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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case Number: 2021-000685

The Station, Inc., d/b/a Company Two, Inc.,…….Appellant,

v.

Hampton County, …….Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Is a formal action of County Council, such as an ordinance or a resolution, required before the assets of Hampton County Council can be encumbered?

II. Can representations from individuals to Quincy Jones, as owner of The Station, Inc., d/b/a Company Two, form an enforceable agreement between Hampton County and The Station, Inc., d/b/a Company Two?

III. Can The Station, Inc., d/b/a Company Two, reasonably rely on oral representations and implied terms, in the absence of an unambiguous promise or any official action, from any Hampton County Council?

IV. Did the trial court err in dismissing Plaintiff's case, as a matter of law?

STATEMENT OF THE CASE

This is a case concerning the authority of Hampton County to self-govern.

"Company Two and Q & J Properties, LLC," the original plaintiffs below, filed their Complaint on April 28, 2017, asserting causes of action for breach of contract, specific performance, and promissory estoppel (Cmplt.). On February 27, 2018, Company Two filed an amended complaint removing Q & J Properties, LLC, from the action. (Consent Order to Amend Cmplt.; Am. Complt.). On March 8, 2018, Hampton County, Respondent, filed its Answer (Ans.), denying the existence of a contract and further denying an actionable promise between The Station, Inc., d/b/a Company Two and Hampton County. (Ans.)

On May 26, 2021, at the conclusion of Plaintiff's case in chief, the trial court directed a verdict for Hampton County on Appellant's causes of action for breach of contract and specific performance. After dismissing the jury, the Court then heard the remaining, equitable, cause of action for promissory estoppel non-jury. (Tr. p. 544). Hampton County renewed its motion for directed verdict at the close of the trial. Appellant asserts that Hampton County should have moved for an Involuntary Dismissal, pursuant to Rule 41(b), SCRCP, as opposed to renewing the motion

for directed verdict, under Rule 50, SCRCP. In either case, the trial Court found for Hampton County, as a matter of law, on the remaining claim of promissory estoppel. (October 8, 2021 Order). (The standards applied in both cases are the same, as Petitioner concedes in its brief.) (Pet. Brief, Page 13).

This appeal followed. Appellant continues to assert that the October 12, 2005 letter from Jim Daniel to Quincy Jones, Company Two, creates an express contract, granting unfettered, unrestricted access to The Station, Inc., d/b/a Company Two, for its business purposes, in and to the Hampton County Airport, including both the runway and the surrounding grounds, for any purposes Company Two might undertake. (October 12, 2005 Letter, Pl. Ex. 1).

FACTS

Hampton County is a sovereign political subdivision of the State of South Carolina, governed by a County Council, with a Council-Administrator form of government. *See* §4-9-20, S. C. Code of Laws. Hampton County owns and operates its airport. Testimony in this case indicates that around 2005, the airport was largely disused. (Tr. p. 126; pp. 274-275; pp. 576-578).

On October 17, 2005, Q & J Properties, LLC, purchased a property known as the former Gemco property, near the Hampton County Airport. (Plaintiff's Ex.3; Tr. p. 137). The Station, Inc., d/b/a Company Two (Appellant), began operations from that location, under a lease with Q & J, Properties, LLC. (Tr. p. 150). Q & J Properties, LLC, which was dismissed from this action, is operated by Quincy Jones (along with his wife), who also manages The Station, Inc., d/b/a Company Two. (Tr. p. 112; p. 150; p. 205). Appellant is in the business of refurbishing Airport Rescue Firefighting (ARFF) vehicles. (Tr. pp. 112-113). Part of the certification process includes testing the trucks, a procedure Appellant contends is best done on an airport runway. (Tr. p. 122; Weinberg Depo. p. 64).

Appellant claims Hampton County entered into a series of agreements with The Station, Inc., d/b/a Company Two and Q & J, Properties, LLC, concerning the use of the airport, to entice Appellant to locate its business in Hampton County, in 2005. (Tr. pp. 116-123). The following exhibits are the only tangible, written documentation offered by Appellant in support of its assertion of the existence of an enforceable contract:

2005: A letter from Jim Daniel, then-Hampton County Economic Development Commission Executive Director (hereafter "Daniel") to Quincy Jones, Company Two Fire, dated October 12, 2005 (Plaintiff's Ex. 1).

2011: June 23, 2011, Agreement between Hampton County and Q & J, Properties, LLC d/b/a Company Two Fire (Defendant's Ex. 12) for a taxiway easement and parcel swap;

2014: A taxiway easement agreement and two deeds constituting a property swap between Hampton County and Q & J, Properties, LLC (Defendant's Ex. 13, 14, 15).

Quincy Jones, the owner of The Station, Inc., d/b/a Company Two and partial owner of Q & J Properties, LLC, argues that the 2005, 2011, and 2014 interactions yielded three distinct, enforceable contracts between three different legal entities and Hampton County: "[t]hey're three separate documents, three separate entities." (Tr. p. 211). However, there is no evidence in this case that Company Two is a legal entity, rather a name under which both The Station, Inc., a Georgia Company, and Q & J Properties, LLC, have both done business. (Plaintiff's Ex. 1; Defendant's Ex. 12).

Hampton County concedes the validity of the 2011 Agreement with Q & J Properties, LLC d/b/a Company Two Fire and the 2014 taxiway easement and two deeds resulting in the anticipated land swap, first described within the October 2005 letter. (Plaintiff's Ex. 1). These interactions

are not in dispute, nor are the three public readings on the ordinance that authorized the taxiway easement and the parcel swap. (Defendant's Ex. 2, 3, 4, 7, 8).

