

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP0702410

Philippe Cahen Bay Point Island, Llc Bay Pointe Holdings, Ltd	Summit Bay Pointe, Inc Jusa Development, Llc Jupiter Usa, Inc	Reinhard Krafft	Dimocharous S.A.R.L.
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order

Statement of Judgment by the Court:

Order Granting Summary Judgment

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ORDER INFORMATION **SC Court of Appeals**

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ C. T. Mullen

2142

9/16/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **November 7, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **November 14, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Ralph E. Tupper PO Box 2055 Beaufort, SC 29901

Ernest Mitchell Griffith PO Drawer 570 Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 PHILIPPE CAHEN,)
 INDIVIDUALLY AND AS)
 PRESIDENT OF SUMMIT BAY)
 POINTE, INC.; SUMMIT BAY)
 POINTE, INC., INDIVIDUALLY)
 AND AS A FOUNDING)
 MEMBER OF BAY POINT)
 ISLAND, LLC; RUSSELL L.)
 MILLS, INDIVIDUALLY AND)
 AS PRESIDENT OF JUPITER)
 USA, INC.; JUPITER USA, INC.)
 INDIVIDUALLY AND AS THE)
 GENERAL PARTNER OF BAY)
 POINTE HOLDINGS, LTD.:)
 JUSA DEVELOPMENT, LLC;)
 BAY POINT HOLDINGS, LTD,)
 INDIVIDUALLY AND AS)
 FOUNDING MEMBER OF BAY)
 POINT ISLAND, LLC; AND)
 BAY POINT ISLAND, LLC,)
 Plaintiffs)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2011-CP-07-2481
 2410

ORDER GRANTING SUMMARY JUDGMENT

-versus-

REINHARD KRAFFT)
 AND DIMOCHAROUS S.A.R.L.)
 Defendants)

2016 NOV -7 PM 3:22

THIS MATTER COMES BEFORE THE COURT by way of a Motion for Summary Judgment filed by the Plaintiffs, Philippe Cahen, individually and as President of Summit Bay Pointe, Inc., et al. The Motion was scheduled to be heard on July 7, 2015, however, the Plaintiffs consented to postponing the hearing and submitting briefs based on the evidence in the record on as of July 7, 2015. The Plaintiffs submitted their Memorandum in Support of Plaintiffs' Motion for Summary Judgment on September, 16, 2015. The Defendants' Memorandum of Law Opposing Plaintiffs' Motion for Summary Judgment was also submitted

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on September 16, 2015. The parties stipulated that the court would decide the motion based on the briefs. In addition to the pleadings, the documents in the record are the depositions of the Plaintiff, Philippe Cahen, and an affidavit of David Tedder, Esquire. The Court has carefully considered the motions, evidence in the case, and memoranda submitted in support of the parties' respective positions and the law, and hereby grants Plaintiff's Motion for Summary Judgment.

LEGAL STANDARD

Rule 56, SCRPC, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857 (2002). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E. 2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). While viewing the evidence in a light most favorable to Plaintiffs, under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

FACTS

This action was commenced as a declaratory judgment action, seeking the court's determination of what obligation, if any, the Plaintiffs (hereinafter "Cahen") owed to the Defendants (hereinafter Krafft) under the terms of a contract entered into on or about, July 31, 2007. Cahen contends that Krafft did not perform pursuant to his obligations as set forth in the contract; therefore, Krafft has no right to exercise the option to ownership of Ten (10%) percent of the shares of Summit Bay Pointe, Inc.

Initially Krafft challenged the jurisdiction of this court; however, after his deposition, Krafft withdrew his objection to jurisdiction and counterclaimed alleging a breach of contract, breach of contract accompanied by fraudulent act, breach of fiduciary duties, tortious interference with contract, and unjust enrichment/*Quanturm meruit*.

