

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 MTS CLT, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Jane M. Pettus, Trustee of The Joseph A. )  
 Pettus and Jane A. Pettus Revocable )  
 Living Trust U/I/D April 12, 2005, and )  
 Rob Bilbro, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

C.A. No. 2023-CP-29-01534

**ORDER GRANTING  
 SUMMARY JUDGMENT  
 AS TO JANE PETTUS**

**RECEIVED**  
**Dec 19 2025**  
 SC Court of Appeals

**THIS MATTER** came before the Court on cross motions for summary judgment filed by plaintiff MTS CLT, LLC (“Plaintiff”) and defendant Jane M. Pettus (“Pettus”). Arguments were heard on September 23, 2025 at the Lancaster County Courthouse. Appearing on behalf of Plaintiff were Kemper Patton and James C. Adams. Appearing on behalf of Pettus were Mark White and Jeremy D. Melville. For the reasons set forth herein, the Court grants Pettus’ Motion for Summary Judgment (“Pettus Motion”) and denies Plaintiff’s Motion for Summary Judgment (“Plaintiff’s Motion”).

**Procedural History**

This case relates to a contract for the purchase and sale of property owned by Pettus. Plaintiff commenced this action with the filing of the Summons and Complaint (“Complaint”) on November 22, 2023.<sup>1</sup> Plaintiff has asserted a claim against Pettus for breach of contract and seeks the remedy of specific performance. On December 19, 2023, Pettus filed an Answer and Counterclaims containing a claim for a declaratory judgment and breach of contract.

---

<sup>1</sup> Plaintiff had filed a Lis Pendens (2023-LP-29-00160) against the Property which is a subject of the underlying contract in this lawsuit on November 3, 2023.

All parties to this action filed motions for summary judgment on July 28, 2025, which was the deadline for dispositive motions under the applicable scheduling order. The deadline to complete discovery was June 30, 2025.

### **Facts**

Based on the record before the Court, the following facts are not in dispute.

1. Pettus is the owner of two parcels of property located in Lancaster County, containing approximately 57 total acres, and identified as Lancaster Tax Parcel Nos. 0003-00-052.00 and 0003-00-052.06 (“Property”).

2. Plaintiff is in the business of land acquisition and development and is an affiliate of Eastwood Homes Construction Partners, LLC (“Eastwood Homes”), a residential homebuilder.

3. Plaintiff sought to purchase the Property to develop a residential development with dwellings to be constructed and marketed by Eastwood Homes.

4. On November 30, 2020, Plaintiff and Pettus entered into a contract for the purchase and sale of the Property.

5. The Contract between the parties consists solely of two writings: (1) an initial Contract for Purchase and Sale dated November 30, 2020 (“Initial Contract”) and (2) a First Amendment to Contract and Option to Purchase Real Estate dated July 18, 2022 (“Amendment”) (collectively, “Contract”). All terms of the agreement between the parties are contained within the Contract.

6. Paragraph 5(b) of the Contract provides as follows<sup>2</sup>:

Entitlement Period (Including Development Approvals). Buyer shall have 361 days following the expiration of the Inspection Period (481 days after the Effective Date) (“Entitlement Period”) from the end of the Inspection Period in

---

<sup>2</sup> As used in the Contract, “Buyer” refers to Plaintiff and “Seller” refers to Pettus.

which to obtain certain rezoning/entitlement request(s), governing jurisdiction/municipality subdivision and site plan approvals, water, sewer, well, and/or septic approvals, as applicable, encroachment agreements, offsite easements, pond approvals, SCDOT driveway approvals, construction plan approvals, house plan approvals and related permits, all of which must be to Buyer's sole satisfaction prior to Closing (the "Required Approvals"), and if the Required Approvals are not received or not approved to Buyer's satisfaction then, in the event Buyer elects to Terminate on the basis of not receiving Required Approvals to Buyer's satisfaction then the initial Deposit and Additional Deposit (less any sums that are non-refundable to Buyer pursuant to the terms of this Contract, which shall be released to Seller) may be released to Buyer...If termination of this Contract occurs due to Buyer being unable to achieve the Entitlement Period rezoning and other approvals, to Buyer's satisfaction, then Buyer shall provide copies to Seller of any non-proprietary reports, site plans, or similar third party due diligence materials produced and received by Buyer within the Inspection Period and any Entitlement Period....