At trial, Appellant put forth testimony that individual members of Hampton County Council, or their agents, made representations to Quincy Jones concerning the desire of Hampton County to work with The Station, Inc., d/b/a Company Two Fire and Q & J Properties, LLC d/b/a Company Two Fire, to accommodate the various needs of the business, including testing fire trucks on the runway of the Hampton County Airport. (Tr. pp. 286-289; pp. 339-343). However, the only writing introduced into evidence regarding these discussions is the October 2005 letter, which does not mention fire trucks, the airport runway, or such testing. (Plaintiff's Ex. 1). The October 2005 letter does not mention Q & J Properties, LLC. (Plaintiff's Ex. 1). There is no evidence in this case of any formal, official, action taken by any Hampton County Council to grant any legal authority to Appellant regarding the use of the airport runway for the testing of firetrucks.

STANDARD OF REVIEW

When considering a motion for a directed verdict, the circuit court must "view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more than one inference or its inference is in doubt." *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc*., 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). "When reviewing the [circuit] court's decision on a motion for directed verdict, this court must employ the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *McKaughan v. Upstate Lung & Critical Care Specialists, P.C.*, 421 S.C. 185, 189, 805 S.E.2d 212, 214 (Ct. App. 2017) (quoting *Burnett v. Family Kingdom, Inc*. 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010)). "This court will reverse the circuit court's ruling on

a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law." *Turner v. Med. Univ. of S.C.,* 430 S.C. 569, 582, 846 S.E.2d 1, 7 (Ct. App. 2020). "On review, an appellate court will affirm the granting of a directed verdict in favor of the defendant when there is no evidence on any one element of the alleged cause of action." *Fletcher v. Med. Univ. of S.C.*, 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010).

ARGUMENT

I. Any Agreement Concerning the Use of Hampton County Assets Requires Formal Action by Hampton County Council

Appellant asserts that Hampton County made an agreement, either written, oral, or implied, with Appellant, to provide access to the Hampton County Airport, for the purposes of testing ARFF firetrucks. Appellant does not and cannot provide any evidence of any formal action taken by any Hampton County Council concerning such an agreement, either by resolution or ordinance. In the absence of any formal action by Hampton County, there cannot be any enforceable contract, promise, or obligation binding the people of Hampton County to provide access to Appellant, a private entity, for its business purposes.

Hampton County has no mouth from which to speak besides Hampton County Council, and only then, in public records. Hampton County has no institutional knowledge apart from that recorded in the minutes from its meetings, its ordinances, its resolutions, or its contracts. Being a public body, a County Council must conduct its business in the open sessions of its public meetings, pursuant to §30-4-60, S. C. Code of Laws. Appellant insists, without any legal authority, that either Daniel or individual members of Council speaking to Quincy Jones, individually, can obligate not only the 2005 Hampton County Council, but all future Hampton County Councils, to provide access to The Station, Inc., d/b/a Company Two, to the Hampton County Airport runway for the purposes of its private business of testing fire trucks. Appellant further asserts that it is

sufficient for the purposes of creating an enforceable contract that individual County Council members had some personal knowledge of what The Station, Inc., d/b/a Company Two, was doing at the Hampton County Airport. This is not the law in South Carolina.

A. The Business of Hampton County is Conducted Publicly

A County must carry out its business through resolutions or ordinances. There is no other method available to a County Council through which to convey an interest in land or to grant permission to use a public asset, like an airport. *See Op. S.C. Atty. Gen.,* 2009WL580557 (S.C.A.G. February 17, 2009); *see also* 56 Am. Jur. 2d *Municipal Corporations* §296 ("[I]t may be observed that a "resolution" deals with matters of a special or temporary character…while an "ordinance" prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed."). *See, for example, Glasscock Company, Inc., v. Sumter County,* 361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004).

"It is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." §30-4-15, S. C. Code Ann. Appellant presented testimony that any discussions of the 2005 Hampton County Council concerning its use of the airport took place in executive session, despite not appearing on any County Council Agenda. (Tr. pp. 275; 289-291). Hampton County cannot make promises, commitments or agreements concerning the assets of Hampton County except through formal, open and public, action of its County Council. Any vote in executive session cannot bind Hampton County: "The members of a public body may not commit the public body to a course of action by a polling of members in executive session." §30-4-70, S. C. Code Ann. Therefore, this testimony

presented to the trial court cannot support the basis of any agreement between Appellant and Hampton County, as a matter of law.

Daniel, author of the October 2005 letter, concedes that he has no legal authority to bind Hampton County. (Tr. pp. 331-339). There is no evidence in this case that Daniel was formally authorized to extend any offers to Appellant, rendering his October 2005 letter, powerless to bind Hampton County.

B. The 2005 Hampton County Council Did Not Bind Subsequent Councils

Even if the 2005 Hampton County Council did grant permission to Appellant to use an asset of Hampton County, which is strenuously denied, that permission is subject to revocation by a subsequent County Council. "[T]he acts of former councils relating to the governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect upon succeeding councils." *Newman v. McCullough,* 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948). A subsequent County Council can certainly void or modify such a grant of permission, at their discretion. *See Cunningham v. Anderson County,* 402 S.C. 434, 741 S.E.2d 545 (2013), reversed, in part, on other grounds by *Cunningham v. Anderson County,* 414 S.C. 298, 778 S.E.2d 884 (2015); *Piedmont Public Service Dist. v. Cowart,* 319 S.C. 124, 459 S.E.2d 876 (1995); 56 AmJur.2d *Municipal Corporations, Counties & Other Political Subdivisions* §154 (1971).

