

# EXHIBIT 2

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

Danny Allman and 3805, LLC, ) Lis Pendens No. 2018-LP-32-00301  
 ) Civil Action No.: 2018-CP-32-01452

Plaintiffs, )

FINAL ORDER ON NON-JURY TRIAL

vs. )

Carl C. Neal, Jr., )

Defendant. )

**RECEIVED**  
AUG 09 2019  
SC Court of Appeals

Date of Trial: June 17, 2019  
Judge: The Honorable R. Lawton McIntosh  
Counsel for Plaintiffs: Brian Dumas  
Counsel for Defendant: Heath P. Taylor  
Court Reporter: Stacy S. Johnson

This is an order granting the Plaintiffs' judgment for specific performance of the real estate contract or purchase agreement at issue in this matter, denying the Defendant's requests for relief, and setting for a subsequent order if necessary, the amount of the entitlement to attorney's fees to Plaintiffs' counsel.

**PROCEDURAL HISTORY**

This matter was initiated by the filing and service of a Notice of Lis Pendens on April 9, 2018, followed thereafter by the filing and service of a Notice of an Amended Lis Pendens, Motion for Temporary Injunction with Supporting Affidavit, Summons and Complaint alleging causes of action in breach of contract, breach accompanied by fraudulent act, and civil conspiracy, the primary request for relief being a request for specific performance of the contract, attorneys fees and costs. Plaintiffs assert the Defendant has breached the contract. Defendant has denied any breach and claims that the contract for sale is unenforceable due to violation of the statute of frauds, that parole evidence may not be reviewed to interpret the contract nor the intent of the parties, and

also claims a failure to comply with a condition of the contract. The original Temporary Injunction hearing was held before this Court on May 29, 2018 resulting in a Consent Order forbidding the transfer or alteration of the real estate in question pending resolution by this Court. Prior to this non-jury trial, the parties were both denied summary judgment. This matter came before this Court for a nonjury trial of all issues.

As a preliminary matter, the Court, upon request by counsel for Plaintiffs, stated that it had no conflicts in hearing this case due to the presence in the courtroom of a former legislator, with Plaintiff being satisfied with that statement, and having no objection to this Court hearing and deciding this case. The Court also took note of counsel for Defendant's objection as to any evidence, beyond the four corners of the contract at issue as violative of the parole evidence rule. The Court ruled that all documents and testimony would be admitted preliminarily, subject to that objection, with the Court to rule ultimately, at the close of the case, when rendering its decision

The Court took testimony from all witnesses, admitted twenty (21) exhibits, and duly considered the law, facts and evidence submitted and being before the Court for determination.

#### APPLICABLE LAW

The construction of a contract is before the Court for determination, and the construction of a clear and unambiguous contract, in the absence of fraud, is generally a matter of law for the Court. *Pearson v. Church of God*, 325 S.C. 425, 478 S.E. 2d 849 (1996). Further, as most recently state in *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198 at 205-206, 687 S.E. 2d 714 at 718 (Ct. App. 2009), "When an agreement is ambiguous, the court should seek to determine the parties' intent. *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct.App.1995). Any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the ambiguous language.

*Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981). “The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous \*206 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.” *Redwend Ltd. P’ship v. Edwards*, 354 S.C. 459, 471, 581 S.E.2d 496, 502 (Ct.App.2003). However, if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning of the contract and the intent of the parties. *Klutts Resort Realty*, 268 S.C. at 89, 232 S.E.2d at 25.”

Ordering specific performance of a contract of sale for real estate is appropriate when one party has complied and is ready, willing and able to complete the transaction, and the other is not willing to complete the transaction, so long as it is clear what is expected, as stated in *Clardy v Bodolosky, et al*, 383 S.C. 418 at 436, 679 S.E. 2d 527 at 531 (Ct. App. 2009): “The trial court should only grant specific performance if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties, citing *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 105-106, 531 S.E.2d 287 at 291 (2000). To compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part or has been and remains able and willing to perform his or her part of the contract. *Ingram, supra*, 340 at 106, 531 S.E.2d at 291.

