IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ST. JOHNS COUNTY, FLORIDA

H. TIMOTHY GILLIS, IN HIS CAPACITY AS TRUSTEE OF THE PARK STREET REVOCABLE TRUST U/A/D MARCH 12, 2014

CASE NO.: CA24-0884
CONSOLIDATED WITH CA21-0298
DIVISION: 59

-VS-

BEACHWAY RESTAURANTS, LLC; JAMES WIGG;
NIEVES WIGG
DEFENDANTS

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BEACHWAY RESTAURANTS, LLC
PLAINTIFFS

-VS-

ABERDEEN LIQUOR, INC. AND
EXCHANGE ENTERPRISES, INC B/D/A
THE FLORIDA LIQUOR LICENSE EXCHANGE
DEFENDANTS
/

FINDINGS OF FACTAND ANALYSIS OF LAW FOLLOWING NON-JURY TRIAL

This matter is before the Court following a multi-day non-jury trial between H. TIMOTHY GILLIS, in his capacity as Trustee of the PARK STREET REVOCABLE TRUST U/A/D MARCH 12, 2014's (the "Park Street Trust" or "Buyer") and Beachway Restaurants, LLC ("Beachway" or Seller") for specific performance in St. Johns County, Florida.! The Court having considered the testimony of all witnesses, all exhibits entered in the case, arguments of Counsel, proposed final orders, applicable laws cited and being otherwise fully advised in its premises finds as follows:

1 By the time of the trial, PRS Amusements dismissed their count and the Court severed the claims of James Wigg and Beachway against Aberdeen Liquor Inc essentially finally going to trial on the original parties of the CA21-0298 case.

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This is an interesting case that surrounds an intangible but very valuable piece of property.

Property that is in finite amount thus great in demand and monetary value in an ever expanding

county - A liquor license.

FINDINGS OF FACT

The Parties and Jurisdiction

Plaintiff is a trust organized and existing under the laws of the State of Florida and with its

principal place of business located in Jacksonville, Duval County, Florida. Plaintiff's Plaintiffs

Complaint for Specific Performance ("Complaint"), 4 1; Defendant's March 8, 2023 Answer to

Complaint for Specific Performance (Answer), 1. The Court heard trial testimony from Plaintiff' s

Trustee H. Timothy Gillis. Mr. Gillis was admitted to the Florida Bar in 1998, is a practicing

attorney located in Jacksonville Florida, and an equity partner of the law firm Burr & Forman LLP.

Prior to joining Burr & Forman LLP this year, Mr. Gillis was the managing partner of the

Jacksonville office of the law firm Shutts & Bowen LLP ("Shutts"), the law firm that represented

the Park Street Trust at the time of the transaction. Trial Transcript (T."), Volume I ("I."), 91: 18-

25; T.1.93:22-25; T.1.94:1-7.* At all times the sole purposeofthe trust was to obtain a liquor license

which would then be transferred to Winn-Dixie.

The Court heard trial testimony from Barry B. Rosayn, the managing partner of

RealtyMasters Licensing, LLC d/b/a RealtyMasters ("RealtyMasters"). Mr. Rosayn has been a

Florida Licensed real estate broker, a sales person specializing in retail commercial leasing and

Florida alcoholic beverage licensing, and has been involved with between 3,800 and 4,000 liquor

* References to the Trial Transcript herein are denoted "T." then "I.," "IL." "II," or "IV." For Volume Number, then page number, and then a ":" before the line designation. Volume I was the July 14, 2025, trial day, Volume II was the July 15, 2025, trial day, Volume III was the July 16, 2025, trial day, and Volume IV was the July 17, 2025, trial day.

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licenses in the state of Florida. Trial Transcript ("T."), Volume II ("II."), 205:14-23; 209:4-9. Mr.

Rosayn acted as the broker and agent for this transaction, and the parties agreed that Mr. Rosayn and RealtyMasters would be the Escrow Agent. T.I.100:9-13; T.1.108:7-11.

Defendant Beachway Restaurants, LLC, is a limited liability company organized and existing under the laws of the State of Florida, with its principal place of business located in St. Augustine, St. Johns County, Florida. Complaint, 2; Answer, 3. The Court heard trial testimony from James Wigg, the corporate representative of Beachway. James Wigg has been convicted of two crimes of dishonesty. Trial Transcript ("T."), Volume IV ("IV."), 627:3-8.

The Court also heard trial testimony from Kevin Ward, the principal of Exchange Enterprises. Mr. Ward has beena liquor license broker for 29 years and has been involved with the transfer of over 3,000 liquor licenses. Trial Transcript (T."), Volume HI ("HI."), 348:21-25; 349:1-8.

The Parties admit that personal and subject matter jurisdiction and venue are property in this Court. Complaint, {{ 3-4; Answer, 3-4.

The Severing of Parties and Claims

The Court severed the Park Street Trust’s non-jury trial claim for specific performance from the consolidated case, thereby removing defendants Aberdeen Liquor, Inc. ("Aberdeen") and Exchange Enterprises, Inc., d/b/a The Florida Liquor License Exchange ("Exchange Enterprises") from this bench trial. The Court was inclined to sever the Park Street Trust’s non-jury trial claim for specific performance from the scheduled jury trial in an effort to simplify the issues in the consolidated case, and did this, in part, because of a stipulation first represented by Aberdeen’s attorney Enk Johanson, which the Court ultimately required Aberdeen’s principal, Talal Askar, make under oath, at the inception of the trial proceedings, whereby Aberdeen agreed to abide by

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the Court's ruling in the Bench Trial with respect to whether the Park Street Trust was entitled to specific performance, and if so, ultimately transfer the License to the Park Street Trust. T.I.48:2-25; T.1.49:1-25; T.1.50:1-23.

The Property at Issue

The property at issue and the subject of the Asset Purchase Agreement in this case ("Agreement") is the quota alcoholic beverage license number BEV5600184 (the "License"), a series 4COP license issued by the Division of Alcoholic Beverages and Tobacco ("DABT'") for use in St. Johns County, Florida. Complaint, 5; Answer, 5; Trust's Trial Exhibits ("TTE") 1.

A quota liquor license is one that is issued by the state of Florida based upon quota increases in population. T.I.109:12-21; T.II.206:20-25. Quota liquor licenses are movable through the county and may only be acquired from an existing or current licensee within that county. T.II.206:20-25. The design of this systems means there will be only so many establishments that distribute liquor, whether it be at a traditional bar that serves of stores that packages. The named bars and establishments will go in and out of business but the overall amount in a county will remain the same. At the time the Agreement was entered, the License was the only available liquor license in St. Johns County, making it unique property. T.I.109:12-21.

A quota liquor license has two separate and distinct interests, (1) the property interest in the license, and (2) the use rights associated with the license. T.II.262:4-17; T.IV.490:24-25; T.I1.491:1-5; T.IV.497:4-14. The purchase of the property interest in the license does not require DABT approval, and such approval is not necessary to purchase a quota liquor license. T.II.262:4-17; T.IV.490:24-25; T.I1.491:1-5. This means that someone who will eventually be disapproved for using the license because of a criminal history can still own rights to the actual license. Simply put; just because you can't use it does not mean you cannot own it.

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It is possible to transfer the property interest in a liquor license without actually having anything happen at the DABT level. T.I1.449:11-25; 450:1-12. The DABT does not have a say as to who the owner of the property interest in the liquor license is.?

Testimony showed that there are potentially 100 to 150 licenses that are owned by one given legal entity, however, the DABT has the ownership of the license reflected elsewhere because the owners have not yet filed paperwork to reflect the transfer of the property interest to that legal entity. T.III.449:15-22.

The property interest in a liquor license has value independent of the use rights of the license. T.II.262:4-17; T.IV.497:11-14. In fact, the property interest in the license may be purchased as an investment and then sold later, like other pieces of property or commodities. T.II.262:4-17. However, the use rights of a quota liquor license do require DABT approval for the operation of the license. T.II.262:4-17. Further, there are some buyers that buy liquor licenses and then sell them without the DABT ever approving the transfer. T III.449:22-25; 450:1-7. In such a case, the buyer will have purchased and sold a liquor license without ever registering it with the DABT. T.III.449:22-25; 450:1-7. Therefore, the buyer has come to own the property interest in a liquor license without ever having the government recognize, authenticate, or exercise authority over that property interest.*

Quota liquor licenses may be converted from one series type to another. T.IV.492: 20-25. Changing the series of the license is an easy process, whether converting it from a series 4COP license to a 3PS license, or alternatively, from a 3PS license to a 4COP license. T.IV.492: 20-25; 493:1-14; T.H1.360:10-24. A series 4COP license may be converted to a series 3PS license.

3 Notably, this was a question specifically raised by the Court during the trial proceedings. T.IV.684:22-25.
4 Further, the Court also specifically raised this issue with the Parties during the trial proceeding. T.IV.685:13-15.