In this case, a subsequent Hampton County Council sought to terminate any temporary right to use previously granted to Appellant, such "grant," if any, being by implication only, for the record in this case does not reveal any formal grant through ordinance or resolution of such permission.

In 2015, Hampton County directed Appellant to cease using the runway, so as to allow Hampton County to explore opportunities for developing and expanding the airport, to promote economic development in Hampton County. (Tr. pp. 466-468; 625-629; 721-723). This is a legitimate act of discretion by elected County officials. The trial court refrained from evaluating the merits of the subsequent actions of a later County Council, despite Appellant's insistence that the decision was "wrongful." In the event the people of Hampton County find the decision to be improper, they possess the ability to elect new individuals to Council. That is a political decision, not one reviewable by any Court. *See S. C. Pub. Int. Found. v. Jud. Merit Selection Comm'n,* 369 S.C. 139, 632 S.E.2d 277 (2006).

Hampton County did not, either by ordinance or resolution, enter into any agreement with Appellant to provide access to the airport runway for Appellant's unique business purposes. Hampton County has the right and the obligation to use its assets for the benefit of its citizens. "All laws concerning local government shall be liberally construed in their favor." *S. C. Const. art. VIII. §17.*

II. <u>There Is No Contract Theory Available to Appellant Obligating Hampton County to Provide Access to the Hampton County Airport to Appellant for the Purpose of Testing ARFF Firetrucks</u>

While the record is clear that Hampton County Council did not entertain or pass either an ordinance or a resolution concerning Appellant's proposed use of the Hampton County Airport Runway for the purposes of testing ARFF firetrucks, Appellant contends that the documentary evidence in this case nonetheless amounts to a contractual obligation of some sort that does not require any official act of Hampton County. While this argument fails entirely, as a matter of law, Appellant is also unable to put forth any meaningful evidence of the terms of the alleged agreement.

A. Four Corners of the 2005 Letter, Agreement to Agree

The face of the 2005 letter states as follows, in relevant part:

> Hampton County is excited about **the prospect** of having Company Two Fire locate here. You **requested** that certain commitments be made by the county to assist you in **making a decision** about locating in the Gemco building at 283 Foster Road in Varnville.
>
> Hampton County Council has authorized me to make the following commitments to you concerning the Hampton-Varnville Airport. Hampton County **agrees to provide** you with a **private taxiway right to use** from the northeast tip of the airport to the Gemco property line. The county also **agrees to clear** and rough grade the taxiway to the Gemco property line. The county **also plans** to move forward with improvements to the airport including the installation of runway lights **as soon as possible**. During discussions with Administrator Sabrena Posey-Graham, Airport Commission Chairman Lee Ellis and myself in earlier this year it was indicated that the county **desires to obtain** a portion of the Gemco property adjacent to the airport to facilitate necessary upgrades. **We would appreciate** your commitment to grant this portion of property to the county provided we **give you** a similar amount of acreage to the west or southwest of the Gemco property. By way of this letter, Hampton County Council concurs with that **request.**
>
> [emphasis added] (Plaintiff's Ex. 1)

At the trial of this matter, Appellant entered this letter into evidence as an Agreement between Hampton County and The Station, Inc., d/b/a Company, Two. Appellant asserts that this letter, with its description of "the northeast tip of the airport to the Gemco property line," should be read as a grant of absolute permission to use the entire Hampton County Airport, in whatever manner and for whatever purposes The Station, Inc. might require for its business, indefinitely. At the trial of this matter, Appellant essentially conceded that there was no time term contained in this letter, but in its Brief, Appellant asserted that the "duration is plainly limited by the lifetime of Company, Two as a business in Hampton County."[1] (Tr. pp. 516-522). The language contained within the four corners of this writing simply do not support this broad reading.

[1] It should be noted here that both The Station, Inc. and Q & J, Properties, LLC have "done business" in the name of Company, Two, which is a fictitious name only and not a legal entity.

In this case, the October 2005 letter is not ambiguous, and the language is plain on its face as to the intention of the parties. *See Hawkins v. Greenwood Dev. Corp.,* 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997)("Ambiguous" means "capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.").

In this case the October 2005 letter, concerns a "private taxiway right to use," and a proposed property exchange, to be negotiated in the future.[2] The letter is entirely devoid of any mention of the airport runway or the testing of fire trucks on the airport runway. Further, the letter contains a great deal of prospective language, indicating that the parties would continue to discuss the relationship, over time, and anticipated making additional agreements. *See Stevens & Wilkinson of S.C., Inc., v. City of Columbia,* 409 S.C. 568, 762 S.E.2d 696 (2014). Appellant concedes that this October 2005 letter does not rise to the level of a lease or a conveyance of land, as Appellant recognizes that such an interest in land would require an ordinance to be passed by Hampton County Council. See §4-9-130(6), S. C. Code of Laws. No ordinance exists giving Appellant any right to use the airport runway for the purposes of testing ARFF firetrucks.

