STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C. A. No. 2024-CP-23-05987
Derek DuBay, Plaintiff,	)	**ORDER**
vs.	)	
James E. Carter, Defendant.	)	

This case was tried by this court on June 9, 2026. Having considered the testimony, exhibits and evidence, briefs of counsel, and arguments at trial, the court makes the following findings:

Plaintiff Derek Dubay commenced this action by filing a summons and complaint on October 9, 2024 alleging a single cause of action for specific performance of a written contract for the sale of real property located at 113 Ridgeland Drive, Greenville, South Carolina (the "Property"). Dubay also seeks an award of his attorneys' fees and costs pursuant to the contract. As noted below, this issue will be addressed (whether recoverable and, if so, in what amount) at a later hearing.

Many of the relevant facts in this case are uncontested. Defendant James Carter owns a chemical manufacturing business and has also owned, developed, and sold pieces of commercial real estate in the Greenville area over a number of years. Carter purchased the Property in 2011. At various times since 2011, Carter listed the Property for sale through his real estate agent Sara Chesney. Chesney is a licensed real estate agent with the brokerage C. Dan Joyner, d/b/a Berkshire Hathaway HomeServices C. Dan Joyner Realtors ("C. Dan Joyner"). Chesney is also Carter's former fiancé and lived with Carter at the Property until 2017. Evidence submitted to the court shows that Chesney listed the Property on Carter's behalf nearly continuously from December

2020 through April 2023. During the time Chesney listed the Property, the listing price fluctuated from $1,700,000.00 to $2,700,000.00.

Dubay is a transplant surgeon who relocated his family from Charleston, South Carolina to Greenville, South Carolina in Summer 2023. He retained realtor Susan Dodds, also of C. Dan Joyner, to help him find a permanent home in the downtown Greenville area. Dodds knew of Carter's interest in selling his home and showed the Property to Dubay with Carter's consent and permission. At some point after showing the Property to Dubay, Carter and Dubay met and became friends. They texted with one another and met socially on several occasions. The Property was a frequent topic of discussion and Susan Dodds followed up with Carter about Dubay's interest in purchasing the Property.

On April 29, 2024, Carter sent Dodds a text message with a video of the Property along with the message "$2 today only…" Dodds interpreted this to mean that Carter was willing to sell the Property to Dubay for $2 million if a contract was executed quickly. Dodds acted quickly, putting together a standard real estate contract dated May 1, 2024 with a purchase price of $2 million (the "May 1st Offer"), had Dubay sign it, and delivered it to Carter at the Property. After delivery, Carter texted Dodds and claimed that his "$2…today only" text was a "joke" but that he would consider an offer for $2.7 million.

Two months later, Carter decided to make his counteroffer official. On July 22, 2024, Carter emailed Chesney and asked her to "tweak" the May 1st Offer to change the purchase price to $2,775,000.00. He also directed that the commission for the sale of the Property would be split evenly between Chesney and Dodds, which is typical in a transaction where the buyer and seller are each represented by separate agents. He asked Chesney to revise other terms related to his time to vacate and items that would not be conveyed. Rather than prepare a new contract with these terms, Chesney redlined the May 1st Offer, so that the terms being revised were struck through and Carter's initials appeared next to the changes. Consistent with Chesney's previous representation of Carter as his listing agent, Carter initialed that he was represented in the transaction. Carter executed the revised May 1st Offer on July 23, 2024 (the "Counteroffer") at 2:05 p.m. via Docusign and it was transmitted via email from Chesney to Dodds at 9:16 p.m. that evening.

