

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

Quarter Pointe Ventures, LLC,

Plaintiff,

v.

James Lineberger,

Defendant.

2015-CP-46-2608

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ORDER FOR JUDGMENT

OCT 03 2016

SC Court of Appeals

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2016 JUL 28 AM 9:20  
DAVID HATHLON  
S.C.C.P. & GS  
YORK COUNTY, SC

This matter came before me on April 14, 2016, for trial upon the petition of Quarter Pointe Ventures, LLC ("QPV"), pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.* (1976, as amended) for a Declaratory Judgment. Appearing on behalf of QPV was Matthew E. Cox, and appearing on behalf of Defendant James Lineberger ("Lineberger") was Hugo A. Pearce. The parties presented witnesses and exhibits, as well as the arguments of counsel. Based on the record presented, I make the following findings and conclusions.

**BACKGROUND**

This action arises out of a transaction involving a buyout of Lineberger's membership interest in QPV, and the sale of property ("Property") owned by QPV. The terms of the buyout were memorialized in a Membership Buyout Agreement ("Agreement") duly executed by the parties. In connection with the transaction, and pursuant to the Agreement, QPV gave a note ("Note") secured by a mortgage on a portion of QPV's property ("Collateral")

QPV seeks a declaratory judgment, with attendant relief, and a ruling by the Court as follows: that Linberger breached the parties' Agreement by failing to provide a recordable Notice of Dissociation after the Agreement; that the Court declare that the transaction involving the sale of property owned by QPV is a sale pursuant to Title 26 of the IRC, § 707(a)(2)(B); that QPV's obligations to Lineberger with respect to the Collateral for the Note be satisfied upon payment of the Note; that the Court require Lineberger to satisfy the Mortgage; that the Court suspend interest on the Note from August 15, 2015, or such date that the Court finds that QPV was ready, willing and able to fulfill its obligations to tender the amount of the Note; that the Court require Lineberger to provide QPV a recordable Notice of Dissociation; that QPV be

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ordered to pay Lineberger 25% of any amount recovered from York County for the right of way acquired by the County, if and when any money is recovered.

### FINDINGS OF FACT

#### 1. Company History.

QPV is a South Carolina limited liability company owning real property in York County. Lineberger is a resident of Union County, North Carolina, and former member of QPV. On August 8, 2006, QPV was formed to own and acquire real estate located off of Doby's Bridge Road ("Property") in York County. Members of QPV were Christopher R. Barton (25% interest), Meverell L. Pence, Jr. (25% interest), Roger L. Pence (25% interest) and James Lineberger (25% interest).

#### 2. ROW and Closing of the Large Tract.

On December 3, 2012, a portion of the Property was taken by York County for a road way and right of way, for which QPV was compensated. In February, 2015, QPV was the maker of a note secured by a mortgage on the Property, which was in arrears with Park Sterling Bank. Prior to any foreclosure action, QPV negotiated a partial sale of a portion of the Property, namely a one-half interest in approximately fourteen acres ("Large Tract"), with Merrifield Patrick Vermillion ("MPV") of Charlotte, North Carolina. Lineberger opted to take money and a Note to have his membership interest bought out of QPV, rather than to continue as a member of QPV and move forward with any future development.

During a survey for the closing of the Large Tract with MPV, it was determined that York County took more of the Property than QPV believed it was compensated for by the County, due to designated Right of Way ("ROW" property). Prior to closing the Large Tract, QPV agreed to a buyout of all membership interest of Lineberger pursuant to the terms and conditions of the Agreement, executed on March 16 and March 17, 2015. The Agreement provided for Lineberger to receive money, to take a Note for the balance owed, and potentially to be compensated, if future monies were realized from the ROW property.

Pursuant to the terms and conditions of the Agreement, a one-half interest in the Large Tract was sold for \$1,300,000.00 to MPV, and following that both QPV and MPV placed their interest into a newly created LLC, Doby's Bridge Investors, LLC. At the Large Tract closing, QPV paid off the note to Park Sterling Bank and transferred a one-half interest to MPV. Lineberger received \$320,000.00 cash from the \$500,000.00 in proceeds from the Large Tract

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closing, as appears on the Statement of Distributions. He also received a Note in the amount of \$395,000.00, representing his balance due on the Large Tract, and a guaranteed payment on the remaining smaller tract, containing 1.6 acres ("Small Tract"), also owned by QPV.

The Small Tract was used as collateral ("Collateral") for the Note to Lineberger. Lineberger also had the potential to receive 25% of portions of the Small Tract designated as Right of Ways ("ROW"), in hopes that the government would abandon the ROW, and leave QPV free to sell the ROW unencumbered.

Testimony by both parties was that the likelihood of the County or the South Carolina Department of Transportation abandoning the ROW to QPV was slight at best, and the likelihood of any recovery unknown. The amount of the Note to Lineberger from QPV was derived by estimating that the net sale from the Small Tract would gross a million dollars. If it did not, QPV would bear the risk, as it was obligated for a net \$250,000.00 to Lineberger. Thus \$145,000 of the Note represented the balance owed to Lineberger for his interest from the sale of the Large Tract and \$250,000.00, based upon anticipated proceeds of the sale of the Small Tract, secured by the Mortgage.

