STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2016-CP-10-2380
	)	
	)	
Chicora Life Center, LC,	)	
	)	
Plaintiff,	)	**ORDER**
v.	)	
	)	
Fetter Health Care Network Inc.; NBSC Corporation; and John and Jane Does 1-100,	)	
	)	
Defendants.	)	
	)	

This matter is before me for decision. By way of a "Consent Order of Reference to Special Master," dated Dec. 15, 2017, the Presiding Judge of the Ninth Judicial Circuit referred the case to me, as Special Master-In-Equity, for a full and final hearing on the issues. A hearing was held on April 23-24, 2018.

Appearing on behalf of Plaintiff, Chicora Life Center, LC ("Chicora"), was John A. Massalon, Esq. of Wills, Massalon &Allen. Appearing on behalf of Defendant and Counter-Claimant, Fetter Health Care Network, Inc. ("Fetter"), was Samuel A. Altman, Esq. of Derfner & Altman.

The Plaintiff acquired the property in question from the City of North Charleston and negotiated leases with various entities, including Fetter, the County of Charleston and the South Carolina Department of Mental Health. The issue before the Court is whether or not Chicora satisfied its obligation under a lease executed on August 4, 2014 ((and thereafter amended) by completing the Tenant Improvements in order that Fetter could move in and operate a health care facility.

Chicora filed this action asserting several claims against Fetter. In its Answer, Fetter denied the material allegations of the Complaint, asserted several affirmative defenses and a counter-claim. At the lengthy hearing, every point was vigorously contested. The testimony was in conflict on all important issues.

I. CLAIMS OF THE PARTIES

Chicora asserts claims for breach of contract (a lease), a breach of the covenant of good faith and fair dealing and for negligent misrepresentation and declaratory judgment. In its First Cause of Action, it seeks relief in the form of compensatory damages resulting from Fetter's alleged breach of contract, for a declaratory judgment that the lease remains in full force and effect, for prejudgment interest and for attorneys' fees and costs. In its Second Cause of Action, it seeks general and compensatory damages. On its Third Cause of Action, it seeks compensatory damages, prejudgment interests and costs. On its Fourth Cause of Action, it seeks declaratory relief in the form of a ruling that Chicora is entitled to payment of the costs in excess of the "Budget Cap" and the amount of such costs.

In its Answer, Fetter asserts a qualified general denial of the allegations of the Complaint and certain affirmative defenses, including impossibility of performance as a result of a foreclosure filed by Plaintiff's lender and its subsequent filing of a bankruptcy petition under Chapter 11. It also asserts as defenses a breach of the covenant of quiet enjoyment, estoppel and waiver. Finally, it asserts a claim for Chicora's alleged breach of the lease. It seeks dismissal of Chicora's Complaint, an order determining that the lease has been breached and an award of attorneys' fees and costs.

II. PARTIES

Plaintiff is a limited liability company organized under the laws of South Carolina, with its principal place of business in North Charleston. It was formed for the purpose of owning and managing a commercial real estate building located at 3600 Rivers Avenue in North Charleston (the "Property"). Fetter is a non-profit corporation doing business in North Charleston. Fetter entered into a commercial lease (the "Lease") with Chicora for occupancy of a certain portion of the Property.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY CONCLUSION OF LAW

I find, preliminarily, that this Court has jurisdiction of the parties as well as subject matter jurisdiction. Venue of this case is proper in Charleston County.

B. FINDINGS OF FACT

Based on the testimony provided at the trial and a review of the transcript of record, I hereby make the following findings:

1. **I FIND** that the Lease (Exhibit F) executed between the parties contains the following provisions:

(a) Section 2 required "Tenant takes the Premises 'AS IS' except as described in Exhibit B, with Tenant to receive delivery of the Premises after satisfactory completion of the

Tenant Improvements by Landlord."

(b) Section 3 of the Lease, included the following language: "If Tenant's failure to occupy the Premises is due to the Landlord's failure to complete improvements or to perform any other obligation set forth herein, then Tenant's obligation to pay interior finishing costs pursuant to this Section 3 shall be excused or waived."