Dodds was in Paris, France at the time. She forwarded the Counteroffer to Dubay via Authentisign at 4:57 p.m. ET on July 24, 2024, noted that the Counteroffer expired at 8:00 p.m. that night, and noted that Carter had changed the closing date to August 13, 2024. Dubay countersigned the Counteroffer at 6:50 p.m. via Authentisign without making any changes and thereby ratified the contract (the "Contract'). Dodds then emailed the Contract to Carter, copying Chesney and closing attorney Jackie Patterson. The Contract was sent via email as a .pdf attachment titled "Final Ratified Contract on 113 Ridgeland Drive.pdf." Dodds' email to Carter began by congratulating him on "breaking a lot of records in Greenville Real Estate" and continued "Attached please find the final ratified contract on the sale of 113 Ridgeland Drive." She went on to explain that Dubay would be wiring an escrow deposit to Patterson and Associates Law Firm. Carter did not respond to this email or express any confusion about Dubay's acceptance of the Counteroffer or note any problem opening the attached Contract. Dodds also sent a separate contemporaneous text to Carter alerting him that she emailed him the ratified Contract. Carter acknowledged receipt of the Dodds' email a few minutes later in a separate text message to Chesney.

At 8:00 p.m. that night, Dubay and Carter had a lengthy telephone conversation. The substance of that conversation is disputed by the parties. According to Dubay, Carter expressed reservations about selling the Property and asked for some time to think about it. According to

Carter, he told Dubay he wanted to back out of the Contract. What is not disputed is that no document was signed by the parties terminating the Contract. Instead, the very next day Dubay and Carter executed an addendum to the Contract (the "Addendum") extending the due date for escrow funds to August 1, 2024 and the closing date to September 13, 2024.

Following the execution of the Addendum, Dubay began to perform his obligations under the Contract. He arranged for an appraiser to visit the Property on July 30, 2024 and he paid $20,000.00 into escrow on July 31, 2024. Carter did not question these actions or dispute the existence of a valid contract. Instead, he texted Dodds on July 30th about the appraisal of the Property, noting that an appraisal was unlikely to value the Property at purchase price, reminded Dodds that the contract was on an "as-is" basis, and stated that he was mentioning this because he had been advised the Property was worth "a million less than the current contract price."

On July 31, 2024, Carter texted Dubay and told him that he could not part with the Property because of his emotional attachment to it. Then one day later on August 1, 2024, Carter changed his mind again, texting Dubay that he wanted to move forward with the sale, asked if it was still possible to close on August 13th, and stated this was his "final decision." Unfortunately, it wasn't. One day later Carter texted and emailed Dodds and claimed that due to his mother's poor health he needed to move her to the Property, and he had to "request a release from our current agreement," referring to the Contract. Dodds responded that they were in conversations with Dubay and would be in touch.

Carter then asked Chesney to prepare a formal termination of the Contract. Chesney did as Carter requested, preparing a "Notice of Termination" using standard South Carolina Realtor Association Form ("Realtor Form") 313. The Notice of Termination begins by stating its purpose in all caps "SENDER PARTY HEREBY DELIVERS NOTICE THAT SENDING PARTY IS

TERMINATING THE AGREEMENT/CONTRACT…" The Notice of Termination goes on to identify the contract it is seeking to terminate as the one between Dubay and Carter for the Property. The Notice of Termination gives several check boxes for the "REASON FOR TERMINATION." Carter checked that the he was sending the Notice of Termination "without a contractual basis to do so…" The same line went on to note in bold, all-caps and underlined "**THIS IS NOT A VALID TERMINATION"**. Carter executed the Notice of Termination via Docusign on August 10, 2024. Chesney also executed it as Carter's "Broker."

That same day Carter also Docusigned standard Realtor Form 517 titled "Disbursement Agreement for Contract to Buy and Sell Real Estate" (the "Disbursement Agreement"). Directly below the title of the Disbursement Agreement is language again in all-caps reminding the signatories that this is "NOT A RELEASE OF CONTRACT." The Disbursement Agreement states "any responsibilities or obligations or rights by virtue of the Contract are still in full force and/or effect and this is not a Release Agreement to the Contract….This is not a release of your obligations under the Contract."

