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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Case No. 2022-CP-32-02217

Appellate Case No.: 2025-001607

Dennis Gilpatrick Appellant

Gregory Lucas.....Respondent

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the Master in Equity err in finding that Respondent and Appellant had entered into a novation extinguishing the Residential Lease Purchase Agreement and substituting a Month-to-Month Lease?
2. Did the Master in Equity err in finding that Appellant had no right to specific performance due to the novation and inequitable conduct?
3. Did the Master in Equity err in finding that neither the Appellant nor his ex-wife were entitled to the equity of redemption?
4. Did the Master in Equity err in finding that the ruling of the Magistrate’s Court that Respondent and Appellant had entered into a novation extinguishing the Residential Lease Purchase Agreement and substituting a Month-to-Month Lease was a final, binding order?
5. Did the Master in Equity err in finding that Respondent was entitled to an Order of Eviction and an award of damages?
6. Did the Master in Equity err in finding that the filing of the lis pendens was improper and an abuse of process?

STATEMENT OF THE CASE

On or about November 28, 2014, Respondent Gregory Lucas entered into a Residential Lease Purchase Agreement with Appellant Dennis Gilpatrick and his then wife, Kristen Gilpatrick, under the terms of which the Gilpatrick's agreed to lease approximately two (2) acres of land at 117 Noah Lucas Rd. in Pelion, SC for a term of 96 months commencing November 28,

2022. The Gilpatricks promised to pay monthly rent for the premises in the amount of \$725 in 96 monthly installments commencing November 28, 2022 (Record- Appellant Trial Exhibit1).

On or about January 18, 2022, Respondent filed an Application for Ejectment against Appellant in case number 2022-CV-33-110-0077 alleging that the Month-to-Month Lease had expired and that Appellant was further in breach of the Month-to-Month Lease for failure to pay taxes in February 2019 and for lapses in rental insurance coverage. (Record-trial transcript page 130, line 17-page 131 line 2; Respondent's trial Exhibit 15). At the eviction hearing on February 7, 2022 the eviction was denied based on Respondent's failure to give Appellant the statutorily required 30 days' notice of termination of a Month-to-Month Lease. (Record- pages 2-3, lines 10-14 of transcript, Exhibit C to Defendant's Motion for Summary Judgment).

On June 12, 2022, Respondent gave Appellant the statutorily required 30 days' Notice of Termination of a Month-to-Month Lease and on July 19, 2022 filed a second Application for Ejectment in case number 22022CV331100873. (Record- affidavit of Gregory Lucas attached Defendant's Motion for Summary Judgment). An eviction hearing was held on August 26, 2022. The Magistrate transferred the case to circuit court as Appellant's verbal counterclaims at the hearing exceeded the Magistrate's jurisdictional limit. (Record -Order removing case 2022 – CV – 32 – 1100873). The removed eviction case was assigned civil case number 2022-CP-32-02944.

On July 1, 2022, prior to a hearing on the second Application for Ejectment, Appellant filed the within action against Respondent in the Lexington County Court of Common Pleas in Civil Action Number 2022 – CP – 32 – 02217 seeking specific performance of the Residential Lease Purchase Agreement and damages.

On October 13, 2022, Respondent responded to Circuit Court action 2022-CP-32- 02217 with an Answer and Counterclaim that also sought a declaratory judgment that the controlling relationship between the parties was not an Installment Land Sales Contract, but was a Month-to-Month Lease, which had been breached by Appellant, and which entitled Respondent Lucas to an order of eviction. (Record-Answer and Counterclaim).

On May 15, 2023, Respondent filed an Amended Answer and Counterclaim adding an additional counterclaim asserting that Appellant's filing of a lis pendens constituted malicious prosecution or abuse of process and sought damages. (Record-Amended Answer and Counterclaim).

On December 6, 2023, Appellant and Respondent filed a Consent Order of Consolidation consolidating civil action number 2022-CP-32-02217 with civil action number 2022-CP-32-02944. (Record -Consent Order of Consolidation).

On December 6, 2023, a quit claim deed was filed wherein Appellant's prior wife Kristen Gilpatrick, who had not been made a party to the litigation by Appellant, conveyed all right, title and interest in the Residential Lease-Purchase Agreement dated November 28, 2014 with Respondent Greg Lucas to Appellant in consideration of the previously executed divorce agreement. (Record-Appellant's trial Exhibit 3).

The consolidated matters were tried before Lexington County Master in Equity Judge James O. Spence on May 21, 2025, and all issues were litigated. The Court issued its order on July 30, 2025 denying the relief sought by Appellant and granting the relief sought by Respondent.

On August 11, 2025, Appellant Gilpatrick filed his Notice of Appeal.

STATEMENT OF FACTS

On or about November 28, 2014, Respondent Gregory Lucas entered into a Residential Lease Purchase Agreement with Appellant Dennis Gilpatrick and his then wife, Kristen Gilpatrick, under the terms of which the Gilpatrick's agreed to lease approximately two (2) acres of land at 117 Noah Lucas Rd. in Pelion, SC for a term of 96 months commencing November 28, 2022. The Gilpatricks promised to pay monthly rent for the premises in the amount of \$725 in 96 monthly installments commencing November 28, 2022. (Record- Exhibit A to Defendant's Motion for Summary Judgment).

