

STATE OF SOUTH CAROLINA )  
 RICHLAND COUNTY )  
 Resource Properties, Inc., )  
 Plaintiff, )  
 v. )  
 CSS Enterprises, LLC, Douglas E. Crolley, )  
 and Jeff C. Crolley, )  
 Defendants. )

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IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT  
 DOCKET NO. 2018-CP-40-02824

**RECEIVED**  
**ORDER**  
**FEB 12 2021**  
**SC Court of Appeals**

Plaintiff, Resource Properties, Inc. (“Plaintiff”), brought this action for breach of contract against Defendants, CSS Enterprises, LLC (“CSS”), Douglas E. Crolley (“Doug”), and Jeff C. Crolley (“Jeff”). A non-jury trial was held on June 30 – July 1, 2020. Mark Bible, Jr., Esquire represents Plaintiff. William J. LaLima, Esquire represents Defendants.

**BACKGROUND**

Plaintiff commenced this action seeking payment and collection of rents allegedly owed by Defendants, jointly and severally, pursuant to a purported commercial lease agreement dated July 21, 2016 (the “Lease”) regarding Suite 140, The Business Park at St. Andrews, Columbia, South Carolina 29210 (the “Property”). In addition to seeking recovery of rents due under the Lease, Plaintiff sought recovery of damages including, but not limited to, attorney’s fees, interest, costs, and damages arising out of Defendants’ alleged default or breach of the Lease.

Defendants generally denied Plaintiff’s allegation. However, Defendants’ admitted or alleged that: (1) a lease agreement for the Property was entered into with Plaintiff; (2) CSS Enterprises, LLC, and not the individual Defendants, was bound by the actual lease agreement between the parties; and (3) Plaintiff entered into an undated alleged modification or amendment (“Side Agreement”) that materially altered, modified, or amended the parties rights and obligations under the Lease or the actual lease between Plaintiff and one or more Defendants.

Defendants filed and asserted counterclaims against Plaintiff alleging in pertinent part: (1) Plaintiff breached the actual lease between the parties such that no rents were owed to Plaintiff by Defendants; (2) Plaintiff breached the actual lease between the parties by failing to provide adequate parking, air conditioning, or security such that Defendants were unable to operate in the Property and sustained damages as a result; and (3) Plaintiff was conferred a benefit of

approximately \$45,000 in upgrades to the Property by Defendants and that Plaintiff would be unjustly enriched if Plaintiff did not pay for improvements alleged to have been made to the Property by Defendants. Plaintiff denied Defendants' allegations, counterclaims, and relief sought.

Generally, Plaintiff contends that Defendants, individually and collectively, were bound by the terms and provision of the Lease, which required all Defendants to occupy the Property for the term of the Lease and pay rent and associated costs as set forth in the Lease. Contrary to Plaintiff's position, Defendants contend that the Lease presented by Plaintiff was not the actual agreement between the parties, the actual lease between the parties did not name the individual Defendants, Jeff C. Crolley ("Jeff") and Douglas E. Crolley ("Doug"), as lessee, tenant, or guarantors, and that the Side Agreement excused or released Defendants, individually and collectively, from the obligation to: (1) pay rent and associated costs to Plaintiff, and (2) occupy the Property for any specific length of time or term.

Six witnesses testified during trial. Plaintiff's witnesses include: Jeff and Doug Crolley as adverse witnesses, Marvin Dawson, Jr., Anna Belle Kibler-Moca, Wesley Shull, and Kim Duffy Beasenburg. Defendants called Doug in his case in chief.

#### **FINDINGS OF FACT**

Based upon the testimony of witnesses, exhibits, evidence, and arguments presented by counsel, the Court makes the following findings of fact:

Plaintiff is a corporation licensed and operating under the laws of the State of South Carolina. Plaintiff is the current owner of the Property. During all times at issue, Plaintiff was the record owner of the Property in addition to multiple other commercial suites, buildings, and units, which Plaintiff leased to various tenants. From July 18, 2014 until late July 2017, Plaintiff operated under the direction of a board of directors comprised of Michael E. Duffy ("Duffy") (President, Treasurer, and Assistant Secretary), Kim Duffy Beasenburg ("Beasenburg") (Vice President and Secretary), Laura Duffy Player (Vice President of Administration), and Brian Michael Duffy ("Brian") (Vice President of Operations) (collectively the "Directors").

