

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 JAMEEL RIZK and CRISTINA RIZK,
 Plaintiffs,
 v.
 JUDY F. SIMMONS,
 Defendant

COURT OF COMMON PLEAS
 THE FOURTEENTH JUDICIAL CIRCUIT
 C.A. No. 2013-CP-07-02318

**ORDER DENYING DEFENDANT'S
 MOTION TO SET ASIDE JUDGMENT**

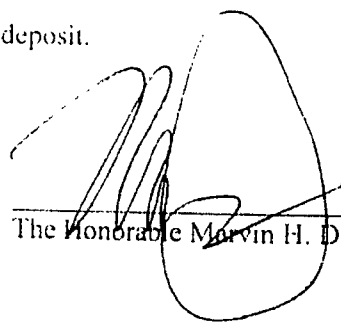
On March 19, 2014 I granted Plaintiffs' Motion for Summary Judgment ruling that the Plaintiffs were entitled to the return of the \$50,000 earnest money deposit because there was no enforceable contract as there was never a meeting of the minds in regard to a critical and essential term relating to a financing contingency. Defendant has filed a motion pursuant to Rules 52, 56, 59, and 60 of the South Carolina Rules of Civil Procedure, seeking to set aside the grant of summary judgment. The motion is denied.

Defendant's motion focuses on the issue of whether the statute of frauds has been satisfied by Plaintiffs' various acts and documents. The statute of frauds is not the issue in my ruling, but rather it is the fact that there was never an agreement reached concerning the essential issue of a financing contingency, and therefore, there was no contract.

IT IS THEREFORE ORDERED that Defendant's motion is denied and Plaintiffs are entitled to the return of the \$50,000 earnest deposit.

IT IS SO ORDERED.

Dated: 7/2/14


 The Honorable Marvin H. Dukes, III

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SC Court of Appeals

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) THE FOURTEENTH JUDICIAL CIRCUIT
C.A. No. 2013-CP-07-02318

JAMEEL RIZK and CRISTINA RIZK,)
Plaintiffs,)
v.)
JUDY F. SIMMONS,)
Defendant.)

**ORDER GRANTING
SUMMARY JUDGMENT**

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BEAUFORT COUNTY, S.C.
COURT

This matter is before me on Plaintiffs' Motion for Summary Judgment. This case involves a failed real estate transaction in which the Plaintiffs were unable to obtain financing for the purchase. The dispute involves who is entitled to the \$50,000 earnest money deposit. Upon review of the affidavits and documents in the case, it is clear there are no material issues of fact in dispute, and summary judgment is appropriate.

On April 26, 2013, Plaintiffs made a written offer to purchase Defendant's home in Wexford Plantation on Hilton Head Island. On May 1, 2013, Defendant verbally countered the offer, with four essential changes: an increase in the purchase price; an increase in the earnest money deposit; a reduction in the financing contingency; and a reduction in the inspection. On May 6, 2013, Plaintiffs accepted the Defendant's proposal and revised their initial written offer by initialing the changes indicated. Thereafter, the revised offer, along with \$50,000 in earnest money was delivered to the Defendant's real estate agent. On June 1, 2013, Defendant executed the revised contract with two critical revisions: the financing contingency period was reduced from 25 business days to June 15; and the closing date was changed from June 14 to June 30. These issues relating to the back and forth revisions to the proposed contract are not in dispute.

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The changes made by Defendant relating to the financing contingency and the closing date are essential terms, as Plaintiffs were unable to obtain the necessary purchase money mortgage. Both Plaintiffs' and their realtor's affidavits state the Plaintiffs never agreed to the proposed changes by the Defendant, nor were such changes ever discussed with the Plaintiffs. Defendant's affidavits do not dispute this issue. Further, the emails submitted with the affidavits show the parties were never in agreement as to these issues.

The essence of a contract is a meeting of the minds. "In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." Clardy v. Bodolosky, 679 SE 2d 527 (SC App 2009). Here, the parties failed to reach agreement on two critical issues, the financing contingency and the date of closing. As there was no meeting of the minds, there was no contract.

IT IS THEREFORE ORDERED that Plaintiffs are entitled to a return of their \$50,000 earnest money deposit and that Charter One Realty, the escrow agent, is directed to return the same to Plaintiffs.

IT IS SO ORDERED.


The Honorable Marvin H. Dukes, III

Dated: 3/19/14

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