Further under the terms of the Residential Lease Purchase Agreement, the Gilpatricks agreed to pay \$8000 down, maintain renters' insurance until the end of the contract, and pay \$400 every February towards house taxes. Under the terms of the Residential Lease Purchase Agreement, Respondent agreed that upon payment of the full amount of monthly payments by Appellant, he would convey a fee simple deed of the property to Appellant.

The Residential Lease Purchase Agreement was further clear that upon default of the Gilpatricks, Respondent could declare the term of the lease ended and repossess the premises; could peacefully expel and remove the tenant; and that no monies would be refunded. Appellant

paid the down payment and commenced making monthly payments on November 28, 2014. (Record-appellant exhibit trial Exhibit 2; Respondent trial Exhibit 10).

On October 31, 2019, the Gilpatricks were informed that they were in breach of the Residential Lease Purchase Agreement for failure to pay the 2018 taxes and failure to maintain rental insurance as required under the terms of the Residential Lease Purchase Agreement; that the Residential Lease Purchase Agreement was being terminated due to such breaches; and that they were being given 90 days' notice to move or eviction would be filed. (Record-Respondent trial Exhibit 14-deposition of Gilpatrick; trial transcript page 65 line 1 – 8).

By October 2019, Kristen Gilpatrick had moved away from the property and out of the home and the parties eventually divorced. (Record-Gilpatrick deposition p. 27 and page 34).

On January 28, 2020, Appellant, in consideration of not being evicted, agreed with Respondent to terminate Residential Lease Purchase Agreement and to enter a new month-to-month lease. The month-to-month lease was emailed to him on January 28, 2020. In response, Appellant's email stated, "I agree to the terms and conditions of the Month-to-Month Rental Agreement" (Record-trial transcript page 112, line 82 -page 115 line 18).

Appellant began to pay the newly agreed-upon \$900 month-to-month rental payments on January 28, 2020, and made the initial monthly rental payments for January 2020 and February 2020. Appellant acknowledged the Month-to-Month Lease in writing and performed by making the new \$900 rental payment from January 2020 through June 1, 2022. (Record-trial transcript page 116 line 21 to line 24; respondent trial Exhibit 11).

At the time of entering into the new Month-To-Month Lease Agreement, Appellant had paid a total of \$50,775 under the Residential Lease Purchase Agreement, but had not paid the full \$63,200 required by the Residential Lease Purchase Agreement. (Record- Respondent trial Exhibit 11).

On August 25, 2021, because Appellant did not pay the 2019 taxes as required by the Month-to-Month Lease, Appellant was given a 90-day written notice by Respondent to vacate the property (Record- affidavit of Gregory Lucas attached to Defendant's Motion for Summary Judgment).

On or about January 18, 2022, Respondent filed an Application for Ejectment against Appellant in case number 2022-CV-33-110-0077 alleging that the Month-to-Month Lease had expired and that Appellant was further in breach of the Month-to-Month Lease for failure to pay

taxes in February 2019 and for lapses in rental insurance coverage. (Record-trial transcript page 125, line 5 to page 126, line 3-line 25; respondent trial Exhibit 13).

At the eviction hearing on February 7, 2022, Appellant was represented by counsel who argued that the Magistrate's Court lacked jurisdiction because the agreement between the parties was an Installment Land Sales Contract, which was outside the Magistrate's Court statutory jurisdiction (Record-Respondent Trial Exhibit 14). Magistrate Judge Whittle, however, ruled that the parties had terminated the Residential Lease Purchase Agreement and had entered into a Month-to-Month Lease Agreement. (Record-Respondent Trial Exhibit 14 page 3, line 10 to page 4, line 19). The eviction was denied based on Respondent's failure to give Appellant the statutorily required 30 days' notice of termination of a Month-to-Month Lease. (Record- pages 2-3, lines 10-14 of transcript, Exhibit C to Defendant's Motion for Summary Judgment). Appellant did not appeal the final February 7, 2022 oral order of Judge Whittle.

On June 12, 2022, Respondent gave Appellant the statutorily required 30 days' Notice of Termination of a Month-to-Month Lease and on July 19, 2022 filed a second Application for Ejectment in case number 22022CV331100873. (Record-trial transcript page 130 line 17 to page 131, line 2; respondent trial Exhibit 15).

On July 1, 2022, prior to a hearing on the second Application for Ejectment in case number 22022CV331100873, Appellant filed the within action against Respondent in the Lexington County Court of Common Pleas in Civil Action Number 2022 – CP – 32 – 02217 seeking specific performance of the Residential Lease Purchase Agreement and damages for breach of contract. Appellant also filed a lis pendens over the entire four (4) acres owned by Respondent. (Record-Complaint).

