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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers, ……Appellant

v.

Rizan Properties, LLC, Anthony Pearson and Tiesha Dash……Defendants

Of which Rizan Properties, LLC is the Respondent

FINAL BRIEF OF APPELLANT

SOUTH CAROLINA LEGAL SERVICES

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STATEMENT OF THE CASE

On April 10, 2020, Jerry Powers ("Appellant") filed suit against Rizan Properties, LLC ("Rizan") seeking specific enforcement of an option contract to purchase real estate. (R. p. 11). Rizan answered denying the material allegations of the complaint and asserting, inter alia, that Appellant waived his right to purchase the real estate. (R. p. 18). The parties referred the case to the Master-in-Equity for Greenville County by a consent Order of Reference filed November 4, 2020. (R. p. 9).

After discovery, the parties filed cross motions for summary judgment and briefed the issues. (R. pp. 31, 33, 35, 57). Rizan filed its motion on December 17, 2020, and Appellant filed the following day. After holding a hearing on January 14, 2021, the Master-in-Equity, in an order filed January 27, 2021, denied Appellant's motion in its entirety and granted Rizan's motion, finding that Appellant and the other defendants had no further rights to the real estate at issue. (R. p. 2). Appellant filed a Rule 59 motion on February 4, 2021. (R. p. 72). By order entered February 11, 2021, the Court denied the motion. (R. p. 6). On

February 23, 2021, Appellant served the Notice of Appeal.

STATEMENT OF FACTS

Appellant and his girlfriend, Jackie Pearson, began renting a house located at 39 2nd Ave. in Greenville, SC (the "Property") from Rizan on approximately August 3, 2011, under a simple lease agreement. (R. p. 254). Lukas Rigdon ("Ridgon") was the sole member-manager of Rizan. (R. pp. 245-246; pp. 250-251, paras. 10, 13). Appellant has a high school GED and worked for decades in mills and cutting down trees. (R. p. 107, lines 14-25; p. 109, lines 10-25). In 2013, Rigdon approached Appellant and Ms. Pearson about giving them the option to buy 39 2nd Ave. in Greenville, SC (the "Property"). (R. pp. 115, lines 15-20, 118, lines 8-16, 219).

On or about May 1, 2013, Appellant and Ms. Pearson signed two documents with Rizan, a new Lease Agreement ("Lease") and an Option to Purchase ("Option") a single-family home located at 39 2nd Ave. in Greenville, SC (the "Property"). (R. pp. 260-268). Rizan's attorney drafted the documents. (R. p. 6, p. 119, lines 15-20). The Option recites a separate consideration of $550. (R. p. 267). According to the Lease, Appellant and Ms. Pearson were to pay payments of $550 per month for eight years. (R. p. 260). The Option granted them the right to buy the Property at any point during the following eight years. (R. p. 267). Upon exercising the Option, Rizan would sell the Property for $52,800. (R. p. 267). All rent paid under the Lease plus an additional $550 would be credited against the purchase price. (R. p. 267). The Lease does not reference the Option except that it recites the same purchase price, which it calls rent, of $52,800. (R. pp. 260-265). The Option does not reference the Lease except with respect to calculating the final payoff. (R. pp. 267-268). Neither document says that breaching the Lease voids the Option. (R. pp. 260-268).

For over five years Appellant paid Rigdon without complaint. (R. p. 132, lines 5-17; p. 153, line 24-p. 154, line 9). In or around November 2018, Rigdon came to Appellant and told him that he would have to sell the Property. (R. p. 131, line 24-p. 132, line 2; p. 169, lines 4-18). He told Appellant that he was having financial trouble due to things such as child support. (R. p. 131, line 24-p. 132, line 2; p. 169, lines 2-19, p. 211, lines 22-24). Rigdon, in fact, had recently been ordered to pay $238 a month in child support, and the financial statement he submitted to the Greenville County Family Court on or about August 3, 2018 shows his expenses exceeding his net income by $964.82. (R. pp. 271-274).

On November 19, 2018, Appellant first visited SC Legal Services seeking assistance with respect to the Lease and Option on the Property. (R. p. 275). On December 3, 2020, Rigdon delivered a letter to Appellant and Ms. Pearson titled Eviction Notice. (R. p. 278). Attached to the letter was a spreadsheet containing a payment history. (R. pp. 279-280). The total amount of past due rent and number of late payments alleged in the letter are derived from the payment history. (R. pp. 278-280).