The Directors are family, Duffy being the father of the remaining Directors. Duffy performed and managed the day-to-day operations of Plaintiff until the time of his death in July 2017. Duffy was the sole representative of Plaintiff to execute the Lease on Plaintiff's behalf and at all times Duffy was acting on behalf of Plaintiff.

Defendant, CSS Enterprises, LLC (“CSS”), is a South Carolina limited liability company. CSS maintains a commercial general roofing construction license (“Roofing License”) through its member Doug. During all times at issue, Defendants CSS and Doug, transacted business as commercial roofing contractors. The individual Defendants, Doug and Jeff, are residents and citizens of South Carolina. They conduct business and make decisions on behalf of CSS. During all times at issue, Jeff possessed a residential homebuilder's construction license which authorized him to transact business as a residential home builder in South Carolina.

Prior to the July 21, 2016 effective date of the Lease, Duffy and Defendants exchanged e-mail communications, which set forth details of the parties lease negotiations. In email exchanges between July 17, 2016 through July 21, 2016 (collectively the “Pre-lease Negotiations”), the parties discussed the terms under which the Property was to be leased by one or more Defendants, and interior improvements to the Property to suit the Defendants’ needs (e.g. build the Property to suit).

During the Pre-lease Negotiations, Jeff represented to Duffy that “we” would be willing to rent or lease the Property for a three-year term, with the first month’s rent waived, and pay \$1,500 per month for the balance of the lease term. In the July 20, 2016 Pre-lease Negotiations, Duffy indicated that the July 19, 2016 proposal submitted to Plaintiff by Jeff was unacceptable and proposed that the Defendants could make the requested interior modifications to the Property upon agreeing to rent or lease the Property for a term of thirty-six paid months, rent for the month of August 2016 is waived (37 month total lease term), at rent of \$1,395.00 per month plus common area maintenance costs (“CAM”), for a total of \$1,622.50 per month for thirty-six months.

Thereafter, on July 21, 2016, Duffy sent the final Pre-lease Negotiation communication addressed to Doug attaching a copy of the lease agreement, bookkeeping information sheet, and Property rules and regulations. Duffy requested that the enclosed lease documents be completed, and for the Defendants to submit a copy of their floor plan modifications to be incorporated as “Exhibit A” to the executed lease agreement. On July 21, 2016, a copy of the Defendants’ proposed interior modification plans was delivered to Plaintiff via facsimile from the Defendants. During the trial the Parties did not contest the Pre-lease Negotiations were exchanged between the parties and did not dispute their content.

Plaintiff introduced a photocopy of the Lease and presented a wet ink signed original of the Lease maintained in Plaintiff’s business records. Beasenburg testified that the signature for

Plaintiff on the Lease was Duffy's authentic signature and the hand-written effective date of the Lease was Duffy's handwriting. Further, the testimony reflects the Lease was the only agreement in Plaintiff's records applicable to the Property during the times at issue before this Court. The Plaintiff did not possess, and was not aware of, any agreement between the Parties other than the Lease, its associated documents, and the Pre-lease Negotiations. Plaintiff's testimony was consistent that the Lease, and its terms, was the actual agreement between the Parties and was binding as to CSS, Jeff, and Doug, individually and collectively.

A credibility issue existed regarding Defendants' testimony on the Lease. Defendant Doug testified that the signature above his typewritten name on the Lease appeared to be authentic; however, Doug claimed he did not sign the Lease introduced into evidence. Doug testified he did not execute or sign the Lease on behalf CSS or his brother, Jeff. Jeff testified he was unsure that the signature or initials above his typewritten name or the signature or initials on behalf of CSS were authentic. Jeff also asserted that he did not execute or sign the Lease as presented by the Plaintiff.

The express provisions of the Lease as to its term, rents due, and the parties bound thereunder are materially consistent with provisions in the July 20, 2016 Pre-lease Negotiations sent by Duffy. Further, the evidence from both Defendants and Plaintiff reflect the following: (1) a security deposit in the amount of one month's rent (\$1,622.50 contemplated in the Lease and Pre-lease Negotiations) was paid to Plaintiff by CSS check; (2) payments were made by one or more of the Defendants and received by Plaintiff for rent, use, and/or lease of the Property for seventeen months out of the thirty-six months of the Lease term; (3) no further payments were remitted by any of the Defendants to Plaintiff after February 2017; (4) Defendants made use of and/or occupied the Property for a period of approximately seventeen or eighteen months; (5) one or more of the Defendants made interior modifications and improvements to be made to the Property as contemplated in the Pre-lease Negotiations and the Lease; and (6) Defendants, individually and collectively, vacated, abandoned, or no longer made use of the Property after late February or early March 2018.

