

and venue are proper.

FINDINGS OF FACT

After careful review of the file in this matter, after hearing and considering the sworn testimony of the parties and witnesses, and after hearing statements of counsel and scrutinization of the pleadings, and reviewing the trial exhibits, I make the following Findings of Salient Facts:

On May 9, 2013 the Plaintiff Company and Defendants entered into a Purchase and Sale Agreement whereby Defendants agreed to sell assets of CQI Oncology/ Infusion Services, LLC to the Plaintiff Company for \$30,000.00. The terms of the Purchase and Sale Agreement are straightforward and provided that “[s]eller represents and warrants that the Property is free and clear of any liens or encumbrances and that the Seller has rightful title to the Property. Seller hereby agrees to forever defend the title to the Property unto Purchaser, its successors and assigns, from and against all persons whomsoever.” The Purchase and Sale Agreement further provides an indemnification clause which reads in part “[s]eller agrees that he will defend, indemnify and hold purchaser harmless from any and all actions, causes of action, claims and or demands which arise or are asserted as arising from the Seller’s conduct prior to closing.” There is no question that this is a binding contract.

At the time the Purchase and Sale Agreement was entered into the Plaintiff, Robin Johnson, was an employee of CQI Oncology/ Infusion Services, LLC and had been an employee for approximately 15 years. In the course of her employment, Mrs. Johnson’s duties included day-to-day operations of the CQI Oncology/ Infusion Services, LLC which included accounts receivable and accounts payable. Prior to entering into the Purchase and Sale Agreement Mrs. Johnson, as an employee of CQI Oncology/ Infusion Services, LLC, made multiple deposits of over \$58,000.00 and made several payments on invoices dated March 28, 2013 through April 28, 2013 in excess of

\$24,000.00 to vendors (Plaintiff's Exhibit 2). After extensive negotiations and after the payments were made on invoices in excess of \$24,000.00. The Plaintiff Company entered into the Purchase and Sale Agreement with the Defendants. In consideration of the mutual promises between the Plaintiff Company and Defendants, Plaintiff Company tendered payment of consideration in the amount \$30,000.00 to the Defendants on May 9, 2013.

Plaintiff Company entered into the contract in reliance upon the invoices having been paid, although without any knowledge or notice that the Defendant, Robert Little, removed Mrs. Johnson as a signatory on the checking account used to make the deposits and payments from and caused the checks issued to vendors to be retracted. Although Mr. Little assumed that Mrs. Johnson knew that she was removed from the accounts, he did not notify her that he removed her name as signatory from the account. Mrs. Johnson was unaware that the checks were returned until notified by the vendors all of whom refused to send Plaintiff Company any product until all accounts were current.

Mrs. Johnson testified that had she known that the payments she made during her employment with CQI Oncology/ Infusion Services, LLC would be returned, Plaintiff Company would not have entered into the contract with the Defendants.

CONCLUSIONS OF LAW

To recover for breach of contract, Plaintiffs must prove that (1) a binding contract existed between the parties, (2) Defendants breached or failed to perform the contract, and (3) Plaintiffs suffered damages as a result of the breach. S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). Once the Plaintiffs prove an existing, binding contract and the breach of that contract, the breaching Defendants are liable for whatever damages flow as a natural and probable consequence and proximate result of the breach. See S. Glass & Plastics Co., 399 S.C. at 492, 732 S.E.2d at 209.

Here, there is no dispute that the parties entered into a binding contract. The terms of the Purchase and Sale Agreement are clear and provide that the assets are free and clear. The retraction of the checks and the Defendants' removal of Mrs. Johnson as signatory on the account caused multiple vendors to remain unpaid and demand payment from Plaintiff Company. Therefore, the Plaintiff Company's damage included the payment in excess of \$24,000.00 on these invoices.

South Carolina courts have consistently defined indemnity as "that form of compensation in which a first party is liable to pay a second party for loss or damage the second party incurs to a third party." Campbell v. Beacon Mfg. Co., Inc., 313 S.C. 451, 454, 438 S.E.2d 271, 272 (Ct.App.1993). Here, the indemnification clause in the contract clearly stated "[s]eller agrees that he will defend, indemnify and hold purchaser harmless from any and all actions, causes of action, claims and or demands which arise or are asserted as arising from the Seller's conduct prior to closing." Therefore, the Plaintiffs' contractually agreed to indemnify and hold Plaintiff Corporation harmless against Defendants actions prior to the closing of the Purchase and Sale Agreement.

CONCLUSION

The Plaintiffs have proven by clear and convincing evidence that the Defendants breached the Contract and that the Plaintiffs suffered damages as a result of the Defendants breach. Defendants failed to show excuse or justification for their breach. Plaintiffs have sustained their claim for damages; thus Defendants shall be jointly and severally liable for damages from Breach of Contract. Furthermore, the indemnification clause in the contract provides that the Defendants will indemnify Plaintiff Company against any claims or demands arising out of the Defendants conduct prior to the closing of the Purchase and Sale Agreement.

ORDER FOR JUDGMENT

Accordingly, based on the foregoing it is:

ORDERED, ADJUDGED, AND DECREED that the Plaintiffs are awarded judgment against Defendant Robert Little and Defendant CQI Oncology/Infusion Services, LLC jointly and severally and that the amount of the judgment is Fifty Thousand and no/100 (\$50,000.00) Dollars. The Clerk of Court is directed to enter judgment against the Defendant Robert Little and Defendant CQI Oncology/Infusion Services, LLC and Plaintiffs are entitled to begin execution of said judgment as allowed by law.

AND IT IS SO ORDERED!

May 26, 2016



Ellis B. Drew
Master-In-Equity for Anderson County