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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal From Lancaster County  
Court of Common Pleas  
Eugene C. Griffith, Jr., Circuit Court Judge

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Case No. 2023-CP-29-01534  
Appellate Case No. 2025-002538

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MTS CLT, LLC. . . . . Appellant,

v.

Jane M. Pettus, Trustee of the  
Joseph A. Pettus and Jane M. Pettus  
Revocable Living Trust u/i/d April 12, 2005  
and Rob Bilbro . . . . . Respondents.

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**INITIAL BRIEF OF RESPONDENT JANE M. PETTUS,  
TRUSTEE OF THE JOSEPH A. PETTUS AND JANE M. PETTUS  
REVOCABLE LIVING TRUST U/I/D APRIL 12, 2005**

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### **STATEMENT OF ISSUES ON APPEAL**

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF JANE PETTUS AS TO APPELLANT'S BREACH OF CONTRACT CLAIM?

DID THE TRIAL COURT ABUSE ITS DISCRETION IN HEARING JANE PETTUS' MOTION FOR SUMMARY JUDGMENT FILED AFTER THE CLOSE OF DISCOVERY ON JULY 28, 2025?

### **STATEMENT OF THE CASE**

This case arises from a contract between MTS CLT, LLC ("Developer"), a real estate developer and homebuilder, and Jane M. Pettus ("Pettus") for the purchase and sale of family property owned by Pettus in Lancaster County, South Carolina.

On November 22, 2023 Developer commenced this civil action<sup>1</sup> asserting a claim for breach of contract against Pettus and seeking the remedy of specific performance.

On March 27, 2024, approximately four months into the case, Pettus filed a Motion for Summary Judgment.

In opposition to the Motion, Developer submitted multiple affidavits and numerous exhibits argued among other things, that the motion was premature given the age of the case and the fact that Developer had not had an opportunity to conduct discovery that would be material to the issues presented by Pettus. Developer also filed a separate Motion for Continuance on June 19, 2024 on the grounds that Developer had not had an

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<sup>1</sup> Developer also asserted claims against Pettus' real estate broker, Rob Bilbro which were dismissed by way of summary judgment and which are also a subject of Developer's present appeal. Pettus' brief will focus solely on the claim against Pettus.

opportunity to conduct discovery necessary to address the issues in the Motion for Summary Judgment. (Motion for Continuance, pp 4-5.)

The hearing on the Motion for Summary Judgment was held before the Honorable Brian M. Gibbons on June 26, 2024. On July 9, 2024, Judge Gibbons entered a Form 4 Order denying Pettus' Motion and instructing the parties to complete discovery and mediate within 6 months. (Order, July 9, 2024, p. 1.)

The parties proceeded to conduct extensive amounts of discovery in the case including serving and responding to multiple sets of written discovery, conducting twelve depositions, and submitting several affidavits into the record. (Order, Dec. 4, 2025, p. 10.)

While this discovery was ongoing, the parties entered into a Consent Scheduling Order which was subsequently amended multiple times. Pursuant to the Scheduling Order, as amended, discovery was required to be completed by June 30, 2025 and dispositive motions were required to be filed by July 28, 2025.

On July 28, 2025, after the conclusion of discovery in the case, each of the three parties filed a Motion for Summary Judgment. On September 23, 2025, a hearing on all three of the motions were heard by the Honorable Eugene C. Griffith,

Jr. On December 4, 2025 Judge Griffith entered an Order Granting Summary Judgment as to Jane M. Pettus ("Order"). On December 12, 2025 Developer filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP. On December 18, 2025 the Honorable Eugene C. Griffith, Jr. entered an Order Denying Motions to Reconsider. Developer filed a Notice to Appeal on December 19, 2025.

### **STATEMENT OF FACTS**

Pettus is the owner of two parcels<sup>2</sup> of property, containing approximately 57 total acres, located in Lancaster County, South Carolina (collectively "Property"). (Pettus Aff., March 26, 2024, ¶ 6.) The Property was a family farm which became too difficult for Pettus to maintain after her husband passed away in 2018. (Id., ¶ 6.) Pettus is currently 84 years old and resides in Kentucky with her daughter. (Id., ¶¶ 2, 4.)