Like the Pre-lease Negotiations, the Lease contemplates and incorporates material provisions regarding the interior improvements to the Property and is supported by documentary evidence and testimony. The individual Defendants also testified about the desired improvements to the interior of the Property. "Exhibit A" to the Lease is a true and accurate reflection of the

drawing Defendants prepared and sent to Plaintiff in response to Duffy's July 21, 2016 Pre-lease Negotiations.

Further, Section 27 of the Lease provides that the Plaintiff, as lessor, consents to the "lessees'" modifications to the "office portion of the premises and shown in the attached Exhibit "A", "[a]ll work shall be consistent in quality with the existing offices, code compliant, and professionally completed, and that Plaintiff, as lessor, "shall waive rent and common costs which would otherwise be due for the period from the date of occupancy through August 31, 2016."

The Lease expressly provides that "all additions, fixtures, or improvements which may be made by the Lessee, except movable office furniture, shall become property of the Lessor and remain upon the Premises as a part thereof and be surrendered with the Premises at the termination of this lease." It is undisputed Defendants occupied the Leased Premises, paid some rents in accordance with the Lease, and improvements were made to the interior of the Property by or on behalf of one or more of the Defendants.

Notwithstanding the course of conduct of the parties, there is a dispute in testimony as to whether the Lease introduced by Plaintiff was the controlling agreement between the parties. Plaintiff introduced documentary evidence and witness testimony supporting its contention that the Lease was the controlling agreement between the parties and was binding as to all Defendants in their individual and corporate capacities. Plaintiff also introduced evidence of its ordinary business practices and historical conduct, which included leases for its other commercial properties. Those leases were substantially similar in form as the Lease in this case.

On the other hand, Defendants, through testimony of Doug and Jeff, contend that they did not sign any lease agreement with Plaintiff although the Lease evidences initials and/or signatures above each of their typewritten names. The two individual Defendants testified essentially that, if any lease agreement existed, it would have been binding only as to CSS. Defendants did not contest the Lease terms, provisions, rights, responsibilities, and obligations expressly set forth therein. However, the individual Defendants testified that the Lease was not binding on them in their individual capacities and that the Lease introduced by Plaintiff was not the actual agreement entered into by any of the Defendants. Notwithstanding their testimony, Defendants did not produce or introduce documentary evidence of any alternative version of the Lease, which they contend was controlling.

In addition to the dispute in testimony regarding the applicability and enforceability of the Lease, disputes in testimony and evidence exist regarding a Side Agreement as asserted by Defendants. Defendants alleged and testified that the Side Agreement was prepared by Jeff and it materially modified the terms of the actual agreement formed between the parties. The Side Agreement is a handwritten document that states in part, "... In lieu of work performed being completed, CSS will be released of all obligations to Resource Properties. This is to be completed by 10-15-16 .... No term".

Defendants further testified that the Side Agreement was binding on Plaintiff and released CSS, and the individual Defendants to the extent they were bound by the terms of any lease with Plaintiff, of any commitment to rent or lease the Property for a specified term in exchange for interior improvements made to the Property by or on behalf of Defendants. In support of their position, the individual Defendants testified that the Side Agreement was negotiated and signed by who they believed to be Duffy or an agent of Plaintiff and Jeff on behalf of CSS.

However, Jeff and Doug consistently testified they later discovered that the person they believed to be Duffy, who signed the Side Agreement, was not actually Duffy. Defendants could not positively identify or name the person who allegedly signed the Side Agreement for Plaintiff. Defendants further described the individual who allegedly signed the Side Agreement as a white male approximately six feet in height with brown hair and aged in his 40's. This person also, allegedly, performed routine landscape maintenance at the Property and surrounding units. Defendants concede that the person who signed the Side Agreement was not Duffy. However, Defendants insist that the Side Agreement remained binding on Plaintiff. Defendants failed to establish that the person who signed the Side Agreement had actual or apparent authority and was an agent of Plaintiff.

Plaintiff showed its normal and customary practices in negotiating, preparing, and entering into lease agreements, modifications and amendments thereto. Plaintiff demonstrated that neither Plaintiff nor Duffy on behalf of Plaintiff entered into entirely handwritten lease modifications or amendments with Defendants or other tenants of Plaintiff. Rather, the agreements presented by Plaintiff consistently showed that agreements entered into by Plaintiff were typewritten and hand signed. On some occasions, Plaintiff's documents show hand-written modifications to lease agreements, but in those documents, the modifications are handwritten on the typewritten lease agreements and ratified by the signatures of all parties bound thereto. Plaintiff's testimony also

supports no other agent or representative of Plaintiff executed the Side Agreement on Plaintiff's behalf.