The Notice of Termination and the Disbursement Agreement were sent to Dodds and Dubay for execution by Dubay, along with a right of first refusal for the Property prepared by Carter, which Carter initially offered to Dubay as a consolation for seeking to cancel the Contract. Dodds responded that the right of first refusal was not the "form we can use" and stated that Carter was in default of contract. Carter responded expressing no doubt or misunderstanding about his obligations: "I am fully aware of my contractual obligations and am not in default…we both signed an extension until September 13th to meet those obligations." That was not all, later in the same text Carter noted the fact that "we have a valid contract" and criticized Dodds for advising Dubay to "let the contract expire." Dubay never countersigned the Notice of Termination or Disbursement Agreement.

On August 26, 2024, Dubay called Carter and informed him he planned to go forward with the purchase. He also confirmed that he planned to move forward in an email. Carter retained attorney Stokely Holder to represent him. Once Mr. Holder was involved, Carter claimed for the first time that he never received a fully ratified copy of the Contract and that he only recently realized this because he could not open the attachment to the July 24th email from Dodds. Dubay responded through counsel that he planned to proceed to closing. On September 13, 2024, Patterson confirmed she had received everything she needed from Dubay to close the sale and that Dubay had performed all the terms of the Contract. Dubay appeared at Patterson's office at the scheduled time to close. Carter did not appear and refused to close. This lawsuit followed. Dubay testified that he remains willing and able to perform the Contract.

ANALYSIS

The elements of a contract are offer, acceptance, and valid consideration. Under South Carolina law, a valid offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." Saunder v. Public Svc Auth of South Carolina, 354 S.C. 397, 405, 581 S.E.2d 161, 166 (2003). The Counteroffer was certainly a valid offer, reciting the bargained for consideration of the Property in exchange for the purchase price, along with other terms. Dubay accepted the Counteroffer prior to its expiration or revocation and that acceptance was communicated to Carter prior to the deadline for acceptance.

Carter raises two defenses to the Contract. Carter first claims that he revoked the Counteroffer prior to its acceptance via a phone call to Chesney earlier that day. Chesney disputes that this conversation occurred or that Carter otherwise verbally communicated any revocation of the Counteroffer prior to its acceptance. Based on the greater weight of testimony and written evidence before the court, the court finds that Chesney's testimony is more credible and that Carter did not seek to revoke the Counteroffer prior to acceptance. But even if the court found Carter's version of events credible, which it does not, it would not alter the outcome because Chesney did not represent Dubay in the transaction and was not his authorized agent to receive communications regarding the Contract. Instead, as is clear from the evidence, Dodds was Dubay's agent, not Chesney. There is no evidence that any revocation of the Counteroffer was communicated to Dodds or Dubay prior to its acceptance by Dubay.

Carter's second defense to the formation of the Contract is that the .pdf attachment to Dodds email of July 24th was not the correct version of the Contract. Instead, it was just the Counteroffer, unsigned by Dubay, and mistakenly sent by Dodds instead of the fully ratified Contract. Carter claims he did not realize this until over a month later and then only after he hired an attorney to review the transaction. While there is conflicting testimony and evidence on whether the correct version of the Contract was attached to Dodds email on July 24th, the court likewise finds this argument unavailing for numerous reasons.

First, any alleged defect in delivery of the Contract was mooted by the Addendum. Neither party disputes the Addendum is a valid, written modification of the Contract. "Any modification of written contract must satisfy all requisites of valid contract." Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). Where an addendum modifies some portions of a contract but not others, it confirms the terms of the original contract to the extent not contradicted by the modification. McJunkin Corp. v. City of Orangeburg, 238 F.2d 528, 531 (4th Cir. 1956); Chicago Coll. of Osteopathic Med. v. George A. Fuller Co., 776 F.2d 198, 208 (7th Cir. 1985); Beacon Terminal Corp. v. Chemprene, Inc., 75 A.D.2d 350, 354, 429 N.Y.S.2d 715, 717–18 (1980) ("The modification of a contract results in the establishment of a new agreement between the parties which pro tanto supplants the affected provisions of the original agreement while leaving the balance of it intact."). By executing the Addendum, the parties reaffirmed the Contract as modified by the Addendum. As admitted by Carter, if he had proceeded with closing it would have been with all the terms contained in the Contract excepting those modified by the Addendum.

