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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No.: 2016-000910

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SC Court of Appeals

Ten State Street, LLP.....Appellant,

v.

William E. Danielson and Carol Danielson,Respondents.

William E. Danielson and Carol Danielson,Respondents,

v.

Ten State Street, LLP.....Appellant.

INITIAL BRIEF OF RESPONDENTS

McCULLOUGH KHAN, LLC

Clayton B. McCullough, Esq. (SC Bar No.: 13722)

Jamie A. Khan, Esq. (SC Bar No.: 76685)

359 King Street, Suite 200

Charleston, SC 29401

(843) 937-0400

Clay@mklawsc.com

Jamie@mklawsc.com

ATTORNEYS FOR RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. The Master-In-Equity committed no errors of law when it found for the Respondents on Appellant's breach of contract claim and the record contains substantial evidence supporting the decision and findings.
2. The record supports the Master-In-Equity's conclusion that the Agreement was not breached due to Respondents' alleged "default on the Note."
3. The Master-In-Equity properly found that Respondents use their "best efforts" to try and facilitate Appellant's assumption of the mortgage as contemplated by the Agreement and because of such, there was no breach under the Agreement.
4. The Master-in-Equity properly interpreted the Agreement's 2% interest carry language and the Appellant's interpretation of the provision is contrary to the terms of the Agreement.
5. The Master-in-Equity correctly denied Appellant's attempt to rescind the Agreement on the basis of mutual mistake and unilateral mistake and the law, record and testimony support such decision.
6. The Master-In-Equity properly found for the Respondents on their counterclaim for holdover rent.
7. The Appellant's claims for unjust enrichment, equity, and constructive trust were waived at trial and are not part of this appeal

STATEMENT OF THE CASE

On March 11, 2013 Appellant Ten State Street, LLP (“Appellant”), by and through its attorney and managing partner Timothy Scrantom, Esquire (“Scrantom”), filed suit against Respondents William E. Danielson and Carol Danielson (“Respondents”) over disputes surrounding a Purchase Option Lease Agreement (“Agreement”) for residential property owned by Respondents and located on Sullivans Island, South Carolina. (Comp.) The lawsuit contains claims for breach of contract, mutual mistake, unilateral mistake, unjust enrichment, and “claims and assertions in equity.” Respondents answered, counterclaimed for breach of contract, and asserted a third-party claim against Scrantom for breach of his personal guaranty. (Ans. to Compl.) Among other things, Respondents alleged that Appellant and Scrantom were obligated to pay \$8,000.00 in holdover rent. Appellant then filed a First Amended Complaint on March 13, 2014, which amended the factual allegations and added a cause of action for constructive trust. (1st Am. Compl.).

On November 3, 2014, the entire case was referred, by consent, to the Master-In-Equity for Charleston County. (Order of Reference). A Second Amended Complaint was then filed on May 12, 2015, which only amended the factual allegations and did not include new claims against Respondents. (2nd Am. Compl.). Respondents answered and renewed their breach of contract counterclaim and third-party claims against Appellant and Scrantom, respectively. (Ans. to 2nd Am. Compl.). Appellant filed a motion for partial summary judgment on its breach of contract claim, but this was denied by the Master-In-Equity. (Motion; Order).

A trial before the Master-In-Equity was held on January 13, 2016 and February 10, 2016. By order filed on March 29, 2016, the Master-In-Equity denied all of Appellant’s claims and

found for Respondents on their breach of contract claims against Appellant and Scrantom. (Order).

Appellant filed its Notice of Appeal on May 2, 2016. (Notice of Appeal).

STATEMENT OF THE FACTS

This is a case of “buyer’s remorse” of a Purchase Option Lease Agreement for a home located on Sullivans Island, South Carolina. Timothy Scrantom, Esquire (“Scrantom”) is the managing partner of Appellant Ten State Street, LLP, and who is also a local and international contract lawyer who has practiced law for over thirty (30) years locally, internationally and as an English Barrister. (P. Tr. Ex. 7A, Trial Tr. p. 10, ln. 13-25, p. 23, ln 5-8, p. 84 ln. 7 – p. 86, ln. 14; D. Tr. Ex. 1, D. Tr. Ex. 2).

In 2010, Scrantom began leasing the property owned by the Respondents located at 2302 Atlantic Avenue, Sullivans Island, SC (“Property”) and began residing at the Property on a part-time basis with his now wife Leigh Wilkes. (Trial Tr. p. 11, ln. 9-12, p. 18, ln. 9-15, p. 135, ln. 19 – p. 138, ln. 11). Shortly thereafter, Respondent William E. Danielson (“Danielson”) and Scrantom began discussing methods by which Scrantom could purchase the Property from the Respondents. (Trial Tr. p. 19, ln. 9-15, P. Tr. Ex. 16, P. Tr. Ex. 20, D. Tr. Ex. 20). Scrantom wanted a method that would give him “beneficial ownership” of the Property so that he could proceed with renovation plans and be protected from the Respondents leasing or selling the Property to a third-party. (Trial Tr. p. 282, ln. 18 – p. 284, ln. 8). At that time, Scrantom was unable to complete an outright purchase of the Property because of his credit issues from his previous divorce. (Trial Tr. p. 90, ln. 10 – p. 91, ln. 18). These discussions and negotiations

lasted two years until the time a Purchase Option Lease Agreement (“Agreement”) was entered with an effective date of April 1, 2012. (P. Tr. Ex. 7A, Trial Tr. p. 18, ln. 9-15).

At the time the Agreement was entered into, Scrantom decided to enter the Agreement through Ten State Street, LLC, rather than individually, with Scrantom being the managing member, in order to develop the Property further and eventually lease out the Property. (Trial Tr. p. 22, ln. 4-19). Scrantom personally guaranteed the payments to the Respondents under the Agreement and acted on behalf of Ten State Street, LLP in all matters related to this case. (P. Tr. Ex. 7A, Trial Tr. p. 92, ln. 18 – p. 93, ln. 4).

Subsequent to entering the Agreement, the Appellant, Scrantom and his now wife, Leigh Wilkes, began undertaking plans to renovate the Property following the future purchase, while continuing to live at the Property. (Trial Tr. p. 149, ln. 2- p. 158, ln. 25; P. Tr. Ex. 19, P. Tr. Ex. 2, D. Tr. Ex. 11, D. Tr. Ex. 12).