(c) Section 4 of the Lease states in part, "Upon completion of the Tenant Improvements as provided herein and the issuance of a certificate of occupancy the term of this Lease shall commence (the "Term Commencement"), which shall occur by November 1, 2014."

(d) Section 6 of the Lease recognizes that the premises are to be used for healthcare services.

(e) Section 14 requires that both the Landlord and Tenant comply with all laws, statutes, and ordinances, and government rules and regulations.

(f) Section 46 acknowledges the obligation to work with the Tenant in obtaining any licensing necessary in order to satisfy requirements of the South Carolina Department of Health and Environmental Control and Department of Alcohol and other drug abuse services.

(g) Section 50 of the Lease repeats language that has been stated before and includes the following, "The Landlord shall deliver the Premises AS IS after the improvements contemplated on Exhibit B are completed and a certificate of occupancy is delivered to the Tenant, which shall occur no later than November 1, 2014."

(h) Exhibit B to the Lease contains the following language: "Tenant shall contract with the Landlord or an approved general contractor to make any and all Tenant Improvements in accordance with the applicable building codes and craftsmanship standards to the satisfaction of Tenant, Landlord, and the City of North Charleston such that a Certificate of Occupancy will

be issued in a timely fashion."

(i) Section 36 of the Lease is entitled "Corporate Agreement" amounts to a merger clause and states that there are no oral agreements effecting the lease. It further states that the terms of the agreement are the entire agreement.

2. **I FIND** that Chicora was unable to complete the improvements and obtain a certificate of occupancy by November 1, 2014 through no fault of or caused by Fetter.

3. **I FIND** that on April 15, 2015 an additional Lease for storage space was entered into between the parties in order that the Defendant could store medical records at CNH, which lease was to run concurrently with the original Lease for 1,776 rentable square feet at the rental rate of $1,776.00 per month.

4. **I FIND** that Fetter took possession of the storage space and made payments in accordance with its obligations for a period of 12 consecutive months, but was forced to vacate the premises, removing the medical records, when leaks were discovered in the building. Thereafter, Fetter was advised that Chicora would not make any repairs. See Jones Page 350, lines 1-25; Page 351, lines 1-19.

5. **I FIND** that a First Addendum to the Lease was executed between the parties on April 16, 2015, which increased the square footage and included the following language: "Term Commencement, as defined in paragraph 4 of the Lease, as occurring upon completion of the Tenant Improvements and the issuance of a certificate of occupancy for the Premises, shall occur by June 1, 2015." Chicora again was unable to deliver the Premises by the due date through no fault of Fetter.

6. **I FIND** that Fetter in an effort to honor its obligation under the Lease had obtained a grant from the Health Resources and Services Administration; had ordered computer equipment costing over $100,000.00; and spent other monies in anticipation of moving into the CNH upon completion of the Tenant Improvements. See Jordan Page 252, Lines 1-25; Page 253 Lines 1-17.

7. **I FIND** that a Third Addendum to the Lease was executed by the parties dated November 23, 2015 which included in Section D the following terms: "Term Commencement of the Lease shall occur upon completion of the Tenant Improvements and issuance of a certificate of occupancy for the Premises, which shall occur on or before ninety (90) days from the date a Contract is executed between Contractor and Tenant, but no later than February 15, 2016."

8. **I FIND** that on December 22, 2015 a Temporary Certificate of Occupancy was issued by the City of North Charleston, which provided for the Tenant to move in furniture.

9. **I FIND** that on January 1, 2016, Chicora forwarded a letter to Fetter stating that the premises were ready for occupancy and providing the statement that the cost for upfitting and rent had become due and payable. See David Page 182, Lines 7-17.

10. **I FIND** thereafter on January 21, 2016, a final Certificate of Occupancy was issued by the City of North Charleston without any attempt being made by Chicora to determine whether or not the Tenant Improvements had been completed to the satisfaction of Fetter in accordance with the second paragraph of Exhibit B of the Lease. See David Page 190, Lines 3-7.

