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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
SINACORI BUILDERS, LLC) Case No. 2019-CP-29-00896
Plaintiff,)
v.) **ORDER GRANTING**
VK COVINGTON, LLC,) **MOTION TO DISMISS AND**
Defendant.) **CANCELLING LIS PENDENS**
) **NO. 2019-LP-29-00143**
_____)

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SC Court of Appeals

This matter comes before the Court on the Emergency Motion to Dismiss and Cancel Lis Pendens (“Motion”) filed by the Defendant VK Covington, LLC (“Defendant”) on August 19, 2019. A hearing was held on September 12, 2019, at which counsel for Defendant and Plaintiff Sinacori Builders, LLC (“Plaintiff”), presented arguments.

After a review of the pleadings and filings related to the Motion and consideration of the arguments, this Court makes the following findings of fact and conclusions of law:¹

FINDINGS OF FACT

1. On September 25, 2015, Plaintiff entered into a Real Estate Sales Contract (“Sales Contract”) with Kolter Acquisitions, LLC (“Kolter”), which subsequently assigned its interest in the Sales Contract to Defendant.
2. Pursuant to this Sales Contract, Plaintiff agreed to sell to Defendant several parcels of land (collectively, the “Property”) with a closing on or before December 15, 2015.
3. Defendant had no obligations whatsoever under the Sales Contract with respect to providing sewer infrastructure to any neighboring property retained by Plaintiff.

¹ To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any of the following conclusions of law constitute findings of fact, they are so adopted.

4. On December 16, 2015, the sale of the Property was consummated, and Plaintiff executed a Limited Warranty Deed (“Deed”) conveying the Property to Defendant, which was recorded December 21, 2015.

5. On September 27, 2016, the parties executed a Fourth Amendment to the Sales Contract (“Fourth Amendment”).

6. The only aspect of the Fourth Amendment alleged to remain unperformed is Defendant’s agreement to “at its sole cost, extend sanitary sewer infrastructure, with capacity sufficient for the [Plaintiff’s] intended use of” neighboring property owned by the Plaintiff. Complaint ¶ 8.

7. On July 17, 2019, Plaintiff filed the Summons, Complaint, and Lis Pendens in this action, alleging that Defendant failed to provide the sewer infrastructure as agreed in the Fourth Amendment.

8. The Complaint asserts three causes of action: (1) breach of contract, which seeks damages related to Defendant’s alleged failure to provide the sewer infrastructure; (2) specific performance, seeking to either compel Defendant “to provide the agreed upon sewer capacity . . . or pay [Plaintiff] back the amount reduced in the Fourth Amendment;” and (3) constructive trust, which alleges that Defendant “had no intention of providing the agreed upon sewer capacity” and asserts that Plaintiff “is entitled to retain the title of the VK Property and recoup its damages” as a result.

9. In connection with the constructive trust cause of action, Plaintiff also filed a Lis Pendens, purporting to encumber the entirety of the Property conveyed to Defendant.

10. On August 19, 2019, Defendant filed the instant Emergency Motion to Dismiss and Cancel Lis Pendens, seeking dismissal of the specific performance and constructive trust causes of action and cancellation of the Lis Pendens.

CONCLUSIONS OF LAW

11. Plaintiff's cause of action for specific performance seeks to compel specific performance of the Fourth Amendment or damages equal to the reduction in the Property's purchase price in the Fourth Amendment.

12. "A court may order specific performance if: (1) a valid contract exists between the parties; (2) no adequate remedy at law exists for the breach; (3) specific performance is equitable between the parties; and (4) no fraud, accident, or mistake infects the contract." *Time Warner Cable v. Condo Servs., Inc.*, 381 S.C. 275, 281, 672 S.E.2d 816, 819 (Ct. App. 2009) (citing *King v. Oxford*, 282 S.C. 307, 314, 318 S.E.2d 125, 129 (Ct. App. 1984)). "A party is not entitled to specific performance of a contractual provision if an adequate remedy exists at law." *Id.* at 284, 672 S.E.2d at 820.

