

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Derek DuBay,)

Plaintiff,)

vs.)

James E. Carter,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No. 2024-CP-23-05987

ORDER**RECEIVED****Sep 11 2026****SC Court of Appeals**

This matter comes before the Court on three post-trial motions: (1) Defendant James E. Carter's Motion to Alter or Amend pursuant to Rule 59(e), SCRPC ("Motion to Amend"); (2) Plaintiff Derek DuBay's Motion for Attorneys' Fees and Costs pursuant to Paragraph 23(A) of the parties' contract (the "Contract") and Rules 54 and 59, SCRPC; and (3) Defendant's Motion to Stay pursuant to Rule 62(b), SCRPC, Rule 241, SCACR, and S.C. Code Ann. § 18-9-170 ("Motion to Stay"). The Court heard all three motions on August 17, 2026, with counsel for all parties present. Having considered the record, the briefs and affidavits submitted, and the arguments of counsel, the Court makes the following findings.

On July 9, 2026, this Court entered an order (the "July 9 Order") following a bench trial, finding that Carter had entered into a binding contract and then defaulted on his contractual obligation to convey the property located at 113 Ridgeland Drive, Greenville, South Carolina (the "Property"), to DuBay, and ordering specific performance of the parties' Contract. The July 9 Order reserved the question of Plaintiff's entitlement to attorneys' fees and costs under Paragraph 23(A) of the Contract for further consideration and directed Plaintiff to submit a motion and supporting affidavit within twenty days.

Consistent with that directive, DuBay filed the Motion for Attorneys' Fees on July 29, 2026, supported by the Affidavits of Adam C. Bach and Samuel W. Outten, seeking \$130,877.29 in attorneys' fees and costs. Carter filed a Memorandum in Opposition on August 13, 2026. Carter filed his Motion to Amend on July 17, 2026, challenging the July 9 Order's findings on contract formation and the evidentiary standard applied. On August 13, Carter filed the Motion to Stay, seeking to stay enforcement of the July 9 Order pending resolution of the Motion to Amend and, if necessary, pending appeal. DuBay filed a Response in Opposition to the Motion to Amend on August 12, 2026.

ANALYSIS

Rule 59(e), SCRCP, permits alteration or amendment of a judgment only to correct a clear error of law, prevent manifest injustice, or address a misapprehension of the record. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). While a party may revisit a previously raised argument under Rule 59(e), relief requires a showing that the Court applied an incorrect legal standard, overlooked controlling South Carolina authority, or misapprehended the record—not a mere disagreement with the Court's assessment of the evidence. *Id.* Carter has not made that showing.

Our courts have explained that the difference between an ordinary contract case and one seeking specific performance "is not in the amount or degree of the certainty required, but in the extent of the certainty," that is, the certainty required must extend to all the particulars essential to enforcement of the contract. *White v. Felkel*, 222 S.C. 313, 322, 72 S.E.2d 531, 535 (1952); *Shirey v. Bishop*, 431 S.C. 412, 422, 848 S.E.2d 325, 330–31 (Ct. App. 2020). The July 9 Order found a contract by "clear evidence" and expressly stated that the finding and result would be the same

whether a preponderance or a clear and convincing standard applied; thus, the choice of standard would not alter the judgment.

The July 9 Order also cites to numerous other evidence showing the existence of a contract, including the Notice of Termination, the Disbursement Agreement, and Carter's contemporaneous emails and text messages signed or authored by Carter. In the Court's analysis, there is ample evidence that the Contract and the Addendum are sufficiently clear to enforce. S.C. Code Ann. § 32-3-10(4); *Springob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014). Dubai also partially performed his obligations under the Contract, such as arranging the appraisal and paying escrow funds with Carter's knowledge and tacit approval. *Player*, at 105-106, 382 S.E.2d at 894. In sum, there is clear evidence of the existence of a contract and of its terms, and the Motion to Amend is denied.