T.IV.492: 20-25. This process consists of checking the "decrease in series" box on the Liquor License Transfer application form, and then inserting the style of the licenses or the series of license that the applicant wants issued. T.IV.492:20-25; 493:1-14. In the case of the License, to convert the License's series, the applicant would check the box "decrease in series" from a 4COP and then write in 3PS in the requested series. T.IV.492: 20-25; 493:1-14; T III.360:10-24. In fact, if the license were in escrow, an owner could convert the series type every single day and the DABT would allow it. T.III.359:5-17. The DABT does not usually exert more than a "rubber stamp" when it comes to its policies and procedures. T.III.360:10-24; T.III.361:2-17; T.II.449:12-22; T.II.262:23-25. Because of the ease of conversion of the series type, every license can be considered a 4COP license. TIII.362:3-12.

The Execution and Purpose of the Agreement and Amendments

Southeastern Grocers, Inc. ("SEG") is the parent company to Winn-Dixie Stores, Inc., ("Winn-Dixie Stores" and together with SEG, "Winn-Dixie") and was the client of Mr. Gillis and Shutts during the time of this transaction. T.I.94:14-18. The Park Street Trust is a common law trust created for the purpose of purchasing alcoholic beverage licenses for its sole and ultimate beneficiary, Winn-Dixie. T.I.95:1-11; T.1.:95:20-25; T.1.96:1-3; T.II.208:2-4.

In the normal course of purchasing alcoholic beverage licenses, the Park Street Trust would enter into an asset purchase agreement, go through the contract process, close the contract, and at closing, the Park Street Trust would assign its rights and the license that was being acquired by the asset purchase agreement to Winn-Dixie, and then later, the license would be issued in the name of the relevant Winn-Dixie entity. T.I.:95:20-25; T.1.96:1-3. The Park Street Trust is the purchasing agent for Winn-Dixie, and while the Park Street Trust was the contractual party to the

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Agreement, it was nothing more than a mere conduit for Winn-Dixie to acquire the property interest. T.I.:95:20-25; T.1.96:1-3.

In this case, it was important to the client, Winn-Dixie, that the Park Street Trust acquire clean and marketable title to the liquor license, and certain business considerations by SEG necessitated that a "Time is of the Essence" clause be included in the Agreement. T.I.94:18-25; T.I.109:3-21. Like most businesses in this realm, obtaining the liquor license is only one element in opening a store as the property must be obtained, the building either built or refitted for the intended purpose, etc. Simply having the liquor license before you can use it is not helpful nor is having a full store ready to open without the license.

On January 5, 2021, the Park Street Trust as Buyer, and Beachway, as Seller, fully executed that certain Asset Purchase Agreement ("Agreement") with an Effective Date of December 30, 2020, whereby the Park Street Trust agreed to purchase from Beachway and Beachway agreed to sell to the Park Street Trust the property interest in the License. T.I.99:1-7; TTE 1.

The DABT is not a party to the Agreement, there is no involvement in the terms of the Agreement with the DABT at the time of the Closing of the Agreement, and the Closing of the Agreement would not require any action by the DABT. TTE 1; T.IV:490:14-19; T.IV.491:4-18.

Had the parties successfully closed the transaction contemplated in the Agreement, the Park Street Trust would have obtained the property interest in the License, the No Lien Affidavit, Beachway’s Company Resolution authorizing the transfer, if necessary, and the actual Affidavit of Transferor. TTE 1; TTE 4. After the Closing, the Park Street Trust would not have obtained the license interest* in the License, but would have obtained the Affidavit of Transferor, which

5 The terms "license interest" and "use rights" are used interchangeably throughout the testimony, and are synonymous.

would enable the Park Street Trust to submit an application, sometime after the Closing, to the DABT to facilitate the transfer of the license interest of the License. T.IV:490:4-25; T.IV:491:7-23. The relevant application form, the ABT Form 6002, is not a part of the closing documents and therefore the transfer of the license interest has nothing to do with the transfer of the property interest that is the subject of the Agreement; the transfer of the license interest is outside of the scope of the Agreement. TTE 4. In fact, the Park Street Trust would never actually obtain the license interest of the License as it would assign its rights to Winn-Dixie, which provides further support as to why the transfer of the license interest was never part of the Agreement. T.IV.492:1-7.

Following the execution of the Agreement and acting within his role as the broker, Mr. Rosayn commenced due diligence on the license and its ownership. T.II.212:8-19. Through due diligence, Mr. Rosayn discovered issues with the license encumbering the ownership interest and the transferability of the License, issues that were impediments to Closing. T.II.215:9-15. Specifically, Mr. Rosayn discovered the following impediments: (i) sales tax issues; (11) reemployment tax issues; (iil) missing returns; (iv) the "no-sale list" status of the License; (v) foreclosure; and (vi) the License renewal issue. T.II.215:9-15. Curing these impediments were all obligations of the Seller under the Agreement. T.II.225:20-25; T.II.226:1-3.

Mr. Rosayn conducted a lien search with DABT and conducted a public records search to determine if there was any pending litigation or judgments, judgment liens, or UCC-1 financing statements encumbering the License. T.II.212:8-19.

Mr. Rosayn provided Mr. Wigg with a Florida Department of Revenue DR-835 Power of Attorney ("DOR POA"), which enabled Mr. Rosayn to communicate with the Florida Department of Revenue ("DOR") and obtain the information necessary and required to determine if there were outstanding tax liabilities or if there were any issues that needed to be resolved as well as to obtain sales tax records in order to compute the "quota license transfer fee," and other sales tax documentation that may be necessary. T.II.212:22-25; T.II.213:1-10.

Upon the return by Mr. Wigg of the executed POA by Nieves Wigg, Mr. Wigg’s mother, Mr. Rosayn submitted the DOR POA to the DOR to obtain a "certificate of compliance." T.11.212:22-25; T.I1.213:1-10. The DOR responded with a denial of the certificate of compliance because there were a number of issues related to reemployment tax, sales tax, missing returns, and unpaid bills. T.I1.212:22-25; T.II.213:1-10. Mr. Rosyan provided Mr. Wigg a copy of the denials of the certificate of compliance and the judgment liens that appeared in the public records that were from the DOR. T.1II.215:21-25.

Mr. Rosayn also discovered that the license was being foreclosed for failure to meet obligations under a purchase money security agreement related to a loan from a group called Provantage Group and arranged the attorney Marc Tiller. T.I1.212:22-25; T.11.213:110. Mr. Rosayn contacted Mr. Tiller about the foreclosure, and Mr. Tiller informed Mr. Rosayn that the foreclosure was based on Beachway’s monetary defaults. T.II.213:16-22.

In his broker role, to facilitate the Closing, Mr. Rosayn assisted Mr. Wigg in an effort to resolve some of the Seller’s obligations, and to try to get a payoff estoppel letter from the mortgage holder, Provantage Group. T.II.223:23-25; T.II.224:1-15; TTE 8. In fact, after the execution of the Agreement, Mr. Rosayn and Mr. Wigg spent the following three months working together to "try and sort out the mess of sales tax filings and payments that were needed to clear the license for sale." TTE 8.

Mr. Rosayn discovered that the License was on the "no-sale list" because some wholesale venders had reported Beachway for failure to pay the bills within the statutory time frame. T.11.214:2-7. Mr. Rosayn discovered that there were tax liens recorded both with the Florida

Secretary of State as judgment liens and also in St. Johns County with the Clerk of the Court. T.II.214:2-7. Mr. Rosayn also discovered that the License had not been renewed. T.I.215:11-15.

Mr. Rosayn utilized the DOR POA to request payoff letters, estoppels, and other information from the DOR in order to work with Mr. Wigg to satisfy these Seller obligations. T.I1.223:23-25; T.11.224:1-9.vAfter each and every item was uncovered, Mr. Rosayn communicated with Shutts and solicited their opinions on the matters, and communicated and provided Mr. Wigg with everything that Mr. Rosayn uncovered. T.II.214:2-19; T.I.220:13-16. After discussing each of these items with Mr. Wigg, Mr. Wigg made several representations as to his efforts, ability, and willingness to cure these issues, including the following:

1. Mr. Wigg represented that he was aware of the issue with the foreclosure and was attempting to communicate with Mr. Tiller to resolve the foreclosure, but was unable to do so. T.II.214:9-19.

2. Mr. Wigg represented that he was going to coordinate a payment or had made a payment of some of the "no-sale list" items, in an effort to cure the issue. T.II.214:9-19,

3. Mr. Wigg represented that he was going to coordinate a payment of one of the outstanding sales tax liens. T.II.214:9-19.

4. Mr. Wigg represented that he would contact the payroll company to get additional information to address the reemployment tax liens (together with the sales tax liens, the "Tax Lien" T.II.214:9-19.

