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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 No. 2021-000685

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

v.

Hampton County, ...Respondent.

**RECORD ON APPEAL
VOLUME I**

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Jun 24 2021

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

Case No. 2017-CP-25-00170

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

v.

Hampton County, ...Respondent.

NOTICE OF APPEAL

Appellant The Station, Inc. d/b/a Company Two, Inc., appeals the ruling granting Respondent Hampton County's motion for a directed verdict as to the causes of action for breach of contract and specific performance. The lower court granted the motion on May 27, 2021, during trial. A copy of the rough transcript pages showing the ruling is attached. This Notice is timely filed.

The lower court retains under advisement Respondent's motion for a directed verdict as to the promissory estoppel cause of action and also retains ruling on the merits of promissory estoppel. That is not affected by this notice of appeal under Rule 241, SCACR. Appellant intends to, if necessary, supplement this notice of appeal after receipt of the lower court's ruling on the promissory estoppel cause of action as to that ruling and other pre-trial and trial rulings related to promissory estoppel.

Dated: June 24, 2021

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STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2016-CP-25-00170

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Jun 24 2021

SC Court of Appeals

The Station, Inc,)
)
Plaintiff,)
)
vs.)
)
Hampton County,)
)
Defendants.)
-----)

EXCERPT OF JURY TRIAL

DIRECTED VERDICT MOTIONS
AND RULINGS

May 24 - 27, 2021
Hampton, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge Presiding

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1 Supreme Court, that's not fatal. And in that case,
2 Your Honor, the temporary restraining order was set
3 aside and the injunction was refused. Your Honor,
4 that -- that -- that -- that case did not decide
5 that the lack of duration was fatal, that case said
6 that that's the missing element. I don't believe
7 the word fatal there is being used in the context of
8 the claim fails. That -- that -- that word is being
9 used in the context of this is what's -- this was
10 missing, or this is what is maybe not addressed.
11 Your Honor, and I -- I -- I've looked, the case law,
12 Your Honor, an easement is a burden on property, an
13 easement is a right to use property, but I -- I
14 found no case law, and I mean I looked all night
15 long last night at this stuff, I found no case law
16 that indicates that an easement is a sale of
17 property, which encompasses giving up rights as
18 opposed to allowing co-existing rights. And, Your
19 Honor, I don't want to keep the Jury waiting. If I
20 need to, you know, if I need to pull out and give
21 that to you specifically, I'm glad to if that's an
22 issue that you feel like you need that, I'll -- but
23 I'll let you tell me how you want to proceed.

24 THE COURT: I think where we are is that I'm
25 going to grant the motion for a directed verdict as

1 to the breach of contract cause of action and as to
2 the specific performance cause of action. It
3 appears to me that this 2005 letter is similar to
4 the memorandum of understanding, I can't remember
5 the case, the one that Kaye Hearn wrote for the
6 Supreme Court confirming Buck James, involved a
7 hotel in downtown Columbia. That this is more in
8 the nature of that memorandum of understanding of
9 what the parties intend to do in the future. That
10 Hampton County has authorized Mr. Daniel to make
11 these commitments, and, I guess, what -- what really
12 strikes me is, the tentative nature of this with the
13 language that, you know, "We intended in the future
14 to install runway -- runway lights. We would
15 appreciate your commitment to grant the property in
16 a property swap. Hampton County concurs with that
17 request." At that point, that's just a request.
18 Here's what we're willing to commit to you, here's
19 what we're going to ask you to do commit back to us.
20 So the fact that there's no duration on this, I mean
21 I'm just having to torture this to make this be able
22 to go to the Jury on the breach of contract cause of
23 action. It pains me to direct a verdict, because I
24 would prefer for the Jury to have to make this
25 decision and not me, but I just -- I -- I can't

1 torture this in any way to be able to send this to
2 the Jury. I do find that the promissory estoppel
3 claim does present questions of fact for the Jury to
4 determine, whether the County made promises to
5 Mr. Jones in order to get him to bring his Company
6 here; whether they made a promise to give him use of
7 the runway from the northeast tip of the Airport to
8 the Gemco property line, and whether they made good
9 on that promise. So I do think that the promissory
10 estoppel claim goes to the Jury. And that will be
11 my ruling.

12 MS. JETT: Your Honor, if I may be heard
13 briefly, and I'm not arguing after the Court has
14 ruled except that I do not know --

15 THE COURT: Sure, because we're not going to
16 reargue.

17 MS. JETT: Right, I do want to -- want to know,
18 I think we're gonna need some guidance later from
19 the Court on the Jury Verdict form, because if the
20 promise was made, we get back to the duration of the
21 promise unless they fill in the terms of the
22 promise, so I do think we're going to need to hash
23 out the Jury Verdict form.

24 THE COURT: I feel certain we'll need to hash
25 something out, but I -- I have confidence we can do

1 contract counterclaim directed verdict was denied,
2 and that's why both went to the jury, and -- and had
3 Your Honor denied our motion for a directed verdict,
4 all would have gone to the Jury in this case.

5 THE COURT: I don't want to keep the Jury
6 waiting too long. Let me just -- I'm gonna kind of
7 just break for a minute so I can take a look at
8 this, and -- and I'll be right back with y'all. Let
9 me -- let me just step off, so I can kind of take a
10 look here.

11 MS. JETT: Than you, Your Honor.
12 (Whereupon, a brief recess is taken.)

13 THE COURT: Back on the record. The motion to
14 dismiss the jury is granted. This is a promissory
15 estoppel, there's not a right to a jury trial, so
16 I'm going to go ahead and dismiss the Jury, and we
17 will hear the remainder of the Defendant's case
18 nonjury.

19 MR. WILSON: Your Honor, could I be heard just
20 one moment, please?

21 THE COURT: Sure.

22 MR. WILSON: Your -- Your Honor, unless I
23 misread North American versus Richardson, and I know
24 Your Honor went back and reviewed it and other
25 stuff, you've got North American, who brought a DJ

1 to get too keep into it, I had to put off getting a
2 proposed order done in another case on a pretty
3 extensive issue because of this trial, and then a
4 medical malpractice trial that we were supposed to
5 be trying in two weeks that actually resolved, so it
6 freed up to be able to catch that up, but I owe that
7 order first, if I could, so if that's not too --

8 THE COURT: I don't have any objection to the
9 ten days. I'm on vacation next week, so if y'all
10 get it to me by tomorrow, that means I've got to
11 read it all next week.

12 MR. WILSON: We'll wait. We'll wait.

13 THE COURT: So ten days is perfectly fine. I do
14 have to say I really appreciate all the attorneys
15 being so thoroughly well prepared in this case.
16 Great advocates for their clients, and collegial and
17 professional. You know, anybody that criticizes
18 lawyers, I wish they could have come and have sat in
19 on this and seen what a great job all of you did, so
20 I do appreciate that very much.

21 MR. WILSON: Thank you, Your Honor.

22 MS. JETT: Thank you, Your Honor.

23 THE COURT: Okay, anything further before we
24 recess?

25 MS. JETT: Just the subject matter of the

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2016-CP-25-00170

The Station, Inc,

)

)

Plaintiff,

)

)

vs.

)

EXCERPT OF JURY TRIAL

)

Hampton County,

)

DIRECTED VERDICT MOTION

)

FROM MAY 27, 2021

Defendants.

)

-----)

May 24 - 27, 2021

Hampton, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge Presiding

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DIRECTED VERDICT MOTION

* * *

THE COURT: Okay, we're back on the record.

MR. WILSON: Your Honor, may I be heard a moment?

THE COURT: Yes, sir.

MR. WILSON: Thank you.

Judge, I was just looking back over my notes on the lunch break, and -- and I understand all your rulings, I'm not questioning any, if it all, or asking you to reconsider, I mean could -- could we get on the record that they argued a number of different grounds for a directed verdict on the breach of contract claim, and could we get on the record the specific basis for the ruling on that, and then, in essence, the denial of our motions to amend to assert a -- a breach of an easement, and I guess a -- a breach of a -- a license, Your Honor? My understanding, you've taken the promissory estoppel and allowed them to proceed as a nonjury claim, but can -- can we get the specific grounds for that so that it's just more clear?

THE COURT: Sure.

MR. WILSON: Thank you.

THE COURT: The -- again, I did direct a verdict

1 as to the breach of contract cause -- cause of
2 action, based on several things. First of all, the
3 2005 letter shows the parties intent to move
4 forward. It does not contain any of the terms or
5 what type of interest the County would be granting
6 to Company Two. It uses the -- the language
7 "private taxiway right-to-use," which does not carry
8 any particular legal definition. It then goes on to
9 talk about what each party claims to do in the
10 future. The County claims to move forward with
11 improvements, that the County wants to acquire this
12 piece adjacent to the airport, and it then requests
13 that's -- this property swap, and it certainly
14 doesn't say the parties have agreed to the property
15 swap, so it's -- it's -- what they're willing to
16 offer Company Two and what Company Two -- what they
17 are requesting back to Company Two. If you look at
18 the March 2005 letter to Gary Grossman, you'll see
19 that there's different language in that letter that
20 says "You agreed to grant the portion of the
21 property to the County provided we give you a
22 similar amount of acreage." The contract's alleging
23 Mr. Jones says -- says, "This is what we're
24 requesting that you commit to us, and that Hampton
25 County Council concurs with that request." So it

1 appears to me an agreement to do something in the
2 future. Because there was no vote from County
3 Council or what appeared to be any official action,
4 I think the most that could be granted is a license
5 or a right-to-use it that was revocable. I believe
6 that it wasn't any kind of a permit, it's -- it was
7 an easement, or any other more permanent burden on
8 the County's property, that that would have had to
9 have been approved by County Council by an
10 ordinance. It does not contain any of the
11 particulars of any agreement between the parties,
12 which I guess is borne out by the fact that this
13 property swap didn't take place until 2015. So I
14 find that this does not contain any of the
15 requirements, and a particular problem to me is the
16 duration issue, that it doesn't give any indication
17 of what the duration of this right-to-use is, so
18 that's the grounds for my granting the directed
19 verdict as breach of contract.

20 MR. WILSON: And, Your Honor, I'm not trying to
21 reargue, I just -- just for the record, I'd just
22 like to note the -- and I think I argued that we had
23 had evidence, I think I said this yesterday, that we
24 had had evidence from I believe Mr. Willard Wilson
25 had come out of executive session and given

1 instruction to the chairman who gave it to
 2 development director, and I think the reasonable
 3 inferences from that could be drawn. And I think
 4 you had denied their parol evidence arguments
 5 throughout, trying to preclude any oral or other
 6 evidence -- parol evidence of the meeting of those
 7 words within the Plaintiff's Exhibit Number 1. And,
 8 you know, we've had ample witness testimony in that
 9 regard, but I -- I understand. I'm not trying to
 10 reargue, I just want to make sure it was on record,
 11 Your Honor. And then I think we did have the -- the
 12 motion to amend in both regards that, as I
 13 understood, was denied.

14 THE COURT: Well, your first was a motion to
 15 amend to allege the existence of an easement.

16 MR. WILSON: Yes, Your Honor.

17 THE COURT: I -- I just don't think that
 18 particularly helps you. I'm happy to allow you to
 19 amend to a certain right, that he had the right to
 20 an easement across the property; but, again, I don't
 21 think that that helps you. I don't think that the
 22 -- the discussions that we've heard thus far could
 23 support the County having granted an easement,
 24 particularly, when they then went on to formalize
 25 the easement from the taxiway to the -- to the tip

1 of the airport.

2 MR. WILSON: Yes, Your Honor. Thank you very
3 much.

4 THE COURT: Okay. Do you want to call your next
5 witness?

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

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

Nov 08 2021

SC Court of Appeals

Appellate Case No. 2021-000685

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

v.

Hampton County, ...Respondent.

AMENDED NOTICE OF APPEAL

Appellant The Station, Inc. d/b/a Company Two, Inc., appeals the following:

1. The lower court's May 27, 2021 ruling granting Respondent Hampton County's motion for a directed verdict as to the causes of action for breach of contract and specific performance.
2. The lower court's October 8, 2021 Final Order ruling in favor of Respondent as to the promissory estoppel cause of action.

Appellant's counsel received written notice of entry of the Final Order filed October 8, 2021, on that same date and timely files this Amended Notice of Appeal. Appellant intends to, if necessary, supplement this notice of appeal after receipt of the lower court's rulings on Respondent's motion for costs and attorneys' fees. This appeal is currently held under abeyance.

Dated: November 8, 2021

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON

CIVIL ACTION: 2017-CP-25-00170

THE STATION, INC., D/B/A COMPANY
TWO, INC.

FINAL ORDER

PLAINTIFF,

v.

HAMPTON COUNTY,

DEFENDANT.

RECEIVED**Nov 08 2021****SC Court of Appeals**

Company Two brought this lawsuit against Hampton County in 2017 alleging causes of action for breach of contract, specific performance, and promissory estoppel. The case proceeded to a jury trial on May 24, 2021. At the conclusion of Company Two's case, County moved for a directed verdict on all causes of action. The court granted County's motion as to the breach of contract and specific performance causes of action, and dismissed the jury for the court to consider the remaining equitable cause of action for promissory estoppel. At the conclusion of County's case, County renewed its motion for a directed verdict. The parties requested additional time to submit written briefs regarding the remaining legal issues, and the court took the matter under advisement.

After reviewing the memoranda, exhibits, and relevant case law, the court finds in favor of County.

FINDINGS OF FACT

In 2005, Quincy Jones began negotiations with Hampton County to relocate his business Company Two to Hampton County. On October 12, 2005, the Executive Director of the Hampton County Economic Development Commission, Jim Daniel, wrote to Mr. Jones regarding the company's relocation. The letter states, 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 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 letter, Hampton County Council concurs with that request. [Plaintiff's Ex. 1]

This lawsuit centers around the meaning of the October 2005 letter. Company Two contends this was an unambiguous promise to give Company Two a perpetual right to use the entire airport property to test its Airport Rescue Firefighting vehicles. County argues the letter was an offer to grant Company Two an easement for a private taxiway from the Gemco property line to the airport runway, in exchange for County's commitment to swap a portion of the Gemco property adjacent to the airport with a comparable parcel of County-owned land adjacent to the Gemco property.

I find that the October 2005 letter was an offer to engage in a property swap with Company Two if it relocated the business to the Gemco property and to provide Company Two with a private taxiway from its property line to the airport runway. I further find that County made good on this offer by entering into a written agreement with Company Two in 2011 detailing the proposed property swap, construction of the taxiway, and grant of an easement to Company Two for the taxiway, and by executing and recording the appropriate documents in 2015 to conclude this agreement.

Company Two is in the business of refurbishing fire trucks so that they can be certified and sold as Airport Rescue Firefighting vehicles (ARFFs). Company Two needs to use the airport runway in order to perform the required speed testing for its ARFF trucks. Company Two, through its owner Quincy Jones, contends that he relocated his business to Hampton County based on the County's promise to allow him the use of the entire airport runway and property to test his trucks.

On October 17, 2005, Q & J Properties (also owned by Quincy Jones) purchased the former Gemco property in Hampton County, and Company Two began operating from that location. [Plaintiff's Ex. 3] In 2011, Hampton County Council introduced an ordinance to swap some property with Company Two, and to give Company Two an easement across County's property for a taxiway. First reading of the proposed ordinance took place at the February 22, 2011 County Council meeting [Def. Ex. 2], and second reading took place at the March 21, 2011 meeting. [Def. Ex. 3]. Third reading of the ordinance and a public hearing took place at the April 18, 2011 County Council meeting. [Def. Ex. 4]

The minutes of the April 18, 2011 Hampton County Council Meeting contain a Memo from Sandy Fowler, the Economic Development Director for Hampton County at the time. The Memo pertains to the Agenda item "Third Reading – Ordinance 2011-001," and states, "In 2005, Hampton County committed to providing a taxi way to Company Two if they would locate here. In addition, Hampton County asked Company Two to swap land parcels with them so that

Hampton could obtain land near the runway that is needed for FAA clearance. For various reasons, this transaction has never been done. **Company Two is asking that the promise be fulfilled, the land parcels swapped, and the taxiway be created.** Under the “Points to Consider” section, the memo further states, “Hampton County made this commitment in writing, and it needs to be honored. **Since the commitment is to build a taxi way to Company Two’s property line**, the land parcels need to be swapped before the taxi way is created. Council is being asked to approve an Ordinance to transfer a parcel to Company Two and receive a parcel from Company Two (sketch attached). The Hampton County Attorney, Company Two and their attorney have developed a detailed agreement to finalize this arrangement. Council is being presented with and asked to approve the agreement under a separate agenda item.” An attachment to the memo contains a plat showing the location of the proposed taxiway from the end of the runway nearest Company Two’s property to Company Two’s property line. [Def. Ex. 8] The ordinance received unanimous approval. [Def. Ex. 4, 7]. Nothing in the ordinance or in the minutes of the Council meetings refer to Company Two requesting use of the airport runway for the testing of its trucks, in the form of a lease, easement, license, or any other “right to use.”

On June 23, 2011, Company Two and County entered into an Agreement to swap the properties, and for County **“to construct a taxiway for access by Company Two to the paved runway.”** [Def. Ex. 12]. Paragraph 5 of the Agreement obligates County to **“clear, rough grade and initially grass a taxiway from Parcel B to the paved runway** of the Hampton County Airport, and shall grant Company Two an easement in gross of a commercial nature **for the sole and exclusive use of the taxiway** by Company Two and its heirs, successors, and assigns.” Paragraph 11 states, “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.” No mention is made in the Agreement for an easement, lease, license, or any use of the airport runway or property other than the proposed taxiway.

In 2015, the respective deeds were recorded to execute the property swap. [Def. Ex. 13 and 14]. In addition, an Easement Agreement was executed in December of 2014 and recorded in March of 2015. [Def. Ex. 15] This Easement Agreement gives Company Two “an easement in gross of a commercial character for the purpose of vehicular and airplane access to and from the Hampton County Airport runway from the Grantee property.”

County Administrator Sabrina Posey Graham testified she became aware that Company Two was using the airport runway to test its ARFF vehicles in 2015 when she received reports from a pilot of fire-suppressing foam on the runway. Shortly thereafter she instructed Company Two to keep the ARFF vehicles off of the airport runway.

In October of 2015, Quincy Jones wrote to the Hampton County Airport Commission requesting that Company Two be allowed continued use of the runway. In this letter he states “the big reason we (Co2 Fire) chose the property adjacent to the county airport was twofold, (1) having direct access to the airport itself & (2) the willingness of Hampton County officials to help us grow as a company in any way they could as the governing body of the airport. . . Up until recently, Hampton County Admin has cooperated with us in any way they could. Recently, Rose asked us to stay clear of the runways & we have done so but now this request is starting to increase our production costs dramatically . . . **When Co2 Fire agreed to purchase this**

property, the sale was contingent upon several conditions, one of which was that Hampton County would build us a grassed taxiway to the runway itself (they agreed & did so). Co2 Fire has used and maintained it since day one without incident.” [Def. Ex. 20]

Jones wrote a subsequent letter to the Commission in February of 2016 again requesting that Company Two be allowed continued use of the runway and addressing Commission members’ concerns. [Def. Ex. 19] In the letter, Jones offers to pay for the use of the runway for testing the ARFF vehicles. At no time in either the 2015 or 2016 letter does Jones complain that he was promised perpetual use of the runway as an incentive to Company Two in Hampton County. Jones’ request was ultimately denied by both the Airport Commission and the County Administrator, citing concerns with allowing these large vehicles to operate on an active runway. [Def. Ex. 21 & 22].

PROMISSORY ESTOPPEL

Promissory estoppel is a “quasi-contract” remedy. Higgins Constr. Co. v. S. Bell Tel. & Tel. Co., 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981). Courts have used the doctrine where the refusal to apply it “would be virtually to sanction the perpetration of a fraud or would result in other injustice.” Satcher v. Satcher, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct. App. 2002). To prevail in a cause of action for promissory estoppel, Plaintiff must prove (1) a promise unambiguous in its terms, (2) reasonable reliance upon the promise, (3) the reliance is expected and foreseeable, and (4) the party to whom the promise is made sustains injury in reliance on the promise. North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 241 (2015).

Based on the language of the 2005 letter, the language of the proposed Ordinance and accompanying documents, the documents executed in 2015, and in Jones’ own letters to the Airport Commission, I find that the language of the 2005 letter was a promise to give Company Two exactly what the County ultimately provided - a grassed taxiway for Company Two’s private use from his property line to the airport runway. When either of the parties refer to the commitments made in the 2005 letter, they uniformly refer only to the County’s promise to construct a grassed taxiway. No reference is made in the 2005 letter, in the minutes of any County Council meeting, in the proposal to County Council submitted by Economic Development Director Sandra Steele-Fowler, or in Company Two’s own correspondence to the Airport Commission to any promise to allow Company Two to use the runway or other airport property for business purposes to test his ARFF vehicles. The very language of the offer of a “private taxiway right to use” contradicts Company Two’s assertion that it covered the entire runway. If the right encompasses the entire public airport runway, then it cannot also be a “private taxiway” in any sense.

Assuming *arguendo* that the County had made such a promise in the 2005 letter (although this court specifically finds that the evidence does not support this notion) any agreement to provide a permanent easement, license, or permanent “right to use” for the airport runway should have been included in the 2011 written agreement. The 2011 agreement sets forth the parties’ respective obligations regarding the property, and contains language that the

contract contains the entire understanding between the parties, and cannot be modified or amended except by a written instrument. Any promise made prior to this comprehensive written agreement, yet inexplicably not included in the agreement, cannot form the basis of a claim for promissory estoppel.

The South Carolina Supreme Court reached a similar result in North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 769 S.E.2d 237 (2015). North American Rescue Products (NARP) brought a declaratory judgment action to determine whether Richardson had the right to purchase NARP's stock at a discounted price, despite the existence of a termination agreement which purported to end the parties' relationship. The court found the trial court erred in denying NARP's motion for directed verdict as to Richardson's promissory estoppel claim, holding that the Termination Agreement severed any agreements between the parties. The Termination Agreement thus precluded any promissory estoppel claim that could have arisen between the parties before its execution. Similarly, in this case the parties executed the 2011 Agreement memorializing their understanding, which states it is the entire agreement. Any promises made prior to the written agreement, but not included in the 2011 written agreement, cannot form the basis of any promissory estoppel claim.

In addition, I find that any promise made by the Economic Development Director without the formal approval of County Council cannot form the basis of a promissory estoppel claim. Public hearings, after reasonable public notice, must be held before final council action is taken to sell, lease, or contract to sell or lease property owned by the county. S.C. Code Ann. § 4-9-130(6). Company Two claims a permanent right to use the public airport runway to conduct his private business, including speed-testing his ARFF vehicles on the runway. Company Two offered the testimony of Jim Daniel and former County Councilman Willard Wilson, who testified that Company Two's use of the airport runway to test his firetrucks was discussed and approved during an Executive Session of County Council in 2005, and that Council approved Company Two's use of the runway for this purpose in Executive Session. I find that Hampton County could not permanently burden public lands by giving Company Two a right to use the airport runway for its private business in perpetuity, without a full public hearing. See Davis v. Greenwood School Dist., 365 S.C. 629, 620 S.E.2d 65 (2005) (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.).

I find that the October 2005 letter was, in essence, an offer to agree in the future. It lacks the material terms of the agreement, such as exactly which parcels of property would be swapped. It refers to unspecified improvements to the airport in the future with the only time frame for those improvements being "as soon as possible." Most notably, if the court were to adopt Company Two's reasoning, then the commitment to give Company Two a "private taxiway right to use" the entire airport runway lacks a duration. In the absence of a duration, Company Two is asking the Court to assume the right continues upon public lands in perpetuity. An agreement which leaves open material terms is unenforceable. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d 696 (2014). To be binding, material terms cannot be left for future agreement. Id.

For the above reasons, the Court finds in favor of the Defendant.

IT IS SO ORDERED.

October 7, 2021

Sumter, SC

Kristi Curtis, Circuit Court Judge



Hampton Common Pleas

Case Caption: Q & J Properties LLC , plaintiff, et al VS Hampton County

Case Number: 2017CP2500170

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-10-08 11:22:18 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 17-CP-25-00170
Q & J Properties, LLC dba Company	)	
Two Fire Apparatus aka Company Two,	)	
	)	
Plaintiff(s),	)	
	)	CONSENT ORDER TO AMEND
vs.	)	SUMMONS AND COMPLAINT
	)	
Hampton County,	)	
	)	
Defendant(s).	)	
	)	

It appears Plaintiff filed a Summons and Complaint in the above entitled action on April 28, 2017. It now appears Plaintiff would like to amend his Summons and Complaint dated April 26, 2017 and filed April 28, 2017 to correct Plaintiff's name to "The Station, Inc. dba Company Two, Inc.". It further appears all parties in the above entitled action consent to allow Plaintiff to amend his Summons and Complaint to accomplish this.

It further appears that no parties will be prejudiced by the amendments.

IT IS THEREFORE ORDERED that Plaintiff shall be and is hereby allowed to amend its Summons and Complaint in this regard.

AND IT IS SO ORDERED.

Honorable Perry M. Buckner, III
Fourteenth Judicial Circuit

January _____, 2018
_____, South Carolina

SEE ATTACHED CONSENT SIGNATURE PAGE

RE: Q & J Properties, LLC dba Company Two Fire Apparatus aka Company Two vs.
Hampton County
Case No.: 2017-CP-25-00170

CONSENT ORDER TO AMEND SUMMONS AND COMPLAINT

I SO MOVE AND CONSENT:

s/J. Christopher Wilson
J. Christopher Wilson
Attorney for Plaintiff

I CONSENT:

s/Richard B. Ness (by JCW with consent on the record/depo)
Richard B. Ness, Esquire
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	
	)	CASE NO.: 2017-CP-25-00170
The Station, Inc. dba Company Two, Inc.,	)	
	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
Plaintiff,	)	
	)	
vs.	)	
	)	
Hampton County,	)	
	)	
Defendant.	)	

THIS MATTER came before this Court on June 25, 2018 in the Hampton County Courthouse on Defendant Hampton County's Motion for Summary Judgment. Present at the hearing were J. Christopher Wilson and Julia M. Flumian, attorneys for Plaintiff, and Richard B. Ness and Aaron Ness, attorneys for Defendant.

After reviewing the file, the Memorandum of Plaintiff, the Memorandum of Defendant submitted after the hearing, the submissions of the parties including the Affidavit of Quincy Jones and the Affidavit of Aline Newton, and hearing the arguments of counsel, this Court finds that there exist issues of material fact which would require the submission to a jury and that Defendant is not entitled to judgment as to matter of law at this stage of the proceedings. Accordingly, for the reasons set forth below, the Defendant's Motion is respectfully **DENIED**.

DISCUSSION

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334 S.E.2d 485 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable

to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). Furthermore, the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004).

Hampton County's Summary Judgment motion lists eight (8) grounds upon which it requests this Court grant summary judgment. However, at the hearing, Defendant only argued that there was no written agreement (Statute of Frauds) and S.C. Code Section §55-13-40 (Illegality). In denying this Motion for Summary Judgment, however, the Court has considered all grounds set forth in Defendant's Motion and the Memorandum submitted after the hearing.

I. Breach of Contract

Breach of contract requires proof of (1) the existence of a binding contract, (2) breach of the contract or unjustifiable failure of the breaching party to perform, and (3) damages resulting from breach. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). This Court finds no evidence in the record before me of a written contract. However, considering the evidence submitted, and all reasonable inferences drawn therefrom, in the light most favorable to Plaintiff, there exists a genuine issue of material fact as to whether the parties entered into an oral contract, later allegedly breached by Defendant to Plaintiff's harm, and therefore, summary judgment is improper.

Quincey Jones' affidavit alleges an oral agreement whereby Hampton County agreed for the Plaintiff to have access to the runway for its ARFF trucks.

The Plaintiff alleges, that prior to 2005, Plaintiff was operating a business in Atlanta, Georgia and engaged in remanufacture of firetrucks, including some ARFF (Airport Rescue and Firefighting) trucks. Quincey Adams's affidavit evidences an oral agreement whereby Hampton County agreed for the Plaintiff to have access to the runway for its ARFF trucks in exchange for Plaintiffs' relocation to Hampton County and that Plaintiff would perform FOD (foreign object debris) cleanup at the airport on the runway and surrounding areas of the runway.

In reliance on the agreement of the parties and the promises of Defendant, Plaintiff claims to have moved its operations to Hampton County, where it invested allegedly significant monies in a building located next to the Hampton-Varnville airport, entered into contracts, expended monies seeking contracts to remanufacture firetrucks, and took other actions in connection with the business in reliance on its ability to use the airport runway to test trucks. The Plaintiff began remanufacturing and restoring ARFF trucks at the Hampton County facility. ARFF trucks are unique because they cannot be driven on a highway due to their weight, size, and lack of highway safety features. ARFF trucks are predominately reserved for large airports and have certain requirements, per industry standards, that must be met to be marketable for use at large airports. The Plaintiff allegedly used the runway from 2005 to 2015 (ten years) to test their ARFF trucks, until the Defendant terminated the use of the runway. Furthermore, in 2011, Q&J Properties, the company from which Plaintiff leases the building in which it operates, allegedly engaged in a land swap/easement exchange with Hampton County. The Plaintiff contends this had been discussed during the Plaintiff and Defendant's 2005 agreement, and was something Hampton County had desired as necessary to improve its airport. The land swap/easement exchange was finalized in late 2014 and early 2015.

