

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2019-CP-07-00117

ZACHARY Z. ZOUL, AND ZOUL)
HOSPITALITY, LLC d/b/a)
HOSPITALITY ADVISORS)
GROUP,)

Plaintiff,)

v.)

LAWRENCE LEARY, AND OLD)
TOWN BLUFFTON INN, LLC,)

Defendants.)

JUDGMENT ORDER

RECEIVED

Aug 11 2021

SC Court of Appeals

Date/Time of Trial: Tuesday, May 18, 2021; 9:30 a.m.
Presiding Judge: Honorable Carmen Mullen
Plaintiffs' Counsel: F. Ward Borden, Esq.
Defendants' Counsel: Gregory M. Galvin, Esq.

CAME the parties, by their respective counsel, on the 18th day of May 2021 at 9:30 a.m. for a bench trial of remaining unresolved claims of Plaintiffs against Defendants. Plaintiffs on January 2, 2019, filed a Summons and Complaint in the Beaufort County Court of Common Pleas. At that time, there were two named Plaintiffs and a total of five named Defendants.¹ Plaintiffs' claims were in Breach of Contract Express or Implied in Fact, Breach of Contract Accompanied by Fraudulent Act, Promissory Estoppel, *Quantum Meruit*, and Violation of the S.C. Unfair Trade Practices Act. Following a hearing on March 16, 2020 at 3:30 p.m. on motions for summary judgment filed by both Plaintiffs and Defendants, Plaintiffs' motion was denied, and Defendants' was granted in part and denied in part, with Plaintiff's claims of Breach of Contract Express or Implied in Fact, Promissory Estoppel and *Quantum Meruit* surviving against the two remaining Defendants.

Findings of Fact

1. Plaintiff Zachary Z. Zoul (individually "Mr. Zoul") is a natural person, over 21 years of age,

¹ The Plaintiffs were at the beginning of this litigation those named near the top of the page. The Defendants at the time this case was filed were Lawrence Leary, Old Town Bluffton Inn, LLC, Landmark 2 Developers, LLC, Bluffton Inn SC, LLC and Bluffton Inn Management, LLC. After the parties' summary judgment hearing, the last three Defendants here referenced were dismissed from the case.

and a citizen and resident of Grand Island, Nebraska. Plaintiff Zoul Hospitality, LLC d/b/a Hospitality Advisors Group (hereinafter "HAG") is a Nebraska-organized limited liability company that has been licensed to transact business in the State of South Carolina. Mr. Zoul is the LLC's chief operating officer. Plaintiffs are assisted in their trade work by Mr. Eric Brooks of Savannah, Georgia (hereinafter "Mr. Brooks"), and Mr. Mike Alsko (hereinafter Mr. Alsko) of Hilton Head Island, South Carolina. Mr. Zoul and Mr. Brooks attended the bench trial and gave testimony and identified written exhibits.

2. Defendant Lawrence Leary (hereinafter "Mr. Leary") owns property in Beaufort County, South Carolina at 63 Honesty Lane, Bluffton, Beaufort County, South Carolina. Mr. Leary did not attend the trial; however, a deposition transcript taken while Mr. Leary was physically in New Jersey was filed with the court.

3. Mr. Leary and Old Town Bluffton Inn, LLC (hereinafter "LLC") were represented by counsel at trial. The court was informed that Mr. Leary owns a majority member interest in the LLC and his daughter Danielle Harrison holds a minority member interest in the LLC, but that daughter Danielle Harrison now manages the Old Town Bluffton Inn. Without more, the court regards the referenced circumstances to be facts of the case.

4. This court has received and reviewed the complete deposition transcript of Lawrence Leary, who was questioned by his own attorney and was able to state his views. Mr. Leary was not at trial. The fact recollections of the Plaintiffs and the Defendants differ on some issues. The court took full opportunity to review Defendants' positions as to the facts and to draw conclusions on the facts as stated by all parties.

5. Plaintiffs opened their case with testimony and records provided or testified to by Mr. Brooks. Mr. Brooks is semi-retired, a resident of Savannah, Georgia, and per his testimony, an associate of HAG who has over twenty (45) years of experience in the hospitality and tourism trades. Mr. Brooks acknowledged his relationship with Mr. Zoul and HAG, and testified specifically about the work he performed from September 2018 through at least October 2018 for Mr. Leary and LLC. Specifically, he prepared multiple *pro formas*, prepared notes to accompany the *pro formas* and an action list of logistical items remaining to be addressed. Mr. Brooks also travelled to Mt. Pleasant with Mr. Leary, and met with company representatives of a company called Q4 Launch, which is an internet booking company. Mr. Brooks testified to also interacting with multiple vendors, with the objective of having the Old Town Bluffton Inn up and running by Thanksgiving 2018. More than once the Thanksgiving timing was described as ambitious and labor

intensive. Mr. Brooks estimated that he had worked 80 to 100 hours on the Old Town Bluffton Inn project. Importantly, Mr. Brooks delivered his work product to Mr. Leary and the LLC. They physically received the products being produced by Mr. Brooks as HAG's associate.