Ms. Pearson signed the letter agreeing to be out of the Property by January 5, 2019. (R. p. 278). Appellant refused to sign. (R. p. 127, line 23-p. 128, line 7; p. 131, lines 11-22). Approximately two weeks later, Appellant had a heart attack and was in the hospital from December 19, 2019, to December 21, 2019 (R. p. 281; p. 144, lines 12-16). He also was admitted for heart attacks from February 8-10, 2019, and April 10-22, 2019 (R. pp. 282-284). Appellant testified that he last made a payment of $550 to Mr. Rigdon on or about January 3, 2019, the last time they spoke. (R. p. 145, lines 1-5; p. 186, lines 7-15).

By this time Appellant had paid, according to Rizan's accounting, more than $35,000 under the Lease and towards the purchase price under the Option. (R. p. 239; pp. 279-280).

Ms. Pearson moved out of the Property and began renting 300 Watkins Road in Greenville for $1,000 a month. (R. p. 159, line 24-p. 160, line 2; p. 210, line 25-p. 211, line 1). Ms. Pearson could not afford the rent on her own, so she asked Appellant to move in with her to help share the rent burden. (R. p. 210, line 22-p. 211, line 7). He moved in with Ms. Pearson to help her cover her rent payments, never intending to relinquish his claim to the Property. (R. p. 211, lines 14-15). Appellant is also legally blind. (R. p. 113, lines 15-22; p. 167, lines 3-13). Consequently, he relied on Ms. Pearson to drive him around and take him to doctor's appointments. (R. p. 168, lines 2-16). Mr. Rigdon later asked Appellant to give him back the keys to the Property. (R. p. 154, line 14-p. 155, line 17; p. 156, line 14-p. 157, line 5). Appellant testified that he at first refused, but later relented at Ms. Pearson's request. (R. p. 154, line 14-p. 155, line 17).

On March 21, 2019, Lukas Rigdon passed away. Meredith Ridgon opened an estate for him and became appointed as personal representative for his estate on April 25, 2019 (estate # 2019ES2300823). (R. p. 249). By virtue of that status, she became the sole member of Rizan Properties, LLC. (R. p. 249, p. 250, para. 10). In July 2019, Appellant found out about Mr. Rigdon's passing (R. p. 170, line 20-p. 171, line 10). Ms. Pearson passed away July 1, 2019. (R. p. 290).

Plaintiff sought out financing to pay off the balance owed on the Option, consulting both with Luthi Mortgage and Bank of America (R. p. 178, lines 7-15; p. 214, line 24-p. 215, line 3). Bank of America denied Appellant due to his credit (R. p. 215, lines 2-3). No financing from Luthi Mortgage ever was worked out. (R. p. 181:12-17). Appellant's family members agreed to provide him the funds to pay off the Option. (R. p. 215:4-8).

Despite not residing at the Property, Appellant had a friend, Rodney Pitts, maintain

the Property's exterior. (R. p. 148, lines 11-17; p. 162, lines 8-16; p. 162, line 19-p. 163, line 2; p. 177, lines 14-22; pp. 218-220). He did not want it to appear uninhabited because he was concerned homeless individuals might try to live in the house. (R. p. 162, line 19-p. 163, line 2). He paid Mr. Pitts, $20-$25 a week to watch over it and cut the grass regularly. (R. p. 163, lines 3-13). Appellant could not do it because he was recuperating from one or another of his heart attacks. (R. p. 163, lines 7-11). Mr. Pitts maintained the Property at Appellant's behest until October 27, 2019. On that date, Meredith Rigdon called a police officer to the Property who met Mr. Pitts and placed him on trespass notice. (R. p. 164, line 16-p. 165, line 2; p. 166, lines 1-6; pp. 285-289).

On October 15, 2019, Appellant, through counsel, wrote to Jacqueline Patterson, Esq., counsel for Rigdon's estate, stating Plaintiff's intention to exercise the Option. (R. pp. 226-235). This was based on a commitment Appellant had obtained from his sister to finance the payoff for the Option. (R. p. 176, line 24-p. 177, line 2; p. 215, lines 4-8). Appellant's attorney and the Estate's attorney exchanged communications regarding exercising the Option until December 3, 2018, after which counsel for the Estate made no further reply. (R. pp. 226-243). Appellant subsequently filed this case.

