

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

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SC Court of Appeals

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152