6. Plaintiffs' next witness was John Sulka (hereinafter "Mr. Sulka"), a commercial banker employed now at Palmetto State Bank in Bluffton, South Carolina. Mr. Sulka testified that in the September 2018 through October 2018 time frame he was with Coastal States Bank located in Bluffton, South Carolina. Mr. Sulka verified an account told by Mr. Brooks that during the relevant time, Mr. Sulka encountered Mr. Leary in public. Mr. Sulka asked about the progress of the Old Town Bluffton Inn. Mr. Leary referred Mr. Sulka to Mr. Brooks, who was in the lobby of the Inn, and Mr. Sulka met Mr. Brooks and they conversed briefly. Mr. Sulka was Defendants' lender for the Old Town Bluffton Inn project, and Mr. Leary essentially relied upon Mr. Brooks and HAG to lend credibility to the project with their banker.

7. Mr. Zoul was Plaintiffs' witness who followed Mr. Sulka. Mr. Zoul testified to having had numerous communications with Mr. Leary concerning the LLC and Old Town Bluffton Inn. Mr. Zoul, as well, identified and described multiple documents including Plaintiffs' exhibits 10 through 23. Mr. Zoul testified to travelling to Bluffton to work on the Old Town Bluffton Inn project. Through a set of Plaintiffs' exhibits that included public records, a Deed of property to Old Town Bluffton Inn, LLC, and additional records, Mr. Zoul described three transactions between HAG on one hand, and Mr. Leary and LLC on the other. The tasks being undertaken merged.

In May 2018 Mr. Leary's son-in-law Vincent Harrison asked HAG to assist with getting the Town of Bluffton to approve a loading zone at the Inn for dropping off and picking up guests. HAG charged its hourly rate and invoiced Mr. Harrison \$1,350.00. HAG received an unsigned check from Mr. Leary dated September 8, 2018 – about the time Mr. Leary needed more assistance from HAG. Payment of the \$1,350.00 occurred. According to Mr. Zoul and Mr. Brooks, Mr. Leary and LLC wanted HAG to find a buyer for the Old Town Bluffton Inn. A Consulting Services Agreement (Plaintiff's Exhibit 17) was prepared by Mr. Zoul for the referenced purpose and was signed by Mr. Zoul on behalf of HAG, and Mr. Leary as "Owner" of the Inn. Testimony of Mr. Zoul and Mr. Brooks indicates that Mr. Leary shortly after signing the Consulting Services Agreement thought that the marketing of the Inn might go better if it was in operation. Mr. Leary communicated that he wanted a dual approach such that the Inn could be rendered operational by Thanksgiving 2018, and operated, and maybe sold in the future. Mr. Zoul prepared a Management

Agreement that described a new set of responsibilities to accomplish Mr. Leary and LLC's stated changing needs.

The alteration by Mr. Leary and the LLC of their objectives, particularly setting a Thanksgiving 2018 opening date for the Inn, outpaced the ability of Mr. Zoul and HAG to create and execute with Mr. Leary and the LLC a discrete, distinct writing. Mr. Brooks and Mr. Zoul, at the urging of Mr. Leary, plunged into taking measures to enable the Old Town Bluffton Inn to open at or near the scheduled time. Mr. Leary and the LLC wanted it, and the court finds as a fact that Mr. Leary and the LLC sought just what it was being given by Mr. Brooks, Mr. Zoul and HAG. The Management Agreement was not signed, and Defendants took the position there was no written contract involving a meeting of the minds. Objectives appear to have been occurring too rapidly for an adequately discussed written contract for opening and managing the Old Town Bluffton Inn to be prepared and executed. However, while Mr. Leary's deposition essentially denies that he understood the Management Agreement and was receiving nothing for which he should pay, the fact evidence undermines the denials of Mr. Leary and the LLC. Mr. Leary sought for Mr. Brooks, Mr. Zoul and HAG to provide professional services while waiting for their down payment and signed Management Agreement to be returned. In late-October 2018, Mr. Leary had decided the Management Agreement and down payment, were not going to be delivered. Mr. Leary and LLC, by Mr. Leary's advisor, informed Mr. Zoul and HAG that their services were being terminated. Mr. Zoul prepared and delivered to Mr. Leary a discounted invoice dated October 29, 2018 (Plaintiff's Exhibit 23) that provided a discount in order that the separation be quick and clean. Notwithstanding statements to the contrary, no payment to Mr. Zoul, HAG and Mr. Brooks was forthcoming.