QPV fully paid Lineberger the \$320,000.00 at the closing of the Large Tract, and executed the Agreement and the Note, and recorded the Mortgage. Lineberger received copies of the closing documents and the recorded Mortgage, recorded in Book 14842, Page 19, in the York County Clerk of Court's Office. In addition to the payment and the Note, the Membership Buyout Agreement provided that if the remaining Property sold and produced a net profit of over \$1,000,000, QPV would further compensate Lineberger for 25% of such net profits. Furthermore, QPV agreed that if it received any additional compensation or return of property from York County for the ROW, another government entity or another company, that QPV would pay to Lineberger 25% of the additional compensation. QPV agreed not to restrict or encumber the Property until the Note was paid in full, and to give Lineberger notice of any sale.

### 3. The Dispute.

On July 27, 2015, QPV noticed Lineberger that it was going to sell the Small Tract, and requested a payoff of the Note. On July 31, 2015, Lineberger, through counsel, provided a payoff of the Note, and a per diem interest amount. On August 6, 2015, the purchaser requested additional time to perform due diligence. On August 12, 2015, the purchaser agreed to go forward with the transaction, resulting in the same or similar arrangement as prior, in that QPV

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would sell one-half interest in the property to MPV, and transfer its other one-half into a new entity, DB2 Associates, LLC for \$1 million dollars.<sup>1</sup> From the testimony and exhibits, I find that \$1,000,000 is a fair valuation of the property for the purposes of determining the amount to be paid Lineberger under the terms of the Agreement.

Closing was set for August 15, 2015. QPV requested that Lineberger execute a Satisfaction of Mortgage that was to be held by the closing attorney in trust. Lineberger refused to provide a Satisfaction of Mortgage, and stated through his counsel that the transaction was not a sale for fair market value. Further, he stated that the Mortgage would not be satisfied until the property was sold and 25% of net profits over a million were paid to him, as well as any proceeds from the ROW at a future date and time. However, he said that he would accept the payment of the Note without releasing or satisfying the Mortgage.

### CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law.

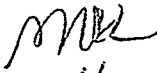
Construction and interpretation of a contract is a question of law to be decided by the court. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997). "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004) (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001)).

"The primary concern of the court interpreting a contract is to give effect to the intent of the parties." *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015); *Lee v. Univ. of S.C.*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014). The best evidence of the parties' intent is the contract's plain language. *Lee, supra*, 407 S.C. at 517, 757 S.E.2d at 397.

Based on the language of the Agreement in this case, Lineberger does not have discretion

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<sup>1</sup> QPV showed the sale of the main tract was for \$1,000,000.00 showing \$500,000.00 in proceeds to QPV. QPV also has an agreement with MPV for the ROW. Such agreement is contingent upon abandonment of the ROW by government, and no monies were to trade hands. Pursuant to the Operating Agreement between QPV and MPV, each entity would hold a one-half interest in the new LLC, with an adjusted tax basis of \$1,000,000 in the real property. Additionally, the ROW areas would be valued at \$209,316, with such funds not being paid, but a future payment if the ROW were abandoned by the government. Otherwise, the ROW would revert 100% back to QPV if not abandoned by July 31, 2018, and QPV's capital account would be adjusted.

  
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to determine to whom QPV should sell the small tract, or the amount for which it should be sold. Such business decisions are left entirely to QPV. Lineberger is no longer a member of QPV.

Further, I conclude that the sale price of the Small Tract is \$1,000,000, and that this represents the fair market value of the property. The evidence does support the contention that the Small Tract was worth more than the \$1,000,000 sales price, or that the sale was netting more than \$1,000,000 to QPV. I further conclude that QPV was ready willing and able to close on August 15, 2015.

Obviously, the potential recoupment of the ROW property may, or may not, result in additional proceeds for distribution to Lineberger. Nevertheless, if the ROW were to be abandoned by the government before July 31, 2018, the ROW property would be valued at \$209,316, per the agreement between MPV and QPV, and Lineberger compensated accordingly.

Thus, I conclude that Lineberger is obligated to complete performance of the Agreement by execution and delivery of a Satisfaction of Mortgage, and provision of a recordable Notice of Dissociation, as required by the Agreement. I further conclude that due to his failure to comply with the terms of the Agreement, interest on the Note due Lineberger ceased accruing as of August 15, 2015, the date of tender by Plaintiff. "It is a long recognized principle in our courts that a valid tender stops the running of interest." *Ruscon Const. Co. of Fla. v. Beaufort-Jasper Water Authority*, 259 S.C 314, 319, 191 S.E.2d 715, 717, (1972) citing *Smith v. Stinson*, 1 Brev. 1 (1793); *Ryan v. Baldrick*, 3 McCord 498 (1826). This makes the payoff amount for the Note, as of August 15, 2015, \$411,644.62.

#### ORDER

Therefore, based on the findings and conclusions herein, it is ordered as follows:

1. QPV is entitled to sell the Small Tract to the third-party, DB2 Associates, LLC, and that the sale price established for the property is \$1,000,000.
2. Lineberger shall execute a Satisfaction of Mortgage for the payoff of the Note, with interest abated from August 15, 2015.
3. QPV shall pay Lineberger the sum of \$411,644.62 in satisfaction of the Note.
4. Lineberger shall execute and deliver a recordable Notice of Dissociation to QPV.
4. If the ROW property is abandoned by the government before July 31, 2018, MPV shall pay QPV \$104,658.00, and QPV shall pay to Lineberger the sum of \$52,329.00, representing his share of such payment, in accordance with the Membership Buyout Agreement.

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5. If the ROW property is abandoned by the government after July 31, 2018, then QPV is obligated to pay twenty-five percent of any monies recognized thereafter to Lineberger pursuant to the Membership Buyout Agreement.

ALL OF WHICH IS SO ORDERED.

July 27, 2016



S. Jackson Kimball  
Master-in-Equity  
York County

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