On July 19, 2022, prior to being served with Civil Action Number 2022-CP-32- 02217, Respondent Lucas filed the second Application for Ejectment against Appellant alleging that a Month-to-Month Lease existed between the parties which had been breached and requested ejectment. (Record-Application for Ejectment 2022 – CV – 32 – 1100873). Appellant responded requesting a hearing (Record -Request for hearing 2022 – CV – 32 – 1100873).

An eviction hearing was held on August 26, 2022 in which both Respondent and Appellant were represented by counsel. Counsel for Appellant argued again that the Magistrate's Court lacked jurisdiction because the agreement between the parties was an Installment Land Sales Contract. Counsel for Respondent argued that the Magistrate's Court had already ruled in

the earlier eviction action that the binding agreement between the parties was a Month-to-Month Lease.

Magistrate Judge Whittle confirmed that there was a previous order of the court finding that the parties had terminated the Residential Lease Purchase Agreement and entered into a Month-to-Month Lease Agreement. The Magistrate transferred the case to circuit court as Appellant's verbal counterclaims at the hearing exceeded the Magistrate's jurisdictional limit. (Record -Order removing case 2022 – CV – 32 – 1100873). The removed eviction case was assigned civil case number 2022-CP-32-02944.

On October 13, 2022, Respondent responded to Circuit Court action 2022-CP-32- 02217 with an Answer and Counterclaim that sought a declaratory judgment that the controlling relationship between the parties was not an Installment Land Sales Contract, but was a Month-to-Month Lease, which had been breached by Appellant, and which entitled Respondent Lucas to an order of eviction. (Record-Answer and Counterclaim).

On May 15, 2023, Respondent filed an Amended Answer and Counterclaim adding an additional counterclaim asserting that Appellant's filing of a lis pendens over the entire 4 acres owned by Respondent constituted malicious prosecution or abuse of process and sought damages. (Record-Amended Answer and Counterclaim).

On December 6, 2023, Appellant and Respondent filed a Consent Order of Consolidation consolidating civil action number 2022-CP-32-02217 with civil action number 2022-CP-32-02944. (Record -Consent Order of Consolidation).

Also on December 6, 2023, a quit claim deed was filed wherein Appellant's prior wife Kristen Gilpatrick, who had not been made a party to the litigation by Appellant, conveyed all right, title and interest in the Residential Lease-Purchase Agreement dated November 28, 2014 with Respondent Greg Lucas to Appellant in consideration of the previously executed divorce agreement. (Record-Appellant's trial Exhibit 3).

The consolidated matters were tried before Lexington County Master in Equity Judge James O. Spence on May 21, 2025, and all issues were litigated. The Court issued its order on July 30, 2025, finding that the Appellant and Respondent had entered into a novation by which the Residential Lease-Purchase Agreement was terminated and a Month-to-Month Lease Agreement was substituted. The trial court found that the contractual relationship between the parties was not an Installment Land Sales Contract but was a Month-to-Month Lease, which had

been breached by Appellant. (Record-July 30, 2025 Order). The trial court denied Appellant's request for specific performance and granted Respondent's prayer for declaratory judgment. The trial court further found that Respondent was entitled to evict Appellant due to the failure to pay rent since June 2022. The trial court also granted Respondent an award of damages for unpaid past due rent in the amount of \$30,600 representing the agreed-upon rent from July 1, 2022 through and including May 2025. (Record-July 30, 2025 Order).

On August 11, 2025, Appellant Gilpatrick filed his Notice of Appeal.

STANDARD OF REVIEW

Appellant's Complaint asserted that the controlling agreement between the parties was a Residential Lease Purchase Agreement and asserted two causes of action: one claim for specific performance of the Residential Lease Purchase Agreement, and the other a claim for damages. Respondent's Answer and Counterclaims asserted that the controlling agreement between the parties was a month-to-month lease and sought a declaratory judgment of the court to that effect. Respondent further sought an order of eviction due to the alleged breach of that lease and a claim for damages in the form of unpaid rent.

At trial, the trial court's initial task was to determine what was the binding agreement between the parties. The interpretation of contracts, including leases and installment land sales contracts, is typically a legal issue. South Carolina have consistently held that when the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court to decide . *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31(Ct.App.2010). The interpretation of a lease agreement is an action at law, and the cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language . *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31(Ct.App.2010).

Appellant's cause of action for specific performance was an claim in equity. *Lollis v. Dutton*, 421 S.C. 467 S.E.2d 723(Ct. App. 2017).

Respondent's Counterclaims for breach of contract, eviction and damages are all claims at law.

In sum, therefore, the within case involved both legal and equitable issues. In cases involving both legal and equitable issues, appellate courts apply a "divided scope of review," meaning that the standard of review depends on whether the issue under consideration is legal or

equitable in nature. Each cause of action retains its own identity as legal or equitable for purposes of determining the applicable standard of review on appeal. *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 896 S.E.2d (Ct.App.2023). When legal and equitable actions are combined in one suit, the appellate court must analyze each issue separately to apply the appropriate standard of review. *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); *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 769 S.E.2d 242, (Ct. App. 2014).

As pointed out by the South Carolina Court of Appeals in, *Lollis v. Dutton*, 421 S.C. 467 S.E.2d 723(Ct. App. 2017), in an action at law, the [court's] factual findings will not be disturbed by appeal unless found to be without evidence that reasonably supports the [court's] findings.