Second, "when the existence of a contract is disputed or its terms are ambiguous, evidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract's existence, the meaning of its terms, and whether the contract was breached." Conner v. City of Forest Acres, 363 S.C. 460, 473–74, 611 S.E.2d 905, 912 (2005) ("A contract may arise from actual agreement of the parties manifested by words, oral or written, or by conduct."). When the contract is one for the sale of land, the party seeking performance must also come forward with a writing signed by the party against whom enforcement is sought showing the existence and terms of the contract. Springob v. Univ. of South Carolina, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (20014); S.C. Code § 32-3-10(4). It is axiomatic that the form of the writings is immaterial, that it may consist entirely of written correspondence, and it may be gathered from several writings "connected either expressly or through internal evidence of the subject matter." Id.; Young v. Independent Pub. Co., 273 S.C. 107, 110, 254 S.E.2d 681, 683 (1979).

Here, Dubay has introduced evidence of multiple writings signed or authored by Carter showing the existence and terms of the contract. As described above, Carter signed the Contract, the Addendum, the Notice of Termination, the Disbursement Agreement, and an email to Dodds all of which are expressly connected to the Contract and are sufficient to show its existence or terms. Carter also authored multiple text messages to various parties acknowledging the existence of the Contract and his understanding of its terms and his obligations. And finally, Carter sent text messages acknowledging and assenting to Dubay's partial performance of Dubay's obligations under the Contract, permitting the appraiser to appraise the Property and acknowledging payment of the escrow funds to Patterson. In sum, the Court finds clear evidence of the existence of the Contract, its terms, and of multiple writings signed by Carter sufficient to satisfy the Statute of Frauds.

Third, the court looks to the terms of the Counteroffer itself. The paragraph cited by Carter is paragraph 31 of the Contract, which states that when the document is intended as a counteroffer it expires at 8:00 p.m. on July 24th "unless accepted…by the other Party in written form Delivered prior to such deadline." The Contract does not specify what "written form" acceptance must take. Neither party disputes that Dubay's acceptance was communicated to Carter in written form at least twice prior to the deadline, first in Dodds' email and then in Dodds' text message minutes later. Carter acknowledged receipt of the acceptance by text to Chesney and communicated with her via text about it. And Carter himself called Dubay that same night and acknowledged his Counteroffer had been accepted and a Contract formed. Carter has not offered any reason why these written communications are not sufficient to constitute acceptance regardless of whether the correct document was attached to the email.

Fourth, there is conflicting testimony and evidence about whether Carter received the fully ratified Contract prior to the 8:00 p.m. deadline. Carter swears he did not. But Dodds, Chesney, and the Broker-in-Charge of C. Dan Joyner dispute this, claiming that Carter did receive a fully executed copy. On this point, it is relevant that there are no contemporaneous writings from Carter claiming that the attachment to the July 24th email was the wrong document, claiming that he could not open the document, or claiming any issue with receipt of the Contract prior to the deadline for acceptance. Given this, the court finds by the preponderance of the evidence [1] that the Contract was delivered to Carter prior to its expiration.

Finally, even if there were not multiple writings signed or authored by Carter showing the existence and terms of a contract, there is no credible dispute that Dubay partially (and ultimately fully) performed his obligations under the Contract. "[F]or part performance of an oral agreement to remove the agreement from operation of the Statute of Frauds and permit specific performance, the appellants must establish acts which relate clearly and unequivocally to the agreement, exclusive of any other relation between parties touching such agreement." Player, 382 S.E.2d at 894. In the weeks following the execution of the Contract and Addendum, Dubay took affirmative actions to perform his obligations under the Contract with the tacit if not explicit consent of Carter. This by itself is sufficient to show the existence of a contract and to meet the Statute of Frauds.