B. No Evidence of Oral Agreement

Despite the plain language of the October 2005 letter, Appellant seeks to vindicate an alleged right to unfettered, perpetual access to the runway for the purposes of testing firetrucks,

[2] The property swap was ratified, later, by the 2011 Agreement between Q & J Properties, LLC d/b/a Company Two and Hampton County, and the 2015 Easement and deeds, confirming the proposed property swap. (Defendant's Ex. 12, 13, 14, 15). The property swap proposed in the October 2005 letter necessarily concerned Q & J Properties, LLC, d/b/a Company Two, because Q & J Properties, LLC is the entity that actually owns the real property described with the October 2005 writing, having purchased the land on October 17, 2005. (Plaintiff's Ex. 3). However, the October 2005 writing does not mention Q & J Properties, LLC.

none of which is included within the writing. At trial, Appellant presented parol evidence, from individuals including Quincy Jones, Jim Daniel, and former County Councilman Willard Wilson, all of whom recall that the County Council discussed the airport and Appellant's desired use of the airport, prior to the October 2005 letter being delivered. (Tr. pp. 280-281; pp. 335-343). Quincy Jones testified that individual County Council members made commitments to him to provide the requested access. (Tr. pp. 195-196). These oral, unofficial discussions or representations, even if made, carry no weight.

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument." *Gilliland v. Elmwood Props.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990) (internal citations omitted); *In re Estate of Holden,* 343 S.C. 267, 275–76, 539 S.E.2d 703, 708 (2000). "Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Stevens & Wilkinson of S.C., Inc.,* 409 S.C. at 577, 762 S.E.2d at 700 (2014). "A party cannot avoid the parol evidence rule simply by claiming he thought the contract he signed meant something other than what it said." *Rodarte v. Univ. of S.C.,* 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017).

Daniel, the author of the October 2005 letter, testified that he didn't know what Appellant planned to use the airport property to do. (Tr. p. 335-336). Specifically, Daniel testified: "I can't say if he specifically said, "I want to use the Airport runway," or "just use the Airport." (Tr. p. 336). Regarding the alleged consideration of runway clean up, also entirely absent from the writing, Hampton County employees testified that they occasionally saw Appellant's employees sweeping the runway with brooms, finding the unexpected behavior, "odd." (Tr. pp. 235-237).

Former County Administrator Sabrina Graham testified that she understood the letter to commemorate an understanding regarding the proposed property swap and taxiway only. (Tr. pp. 580-582; 584-587). Daniel said the letter was dictated by the County Attorney. (Tr. pp. 334-35). The County Attorney said he didn't write or review the letter. (Tr. pp. 601-604). A copy of essentially the same letter was sent previously to an entirely different entity, who did not locate in Hampton County and had no need to use the runway except for normal air traffic. (Def. Ex. 18; Tr. pp. 709-712).

Both the writing, which Respondent asserts is unambiguous, and the record, are devoid of any evidence of any meeting of the minds preceding the October 2005 correspondence, concerning the terms put forth by Appellant in its brief as material and enforceable (including consideration, duration, scope of use of the runway for testing firetrucks, prioritization of air traffic vs. firetrucks, right to cancel or required method of cancellation).

C. No Implied Terms

As the evidence of any oral agreement proves as dubious as Appellant's assertions that the October 2005 letter contains a right to test firetrucks on the runway, Appellant finally attempts to overcome the parol evidence rule (in spite of the writing) by instead asserting that the permission to use the runway should be inferred from the approximately ten years that Appellant did use the Hampton County Airport without formal objection from Hampton County Council. However, an implied contract (assuming the October 2005 writing is not an unambiguous writing) cannot arise without a meeting of the minds as to those terms considered indispensable. "Certain terms, such as price, time and place, are considered indispensable and must be set out with reasonable certainty." *McPeters v. Yeargin Const. Co., Inc.*, 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986). Even if the parties intend to be bound by an agreement, the absence of material terms

renders the agreement unenforceable. *Stevens & Wilkinson of S.C., Inc. v.* 409 S.C. at 579, 762 S.E.2d at 701 (2014); *Childs v. City of Columbia,* 87 S.C. 566, 70 S.E.296 (1911).

In this instance, duration and right to cancel or rescind are indispensable terms. At trial, Appellant produced no evidence of any agreement as to the duration of the asserted use agreement. In its brief, Appellant attempts to shift the burden regarding the alleged ambiguity to the County, asserting that any ambiguity should be construed against the County, who Appellant calls the drafter of the agreement. However, Appellant also maintains that the agreement isn't written, such that parol evidence should be admitted and considered, and further that the terms are implied through a course of dealing. These conflicting positions are untenable.

A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. *Gaskins v. Blue Cross-Blue Shield of South Carolina,* 271 S.C. 101, 245 S.E.2d 598 (1978); *Moore v. Palmetto State Life Insurance Co.,* 222 S.C. 492, 73 S.E.2d 688 (1952). If an agreement is manifested by words, the contract is said to be express. *Thomas v. Lomax,* 82 Ga.App. 592, 61 S.E.2d 790 (1950). If it is manifested by conduct, it is said to be implied. *Dowling v. Charleston & W.C. Ry. Co.,* 105 S.C. 475, 81 S.E. 313 (1913). In either case, the parties must manifest a mutual intent to be bound. *Hughes v. Edwards,* 265 S.C. 529, 220 S.E.2d 231 (1975); *Shealy v. Fowler,* 182 S.C. 81, 188 S.E. 499 (1936). "Interpretation of a contract is governed by the objective manifestation of the parties' assent *at the time the contract was made,* rather than the subjective, after-the fact meaning one party assigns to it." *Laser Supply & Servs., Inc. v. Orchard Park Assoc.,* 382 S.C. 326, 334, 676 S.E.2d 139, 143-144 (Ct. App. 2009)(emphasis added).

