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McCABE, TROTTER & BEVERLY, P.C.  
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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D. Ryan McCabe  
Shareholder

[Ryan.McCabe@mccabetrotter.com](mailto:Ryan.McCabe@mccabetrotter.com)

71406

February 24, 2014

The Honorable Jenny Abbot Kitchings  
Court of Appeals Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

Re: *Lawful House, LLC vs. Yvette Smoak*  
Appellate Case No.: 2014-000287  
MTB File No.: 18528.1

Dear Ms. Kitchings:

Per the Court's request, please find enclosed the filed Notice of Appeal and Proof of Service for Lawful House, LLC, along with the accompanying Order Granting Summary Judgment that has been challenged and this firm's check in the amount of \$100.00 to cover the filing fee.

Thank you for your assistance. Should you have any questions or need any other documentation, please do not hesitate to contact us.

Sincerely,

D. Ryan McCabe

DRM/acm  
Enclosures

cc: Thomas C. Salane (via U.S. Mail)  
Lawful House, LLC (via Email)

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FEB 28 2014

**SC Court of Appeals**

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

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FEB 19 2014

Case No. 2012-CP-32-0447

SC Court of Appeals

Lawful House, LLC,

Appellant,

71406

v.

Yvette Smoak, is

Respondent.

NOTICE OF APPEAL

Lawful House, LLC appeals the Order of the Honorable Eugene C. Griffith, Jr. dated December 31, 2013. Appellant received written notice of entry of this Order on January 15, 2014.

D. Ryan McCabe, SC Bar 16977  
McCabe, Trotter & Beverly, PC  
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Columbia, SC 29221  
Phone: 803-724-5000  
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Attorneys for Appellant

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SC Court of Appeals

COPY

February 14, 2014

Counsel for Respondent:  
Thomas C. Salane  
Turner Padgett Graham Laney, P.A.  
Post Office Box 1473  
Columbia, South Carolina 29202

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COPA

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Case No. 2012-CP-32-0447

Lawful House, LLC,

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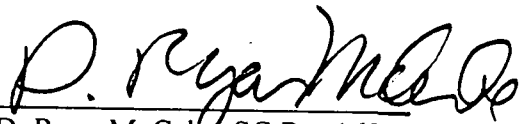
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FEB 19 2014

**SC Court of Appeals**

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on this, the 19<sup>th</sup> of February, 2014, addressed to Respondent's attorney of record as listed below.

  
D. Ryan McCabe, SC Bar 16977  
McCabe, Trotter & Beverly, PC  
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Phone: 803-724-5000  
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Attorneys for Appellant

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FEB 28 2014

**SC Court of Appeals**

COF

February 14, 2014

Counsel for Respondent:  
Thomas C. Salane  
Turner Padgett Graham Laney, P.A.  
Post Office Box 1473  
Columbia, South Carolina 29202

---

STATE OF SOUTH CAROLINA  
 COUNTY OF LEXINGTON  
 IN THE COURT OF COMMON PLEAS  
 Lawful House, LLC

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 32-00447

Yvette Smoak

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Defendant

Attorney for : Plaintiff  Defendant  
 or

Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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FEB 28 2014

If applicable, describe the property, including tax map information and address, referenced in the order:

**SC Court of Appeals**

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2154

Judge Code

12/31/13

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 10<sup>th</sup> day of Jan 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Jan 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Donald McCabe, Jr  
140 Stoneridge Dr. Suite 650  
Columbia, SC 29210

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Thomas Salane  
P.O. Box 1473  
Columbia, SC 29202

**ATTORNEY(S) FOR THE DEFENDANT(S)**

LETTER  
CLERK OF COURT  
LEXINGTON, SC

*Beth Carnagay/mh*

**Court Reporter:**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Civil Action No. 2012-CP-32-047

Lawful House, LLC,

Plaintiff,

vs.

Yvette Smoak,

Defendant.

DEBRA WILCOX  
CLERK OF COURT  
LEXINGTON SC

**ORDER GRANTING SUMMARY  
JUDGMENT**

**ORIGINAL**

This is a contract action and is before me upon Defendant's motion for summary judgment. Upon consideration of the arguments and submissions of counsel, I conclude that the terms of the contract at issue are unambiguous so that construction of the contract is a legal matter for the court and resort to extrinsic facts to determine its meaning is unnecessary. Accordingly, for the reasons which follow, I find and conclude that the contract, in clear and unambiguous terms, provides that the purchaser's deposits constitute a liquidated damage immediately payable to seller upon default and that any further obligation under the contract by either party is discharged. Since the deposited funds have been claimed and retained by Plaintiff, no further contract damages are recoverable and summary judgment should be granted.