### FACTS AND LAW

#### AS TO ISSUES FOR DETERMINATION

#### 1. INTERPRETATION OF AND ENFORCEABILITY OF THE CONTRACT

The issue of contention between these parties is whether the contract of sale for real estate between the parties is enforceable and if so how. The evidence before this Court from this trial clearly establishes the following to the satisfaction of this Court:

A. On January 30, 2018 the Defendant listed for sale by an exclusive right to sell contract (also called the listing agreement), 2 tracts of property, TMS No.: 0062822-01-005 (2.0 acres) and TMS No.: 0062822-01-009 (2.09 acres) both of those being identified on the document with the commercial real estate broker selected by Defendant as having the address of 2540 Charleston Highway, West Columbia, South Carolina and a hand written note on the CAMA card copy for one parcel that the price stated was for "Both". Both CAMA cards and maps show these properties as being adjacent to each other and addressed as Charleston Highway and 2540 Charleston Highway respectively, the same being attached to and part of the listing agreement before this Court. The listing agreement also detailed the structures on the property, the square footage of each, retail and heated square footage, warehouse square footage, parking spaces, cooling, etc. This listing agreement is executed by the Defendant. It is clear from the listing agreement that these parcels totaling 4.09 acres at that address, along with all structures on the property as what was being listed for sale and that both parcels were to be sold together.

B. The property listed for sale with the real estate agents was listed and marketed by Defendant's agents as per the listing agreement on a commercial property website by the Defendant's brokers and the listing agreement called it the "Rock and Roll Auto Dealership" consisting of 4.09 acres at the same 2540 Charleston Highway address in West Columbia, listing a price and giving a very detailed description, including parking, road frontage on Charleston Highway, all structures on the property and descriptions of the structures, all of which track the two (2) parcels at that address, and also relating that the owner was retiring.

C. Prior to executing the listing agreement, the Defendant mortgaged the two parcels concerned in this matter, listing both as having the address of 2540 Charleston Highway, West Columbia, in Lexington County by a mortgage filed of record on March 1, 2018, and the TMS

Numbers and acreage as in the listing agreement, along with three (3) other parcels with different addresses for \$1,289,000.00 from First Reliance Bank. From the testimony of the Defendant it was clear that the lender, as a condition of this financing, wanted Defendant to reduce his indebtedness.

D. The contract of sale or purchase agreement was first executed by the parties on February 7, 2018 and re-executed and initialed by the parties, with minor changes not relevant to the dispute, along with the real estate agent for the Defendant and a witness on March 7, 2018.

E. Evidence was presented to the Court that 2540 Charleston Highway and 2540 US-176 are the same location at that point in West Columbia, Lexington County. There was also evidence presented that the same road at that point is also known as US-321 and US-21. Evidence was also presented to the Court that although no one parcel owned by the Defendant in Lexington County was 4.09 acres, the two parcels in question, adjacent to each other, total 4.09 acres. The mortgage, also executed by the Defendant, listed both parcels as being at the address of 2540 Charleston Highway in Lexington County, the total acreage of the two (2) parcels being 4.09 acres.

F. The Defendant notified his real estate agent, who then notified the Plaintiff on April 8, 2018, that Defendant did not want to follow through with the sale. This was confirmed by the Defendant's attorney on June 11, 2018. The Plaintiff was present for the closing set by the contract for June 15, 2018, was ready to complete the sale, had funds and documents ready to complete the sale, which had been preapproved by his lender letter of May 25, 2018, but the Defendant did not appear. Further, the Plaintiffs' lender had performed an appraisal based on the contract which was stated in the appraisal as comprising the 2 parcels at issue, the appraisal also noting that Charleston Highway is a conglomerate of US Highway 321, US Highway 21, and US Highway 176, but is more commonly known as Charleston Highway.

G. Plaintiff testified he was buying both parcels and all structures on the 4.09 acres, as did Defendant's real estate agents. He further testified that he was currently renting space for his business on an approximate 4 acre parcel about 6 miles down the road from the 4.09 acres at issue, that his current lease had expired, he needed to move his business as soon as possible as he was currently month to month in his rental location, and he had other problems at the rental location that would be resolved by the purchase of and move to the 4.09 acres at issue. Defendant's real estate agents further testified that there was never any discussion about selling the parcels separately, but only selling them together, as listed in the listing agreement, with all structures and improvements. Defendant testified he was only selling the 2.09 acre parcel, and only with the permanent structures, not the office. Defendant's real estate agent, who drafted the contract, testified that he did not know why or how the contract stated the address as US-176, instead of Charleston Highway, as stated in the listing agreement, nor why the contract only stated one of the TMS numbers, instead of both as listed on the listing agreement. From the evidence presented, the Defendant saw on the first draft of the contract on February 7, 2018, that the contract was transferring 4.09 acres at the address specified, and Defendant made no modification to the contract as to the acreage nor the address when the amended version was initialed on March 8, 2018. The contract of sale is clear as to the sale including all structures and improvements on the property, regardless of whether or not one of the mobile home structures was "detitled".