Cahen, a resident of Luxembourg, is the Director of Summit Capital Holdings, S.A. At the time the contract was executed, Summit Capital Holdings, S.A. owned all of the outstanding shares of Summit Bay Pointe, Inc., a Delaware corporation, Cahen had the authority to enter into contracts on the behalf of Summit Bay Pointe, Inc. and Summit Capital Holdings, S.A. At all times relevant hereto, Summit Bay Pointe, Inc. owned Bay Point, Inc., which owned a 450-acre island off the coast of South Carolina, which it wanted to sell or develop. Krafft is also a resident of Luxembourg. Krafft's primary occupation is consulting with clients on their corporate affairs. As part of his consulting business, Krafft sometimes introduces foreign investors to a particular project, which they may or may not invest. At all times relevant hereto, Krafft was the sole shareholder of a Luxembourg corporation named Dimocharous, S.A.R.L. The contract at issue was assigned from Krafft to Dimocharous, S.A.R.L, on October 9, 2008.

As hereinabove set forth, Krafft counterclaimed alleging various causes of action regarding an alleged breach of contract or duties created by the contract and *Quantum meruit*. In determining the merits of Plaintiffs' motion, it is necessary to review the plain language of the contract and the parties' conduct in relation to the contract.

The facts, as entered in the record, are that in the summer of 2006, Krafft and Cahen met in Düsseldorf, Germany, when Krafft worked for Bank Oppenheim, to discuss Bank Oppenheim's interest in investing or co-developing Bay Point Island. In May 2007, Krafft, who was, at the time, no longer employed by Bank Oppenheim, arranged and attended a meeting in

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Orlando, Florida, with Cahen and representatives from Jupiter USA, Inc. At the May 2007, Orlando meeting, a representative of Jupiter USA, Inc. introduced himself and Jupiter USA, Inc. to Cahen, and told Cahen that Jupiter USA, Inc., through its network in Germany, was raising substantial funds for real estate projects of Jupiter USA, Inc. in the United States.

At this meeting, Jupiter USA, Inc. representatives and Cahen discussed a possible joint venture to own and develop Bay Point Island between Jupiter USA, Inc. and Summit Bay Pointe, Inc., whereby Summit Bay Pointe, Inc. would sell fifty percent (50%) of its shares to Jupiter USA, Inc. at a price to be determined later.

At some point thereafter there were discussions between Cahen and representatives from Jupiter USA, Inc., and Krafft regarding Krafft becoming involved in Summit Bay Pointe, Inc. and in Jupiter USA, Inc., based on a 50-50 joint venture between Summit Bay Pointe, Inc. and Jupiter USA, Inc.

The agreement reached was that in the event of a successful joint venture—which was defined as “*Summit Bay Point, Inc. selling fifty percent (50%) ownership to Jupiter USA, Inc.*”(emphasis added)—Jupiter USA, Inc. would then convey five percent (5%) of Summit Bay Pointe, Inc. to Krafft and Summit Bay Pointe, Inc. would also convey a five percent (5%) interest to Krafft. In other words, in the event of a successful joint venture between Summit Bay Pointe, Inc. and Jupiter USA, Inc., Krafft would have the option to purchase ten percent (10%) of the joint venture project for the sum of twenty thousand (\$20,000) dollars.

On July 31, 2007, the contract was entered into between Krafft and Summit Capital Holdings, S.A., which would compensate Krafft by giving him an option to purchase ten percent (10%) of the shares of Summit Bay Point, in the event Jupiter USA, Inc. and Summit Bay Pointe,

Inc. concluded a partnership by December 31, 2008. Krafft subsequently forwarded twenty thousand (\$20,000.00) dollars to the Plaintiff, which has been held in escrow.

Due to the financial crisis of 2008, Summit Bay Pointe, Inc. agreed to extend the Option period to Jupiter USA, Inc. from December 31, 2008, until May of 2009, and the purchase price was reduced Six Million Four Hundred Thousand (\$6,400,000.00) dollars. However, the option was never exercised by Jupiter USA, Inc. due to the fact Jupiter USA, Inc. could not raise the funds necessary to complete the transaction. After the extension expired, all negotiations between Summit Bay Pointe, Inc. and Jupiter USA, Inc. ceased.

In May 2010, Summit Bay Pointe, Inc. entered into a joint venture agreement with Bay Point Island, LLC to co-develop the island under a completely different financial arrangement than the terms of the option agreement.

COUNTER CLAIMS OF DEFENDANTS

All the cause of actions, except *Quantum meruit*, involve applying the facts to the terms of the herein referenced option agreement contract.