According to the deposition testimony of Rose Elliot, Hampton County Administrator, who was hired in early 2015, she notified Quincy Jones in March 2015 that Plaintiff would no longer be allowed to test trucks on the airport runway. In addition to other damages and losses, Plaintiff claims it lost a

potential multimillion-dollar contract, upon which it had spent monies in pursuit, lost monies it invested in pursuing this contract, and lost monies invested in its business when Rose Elliott denied access to the runway for testing. The Plaintiff further contends that former county administrator Sabrina Graham was authorized to allow third parties such as the Economic Development Council to act as her agent. S.C. Code Ann. §4-9-630.

Considering the evidence submitted, and all reasonable inferences drawn therefrom, in the light most favorable to Plaintiff, there exists a genuine issue of material fact as to whether the parties entered into a contract, later breached by Defendant to Plaintiff's harm, and therefore, summary judgment is improper at this time.

II. Detrimental Reliance/Promissory Estoppel

Plaintiff has also brought claims for Detrimental Reliance/Promissory Estoppel which requires (1) the presence of an unambiguous promise, (2) reasonable reliance on the promise by the party to whom the promise is made, (3) the reliance is reasonable and foreseeable, and (4) damage resulting from reliance on the promise. Higgins Constr. Co. v. S. Bell Telephone Co., 276 S.C. 663, 281 S.E.2d 469 (1981). For the reasons stated above, a genuine issue of material fact exists on this issue. Considering the evidence and inferences in the light most favorable to Plaintiff, there is a genuine issue of material fact whether Defendant made a promise to Plaintiff for its use of the airport runway to test trucks, whether Plaintiff relied upon the promise, whether its reliance was reasonable and foreseeable, and whether Plaintiff suffered damage as a result of its reliance. Summary judgment is therefore improper, and the Defendant's Motion is respectfully **DENIED**.

III. Specific Performance

Plaintiff has also brought claims for Specific Performance, for which the central issue will be whether the parties had a binding, valid contract between them. 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 in 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 Associates, 340 S.C. 98, 531 S.E.2d 287 (2000). For the reasons stated above, a genuine issue of material fact exists on this issue, and summary judgment is improper at this time.

IV. Statute of Frauds

Defendant argued that there was no written agreement, and therefore, the Statute of Frauds is grounds for summary judgment. However, there are exceptions to the Statute of Frauds. “An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other.” Graham v. Prince, 293 S.C. 77, 81, 358 S.E.2d 714, 717 (Ct. App. 1987). Where the parties fully perform the contract, the Statute of Frauds no longer applies. *See* DeWitt v. Kelly, 256 S.C. 224, 182 S.E.2d 65 (1971). Further, the Statute may not apply where there has been partial performance. Settlemyer v. McCluney, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004). Factors such as possession of the land, payments made, and improvements undertaken are considered in determining the sufficiency of partial performance. Stackhouse v. Cook, 271 S.C. 518, 248 S.E.2d 482 (1978). In addition, the Easement Resolution, Easement Agreement, and Deeds that Defendant cites language from as precluding Plaintiff’s claims are between Defendant and a third-party (Q&J Properties) and not the parties to this case. Genuine issues of material fact exist on all of these issues, and therefore granting summary judgment would be improper at this time.

V. Applicability of §§ 4-9-130(6) and 55-13-40

Defendant argues in its memorandum provided after the hearing that pursuant to § 4-9-130(6) the county could only grant an “interest or usage of the airport runway for fire truck testing” by ordinance. The Plaintiff argues that this statute is inapplicable given the particulars of the contract at issue.

Specifically, that the Plaintiff has not alleged it contracted to sell or lease the runway. Rather, Plaintiff's contract claim includes a bargain for exchange in the form of ongoing FOD cleanup by Plaintiff for access to the runway for the purpose of testing fire trucks. In viewing this issues in the light most favorable to the non-moving party, as is the standard at this stage, there are issues of material fact as to the issue of §4-9-130(6).

Defendant also cited and argued S.C. Code Section § 55-13-40 which prevents trespassing, parking, driving or drag racing on an airport runway as a basis for summary judgement. Defendant argued that Section §55-13-40 made any agreement between Plaintiff and Defendant illegal, and thus, unenforceable. However, Section §55-13-40 (1) provides that it is unlawful to park, drive or drag race on an airport runway "without proper authority." Plaintiff contends that per the deposition testimony of Rose Elliott (Hampton County Administrator) submitted by Plaintiff, Hampton County has authority concerning the Airport and its use. (Elliott Depo. Pg. 52-53). Plaintiff alleges that Hampton County appears to have the power to authorize the use by the Plaintiff for it to speed test fire trucks. A dispute of material fact exists on this issue, and summary judgment would not be appropriate at this time.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is respectfully **DENIED**.

Perry M. Buckner III
Fourteenth Judicial Circuit

Walterboro, S.C.
July __, 2018.



Hampton Common Pleas

Case Caption: Q & J Properties LLC , plaintiff, et al VS Hampton County

Case Number: 2017CP2500170

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	
	)	CASE NO.: 2017-CP-25-00170
The Station, Inc. dba Company Two, Inc.,	)	
	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR RECONSIDERATION OF
Plaintiff,	)	THE ORDER DENYING SUMMARY JUDGMENT
	)	
vs.	)	
	)	
Hampton County,	)	
	)	
<u>Defendant.</u>	)	

THIS MATTER came before the Court on June 25, 2018 for hearing on Defendant Hampton County's Motion for Summary Judgment. By Order filed July 10, 2018, this Court denied the Motion for Summary Judgment. Defendant timely filed the Motion for Reconsideration of the Order Denying Summary Judgment on July 20, 2018 with the Hampton County Clerk of Court's Office. For the reasons set forth herein, in addition to those reasons set forth in the Order filed July 10, 2018, the Court denies the Motion for Reconsideration.

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334 S.E.2d 485 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). Even

when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). Furthermore, the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004).

Hampton County's Summary Judgment Motion filed May 4, 2018 listed eight (8) grounds for seeking summary judgment. At the Motion hearing, Defendant only argued two of those grounds - that there was no written agreement (Statute of Frauds) and S.C. Code Section §55-13-40 (Illegality). After the hearing, Defendant submitted a Memorandum of Law In Support of Summary Judgment that for the first time asserted that S.C. Section 4-9-130(6) entitled it to summary judgment. In denying the Motion for Summary Judgment, this Court considered all grounds set forth in Defendant's Motion and the Memorandum submitted after the hearing.

In its Motion for Reconsideration, Defendant focuses on its argument concerning S.C. Code Section 4-9-130(6)(emphasis added), which provides that:

“Public hearings, after reasonable public notice, must be held before final council action is taken to:

- (1) adopt annual operational and capital budgets;
- (2) make appropriations, including supplemental appropriations;
- (3) adopt building, housing, electrical, plumbing, gas and all other regulatory codes involving penalties;
- (4) adopt zoning and subdivision regulations;
- (5) levy taxes;
- (6) **sell, lease or contract to sell or lease real property owned by the county.**

Defendant asserts that without three readings (as required pursuant to S.C. Code § 4-9-120), a public hearing and the passing of an ordinance, Hampton County, and any of its agents or officers, could not authorize, promise or contract for Plaintiff's use of the airport runway to test ARFF trucks. Defendant further asserts that, without full compliance with S.C. Code Section 4-9-130, Defendant's agents - i.e. Former Hampton County Administrator Sabrina Graham and Former Hampton County Economic

Development Director Jim Daniels - did not have authority to bind Hampton County in regard to Plaintiff's use of the runway or to contract for, promise or authorize such use.

While these arguments by Defendant may have merit if any arrangement between Plaintiff and Defendant involves the County's attempt to "sell, lease or contract to sell or lease real property owned by the county," a genuine issue of material fact exists as to the exact nature of any arrangement between Plaintiff and Defendant concerning Plaintiff's use of the runway. See, e.g. Prestwick Golf Club Inc. v. Prestwick Ltd. Partnership, 331 S. C. 385, 503 S. E.2d 184 (Ct. App. 1998). A lease is "a contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usually rent." Black's Law Dictionary (2nd ed. 2001). A lease generally encompasses exclusive use and occupancy of property by the Lessee rather than a brief utilization of the property. Plaintiff does not contend that it contracted to buy or lease the runway, or that it had an exclusive right to use or occupy the runway, but rather, the Plaintiff contends it was granted use of the runway under the promise and authorization of Defendant - under a promise and authorization of Defendant supporting an estoppel claim, or in exchange for FOD cleanup by Plaintiff supporting a breach of contract claim. The issue of whether Plaintiff's access to the runway amounted to a "lease" or other right in the property that would implicate § 4-9-130 is a genuine issue of material fact, and would therefore be appropriate for jury determination. "If the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to a jury." See, e.g., Armstrong v. Collins, 366 S.C. 204, 222, 621 S.E.2d 368, 376 (Ct. App 2005).

Furthermore, considering that a genuine issue of material fact exists as to the exact nature of Plaintiff's claimed arrangement to use the airport runway, and whether or not § 4-9-130 is implicated, there would also exist a genuine issue of material fact as to whether the former Hampton County officials could promise, authorize and contract for Plaintiff's mere use of the runway. The Hampton County Administrator and other authorized officials would have authority, absent statutory prohibitions like § 4-

9-130 or other prohibitions, to contract on behalf of Hampton County concerning the airport runway or authorize its use. *see, e.g.*, S.C. Code Section 4-9-630. Plaintiff contends that his agreement with Defendant for use of the runway and authorization for use of the runway was negotiated in 2005 with the former Hampton County Administrator and former Hampton County Economic Development Director. There exists a genuine issue of material fact concerning the authority of Defendant's former Administrator and Economic Development Director to contract for and authorize use of the runway, and therefore, summary judgment would be inappropriate.

Finally, Defendant has asserted that there is no genuine issue of fact as to whether Plaintiff could justifiably rely upon any promise, contract or authorization from Defendant, or its agents and officers, to use the airport runway to test ARFF trucks. This argument likewise hinges on the determination of the exact nature of Plaintiff's claimed arrangement with Defendant for use of the runway, and whether § 4-9-130 is even implicated. Considering the genuine issues of fact in those regards, there exists an issue of fact concerning the reasonableness of Plaintiff's reliance on any promise, statement or authorization by Defendant concerning use of the runway. Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013).

Considering the disputed facts and all inferences or conclusions that can be drawn from those facts in the light most favorable to Plaintiff, this Court respectfully **DENIES** Defendant's Motion for Reconsideration pursuant to Rule 59(e), SCRCP.

CONCLUSION

IT IS ORDERED Defendant's Motion for Reconsideration is respectfully **DENIED**.

_____, SC
August ___, 2018

Perry M. Buckner III
14th Judicial Circuit Court of Common Pleas



Hampton Common Pleas

Case Caption: Q & J Properties LLC , plaintiff, et al VS Hampton County

Case Number: 2017CP2500170

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-08-09 14:18:47 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Hampton
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2500170

Q & J Properties LLC et al
PLAINTIFF(S)

Hampton County
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

CASE SETTLED PER STATEMENTS OF CHRIS WILSON AND RICHARD NESS ON THE RECORD.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/29/2019 .

Company Two
Company Two Fire Apparatus

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Hampton Common Pleas

Case Caption: Q & J Properties LLC , plaintiff, et al VS Hampton County

Case Number: 2017CP2500170

Type: Order/Electronic Form 4

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2019-08-29 10:55:54 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	Case No.: 2017-CP-25-00170
	)	
The Station, Inc. dba	)	
Company Two, Inc.,	)	
	)	CONSENT ORDER
Plaintiff,	)	
	)	
-vs-	)	
	)	
Hampton County,	)	
	)	
Defendant.	)	

This matter came before the Court for a jury trial during the week of of August 26, 2019. At the call of the case, the parties reached a potential settlement, whose terms were subject to being approved and adopted by Hampton County Council by ordinance. Hampton County Council did not approve or adopt the terms of the settlement, and because of such, the settlement was not consummated and the prior Order dismissing this case is vacated and the case needs to be restored to the jury roster for trial. Both parties consent below.

IT IS THEREFORE ORDERED that this case shall be and is hereby restored to the jury trial roster and the Clerk shall place the case first for trial on the March 30, 2020 roster for trial.

AND IT IS SO ORDERED.

Honorable Deadra L. Jefferson
Circuit Court Judge
Chief Administrative Judge 14th Judicial Circuit

_____, SC

_____, 2020

WE CONSENT

s/ J. Christopher Wilson

J. Christopher Wilson, SC Bar No.: 06987

Wilson & Luginbill, LLC

P. O. Box 1150

Bamberg, SC 29003

Telephone: (803) 245-7799

Fax: (803)245-0037

chris@w-llawfirm.com

Attorney for Plaintiff

WE CONSENT:

s/R. Aaron Ness (by JCW with permission)

Richard B. Ness, SC Bar No.: 4191

R. Aaron Ness, SC Bar No.: 102331

Ness & Jett, LLC

P. O. Box 909

Bamberg, SC 29003

Telephone: (803) 245-5178

Fax: (803) 245-5384

RBNSecretary@gmail.com

Attorney for Defendant



Hampton Common Pleas

Case Caption: Q & J Properties LLC , plaintiff, et al VS Hampton County

Case Number: 2017CP2500170

Type: Order/Restore Case To Active Docket

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-02-21 11:53:58 page 3 of 3

Subject: FW: rulings

Date: Tuesday, May 25, 2021 at 9:34:46 AM Eastern Daylight Time

From: Curtis, Kristi F. <kcurtisj@sccourts.org>

To: J. Christopher Wilson <chris@wilsonlawgroupsc.com>

I'm sorry, this did not go through last night. Looks like I got your email address wrong.

From: Curtis, Kristi F.

Sent: Monday, May 24, 2021 4:48 PM

To: 'chrish@wilsonlawgroupsc.com' <chrish@wilsonlawgroupsc.com>; 'raaronness@gmail.com' <raaronness@gmail.com>; 'RichardBNess@gmail.com' <RichardBNess@gmail.com>; 'NormaJett@gmail.com' <NormaJett@gmail.com>

Cc: Curtis, Kristi F. Law Clerk (Kimberly Land) <kcurtislc@sccourts.org>

Subject: rulings

Dear all:

After review and reflection, Defendant's motion for summary judgment is denied. I find there are genuine issues of material fact as to the scope of the 2011 and 2015 agreements, which by their terms refer only to the property swap.

Plaintiff's motion in limine to exclude testimony and/or argument that the right to use the airport runway required a county council ordinance is GRANTED. Section 4-9-130(6) requires council to pass an ordinance for the sale or lease of property. The 2005 letter refers only to a "private taxiway right to use" which was apparently (by the terms of the letter) explicitly approved by council.

Thank you all for being so thoroughly prepared this morning.

Kristi Curtis

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) |                              |
| COUNTY OF HAMPTON              | ) | Case No.: 2016-CP-25-_____   |
| Q&J Properties, LLC dba        | ) |                              |
| Company Two Fire Apparatus aka | ) |                              |
| Company Two,                   | ) |                              |
|                                | ) |                              |
| Plaintiff,                     | ) |                              |
|                                | ) |                              |
| -vs-                           | ) | <b>COMPLAINT</b>             |
|                                | ) | (Jury Trial Demanded)        |
| Hampton County,                | ) |                              |
|                                | ) |                              |
| Defendant.                     | ) |                              |

TO THE DEFENDANT ABOVE NAMED

Now comes Plaintiff complaining of Defendant herein who would allege and state as follows:

1. Plaintiff (hereinafter "Company Two") is a corporation organized and existing under the laws of Georgia with offices and agents to transact business in Hampton County, South Carolina, and entering into contracts in Hampton County, South Carolina, and owning property in Hampton County, South Carolina.
2. Upon information and belief, Defendant Hampton County (hereinafter "Hampton County") is, and was at all relevant times herein, a political subdivision existing in South Carolina and under the laws of South Carolina with all authority and obligations as provided for by law.
3. This Court has jurisdiction over the parties and subject matter of this action.
4. That venue is proper in Hampton County, South Carolina.
5. On or about 2005, Plaintiff was investigating and searching for property located near an airport for location of its Airport Rescue Fire Fighting (ARFF) remanufacturing

business. Operation of this ARRF remanufacturing business requires Plaintiff to road test/speed test ARFF trucks to meet certain industry standards.

6. In 2005, Plaintiff and Hampton County entered into a contract/agreement wherein Plaintiff agreed to locate its business in Hampton County near the Hampton-Varnville airport and Defendant Hampton County agreed to allow Plaintiff access to and use of the airport runway to test its ARFF trucks. In addition, Defendant Hampton County agreed to provide Plaintiff a private taxiway from its property to the airport runway and indicated its desire to obtain ownership of properties owned by Plaintiff for improvements at the airport.

7. In 2005, Plaintiff located its business at the Hampton County site and began investing monies at the site, employing persons, paying taxes, and other actions all in connection with its remanufacturing business and its testing ARFF trucks on the airport runway.

8. Defendant Hampton County was aware that Plaintiff was testing ARFF trucks on the airport runway.

9. Plaintiff and Defendant Hampton County continued discussions about Hampton County's desire for ownership of a portion of property owned by Plaintiff.

10. In 2011, Plaintiff and Hampton County entered into an additional agreement for a real property exchange, whereby Hampton County provided approximately 3.00 acres to Plaintiff in exchange for approximately 1.76 acres; furthermore, Hampton County agreed to construct a taxiway across the property Hampton County was obtaining and grant Plaintiff an easement for access to the airport runway for its testing procedures.

11. Plaintiff continued testing of its ARFF trucks on the airport runway with Hampton County's knowledge and pursuant to its contractual agreement with Hampton County until October 2015, when Plaintiff was instructed by Hampton County Administrator Rose Dobson-Elliott to cease from using the runway for its testing.

12. Plaintiff has attempted to mitigate its damages and attempted to remedy with Defendant Hampton County its renewed use of the airport runway for testing, but Hampton County has refused to allow or provide use of the airport runway and has prevented Plaintiff's use of the airport runway.

13. As a result of the actions and inactions of Defendant Hampton County, Plaintiff has been harmed and damaged, has suffered economic loss, and other losses, and believes it is entitled to an award of damages and other relief against Defendant.

FOR A FIRST CAUSE OF ACTION (BREACH OF CONTRACT)

14. Plaintiff repeats and reiterates the above allegations not inconsistent herewith as if repeated verbatim.

15. Plaintiff and Defendant entered into a contractual agreement whereby each had certain rights and obligations and made certain agreements, including but not limited to Defendant Hampton County's promise and agreement for Plaintiff's use of the airport runway for its ARFF truck testing.

16. Plaintiff and Defendant entered into a valid, binding contract.

17. Defendant has breached said contract by not allowing Plaintiff use of the airport runway for its ARFF truck testing and preventing such use.

18. As a direct result, Plaintiff has been harmed and damaged and believes it is entitled to an award of actual damages.



## FOR A SECOND CAUSE OF ACTION (PROMISSORY ESTOPPEL)

19. Plaintiff repeats and reiterates the above allegations not inconsistent herewith as if repeated verbatim.
20. In connection with this matter, Defendant Hampton County made an unambiguous promise to allow Plaintiff use of the airport runway for its ARFF truck testing, and Defendant Hampton County allowed Plaintiff to make use of the airport runway for such purposes from 2005 until October 2015.
21. Plaintiff relied upon said promise of Hampton County to its detriment.
22. In reasonable reliance on said promise, Plaintiff has invested monies in its business, engaged in a property exchange with Defendant Hampton County, and taken numerous other actions or has foreborn taking other actions.
23. Plaintiff's reliance on the promise of Defendant Hampton County is reasonable and expected and foreseeable to Defendant Hampton County.
24. In reliance on the promise of Hampton County, Plaintiff has sustained substantial, economic loss that is or was foreseeable to Hampton County.
25. Plaintiff is informed and believes it is entitled to an award of actual damages.

## FOR A THIRD CAUSE OF ACTION (SPECIFIC PERFORMANCE)

26. Plaintiff repeats and reiterates the above allegations not inconsistent herewith as if repeated verbatim.
27. Plaintiff and Defendant entered into a valid, binding contract that provided for Plaintiff's use of the airport runway for ARFF truck testing.
28. Defendant has breached the contract and continues to do so, resulting in specific, unique harm to Plaintiff, and for which no adequate remedy at law exists.

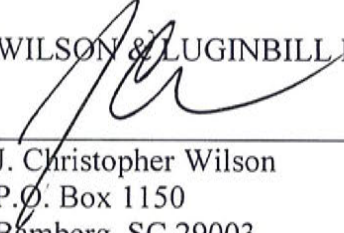
29. Specific performance of the contract between Plaintiff and Defendant is equitable.
30. The contract between Plaintiff and Defendant is not the result of fraud, mistake or accident.
31. Plaintiff is informed and believes it is entitled to an Order of the Court enforcing the terms of the contract and requiring Defendant Hampton County to allow for and provide Plaintiff access for use of the airport runway for ARFF truck testing.

WHEREFORE, Plaintiff prays for judgment for actual damages in an amount to be determined by the triers of the facts, for specific performance, plus the costs and disbursements of this action and such other relief as the Court deems just and proper.

April 26, 2017

Bamberg, South Carolina

WILSON & LUGINBILL LLC

  
\_\_\_\_\_  
J. Christopher Wilson  
P.O. Box 1150  
Bamberg, SC 29003  
(803) 245-7799  
(803) 245-0037



Hampton Common Pleas

**Case Caption:** Q&J Properties, Llc DbA Company Two Fire Apparatus , plaintiff, et al  
VS Hampton County  
**Case Number:** 2017CP2500170  
**Type:** Order/Amend

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-01-30 09:10:40 page 3 of 3

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|                         | ) |                              |
| COUNTY OF HAMPTON       | ) | Case No.: 2017-CP-25-00170   |
|                         | ) |                              |
| The Station, Inc. dba   | ) |                              |
| Company Two, Inc.,      | ) |                              |
|                         | ) |                              |
| Plaintiff,              | ) |                              |
|                         | ) |                              |
| -vs-                    | ) |                              |
|                         | ) |                              |
| Hampton County,         | ) |                              |
|                         | ) |                              |
| Defendant.              | ) |                              |

**AMENDED  
COMPLAINT**  
(Jury Trial Demanded)

TO THE DEFENDANT ABOVE NAMED

Now comes Plaintiff complaining of Defendant herein who would allege and state as follows:

1. Plaintiff (hereinafter "Company Two") is a corporation organized and existing under the laws of Georgia with offices and agents to transact business in Hampton County, South Carolina, and entering into contracts in Hampton County, South Carolina, and owning property in Hampton County, South Carolina.
2. Upon information and belief, Defendant Hampton County (hereinafter "Hampton County") is, and was at all relevant times herein, a political subdivision existing in South Carolina and under the laws of South Carolina with all authority and obligations as provided for by law.
3. This Court has jurisdiction over the parties and subject matter of this action.
4. That venue is proper in Hampton County, South Carolina.
5. On or about 2005, Plaintiff was investigating and searching for property located near an airport for location of its Airport Rescue Fire Fighting (ARFF) remanufacturing

business. Operation of this ARRF remanufacturing business requires Plaintiff to road test/speed test ARRF trucks to meet certain industry standards.

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7. In 2005, Plaintiff located its business at the Hampton County site and began investing monies at the site, employing persons, paying taxes, and other actions all in connection with its remanufacturing business and its testing ARRF trucks on the airport runway.

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10. In 2011, Plaintiff and Hampton County entered into an additional agreement for a real property exchange, whereby Hampton County provided approximately 3.00 acres to Plaintiff in exchange for approximately 1.76 acres; furthermore, Hampton County agreed to construct a taxiway across the property Hampton County was obtaining and grant Plaintiff an easement for access to the airport runway for its testing procedures.



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12. Plaintiff has attempted to mitigate its damages and attempted to remedy with Defendant Hampton County its renewed use of the airport runway for testing, but Hampton County has refused to allow or provide use of the airport runway and has prevented Plaintiff's use of the airport runway.

13. As a result of the actions and inactions of Defendant Hampton County, Plaintiff has been harmed and damaged, has suffered economic loss, and other losses, and believes it is entitled to an award of damages and other relief against Defendant.

FOR A FIRST CAUSE OF ACTION (BREACH OF CONTRACT)

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15. Plaintiff and Defendant entered into a contractual agreement whereby each had certain rights and obligations and made certain agreements, including but not limited to Defendant Hampton County's promise and agreement for Plaintiff's use of the airport runway for its ARFF truck testing.

16. Plaintiff and Defendant entered into a valid, binding contract.

17. Defendant has breached said contract by not allowing Plaintiff use of the airport runway for its ARFF truck testing and preventing such use.

18. As a direct result, Plaintiff has been harmed and damaged and believes it is entitled to an award of actual damage.

## FOR A SECOND CAUSE OF ACTION (PROMISSORY ESTOPPEL)

19. Plaintiff repeats and reiterates the above allegations not inconsistent herewith as if repeated verbatim.

20. In connection with this matter, Defendant Hampton County made an unambiguous promise to allow Plaintiff use of the airport runway for its ARFF truck testing, and Defendant Hampton County allowed Plaintiff to make use of the airport runway for such purposes from 2005 until October 2015.

21. Plaintiff relied upon said promise of Hampton County to its detriment.

22. In reasonable reliance on said promise, Plaintiff has invested monies in its business, engaged in a property exchange with Defendant Hampton County, and taken numerous other actions or has foreborn taking other actions.

23. Plaintiff's reliance on the promise of Defendant Hampton County is reasonable and expected and foreseeable to Defendant Hampton County.

24. In reliance on the promise of Hampton County, Plaintiff has sustained substantial, economic loss that is or was foreseeable to Hampton County.

25. Plaintiff is informed and believes it is entitled to an award of actual damages.

## FOR A THIRD CAUSE OF ACTION (SPECIFIC PERFORMANCE)

26. Plaintiff repeats and reiterates the above allegations not inconsistent herewith as if repeated verbatim.

27. Plaintiff and Defendant entered into a valid, binding contract that provided for Plaintiff's use of the airport runway for ARFF truck testing.

28. Defendant has breached the contract and continues to do so, resulting in specific, unique harm to Plaintiff, and for which no adequate remedy at law exists.

29. Specific performance of the contract between Plaintiff and Defendant is equitable.

30. The contract between Plaintiff and Defendant is not the result of fraud, mistake or accident.

31. Plaintiff is informed and believes it is entitled to an Order of the Court enforcing the terms of the contract and requiring Defendant Hampton County to allow for and provide Plaintiff access for use of the airport runway for ARFF truck testing.

WHEREFORE, Plaintiff prays for judgment for actual damages in an amount to be determined by the triers of the facts, for specific performance, plus the costs and disbursements of this action and such other relief as the Court deems just and proper.

WILSON & LUGINBILL, LLC

By: s/J. Christopher Wilson  
J. Christopher Wilson, SC Bar No.: 06987  
Wilson & Luginbill, LLC  
P. O. Box 1150  
Bamberg, SC 29003  
Telephone: (803) 245-7799  
Fax: (803)245-0037  
[chris@w-lawfirm.com](mailto:chris@w-lawfirm.com)  
Attorney for Plaintiff

February 27, 2018  
Bamberg, SC

|                                           |   |                                    |
|-------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS       |
|                                           | ) |                                    |
| COUNTY OF HAMPTON                         | ) | FOURTEENTH JUDICIAL CIRCUIT        |
|                                           | ) |                                    |
| The Station, Inc. d/b/a Company Two, Inc. | ) | Case No.: 2017-CP-25-170           |
|                                           | ) |                                    |
| PLAINTIFF,                                | ) |                                    |
|                                           | ) | <b>ANSWER TO AMENDED COMPLAINT</b> |
| v.                                        | ) | <b>WITH COUNTERCLAIM</b>           |
|                                           | ) |                                    |
| Hampton County,                           | ) |                                    |
|                                           | ) |                                    |
| DEFENDANT.                                | ) |                                    |
| _____                                     | ) |                                    |

The Defendant, Hampton County, by and through its undersigned attorneys, hereby answers Plaintiff's Amended Summons and Complaint, dated February 27, 2018, as follows and makes the following allegations by way of counterclaim.

**FOR A FIRST DEFENSE**

**(Responding specifically to the allegations of the Amended Complaint – Each Paragraph not hereafter admitted, denied, or explained is denied)**

1. Hampton County is without sufficient information to admit or deny Paragraph 1 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
2. Hampton County admits Paragraphs 2, 3, and 4 of the Complaint.
3. Hampton County is without sufficient information to admit or deny Paragraph 5 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
4. Hampton County denies Paragraph 6 in its entirety.
5. Hampton County is without sufficient information to admit or deny Paragraph 7 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
6. Hampton County denies Paragraph 8 in its entirety.

7. Hampton County Hampton County is without sufficient information to admit or deny Paragraph 9 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
8. Hampton County denies Paragraph 10 in its entirety.
9. Hampton County denies Paragraph 11 in its entirety.
10. Hampton County denies Paragraph 12 and demands strict proof thereof.
11. Hampton County denies Paragraph 13 in its entirety.
12. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 14 of the Complaint.
13. Hampton County denies Paragraphs 15, 16, 17, and 18.
14. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 19 of the Complaint.
15. Hampton County denies Paragraphs 20, 21, 22, 23, 24 and 25.
16. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 26 of the Complaint.
17. Hampton County denies Paragraphs 27, 28, and 29.
18. Hampton County is without sufficient information to admit or deny Paragraph 30; therefore, Hampton County denies the same and demands strict proof thereof. Hampton County also denies any valid contract with Plaintiff and asserts that any purported contract, which Plaintiff alleges entering into with Hampton County, was an illegal contract and not legitimately formed.
19. Hampton County denies Paragraph 31 in its entirety.

