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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NUMBER: 2009-CP-22-01045
John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens,	)	
Plaintiffs,	)	
vs.	)	ORDER GRANTING SUMMARY JUDGMENT
Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.	)	
Defendants.	)	

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This action came before me on September 29, 2017, for consideration of a motion for summary judgment filed by the Defendants Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc. (hereinafter "the Charltons") . Present in support of the motion was Charles T. Smith, attorney for the Charltons. Present in opposition to the motion were John M. Leiter and K. Douglas Thornton, attorneys for the Plaintiffs.

After carefully considering the arguments of counsel, the memorandums submitted in support of the motion and in opposition to the motion, and the depositions and exhibits cited in the arguments and memorandums, I found and concluded that the motion should be granted.

Factual Background

In 2007 the Plaintiffs signed agreements with South Bay Properties, LLC[1] for the purchase of lots in Harbor Club on Winyah Bay, a new residential subdivision then being

[1] South Bay Properties, LLC was founded by Kyle V. Corkum for the acquisition and development of the real estate that became Harbor Club on Winyah Bay subdivision. Kyle V. Corkum was the manager and a member of South Bay Properties, LLC. Kyle V. Corkum was also the founder, the manager and a member of Landquest Development, LLC.

EXH. B

developed by South Bay Properties, LLC. The Goodwins contracted to purchase Lot 160. The Owenses contracted to purchase Lot 94. No infrastructure or amenities existed at Harbor Club on Winyah Bay when the agreements were signed or when the lot sales closed.

The agreements to buy and sell real estate signed by the Plaintiffs, as buyer, and South Bay Properties, LLC, as seller, specified the infrastructure and amenities to be provided by South Bay Properties, LLC:

> Improvements by Seller. Seller agrees that only the following services and amenities will be provided or completed by Seller and that such completion shall be subject to time extensions caused by acts of God, material shortages, strikes, or any other grounds legally establishing impossibility of performance:
>
> a. Paved roads providing access to the Lot;
> b. Water service lines to a boundary line of the Lot;
> c. Sever service lines to a boundary line of the Lot; and
> d. The following recreational facilities: Clubhouse and Pool, Boathouse and Fishing Pier.
>
> Buyer acknowledges that no other representations regarding completion by Seller of roads, utilities or recreational facilities have been made or relied upon by Buyer and Buyer hereby acknowledges that Seller is not obligated to complete any facilities or improvements other than those listed above.

Although South Bay Properties, LLC initially enjoyed strong lot sales in Harbor Club on Winyah Bay, the real estate market rapidly declined at the end of 2007. The last lot sale in Harbor Club on Winyah Bay occurred in January of 2008. Without revenue from lot sales or some other source of funds, South Bay Properties, LLC was unable to provide the promised improvements.

Ultimately the City of Georgetown called the subdivision performance bond issued by Hartford Casualty Insurance Company and paved roads, water lines, sewer lines and electric service were built in the subdivision. A clubhouse, pool and boathouse were not built.

The Charltons had two connections with South Bay Properties, LLC and Harbor Club on Winyah Bay subdivision: (i) the Charltons sold South Bay Properties, LLC approximately 79.524

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acres of land for $20,850,000.00 and (ii) the Charltons provided seller financing by accepting South Bay Properties, LLC's promissory note for $14,580,662.92 secured by a purchase money mortgage.

The Plaintiffs did not meet the Charltons or have any communications with the Charltons until months after the Plaintiffs' lot closings.

Plaintiffs' Causes of Action

Twenty-one Plaintiffs commenced this action alleging twelve causes of action against twelve Defendants. The Order Dismissing Parties dated January 27, 2017, dismissed seventeen Plaintiffs leaving John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens as the Plaintiffs in this case. At the mediation conference on August 9, 2017, the Plaintiffs agreed to a partial settlement of the case which included dismissal of all claims against all Defendants except the four Charlton Defendants. Landquest Development, LLC, Kyle V. Corkum and South Bay Properties, LLC were dismissed with prejudice by a Stipulation dated September 19, 2017. Hartford Casualty Insurance Company, Hartford Fire Insurance Company and The City of Georgetown were dismissed with prejudice by a Stipulation dated September 28, 2017. C. R. Thompson and Sons, LLC, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities were dismissed with prejudice by a Stipulation dated September 29, 2017.