STANDARD OF REVIEW

An appellate court "applies the same standard that governs the trial court under Rule 56(c); 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." *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007) (citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)).

Whether a triable issue of fact exists depends on the evidence and all factual

inferences drawn viewed in a light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Summary judgment should be denied where the conclusions or inferences to be drawn from the undisputed facts are in conflict. *Baugus v. Wessinger*, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). "All ambiguities, conclusions, and inferences arising in and from the evidence must be construed most strongly against the movant." *Id.*

ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT FORFEITED ALL RIGHTS UNDER THE OPTION CONTRACT BY BREACHING THE LEASE WHERE COMPLIANCE WITH THE LEASE WAS NOT A CONDITION PRECEDENT.

The Court below erred by not applying the correct analytical framework to review the Lease and the Option. The Court found that without the Lease the Option could not stand alone, and therefore, once Appellant breached the Lease and vacated the Property, regardless of the reasons therefore, the Option ceased to exist. (R. pp. 3-4). There is Supreme Court precedent to the contrary that the Court should have followed. *Jackson v. Rogers* holds that a breach of a lease does not automatically invalidate a corresponding option where neither the lease nor the option so provide. 111 S.C. 49, 96 S.E. 692 (1918). Moreover, the legal principle on which the Court relied does not justify its conclusion that a breach of the Lease caused a forfeiture of the Option. Instead, the Court should have found there to be no genuine issue of material fact that the Option remained enforceable despite a breach of the Lease based on the unambiguous language of those documents.

A. Supreme Court precedent

The Court should have relied on the case of *Jackson v. Rogers* to find that the right to lease and the right to buy are separate features under a lease and a corresponding option unless the parties specify otherwise. 111 S.C. 49, 96 S.E. 692 (1918). In that case Jackson sued Rogers to enforce an option to buy land. Their "Rent Contract" contained two lease paragraphs and one option paragraph. *Id.*, 111 S.C. at 57, 96 S.E. at 694. The Supreme Court referred to these as "separable features of the contract." *Id*., 111 S.C. at 53, 96 S.E. at 692. At the time Jackson exercised the option, he had not paid the annual $125 rent for 1915.

The Court held that this did not prevent him from exercising the option because the parties had not made paying the rent a condition precedent to exercising the option. The Supreme Court stated, "The particular act of omission designated by Rogers is Jackson's neglect and refusal to pay $125 rent for 1915. *The parties to the contract did not agree therein that such omission should forfeit the right to buy*." *Id.* 111 S.C. at 54, 96 S.E. at 693 (emphasis added). Later the Court stated, "There is no justice to be served in the instant case by denying the plaintiff the relief he asks because he did not offer in 1915 to pay the rent for that year. *The contract did not so provide*, and the exigencies of the case as revealed by the testimony raised no such remedial right in the defendants." *Id*. 111 S.C. at 54-55, 96 S.E. at 693 (emphasis added).

Despite recognizing that the Lease and Option do not refer to each other,[1] the trial court in this case did not rely on a "four corners" analysis nor ground its ruling on whether the Lease provided for a forfeiture of the Option upon a breach of the Lease like the *Jackson*

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[1] At the summary judgment hearing the trial court noted, "I understand it's not contested that [Rizan] had the agreements drawn up – has two separate agreements drawn up. They don't refer to each other." (R. p. 90, lines 8-11).

Court did. Instead, the trial court relied on three facts to conclude that the Option is unenforceable. The court noted that Appellant "breached the Lease by nonpayment of rent for over eleven (11) months, had vacated the premises and had turned over the keys to agents of Rizan Properties, LLC." (R. p. 4). The Court should have examined the documents instead and followed *Jackson's* directive to adhere to the parties' agreement as set down by the parties' themselves.

This case is factually distinct from *Jackson* in a way that makes it clearer that the Option survived any breach of the Lease. The Option in this case recited a separate consideration of $550 whereas in *Jackson* there was no separately listed consideration. (R. p. 267). This indicates that the parties intended the Option to constitute a legal right to buy the Property, separate from the rights created by the Lease, and did not depend on the Lease.

Jackson relied on generally applicable black letter law. American Jurisprudence says that "the determining factor in deciding if an option is rendered void due to default under a lease is not whether the documents are construed as a single transaction or as separate documents, but, more important, whether the parties, *through their expression of intention, have chosen to make the exercise of the option conditional upon compliance with the terms of the lease.*" 49 *Am. Jur. 2d Landlord and Tenant* § 341 (2021) (emphasis added).

