

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

John Sifonios, individually and as agent for
William Rempfer and Gary Sedlack,

Plaintiff,

vs.

Town of Surfside Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-26-5575

**ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANT
TOWN OF SURFSIDE BEACH**

FILED
HORRY COUNTY
2013 JUL 12 PM 12:10
MELANIE HUGGINS-WARD
CLERK OF COURT

Presiding Judge: The Honorable Paul M. Burch

Hearing Date/Time: May 15, 2013 at 2:00 P.M.

Motion: Summary Judgment For The Town of Surfside Beach

This matter comes before the Court upon a hearing on Defendant Town of Surfside Beach's (Town) Motion for Summary Judgment. In the lawsuit, Plaintiffs John Sifonios, individually and as agent for William Rempfer and Gary Sedlack claimed damages in the form of lost profits resulting from the Town's alleged failure to execute and perform a lease agreement with the Plaintiffs. The Town contends the lease had to be executed and delivered by the Town before it became an enforceable agreement and there are no material factual disputes about the fact that the Town did not execute and deliver the lease agreement. The Town contends it is entitled to summary judgment as a matter of law.

A hearing was held on Town's motion for summary judgment at the Horry County Courthouse on May 15, 2013. Present at the hearing were Michael W. Battle Esq., representing the Town and Bob Gwin, Esq. representing Plaintiffs.

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WILE & VAUGHT, P.A.

After considering the submittals of the Plaintiffs and the Town, the Court has determined Summary Judgment is appropriate for the Town and hereby grants its motion for summary judgment.

Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Rule 56(c), SCRPC*. "[T]he evidence and all reasonable inferences there from must be viewed in the light most favorable to the non-moving party." *Byrd v. City of Hartsville* 365 S.C. 650, 620 S.E.2d 76 (S.C., 2005).

Statement of Facts

The Town of Surfside Beach sought proposals from prospective tenants to operate and maintain a restaurant on the Surfside Beach Pier located at Ocean Boulevard, Surfside Beach, South Carolina 29575. On or about February 14, 2011, the Plaintiff, together with William Rempfer and Gary Sedlaek, caused a Letter of Intent to be submitted to the Town. The Letter of Intent was signed by James Cole, Associate Broker of Century 21 Strand Group on behalf of an undisclosed principal (herein "Letter of Intent"). The Letter of Intent contemplated the formation of a corporation for the operation of the restaurant on the Surfside Beach Pier once there was a "meeting of the minds" as to the Lease terms. At a Special Council Meeting held on March 4, 2011, the Town Council considered the terms of the Letter of Intent. The Town Council authorized the Town Administrator to present for Council's approval a proposed lease agreement with Plaintiff for the restaurant at the pier. On April 15, 2011 a Lease was presented to the Town Council at a Special Council Meeting. At that time, the Town Administrator was authorized by the Town Council to enter into the

Lease Agreement presented to the Town by the Plaintiff, conditioned upon the Defendant's receipt and acceptance of evidence of (1) the prospective Tenant's credit worthiness, and (2) satisfactory background check. The Lease Agreement also contemplated the formation of a corporation for the operation of the restaurant on operation of the restaurant on the Surfside Beach Pier upon acceptance of the Plaintiffs' credit worthiness and background check by the Town Council.

The proposed pier restaurant lease agreement contained the following requirements:

a. 20.8 No Option.

The submission of this Lease for examination does not constitute a reservation of or option for the Premises and **this Lease shall become effective only upon execution and delivery hereof by both parties.** (emphasis added).

b. 20.9 No Modification.

This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

The lease agreement was not signed by the Town or delivered to the Plaintiffs. Plaintiffs never occupied the premises. At a Regular Council meeting held on May 10, 2011, the Town rescinded its conditional approval of the lease agreement. Plaintiffs brought the present lawsuit to enforce the unexecuted lease.


Discussion

The law is clear on the enforceability of the pier restaurant lease agreement. Where the parties know that the execution and delivery of a written contract is a condition precedent to their being bound, there can be no binding contract until the written agreement is executed and delivered, even if all the terms have been agreed on. A contract may be signed on condition that it shall not take effect until others have signed it. Or it may be the manifest intent of the parties that the contract is not to be effective until signed by all intended parties; in such a case, in the absence of any of the signatures

so required, the contract, being joint, cannot be enforced. *Dean v. Dean*, 229 S.C. 430, 93 S.E.2d 206 (1956); *Oeland V. Kimbrell's Furniture Co.* 210 S.C. 223, 42 S.E.2d 228 (S.C. 1947) (It is a well-founded rule of law that a contract for sale or lease of real estate may be consummated by letters without the execution of a formal instrument and the fact that it is understood that the contract is to be reduced to a formal instrument does not invalidate such agreement unless there be a positive agreement that it shall not be binding until formally executed); Also see *17A Am. Jur. 2d Contracts § 175.*

It is undisputed that the lease expressly clearly provided that it would become effective only upon execution and delivery hereof by both parties. Plaintiffs now claim that all of the terms were agreed upon and that agreement was noted in the minutes of the Town's minutes. Plaintiff's claim misses the point that one of the express terms agreed upon by both the Town and the Plaintiff were that the lease would not be enforceable against the Town unless it was actually signed by the Town. Plaintiff does not claim that the pier restaurant lease was actually signed by the Town. Even when construing in Plaintiff's favor all of the factual disputes about whether the Town Administrator was satisfied with the Plaintiff's credit worthiness or Plaintiff's background check, the undisputed fact remains that the Town did not execute or deliver the lease agreement to Plaintiff. The pier restaurant lease is not enforceable against the Town and summary judgment is hereby granted to the Town of Surfside Beach.

AND IT IS SO ORDERED!



Hon. Paul M. Burch
Presiding Judge
Fifteenth Judicial Circuit

Conway, SC
this 8th day of July 2013