

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Vy Quoc Mac,

Plaintiff,

v.

Nicole Dennis and Esley Dennis, Jr.,

Defendant(s).

IN THE COURT OF COMMON PLEAS FOR  
THE FIFTH JUDICIAL CIRCUIT

Case No. 2023-CP-40-00077

**ORDER**  
**RECEIVED**

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SC Court of Appeals

This matter came before the Court for a merits hearing on October 15, 2024. Plaintiff, Vy Quoc Mac, commenced this action with the filing of a Notice of Lis Pendens, Summons and Complaint on January 6, 2023, alleging breach of contract, specific performance, damages and attorney fees. The Defendant Nicole Dennis (Defendant Dennis) filed an Acceptance of Service on July 7, 2023 and an Answer July 25, 2023. Plaintiff appeared and was represented by his attorney, C. Cantzon Foster, II. Defendant Nicole Dennis (Defendant Dennis) appeared, represented by her attorney, Kenneth A. Davis. Testimony was provided by Plaintiff, Plaintiff's real estate agent, Nicole Johnson, and Defendant Dennis. At the conclusion of evidence, each party submitted proposed orders for the Court's consideration. <sup>1</sup>

**FINDINGS OF FACT**

Based upon the testimony of the witnesses and the exhibits admitted at the trial, a review of the record in this matter, as well as consideration of the parties' proposed orders, the Court makes the following findings of fact by a preponderance of the evidence:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.

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<sup>1</sup> For various reasons, the Court did not receive all of the proposed orders until March 2025.

2. Defendant Dennis is a citizen of the State of California.

3. Named defendant Esley Dennis, Jr., was an Illinois resident, who, while alive at the time of the events at issue, subsequently died on or about March 22, 2023. Esley Dennis, Jr., was never served with the Plaintiff's Summons and Complaint. All responsive pleadings were filed only on behalf of Defendant Dennis.

4. Defendant Dennis and her father, Defendant Esley Dennis, Jr. (hereinafter, referred to collectively as "Defendants"), acquired real property located at 87 Leaning Tree Road, Columbia, South Carolina 29223 (hereinafter "subject property") on March 17, 2022, as joint tenants with right of survivorship.

5. When the Defendants purchased the subject property, the Defendant Dennis signed documents at the real estate closing in her individual capacity and in a representative capacity on behalf of Esley Dennis, Jr., using a durable Power of Attorney (POA), dated April 5, 2018, prepared in the state of California.

6. On September 9, 2022, Defendant Dennis signed a contract to sell the subject property to Plaintiff, in her individual capacity, and in a representative capacity for Esley Dennis, Jr., for a sales price of Sixty Thousand and 00/100 Dollars (\$60,000.00). The parties' contract required the sum of Two thousand and 00/100 Dollars (\$2,000.00) as earnest money in support of the contract and the Plaintiff dutifully deposited this amount.

7. The closing date specified in the contract was September 26, 2022. The term of the contract did not extend beyond September 26, 2022.

8. Defendant Dennis notified her selling real estate agent at the time of execution of the contract that she was signing on her father's behalf using the April 18, 2018 POA that had been prepared in California.

9. On September 13, 2022, Defendant Dennis' selling real estate agent sent notice of the POA to the attorney who was going to handle the closing transaction for the subject property. Thereafter, the closing attorney advised Defendant Dennis, through her agent, that the California POA was not valid for execution of a deed in South Carolina.

10. On September 16, 2022, Defendant Dennis executed a new POA on behalf of her father and sent it to the closing attorney for review.<sup>2</sup>

11. The closing for the parties' sales transaction was scheduled for Monday, September 26, 2022. On Friday, September 23, 2022, by way of email at 1:14 pm, the closing attorney advised Defendant Dennis' real estate agent that there still needed to be a "corrected POA." At that time, Defendant Dennis was en route to South Carolina for the closing and was not in the same location as her father.

12. On Monday morning, September 26, 2022, the closing attorney advised that his office would prepare a POA for the transaction.

13. Defendant Dennis and the Plaintiff subsequently arrived for the scheduled closing on September 26, 2022. After some discussion, the closing attorney advised Defendant Dennis that instead of a "corrected POA", the previously provided April 5, 2018 POA could be used for the transaction as long as a California attorney provided an affidavit attesting that the POA was

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<sup>2</sup> Defendant Dennis, a lay person, signed the new POA in a representative capacity based upon her belief that the previous POA conferred her the authority to do so.

valid under California law. Although Defendant Dennis contacted a few California law firms while she was in South Carolina, she was unable to obtain an attorney to provide the requested affidavit.<sup>3</sup>

14. The sale did not close on September 26, 2022. At some point after the contract expiration, Plaintiff's real estate agent proposed a contract extension to the Defendants but the parties did not reach any agreement to extend the contract for the subject property.

15. The Plaintiff filed this action on January 6, 2023, alleging causes of action against the Defendants for breach of contract and specific performance of the real estate contract for the sale of property located at 87 Leaning Tree Road, Columbia, South Carolina 29223.

#### CONCLUSIONS OF LAW

Based on the foregoing, the Court finds as follows:

1. This matter involves the alleged breach of a contract for the sale of real property located in Richland County, South Carolina; accordingly, this Court has subject matter jurisdiction over the action and venue is proper;

2. The Court has personal jurisdiction over the Plaintiff and Defendant Dennis.

3. The parties' real estate contract for the sale of the real property was executed by the Plaintiff and Defendants, was supported by consideration and was, therefore, a valid, binding contract. Under the terms of the contract, the Plaintiff was obligated to buy and the Defendants were obligated to sell, the subject property for the sum of \$60,000.00.