**FOR A SECOND DEFENSE**

(Illegal Contract)

(Violation of S.C. Code § 55-13-40)

20. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
21. Hampton County asserts that any contract theories of promissory estoppel or detrimental reliance alleged by Plaintiff in this Amended Complaint is a violation of public policy and is an illegal contract that violates S. C. Code Section 15-13-40 which explicitly provides that no vehicle may be driven on an airport runway. Plaintiff does not have the proper authority to drive, park, or use airport property, nor does defendant have the legal authority or right to allow plaintiff to drive, park, or use airport property for a private, for-profit use, nor in circumstances whereby hazards are created on airport runways, in any way. The use Plaintiff demands would constitute a misdemeanor that is punishable under the laws of the State of South Carolina, and Defendant, by acquiescence or permission, would also be committing a misdemeanor that is punishable under the laws of the state of South Carolina under the doctrine of *pari delicto*.

**FOR A THIRD DEFENSE**

(Airport Hazard and Public Nuisance)

(Violation of S.C. Code § 55-9-250)

22. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
23. Hampton County asserts that Plaintiff's current, previous, and existing use, if any, of the airport runway is an airport hazard that endangers the lives and property of users of its airport and occupants of land and other persons in its vicinity, and, in effect, reduces the

size of the area available for the safe landing, taking off, and maneuvering of aircraft, thus destroying or impairing the utility of the airport and the public investment in it.

24. Hampton County asserts that any airport hazard created by Plaintiff is a public nuisance, an injury to the community, and should be prevented, removed, and/or eliminated in the interest of the public health, safety, and general welfare, under the police powers of this Court.
25. Hampton County, pursuant to S.C. Code § 55-9-250(5), seeks recovery of costs against Plaintiff for creating and maintaining this hazard, including actual costs for in the removal or abatement of the hazard.

**FOR A FOURTH DEFENSE**

(Violation of S.C. Code § 55-9-30, et seq.)

26. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
27. Pursuant to S.C. Code § 55-9-40, Hampton County asserts that any lands owned, leased, controlled, or occupied by it must be used for the purpose or purposes enumerated in S.C. Code § 55-9-30, and declares that any lands owned, leased, controlled, or occupied by the airport are for public, governmental, and municipal purposes only, and not for private use by Plaintiff.
28. Defendant, Hampton County, is not aware of any public benefit Plaintiff can provide to the public in using the airport runway.
29. Hampton County asserts that any alleged lease allowing Plaintiff to use the airport for testing ARFF trucks violates S.C. Code § 55-9-190(3) and deprives the public of its rightful, equal, and uniform use to land, takeoff, and maneuver airplanes.

**FOR A FIFTH DEFENSE**  
(Statute of Frauds)

30. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim
31. Hampton County asserts that Plaintiff's claim(s) are barred in part and in whole by the statute of frauds.

**FOR A SIXTH DEFENSE**  
(*Ultra Vires* Act)

32. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
33. That any alleged contract or contractual theory of recovery prior to the filing of this action is the result of an Ultra Vires Act by uninformed parties without proper legal authority to bind Hampton County.

**FOR A SEVENTH DEFENSE**  
(SCRCP Rule 12(b)(6) – Failure to State a Cause of Action)

34. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
35. Hampton County asserts that Plaintiff's Amended Complaint has failed to state facts sufficient to constitute a cause of action against Defendant, and Plaintiff's Amended Complaint should be dismissed against Defendant pursuant to SCRCP Rule 12(b)(6).

**FOR AN EIGHTH DEFENSE**  
(Statute of Limitations)

36. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.



37. Hampton County asserts that Plaintiff's claim(s) are barred by the applicable Statute of Limitations.

**FOR A NINTH DEFENSE**  
(Laches)

38. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
39. Hampton County asserts that Plaintiff's claim(s) are barred by the equitable defense of Laches.

**FOR A TENTH DEFENSE**  
(Lack of Capacity to Sue)

40. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
41. Hampton County asserts that Plaintiff lacks the capacity to initiate and/or maintain a proceeding in any court in the State of South Carolina.

**FOR AN ELEVENTH DEFENSE**  
(Lack of Standing)

42. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
43. Hampton County asserts that Plaintiff lacks standing to bring this action.

**FOR A TWELFTH DEFENSE**  
(Lack of Privity of Contract)

44. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
45. Hampton County asserts that Plaintiff is not privy to any contracts entered into between Q&J Properties, LLC and Hampton County, and, therefore, lacks standing.

**FOR A THIRTEENTH DEFENSE  
AND BY WAY OF COUNTERCLAIM**  
(Nuisance Damage to Airport Property)

46. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
47. That any such use or damage to airport property as alleged in the Amended Complaint constitutes trespass to government property and deprivation of the public use of the airport, limits the availability of the airport for landing, taking off, and maneuvering the aircraft, and is a public nuisance. Defendant requests an Order directing the immediate cessation of any current or future use of airport runway by Plaintiff, and resulting damages from the nuisance, including actual costs and attorney's fees.

**FOR A FOURTEENTH DEFENSE  
AND BY WAY OF COUNTERCLAIM**  
(Injunctive Relief)

48. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
49. That any past, present, or future use of airport property for the testing or work by Plaintiff on fire trucks should be enjoined, permanently, as a public hazard and nuisance.

WHEREFORE, the defendant, Hampton County, requests the Court inquire into these matters, and issue its Order:

- a. Denying the relief requested by Plaintiff in its Amended Complaint;
- b. Dismissing Plaintiff's action, in its entirety, with prejudice;
- c. Granting judgment in favor of Defendant for attorney's fees, actual damages in an amount to be determined by the trier of fact, and an Order enjoining further nuisance and trespass; and,

- d. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

NESS & JETT, LLC

By: s/ Richard B. Ness  
Richard B. Ness, #4191  
R. Aaron Ness, #102331  
PO Box 909  
Bamberg, SC 29003  
T (803) 245-5178  
F (803) 245-5384  
RBNSecretary@gmail.com  
ATTORNEYS FOR DEFENDANT

March 6, 2018

|                                           |   |                                    |
|-------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS       |
|                                           | ) |                                    |
| COUNTY OF HAMPTON                         | ) | FOURTEENTH JUDICIAL CIRCUIT        |
|                                           | ) |                                    |
|                                           | ) | Case No.: 2017-CP-25-170           |
| The Station, Inc. d/b/a Company Two, Inc. | ) |                                    |
|                                           | ) |                                    |
| PLAINTIFF,                                | ) |                                    |
|                                           | ) |                                    |
| v.                                        | ) | <b>NOTICE OF MOTION AND MOTION</b> |
|                                           | ) | <b>FOR SUMMARY JUDGMENT</b>        |
| Hampton County,                           | ) |                                    |
|                                           | ) |                                    |
| DEFENDANT.                                | ) |                                    |
| _____                                     | ) |                                    |

TO: J. CHRISTOPHER WILSON, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, the defendant, Hampton County, will move this Court for an Order granting summary judgment in this action, pursuant to SCRCP 56, on the grounds there exists no genuine issue of material fact which would preclude judgment for the defendant; that the plaintiff cannot adduce facts to establish his causes of action; and, that the defendant is entitled to judgment as a matter of law, as to the following issues:

1. Illegal Contract
2. Airport Hazard and Public Nuisance
3. Land Use for Aviation Deemed a Governmental Purpose
4. Statute of Limitations
5. Statute of Frauds
6. Lack of Privity of Contract
7. Lack of Standing
8. Lack of Capacity to Sue

This motion is supported by the pleadings, deposition testimony to date (already in possession of Plaintiff), transcripts, statutes and case law of South Carolina, and any memoranda of law.

Respectfully submitted,

NESS & JETT, LLC

By: s/ R. Aaron Ness  
Richard B. Ness, #4191  
R. Aaron Ness, #102331  
PO Box 909  
Bamberg, SC 29003  
T (803) 245-5178  
F (803) 245-5384  
RBNSecretary@gmail.com  
ATTORNEYS FOR DEFENDANT

May 4, 2018

|                         |   |                                |
|-------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS   |
|                         | ) |                                |
| COUNTY OF HAMPTON       | ) | Case No.: 2017-CP-25-00170     |
|                         | ) |                                |
| The Station, Inc. dba   | ) |                                |
| Company Two, Inc.,      | ) |                                |
|                         | ) |                                |
| Plaintiff,              | ) | MEMORANDUM IN OPPOSITION       |
|                         | ) | TO MOTION FOR SUMMARY JUDGMENT |
| -vs-                    | ) |                                |
|                         | ) |                                |
| Hampton County,         | ) |                                |
|                         | ) |                                |
| <u>Defendant.</u>       | ) |                                |

## INTRODUCTION

Plaintiff submits this Memorandum in Opposition to Defendants' Motion for Summary Judgment. Plaintiff relies upon the pleadings, the discovery responses of all parties, the discovery materials, the depositions taken, the Affidavit of Quincy Jones served upon Defendant in Opposition to this Motion (and attached hereto), this Memorandum, and other applicable law.

## FACTS

Prior to 2005, Plaintiff was operating a business in Atlanta, Georgia and engaged in remanufacture of firetrucks, including some ARFF (Airport Rescue and Firefighting) trucks. About 2005, Plaintiff, through its President Quincy Jones, engaged in discussions with officials from Hampton County, South Carolina about relocation of the business to Hampton County. During the discussion, and in exchange for Plaintiff's promise to relocate to Hampton County, Defendant promised Plaintiff the use of the Hampton-Varnville airport runway to "speed test" fire trucks, including ARFF trucks. In addition, the parties agreed that Plaintiff would perform FOD (debris) cleanup at the airport. Hampton County Economic Development Director Jim Daniels wrote a letter to Plaintiff in October 2005 (copy attached) and cc: Sabrena Graham,

Hampton County Administrator and Lee Ellis, Hampton County Airport Commission Chairman, which referenced the discussions.

In reliance on the agreement of the parties and the promises of Defendant, Plaintiff moved its operations to Hampton County, where it invested significant monies in a building located next to the Hampton-Varnville airport, entered into contracts, expended monies seeking contracts to remanufacture firetrucks, and took other actions in connection with the business in reliance on its ability to use the airport runway to test trucks. Furthermore, in 2011, Plaintiff engaged in a land swap/easement exchange with Hampton County. This had been discussed during the parties' 2005 agreement and was something Hampton County had desired as necessary to improve its airport. The land swap/easement exchange was finalized in late 2014 and early 2015.

Speed testing requires driving a firetruck and gaining speeds of 50 mph within a certain number of seconds. The testing must be done in opposite directions on a road/runway. The testing, while relatively short in duration, is necessary for many of the remanufacture contracts that Plaintiff performs and seeks to be awarded.

From approximately 2005 until 2015, Plaintiff performed FOD cleanup at the airport and tested firetrucks, including ARFF trucks, without incident. According to Rose Elliot, Hampton County Administrator, who was hired in early 2015, she notified Quincy Jones in March 2015 that Plaintiff would no longer be allowed to test trucks on the airport runway. Plaintiff has made numerous attempts to resolve the issue with Hampton County and resume testing of trucks on the runway, but Plaintiff has been denied access to the runway for testing repeatedly. In addition to other damages and losses, Plaintiff lost a potential multi-million dollar contract, upon which it had spent monies in pursuit, when Rose Elliott denied access to the runway for testing.

## STANDARD OF REVIEW

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn there from must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005).

Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56, SCRCF; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334 S.E.2d 485 (2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004).

Furthermore, the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Because summary judgment is such a drastic remedy,



it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631 594 S.E.2d 455 (2004).

## ARGUMENT

Hampton County's Summary Judgment motion lists eight grounds upon which it requests this court grant summary judgment. The first three essentially argue that Plaintiff does not have a contract with Hampton County to permit its use of the runway because such a contract would be illegal or improper. Defendant's motion lists three separate grounds for summary judgment which seem to stem from the belief that Plaintiff did not have the capacity to sue, but even if it did, it did not do so within the allotted three-year statute of limitations. None of these arguments is with merit.

### **Defendant's Motion Should Be Denied as Genuine Issues of Material Fact Exist as to Plaintiff's Claims, and Defendant Is Not Entitled to Judgment as a Matter of Law**

Plaintiff has brought causes of action for Breach of Contract, Promissory Estoppel/Detrimental Reliance and Specific Performance. Plaintiff has pled, and there is a genuine issue of material fact, concerning each element of each cause of action.

Breach of contract requires proof of (1) the existence of a binding contract, (2) breach of the contract or unjustifiable failure of the breaching party to perform, and (3) damages resulting from breach. Hotel and Motel Holdings LLC v. BJC Enterprises, LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). Quincy Jones' deposition testimony and Affidavit assert that Plaintiff and Defendant entered into a binding, verbal agreement in 2005 whereby Plaintiff would be granted access to the Hampton-Varnville airport runway to test ARFF (Airport Rescue and Firefighting) trucks in exchange for its relocation to Hampton County, SC from Atlanta, GA and its providing

FOD cleanup at the Hampton-Varnville airport. An October 2005 letter from Jim Daniels, Hampton County Economic Development Director, references the agreement and the commitments from Hampton County. Plaintiff's agreement with Hampton County to permit Plaintiff's access to the runway in exchange for FOD clean-up is a binding, legal, oral contract.

Plaintiff's deposition testimony and Affidavit demonstrate Company Two relied upon the assurances of Jim Daniels as Economic Development Director that Plaintiff would have access to the Hampton Varnville Airport. Mr. Daniels' October 2015 letter states, "Hampton County has authorized me to make the following commitments to you concerning the Hampton-Varnville Airport." As a County-Administrator form of government, then-county administrator Sabrina Graham was authorized to allow third parties such as the Economic Development Council to act as her agent. S.C. Code Ann. §4-9-630.

After nearly 10 years of Plaintiff's use of the airport runway for ARFF testing and Plaintiff's FOD cleanup, Defendant, upon a new County administrator being hired, and without justification or notice, halted Plaintiff's use of the runway, breaching the contract with Plaintiff and causing damages. Considering the evidence and all inferences in the light most favorable to Plaintiff, there existed a contract between the parties that Defendant breached causing damage to Plaintiff.

Detrimental Reliance/Promissory Estoppel requires (1) the presence of an unambiguous promise, (2) reasonable reliance on the promise by the party to whom the promise is made, (3) the reliance is reasonable and foreseeable, and (4) damage resulting from reliance on the promise. Higgins Constr. Co. v. S. Bell Telephone Co., 276 S.C. 663, 281 S.E.2d 469 (1981). Considering the testimony and Affidavit of Quincy Jones, as well as the evidence and inferences in the light most favorable to Plaintiff, Defendant made a promise to Plaintiff for its use of the

runway, Plaintiff relied upon the promise, its reliance was reasonable and foreseeable, and Plaintiff suffered damage as a result of its reliance. Quincy Jones' testified that use of the Hampton-Varnville airport runway to test ARFF trucks is vital to Plaintiff's business, and it is reasonable and foreseeable that Plaintiff would seek and rely upon a promise from Defendant to allow testing of ARFF trucks on the runway.

Defendant's motion lists Statute of Frauds as a ground for summary judgment. However, there are exceptions to the Statute of Frauds. "An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other." Graham v. Prince, 293 S.C. 77, 81, 358 S.E.2d 714, 717 (Ct. App. 1987). Where the parties fully perform the contract, the Statute of Frauds no longer applies. *See DeWitt v. Kelly*, 256 S.C. 224, 182 S.E.2d 65 (1971). Further, the Statute may not apply where there has been partial performance. Settlemyer v. McCluney, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004). Factors such as possession of the land, payments made, and improvements undertaken are considered in determining the sufficiency of partial performance. Stackhouse v. Cook, 271 S.C. 518, 248 S.E.2d 482 (1978).

In the instant case, both parties have partially performed the terms of the contract. Plaintiff relocated its business to Hampton County at great expense. Since relocating, Plaintiff has further improved the land by building additional structures. Plaintiff has further swapped land with Defendant as desired by Defendant. From 2005 until 2015, Plaintiff provided FOD clean-up for the benefit of Hampton County. As evidenced by Plaintiff's affidavit and deposition testimony, all of these actions were made with the full-knowledge, consent, and approval of Hampton County. In exchange, Hampton County permitted Plaintiff to utilize the Hampton-Varnville Airport runway for ten years before denying access.

**Defendant's Motion for Summary Judgment Should be Denied as Defendant's Claims of Illegality, Hazard and Government Purpose Are Without Merit**

Defendant's arguments of illegality, nuisance and government purpose appear to be premised upon the idea that only planes are permitted to enter a runway. However, Defendant permits other non-aviation uses of the airport. Plaintiff has provided photographs of crop duster activity on the runway, which necessitates 18-wheelers park on the runway for weeks at a time. Furthermore, current County Administrator Rose Dobson testified she permits motorized glide planes and the National Guard to utilize the runway without requiring the County Council grant an ordinance.

Defendant cites SC Code Section §55-13-40 which prevents trespassing, parking, driving or drag racing on an airport runway. Section §55-13-40 (1) provides that it is unlawful to perform these activities "without proper authority." Hampton County can authorize, and did authorize for 10 years, Plaintiff's use of the runway to test ARFF trucks. The entire dispute in the case centers around whether Hampton promised and agreed to such use, and, therefore authorized such use. And the attached emails from the Federal Aviation Administration (FAA) set forth that Hampton County can authorize such use.

Defendant also cites SC Code Section §55-9-250 which deals with hazards at airports. Nothing in this Section prevents Defendant's agreement and promise for Plaintiff's use of the runway to test ARFF trucks. Plaintiff's use of the airport is not a hazard or nuisance, especially if conducted under appropriate circumstances, which are easily met by Plaintiff and Defendant. Hampton-Varnville airport is a VFR (Visual Flight Rules) which means planes take off and land

on visual direction only – no tower, lighting or electronic direction/assistance. Hampton County could issue a NOTAM (a notice of any issue at an airport) or close the airport briefly for the time periods that Plaintiff tested trucks.

Finally, Defendant cites SC Code Section §55-9-30 et. seq. as somehow preventing Defendant from having entered into this agreement with Plaintiff. While SC Code Section §55-9-30 establishes that lands acquired by government for airports are considered for a “government purpose”, nothing prevents the agreement and promises of Defendant or bars this action.

**Defendant’s Motion for Summary Judgment Should be Denied as Plaintiff Has Standing and Capacity to Sue, Plaintiff’s Contract Was in Privity with Defendant, and Plaintiff’s Amended Complaint was filed within the Three-Year Statute of Limitations**

Plaintiff is a Georgia corporation with standing and capacity to sue. The Station, Inc., is a business fully-licensed in the State of Georgia and lawfully operates in South Carolina. Plaintiff has capacity and standing to sue as President of The Station, Inc.

Hampton County’s agreement was directly with Plaintiff and its representations and promises were made to Plaintiff. As such, Plaintiff was in privity with Defendant. This was not a contract, agreement, or promise intended for the benefit of a third party but intended directly for Plaintiff.

“The statute of limitations for actions pursuant to contract or statute is three years. S.C. Code Ann. § 15–3–530(1), (2) (2005) (stating the statute of limitations for actions based upon contract or upon liability created by statute is three years).” Anonymous Taxpayer v. S.C. Dep’t of Revenue, 377 S.C. 425, 438–39, 661 S.E.2d 73, 80 (2008). “The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of

action might exist.” RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007)

Plaintiff initially filed suit against Hampton County on April 28, 2017. In doing so, Plaintiff listed the property holding company as Plaintiff. During his deposition, Quincy Jones explained Q&J Properties is separate and apart from the company that operates his business - The Station, Inc. Upon learning this distinction, Plaintiff’s counsel filed an Amended Summons and Complaint on February 27, 2018, which Defendant Answered on March 8, 2018. Furthermore, the Amended Summons and Complaint were filed within the three-year statute of limitations. Rose Dobson-Elliott testified she first informed Mr. Jones to stop using the runway in March of 2015.

### CONCLUSION

Therefore, for the reasons stated above, Defendant’s Motion for Summary Judgment should be denied.

s/ J. Christopher Wilson  
J. Christopher Wilson  
Wilson & Luginbill, LLC  
PO Box 1150  
Bamberg, SC 29003  
(803) 245-7799  
[christ@w-lawfirm.com](mailto:christ@w-lawfirm.com)

June 22, 2018

Bamberg, SC

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|                         | ) |                              |
| COUNTY OF HAMPTON       | ) | Case No.: 2017-CP-25-00170   |
|                         | ) |                              |
| The Station, Inc. dba   | ) |                              |
| Company Two, Inc.,      | ) |                              |
|                         | ) |                              |
| Plaintiff,              | ) | AFFIDAVIT OF QUINCY JONES    |
|                         | ) |                              |
| -vs-                    | ) |                              |
|                         | ) |                              |
| Hampton County,         | ) |                              |
|                         | ) |                              |
| Defendant.              | ) |                              |

Personally appeared before me, Quincy Jones, who being duly sworn, sayeth:

1. I am the President of the Plaintiff.
2. I have been involved in the day-to-day operations of Plaintiff since its formation.
3. Prior to and during 2005, Plaintiff was a business that engaged in the restoration and remanufacturing of fire trucks, including some Airport Rescue and Fire Fighting (ARFF) trucks.
4. Prior to 2005, Plaintiff was operating from Atlanta, but about 2005, I began to have discussions with several Hampton County officials about relocation of the business to Hampton County, South Carolina.
5. To help entice me to move the Plaintiff company to Hampton County, Hampton County agreed for Plaintiff to have access to and use of the Hampton-Varnville airport runway for speed testing ARFF trucks. Hampton County represented to me that use of the runway for speed testing would be provided to Plaintiff and promised me that Plaintiff would have access to the runway for such purposes. In exchange, I decided to relocate Plaintiff to Hampton County and agreed and promised to provide FOD cleanup for the Hampton-Varnville airport. Plaintiff has performed FOD cleanup as agreed.
6. In reliance on this, I relocated Plaintiff to Hampton County and expended monies in the purchase of, upgrade of, and operation of properties, including a building, upon which we have expanded. In addition, we have expanded our ARFF remanufacturing business by spending monies and investment that will be lost, and some of which has already been lost, by the denial of access to the airport runway for speed testing of ARFF trucks. Without the promise and agreement of Hampton County for use of the airport runway to speed test ARFF trucks, Plaintiff would not have taken such activity. The denial of access to the airport runway for speed testing increases the cost of operations and affects our profitability.

7. In addition, in reliance on the promise and agreement of Hampton County for use of the airport runway to speed test ARFF trucks, Plaintiff has expended monies to pursue contracts for remanufacturing ARFF trucks. Upon being denied access to the airport runway for speed testing ARFF trucks by Hampton County, Plaintiff sustained a loss by losing a multi-million dollar contact potential and lost the monies expended on consultants and otherwise in pursuing such contract.
8. As part of my duties, I will sometimes myself perform the speed testing of ARFF trucks or observe Plaintiff's employees perform such testing. Several times between 2005 and 2015, while testing ARFF trucks at the Hampton-Varnville airport, I have observed Hampton County employees at the airport at the same time that we were testing an ARFF truck by driving it on the airport runway.
9. At no time prior to being advised by Rose Elliott that we were not allowed to use the airport runway to test ARFF trucks has anyone connected to Hampton County advised me that our use of the runway was improper.

SWORN TO BEFORE ME THIS 18<sup>th</sup>  
DAY OF June, 2018

Annette B. Sizemore  
Notary Public for SC  
Comm Exp 10-4-22

Quincy Jones







## Hampton County Economic Development Commission

COURT HOUSE ANNEX

Post Office Box 672

Telephone (803) 943-7521

FAX: (803) 943-7538

Hampton, South Carolina 29924

October 12, 2005

Jim Daniel  
Executive Director

Mr. Quincy Jones  
Company Two Fire  
1624 Holly Lake Circle  
Snellville, GA 20078

Dear Quincy,

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 letter, Hampton County Council concurs with that request.

If we can be of further assistance, please feel free to contact me. We look forward to welcoming Company Two Fire to the Hampton County family.

Sincerely,

Jim Daniel

Cc: Sabrena Posey Graham  
Lee Ellis

FAA (Notam.)

Subj: RE: from Q Jones @ Co2 Fire in Hampton SC (Bobby Shaub passed ur name to me)  
 Date: 2/23/2016 11:39:33 P.M. Eastern Standard Time  
 From: Jim.Price@faa.gov  
 To: StationInc@aol.com

Hi Mr. Jones,

The issuance of a NOTAM for a FOD clean up would be at the discretion of the airport...but it is a good idea to protect both the flyers and the cleanup crew...especially if the runway is closed for the operation. Hope that help, Jim.

Jim Price  
 Airport Certification Safety Inspector  
 FAA Southern Region  
 Voice 404-305-6721 Fax 404-305-6730  
<http://www.faa.gov/airports/southern/>

No Notams  
 Issued

**From:** StationInc@aol.com [mailto:StationInc@aol.com]  
**Sent:** Tuesday, February 23, 2016 8:26 PM  
**To:** Price, Jim (FAA)  
**Subject:** from Q Jones @ Co2 Fire in Hampton SC (Bobby Shaub passed ur name to me)

Jim  
 I don't want to take up too much of your time but I was speaking w/ Bobby about a problem I had w/ an airport here in SC & he thought you may be able to answer my question

Basically, does a GA Indexed airport need to issue a NOTAM to perform just FOD cleanup

The FAA Airport code info is seen below:

**3J0 Hampton-Varnville Airport**  
 Hampton, South Carolina, USA

Thanks for your time & any help will be appreciated

Quincy Jones ( Owner )  
 Crash Truck Services  
 283 Foster Rd  
 Varnville SC 29944

803-943-5232 - SC Off  
 866-289-6188 - Toll free  
 803-943-5434 - fax  
 770-598-3473 - mb  
[www.companytwofire.com](http://www.companytwofire.com)

FAA  
Letter ON  
USE

Subj: Re: INFO: Hampton-Varnville Airport (3J0)  
 Date: 6/9/2016 1:44:32 P.M. Eastern Daylight Time  
 From: [bshaub39@aol.com](mailto:bshaub39@aol.com)  
 To: [Jim.Price@faa.gov](mailto:Jim.Price@faa.gov)  
 CC: [stationinc@aol.com](mailto:stationinc@aol.com)

Thanks so much Jim for the review and quick response. This should clear up the FAA's position and the airports position.

Thanks again, see you soon.

Bobby Shaub  
[Bshaub39@aol.com](mailto:Bshaub39@aol.com)  
 352-804-4511

On Jun 9, 2016, at 10:37 AM, <[Jim.Price@faa.gov](mailto:Jim.Price@faa.gov)> <[Jim.Price@faa.gov](mailto:Jim.Price@faa.gov)> wrote:

Hi Bobby,

Regarding the Hampton-Varnville Airport (3J0), and it's use by Company2.

This is not a NPIAS (National Plan of Integrated Airport Systems) airport and is non-obligated, that is, it receives no grant monies. That being said, there are no grant assurances that exist that the airport has to comply with. I checked with the Airports District Office and compliance officer and the email below is what I got from Deandra Brooks, compliance specialist for the FAA Southern Region.

Normally with grant assurances, the airport would be required to charge Company2 for use of the airport, or accept in-kind services. Since there is no obligation, there is no requirement for the airport to comply with grant assurances and they can operate the airport as they deem prudent for the facility.

Further, since there is no obligation, the airport is free to operate as they see fit, including allowing Company2 to operate or to deny them access. There is no FAA "regulation" that says either way. The runway has a weight bearing capacity of 8000 lbs for a single wheel aircraft.

I hope this helps, but feel free to give me a call if you have questions...take care!

Jim Price  
 Airport Certification Safety Inspector  
 FAA Southern Region  
 Voice 404-305-6721 Fax 404-305-6730  
<http://www.faa.gov/airports/southern/>

**From:** Haney, Heather (FAA)  
**Sent:** Thursday, June 09, 2016 9:12 AM  
**To:** Price, Jim (FAA)  
**Subject:** FW: ACTION: from Q Jones (Airport Use/FOD) issues

**From:** Brooks, Deandra (FAA)  
**Sent:** Thursday, June 09, 2016 8:58 AM

|                                           |   |                                  |
|-------------------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS     |
|                                           | ) |                                  |
| COUNTY OF HAMPTON                         | ) | FOURTEENTH JUDICIAL CIRCUIT      |
|                                           | ) |                                  |
|                                           | ) | Case No.: 2017-CP-25-170         |
| The Station, Inc. d/b/a Company Two, Inc. | ) |                                  |
|                                           | ) |                                  |
| PLAINTIFF,                                | ) |                                  |
|                                           | ) |                                  |
| v.                                        | ) | <b>DEFENDANT'S MEMORANDUM OF</b> |
|                                           | ) | <b>LAW IN SUPPORT OF SUMMARY</b> |
| Hampton County,                           | ) | <b>JUDGMENT</b>                  |
|                                           | ) |                                  |
| DEFENDANT.                                | ) |                                  |
| _____                                     | ) |                                  |

Defendant, Hampton County, by and through its undersigned attorneys, hereby submits this Memorandum of Law in Support of its Motion for Summary Judgment. This memorandum is intended to supplement Hampton County's oral argument regarding 'authorization,' from the summary judgment hearing on June 25, 2018, at the Hampton County Courthouse.

### **ARGUMENT**

Hampton County denies it ever authorized use of the runway, in writing or otherwise, to Company Two for fire truck testing. As to this point regarding authorization, section 4-9-130(6) of the S.C. Code of Laws requires Hampton County pass an ordinance for the transfer of any interest in real estate. Hampton County cannot grant usage of an airport runway without an ordinance. This statute provides, specifically:

"Public hearings, after reasonable public notice, must be held before final council action is taken to (6) sell, lease or contract to sell or lease real property owned by the county."