Turning to Dubay's claim for specific performance, Dubay must establish three elements: (1) 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 part or has been and remains able and willing to perform his part of the contract. Gibson v. Hrysikos, 293 S.C. 8, 13-14, 358 S.E.2d 173, 176 (Ct. App. 1987). "When land is the subject matter of an agreement the jurisdiction of equity to enforce specific performance is undisputed, and does not depend on the inadequacy of the legal remedy in the particular case." Adams v. Willis, 225 S.C. 518, 526, 83 S.E.2d 171, 175 (1954).

The court finds that Dubay has met all three elements. Based on the testimony and evidence presented at trial, Dubay has shown by clear evidence a valid agreement, that he partially or fully carried the agreement into execution with the approbation of Carter, and that he both fully

[1] The Court is of the opinion that 'preponderance of evidence' is the proper standard. However even if the standard is 'clear and convincing' the finding and result would be the same.

performed his obligations under the agreement and that he remains willing to perform his obligations.

The court also finds that an order of specific performance is fair, just and equitable between the parties. Carter is a sophisticated businessman and business owner who has bought and sold commercial real estate around Greenville, South Carolina. Carter listed the Property for years prior to entering the Contract. Carter was represented by C. Dan Joyner listing the Property and utilized their assistance through Chesney for specific documents and items during the transaction. After voluntarily showing his home to Dubay and inviting Dubay's interest in the Property, Carter chewed on his decision to sell the Property for months. Carter admitted that he had a local "real estate attorney" with whom he worked, could consult, and who he ultimately consulted in August 2024 once he sought to back out of the Contract. Between the parties to this dispute, there is no disparity of bargaining power, no evidence that Carter was not fully competent and capable of protecting his interests or understanding the Contract and his obligations, and no evidence of any undue influence over Carter. After nearly three years of listing the Property and inviting interest and offers from third parties, Carter made the decision to sell. This litigation is solely the result of his second thoughts, not any unfair, unjust or inequitable circumstance beyond his control.

THEREFORE, BASED ON THE FOREGOING, IT IS ORDERED:

1. Judgment is entered in favor of Plaintiff Derek Dubay and against Defendant James E. Carter on his claim for specific performance of the Contract dated July 24, 2024, as modified by the written Addendum dated July 25, 2024.

2. Defendant James E. Carter shall convey the Property at 113 Ridgeland Drive, Greenville, South Carolina, to Plaintiff Derek DuBay on the terms set forth in the Contract and Addendum.

3. The Contract and Addendum provided fifty (50) days from execution to closing (July 25, 2024 to September 13, 2024). Consistent with these provisions, the parties shall close the transaction no later than fifty (50) days from the date of this Order at the offices of Patterson & Associates, P.A. or at such other place as the parties may mutually agree. The closing shall proceed on the terms set forth in the parties' Contract and on the terms reflected in the Closing Disclosure previously issued by Patterson & Associates, P.A. dated September 10, 2024, adjusted as necessary for changes that have occurred since that date. The closing date and time may be adjusted by agreement of the parties or by this court in the event either party shows evidence that the other party has delayed or failed to expeditiously perform their obligations under the Contract, or has prevented the other party from performing their obligations under the Contract.

4. Defendant is directed to preserve the Property status quo and to take no action to alter, destroy, or damage the Property excepting normal wear and tear. Failure to preserve the Property pending transfer to Plaintiff may subject Defendant to contempt and appropriate sanctions.

5. Plaintiff's claim for reasonable attorneys' fees and costs as authorized by Paragraph 23(A) of the Contract and their recoverability, if at all, is reserved for further consideration. Plaintiff is directed to submit a motion for attorneys' and costs with a supporting affidavit within twenty (20) days of the date of the Order, Defendant shall have twenty (20) days to submit any response, whereupon the Court will determine the fee question.

6. The Court retains jurisdiction to enforce this Order, to address the reserved question of attorneys' fees and costs, and to address any further matters that may arise in connection with the closing of the transaction or conveyance of the Property to Plaintiff.

IT IS SO ORDERED.

Greenville Common Pleas

Case Caption: Derek Dubay vs. James E Carter

Case Number: 2024CP2305987

Type: Master/Order/Other

And It Is So Ordered!

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