During this time, Mr. Rosayn remained in contact with the DOR and provided the DOR with documents given to him by Mr. Wigg in an effort to clear the outstanding Tax Lien. .II.214:23-25; T.II.215:1-5. Mr. Rosayn specifically asked Mr. Wigg if he was able to delinquently renew the liquor license. T.II.220:22-25; T.II.221:1-6. Mr. Wigg would ultimately coordinate having the delinquent renewal fee paid. T.II.225:11-15. Mr. Rosayn specifically asked Mr. Wigg about the Tax Lien, and Mr. Wigg represented that he was working to get a number of the items to Mr. Rosayn and the DOR, as Mr. Wigg was actively negotiating a reduction of the Tax Lien. T.I1.220:22-25; T.11.221:1-6. As a result of Mr. Wigg’s representation, coupled with the fact that Mr. Rosayn was not made a part of the negotiation process with the DOR, Mr. Rosayn relied on Mr. Wigg to provide the final amount of the negotiated Tax Lien. T.IV.664:15-18; T.IV.666:8-10.

Once Mr. Wigg provided Mr. Rosayn some of the deliverables that Mr. Wigg represented he would provide to Mr. Rosayn, Mr. Rosayn forwarded them on to the DOR and again applied for a certificate of compliance. T.1.220:22-25; T.II.221:1-6. However, the second certificate of compliance was denied as there were a number of remaining issues that had not yet been resolved. T.IL.220:22-25; T.1L.221:1-6.

As a result of Beachway’s impediments to closing, and at the request of the Beachway, on or about February 9, 2021, the Park Street Trust and Beachway entered into an Amendment to the Asset Purchase Agreement ("Amendment") whereby the Park Street Trust agreed to modify the Agreement to extend its Closing Date. TTE 2. The Closing date was thereby modified in the Amendment to take place on or before February 26, 2021 (’Amended Closing Date"), with additional provision that the Amended Closing Date could be extended by up to five (5) business days upon the written request of either Party with all other material provisions of the Agreement remaining the same. TTE 2. The Amendment was validly executed by the Defendant, as the signatures of Mr. Wigg, as Authorized Member, and Nieves Wigg, as Manager, clearly appear on the face of the Amendment on behalf of Beachway. TTE 2.

The purpose of the Amendment was to extend the diligence period prior to Closing to provide Mr. Wigg with additional time to resolve outstanding issues related to the License and its ownership, including, importantly, the negotiation and resolution of the outstanding Tax Lien. T.II.226:13-24. Mr. Rosayn continued to work with Mr. Wigg to try to assist with the unresolved Seller obligations related to Closing. T.II.227:5-15; TTE 8. Again with no other liquor licenses available, Mr. Wigg was proverbially the "only show in town" so the trust needed to keep working with him.

Prior to the end of the business day on the Amended Closing Date, the Park Street Trust, once again, accommodated Beachway by providing it with yet another extension so that it could negotiate, or otherwise satisfy the Tax Lien, and requested ("Second Amended Closing Date Request") that the Amended Closing Date be extended the extra five (5) business days provided for in the Amendment from February 26, 2021 to March 5, 2021 (’Second Amended Closing Date"). T.1.115:11-18; TTE 3; TTE 8. In the email memorializing this, the Park Street Trust specifically noted that "Buyer hereby requests to extend the Closing Date the additional 5 business days provided under Section 3, to allow Seller the opportunity to finalize its resolution of all matters affecting transferability of the license, including the DOR tax liability, and lien/lawsuit matters related to the St. Johns mortgage." TTE 3.

Between February 26, 2021, and March 5, 2021, the Park Street Trust prepared for Closing. T.1.116:11-22. Shutts prepared the closing documents, which included the bill of sale, the Seller’s no lien affidavit, the Beachway’s company resolution, DABT Affidavit of Transfer, and a closing statement. T.1.116:11-22. The closing statement did not include the Tax Lien figure because Beachway failed to provide Mr. Rosayn or the Park Street Trust with the Tax Lien figure. T.1.116:11-22. Beachway represented that it was actively negotiating with the DOR and therefore, only Beachway could ever know what the Tax Lien figure was. T.I.105:7-24; T.1.156:22-25. Knowing that the Tax Lien figure would be withheld from the gross proceeds of the sale thereby reducing the net proceeds to Beachway, Beachway represented that it was attempting to negotiate the Tax Lien figure down. T.I.105:7-24; T.1.156:22-25. At Closing, the amount of the Tax Lien was Set be deducted and paid to the Department of Revenue, meaning that upon the imputation of the negotiated Tax Lien figure and the Closing of the transaction, the impediment would be resolved. T.I.105:7-24; T.I.156:22-25. The negotiated Tax Lien figure was solely in Beachway's possession and Beachway knew what the negotiated Tax Lien figure would be to release the lien. T.I.116:19-22. Mr. Rosayn and Winn-Dixie had no way of determining the negotiated Tax Lien even with the DOR POA, as they were not involved with negotiating the Tax Lien. Beachway failed to provide that critical information to the Park Street Trust or Mr. Rosayn in the manner in which Beachway had provided other information during the due diligence of this transaction, even though providing clean title was an obligation of the Seller under the Agreement. T.I.116:19-22. Thus, as the Closing Date approached, the only issue that remained was satisfaction of the Tax Lien, which was being negotiated solely by Beachway and was exclusively the Seller's obligation. T.1.13:22-25; T.1L.227:20-25; T.I.228:1-3.

On March 4, 2021 at 4:33 PM, Sue VanLeeuwen, a Shutts attorney, sent Mr. Rosayn an email containing PDF versions of the revised closing documents as provided for in the Agreement, as amended. TTE 4; T.I.229:8-13. The email also stated that "[t]he Cash to Close funds have been submitted by Buyer to, and receipt has been confirmed by, RealtyMasters. Therefore, Buyer is ready, willing and able to close on this purchase as scheduled tomorrow, Friday, March 5, 2021, and fully expects Seller to comply with the valid terms of the Asset Purchase Agreement, as amended . . . if you have any questions, or modifications to the attached, please let me know." TTE

4. Mr. Rosayn testified that "[Shutts] were coordinating the cash to close as -- and I had confirmed it as the escrow agent, and I forwarded all of the closing documents to Mr. Wigg." T.II.229:21-25; T.II.230:1; TTE -230; Trust E. On March 4, 2021, at 5:23 PM, Mr. Rosayn forwarded the March 4, 2021 email from Mrs. VanLeeuwen to Mr. Wigg, notifying Mr. Wigg that the Buyer wanted to close. T.II.228:4-10; TTE 5. On the same day, Mr. Rosayn tried numerous times to get in touch with Mr. Wigg via phone and text so that Mr. Rosayn could review the documents ahead of the Closing. Trust E. Mr. Rosayn was unable to reach Mr. Wigg. TTE 5. Later at 6:51 PM, Mr. Wigg replied to Mr. Rosayn's forwarding email and informed Mr. Rosayn that he was having stock market issues and other personal financial issues, and he could not complete the closing. T.II.230:3-6. Also in that email, Mr. Wigg emphatically stated, "I do not want the first quarter funds that are claimed by DOR deducted or paid. We cannot close until this is resolved[, |" despite the resolution of the Tax Lien being Beachway's obligation at Closing. TTE 5. This email represents the final communication from Mr. Wigg until after the lawsuit was filed four days later, despite Mr. Rosayn's best efforts to get in touch with Mr. Wigg. T.IV.663:20-25; T.IV.664:1-8. Mr. Wigg's failure to respond to Mr. Rosayn or return any of his calls on the day of Closing was "extremely" unusual behavior from a Seller. T.1V.663:20-25; T.IV.664:1-8.

Following Mr. Wigg's email, Mr. Rosayn, Mr. Gillis, and Mrs. VanLeeuwen exchanged emails discussing the possibility of offering Mr. Wigg a second amendment to the Agreement to extend the closing date to allow Mr. Wigg to resolve his last issue. TTE 10. On March 4, 2021, at 10:36 PM, Mrs. VanLeeuwen sent an email to Mr. Gillis and Mr. Rosayn with a "draft Second

6 Mr. Wigg denies ever having received the closing documents and ever having seen the March 4, 2021, 4:33 PM email from Mrs. VanLeeuwen to Mr. Rosayn, despite having replied to that very email after it was forwarded to him (as shown in both TTE 5 and TTE 10). T.IV. 573:10-18.

Amendment extending closing for an additional 10 Business Days to allow Seller to negotiate and resolve the encumbrances remaining on the liquor license." TTE 5.

On March 5, 2021, Mr. Rosayn sent Mr. Wigg the Second Amendment. TTE 10. However, that same day Mr. Rosayn spoke with another broker, Robert Casey. T.II.235:19-25; TTE 10. From this conversation, Mr. Rosayn believed that Mr. Wigg did not intend to ever close the Agreement, and rather, was shopping the license around. TTE 10. Mr. Rosayn then sent an email to Mr. Gillis and Mrs. VanLeeuwen to inform them. TTE 10.

Consistent with Mr. Rosayn's testimony, Mr. Gillis testified that Mr. Rosayn and the Park Street Trust: (i) were not receiving closing documents from Beachway, (i1) that Beachway was not complying with the finalizing of the closing documents, and (iii) that Beachway was refusing to close. T.1.125:2-22. Also on March 5, 2021, the Park Street Trust sent a letter to Beachway: (i) advising that the Park Street Trust stood ready, willing, and able to close the transaction set forth in the Agreement, as amended, close the transaction on the Second Amended Closing Date, and that "time is of the essence" with regard to same; and (ii) demanding that Beachway specifically perform its obligations under the Agreement, as amended (as modified by the Second Amended Closing Date Request). TTE 6.