In addition to two years of discussions and negotiations between Scrantom and the Respondents over the terms and concepts of the Agreement, prior to entering the Agreement, Scrantom utilized the assistance of John Hagerty, Esquire with Nelson Mullins Riley and Scarborough, LLP to draft and develop the Agreement, obtained, reviewed and analyzed the Respondents’ mortgage documents himself, with his attorney and Certified Public Accountant, and performed a title search on the Property. (Trial Tr. p. 22, ln. 23 – p. 23 ln. 12, p. 87, ln. 3-16, p. 87, ln. 17 – p. 90, ln. 6, p. 31, ln. 2 – 9; D. Tr. Ex. 3, D. Tr. Ex. 4). Following the above work by Scrantom, Scrantom drafted the Agreement with his attorney for execution. (Trial Tr. p. 89, ln. 2-8). The Agreement was subsequently executed by Ten State Street, LLP, Scrantom and the Respondents with an effective date of April 1, 2012. (P. Tr. Ex. 7A).

Following the execution of the Agreement, the parties proceeded in accordance with the terms of the Agreement without major issues until the very end. Eventually though, Scrantom located an alternative house located at 200 Bank Street, Mt. Pleasant, SC that he liked better than the Property and made a \$2.4-million-dollar cash purchase offer for that house on February 25, 2013. (Trial Tr. p. 115, ln. 25 – 123, ln. 2; D. Tr. Ex. 7, D. Tr. Ex. 9). Scrantom then contracted for the purchase of 200 Bank Street on February 28, 2013 for \$2,525,000.00 and subsequently closed, paying cash for the Bank Street property. (Trial Tr. p. 7 – 14; p.333, ln. 23 – p. 334, ln. 12; D. Tr. Ex. 10).

Interestingly, on February 25, 2013, Scrantom specifically told his real estate broker in an email communication related to his \$2.4 million offer on 200 Bank Street that he was close to closing / exercising on the purchase option in the Agreement until he saw the property at 200 Bank Street. Scrantom also told the broker that he had two choices – close on the option in the Agreement *or terminate the option and lose the prior payments to the Respondents:*

There is a real negotiating point though, in addition to the ones you know about – I have been leasing 2302 Atlantic on Sullivans’s for three years. Last March, I renegotiated a lease-purchase, and paid \$50,000 for the option and a further \$35,000 in option continuation payments over the course of the year. We have been working with architects and builders for 8 months, and have final plans and a “final final” bid from a builder who we selected from a round of bids. I have to close the option purchase before April 1 (which we have been working toward, till we saw Bank Street)—*or get out of it and lose the prior payments/investments (including design, time, etc., not to mention commitment).*

We both love the house on Bank, but it’s quite a bit more than the house on Atlantic – and we spend a good deal of time out of town. *So we are going to move, one way or another, in the next few days on a house, and we both hope the owners of Bank Street can meet our price.*

(D. Tr. Ex. 9)(emphasis added).

Scrantom and Ten State Street, LLP actually came up with a third option in this case – attempt to rescind the Agreement for reasons he crafted, try and obtain a refund, and still close on 200 Bank Street.

Per the Agreement, the Appellant was free to terminate the Agreement at-will, at any time, for no reason or any reason with thirty (30) days written notice to the Respondents. However, if the Appellant terminated the Agreement, all prior payments to the Respondents would be retained by the Respondents. (P. Tr. Ex. 7A, §1.03). The Respondents were unable to terminate the Agreement under its terms, only the Appellant. (P. Tr. Ex. 7A, §1.04).

Mr. Scrantom never told the Respondents that he made an offer and a subsequent contract for the purchase of 200 Bank Street or of any other issue with the Agreement which would constitute a perceived breach. (Trial Tr. p. 116, ln. 15 – 118, ln. 12). Rather, on March 1, 2013, before his next payment to the Respondents was due on April 1, 2013, Scrantom on behalf of Ten State Street, LLP, issued the Respondents a “notice of rescission” of the Agreement (as opposed to a termination under §1.03 of the Agreement) via email and attempted to evade the terms of the Agreement so he could move on to 200 Bank Street as well as attempt to recoup all of his prior payments to the Respondents, save for what he deemed reasonable rent. (Trial Tr. p. 116, ln. 15-19; P. Tr. Ex. 7A, §1.03; P. Tr. Ex. 4). This action shocked the Respondents as they believed Appellant and Scrantom were about to buy the Property. (Trial Tr. p. 281, ln. 12-24). Just prior to this notice from Scrantom, Scrantom began raising issues with the contents of the Agreement, presumably to try and set-up some form of claim for rescission or other methods to undermine the actual terms of the Agreement. (P. Tr. Ex. 21, P. Tr. Ex. 3, P. Tr. Ex. 23). Scrantom never exercised the purchase option for Ten State Street, LLP to close on the Property, he only looked for ways to try and create a dispute in order to rescind the Agreement.

The email from Scrantom purporting to be a notice of rescission unilaterally contends that the Agreement is riddled with mistakes and is a “bad deal” for Scrantom and Ten State Street, LLP, even though it was negotiated for years and drafted by two sophisticated attorneys. (P. Tr. Ex. 4).

Ten days following the attempted rescission, on March 11, 2013, Scrantom, representing Ten State Street, LLP as its attorney, filed a lawsuit against the Respondents alleging claims of rescission based on mistake, breach of contract, as well as other claims, and seeking the return all sums that have been paid to the Respondents by the Appellant under the Agreement, as well as attorney’s fees. (Original Summons and Complaint, First Amended Summons and Complaint and Second Amended Summons and Complaint).

Despite the Appellant issuing a “notice of rescission” and filing a lawsuit against the Respondents for the claims asserted, neither Appellant nor Scrantom ever gave the Respondents any form of notice during the existence of the Agreement that the Respondents were not complying with the terms of the Agreement that they now sue for. The Agreement required the Appellant to notify the Respondents in writing and in detail with regard to the nature of the alleged breach, and further give the Respondents thirty (30) days to cure such alleged breach. (P Tr. Ex. 7A, §11.03, §16.01). There is no evidence in the record that the Appellant complied with this notice procedure. The inference to be taken from the lack of notice by the Appellant is simply that there were no true breaches and Appellant simply wished to assert claims to unwind the Agreement that had existed for almost a year, recoup the amounts paid to the Respondents, and purchase a different home. The alternative for the Appellant would have been to simply terminate the Agreement and forfeit the amounts previously paid to the Respondents; a result which Scrantom knew based on his admission to his real estate broker. (D. Tr. Ex. 9).