7. Under the Contract Pettus was required to cooperate with Plaintiff's pursuit of permits and approvals for the Property (Contract, ¶ 13(c).)

8. Under the Contract Plaintiff had the right to terminate the Contract and not close on the Property if Plaintiff did not obtain the Required Approvals (defined above) for the Property to Plaintiff's satisfaction. (Contract, ¶ 5(b).)

9. The Initial Contract provided Plaintiff with two options to extend the closing date for a period of 30 days for each option, both of which were exercised by Plaintiff.

10. Paragraph 8 of the Initial Contract provided as follows:

Provided that all conditions of closing have been either satisfied or waived, the closing of the sale and purchase of the Property ("Closing") shall take place on or before the date ("Closing Date") that is the earlier of (i) thirty (30) days after the receipt of the Required Approvals, or (ii) Five Hundred Forty (540) days after the Effective Date.

11. On July 18, 2022, Pettus and Plaintiff entered into the Amendment which provided Plaintiff with three (3) additional options to extend the initial closing date by a combined total of 400 days, all of which were exercised by Plaintiff.

12. Paragraph 3 of the Amendment replaced Paragraph 8 of the Initial Contract with the following:

Provided that all conditions of closing have been either satisfied or waived, the closing of the sale and purchase of the Property (the "Closing") shall take place on or before the date (the "Closing Date") that is the earlier of (i) thirty (30) days after the receipt of the Required Approvals, or (ii) September 28, 2023.

13. The Contract provides that "time is of the essence with respect to the parties obligations hereunder." (Contract, ¶ 18(k).)

14. On September 18, 2023, counsel for Pettus sent a notice to Plaintiff stating that the Contract had not been amended and that Pettus was ready, willing, and able to close by September 28, 2023.

15. On September 27, 2023, counsel for Pettus delivered all closing documents, executed by Pettus, to Plaintiff's closing attorney.

16. Neither Plaintiff nor Plaintiff's legal counsel notified Pettus' attorney of any deficiencies in the closing documents provided by Pettus.

17. Plaintiff elected not to close on the purchase of the Property by September 28, 2023.

18. The record does not contain any evidence that Pettus failed to cooperate with Plaintiff in its pursuit of permits or approvals at any point prior to September 28, 2023.

19. The record does not contain any evidence that Pettus impeded Plaintiff's ability to close on the purchase of the Property on or before September 28, 2023.

20. On September 29, 2023, counsel for Pettus sent a letter to Plaintiff notifying Plaintiff that it had failed to close and giving Plaintiff an additional thirty days to close.

21. Plaintiff did not close within this additional thirty-day period.

22. On November 1, 2023, counsel for Pettus sent a letter to Plaintiff confirming that the Contract had lapsed by its own terms and was thereby terminated.

### **Summary Judgment Standard**

Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact-finder. Bankers Trust of S.C. v. Benson, 267 S.C. 152, 226 S.E.2d 703 (1976). “The judgment sought shall be rendered forthwith 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.

“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); Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

### **Discussion**

#### **A. Plaintiff’s Breach of Contract Claim**

“The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach.” Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Critically, the record does not contain any evidence that Pettus failed to cooperate with Plaintiff or otherwise breached the Contract at any point during or prior to September 28, 2023. Further, the record does not contain any evidence that Pettus impeded Plaintiff’s ability to close on the purchase of the Property on or before September 28, 2023. Rather, the record establishes that Plaintiff made a business decision and voluntarily elected not to close on the Property by September 28, 2023.

