.; Andrew A. Mathias; and Konstantine P. Diamaduros of Nexsen Pruet, LLC.

After carefully considering the papers and pleadings of records in this action and the arguments of counsel, and for the reasons set forth below, the Court hereby grants TRI Pointe's Motion, dismisses Plaintiffs' claims for specific performance with respect to Brooks Creek with prejudice, and cancels the *lis pendens* filed by Plaintiffs against Brooks Creek.

I. STATEMENT OF UNDISPUTED FACTS

Plaintiffs' claims for specific performance are based on Plaintiffs' contention that Eastwood Construction is entitled to the ownership of Brooks Creek—a 10.6 acre tract of land in Tega Cay, South Carolina. In April 2013, Eastwood Development signed a contract to purchase Brooks Creek from an unrelated third party. In December 2013, Eastwood Development assigned that contract to Defendant AF-Brooks Creek, LLC ("AF-Brooks Creek"), an affiliate of Defendant Greenhawk Corporation, Inc. ("Greenhawk"). At the time of the assignment by Eastwood Development, it was the parties' general understanding that AF-Brooks Creek would prepare the Brooks Creek tract for development by, among other things, securing all of the necessary zoning and planning approvals and plats for development. Once that was done, it was Plaintiffs' general understanding that the Brooks Creek tract would be conveyed to Eastwood Construction (a separate entity from Eastwood Development) via a written lot purchase agreement, the terms of which would require further negotiation and discussion between the parties.

Ultimately, however, the material terms of the sale of Brooks Crook from Greenhawk's affiliate to Eastwood Construction were neither agreed to nor memorialized in a writing. In particular, despite protracted, desultory negotiations between the parties—over a period of years—neither Greenhawk nor any of its affiliates ever agreed with Eastwood Construction to a particular

lot price, deposit amount, or takedown schedule for the lots in Brooks Creek. Although a Greenhawk affiliate sent a draft contract for the sale of Brooks Creek to Eastwood Construction in October 2018, Plaintiffs conceded in the sworn deposition testimony of their Rule 30(b)(6) representative that Eastwood Construction never accepted that draft contract. Nor did Eastwood Construction make a written counter-proposal. Greenhawk's affiliate eventually conveyed Brooks Creek to TRI Pointe in August 2019.

In support of its Motion for summary judgment, TRI Pointe included in the record a number of internal and external communications to and from Plaintiffs, over a period of years, that explicitly stated that there was never a contract for Eastwood Construction to purchase the Brooks Creek tract. Among the latest of these communications was an email from Eastwood Construction's Vice-President of Land dated June 8, 2020—just a month before this lawsuit was filed.

In July 2020, Plaintiffs filed this action claiming, among other things, a right to specific performance of a contract for the sale of Brooks Creek to Eastwood Construction. Plaintiffs also filed a *lis pendens* based on the same alleged contract with the Court, which has encumbered TRI Pointe's title to the Brooks Creek tract and made it impossible for TRI Pointe to develop, market, and sell the property.

TRI Pointe's motion seeks summary judgment on Plaintiffs' claims for specific performance on the following grounds: (i) there is no enforceable contract for Eastwood Construction's purchase of the Brooks Creek tract because certain material terms were left open for further negotiation; and (ii) any alleged unwritten agreement is unenforceable by application of the Statute of Frauds. TRI Pointe also seeks cancellation of the *lis pendens* on the Brooks Creek

tract on the grounds that none of Plaintiffs' claims (other than claims for specific performance) affect the title to the Brooks Creek tract. The Court agrees with TRI Pointe.

LAW AND ANALYSIS

- I. **Any alleged contract for Eastwood Construction's purchase of the Brooks Creek tract is unenforceable because the parties left material terms open for further negotiation.**

In order to compel specific performance of a contract, a court must find that there is clear evidence of a valid agreement. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). To have a valid and enforceable contract, the parties must have agreed to all essential terms of the agreement, which include, among other things, price, time, and place. *See McPeters v. Yeargin Const. Co.*, 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986) ("Certain terms, such as price, time and place, are considered indispensable."). What constitutes a "material term" may also go beyond price, time, and place, depending on the relationship between the contracting parties. *See Mullins v. Benton*, 309 S.C. 85, 90, 419 S.E.2d 838, 840-41 (Ct. App. 1992) (stating that method for determining price, amount of down payment, interest rate, and length of a purchase money mortgage may be material terms to a contract for the transfer of real property). When negotiating parties leave material terms open for future agreement, the contract is void for indefiniteness, even if the parties initially intended to be bound. *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994); *Rose Elec., Inc. v. Cooler Erectors of Atlanta, Inc.*, 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016). It is "well recognized and has been repeatedly affirmed" that the requirement of definiteness is more exacting when the remedy sought is specific performance of a contract. *Craven v. Williams*, 302 F.Supp. 885, 891 (D.S.C. 1969).

Here, there exists no issue of material fact as to whether Eastwood Construction and a Greenhawk affiliate ever agreed to a particular lot price, deposit amount, or time for the sale of the Brooks Creek lots. To the contrary, Plaintiffs and their employees repeatedly admitted, both in

the documents they produced and in their sworn deposition testimony, that Eastwood Construction and Greenhawk never reached an agreement on the foregoing material terms. The parties instead opted to keep these terms open for future negotiation. Such an arrangement is a mere “agreement to agree,” which does not constitute a valid, enforceable contract in South Carolina. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

Plaintiffs are correct in their contention that a contract need not set an exact price for a transfer of land if there is an agreed upon and definite method for ascertaining the price. Plaintiffs claimed that the parties had agreed to a purchase price formula that would generate a 20% profit for Greenhawk and its affiliates. The only evidence that Plaintiffs adduced in support of this claim, however, were two pro formas exchanged between Plaintiffs and Greenhawk. Neither of these pro formas actually project a twenty percent profit. Even if they did, neither pro forma shows that Greenhawk or its affiliates agreed to use such a pro forma projection as a binding contract lot price. And finally, even if Plaintiffs were able to overcome these crippling evidentiary defects, they offered no evidence to show that the parties had agreed to other material terms, such as deposit amount and the timing of lot purchases. Accordingly, because the undisputed facts show that Plaintiffs and Defendants never agreed on material terms, there exists no valid, enforceable contract on which Plaintiffs can base their claim for specific performance.