This court finds as fact that Plaintiffs Zoul and HAG conferred valuable benefits upon Defendants Mr. Leary and LLC; and that Defendants were not ignorant of the benefits conferred upon them but were seeking them and realized those benefits conferred. The Defendants Mr. Leary and LLC retained the benefits conferred upon them by Plaintiffs Zoul and HAG under conditions that make it unjust for Defendants to take those benefits without paying their value.

Following a break, the Plaintiffs introduced as a witness Dr. John Salazar. Dr. Salazar identified his curriculum vitae, which identified an extensive background in education, hospitality, tourism and related undertakings. Dr. Salazar was moved in, and accepted by the court, as an expert in the fields of hospitality and tourism. Dr. Salazar reviewed pleadings and discovery documents from the case, as well as having lived in Bluffton, South Carolina for years. Dr. Salazar stated that

after reviewing the work of Plaintiffs Mr. Zoul, HAG and Mr. Brooks, that their work was competent, and appropriate for that which they had been requested to do. Dr. Salazar stated that to a reasonable degree of expert certainty, the work of Mr. Brooks and Mr. Zoul was competent and had significant value. He testified that if the work product of Mr. Zoul, Mr. Brooks and HAG was given to Defendants Mr. Leary and LLC, that they [Defendants] had received a significant and valuable benefit. Dr. Salazar, in discussing the value of Plaintiffs' work, stated that he had been paid far more for similar work. Dr. Salazar testified that, to a reasonable degree of expert certainty, the value of what Plaintiffs have conferred on Defendants is worth \$30,000.00 to \$50,000.00. He stated to a reasonable degree of expert certainty that of that range, the higher amount was more appropriate. It is noted that Dr. Salazar's estimate does not reflect the out-of-pocket expenses Mr. Zoul has identified.

Conclusions of Law

Following summary judgment arguments earlier in the case, the Plaintiffs had three remaining theories of recovery going into trial. Plaintiffs had pleaded (1) Breach of Express or Implied in Fact Contract; (2) Promissory Estoppel; and (3) *Quantum Meruit*.

In a Breach of Contract action, the burden was on the Plaintiffs to prove the existence and terms of the contract, to prove its breach, and to prove damages caused by the breach. Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As noted above, *supra*. P. 4, Defendants Mr. Leary and LLC were altering what they wanted, and there was no agreed upon signed contract. Breach of Contract does not fit these circumstances.

Like a Breach of Contract action, an action in Promissory Estoppel starts with a promise unambiguous in its terms. Satcher v. Satcher, 351 S.C. 477, 483-484, 570 S.E.2d 535, __ (Ct.App. 2002). Defendants' objectives were too much a moving target to constitute an unambiguous promise, and made it untenable for Plaintiffs to assert an unambiguous promise. Plaintiffs initially charged hourly. Defendants decided they wanted Plaintiffs to find a buyer for the Inn, in which case the payment was to be a percentage. Before the September 17, 2018 Consulting Services Agreement had even begun to cause performance, the objective was changed by Defendants to Plaintiffs enabling a Thanksgiving opening of the Inn. Therefore, Promissory Estoppel also appears to not fit the circumstances.

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. The elements, as set forth by the Supreme Court of South Carolina, are "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868 (2000). Plaintiffs proved by the requisite

evidence that all the elements for a recovery in *quantum meruit* exist in this case. The value conferred by the Plaintiffs and retained by the Defendants was established by expert testimony and is considerable.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED as follows:

- a. Plaintiffs are hereby granted judgment against the Defendants Lawrence Leary and Old Town Bluffton Inn, LLC, jointly and severally in the amount of \$30,000 (thirty thousand dollars)
- b. Plaintiff shall be entitled to post-judgment interest at the rate provided by law on any unpaid amount of the judgment until the judgment has been paid

IT IS SO ORDERED. THIS ORDER IS FINAL.



Honorable Carmen Mullen
Judge, Beaufort County Circuit Court

5/24, 2021
Beaufort, SC