For equitable issues, appellate courts review both factual findings and legal conclusions de novo. This allows the appellate court to make its own factual determinations based on the preponderance of the evidence, though it may still give weight to the trial court's findings, particularly regarding witness credibility. *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 769 S.E.2d 242, (Ct. App. 2014); *Church v. McGee*, 391 S.C. 334, 705 S.E.2d 481 (Ct. App. 2011). *Zan, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 751 S.E.2d 664 (Ct. App. 2013). The Court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge the credibility. *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 769 S.E.2d 242, *Church v. McGee*, 391 S.C. 334, 705 S.E.2d 481 (Ct. App. 2011).

ARGUMENTS

1. The Master in Equity correctly found that Respondent and Appellant had entered into a novation extinguishing the Residential Lease Purchase Agreement and substituting a Month-to-Month Lease.

a. The Master in Equity correctly found the Appellant had breached the Residential Lease Purchase Agreement and that the breaches were material.

The Master in Equity correctly found that Appellant breached the Residential Lease Purchase Agreement by failure to maintain insurance and reimburse Respondent for property taxes, terms that were expressly required by the Residential Lease Purchase Agreement. (Record-Respondent's trial exhibit 2; deposition of Appellant, pages 29 to 34, Respondent's trial exhibit number 18). Respondent testified at trial that these breaches were significant and material breaches (record-trial transcript page 104). The Master in Equity therefore correctly found as a fact that these breaches exposed Respondent to financial risk and loss and were therefore material breaches of the specified duties of Appellant under the Residential Lease Purchase Agreement. An action for breach of contract is one at law *Milliken & Co. v. Morin*, 399 S.C. 23, 731 S.E.2d 288(2012). Findings of fact by the trial court are generally upheld unless they are clearly erroneous or unsupported by the evidence. *State v. Sweat*, 379 S. C. 367, 665 S.E.2d 645 (Ct. App. 2008). Furthermore, a finding of fact on a legal issue such as this is not to be disturbed unless there is no evidence that reasonably supports the finding. *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31(Ct. App. 2010).

The trial court's ruling on these issues was not clearly erroneous and was supported by the evidence adduced at trial and should be upheld.

b. The Master in Equity correctly found that Appellant voluntarily and knowingly agreed to a novation with Respondent by which the Residential Lease Purchase Agreement was terminated and the parties agreed to a new Month-to-Month Lease Agreement.

The Master in Equity correctly found, based on the trial exhibits and Appellant's trial testimony, that after Appellant defaulted in the terms of the Residential Lease Purchase Agreement and was facing eviction, he voluntarily agreed to a novation, that is, he agreed to terminate the Residential Lease Purchase Agreement with Respondent and enter into a new Month-to-Month Lease Agreement with Respondent.

The new Month-to-Month Lease Agreement between the parties constituted a novation. "A novation is an agreement between all parties concerned for the substitution of a new obligation between the parties with the intent to extinguish the old obligation." *Wayne Dalton Corp. v. Acme Doors, Inc.*, 302 S.C. 93, 96, 394 S.E.2d 5, 7 (Ct. App. 1990) (citing *Ophuls & Hill Inc. v. Carolina Ice & Fuel Co.*, 160 S.C. 441, 158 S.E. 824

(1931)). There must be an intention to create a novation. *Adams v. B & D, Inc.*, 297 S.C. 416, 420, 377 S.E.2d 315, 317 (1989). There can be no novation unless both parties so intend. *Id.* "The circumstances attending the transaction alleged to be a novation must show the intention to substitute a new obligation in place of the existing one." *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 72, 620 S.E.2d 86, 92 (Ct. App. 2005).

Under South Carolina law, a contract is formed when there is an offer, acceptance, valuable consideration. *Hennes v. Shaw*, 397 S.C. 391, 399 725 S.E.2d 501, 505 (Ct. App. 2012). Here, Respondent offered Appellant a Month-to-Month Lease, and Respondent expressly accepted the offer by email. (Record-Respondents Trial Exhibit 8, trial transcript pp.110, line 13 to page 115, line 18, page 73, line 13 to page 76, line 22) The parties exchanged valuable consideration in bargaining possession of the property in exchange for rent payments and the forbearance of eviction proceedings in face of an acknowledged default. "The consideration to support an agreement need not of necessity be a pecuniary one, nor even a beneficial one to the person promising. If it be a loss or even an inconvenience to the promisee, the relinquishment of a right, as the discharge of a debt, or the postponement of a remedy, as the discontinuance of a suit, or a forbearance to sue it is enough. *Timmons v. Boyd*, 89 S.C. 11, 71 S.E. 298 (1911).

The email exchange between Appellant and Respondent confirms that the elements of a binding novation existed. Respondent emailed Appellant a copy of the proposed month-to-month lease agreement and stated "I will need you to sign it and send a picture to me, before I will accept payment tonight. An email stating you've agreed to the terms and conditions of the Month-to-Month Rental Agreement will be sufficient too." (Record- Appellant trial exhibit 8). Appellant responded in a January 28, 2020 email stating, "I agree to the terms and conditions of the Month-to-Month Rental Agreement." (Record Appellant trial exhibit 8).

