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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Court of Appeals Case No. 2022-000580
Supreme Court Case No. 2026-001324
Circuit Court Case No. 2018-CP-46-03726

The Grapevine of Riverwalk, Inc.,

Petitioner-Respondent,

v.

Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC,

Respondents-Petitioners.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Petitioner-Respondent ("Grapevine") files this Reply to the Respondent-Petitioner's ("Riverwalk") Return to its Petition for Writ of Certiorari of the Court of Appeal's reversal of the trial court's rulings on specific performance and the remand of the unpreserved issue of the award of attorneys' fees. Riverwalk fails to respond to many of the issues raised in Grapevine's Petition and misstates the underling basis for them. It also ignores substantial issues presented. Respectfully, the issues raised by Grapevine are worthy of this Supreme Court granting its Petition and reversing the two issues which it raises. [1]

Riverwalk acknowledges this Supreme Court may grant a writ of certiorari to address "special or important reasons" as required by Rule 242(a) SCACR. It then goes on to argue this case presents no such reasons. Respectfully, this case presents such special or important reasons, and the opinion of the Court of Appeals clearly conflicts with the holdings and reasoning of this Supreme Court as well as precedents from the Court of Appeals on the two issues raised in Grapevine's Petition. As such a grant of Grapevine's Petition for Writ of Certiorari on the two issues it raises is appropriate and in the interest of justice.

[1] Riverwalk states Grapevine in its Petition changed the language of the verdict form on Question 3 from "a negligent misrepresentation" to "any negligent misrepresentation". (Return p. 3). Grapevines apologizes as this was a typographical error. Grapevine cited the actual verdict form and was not attempting anything nefarious. Further, the negligent misrepresentation verdict awarded by the jury is not at issue in Grapevine's Petition.

ARGUMENT

I. The Court of Appeals overlooked and misapplied South Carolina law and the facts of this case in reversing the trial court's grant of specific performance and in doing so issued a ruling on specific performance and option agreements inconsistent with South Carolina law.

In overturning the trial court's award of the remedy of specific performance, the Court of Appeals stated "Appellants [Riverwalk] argue[s] the option could not be fulfilled without execution of a PSA [Property Sale Agreement also known as the "Option"], including a contemporaneous escrow deposit. Riverwalk continues to asserts that Grapevine had no purchase contract for the court to specifically enforce, but fails to address the rule set forth in 92 *C.J.S.* Vendor and Purchaser section 172 (2025). This was cited with approval in the Court of Appeal's opinion but not applied. This provision is consistent with the law set forth by this Supreme Court and other opinions of the Court of Appeals. C.J.S. recognizes that "an option must be accepted according to its terms, thus if the option prescribes certain conditions for its acceptance, those conditions must be performed while the option is still outstanding **unless** they are waived **or the optionor makes compliance impossible."** (emphasis added).

Riverwalk's Return continues to ignore this general rule for obvious reasons. Riverwalk made compliance with the technical terms of the Option impossible by its own actions. The jury found in Grapevine's favor on its breach-of-contract claim concerning the option agreement. Riverwalk characterizes this case as a simple commercial-lease dispute unworthy of this Supreme Court's attention. But this is not, as Riverwalk claims, an attempt to "reframe this case into broad questions of equity and tort …." (Return p. 3). Nor does Riverwalk attempt to address the substantial evidence showing that it made compliance impossible. Its repeated refrain is that there was no contract to enforce. That argument overlooks—or, in some instances, ignores entirely—the issue recognized in the Court of Appeals' *C.J.S.* reference and other applicable authority: Riverwalk, as Optionor, made strict compliance with the Purchase and Sale Agreement contained in the lease and Option impossible. Riverwalk's Return also fails to address this Supreme Court's holding that "when the accompanying incidents are inequitable and show bad faith, such as concealment, misrepresentations, undue advantage, oppression on the part of the one who obtains the benefit… [such] may easily induce a court to grant relief, defensive or affirmative." *Holly Hill Lumber Co. v. McCoy,* 201 S.C. 427, 442, 23 S.E.2d 372, 378 (1942); *cf. Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967) (promisee is not required to prove complete performance when performance was made impossible by the promisor's actions and through no fault of the promisee). The Court of Appeal's opinion is contrary to and ignores applicable precedent of this Supreme Court as set forth above.

Riverwalk offers no evidence—and the Court of Appeals identified none—to contradict the trial evidence that Grapevine was ready, willing, and able to close on the purchase, but for Riverwalk's actions that made closing impossible, or, more precisely, Riverwalk's failure to take the steps required for Grapevine to exercise its rights under the Purchase and Sale Agreement. Rather, Riverwalk simply dismisses Grapevine's arguments and applicable precedent by asserting this is a simple commercial dispute which involves nothing "special or novel" justifying granting the Petition for a Writ of Certiorari.