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<sup>3</sup> The Plaintiff's real estate agent was able to contact a law firm in California on the day of closing that indicated it might be able to prepare such an affidavit. The email correspondence from that firm, however, provided what appeared to be an intake form titled "Disclaimer of Services" to be completed before any work was to begin and, significantly, did not indicate when any affidavit could be prepared.

4. The parties' real estate contract, to include their respective obligations thereunder, expired on September 26, 2022.

5. The subject property was titled in the names of the Defendants Nicole Dennis and Esley Dennis, Jr., as joint tenants with right of survivorship. At the time of the September 26, 2022 closing, signatures were needed from both Defendant Dennis and Esley Dennis, Jr., to transfer complete, clear title for the subject property to the Plaintiff. See, S.C. Code Ann. § 27-7-40.

6. Esley Dennis, Jr., was not present for the closing for the subject property on September 26, 2022; the Defendant Dennis endeavored to use the April 5, 2018 POA executed in the state of California to sign Esley Johnson, Jr.'s name to the deed on his behalf, in a representative capacity, but was initially advised that her POA was not valid for use in South Carolina.

7. S.C. Code Ann. § 62-8-107 addresses the validity in South Carolina of a POA executed in other jurisdictions:

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

8. Thus, California law, rather than that of South Carolina, determined the validity of the Defendants' POA. Cal. Probate Code § 4121 provides as follows:

A power of attorney is legally sufficient if all of the following requirements are satisfied:

- (a) The power of attorney contains the date of its execution.
- (b) The power of attorney is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction.
- (c) The power of attorney is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Section 4122.

9. On its face, the April 5, 2022 POA presented by Defendant Dennis for closing on the subject property contained the date of execution, was signed by Esley Dennis, Jr., contained a certificate of acknowledgment from a California notary public and further, gave Defendant Dennis the authority to, among other things, handle “real estate property transactions.”<sup>4</sup> Without more, the April 5, 2022 POA was valid under California law and thus, was valid for consummating the real estate transaction between the Plaintiff and Defendants here in South Carolina.

10. The validity of Defendant Dennis’ April 5, 2022 POA was not dependent upon any affidavit from a California attorney attesting to the validity of the POA under California law. Further, there is no requirement under South Carolina law that a person using a valid out-of-state POA must produce such an attorney affidavit. Nonetheless, Defendant Dennis made efforts to obtain such an affidavit but was unsuccessful given the short window of time provided on the day of closing. The parties left the closing on September 26, 2022 without completing the transaction.

11. The parties failed to agree upon a contract extension, meaning the parties’ real estate contract for the sale of the subject property expired on September 26, 2022.

12. The Defendants’ responsibilities under the real estate contract included the transfer of clear title to the subject property to the Plaintiff. The Court finds that the Defendants were ready and willing to fulfill their responsibility to transfer title on September 26, 2022. However, the confusion regarding the validity of the POA prevented the closing from going forward. That the

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<sup>4</sup> Cal. Probate Code 4123(b) provides :

With regard to property matters, a power of attorney may grant authority to make decisions concerning all or part of the principal’s real and personal property, whether owned by the principal at the time of the execution of the power of attorney or thereafter acquired or whether located in this state or elsewhere, without the need for a description of each item or parcel of property. (emphasis added)

closing did not take place on September 26, 2022 was not the fault of the Defendants or otherwise the result of action or inaction by the Defendants. Accordingly, there was no breach of the contract by the Defendants. The Defendant Dennis, acting individually and in her representative capacity pursuant to the April 18, 2022 POA, fulfilled her obligations under the contract – she traveled from California to South Carolina for the closing and presented herself as willing and able to proceed with the closing with the necessary authority to complete the transaction. <sup>5</sup>

13. Furthermore, the failure to extend the contract beyond the closing date means that the contract expired on its face without completion. While Plaintiff's real estate agent presented a proposed extension at some point after September 26, 2022, the contract had already expired and Defendants were not obligated to execute an extension.

14. Plaintiff's claim for breach of contract must therefore fail.

15. Similarly, Plaintiff's claim for specific performance of the contract must also fail.

16. Specific performance is an equitable remedy which "should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). Further, "[e]quity will not decree specific performance unless the contract is fair, just, and equitable." *Id.* It is significant that a court compelling the specific performance must find that specific performance is equitable between the parties. This necessarily requires a balancing of the equities between the parties. See, *Shirey v. Robinson*, 431 S.C. 412, 429, 848 S.E.2d 325, 334

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<sup>5</sup> Inasmuch as the transfer of clear title to the subject property required the signatures of both Defendant Dennis and Esley Dennis, Jr., the Court is not persuaded by Plaintiff's argument that the Defendant Dennis' failure to sign documents in her individual capacity evidences a breach of contract or an intent to breach the contract.

(Ct. App. 2020)(“After analyzing the equities involved amongst all three parties, we find the equities favor granting specific performance of the Shirey Contract.”) The Plaintiff here performed his responsibilities under the contract. This Court has also found that the Defendant Dennis fulfilled her obligations under the contract and the failure to consummate the transaction was not her fault. The Court finds that under the circumstances, the equities of this situation do not favor either party.

17. Each party shall bear his/her own attorney’s fees and costs in this matter.

AND IT IS SO ORDERED.

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The Honorable Milton G. Kimpson  
Presiding Judge  
Fifth Judicial Circuit

May \_\_ 2025

Columbia, South Carolina

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Richland Common Pleas

**Case Caption:** Vy Quoc Mac vs Nicole Dennis , defendant, et al

**Case Number:** 2023CP4000077

**Type:** Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

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