

LEVI GRANTHAM LLC

KATHY WRIGHT MITCHELL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DONALD J. BUDMAN

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

RECEIVED
Apr 18 2022
 SC Court of Appeals

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

identified as Charleston County TMS # 427-00-00-024 to plaintiff for \$400,000.00. The Agreement called for a 90- day “termination right” and for a closing to occur within 30 days after the termination right expired. An additional 30-day extension period is stated in the Agreement. The Agreement also states that “Time is of the essence,” in bold letters and underscored.

Typed in to the otherwise form Agreement are two contingencies, both pertaining to governmental approval of plaintiff’s development plans for the property. In smaller print, but still typed into the Agreement, it states that if the contingencies are not met by the closing date, the buyer could either terminate the Agreement with a return of its earnest money deposit, or, upon notice to seller, the buyer could choose to toll the Agreement until all such conditions are satisfied. There is no time deadline set forth in the Agreement at which the buyer must satisfy the contingencies and close on the sale. By letter dated July 9, 2021, plaintiff delivered notice to defendant electing to exercise its right to toll the Agreement until the contingencies were satisfied.

On November 4, 2021, defendant notified plaintiff that since the Agreement did not set a deadline for satisfying the contingencies, she would consider December 4, 2021 to be a reasonable period of time for the buyer to do so, and close the sale. The defendant’s notice stated clearly and unequivocally that if the sale did not close by that date, or the closing date not be extended by agreement, she would consider the Agreement to be terminated, and that she would seek a rescission of the contract, or damages at law as may be applicable.

No closing occurred by December 4, 2021. Nor did a closing occur by January 5, 2022 when defendant notified plaintiff that she was agreeable to extending the closing until February 11, 2022- the one year anniversary of the Agreement. Once again, the defendant’s notice stated clearly and unequivocally that if the sale did not close by February 11, 2022, she would



consider the Agreement to be terminated and that she would seek a rescission of the Agreement or damages at law as may be applicable.

On February 2, 2022, defendant notified the plaintiff clearly and unequivocally of her continuing intent to terminate the contract on February 11, 2022, and seek a rescission of the Agreement, if the Agreement had not closed by then. Also in this notice, the defendant tendered a full return of the plaintiff's earnest money deposit and instructed the escrow agent that she consented to an immediate release of the escrowed funds to plaintiff if it consented to, or was ordered to, rescind the Agreement.

There was no closing of the Agreement by February 11, 2022. Defendant's motion for summary judgment was filed on February 22, 2022. As of the date of this hearing, there has been no closing, and no closing is scheduled. The affidavit of Joshua Craig, Director of Acquisitions for plaintiff's Charleston Division, instructs the court that the process of meeting contingencies similar to those in the Agreement could take 1 to 3 years.

I conclude that there are no genuine issues of material fact that need to be resolved in this case. The refusal or unwillingness of plaintiff to close on the Agreement to Buy and Sell Real Estate within a reasonable period of time is a substantial and fundamental breach which defeats the purpose of the subject contract. Requiring the seller to wait more than one year to close on the Agreement, when "time is of the essence," and no date is set for the satisfaction of contingencies, is unreasonable.

Therefore, it is

ORDERED, that the defendant's motion for summary judgment is granted, subject to the following condition: that the plaintiff, Levi Grantham, LLC, shall have until the close of business on April 15, 2022 to purchase the subject real property from the defendant for the sum stated in the



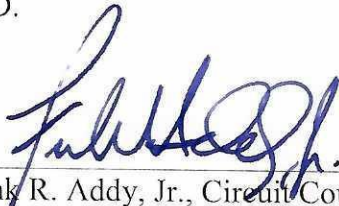
Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021; and it is further

ORDERED, that should the plaintiff fail to purchase and pay for the subject real property on or before the close of business on April 15, 2022, as stated above, the Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021, which is the subject of this lawsuit, shall be immediately rescinded and terminated; at which time the Clerk of Court, at the request of counsel for defendant, shall enter judgment of rescission in favor of defendant, dismiss the remainder of this lawsuit without prejudice, and cancel the Lis Pendens, case # 2021-LP-10-0489; and it is further

ORDERED, upon entry of judgment of rescission in favor of defendant, the plaintiff's earnest money deposit of \$5,000.00 shall be released in its entirety by the escrow agent and returned to plaintiff; and it is further

ORDERED, that should plaintiff file an appeal of this Order pursuant to the South Carolina Rules of Civil Procedure and/ or the South Carolina Appellate Court Rules, and seek a supersedeas, I will require plaintiff to post a surety appeal bond in the amount of \$400,000.00 in accordance with Rule 241(d) SCACR.

AND IT IS SO ORDERED.



Frank R. Addy, Jr., Circuit Court Judge

Greenwood, South Carolina

31st day of March, 2022