THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Case No. 2021-CP-08-01441

Christ Fellowship Church, d/b/a a Church in St. Stephen, South Carolina, Respondent,

v.

William H. Johnson and Dustin Kyle Johnson, Appellants.

FINAL REPLY BRIEF OF APPELLANT

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s/ Roman V. Hammes
Roman V. Hammes, Esq. (SC Bar # 76977)
s/ Christian T. Wall
Christian T. Wall, Esq. (SC Bar #106550)
Charpia & Hammes, Attorneys at Law
215 W. 2nd South St.
Summerville, South Carolina 29483
(843) 324-1727
Attorneys for Appellants

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OVERVIEW

Respondent seems to rely on an irrelevant and obvious trope of mentioning the price at which Appellant William "Lucky" Johnson originally purchased the property in question as though that somehow alleviates the Respondent from any obligation to adhere to the contract which the parties entered into. It no more matters that Appellant bought the property at a tax sale than it would if he had inherited the land from ancestors dating back to South Carolina's days as a colony of Great Britain. The contract had terms, and Respondent violated those terms. This argument is simply an attempt to cast Appellant in a negative light and should be disregarded.

Further, it does not matter what Respondent did to the property to repair or improve it. Respondent was fully aware of the condition of the property prior to executing the contract, and chose to do so anyway. The contract did not contain provisions for Respondent to receive credit for work on the property to count against the contract price.

Respondent fails to meaningfully counter Appellants' arguments in their Initial Brief, arguing on its own that all arguments were abandoned. As Appellants did not abandon any arguments and in fact state meritorious arguments as to error, the Order of the Court below should be reversed.

ARGUMENT

I. Despite Respondent's argument to the contrary, the trial court erred in ruling the contract was an installment contract instead of a lease with purchase option.

In South Carolina, when a contract is unambiguous, the language of the contract controls the force and effect of the agreement. *Lewis v. Premium Investment Corp.*, 351 S.C 167, 171, 568 S.E.2d 361, 363 (2002). It is not the place of the courts to rewrite the terms of a contract for the parties. *Id*. South Carolina law also requires a party seeking an equitable remedy to act equitably himself. *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967). Option contracts are construed

in favor of the Optionor and against the Optionee, and any requirements of the option must be exactly complied with. *Cotter v. James L. Tapp Co.*, 267 S.C. 647, 230 S.E.2d 715 (1976) *see also Southern Silica Min. & Mfg. Co. v. Hoefer*, 215 S.C. 480, 497, 56 S.E.2d 321, 328 (1949) ('(the) argument by the defendant that the Courts do not favor forfeiture and therefore the option to renew must be granted, overlooks the fact that options because unilateral, are strictly construed against the party claiming the option').

Respondent declares in its Initial Brief that the lease with purchase option contract in the instant case is actually an installment contract for land as described in *Lewis*. Respondent failed to address Appellants' argument in its Initial Brief that there are distinct differences between the two contracts, most importantly being that in *Lewis*, the parties agreed that the intent of the contract from the start was that the buyer was purchasing the land in exchange for the monthly installments, while here the terms of the contract clearly describe a purchase option while maintaining its distinctiveness as a lease contract. The other difference being the buyer in *Lewis* had already paid almost the entire purchase price when the seller attempted to invoke the forfeiture clause. Here, Respondent breached the conditions of the purchase option early in the life of the contract, and attempted to shoehorn in an argument that they should be permitted to unilaterally revise the payment terms of the contract while still holding Appellant to the terms of the option. This case is differentiated from *Lewis* by the distinctly different facts surrounding the instant case.

Respondent makes a further erroneous declaration that Appellants' argument that the contract in the instant case is differentiated from the contract in *Lewis* has something to do with how the document is titled. The argument is the substance of the documents, and the substance of the documents differs sufficiently enough that the *Lewis* decision should be differentiated when evaluating the instant action.

