STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO. 2023-CP-10-05598
DSH HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	**ORDER GRANTING**
	)	**PARTIAL SUMMARY JUDGMENT**
v.	)	
	)	
318 Royal St., LLC and William Irvine,	)	
	)	
Defendants,	)	
	)	

This matter came before the Court on Plaintiff, DSH Holdings, LLC ("DSH") motion for summary judgment as to its Breach of Contract and Conversion causes of action pursuant to S.C. R. Civ. P. 56. DSH did not move for summary judgment as to its cause of action for misrepresentation. Based on the pleadings, arguments of counsel, supporting memoranda submitted by counsel and the applicable law of the State of South Carolina, DSH's motion for summary judgment is GRANTED.

FINDINGS OF FACT

On August 14, 2023, Plaintiff and Defendant 318 Royal St, LLC executed a Purchase and Sale Agreement (PSA) for the property known as Carrington Townhomes, which was presented to this Court as Exhibit A to Plaintiff's Summons and Complaint. Upon execution of the PSA, DSH initiated three (3) separate wires for the $125,000 required earnest money deposit to ratify the PSA. The first wire of $10,000.00 was a non-refundable deposit wired directly to the Defendants. The second wire of $40,000 is claimed to have been erroneously sent to the Defendants instead of the Escrow Agent. The third wire of $75,000 was sent to DSH's closing attorney for deposit with the Escrow Agent. According to Plaintiff, upon realizing that the second wire of $40,000 was erroneously sent to the Defendants, a request was made directly to Defendant William Irvin that

the money be returned so it could be redirected to the Escrow Agent. Defendant William Irvin has retained possession of the second deposit and has not returned it to Plaintiff or redirected it to the Escrow Agent.

Under the terms of the PSA, DSH had a due diligence period to analyze the Property, conduct an inspection of all books, records and financial information pertaining to the Property, as well as perform physical, mechanical and environmental inspections of the Property. According to Section 3.1 of the PSA, DSH had until September 15, 2023, at 3:00 p.m. to terminate the PSA resulting in a refund of the paid earnest money, less the $10,000.00 hard deposit required under the PSA. The record before the Court establishes that DSH, through Ryan Lipomi, its agent, sent notice of termination of the PSA drafted by Attorney Todd Robinson, via email, at 2:54 p.m. on September 15, 2023, to 318 Royal St., LLC at wirvinsc@gmail.com and Continental Land Title Company, LLC at todd@cltitlecompay.com. Defendant William Irvin acknowledges receipt of the notice but challenges its validity arguing the notice was not signed as required by the PSA. On September 18, 2023, the first business day after September 15, 2023, DSH sent to the Defendants a duplicate notice of termination pursuant to Section 14.1 of the PSA and a demand for the return of the earnest money deposit.

Defendant William Irvin continues to possess $40,000 in earnest money and directed the Escrow Agent to retain the additional $75,000 earnest money being held in escrow based on what he maintains is a defective notice of termination. The Defendants argue that the typed signature of Todd Robinson, Esq. on the notice of termination letter fails to meet the signature requirement of the PSA and that the notice requirement within the PSA requires the notice to be sent by an attorney licensed in the State of South Carolina, which Mr. Robinson admittedly is not. Further, the

Defendants argue that the Plaintiff failed to comply with the terms of the PSA in sending a duplicate notice of termination the next business day from the original notice of termination.

It is undisputed that Section 3.1 of the PSA states "at any time prior to the expiration of the Due Diligence Period, Purchaser shall have the right to terminate this Agreement by delivering written notice of its election to terminate to Seller at any time Prior to 3:00 p.m. eastern time on the Due Diligence Expiration Date. In accordance with Section 14.1 of the PSA, notices required to be given under the PSA shall be in writing, signed by the party giving the same or by its attorney and is deemed effective upon being either personally delivered, delivered to an overnight delivery service, sent US Mail, postage prepaid, certified with return receipt requested or via email, provided the electronic mail is backed up by duplicate notice sent no later than the first business day following the date of electronic mail. Based on the record before the Court, the Plaintiff complied with the express requirements of the PSA in providing notice of termination. Termination of the PSA before 3:00 p.m. on September 15, 2023. Accordingly, DSH is entitled to a refund of its paid earnest money, less the $10,000.00 hard deposit required under the PSA.