Plaintiff’s breach of contract claim against Pettus distills down to the single issue of whether the Contract language includes a material term (a time window for performance—the

Closing Date) such that Plaintiff was required to close on the purchase of the Property, if at all, by September 28, 2023. The Court finds that it does and that Plaintiff was required to close, if at all, by September 28, 2023. Accordingly, Pettus is entitled to summary judgment as a matter of law.

i.

“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). “It is a question of law for the court whether the language of a contract is ambiguous.” South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001).

“In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. The parties' intention must, in the first instance, be derived from the language of the contract. If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.” S. Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80, 562 S.E.2d 482, 484 (Ct. App. 2002).

“In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways.” Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008). “A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause.” First S. Bank v. Rosenberg, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016).

ii.

As a threshold matter the Court finds that the Contract is not ambiguous with respect to the dispositive issue. The plain and unambiguous language of the Contract establishes that if Plaintiff was going to close on the Property, Plaintiff was required to close by September 28, 2023.

The Contract explicitly prescribes the Closing Date as follows:

Provided that all conditions of closing have been either satisfied or waived, the closing of the sale and purchase of the Property (the "Closing") shall take place on or before the date (the "Closing Date") that is the earlier of (i) thirty (30) days after the receipt of the Required Approvals, or (ii) September 28, 2023.

(Amendment, ¶ 3.)

Furthermore, the express language of the Contract establishes that time is of the essence. (Contract, ¶ 18(k).) Under South Carolina law “[w]here ‘time is made the essence of the contract,’ the parties are bound by the time limited in the contract, and the vendee forfeits his rights by a failure to comply within the specified time.” Anderson v. Pearson, 445 S.C. 455, 467, 914 S.E.2d 866, 872 (Ct. App. 2025); see also Gen. Sprinkler Corp. v. Loris Indus. Devs., Inc., 271 F. Supp. 551, 558 (D.S.C. 1967) (holding that “[w]here time is of the essence of the contract, failure to perform within the time stipulated is ground for rescission.”).

The express language contemplates the scenario presented in this case and defines the outcome. If Plaintiff had ever obtained the Required Approvals,<sup>3</sup> then the closing was required to take place within 30 days thereafter. Otherwise, the closing was required to take place by September 28, 2023. Even though the first trigger for the Closing Date never occurred, the second trigger did occur. September 28, 2023 approached, arrived

---

<sup>3</sup> “Required Approvals” is defined broadly in Paragraph 5(b) of the Contract to include a variety of permits, approvals, and other land entitlements that Plaintiff was pursuing for its intended development of the Property.

and ended, and Plaintiff elected not to close on the Property. Under South Carolina law and the terms of the Contract, the closing, if ever to occur, was required to take place on or before September 28, 2023.

iii.

Plaintiff argues that it was not required to close on or before September 28, 2023. As far as that sentence goes, Plaintiff is correct. The Contract clearly afforded Plaintiff with the right to terminate the Contract and not close on the Property if Plaintiff did not obtain the Required Approvals to its satisfaction. But this case is not about whether Plaintiff had to close on the Property; rather, this case is about when Plaintiff had to complete its purchase of the Property, if it elected to do so. Plaintiff argues that its time window is indefinite, or infinite. The Court finds that the Contract forestalls that gambit and expressly provides for an outside closing date of September 28, 2023. Plaintiff's position is not supported by the language of the Contract.

The Court concludes that as a matter of law the Contract established an outside closing date as the earlier of (i) a variable conditional event (30 days after receipt of all Required Approvals) or (ii) a firm date (September 28, 2023). If Plaintiff was going to close on the Property, it was required to do so on or before the outside closing date of September 28, 2023.

Based on the foregoing, Pettus is entitled to summary judgment dismissing Plaintiff's claims for breach of contract and its accompanying request for specific performance.