At trial, Counsel for the Appellant and Scrantom stipulated that the Agreement is unambiguous. (Trial Tr. p. 8, ln. 2-5). A portion of the Appellant's claims in this case involve its intention to assume the first mortgage on the Property as part of the purchase option. (first mortgage hereinafter referred to as the "Note"). (P. Tr. Ex. 7A, D. Tr. Ex. 14 & 15). The Note contained an adjustable rate rider that specified the process if someone was interested in assuming the mortgage (P. Tr. Ex. 22). Scrantom knew and admitted that the mortgage holder could, but did not have to, agree to an assumption. (D. Tr. Ex. 6). In addition, on February 18, 2013, Scrantom admitted that he was not looking for a straight assumption of the mortgage, but was looking for a modification of the mortgage – a different deal altogether to assume, which was not what the Agreement contemplated. (D. Tr. Ex 6).

For the Respondents, it was critical to the deal encompassed by the Agreement that they did not want to sell "at the bottom of the market" in 2012 and therefore, they needed a 2% margin on the debt, or interest rate carry, to entice them to enter into the Agreement. (D. Tr. Ex. 17). This provision was integrated into the Agreement.

ARGUMENTS

I. The Master-In-Equity committed no errors of law when it found for the Respondents on Appellant's breach of contract claim and the record contains substantial evidence supporting the decision and findings.

Appellant's position, at its core, appears to be that the Master-In-Equity erred in finding for the Respondents on Appellant's breach of contract claim. At trial, Appellant argued the Respondents breached the Agreement because (1) the Appellant's Note was in "default" when the Agreement was executed; (2) Respondents failed to use "best efforts" to facilitate Appellant's assumption of the Mortgage; and (3) the Respondents misinterpreted the 2% Interest Carry language in the Agreement to Appellants' detriment. (Order pp. 6-7). According to

Appellant's Brief, these are the only specific breach of contract allegations preserved on this appeal.

The Master-In-Equity heard the testimony of the parties and witnesses, reviewed the Agreement and other relevant agreements, documents, and communications, and ultimately rejected each of the aforementioned alleged breaches. (Order pp. 7-10, 12-14). On appeal, Appellant claims the Master-In-Equity's decision was erroneous due to a smorgasbord of misapprehended factual findings in the Order.¹ For the reasons set forth below, this Court should affirm the Master-In-Equity in light of the highly deferential standard of review for actions at law, such as breach of contract claims, and the robust record supporting the decision.

"An action to construe a contract is an action at law reviewable under an 'any evidence' standard." *Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* at 600,

¹ Appellant's Brief does not identify with any specificity or particularity the precise legal errors committed by the Master-In-Equity. Rather, the Appellant merely points to a number of miscellaneous factual findings, the vast majority of which are irrelevant, he contends generally clouded the proceeding. Appellant fails to connect these qualms with any specific cause of action or legal error. Given this fact, the majority of these observations, even if accurate, have no bearing on the precise legal causes of action and issues relevant to this appeal and are, therefore, irrelevant. *See Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 85-86, 504 S.E.2d 311, 316 (1998) (finding the resolution of disputed factual matters is largely within the trial court's discretion, "the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant"); *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)("[W]hatever doesn't make any difference, doesn't matter"). In the interests of clarity, Respondents' Brief defends the Master-In-Equity's Order based on the specific causes of action asserted by Appellant and the factual and legal arguments relevant to same in light of the applicable standard of review in this appeal.

675 S.E.2d at 415. "The rule is the same whether the judge's findings are made with or without, a reference." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "The judge's findings are equivalent to a jury's findings in a law action." *Id.* The veracity and credibility of a witness can best be judged by the trial judge who heard the witness testify, and who was able to observe his demeanor, and he must be given broad discretion in this area. *Klutts Resort Realty v. Down Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20, 26 (1977).

To prevail on a claim for breach of contract, a party must prove the contract, its breach, and the damages caused by such breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 686 S.E.2d 200 (Ct. App. 2009). In this case, neither party disputes the Agreement is a contract. The only issue is whether the agreement was breached or not.

At trial, counsel for Appellant stipulated² the Agreement was "unambiguous," and this shapes and governs how the Master-In-Equity at trial and this Court on appeal should approach interpreting the Agreement. (Trial Tr. p. 8, ln. 23-24) If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "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." *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). The parties' intention must be gathered from the

² A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. *See State v. Anderson*, 318 S.C. 395, 458 S.E.2d 56 (Ct. App.1995). Stipulations, of course, are binding upon those who make them. 73 Am.Jur.2d Stipulations § 8, at 543 (1974).

contents of the entire agreement and not from any particular clause thereof. *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977).

A breach occurs when a party to the contract fails to carry out a term, promise, or condition of the contract. See *Freeman Dodge, Inc. v. Fin. Servs., Inc.*, 249 S.E.2d 897 (S.C. 1978). "[E]vidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract's existence, the meaning of its terms, and whether the contract was breached." *Conner v. City of Forest Acres*, 363 S.C. 460, 473, 611 S.E.2d 905, 912 (2005). The general rule for awarding damages in a breach of contract action is that the Defendant is liable for whatever damages follows the normal consequence and the approximate result of such breach. *Fuller v. E. Fire and Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962).

Appellant's three alleged breaches of the Agreement are discussed below.

a. The record supports the Master-In-Equity's conclusion that the Agreement was not breached due to Respondents' alleged "default" on the Note.

Appellant points to Respondents' arrearage on the Note in a doomed attempt to show a "default" on the Note at the time the Agreement was executed and, thus, a breach of the Agreement. This argument, however, relies on a flawed interpretation of the Agreement and runs counter to the express, unambiguous language found therein, which demonstrates the parties' intent and mutual understanding. The evidence shows that (1) prior to signing the Agreement, Appellant was fully aware of Respondents' arrearage and the Agreement itself expressly identified the arrearage; (2) the arrearage amount was the same when the Agreement was executed as it was when Respondents sought to terminate the Agreement; and (3) the Mortgagee never commenced any collection or foreclosure activity against Respondents due to the arrearage

on the Note. Therefore, the Master-In-Equity properly found that Respondents did not breach the agreement by virtue of there being an arrearage on the Note.