The eleventh cause of action in the Complaint which sought an equitable lien was dismissed by an Order dated March 10, 2017. The seventh cause of action in the Complaint which sought declaratory relief regarding the subdivision performance bond issued by Hartford Casualty Insurance Company to the City of Georgetown was implicitly ended by the dismissal and release of Hartford Casualty Insurance Company and the City of Georgetown.

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The remaining causes of action are: the first, second and third causes of action (breach of contract); the fourth cause of action (SC Unfair Trade Practices Act); the fifth cause of action (negligent misrepresentation); the sixth cause of action (fraud); the eighth and ninth causes of action (Interstate Land Sales Full Disclosure Act); the tenth cause of action (SC Uniform Land Sales Full Disclosure Act); and, the twelfth cause of action (civil conspiracy). All these causes of action concern the Plaintiffs' decision to purchase lots in Harbor Club on Winyah Bay subdivision.

The remaining causes of action do not allege the Charltons entered any contracts with any Plaintiff or made any promises or representations to any Plaintiff. Instead the Complaint alleges the Charltons are joint ventures partners with Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC and C. R. Thompson and Sons, LLC. The Charltons' Answer denies the allegation of a joint venture or partnership. At the motion hearing the Charltons and the Plaintiffs agreed the existence of a joint venture or partnership between the Charltons and the developer of Harbor Club on Winyah Bay is an essential element of all the Plaintiffs' remaining causes of action against the Charltons.

Analysis

Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001). "The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Carolina Alliance for Fair Emp't v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 799-800 (Ct. App. 1999).

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“Once the party moving for summary judgment meets this initial burden, the non-moving party cannot simply rest on the mere allegations or denials contained in the pleadings.” *Id.* at 485, 523 S.E.2d at 800 (“Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial.”). The plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007)

The parties agree that establishing the Charltons were joint venturers or partners in the development of Harbor Club on Winyah Bay is an essential issue in all the Plaintiffs' remaining causes of action against the Charltons. All the causes of action concern events that are alleged to have occurred prior to the Plaintiffs' first contact with the Charltons. All the wrongful acts and omissions alleged in the Complaint were committed by parties other than the Charltons, parties that have been dismissed and released by the Plaintiffs.

In the case of *Welling, et al. v. Crosland, et al.*, 129 S.C. 127, 123 S.E. 776, 781 (1924), the South Carolina Supreme Court discussed the distinction between a joint venture and a partnership:

> Practically the only difference between a ‘joint adventure’ and a ‘partnership’ is that a partnership is ordinarily for the transaction of a general business of a particular kind, while a joint adventure relates to a single transaction. A joint adventure was unknown to the common law, being regarded as within the principles governing partnerships; it is still governed by the same rules of law.

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. *S. C. Code* §33-41-210. “One of the most important tests as to the existence of a partnership is the intention of the parties.” *Stephens v. Stephens*, 213 S.C. 525, 530-31, 50 S.E.2d 577, 579 (1948). To determine whether a partnership exists, the following tests are used: (1) the

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sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management. *Wyman v. Davis*, 223 S.C. 172, 181, 74 S.E.2d 694, 699 (1953); *Stephens*, 213 S.C. at 531, 50 S.E.2d at 579; *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990). "[W]hen all of the conditions exist which by law create a legal relationship, the effects flowing legally from such relation follow whether the parties foresaw and intended them or not." *Stephens*, 213 S.C. at 531, 50 S.E.2d at 579.

The Charltons met their initial burden of demonstrating the absence of a genuine issue of material fact by the depositions taken in this action. Ronald L. Charlton was deposed on August 24, 2017, and was asked whether there was a partnership.

> Q. Mr. Charlton, did you enter a partnership with Landquest Development, South Bay Properties, LLC, CR Thompson & Sons or Kyle Corkum?
>
> A. No.