Developer is in the business of land acquisition and development. (Complaint, ¶ 12.) Developer sought to purchase the Property to develop a residential subdivision with dwellings to be constructed and marketed by its affiliate, Eastwood Homes Construction Partners, LLC, a residential homebuilder. (SJ Order, p.2, ¶ 2.)

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<sup>2</sup> Lancaster Tax Parcel Nos. 0003-00-052.00 and 0003-00-052.06.

### Initial Contract

On November 30, 2020 Developer and Pettus entered in a Contract for the Purchase and Sale of the Property ("Initial Contract"). (Complaint, ¶¶ 13-14.) The pertinent terms of the Initial Contract are as follows.

The Initial Contract provided Developer with a set amount of time (481 days) to pursue governmental approvals, permits, and other land entitlements for its desired development of the Property. Paragraph 5(b) specifically provides as follows:

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 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 Deposits (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 [Developer] being unable to achieve the Entitlement Period rezoning and other approvals, to [Developer]'s satisfaction, then [Developer] shall provide copies to [Pettus] of any non-proprietary reports, site plans, or similar third party due diligence materials produced and received by

[Developer] within the Inspection Period and any Entitlement Period....

(Initial Contract, § 5(b).)

The Initial Contract also provided Developer with two options to extend the deadline to close by a period of thirty days each (60 days total), both of which were exercised by Developer. (Contract, ¶ 4; Pettus Answer, ¶¶ 45, 47; Plaintiff Reply, ¶¶ 11, 13.)

Developer had the right to terminate the Contract in the event Developer was unable to secure land entitlements or unable to secure such land entitlements to Developer's satisfaction, within that time. (Contract, ¶ 5(b); SJ Order, p. 3, ¶ 8.) Under the Contract Pettus was required to cooperate with Developer as Developer pursued land entitlements prior to the closing deadline. (Contract, ¶ 13(c); SJ Order, p. 3, ¶ 7.)

Under the Initial Contract, closing of the purchase of the Property was required to occur by no later than 540 days after the effective date of the Initial Contract:

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.

(Contract, ¶ 8.)

Under the Initial Contract, Developer and Pettus agreed that "time is of the essence with respect to the parties obligations hereunder." (Contract, § 18(k).)

Amendment to Initial Contract

Developer exercised both extension options but was still unable to obtain land entitlements to its satisfaction prior to the deadline prescribed by the Initial Contract.

On July 18, 2022 Pettus and Developer entered into the First Amendment to Contract and Option to Purchase Real Estate dated July 18, 2022 ("Amendment") to extend the closing date and give Developer additional time to pursue land entitlements. (Pettus Answer, ¶ 49; Plaintiff Reply, ¶ 15.)

Pursuant to the Amendment Developer was provided with three (3) additional options to extend the initial closing date by a combined total of 400 days. Developer exercised all three of these additional options. (Amendment, ¶ 2(d); Pettus Answer, ¶¶ 50, 52; Plaintiff Reply, ¶¶ 16, 18.)

The Amendment further revised the deadline for closing as follows ("Closing Date Provision"):

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 (emphasis added).) The language used in the Closing Date Provision of the Amendment was identical to the closing date provision in Paragraph 8 of the Initial Contract with the only difference being that a firm date (September 28, 2023) was substituted in the place of a calculation of days (540 days from effective date) to serve as the outside closing date.

Except as modified in the Amendment, the Initial Contract remained in full force and effect. (Amendment, ¶ 1.)

Developer Elects not to  
Close on Purchase of the Property

On September 18, 2023 Pettus sent a notice to Developer reminding Developer that the Contract<sup>3</sup> had not been further amended and that Pettus was ready, willing, and able to close by September 28, 2023. (Pettus Answer, ¶ 53, Ex. C; Plaintiff Reply, ¶ 19.)