S.C. Code § 4-9-130(6). Only the county could grant an interest or usage of the airport runway for fire truck testing, and it must do so by ordinance. Any authorization Company Two allegedly received from anyone other than the Hampton County Council, by ordinance, is *void ab initio*.

The only ordinance on record allows for the exchanging of property with Company Two and giving an easement for use of a taxiway that was to be constructed. *See* Hampton Co. Ordinance #2011-001; *see also* Exhibit D14 - Jones Dep. It mentions not one word regarding the use of an airport runway for testing fire trucks. *Id.* The county council Minutes leading up to the passing of this ordinance also make no mention of testing fire trucks on the airport runway. *See* Meeting Minutes (Hampton County); *see also* Exhibit D13 - Jones Dep.

During Hampton County's prior motion to dismiss hearing on August 24, 2017, it presented an affidavit<sup>1</sup> to the Court, in which the clerk to the county council swore under oath she could find no other county ordinance(s) authorizing Company Two to test fire trucks on the runway. *See* Aff. of Aline Newton, Clerk of Hampton County Council; *see also* Transcript (August 24, 2017) 10:1-15. Therefore, this single ordinance is dispositive.

### **CONCLUSION**

For the reasons stated above, disposition of this case by means of summary judgment would serve the interests of justice and would not be improper or premature. Therefore, Hampton County respectfully requests that judgment as a matter of law be granted against Company Two as to all causes of action.

Respectfully submitted,

NESS & JETT, LLC

By: s/ R. Aaron Ness  
 Richard B. Ness, #4191  
 R. Aaron Ness, #102331  
 PO Box 909  
 Bamberg, SC 29003  
 T (803) 245-5178

July 2, 2018

---

<sup>1</sup> This affidavit was sent by Hampton County's attorneys to Company Two's attorneys on August 22, 2017, prior to the hearing on August 24, 2017.

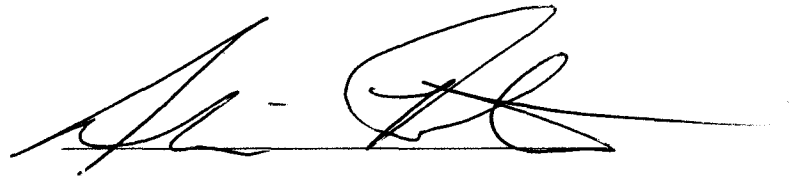
F (803) 245-5384  
RBNSecretary@gmail.com  
ATTORNEYS FOR DEFENDANT,  
HAMPTON COUNTY

STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF HAMPTON            )     **AFFIDAVIT OF ALINE NEWTON**  
                                                            )     **(CLERK OF HAMPTON COUNTY COUNCIL)**

PERSONALLY appeared before me, Aline Newton, who, being duly sworn says:

1. I am over the age of 18 and otherwise qualified to give sworn testimony in court.
2. I am the current Clerk of the Hampton County Council, in Hampton County, South Carolina.
3. Using due diligence, I performed a search for a County Ordinance of the Hampton County Council, in which the Hampton County Council authorized a business named Q&J Properties, LLC or Company Two Fire Apparatus to use the Hampton-Varnville Airport runway to test its ARFF (Airport Rescue Fire Fighting) trucks for its for-profit business.
4. After performing my search for a County Ordinance of the Hampton County Council authorizing the same referenced above in Paragraph 3, I found no County Ordinance in which the Hampton County Council authorized a business named Q&J Properties, LLC or Company Two Fire Apparatus to use the Hampton-Varnville Airport runway to test its ARFF (Airport Rescue Fire Fighting) trucks for its for-profit business.

I have reviewed this affidavit, and I assert the matters stated therein are true to the best of my knowledge.



Aline Newton  
 Clerk of Hampton County Council

SWORN to before me this 22nd )

day of August, 2017.

\_\_\_\_\_ (L.S.)  
 Notary Public for South Carolina

My Commission Expires: August 24, 2022



|                                           |   |                                    |
|-------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS       |
|                                           | ) |                                    |
| COUNTY OF HAMPTON                         | ) | FOURTEENTH JUDICIAL CIRCUIT        |
|                                           | ) |                                    |
|                                           | ) |                                    |
| The Station, Inc. d/b/a Company Two, Inc. | ) | Case No.: 2017-CP-25-170           |
|                                           | ) |                                    |
| PLAINTIFF,                                | ) |                                    |
|                                           | ) | <b>ANSWER TO AMENDED COMPLAINT</b> |
| v.                                        | ) | <b>WITH AMENDED COUNTERCLAIMS</b>  |
|                                           | ) |                                    |
| Hampton County,                           | ) |                                    |
|                                           | ) |                                    |
| DEFENDANT.                                | ) |                                    |
| _____                                     | ) |                                    |

The Defendant, Hampton County, by and through its undersigned attorneys, hereby answers Plaintiff's Amended Summons and Complaint, dated February 27, 2018, as follows and makes the following allegations by way of counterclaims.

**FOR A FIRST DEFENSE**

**(Responding specifically to the allegations of the Amended Complaint – Each Paragraph not hereafter admitted, denied, or explained is denied)**

1. Hampton County is without sufficient information to admit or deny Paragraph 1 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
2. Hampton County admits Paragraphs 2, 3, and 4 of the Complaint.
3. Hampton County is without sufficient information to admit or deny Paragraph 5 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
4. Hampton County denies Paragraph 6 in its entirety.
5. Hampton County is without sufficient information to admit or deny Paragraph 7 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
6. Hampton County denies Paragraph 8 in its entirety.

7. Hampton County Hampton County is without sufficient information to admit or deny Paragraph 9 of the Complaint; therefore, Hampton County denies the same and demands strict proof thereof.
8. Hampton County denies Paragraph 10 in its entirety.
9. Hampton County denies Paragraph 11 in its entirety.
10. Hampton County denies Paragraph 12 and demands strict proof thereof.
11. Hampton County denies Paragraph 13 in its entirety.
12. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 14 of the Complaint.
13. Hampton County denies Paragraphs 15, 16, 17, and 18.
14. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 19 of the Complaint.
15. Hampton County denies Paragraphs 20, 21, 22, 23, 24 and 25.
16. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim, in responding to Paragraph 26 of the Complaint.
17. Hampton County denies Paragraphs 27, 28, and 29.
18. Hampton County is without sufficient information to admit or deny Paragraph 30; therefore, Hampton County denies the same and demands strict proof thereof. Hampton County also denies any valid contract with Plaintiff and asserts that any purported contract, which Plaintiff alleges entering into with Hampton County, was an illegal contract and not legitimately formed.
19. Hampton County denies Paragraph 31 in its entirety.

**FOR A SECOND DEFENSE**

(Illegal Contract)

(Violation of S.C. Code § 55-13-40)

20. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
21. Hampton County asserts that any contract theories of promissory estoppel or detrimental reliance alleged by Plaintiff in this Amended Complaint is a violation of public policy and is an illegal contract that violates S. C. Code Section 15-13-40 which explicitly provides that no vehicle may be driven on an airport runway. Plaintiff does not have the proper authority to drive, park, or use airport property, nor does defendant have the legal authority or right to allow plaintiff to drive, park, or use airport property for a private, for-profit use, nor in circumstances whereby hazards are created on airport runways, in any way. The use Plaintiff demands would constitute a misdemeanor that is punishable under the laws of the State of South Carolina, and Defendant, by acquiescence or permission, would also be committing a misdemeanor that is punishable under the laws of the state of South Carolina under the doctrine of *pari delicto*.

**FOR A THIRD DEFENSE**

(Airport Hazard and Public Nuisance)

(Violation of S.C. Code § 55-9-250)

22. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
23. Hampton County asserts that Plaintiff's current, previous, and existing use, if any, of the airport runway is an airport hazard that endangers the lives and property of users of its airport and occupants of land and other persons in its vicinity, and, in effect, reduces the

size of the area available for the safe landing, taking off, and maneuvering of aircraft, thus destroying or impairing the utility of the airport and the public investment in it.

24. Hampton County asserts that any airport hazard created by Plaintiff is a public nuisance, an injury to the community, and should be prevented, removed, and/or eliminated in the interest of the public health, safety, and general welfare, under the police powers of this Court.
25. Hampton County, pursuant to S.C. Code § 55-9-250(5), seeks recovery of costs against Plaintiff for creating and maintaining this hazard, including actual costs for in the removal or abatement of the hazard.

**FOR A FOURTH DEFENSE**

(Violation of S.C. Code § 55-9-30, *et seq.*)

26. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
27. Pursuant to S.C. Code § 55-9-40, Hampton County asserts that any lands owned, leased, controlled, or occupied by it must be used for the purpose or purposes enumerated in S.C. Code § 55-9-30, and declares that any lands owned, leased, controlled, or occupied by the airport are for public, governmental, and municipal purposes only, and not for private use by Plaintiff.
28. Defendant, Hampton County, is not aware of any public benefit Plaintiff can provide to the public in using the airport runway.
29. Hampton County asserts that any alleged lease allowing Plaintiff to use the airport for testing ARFF trucks violates S.C. Code § 55-9-190(3) and deprives the public of its rightful, equal, and uniform use to land, takeoff, and maneuver airplanes.

**FOR A FIFTH DEFENSE**

(Statute of Frauds)

30. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim
31. Hampton County asserts that Plaintiff's claim(s) are barred in part and in whole by the statute of frauds.

**FOR A SIXTH DEFENSE**

(*Ultra Vires* Act)

32. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
33. That any alleged contract or contractual theory of recovery prior to the filing of this action is the result of an *Ultra Vires* Act by uninformed parties without proper legal authority to bind Hampton County.

**FOR A SEVENTH DEFENSE**

(SCRCP Rule 12(b)(6) – Failure to State a Cause of Action)

34. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
35. Hampton County asserts that Plaintiff's Amended Complaint has failed to state facts sufficient to constitute a cause of action against Defendant, and Plaintiff's Amended Complaint should be dismissed against Defendant pursuant to SCRCP Rule 12(b)(6).

**FOR AN EIGHTH DEFENSE**

(Statute of Limitations)

36. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.

37. Hampton County asserts that Plaintiff's claim(s) are barred by the applicable Statute of Limitations.

**FOR A NINTH DEFENSE**

(Laches)

38. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
39. Hampton County asserts that Plaintiff's claim(s) are barred by the equitable defense of Laches.

**FOR A TENTH DEFENSE**

(Lack of Capacity to Sue)

40. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
41. Hampton County asserts that Plaintiff lacks the capacity to initiate and/or maintain a proceeding in any court in the State of South Carolina.

**FOR AN ELEVENTH DEFENSE**

(Lack of Standing)

42. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
43. Hampton County asserts that Plaintiff lacks standing to bring this action.

**FOR A TWELFTH DEFENSE**

(Lack of Privity of Contract)

44. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
45. Hampton County asserts that Plaintiff is not privy to any contracts entered into between Q&J Properties, LLC and Hampton County, and, therefore, lacks standing.

**FOR A THIRTEENTH DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**  
 (Nuisance Damage to Airport Property)

46. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
47. That any such use or damage to airport property as alleged in the Amended Complaint constitutes trespass to government property and deprivation of the public use of the airport, limits the availability of the airport for landing, taking off, and maneuvering the aircraft, and is a public nuisance. Defendant requests an Order directing the immediate cessation of any current or future use of airport runway by Plaintiff, and resulting damages from the nuisance, including actual costs and attorney's fees.

**FOR A FOURTEENTH DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**  
 (Injunctive Relief)

48. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
49. That any past, present, or future use of airport property for the testing or work by Plaintiff on fire trucks should be enjoined, permanently, as a public hazard and nuisance.

**FOR A FIFTEENTH DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**  
 (Declaratory Judgment)  
 (S.C. Code § 15-53-10 et seq.)

50. Hampton County repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
51. Hampton County asserts that it executed a written contract, deeds, and an easement agreement with Company Two, specifically stating any and all terms and any and all agreements it has with Company Two.

52. Hampton County requests this Court analyze and construe these documents and issue a declaratory judgment that Hampton County is not in breach of contract, and that Hampton County has no other agreements with Company Two, other than within the documents above-stated in Paragraph 51.

WHEREFORE, the defendant, Hampton County, requests the Court inquire into these matters, and issue its Order:

- a. Denying the relief requested by Plaintiff in its Amended Complaint;
- b. Dismissing Plaintiff's action, in its entirety, with prejudice;
- c. Granting judgment in favor of Defendant for attorney's fees, actual damages in an amount to be determined by the trier of fact, and an Order enjoining further nuisance and trespass;
- d. For a declaratory judgment; and,
- e. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

NESS & JETT, LLC

March 12, 2020

By: /s/ R. Aaron Ness  
 Richard B. Ness, #4191  
 R. Aaron Ness, #102331  
 PO Box 909  
 Bamberg, SC 29003  
 T (803) 245-5178  
 F (803) 245-5384  
 RBNSecretary@gmail.com  
 ATTORNEYS FOR DEFENDANT



|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
|                         | ) |                              |
| COUNTY OF HAMPTON       | ) | Case No.: 2017-CP-25-00170   |
|                         | ) |                              |
| The Station, Inc. dba   | ) |                              |
| Company Two, Inc.,      | ) |                              |
|                         | ) |                              |
| Plaintiff,              | ) | <b>REPLY</b>                 |
|                         | ) |                              |
| -vs-                    | ) | (JURY TRIAL DEMANDED)        |
|                         | ) |                              |
| Hampton County,         | ) |                              |
|                         | ) |                              |
| <u>Defendant.</u>       | ) |                              |

Plaintiff, responding to Defendant's Amended Counterclaim, would respectfully show unto the Court:

**FOR A FIRST DEFENSE**

1. Paragraphs 1 – 45 do not require a response, but Plaintiff denies any paragraph not hereinafter admitted, explained or modified is denied.

**FOR A SECOND DEFENSE**

2. Paragraph 46 does not require a response.
3. Plaintiff denies Paragraph 47 – 52 and the prayer for relief and demands strict proof thereof.

**FOR A THIRD DEFENSE**

4. Plaintiff restates its First and Second Defenses as if the same were repeated verbatim herein.

5. Defendant's claims should be dismissed pursuant to Rule 12(b) 6 of the S.C.R.C.P., for the failure to state facts sufficient to constitute a cause of actions.

**FOR A FOURTH DEFENSE**

**(Laches, Estopped, and Statute of Limitations)**

6. Plaintiff restates its First, Second, and Third Defenses as if the same were repeated Verbatim herein.

7. Defendant's claims should be barred by the doctrines of estoppel, laches, and the applicable statute of limitations or the doctrine of stale demand.

WHEREFORE, having responded to Defendant's Amended Counterclaim, Plaintiff requests the Court inquire into the allegations and issue its Order accordingly, dismiss Defendant's Amended Counterclaim, grant Plaintiff the relief sought in its Amended Complaint, award attorney fees and costs to Plaintiff, and for such other and further relief as the Court deems just and proper.

By: s/J. Christopher Wilson  
J. Christopher Wilson, SC Bar No.: 06987  
Wilson Law Group, LLC  
P. O. Box 1150  
Bamberg, SC 29003  
Telephone: (803) 245-7799  
Fax: (803)245-0037  
[chris@wilsonlawgroupsc.com](mailto:chris@wilsonlawgroupsc.com)  
Attorney for Plaintiff

Bamberg, SC

March 20, 2020

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS  |
|                               | ) |                               |
| COUNTY OF HAMPTON             | ) | Case No.: 2017-CP-25-00170    |
|                               | ) |                               |
| The Station, Inc. dba Company | ) |                               |
| Two, Inc.                     | ) |                               |
|                               | ) |                               |
| Plaintiff,                    | ) |                               |
|                               | ) | <b>PLAINTIFF'S MEMORANDUM</b> |
| -vs-                          | ) |                               |
|                               | ) |                               |
| Hampton County,               | ) |                               |
|                               | ) |                               |
| <u>Defendant.</u>             | ) |                               |

Plaintiff submits this Memorandum for the Court's additional consideration on the following issues before the Court:

**DEFENDANT'S DIRECTED MOTION VERDICTS AT THE CLOSE OF  
DEFENDANT'S CASE**

On Thursday, May 27, 2021, at the close of Defendant's case-in-chief (to which Plaintiff did not present Reply evidence), Defendant made directed verdict motions arguing that Plaintiff failed to present evidence sufficient to withstand a directed verdict analysis primarily as to whether any promise was unambiguous and whether Plaintiff proved any cognizable damages under a Promissory Estoppel claim. At that point, the Court had already directed a verdict on the Plaintiff's Breach of Contract and Specific Performance causes of action, and the only remaining cause of action was Promissory Estoppel, which was being tried non-jury pursuant to the Court's rulings dismissing the jury.

Under the circumstances of this case as a non-jury trial at that stage on May 27, the proper Motion for Defendant to have made would have been a Motion for Involuntary Nonsuit

under Rule 41(b), SCRCP (“After the Plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.”). See Owens v. Owens, 320 S.C. 543, 466 S.E.2d 373 (Ct. App. 1996); Schwartz v. Schwartz, 311 S.C. 303, 428 S.E.2d 748 (Ct. App. 1993). After the Court’s grant of Defendant’s Motions for Directed Verdict on the Breach of Contract claim and the Specific Performance claim, and dismissal of the jury to proceed as a non-jury trial on the equitable claim of Promissory Estoppel, the Court then became the factfinder. If the Court were to determine that “upon the facts and the law the plaintiff has shown no right to relief” the Court would in essence decide the merits of the case in Defendant’s favor and make such findings of fact on the record. A Directed Verdict Motion, with its applicable standard for the trial court review of evidence, would be inappropriate as the trial judge is now acting as a factfinder whose factual determinations are based on a preponderance of the evidence standard.

In any event, even if a Directed Verdict Motion was proper at that stage, the Court should deny Defendant’s Motion as there is ample evidence presented by Plaintiff, when considered in the light most favorable to Plaintiff and construing all reasonable conclusions from such evidence in favor of Plaintiff, to withstand a Directed Verdict Motion scrutiny. Promissory Estoppel is established when a Plaintiff proves (1) a promise unambiguous in its terms, (2) the party to whom the promise is made reasonably relies upon the promise, (3) the reliance is expected and foreseeable by the party who makes the promise, and (4) the party to whom the promise is made sustains injury in reliance on the promise. North American Rescue v. Richardson, 411 S.C. 371, 769 S.E.2d 237 (2015); Davis v. Greenwood School District, 365 S.C.

629, 620 S.E.2d 65 (2005); Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013 (reh'g denied)(cert. denied); Stevens and Wilkinson v. City of Columbia, 396 S.C. 338, 721 S.E.2d 455 (Ct. App. 2011) (reversed on other grounds 409 S.C. 568, 762 S.E.2d 696 (2014)); Craft v. S.C. Comm. for the Blind, 385 S. C. 560, 685 S.E.2d 625 (Ct. App. 2009); Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006). All of these elements are for a factual determination under a preponderance of the evidence standard, often by a jury, when evidence is submitted from which multiple inferences may be drawn. Rule 50(a), SCRPC; Unlimited Servs., Inc. v. Macklen Enters, Inc., 303 S.C. 384, 401 S.E.2d 153 (1991)(setting forth the standard for directed verdict consideration); See North American Rescue Products v. Richardson, 411 S.C. 371, 769 S.E.2d 237 (2015) (promissory estoppel claim, with corresponding breach of contract claim, submitted to jury for determination of elements of the promissory estoppel claim); See, Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010) (preponderance of the evidence is the standard for determination of facts by an appellate court reviewing an action tried in equity before a judge).

As to the existence of an unambiguous promise, the October 2005 letter from Jim Daniel to Quincy Jones/Company Two (Plaintiff Exhibit 1), for purposes of considering a Directed Verdict Motion, can easily be construed as an unambiguous promise encompassing use of the airport runway when considered in the light most favorable to Plaintiff, especially considering the language used in the letter referencing a “private taxiway right to use from the northeast tip of the airport to the Gemco property line.” Ample evidence was produced that could be reasonably construed to support the claim that the description used in the letter encompassed use of the entire airport property, including the runway, for ARFF testing purposes. A review of any map or ariel could lead to the conclusion that this description encompassed the entire airport



property. The only witnesses who testified in this trial that were present in 2005 when Company Two's relocation was being discussed – Jim Daniel, Willard Wilson and Quincy Jones – all testified clearly that the County committed, verbally, and then by follow up letter of October 2005, to Company Two for the use of the airport property, including runway, to test ARFF trucks. Even Defendant's own witness, Algie Solomons, who was the County attorney, acknowledged that the October 2005 letter (which he felt was inartfully drafted) could be interpreted to give broad acquiescence and carte blanche use of the airport property to Company Two. Defendant's attempts to make the promise seem ambiguous by such contortions as drawing a line diagonally between the referenced points (northeast tip of the airport, Gemco property line') to establish the description as set forth in the 2005 letter, or suggesting that words were omitted from the letter (that it intended to have read "private taxiway right to use from the northeast tip of the airport **runway** to the Gemco property line'), or trying to change the wording of a letter (to change "northeast tip of the airport' to read **northwest tip of the airport**), or testimony from persons who were not present or involved in 2005 about the transaction, do not in and of themselves make the promise ambiguous. See, Maybank v. BB&T Corporation, 416 S.C. 541, 787 S.E.2d 498 (2016) (pertaining to contract law, "[A] contract must be read as a whole document such that litigants may not create ambiguity by pointing to a single sentence or clause."). Plaintiff has contended from the beginning of the trial, asserting in Pretrial Motions, that the promise was unambiguous, and the only testimony from those involved in the transaction, and the language of the October 2005 letter, support the reasonable conclusion that Hampton County unambiguously promised Plaintiff and committed to Plaintiff the use of the airport property, including the runway, for ARFF testing. As such, Directed Verdict would be improper based on a lack of evidence on this element of the claim of Promissory Estoppel.

As to the elements of reasonable reliance and foreseeable reliance, the testimony of both Jim Daniel, former Economic Development Director (Plaintiff's called witness) and Sandy Steele, former Economic Development Director (Defendant's called witness) establish that economic prospects were expected to reasonably rely upon promises and commitments made by Hampton County, and their reliance was foreseeable. Both testified very clearly about this issue. This evidence precludes Directed Verdict based on this element of the claim of Promissory Estoppel.

Finally, as to the element of damages (which will be discussed in more detail in the section below on the Merits of the Case), for purposes of consideration of Defendant's Motion for Directed Verdict, Plaintiff has established at least the existence of some cognizable damage in reliance on the promise. At a minimum, Plaintiff established that time, money and manpower efforts were expended in the preparation of the bid package for the PAIP bid, and at the time these monies and manpower were expended, Plaintiff was being allowed use of the runway for testing purposes in reasonable, foreseeable reliance on the promise and commitment. The existence of these damages is enough to defeat Defendant's Motion for Directed Verdict. In addition to Plaintiff's testimony, Robert Shaub testified that Plaintiff paid him in connection with preparation of the bid package, and that at the time, Plaintiff had access to the airport runway for ARFF testing purposes, but that once Plaintiff was denied access to the runway, even though the bid was submitted, Plaintiff could not meet the conditions of the "no-exception" bid. Shaub also testified that Plaintiff was in the best position to win the bid and secure the contract, and that Plaintiff was able to perform the contract had its bid been accepted. Shaub's testimony was unrefuted. The uniqueness of this industry, with Plaintiff being one of just a few ARFF

remanufacturers in the world, in addition to the reputation of Plaintiff as a leader in the industry, are important factors for consideration in this case and on these issues.

### **MERITS OF THE CASE (PROMISSORY ESTOPPEL CLAIM)**

As to the merits of the case, and the remaining Promissory Estoppel claim, these issues are for the Court to determine based on a preponderance of the evidence standard. And as stated above, Promissory Estoppel is established when a Plaintiff proves (1) a promise unambiguous in its terms, (2) the party to whom the promise is made reasonably relies upon the promise, (3) the reliance is expected and foreseeable by the party who makes the promise, and (4) the party to whom the promise is made sustains injury in reliance on the promise. North American Rescue, supra; Davis, supra; Bishop, supra; Stevens and Wilkinson, supra; Craft, supra; Rushing, supra.

Promissory Estoppel is equitable in nature. Thomerson v. Devito, 430 S.C. 246, 844 S.E.2d 378 (2020); Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006). Promissory Estoppel has been observed to be a quasi-contract remedy, but a distinctly different “creature” from a contract. Thomerson, supra (citing North American Rescue Products, supra). The South Carolina Supreme Court has noted that “[T]he basis of the doctrine (promissory estoppel) is not so much one of contract, with a substitute for consideration, but an application of the general principles of estoppel under appropriate circumstances.” Thomerson, supra (citing Duke Power Co. v. SC Public Serv. Comm., 284 S.C. 81, 326 S.E.2d 385 (1985)).

As to the first three elements – unambiguous promise, reasonable reliance, and foreseeability of reliance – Plaintiff has addressed those grounds more fully above, and the Court can review the evidence submitted by Plaintiff and Defendant to consider these elements. The



only evidence before the Court from persons who were involved in the 2005 transaction – those presumably with the most knowledge of the intent of the parties, and particularly the intent of Hampton County as relates to its promise and commitment – very clearly establish that Plaintiff was unambiguously promised use of the airport property, including the runway, to test ARFF trucks in connection with its relocation to Hampton County and property adjacent to the airport. Defendant has attempted to have persons who were not involved in the transaction testify as to the meaning of the October 2005 letter and interactions between Plaintiff and Defendant, has attempted to assert the October 2005 letter has mistaken language or omits intended wording, has attempted to equate the October 2005 letter with a prior letter to another prospect when there are clear differences between the needs of each prospect and the letter written to each, and has otherwise attempted to cloud the issue. But the clear, and only evidence, before the Court on the issue of whether an unambiguous promise was made by Defendant to Plaintiff is that a clear, unambiguous promise was made by Defendant verbally, and then followed by written letter, allowing Plaintiff use of the airport property to test ARFF trucks. In 2005, during the discussions between Plaintiff and Defendant, the evidence shows that both parties were aware of the importance of the access to the runway for testing purposes to Plaintiff's business. Numerous witnesses testified that Plaintiff, like any other economic prospect, should be able to rely upon promises and commitments by Hampton County, and the reliance by Plaintiff in this case is no doubt reasonable and foreseeable. The evidence shows that Plaintiff relocated its business to Hampton County in reliance on this promise and commitment and located near the airport.

As to consideration by the Court of damages or the proper remedy if the Court does determine that Plaintiff has met its burden by a preponderance of evidence on the first three

elements of Promissory Estoppel, courts of equity have broad powers when fashioning a remedy. See, United States v. Paradise, 480 U.S. 149, 107 S.Ct. 1053 (1987); Thomerson, supra (citing Barnes v. Johnson, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013) which notes that promissory estoppel is a “flexible doctrine that aims to achieve equitable results” and to provide a “remedy where contract law cannot”)(further citing Satcher v. Satcher, 351 S.C 477, 570 S.E.2d 535 (Ct. App. 2002) which notes that South Carolina courts recognize “a remedy in equity” if plaintiff can prove all elements of promissory estoppel). The determination of what equity requires is a matter left to the discretion of the trial judge, and court’s power in this regard is “broad and flexible.” 27 Am. Jur. 2d Section 98 (May 2021). Our court have acknowledged that where a wrong exists, equity will seek a remedy. S.C. Jur. Equity Section 8 (May 2021).

In considering an equitable remedy, the Court can consider all testimony and evidence presented by Plaintiff and Defendant. The testimony clearly establishes that Plaintiff’s use of the airport runway has been and would continue, if allowed, to be very limited. The testimony establishes that the speed and acceleration testing of these ARFF trucks takes only several minutes and is conducted only a few times weekly. The evidence also establishes that proper safety precautions can be taken whenever an airport runway, including the Hampton County Airport runway, needs to be closed for any number of reasons – emergency, maintenance, non-traditional uses such as air shows or photo shoots, etc. There is also evidence before the Court that, contrary to assertions by Defendant in the past, Plaintiff’s use of the airport runway in such a limited capacity would not violate any FAA regulation or funding directives. The testimony of Jim Nilo (Plaintiff’s expert) and the email from Jim Price, referenced in testimony of Jim Nilo and Rose Elliott (County Administrator), prove this clearly. Even Defendant’s own expert David Anderson acknowledged that under the appropriate circumstances, Hampton County could allow

Plaintiff use of the airport runway for testing purposes. It is undisputed that Hampton County, as operator of the airport, has the authority to determine allowable uses, aviation and non-aviation, of the airport. In addition, Defendant elicited testimony of several current Council Members who spoke of improvements at the airport, including the construction of a taxiway parallel to the runway, which would accommodate Plaintiff's ARFF testing.

The evidence is undisputed that it is Hampton County Council's decision, made through its Administrator Rose Elliott in 2015, and subsequently affirmed by County Council, and not any outside, unrelated, external events, or FAA requirements or other laws or regulations, that is preventing Plaintiff from using the runway, or taxiway, to test ARFF trucks. Barnes, supra (in a promissory estoppel case, Plaintiff must show injury is connected to an "inconsistent disposition" by the promisor than what was promised). Defendant Hampton County, through a new County Council, has simply made the decision not to honor the promise (and contract as Plaintiff would and did allege) and commitment made in 2005 by Defendant.