Respondent's email stating that an emailed acceptance would suffice in place of a picture of the signed writing clearly conveyed that the emailed acceptance would memorialize their agreement with the same force as if the written contract had been signed. (Record Appellant trial exhibit 8). If a party to a contract is "in position to learn the contents of the paper and thus fully to protect himself by reading it or having it read," that party's

acceptance to the agreement binds it to all terms and conditions, absent actionable fraud. *J.B. Colt Co. v. Britt*, 129 S.C. 266, 123 S.E.2d 845 (1924).

Additionally, Appellant's express assent to the terms and conditions of the Lease demonstrates a clear "meeting of the minds." Appellant agreed to all terms and conditions of the offer of the Month-to-Month Lease presented to him to the extent of emailing Respondent: but there is an agreement on the renting. I was just clarifying a few things on it... Where do we not have an agreement on the renting part of this? Other than me asking a few questions...(Record-Appellant Trial Exhibit 8).

At trial on cross-examination when Appellant was questioned: "... there's no doubt but that you agreed to the residential land sales contract, correct?", He responded: "Yes sir" "and you knew what the terms of it were?" "yes sir" (Record-trial transcript page 58 lines 13 – 18).

In South Carolina, if a party to a contract is "in position to learn the contents of the paper and thus fully to protect himself by reading it or having it read," that party's acceptance to the agreement binds it to all terms and conditions, absent actionable fraud. *J.B. Colt Co. v. Britt*, 129 S.C. 266, 123 S.E.2d 845 (1924).

The Master in Equity therefore correctly found based on the trial testimony and exhibits that Appellant was in a position to read and learn the contents of the lease and clearly accepted and agreed to same. The Master in Equity also correctly found that Appellant's acceptance of the Month-to-Month Lease bound him to all terms and conditions of the Month-to-Month Lease and constituted a binding novation. The trial court correctly found as a fact that the elements of a binding novation existed between Appellant and Respondent and that Respondent had performed under the new Month-to-Month Rental Agreement for two years without complaint.

The trial judge's findings were supported by the evidence and were not erroneous and should be upheld.

c. The Master in Equity correctly found as a fact that Appellant was not coerced or threatened into entering into the novation by which the Residential Lease Purchase Agreement was terminated and a new Month-to-Month Lease Agreement was entered into and that such agreement was supported by adequate consideration.

In both his deposition and trial testimony, Appellant admitted that he was not threatened or coerced into entering into the new agreement. (Record- deposition of Appellants page 49, line15-page 50, line7; trial transcript pp.75 line3 to p.76,line 2).The Master in Equity correctly found as a fact that Appellant did not qualify his acceptance of the month-to-month lease and was not threatened to enter into the Month-to-Month Lease. (record-deposition of Appellant, page 49, line 9; Appellant’s trial exhibit number 18; trial transcript page 73 lines 3 through 18) The trial court also correctly found as a fact that Appellant was aware that he could have sought legal remedies rather than sign the Month-to-Month Lease (record-deposition of Appellant, page 48, line 11; Respondent’s trial exhibit number 18; trial transcript page 120 lines 4 through 21).

The trial court also correctly found as a fact that the Month-to-Month Lease Agreement was supported by adequate consideration in the form of mutual promises and the forbearance of litigation. Due to Appellant’s breach of the terms of the Residential Lease Purchase Agreement by failure to pay taxes and maintain rental insurance, Appellant was provided notice from Respondent that the Residential Lease Purchase Agreement was being terminated and that Appellant was given 90 days’ notice to move or eviction would be filed (record – Respondent’s trial exhibit number four, trial transcript page 104, line 11 to page 105 line 20). Appellant was aware that he could oppose the eviction, but to avoid litigation agreed to enter into the Month-to-Month Lease that was offered as an alternative. (Record- Respondent’s trial exhibits number five, six and seven counts; trial transcript, page 105 to page 109 line 23; page 110 line 13 to page 115 line 18; page 73 line 13 to page 76 line 22).

Specifically, Appellant responded on cross-examination to the question, “... And you elected to go along with this agreement so as not to go through that[eviction] process, correct?” by answering, “Yes, I already had too many things going on in my life at that time.” (Record-trial transcript page 73 lines 9 through 12). South Carolina courts have long observed that forbearance to sue is sufficient consideration. *Timmons v. Boyd*, 89 S.C.11, 71 S.E.2d 298 (1911).

The trial court’s findings of fact should be upheld on appeal as they are not clearly erroneous or unsupported by the evidence. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008).

2. The Master in Equity correctly found as a fact that Appellant had no right to specific performance due to the novation, failure to fully perform under the Residential Lease Purchase Agreement and inequitable conduct.

As set forth herein, the trial court found as a fact that Appellant had knowingly and voluntarily entered into a novation by which the Residential Lease Purchase Agreement was terminated and a new Month-to-Month Lease Agreement was substituted and that such agreement was supported by consideration.