11. **I FIND** that multiple inspections of the premises took place before and after the issue of the Certificate of Occupancy by representatives of Fetter including Corbitt Hinson,

chairman of its Facilities Committee; Ruth Jordan, its interim Chief Executive Officer; Adrian Williams, a professional engineer and construction manager; and Aretha Jones, the present CEO of the Defendant, with each reaching the decision that the Tenant Improvements had not been completed.

12. **I FIND** that Corbitt Hinson as Chairman of the Facilities Committee indicated that he visited the premises on multiple occasions before and after the Certificate of Occupancy had been issued with other members of his committee, which included Leonard Brown and Antoine Sanders. Sanders is a local banker and Brown is local realtor. He testified that he was shocked at the condition of the premises and was concerned because Fetter was under a federal deadline to take advantage of a grant that had been obtained from a federal health services agency for the provision of health and medical services. His statement regarding the unsatisfactory condition of the Tenant Improvements was shared by the other members of his committee and reported to Fetter's Board. See Hinson Pages 145-149.

13. **I FIND** that Ruth Jordan, the interim CEO, testified in detail regarding her position as interim CEO and the ongoing negotiations that she had in having the leased premises available for use as a healthcare facility; and the delays in having the Tenant Improvements completed as required in the Lease. She provided the opinion that the Tenant Improvements were never completed. She testified that the items set forth on Exhibit R were not change orders or add-ons. She testified that she had visited the property on multiple occasions both before and after the issuance of a Certificate of Occupancy. She further testified that she had taken medical staff to the premises to inspect the property and concluded that the premises could not be occupied as a medical facility based on the condition of the property and the incompletion of the

Tenant Improvements. The deficiencies are set forth in her testimony on Pages 272, lines 1-25; Page 273, lines 1-25; and Page 274, lines 1-13.

14. **I FIND** that Adrian Williams inspected the property on several occasions prior to the issuance of a Certificate of Occupancy and thereafter inspected the property between February 5 and February 9, 2016 utilizing the architectural drawings that were prepared for Fetter. He prepared what is known as "Exhibit R" based on those drawings. He provided the opinion that the condition of the leased premises would not permit Fetter to move in and operate a healthcare facility. He further testified that the items shown on "Exhibit R" were not related to any change orders. He advised that the bathrooms were not finished, sinks were not installed, the front desk was not set up, and there was no exit door, in addition to those items cited in the report. He provided the opinion that based on what he knew about the operation of Fetter, with the items set forth on Exhibit R, that Fetter could not have moved in and operated a healthcare facility. See Williams Page 324, lines 1-25 and Page 325, lines 1-25.

15. **I FIND** that the three page, single spaced list of items set forth on Exhibit R shows numerous defects in the existing condition of the leased premises, which include multiple rooms with missing sinks, rooms with missing toilets, walls that needed to be repaired or moved, floors and ceilings that needed repair, multiple problems with doors, latches, locks and misaligned doors, that with other defects placed the premises in a condition where it was unready for Fetter's use as a healthcare facility.

16. **I FIND** that Sections 6, 14, and 46 of the Lease place Chicora on notice that the premises were to be used for healthcare services and Fetter would have to comply with all legal requirements. Section 29 CFR 1910.1030 (d) sets forth standards for facilities providing

outpatient care to have implanted basic infection procedures. These standard procedures include installation and maintenance of handwashing facilities inside examination rooms. Exhibit R reflected significant deficiencies in the subject premises including the following:

Room 1303	Peds missing sink
Room 1304	Peds Triage missing sink
Room 1305	Relocation of the sink is required in the plans.
Room 1312	Peds Exam missing sink.
Room 1313	Peds Exam missing sink.
Room 1320	Adult Exam missing sink
Room 1323	Adult Exam missing sink
Room 1324	Adult Exam missing sink
Room 1346	OB Exam add sink
Room 1347	OB Exam add sink
Room 1350	OB Exam add sink

The installation of these items, as well as the other items set forth on Exhibit R, are required before a healthcare facility could legally commence its operation.

17. Based on the testimony and the Court's own review of the items on Exhibit R, **I FIND** that the Tenant Improvements were far from completed.