To that extent, the Court could determine that equity requires that Plaintiff be allowed access to the airport runway (or newly constructed taxiway) on a limited basis for a duration in time that the Court finds appropriate under the circumstances. The evidence presented by both parties supports that this can be accomplished while still protecting Defendant Hampton County's interests in operating its airport safely and expanding its operations. In the alternative, Plaintiff also presented extensive evidence about a lost contract opportunity concerning a PAIP bid. The \$4,900,000.00 opportunity required bids from potential suppliers, with very specific requirements for bidders. The bid process was a "no-exception" bid with a requirement for on-site testing. During the process, Defendant denied Plaintiff's access to the runway for testing causing Plaintiff to lose the bid process for being unable to meet the on-site testing requirement.



Testimony regarding the bid process, regarding Plaintiff's ideal status to win the bid process, and regarding the reason Plaintiff lost bid process was unrefuted. Robert Shaub testified that Plaintiff was ideally situated to win the bid in this very unique industry where only a few suppliers exist. Plaintiff testified, without any evidence submitted to the contrary by Defendant, that its expected profit margin on the PAIP contract was approximately \$1,000,000.00, and that it had recovered approximately \$80,000.00 when it sold two (2) ARFF vehicles to the bid winner who could not meet the bid requirements on the number of trucks without obtaining trucks from Plaintiff.

Plaintiff also testified without objection or evidence to the contrary that it would cost Plaintiff approximately \$8,000.00 monthly to lease a similar facility with on-site or nearby testing capability, compared to the \$3,000.00 monthly lease at its current facility. Finally, Plaintiff testified about the monies paid to Robert Shaub (approximately \$12,000.00 - \$15,000.00) and the hours and manpower spent to prepare the bid prior to Defendant's refusal of access to the airport runway for testing. There was also testimony that Defendant's denial of access to the runway came during the bid process, and Defendant's Administrator Rose Elliott testified that there was no advance notice given to Plaintiff and no attempts to accommodate Plaintiff's use of the runway for any further period of time – even just during the bid process and performance of the PAIP contract.

In support of its position on damages or remedy, Defendant has not submitted any South Carolina state cases on point but has relied upon federal cases or unrelated state cases. Defendant cited to Glover v. Lockheed Corp., 772 F. Supp. 898 (D.S.C. 1991), but Glover does not address damages or remedy and is based on the lack of promissory estoppel as a valid claim in an ongoing employment relationship. Barnes v. Johnson, supra, does not pertain to damages

or remedy as the Barnes Court made a determination that promissory estoppel was not proper under the facts of that case for other reasons. Rushing v. McKinney, supra, does not address damages or remedy as the Rushing court determined that Plaintiff failed to show an unambiguous promise or reasonable reliance. Davis v. Greenwood School District, supra, pertains to a Summary Judgment motion on a promissory estoppel claim and in no way addresses damages or remedy. Finally, Defendant relies upon the federal case Blanton Enterprises, Inc. v. Burger King Corporation, 680 F. Supp. 753 (D.S.C. 1988) (citing RCM Supply Co., Inc. v. Hunter Douglas, Inc., 686 F.3d 1074 (4<sup>th</sup> Cir. 1982)) which has not been cited by any South Carolina case since 1988 for the proposition for which Defendant cites the case. Blanton is a summary judgment case where the Court determined that promissory estoppel would not lie under the facts, and the Court goes on to discuss the elements of promissory estoppel, including damages. Unlike here, in Blanton, the plaintiff admitted that it did not have any lost profits because it could make more profit operating a Denny's than a Burger King. Nothing in Blanton, or any other authority cited by Defendant, would prevent this Court, in exercise of its powers in equity, from crafting a remedy to allow Plaintiff access to the runway in a limited capacity or from awarding Plaintiff appropriate damages for the loss of the PAIP bid process resulting from Defendant's denial of access to the airport runway to test ARFF trucks causing Plaintiff to lose the bid.

Plaintiff does not have to prove damages to a mathematical certainty, but damages cannot be speculative or left to the realm of conjecture. Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004). In this instance, Plaintiff has shown that Plaintiff was best situated to win the bid and perform the contract, ultimately resulting in approximately \$1,000,000.00 in profit on the \$4,900,000.00 contract. Plaintiff has shown that Plaintiff was a leader in the industry, and that

even the bid-winning company had to come to Plaintiff to fulfill the contract by obtaining two (2) ARFF vehicles from Plaintiff. Plaintiff testified that he was able to recover approximately \$80,000.00 of losses from the sale of these two (2) ARFF vehicles. In addition, Robert Shaub's testimony clearly establishes that the PAIP bid was a "no-exception" bid that Plaintiff would most likely had been awarded had it not been denied access to the runway for testing purposes, which, in addition, also increased Plaintiff's costs and ultimately its bid price.

The parties have submitted evidence from which this Court can calculate a remedy, or appropriate damages, to address this wrong to Plaintiff. And Plaintiff has established an unambiguous promise, reasonable reliance, and foreseeable reliance. Plaintiff is entitled to an award in its favor and a remedy, or damages, that the Court finds appropriate.

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June 18, 2021

Bamberg, South Carolina

|                                           |   |                               |
|-------------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS  |
|                                           | ) |                               |
| COUNTY OF HAMPTON                         | ) | FOURTEENTH JUDICIAL CIRCUIT   |
|                                           | ) |                               |
|                                           | ) |                               |
| The Station, Inc. d/b/a Company Two, Inc. | ) | Case No.: 2017-CP-25-170      |
|                                           | ) |                               |
| PLAINTIFF,                                | ) |                               |
|                                           | ) |                               |
| v.                                        | ) | <b>MEMORANDUM OF LAW</b>      |
|                                           | ) | (Motion for Directed Verdict) |
|                                           | ) | (Promissory Estoppel)         |
| Hampton County,                           | ) |                               |
|                                           | ) |                               |
| DEFENDANT.                                | ) |                               |
| _____                                     | ) |                               |

### Introduction

In this action, the plaintiff asserted claims for breach of contract, promissory estoppel, and specific performance, against Hampton County, a political subdivision of the State of South Carolina. Of those causes of action, at the close of Plaintiff's case, the Court directed a verdict for Defendant on breach of contract and specific performance, leaving promissory estoppel as the sole remaining cause of action. At the close of Defendant's case, Defendant again moved for a directed verdict on the remaining cause of action. Pursuant to the Court's instruction, Defendant provides this memorandum of law in support of that motion.

Plaintiff is a company owned by Quincy Jones. It is a tenant occupying a property owned by Q & J Properties, LLC, another company of Quincy Jones. Q & J Properties, LLC is not a party to this action. The property Plaintiff leases abuts property of Hampton County of which the county operates the Hampton County Airport. Plaintiff asserts it was promised a perpetual right to use the runway of the Hampton County Airport for the testing of aviation-related fire trucks known as Airport Rescue and Fire Fighting (ARFF) trucks. During the pendency of this case, the plaintiff claimed, alternately, that it has a lease upon the runway, that it has a contract allowing it to use the

runway, and that it was promised the use of the runway as an enticement to induce it to locate its business at the Hampton County Airport.

What remains to be addressed in this case is the question of promissory estoppel. Hampton County denies the claimed promise was made, asserts the testimony and evidence at trial established no such promise, and, further asserts no such promise could lawfully be made with binding effect on a County and its property, for the reasons set forth herein. This is not a fact-dependent inquiry but is a question of law; nonetheless, the testimony and evidence does not support a cause of action in promissory estoppel.

Q & J purchased its property in 2005. In 2007, its tenant, Plaintiff, began refurbishing ARFF trucks at that location. (See Defendant's Exhibit 19). In 2015, Hampton County hired Rose Elliott as its new County Administrator. When Ms. Elliott learned, through a report of foam on the runway, that Plaintiff was engaging in ARFF exercises on the airport runway, she directed a county employee to instruct Plaintiff to cease those activities. Thereafter, Plaintiff entreated the County Council and Airport Commission to allow it to resume those activities, sending letters (Defendant's Exhibits 19 and 20) proposing to perform services and make payment for such privilege. Those letters never asserted that Hampton County had ever made, or was now breaking, a promise to Plaintiff to allow it to use the runway for testing ARFF trucks. Indeed, Defendant's Exhibit 20, Plaintiff's October 8, 2015, letter to the Hampton County Airport Commission, references the County's agreement to build a grass taxiway, and states the County honored that agreement, which it did in the form of the Easement admitted into evidence as Defendant's Exhibit 15. Now, however, Plaintiff asserts it was promised more, a perpetual right to use the airport runway to test its ARFF trucks. Hampton County denies making the alleged promise to Plaintiff and asserts no person had



valid authority to make such a promise to Plaintiff. Hampton County further asserts it cannot be estopped by, and bound to, an unlawful or unauthorized promise of the nature alleged by Plaintiff.

Plaintiff asserts, and its principal, Quincy Jones, testified, that the "promise" of which Plaintiff complains was embodied in an October 12, 2005, letter of Jim Daniel, Executive Director of the Hampton County Economic Development Commission to Mr. Jones. (Defendant's Exhibit 17). The letter, however, was obviously not tailored to any stated needs of Plaintiff, as it is identical to Defendant's Exhibit 18, an earlier letter by the same writer to a different prospective company with entirely different stated needs. (A modular home manufacturer with no need to test anything on the runway, but a need to fly in and out for business.) Despite Plaintiff's insistence that access to the runway for testing its ARFF products was critical, the letter to Plaintiff does not even mention the plaintiff's use of the runway nor the presence or testing of fire trucks on the runway.

The letter mentions a taxiway, and the swap of parcels of land, which were later the subject of a June 23, 2011, written Agreement (Defendant's Exhibit 12) between Q & J and Hampton County, approved by an ordinance adopted by Hampton County Council (Defendant's Exhibit 7), which later resulted in execution in December 2014 of an easement (Defendant's Exhibit 15) from Hampton County to Q & J along a taxiway from its property line to the runway, and deeds (Defendant's Exhibits 13 and 14) exchanging parcels between Q & J and Hampton County, all of which were recorded in the public records. None of these documents mention use of the runway itself, nor ARFF testing activities. Furthermore, those documents are consistent with the October 12, 2005, letter. The negotiations contemplated by the letter resulted in a clear and unambiguous written agreement in 2011, followed by unambiguous deeds and an easement agreement. Where the parties' talks resulted in a written unambiguous contract, promissory estoppel will not lie to increase the scope of the agreement. Because the parties signed a contract in 2011, Plaintiff's

promissory estoppel claims fails as a matter of law. Promissory estoppel is not applicable where an actual contract exists. *Glover v. Lockheed Corp.*, 772 F. Supp. 898, 907 (D.S.C. 1991).

**The plaintiff has not established the elements of promissory estoppel.**

**An unambiguous promise?**

“The elements of promissory estoppel are (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee 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). Plaintiff has not established a promise regarding the use of the airport runway to test ARFF trucks. At most, Plaintiff established negotiations, later reduced to an unambiguous written contract, regarding a taxiway easement and a land swap. To read into the October 12, 2005 letter, a promise of perpetual runway access for equipment testing, is a far stretch and would indicate there is quite an ambiguity in the letter. Indeed, the Court would have to supply the terms of the promise, as to scope and duration, among others, just as would have been the case in a contract cause of action. Any ambiguity in the key terms of the alleged "promise" is fatal to a cause of action for promissory estoppel. *Barnes, supra*. The absence of clearly articulated terms between the parties to an alleged promise precludes recovery in promissory estoppel. *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (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).

**Reasonable reliance on the alleged promise? Which was expected by and foreseeable to the promissor?**

Plaintiff did not establish reasonable reliance, where any promise on the part of Hampton County was unauthorized and unlawful. A county's property is the property of its people. For that reason, a county can only grant property rights through an ordinance enacted by its council after public hearings with public notice. It cannot transact its property business behind closed doors in executive session or behind the scenes, outside of a council meeting. It cannot make handshake deals outside of the public spotlight.

While a County has the power to deal with its lands, it can do so only for a public purpose, only through those who are authorized to conduct such county business, and only in the manner in which it is authorized to act. The plaintiff has asserted that various Hampton County personnel granted him the use of the airport property, either in informal discussion or upon authority granted in executive session during a County Council meeting. Hampton County cannot make such arrangements in those ways. For a County to sell, lease, or contract regarding its real property requires an ordinance adopted by a vote of County Council, **after public hearing** with reasonable **public notice**. S.C. Code §4-9-130(6); also see *Op. S.C. Atty. Gen.*, 2017 WL 1095384 (S.C.A.G. Mar. 2, 2017); *Op. S.C. Atty. Gen.*, 2016 WL 4917034 (S.C.A.G. Sept. 1, 2016); *Op. S.C. Atty. Gen.*, 2000 WL 356783 (S.C.A.G. Jan. 11, 2000).

Hampton County is a sovereign political subdivision, governed by a County Council, with a Council-Administrator form of government. S.C. Code §4-9-30 provides, “Under each of the alternate forms of government listed in §4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ... (2) to acquire real property by purchase

or gift; to lease, sell or otherwise dispose of real and personal property; and to acquire tangible personal property and supplies; (3) to make and execute contracts; ...”. Being a public body, a County Council must conduct its business in the open sessions of its public meetings. “No action may be taken in executive session except to (a) adjourn or (b) return to public session. 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.” S.C. Code §30-4-70(b). Additionally, to be valid, such a transaction must serve a public purpose, a consideration which requires the county council to make a deliberate fact-specific inquiry. *Op. S.C. Atty. Gen.*, 2012 WL 440538 (S.C.A.G. Jan. 12, 2012).

In addition to the statutory requirements for granting use of public land, South Carolina law protects the safety of those using airports by criminalizing unauthorized use of airport property. S.C. Code §55-13-40 provides it is unlawful to drive or park on an airport runway without proper authority. While Hampton County could give “proper authority” for a proper purpose and by proper methods, the gravity of such a decision would additionally mandate a decision in the form of an ordinance properly adopted in open sessions of County Council.

In accordance with law, Hampton County Council adopted Ordinance 2011-001, authorizing the June 23, 2011 Agreement, and the land swap and easement between the County and Q & J Properties, LLC, a company separate and distinct from the Plaintiff herein. And that transaction is the only transaction lawfully authorized under the facts presented at trial.

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 to make such a promise. 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 School Dist. 50*, 365 S.C. 629, 620 S.E. 2d 65 (2005) (teachers' reliance on

superintendent's promises of pay incentive for board certification was unreasonable, where such a promise required school board approval). Plaintiff introduced testimony that the "promise" embodied in the October 12, 2005, letter was authorized by Hampton County Council in a closed executive session. While the Court has opined that the claimed arrangement, being neither a sale nor lease of County property, would not require adoption of an Ordinance pursuant to *South Carolina Code §4-9-130(6)*, Plaintiff asserts a perpetual right over the runway, which must necessarily be something in between a lease and a sale, which surely would trigger the statutory requirement of an ordinance. Even if no ordinance was required, **no** action can be taken by a County Council in an executive session. All County Council action must be taken in open session with notice of the meeting, so that the public may have notice, appear, observe, and object to the actions of its governing body. Any decision made in executive session would be unlawful and cannot form the authority for the promise asserted by Plaintiff.

If the lawful requirements for a transaction involving county land were not met, there was no valid promise to Plaintiff on the part of Hampton County. 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.*, 1963 WL 118666 (S.C.A.G. June 25, 1963).

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 S.C. Code §4-9-630. 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, and the County Council cannot devolve to an employee its authorities that must be exercised only by ordinance. 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).

A County is not bound by the unauthorized acts of county employees, nor even by the unauthorized acts of its County Council, and the law provides that persons interacting with government are bound to the knowledge of the requirements and limitations of government action. “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). A party which transacts with a government entity is charged with the knowledge of the limitations and restrictions of that government. *Op. S.C. Atty. Gen.*, 2000 SL 356783 (S.C.A.G. Jan. 11, 2000); *City of North Charleston v. North Charleston District*, 289 S.C. 438, 346 S.E.2d 712 (1986).

It is patently unreasonable for a person or entity to rely upon the “promises,” even if proven, that a government actor cannot lawfully make nor keep. Just as a broken promise to marry is not actionable if the promissor cannot lawfully promise because he is a minor, as in *Evans v. Terry*, 1 Brev. 80, 3 S.C.L. 80 (1802), or if the jilted party knew or should have known the other could not lawfully contract due to a current marriage, as in *Strickland v. Anderson*, 186 S.C. 482, 196 S.E.184 (1930), no person can rely upon a promise made by a government official who lacks lawful authorization to promise. Even if the plaintiff can establish that a deal was intended between the plaintiff and Hampton County, any proven contemplated transaction or deal was always set against a backdrop of the law pertaining to a county and its property and transactions, and the approval process for such transactions. No one could lawfully deliver what the plaintiff asserts was promised to it; and no one could reasonably rely on any such “promise” coming to fruition.

Reliance by Plaintiff on an unauthorized promise is unreasonable and is immaterial, where the alleged promissor is a government entity. “The fact that petitioner ...had incurred considerable expense ... cannot avail against the ordinance. As the state may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipality, as a governmental agency, acting and bound always to act as trustee of the power delegated to it, may not, by contract, license, or bylaw, surrender or restrict any portion of the police power conferred upon it.” *Douglas v. City Council of Greenville*, 92 S.C. 374, 75 S.E. 687 (1912) (upholding an ordinance prohibiting operation of stables in certain areas of the city, after plaintiff had purchased land, obtained a building permit, built a foundation, and expended additional sums for materials and contractor services).

Hampton County is the owner of the airfield, as a trustee for the people of Hampton County. Hampton County cannot, as a matter of sovereignty, be compelled to provide Plaintiff unfettered and perpetual access to this County resource absent a proper ordinance.

**Damages incurred in reliance?**

Promissory estoppel carries only reliance damages, not consequential damages nor punitive damages. Lost profits are not recoverable. "Damages recoverable under a claim of detrimental reliance are carefully circumscribed; the plaintiff may recover only those expenditures made in reliance upon defendant's promise." *Blanton Enterprises, Inc. v. Burger King Corp.*, 680 F. Supp. 753 (D.S.C. 1988). Plaintiff introduced no evidence of any specific expenses incurred in reliance on any promise. While Plaintiff introduced a deed for the property Q & J Properties, LLC purchased in October 2005, that purchase was not made by Plaintiff, but was made by a separate company owned by Quincy Jones. During trial, the Court excluded testimony proposed by Plaintiff, concerning the cost to build a replacement facility in another location. The Court excluded the testimony because Plaintiff is not an owner of the property but is a tenant. For the same reason, the deed into Q & J Properties, LLC, is no evidence of reliance damages incurred by Plaintiff. Plaintiff introduced no evidence of the cost of a replacement rental arrangement.

**The County cannot be estopped from exercising its police power.**

The plaintiff complains that Hampton County has directed him to cease his activities on its airport runway. As set forth above, the safety of those flying into and out of the Hampton County Airport, and all South Carolina airports, is a sufficiently vital consideration that the South Carolina Legislature enacted a law criminalizing unauthorized driving and parking on runways. S.C. Code §55-13-40. Hampton County directed the plaintiff to cease his unauthorized activities on the runway. The plaintiff now seeks to estop Hampton County from enforcing that statute and barring



him from the unauthorized use. To grant the plaintiff's requested relief is to interfere in a vital function reserved to Hampton County Council. "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).

### **Conclusion**

Plaintiff has established no promise, and certainly no unambiguous, binding, enforceable, lawful, authorized promise, on the part of Hampton County, regarding its use of the airport runway to test ARFF trucks in perpetuity. As with Plaintiff's contract claim, application of promissory estoppel in this case would require the Court to write the promise, and fill in its terms, as those are lacking in the only document Plaintiff advanced as stating the promise. (The October 12, 2005, letter.) Applicability of the doctrine of promissory estoppel "depends on whether the refusal to apply it 'would be virtually to sanction the perpetration of a fraud or would result in other injustice.'" *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002). In this case, the testimony, evidence, and applicable law establish just the opposite. An injustice would be inflicted on the citizens of Hampton County if their airport is to be perpetually burdened, with no limitation on scope or duration, where no promise was made, or where any promise made was necessarily made unlawfully, in a private deal with no open vote of the governing body elected by the people.

For lack of proof, the Court should direct a verdict for the Defendant on Plaintiff's remaining cause of action for promissory estoppel.

Respectfully submitted,

NESS & JETT, LLC

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STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
2016-CP-25-00170

The Station, Inc., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Hampton County, )  
 )  
Defendants. )  
----- )

TRANSCRIPT OF HEARING  
VOLUME I  
PAGES 1 - 69

May 24, 2021  
Hampton, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge Presiding

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I N D E X

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**PROCEEDINGS**

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THE COURT: (Dismisses the Jury for the day.)

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Okay, well, we're down one, we've not even started good, so we'll hope that Mr. Harris is able to make some arrangements before now and tomorrow morning.

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Okay, I'm glad to hear motions. I know we have a motion for summary judgment and we have some motions in limine. I'm glad to hear whoever wants to go first.

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MR. AARON NESS: Yeah, I just want to get into the summary judgment first.

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THE COURT: Sure.

MR. AARON NESS: And will you need a copy of anything?

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THE COURT: I've got it in front of me.

MR. AARON NESS: Okay. Judge, now, do you want me to go into any background information before I get to the law?

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THE COURT: Sure.

MR. AARON NESS: Mr. Jones' company is physically adjacent to the Hampton Airport, the property lines touch. The testimony has been so far that -- the deposition testimony has been so far

1 that he came from Atlanta to Hampton. He basically  
2 set up shot at this building next to Airport, and  
3 there were some terms and negotiations or  
4 solicitations involved with Hampton and him coming  
5 from Atlanta to Hampton. In 2005, there was a  
6 County Council meeting where it was alleged to have  
7 -- there may be some witness testimony where it was  
8 alleged to have been that Hampton County was  
9 permitting to give him certain things. Well, from  
10 2005 to 2011, that timeframe, there really wasn't  
11 anything that happened regarding the -- the terms  
12 from 2005. They didn't put them in writing until  
13 2011. And that's kind of where my summary judgment  
14 motion starts because that's when they actually put  
15 their terms of what each side was agreeing to in  
16 writing, and we believe this is a textbook case for  
17 summary judgment because of parol evidence rule.  
18 Both sides signed this agreement in 2011. Both  
19 sides agreed to only really two things, they agreed  
20 to swap a little bit of property right next to  
21 Mr. Jones' property, so Hampton County could get a  
22 -- a square airport property, and then Mr. Jones  
23 would get a little piece on the other side,  
24 basically, to make his parcel bigger, so they  
25 committed to that in the '11 agreement. And then



1 they also committed to Mr. Jones to give him a 35-  
2 foot-wide easement from his property to the tip of  
3 the runway. And so that's what they agreed to in  
4 '11, they agreed to do that, but, of course, you  
5 know, you still had to do deeds to transfer the  
6 properties, and they still had to do an easement  
7 agreement. So then you go from '11, after they all  
8 signed those contracts, which were integrated  
9 contracts, they then go to -- fast forward to '14,  
10 basically, end of '14 into '15, and that's when they  
11 did the deeds, both sides sign them, and they sign  
12 the easement agreement. And I've made all of those  
13 exhibits to my summary judgment motion. And so part  
14 of what the Plaintiff is attempting to do in this  
15 case is, he wants to admit a letter way back from  
16 2005 that surrounded the County Council meeting  
17 where these commit -- commitments were allegedly  
18 made. He wants to admit that letter in evidence,  
19 testimony surrounding that letter into evidence.  
20 And he wants to then, I -- I believe, put evidence  
21 regarding what was said at the County Council  
22 meeting into evidence. And I think the Supreme  
23 Court recently has unequivocally made the decision  
24 that in cases where there's an unambiguous contract,  
25 and there's nothing -- Mr. Jones has not alleged

1 that this is an unambiguous contract or any of the  
2 contracts that he signed were unambiguous, but the  
3 parol evidence can't come in. The Rodar case from  
4 '18 and the Callawassie case from '17, in both cases  
5 I think it's important for me to point out that the  
6 trial judge granted summary judgment in those cases,  
7 it was upheld -- and the summary judgment grant was  
8 upheld by the Supreme Court on appeal. Both of  
9 those cases, -- well, we'll go with Rodar case  
10 first, that was the Gamecock Club issue where the  
11 University had made certain commitments to these  
12 Booster Club members, and they put it in writing.  
13 And then they were supposed to get preferential  
14 parking right around the -- the apron of Williams-  
15 Brice Stadium. Well, then when they ripped up the  
16 apron, they had to move these people across the road  
17 to the farmers' market. And so anyway the Booster  
18 Club members didn't like that. They sued USC.  
19 Ultimately, the Supreme Court said, "Now what you  
20 signed was the agreement." Any oral considerations,  
21 you know, any -- any parol of evidence, it's  
22 inadmissible. And so the Supreme Court relied on  
23 the unambiguous contract. In the Callawassie case,  
24 the agreement wasn't just one document, it was  
25 multiple documents, kind of like what we have here.

1 We've got a 2011 agreement, we've got some deeds.  
2 And then we've got a 2014 agreement. And the  
3 members in that case were sued by the Callawassie  
4 Island Club Members Group, and, ultimately, the  
5 Supreme Court said, "No, what you signed is your  
6 agreement, I mean that that is your agreement." We  
7 cited the 1960 case that was referenced, I mean I  
8 know it's old case law, but it's still good case  
9 law, and it was referenced by the Supreme Court.  
10 And going to the agreements though, the 2011  
11 agreement, paragraph 11, page four, said, "That this  
12 contract contains the entire understanding and  
13 agreement between the parties. It shall not be  
14 modified or amended in any way except by a written  
15 instrument executed by parties." And so what  
16 Mr. Jones -- and -- and what Mr. Jones is trying to  
17 do, he is trying to add to his agreement, and that's  
18 what he testified to, he's relying on the 2005  
19 letter and this agreement. He's trying to add to  
20 this agreement a term that he can use the runway to  
21 test his fire trucks. And interpreting, not  
22 interpreting, but analyzing -- reading an  
23 unambiguous contract is an issue of law, and that's  
24 for the Court to determine, this will be a judicial  
25 function. There's nothing ambiguous such that a

1 jury of lay people would need to read a contract.

2 THE COURT: Well, Mr. Ness, I'm just -- guess  
3 what he might be arguing, but they have been using  
4 the track or using the -- the runway as a -- as a  
5 track up until this point I'm -- I'm guessing,  
6 between 2005 and 2011, and that this agreement was  
7 pertaining to the property swap and not necessarily  
8 the use of the runway is what I'm guessing he's  
9 going to argue. Does it make any difference to you  
10 that the agreement clearly talks about -- I mean it  
11 talks about this taxiway, refers to it as taxiway.  
12 It refers to both airplanes and vehicles being able  
13 to use it. So what will be the purpose of them  
14 having this easement to the runway if not to use the  
15 runway?

16 MR. AARON NESS: Sure, and there may be  
17 testimony on that on what the reasons would be. You  
18 know, without me trying to create an issue of fact,  
19 you know, what is in writing, because these are  
20 integrated unambiguous contracts, what is in writing  
21 is the terms of it. And I understand what you're  
22 asking me, you know, why -- why would they do this,  
23 and, you know, allow him to use the runway for this  
24 amount of years, but there's no part performance  
25 exception that I have found to the parol evidence

1 rule. There's a part performance exception to state  
 2 of frauds, but not to the parol evidence rule. And  
 3 so I don't think that the performance would apply as  
 4 to the parol evidence rule as an issue of  
 5 substantive law. But Mr. Jones testified in his  
 6 deposition that the 2005 letter and the 2011  
 7 agreement together is what he bases his right-to-use  
 8 the airport on. The only problem is one branch of  
 9 that arm, the 2005 letter is parol when you look at  
 10 it with the 2011 letter. And then when you look at  
 11 the 2014 Easement Agreement they did -- they did a  
 12 couple years later, the Easement Agreement is even  
 13 stronger in terms of what does he have a right to on  
 14 the airport and what doesn't he have a right to?  
 15 And -- excuse me one second, let me get it right  
 16 here. On page one --

17 THE COURT: And, I'm sorry, that was Exhibit 2?

18 MR. AARON NESS: Yes, ma'am, Exhibit 2 to  
 19 summary judgment motion.

20 THE COURT: Okay.

21 MR. AARON NESS: Down towards the bottom, the  
 22 fourth line from the top, it starts with, "Grantee."

23 THE COURT: I'm sorry, you said down on page  
 24 one.

25 MR. AARON NESS: Yes, ma'am, "Grantee," it's the

1 fourth line from the bottom.

2 THE COURT: Shall have no other rights?

3 MR. AARON NESS: Yeah, "Grantee," and Mr. Jones  
4 is the Grantee, "Grantee shall have no other rights  
5 in and to any other portion of the Grantor property  
6 except the easement area herein." So they are very  
7 specifically giving him rights to the easement, of  
8 course, that's what they agreed to a couple years  
9 before, but no other rights to any other portion of  
10 the property as defined herein. I've got a plat  
11 that they refer to, somewhere in this document, that  
12 was done by a surveyor, but I think that's very  
13 specific on what they were giving him rights to.  
14 Then on page three, paragraph 12, "This agreement is  
15 an integrated agreement, and expresses the complete  
16 agreement and understanding of the parties. Any and  
17 all prior or contemporaneous oral agreement or prior  
18 written agreement regarding the agreement will be  
19 merged herein." So any prior oral or just really  
20 parol evidence in general that was antecedent to the  
21 contract is supposedly by law merged herein. So  
22 these were the documents that everybody pen to paper  
23 to. I've got a companion motion, it was a motion  
24 for a speedy trial, it was under Rule 57, which is  
25 the declaratory judgment rules. My point of filing

1 that was to simply get this issue in front of the  
2 Court, and ask the Court, as a matter of law, to  
3 read these contracts and make a finding based on the  
4 contracts before we submit contractual issues to a  
5 jury of laypeople. So that's the reason I filed the  
6 companion motion, and we'd ask the Court to read the  
7 contracts, analyze them, and make a finding that  
8 they're unambiguous as a matter of law. Because  
9 these are the contracts that are integrated and  
10 unambiguous, there cannot be, by law, any factual  
11 issues to determine because that's what -- what they  
12 signed is what they're bound to.