H. This Court finds, after reviewing all the evidence, that it is clear that the intent of the contract was to convey 4.09 acres, that being both of the tracts at issue, along with all improvements at the price stated, by the contract between the parties. It also is clear to the Court, that the contract for sale is ambiguous, since the final contract dated and executed March 8, 2018

states that the property to be conveyed is 4.09 acres, but only lists the TMS number of the parcel containing 2.09 acres and states the street as US-176, not Charleston Highway.

The cases interpreting the statute of frauds and the parol evidence rule, make it clear that the Court may, where the contract of sale is ambiguous, examine extrinsic evidence to ascertain the intent of the parties, and examine other documents executed by the Defendant to interpret the contract and determine the intent of the parties. The road in question is named both Charleston Highway and US-176. The evidence shows that the two adjacent parcels at that address total 4.09 acres, as confirmed by the listing agreement signed by the Defendant and the mortgage on the two parcels filed about one week prior to the execution of the final version of the contract. The Court finds that the extrinsic evidence presented resolves any ambiguity in the contract as to the identity of the property being conveyed.

As far back as 1913, in the case of *Fore v. Berry, et al*, 94 S.C. 71, 78 S.E. 706 (1913), the requirement for satisfaction of the statute of frauds for a sufficient description of the property has been that so long as the property may be identified, the description is sufficient, whether by one document or more, including reference to extrinsic evidence. All that is necessary is that there should be such a designation that the land may be identified by the description. *Kirkland v. Way*, 3 Rich. 4, 45 Am. Dec. 752. See also, *Speed v Speed*, 213 S.C. 401, 49 S.E. 2d 588 (1948), where the description was “the store” in one document and “the Speed Drug Store property in Abbeville” in another. In this case, the contract of sale, the listing agreement, the prior mortgage, all read together, make it clear that the property to be conveyed is the 4.09 acres owned by Defendant on Charleston Highway (also known as US-176) in Lexington County in West Columbia, and referenced as TMS 006822-01-009 and TMS 006822-01-005.

The case of *Cash v Maddox*, 265 S.C. 480, 220 S.E. 2d 121 (1975) makes it clear that the

land must be described with reasonable certainty the property to be conveyed so as to carry out the intent of the parties. This contract so describes the property to be conveyed, and the Court, due to the ambiguity caused by the omission of one of the TMS numbers, finds the intent of the parties to be clear from an examination of other documents executed by the Defendant, most notably the listing agreement, that the entire 4.09 acres at that address with all structures on the premises, are to be conveyed. Here, the description in the contract of sale (executed by Defendant), the listing agreement (executed by Defendant), and the prior mortgage (executed by the Defendant), make it clear that the land to be conveyed is the 4.09 acres at one particular address on one particular road in Lexington County, as those two parcels are the only ones where the Defendant owns the land on that particular road in Lexington County meeting that description as is stated in those written documents signed and or published by the Defendant and or his agents.

*Fici v. Koon*, 372 S.C. 341, 642 S.E. 2d 602 (Ct. App. 2007), also supports the Plaintiffs' position in this matter, as the writings executed by the Defendant provide every essential element of the contract so as to resolve any ambiguity.

Based upon the evidence before this Court, the contract in question calls for the sale of approximately 4.09 acres, located at 2540 Charleston Highway, also known as 2540 US-176 in West Columbia, Lexington County, to the Plaintiffs on the terms stated in the contract of sale dated March 7, 2018. It is also clear that the sale is to include all structures and improvements on the property being conveyed.