In the Agreement, Appellant expressly acknowledged “[o]wner is currently \$23,000 in arrears on payments due under the first Mortgage and Owner agrees to immediately pay such arrearage to avoid a default on such Mortgage *if pursued as a default by the Mortgagee.*” (Agreement, ¶11.04; P. Tr. Ex. 7A (Emphasis added)). This unambiguous language demonstrates, conclusively, the arrearage was not a post-execution surprise to the Appellant. “One who signs a written instrument has the duty to exercise reasonable care to protect himself.” *Regions Bank v. Schmauch*, 354 S.C. 648, 664, 582 S.E. 2d 432 (Ct. App. 2003).³ Additionally, Paragraph 11.04, when read in its entirety, evidences the parties’ clear intent that the arrearage itself does not constitute a default, but *may* rise to the level of a default should the Mortgagee take certain enforcement action against the Respondents, which would then trigger the Owner’s duty under the contract to pay the arrearage. Therefore, there can be no question the arrearage itself does not constitute a breach of the Agreement as it was expressly acknowledged by Appellant upon execution. A breach under the Agreement would only occur if pursued as a default by the mortgagee and if it was not cured by the Respondents. There is no evidence in the record of this occurring.

³ “This rule is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused. However, our courts very strictly construes this exception. In determining whether a party can be classified as ignorant and unwary, an individual’s education, business experience and intelligence are all considered.” *Regions Bank*, 354 S.C. at 664 (internal citations omitted). This exception does not apply to Scrantom, who is an experienced and renowned business and contract attorney, both in South Carolina and internationally.

Bill Danielson testified that Scrantom was fully aware of the arrearage and was not surprised at all about the inclusion of the provision regarding arrearage in the Agreement. (Trial Tr. p. 292, ln. 12 – p. 294, ln. 5).

Moreover, the Master-In-Equity found based on the evidence that the Mortgagee took no enforcement action against the Respondents; therefore, default was not triggered under Paragraph 11.04 of the Agreement. Carol Danielson testified she continued to make monthly payments on the Note after the Agreement was executed, the amount of the arrearage (\$23,000) remained constant from the execution of the Agreement through the Appellant's termination attempt in March of 2013, and the Mortgagee never pursued any enforcement action as a result of any alleged default. (Trial Tr. p. 184, ln. 4 – p. 187, ln. 10). The Master-In-Equity weighed Respondents' testimony against the testimony of the Appellant on this point, finding the former persuasive and dispositive of the breach of contract issue vis-à-vis the arrearage. This finding is entitled to deference under the "any evidence" standard and should not be disturbed on appeal. *See Klutts Resort Realty v. Down Round Development Corp.*, 268 S.C. 80, 232, S.E.2d 20, 26 (1977).

As an additional sustaining ground, before the Respondents could even be considered to be in default of the Agreement for the reasons advanced by the Appellant, Sections 11.03 and 16.01 of the Agreement required the Appellant to notify the Respondents in writing and in detail with regard to the nature of the alleged breach, and further give the Respondents thirty (30) days to cure such alleged breach. (P. Tr. Ex. 7A). There is no evidence in the record that the Appellant notified the Respondents in accordance with these provisions as to the alleged default on the Agreement due to the "arrearage" argument of the Appellant. This fact further supports the inference that the Appellant was simply trying to generate a default under the Agreement.

after locating a different house and in order to seek the return of the payments made to the Respondents under the Agreement.

Given the foregoing, the Master-In-Equity properly interpreted the unambiguous language of Paragraph 11.04, in light of the entire Agreement and evidence presented, and denied Appellant's breach of contract claim stemming from the arrearage on the Note argument.

b. The Master-in-Equity properly found that Respondents used "best efforts" to facilitate Appellant's assumption of the mortgage and because of such, there was no breach of the Agreement.

According to Appellant, Respondents breached the Agreement by not using "best efforts" to facilitate his assumption of the Mortgage. The Agreement, does not define "best efforts," but it does expressly state the assumption process is governed by the Mortgage and the ultimate decision is up to the Mortgagee (not the Respondents) and discretionary at that. (P. Tr. Ex. 22 and 7A, D. Tr. Ex 5, 14, 15). Moreover, the evidence at trial shows (1) Respondents did, in fact, contact the Mortgagee to begin the assumption process, even before entering into the Agreement (P. Tr. Ex. 15); (2) Appellant failed to follow through with submitting the necessary underwriting materials; and (3) Appellant wished to pursue a loan modification rather than a straight forward assumption (D. Tr. Ex. 6). Therefore, the Master-In-Equity correctly found that Respondents employed "best efforts" and did not breach the Agreement.

The Agreement states that "[o]wner agrees to use its best efforts, upon request by Buyer, to obtain the consent of the Mortgage holders to the assumption of the Mortgage Debt by Buyer under the terms of the existing Mortgage Debt instruments." (Agreement, ¶19.07; P. Tr. Ex. 22 and 7A) (Emphasis added). The Adjustable Rate Rider, accompanying the Mortgage, describes the assumption process and decision making criteria as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this security instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

(P. Tr. Ex. 22, D. Tr. Ex. 5) (Emphasis added).

Although the mortgage documents at issue are recorded and Scrantom conducted a title search, Appellant had actual possession and knowledge of the mortgage documents as early as March 19, 2012 via delivery from the Respondents, before entering into the Agreement and before Scrantom and John Hagerty began drafting the Agreement. (D. Tr. Ex. 3, D. Tr. Ex. 4). The Appellant and Scrantom had actual possession and knowledge of the contents of the mortgage instruments to include the Adjustable Rate Rider before entering into the Agreement.

Viewing the unambiguous Agreement, the Adjustable Rate Rider, the testimony and evidence, the Master-In-Equity found that the Respondents did not breach the contract for failing to use "best efforts" as contemplated by the Agreement. The Agreement's "best efforts" language was negotiated at arm's length with the aid of another attorney working on behalf of Appellant and Scrantom. (Trial Tr. p. 89, ln. 21 – p. 90, ln. 2). The Court's finding reflects a correct interpretation of "best efforts" to mean Respondents, upon request of Appellant, would contact the Mortgagee to inform them of Appellant's desire to pursue an assumption with the understanding that the assumption process itself would require underwriting paperwork to be

submitted by the Appellant with the decision to approve ultimately up to the Mortgagee⁴. Had Appellant wished for a different or more specific conception of “best efforts,” it had the opportunity to negotiate one in the Agreement.