In this case, there is a writing, the October 2005 letter. Appellant asserts it is incomplete, not ambiguous. Appellant asks the Court to permit parol evidence to supplement the writing. This

is improper. Further, Appellant asks the Court to infer additional terms through the course of performance from 2005 to 2015, well after the initial agreement is supposed to have been entered. The analytical gymnastics necessary to cobble together the alleged agreement demonstrates that there was, in fact, no such agreement between the parties in October, 2005, express or implied, concerning the use of the runway for the purpose of testing firetrucks. "Without the actual agreement of the parties, there is no contract." *Edens v. Laurel Hill, Inc.,* 271 S.C. 360, 247 S.E.2d 434 (1978).

The October, 2005 writing concerns a proposed property swap and a "private taxiway right to use." Later, Hampton County delivered on these offers. (Defendant's Exhibits 12, 13, 14, 15). The writing is an unambiguous expression of intent between the parties, to continue working together. Appellant cannot enlarge the obligations of Hampton County through parol evidence or additional implied terms. There was simply no such agreement between the parties to provide unfettered access to Appellant to the runway for the purposes of testing fire trucks. Neither the October 2005 letter, nor the parol evidence admitted at trial support the terms advanced in Appellant's brief.

D. <u>No Evidence of Necessary Terms</u>

Setting aside the fact that Company Two is not a corporation, but a fictitious name used by The Station, Inc. (a Georgia Corporation) and Q & J Properties, LLC (a South Carolina Limited Liability Company), Appellant can produce no evidence of any agreement as to essential terms of the nature of this alleged grant of permission. For the first time in the record of this case, on page 17 of its Brief, Appellant asserts, "the duration is plainly limited by the lifetime of Company Two as a business in Hampton County." There is no evidence in the record below of a meeting of the minds concerning the duration, expiration, or method of cancellation of the "right-to use"

permission Appellant claims. At the trial court, Appellant argued that the duration of the contractual arrangement was unclear, and it would be up to the jury or trial judge to determine the duration of the permissive use agreement. (Tr. p. 500).

Respondent asserts that any oral evidence of such representations by Daniel or former County Council members should be dismissed summarily under the parol evidence rule. Appellant repeatedly asks this Court to select, *a la carte,* language from the October 2005 writing and various recollected oral representations and implied terms to stitch together a contractual arrangement that is not otherwise memorialized or supported by the evidence. Specifically, in its brief, Appellant creates from whole cloth contract terms concerning relocation by Appellant in exchange for maintenance and foreign object debris removal, for the term of "the lifetime of Company Two as a business in Hampton County." These provisions are not recorded in any writing in this case, nor are they born out in the witness testimony. "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Regions Bank v. Schmauch,* 354 S.C. 648, 660, 582 S.E.2d 432, 439 (Ct. App. 2003). Appellant seems to assert that contractual obligations can arise from oral AND written representations AND conduct, roughly hewn together to create a meeting of the minds.

Appellant cites *Benya v. Gamble,* 282 S.C. 624, 321 S.E.2d 57 (Ct. App. 1984) for the proposition that this jumble of evidence should have been submitted to a jury, who might draft a contract for the parties, in the absence of any valid terms. In *Benya,* the parties both signed a written contract for the sale of real property. The holding concerns the interpretation of a single document that both parties signed and dated. It does not call for submission to a jury of a document (like the October 2005 writing), oral representations, or a course of dealing, with an instruction that the jury draft an agreement for the parties where none previously existed.

Further, Appellant asks the Court to disregard completely the fact that Hampton County is not an individual. Hampton County is a political subdivision of the State of South Carolina. It does business only through its duly elected County Council, and only in public, open session.

III. It is Manifestly Unreasonable to Rely on an Unofficial Representation from an Individual Regarding Permission to Use the Assets of Hampton County

At most, Appellant asserts, but does not establish, that Hampton County allowed Appellant to test fire trucks on the runway of the Hampton County Airport from 2005 through 2015. At most, such permission, if proven, could be characterized as a revocable license.[3] *See Briarcliff Acres v. Briarcliff Realty,* 262 S.C. 599, 206 S.E.2d 886 (1974); *see also McClellan v. Taylor,* 54 S.C. 430, 32 S.E. 527 (1899). A license is revocable by the grantor. *See Couch v. Burke,* 20 S.C.L. 534, 535 (S.C. App. L. & Eq. 1835). Any grant of a permanent encumbrance (or a use that cannot be performed within one year) on the real property of Hampton County would require an ordinance and a writing, signed by both parties. *See* §4-9-130(6), *S. C. Code of Laws; see also Davis v. Greenwood Sch. Dist., 50,* 365 S.C. 629, 620 S.E.2d 65 (2005); *see also* §32-3-10(4) and (5), S. C. Code of Laws.[4] /

In the absence of the material element of duration, which Appellant agrees is absent in this case, an agreement is terminable at will by either party. *Doe v. TCSC, LLC,* 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020); *Childs v. City of Columbia,* 87 S.C. 566, 70 S.E. 296 (1911).[5]

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[3] A revocable license would still require a formal action by Hampton County Council, pursuant to §4-9-30, S. C. Code of Laws, including the making and executing of contracts. *See* §4-9-30(3), S. C. Code of Laws.