**B. Pettus' Counterclaim for Declaratory Judgment**

In this case, among alternative claims for relief, Pettus seeks a declaratory judgment, pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, regarding the rights and

obligations of the parties under the Contract.<sup>4</sup> In light of the Court findings with respect to Plaintiff's claims against Pettus, the Court grants Pettus' Motion as it relates to the declaratory judgment counterclaim. Specifically, the Court finds and concludes:

- 1) that Pettus has not breached the Contract,
- 2) that the Contract was of no further force and effect after Plaintiff elected not to close on the Property by the outside closing date,
- 3) that the Lis Pendens shall be cancelled of record, and
- 4) that Pettus is free to sell the Property free and clear of Plaintiff's claims.

### C. Prior Summary Judgment Motion

Plaintiff argues that the Court should not consider Pettus' Motion because she had previously filed a Motion for Summary Judgment in this case. The Court disagrees.

On March 27, 2024, Pettus filed a Motion for Summary Judgment ("Prior Motion"). The Prior Motion was filed four months into the case - before Plaintiff had served any written discovery or subpoenas, and prior to the parties taking any depositions. On July 9, 2024 the Honorable Brian M. Gibbons issued an order denying the Prior Motion and directing the parties to complete discovery and mediate within six months. Judge Gibbons did not issue any findings that the Contract was ambiguous or that the case presented a disputed issue of material fact.

"The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict." Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). "The fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion

---

<sup>4</sup> Pettus also asserted a counterclaim for breach of contract. But based on the Court's finding that the Contract expired, lapsed by its terms and operation of law, or was constructively terminated by Plaintiff's election not to close, Pettus' claim for breach of contract is rendered moot.

once new evidence is gathered.” Smith v. Breedlove, 377 S.C. 415, 421, 661 S.E.2d 67, 70 (2008) (holding that a subsequent motion for summary judgment is appropriate where considerable discovery had taken place); Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) (finding that a subsequent motion for summary judgment was appropriate where substantial discovery had been conducted in between the motions).

The record shows that the parties have engaged in extensive discovery after the Prior Motion, including serving multiple sets of written discovery, taking 12 depositions, and submitting several affidavits into the record. Pettus’ Motion is now before the Court with a fully-developed record. The Court finds that under South Carolina jurisprudence, Pettus’ Motion is not barred and is properly before the Court for consideration.

**NOW, THEREFORE**, based upon the foregoing,

**IT IS HEREBY DECLARED, ORDERED AND DECREED**, that Pettus’ Motion for Summary Judgment is granted; that Plaintiff’s Motion for Summary Judgment is denied; that Plaintiff’s claims against Pettus are dismissed with prejudice; and that Pettus is entitled to have judgment entered in her favor on her counterclaim for declaratory judgment, as set forth herein;

**IT IS FURTHER ORDERED** that the Lis Pendens filed by Plaintiff and encumbering the Property shall be cancelled of record.

**AND IT IS SO ORDERED.**

*[Electronic Signature to Follow]*

Eugene C. Griffith, Jr.  
Circuit Court Judge



Lancaster Common Pleas

**Case Caption:** Mts Clt, Llc VS Jane M. Pettus , defendant, et al

**Case Number:** 2023CP2901534

**Type:** Order/Summary Judgment

It is so ordered

Eugene C. Griffith, Jr. 2154

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

-

**A filing has been submitted to the court RE:** 2023CP2901534

**Official File Stamp:** 12-04-2025 09:17:54 AM  
**Court:** CIRCUIT COURT  
Common Pleas  
Lancaster  
**Case Caption:** Mts Clt, Llc VS Jane M. Pettus , defendant, et al  
**Document(s) Submitted:** Order/Summary Judgment Order/Summary Judgment  
**Filed by or on behalf of:** Eugene Griffith

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

-

**The following people were served electronically:**

Daniel Joseph Ballou for Heath Myers  
Lawrence Michael Hershon for Rob Bilbro  
Jeremy Daniel Melville for Jane M. Pettus  
James Kemper Patton for Mts Clt, Llc

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

Daniel Joseph Ballou for Jane M. Pettus