The trial court further found as a fact, based on the exhibits prepared by both counsel and testimony of the parties, that Appellant had failed to fully perform under the Residential Lease Purchase Agreement having paid only \$41,925 of the required \$63,200 and not maintained the agreed-upon tax payments and insurance payments (record – trial transcript page 144 to page 145; trial transcript page 116 to page 119 line 12 to line 21; trial transcript page 77 line 24 to page 878 line 9 ;Respondent’s trial exhibit number 11; Appellant’s trial Exhibit 2) As a result, the trial court found that Appellant had not fully performed under the Residential Lease Purchase Agreement.

It is well-established in South Carolina that, “in order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Gibson v. Hrysikos*, 293 S.C. 8, 14, 358 S.E.2d 173, 176 (Ct. App. 1987).

The trial court correctly found that none of these elements were met by Appellant and therefore denied specific performance. First, due to the novation agreed to by the parties, there was no longer a valid agreement between Appellant and Respondent that could be specifically performed. Secondly, the accounting provided by both counsel for Appellant and respondent makes it clear that at the time that the parties entered into a novation, Appellant had not fully performed in making the payments called for in the Residential Lease Purchase Agreement and is barred from receiving specific performance as a matter of law.

Finally, the trial court found as a fact that Appellant was precluded from specific performance due to the inequitable conduct of Appellant by expressly agreeing to the new month-to-month lease agreement both verbally and in writing and performing under it from

November 28, 2014 to October 1, 2019 and then disavowing the agreement in two eviction hearings and the within action. The trial court correctly found therefore Appellant was estopped from seeking specific performance because he acted with unclean hands in misleading Respondent as to the Month-to-Month Lease. The trial court also correctly found that Appellant was guilty of inequitable conduct in acting with an improper ulterior motive by the filing of a lis pendens over greater property than was ever discussed or agreed to between the parties. Appellant testified in his deposition that the parties never discussed more than 2 acres. (Record- Gilpatrick deposition page 25 Respondent's trial Exhibit 18) "Unclean hands precludes a Plaintiff from recovering in equity if he acted unfairly in a manner that is the subject of the litigation to the prejudice of the Defendant" *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 569, 511 S.E.2d 372 (Ct. App. 1998).

The trial court therefore correctly denied Appellant's request for specific performance and should be upheld.

3. The Master in Equity correctly found that neither the Appellant nor his ex-wife were entitled to the equity of redemption.

a. Appellant's ex-wife, Kristen Gilpatrick, never requested the equity of redemption and released and surrendered any right of redemption through the quitclaim deed conveyed to Appellant.

Appellant testified that he and Kristyn Gilpatrick 'split up' and she moved out of the subject property in October 2019 and obtained a final divorce on August 15, 2022 (record-respondent trial Exhibit 14-deposition of appellant pages 27 and 34; trial transcript page 39). Four years after moving out of the property and one year after divorcing Appellant, Kristyn Gilpatrick conveyed whatever interest she had in the November 28, 2014 Residential Lease Purchase Agreement by quitclaim deed dated December 1, 2023. (Appellant trial exhibit number three) In the quitclaim deed, Kristyn Gilpatrick released and forever quitclaim all of her right title and interest in the Residential Lease Purchase Agreement dated November 28, 2014 in consideration of the previously executed divorce agreement (record-Appellant's trial exhibit number three, emphasis added). Any right to the equity of redemption by Kristyn Gilpatrick as to the subject property was therefore released by virtue of this quitclaim deed. "[The right to redeem is] assignable, descendent and devisable." *Bartles v. Livingston*, 282 S.C.448, 455, 319 S. E.2d 707, 711(1984).

Furthermore, Appellant produced no evidence that Kristen Gilpatrick ever asserted a claim for the equity of redemption and provided no evidence that she stood ready and willing to pay the balance due which is a necessary condition to redeem the property. SC Code Ann. §36 – 9– 623. See also *Middleton v. Eubank*, 388 S.C.8, 694 S.E.2d 31 (Ct. App. 2010)

b. The trial court correctly found that Appellant released and surrendered any right of redemption by terminating the Residential Lease Purchase Agreement and entering into a Month-to-Month Lease.

As set forth herein, Appellant voluntarily and knowingly agreed to terminate the Residential Lease Purchase Agreement and enter into a new Month-to-Month Lease, under which he performed from November 28, 2014 to October 1, 2019. By doing so, Appellant surrendered and released his right to redemption, as no right of redemption exists under a lease agreement.

c. Appellant has produced no evidence that a request for the equity of redemption was ever made or that he attempted to fulfill the necessary conditions.

At no point through this litigation did Appellant produce any evidence that a request for the equity of redemption was ever made to Respondent. Equally, at no point through this litigation has Appellant produced any evidence of an attempt to fulfill the necessary conditions such as fulfilling all obligations under the Residential Lease Purchase Agreement which are prerequisites to exercising the equity of redemption are that he was ready and willing to pay the balance due. S.C. Code Ann. §36 – 9– 623 see also, *Rainwater v. Merchants & Farmers Bank*, 108 S.C.206, 213, 93 S.E.770 (1917); *Middleton v. Eubank*, 388 S.C.8, 694 S.E.2d 31 (Ct. App. 2010)

d. [as an additional sustaining ground] Appellant's agreement to terminate the Residential Lease Purchase Agreement also terminated his equitable right of redemption.

