

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,
Plaintiff,
v.
RIVERWALK RIVER DISTRICT
BUILDING 6, LLC, MARK S. MATHER,
GRH DEVELOPMENT RESOURCES, LLC,
THE GREENS OF ROCK HILL, LLC, and
ASSURED ADMINISTRATION, LLC
Defendants.

**ORDER REGARDING
POST-TRIAL MOTIONS**

RECEIVED
Apr 29 2022
SC Court of Appeals

THIS MATTER came before the undersigned on the post-trial motions filed by the parties¹, and the Court, having reviewed and considered the motions, the materials submitted, and the oral arguments of counsel, hereby finds and concludes as follows:

1) Plaintiff's Motion for Directed Verdict / Motion for Specific Performance is GRANTED. The closing on the purchase/sale of the "Demised Premises" as defined in the Lease Agreement between the parties shall occur on or before May 31, 2022 (hereinafter, the "Closing Date"). The "Purchase Price" as defined in Section 33 of the Lease shall include an additional credit in favor of Plaintiff for all amounts of Base Rent paid by Plaintiff under the Lease since February 2, 2018, through the Closing Date. Upon the closing, the Lease shall immediately terminate, but Plaintiff shall retain the right to jointly use the Common Areas (as defined in the Lease) with the remaining tenants and the condominium documents shall

¹ Plaintiff's post-trial motions were filed on September 3, 2021. Defendants' post-trial motions were filed on September 10, 2021.

expressly so provide. Defendants shall not restrict or limit Plaintiff's right to use the Common Areas in conjunction with the remaining tenants.

The decision to grant specific performance is to be exercised in accordance with rules of equity and with regard to the facts and circumstances of each case. *See Campbell v. Carr*, 603 S.E.2d 625 (S.C. Ct. App. 2004). The Court of Appeals of South Carolina has set forth the elements of specific performance as follows: "(1) The existence of a valid contract; (2) The absence of an adequate remedy at law for breach of contract; (3) The specific performance is equitable between the parties; and (4) The contract is not infected by fraud, accident, or mistake." *King v. Oxford*, 282 S. C. 307, 318 S. E. 2d 125 (Ct. App. 1984). Whether an adequate remedy at law exists is based on whether the "object of the contract is so peculiar in value as to give rise to an equity for the specific performance of the contract without referring to its quality or quantity." *See Kitchen v. Herring*, 36 N. C. (1 Ired. Eq.) 190 (1851); *Hazelton v. Miller*, 25 App. D. C. 337 (1905), *aff'd*, 202 U. S. 71 (1906).

In addition, order to compel specific performance, a court of equity must find that the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000). To perform an option to purchase, the party must follow to specific language in the option contract. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 109, 531 S.E.2d 287, 293 (2000). "If the option contract specifically makes the tender of the purchase price a condition precedent to the option's exercise, then the plain language of the contract controls and actual tender is required." *See Catawba Athletics, Inc. v. Newton Car Wash, Inc.*, 53 N.C.App. 708, 281 S.E.2d 676 (1981). However, in situations similar to this case, where the option contract only requires payment "at any time during the terms [of the lease]," the Court must consider the

context in which the contract was made and attempt to further the intent of the contracting parties. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 110–11, 531 S.E.2d 287, 293–94 (2000).

The Court finds that Section 33 of the Lease (the Option to Purchase provision) only requires advance written notice of 120 days; it does not also require payment of the Purchase Price, or tender thereof, in order to bind the parties to the purchase. Therefore, Grapevine exercised its option to purchase and is entitled to specific performance as it was able and willing to perform its part of the contract. Grapevine had every intention to purchase the property and had the funds to do so. Riverwalk refused to set a closing date and without the horizontal property regime, Grapevine could not purchase the property. The Court also finds the existence of a valid contract in the lease agreement, the absence of an adequate remedy at law for the breach of this lease agreement because the leased property is peculiar in value to Grapevine, the specific performance is equitable between the parties; and the lease is not entered into by fraud, accident, or mistake.

2) Plaintiff's Motion for Award of Costs and Attorneys' Fees is GRANTED, but with a thirty percent (30%) reduction from the total amounts sought in the motion to account for the non-contractual claims that are not subject to the fee-shifting provision contained in the Lease. Accordingly, Plaintiff is entitled to recover costs and attorneys' fees in the total amount of \$404,934.75.

Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). The Court has given careful consideration to each of the six (6) factors set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993), and specifically finds as support for its award of costs and attorneys' fees (i) that the legal services rendered by Plaintiff's counsel were substantial and

complex; (ii) that the time and labor devoted by Plaintiff's counsel was substantial; (iii) that the professional standing of Plaintiff's counsel is high; (iv) that no contingency-based compensation structure applied to the representation provided by Plaintiff's counsel; (v) that the fees charged by Plaintiff's counsel are in-line with the fees customarily charged by firms of similar size with lawyers of similar experience and qualification practicing in this jurisdiction; and (vi) the result obtained by Plaintiff's counsel were beneficial to Plaintiff.

The Court finds the contractual agreement in the lease entitles the Plaintiff to recover costs and attorneys' fees, but only in regards to the defendant, Landlord Riverwalk River District Building 6, LLC for the breach of lease claims. The Plaintiff's billing statements make it difficult to determine and delineate the work completed in furtherance of the breach of lease claims—which is the only claim upon which attorneys' fees and costs may be awarded. Similar to *Maybank v. BB&T*, the claims in this case shared the same common facts and required combined efforts throughout the litigation process. Therefore, the Court reduces the fees and cost by thirty percent to account for a distinction in the claims and the time allotted to assert claims unrelated to the breach of lease claims. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016).

3) Plaintiff's Motion for Award of Pre-Judgment Interest on Jury Verdict is GRANTED IN PART, as follows: Pre-judgment interest at the rate of 8.75% shall accrue only on the Base Rent paid by Plaintiff under the Lease after February 2, 2018.² In all other respects the motion is DENIED.

4) Defendants' Motion for Judgment Notwithstanding the Verdict is GRANTED only with respect to Plaintiff's Negligent Misrepresentation claim against Defendant Mark S. Mather, and in all other respects is DENIED. As discussed prior in this order, Section 33 of the

² Plaintiff has paid \$112,110.00 in Base Rent under the Lease from February 2, 2018 through December 2021.

Lease (the Option to Purchase provision) only required advance written notice of 120 days; it did not also require payment of the Purchase Price, or tender thereof, in order to bind the parties to the purchase/sale. Therefore, Grapevine exercised the option when it wrote its letter. Also, the Courts concludes the fact that Riverwalk never set up the horizontal property regime is important. Grapevine had every intention to purchase the property and had the funds to do so. Riverwalk refused to set a closing date and without the horizontal property regime, Grapevine could not purchase the property.

The only factual basis for Plaintiff's Negligent Misrepresentation claim permitted to go to the jury was David Williams' statement that the landlord's lender required a two-year lease prior to exercising the Option to Purchase. Over Plaintiff's objection, the jury was not permitted to consider any other alleged misrepresentations. The Court finds that evidence at trial was sufficient for the jury to find that David Williams' misrepresentation regarding the lender's two-year lease requirement before the Option could be exercised specifically induced Plaintiff to enter into the Lease and to trust the Defendants' intentions, and provided the false basis for why Defendants would not sell the space outright, putting Plaintiff in the position it found itself, by needing to seek redress from the Court. Nevertheless, the Defense motion is granted in regards to Mark Mather because there was not testimony that David Williams was acting on behalf of Mark Mather personally.

5) Defendants' Motion to Require Election of Remedy is GRANTED only as between Plaintiff's claim for Specific Performance and Plaintiff's recovery of the Breach of Contract damages awarded in response to Jury Question # 1 on the Jury Verdict Form (\$221,700.00 for Breach of the Option to Purchase), and in all other respects is DENIED. For purposes of clarity, Plaintiff may elect the remedy of specific performance and still recover the

Breach of Contract damages awarded in response to Jury Question # 2 (\$146,124.00 for Breach of the Common Area provisions of the Lease Agreement) and the Negligent Misrepresentation damages awarded in response to Jury Question # 3 (\$96,800.00). The Court notes that Plaintiff has previously elected the remedy of specific performance;³ however, Plaintiff may change such election at any time prior to entry of final judgment in this action.

6) All other post-trial motions filed by Defendants are DENIED.

IT IS SO ORDERED.

The Honorable William A. McKinnon

_____, 2021
_____, South Carolina

³ Plaintiff's election of remedies was made in its Motion for Directed Verdict / Motion for Specific Performance filed on September 3, 2021.



York Common Pleas

Case Caption: Grapevine Of Riverwalk Inc The VS Riverwalk River District
Building 6 Llc , defendant, et al
Case Number: 2018CP4603726
Type: Order/Other

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761