13 THE COURT: I -- I note that you did have a  
14 previous motion for summary judgment. This was not  
15 addressed in the Order denying the previous summary  
16 judgment motion?

17 MR. AARON NESS: No -- no, ma'am. Not that I --

18 MR. WILSON: I would disagree with that, Your  
19 Honor, but I'll show you when I get to argue.

20 MR. AARON NESS: We didn't file the motion under  
21 the parol evidence rule. We've never filed a motion  
22 for judgment on the parol evidence rule.

23 That's all I have at the moment.

24 THE COURT: Okay, Mr. Wilson?

25 MR. WILSON: Thank you, Your Honor.

1           Your Honor, I'm just going to hand up three  
2 things to the Court that just might help. You seem  
3 to have a very good grasp already on the factual  
4 circumstances, but can I just approach that way,  
5 Your Honor?

6           THE COURT: Please.

7           MR. WILSON: Okay. It is a -- it's just an  
8 aerial of the Hampton-Varnville Airport property,  
9 and it's the plat that Mr. Ness was referring to a  
10 moment ago. I'm sorry. And then the 2005 letter  
11 that he was referring to a moment ago. Your Honor,  
12 I'll just kind of work my way backwards, so I don't  
13 forget the last thing he said. Your Honor, you were  
14 exactly right in your observation a moment ago that  
15 this 2011 document and the 2014 document, the  
16 Easement Agreement, they pertain to different  
17 properties, different locations, different subject  
18 matter. Your Honor, if you look at the Easement  
19 Agreement, I don't know which exhibit it was in  
20 their motion, Your Honor, but in the Easement  
21 Agreement it very clearly in the very first words  
22 says, "This Easement Agreement," and then defines  
23 that as the agreement. So when you look back at  
24 paragraph number 12, the integration clause that  
25 they want to rely on to say this agreement precludes



1 evidence of any other agreement, Your Honor, or any  
2 other commitment, it -- it specifically says, "This  
3 agreement is integrated and expresses the complete  
4 agreement and understanding of the parties, and any  
5 and all prior contemporaneous oral agreement or  
6 written agreement regarding the agreement are merged  
7 herein," so this document by its own terms pertains  
8 only to the easement. And, Your Honor, on that  
9 survey that I handed up, the easement is highlighted  
10 in pink, and in essence, Your Honor, it -- it is a  
11 -- a -- an easement to go from Company Two's  
12 property to the edge of the Hampton Airport runway  
13 to get to the runway to be do -- to be able to do  
14 exactly what you spoke about earlier, what do they  
15 need that for? And it's to get their, in our  
16 allegations, Your Honor, to be able to use the  
17 runway to test these fire trucks. Now, that  
18 Easement Agreement was necessary, because Mr. Jones  
19 swapped a piece of property that was between --  
20 well, that was on the Airport side of his property  
21 bordering the airport. And so the County had to  
22 give him an easement across the property that he  
23 just gave them, because they became the owner of  
24 that property. So, of course, he needed an easement  
25 to get across what he just swapped to the County.

1 But that document, Your Honor, very clearly -- that  
2 2014 agreement very clearly, by its own terms,  
3 limits itself to the agreement, and, Your Honor, if  
4 you look in the very first paragraph in the Whereas,  
5 on the first page, right under the witnesses, in the  
6 very first paragraph it describes the Grantor  
7 property. And the description that it gives for the  
8 Grantor property is Exhibit A, and Exhibit A is the  
9 metes and bounds for that 35-foot wide easement,  
10 that pink piece that I highlighted. And so the  
11 language they want to rely on in there, "The Grantee  
12 shall have no other rights in and to the portion of  
13 the Grantor property, except the easement, as  
14 defined herein," well, that's true, Your Honor. He  
15 couldn't go out there and plant crops on that  
16 easement area. He couldn't, you know, erect a  
17 building and start operating a whatever out of  
18 there. He had the right to go across that to get  
19 back and forth to the Airport runway, what was  
20 granted in this, and nothing else, but, Your Honor,  
21 not to repeat myself, but this document pertains to  
22 an entirely different subject matter than the breach  
23 of contract, promissory estoppel claim in the  
24 subject matter that we're here about in this case.  
25 They want to bootstrap it onto this so that they

1 claim access to that language. Your Honor, that --  
2 that's clear. Your Honor, the same thing for the  
3 2011 agreement. Your Honor, the 2011 agreement to  
4 swap these properties, Your Honor, pertains to the  
5 piece of property on Mr. Jones' company's airport  
6 side that he owned, and some property behind his  
7 building -- on the other side of his building from  
8 the airport that the County owned, that they decided  
9 it was mutually beneficial to make a swap, so that  
10 the Airport and Hampton County could square-up its  
11 airport for purposes of safety reasons and other  
12 reasons, Your Honor. Why we're here today, Your  
13 Honor, if you look at the aerial that I showed you,  
14 and if, Your Honor, if you'd turn it kind of where  
15 Hampton-Varnville Airport, I believe, is -- and I'm  
16 sorry it's small, I planned on showing it up here  
17 and we have a little technical difficulty, Your  
18 Honor, but north -- north is up, south is down, east  
19 is to the right, and west is to the left, Your  
20 Honor. And what we're talking about is that long  
21 strip of runway that you see there, an entirely  
22 different piece of property than was referenced in  
23 the 2011 document and the 2014 document. Mr. Ness  
24 says that -- I think in his argument he said  
25 Mr. Jones -- or 2005 and 2011 nothing happened, and

1 he didn't put the terms in writing of anything about  
2 use of the easement or -- excuse me, not the  
3 easement, the use of the runway until 2011. That's  
4 just simply not accurate, your Honor. From 2005 to  
5 2011 Mr. Jones used the runway to test firetrucks  
6 without incident. He actually used the runway to  
7 test fire trucks until sometime late in 2015 without  
8 incident, without being precluded from doing so by  
9 the County, Your Honor. The 2011 and the 2014  
10 documents did take place during that time, Your  
11 Honor, but the -- the agreement that we're here to  
12 enforce today, Your Honor, was Mr. Jones was looking  
13 to relocate his company, and he's originally from  
14 this area, or close to this area, and he had some  
15 communications with Hampton County Council and there  
16 was a meeting. Your Honor, just like it's done  
17 often times with industrial prospects in these areas  
18 that are looking for jobs and looking for  
19 investment, and there was a meeting, and Mr. Jones  
20 indicated, "These are the things that I need to be  
21 able to do to grow my business and invest in Hampton  
22 County," one of which was to have access to the  
23 Airport property to test his equipment. There was  
24 nothing going on at the Airport property. The  
25 evidence is going to come out that the Airport was

1 basically in default. There had been discussions  
2 about shutting it down. There really wasn't much  
3 going on at all, a couple planes, if anything. I  
4 think even today with the increased activity they  
5 have I think it's about 400 takeoffs and landings in  
6 an entire year, Your Honor. And so back then there  
7 was a discussion had with the Council and  
8 representatives of the Council, and a commitment was  
9 made to Mr. Jones that he could use the Airport  
10 runway to test fire trucks -- he could use the  
11 Airport property to test fire trucks. Your Honor,  
12 there was a letter written that I have handed up to  
13 you, a 2005 letter, that followed the meeting where  
14 this agreement was made, and, Your Honor, the terms  
15 of that letter say what they say, that Mr. Jones was  
16 going to have a private right to use -- a private  
17 taxiway right to use the Airport from the northeast  
18 tip of the Airport to the Gemco property line. Now,  
19 what we know that means, Your Honor, if you look at  
20 that aerial, the northeast tip of the Airport is the  
21 top right corner of the Airport property. The Gemco  
22 property line, and I apologize for having to come  
23 up, Your Honor, but the Gemco property line is  
24 actually the building that Mr. Jones' company  
25 bought, and they closed on it just a couple weeks

1 after this Airport, excuse me, after this County  
2 Council meeting, and after -- and after this letter.  
3 And this is the property he closed on and purchased  
4 shortly after, this was the old Gemco building, so  
5 this is Mr. Jones, Gemco property line, and this is  
6 the northeast tip of the Airport. So the use that  
7 was encompassed within that contract, that agreement  
8 that promised, Your Honor, encompassed the Airport  
9 property, an entirely different piece of property,  
10 or different than the -- than the properties that  
11 are being referenced in the 2011 and the 2014  
12 agreements, Your Honor. And -- and that, as you  
13 well picked up on, is an extremely important  
14 distinction in here. Your Honor, the document  
15 themselves limit themselves to what they're dealing  
16 with. The 2011 and the 2014 they limit themselves  
17 to the agreement that is being done at that time.  
18 They don't say all, you know, prior agreements  
19 regarding any use of any of the Grantor's property  
20 anywhere or encompass -- I mean, you know, if he had  
21 been using the Courthouse on a regular basis, the  
22 Courthouse grounds, or something like that, and they  
23 wanted to preclude that, then all that could have  
24 been spelled out very clearly and specifically in  
25 those agreements, but they do not encompass anything

1 by their language beyond what they pertain to. Your  
2 Honor, the issue of the location of the property  
3 wasn't necessarily as -- and I think you asked, "Was  
4 this issue taken up in the prior summary judgment?"  
5 They did not move on any kind of parol evidence  
6 rule, Your Honor, it was a statute of frauds  
7 argument, Your Honor, but I handed up a copy of the  
8 prior Order denying the Motion for Summary Judgment.

9 THE COURT: I've got it.

10 MR. WILSON: Do you?

11 THE COURT: Uh-huh.

12 MR. WILSON: Thank you. Your Honor, not to  
13 mention these are different properties, these are  
14 actually different entities. So the 2011 agreement  
15 is with Q&J Properties. 2014 agreement is with Q&J  
16 Properties. The agreement that we're here today to  
17 enforce, the Plaintiff is The Station, Inc. Now,  
18 they ask this in their request to admit, because  
19 they know -- I mean as in often the case, Your  
20 Honor, and I'm not going to try to misrepresent to  
21 the Court, Mr. Jones is the principal in both of  
22 those companies, but as if often the case, his  
23 operational company, Company Two, who he contracted  
24 with, agreed with Hampton County to relocate and do  
25 the -- all the other things that we'll put before

1 the Court as evidence, I'm don't want to try the  
2 case in front of you. In exchange for the agreement  
3 of being able to access the runway to rest trucks,  
4 that's his operational company, that's who does his  
5 fire truck work. And then he has a property  
6 ownership comp -- company that owns the real estate  
7 and he rents from that, and I do the same thing in  
8 my law office. I think a lot of people do that,  
9 Your Honor. So -- so these are two different  
10 entities. They're trying to take a contract with  
11 one entity and enforce some very broad reading --  
12 improper reading of the language against another  
13 company, Your Honor, and -- and it's -- it's not --  
14 it's not valid or proper legally, Your Honor. And  
15 they asked this question in the request to admit  
16 that they submitted as a part of their motion. I  
17 think the third is to admit that Company Two didn't  
18 actually own the property involved at the property  
19 swap. Your Honor, that -- that issue was addressed  
20 by Judge Buckner, I believe it was, in his prior  
21 Order, where they tried to argue the same thing and  
22 on the statute of fraud, Your Honor. If you look on  
23 the fifth page of the Order, under Statute of  
24 Frauds, it's the very last sentence, and they call  
25 -- he called that an easement resolution, but it was



1 the contract -- the 2011 contract. In addition, the  
2 easement resolution, the easement agreement and all  
3 the deeds that they tried to say preclude our claims  
4 are between the third party and not the actual  
5 parties to the lawsuit. So, Your Honor, we just  
6 think, at this point, summary judgment would be  
7 improper. Obviously, the Court, you know, has the  
8 opportunity to hear the evidence, and there's --  
9 there's other opportunities for the Court to deal  
10 with these issues, if -- if there was something to  
11 come that way, but, Your Honor, at -- at this stage  
12 summary judgment would be improper, I'll be glad to  
13 answer any questions.

14 THE COURT: So I guess what I'm wrangling with a  
15 little bit is, the terms of this agreement is it  
16 your contention that Company Two has the right to  
17 use the runway in perpetuity?

18 MR. WILSON: I believe that'd be the testimony,  
19 yes, Your Honor.

20 THE COURT: Okay.

21 MR. WILSON: That's -- yeah, I mean that'll be  
22 our position, Your Honor, yes.

23 THE COURT: Okay, thank you.

24 MR. WILSON: Thank you.

25 THE COURT: Anything in reply?

1 MR. AARON NESS: Yes, Your Honor. Judge, I'd  
2 like to point out that on the 2011 agreement, at the  
3 very first paragraph it says, "This agreement made  
4 and entered into this 23rd day of June 2011, by and  
5 between Hampton County, hereinafter HC, and Q&J  
6 Properties, LLC, d/b/a Company Two." So he signed  
7 it at the time doing business as Company Two, who is  
8 the Plaintiff in this case, so this contract is  
9 relevant, extremely relevant. And it's even more  
10 relevant, when the Plaintiff, Mr. Jones -- excuse  
11 me, when Mr. Jones testified in his deposition that  
12 he is relying for his use of the Airport along this  
13 '11 agreement, that's what he's already testified  
14 to. He testified to the same thing regarding the  
15 2014 agreement. We asked him a question, "In 2014  
16 when this easement agreement was signed, you say  
17 that adds onto what you did in 2005? Is that the  
18 premise of your case here?" "That is correct," was  
19 his answer. He says -- and he says it again, "That  
20 is correct, not to mention the testing between 2005  
21 and that letter." So the Plaintiff has made both  
22 the -- or Mr. Jones, the owner of the Plaintiff, has  
23 made both of these documents extremely relevant, and  
24 -- and is basing his case on it. I mean he's  
25 testified to it. And one other thing I'd like to

1 mention about this 2005 letter, it was signed by a  
2 guy named Jim -- Jim Daniel. Jim Daniel is not an  
3 attorney. And the reason we have the parol evidence  
4 rule in general is, so that way attorneys, because  
5 we are trained in the legal profession, can get --  
6 can put documents in writing that has the terms of  
7 both sides, and both sides can review and agree to  
8 and then sign them, and that what -- from 2005 to  
9 2011, that's what happened. And anything prior to  
10 2011, or anything that tries to explain, contradict,  
11 vary or add to written, unambiguous contracts is  
12 invisible, according to our case law is irrelevant,  
13 and summary judgment, as a matter of law on the  
14 written contracts should be granted because there is  
15 no at issue of fact when you're bound by a legal  
16 document, so thank you.

17 THE COURT: Thank you. I'm not gonna rule on  
18 the spot here, I am going to take a look,  
19 particularly, at case law. I can tell you if you  
20 want to give me your emails, I'm glad to email you  
21 this evening while I'm looking at it. Just so you  
22 know this evening, if not, then I can certainly give  
23 you my ruling the first thing tomorrow morning. Now  
24 we have some other motions regarding things we want  
25 kept out of the trial?

1 MR. WILSON: Your Honor, just, if I could, just  
2 be heard one more moment on that, just one thing?  
3 Your Honor, the -- the testimony, and I don't know  
4 if this matters, but I just don't want there to be  
5 some void of information. The testimony, I believe,  
6 and I believe Mr. Daniel's deposition testimony and  
7 I believe the testimony you'll hear in this trial is  
8 that the County Attorney was either involved in or  
9 drafted that letter, and so I don't know if that  
10 matters for purposes of your consideration of the  
11 motion of Mr. Ness. I -- I just want to make sure  
12 you had full information. I -- I think -- and I  
13 don't -- I believe Mr. Daniel testified he couldn't  
14 remember for sure, but that either the County  
15 Attorney drew that up and he signed it, or the  
16 County -- or he had it drafted, but had it reviewed  
17 and approved by the County Attorney.

18 THE COURT: Okay, thank you.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: All right, what other motions do you  
21 need me to hear?

22 MR. NESS: I think we both have motions in  
23 limine, Your Honor. I don't know if Chris wants to  
24 go first this time.

25 MR. WILSON: I'll be glad to, Your Honor.

1 THE COURT: Okay.

2 MR. WILSON: Your Honor, we're gonna move in  
3 limine to preclude any argument or evidence or  
4 discussion or testimony that the 2005 letter, the  
5 document there, and the -- and the oral contract --  
6 the -- the oral statements that were made to  
7 Mr. Jones in 2005, mean anything other than what  
8 they say. Very clearly and very unambiguously is  
9 that he had a private right to use the Airport  
10 property from the Gemco property line to the  
11 northeast tip of the Airport. And that by its clear  
12 language encompasses the entire Airport property,  
13 and that's not ambiguous or subject to  
14 interpretation or debate. All you have to do to be  
15 able to -- to figure out what that means, Your  
16 Honor, and read that -- that -- that writing is to  
17 either be familiar with the property, or take a look  
18 at a -- at an aerial. And, Your Honor, it says  
19 exactly what it says, and it means exactly what it  
20 means unambiguously. And I anticipate and -- and I  
21 don't know whether it will be in open statements  
22 tomorrow or surely in early questioning is, that  
23 there's going to be some testimony elicited or some  
24 argument that that document does not encompass use  
25 of the Airport property, that it somehow only

1 encompasses a taxiway or a piece of the property  
2 that, if you're looking at the aerial, Your Honor,  
3 or if you're looking at the easement, runs up and  
4 touches the edge of the runway. So from Mr. Jones'  
5 or Company Two's property, and then, of course,  
6 cross the piece of property to Hampton County that  
7 he swapped, and then up to the -- the -- that would  
8 be southwestern edge of the Airport runway, but  
9 that's not what it says, Your Honor. There's going  
10 to be some attempt to limit it to that. So, Your  
11 Honor, we would move in limine to exclude any -- any  
12 testimony or argument otherwise. And then the jury,  
13 you know, will just have to decide had that been  
14 breached?

15 THE COURT:

16 MR. NESS: Well, Judge, I guess we're getting  
17 back to the parol evidence rule again. Mr. Jones'  
18 testimony is what it is. The 2005 letter and the  
19 '11 agreement is what he testified to gives him the  
20 right. And it's not just based on the 2005 letter  
21 like Counsel's arguing today. Mr. Jones' testimony  
22 says otherwise. And so it is -- it is parol  
23 evidence, and in the -- the 2005 letter or anything  
24 prior to that will be parol to the written  
25 contracts, but the written contracts, you know, he's

1 brought into and -- and has made an issue in this  
2 case. I mean that -- that was part of his case now,  
3 because he's testified to it, so they're relevant,  
4 and there's going to be multiple people who can  
5 testify to it, but it's -- it's highly relevant, and  
6 he's brought -- he's brought in the issue.

7 THE COURT: Well, I mean I -- I guess I was  
8 taking it for granted the 2005 letter's going to  
9 come in front of the jury.

10 MR. NESS: Yes.

11 THE COURT: So -- but I'm not sure what you're  
12 asking me to exclude any testimony that they were  
13 not allowed to actually use the runway proper; is  
14 that what you're --

15 MR. WILSON: Your Honor --

16 THE COURT: -- asking?

17 MR. WILSON: -- the -- the 2005 letter is just a  
18 follow-up. Mr. Daniel will testify and there'll be  
19 other testimony, I believe, that the 2005 letter was  
20 just a follow-up to the meeting and the -- and the  
21 oral conversations and commitments and agreements  
22 that were made. Your Honor, what we're -- what we  
23 are saying is, that the 2005 letter, by its terms,  
24 is unambiguous. It encompasses a right-to-use the  
25 entire Airport property. And to allow the

1 Defendants to either try to argue, which I assume  
2 would be more of the case, or elicit testimony,  
3 which they may look to do from their own witnesses,  
4 that that means something different than what it  
5 says would be improper. It would be -- but it would  
6 be confusing, it would be misleading, it would be  
7 violative of the prejudicial probative value rule,  
8 and I mean it would just -- it goes against -- I  
9 mean the clear terms of that letter say what they  
10 say.

11 THE COURT: Mr. Ness, do you anticipate that you  
12 would be eliciting testimony that the private  
13 taxiway to be used from the northeast tip of the  
14 Airport to the Gemco property line does not  
15 encompass the runway proper?

16 MR. NESS: I'm not sure I understand your  
17 question, Judge.

18 THE COURT: What I -- what I think I'm  
19 understanding is, that he wants me to tell you that  
20 you can't present any testimony that this 2005  
21 agreement did not give them a right to use the  
22 runway, it only gave a taxiway to the runway, I  
23 think is what I'm --

24 MR. WILSON: Exactly, Your Honor.

25 THE COURT: -- I'm hearing. So I guess is that



1 an issue?

2 MR. NESS: It is an issue, because the contracts  
3 say otherwise.

4 THE COURT: The 2011 contract say otherwise?

5 MR. NESS: Sure, and the easement agreement and  
6 the plat that was done, which describes the easement  
7 -- or describes the easement, I guess, more  
8 particularly. I -- I don't even know what it looks  
9 like. That's -- that's the actual plat.

10 But I mean his client makes the 2011 agreement  
11 and 2014 agreement relevant and at issue. We have  
12 to be able to put testimony up.

13 THE COURT: Well, and I guess I'm speaking to,  
14 the time prior to the 2011 agreement being en- --  
15 entered into, I'm assuming. Y'all are kind of  
16 asking me to anticipate what the testimony's going  
17 to be. I'm going to respectfully deny the motion at  
18 this point. I don't know how I can really rule as a  
19 matter of law before I've heard the testimony and  
20 see what's been admitted to this jury.

21 MR. WILSON: Fair enough.

22 MR. AARON NESS: Judge, I've got a motion  
23 limited to. It's probably going to be the exact  
24 opposite.

25 MR. WILSON: I had said a letter, so we -- we --

1 we can go back and forth, whatever, you know, either  
2 way.

3 MR. WILSON: Your Honor, like -- likewise in  
4 that same vein, we would argue to exclude discussion  
5 of the 2011 document or the 2014, '15 documents.  
6 And when I say '14, '15, the '14, I think they were  
7 signed in 2014 but aren't recorded until 2015, which  
8 will be two deeds and an easement, and they're not  
9 -- they're not relevant to the same properties, Your  
10 Honor. We're not talking about the same property.  
11 They want to talk about -- and I don't want to  
12 belabor the point, Your Honor, but they want to talk  
13 about like it's all together, and we're talking  
14 about a runway, Your Honor, and we're talking about  
15 Airport property that encompasses the runway, and  
16 what they're talking about is an entirely different  
17 property, it's property that Mr. Jones at one time  
18 owned that he swapped with the County, the property  
19 that at one time the County wanted to swap with  
20 Mr. Jones, so it's -- it's the same motion, Your  
21 Honor, basically, but to exclude those documents  
22 from coming before the jury.

23 THE COURT: Let me make sure I just understand  
24 correctly. The 2011 and 2015 agreements were  
25 pertaining to the same properties, or they were

1 different properties?

2 MR. AARON NESS: The same properties.

3 THE COURT: Okay. So there was a 2011  
4 agreement, just the deeds weren't actually done  
5 until 2015 --

6 MR. AARON NESS: Correct.

7 THE COURT: -- or recorded in 2015?

8 MR. AARON NESS: Yes.

9 MR. WILSON: And not to split hairs, Your Honor,  
10 they don't pertain to the exact same properties,  
11 because 2011 pertain to the properties that were  
12 swapped. And -- yeah, because then the 2015  
13 easement is just across one of the properties that  
14 was swapped, so --

15 THE COURT: So what you're saying is, the 2011  
16 and 2015 dealt with these two properties that do not  
17 include the actual runway?

18 MR. WILSON: Exactly, Your Honor.

19 THE COURT: I -- I understand your position.  
20 Yes, sir.

21 MR. RICHARD NESS: Now the elephant in this room  
22 is -- I'm just explaining to the Court, Judge, by  
23 ruling on this, we could have it brought up today.  
24 But you've got to question if the elephant's in the  
25 jury box over here that says that the -- he says the

1 -- I should have my thoughts right, Your Honor.  
 2 County Council hasn't moved on this, never voted on  
 3 this thing. County Council could not sell property,  
 4 lease property under the statute, unless they have  
 5 an ordinance on it. And they didn't have that in  
 6 this case. If these are ruled on if that was kind  
 7 of a fact issue and all that sort of stuff, but it's  
 8 a big elephant sitting in a the room, I think you  
 9 can't forget Mr. Wilson's trying to box us in here  
 10 on this question of no ordinance -- or an ordinance  
 11 versus no ordinance, and without an ordinance, we  
 12 can't lease property in perpetuity, or whatever  
 13 you've been talking about out here. I don't think  
 14 it's an issue. I don't think that the -- I mean I  
 15 think all this evidence has got to come in just like  
 16 it is. I don't think you can exclude any of the  
 17 documents, I don't think, Your Honor.

18 THE COURT: Well, let me look at this Order from  
 19 Judge Buckner real quick, if y'all don't mind. The  
 20 motion to exclude the 2011 and 2015 agreements I'm  
 21 gonna deny that at this point. And I certainly  
 22 understand your position, but I think these are --  
 23 there's some factual issues that a jury's going to  
 24 have to determine here.

25 MR. WILSON: Thank you, Your Honor. Your Honor,

1 one thing -- this goes to one thing Mr. Ness  
2 mentioned just a moment ago, it was the motion I  
3 have to prevent argument in opening for -- or, you  
4 know, ultimately, down the road testimony, about  
5 there being no ordinance -- no County Council  
6 ordinance in connection with the agreement that  
7 we're here to enforce the contract, we're here to  
8 enforce. Your Honor, there -- there's not an  
9 ordinance that in any way references what's  
10 encompassed in that 2005 letter and the -- and the  
11 2005 agreement, Your Honor, and they want to take  
12 the position, because there's no ordinance,  
13 nothing's enforceable. Your Honor, the law on that  
14 is Section 4-9-130, it's actually Subparagraph 6,  
15 Your Honor, that a county or a government cannot  
16 sell, lease or contract to sell or lease real  
17 property owned by the County without an ordinance.  
18 So they've got to sell it, lease it, or contract to  
19 sell or lease it, Your Honor, and that's not what we  
20 have here. We obviously don't have a sale, Your  
21 Honor, we don't have a lease, and we don't have a  
22 contract to sell or lease. A lease, you know,  
23 obviously, a sale -- a sale is clear, your Honor,  
24 and a lease as defined in Black's Law Dictionary,  
25 the basic definition is, a written agreement where

1 the -- the lessee becomes -- has a right to  
2 exclusive use and possession of the property. We've  
3 got -- we've got a use here, Your Honor. And they  
4 don't use terms lease -- they don't use the terms  
5 lease in the oral agreement, they don't use the  
6 terms lease in that letter in 2005. It's not a  
7 lease, it's just a right to use. It would be no  
8 different than, if someone from County owns a lot of  
9 different properties, the Courthouse or recreation  
10 complexes or whatever else, if somebody was granted  
11 the right to use or contract with the right to use,  
12 you know, one of those facilities on a periodic  
13 basis. What this consists of, Your Honor, not to  
14 get too deep into the facts is, ultimately, these  
15 trucks -- these big fire trucks that Company Two  
16 refurbishes these Airport Rescue and Fire Fighting  
17 trucks have to be speed tested by the FAA to meet  
18 certification. And that speed test just requires  
19 them to get up from zero to 50 miles an hour in a  
20 certain amount of time, go in one direction, turn  
21 around and do the same thing going back the other  
22 direction, it's a straightaway -- a long  
23 straightaway, so perfect for that airport runways,  
24 things like that are perfect for that. This is a  
25 test that takes two to five minutes. It's not even

1 done on a daily basis, Your Honor. And -- and so  
2 this is not something that requires an ordinance and  
3 -- to allow them to stand up in front of a jury and  
4 argue that there's no ordinance, it's just  
5 confusing, Your Honor, and it's prejudicial or to  
6 try to elicit testimony in that regard, because it's  
7 not required by law. There's a case, Your Honor,  
8 and I apologize, I don't have a copy of it, but it's  
9 the Amick case that they cited in -- in -- in some  
10 of their request to charge what they were going to  
11 submit the last time, and that was an option to  
12 purchase real estate. A totally different deal,  
13 Your Honor, that's a contract to sell or purchase  
14 property. This is not something that requires an  
15 ordinance.

16 THE COURT: Mr. Ness?

17 MR. WILSON: And, I'm sorry, Your Honor, if I  
18 could, Mr. Roy Hollingsworth, whose -- at the time I  
19 deposed him at least was one of the Council Chair --  
20 who's the Council Chairman of the County Council,  
21 and -- and in his deposition he agreed with me, Your  
22 Honor, that -- and I'll pull those sections, if you  
23 feel it necessary, but he agreed that the -- that  
24 use of property was different than a lease of the  
25 property, Your Honor, in -- in this set of

1 circumstances.

2 THE COURT: Yes, sir.

3 MR. AARON NESS: Judge Curtis, I'll disagree  
4 that they are -- to Mr. Wilson's argument that there  
5 are no ordinances. There is an ordinance in this  
6 case, and we would -- we hope to put into evidence.  
7 I've got one copy here, that's the trial copy, but I  
8 can get you another copy, but it is terms of what  
9 Hampton County Council agreed to, or substantially  
10 what was in -- put into the 2011 agreement, and they  
11 were signed at basically the same time, where  
12 Hampton County Council agreed to it and then the  
13 attorneys put it in writing. So I would say the  
14 statutes that this is akin to, there's an ordinance,  
15 too, but use --

16 THE COURT: Well, of course, the 2011 and the  
17 2015 agreements that dealt with swapping property,  
18 that would have to have an ordinance, I mean that  
19 involves the sale or leasing of property.