Not surprisingly, the Agreement did not close on March 5, 2021. T.II.236:25-22. Mr. Wigg never made a demand to close on the Agreement. T.I.165:19-22. Mr. Wigg failed to respond to the Park Street Trust's March 5, 2021 demand to close, or otherwise return any of Mr. Rosayn's calls or texts sent in an effort to close the Agreement; Mr. Wigg ignored all of these communications. T.IL.235:22-25; T.1.236:1-4; TTE 10.

Following Mr. Wigg's failure to close on the Agreement, Mr. Rosayn attempted to communicate with Mr. Wigg in order to potentially execute another extension so that Mr. Wigg could resolve his obligation to satisfy the Tax Lien. T.II.235:22-25; T.II.236:1-4. Mr. Wigg did not contact or communicate with Mr. Rosayn or the Park Street Trust on March 5, 2021, March 6, 2021, March 7, 2021 or March 8, 2021, after breaching his obligations under the Agreement and ultimately failing to close. T.IV.664:2-4.

Rights, Duties, and Obligations Under the Agreement

It is undisputed that the parties entered into the Agreement, effective December 30, 2020, which was validly executed on January 5, 2021. T.1.99:1-7; T.IV.609:6-10; TTE 1. TTE 8. It is further undisputed that the parties entered into the Amendment, which was validly executed by the parties on February 9, 2021, and after the 5 day extension, closing was to occur on March 5, 2021. 226. T.1.110:16-25; T.1.111:1-25; T.1IV.618:1-9; TTE 2; TTE 8.

Pursuant to Section 2 of the Agreement, the Buyer agreed to pay the Seller three hundred and forty five thousand dollars ($345,000.00) (the "Purchase Price") to purchase the License, all of which was tendered to RealtyMasters (defined therein as the "Escrow Agent’) prior to Closing, for the purpose of tendering the payment of the Purchase Price to Seller at Closing. Section 2(a) provides that a portion of the Purchase price ($34,000.00) was to be paid, and was in fact paid, within seven (7) business days of the execution of the Agreement. Section 2(b) provides that the Buyer was to pay the remainder of the Purchase Price (minus the deposit) at Closing, the Closing which was extended at Seller’s option to March 5, 2021, as permitted under Section 3 of the Amendment. The entirety of the Purchase Price was verified to be in escrow in anticipation of the Closing Date by the Closing Agent.

Section 3 provides, in pertinent portion, that it is the Seller's obligation to pay to satisfy all liens against the License' (in order to deliver clean title of the License), and to record any curative title documents. The Buyer was only responsible to pay for any lien searches and abstract fees, the amount of the transfer fee to be assessed by the DABT in connection with the transfer of the license (a transfer that was to occur post-Closing), and Buyer's attorneys' fees. While Buyer complied with all of its Closing Cost obligations, Seller failed to satisfy all of the liens against the License, specifically the Tax Lien prior to Closing.

Section 4 of the Agreement relates to the manner in which Closing is to occur, specifically that the closing documents were to be exchanged remotely at Closing, which, per Section 3 of the Amendment, was extended at Seller's option to March 5, 2021, as a "courtesy" to provide the Buyer with additional time to negotiate or otherwise resolve the Tax Lien. Plaintiff's phrase this as a "courtesy" but ultimately buyer wanted to continue to "play nice" and be negotiable with seller because again he had the only license available.

Section 5 titled "Deliveries by Seller' governs the Seller's deliverables under the Agreement. This Section contains obligations and covenants that must be performed by Seller as a condition precedent to Buyer's obligations to close. T.I.164:21-25. The Section 5 deliverables by Seller necessary to conduct the proper due diligence regarding the License and ownership. T.I1.222:9-25; T.11.223:1-25; T.I1.224:1-9. Section 5 was a commonly used section by the Park Street Trust and Mr. Rosayn. The Seller's deliverables required under the Agreement are as follows:

7 This was because the Seller wanted to negotiate with the authorities about reducing the tax lien.

1. Section 5(a) required the Seller to provide the Buyer with an authorization and required DABT forms to give the Buyer the ability to obtain the Department of Revenue clearance on the Seller’s tax account. Importantly, this section under the title "Deliveries by Seller" only contained obligations of the Seller, and no deliverables were required by the Buyer.

2. Under Section 5(b), Seller was to provide copies of monthly sales tax returns for the prior 36 month period, and any estoppels, payoff letters, or releases to satisfy or pay any obligations due and owing by Seller including, but not limited to, liens and tax assessments.

3. Section 5(c) provides that at Closing, the Seller was to deliver the following:
    i. a general warranty bill of sale free and clear of all liens and encumbrances;
    ii. Certificate of Compliance issued by the DOR advising there are no outstanding tax liabilities owed by the Seller;
    iii. an executed No Lien Affidavit for the License by Beachway, Mr. Wigg, and Mrs. Wigg, warranting the License to be free and clear of all debt, obligations, liens... . of any nature of kind and freely transferrable to Buyer;
    iv. a company resolution of Seller authorizing the sale and transfer of the license;
    v. two original DABT Affidavits of Transfer, signed by the Seller (for the Buyer to provide to the DABT after the Closing); and
    vi. an executed Closing Statement.

Section 6 titled "Deliveries by Buyer" governs the Buyer's deliverables under the Agreement. Unlike the Seller's obligations under Section 5, which required deliverables prior to Closing, all ofthe Buyer's deliverables were due at Closing, a Closing which Mr. Wigg refused to attend (until he could finish negotiating the Tax Lien, which was not something he was entitled to do under the Agreement). At Closing, Buyer's deliverables were to be as follows:

i. the Purchase Price (which includes the deposit) in cash by wire to an account in the name of the Seller; and

ii. an executed closing statement.

Section 9(a) provides the negotiated remedies available to the Buyer in the event of a breach of the Agreement by the Seller. Importantly, the provision provides that, at the Buyer's election, it may choose one of three remedies, the relevant remedy in this case being to "enforce this Agreement by suit for specific performance." It is undisputed that this pre-negotiated contractual remedy was an available remedy to the Buyer in the event of breach. Importantly, none of the three remedies that the Buyer could elect were for liquidated damages or some other monetary damages for the Buyer to recover as a result of Seller's breach, as the parties clearly recognized that no such amount would be adequate, and that specific performance was the more appropriate remedy.

Section 15 is the "Time is of the Essence" clause and clearly states that "TIME IS OF THE ESSENCE" in this Agreement. The Seller's failure to timely comply with its obligations prior to closing, including, most importantly, its blatant refusal to close until Mr. Wigg had finished negotiating a reduced Tax Lien figure, was a clear violation of this provision. On the other hand, the Park Street Trust had satisfied all of its obligations up to the point of Mr. Wigg's refusal to close, and stood ready, willing, and able to close at the time of Closing.

Section 18 titled "Judicial Interpretation" provides that if any of the provisions of the Agreement "require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the agents of all parties participated in the preparation hereof."

The Park Street Trust was Ready, Willing, and Able to Close

The Park Street Trust performed all of its obligations under the Agreement. The Park Street Trust completed each of its pre-closing obligations, consisting of: (i) a lien search and payment of abstract fees, and (11) depositing 10% of the purchase price ($34,000.00) to the Escrow Agent’s trust account. 100-101.

The Park Street Trust also prepared each of its Section 6 deliverables, none of which were due until Closing. The Park Street Trust further completed each of its Closing obligations, consisting of: (i) tendering the remainder of the Purchase Price to the Escrow Agent’s trust account, and (11) preparing an executed closing statement. 108; 117; Trust D (email) (closing statement).

Because the Park Street Trust had tendered the entirety of the Purchase Price to the Escrow Agent’s trust account as required by the Agreement in order to close, the Park Street Trust was ready, willing, and able to close. T.I.108:7-25; T.I.109:1-2; T.1L117:5-15; TTE 4.

On March 4, 2021, at 4:33 PM the Park Street Trust sent an email to Mr. Rosayn with the closing documents confirming that the "Cash to Close funds have been submitted by Buyer to, and receipt has been confirmed by, RealtyMasters," and stating that the Buyer was "ready, willing and able to close on this purchase as scheduled tomorrow, Friday, March 5, 2021." TTE 4. About an hour later, at 5:23 PM, Mr. Rosayn forwarded that email to Mr. Wigg, thus providing Mr. Wigg with the closing documents and notice that the Park Street Trust had tendered the Purchase Price to the Escrow Agent’s trust account, and was ready, willing, and able to close on the transaction. TTE 4.