## **2. BREACH BY DEFENDANT NOT PLAINTIFFS**

Based on the evidence presented, there is no question that Plaintiffs were and are fully ready to comply with the contract, have expended significant funds in preparation for the sale in question and have complied with all conditions of the contract. Defendant in his answer, alleges

that the Plaintiffs have not complied with the contract as it was required to be "signed off" by a third-party lender. The evidence before this Court shows that Plaintiffs had funding to honor and make good the contract and at the June 15, 2018 closing set by the closing attorney, Plaintiffs appeared, funds to complete the transaction were ready and available and Plaintiffs were fully ready and able to comply with the contract. Defendant claims that there has been no compliance with the term in the contract requiring a third-party lender to "sign off on" the contract as stated in Section 5(V), subparagraph (C) of the final contract. Based on the testimony of the agent from ERA Wilder as well as the proposed HUD settlement statement reflecting the mortgage payoffs, First Reliance Bank clearly "signed off" on the proposed transaction. In fact, First Reliance Bank was requiring the Defendant to lessen the amount of his indebtedness in order to secure refinancing. Based on Mr. Brock's testimony, he acted as an agent for First Reliance Bank in this transaction. Therefore, the subject language contained in the contract or purchase agreement was for the protection of First Reliance Bank and not Plaintiff's lender. The Court finds that this provision of the contract has been honored. Further, Defendant did not appear at the closing and had made it clear through various emails and communications both to Defendant's real estate agent and Plaintiffs that he would not appear at nor close the transaction. This Court finds that Plaintiffs have complied with the contract, Defendant has not, and the contract or purchase agreement as stated herein is valid and enforceable.

### **3. PLAINTIFFS' ENTITLEMENT TO REMEDY REQUESTED**

This purchase agreement or contract also granted the purchaser (Plaintiffs) the option of enforcement by an action for specific performance in addition to the prevailing party being entitled to attorney's fees and costs in the event of an enforcement action. Plaintiffs have taken every reasonable step in order to encourage compliance with the contract of sale, having fully complied

with it and having placed before this Court an affidavit of attorney's fees, costs, and expenses incurred by Plaintiffs prior to the trial in order to enforce the contract of sale. Plaintiff is clearly entitled to an award of attorney's fees, costs and expenses, under the contract as the prevailing party and filed with this Court an Affidavit of Attorney's Fees and Costs totaling \$24,697.79. Defendant shall be given ten (10) days from the filing of the Form 4 Order, June 21, 2019, to request the right to cross examine Plaintiff's counsel as to that Affidavit. Failure to file such a request within ten (10) days of that filing, or by July 1, 2019 shall be deemed as an acceptance of the amount of attorney's fees and costs being claimed by the Plaintiff in that Affidavit, and judgment is also to be entered against Defendant for \$24,697.79 as attorney's fees and costs.

Now therefore and based upon the foregoing, this Court hereby finds, orders, and concludes as follows:

1. Plaintiffs are granted judgment in this matter, the Court hereby ordering specific performance of the contract of sale or purchase agreement and that the closing in this matter is to be reset as soon as possible for a closing date not later than ten (10) days after the filing of this Order for the conveyance of the two (2) parcels owned by Defendant located at 2540 Charleston Highway, or 2540 US-176, totaling 4.09 acres, and as further described as TMS 006822-01-009 and TMS 006822-01-005 on the terms and conditions as set in the Contract of Sale executed by the parties on March 7, 2018 but for the reset date of closing. As this Court has interpreted the contract to include all structures on the property, the same are to be included in this sale. The Defendant is to cooperate fully as to this closing, including but not limited to compliance with his obligation to provide marketable fee simple title in and to the property being conveyed and the execution of all appropriate documents before and or at the closing. This Court specifically orders

that this closing shall take place not later than ten (10) days from the date of the filing of this Order, unless a later date is requested by Plaintiffs.

3. The Plaintiffs' entitlement to attorney's fees, costs and expenses are to be set and determined as stated above.

**AND IT IS SO ORDERED**

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018- CP-32-01452

Danny Allman and 3805, LLC,

Carl C. Neal, Jr.,

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Brian Dumas	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <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
- STAYED DUE TO BANKRUPTCY**
- 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 (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk:    This Order resolves the issues between the parties and ends this case

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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: 2540 Charleston Highway also known as 2540 US-176, West Columbia, SC TMS 006822-01-009 and TMS 006822-01-005		

[Empty rectangular box]

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Brian Dumas  
718 Clemson Road  
Columbia, SC 29229

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Heath P. Taylor  
3618 Sunset Blvd, Suite D  
W. Columbia, SC 29169

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter: Stacy S. Johnson**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

**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.

[Multiple horizontal lines for additional information]



Lexington Common Pleas

**Case Caption:** Danny Allman , plaintiff, et al VS Carl C Neal Jr  
**Case Number:** 2018CP3201452  
**Type:** Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-07-05 12:09:27 page 14 of 14