18. **I FIND** that Karl David was the construction supervisor for Chicora at CNH and was presented a copy of Exhibit R by Ruth Jordan shortly after its issue. See Jordan Page 274, Page lines 14-19.

19. **I FIND** that David testified that the items listed on "Exhibit R" were not add-ons or change orders, contradicting testimony that had been provided by both Durbano and Blackburn. See David Page 194, lines 22-25 and Page 195, lines 1-3.

20. **I FIND** that the Certificate of Occupancy obtained by David was done without attempting to tell Fetter. Although Chicora may have had no legal or contractual obligation to advise Fetter that it was seeking the Certificate of Occupancy, the fact is that Fetter had no opportunity to provide input concerning the Tenant Improvements that had not been completed. See David Page 190, lines 3-7.

21. I FIND that the issuance of a Certificate of Occupancy does not establish that the separate requirement of completion of Tenant Improvements had been completed.

22. I FIND that Chicora sent Fetter a bill on January 1, 2016 (after issuance of the Temporary Certificate of Occupancy, but before issuance of the permanent Certificate), calling for Fetter to begin paying rent immediately.

23. **I FIND** that David had discussions with Ruth Jordan and Adrian Williams after the preparation of "Exhibit R", but only wanted to discuss beginning payment of rent and not the condition of the property.

24. **I FIND** that on February 23, 2016, Fetter offered a payment to Chicora for certain items (not Exhibit R items) that had been agreed to be upfit items.

25. **I FIND** that Chicora never accepted this offer and never did any further work of any sort on the projected Fetter premises.

26. **I FIND** that both Blackburn and David acknowledged by separate emails that the Tenant Improvements had not been completed. See David email (Exhibit T) sent March 2, 2016 at 7:41 a.m. and Blackburn email (Exhibit T) sent March 22, 2016.

27. **I FIND** that Darbis Briggman, head of the City of North Charleston Inspection Department, testified that in issuing a Certificate of Occupancy in an existing building, that the City is concerned only about code requirements rather than craftsmanship. He testified that he did not perform the inspection; that he provided no photographs related to the inspection; and he further testified that he was not the inspector from the City who actually inspected the property before the Certificate of Occupancy had been issued. See Briggman Page 317, lines 3-14.

28. **I FIND** that the testimony of Aretha Jones further supported Fetter's position, as she testified that she had been, prior to accepting the position at Fetter, the Chief Executive Officer of the Community Health Center of Savannah for 17 years and had a Masters degree in Health Administration and a Masters degree in Public Administration. She testified that she had viewed the space initially in late January, 2016 during her initial interview with Fetter with the Board chairman at the time; the interim CEO, Ruth Jordan; and the Chief Medical Officer, Dr. Shantae Williams. She testified that what she saw was a disaster; water was pouring into back offices; five or six doors were placed up against the wall; sinks that were supposed to be positioned were hanging off the walls. She testified that she came back for a second interview and again walked the space at the CNH finding that no changes had taken place as to the condition of the proposed leased premises. She viewed the property several times thereafter including April, 2016, and during a recent visit in 2018, where she was invited to inspect the space by the County of Charleston, who had acquired the property from Chicora. She testified

that the condition of the property had not changed from her initial visit through the time of her last inspection. She further testified that she was concerned about the issue of the Certificate of Occupancy and attempted to reach Mr. Whitaker, the inspector who issued the Certificate. Whitaker, according to Jones, referred her to Darbis Briggman, who did not return her call. Her testimony echoed the statements made by Hinson, Williams, and Jordan that the premises could not be utilized as a healthcare facility, as Chicora had not satisfied its obligation to deliver completed Tenant Improvements. See Jones Page 348, lines 3-25; Page 349, lines 1-25; Page 350, lines 1-25; Page 351, lines 1-25; and Page 353, lines 1-9.