Riverwalk 's Return states Grapevine does not argue the Court of Appeals applied the wrong law or that its opinion contradicts a prior decision of this Supreme Court. That is not the case. As set forth in Grapevine's Petition, key legal principles (which are supported by and compelled by South Carolina law including opinions of this Supreme Court) relating to options and the remedy of specific performance were not considered or addressed by the Court of Appeals. Such action contradicts the law as set by this Supreme Court and justifies the grant of Grapevine's Petition.

Without restating the arguments and case law in Grapevine's Petition, the followinglegal principles and facts establish why this Supreme Court should review the reversal of the grant of specific performance. First, specific performance is an equitable remedy available in certain cases as a remedy for breach of contract. It should be determined by the specific facts and circumstances of each case. This review of specific facts and circumstances applies not only to actions of Grapevine, but to those of the Optionor, Riverwalk. The specific performance section of the opinion in issue ignored the fact Riverwalk came before the trial court with unclean hands. Riverwalk's Return simply glosses over its behavior and those of agents and others acting on its behalf. Also missing from Riverwalk's return is the fact that the jury determined Riverwalk breached the lease agreement in regard to the lease's option to purchase. (R.A. 19-20).

Riverwalk also ignores Grapevine's argument that the specific performance section of the Court of Appeals' opinion did not address applicable equity maxims, much less apply them to the facts of this case. Instead, it invents the excuse, unsupported by the evidence and as far as Grapevine can determine unsupported by applicable law, that it was doing all it could do but it would have had to "hurried up and formed a complicated, multi-building, multimillion-dollar (sic) condominium regime for the sale of one unit." (Return at p. 16). Riverwalk knowingly entered this contractual obligation. The lease gave the option to purchase it to Grapevine at a specific date. A Purchase and Sale Agreement template with blanks as to the address of the property and the name of an escrow agent was part of the lease. Likewise, Riverwalk was responsible for preparing and recording the necessary horizontal property regime documents.

Riverwalk's key witness, Mark Mather, who was in charge of the development, described Riverwalk's obligations and the required closing as being no more difficult than closing on a house. Counsel for Grapevine offered to assist in preparing the regime documents. Riverwalk did not take him up on this offer but rather sat on and failed to execute regime documents, which the parties were actually in agreement on, and repeatedly provided false closing dates which never came to fruition.

It is reasonable to expect that after Grapevine's counsel gave notice of Grapevine's intent to purchase and proposed a closing date, Riverwalk or its representatives would have communicated its position that no purchase contract existed, requested the escrow deposit, or identified the alleged complications Riverwalk now claims in its Return prevented the closing. They did not. These were only raised when Grapevine brought suit regarding the various actions of Riverwalk. As explained in Grapevine's Petition, the evidence shows Riverwalk led Grapevine along but never allowed the transaction to close. Riverwalk's position before this Supreme Court—that closing did not occur was because Riverwalk would have had to act quickly to meet the deadline and fulfill the responsibilities it agreed to in the Lease and Option—strains logic and reason.

The Court of Appeals' conclusion that the parties lacked a meeting of the minds on all essential terms is contrary to the evidence and fails to address several key issues. While the opinion does not dispute that Grapevine gave notice of its intent to exercise the option to purchase and that Riverwalk received that notice; it does not take into account Riverwalk's conduct—properly considered by the trial court—in obstructing the sale it had contractually agreed to in the lease. That holding conflicts with South Carolina law: a party may not thwart the exercise of an option contained in a lease and then rely on its own obstruction to avoid its obligations. Likewise, Riverwalk cannot claim there was no meeting of the minds because it failed to do what it was required to do after learning that Grapevine was exercising the option. If allowed, specific performance would never be an allowable remedy for breach of contract under any set of facts.

Specific performance is an equitable remedy and must be considered along with the jury's finding that Riverwalk—specifically Riverwalk River District Building 6, LLC, an Appellant and the optionor—breached its lease agreement with Grapevine regarding both the lease's Option to purchase the property in dispute (as well as the use of common elements). (R. A. 19-20). Given the Court of Appeals' reliance on *Ingram*, Grapevine asks this Supreme Court to review that decision and the Court of Appeals' application of it carefully. Properly understood, *Ingram* supports the trial court's award of specific performance here. Although the Court of Appeals cited *Ingram*, it failed to follow that case's holding and reasoning. Instead, the Court of Appeals—and Riverwalk in its Return—cherry-pick isolated language, take it out of context, and use it to argue that no enforceable contract existed and that specific performance was therefore unavailable. That argument ignores the central point: Riverwalk repeatedly failed to do what it had promised, and both Riverwalk and the Court of Appeals allowed that failure to become the basis for avoiding the contract altogether, enabling Riverwalk simply to walk away. Although Riverwalk's Return states it is speculation, evidence at trial established it benefitted financially from simply ignoring the Option. Specific performance exists to prevent precisely that result, a principle reflected throughout this Supreme Court's specific-performance decisions.[2]