[4] In its brief, Appellant asserts that the alleged grant of permission includes an implied duration term that is "plainly limited by the lifetime of Company Two as a business in Hampton County." As this proposed term exceeds one year, The Statute of Frauds requires a signed writing. The October, 2005 letter is not a signed writing.

[5] In its brief, Appellant asserts that Hampton County failed to properly terminate the permissive use or license. Appellant asserts in its brief that this is a question of fact, which should have been submitted to a jury. However, Appellant did not raise this argument below and did not present any evidence of any damages or harm stemming from the manner in which Hampton County alerted Appellant to the termination of the permission to use. Therefore, this issue is not preserved for review.

In light of the revocability of any license or permission made to Appellant by Hampton County, concerning the use of the runway for the purposes of testing fire trucks, Appellant's cause of action for promissory estoppel fails, as a matter of law.

"The elements of promissory estoppel are: (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promise; (3) reliance by the promise was expected by and foreseeable to the promisor; and (4) injury caused to the promise by his reasonable reliance." *North American Rescue Products, Inc. v. Richardson,* 411 S.C. 371, 378, 769 S.E.2d 237, 241 (2015); *Barnes v. Johnson,* 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013). Because promissory estoppel does not require a contract, "the promise to be enforced must be **unambiguous with clearly articulated, definite terms**, while the sustained injury must result from an inconsistent disposition by the promisor." *Id.* at 470, 742 S.E.2d at 11 (emphasis added). The absence of clearly articulated terms between the parties to an alleged promise precludes recovery under a theory of promissory estoppel. *Rushing v. McKinney,* 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006)(holding that a promise involving an investment opportunity was too ambiguous to be enforced where the plaintiff could not clearly articulate the terms of the investment opportunity). In this case, as discussed above, the terms advanced by Appellant appear nowhere in the evidence of record of this case, neither in a writing or in any formal statement from Hampton County Council.

In the absence of an unambiguous promise, formalized and adopted by Hampton County Council, Appellant's reliance on any lesser understanding is not reasonable, as a matter of law. For a County to sell, lease, or contract regarding its real property requires an ordinance (or at least a resolution) adopted by a vote of Hampton County Council, after public hearing with reasonable public notice. §4-9-130(6), S. C. Code of Laws. *See Op. S.C. Atty. Gen.,* 2017WL1095384

(S.C.A.G. Mar. 2, 2017); *Op. S.C. Atty. Gen.,* 2016WL4917034 (S.C.A.G. Sept. 1, 2016); *Op. S.C. Atty. Gen.,* 2000WL356783 (S.C.A.G. Jan. 11, 2000). No minutes of any Hampton County Council meeting, nor any ordinance, can be found to document the claimed promise or Hampton County Council's agreement or authorization of an employee or agent to make such a promise. (Tr. pp. 699-702; 706; 725). A promise of a government body, on which promissory estoppel is to be based, must be made in compliance with the law and procedures of the body. *Davis v. Greenwood Sch. Dist. 50,* 365 S.C. 629, 620 S.E.2d 65 (2005)(holding teachers' reliance on superintendent's promises of pay incentive for board certification was unreasonable, where such a promise required school board approval). For this reason, any purported "action" taken in executive session is ineffectual and can be completely disregarded. *See* §30-4-70, S. C. Code Ann.

A private entity is charged with knowing the boundaries and limitations of a government body. *Inabinet v. Royal Exchange Assur. of London,* 165 S.C. 33, 162 S.E. 599 (1932); *Op. S.C. Atty. Gen.,* 1963WL118666 (S.C.A.G. June 25, 1963). "Generally, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy." *Town of Sullivan's Island v. Byrum*, 306 S.C. 539, 413 S.E.2d 325 (Ct. App. 1992). Hampton County Council is obliged to protect the Hampton County Airport and use the public asset for its best and proper use, upon terms debated in open session with notice to the public.

The plaintiff has asserted dealings with various ostensible agents of Hampton County. In a Council-Administrator government, an Administrator is employed by the County Council, with the powers and duties set forth in §4-9-630, S. C. Code of Laws. The Council and Administrator have separate duties, and neither the Administrator nor any other county employee can take those actions or make those decisions that are reserved for the Council. The authority of a governmental actor is defined by law. "Estoppel cannot grow out of dealings with public officers of limited

authority." *Heyward v. South Carolina Tax Commn.*, 240 S.C. 347, 126 S.E.2d 15 (1962). If the act is not authorized, whether undertaken singlehandedly or mistakenly directed by Council, it is not binding on the government. "The government is never estopped on the grounds that its agent is acting under apparent authority which is not real." *Carolina Nat. Bank v. State of South Carolina*, 60 S.C. 465, 38 S.E. 629, 633 (1901). *See also Town of Brookland v. Broad River Power Co.*, 172 S.C. 115, 173 S.E. 71 (1934). "[A] governmental body cannot be estopped 'by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment.'" *State v. Peake*, 345 S.C. 72, 545 S.E.2d 840 (Ct. App. 2001); *S.C. Coastal Council v. Vogel*, 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct. App. 1987).