On September 27, 2023 Heath Myers, Pettus' real estate attorney, delivered all executed seller closing documents, with the exception of the deed, to Developer's closing attorneys at Costner Law Group. (Ex. C, Pettus Aff., ¶ 14; Ex. D, Myers Aff., ¶ 20.) Pettus had executed and delivered all documents necessary to deliver exclusive possession of the Property to Developer by September 28, 2023 as well as all

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<sup>3</sup> Contract means and refers to the Initial Contract as amended by the Amendment.

documents necessary to transfer all Property ownership rights that Pettus held with respect to the Property as of the closing date to Developer. (Myers Aff., ¶¶ 14-15.) On September 28, 2023 counsel for Pettus delivered the executed deed to the Property to Developer's attorneys. (Myers Aff., ¶ 21.) Neither Developer nor Developer's legal counsel ever notified Pettus or Pettus' attorney of any deficiencies or omissions in the executed seller closing documents. (Myers Aff., ¶ 22.)

Developer did not close on the purchase by September 28, 2023. (Pettus Answer, ¶ 55; Plaintiff Reply, ¶ 21; Myers Aff., ¶ 23.)

On September 29, 2023 counsel for Pettus sent a letter to Developer notifying Developer that it had failed to close and providing Developer with an additional thirty (30) days to close. (Pettus Answer, ¶ 56, Exhibit D; Plaintiff Reply, ¶ 22.) Developer did not close within this additional thirty-day period. (Pettus Answer, ¶ 57; Plaintiff Reply, ¶ 23.)

On November 1, 2023 counsel for Pettus sent a letter to Developer confirming that the Contract was terminated and of no further force and effect. (Pettus Answer, ¶ 58, Exhibit E; Plaintiff Reply, ¶ 24.)

## ARGUMENTS

### **I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF JANE PETTUS AS TO DEVELOPER'S BREACH OF CONTRACT CLAIM. (APPELLANT'S ISSUE NOS. 2-3)**

#### **A. Standard of Review**

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). "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56(c), SCRPC: summary judgment is properly upheld when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Wells v. City of Lynchburg, 331 S.C. 296, 301, 501, S.E.2d 746, 749 (Ct.App.1998); see Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). "In reviewing a grant of summary judgment, the appellate court is limited to the evidence that was before the trial court and applies the same standard of review as did the trial court." Wells, 331 S.C. at 301, 501, S.E.2d at 749 (internal citations omitted).

"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).

**B. Dispositive Issue; Law of this Case**

Developer's sole claim against Pettus is one for breach of contract. "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).

The existence of the contract is not in dispute. The Contract between the parties governing the purchase and sale of the Property consists of two writings: (1) the initial Contract for Purchase and Sale dated November 30, 2020 ("Initial Contract") and (2) the First Amendment to Contract and Option to Purchase Real Estate dated July 18, 2022 ("Amendment"). (Plaintiff Complaint, ¶¶ 13, 22, Ex. A, Ex. B.)

With respect to the second element, the purported breach forming the basis for Developer's claim, and the related timing of such breach, was not clear for much of the litigation. Until the hearing on Pettus' First Summary Judgment Motion on June 26, 2024, Developer was asserting that the breach was Pettus' failure to obtain all of Developer's land entitlements for Developer. (See Complaint, ¶¶ 51-52.)

But realizing the weakness, and absurdity, of this position, Developer pivoted and abandoned its initial theory of the case. After the conclusion of discovery, the record became clear that the only purported breach actively claimed by Developer was Pettus' failure to cooperate with Developer in its pursuit of land entitlements for her Property after the outside closing date (September 28, 2023).

The trial court properly found that the record does not contain any evidence that Pettus failed to cooperate with Developer or otherwise breached the Contract at any point during or prior to September 28, 2023. (Order, pp. 4, 5.) Further, the trial court correctly found that 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. (Order, pp. 4, 5.) Developer has not challenged or appealed the trial court's ruling on these matters and these findings constitute the law of this case. See Dreher v. S.C. Dep't of Health & Env't Control, 412 S.C. 244, 249-50, 772 S.E.2d 505, 508 (2015) ("[S]hould the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings ... become the law of the case"); Cont'l Ins. Co. v. Shives, 328 S.C. 470, 474, 492 S.E.2d 808, 810 (Ct. App. 1997).