Ingram provides that to compel specific performance, a court must find: (1) clear evidence of a valid agreement; (2) that the agreement has been partly performed by one party with the other party's approval; and (3) that the party seeking specific performance has performed, or remains ready, willing, and able to perform, its contractual obligations. In *Ingram*, the court denied relief because the tenant seeking specific performance acted inequitably and with unclean hands by

[2] Riverwalk's and the Court of Appeals' reliance on *Alexander's Land Co. L.L.C. v. M & M & K Corp.*, 390 S.C. 582, 703 S.E.2d 207 (2010), is equally misplaced. *Alexander's Land Co.* dealt with a requirement to enter into a purchase agreement for the assets of a restaurant and pay for those assets in full before it could exercise an option to purchase the real property. It also did not address, or even have an allegation, much less evidence, that the optionor took any steps to make either compliance with the asset-purchase requirement or the option to purchase real estate impossible.

misleading the landlord, had an improper ulterior motive, and lacked the funds necessary to exercise the option. Those facts are not present here. Grapevine had the necessary funds, the essential terms were agreed upon, and, as the trial court found, Grapevine was ready, willing, and able to do everything required to exercise the Option. Grapevine also gave timely notice, and there was no evidence—or any finding by the trial court—that Grapevine acted with unclean hands.

Riverwalk's Return simply rests on the same argument adopted by the Court of Appeals: that no enforceable contract existed between the parties. But, as Grapevine has explained throughout its filings—and as Riverwalk ignores—Grapevine's right to purchase the property was set forth in the lease itself, which is a contract. *See Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31 (Ct. App. 2010). The Option was a term of that lease. Grapevine was not required to prove complete performance (such as unilaterally selecting a random escrow agent as the Court of Appeals stated it should do) when Riverwalk's own conduct made performance impossible. *Cf. Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967) (denying specific performance where the party seeking it made compliance impossible).

The trial evidence also established facts that the Court of Appeals' opinion and Riverwalk's Return fail to address. Those facts are central to whether an option contained in a lease may be enforced especially after the jury found that Riverwalk breached its contract with Grapevine concerning the option. Grapevine gave notice of its intent to purchase. (R. pp. 648, 674-675; R. p. 1262 ¶ 33.) On July 26, 2017, Brian Wilson, counsel for Grapevine regarding the Option to Purchase, sent Building 6, "Attn: David Williams," a letter titled "Exercise of Option to Purchase." That letter gave notice of Grapevine's intent to exercise the Option to Purchase and **specified a proposed closing date of February 2, 2018**. (R. pp. 688-690; R. p. 1298) (emphasis added). Riverwalk never responded by requesting an executed Purchase and Sale Agreement or a deposit. Grapevine's counsel also asked Riverwalk to “take the necessary steps to create [a] horizontal property regime and provide me with a copy of such documentation.” (R. p. 1298; R. pp. 690-691.)

Travis Hege, an employee of Appellant GRH Development, which is collectively part of the entities designated in this Reply as Riverwalk, responded on October 13, 2017 “Good morning, sorry for the delay. I have been in and out of the office lately… I am the Development Director; nonetheless **I look forward to working with you to get this completed.** I will let you know once I determine **what we need to do on our end** and will touch base to get this completed. (R. pp. 1391-1402.) (emphasis added).

On October 26, 2017, Grapevine’s attorney responded to Mr. Hege, “Please confirm we will be able to close on this condo unit on February 2nd. Please advise if I can assist you in any fashion, I have experience in setting up horizontal property regimes.” (R. pp. 1391-1402.) Mr. Hege replied: “**We are working on the condo documents. I will give you an update once I hear back from the lender and our attorney. Sorry for the delay.**” (R. pp. 1391-1402.) (emphasis added).