Kenneth Mitchum, the attorney that represented the Charltons in their negotiations with Landquest Development, LLC, South Bay Properties, LLC and Kyle V. Corkum, was deposed on August 31, 2017, and was asked about the existence of a partnership.

> Q. To the best of your knowledge, did Ron Charlton, Bonnie Charlton, or Ron Charlton, Jr., and South Bay Properties, LLC, agree either expressly or by implication to share in the profits or losses at Harbor Club on Winyah Bay?
>
> A. No.
>
> Q. Did Bayside Property, Inc., and South Bay Properties, LLC, agree either expressly or by implication to share in the management and control of the development of Harbor Club on Winyah Bay?
>
> A. No. In fact, it was exactly the opposite of that. We expressly refrained from doing anything like that.
>
> Q. To the best of your knowledge, did Ron Charlton, Bonnie Charlton, or Ron Charlton, Jr., agree either expressly or by implication to share in the

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management and control of the development of Harbor Club on Winyah Bay?

A. No.

Kyle V. Corkum, the manager of South Bay Properties, LLC and Landquest Development, LLC, was deposed on September 14, 2017, and was asked about the Charltons' role in the development of Harbor Club on Winyah Bay.

> Q. What was--what was Mr. Charlton's and Mrs. Charlton's and Bayside's role in the development at that point?
>
> A. I--I don't recall. Was Bayside their entity? I can't remember.
>
> Q. Bayside Properties, LLC.
>
> A. Just they owned the land, and that was it. And they were going to be living on the property, I think with a couple houses, based on what I've read and what we've talked about. But it was just arm's length. I probably tried to talk him into a partnership and joining together, and he didn't want to cross that line. And so I stayed in my role as the developer, took that responsibility very seriously, and he remained steadfastly in the corner that he had no responsibility for the--the infrastructure. That it was either going to be me or it was going to be The Hartford. And it was always supposed to be that way. We can look back on it and say it's not right, but I--I feel like I'm the one that failed people, so--I'm the one that was supposed to develop the property.

In response the Plaintiffs did not produce direct testimony that the Charltons were partners in the development of Harbor Club on Winyah Bay. The Plaintiffs did not produce evidence of a written partnership agreement between the Charltons and the developer of Harbor Club on Winyah Bay. The Plaintiffs did not produce evidence of a verbal partnership agreement between the Charltons and the developer of Harbor Club on Winyah Bay. Instead the Plaintiffs argued the conduct of the Charltons and South Bay Properties, LLC prove the existence of a partnership.

The Plaintiffs argued that the development restrictions and option contained in paragraph 4 of the Purchase Agreement between South Bay Properties, LLC and the Charltons is evidence

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of a partnership. The development restrictions include an easement over the roads in the subdivision, the right to use the amenities in the subdivision without charge, and limitations on the development of the land. Kyle V. Corkum, an experienced developer, was questioned in his deposition about an early version of the restrictions.

> Q. Okay. These conditions in Plaintiff's Exhibit No. 5, Paragraph 3, if you'll look at those again. If you were paying in this instance eighteen million dollars for a piece of property, is it customary to allow those types of conditions on your use of the property to exist to agree to those kind of terms?
>
> A. Yes. It can be. Yes.
>
> Q. Okay. You--you've had that experience in other developments?
>
> A. Yes, sir.

Kenneth Mitchum, an experienced real estate attorney, was questioned in his deposition about the origin of the restrictions.

> Q. Okay. Does it refresh your memory about those areas of resistance that you encountered with Landquest? Things that they felt like they could do and those things that they said, no, we -- we're really having a problem with that request or that restriction?
>
> A. I can't tell you specifics because I don't remember specifics in that regard. All I know is it all boiled down to some very heated discussions at times. It all boiled down to the language of this agreement and, specifically, as paragraph 4.
>
> Q. Okay. So I understand that paragraph 4 is the resolution of those heated discussions. What I'm trying to --
>
> A. That's correct.
>
> Q. What I'm just trying to understand is where was the heat? What was it that there were heated discussions around?
>
> A. It's like any contract negotiation. I mean, one party wants -- wants it this way. A developer wants to have as much as he can get, and I've worn that

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> hat, too. And I can tell you, I want every single square inch I can -- and without any limitations on what I can do on a piece of property.