**FACTS**

On June 1, 2009, Plaintiff Lawful House, LLC ("Plaintiff" or "Seller") and Defendant Yvette Smoak ("Defendant" or "Buyer") entered into a Commercial Real Estate Contract of Sale which, by its express terms, obligated Plaintiff to sell, and Defendant to buy, commercial property listed for sale by Plaintiff. The recited purchase price was \$284,000.00 and Defendant was required to pay \$3,000.00 as a deposit on the property. The contract also provided for

1 *[Signature]* 1/76

closing of the transaction on or before June 30, 2010, with Defendant's occupancy and leasing of the premises prior to the closing. Under the terms of the lease attached to the contract, the parties acknowledged that the property could remain listed for sale and could continue to be shown and marketed to others by Plaintiff.

In the event of the purchaser's default, the contract contained the following provision which was specifically negotiated by the parties and incorporated as part of an Addendum signed by each party:

**ORIGINAL**

If Purchaser defaults and fails to purchase the property on or before June 30, 2010, the \$3,000.00 earnest money paid to the Sellers is waived and deemed non-refundable. The purchase contract shall also be deemed cancelled and the terms therein can be renegotiated.

On June 11, 2010, Defendant notified Plaintiff that she could not close on the property within the allotted time. Defendant suggested an extension of the sales contract and underlying lease for an additional six months. Plaintiff responded by demanding an increase in the monthly rental payments under an extended lease, an increase in the purchase price and a requirement for an additional \$3,000.00 in non-refundable deposit. The parties agreed on these terms and amended the contract accordingly. No other terms or conditions of the contract were changed, including the term cited above that, in the event of default, "earnest money paid to the Sellers is waived and deemed non-refundable" and "the purchase contract shall also be deemed cancelled and the terms therein can be renegotiated."

Subsequently, in October 2010, Defendant notified Plaintiff that she could not proceed with the purchase of the property. She requested an extension of the lease without purchasing the property. Plaintiff refused the extended lease offer. Defendant gave notice under the lease and vacated the premises on or before December 31, 2010. Plaintiff then claimed, and retained,

the \$6,000.00 deposited by Defendant under the terms of the contract. Defendant treated the contract as having been cancelled and of no further effect. Plaintiff, on the other hand, claimed that it was entitled to both retain the deposits and to seek further damages from Defendant for breach of contract.

W. A. GREGG  
CLERK OF COURT  
LEXINGTON, SC

SUMMARY JUDGMENT STANDARD

ORIGINAL

Summary judgment is proper 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." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Robinson v. Estate of Harris*, 388 S.C. 630, 638, 698 S.E.2d 222, 225 (2010).

When a contract is clear and unambiguous, the construction of the contract becomes a question of law for the court. The court must give effect to the intentions of the parties as expressed by the language of the contract alone. Resort to extrinsic evidence is not permitted to assign a different meaning to the plain terms actually used. *Conner v. Alvarez*, 285 S.C. 97, 328 S.E.2d 334 (1985); *Moser v. Gosnell*, 334 S.C. 425, 513 S.E.2d 123 (Ct. App. 1999).

#### ANALYSIS

The precise issue presented in this case is whether the terms of the contract unambiguously provide that, in the event of purchaser's failure to close on the property, the \$6,000.00 deposits become non-refundable and the contract is cancelled. If so, the deposits are liquidated damages and will not permit another measure of recovery since it is undisputed that the deposited funds have already been retained by Plaintiff.

When interpreting a contract, the court must ascertain and give effect to the intention of the parties. *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct. App. 1990). To

ORIGINAL

determine the intention of the parties, the court "must first look at the language of the contract."

*C.A.N. Enters., Inc. v. S.C. Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). If the language of the contract is clear and unambiguous, the determination of the parties' intention is a question of law for the court to be determined from the language of the contract.

Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party or the other assigns to it. *Laser Supply & Services, Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 676 S.E.2d 139 (Ct. App. 2009). The court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. *Lindsay v. Lindsay*, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997).

Whether an ambiguity exists in the language of a contract is also a question of law for the court. *S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). A contract is ambiguous only when it is reasonably capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878-79 (Ct. App. 1997).

Only if the court decides that the language is ambiguous may evidence be introduced to show the intent of the parties. *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 303. The determination of the intent of the parties then becomes a question of fact for the jury.

