

CHARLESTON SCHOOL OF LAW

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Equity

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**PLAYER v. CHANDLER: AN UNSUCCESSFUL CLAIM FOR SPECIFIC PERFORMANCE**

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**I. INTRODUCTION**

Equity can be described as the quest for what is fair, just, and right. This paper focuses on the Ghost Ship Restaurant and its quest for an equitable remedy. The case at hand concerns the owners of a successful restaurant who were ultimately thwarted in their pursuit to expand their business by an oral modification to a lease agreement. ✓

The owners of the Ghost Ship I Restaurant, the Players, entered into a written lease agreement with the Chandlers for a period of ten years with an option to extend.<sup>1</sup> After the Ghost Ship I Restaurant became a proven success, the Players wanted to construct a second Ghost Ship Restaurant on the leased land.<sup>2</sup> The Players approached the Chandlers in regards to purchasing the property but the Chandlers refused to sell the land.<sup>3</sup> However, the Chandlers did agree to potentially extend the lease.<sup>4</sup> Without signing a written agreement for the lease extension, the Players began construction of the Ghost Ship II Restaurant.<sup>5</sup> Shortly thereafter, the Players were informed that in order for the lease to be extended they would have to agree to additional terms.<sup>6</sup> ✓

<sup>1</sup> Player v. Chandler, 299 S.C. 101, 104 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

These additional terms were not a part of their previous discussion when they attempted to orally modify the lease.<sup>7</sup> The Players then decided to seek equitable relief from this perceived injustice.

This paper addresses the equitable action of specific performance as well as an equitable action for estoppel. Key takeaways from the case are that specific performance is an extreme equitable remedy, equitable estoppel requires detrimental reliance, and that the Statute of Frauds predominates over equitable actions concerning oral modifications of lease agreements.

Ultimately, the Players did not receive equitable relief from the court even though they had already begun construction on the Ghost Ship II Restaurant. The outcome of this case may seem unjust, but equity's role is to supplement the law, not to displace the law.

## **II. THE LAW**

### **A. Specific Performance**

In order to fully understand the issue presented in *Player v. Chandler*, it is essential to comprehend the equitable action of specific performance. A successful action for specific performance may compel a defaulting party to perform on his or her contract.<sup>8</sup> In order for a court of equity to grant specific performance there must be no adequate remedy at law and enforcement of the contract must be equitable between the parties.<sup>9</sup>

Granting or refusing an order for specific performance is strictly discretionary and will turn on the facts and circumstances of each case.<sup>10</sup> The elements of a cause of action for specific performance are: (1) clear evidence of a valid agreement; (2) partial execution of the agreement

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<sup>7</sup> *Player*, 299 S.C. at 104.

<sup>8</sup> RANDOLPH R. LOWELL et al., *SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE* 148 (2010).

<sup>9</sup> *Campbell v. Carr*, 361 S.C. 258, 263 (2004).

<sup>10</sup> *Id.*

by one party with the approval of the other; and (3) the ability and willingness of the party seeking specific performance to perform his or her obligations under the contract.<sup>11</sup>

In order to successfully bring a claim for specific performance, a valid contract must exist between the parties. The traditional elements of contract formation – offer, acceptance, and consideration – must be present to have a valid agreement.<sup>12</sup> Also, specific performance will only be awarded if the contract expresses the true intent of the parties and is fair, just, and equitable.<sup>13</sup> The party seeking specific performance must also be ready, willing, and able to perform the contract at the time that performance is sought.<sup>14</sup> In situations where a party is “not ready, willing, or able to perform, specific performance will not be compelled.”<sup>15</sup>

Specific performance is a suitable remedy if damages at law would be inadequate.<sup>16</sup> Generally, damages allow for the aggrieved party to be placed in the position he or she would have been if the contract had been performed.<sup>17</sup> When damages are adequate there is usually no need for specific performance.<sup>18</sup> However, there are circumstances where damages may be considered inadequate, such as (1) where no market exists; or (2) the subject matter is unique; (3) or the purpose of the contract is non-economic.<sup>19</sup>

When dealing with leases, South Carolina cases “have often required clear and certain terms of lease, before specific performance will be ordered.”<sup>20</sup> There must be a consensus between the parties regarding “all essential and material terms of the agreement.”<sup>21</sup> Terms that

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<sup>11</sup> *Id.* at 264.

<sup>12</sup> LOWELL, *supra* note 8 at 149.

<sup>13</sup> *Campbell*, 361 S.C. at 263.

<sup>14</sup> LOWELL, *supra* note 8 at 150.

<sup>15</sup> *Ingram v. Kasey’s Assoc.*, 340 S.C. 98, 106 (2000).

<sup>16</sup> *Id.* at 105.

<sup>17</sup> LOWELL, *supra* note 8 at 148-154.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> STEPHEN A. SPITZ & MICHAEL J. VIRZI, *REAL ESTATE TRANSACTIONS CASES AND MATERIALS* 261 (2d ed. 2010).