In further support that Plaintiff is not a party to or bound by the Side Agreement, Beasenburg testified that the signature purporting to be Duffy's on the Side Agreement was not authentic and was a forgery. Beasenburg's testimony about the authenticity of Plaintiff's signature contained on the Side Agreement was further supported by the testimony and report of Plaintiff's expert, Marvin Dawson ("Dawson"). Dawson testified as a forensic document examiner including handwriting analysis. In his expert opinion, after review, analysis, and comparison of Duffy's authenticated signatures and the signature on the Side Agreement, the signature purporting to be Duffy's on the Side Agreement was most probably not authentic, not genuine, or was a forgery.

Additionally, the only person who performed routine landscape maintenance on the Property and surrounding units was an elderly African-American man named Jeff Bennett ("Bennett"). Bennett does not meet the description of the person Defendants contend negotiated and executed the Side Agreement with Jeff.

Upon discovering that Defendants were no longer occupying and had vacated or abandoned the Property, Plaintiff delivered to Defendants notice of default of the Lease agreement and gave Defendants the opportunity to cure the default by resuming occupancy of the Property and complying with the obligations and responsibilities, including rent payment obligations, contained in the Lease until the expiration of the Lease terms. Defendants did not resume occupancy of the Property and did not make further payment towards rent. Plaintiff attempted to mitigate its alleged damages by advertising and marketing the Property available for rent. Based upon the testimony presented, Plaintiff was unable to secure a new tenant for the Property until August 2019.

In their defense and in support of the their counterclaims, the individual Defendants testified that no rent is owed by any of the Defendants because, *inter alia*: the individual Defendants, Jeff and Doug, did not execute any lease agreement with Plaintiff making them bound, in their individual capacities, as lessees or personal guarantors of the Lease; it was agreed by Plaintiff or the Plaintiff's agents that Defendants would perform interior improvements and other services in exchange for a waiver of rents and in exchange, no lease term would apply to individual Defendants' and CSS's use and occupancy of the Property; the value of the interior improvements conferred unto the Property and Plaintiff exceed any balance of rent payments owed; and Plaintiff

did not honor alleged obligations that it would provide adequate parking, air conditioning, and security at the Property.

Defendants did not introduce or rely on documentary evidence of any written agreement between the Parties with regard to the Parties rights, obligations, and responsibilities associated with the Property other than the Side Agreement. Plaintiff's testimony remained consistent throughout the course of trial that: the Lease was the controlling agreement between the Parties; the Lease was binding as to all Defendants; and there was no knowledge or documentary evidence that Plaintiff agreed to modify the terms of the Lease as Defendants assert.

Testimony was elicited from the individual Defendants regarding their respective contractor's license qualifications. Plaintiff sought to discredit the individual Defendants' ability to perform interior modifications to the Property because the individual Defendants lacked necessary contractor license qualifications to perform or construct the interior modifications on the Property. Additionally, any interior improvements to the Property was contemplated in the Lease.

#### APPLICABLE LAW

The burden is on a party pleading a fact to prove it. *Landbank Fund VII, LLC, v. Dickerson*, 369 S.C. 621, 628 (Ct. App. 2006) (citing *Jackson v. Frier*, 146 S.C. 322, 329 (1928)). In a civil case, the plaintiff's burden is usually by a preponderance of the evidence. *See Smith v. Barr*, 375 S.C. 157, 161 (Ct. App. 2007). A defendant alleging a counterclaim against the plaintiff bears a similar burden. *See Chan v. Thompson*, 302 S.C. 285, 290, 395 S.E.2d 731, 734 (Ct. App. 1990).

The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.*; *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012).

"A lease agreement is a contract, and an action to construe a contract is an action at law." *Middleton v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010). "An action for breach of contract seeking money damages is an action at law." *Sapp v. Wheeler*, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013) (citing *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008)). "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Rose Electric, Inc.*

*v. Cooler Erectors of Atlanta, Inc.*, 418 S.C. 424, 429, 794 S.E.2d 382, 385 (Ct. App. 2016) (citing *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 433, 322 S.E.2d 474, 477 (Ct. App. 1984)). “If agreement is manifested by words, the contract is said to be express. If it is manifested by conduct, it is said to be implied.” *Id.* “In either case the parties must manifest a mutual intent to be bound.” *Id.*

“The essential terms and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, the term of the lease, the rental as well as the time and manner of payment. This “meeting of minds” required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989).