20 MR. AARON NESS: Sure, but then when you have  
21 somebody who's using or wants to use an airport  
22 property for, you know, in perpetuity, then that's  
23 akin to a lease. I mean what else could it be? And  
24 so that's why we argue that, but Judge Butler's  
25 already made some rulings those issues though.



1 Which is why I didn't bring --

2 THE COURT: Yeah.

3 MR. NESS: Which is why I didn't bring --

4 THE COURT: I've got it in front of me the  
5 section on the applicability of 4-9-136, where he  
6 says there -- it's just the material fact that's at  
7 issue, 4-9-136, and I've got it in front of me, I'm  
8 just going to look at it.

9 MR. NESS: Your Honor, our table over there just  
10 brought up the fact that I've got all your exhibits,  
11 so this is your exhibit book.

12 THE COURT: Okay. I've got this one, thank you.  
13 I guess what I'm struggling with here and it being  
14 -- fall within the lease language is that it would  
15 not be exclusive use, Company Two would not be  
16 entitled to exclusive use, which doesn't seem to  
17 sound like a lease to me. Tell me what your  
18 position is with respect to that.

19 MR. AARON NESS: Yeah, Judge, not to -- not to  
20 not answer your question, but the reason we didn't  
21 refile that summary judgment motion on that issue  
22 was because Judge Buckner had ruled on it. I mean  
23 he found sufficient issues of fact as to that one  
24 issue of whether it's a lease or what -- or, you  
25 know, what the arrangement was. And, you know, when

1 you -- when you want to use someone's -- when you  
2 want to use something that isn't yours, I think that  
3 is a lease.

4 THE COURT: Let me give that one some thought.  
5 I'd like to look at it a little further.

6 MR. AARON NESS: Thank you, Your Honor.

7 MR. WILSON: And, Your Honor, just one other  
8 thing, there'll be other in limine evidentiary  
9 issues I'm sure to come up. One other thing is  
10 important, Your Honor, I anticipate that either in  
11 open or sometime pretty early on, and -- and I would  
12 like to get this ruled upon to -- to clear it up, so  
13 that we don't open this can of worms, that -- that  
14 they're gonna try to argue or elicit testimony, and  
15 more so what I'm worried about is an argument, Your  
16 Honor, or questioning that Mr. Jones' use of the  
17 runway, whatever that is, Your Honor, is -- is  
18 somehow jeopardizing or preventing Hampton County  
19 from obtaining funding for its Airport, specifically  
20 FAA funding, Your Honor. And, obviously, if you've  
21 got 12 citizens of this County sitting in the jury  
22 to intimate to them without proper evidence to do  
23 so, it's somehow enforcing the contract between  
24 Company Two and the County is going to cost the  
25 County money is very prejudicial, and -- and starts

1 to put into any reasonable juror's mind a basis for  
2 making the decision beyond the evidence as presented  
3 in the courtroom. They -- they don't have any  
4 person who is qualified to testify about FAA funding  
5 that's named as a witness. They don't have any  
6 person who'll they able to elicit that kind of  
7 testimony, but the truth is, Your Honor, that --  
8 that there is no FAA regulation, rule, guideline  
9 that prevents the operator of an airport from  
10 operating the airport in whatever manner they see  
11 fit. They allow use of the airport property in  
12 whatever manner they see fit. Hampton County is the  
13 owner and operator of what is now called the Hampton  
14 County Airport, at the time it was called the  
15 Hampton-Varnville Airport. And Hampton County  
16 Council, as the governing body, has the authority,  
17 and -- and I don't think this is disputed,  
18 everybody's admitted this in depositions, Hampton  
19 County has the -- has the ultimate authority to  
20 determine what it will allow to occur or be done or  
21 happen, or whatever you want to call it, with their  
22 property, Your Honor. The Federal Aviation  
23 Administration, of course has -- and so does the  
24 South Carolina Aeronautics Commission, Your Honor,  
25 has involvement with airports and -- and some

1 oversight, Your Honor, but there is -- but there is  
2 no guideline or regulation or rule or funding  
3 requirement that is violated by fire trucks being  
4 tested on the runway, and there's no funding that  
5 would be lost or -- or unavailable as a result of  
6 that. There's written evidence in this case to that  
7 effect, Your Honor, and I'll -- I'll be glad to --  
8 I'll be glad to send -- send it to you. And -- and  
9 any type of funding that is being sought would be so  
10 speculative. Their own expert is the guy who they  
11 intend to call the guy named David Anderson. Your  
12 Honor, and Mr. Anderson was formerly with the FAA,  
13 and his testimony is that -- that Hampton has not  
14 had any FAA funding in years and years and years, I  
15 think more than -- more than ten, or maybe more than  
16 20 years, I don't remember exactly. And that  
17 because of its location within -- and it's -- it's  
18 12 or 13 miles between here and the Allendale  
19 Airport, Allendale's a FAA funded airport. That  
20 proximity in that location between two airports in  
21 this rural area, one already being funded by the FAA  
22 makes it highly unlikely that the Hampton Airport  
23 would receive FAA funding.

24 THE COURT: Didn't I just read about some kind  
25 of groundbreaking last year for an improvement

1 project at Hampton?

2 MR. WILSON: That was. And I --

3 THE COURT: That did not involve FAA funding?

4 MR. WILSON: No, ma'am.

5 THE COURT: USDA loan, I believe. I'm sure they  
6 know more about it than I do. No funding from the  
7 FAA. To -- to date there's no funding from the FAA.  
8 So, Your Honor, not only will an argument to that  
9 effect be contradictory to the evidence that will  
10 come out, Your Honor, it's also extremely  
11 prejudicial, and -- and it's funding so speculative  
12 to allow them to plant that seed in the jurors' mind  
13 to somehow cost Hampton County, and ultimately  
14 themselves, money would just be wrong.

15 THE COURT: Mr. Ness?

16 MR. AARON NESS: Judge, as to the FAA issue, in  
17 2015 that's when they kicked him off the runway,  
18 that's when they said -- they said, "All right, you  
19 can't run fire trucks on the runway anymore." And  
20 the reason they did that is they were trying to get  
21 FAA funding. It's not they were worried about  
22 having it pulled, they were trying to get it in the  
23 first place. And in terms of who can testify about  
24 it on our end, we have a FAA consultant who could  
25 testify to it, who's competent, and -- but, Rose

1 Elliott, the Hampton County Administrator, she's got  
2 30 plus years in writing grants and -- and other  
3 things, and she's been awarded over 100 mil --  
4 \$100,000,000 in grants. She's competent to testify  
5 as to whether or not something could be pulled, or  
6 whether or not she's worried something could be  
7 pulled. I mean it's -- we have competent witnesses  
8 who can testify to it. It's -- it's -- I don't --  
9 it's not an expert issue, that's an issue within her  
10 job as the County Administrator.

11 MR. WILSON: Judge, as the Administrator, she  
12 may know how to fill out an application, and -- and  
13 I think the testimony is that they have a consultant  
14 or had to see a consultant to try to fill out  
15 application for FAA funding, Your Honor; but as far  
16 as whether funding is available and going to be  
17 granted, that's a totally different story, and the  
18 only person that is probably not qualified to even  
19 testify or give an opinion in that regard, because  
20 that would be opinion testimony as to the efficacy  
21 or the potential of getting funding, Ms. -- Miss  
22 Elliott has not been named as an expert witness,  
23 Your Honor, and I don't think she has that  
24 expertise, no offense, I think she's a very good  
25 person, but I don't think she has that expertise,

1 and she hasn't been named as an expert witness. The  
2 only person that they could even argue that would be  
3 Mr. Anderson, who does not say that. And, Your  
4 Honor, there's written documentation that will come  
5 before this jury that -- that the FAA has -- has  
6 told Hampton County, and my client, Mr. Jones or --  
7 or Company Two, that there are no grant assurances  
8 in Hampton County. And a grant assurance is just  
9 strings attached to get grant money, that there are  
10 no grant assurances, and that, Your Honor, that the  
11 operations at the Airport are solely the  
12 jurisdiction of the Airport owner. In short, you  
13 own the airport and you may allow the company to use  
14 your facility or not, and that is from the FAA, and  
15 that's written documentation to Hampton County. And  
16 for them to get up -- I mean I -- I don't -- I don't  
17 know if someone has to -- I don't know if -- I don't  
18 know how close that's getting to testify in a way  
19 you shouldn't, Your Honor, but I'm more worried  
20 about it getting in front of a jury in an open  
21 statement than I am anything else.

22 THE COURT: I'm going to deny the motion at this  
23 point. I -- I understand your position, but I --  
24 I'm not going to limit that testimony on the front-  
25 end, and if that, you know, if the testimony doesn't

1 bear out what somebody says in opening, then that's,  
2 you know, that's their problem to square it up with  
3 the jury.

4 MR. WILSON: Sure.

5 THE COURT: And that's respectfully denied.

6 MR. WILSON: Thank you, Your Honor.

7 THE COURT: Anything else from the Plaintiff,  
8 other than your number three, which I have taken  
9 under advisement?

10 MR. WILSON: I'm sorry, Your Honor, I think my  
11 -- my numbers are a little bit different than yours,  
12 Your Honor, I've got that you denied my motion to  
13 exclude the 2011, 2014 documents. I had that as my  
14 third one, is that actually the second one?

15 THE COURT: Let's see, we had to exclude  
16 testimony that the agreement didn't incorporate the  
17 taxiway, and then I had as the second one to exclude  
18 the 2011 and the 2015 agreements.

19 MR. WILSON: Okay.

20 THE COURT: I have number three as the ordinance  
21 issue, and number four as the FAA.

22 MR. WILSON: Okay, ordinance, I'm sorry, yes.  
23 Just give me one second, please, Your Honor.

24 THE COURT: Sure.

25 MR. WILSON: Your Honor, just one final thing.



1 Your Honor, just one final thing on that -- on that  
2 same issue. And -- and, Your Honor, just one final  
3 thing going back on that funding issue, and I  
4 understand you've already ruled, and I'm sorry for  
5 arguing. One other thing I'd like for you to  
6 consider, if I could be heard on it, I asked in  
7 discovery for them to specify and detail any and all  
8 federal, state and local ordinances, statutes, and  
9 regulations, anything that they felt like -- or the  
10 Plaintiff's use of the Hampton-Varnville Airport  
11 runway, or any organization or agency that has  
12 informed the Plaintiff that they should be barred  
13 from the use of its facilities. That's what I asked  
14 in discovery. The answer I got was see Defendant's  
15 Answer and Counterclaim. And nowhere in the Answer  
16 and Counterclaim, Your Honor, does it reference  
17 anything -- it references a bunch of State statutes,  
18 the one about parking on a runway, one about  
19 nuisance, but there's no mention of any federal  
20 regulation, no mention of any federal funding, no  
21 mention of any federal statute that prevents the use  
22 of the runway. Now they want to stand up and argue  
23 to the jury that the FAA funding regulations permit  
24 it. So, Your Honor, I -- I just submit that in  
25 addition to the reasons why I -- I indicated earlier

1 on that. I don't know if that affects your ruling,  
2 and I'm sorry for arguing after you ruled, because I  
3 know that violates our rules, but I just couldn't  
4 put my hands on that quick enough.

5 THE COURT: Well, I guess it's really two  
6 different issues. One is whether there's any FAA  
7 regs that prevent it from being used as a test  
8 track, and the second is whether it's going to  
9 prohibit the County from getting any FAA funds,  
10 because you've got this agreement in place. To me,  
11 those are two slightly different issues.

12 MR. WILSON: Your Honor, not to get too deep  
13 back in the weeds, their only person that's  
14 qualified or can even be argued to be qualified to  
15 testify about that, David Anderson, is going to take  
16 the position that any vehicle, but, in particular,  
17 these vehicles, on an airport runway violates what's  
18 called Part 1 of federal regulations, and he's going  
19 to argue that it violates that because it violates  
20 what is called -- what he reads as the definition of  
21 an airport. And he reads the definition of an  
22 airport as being a place for aircraft to take off  
23 and land. And any vehicle other than that on an  
24 airport runway he's going to say it violates federal  
25 regulations. He doesn't say that that in and of

1 itself is going to jeopardize or put at risk any  
2 funding through the FAA for Hampton County. He does  
3 -- as a matter of fact, he testifies just to the --  
4 almost to the opposite, that it's not the use that's  
5 being made of the airport property, it's the  
6 proximity to another FAA funded airport and some  
7 other factors that makes it unlikely for Hampton to  
8 receive funding. Your Honor, if -- if -- if they're  
9 able to elicit testimony in that regard that's valid  
10 and proper, you know, then -- then I understand, but  
11 to be able to put that in front of a jury, as an  
12 argument position right out of the gate, Your Honor,  
13 is -- is just -- and I think it's gonna be highly  
14 prejudicial. I don't know that there's a way to  
15 correct that, Your Honor. And we're not talking  
16 about -- we're talking about their own back pockets,  
17 when you put that out in front of them, Your Honor.  
18 I just, at this stage, just asking to keep it out of  
19 the opening. I know I said to not elicit testimony,  
20 I guess we can deal with that as it comes up, I'm  
21 just looking to keep that out of opening statements.

22 THE COURT: Mr. Ness?

23 MR. AARON NESS: Judge, I'll try to address the  
24 issues the way I see them. There are two different  
25 FAA topics that I -- the way I understand them.

1 There's the issue of our expert, and whether or not  
2 he is going to be able to talk about the FAA  
3 statutes that he relies on, as part of his opinion.  
4 And then the second topic is whether or not Miss  
5 Elliott can talk about FAA -- of federal funding,  
6 and why she then told Mr. Jones he couldn't, you  
7 know, run the fire trucks on the runway. Those are  
8 the issues I see. Their expert's going to put in --  
9 try to put in -- or their expert is basing his  
10 testimony on a different FAA document, so -- and I  
11 don't think it's unreasonable that two experts who  
12 are in the aviation industry, are basing their  
13 testimony on FAA documents, I mean they're --  
14 they're in the aviation industry. I mean their  
15 expert's going to do the same thing. So what our  
16 expert bases his opinion on, that's not our case-in-  
17 chief. Our case-in-chief isn't that FAA regs say X,  
18 Y, Z, such that we shouldn't have to plead them,  
19 it's not our case, that's just something that our  
20 expert relied on when giving his opinion, so I -- I  
21 think it's -- it's relevant. The whole basis for  
22 his opinion is -- is because he's in the aviation  
23 industry.

24 THE COURT: Again, I appreciate your openness.  
25 I'm going to deny that motion to exclude any mention

1 of the FAA --

2 MR. WILSON: Thank you.

3 THE COURT: -- issues.

4 MR. WILSON: Just one other thing, Your Honor,  
5 and this will probably be brief, and I appreciate  
6 you letting me --

7 THE COURT: No problem.

8 MR. WILSON: -- argue again on that. Your  
9 Honor, I -- and I -- I'm more, obviously, concerned  
10 with an opening statement immediately, but -- but  
11 likewise, testimony that I expect early on, maybe  
12 even with Mr. Jones, one of the first witnesses to  
13 testify. They have produced to me some number of  
14 photographs of Airport Rescue and Fire Fighting  
15 trucks on the roadways, on highway or regular road,  
16 whatever you want to call it. Your Honor, I -- I  
17 assume that's in some attempt to try to argue that  
18 -- or to intimate to the jury that Company Two is  
19 somehow being unsafe or is somehow -- I don't think  
20 there's any violation of any laws in that regard,  
21 and I don't think they've got anybody who can  
22 testify to that, even if there is, Your Honor; but  
23 moreover than that, I don't see how that is relevant  
24 at all to any issue about whether there was a  
25 contract or an agreement, and whether it's been

1 breached, and whether or not there were damages, or  
2 whether there was promissory estoppel and all the  
3 elements that were required for that, or the speci  
4 -- specific points, all that the cause of action to  
5 be pled. Airport Rescue and Fire Fighting trucks,  
6 ARFF trucks being on the roadway, I -- I don't see  
7 how that's relevant at all. There was some  
8 questions asked of Mr. Jones in his deposition about  
9 testing after he was told not to use the runway, or  
10 about how his, you know, vehicles are being moved  
11 from place to place, those type things. I don't  
12 know, I -- I -- I don't see how any of that, Your  
13 Honor, is -- is relevant to those issues, and that  
14 type of evidence is just being argued or submitted  
15 to try to enflame a jury into thinking that somehow  
16 Company Two is being unsafe by putting these  
17 vehicles out on the road. I mean there is some  
18 testimony, Your Honor, that they're not ideal for  
19 road use, and they don't have regular bumpers like a  
20 car, or like a truck, they've got high bumpers.  
21 They're obviously big vehicles. They don't want  
22 them on the roads because it tears up the tires  
23 quicker and all those kind of things, Your Honor,  
24 but I -- I don't -- I don't see how that's relevant  
25 to any issue, and I -- I anticipate that, if not in

1 opening statement, in the first witness tomorrow.

2 THE COURT: Mr. Ness, what's the relevance of  
3 that?

4 MR. AARON NESS: As to pictures on the road --  
5 the trucks on the road, the relevant is, Judge,  
6 Mr. Jones testified in his deposition that he had  
7 not been driving his trucks on the road. And we've  
8 got pictures of him driving the trucks on the road,  
9 and so that would be the relevance would be -- I can  
10 get -- I think I'll get to ask him, "Have you been  
11 driving trucks on the road?" And depending on what  
12 his answer is, then I could use the pictures  
13 potentially, that's the relevance, is because he  
14 testified otherwise than what the pictures show.

15 THE COURT: I guess I'll hear the objection at  
16 the appropriate time. I can't imagine it would be  
17 relevant except on cross as to some kind of  
18 impeachment. Otherwise, I don't see how that would  
19 be relevant, certainly, in any opening statement or  
20 anything like that; but, of course, if there's a  
21 relevance objection during the testimony, then I'll  
22 take it up at that time.

23 MR. WILSON: Thank you, Your Honor. And that's  
24 all for me, I appreciate your patience.

25 THE COURT: Sure. How about from the defense?

1 MR. AARON NESS: Judge, I've got a couple  
2 motions, well, I actually have a copy of my motion,  
3 here's the memorandum to go with it. And then my  
4 cases, I printed them off for you. Judge, the first  
5 -- number one, I'm sorry, number one, number two --  
6 number one and number two are on parol evidence.  
7 And so I -- I don't know if you want me to reargue  
8 them points.

9 THE COURT: I'm with you. I understand your  
10 position on those two.

11 MR. NESS: Okay. I'll just skip those then and  
12 I'll go straight to number three. We asked for an  
13 order excluding Quincy Jones or Robert Shaub, who's  
14 one of his proposed experts testify that Company Two  
15 lost an international bid for future ARFF contracts,  
16 as a result of being unable to test ARFF trucks on  
17 the Airport runway. So to put some context behind  
18 that, when Mr. Jones was removed from the Hampton  
19 County runway, he was kind of in the process of  
20 putting this bid package together for this huge  
21 contract for him to sell ARFF trucks to, you know,  
22 third world countries. And his testimony will be  
23 that because he got removed off the Hampton County  
24 runway, it pushed all of his bid prices up, because  
25 he then had to take into account that he would have



1 to take his trucks elsewhere to get tested. So,  
2 basically, he says he lost a bid -- the -- this huge  
3 bid contract because he got removed off the Hampton  
4 County runway. In my memorandum I've cited some  
5 deposition testimony as to -- on page five, I guess  
6 I'll try and point you out, page five and page six.  
7 So on page five you can see that I put some  
8 deposition testimony in there, and Mr. Jones  
9 testified that this 4.1 million dollar contract and  
10 his profitability margin would be in the 40 to 45  
11 percent range of the 4.1 million dollar contract.  
12 And then on the next page, when his expert, who  
13 helped him put this bid package together, testified  
14 they were, you know, he testified it was a 4.9  
15 million dollar contract, and so they're -- first of  
16 all, they're \$800,000 apart in their numbers. So  
17 that was my first issue with his testimony is that  
18 it's -- it's speculative, one, because it's a bid,  
19 it wasn't even a contract that Mr. Jones had at the  
20 time. It wasn't a contract he had with a certain  
21 entity that he was doing this, it was just a bid  
22 package. So it was always contingent from the very  
23 beginning, and so -- but he's claiming it as damage,  
24 a 4.9 million dollar damage. The other thing was  
25 really foreseeability on whether or not Hampton

1 County could have foreseen, excuse me, that is they  
2 removed him off the runway, could they have foreseen  
3 that he would then lose a huge contract? And I  
4 think as a matter of law, when Hampton County is  
5 only bound to -- is legally bound to the contracts  
6 that signed, and none of the written contracts they  
7 signed said that they would give him permission to  
8 run the fire trucks on the runways, is then not  
9 foreseeable that he'd lose this huge contract. If  
10 they weren't bound to -- to let him use the runway  
11 in the first place, how could they have known, you  
12 know, legal causation, how could they have known  
13 that he would then be on the hook for this huge  
14 contract? So I don't -- we would ask that Quincy --  
15 or, excuse me, that Mr. Jones and Mr. Shaub be  
16 prevented from testifying as to this international  
17 bid, because it's speculative, it's contingent, and  
18 it's unforeseeable.

19 THE COURT: Mr. Wilson?

20 MR. WILSON: Your Honor, there's testimony and  
21 there will be testimony that Company Two was the  
22 best situated company to amend this bid, and so it's  
23 not speculative, Your Honor. This is a no exception  
24 bid, to -- just to give you a little bit of  
25 background. It was a no exception bid from the

1 World Bank, and -- and what no exception means is,  
2 you can't take any exceptions to the bid  
3 requirements. One of the bid requirements was on-  
4 site testing. And on-site testing is exactly what  
5 it sounds like, testing at your site, so that the  
6 representatives who were involved in, you know,  
7 determining which bid to accept, when they come in  
8 to look at your -- it's ten -- it's ten trucks is  
9 what it was, and it was 4.9 million, I believe, Your  
10 Honor. When they come in to look at your trucks,  
11 they look at them right there on the spot. If  
12 there's any adjustments need to be made, they're  
13 made right on the spot, they're tested again. All  
14 this takes place in the same vicinity, in the same  
15 locale, so that it's all done in the same day,  
16 instead of saying, "Well, I've got to take this  
17 truck now, and I've got to take it 100 miles away or  
18 400 miles away, or whatever I've got to do to it to  
19 test it, and then I've got to bring it back up here  
20 to get my mechanic to work on it, and then we've got  
21 to go test it again," Your Honor, so there's clear  
22 testimony and evidence and written evidence to that  
23 -- to that effect that will come before the Court,  
24 that this was a no exception bid proposal, and that  
25 no exception was on-site testing. And that at the

1 time all of this started, Company Two had access to  
2 the runway and on-site testing, and -- and then had  
3 to -- and then lost the bid, and there's testimony  
4 that that's the reason he lost the bid. And then  
5 there's also testimony, Your Honor, that -- that  
6 they were the most -- I'm drawing blank on the word,  
7 they were the most -- they were the best situated to  
8 win the bid, and, actually, the company that won the  
9 bid had to come buy two trucks from Company Two,  
10 because they couldn't meet the ten-truck  
11 requirement. So there will be some mitigation or,  
12 you know, a lessen of the damages in that regard,  
13 Your Honor, but it's not speculative, there's  
14 testimony that will make it not be speculative.  
15 Whether it's foreseeable or not, Your Honor, I mean  
16 if -- if you break a contract with a company that's  
17 relying on that to get -- to obtain business, to  
18 complete business and to get paid is very  
19 foreseeable that -- that that resulted in damages,  
20 Your Honor. I know they want to take the position  
21 there was no contract, but that's what the jury,  
22 ultimately, will decide. And if the jury decides  
23 there was a contract and the contract was broken,  
24 his damages flow from the breach of that contract,  
25 They're very foreseeable.

1           THE CONTRACT: I'm gonna hear the testimony. I-  
2 -- if you don't present enough evidence to show that  
3 it's anything more than some future possibility,  
4 then it's not an element of damages that's going to  
5 go in front of the jury, but, of course, I'm going  
6 to be giving the instructions that they cannot award  
7 any damages that are speculative.

8           MR. WILSON: And, Your Honor, I'm -- I'm sorry  
9 for jumping the gun.

10          THE COURT: At this point, I'm going to deny the  
11 motion again, without hearing exactly what the  
12 testimony is, you know, I can't look in a crystal  
13 ball and see what the testimony's going to be, but I  
14 will tell you that, of course, I'm going to be  
15 instructing the jury that damages cannot be  
16 speculative. And if that -- the testimony regarding  
17 the bid sounds speculative, after I've heard that  
18 testimony, then it's not an element of damages that  
19 -- that can go to the jury.

20          MR. WILSON: Sure. And, Your Honor, there will  
21 be other damages that flowed from that, and, you  
22 know, beyond losing the bid. I mean there's time,  
23 money and things that are spent in regard --

24          THE COURT: Well, I think that brings us to the  
25 next one --

1 MR. WILSON: -- in regard of putting that  
2 together, so there -- there are damages beyond the  
3 bid itself. We will, obviously, take the position  
4 that the loss of that -- the loss of that -- was the  
5 element of damages, but there will be monetary loss  
6 of damages in connection with that also. We'll --  
7 we'll argue about that when the time comes, but I --  
8 I didn't want -- I didn't want the -- the -- the  
9 implication to be that that was the only element of  
10 damage that we would put up -- and put up, or that a  
11 jury might be able to consider in the breach of  
12 contract claim.

13 THE COURT: Well, I think that kinda leads us  
14 into the next motion, which is to exclude testimony  
15 that a new facility at a different location would  
16 cost close to four million dollars.

17 MR. AARON NESS: Yes. Judge, this is the --  
18 this is -- they've got another expert, who is a  
19 contractor. He puts up these huge metal buildings.  
20 He's expected to testify that Mr. Jones wanted him  
21 to give a quote on what it would cost to build an  
22 entirely new facility at a different location. And  
23 we've got an issue with that, because the Plaintiff,  
24 as he is now, The Station and d/b/a Company Two, the  
25 Plaintiff is only the lessee of the -- of the

1 property, I mean the lessee currently, doesn't have  
2 any property rights to the real property of the  
3 building, and yet they're trying to claim it as a  
4 loss, four million dollar damage, that they're  
5 losing the value of this property when the Plaintiff  
6 didn't own it in the first place, so we do object to  
7 that for a number of different reasons. And, two,  
8 you know, they don't get to have the -- the whole  
9 four million dollar number as a damage. There's got  
10 to be -- there's this -- if I understand it, there  
11 can be the replacement value, minus the value of the  
12 building and then the difference, but they don't --  
13 they don't -- they never produced an expert or named  
14 an expert who can testify as to what the building is  
15 now. And so anyway this is a contract, actually,  
16 you don't get to be placed in a better position, as  
17 a result of the case than you were before the case.  
18 You can be put in the position you were, as if a  
19 contract -- an alleged contract had been done, and  
20 they're allowed to claim the -- with the Plaintiff,  
21 Company Two, is only a lessee and not a lessor,  
22 allowed to claim a four-million-dollar damage,  
23 they're certainly being placed in a better position  
24 than prior to the lawsuit.

25 THE COURT: Mr. Wilson?

1 MR. WILSON: Your Honor, that testimony -- if  
2 Mr. Qui -- if Mr. Jones had a contract with Hampton  
3 County, and Hampton County breached that contract,  
4 and -- and he's been denied access to the runway,  
5 and -- and has continued to be denied access to the  
6 runway, he's got to go somewhere else, Your Honor,  
7 and that go somewhere else comes with a cost.  
8 Whether he leases or whether there's a purchase,  
9 he's got the -- his company to continue to operate  
10 has to have a location from which to do it. And,  
11 Your Honor, that is -- that is not putting him in a  
12 better position, that's putting Company Two in the  
13 position that it would have been in prior to the  
14 breach. Your Honor, if there's some -- the law is  
15 that a property owner can testify about the value of  
16 their property, and there's evidence -- there'll be  
17 evidence in regard to the value of the property, as  
18 it exists, and then there'll be evidence -- or there  
19 -- there's likely to be evidence about the property  
20 and its value to where a jury can take into  
21 consideration all of the things that Mr. Ness, you  
22 know, has thrown out. The case law is clear that --  
23 that a property owner can testify about the value of  
24 their own property, the subject of being attacked,  
25 you know, do they have the, you know, -- requisite



1 of appraisal skills or whatever else, but --

2 THE COURT: Well, I mean the issue is that Q&J  
3 is not the Plaintiff, Station Two is the Plaintiff.

4 MR. WILSON: Your Honor, that -- that's correct,  
5 but it doesn't change the fact that -- that Company  
6 Two would have to be put into the same position that  
7 it was in, prior to the breach of contract. And if  
8 that position requires a building that has the size  
9 and the makeup and the characteristics that this  
10 building over here has, and -- and, Your Honor, I  
11 know that number seems high and it is, because, as  
12 you well know, steel's gone through the roof, just  
13 like everything else, Your Honor, but --

14 THE COURT: So why would your damages --

15 MR. WILSON: -- but --

16 THE COURT: -- be the lease amount? You -- you  
17 stated earlier that Station Two leases property from  
18 Q&J.

19 MR. WILSON: If -- if they want to argue that it  
20 should be a lease amount, Your Honor, they can do  
21 that. They can argue that it would be lease amount,  
22 and -- and that may go to credibility, but I don't  
23 know that it goes to exclusion of the evidence, Your  
24 Honor, and -- and we would elicit that.