<sup>21</sup> *Player*, 299 S.C. at 105.

are essential “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.”<sup>22</sup> The court in *Player* found that the evidence concerning the telephone conversation was insufficient to support an extension of the lease agreement.<sup>23</sup> Notably, *Player* held that mere referral to the original lease was insufficient to constitute discussion of the essential and material terms.<sup>24</sup>

Even if an agreement had been met during the telephone conversation with regards to the lease extension, “such a modification would be outside the Statute of Frauds.”<sup>25</sup> In South Carolina, any contract for an interest in land or a contract that cannot be performed within a year must be in writing and signed by the party to be charged.<sup>26</sup> Significantly, “a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified.”<sup>27</sup>

### **B. Equitable Estoppel**

The Supreme Court of South Carolina held that the doctrine of estoppel may be invoked to prevent a party from asserting the Statute of Frauds.<sup>28</sup> To overcome statutory requirements that an agreement be in writing, the party asserting estoppel must show that he suffered a definite, substantial, and detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his former position.<sup>29</sup>

A party seeking to establish equitable estoppel must prove a set of elements relating to both the party who may be estopped and to the party claiming estoppel.<sup>30</sup> Three elements must be shown in relation to the party to be estopped. First, the conduct must amount to a false

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> S.C. CODE ANN. § 32-3-10(4) (1976).

<sup>27</sup> *Player*, 299 S.C. at 105.

<sup>28</sup> *Florence Printing Co., v. Parnell*, 182 S.E. 313 (1935).

<sup>29</sup> *Player v. Chandler*, 382 S.E.2d at 894.

<sup>30</sup> *See Rushing v. McKinney*, 633 S.E.2d 917, 924 (S.C. App. Ct. 2006) (listing the elements of equitable estoppel).

representation or concealment of material facts, calculated to convey the impression that the facts are inconsistent with those that the party subsequently attempts to assert.<sup>31</sup> Affirmative representations, misrepresentations, or omissions may qualify as conduct amounting to a false representation.<sup>32</sup> Second, it must be proven that the party to be estopped intended or expected the other party to act upon such conduct.<sup>33</sup> Intention of reliance may be demonstrated where the actions of the party to be estopped, viewed objectively, were calculated to mislead.<sup>34</sup> Third, the party to be estopped must have actual or constructive knowledge of the truth.<sup>35</sup> Actual knowledge of the facts is not required where knowledge can be imputed, but the party must be able to prove constructive knowledge.<sup>36</sup>

The party claiming estoppel must also prove elements relating to its knowledge and reliance on the claims. First, the party claiming estoppel must show that he lacked knowledge of the truth.<sup>37</sup> This is because a party cannot be misled if he was aware of the true facts. Equitable estoppel will not apply when the knowledge of the parties is equal and the other party has done nothing to mislead the other. Second, the party claiming estoppel must demonstrate reliance upon the conduct of the party to be estopped.<sup>38</sup> Reliance by the party claiming estoppel must be reasonable, and the party must proceed in good faith. Finally, the party claiming estoppel must show that he suffered a prejudicial change of position due to his reliance on the conduct of the party to be estopped.<sup>39</sup> The courts determine whether the party claiming to be estopped was prejudiced on a case-by-case basis.

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<sup>31</sup> LOWELL, *supra* note 8 at 155-61.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> LOWELL, *supra* note 8 at 155-61.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

### III. THE CASE: *PLAYER v. CHANDLER*

#### A. The Facts

In 1980, William and Robert Player entered into a written lease agreement with William and Anne Chandler for real property in Myrtle Beach, South Carolina for an initial term of ten years.<sup>40</sup> The lease agreement also provided an option for three, five-year extensions.<sup>41</sup> The Players selected this particular location because they intended to build a restaurant on the leased property.<sup>42</sup> After securing the property by signing the lease, the Players constructed the Ghost Ship I Restaurant on the property.<sup>43</sup>

On February 5, 1985, after successfully operating the restaurant for several years, J.H. "Cotton" Player contacted William Chandler by telephone to inquire about purchasing the property.<sup>44</sup> Chandler declined to sell the property to Player, but offered a potential alternative by indicating that he might be interested in extending the lease.<sup>45</sup> Shortly after this conversation, the Players began construction of a second restaurant, the Ghost Ship II, on the property under the assumption that the lease would be extended.<sup>46</sup> However, on February 25, 1985, only 20 days after he indicated his interest in extending the lease, the Chandlers told the Players that the lease would only be extended if they agreed to additional terms and conditions.<sup>47</sup> Because they had already begun construction of the new restaurant based on the assumption that the lease would be extended, the Players brought an action in equity against the Chandlers seeking, among other claims, specific performance of the oral modifications.<sup>48</sup>