Accordingly, the trial court properly determined that the 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 [Developer] was required to close on the purchase of the Property, if at all, by September 28, 2023." (Order, pp. 5-6.)

**C. If Developer was to close on the purchase of the Property, it was required to do so by September 28, 2023**

"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).

The plain and unambiguous language of the Contract establishes that if Developer was going to close on the purchase of the Property, Developer was required to close by September 28, 2023.

The Contract explicitly prescribes for 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 very scenario presented in this case and defines the outcome. 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). Accordingly, if Plaintiff had obtained the Required Approvals<sup>4</sup> to its satisfaction, then the closing was required to take place within 30 days thereafter. Otherwise, the closing was required to take place by September 28, 2023.

The express language of the Closing Date provision is consistent with the Contract as a whole, the terms of which

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<sup>4</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.

balance Developer's right to pursue land entitlements against ensuring the Contract is of definitive duration.

The Contract provided Developer with an initial time period (461 days) in which to pursue its land entitlements.

(Initial Contract, ¶ 5(b).) Section 5(b) of the Initial Contract provides as follows:

Entitlement Period (Including Development Approvals). [Developer] 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 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 [Developer]'s sole satisfaction prior to Closing (the "Required Approvals"), and if the Required Approvals are not received or not approved to [Developer]'s satisfaction then, in the event [Developer] elects to Terminate on the basis of not receiving Required Approvals to [Developer]'s satisfaction then the initial Deposit and Additional Deposit (less any sums that are non-refundable to [Developer] pursuant to the terms of this Contract, which shall be released to [Pettus]) may be released to [Developer] .... If termination of this Contract occurs due to [Developer] being unable to achieve the Entitlement Period rezoning and other approvals, to [Developer]'s satisfaction, then [Developer] shall provide copies to [Pettus] of any non-proprietary reports, site plans, or similar third party due diligence materials produced and received by [Developer] within the Inspection Period and any Entitlement Period ....

If the time provided in 5(b) was insufficient, the Contract provided Developer with two (2) options to extend by

30 days (60 days total). (Contract, 4(b).) If this time was still insufficient for pursuing land entitlements, the parties executed the Amendment which provided Developer with an additional 400 days to pursue land entitlements. (Amendment, § 4(2)(d).) And if all this time was still insufficient, the Contract ultimately gave Developer the right to terminate the Contract prior to the Closing Date, though there was nothing restricting Developer from closing on the purchase of the Property prior to securing land entitlements.

Viewing the clear and unambiguous language of the Closing Date provision prescribed by Section 3 of the Amendment in light of the "time is of the essence" clause and in the context of the entire integrated Contract as a whole, it is clear that the trial court properly ruled that if Developer was going to close on the purchase of the Property, it was required to do so on or before the outside closing date of September 28, 2023.<sup>5</sup>

#### **D. Developer's Arguments are Unavailing**

##### **1. Developer conflates independent issues**

Developer argues that it was not required to close by September 28, 2023. In doing so, Developer improperly conflates two separate and distinct issues addressed by the

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<sup>5</sup> This is not a case where Pettus refused to allow Developer to close immediately after September 28, 2023. Though not required under the Contract, Pettus gave Developer an additional 30 days after September 28, 2023 in which to close.

Contract: (1) whether Developer was required to close *at all* under the Contract and (2) when Developer was required to close on its purchase of the Property, if Developer elected to do so.

Developer was not required to close on the purchase of the Property. The Contract specifically afforded Developer the right to forego closing on the purchase of the Property if Developer did not obtain land entitlements or even if Developer obtained land entitlements but they were not to Developer's satisfaction. The decision of whether to close on the purchase of the Property was Developer's to make. This was abundantly clear in the trial court order.

But this case is not about whether Developer had to close on the Property; rather, this case is about when Developer had to close on the purchase of the Property, if it was going to do so. On this issue, the express language of the Contract establishes that this must occur upon the "earlier of (i) thirty (30) days after the receipt of the Required Approvals, or (ii) September 28, 2023." (Amendment, ¶ 3.)