This description of the process accurately describes the intention of the parties, as stated by the Agreement itself. “One cannot rely upon misstatement of facts, if the truth is easily within his reach. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). “A party must avail himself of the knowledge or means of knowledge open to him. The court will not protect the person who, with full opportunity to do so, will not protect himself.” *Id.*

The record supports the Master-In-Equity’s conclusion that Respondents used “best efforts” and did not breach the Agreement. Bill Danielson testified he made multiple requests to the Mortgagee regarding a potential assumption. (Trial Tr. p. 268, ln. 16 – p. 270, ln. 12). Bill Danielson then told Scrantom, based on these conversations, he would have to submit paperwork to the Mortgagee to be considered. (Trial Tr. p. 52, ln. 22 – p. 53, ln. 7). Critically, there is no evidence the Appellant ever took this next step. Instead, in subsequent conversations Bill Danielson testified that Scrantom stated that he already had cash or his own financing in place to close on the option, but that what he wanted was a loan modification related to the interest rate, which he would then assume⁵. (Trial Tr. p. 268, ln. 16 – p. 273, ln. 7; p. 274, ln. 9-17; p. 279, ln. 11-15; p. 288, ln. 12 – p. 289, ln. 1; D. Tr. Ex. 6). Scrantom himself admitted that the

⁴ Scrantom admitted that he knew that the mortgage holder could, but did not have to, agree to an assumption of the mortgage. (D. Tr. Ex. 6).

⁵ Scrantom did not want to assume the mortgage and Note. He wanted a completely different deal with the mortgage holder as admitted by Scrantom: “Right now, the 1-year LIBOR is .77%, so if it adjusted now, it would be about 2.5%. I think I could be happy enough if I could assume the debt at 2.5%, fixed interest only, for the remaining three years.” (D. Tr. Ex. 6). The Agreement nor the “best efforts” language included an obligation for the Respondents to negotiate a modification of the terms of the mortgage, which is what Scrantom was ultimately seeking.

Respondents' lender did not have to agree to an assumption and also admitted that he was seeking terms that were different from the loan the Respondents had existing. (D. Tr. Ex. 6).

There is no evidence Appellant ever submitted the paperwork to the Mortgagee for an assumption either. The evidence supports that the Appellant truly did not want an assumption, he wanted a better deal on the loan. The Appellant failed to prove a breach of the Agreement on this issue. After considering all of the testimony relevant to the "best efforts" issue, the Master-In-Equity found that Respondents had satisfied their contractual obligations under the circumstances, and this finding should stand on appeal. *See Klutts Resort Realty v. Down Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20, 26 (1977).

As an additional sustaining ground as to this argument by the Appellant, before the Respondents could even be considered to be in default of the Agreement for allegedly failing to use their best efforts to facilitate the assumption, Sections 11.03 and 16.01 of the Agreement required the Appellant to notify the Respondents in writing and in detail with regard to the nature of the alleged breach, and further give the Respondents thirty (30) days to cure such alleged breach. (P. Tr. Ex. 7A). There is no evidence in the record that the Appellant notified the Respondents in accordance with these provisions. This fact further supports the inference that the Appellant was simply trying to generate defaults under the Agreement after locating a different house and in order to seek the return of the payments made to the Respondents under the Agreement.

Given the foregoing, the Master-In-Equity properly interpreted the assumption language in the Agreement, in light of the relevant language in the Mortgage, and found the evidence

showed Respondents used “best efforts” to facilitate the assumption and did not breach the Agreement.

c. The Master-in-Equity properly interpreted the Agreement’s 2% interest carry language and the Appellant’s interpretation of the provision is contrary to the terms of the Agreement.

Appellant’s final breach of contract claim involves the allegation of Respondents demanding excessive payments under the Agreement’s “Interest Carry” provision after the Appellant sought to exercise the option. Respondents have consistently taken the position that the Interest Carry variable should be calculated through March 31, 2015 (the Option Expiration Date), but Appellant countered that the calculation should be prorated only to the date of closing. When viewed in its entirety, the unambiguous Agreement supports the Master-In-Equity’s and Respondents’ interpretation of “Interest Carry” because the alternative would produce absurd results inconsistent with the intent of the parties as expressed in the Agreement.

Although Scrantom was looking at buying a different house, Scrantom began asking questions in February 2013 related to the calculations of the 2% interest carry provision contained in the Agreement. The Agreement defines “Exercise Price” as “(A) the unpaid Option Purchase Price plus the Option Exercise Fee, and (B) all Interest Carry and Unrealized Cottage Rents due and unpaid through and up to the latter of (i) the Closing Date and (ii) the Option Expiration Date.” (P. Tr. Ex. 7A at Ex. A) (Emphasis added). “Interest Carry,” in turn, is defined as “an amount equal to two percent (2%) per annum on outstanding Mortgage Debt and Owner Debt, prorated to the date of payment.” (P. Tr. Ex. 7A at Ex. A). Essentially, Appellant argues the “prorated to the date of payment” language should trump the “latter of (i) the Closing Date and (ii) the Option Expiration Date” language.

The Master-In-Equity interpreted the definitions of "Exercise Price" and "Interest Carry," in light of the Agreement as a whole, and concluded the Interest Carry must be calculated through the Option Expiration Date not the earlier proposed closing date. Based on the aforementioned unambiguous definitions, Interest Carry must be calculated through the latter of the closing date and the option expiration date. This supports Respondents' view that the Interest Carry should be calculated through March 31, 2015 rather than April 2013, as the Appellant suggests. Nothing in the definition of "Interest Carry" is inconsistent with this result, and the proration language therein is entirely consistent with a calculation through March 31, 2015 and does not support a reading that the calculation should be run through an earlier closing date, as this would directly violate the definition of "Exercise Price." *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct.App.1984) ("Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.").

It should be noted that the Appellant never exercised its purchase option right, but rather it attempted to rescind the Agreement after trying to find issues to trigger a disagreement over, all at the same time that Scrantom was purchasing a different house. Therefore, the entire issue of what the percentage of interest carry paid by the Appellant, should it have closed, is moot.

Given the foregoing, the Master-In-Equity properly interpreted the Interest Carry and Exercise Price language in the Agreement as a matter of law, finding the Respondents' interpretation was correct and not a breach of the Agreement.