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<sup>40</sup> *Player v. Chandler*, 299 S.C. 101, 104 (1989).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Player*, 299 S.C. at 104.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

### **B. The Lower Court Ruling**

The Court of Common Pleas denied relief to the Players. The trial court held that the telephone conversation between Cotton Player and William Chandler about extending the lease did not constitute an oral agreement.<sup>49</sup> Furthermore, it reasoned that even if an oral agreement did exist, it was not enforceable; therefore, the Players were not entitled to any recovery.<sup>50</sup>

### **C. The Appeal**

After the trial court ruled in favor of the Chandlers, the Players appealed on the grounds that there was an enforceable oral agreement and thus sought specific performance of the agreement.<sup>51</sup> Again, the Chandlers claimed there was no agreement to extend the lease; therefore, the Players were not entitled to recovery.<sup>52</sup>

Upon review, the Supreme Court of South Carolina concluded that there was not an enforceable oral agreement, which would compel specific performance by the Chandlers.<sup>53</sup> First, the court held that there was not an oral agreement between the parties to extend the lease because there was no meeting of the minds during the telephone conversation with regard to all essential and material terms of the agreement.<sup>54</sup> There was no indication that the material terms were discussed, and the mere referral to the original lease was insufficient to create an agreement to extend the lease.<sup>55</sup>

The court could have ended its opinion with the conclusion that there was no valid agreement. However, it went on to explain the possible result even if there was an agreement reached during the telephone conversation about the lease extension. The court reasoned that

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Player*, 299 S.C. at 107.

<sup>54</sup> *Id.* at 105.

<sup>55</sup> *Id.*

even if the oral agreement were valid, such a lease modification would not be enforceable because it did not comply with the Statute of Frauds.<sup>56</sup> The Statute of Frauds requires that any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced.<sup>57</sup> Moreover, a contract required to be in writing cannot be orally modified.<sup>58</sup> Therefore, the court concluded that even if the telephone conversation about the lease extension was a valid agreement, it was still void because it was not in writing, and thus did not comply with the Statute of Frauds.<sup>59</sup>

The Players asserted several exceptions to the Statute of Frauds, all of which they failed to prove.<sup>60</sup> Most notably, they alleged that equitable estoppel takes the oral agreement out of the operation of the Statute of Frauds. As discussed above, the party asserting estoppel must show that he suffered a definite, substantial, and detrimental change of position in reliance on such agreement and that no remedy except specific performance is adequate to restore his former position.<sup>61</sup> However, the court concluded the Players failed to show they changed their position based on the oral lease extension agreement.<sup>62</sup> Under the original lease agreement and extension options, the Players would have the benefit of any improvements for an additional fifteen years under the original lease if they exercised the options to extend.<sup>63</sup> They could have made the improvements under the original lease; therefore, they failed to prove that the improvements were made based on the oral conversation. Thus, there was no substantial change in their position sufficient to estop enforcement of the requirements of the Statute of Frauds.<sup>64</sup> Based on

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<sup>56</sup> *Id.* at 105.

<sup>57</sup> S.C. CODE ANN. § 32-3-10(4) (1976).

<sup>58</sup> *Windham v. Honeycutt*, 279 S.C. 109 (1983).

<sup>59</sup> *Player*, 299 S.C. at 105.

<sup>60</sup> *Id.* at 105-06.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



the lack of an enforceable oral agreement, the Court refused to order specific performance of the contract and affirmed the lower court's decision.<sup>65</sup>

### III. CONCLUSION

While the court's denial of specific performance of the lease extension may seem harsh considering the Players had already begun construction of a second restaurant on the property, it is clearly the just result. Since the holding in *Player v. Chandler*, South Carolina courts have consistently refused to grant specific performance of an oral contract based on failure to meet the requirements of the Statute of Frauds.<sup>66</sup> Specific performance should be granted only if specific enforcement of the contract is equitable between the parties. In other words, "good guys should win and bad guys should lose."<sup>67</sup> Neither the Chandlers nor the Players are the "bad guys" in this situation. Based on the facts, there is no indication that the Chandlers misled the Players during the telephone conversation about the lease extension; therefore, they should not be punished for a mere misunderstanding. Moreover, as the court noted, the Players had an additional five years under the original lease and the option to extend the agreement for fifteen years. Therefore, specific performance of the extension was not necessary at the time to continue operation of the Ghost Ship restaurants. Denial of specific performance was the appropriate conclusion as it was the most fair and equitable result for both parties to the contract.

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<sup>65</sup> *Id.* at 107.

<sup>66</sup> *See, e.g.* *Fesmire v. Digh*, 385 S.C. 296, 310 (S.C. App. 2009).

<sup>67</sup> Roger Young & Stephen Spitz, *SUEM – Spitz's Ultimate Equitable Maxim: In Equity, Good Guys Should Win and Bad Guys Should Lose*, 55 S.C. L. Rev. 175 (2003).