29. **I FIND** that Chicora attempted to raise an issue alleging that Fetter decided not to move in as a result of a decision made by the County of Charleston to terminate its lease. The testimony of both Ruth Jordan and Aretha Jones contradicts that statement. Even though both said there were misgivings about a decision to move in, both indicated that they believed Fetter had a legal obligation to do so, if Chicora had complied with its obligations under the Lease to provide a facility where the Tenant Improvements were completed so the premises could provide healthcare services in compliance with state and federal laws and regulations. See Jones Page 360, lines 18-24 and Jordan Page 277, line 25; Page 278, lines 1-7.

30. **I FIND** that the Lease was prepared by Douglas Durbano, a Utah lawyer who initially acted as the managing member of Chicora. As a lawyer, he was well aware that the lease imposed a dual obligation on the landlord, to obtain a Certificate of Occupancy *and* to complete the Tenant Improvements. He was also aware of the intended use of the premises as a healthcare facility, and was thus well aware of the highly regulated status of healthcare facilities.

31. I FIND that Durbano was not physically present during most of the relationship between the parties, but said he believed that "Exhibit R" included substantial change orders. Durbano's claim that Exhibit R included change orders was vague, unsupported, and was contradicted not only by Defendant's witnesses, but by Plaintiff's supervisor David. Moreover, the very nature of the defects shown on Exhibit R shows that they were integral to any initial plans and therefore were not change orders or add-ons. I THEREFORE FIND that this claim of Durbano's must be rejected. See Durbano Page 96, lines 6-23; Page 97, lines 6-25; Page 98, lines 1-3.

32. **I FURTHER FIND** that Durbano's testimony attempted to merge the terms "completion of tenant improvements" and "certificate of occupancy" with the testimony being provided: "so when we are talking about the term complete in the Lease, I believe it is my interpretation of the Lease and as my common dealings in the past, is that the tenant improvements are substantially completed and the capstone being the Certificate of Occupancy."

33. **I FIND** that Durbano's testimony referenced in Finding 32 is an attempt to utilize parol evidence in order to define the terms "Completion of Tenant Improvements" and "Certificate of Occupancy" and relies on language not included in the Lease.

34. **I ALSO FIND** that Chicora has attempted in its presentation to state that it has substantially complied with its obligations to provide completed Tenant Improvements. Section 15-3-630 of the South Carolina Code of Laws, as amended, provides the following definition of substantial completion, to wit: According to subsection (b) of the Code, "*that degree of completion of a project, improvement, or a specified area or portion thereof (in accordance with the contract documents, as modified by any change orders agreed to by the parties) upon*

attainment of which the owner can use the same for the purpose for which it was intended." Emphasis added.

35. **I FIND** that it is significant that none of Plaintiff's witnesses ever expressed any understanding that the Tenant Improvements were for premises that the Lease specified was to be a healthcare facility.

36. **I ALSO FIND** that there is no indication that the Certificate of Occupancy in any way indicated that the premises were suitable or ready for occupancy and use as a healthcare facility.

37. **I FIND** that the terms set forth in the Lease, as amended, are express and do not provide the Court with the ability to interpret the Lease in accord with the position presented by Chicora. In the alternative, I find in accordance with South Carolina law Section 15-3-630 of the South Carolina Code provides a definition of substantial completion which appears to be the argument of Chicora in this matter.

38. **I FURTHER FIND** that the preponderance of evidence supports the finding that the Tenant Improvements had not been completed.

IV. THE LAW

Chicora appears to make two arguments, neither of which is persuasive.

First, Chicora appears to argue that obtaining the Certificate of Occupancy amounted to a determination that the Tenant Improvements had been completed, the premises were ready for occupancy, and Fetter's failure to occupy and begin paying rent was a breach.

This argument is unsuccessful because the lease imposed two obligations on Chicora, and obtaining the Certificate of Occupancy met only one of those obligations. This was an express contract in that respect, and it must be viewed as such.