In November 2017, Attorney Todd Brockman contacted Grapevine’s attorney, presenting himself as Building 6’s attorney and requested that Grapevine’s attorney “please direct any future emails to my attention.” (R. pp. 693-694.) On April 12, 2018, Mark Mather sent a text message proposing a closing date of April 17, 2018. (R. pp. 701-707, 709-712; R. pp. 1305, 1363-1387.)[3]

None of these communications nor any other communications stated the option was not properly exercised. None argued or stated it was unenforceable, invalid or that there was no meeting of the minds. Rather they are consistent with each side fully understanding what was promised and what steps were needed so the property could be purchased. This must be viewed

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[3] Why would he propose a closing date if there was no contract to close on or no meeting of the minds between the parties?

with the **undisputed fact in mind that Grapevine made clear, and Riverwalk never disagreed and in fact understood that but for the right to purchase the property, it would never have entered the lease.**

Further contradicting Riverwalk's argument and the Court of Appeal's holding that there was no contract and no meeting of the minds is the fact that Todd Brockman, an attorney for Riverwalk, wrote the land surveyor for the property "where do we stand on getting the condo plat for the building completed [?] **we have a contract that requires selling the space in a couple of weeks, so we need to get this done as soon as possible**." (R. p. 694; R. p. 1304) (emphasis added). Riverwalk's own attorney conceded it had a contract which required closing before a certain date.

Further, on January 30th Mark Mather sent an email to Petitioner's attorney Brian Wilson. Mr. Mather sent draft forms of the master deed, bylaws, and architectural plans, all of which needed to be filed with the Register of Deeds for York County before any closing could take place. (R. pp. 695-696.) Again, **he nor anyone asserted non-compliance with the PSA or Option until this litigation was filed.** Simply put, Riverwalk's arguments in this case are after the fact rationalizations and attempts to explain why it acted as it did or failed to act as it was required to do.

Although Riverwalk used every excuse and even untruths to avoid closing, the record establishes Grapevine was always ready, willing and able to close on the transaction from its first proposed closing date through the trial of this case. Determining whether specific performance is appropriate is a matter of sound judicial discretion. Our courts are required to rely on the equity maxim: "He who seeks equity must do equity." *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967). Such cases must be determined based on their own specific facts and circumstances. In this case, the Court of Appeals failed to give any consideration to the undisputed testimony cited above. Riverwalk simply ignores this testimony in its Return and instead raises a new defense: it was too busy to close, or the regime documents were too complicated to prepare (when they were prepared and agreed to but never filed for unexplained reasons) or there was no contract to close on. All of these are not proper defenses to the remedy of specific performance. Riverwalk's own witnesses contradict each of these arguments by way of their testimony and evidence offered at trial. The trial court heard the evidence, viewed the witnesses and carefully ruled on the grant of specific performance. Riverwalk purposefully failed to perform its obligations of the Option contained in lease and then attempted to (and the Court of Appeals allowed it to successfully do so) prevent specific performance when it was clearly the appropriate remedy.

The Court of Appeals appeared to misconstrue or conflate the rules applicable to a simple option and those found in a lease. Regardless of which is applied, Grapevine did all it could do and was ready, willing, and able to close on the date called for in the Option (and other dates proposed by Appellants). If a party can avoid specific performance by simply not performing simple tasks such as filing an agreed to Master Deed or naming an escrow agent, specific performance becomes a meaningless remedy. Such a result is inconsistent with the law. *See e.g. Mullins v. Benton*, 309 S.C. 85, 419 S.E.2d 838 (Ct. App. 1992) (neither side to an option, including the optionor, could invalidate the option based upon their own nonperformance); *Clardy v. Bodolosky*, 383 S.C. 418, 679 S.E.2d 527 (Ct. App. 2009) (Specific performance appropriate where purchaser substantially performed their part of the contract and gave [seller] substantially all that he bargained for).

II. The Court of Appeals overlooked and misapplied South Carolina law and the facts of this case in reversing and remanding the trial court's award of attorney's fees when the issue was not preserved for appellate review.

In issue five of the Court of Appeals' opinion, it ruled **all** of the issues raised by Appellants regarding attorney's fees awarded to Petitioner were **not preserved for review**. Notwithstanding this holding and the clear precedents on error preservation, the Court of Appeals went on to say in a footnote, however, that it was "troubled" by the redacted billing statements. Accordingly, the Court of Appeals reversed the trial court's award of attorney's fees, which by their own ruling was not preserved for appellate review, and remanded on this issue.

Petitioner respectfully asserts that if an issue is not preserved, then the Court of Appeals has no power or jurisdiction except "under the rarest and most compelling circumstances" to remand the issue and require the trial court to take actions relating to the unpreserved issue. Riverwalk's argument is that the issue was essentially preserved, citing case law which is not consistent with the facts of the case. The Court of Appeals found the attorneys' fee issue unpreserved. Simply being "troubled" does not allow it or Riverwalk to ignore an immeasurable number of cases establishing rules of issue preservation. As such, the Petition for Writ of Certiorari on the attorneys' fee remand should be granted and the determination of the trial court should be reinstated.

CONCLUSION

For the reasons set forth in Grapevine's Petition and this Return, its Petition on the issues of specific performance and attorneys' fees should be granted. As the trial court concluded, Riverwalk should not be rewarded for its behavior.

Respectfully submitted,

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