“The termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding this termination for cause by the lessor, the lessee shall not be relieved of such future obligations.” *Simon v. Kirkpatrick*, 141 S.C. 251, 618, 139 S.E. 614 (1927); *see also United States Rubber Co. v. White Tire Co.*, 231 S.C. 84, 97 S.E.2d 403 (1956). “The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully.” *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 575, 772 S.E.2d 882, 893 (Ct. App. 2015).

A modification of a contract is a change; an alteration or amendment which introduces new elements into the details of a contract, or cancels some of them, but leaves the general purpose and effect of the subject matter intact. *Black's Law Dictionary*, 5<sup>th</sup> ed. 1979. “Any modification of written contract must satisfy all requisites of valid contract.” *Bishop Realty and Rentals, Inc., v. Perk, Inc.*, 292 S.C. 182, 185, 355 S.E.2d 298, 300 (Ct. App. 1987), *cert. denied*, 293 S.C. 538, 362 S.E.2d 26 (1987). “The essential terms and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, the term of the lease, the rental as well as the time and manner of payment.” *Player*, 299 S.C. at 105.

“Generally, agency is a question of fact.” *R & G Const., Inc. v. Lowcountry Regional Transp. Authority*, 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct. App. 2000). “A true agency relationship may be established by evidence of actual or apparent authority.” *Id.* at 432. “An

agency may not be established solely by the declarations and conduct of an alleged agent.” *Frasier v. Palmetto Homes*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996). It is created “by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him.” *Id.* at 244. “The elements of apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; and (3) third party detrimentally changed his or her position in reliance on the representation.” *R & G Const.*, 324 S.C. at 433. There can be no offer of a contract by a person who lacks authority to create a contract. *Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013).

Quantum meruit is an equitable remedy by which a party may recover from another for unjust enrichment. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261 (1994). The Supreme Court addressed the requirements of a plaintiff seeking to recover under this theory in *Scudder May*, stating:

“Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) a realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.”

*Id.* The Supreme Court further recognized the *Scudder May* test as the sole test for a quantum meruit claim in *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000).

## CONCLUSIONS OF LAW

### **A. Lease and Side Agreement**

Assuming, as Defendants testified, that the Lease introduced by Plaintiff was not the actual agreement between the Parties, Defendant’s testimony directly contradicts the Pre-lease Negotiations and their undisputed course of conduct. Defendants’ course of conduct, until the time of their abandonment, was consistent with the terms of the Pre-lease Negotiations and Lease. Defendants made interior modifications to the Property as contemplated in the Pre-lease Negotiations and Lease. Defendants occupied and made use of the Property nearly

half of the Lease term. One or more Defendants remitted payments to Plaintiff for seventeen months in the amounts reflected in the last of the Pre-lease Negotiations and the Lease.

Further, Defendants did not introduce any documentary evidence or credible testimony substantiating their defenses that the Lease was not the actual agreement between the Parties or that the individual Defendants, Jeff and Doug, were not individually bound to any lease agreement with Plaintiff. Defendants simply claimed that the first and last page of the Lease, which bear the names of the individual Defendants, were not contained in the actual agreement between the Parties. The only document that purports to modify the terms of the written Lease was the Side Agreement.

The Side Agreement is an undated hand-written document prepared by Defendant Jeff that was not executed by any agent or representative of Plaintiff. The Side Agreement purports to contain Duffy's initials. Defendants testified, however, that it was not Duffy who executed the Side Agreement. Further, Defendants could not reasonably identify the person having signed the Side Agreement in addition to Jeff. Beasenburg and the Plaintiff's forensic document examination expert established that the signature purporting to be Duffy's on the Side Agreement was not authentic or was a forgery. Additionally, Defendants failed to present any evidence that establishes the existence of any agency between Plaintiff and the unidentified person allegedly having signed the Side Agreement on behalf of Plaintiff. Therefore, the Side Agreement is not a binding contract or agreement as to Plaintiff.