The development restrictions evidence arms-length negotiations between a buyer and a seller in a complex real estate transaction, not a partnership.

The Plaintiffs also argued that the Charltons' receipt of funds from South Bay Properties, LLC upon the sale of lots in Harbor Club on Winyah Bay is evidence of a partnership. The funds received by the Charltons were release fees and were applied to reduce the mortgage debt. Funds received from a business in payment as a debt do not imply the recipient of the funds is a partner in the business. S. C. Code §33-41-220(4)(a). Kyle V. Corkum was asked in his deposition about how any profits realized from the development of Harbor Club on Winyah Bay would have been distributed.

Q. Okay. So if this projection worked out to be exact, which none ever do–

A. No.

Q. --the end result of this project would be a profit of over ten million dollars?

A. Yes, sir.

Q. Including the cost of infrastructure?

A. Yes.

Q. And if those profits had been realized, who would receive that money?

A. Mr. Clark and I would have received that money.

Q. How much of that profit would be received by the-- the Charltons?

A. None.

The receipt of release fees is not evidence of a partnership. If there had been profits from Harbor Club on Winyah Bay, the Charltons would not have shared in the profits.

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The Plaintiffs also argued that the Charltons' decision to sell land to South Bay Properties, LLC, without requiring a bank loan commitment is evidence of a partnership. South Bay Properties, LLC's original offer to the Charltons anticipated South Bay Properties, LLC paying for the land by a combination of cash, seller financing and bank financing. The Second Amendment to Purchase Agreement, dated May 9, 2007, continued to anticipated South Bay Properties, LLC paying for the land by a combination of cash, seller financing and bank financing and provided: "When the outstanding unpaid balance of the Purchase Price is less than or equal to Nine Million Two Hundred Thousand and NO/100 Dollars ($9,200,000.00), Buyer will promptly close on its loan from SunTrust Bank and pay to Sellers the balance of the Purchase Price." By a letter dated May 25, 2007, SunTrust Bank committed to provide a revolving line of credit for South Bay Properties, LLC in the amount of $13,000,000.00. Consistent with the Second Amendment to Purchase Agreement, the Suntrust Bank loan commitment provided that upon closing the loan, SunTrust Bank would fund $9,200,000.00 to pay off the Seller for the purchase of the land. Suntrust Bank's subsequent withdrawal of the loan commitment adversely affected the Charltons and may have justified the Charltons refusing to sell the land to South Bay Properties, LLC. Therefore Kyle Corkum asked Ronald Charlton whether he wanted to close the sale without a bank loan commitment. Both South Bay Properties, LLC and the Charltons were optimistic about the prospects for Harbor Club on Winyah Bay and the sale closed on September 17, 2007. South Bay Properties, LLC continued to seek a bank loan for many months after the closing. The Charltons' decision to sell land without requiring a bank loan commitment is not evidence of a partnership.

The conduct of the Charltons and South Bay Properties, LLC does not demonstrate the existence of a partnership. The conduct of the Charltons and South Bay Properties, LLC does not indicate an intent to form a partnership. The conduct of the Charltons and South Bay Properties,

LLC does not demonstrate the sharing of profits and losses. The conduct of the Charltons and South Bay Properties, LLC does not demonstrate a community of interest in capital or property. The conduct of the Charltons and South Bay Properties, LLC does not demonstrate a community of interest in the control or management of Harbor Club on Winyah Bay.

Conclusion

NOW, THEREFORE, it is hereby

ORDERED, that the motion for summary judgment by the defendants Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc. is GRANTED; it is further

ORDERED, that all remaining causes of action against the said defendants are dismissed and this action is ended.

Benjamin H. Culbertson
Resident Judge, Fifteenth Judicial Circuit

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Georgetown Common Pleas

Case Caption: John Steven Goodwin , plaintiff, et al VS Landquest Development Llc , defendant, et al

Case Number: 2009CP2201045

Type: Order/Summary Judgment

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148