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In this case the language of the Contract is plain and unambiguous. Defendant agreed to purchase Plaintiff's property with a closing at a future time. The parties intended to, and did, enter into a lease of the premises until the anticipated closing date, with payment initially of \$3,000.00 earnest money and, subsequently, an additional \$3,000.00 when the sales contract was amended and extended. The contract clearly and unambiguously gives the Defendant the right to decline proceeding with the completion of the sale and to cancel the contract by forfeiting the not-insubstantial deposits made to assure performance. As specifically negotiated in the contract's Addendum, in the event of purchaser's default by failing to close on or before the closing date, the earnest money deposited becomes non-refundable and "the purchase contract shall also be deemed cancelled and the terms therein can be renegotiated." This default provision is the sole and exclusive remedy under the terms of the contract and effectively creates a "liquidated damages" provision.<sup>1</sup>

There is no language permitting any reasonable inference other than setting the amount of the deposits as the liquidated damage for purchaser's voiding the contract. Indeed, Plaintiff was unable to advance any reasonable interpretation or meaning for this contractual language other than the meaning attributed to it by Defendant.<sup>2</sup> Manifestly, if the parties are enabled to renegotiate a new contract upon default, together with forfeiture of the earnest money and cancellation of the old contract, the contract has been disavowed and a single remedy provided. This effect eliminates any election the Plaintiff has to also seek additional contract damages.

There is no other meaning reasonably attributable to the language used other than the parties

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<sup>1</sup> Citing *Bannon v. Knauss*, 282 S.C. 589, 320 S.E.2d 470 (Ct. App. 1984), Plaintiff argues that a provision allowing retention of the deposit does not "in itself limit the remedies available to the nonbreaching party." Most assuredly this proposition is correct as a general matter; however, this argument does not address the fact that the parties can also agree that retention of a deposit as liquidated damages may be the sole remedy for a breach. *Bannon*, 282 S.C. at 592, 320 S.E.2d at 472.

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agreed that the forfeiture of the \$6,000.00 earnest monies was a liquidated damage in lieu of any further remedies.

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COLUMBIA, SC

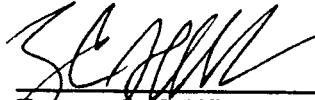
Traditionally, earnest money deposited with a real estate contract is a liquidated damage if the contract specifies that the funds are non-refundable upon default. See *Robeson-Marion Development Co. v. Powers Co.*, 256 S.C. 583, 183 S.E.2d 454 (1971)(deposit as liquidated damages on failure to complete sale); *Shirer v. O.W.S. Associates, Inc.*, 253 S.C. 232, 169 S.E.2d 232 (1969). Here, the parties agreed by the terms of the contract that the sole remedy<sup>3</sup> upon default was the forfeiture of the earnest money and should be construed as the sole remedy available to Plaintiff. See *Cooley v. Call*, 61 Utah 203, 211 P. 977 (1922); cf. *Tate v. LeMaster*, 231 S.C. 429, 99 S.E.2d 39 (1957)(If the sum stipulated is reasonably intended by the parties as the predetermined measure of compensation for nonperformance, the stipulated sum is for liquidated damages.). Indeed, there is no other reasonable interpretation available since the Addendum to the contract made forfeiture of the deposited monies the specific remedy upon default by the purchaser. The Addendum annulled and rescinded the sales contract and stipulated that the parties were free to renegotiate the terms thereafter. There is no language in the contract that preserves the seller's option to seek one of the other, seller remedies for breach such as specific performance or contract damages. It leaves both parties with the ability to abandon the contract and renegotiate its terms but stipulates that the purchaser default results in the forfeiture of the deposited \$6,000.00 and cancellation of the contract.

Defendant forfeited \$6,000.00 in deposits and chose to abandon the contract or, as stated under the contract, treat it as "cancelled" or rescinded. This is exactly what the contract terms indicate Defendant was entitled to do. Plaintiff was left with the marketable title to the property and is free to sell it again. Having demanded and been paid the liquidated damages provided for

by the contract terms, Plaintiff's claims for breach of contract must be dismissed. No further action for breach of contract is permitted under the undisputed facts and the unambiguous language of the contract. Defendant Smoak is entitled to summary judgment as a matter of law.

**IT IS SO ORDERED.**

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EUGENE C. GRIFFITH  
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LEXINGTON, SC

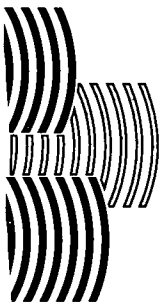


Eugene C. Griffith, Jr., Circuit Judge  
Eleventh Judicial Circuit

Dated: Dec 31, 2013

**ORIGINAL**

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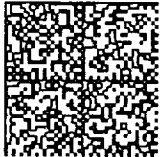
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**FEB 28 2014**

**SC Court of Appeals**

The Honorable Jenny Abbot Kitchings  
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