II. The Master-In-Equity correctly denied Appellant's attempt to rescind the Agreement on the basis of mutual mistake and unilateral mistake and the record supports these findings.

Appellant also sought rescission of the Agreement on both mutual and unilateral mistake grounds. From the testimony and evidence adduced at trial, the Master-in-Equity found Appellant's alleged mistakes center around the same issues relevant to its breach of contract claims; namely, that of (1) the Respondents' Note being in "default" when the Agreement was executed; (2) the Mortgage being freely assumable by Appellant; and (3) the correct calculation of the 2% Interest Carry in the Exercise Price. (Order, p. 6-10). Appellants' Brief similarly identifies and focuses on these three topics on appeal.⁶

The Master-In-Equity found for the Respondents on the rescission claims based on the totality of the testimony and evidence presented at trial. (Order p. 14-16). Central to this decision was the fact that the Agreement was negotiated between sophisticated parties and each party had access to the relevant documents and information to make informed decisions and to protect their respective interests. On appeal, Appellant nevertheless appears to argue this decision is not supported by the facts and rests on incorrect premises.⁷ For the reasons set forth below, this Court should affirm the Master-In-Equity because the record plainly shows Appellant failed to

⁶ Appellant also notes, in passing, alleged mistakes having to do with the condition of the cottage located on the Property as well as the legality of renting it under the local ordinances. The Master-In-Equity found these issues were not the primary focus of the Agreement, and, in any event, the Appellant's had more than enough time to learn about the cottage's condition as well as the regulatory issues surrounding its occupation and use during the two years the Appellant's leased the property prior to signing the Agreement.

⁷ As was the case with the breach of contract analysis (or lack thereof), Appellant's Brief also does not specify the precise legal or equitable flaws in the Master-In-Equity's handling of its mistake/rescission claims. Instead, Appellant has compiled and presented a laundry list of alleged factual errors and misunderstandings, presumably in an attempt to depict the Order as fundamentally flawed even though the alleged flaws are not connected in the Appellant's Brief to legal errors. The vast majority of these factual issues lack any discernable nexus to the causes of action at issue in this case. Rather than attempt the impossible project of addressing and refuting each of these factual challenges, Respondents' Brief will point to the key features in the Record supporting the Master-In-Equity's decision in light of the applicable standard of review.

satisfy by clear and convincing evidence the exacting requirements for either mutual mistake or unilateral mistake.

"A contract may be reformed on the ground of mistake when the mistake is mutual and consists in the omission or insertion of some material element affecting the subject matter or the terms and stipulations of the contract, inconsistent with those of the parol agreement which necessarily preceded it." *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 590, 545 S.E.2d 500, 504 (2001) (quoting *Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987)). "A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended." *Id.* (quoting *Crosby*, 293 S.C. at 206, 359 S.E.2d at 300). "Reformation is the remedy by which writings are rectified to conform to the actual agreement of the parties." *Crosby*, 293 S.C. at 206, 359 S.E.2d at 300 (quoting *Crewe v. Blackmon*, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986)). "Before equity will reform a contract, the existence of a mutual mistake must be shown by clear and convincing evidence." *Id.* (citing *Crosby*, 293 S.C. at 206, 359 S.E.2d at 300).

A contract may be rescinded for mistake, if justice so requires, where the mistake is unilateral and has been induced by the fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to the rescission, without negligence on the part of the party claiming rescission. *See King v. Oxford*, 282 S.C. 307, 313, 318 S.E.2d 125, 128 (Ct. App. 1984). Rescission is appropriate only if both parties can be returned to the status quo prior to the contract. *Id.*

In equity actions, this Court may review the record and make findings based on its view of the preponderance of the evidence. *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221

S.E.2d 773, 775 (1976). However, the Court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989).

The three areas comprising Appellant's mistake claims are discussed below.

a. Appellant failed to show any mistake with respect to the condition of the Note when the Agreement was executed.

As discussed above, Appellant took the position at trial that it was surprised to learn the about the Note's condition when the Agreement was executed, and this mistake justifies rescission. Specifically, Appellant points to the arrearage on the Note of approximately \$23,000.00 as well as letters sent to Respondents by the Mortgagee. This, however, falls well short of a mutual mistake or unilateral mistake sufficient to rescind the Agreement.

Both Appellant and Respondents were fully aware of the arrearage on the Note when the Agreement was executed, and this eliminates any possibility of mutual mistake on this point. As mentioned above, the Agreement acknowledges the arrearage on its face and expressly provides for default if and only if the Mortgagee takes enforcement action and the Respondents fail to cure. (P. Tr. Ex. 7A ¶11.04). Moreover, Bill Danielson testified he did not think the Note was in default at any time relevant to execution of the Agreement or since, despite the arrearage, and no enforcement action has ever been taken. (Trial Tr. p. 290, ln. 12-25). In other words, Bill Danielson does not believe there was any mistake with respect to the Note's accounting as of execution or since. Given the express language of the Agreement and the testimony of Bill Danielson, there can be no basis for mutual mistake on the issue of Note's condition when the Agreement was executed.

For a mutual mistake to exist under the law, both parties must have intended a certain thing and by mistake, they did not obtain what was intended. *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 590, 545 S.E.2d 500, 504 (2001). The testimony of Bill Danielson is dispositive that the elements of mutual mistake could not be met by the Appellant.

There is also no unilateral mistake with respect to the status of the Note. Appellant has failed to identify by clear and convincing evidence any fraud, deception, or misrepresentation committed by Respondents. Moreover, notwithstanding Respondents' state of mind or motivations, at all times relevant, Appellant possessed all the relevant details about the status of the Note, and the Agreement expressly integrated this mutual understanding. Moreover, Bill Danielson testified Appellant not only knew about the arrearage prior to executing the Agreement, but viewed it as potential leverage for future discussions with the lender regarding assumption. (Trial Tr. p. 294, ln. 8 – p. 296, ln. 1). To the extent the Appellant was mistaken about anything, this was purely due to his own negligence and not attributable to Respondents in any way. These factual considerations alone are more than sufficient to derail Appellant's unilateral mistake claim.

Give the foregoing, the Master-In-Equity correctly found there were no mistakes justifying rescission on the issue of the condition of the Note at the time the Agreement was executed.

b. The evidence reveals there was no mistake as to whether and under what conditions the Mortgage could be assumed.