In short, the Contract afforded Developer the discretion to determine *if* Developer closed on the purchase of the Property while simultaneously prescribing *when* that closing would need to occur, if it was to occur at all.

## **2. Developer's interpretation is patently unreasonable**

Developer's argument boils down to the following: the Contract provision that requires closing to 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" lacks any meaning or purpose - it is superfluous. Developer contends instead that the Contract is of indefinite duration. According to Developer: we will close "once we get the permits and approvals we need to be able to develop her property into a residential neighborhood." (Tr. of Hearing, p. 34:17 - 35:3; see also MTS 30(b)(6) Dep., pp. 160:6 - 163:24.)

"An interpretation that renders some terms meaningless is unreasonable." Ace Ins. Co. v. Zurich Am. Ins. Co., 59 S.W.3d 424, 428-29 (Tex. App. 2001); Dow v. Billing, 224 A.3d 244, 251 (Me. 2020) ("An interpretation that renders portions of a contract redundant or superfluous ... is not reasonable."); see also Midland Ins. Co. v. Delta Lines, Inc., 530 F. Supp. 190, 195 (D.S.C. 1982);

Developer's purported interpretation of the Contract is untethered from the language of the Contract, strips the Contract of the closing date provision expressly agreed upon by the parties, and contradicts every provision of the Contract dealing with time and sequence of events. To even

consider Developer's interpretation, one would need to accept as true the fallacy that each of the following terms of the Contract are and have always been meaningless and superfluous: the provision in Section 5(b) providing that Developer shall have 481 days from the Effective Date to pursue land entitlements; the provision in Section 4 providing Developer with options to extend the time before closing under the Initial Contract; the provision in Section 8 of the Initial Contract providing for the original closing date under the Initial Contract; and the entire Amendment providing Developer with an additional 400 days to pursue land entitlements.

Developer's purported interpretation yields an absurd result in which time is of the essence of the Contract (Contract, § 18(k)), yet every provision dealing with time in the Contract is meaningless. As such, Developer's argument is patently unreasonable.

### **3. The Contract is not ambiguous**

"Whether an ambiguity exists in the language of a contract is a question of law." Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of

the customs, practices, usages, and terminology as generally understood in the particular trade or business." Id. "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) (emphasis added).

"The terms of a contract are not ambiguous merely because the parties disagree as to their interpretation." Stenger v. LLC Corp., 819 N.E.2d 480, 484 (Ind. Ct. App. 2004). The alternative interpretation being advanced by the opposing party must be *reasonable*. See S. Atl. Fin. Servs., Inc., 349 S.C. at 80, 562 S.E.2d at 482. "An interpretation that renders some terms meaningless is unreasonable." Ace Ins. Co. v. Zurich Am. Ins. Co., 59 S.W.3d 424, 428-29 (Tex. App. 2001); see also Midland Ins. Co. v. Delta Lines, Inc., 530 F. Supp. 190, 195 (D.S.C. 1982); Dow v. Billing, 224 A.3d 244, 251 (Me. 2020) ("An interpretation that renders portions of a contract redundant or superfluous ... is not reasonable.")

In Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 676 S.E.2d 139 (Ct. App. 2009) this Court emphasized the need to assess the reasonableness of competing interpretations when determining whether a contract is ambiguous. In Laser Supply the parties presented alternative

interpretations of a construction contract. The appellant argued that the contract was ambiguous as to whether the contract called for completion of work on a "per building" basis or completion of work when the specified quantities of materials had been exhausted. The trial court held that the contract was not ambiguous. This Court upheld the trial court finding that despite the competing interpretation, only the "per building" interpretation was reasonable:

Reading the contract as a whole, the only reasonable interpretation of the scope of work provisions is that the parties intended for remediation work to be performed on all of the buildings listed in the payment schedule. If the parties had intended for completion of work to be reached when the specified quantities of materials had been exhausted, there would have been no logical reason for them to have included language addressing change orders for use of quantities exceeding specified limits.

Id. at 335-36, 676 S.E.2d at 144.