Plaintiff has shown that the Pre-lease Negotiations are consistent with the terms and provisions embodied in the Lease. The Lease expressly provides that modifications and amendments to the Lease must be in writing and signed by Plaintiff. Duffy was the sole agent and/or representative of Plaintiff that prepared, negotiated, and executed any agreement on behalf of Plaintiff from prior to 2016 until the time of his death in July 2017. Thus, the Lease is the controlling agreement and binding to Defendants.

#### **B. Defendant's Counterclaims**

After considering all the evidence in light of the applicable law, Defendants have not met their burden of proof on any of the counterclaims asserted against Plaintiff. Defendants testified that Plaintiff agreed to forgive or waive rents in exchange for the interior modifications performed on the Property. Defendants also testified that, in exchange for the interior modifications, Plaintiff would not bind Defendants to any lease term. The only documentary evidence somewhat

consistent with the Defendants' testimony is the Side Agreement. As discussed previously, Defendants failed to prove, by a preponderance of the evidence, the existence of any relationship between Plaintiff and the unidentified person who allegedly signed the Side Agreement on behalf of Plaintiff.

Defendants did not challenge the fact that the Pre-lease Negotiations contemplate that Defendants would make interior improvements to the Property. Importantly, plans prepared by Jeff showing Defendants' proposed interior improvements to the Property were expressly incorporated into the Lease as Exhibit "A". Lastly, the Pre-lease Negotiations and the Lease provide consideration in the form of one month of free rent (August 2016) and a reduced lease term (thirty-seven months instead of five years) in exchange for the interior improvements. Accordingly, Plaintiff already provided consideration to Defendants in exchange for the interior modifications to the Property. The Side Agreement fails for lack of consideration and a meeting of the minds. Both are essential elements of contract formation. Accordingly, the Defendants are not entitled to relief for their first counterclaim for breach of contract.

Regarding Defendants' claims that Plaintiff breached the lease agreement between the Parties by allegedly failing to provide adequate parking, air conditioning, or security. The testimony indicates that it was sometimes difficult to find parking on the property because the property was located across the street from a daycare facility. Defendants failed to meet their burden of proof and have not shown by a preponderance of the evidence that Plaintiff failed to provide adequate parking, air conditioning, or security to Defendants. Additionally, Defendants failed to meet their burden of proof and show, by a preponderance of evidence, they sustained damages arising out of Plaintiff's alleged breach. Accordingly, Defendants are not entitled to relief under their second counterclaim.

In order for the Defendants to prevail on their Quantum Meruit counterclaim, an express agreement between the parties cannot exist. Because this Court finds that the Lease is an express agreement or contract and is binding to Plaintiff and Defendants, Defendants are unable to prevail on their Quantum Meruit counterclaim. Notwithstanding the foregoing, consideration in exchange for the interior improvements to the Property was negotiated by the Parties and was provided in the form of one month of free rent (August 2016) and a reduced lease term (thirty-seven months instead of five years). Plaintiff may have retained or received a benefit from the interior improvements performed by Defendants to the Property. However, Plaintiff provided adequate

consideration to Defendant in exchange for the interior improvements to the Property. Accordingly, Defendants are not entitled to relief on their third counterclaim.

### **C. Attorney Fees**

Pursuant to the Lease Agreement, Section 9, Costs of Enforcement of Lease Terms, “Lessee agrees to pay all attorney’s fees, court costs and other costs of enforcement of the terms of this lease...” Here, the lease contains provisions for recovery of attorney’s fees. *See U.S. Rubber Co. v. White Tire Co.*, 231 S.C. 84, 96, 97 S.E.2d 403, 409 – 410 (1956) (In South Carolina, in the absence of contractual or statutory liability therefor, attorney’s fees are not recoverable as an item of damages.) Therefore, attorney’s fees and costs are awarded to Plaintiff in an amount to be determined.

### **ORDER**

For the reasons stated above, **IT IS THEREFORE ORDERED** that Plaintiff is entitled to a judgment against Defendants, CSS Enterprises, LLC, Douglas E. Crolley, and Jeff C. Crolley, jointly and severally, for actual damages in the amount of \$31,745.56 and attorneys’ fees and costs of this action. Plaintiff shall submit appropriate documentation regarding attorney’s fees and costs within 10 days of the date of this Order.

**IT IS FURTHER ORDERED** that Defendants counterclaims are **DENIED AND DISMISSED**.

**AND IT IS SO ORDERED.**

*Signature page to follow.*



Richland Common Pleas

**Case Caption:** Resource Properties Inc vs Csx Enterprises Llc , defendant, et al  
**Case Number:** 2018CP4002824  
**Type:** Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

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