If an agreement is clear and capable of legal construction, a court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. ***S.C. Dept. of Transp. v. M & T Enter. of Mt. Pleasant, LLC***, 667 S.E.2d 7, 379 S.C. 645 (Ct. App. 2008). Courts must construe and enforce contracts as written in order to preserve the fundamental rights of freedom of contract. **Id.** Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. See ***Davis v. KB Home of S.C., Inc.***, 394 S.C. 116, 127, 713 S.E.2d 799 (Ct. App. 2011). See ***McGill v. Moore***, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Words cannot be read into a contract to impart an intent unexpressed when the contract was executed. ***Davis***, supra and ***Pee Dee Stores, Inc. v. Doyle***, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct.App.2009).

There are two requirements that trigger Defendant's obligation to begin making payments under the Lease which are clearly set forth in multiple sections of the Lease, as amended, which are completion of the Tenant Improvements and the issue of a Certificate of Occupancy. According to Black's Law Dictionary, the term "and" is "a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first." See ***Black's Law Dictionary***, 5th Edition, Page 79. Plaintiff cannot separate the two requirements placed in this Lease.

As the terms of the Lease set forth express conditions to obligate the Defendant to make payment and to occupy the premises, Plaintiff has failed to comply with its obligations and have

no right to enforce this Lease. See ***Ahrens v. McDaniel***, 287 S.C. 63, 336 S.E.2d 505 (Ct.App. 1985) and ***Coastal Seafood Co., Inc. v. Alcoa S.C., Inc.***, 298 S.C. 466, 381 S.E.2d 502 (Ct.App.1989) and ***Lach v. Cahill***, 138 Conn. 418, 85 A. (2d) 481 (1951). Plaintiff cannot rely on substantial performance as a basis for recovery because the doctrine of substantial performance does not apply to express conditions. **Id**.

Second, Chicora argues that if it had two obligations it did perform both of them. This is a question of fact as to which Chicora bears the burden of proof as any plaintiff does on ordinary questions of fact. Even if Chicora did not have the burden of proof, I would find that the evidence shows the Tenant Improvements were not completed. S.C. Code Section 15-3-630, although it applies literally to suits against engineers and architects, offers a good, workable definition of when Tenant Improvements are completed. The touchstone is not, as Durbano tried to claim, the issuance of a Certificate of Occupancy, but that point at which the premises are ready to be used *for the intended purpose*. It appears that these premises were not ready for any use, but as a healthcare facility, treating patients and having to comply with numerous state and federal regulations, the premises were certainly unready and the Tenant Improvements were by no means completed.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impact

an intent unexpressed when the contract was executed." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009).

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument." Gilliland v. Elmwood Props., 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990); see also 11 Samuel Williston & Richard A. Lord, A Treatise on Law of Contracts § 33:1 (4th ed. 1999) (explaining the parol evidence rule "prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing") (emphasis added). The parol evidence rule is particularly applicable where the written instrument contains a merger or integration clause. U.S. Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 318, 364 S.E.2d 202, 205 (Ct. App. 1988).

"A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement." Wilson v. Landstom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984); see also 11 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 33:21 (4th ed. 1999) (same); Black's Law Dictionary 880 (9th ed. 2009) (defining an integration clause, also termed a merger clause, as "[a] contractual provision stating that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract").

"The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in writing." Wilson, 281

S.C. at 266, 315 S.E.2d at 134. Furthermore, when the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term to the agreement, even when the writing is silent as to the particular term sought to be established. U.S. Leasing Corp., 294 S.C. at 318, 363, S.E.2d at 205; see also Blackwell v. Faucett, 117 S.C. 60, 65, 108 S.E. 295, 296 (1921) (noting if the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term thereto)..."

Since Chicora failed to meet its obligations as a landlord, Fetter was not called upon to meet its obligations as a tenant, and therefore, its failure to take occupancy and pay rent was not a breach of the lease by Fetter.

IT IS THEREFORE ORDERED AND DECREED, that the Complaint of the Plaintiff is hereby dismissed and the relief prayed for in the Counterclaim is hereby granted with the Plaintiff being ordered to refund the initial deposit of $17,000.00, together with interest, and the Plaintiff being required to pay for the attorney's fees and costs incurred by the Defendant in litigating this matter.

IT IS SO ORDERED this 30 day of April, 2019

Mt. Pleasant, South Carolina

Wade H. Logan, III
Special Judge