In this case Developer does not claim that the Contract contains a competing closing date or that there is uncertainty as to the specific trigger events specified in the Closing Date provision. Instead, Developer simply seeks to strip the Contract of the closing date provision expressly agreed to by the parties and which gives the Contract a definitive duration.

If the parties intended for the Contract to remain open for as long as Developer desired, without bounds, then there

was no logical reason for the parties to specify the amount of time afforded to Developer to pursue land entitlements, provide Developer with options to extend the entitlement period, specify that closing shall occur upon the earlier of two events (once in the Initial Contract and again in the Amendment), or execute an Amendment that provided Developer with 400 additional days to pursue land entitlements. See Laser Supply, 382 S.C. at 335-36, 676 S.E.2d at 144.

Accordingly, the only reasonable interpretation of the Closing Date Provision in the context of the entire integrated Contract as a whole, is that if Developer was going to close on the purchase, it was required to close by September 28, 2023.

**II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONSIDERING PETTUS' SUMMARY JUDGMENT MOTION FILED AFTER THE CLOSE OF DISCOVERY ON JULY 28, 2025. (APPELLANT'S ISSUE NO. 1)**

**A. Standard of Review**

The decision by a trial judge to hear and consider a subsequent motion for summary judgment is subject to an abuse of discretion standard of review. See Dorrell v. S.C. Dep't of Transp., 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004); Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997). The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.

Halverson v. Yawn, 328 S.C. 618, 621, 493 S.E.2d 883, 884 (Ct. App. 1997).

"An abuse of discretion arises in cases where: (1) the judge issuing the order was controlled by some error of law; or (2) the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support. Appellant has the burden of showing the trial judge's order was arbitrary." Elliott v. Richland County, 327 S.C. 175, 179, 489 S.E.2d 195, 197 (1997).

#### **B. Applicable Law**

Under South Carolina law, it is well-established that it is not an abuse of discretion for a trial court judge to hear and grant a second motion for summary judgment after significant discovery has been conducted between motions.

"A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. The denial of summary judgment does not establish the law of the case...." 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 once new evidence is gathered." Smith v. Breedlove, 377 S.C. 415, 421, 661 S.E.2d 67, 70-71 (2008) (holding that "the circuit court did not err in hearing

[defendant's] second motion for summary judgment after discovery had taken place"); see also Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) (finding that subsequent motion for summary judgment is appropriate where substantial discovery had been conducted in between motions).

**C. Development of the record between the First Motion and Second Motion**

The dispositive issue in this breach of contract case is whether the Contract required Developer to close - if it elected to close at all - by September 28, 2023. However, this issue is only dispositive if there is no factual issue in dispute as to the specific acts and omissions constituting the purported breach and the timing thereof. Of particular importance in this case was the factual issue of whether Developer alleged a breach by Pettus *prior* to September 28, 2023.<sup>6</sup> This point is of critical importance to understanding the development of the record between the Motion for Summary Judgment filed by Pettus on March 27, 2024 ("First Motion") and the subsequent Motion for Summary Judgment filed by Pettus almost a year and a half later, after the close of discovery, on July 28, 2025 ("Second Motion").

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<sup>6</sup> If Pettus had breached the Contract or otherwise impeded Developer's ability to close by September 28, 2023, the Closing Date would likely not be the dispositive issue.

Developer filed this civil action on November 22, 2023. Pettus filed the First Motion on March 27, 2024 - four months into the case - before Developer had served any written discovery or subpoenas, and prior to the parties taking any depositions. (Order, p. 9.)

In opposing the First Motion, Developer's primary argument was that the First Motion was premature and could not be granted because it would deprive Plaintiff of a full and fair opportunity to conduct discovery.<sup>7</sup> (See Patton Aff., Feb. 23, 2024; Plaintiff Memo in Opposition, July 5, 2024, pp. 16-20.) Plaintiff filed a separate Motion for Continuance seeking to delay the hearing on the same grounds, reinforcing the message to the trial court that the First Motion was far too early, and that the facts needed to be developed before the issue presented in the First Motion could even be considered.