Jackson's holding that a lease and option represent distinct, severable rights that do not necessarily depend on each other based on the language used remains the law in South Carolina. *Belton v. Cincinnati Ins. Co*. supports this understanding. 353 S.C. 363, 577 S.E.2d 487 (Ct. App. 2003). Belton had missed five months of rent payments. *Id*. 353 S.C. at 365-66, 577 S.E.2d at 488. The central question there was whether the option created an insurable interest in the real estate. In reaching the conclusion that Belton did have an

insurable interest, the majority[2] noted that "the termination of the lease would not *ipso facto* terminate Belton's option to purchase the property." *Id*. 353 S.C. at 367, 577 S.E.2d at 489. The Court of Appeals stated in that case that the issue of severability was a question of intent, a factual question for which summary judgment was inappropriate. *Id*. 353 S.C. at 367-368, 577 S.E.2d at 489-490.

The Supreme Court reversed the central holding that Belton had an insurable interest because of the option, finding that he had not built-up sufficient equity in the property through his payments. *Belton v. Cincinnati Ins. Co*., 360 S.C. 575, 579, 602 S.E.2d 389, 392 (2004). The Supreme Court did not reverse or vacate the Court of Appeals' statement of the law regarding the effect of a lease termination on an option.

Appellant's case is even a step removed from *Belton* because in this case the trial court found that a mere breach of the Lease voided the Option. (R. pp. 6-7). This finding adopted wholesale Rizan's position. At the summary judgment hearing, Rizan's attorney argued,

> But for the purposes of the Plaintiff's claim for specific performance and the legal reason why my side is entitled to summary judgment, it is because Mr. Powers did not comply with his contractual obligations. The lease and the option are read together as one document.
>
> And that, it seems to me, Judge, is really what it all boils down to on the legal side, is how you view the documents? . . . [I]f they are viewed together as they should be, there was a breach. And that breach is not excused and ended any ability now to come back and ask this Court to order specific performance.

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[2] The dissent would have held that an unexercised option did not create an insurable interest. *Id*. 353 S.C. at 371, 577 S.E.2d at 491.

(R. p. 102, line 23-p. 103, line 8). The trial court erred in adopting this statement of law because this simply is not what the law is as articulated by our Supreme Court, by the Court of Appeals, and by other legal authorities.

Thus, the trial court erred by not following binding Supreme Court precedent. Its order granting summary judgment to Rizan should be reversed, and summary judgment should instead be granted to Appellant on the question of whether a breach of the Lease voided the Option.

B. The rule of law the trial court applied does not justify the conclusion it reached

To analyze the Option's viability, the trial court relied on the rule that documents executed at the same time or as part of the same transaction are construed together. (R. pp. 3-4). *See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 92, 594 S.E.2d 485, 492 (Ct. App. 2004). But this rule does not fully frame the legal inquiry. That inquiry is one of intent, not just whether two documents should be construed together as part of one transaction. *Ellie, Inc.*, 358 S.C. at 93, 594 S.E.2d at 493.

Even construing the Lease and Option together, it does not follow that if one agreement is breached the other agreement automatically fails as well. The purpose of construing documents executed at the same time together is to give effect to the entire agreement of the parties. *Ellie, Inc.*, 358 S.C. at 92, 594 S.E.2d at 493 (Ct. App. 2004). A court still "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." *Id.*, 358 S.C. at 92-93, 594 S.E.2d at 493.

The trial court cited *Café Assocs., LTD v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991). That case did not involve a lease and option to purchase real estate and did not hold that if one of two agreements is breached the other becomes unenforceable. *Gerngross* merely held that a 5-year time limitation in a non-compete clause in an asset purchase agreement could be read into a corresponding covenant not to compete agreement that did not, standing alone, include the same durational limit. 305 S.C. at 10, 406 S.E.2d at 164-165.

The only light that *Gerngross* sheds on this case is that if there were a provision in the Lease or Option that were not also in the other contract, it could be appropriate to read the provision into the contract lacking that provision if that was what the parties intended based on a reading of both documents. However, there is no provision in either document conditioning the validity of the Option on not breaching the Lease. (R. pp. 260-268). Consequently, the Court's reliance on *Gerngross* goes too far because it does not lead to the outcome that the Court relied upon it to reach.