The Motion to Amend also takes issue with the July 9 Order's citations to the Addendum. But the Addendum is significant both because it is sufficient to constitute a contract and is itself evidence of the Contract. A modification of a written contract must itself satisfy the requisites of a valid contract and where, as here, an addendum modifies certain terms of an agreement while leaving others intact, it necessarily reaffirms the underlying agreement to the extent not contradicted by the modification. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989); *McJunkin Corp. v. City of Orangeburg*, 238 F.2d 528, 531 (4th Cir. 1956); *Beacon Terminal Corp. v. Chemprene, Inc.*, 75 A.D.2d 350, 354, 429 N.Y.S.2d 715, 717-18 (1980).

Turning to Dubai's Motion for Attorneys' Fees, Paragraph 23(A) of the Contract provides that, upon a finding of Seller default, Buyer may recover "attorneys' fees and all other direct costs of litigation." The July 9 Order found that Carter defaulted on his obligations under the Contract by failing to convey the Property to Dubai at closing, and the Motion to Amend does not disturb

that finding. DuBay is therefore entitled to recover his attorneys' fees and costs under the plain language of the Contract.

Carter opposes the Motion for Attorneys' Fees on three grounds: (1) that the Contract is not enforceable; (2) that certain fees sought are not recoverable; and (3) that equity weighs against recovery. The first ground is addressed by the Court's July 9 Order and above. The second relates to time spent responding to Carter's frivolous *pro se* filings, discovery misconduct, and fabricated legal citations, as detailed in this Court's November 21, 2025 Order. Carter claims such fees are not "direct costs of litigation" within the meaning of Paragraph 23(A). The Court disagrees. Carter's litigation conduct while proceeding *pro se* was not collateral to this case; it was conduct within this case that directly and substantially increased Dubay's cost of litigating the claim to judgment. Fees reasonably incurred responding to an opposing party's sanctionable conduct in the course of the litigation are direct costs of that litigation. Finally, equity is not a factor that courts consider when fees are authorized by contract. The factors are the nature, extent, and difficulty of the legal services rendered; the time and labor devoted to the case; the professional standing of counsel; the contingency of compensation; the fee customarily charged in the locality for similar services; and the beneficial results obtained. *Baron Data Sys. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). Even if equity was a factor, after consideration of the record of submissions, the Court would find the equities weigh in favor of awarding Dubay attorneys' fees. Therefore, having considered the factors set forth above and having reviewed the Affidavits of Adam C. Bach and Samuel W. Outten, the Court finds the fees and costs sought were reasonable and necessarily incurred, and the Motion for Attorneys' Fees is granted in the full amount requested, \$130,877.29. All such fees were incurred as a result of the Contract not being honored.

Finally, as to the Motion to Stay, Rule 62(b), SCRCP, authorizes the Court, in its discretion and upon such conditions as are proper, to stay execution of or proceedings to enforce a judgment. At the hearing, Carter indicated he plans to appeal this judgment and to seek supersedeas. To give Carter time to seek a stay at the Court of Appeals, the Court will impose a stay of its judgment for thirty-five (35) days from the filing of this Order with the Greenville County Clerk of Court.

THEREFORE, BASED ON THE FOREGOING, IT IS ORDERED:

1. Defendant's Motion to Alter or Amend is DENIED.
2. Plaintiff's Motion for Attorneys' Fees and Costs is GRANTED. Plaintiff is awarded attorneys' fees and costs in the amount of \$130,877.29. The Court directs the clerk to amend the Judgment in favor of Plaintiff Derek DuBay and against Defendant James E. Carter in that amount, in addition to the specific performance relief previously ordered.
3. Defendant's Motion to Stay is GRANTED. Enforcement of the July 9 Order, including any closing, conveyance or transfer of title, delivery of possession, recording of instruments, or other action required to consummate the court-ordered conveyance, is STAYED for a period of thirty-five (35) days from the date of filing of this Order.
4. This stay is granted without prejudice to Defendant's right to seek supersedeas pursuant to Rule 241, SCACR, following service of a notice of appeal, and without prejudice to Plaintiff's right to seek modification of the conditions of this stay. Nothing in this Order extends the time within which Defendant must serve and file a notice of appeal under Rule 203(b)(1), SCACR, which runs from receipt of written notice of entry of this Order.
5. The Court retains jurisdiction to enforce this Order and to address any further matters arising in connection with the stay, the fee award, or the closing and conveyance of the Property.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Derek Dubay vs. James E Carter

Case Number: 2024CP2305987

Type: Order/Stay

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)