13. Specific performance is inappropriate here because there is an adequate remedy at law for the breach of the Fourth Amendment in the form of damages. Plaintiff admits as much by seeking damages within its specific performance cause of action in its Complaint. Accordingly, Plaintiff's claim for specific performance fails to state facts sufficient to constitute a cause of action and is dismissed.

14. Plaintiff's cause of action for constructive trust alleges Defendant did not intend to provide the sewer capacity to Plaintiff's neighboring property as agreed in the Fourth Amendment and that, as a result, Plaintiff should retain the Property it deeded to Defendant almost a year before the execution of the Fourth Amendment and also recoup its damages.

15. A party is not entitled to the equitable remedy of a constructive trust if there is an adequate remedy at law. *Carolina Park Assocs., LLC v. Marino*, 400 S.C.1, 6-8, 732 S.E.2d 876, 879-80 (2012) (“An action to declare a constructive trust is in equity . . . [and] equitable relief is unnecessary when an adequate remedy for money damages is available at law.”). In *Carolina Park*, the Supreme Court of South Carolina affirmed the dismissal of plaintiffs’ claim for constructive trust where they “pled money damages in the alternative.” *Id.* at 8, 732 S.E.2d at 879-80.

16. A constructive trust is inappropriate here because there is an adequate remedy at law in the form of damages. Plaintiff admits as much by pleading a separate cause of action for breach of contract to recover its alleged damages and also seeking to “recoup its damages” within the constructive trust cause of action. Accordingly, Plaintiff’s claim for constructive trust fails to state facts sufficient to constitute a cause of action and is dismissed.

17. Moreover, Plaintiff has failed to plead facts showing that the circumstances under which the Property was acquired make it inequitable that it should be retained by Defendant. “A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title.” *Carolina Park*, 400 S.C. at 6, 732 S.E.2d at 879 (quoting *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)). “It ‘results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution.’” *Id.* (quoting *Lollis*, 291 S.C. at 529, 354 S.E.2d at 560). “It is resorted to by equity to vindicate right and justice or frustrate fraud.” *Id.* (quoting *Whitmire v. Adams*, 273 S.C.453, 457, 257 S.E.2d 160, 163 (1979)). “[T]he standard of proof is high, in that ‘to establish a constructive trust, the evidence must be clear, definite, and unequivocal.’” *Id.* (quoting *Lollis*, 291 S.C. at 530, 354 S.E.2d at 561).

20. Finally, a lis pendens may only be filed “[i]n an action affecting the title to real property.” S.C. Code Ann. § 15-11-10 (1976); *see also Carolina Park*, 400 S.C. at 8-9, 732 S.E.2d at 880 (“[A] lis pendens is permitted only when the action actually ‘affect[s] the title to real property.’”).

21. Because Plaintiff’s constructive trust claim is the only cause of action in this matter which purports to affect title to real property, and because the constructive trust claim is hereby dismissed, this action no longer affects the title to real property and the Lis Pendens is cancelled.

22. All arguments of Plaintiff have been considered and found to be without merit.

23. In conclusion, this Court finds that Plaintiff’s claims for specific performance and constructive trust fail to state facts sufficient to constitute a cause of action and are, therefore, dismissed. This Court further finds that this action does not affect the title to real property, and, therefore, the Lis Pendens No. 2019-LP-29-00143 filed by Plaintiff in this matter is cancelled of record. Accordingly,

IT IS HEREBY ORDERED that Defendant’s Emergency Motion to Dismiss and Cancel Lis Pendens is hereby granted;

IT IS FURTHER ORDERED that Plaintiff’s claims for specific performance and constructive trust are hereby dismissed;

IT IS FURTHER ORDERED that Lis Pendens No. 2019-LP-29-00143 is hereby cancelled; and

IT IS FURTHER ORDERED that the Clerk of Court of Lancaster County, South Carolina, is hereby directed to cancel Lis Pendens No. 2019-LP-29-00143 of record;

AND IT IS SO ORDERED.

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The Honorable Brian M. Gibbons
Presiding Judge, Sixth Judicial Circuit

Lancaster, South Carolina

September _____, 2019.

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Lancaster Common Pleas

Case Caption: Sinacori Builders, Llc VS Vk Covington, Llc
Case Number: 2019CP2900896
Type: Order/Dismissal and Cancellation of Lis Pendens

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

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