II. Any alleged contract for Eastwood Construction’s purchase of the Brooks Creek tract was not committed to writing and is thus barred by the Statute of Frauds.

Plaintiffs’ claims for specific performance also fail because there is no written contract memorializing the alleged lot purchase agreement for the Brook Creek tract. In South Carolina, a contract for the transfer of land is unenforceable unless it is written and signed by the party to be charged. S.C. Code § 32-3-10(4). “To satisfy the Statute of frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled.” *Fici v. Koon*, 372

S.C. 341, 346, 642 S.E.2d 602, 604 (2007). Here, the Plaintiffs cannot produce a satisfactory written contract for the sale of the Brooks Creek tract because, by Plaintiffs' own admission, no such contract exists. Accordingly, the agreement alleged by Plaintiffs is barred by the Statute of Frauds.

Plaintiffs are correct in their contention that the terms of a contract can be ascertained from multiple writings; the Statute of Frauds does not require a single document with the word "CONTRACT" across the top. However, none of the writings in the record, even taken together, memorialize the material contract elements necessary to transfer the Brooks Creek tract. First, Plaintiffs have failed to point to any document signed by Greenhawk or its affiliates memorializing the contract price or method of determining that price. (As explained above, the conflicting pro formas produced by Plaintiffs fall short of this requirement.) Nor is there any writing in the record, signed by Greenhawk or its affiliates, memorializing the timing of the lot purchases (also known as a "takedown schedule"). Accordingly, the Statute of Frauds renders any potential agreement between Greenhawk and Eastwood Construction to transfer the Brooks Creek tract unenforceable.

Plaintiffs further contend that their conduct constitutes "part performance" of the alleged Brooks Creek lot purchase agreement, so that the Statute of Frauds no longer applies. For the "part performance" doctrine to apply, however, all of the following elements must be present: 1) clear evidence of the contract's terms by proof that is clear, definite, and certain; 2) the party's partial execution clearly and unequivocally relates to the agreement; and 3) the party who requests performance had completed or was willing to complete its part of the oral contract. *Fesmire v. Digh*, 385 S.C. 296, 311, 683 S.E.2d 803, 811 (Ct. App. 2009). As this test indicates, part performance is one way (other than a writing) of revealing contract terms *that already exist*. The part performance doctrine cannot create material contract terms that do not exist in the first place.

For this reason alone, the part performance doctrine does not apply here and cannot help Plaintiffs over the insuperable barrier posed by the Statute of Frauds. Plaintiffs cannot use the “part performance” doctrine to show clear evidence of the contract’s terms because critical material terms—such as price, deposits, and timing—had never been agreed to by the parties. Accordingly, any alleged contract for the sale of the Brooks Creek tract is unenforceable.

III. Because none of Plaintiffs’ remaining claims affect the title to the Brooks Creek tract, the *lis pendens* on the property must be cancelled.

South Carolina permits the filing of a *lis pendens* only when the corresponding action “affect[s] the title to real property.” S.C. Code § 15-11-10. Consequently, once it is determined that a plaintiff’s claim cannot affect the title to real property, the *lis pendens* must be cancelled. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012). A party’s claim for money damages associated with a contract for real property does not affect the title to real property and thus cannot serve as the sole basis for a *lis pendens*. *Id.* at 8-9, 879-880.

All of Plaintiffs’ claims associated with the Brooks Creek contract—other than its specific performance claims—are for money damages. Those claims do not affect the title to the Brooks Creek property, and the *lis pendens* must be cancelled.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that TRI Pointe’s Motion for Summary Judgment shall be, and the same is hereby, **GRANTED**. The *lis pendens* filed by Plaintiffs against the Brooks Creek tract in Case No. 2020-LP-46-0228 is hereby **CANCELLED**.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Judge of the Sixteenth Judicial Circuit



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Other

So Ordered

s/Daniel D. Hall 2753



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4602006

Official File Stamp: 01-14-2022 03:54:21 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks Creek , defendant, et al
Document(s) Submitted: Order/Partial Summary Judgment Granted Order/Other
Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Amanda Pickens Nitto for Tri Pointe Homes
Stephen M. Cox for Tri Pointe Homes
Andrew A. Mathias for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc,
Ghd River Falls, Af-Brooks Creek, Llc
Konstantine Peter Diamaduros for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River
Falls, Llc, Ghd River Falls, Af-Brooks Creek, Llc
James Edward Bradley for Eastwood Construction Partners, Llc, Eastwood Development
Corporation

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected for Ghd Brooks Creek
Case Party Info Protected for Eastwood Construction Partners, Llc, Eastwood Development
Corporation
John I Mabe for Ghd Brooks Creek, Greenhawk Corporation, Inc., Af-River Falls, Llc, Ghd
River Falls, Af-Brooks Creek, Llc
Tri Pointe Homes, Inc.
Eastwood Development Corporation for Case Party Info Protected
Ghd Brooks Creek for Case Party Info Protected
Eastwood Construction Partners, Llc for Case Party Info Protected