Hampton County is not bound by the unauthorized acts of its employees or agents, nor even by the unauthorized acts of its County Council members, and Appellant is charged with knowledge of the requirements and limitations of lawful government action. *City of North Charleston v. North Charleston District*, 289 S.C. 438, 346 S.E.2d 712 (1986); *Op. S.C. Atty. Gen.,* 2000WL356783 (S.C.A.G. Jan. 11, 2000). "All men are bound to take notice of the special authority of the state's officers, and when dealing with them outside their authority they assume the peril with their eyes open and cannot be heard to say that they placed reliance upon the state. The question is not one of intention, but of power; and, if the officer has not power to act, his action is not state action, and so affords no basis upon which to predicate estoppel against the state. And if it were, in any sense, a question of intention, the state's intention can only be evidenced in a constitutional way." *Carolina Nat. Bank v. State of South Carolina*, 60 S.C. 465, 38 S.E. 629, 633 (1901).

It is patently unreasonable for Appellant to rely upon the "promises," that an employee or agent of Hampton County may have made. Even if the plaintiff can establish that an agreement

was intended between the plaintiff and Hampton County, any contemplated transaction or agreement must comply with law governing County governments. *See Douglas v. City Council of Greenville,* 92 S.C. 374, 75 S.E. 687 (1912). *See also Mason v. Williams,* 194 S.C. 290, 9 S.E.2d 537 (1940).

Hampton County is the owner of the airfield, as trustee for the people of Hampton County. Hampton County cannot, as a matter of sovereignty, be compelled to provide Appellant unfettered and perpetual access to the Hampton County Airport absent a proper ordinance or resolution, adopted properly, as a result of open public hearings. Appellant further cannot have reasonably relied on a promise of perpetual access to the runway for the purpose of testing fire trucks at the time of relocating to Hampton County in the absence of a writing, in the absence of an ordinance (or even a resolution), in the absence of an unambiguous promise, and further in the absence of any formal action of Hampton County Council.

In this case, Appellant cannot demonstrate an unambiguous promise concerning access to the Hampton County Airport runway for the purposes of testing fire trucks. Additionally, it is manifestly unreasonable for Appellant to have relied upon the October 2005 letter, lacking any specifics and containing no duration term, or to have relied on any oral representations from individuals lacking legal authority to bind Hampton County. In either case, Appellant cannot demonstrate evidence necessary to support a claim for promissory estoppel.

IV. The Trial Court Properly Dismissed Appellant's Causes of Action for Breach of Contract, Specific Performance, and Promissory Estoppel.

The plain language of the October 2005 letter does not contain an enforceable contractual obligation, concerning access to the Hampton County Airport runway for the purpose of testing fire trucks. It does not contain the word "runway," "firetruck," or "testing." The October 2005 letter does not discuss the obvious conflicts between airplanes on the runway and firetrucks on the

runway or prioritize the use by the public versus Appellant's use. Most significantly, the October 2005 letter does not contain any duration term or provide any procedure for cancellation or expiration. Appellant concedes this fact.

At the conclusion of Plaintiff's case, the trial court directed a verdict for Hampton County. (Tr. Pp. 539-540; pp. 660-663). The trial court properly found that the failure of Hampton County Council to ratify any official action in 2005, necessarily means that, concerning the right to use the runway, the letter conveys, at most, a revocable right-to-use.[6] In the absence of any duration term and in the absence of any official action, the trial court correctly concluded that there is no written contract concerning the use of the Hampton County Airport runway for purposes of testing fire trucks. Further, the parol evidence presented by Appellant did not produce any further clarity regarding any oral promises made by Hampton County officials, all of which lacked legal authority from Hampton County Council. In the absence of a contract, the court correctly directed a verdict on the cause of action for breach of contract.

The trial court then considered the cause of action for specific performance. "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Ingram v. Kasey's Assocs.,* 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). As the trial court correctly found there is no enforceable agreement concerning the use of the runway for the purpose

[6] The October 2005 letter also contains terms concerning a property swap, which took place following the 2011 Agreement between Q & J Properties, LLC d/b/a Company Two and Hampton County. (Defendant's Exhibits 12, 13, 14, 15).

of testing fire trucks in the October 2005 letter, the court correctly granted directed verdict on the cause of action for specific performance.

The trial court also correctly dismissed Appellant's cause of action for promissory estoppel. Even giving appropriate weight to Plaintiff's evidence, including the October 2005 letter, the oral evidence of communications with individuals affiliated in various ways with Hampton County Council, the subsequent agreements regarding the property swap, and the records of Hampton County Council, the trial court concluded that the cause of action for promissory estoppel must also fail, as a matter of law.

First, the trial court found that the October 2005 letter did contain an understanding concerning plans to later complete a property swap. While the letter is addressed to Quincy Jones, Company Two Fire, the subject property was purchased a few days after the date on the letter by Q & J Properties, LLC. Later, Q & J Properties, LLC d/b/a Company Two Fire Apparates (sic), entered into a subsequent 2011 Agreement clarifying the terms of the property swap. The 2011 Agreement contains a merger clause: "This Contract contains the entire understanding and agreement between the parties. It shall not be modified or amended in any way except by a written instrument executed by both parties." "A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement. *Pasquale Food Co., Inc. v. L & H Airmotive, Inc.,* 51 Ala.App. 127, 283 So.2d 438 (1973), *cert. denied,* 291 Ala. 795, 283 So.2d 448 (1973); 4 Williston On Contracts § 633 (3d ed. 1961), cited affirmatively in *Wilson v. Landstrom,* 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984).