On March 5, 2021, the day of Closing, Plaintiff further advised the Defendant in a letter that it was "ready, willing, and able to perform the Closing pursuant to the terms of the Agreement and Amendment," and demanded "specific performance of Seller’s timely closing obligations" on that date. TTE 6. Buyer reminded Seller that it was the Closing Date, that the Park Street Trust had performed all of its obligations for Closing, ahead of the Closing. The Park Street Trust also notified Seller of the Time is of the Essence provision in the contract. TTE 6.

Prior to the day of the Closing, the Park Street Trust had completed all of its pre-Closing obligations, tendered the Purchase Price to the Escrow Agent’s trust account, and stood waiting for Mr. Wigg to participate in the Closing so that the parties could complete and exchange their respective deliverables and close the transaction.

Seller made an argument at the close of Plaintiff’s case then again in closing that buyer never proved they had the ability to pay. While the Court addressed these issues on the record, the Cour refers back to the beginning where it is clear that the Trust serves essentially as a pseudonym for Winn-Dixie.

Beachway Failed to Perform its Obligations and Failed to Close

Throughout the due diligence process, Mr. Rosayn worked with Mr. Wigg to obtain documents so that Mr. Wigg could perform each of his obligations under the Agreement. T.II.214: 9-19; T.11.215:11-25; T.I1.220:9-25; T.I.221:1-6; TTE 8. With Winn-Dixie being Mr. Rosayn’s biggest client and his client wanting the only available liquor license for St. Johns County at the time, it behooved Mr. Rosayn to do what he could to make this deal go through. While working with Mr. Rosayn, Mr. Wigg was informed of numerous issues and impediments to the closing of the transaction. These included liens and other liabilities which affected the transferability of the license. T.II.215:1-25. These impediments were the impetus for the Amendment to the Agreement and the extension; TTE 8.

Mr. Wigg made numerous representations as to his efforts, ability, and willingness to cure these issues. T.II.214: 9-19; TTE 8. In several instances, Mr. Wigg abided by these representations and successfully cleared certain impediments. These efforts included making certain necessary payments and providing Mr. Rosayn with necessary documents. T.I.105:7-24; T.II.220:20-25; T.1.221:1-6.

The final impediment to the Closing of the transaction was the Tax Lien issue. T.II.228:20-25; TTE 3; TTE 10. After multiple extensions, including the final five day extension to March 5, 2021 provided as a courtesy by the Park Street Trust to allow Beachway to negotiate a lower tax liability with respect to the Tax Lien, the actual impediment that prevented Closing was Beachway’s failure to provide the negotiated Tax Lien figure to the Park Street Trust because without the Tax Lien figure, the title to the License could not be cleared and the closing documents could not be completed.

Pursuant to the closing documents, the Tax Lien figure was set to be withheld at Closing and paid over to the DOR at closing. T.I.104:12-25; T.1.105:1-5; T.1.156:21-25; TTE 4. This means that on the day of Closing, if Beachway had simply provided to the Park Street Trust the Tax Lien figure, the transaction could have closed, and the Park Street Trust could have received the License with clean title. TTE 4. However as already stated, Mr. Wigg wanted the Tax Lien figure reduced so that those taxes would not be withheld and paid over the DOR at closing, meaning that if

Beachway was successful in negotiating the Tax Lien figure down, Beachway could receive more of the gross proceeds under the Agreement. T.I.104:12-25; T.1.105:1-5; T.1.156:21-25; TTE 8.

While the Tax Lien issue remained, Beachway requested that the Park Street Trust defer Closing, and once again, give Beachway additional time to negotiate down the Tax Lien figure and thus resolve the Tax Lien issue. T.I.110:24-25; T.I.111:1-22. This was so Beachway could work to negotiate the Tax Lien figure down. T.I.111:1-22. Therefore the Tax Lien figure amount could only ever be known by Mr. Wigg because he represented that he was working with the DOR and was trying the lower the Tax Lien figure. The amount of the negotiated Tax Lien could only be known by Mr. Wigg, as no other parties were involved with the negotiation of the Tax Lien, not even Mr. Rosayn. The figure was a moving number. T.I.157:1-2.

Mr. Gillis testified that the reason the Park Street Trust did not simply include the maximum Tax Lien amount down (i.e., the figure prior to Mr. Wigg negotiating it down), was that Mr. Wigg had requested additional time to negotiate down his obligation because he did not want that amount withheld and paid over to the DOR at Closing. T.I.156:21-25.

On March 4, 2021, Buyer came to believe that the Seller would not close the transaction because the Seller had ceased communicating with Buyer and indicated that he was not participating in the Closing because of his ongoing Tax Lien negotiations. T.I.117:5-15; TTE 5. On that same day in response at 5:23 PM, Mr. Rosayn forwarded to Mr. Wigg the March 4, 2021 email from Mrs. VanLeeuwen to Mr. Rosayn, thereby providing Mr. Wigg with the closing documents and notice that the Park Street Trust wanted to close pursuant to the Agreement, as amended, and that the Park Street Trust was ready, willing, and able to do so. T.1.229:21-25; T.1.230:1-6; TTE 5. In response, Mr. Wigg replied to Mr. Rosayn’s email by saying that "I do not want the first quarter funds that are claimed by the DOR deducted or paid. We cannot close until this is resolved." TTE 10. Beachway did not provide a date or time estimate as to when the Seller would have the required information. Mr. Rosayn forwarded Mr. Wigg's response to the Park Street Trust, making the Park Street Trust aware of Beachway's blatant refusal to clear title and close the transaction. TTE 6; TTE 10.

Beachway then ceased communications with Mr. Rosayn and the Park Street Trust on the day of the Closing, thus indicating their inaction and silence that they would not be participating in the Closing, even though the Park Street Trust had (1) wired the closing funds to the Escrow Agent's trust account, and it was sitting there ready to go, (11) signed everything that it needed to sign, (iii) was ready, willing, and able to close, and (iv) had communicated to Beachway that the Park Street Trust was ready, willing, and able to close. T.I.117:5-15; TTE 6. Specifically, the Park Street Trust sent a letter to Beachway advising that the Park Street Trust stood ready, willing, and able to close the transaction and demanded that Beachway specifically perform its obligations under the Agreement. TTE 6.

Notwithstanding the Park Street Trust's written demand to close and the Agreement provision "TIME IS OF THE ESSENCE," Beachway failed to close the transaction and convey the License with clean title to the Park Street Trust from Beachway by March 5, 2021, and forced the Park Street Trust to file the Complaint for Specific Performance and related Lis Pendens.

This Court is Capable of Granting Relief Despite Severing the Non-Jury Trial Claim from the Consolidated Case.

As to the involvement of Aberdeen, Aberdeen is a party in the consolidated action. In order for this Non-Jury Trial to proceed, on the first day of trial, the Court severed the Park Street Trust's Non-Jury Trial claims. The Court did this specifically because Aberdeen stipulated that it would

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recognize and abide by an Order from the Court granting the Park Street Trust the relief it seeks, and transfer the License to the Park Street Trust in the event that it was granted a decree of specific performance. T.I.48:14-23. Therefore, because of the stipulation, the Court is capable of granting the relief sought by the Park Street Trust.

Even if Aberdeen had not provided its stipulation, the Court would be capable of granting the relief sought by the Park Street Trust because there was a Lis Pendens in effect at all relevant times. TTE 7; TTE 9. Additionally, Paragraph 11B of the Agreement for Purchase between Beachway and Aberdeen states that "[t]here is a pending lawsuit for specific performance, CA21-0298, St. Johns County, which includes the Seller as a named party and remains unresolved. At some point, the final resolution of this case could potentially affect the subject license." Beachway’s Trial Exhibits ("BTE") 1. Therefore, all parties to the Aberdeen contract had knowledge of the pending lawsuit at the time their agreement was executed. T III.447:2-6. Thus, Aberdeen was not and cannot be a bona fide purchaser, as it had actual knowledge of the subject lawsuit. See 2000 Presidential Way, LLC v. Bank ofNew York Mellon, 326 So. 3d 64, 68 (Fla. 4th DCA 2021) (holding that "[a] party is a bona fide purchaser for value when: ’(1) the purchaser obtained legal title to the challenged property, (2) the purchaser paid the value of the challenged property, and (3) the purchaser had no knowledge of the claimed interest against challenged property at the time of the transaction.’").

ANALYSIS OF LAW

Applicable Legal Standard

Specific performance is an equitable remedy granted at the discretion of the trial court. As previously noted, here it is also a specific agreed-upon contractual remedy. Actions for specific performance may only be granted when (i) the plaintiff is clearly entitled to it, (ii) there is no adequate remedy at law, and (ii1) the judge believes that justice requires it. Jnvego Auto Parts, Inc.

v. Rodriguez, 34 So. 3d 103, 104 (Fla. 3d DCA 2010) (citing Castigliano v. O'Connor, 911 So. 2d

145, 148 (Fla. 3d DCA 2005)).8

Thus, the plaintiff must prove that "[a]s a condition precedent to specific performance . . .

[it] either pa[id] the contract sum; tender[ed] it; . . . [was] ready, willing and able to do so; or...