C. The Option is enforceable as a matter of law

The first analytical step is to determine whether the Lease and Option are ambiguous or unambiguous. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). If unambiguous, the trial court should have ascertained the parties' intent from the four corners of the documents. *Id.* (noting that "[t]he parties' intention must, in the first instance, be derived from the language of the contract.").

Although not stated directly in either of its orders, the court must have found the documents to be unambiguous because if they are ambiguous, the court should not have granted summary judgment. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d

799, 802 (Ct. App. 2009) ("Summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument."). Furthermore, if there were an ambiguity in the Lease and Option as to whether a breach of the Lease voided the Option, that ambiguity must be resolved against Rizan, whose attorney drafted them. *Williams v. Teran, Inc*., 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) ("The rule of law is that where the contract is susceptible of more than one interpretation, a doubt shall be resolved against the party whose business it was to speak without ambiguity.").

Looking at the question of intent, there is no genuine issue of material fact that the parties did not make the validity of the Option contingent on full compliance with the Lease. The court recognized this during the summary judgment hearing when it stated, "And then for whatever reason, the documents do not refer to each other." (R. p. 87, lines 13-14). Therefore, rather than granting summary judgment to Rizan on this question, the court should have granted summary judgment to Appellant.

The Lease and Option are plain and capable of only one reasonable construction. They express the parties' central goal as being the eventual sale of the Property for $52,800. (R. pp. 260-268). Plaintiff had eight years within which to pay off the Property by paying "rent," which, upon exercising the Option, would constitute full payment of the purchase price. (R. p. 267).

The only default provision in either document is Article XVI of the Lease. It states that upon a default, Rizan could elect to terminate the Lease by re-entry or by judicial process, neither of which Rizan did. (R. p. 263). Or Rizan could have elected to continue the Lease. (R. pp. 263-264). In fact, the Lease states that re-entry or taking possession shall not be

construed as an election to terminate the lease "unless a written notice of such intention is given . . . at the time of such re-entry." (R. p. 264). Despite the detail about under what circumstances the Lease would or would not continue, this provision, nor any other provision, mentions the Option.

The Option and Lease express a complete agreement upon their face, and there is no material term lacking. *Carolina Nat. Bank v. Wilson*, 153 S.C. 251, 254, 150 S.E. 765, 766 (1929) (noting that parol evidence is inadmissible to add terms to a writing that "imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract. . . .").

Given that the Lease and Option do not express any intent for the Option to expire upon a breach of the Lease, applying the appropriate legal framework for interpreting contracts based on the parties' intent drawn from the language used, the only conclusion to draw is that the Option survived Appellant's breach. When Appellant exercised the Option on October 15, 2019, he did just what the plaintiff in *Jackson v. Rogers* did when he offered to pay the balance of the contract price despite having failed to pay part of the rent. 111 S.C. 49, 54, 96 S.E. 692, 693 (1918) ("[T]he other party is saved in his right under the contract if he shall offer to do his part . . .").

Moreover, nothing in the Lease or Option states that a failure to make monthly payments for one, two, or even ten months necessarily voids the Option. Courts are not permitted to write terms into contracts that the parties themselves did not supply. *Gilstrap v. Culpepper*, 283 S.C. 83, 85-86, 320 S.E.2d 445, 447 (1984) ("Courts are without authority to alter a contract by construction or to make new contracts for the parties."). Requiring Rizan to comply with the Option places it in the same position as if Appellant had made every

Lease payment—Rizan gets its $52,800[3] and Appellant gets title to the house for which he already has paid more than $35,000.

Thus, this Court should hold that there is no genuine issue of material fact that the Option is enforceable as written despite a breach of the Lease. Consideration of Rizan's waiver defense, as argued below, does not change this outcome.[4]

II. THE TRIAL COURT ERRED BY FINDING THAT APPELLANT WAIVED HIS RIGHT TO EXERCISE THE OPTION CONTRACT AS A MATTER OF LAW WHERE THE FACTS SHOW AS A MATTER OF LAW THAT HE DID NOT WAIVE HIS RIGHT TO THE OPTION

The trial court also concluded that Appellant "waived and abandoned any and all rights he may have had under the Option." (R. p. 7). The court based this on the facts that Appellant vacated the Property and turned over the keys to Rizan. (R. p 3). The only reasonable conclusion to draw from the totality of the evidentiary record is that he did not intentionally abandon his right to exercise the Option. Moreover, when applying a summary judgment standard of review and construing facts in the light most favorable to Appellant, at a minimum there remains a genuine issue of material fact about Appellant's intent as to this defense.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right. . . . In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned." *King v. James*, 388 S.C. 16, 30, 694 S.E.2d 35,

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[3] Had Rizan complied with Appellant's exercise of the Option, it would have come out better because it would have received full payment of the $52,800 sooner than if Appellant had made every payment on time under the Lease for eight (8) years.