STANDARD OF REVIEW

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to a judgment as a matter of law. *Fender & Latham, Inc. v. First Union Nat'l Bank of S.C.*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). The issue for this Court to decide is whether Plaintiff notice of termination, transmitted by email, with subsequent notice sent the next business day meets the notice requirement outlined in the PSA between the parties. The interpretation of the notice requirements of the PSA and whether Plaintiff's complied with the notice requirement is a matter of law to be decided by the Court and ripe to be decided on summary judgment. Summary judgment is properly regarded not as a procedural shortcut, but as an integral

part of the rules of civil procedure which are designed to secure the just, speedy, and most inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Accordingly, Rule 56, SCRCP, must be construed with due regard not only for the rights of persons asserting claims, but also for the rights of persons opposing such claims. *See id*. at 327.

CONCLUSIONS OF LAW

I. Plaintiff Validly Terminated the Contract Pursuant to its Notice of Termination.

There is no issue of material fact that Plaintiff terminated the PSA. The issue for this Court to determine is whether Plaintiff terminated the PSA in accordance with its unambiguous terms. "The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment." *Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co.*, 401 S.C. 395, 399, 736 S.E.2d 863, 865 (Ct. App. 2012); *S.C. Dept of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). Thus, where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) (*quoting Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)).

Based on the evidence presented to this Court, Plaintiff provided a timely notice of termination to the Defendants in accordance with the terms of the PSA by delivering written notice of its election to terminate to the Seller prior to 3:00 pm eastern time of the Due Diligence Expiration Date. The notice was drafted by Plaintiff's counsel, Todd Robinson, Esq., and emailed to 318 Royal St, LLC, as Seller, and Continental Land Title Company, as the title insurance provider and escrow agent at 2:54 p.m. by Plaintiff's agent, Ryan Lipomi. According to Section 14.1 of the PSA, "all notices must be in writing **signed by the party giving the same or by its**

attorneys, and shall be deemed to have been properly given and shall be deemed effective upon being . . . **sent via electronic mail**[.]" Defendants attempt to argue that the Notice of Termination given by the Plaintiff was invalid for two (2) reasons. First, Defendants argue that the Notice of Termination was not signed. Second, Defendants argue that if the notice is signed on Plaintiff's behalf by an attorney, that attorney must be licensed in the State of South Carolina. Defendants further argue that Plaintiff failed to provide duplicate notice of termination as required by Section 14.1 of the PSA, but that argument is inconsistent with the record before the Court.

(a) A typed name is equivalent to a signature

Defendants allege, without authority for the same, that the Todd Robinson, Esq.'s typed signature on the Notice of Termination does not constitute a signature. The PSA nor South Carolina law differentiates between an actual physical wet signature or an electronic signature. *See* S.C. Code Ann. § 26-6-70 (South Carolina Uniform Electronic Transactions Act providing that "[a]" record or signature must not be denied legal effect or enforceability solely because it is in electronic form"); *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 877 S.E.2d 486 (Ct. App. 2022), reh'g denied (Aug. 30, 2022), cert. granted (Feb. 7, 2024) (recognizing same). S.C. Code Ann. § 29-6-20 (8) defines "electronic signature" to mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. An electronic signature, like an email, satisfies any legal requirement that a contract be in writing and an electronic signature, like at the bottom of an email message, satisfies any legal requirement of a signature. *See* S.C. Code Ann. § 26-6-70(D); *see also* S.C. App. Ct. R. 614 (Adopted by Order dated 5/2/2022).

