



Beaufort Common Pleas

Case Caption: Stancel E Kirkland VS Old South Properties Inc , defendant, et al
Case Number: 2018CP0700796
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Stancel E. Kirkland and El Cid Holdings,
LLC,

Plaintiffs,

v.

Robert Wolfson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-07-00796

FINAL JUDGMENT

RECEIVED

FEB 11 2019

SC Court of Appeals

On October 1, 2018, this matter was referred to this Court with finality with special instructions to expedite the final hearing. The issues before the Court concern the interpretation of a contract between Stancel E. Kirkland¹ and Robert Wolfson regarding ownership of a company named Old South Properties, Inc.

On November 5, 2018, the matter was heard before this Court in a non-jury trial. The findings of this Court are as follows.

The evidence in the case confirmed that Kirkland and Wolfson were, at all times relevant, sophisticated and experienced businessmen. The evidence also confirmed that, at all times relevant, Wolfson had superior knowledge of the books, operations, assets and liabilities of Old South Properties, Inc., than did Kirkland.

The contract at issue was made in two parts: (1) an Agreement dated May 21, 2017, and (2) a Note of Security Agreement dated July 5, 2017. By their own terms, they are meant to act and be construed in conjunction with one another and as a single agreement.

¹ While this case was pending, on June 29, 2018, Stancel E. Kirkland assigned all of his interest in Old South Properties, Inc. to El Cid Holdings, LLC, who thereafter intervened as Plaintiff in this matter.

There were several provisions in the contract that provided valuable consideration to each party. The specific parts of the contract at issue in this case are as follows:

1. When the contract was executed, Kirkland and Wolfson were each 50% owners of Old South Properties, Inc.
2. Wolfson agreed to purchase Kirkland's 50% interest in Old South Properties, Inc. by paying Kirkland \$80,000 on or before March 1, 2018, with a 30-day period to cure default in the case of non-payment. Wolfson was also required to pay Kirkland another \$10,000 on or before January 1, 2019, with a 30-day period to cure default in the case of non-payment.
3. Following any such default, there was a self-executing consequence for the default, by which Wolfson's interest in Old South Properties, Inc. "shall be the exclusive property of Stancel E. Kirkland."

Neither party claims any ambiguity to any part of this contract, including the provisions referenced above, nor do I find that any exist.

It is undisputed that Wolfson failed to make the \$80,000 payment to Kirkland on or before March 1, 2018, and it is undisputed that Wolfson failed to cure this default within the 30-day grace period. Although Wolfson's reason for not complying with the payment schedule involved his concern about a 3rd party's lien on real estate owned by Old South Properties, Inc., nothing in the contract allowed for any extensions or modifications under such circumstances. Further, there was no agreement or modification that altered or extended the payment period.

Indeed, although certain extrinsic evidence was presented to and received by the Court, this ruling is based solely on the four corners of the unambiguous contract and upon the undisputed and unexcused failure to pay.

Under South Carolina law, the main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (S.C.

App. 1992); *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). If a contract's language is clear and capable of legal construction, a court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement. *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (S.C. App. 2001). A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense. *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (S.C. App. 1993); *Gilbert v. Miller*, 356 S.C. 25, 30–31, 586 S.E.2d 861, 864 (S.C. App. 2003).

Therefore, I find that Wolfson was in default of the Agreement as of the expiration of the grace period, which was March 31, 2018. This default activated the self-executing clause transferring Wolfson's interest in Old South Properties, Inc. to Kirkland. As of April 1, 2018, Kirkland was the exclusive owner of Old South Properties, Inc.

I also find that, as Kirkland transferred the entirety of his interest in Old South Properties, Inc. to El Cid Holdings, LLC on June 29, 2018, that as of that same date, El Cid Holdings, LLC became the sole and exclusive owner of Old South Properties, Inc.

As to the other provisions of the contract, I find that (1) Kirkland and El Cid Holdings, LLC each waives any further claims under the Agreement by reason of the forfeiture and declares the same to be satisfied, and said satisfaction shall be the Order of the Court, and (2) the mutual releases between Kirkland and Wolfson under the contract were not challenged and remain binding on Kirkland and Wolfson.

For the same reasons as set forth hereinabove, the Counterclaims fail and I find for the Plaintiffs on the same.

Finally, as the evidence offered at trial establishes that the mortgage Wolfson gave on February 16, 2018 and recorded on March 6, 2018 (File No. 2018011846) in the name of Old South Properties, Inc. to his son's company, HCG Weight Loss Center, Inc., has been satisfied, I hereby direct Wolfson to take all actions necessary to have the appropriate satisfaction of mortgage filed with the Beaufort County Register of Deeds within fifteen (15) days of the date of this Order.

AND IT IS ORDERED.

Marvin Dukes
Master-in-Equity

November 14, 2018
Beaufort, South Carolina