Once the parties agree to terminate the Residential Lease Purchase Agreement, an installment land sales contract, and enter into a month-to-month lease, the Respondent could no longer foreclose as the controlling agreement was a lease and the appellant no longer had an equitable right to redeem as such rights are reciprocal. *Leland v. Morrison*, 90 2S. C. 501, 705 S. E. 889, 893 (1912).

4. **The Master in Equity correctly ruled that the ruling of the Magistrate's Court was a final, binding order.**

After the parties entered into a new Month-to-Month Lease Agreement in January 2020, Respondent filed two eviction hearings against Appellant due to Appellant's breach of the Month-to-Month Lease Agreement.

At the February 7, 2022 eviction hearing in Case 2022 – CV – 33 – 110-0077, Appellant was represented by counsel who advanced the argument that the Magistrate's Court did not have jurisdiction to hear the eviction as the agreement between the parties was a rent to own Installment Land Sales Contract which was outside the statutory Magistrate's Court jurisdiction. Magistrate Judge Whittle, however, ruled that he did have jurisdiction as he found that the parties had terminated the Residential Lease Purchase Agreement and had entered into a Month-to-Month Lease Agreement. Judge Whittle specifically held: "you know, does appear to me that he when he began paying \$900 a month he did enter into this lease agreement. He-he began paying. Offer and acceptance..."(Record- transcript pages 3 through 4 lines 10 through 13, Exhibit C to motion to summary judgment). This was a final ruling that the binding agreement between the parties was a Month-to-Month Lease Agreement. Appellant did not appeal the final February 7, 2022 oral ruling of Judge Whittle.

Because Judge Whittle did not order an ejectment because Respondent failed to give the proper statutory notice to terminate a Month-to-Month Lease, Respondent brought a new eviction action in July 9, 2022 in case number 2022 – CV – 32 – 110 – 0873. Appellant was again represented by counsel who once again asserted the argument that the Magistrate's Court lacked jurisdiction to consider the eviction application.

When counsel for Respondent asserted that the magistrate's court had previously ruled that the parties agreement was a Month-to-Month Lease and the Court agreed, counsel for Appellant asked the Court to reconsider that decision. (Record-Respondent's Trial Exhibit 16-transcript p. 3, line 4-5).

Judge Whittle denied the motion to reconsider and asserted that there had been no error in the previous ruling. Judge Whittle stated, "Well, the issue is there was no previous error, in my opinion, because it began as a, as a rent to own under the Residential Lease Contract, and at some point changed from that to a month-to-month tenancy as evidenced by agreement." (Record-Respondent's Trial Exhibit 16-transcript p. 4, line 20-page 5, line 3).

When confronted with the argument that the Court did not have the jurisdiction to make that conclusion, Judge Whittle responded, "I've already made that conclusion that the last hearing... No it was not in error the last time, that was the facts were presented to the court" (Record- transcript attached as Exhibit N to affidavit of Greg Lucas, pages 2 line 9 through page 6 line 5). Judge Whittle denied the oral Motion for Reconsideration.

At trial, Appellant contended that the magistrate's court lacked jurisdiction to make the determination that the controlling agreement between the parties was a Month-to-Month Lease. The trial court, however, found the recent South Carolina Supreme Court decision in *Rivers v. Smith*, 446 S.C.293, 919 S.E.2d 545 (2025) to be controlling. The trial court concluded that under the authority of *Rivers, supra*, "thus, looking back at our decisions over 104 years, from Fickling in 1878 through Stewart-Jones in 1924 to Lund in 1982-it becomes crystal clear that the Magistrate's Court is not deprived of the authority to conduct an eviction proceeding simply because the tenant claims [that the underlying contract is installment land sales contract]. Rather, the magistrate court must first answer the primarily factual question of whether a landlord-tenant agreement exists between the parties. If the Magistrate's Court find that it does, then the magistrate may proceed to determine whether tenant breached the agreement and, if so whether eviction is warranted" *Rivers*, 446 S.C. at 308.

Based on this holding, the trial court found that the Magistrate's Court had appropriate authority to decide that it had jurisdiction to consider the issue of the agreement between the parties and to make a finding that the controlling agreement between the parties was a Month-to-Month Lease. As a result, the trial court found that the determination of the Magistrate's Court was binding and res judicata. A final ruling in South Carolina refers to a judgment that resolves all issues in a case, leaving nothing further for the court to determine. *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008).

Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the Defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992); *Sealy v. Dodge*, 289 S.C.

543, 545, 347 S.E.2d 504, 505 (1986). All elements of res judicata are present in the within case and the trial court's decision should be upheld.