The effect of an electronic record or electronic signature attributed to a person is determined from the context and surrounding circumstances at the time of creation, execution and

adoption. *See* S.C. Code Ann. § 26-6-90. A contract cannot be denied legal effect solely because an email is used in its formation. *See* S.C. Code Ann. § 26-6-70 (A). Mr. Robinson's typing of his name is a sufficient signature, and no further mark is necessary to be considered valid. Further, the Plaintiff's authorized agent, Ryan Lipomi, emailed Mr. Robinson's letter to the Defendants providing an additional signature on the Notice of Termination.

This Court finds no precedent that a signature in electronic form must be with some specific technology or crafted in a certain way. All that is required for an electronic signature to be binding is that the signer execute or adopt the sound, symbol, or process with the intent to sign the record. If a voice on an answering machine, a name as part of an e-mail, a letterhead on a fax or a digital signature using public key encryption technology are all acceptable forms of electronic signatures, Mr. Robinson typing Todd N. Robinson at the end of his letter certainly is. Defendants have presented no legal basis to challenge that Attorney Robinson's typed name does not constitute a signature. This is a question of law and should be determined in the affirmative at the summary judgment stage.

(b) The Notice of Termination is not required to be signed by a South Carolina lawyer

In addition to arguing the notice was not signed, Defendants further argue that the notice was not signed by a lawyer licensed to practice in the State of South Carolina. The Defendants cite to Section 14.1 of the Contract as support for the argument that the attorney signing on behalf of the Plaintiff must be a licensed South Carolina lawyer. However, neither Section 14.1, nor anywhere else in the PSA sets forth such a requirement. The PSA merely stipulates that notice must be sent by the Purchaser, i.e., the Plaintiff, or its attorney, without specifying any state-specific licensing requirements.

Defendants cite to *State v. Buyers Service Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987) as support for its argument that Attorney Robinson did not have the authority to issue the Notice of Termination as instructed by his client and constitutes the unauthorized practice of law. The *State* opinion does not make any findings in support of Defendants' position. *Id*. Instead, the Supreme Court found that a real estate closing should be conducted only under the supervision of licensed attorneys as such constitutes the practice of law. *Id*. In *State*, Buyers Service Co. was conducting closings without any attorney present. *Id*. Here, no closing took place as the PSA was terminated prior to the expiration of the due diligence period. Nothing in *State* suggests that Mr. Robinson engaged in the unauthorized practice of law by sending a termination letter on behalf of Plaintiffs.

Regardless of whether Attorney Robinson is licensed in South Carolina, Georgia or any other state, his signature on the notice of termination is binding on the Plaintiff, provided he had the authority to send such notice. Plaintiff does not challenge Attorney Robinson's authority to send the notice of termination and Defendants have presented no evidence that Attorney Robinson lacked such authority. Whether Attorney Robinson had to be licensed in South Carolina to send the Notice of Termination is also question of law and should be determined at the summary judgment stage.

c. *Edisto Island Historical Preservation Society Inc. v. Gregory, et al.*, 354 S.C. 198 (2003)

Defendants rely heavily on the South Carolina Supreme Court's decision in the *Edisto Island* case to suggest that Plaintiff's Notice of Termination is invalid. The decision in *Edisto Island* is both distinguishable and analogous to the current case before the Court. The contract at issue in *Edisto Island* was issued in 1995 and the disputed termination letter was issued in 1996. *Id*. This Court notes that email was not a primary means of communication in 1996 and the State

of South Carolina did not adopt the Uniform Electronic Transactions Act, codified at S.C. Code Ann. § 29-6-10 until 2004.

Sitting as Master-In-Equity, I presided over the *Edisto Island* case. Based on the facts presented in that matter, I found that grounds for termination (lack of marketable title) were not met and therefore the termination letter was insufficient notice of termination. The Supreme Court affirmed my decision. The analysis used in *Edisto Island* sets a precedent that a notice of termination must comply with the terms of the contract. In *Edisto Island*, the right to terminate did not exist, therefore the content of the termination letter was insufficient to support termination. *Id* at 200. In the current matter before the Court, the Plaintiff has the absolute right, for any reason or no reason at all, to terminate the contract provided written notice of termination is given prior to the expiration of the due diligence period. Plaintiff gave the required written notice with the clear intention to terminate the contract prior to the expiration of the due diligence period. I find no basis to consider the Notice of Termination as invalid.