[4] In addition to waiver, Rizan asserted defenses of laches and estoppel but did not advance either of these defenses in favor of summary judgment.

42 (Ct. App. 2010). *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470-71 (2007) (noting that waiver requires a party to have "known that the party was abandoning that right."). "Summary judgment should be denied where the facts, although not in dispute, are nonetheless subject to conflicting inferences." *Lyles v. BMI, Inc.*, 292 S.C. 153, 159, 355 S.E.2d 282, 285 (Ct. App. 1987).

Appellant moved out of the Property to help support Ms. Pearson, not intending to abandon his right to complete the purchase of the Property. (R. p. 210, line 22-p. 211, line 7). He testified, "She went and got the house, because I wasn't going to move. Then she just came and said, 'Jerry, this thing is $1,000 a month. I can't afford that.'" (R. p. 210, line 22-p. 211, line 1). When asked whether he had given up on the Property he testified, "No. No. No, I hadn't given up." (R. p. 211, lines 14-15).

Appellant demonstrated his lack of intent to abandon the Option by spending money to maintain the Property. He paid his friend Rodney Pitts to maintain it after he moved out. (R. p. 162, line 19- p. 163, line 17). This happened up until October 27, 2019, when Mr. Pitts was placed on trespass notice by law enforcement at Mrs. Rigdon's request. (R. p. 148, lines 11-17; p. 177:14-22; p. 164, line 16-p. 165, line 2; pp. 218-220; pp. 285-289). The only rational explanation for why Appellant would have paid someone to maintain the Property is that he still considered it to be his. Attorney Jacqueline Patterson recognized this when she assumed that the person at the Property on October 27th was in fact Appellant when she wrote on October 28, 2019, "[O]n Sunday, October 27, 2019, the Estate contacted the Greenville County Sheriff's Department regarding the trespass of Jerry Powers on the Property." (R. p. 236). Contrary to the trial court's finding, this is conclusive evidence that he had no legal intent to relinquish his right to exercise the Option.

Other record evidence further supports that Appellant did not intentionally relinquish his right to exercise the Option. He refused to sign the "Eviction Notice" that Rizan asked him to sign, and which Ms. Pearson did sign, on December 3, 2018. (R. p. 127, lines 23-25, p. 131, lines 11-22, p. 278). He testified that he paid Rizan $550 the following month in January 2019, which demonstrates that he had not intended to give up any right under the Option despite receiving the "Eviction Notice." (R. p. 145, lines 1-5, p. 186, lines 7-15). He sought out legal counsel in November 2018 after Rigdon told Appellant he would have to sell the Property. (R. p. 275; p. 186, lines 5-19; p. 169, lines 2-18). He sought out financing from Luthi Mortgage, Bank of America, and his sister to be able to complete purchasing 39 2nd Ave. (R. p. 176, line 21-p. 177, line 2, 178, line 16-p. 181, line 11; p. 214, line 24-p. 215, line 8; pp. 219-220).

Furthermore, the act of relocating to help out his girlfriend and giving Rizan the keys to the Property only when Rizan asked for them is not inconsistent with Appellant not intending to give up the right under the Option to pay, within 8 years, the balance of the $52,800.

Based on the foregoing, there is no genuine issue of material fact about whether Appellant had waived his right to exercise the Option prior to doing so through counsel on October 15, 2019. In the alternative, there is at least a genuine issue of material fact as to Appellant's intent.

CONCLUSION

The trial court did not analyze the intent of the parties based on the plain language of the Lease and Option. Analyzing the intent of the parties based on the language the parties

chose to use and following binding Supreme Court precedent leads only to the conclusion that a breach of the Lease did not make the Option unenforceable. Nor did Appellant subsequently waive his right to enforce the Option. Consequently, this Court should reverse the Order granting summary judgment to Rizan and instead grant summary judgment to Appellant and find that the Option was still effective when he exercised it on October 15, 2019.

Respectfully submitted,

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June 23, 2021

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Of which Rizan Properties, LLC is the Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

June 23, 2021

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