

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas**

Kristi L. Harrington, Circuit Court Judge

Case No.: 2011-CP-18-1684

WALTERS CONSTRUCTION, INC., Respondent,

vs.

STANLEY J. SLEDZIONA and SHARON SLEDZIONA, Appellants,

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This is a Reply Brief. Respondent raises in its argument that Appellants allegedly repudiated the Contract and that Respondent was justified in not completing the construction based on Appellant's alleged anticipatory breach and imply that the work done by the Respondent pursuant to the Addendum was somehow in addition to its obligations under the Contract.

Appellants gave Respondent a copy of a loan denial letter from Heritage Trust. (R. pp. 89-91; pp. 185-186.) Appellants stated that they did not qualify for the loan. (R. p. 91.) Appellants did not say anything about not purchasing the property. (R. pp. 91.) Further, at no time did Respondent raise repudiation or anticipatory breach in its pleadings as justification for its failure to finish the construction and provide a Certificate of Occupancy. Respondent did not produce any email, letter or other written communication confirming the alleged repudiation.

ARGUMENTS

I. THERE IS NO EVIDENCE THAT APPELLANTS DISTINCTLY, UNEQUIVOCALLY AND ABSOLUTELY REPUDIATED THEIR OBLIGATION TO CLOSE ON THE PROPERTY

Respondent contends that Appellants repudiated the agreement by showing Respondent a bank letter turning Appellants down for financing for the purchase and that Appellants allegedly stated Appellants were not going to buy the house because of the lack of financing. Respondent's Brief p. 2-3. However, Respondent admits that following that alleged conversation Appellants continued to discuss purchasing the house with Respondent. (R. p. 50; p. 75.) Despite Appellants' continued indication that they desired to purchase the house, Respondent had already stopped working on the house. (R. p. 75.)

Respondent relies on the language provided by Ralph King Anderson, Jr. in his South Carolina Requests to Charge-Civil, However, “[i]n order to justify the adverse party in treating the repudiation as a total breach, the refusal to perform ... must be distinct, unequivocal, and absolute. A mere assertion that the party will be unable or will refuse to perform his contract is not sufficient.” Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009 § 19-9. While Respondent quoted from the same charge, it fails to include the aforementioned language.

In the present case there is no testimony that the alleged repudiation was distinct, unequivocal and absolute. Indeed, Respondent admitted that Appellants showed him a denial of financing. At best this document went to whether Appellants had the funds to close or were unable to close, not whether Appellants would close. Further conversation between Appellants and Respondent, by Respondent’s own admission, were that the parties continued to talk about Appellants purchasing the property. (R. p. 50; p. 75.) This indicates that there was not a distinct, unequivocal and absolute refusal by Respondents to close on the property. There was no finding by the Trial Court that the Appellants repudiated their duty to close on the property.

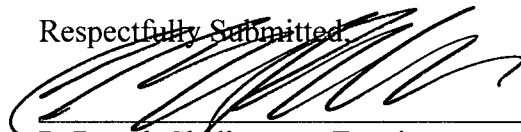
II. THE ADDENDUM TO THE CONTRACT WAS AT ALL TIMES PART OF THE ORIGINAL CONTRACT.

Respondent’s brief appears to indicate that the Contract Addendum with the twenty-seven (27) changes was somehow in addition to Respondent’s original contractual obligations. The document labeled as an Addendum was at all times part of the original contract between Appellants and Respondent. The contract obligated Respondent to complete the project within the specified period according to the terms contained in the contract which included the Addendum.

CONCLUSION

For the above reasons and for reasons cited in the Appellant's Initial Brief, this case should be remanded.

Respectfully Submitted,



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May 9, 2014

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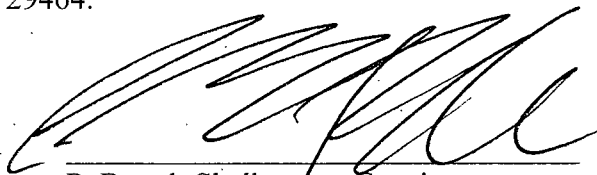
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STANLEY J. SLEDZIONA and SHARON SLEDZIONA, Appellants,

PROOF OF DELIVERY

I certify that I have served a copy of the Appellant's Final Brief, Final Reply Brief and Record on Appeal on Walters Construction, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2014 addressed to their attorney of record, Frank M. Cisa, 858 Lowcountry Blvd., Suite 101, Mt. Pleasant, SC 29464.



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