Appellant's next mistake claim is based on the Mortgage assumption process. Appellant claims all parties misunderstood all that went into the assumption process and what was meant by Respondents agreeing to use "best efforts" to facilitate the same. Specifically, Appellant

claims he was unaware he would have to submit underwriting information to be approved and suggests, in an unspecified manner, that Respondents should have done more to accomplish the assumption quickly and seamlessly. Neither argument withstands scrutiny nor supports either a mutual mistake or unilateral mistake theory.

The relevant documents foreclose any possibility for Appellant to claim either mutual mistake or unilateral mistake related to the assumption process. Prior to the drafting of the Agreement, Appellant was provided and retained copies of the Mortgage and other loan documents, and at all times should have fully understood the nature of the assumption process. (Trial Tr. p. 88, ln. 15 – p. 89, ln. 13). In addition, as stated above, these documents were recorded and the Appellant had conducted a title search. Furthermore, as set forth above, the principal of the Appellant (Timothy Scrantom) is a South Carolina attorney and he also engaged the services of an attorney to review the loan documents and assist with the drafting of the Agreement.

The assumption process is outlined in detail in the Adjustable Rate Rider accompanying the Mortgage. It clearly states that assumption is discretionary and would require Appellant submit to an underwriting process through the lender. Bill Danielson testified he contacted the Mortgagee about the assumption procedure (as well as the loan modification requested by Appellant), was told the underwriting steps outlined in the Adjustable Rate Rider would have to be followed for an assumption, and this was communicated to Appellant. (Trial Tr. p. 275, ln. 4-15).

Appellant was acting through its managing partner who is a licensed attorney and English barrister who specializes in international contract law and has taught classes at the University of South Carolina School of Law. (Trial Tr. p. 10, ln. 13 – 25). In addition to that, the Appellant

and Scrantom were represented by well-respected counsel. Accordingly, Appellant knew or should have known what goes into the assumption process, as outlined in the relevant documents, and there is no evidence in the record that Scrantom or the Appellant was deceived or misled by Respondents in any way. Moreover, as a sophisticated party familiar with financial transactions, he knew or should have known that it would be unreasonable to anticipate a lender would blindly sign off on an assumption without doing its homework first.

However, it is clear that the Appellant was not interested in an assumption of the Respondents' mortgage, which is what the terms of the Agreement contemplated. The Appellant and Scrantom wanted a different deal – a modification to the Respondents' mortgage in order to benefit the Appellant and Scrantom. (Trial Tr. p. 268, ln. 16 – p. 270, ln. 12; p. 274, ln. 9-17; p. 279, ln. 11-15; D. Tr. Ex. 6). This request of the Appellant and Scrantom goes well beyond the contents and requirements of the Agreement and what the Respondents were required to do. In addition, Scrantom was readily able to close on the Property with cash or his own financing. (Trial Tr. p. 268, ln. 20- p. 269, ln. 2).

Based on the clear language of the relevant documents as well as Appellant's knowledge thereof at all times relevant, the Master-In-Equity correctly found there was no mistake justifying rescission in connection with the assumption of the mortgage.

c. The dispute over the “Interest Carry” language does not amount to a mistake justifying rescission.

As mentioned above, a dispute arose between the parties regarding the proper calculation of the “Interest Carry” component of the overall “Exercise Price.” These terms are defined by the Agreement and discussed in detail in the breach of contract analysis above. Nevertheless, Appellant takes the position that this language is plagued by mistake and justifies rescission of

the Agreement. This argument fails not only by virtue of the express language of the Agreement, but also the well documented motivations of the parties during the negotiation process.

There is no mutual mistake with respect to the “Interest Carry” language because Respondents contend the express language of the Agreement reflects their understanding of the deal. As discussed above, “Exercise Price” is defined to include the “Interest Carry” through the latter of the closing date and the option expiration date. Therefore, under no plausible reading of the Agreement, can “Interest Carry” be interpreted to call for a proration through closing where closing stands to occur prior to the option expiration date. Respondents, who took the position “Interest Carry” should have been calculated through the option expiration date, do not believe there is any ambiguity or misunderstanding with respect to the relevant language; rather, the defined terms accurately depict the bargained for arrangement (Trial Tr. p. 300, ln. 20 – p. 303, ln. 24). Hence, there can be no mutual mistake. Given the clear language of the Agreement, the arms-length negotiation of the Agreement between sophisticated parties, and Respondents’ understanding of the provision, the mutual mistake argument fails.

As for unilateral mistake, the record is devoid of any evidence approaching fraud, deceit, misrepresentation, or other improper conduct on the part of Respondents. Aside from the clear terms of the Agreement, which of course cannot be said to have been concealed from Appellant, Respondents’ interpretation reflects its well documented motivations leading up to consummation of the deal, as evidenced by the trial testimony as well as the communications between the parties leading up to the Agreement. Bill Danielson testified he did not want to sell the Property at 2012 prices while the real estate market was depressed, and he did not want to lose out on the profit margin associated with the rental income he was receiving from the Property relative to his payments on the very favorable low interest only Note. (Trial Tr. p. 296,

ln. 16 – p. 299, ln. 5). E-mails exchanged between the parties during the negotiation process evidence Respondents’ intentions and demonstrate how the “Interest Carry” was designed to capture and preserve this value in the event Appellant exercised the option to buy before the option expiration date. (Trial Tr. p. 300, ln. 20 – p. 303, ln. 16; P. Tr. Ex. 21, P. Tr. Ex. 23, D. Tr. Ex. 17, p. 1). Based on the clear language of the Agreement and the negotiations between the parties, Appellant cannot claim Respondents’ interpretation of “Interest Carry” came as any surprise or was fueled by the sort of underhanded conduct necessary to support a unilateral mistake theory.

For these reasons, the record supports the Master-In-Equity’s finding that the Agreement should not be rescinded due to any mistake associated with the “Interest Carry” interpretation and should be affirmed by this Court.

III. The Master-In-Equity correctly found that Appellant failed to timely vacate and owed one month’s worth of holdover rent to Respondents.