[was] excused from so doing." /d. at 105. A plaintiff can prove that it was "financially ready and

able to buy it," if it:

> (1) ... ha[d] the needed cash in hand, or (2) ... [was] personally possessed of assets-which in part may consist of the property to be purchased-and a credit rating which enable [it] with reasonable certainty to command the requisite funds at the required time, ... or (3) ... ha[d] definitely arranged to raise the necessary money-or as much thereof as [it] is unable to supply personally-by obtaining a binding commitment for a loan to [it] for that purpose by a financially able third party, irrespective of whether such loan be secured in part by the property to be purchased.

Id. (quoting Hollywood Mall v. Capozzi, 545 So. 2d 918, 920-21 (Fla. 4th DCA 1989)).

Upon completion of the Plaintiff's prima facie case for specific performance, the burden of proof then shifts to the Defendant to prove by a preponderance of evidence any affirmative defenses it has raised.

Plaintiff's Prima Facie Case for Specific Performance

The Park Street Trust met its burden of proof at trial and established that the Park Street Trust was entitled to the equitable remedy of specific performance. The Park Street Trust is clearly entitled to specific performance. It is undisputed and has been clearly demonstrated that the Park Street Trust and Beachway entered into the Agreement, as amended. TTE 1; TTE 2; TTE 3; T.IV.609:1-9; T.IV.618;1-9. Itis undisputed, clear, and definite that Section 9(a) of the Agreement

8 The Court notes that a liquor license is not real property and therefore the Plaintiff does not have to demonstrate proof of a heightened standard of "clear, definite, and certain" evidence applicable to real property cases.

specifically provides that, in the event of a breach by Seller, the Buyer may elect to "enforce this Agreement by suit for specific performance." TTE 1. As a result of Beachway's failure to attend and close the Agreement, the Park Street Trust was thereby entitled to specific performance at its discretion. TTE 1.

The Park Street Trust has no adequate remedy at law. Section 9(a) of the Agreement specifically provides the remedy of specific performance may be elected by the Park Street Trust in the event of a breach by Beachway. TTE 1. The presence of the bargained for remedy of specific performance in the Agreement clearly indicates the unique value of the License. Upon a breach of the Agreement by Seller, Section 9(a) provides for three potential elections by the Buyer. None of those elections included a liquidated or other monetary amount, further emphasizing that money damages would not be sufficient to make the Buyer whole. Moreover, Florida law has long recognized liquor licenses as having the unique qualities appropriate for an award of specific performance, "due to the limitations respecting the number and location of liquor establishments and the conditions under which the license is issued" resulting in "an actual pecuniary value far in excess of the license fees exacted by the state, county, and city." See House v. Cotton, 52 So. 2d 340, 341 (Fla. 1951). When the Agreement was executed, the License was the only available liquor license and on the day before the closing of the Agreement, there were "literally no other [liquor license sellers]," making the License a highly valuable, rare, and unique item. TTE 10.

Justice requires a specific performance be granted. Because it is undisputed that the parties unequivocally agreed that specific performance was a remedy available to the Park Street Trust in the event that Beachway breached its obligations under the Agreement, an election to be made solely at the Park Street Trust's discretion, justice requires that specific performance be entered in favor of the Park Street Trust. See Invego, 34 So. 3d at 105 (holding that the trial court erred by not awarding specific performance in light of Invego's overwhelming evidence that it was ready, willing, and able to perform).

The Park Street Trust was ready, willing, and able to close on the Agreement because it had timely completed all of its pre-closing obligations including the tendering of the Purchase Price to the Escrow Agent under the Agreement. T.I.108:7-25; T.1.109:1-2; T.1.117:5-15; T.1.229:21-25; T.1.230:1-6; TTE 4.

The Park Street Trust performed all of its obligations under the Agreement. The Park Street Trust completed its pre-closing obligations, which namely consisted of depositing the Purchase Price into the Escrow Agent's trust account as required by the Agreement. T.I.108:7-25; T.I.109:1-2; T.1.117:5-15; T.1.229:21-25; T.1.230:1-6; TTE 4.. As such, the Park Street Trust had tendered the Purchase Price as required by the Agreement and the money is still in the Escrow Agent's trust account. T.I.108:7-25; T.1.109:1-2; T.1.117:5-15; T.1.229:21-25; T.1.230:1-6; TTE 4.. The Park Street Trust was ready, willing, and able to close the Agreement. While not required under the Agreement or the law governing specific performance, the Park Street Trust also prepared all of its Section 6 deliverables, including its signature pages, prior to the closing date, March 5, 2021. T.1.108:7-25; T.1.109:1-2; T.1.117:5-15; T.1.229:21-25; T.1.230:1-6; TTE 4.

By tendering the Purchase Price under the Agreement to the Escrow Agent as provided for under the Agreement, the Park Street Trust has clearly demonstrated that it was ready, willing, and able to pay the contract sum.

Beachway breached the Agreement when it failed/refused to attend and close the Agreement on the Closing date of March 5, 2021. Section 4 provides for the date and manner of the Closing, which was extended to March 5, 2021, per the Amendment and five-day extension. Under Section 7, the Seller warranted to the Buyer that it would transfer the License free and clear of any and all liens, including tax liens. TTE 1. Section 15 provides that "Time is of the Essence" as to the Agreement, and therefore, the failure of party to timely comply with its obligations is a breach of covenant under the Agreement. It is uncontested that Beachway failed and refused to attend and close the transaction on March 5, 2021 as required by the Agreement, as amended, and as a result, it breached its obligations in each of these sections under the Agreement.

The Court concludes that Park Street Trust is entitled to decree of specific performance under the Agreement because it has demonstrated that it is entitled to the remedy of specific performance, the Park Street Trust proved the Agreement as alleged in the complaint with clear, definite, and certain proof, and the Park Street Trust proved that it was ready, willing, and able to close on the contract.

Beachway’s First Defense Regarding the Prima Facie Case

At trial, Beachway argued that the Park Street Trust had not proven its prima facie case because it had not fully performed its obligations under the Agreement. Beachway argued that the Park Street Trust did not perform its alleged obligations under Section 5 "Deliveries by Seller" subsection (a). Specifically, Beachway argued that the Park Street Trust did not obtain DOR clearance.

This claim is meritless because the Agreement language is clear and unambiguous. The plain language of the Agreement provides that the "Seller shall provide Buyer with an authorization and required DABT forms with which to obtain Department of Revenue clearance on Seller’s tax account." Beachway argues that the phrase "with which" somehow creates an ambiguity, thereby creating an obligation for the Buyer to obtain such clearance. Because the language of the Agreement is not ambiguous, and rather, is clear and definite, such that 5(a) refers only to an obligation of the Seller (to provide Buyer with an authorization and DABT forms), the plain language should prevail and no ambiguity should be read into the Agreement.

Furthermore, Section 5(c) provides that at the Closing, Beachway was to deliver a Certificate of Compliance. By reading each of Section 5's subsections together, it is clear that it is the Seller's duty to obtain and deliver a Certificate of Compliance.

Beachway also argued that because the Agreement was ambiguous, the language should be construed against the drafter, the Park Street Trust. However, Section 18 of the Agreement specifically instructs against this. Section 18 of the Agreement provides that if any of the provisions of the Agreement "require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the agents of all parties participated in the preparation hereof." TTE 1.

The Court concludes that Beachway's first defense regarding the Park Street Trust's prima facie case fails because the Agreement is clear and unambiguous as to the fact that Section 5(a) does not create an obligation for the Park Street Trust to obtain DOR clearance.

Beachway's Second Defense Regarding the Prima Facie Case

At trial, Beachway argued that the Park Street Trust did not demonstrate that it was "ready, willing, and able" to perform the contract. Specifically, Beachway argued that the Park Street Trust did not show that it was able to pay for the License. In support of its argument, Beachway cited to three cases, Lusignan v. Lusignan, 972 So. 2d 1076 (Fla. 5th DCA 2008), Shapiro v. Jacobs, 948 So. 2d 880 (Fla. 3d DCA 2007), Taylor v. Richards, 971 So. 2d 127 (Fla. 4th DCA 2007), all for the proposition that when a party is seeking specific performance of the contract, the party must allege and prove that they have either paid the balance necessary, tendered the balance, or are ready, willing, and able to do so. Notably, Lusignan also holds that "to prove that a prospective purchaser of property is ready, willing and able to buy, the purchaser must show that he is able to command the necessary money to close the deal on reasonable notice or within the time stipulated by the parties." Lusignan v. Lusignan, 972 So. 2d 1076, 1077 (Fla. 5th DCA 2008) (citing Taylor v. Richards, 971 So. 2d 127 (Fla. 4th DCA 2007)).

The Park Street Trust presented overwhelming and uncontested evidence demonstrating that it had tendered the entire Purchase Price of the Agreement to the Escrow Agent’s trust account, as was required by the Agreement. T.I.108:7-25; T.I.109:1-2; T.L117:5-15; T.1.229:21-25; T.1.230:1-6; TTE 4.

The Court concludes that the Park Street Trust conclusively demonstrated that it tendered the Purchase Price and stood ready willing and able to close pursuant to the terms of the Agreement.