Appellant asks the Court to ignore the fact that the 2011 Agreement is between Q & J Properties, LLC **d/b/a Company Two Fire** and Hampton County. Company Two Fire is a legal fiction, a name in which both The Station, Inc. and Q & J Properties, LLC have done business.

(Plaintiff's Ex. 1; Defendant's 12). This means that the parties to the October 2005 letter completed any obligations concerning the property swap and taxiway, through the execution and completion of the 2011 Agreement and subsequent documents.

The trial court properly found that the 2011 Agreement merged, or extinguished, any other outstanding oral promises or ambiguous agreements between the parties. Appellant asserts that the October 2005 letter contains terms independent from the 2011 Agreement, not integrated into the subsequent property swap, and concerning other parties, namely The Station, Inc., d/b/a Company Two. This argument fails. The October 2005 letter is silent concerning testing fire trucks on the runway. The oral evidence presented by Appellant does not demonstrate any clear, enforceable, unambiguous promise properly made on behalf of Hampton County, such promises necessarily required to adhere to the statutory scheme, outlined in §4-9-10, et seq., S.C. Code of Laws.

Further, in all cases, the trial court correctly concluded that the absence of a duration for the claimed right-to-use is fatal to Appellant's case. In its brief, Appellant concedes that there is no evidence of a duration term in either the October 2005 writing, the oral evidence presented, or the records of Hampton County Council. Rather, the Appellant asserts, correctly, that in the absence of a necessary term, like duration, any agreement becomes terminable at will. *See Doe,* 430 S.C. at 611, 846 S.E.2d at 879 (Ct. App. 2020).

Hampton County, with the recommendation of the Hampton County Airport Commission, terminated whatever use (with permission or otherwise) Appellant was making of the runway for the purpose of testing firetrucks. (Tr. pp. 640-648; Defendant's Ex. 21, 22, 35). County Administrator Rose Elliott's office conveyed the directive to cease activity to Quincy Jones,

principal for Appellant and Q & J Properties, LLC. (Tr. pp. 643-646; 699-703; 724-725)(Def. Ex 22).

On February 5, 2016, Quincy Jones, identifying himself as President of Company Two Fire and Crash Truck Services, sent a proposal to Hampton County Council attempting to negotiate a use agreement. [7] (Defendant's Ex. 19). This proposal does not assert that Appellant understood itself to be the owner of any interest in Hampton County Airport, nor the holder of any lease, license, or other legal right to use the Hampton County Airport. It is not a request to vindicate a legal right or enforce an agreement; it is an attempt to negotiate permission to use the runway for his private business purposes. This request was denied by the Hampton County Airport Commission and the County Administrator. (Defendant's Ex. 21 and 22; Tr. pp. 702-705). This proposal makes it clear that even Appellant was aware that it did not have a legal right to test fire trucks on the Hampton County Airport runway following the revocation of permission by formal action of Hampton County.

Former Administrator Sabrina Graham testified that the October 2005 letter was not intended as an agreement but was an expression that Hampton County did want to work with Appellant's business, to promote economic development in Hampton County. (Tr. pp. 582-584). County Administrator Rose Elliott reported hearing Quincy Jones recount to a member of the Hampton County Airport Commission that Appellant didn't have formal permission to use the airport, but they just started using it. (Tr. pp. 739-741). While the parties may have shared a general desire to cooperate, Appellant and Hampton County never progressed past this initial, cordial, stage of negotiations. The October 2005 Letter is correctly understood to be, in essence,

[7] The letter states, "[I]n 2005, we were able to purchase the property adjacent to the Airport…". While the letter is not signed by "Q & J Properties, LLC, d/b/a Company Two Fire," it is clear, Q & J Properties, LLC, the owner of the property, sometimes does business as Company Two Fire.

an offer to agree in the future. It is patently unreasonable to rely on so tenuous an expression of intent to cooperate alone. While Appellant did make use of the runway for some period of time, there is no evidence in this case that Hampton County authorized that use, nor that Hampton County is obligated to continue to permit that use.

The trial court did not err in granting Hampton County's motion for directed verdict on all causes of action.

CONCLUSION

The Court should dismiss the appeal, in its entirety, upholding the decision of the trial court. Appellant fails to identify any errors of law or misapprehensions of fact which would require reversal of the trial court's orders in this case.

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July 18, 2022

Bamberg, SC

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case Number: 2021-000685

The Station, Inc., d/b/a Company Two, Inc.,…….Appellant,

v.

Hampton County, …….Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the Initial Brief of Respondent and Respondent's Designation of Matter for the Record on Appeal have been served upon counsel of record for the Respondent using their primary email addresses listed in the Attorney Information System, as shown below, on July 18, 2022.

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July 18, 2022

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July 18, 2022

Via E-Mail

The Honorable Jenny Abbott Kitchings
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Via E-mail

Re: *The Station, Inc., d/b/a Company Two, Inc. v. Hampton County*
Appellate Case Number: 2021-000685
Filing Respondent's Initial Brief

Dear Mrs. Kitchings,

Attached for electronic filing and service, please find the following:

(1) Initial Brief of Respondent;
(2) Respondent's Counter-Designation of Matter for the Record on Appeal; and
(3) Proof of Service.

Please file the documents and return one file-stamped copy to me via email. By electronic copy of this letter, I am serving all counsel of record with a copy of the same.

Sincerely,

s/Alison Dennis Hood

Alison Dennis Hood

ADH

cc: Kathleen C. Barnes (via email)
Chris Wilson (via email)