In addition to Developer's prematurity argument, Developer submitted multiple affidavits and exhibits into the record to suggest that the case would present disputed issues of material fact. Most notably, Developer submitted an affidavit from its civil engineer, Brandon Pridemore, which contained an assertion that suggested to the trial court that

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<sup>7</sup> See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (stating that "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery").

Pettus may have breached the Contract and impeded Developer's ability to obtain land entitlements *prior* to September 28, 2023. Mr. Pridemore's affidavit stated as follows: "I understand that Ms. Pettus wanted to close on the Contract on or before September 28, 2023, but the parties did not close on the Contract because MTS had not received all governmental approvals and permits necessary to complete the Development *due to lack of cooperation by Ms. Pettus.*" (Pridemore Aff., ¶ 22) (emphasis added).

During oral arguments on the Prior Motion, Counsel for Developer further sowed the seed of doubt as to the dispositive nature of the issue presented:

Your Honor, the facts of this case involve a lot more than what [counsel for Pettus] wants to suggest they are. That's one of the reasons we said, Mr. Patton put in an affidavit with respect to the other discovery needed to be done. One of your options, your honor, is just to defer ruling under 56(f) and say: There's too much going on here. I need to spend more time. I need to let the parties develop the record, then we'll come back and consider it. (Tr. of Hearing, 6/26/24, p. 33:11-20.)

Developer's arguments achieved the desired result. 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. (Prior SJ Order, p.1.)

**D. The trial court properly considered the Second Motion after the close of discovery**

South Carolina caselaw makes clear that the touchstone for determining when a trial court may exercise its discretion in deciding whether to hear (or not hear) a subsequent motion for summary judgment is simply whether discovery has been conducted between the motions.

Based on this standard, the trial court did not err in hearing the Second Motion given the substantial development of the record through discovery. Between the filing of the First Motion and the Second Motion, the parties conducted extensive amounts of discovery in the case including, among other things, multiple sets of written discovery, subpoenas on third parties, and twelve depositions.<sup>8</sup> (Order, Dec. 4, 2025, p. 10.)

However, in this case, the backdrop for the Second Motion was fundamentally different than the backdrop of the First Motion given the development of the record through discovery. Because the discovery was complete and the record fully-developed by the time of the Second Motion, Developer could no

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<sup>8</sup>In total Developer took six depositions: Jane Pettus; Allison Pettus and Scott Pettus, Jane Pettus' children; Davis Riddle, the attorney that represented Pettus with respect to the Initial Contract; Heath Myers, the attorney that represented Pettus with respect to the Amendment; and Rob Bilbro, Pettus' real estate broker. Pettus also took six depositions: 30(b)(6) of Developer; Kathy Garner, Developer's real estate broker; and 4 of Developer's agents and representatives. (Supp. Mem. in Support, Sep. 23, 2025, p. 2; Pettus Dep., p. 1; A. Pettus Dep, p. 1; S. Pettus Dep., p. 1, Riddle Dep., p.1; Myers Dep., p. 1; Bibro Dep., p. 1; Developer Dep., p. 1; Motion, July 2, 2025, p. 2, ¶ 4.)

longer contend that the Motion was premature. Furthermore, discovery subsequent to the First Motion had confirmed the nature and timing of the purported breach by Pettus and more importantly, the absence of any evidence to suggest that Pettus had breached the Contract prior to September 28, 2023.<sup>9</sup> Accordingly, the question as to whether the Contract required Developer to close, if at all, by September 28, 2023 was solidified as the dispositive issue in the case.

Based on the foregoing, the trial court did not abuse its discretion in hearing and ultimately granting Pettus' Second Motion.

#### **CONCLUSION**

For the reasons stated above, the Order Granting Summary Judgment in favor of Pettus should be affirmed and this appeal dismissed with prejudice.

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<sup>9</sup> Most notably, Brandon Pridemore subsequently testified that in his Affidavit he was not suggesting that Pettus failed to cooperate with Plaintiff prior to September 28, 2023, and that there is nothing to lead him to believe that Pettus failed to cooperate with Plaintiff in its pursuit of land entitlements at any point prior to September 28, 2023. (Pridemore Dep, pp. 219:22 - 220:16.)

Respectfully submitted,

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