Beachway’s Third Defense Regarding the Prima Facie Case

At trial, Beachway argued that the Park Street Trust had not established its primafacie case because the Park Street Trust did not execute the closing documents and was therefore not ready, willing, and able to close on the Agreement. Beachway argued that Section 6 of the Agreement required that the Park Street Trust was come to the Closing with already executed closing statements, rather than the documents being due at Closing, as Section 6 actually provides.

This argument fundamentally misconstrues the very nature of this case. This is an action for specific performance to close the transaction contemplated under the Agreement. The Park Street Trust initiated this lawsuit because Mr. Wigg failed and refused to participate in the Closing on the Closing Date. Therefore, in order to prove its prima facie case, the Park Street Trust must

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demonstrate that it was ready, willing, and able to close on the Agreement. As such, the Park Street Trust conclusively demonstrated that it completed all of its obligations prior to the closing, the most important being that it had tendered the Purchase Price of the Agreement to the Escrow Agent’s trust account as required by the Agreement, which stands as uncontroverted evidence that it was ready, willing, and able to close the transaction. T.I.108:7-25; T.1.109:1-2; T.1.117:5-15; T.1.229:21-25; T.1.230:1-6; T.1.101:8-12; TTE 4. The Park Street Trust’s Section 6 obligations were to occur at Closing, which never happened because Mr. Wigg failed and refused to participate in the Closing. To be ready, willing, and able to close, the Park Street Trust only needed to tender the Purchase Price of the Agreement to the Escrow Agent’s trust account (which it had), and be ready, willing, and able to execute the closing statements at Closing (which it was).

But even if the Park Street Trust was somehow obligated to complete all of its Closing deliverables prior to Closing, despite the uncontested fact that Mr. Wigg failed and refused to close on the transaction, or otherwise show up to Closing at all, the Park Street Trust did exactly that. Mr. Gillis testified that "[t]he money was there, we had all of our signature pages in." T.I.108:7-25; T.1.109.

The Court concludes that the Park Street Trust was not required to bring fully executed closing documents to Closing, and that the Park Street Trust performed all of its necessary elements to be "ready, willing, and able."

Beachway’s "Time is of the Essence" Affirmative Defense

Beachway’s only affirmative defense, prior to the Court granting Beachway’s Ore Tenus Motion at Trial to add several more, was "Time is of the Essence." This defense alleged that "[the Park Street Trust] failed to comply with the ’time is of the essence’ clause of the parties’ agreement and thus, [the Park Street Trust] waived its right to enforce the Park Street Agreement that is

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subject of this action." Answer 16. This is the only affirmative defense Beachway had pleaded going into the trial.

At trial, Beachway did not pursue this defense as it did not present any evidence in support of this affirmative defense. As such, Beachway has not satisfied its burden of proof as to this affirmative defense.

However, to address the merit of this defense, not only is there absolutely no evidence that the Park Street Trust failed to timely comply with any of its obligations under the Agreement or otherwise in keeping with the "time is of the essence" clause, there is overwhelming evidence that shows that the Park Street Trust did comply with all of its obligations prior to Closing. The Park Street Trust's primary pre-Closing obligation was to tender the purchase price of the License to the Escrow Agent's trust account.

The Court concludes that the Park Street Trust complied with all of its obligations in a timely manner and did not waive its right to enforce Section 15 of the Agreement.

Beachway's First Impossibility Defense: Cloud on Title

Beachway's first of three impossibility affirmative defenses, raised for the first time at trial, and over Plaintiff;s objections, and under the guise of a single affirmative defense, was that performance of the Agreement was impossible because the Agreement required clean title and there was a Tax Lien on the License.

The Tax Lien clouding the title of the License was a Tax Lien ultimately created by Beachway's failure to comply with its tax obligations. Resolving the Tax Lien was an obligation of Beachway under the Agreement. T.II.225:24-25; T.II.226:1-3; TTE 1. Beachway then maintained the Tax Lien by failing and refusing to satisfy the Tax Lien at any time prior to or at Closing.

While Beachway argued that it would have been impossible to clear the Tax Lien because "no one knew the number" and "no one could cure it," there is overwhelming evidence to the contrary. T.IV.528:13-18. First of all, Beachway's position was that there was the Tax Lien issue and it was never discussed with Mr. Wigg. T.IV.681:4-7. There is overwhelming evidence that the Tax Lien issue was Mr. Wigg's obligation and that Mr. Wigg represented that he would resolve it. T.II.225:24-25; T.1[.226:1-3; T.11.214: 9-19; T.1.215:11-25; T.I1.220:9-25; T.II.221:1-6; T.IV.664:15-18; T.IV.666:8-10; TTE 8. This evidence includes statements from both Mr. Rosayn and Mr. Wigg. T.II.225:24-25; T.I1.226:1-3; T.I1.214: 9-19; T.11.215:11-25; T.I1.220:9-25; T.IL.221:1-6; T.IV.664:15-18; T.1V.666:8-10; TTE 8.

As to Beachway's contention that "no one knew the number," Mr. Wigg represented to Mr. Rosayn and the Park Street Trust that he was attempting to negotiate the Tax Lien down prior to the Closing. T.I.104:12-25; T.1.105:1-5; T.1.111:1-22; ; T.1.156:21-25; T.II.220:22-25; T.I1.221:1-6; T.IV.664:15-18; T.IV.666:8-10; TTE 8. Mr. Wigg also stated in an email on May 28, 2021, to counsel in this case, Jeffrey S. York, an attorney at Shutts at the time, that "[Beachway] signed a purchase contract and Barry spent the next 3 months working with me. . . to try to sort out the mess of sales tax filings and payments that were needed to clear the license for sale. . . I was working daily to have the interest and penalties waived on it." TTE 8. Clearly Mr. Wigg "knew the number" because he was working daily to have the interest and penalties waived on it. TTE 8.

The Park Street Trust relied on this representation throughout the due diligence period because either clearing the Tax Lien and/or providing Mr. Rosayn or the Park Street Trust with the Tax Lien figure was Beachway's obligation under the Agreement. This reliance was reasonable and justified because Mr. Wigg made similar representations regarding a number of other impediments and ultimately cured them. By representing that he was attempting to negotiate down

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the lien, Mr. Wigg indicated that he had knowledge of the number he was negotiating down from. Therefore, the tax lien figure was in the exclusive possession of Beachway and could only ever have come from Beachway.

As to Beachway's contention that "no one could cure it," had Beachway simply complied with its obligations under the Agreement and either cleared the Tax Lien itself or provided Mr. Rosayn with the negotiated Tax Lien figure, at any point up to and including the day of Closing, the Tax Lien would not have put a cloud on the title. Had Beachway provided the Tax Lien figure to Mr. Rosayn or the Park Street Trust, as was Beachway's obligation under the Agreement, Mr. Rosayn could have aided Mr. Wigg in obtaining a certificate of clearance from the DOR. Alternatively, the Tax Lien could have been cleared at the Closing because if Mr. Wigg had provided the Tax Lien figure, the funds from the Purchase Price would have been deducted and used to clear the Tax Lien. However, this is exactly why Mr. Wigg did not provide the Tax Lien figure despite knowing the negotiated figure, because Mr. Wigg did not want the Tax Lien to be paid out of the Purchase Price of the Agreement. In fact, this is the very basis for Mr. Wigg failing and refusing to participate in the Closing.

Put simply, Beachway created the Tax Lien, maintained the Tax Lien, knew the Tax Lien figure, and could have cured the Tax Lien at any point prior to or at Closing, but simply chose not to.

Beachway further argued that even if clearing title was one of Beachway's obligations, Beachway should be excused as to the Tax Lien because Beachway performed with claimed reasonable due diligence. Beachway cites to Blackmon v. Hill, 427 So. 2d 228, (Fla. 3d DCA 1983), Castigliano v. O'Connor, 911 So. 2d 145 (Fla. 3d DCA 2005), and Levin v. Lang, 933 So.

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2d 107 (Fla. 3d DCA 2006), for the proposition that reasonable due diligence does not require extraordinary efforts or expenditures as are opposed by the terms.

While showing reasonable due diligence does not require extraordinary efforts or expenditures, Beachway's behavior and actions regarding the Tax Lien are far from "reasonable due diligence." Upon the execution of the Agreement, Beachway represented that "[s]eller has good and marketable title to the License, free and clear of any and all claims, liens, encumbrances and security interests whatsoever." TTE 1. Once Mr. Rosayn commenced due diligence on the License and its ownership interest, Mr. Rosayn discovered a myriad of issues with the License, most importantly the Tax Lien. T.II.212:22-25; T.I1.213:110. The parties proceeded with the Agreement under Beachway's representation that the issues, one of which being the Tax Lien, would be clear by Closing. TTE 1. While Mr. Rosayn and Mr. Wigg worked to clear these issues, Mr. Rosayn justifiably relied on Mr. Wigg's representations that he was trying to negotiate the Tax Lien figure down, as Mr. Rosayn had no involvement with the negotiation process of the Tax Lien. This process was something that only Mr. Wigg was capable of doing. At the time, such reliance was reasonable and justified because Mr. Rosayn and Mr. Wigg would ultimately clear every other issue before the March 5, 2021 Closing Date.