The Master-In-Equity found for the Respondents’ on their breach of contract counter claim against Appellant and third-party claim against Timothy Scrantom, as guarantor, due to Appellant’s failure to timely vacate the property and the failure of Scrantom to pay, and awarded a joint and several judgment in the amount of \$8,000.00. It is unclear whether this decision is part of this appeal, given the vagueness of Appellant’s Brief, and since Scrantom is not a party to this appeal. Regardless, the Master-In-Equity’s decision on this point should be affirmed based on the record and the applicable law. To the extent that the Appellant or Scrantom argues that this issue is before the Court on this appeal, the issue is abandoned as to Scrantom. In Appellant’s Brief, the Appellant clearly states that “Ten State Street, LLP is the only Appellant in this case...” (Appellant Brief, p. 12). Being the judgment also applied to Timothy Scrantom

individually as guarantor, the issue is abandoned as to Mr. Scrantom as he is not an Appellant and makes no arguments as to the personal judgment against him.

The record clearly establishes the basis for the holdover rent charge as well as Appellant's responsibility to pay. The Agreement's "holdover clause" provides authority for the owner to charge one-month's base rent in the amount of \$8,000.00 should the tenant fail to vacate after the last day of the term. (P. Tr. Ex. 7A ¶14.02). Timothy Scrantom personally guaranteed all of Appellant's obligations under the Agreement, including the hold-over penalty. (P. Tr. Ex. 7A). Due to Appellant's unilateral termination of the Agreement, his occupancy rights expired at the end of March 2013. (P. Tr. Ex. 4). However, Bill Danielson testified Appellant remained in the property into April. (Trial Tr. p. 304, ln. 16 – p. 306, ln. 9). Appellant did not dispute that it continued to possess the Property into April. When specifically questioned on this point, Mr. Scrantom testified that he still had property he had to move out and therefore was still in the move-out process during that time period. (Trial Tr. p. 330, ln. 12 – p. 332, ln. 23). Therefore, he was technically a holdover. Based on the above, the Master-In-Equity properly found Appellant had violated Paragraph 14.02 of the Agreement, and awarded a \$8,000.00 judgment against Appellant and Timothy Scrantom.

Given the foregoing, the Master-In-Equity's decision to award breach of contract damages against Appellant and Timothy Scrantom is supported by both the law and the facts and should be affirmed.

IV. Appellant's claims for unjust enrichment, equity, and constructive trust were waived at trial and not part of this appeal.

Appellant's Second Amended Complaint also contains causes of action for unjust enrichment, "equity," and constructive trust. However, the Master-In-Equity found that

Appellant failed to present any evidence or argument in support of these claims at trial. (Order, p. 6) (“At trial, [Appellant] produced evidence and arguments in support of the claims for Rescission – Mutual Mistake, Rescission – Unilateral Mistake, and Breach of Contract”). Since the causes of action for unjust enrichment, equity, and constructive trust were abandoned and waived at trial, the Master-In-Equity did not make any factual findings or conclusions of law with respect to the unjust enrichment, equity, and constructive trust claims. The Master-in-Equity also found that those remaining causes of action were unsupported by the evidence which was advanced in support of the theories which were ruled upon. (Order, p. 16).

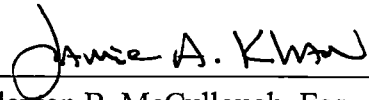
Appellant did not file a motion pursuant to Rule 59, SCRPC to ensure the preservation of these claims on appeal. Further evidencing waiver and abandonment of these claims, Appellant’s Brief does not even address these causes of action. An appellate court cannot address an issue unless it was raised to and ruled upon by the trial court. *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000). Therefore, the Master-In-Equity’s finding that these claims were abandoned is the law of the case and should not be disturbed on appeal. *Id.* Given the foregoing, the claims for unjust enrichment, equity, and constructive trust have been waived and are not part of this appeal.

Conclusion

Because the Master-in-Equity made no error of law and his findings were supported by the evidence in this case, this Court should affirm the Master-in-Equity’s order.

[SIGNATURE PAGE TO FOLLOW]

McCULLOUGH KHAN, LLC



Clayton B. McCullough, Esq.
Jamie A. Khan, Esq.
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-0400
(843) 937-0706 (fax)
jamie@mklawsc.com

ATTORNEYS FOR RESPONDENTS

October 26th, 2016
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No.: 2016-000910

RECEIVED

OCT 28 2016

SC Court of Appeals

Ten State Street, LLP.....Appellant,

v.

William E. Danielson and Carol Danielson,Respondents.

William E. Danielson and Carol Danielson,Respondents,

v.

Ten State Street, LLP.....Appellant.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the *Initial Brief of Respondents and Designation of Matter to be Included in the Record of Appeal* has been served upon the following by mailing a copy, properly addressed and with sufficient postage affixed thereto, on this 26th day of October, 2016.

Timothy D. Scrantom, Esq.
Scrantom Dulles International PLLC
107 East Bay Street
Charleston, SC 29401

W. Andrew Gowder, Jr., Esq.
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413-2247

Attorneys for Appellant


Katie B. Nancy, Paralegal



McCULLOUGH • KHAN, LLC
ATTORNEYS AT LAW

Jamie A. Khan
Direct: 843.937.0705
Fax: 843.937.0706
jamie@mklawsc.com

October 26, 2016

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
OCT 28 2016
SC Court of Appeals

Re: *Ten State Street, LLP v. William E. Danielson*
Appellate Case No. 2016-000910

Dear Ms. Kitchings:

I hope this letter finds you well. Enclosed for filing please find the original and one (1) copy of the Initial Brief of Respondents William E. Danielson and Carol Danielson, as well as the Designation of Matter to be Included in the Record on Appeal and the Proof of Service regarding the above-referenced matter. Please file the originals and return clocked copies to our office in the enclosed self-addressed stamped envelope. By copy of this correspondence to counsel for the Appellant, I am notifying them of this filing.

Thanks in advance for your assistance and please do not hesitate to contact me if you have any questions or need anything further. With kind regards, I remain

Sincerely yours,

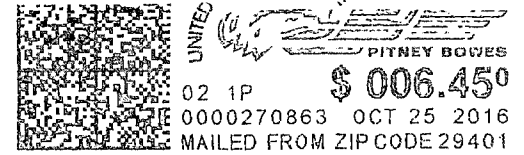
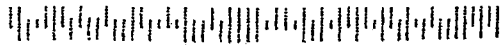
McCULLOUGH KHAN, LLC

Jamie A. Khan

JAK/kbn

Enclosures

cc: Timothy D. Scrantom, Esq.
W. Andrew Gowder, Jr. Esq.



359 King Street, Suite 200 • Charleston, SC 29401

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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