With regard to the *Quantum meruit* cause of action, in order to recover, Defendant Krafft must present a mere scintilla of evidence that there was some value imparted to the Plaintiff as a result of Krafft's action. Assuming, for the sake of argument, that the service performed was introducing Cahen to Jupiter USA, Inc., and its agents, which ultimately resulted in a joint venture contract between Summit Bay Pointe, Inc., and Bay Point Holdings, LTD, on different terms and conditions. The court takes judicial notice of judgment in case number 2013-CP-07-0056 of One Million Eight Hundred Fifty-Five Thousand Six Hundred Forty-Four and 05/100

(\$1,855,644.05) dollars against Bay Point Holdings as a result of Bay Point Holdings adverse actions to Summit Bay Pointe, Inc.

With regard to the other causes of action, in order for Krafft to prevail, Defendant must show that there is a mere scintilla of evidence in the record that would support Defendant's position that he is entitled to the compensation as set forth in the contract. The Plaintiffs contended that in applying the facts to the terms of the contract, the inescapable conclusion is that the terms of the contract were not satisfied. Thus, no compensation is due, and the option is not exercisable. This conclusion may be reached in several ways.

First and foremost, Article 1 of the contract specifically states:

Article 1: Option

The Grantor hereby grants to the Beneficiary an option (the "Option") to subscribe to such number of Shares representing 10% of the common stock of the Company at the next capital increase of the Company from the Grantor upon all of the terms, covenants and conditions hereinafter set forth.

The Grantor shall procure that the Company issues such shares for the agreed price.

However if a partnership is not concluded between Jupiter USA Inc, a Florida corporation, and the Company or any other related party to the Company, before 31 December 2008, the Option shall be automatically cancelled and null and void.

There is no testimony or evidence in the record that a partnership between Summit Bay Pointe, Inc. and Jupiter USA, Inc. was created between July 31, 2007, the date of the contract, and December 31, 2008, or that there was ever a partnership between Summit Bay Pointe, Inc. and Jupiter USA, Inc.

Article 2 reiterates the need for the partnership to take place by December 31, 2008:

Article 2: Consideration for the Option

The Grantor acknowledges that the expertise and the know-how of the Beneficiary for various investment projects of and in the Company is good, valuable and sufficient consideration for the Option, being understood that such expertise and know-how shall have to be materialized by the conclusion of partnership between Jupiter USA Inc, a Florida corporation, and the Company or any other related party to the Company, before 31 December 2008.

There is no testimony or evidence in the record that a partnership between Summit Bay Pointe, Inc. and Jupiter USA, Inc. was created between July 31, 2007, the date of the contract, and December 31, 2008, or that there was ever a partnership between Summit Bay Pointe, Inc. and Jupiter USA, Inc.

Article 3 states the manner in which the option shall be executed:

Article 3: Term and Exercise

The Beneficiary may exercise the Option at any time as from 1 January 2008 up to 5:00 p.m., Luxembourg City time to 31 July 2009, (the "Termination Date") by sending a letter with receipt to the Grantor of written notice with receipt of its exercise of the Option to subscribe to the capital increase of the Company.

The evidence in the record is clear—no letter was received by Grantor to exercise the option.

Article 4 states:

Article 4: Purchase Price

The subscription price ("Subscription Price") which the Beneficiary agrees to pay upon exercise of the Option is Twenty Thousand American dollars (\$20,000) payable before the Closing by bank transfer.

The Twenty Thousand (\$20,000.00) dollars was paid prior to closing and is being held in escrow by the Plaintiff. However, no letter was ever received by Summit Bay Pointe, Inc.

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Article 11 states:

Article 11: Retransfer of the Option Shares

It is expressly agreed that if the Option has been exercised and if a partnership is not concluded between Jupiter USA Inc, a Florida corporation, and the Company or any other related party to the Company, before 31 December 2008, the ownership of any and all the Option Shares will be automatically retransfer to the Grantor.

Again, this paragraph illustrates the importance of the partnership being concluded by December 31, 2008, and again there was no partnership established with Jupiter USA, Inc. and Summit Bay Pointe, Inc.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED no agreement was consummated between the parties and, therefore, no compensation is due. Accordingly, Plaintiff's Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.



Honorable Carmen T. Mullen

Beaufort, South Carolina

Dated: September 16, 2016

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