By contrast, in Castigliano, the title company conducted a lien search on a condominium before closing and informed the parties that there were three fraudulent mortgage liens on the property which prevented the seller from obtaining title insurance; notably, neither the buyer nor the seller disputed that all three of the mortgages were placed against the property without the seller's consent. Castigliano v. O'Connor, 911 So. 2d 145, 147 (Fla. 3d DCA 2005). Still, the seller made all efforts to pay off the fraudulent mortgages, including an offer to lease the condominium to the buyers, thereby cancelling the scheduled closing date while the seller made efforts to remove the fraudulent mortgages. /d. at 149-150. The buyer could not show that it would not be "unjust or oppressive on the seller to have the contract enforced" in light of the seller’s diligent efforts; and as a result, the court reversed the trial court’s grant of specific performance to the buyer. /d at 149-150. Here, Beachway was not attempting to remove fraudulent liens from its property to facilitate a closing; Beachway had the full knowledge and ability to cure its own Tax Lien, but chose not to, and backed out of the scheduled Closing. There is no similarity with Castigliano, where the seller there had dealt with fraudulent mortgages recorded unbeknownst to him, and despite diligent efforts to remove th em. /d. at 147. To the contrary, Beachway and Mr. Wigg were fully in control at all times of the ability to cure their Tax Lien but made their own choice not to.

Beachway also cites to Richards v. Mindlin, 114 So. 508 (Fla. 1927) for the proposition that when a seller cannot make good title, the court will not grant specific performance. First of all, Richards deals with a contract to convey real property and not a liquor license. Second, the evidence presented at trial clearly shows that Beachway had the full ability to make good title and simply chose not to, to try to negotiate a better deal for himself in a last ditch effort to avoid paying the full amount (or any amount) of the Tax Lien.

Although the evidence clearly shows that Mr. Wigg knew the Tax Lien figure and could have cured at any time prior to or at Closing, even if this was a true impossibility, it is well settled law that a seller cannot take advantage of a delay in performance that he or she created. See Forbes v. Babel, 70 So.2d 371 (Fla.1953); Smith v. Crissey, 478 So.2d 1181 (Fla. 2d DCA 1985). Florida courts have addressed situations such as this and have forcefully and consistently held that a party cannot benefit froma self-inflicted delay. See, e.g., Harrison v. Baker, 402 So. 2d 1270, 1273 (Fla. 3d DCA 1981) ("[t]he record conclusively establishes that appellant’s own conduct prevented the closing from taking place as scheduled, thereby entitling appellee to the relief of specific performance. A vendor cannot take advantage of a delay in performance which he himself has fostered."); see also Hanover Realty Corp. v. Codomo, 95 So.2d 420, 423 (Fla. 1957) (holding that "the general rules of contract law are that where a party contracts for another to do a certain thing, he thereby impliedly promises that he will himself do nothing which will hinder or obstruct that other in doing the agreed thing . . . and that ’one who prevents or makes impossible the performance or happening of a condition precedent upon which his liability by the terms of a contract is made to depend cannot avail himself of its nonperformance.").

Beachway’s failure to clear the Tax Lien and make good title was clearly its own doing, and as such, to the extent that the Tax Lien did create an impossibility for Beachway to perform under the Agreement, Beachway cannot seek asylum under the impossibility it manufactures to excuse closing and created as a result of its deliberate and self-inflicted delay.

The Court concludes that no impossibility existed, as Beachway was capable of providing the License at Closing with clean title, but chose not to.

Beachway’s Second Impossibility Defense: Aberdeen

Beachway’s second impossibility defense argues that because Aberdeen is the owner of the License and not Beachway, the Court cannot grant specific performance requiring a third party transfer of property.

As to the involvement of Aberdeen, prior to severing on the first day of trial, Aberdeen has always been a party to the consolidated action. In order for this Non-Jury Trial to proceed, the Court severed the non-jury portion of the consolidated case, thereby removing Aberdeen from this Trial. The Court only agreed to sever the Non-Jury Trial because Aberdeen stipulated that they would recognize and abide by an Order from the Court granting specific performance in favor of the Park Street Trust, and transfer the license to the Park Street Trust in the event that it prevailed.

T.1.48:14-23. Therefore, because of the stipulation, the Court is capable of granting the relief sought by the Park Street Trust, despite Beachway's baseless assertion that the stipulation is not sufficient. T.IV.533:4-5,

Even if Aberdeen had not provided its stipulation, the Court would be capable of granting the relief sought by the Park Street Trust because there was a Lis Pendens in effect at all relevant times. TTE 7; TTE 9.

Additionally, Paragraph 11B of the Agreement for Purchase between Beachway and Aberdeen states that "[t]here is a pending lawsuit for specific performance, CA21-0298, St. Johns County, which includes the Seller as a named party and remains unresolved. At some point, the final resolution of this case could potentially affect the subject license." BTE 1. Therefore, all parties to the Aberdeen contract had knowledge of the pending lawsuit at the time their agreement was executed. T.[I.447:2-6. Thus, Aberdeen had actual knowledge this prior lawsuit over the License before signing any agreement with Beachway; in fact, there was testimony that Aberdeen cancelled the transaction with Beachway in June 2022. In any event, Aberdeen has stipulated to an Order of specific performance for the Park Street Trust and the Court needs nothing further.

Further, in Howard v. Metcalf, the court held that "it is generally true that specific performance is appropriate to remedy a conveyance to a third party purchaser where the third party is aware of a prior contract to sell to another." 487 So. 2d 43 (Fla. 2d DCA 1986). Unlike Camp v. Parks, 314 So. 2d 611 (Fla. 4th DCA 1975), relied upon by Beachway, a case that involved close corporation stocks, Howard dealt specifically with the transfer of a liquor license, the actual subject of this lawsuit.

The Court concludes that Aberdeen's severance from this Non-Jury Trial does not affect in the slightest the Park Street Trust's sought relief or the Court's ability to decree it.

Beachway's Third Impossibility Defense: DABT

Beachway's third and final impossibility defense is that, like Aberdeen, the DABT is a necessary party to this action. As Beachway argued, DABT is a necessary party and the Park Street Trust seek specific performance without the DABT for two reasons (i) because such relief would require DABT action and (ii) because without the license interest to the License, the Park Street Trust cannot enjoy the benefit of ownership.

The Park Street Trust is seeking specific performance of the Agreement. The DABT is not a party to the Agreement, there is no involvement with the DABT at the time of the Closing of the transaction, and the Closing would not require any action by the DABT, as the Agreement only transfers the property interest in the License. TTE 1; T.IV:490:14-19; T.IV.491:4-18. Likewise, a grant of specific performance would require no action by the DABT.

The necessary form to transfer the license interest in the License, the ABT Form 2002, was not even one of the closing documents because the transfer of the license interest is wholly outside of the scope of the Agreement. TTE 4. Concannon v. St. John, 384 So. 2d 903, 904 (Fla. 5th DCA 1980) ("A statutory transfer of a liquor license to satisfy the records of the State Beverage Department is not a transfer of property rights in the license to the purchaser of a business... .").

In fact, the Park Street Trust would never actually obtain the license interest of the License as it would assign its rights to Winn-Dixie. T.IV.492:1-7. Thus, the DABT is irrelevant to the Agreement and the transaction.

Next, Beachway argued that the Park Street Trust could not enjoy the benefit of ownership of the License without obtaining the license interest. However, this contention fails to recognize that even if the Agreement, as bargained for by two sophisticated parties, had closed, the Park Street Trust would never have obtained the license interest to the License. T.IV.492:1-7.

Put simply, the property interest in a liquor license has value independent of the use rights of the license, as the property interest is inherently valuable, as the property interests are even sometimes held as investments without ever transferring the use rights to the a license. T.II.262:4-17; T.IV.497:11-14; T.11.262:4-17.

The Court concludes that the Park Street Trust's requested relief would not involve DABT in any way shape or form, and that it is not a necessary party to this action. Furthermore, Beachway had a DABT representative to call as a witness and did not do so, and also elected to call no expert witnesses at all on a topic where expert testimony would be needed. T.IV.458:15-18.

Therefore it is ORDERED AND ADJUDGED that:

1. The relief sought by Plaintiff in the Complaint is GRANTED.

2. Final Judgment of Specific Performance is hereby entered against Defendant Beachway and Plaintiff is entitled to specific performance of contract as to the Liquor License at issue;

3. The Court retains jurisdiction as necessary to enforce the terms of this Judgment, to award attorney's fees and costs, and for all other relief as is just and proper.

DONE AND ORDERED in chambers, in Putnam County, Florida, on 22 day of September, 2025,

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e-Signed 9/22/2025 4:17 PM CA24-0a54
KENNETH J. JANESK IT, CIRCUIT JUDGE

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cc: counsel of record (via e-portal)