

4. Defendant did pay the first two payments of \$2500.00 per month due in August and September of 2013 following the receipt of his bingo license, but made no payments after that time, leaving eight (8) payments owed under the terms of the contract for a total of \$20,000.00. The parties agree that the eight (8) payments unpaid total \$20,000.00.

5. Sometime in early 2014, the Defendant closed the business and sold the assets he had at that time for \$50,000.00. Plaintiff made demand for the remaining payments, and then filed suit for breach of contract and anticipatory breach of contract on February 4, 2014. Defendant filed an Answer and Counterclaim on March 17, 2014 denying the allegations of Plaintiff's Complaint, and asserting claims for conversion, breach of contract with fraudulent intent and negligent misrepresentation, as well as several affirmative defenses. Plaintiff timely filed an Answer to the Counterclaim denying the allegations of the Counterclaim.

6. At the call of the case the Plaintiff announced that since all time for payments had passed, the Plaintiff was dropping the claim for anticipatory breach and would proceed on the claim for breach of contract claiming the \$20,000.00 in damages, with no objection by the defense.

Conclusions of Law

1. The Plaintiff has met her burden of proof with respect to her cause of action for breach of contract. The contract was drafted by the Defendant and was clear and unambiguous. It provided for a sum certain price for the business and its assets. The business and its assets were conveyed, and the purchase price is due and payable. Therefore, this Court awards judgment in favor of the Plaintiff and against the Defendant for the amount requested of \$20,000.00.

2. The Defendant's cause of action for breach of contract with fraudulent intent is denied. The Defendant has failed to prove by a preponderance of the evidence the elements of fraud. Quite simply, the Defendant presented no credible evidence of a material fraudulent representation by the Plaintiff. The Defendant admittedly elected to perform little or no due diligence in anticipation of the consummation of the agreement. There was no suggestion or indication that any and all documentation or information was not available for inspection and review before execution of the contract. The Defendant acknowledged that he knew little or nothing about the business and did not know how to run the same. Any damages, shortcomings or deficiencies realized by the Defendant were a direct consequence of his own failings.

3. The Defendant's counterclaim for conversion is denied. The evidence demonstrates clearly that the Defendant received what he contracted for. Furthermore, the evidence established that the Defendant disposed of the purchased assets in a subsequent transaction wherein he transferred what he felt was good title to the assets for \$50,000.00 to a third party.

4. The Defendant has also failed to demonstrate by a preponderance of the evidence that the Plaintiff negligently misrepresented any material information. Therefore, the counterclaim for negligent misrepresentation is denied.

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Wherefore, Plaintiff is awarded judgment against the Defendant in the sum of \$20,000.00. Defendant's counterclaims are denied.

IT IS SO ORDERED.

Honorable Robin B. Stilwell
Judge, Thirteenth Judicial Circuit

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February 25, 2013
Greenville, South Carolina

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