II. Defendants have Wrongly Exercised Ownership of Plaintiff's Property

Plaintiff seeks recover against the Defendants for conversion. To establish the tort of conversion, Plaintiff must establish either title to or right to the possession of the personal property. *Oxford Fin. Cos. v. Burgess,* 303 S.C. 534, 402 S.E.2d 480 (1991). "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Crane v. Citicorp Nat'l Servs., Inc*., 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). Money may be the subject of conversion if "it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *SSI Med. Servs., Inc. v. Cox,* 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990) (finding the plaintiff sufficiently established

a determinate amount of money that was converted and therefore affirming summary judgment proper as to defendant's liability for conversion).

This Court sees Defendant Irvin's actions in retaining Plaintiff's earnest money as an attempt to remove the Plaintiff's contractual right of termination; a right the Plaintiff, as the buyer, clearly intended to invoke. Defendant Irvin acknowledges receipt of the Plaintiff's notice of termination, yet he arbitrarily, and without justification, decided the notice of termination was invalid. Despite the express terms of the PSA requiring the return of earnest money to Plaintiff upon notice of termination, Defendants have refused to return these funds. Defendant Irvin has personally instructed the escrow agent not to release the $75,000 in earnest money funds held by the escrow agent to Plaintiff. Further, Defendant William Irvin, acting for himself and on behalf of Defendant 318 Royal St., LLC, knew or should have known that the $40,000 wired to him by Plaintiff was not intended for him but rather for the escrow agent as part of the earnest money deposit. If Defendant Irvin did not know at the time of receipt, he was made aware of the error through Plaintiff's demands for the earnest money to be redirected to the escrow agent. Rather than returning the $40,000, or redirecting the $40,000 to the escrow agent, Defendant Irvine has retained the misguided funds.

Defendant Irvin's actions deprive Plaintiff of its rightful ownership and use of the earnest money deposit. Defendants' ongoing refusal to return the earnest money constitutes a clear and unequivocal act of conversion. Defendants' retention of the $40,000 and improper direction as to the remaining $75,000 was without any lawful justification and is a wrongful act of dominion and control over Plaintiff's property. Thus, there is no material issue of fact that Defendants have converted Plaintiff's funds, and Plaintiff is therefore entitled to judgment as a matter of law as to its conversion claim as to both Defendants.

NOW THEREFORE, for the reasons set forth herein, Plaintiff's Motion for Summary Judgment as to its Breach of Contract and Conversion causes of action is GRANTED. Where money has been converted, the measure of damages is the amount converted with legal interest from the date of the conversion. *See Robbins v. First Federal Savings Bank*, 294 S.C. 219, 363 S.E.2d 418 (Ct. App. 1987).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff is entitled to judgment against the Defendants in the amount of $115,000.00, with pre-judgment interest at 8.75% from September 15, 2023 through the date of this Order in the amount of $12,731.07, and a per diem rate of $27.57 per day until said judgment is paid to the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Section 15.10 of the PSA provides "if any litigation arises under this Agreement, the prevailing party (which term shall mean the party which obtains substantially all of the relief sought by such party) shall be entitled to recover, as a part of its judgment, reasonable attorney's fees and paralegal fees, court costs and expert witness fees." Plaintiff shall have ten (10) days from the date of this Order to submit to this Court an Affidavit of Attorneys Fees and Costs in this matter, which upon review and acceptance by this Court shall be added to Plaintiff's judgment against Defendants.

Under a cause of action for conversion, punitive damages may be awarded where the Plaintiff shows the conversion was accomplished recklessly and with conscious indifference to his or her rights. Plaintiff has the right to request a hearing to present evidence to the Court for consideration as to whether Plaintiff is entitled to punitive damages.

AND IT IS SO ORDERED.

Charleston Common Pleas

Case Caption: Dsh Holdings Llc VS 318 Royal St Llc , defendant, et al

Case Number: 2023CP1005598

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134