In an attempt to make Appellants' argument for them, Respondent creates a purported assumption on the part of Appellants regarding the binary nature of lease with purchase option contracts and bona fide land installment contracts and then declares Appellants' argument abandoned. Unfortunately for Respondent, Appellants made no such assumption, nor did they abandon any argument on this topic.

II. Appellants' Argument II does not fail and was not abandoned.

Respondent again declares victory without addressing the substance of Appellants' argument in Issue II of the Appellants' Initial Brief. The clause which Respondent insists is a penalty clause in actuality operates as a cancelation of the option to purchase. Since Respondent did not follow the procedures and terms of the contract - which it signed freely and voluntarily – it no longer had the option to purchase the property under the terms of that contract. This is the argument made in Appellants' Initial Brief, and was not abandoned.

Respondent further attempts to rewrite the terms of the contract, arguing that it should receive credit for the expenses laid out for repairs and improvements to the property, when the trial testimony clearly showed that Respondent was familiar with the condition of the property and what would be required to use the property for its intended purpose, and made no effort to renegotiate the lease contract to provide for such credits. Respondent should not be allowed to use the courts to insert a provision into the contract that the parties did not contemplate.

The contract between Appellants and Respondent was a lease, particularly after the conditions of the purchase option were not met, and therefore the payments made were payments toward a lease. A tenant does not get a refund of rent money when it vacates a property, so it begs the question why Respondent would be entitled to such a refund. For these reasons, the finding of the trial court that the provision in the contract for the cancelation of the purchase option was a

penalty clause should be reversed.

III. Appellants' Argument III does not fail, and the prejudice to the Appellants is clear in that argument.

"In construing terms in contracts, a court must first look at the language of the contract to determine the intentions of the parties…When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 896 S.E.2d 328 (Ct. App. 2023) quoting *C.A.N. Enters., Inc. v. S.C. Health & Hum. Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

As stated in Appellants' Initial Brief, the contract in this case unambiguously, clearly, and explicitly sets the price of the property at $500,000.00. The trial court order, and Respondent's Initial Brief, made more out of the contract terms revolving around the tax contribution letters than necessary. The price Respondent was to pay Appellant for the property, should they exercise the option effectively, was $500,000.00. If Respondent chose to rely on advice from their unidentified accountant who did not testify at trial that they couldn't provide contribution letters, then they were responsible for finding another way to pay that additional $250,000.00.

The prejudice to the Appellants is that they are being denied consideration due to them by the Respondent. The trial court's order gave Respondent a fifty percent discount on the contract price which Appellants did not consent to. This was argued in Appellants' Initial Brief on this point.

The trial court erred in disregarding the price term of the contract and finding the sale price to be $250,000.00, and therefore the order of the trial court determining the price of the property should be reversed.

IV. Appellants' Argument IV does not fail, and it did not ignore the trial court's

reasoning.

Appellants assert the trial court erred in concluding the testimony was contradictory and not credible. There was no reasoning given by the trial court order which could have been ignored. Testimony was given from both Appellants and Respondent that said Respondent failed to procure and maintain insurance on the property according to the contract, and that Appellant therefore was forced to maintain insurance on the property himself.

Respondent argues that Appellants' choice to proceed directly to appeal instead of filing a Rule 59 motion somehow wins the day for their side on this point. However, there is no requirement that a party file a Rule 59 motion prior to filing an appeal.

CONCLUSION

For the foregoing reasons, the record in this case, and any matters raised during oral arguments, Appellants request that the order of the trial court be REVERSED.

Respectfully submitted,

s/ Roman V. Hammes
Roman V. Hammes (SC Bar #76977)
s/ Christian T. Wall
Christian T. Wall (SC Bar #106550)

CHARPIA & HAMMES, ATTORNEYS AT LAW
215 W. 2nd South St.
Summerville, SC 29483
843-324-1727
roman@charpialaw.com
christian@charpialaw.com

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