5. The Master in Equity correctly ruled that Respondent was entitled to an order of eviction and an award of damages.

Having found as a fact that the parties had entered into a novation by which the Residential Lease Purchase Agreement was terminated and a new Month-to-Month Lease Agreement had been entered into by the parties, the trial court's authority was limited to enforcing the agreement that the parties voluntarily made.

Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or to make new contracts for the parties. *Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985). Parties have the right to make their own contracts. *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). A court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction. *See, e.g., Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) ("It is not the function of the court to rewrite contracts for parties.").

Based on the testimony of the parties at trial, the court found that the parties had agreed to a month-to-month lease, Appellant had continuously occupied the property and had paid no rent since June 2022. Under the express terms of the Month-to-Month Lease, the exhibits submitted by both counsel and the testimony at trial, the court found that there was unpaid rent under the terms \$30,600 (Record-trial transcript page 142 line 18 to page 144, line 3; Respondent's exhibit number 17). The trial court also properly found that due to Appellant's failure to pay rent since June 2022 eviction was appropriate under SC Code § 27-37-10 (a).

The above findings of the Master in Equity as to eviction and damages were legal issues. *Rogers v. Nation*, 280 4S. C. 330, 326 S. E. 2d 182 (Ct. App. 1985) ; *Ritter & Assocs. Inc. v. Buchanan Volkswagen, Inc.*, 405 S. C. 643, 748 S. E. 2d 801, (Ct. App 2013). As such, these findings by the trial court were reasonably supported by the evidence deduced at

trial and should be affirmed. *Townes Associates, Ltd. v. City of Greenville*, 260 6S. C. 81, 221 S. E. 2d 773 (1976).

6. The Master in Equity correctly found that the filing of the lis pendens was improper and an abuse of process.

As set forth herein, the initial agreement between the parties was a Residential Lease Purchase Agreement, that covered two (2) acres only. Appellant conceded in his deposition that the parties had never discussed more than the two (2) acres. (Record-respondent trial Exhibit 14 -deposition of appellant, page 25, lines 11-13) Appellant, however, filed a lis pendens that extended over four (4) acres, placing a cloud over the entirety of respondent's property. Furthermore, the lis pendens was filed after Appellant canceled the Residential Lease Purchase Agreement, entered into a Month-to-Month Lease and paid lease payments for almost five (5) years.

The trial court therefore correctly found that Appellant's filing of the lis pendens was an of abuse of process for two reasons: 1) Appellant filed a lis pendens over four (4) acres when the initial agreement of the parties only covered two (2) acres; and 2) at the filing of the lis pendens, Appellant's sole interest in the property was a Month-to-Month lease and therefore he had no ownership in the property and no right to file a lis pendens. Based on those facts, the Court correctly found that the purpose of the lis pendens was an improper use of process to gain a litigation advantage over Defendant.

The proper action against a maliciously filed lis pendens is under abuse of process or malicious prosecution." *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (2014).

CONCLUSION

The trial court had before it all exhibits offered by counsel, the depositions of both parties, the motions for summary judgment filed by both parties and the trial testimony of both parties. The trial judge was in a position to judge the credibility and veracity of both parties. The trial judge made extensive findings of fact based on his review of the evidence and evaluation of the witnesses. The final order of the trial judge set forth certain undisputed facts between the parties:

1. That the parties entered a new Month-To-Month Rental Agreement.
2. That Appellant was not threatened to enter into the new Month-to-Month Rental Agreement.

3. That Appellant performed under the new Month-to-Month Rental Agreement by making new rental payments from January 20 through June 1, 2022.
4. That at the time of entering into the new Month-to-Month Rental Agreement, Appellant had not fully performed under the Residential Lease Purchase Agreement.

In addition to those facts that were not disputed by the parties, the court found the following additional essential facts:

1. The Month-to-Month Agreement constituted a novation extinguishing the Residential Lease Purchase Agreement and substituting a new Month-To-Month Lease Agreement.
2. That Appellant's breaches of the Residential Lease Purchase Agreement were material.
3. That Appellant was not coerced to enter into the new Month-to-Month Lease Agreement which was supported by adequate consideration.
4. That Appellant performed under the Month-to-Month Rental Agreement for two years.
5. That neither Appellant nor his ex-wife requested the equity of redemption are satisfied the conditions precedent to receiving the equity of redemption.
6. That Appellant surrendered his right to the equity of redemption by terminating the Residential Lease Purchase Agreement and entering into a Month-to-Month Lease.
7. That Kristen Gilpatrick surrendered her right to the equity of redemption by executing the quit claim deed to Appellant.
8. That the Magistrate's Court had authority to rule on the issue of the agreement between the parties and such ruling was a final binding order.
9. That Appellant failed to meet the conditions precedent to an order of specific performance.
10. That Respondent was entitled to an order of eviction and an award of damages for unpaid rent.
11. That the filing of the lis pendens was an abuse of process.

Those essential facts should be upheld as they are supported by a preponderance of evidence that reasonably supports them. These findings of fact upon which the trial court rested

its order should not be disturbed as there is evidence which reasonably supports them. The trial court's conclusions of law were proper and correct and did not constitute an error of law.

The trial court order should be affirmed.

RESPECTFULLY SUBMITTED

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