25 MR. AARON NESS: Judge, it's certainly confusing

1 to the jury.

2 THE COURT: And I mean I just have a fundamental  
3 problem with it. Q&J's not the owner -- I mean, I'm  
4 sorry, Station Two is not the owner of the property,  
5 so you kind of can't have it both ways. So if Q&J  
6 owns the property and Station Two leases the  
7 property from Q&J and they are separate entities,  
8 which is perfectly fine and legal and legitimate, I  
9 don't think the proper measure of damages is re- --  
10 a total rebuild if Q&J's not a party to this suit.

11 MR. WILSON: Your Honor, when -- when they put Q  
12 -- when they put Company Two out of their house,  
13 Company Two has to go find a house.

14 THE COURT: And I --

15 MR. WILSON: And --

16 THE COURT: -- understand, but it's leasing this  
17 house, so it's got to go lease a building from  
18 somewhere else.

19 MR. WILSON: Sure, Your Honor, and I think if  
20 they wanted to -- I think that goes to the weight of  
21 the evidence and not to its admissibility. They can  
22 argue to a jury that that's, you know, not -- that  
23 that's not credible or -- or not -- or doesn't make  
24 sense, or whatever it is, but that all goes to --  
25 that all goes to the weight to be given to that

1 evidence, not to the admissibility of it or not. Q&  
2 -- Company Two has to be put back into the position  
3 that it had prior to the breach of contract, and  
4 that position was, it had access to this type of  
5 property, and it was long-term access. I mean,  
6 obviously, it's, you know, companies that are  
7 separate, but, you know, with, of course, dealing  
8 whether that property was gonna be there for, you  
9 know --

10 THE COURT: I -- I still don't think that the  
11 measure of damages would be to construct a new  
12 facility in a different location. Again, Q&J's not  
13 a party to this action. So in that narrow -- and to  
14 me is this a very narrow motion, that would be --  
15 I'm -- I'm granting that. I don't think that's the  
16 -- the proper measure of damages.

17 MR. WILSON: Okay.

18 THE COURT: And then last two, excluding  
19 testimony concerning offers of settlement?

20 MR. AARON NESS: Judge, we've mediated this case  
21 a couple times. It's, you know, this case has been  
22 very political, we just don't want to talk about  
23 settlement.

24 THE COURT: Sure, that's - that's always a  
25 given, and that is not in this admissible to come in

1 front of this jury. Can I ask y'all, I believe --  
 2 I'm looking at the 2011 agreements, and I think  
 3 there's similar language in the 2015, refers to a  
 4 sketch, and I just want to look at the exact sketch,  
 5 if y'all have it, and I don't seem to -- I -- I  
 6 didn't see it in the exhibits that were brought --  
 7 that were attached to the motion. I don't see it in  
 8 the Defendant's list of exhibits here. It looks  
 9 like it's Exhibit 12 is the 2011 agreement, and  
 10 there's no -- there's no sketch attached. And I  
 11 would assume the 2015 agreement also -- I think it  
 12 refers to an attached plat or something.

13 MR. AARON NESS: That's -- that's the one I  
 14 handed to you, your Honor.

15 THE COURT: That's this one?

16 MR. AARON NESS: Yes, ma'am.

17 THE COURT: This is -- and this appears to be  
 18 the same one that Mr. Wilson had handed me that's  
 19 got the pink. This was the attachment to the 2015  
 20 agreement?

21 MR. AARON NESS: This is the one that's  
 22 referenced into -- it reference -- it's referenced  
 23 on the bottom paragraph of page one. The easement  
 24 area's more fully shown and described on that  
 25 certain plat prepared by Lawton Hanger (phonetic);

1 is that the one you're referring to? There's two  
2 exhibits, which are just the property descriptions.  
3 Those -- those should be attached.

4 THE COURT: All right, Exhibit 1 is the 2011  
5 agreement, and that 2011 agreement says, "Whereas,  
6 coming to on the 1.767 acres designated as Parcel A  
7 on the attached sketch adjacent to the Hampton  
8 County Airport."

9 MR. AARON NESS: Oh, I see -- okay.

10 THE COURT: And I don't -- I haven't seen any  
11 sketch. What -- I think what you've both handed me  
12 would be -- it's dated 2013, it looks like in very  
13 little tiny -- there's some very little -- it looks  
14 like -- and I think it was filed -- a Hampton County  
15 Building Official signed it on December 4, 2013. Do  
16 you know --

17 MR. AARON NESS: Judge -- Your Honor, yes,  
18 Judge, I -- I think I can confirm this. If you go  
19 to Exhibit 8 in that folder of exhibits that I gave  
20 you.

21 THE COURT: Attached to --

22 MR. AARON NESS: So the sketch I believe they  
23 refer to -- and we can confirm this this afternoon,  
24 is on Exhibit 8 -- it's attached to Exhibit 8.

25 THE COURT: Are you saying the number eight?

1 MR. AARON NESS: Yes, Defendant's Exhibit 8.

2 Yeah, Judge, this is it.

3 THE COURT: Sorry, it's not tabbed, so I kind of  
4 have to go page by page to find it. Exhibit 8.

5 MR. AARON NESS: And then the sketch behind it.

6 THE COURT: Okay.

7 MR. AARON NESS: And, Chris, you agree, right?  
8 That's it?

9 MR. WILSON: Yeah, I think so.

10 THE COURT: If I could just -- when we break, if  
11 I can get you each to give me your email address, so  
12 I can give you -- if you'll just verify we've got  
13 the -- the correct one so I can email you just as  
14 soon as I make my ruling? Anything else we need to  
15 take up this evening?

16 MR. WILSON: Nothing from the Plaintiff, Your  
17 Honor.

18 MR. AARON NESS: Nothing from Hampton County.

19 THE COURT: Nine -- now that I've told the jury,  
20 I guess it's too late for me to ask you if 9:30 is  
21 okay with everyone. Then there's a little bit of a  
22 commute involved. You -- you're -- everyone is in  
23 Bamberg; is that right? Well, I don't know where  
24 your actually coming from, your offices are in --

25 MR. AARON NESS: Yeah, we're 30, 35 minutes,

1 we're not too far.

2 THE COURT: All right, well, we'll reconvene at  
3 9:30.

4 MR. WILSON: Thank you, Your Honor.

5 (At 5:00 p.m. the trial was continued to be  
6 resumed the following day without interruption.)

7 END OF VOLUME I

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STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
2016-CP-25-00170

The Station, Inc, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Hampton County, )  
 )  
Defendants. )  
----- )

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May 25, 2021  
Hampton, South Carolina

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The Honorable Kristi Curtis, Judge Presiding

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1 THE COURT: Good morning.

2 Anything we need to address before we bring the  
3 jury in?

4 MR. WILSON: Your Honor, just two brief things,  
5 Your Honor, that will keep us from having to take a  
6 break maybe, otherwise, I -- I would ask that the  
7 witnesses be sequestered. There are a number of  
8 current County Council members, Airport Commission  
9 members, County employees that are present. I -- I  
10 would ask that anybody that's a potential witness be  
11 excluded. I have let Mr. Ness know -- Mr. Ness know  
12 that I don't have any objection to current County  
13 Council members being present in the courtroom,  
14 because they are Hampton County current government,  
15 and I think one of them -- I don't know, they may  
16 call several of them, I don't know that they're  
17 relevant, but we can argue about that later, but,  
18 Your Honor, I don't have a problem with the current  
19 County Council members, even if they plan on calling  
20 them as a witness, but I do have a problem with all  
21 the other witnesses -- the potential witnesses that  
22 are in the courtroom being here during testimony of  
23 any witness.

24 THE COURT: Mr. Ness?

25 MR. RICHARD NESS: And I believe any person who

1 is a member of the Airport Commission should stay in  
2 courtroom to, part of the governing body of the  
3 airport.

4 THE COURT: Is there a reason they need to be in  
5 here? I mean are they going to be testifying as  
6 potential witnesses, as well?

7 MR. RICHARD NESS: Possibly, yes, ma'am, I don't  
8 want to exclude anybody right now.

9 THE COURT: I -- I understand. I mean,  
10 generally, I'm going to sequester the witnesses if  
11 anybody requests it.

12 MR. AARON NESS: Judge, we've got a situation,  
13 where we represent, you know, a County, obviously,  
14 who's got multiple people to represent it, and the  
15 thing about it --

16 THE COURT: I understand, but I also heard y'all  
17 yesterday say the County was -- that County Council  
18 was the -- the authorizing body with respect to  
19 these agreements and not the -- any other body, I  
20 believe, was your argument yesterday.

21 MR. AARON NESS: And it -- it still will be.

22 THE COURT: So any current member of Council  
23 would be certainly welcome to stay. I -- I don't  
24 have any grounds to deny a motion to sequester the  
25 witnesses, I mean that's --

1 some instructions.

2 (jury duly sworn and impaneled.)

3 THE COURT: Ladies and gentlemen, the case we're  
4 about to try this morning is The Station, Inc.,  
5 doing business as Company Two, Inc., versus Hampton  
6 County. This is a civil case. And before we begin  
7 this trial, I want to tell you that the trial may be  
8 very different from what you might expect. Many  
9 people don't have the chance to attend trials, and  
10 so may think from watching television or movies or  
11 reading books, that trials are always full of high  
12 drama and intense action and riveting circumstances.  
13 And while all these things may be true, the trial is  
14 not for entertainment, it's a fundamental part of  
15 our judicial system. It's often slow, deliberate,  
16 and repetitive. It might be the opposite, actually,  
17 of what you see in television or movies, but the  
18 courtroom is a place of honor dedicated to the --  
19 the protection and preservation of citizens' rights  
20 to what many have called the greatest justice system  
21 ever created. The attorneys appearing before you  
22 are advocates for the parties that they represent,  
23 but first and foremost, they're officers of the  
24 Court, and they're sworn to uphold the integrity and  
25 fairness of our judicial system, so you should

1 expect them to be professional, competent and  
2 ethical in their representation of their clients'  
3 interests. And remember that each of you have taken  
4 an oath to try this case and reach -- reach a fair  
5 and just verdict, and you are also expected to be  
6 professional, reasonable and ethical. So I want to  
7 thank you, first of all, for accepting this very  
8 important responsibility. The first thing that's  
9 going to occur during the trial is, the attorney for  
10 the Plaintiff, and the Plaintiff is the person or  
11 entity who has brought this action, his attorney  
12 will make an opening statement, which will be  
13 followed by a similar opening statement by the  
14 Defendant's attorney. These opening statements are  
15 not arguments or evidence. Those arguments will  
16 come at the conclusion of the trial, but the purpose  
17 of the opening statement is for each party to  
18 outline his claims and the evidence which he or she  
19 intends to present in support of these claims.

20       Following the opening statement each side will  
21 present its evidence, the Plaintiff, once again,  
22 going first. Evidence can take many forms. It can  
23 be testimony, documents, models, photographs, or the  
24 like. You should pay close attention to all of the  
25 evidence which is presented by each party. You, the

1 jury, are the factfinders, you're the sole finders  
2 of fact in this case. No one else will be permitted  
3 to weigh the evidence and render a verdict based on  
4 it.

5 After all the evidence has been presented, the  
6 attorney will make their closing arguments. Unlike  
7 the opening statement, the final remarks will be  
8 true arguments, that is, each side will emphasize  
9 certain portions of the evidence and try to persuade  
10 you to agree with their version of the facts.

11 Keep in mind that the opening statements, as  
12 well as the closing arguments of the attorneys do  
13 not represent evidence in this case. The evidence,  
14 of course, will be in the form of the things that  
15 I've just described to you and the sworn testimony  
16 from this witness stand.

17 Of course, give the attorneys your undivided  
18 attention, but keep in mind that what they say in  
19 those arguments is not evidence. After the  
20 arguments are finished, I'll explain to you the law  
21 that applies to this case, and you'll then return to  
22 the jury room to consider the facts and the law, and  
23 once you've done so, you'll return a verdict in  
24 favor of one side or the other. During the course  
25 of the trial, the Plaintiff has the burden of

1 proving his claims, and the Plaintiff must meet this  
2 burden, by proving his claims by the greater weight  
3 or preponderance of the evidence. And what we mean  
4 by the greater weight of the evidence can be  
5 illustrated by just imagining a traditional set of  
6 scales. When the case begins, the scales are even.  
7 After all the evidence has been presented, if the  
8 scales should remain evenly balanced, or if they  
9 should tip even slightly in favor of the Defendant,  
10 then the Plaintiff would have failed to meet his  
11 burden of proof and your verdict would be for the  
12 Defendant. If on the other hand the scales should  
13 tip even slightly in favor of the Plaintiff, then he  
14 will have met his burden of proof and your verdict  
15 would be for the Plaintiff.

16 As I mentioned earlier, although I'm the only  
17 person who can tell you what the law is, you are the  
18 only ones who can determine the facts. I do not  
19 have the right to indicate how I may feel about the  
20 evidence presented, and throughout this trial my  
21 intention will be to act impartially toward each  
22 party. Please don't read anything into my rulings.  
23 I may have to make legal rulings during -- during  
24 the course of the trial, please don't think that I'm  
25 trying to give you any indication about what my

1 opinion is on the facts, that is solely for you to  
2 -- to determine. From time to time, you may hear an  
3 attorney object to some bit of testimony or  
4 evidence, which the other side is seeking to  
5 present. There are certain rules that both sides  
6 must obey in presenting evidence, and these rules  
7 have a definite purpose, and that's to ensure that  
8 the information you receive is the most trustworthy  
9 and reliable evidence available. An objection is  
10 the procedure that's used for an attorney to call a  
11 possible violation of the rules to my attention as  
12 the judge of this Court. And for this reason you  
13 should not hold an attorney's objection against his  
14 or her client, nor should you conclude from my  
15 ruling on the objection that I favor one side or the  
16 other.

17 Finally, I would ask that you pay close  
18 attention to all of the evidence presented to you.  
19 It's you, the jury, who will determine the facts in  
20 this case, and, as a result, you will have to  
21 evaluate the credibility or believability of each  
22 witness who testifies in this matter.

23 You're participating in a time-tested system,  
24 and it's extremely important for each of you to  
25 listen carefully to all the evidence presented. And



1 then at the end you'll be in a position to determine  
2 the facts, apply the law to those facts, and render  
3 a verdict.

4 At our first opportunity for a break, I'm going  
5 to ask, if you'll please appoint a foreperson from  
6 among the 12 of you. Our two alternates would not  
7 be eligible to serve as the foreperson. You do not  
8 need any particular training or experience to be a  
9 foreperson, it just means that you're going to be  
10 the spokesperson for the jury panel. If there's  
11 some issue that needs to be brought to my attention,  
12 you'll notify the Bailiffs, and send a note to me.  
13 The foreperson will preside over the deliberations  
14 and will sign the verdict form on behalf of the jury  
15 panel. So, again, I would like to, when we take the  
16 first break, to please select the foreperson. Any  
17 objections or additions to the instructions I've  
18 given to the jury, thus far?

19 MR. RICHARD NESS: Nothing from the Defendant,  
20 Your Honor.

21 THE COURT: Okay, Mr. Wilson, if you'd like to  
22 make your opening statement?

23 MR. WILSON: Thank you, Your Honor.

24 **OPENING STATEMENT BY MR. WILSON**

25 If it pleases the Court, Mr. Ness, Mr. Ness.

1 Good morning, ladies and gentlemen.

2 I just want to thank you for being here today,  
 3 and as the Judge said yesterday, I'm sure everyone  
 4 of you has somewhere else you'd rather be for the  
 5 next few days. I promise you my client and I would  
 6 rather be somewhere else for the next few days, too,  
 7 as well as, I'm sure, everybody who's in this  
 8 courtroom, but this is a very important case. It's  
 9 a very -- a very important process that we're about  
 10 to go through, because this case involves a dispute  
 11 between Mr. Jones' Company, a company called Company  
 12 Two, and Hampton County, and they haven't been able  
 13 to resolve that dispute, so our Court system allows  
 14 them to bring that dispute before 12 citizens of the  
 15 County to make decisions that bind the parties. And  
 16 we don't go out like in other places and fight it  
 17 out on the street or take it out in other ways, we  
 18 come to a courtroom and we resolve the dispute  
 19 civilly. That's what the Judge just told you a  
 20 moment ago, this is the best process in the world  
 21 that's ever been resolved to do -- that's ever been  
 22 formed to do this. But it's an extremely important  
 23 process, and we're -- we're gonna take good  
 24 advantage of your time, we're gonna not try to waste  
 25 your time. There are gonna be things that we have

1 to do to give you the information, to give you the  
2 tools that you'll need to be able to make the  
3 decisions that -- that you'll have to make.  
4 Sometimes you'll wonder why we're doing it.  
5 Sometimes it may be something that you don't think  
6 is important, but we think it's important for you to  
7 know and consider and decide what weight to put on  
8 it. So we want to arm you with information, we want  
9 to provide you with information, and then we want  
10 you to be able to make the decisions that you need  
11 to make to resolve this dispute of the parties.  
12 Now, I may forget to turn that way sometimes to  
13 talk, and if we're showing some doc -- and I know we  
14 have to spread out a little bit, because of COVID,  
15 but I think that's probably more comfortable than  
16 these metal chairs you were in yesterday. If I  
17 forget and turn my back on you or turn this way and  
18 forget, where you can't see something that we show,  
19 anybody, just please let us know. Everybody on this  
20 jury is just as important as everybody else.  
21 Everybody's vote will carry the same weight in the  
22 end, and you will have to make a collective,  
23 unanimous decision. I introduced myself to you  
24 yesterday, and I introduced you to Mr. Quincy Jones.  
25 Quincy is the President and the owner of a company

1 called Company Two, that's a business, an industry,  
2 that's located right here in Hampton County and has  
3 been since 2005. If you're not familiar with it or  
4 never heard of it, it didn't seem like everybody had  
5 yesterday and that's good, because that means you  
6 come in, and what's your gonna know and what you're  
7 gonna learn and what you're gonna hear is -- is in  
8 this courtroom where you make your decision. If you  
9 -- if you don't know anything about it, Company Two  
10 is located right out next to the airport at the  
11 Hampton -- what used to be called the Hampton-  
12 Varnville Airport, it's now called Hampton County  
13 Airport. And Company Two's business is located  
14 right next to the airport, just -- that property  
15 borders the airport property. And what does Company  
16 Two do? Well, it's pretty unique, there's actually  
17 only a few of these companies in the nation, and  
18 really in the world, but there's only a handful in  
19 the United States that do this, and it's -- it's  
20 unique to this Company and it's really unique to  
21 Hampton County. What Company Two does is they  
22 refurbish, and what you'll hear called remanufacture  
23 fire trucks. And you're gonna learn that there are  
24 two kind of fire trucks really out there that exist,  
25 and you may see some photos and you may not, if you

1 don't, you'll know what I'm talking about after I  
2 explain it to you. There's a type of fire truck  
3 that you usually see going down the highway in the  
4 town, or a city, or a county, that's called -- it's  
5 kind of a regular fire truck, and then you have  
6 these much bigger fire trucks that you see -- and  
7 you've probably seen them on TV, that have these  
8 huge, huge tires, they're massive fire trucks and  
9 they're industrial-size fire trucks, and they're  
10 made to go off-road. They're made to be able to get  
11 about anyplace, and so they're very useful in  
12 airports and industrial parks. And so Mr. Jones'  
13 company works with both type of fire trucks, regular  
14 fire trucks, the smaller kind that you see just say  
15 on the roads around towns and cities, and out in the  
16 County on the roads, and then these larger fire  
17 trucks, and you're gonna hear them call ARFF trucks,  
18 and all that is, is A-R-F-F, and that stands for  
19 Airport Rescue and Fire Fighting. I think I had  
20 that right. I struggle with it every time, Airport  
21 Rescue and Fire Fighting. They mean exactly what  
22 they say. They're for Airport Rescue and Fire  
23 Fighting. They are utilized, built for, and  
24 operated at airport facilities. On pavement, if  
25 something were to happen and they've got to go out

1 on grass, or they've got to go across a, you know,  
2 an area, they operate all across and all around  
3 airport properties, if there were to be some  
4 incident. If a plane were to have an incident, or  
5 there's a fire that breaks out on the property, or  
6 there's some, you know, emergency, these things are  
7 built to get on airports. And then people realized,  
8 you know what? They can do it on a large property  
9 or a property like an airport, then they're pretty  
10 well seated to do that at industrial sites and other  
11 big facilities like that. So that's what Mr. Jones'  
12 Company, Company Two, does. What you're gonna hear,  
13 is there -- there's not a lot of -- there's not a  
14 lot of companies that do this -- you're gonna hear  
15 there's not a lot of companies that do that.  
16 There's not a lot of competitors. The good thing  
17 about that is it's a very stable business, it's a  
18 very stable industry, it's a very stable company  
19 here in Hampton County. And I'm from up in Bamberg,  
20 Mr. Ness is from up in Bamberg also, and we go  
21 through a lot of the same issues that Hampton and  
22 all the other counties that surround this area do  
23 when it comes to attracting jobs and keeping jobs.  
24 We have the same ups and downs that -- that almost  
25 all smaller rural counties in this area have as far

1 as attracting jobs and attracting investment and  
2 keeping investment, but this ARFF business, this big  
3 fire truck business that Mr. Jones' Company really  
4 concentrates and specializes in and -- and exceeds  
5 in, and you'll hear testimony that it's one of the  
6 most reputable, most respected, most well-formed  
7 organizations to do that. It's a very stable, very  
8 stable company here in Hampton County, and it's --  
9 and it's profitable. You won't stay in business, if  
10 you're not profitable. Nobody goes into business  
11 and invest that kind of money to do these kind of  
12 things unless it's profitable. And Company Two has  
13 been doing that here in Hampton County for ten plus  
14 years.

15       You're gonna hear testimony that when Mr. Jones  
16 was looking to relocate his company from Georgia, he  
17 had some conversations and some interest in some  
18 places, but settled for Hampton -- settled in  
19 Hampton, and was excited about coming to Hampton.  
20 He had some family from this area. It was a -- a  
21 very good fit, made sense, and he was excited to  
22 come to Hampton and invest money in this area, and  
23 he's done so since 2005. And you're gonna hear and  
24 the evidence is gonna tell you how everything went  
25 really well for ten years with this arrangement

1 between Mr. Jones' Company, Company Two, and Hampton  
2 County, this agreement that they had between them.  
3 Things went really well. And what you're gonna hear  
4 is in 2005 Mr. Jones' Company, Company Two, came to  
5 an agreement, reached a deal. You'll hear it called  
6 a lot of things. The law calls it a contract. We  
7 -- we oftentimes on the street call it, you know,  
8 making a deal, or reaching an agreement, and the law  
9 just calls it a contract. That's just the legal  
10 term for what we, you know, have learned our whole  
11 lives growing up, whether or not we talk about in  
12 different terms, you know, happen in everyday life.  
13 And they reached a deal where Mr. Jones and his  
14 Company would relocate to Hampton County, invest  
15 money, and hire people, pay taxes, and do all the  
16 things that go along with operating a company that  
17 does business with other businesses in Hampton  
18 County, and spends money within the County. And in  
19 exchange for that and as a part of that, Hampton  
20 County agreed that Mr. Jones' Company, Company Two,  
21 would be able to use the Hampton County Airport  
22 property for certain parts of its operation, and  
23 that they would have access to and use of the  
24 Airport property for certain parts of his business.  
25 Now, specifically, what you're gonna hear about



1 mostly is that Company Two would have access to and  
2 be allowed to use an airport runway to do some  
3 testing on these fire trucks. So these -- these  
4 fire trucks, especially these -- these big ARFF  
5 ones, the -- the smaller conventional trucks don't  
6 require as much. These bigger trucks require  
7 testing by several different organizations, and they  
8 required a number of tests, spray tests, speed  
9 tests, acceleration tests, all kinds of tests. But  
10 what you're gonna hear mostly talked about in this  
11 courtroom and what the evidence is going to conc --  
12 concern mostly is some acceleration testing and then  
13 some speed testing. And you'll hear that in order  
14 for these trucks to be certified, to be able to sell  
15 them out there to airports and industries that want  
16 them and that need to use them, the truck has to  
17 have a certification. It's required by the FAA.  
18 And that certification requires that that truck be  
19 able to get up from zero to 50 miles an hour within  
20 a certain time period going in one direction, turn  
21 around and go back the other direction zero to 50  
22 miles an hour within that same time period, and it  
23 depends on the size of the truck for the time  
24 period. And then that truck also has to be able to  
25 get to speeds of 70 miles an hour. It makes sense

1 -- why would that be? It makes sense. I mean if  
2 the truck's trying to get to an emergency on an  
3 airport and the airport's as big as, you know,  
4 Columbia or Chicago, it's got a good ways to cross,  
5 it's got to be able to get there quickly, so these  
6 trucks have to reach these certifications. And so  
7 to be able to run his business, to be able to  
8 operate his business, Mr. Jones needs to be able to  
9 test those trucks. Now in 2005, the Hampton-  
10 Varnville Airport didn't have a whole lot going on,  
11 it was almost defunct. You're gonna hear some  
12 testimony that there were a few things out there,  
13 maybe there was a plane or two being housed there,  
14 but it just wasn't a priority. There wasn't really  
15 any money being put into it, it was being upkept, it  
16 -- it just wasn't a priority at all. And so it made  
17 perfect sense for Hampton County, who didn't have a  
18 lot going on in its airport to be able to allow this  
19 company, to be able to agree with this company to be  
20 able to contract and make a deal with this company  
21 to be able to use the runway for something that  
22 would benefit the County and benefit its citizens,  
23 and so they -- they came to an agreement. And  
24 you're gonna hear testimony and you're gonna see  
25 evidence of this agreement. And that is that

1 Company Two would relocate its business into Hampton  
2 County, would be able to access and use the airport  
3 property, in particular, the runway to test trucks.  
4 And as a part of that, they would do what you're  
5 gonna hear called FOD, or maintenance on the airport  
6 runway. You see Hampton County wasn't really paying  
7 attention to its airport at that time, and -- and  
8 that's not abnormal. Sometimes there are airports  
9 in other areas that are getting a little bit more  
10 attention, and, you know, it's not too far to drive  
11 over to Allendale, or in to Bamberg, it's not too  
12 far to drive over to Orangeburg, there's not a lot  
13 going on at the Bamberg Airport, you go to the  
14 Orangeburg airport. And -- and so what you're gonna  
15 hear is, there was really no upkeep going on out  
16 there, and we did have a few planes that would land  
17 every so often out there, and the runway has to be  
18 kept clean. You don't want debris on a runway, you  
19 don't want pebbles and rocks and boulders or tire  
20 pieces or trash, you don't want anything on there  
21 with cracks or holes. You don't want anything on  
22 that runway to make that runway unsafe to land. And  
23 so as part of the agreement, Company Two agreed to  
24 do FOD cleanup and maintenance on the runway. They  
25 would go out there on a regular basis and go across

1 the runway and make sure it's clean, and clean it  
2 using their trucks sometimes with sprayers, and  
3 sometimes with blowers, and sometimes just picking  
4 up trash, and sometimes patching up a track or  
5 patching a hole. And so this deal, this agreement  
6 was struck in 2005, and you're gonna hear testimony  
7 about how it came to be, and this is oftentimes how  
8 a lot of industries located in certain counties and  
9 counties attract industries. Hampton County  
10 employed -- has employees, and you're gonna hear  
11 that Hampton County had somebody called a Hampton  
12 County Economic Development Director. It means  
13 exactly what it sounds like. His job is to try to  
14 help promote growth and economic development in  
15 industry in Hampton County. Hampton County still  
16 has a person like that, someone whose job that is.  
17 Hampton County has an Administrator, okay, and the  
18 Administrator -- and in this case you're gonna hear  
19 it's a lady named Rose Elliott, back in 2005, it was  
20 a lady named Sabrina Brown, but the Administrator's  
21 charged with running the entire aspect of the County  
22 at the direction of County Council, every aspect of  
23 it, recreation, public works, emergency  
24 preparedness, finance, everything, and -- and no one  
25 person can do it all, so there are other sub-

1 employees. When it comes to economic development  
2 that person in 2005 was a person named Jim Daniel.  
3 And so what you're gonna hear is that Mr. Daniel and  
4 Mr. Graham began to have -- excuse me, Mr. Jones,  
5 began to have conversations about Company Two coming  
6 to Hampton County. Mr. Jones had conversations with  
7 -- with the Administrator and other Hampton  
8 officials, said Mr. Daniel is our guy, work it out  
9 with him, and the Council will ultimately approve.  
10 And Mr. Jones has those discussions, and he and  
11 Mr. Daniel and -- are able to reach an agreement,  
12 what I just told you about, that he would relocate,  
13 invest in Hampton County and create jobs, that he  
14 would be allowed to use the Airport runway for  
15 testing purposes for his company, and that he would  
16 help maintain the runway and do what's call FOD,  
17 Foreign Object Debris cleanup. That agreement was  
18 reached. They went to a County Council meeting.  
19 You'll hear testimony that -- that there was a  
20 Council meeting where the Council approved this, and  
21 Mr. Daniel followed up with a letter to Mr. Jones.  
22 And you'll see and hear that letter, but that letter  
23 gives Mr. Jones the right to use the airport runway  
24 from one end of the property to the other, and  
25 you'll see that when you see the letter and when you

1 review the letter. We don't show those things in  
2 opening statement. The Judge told you we're just  
3 gonna tell you're gonna see and hear and then you'll  
4 actually see it. And you'll see this letter dated  
5 October the 12th, I believe, of 2005, where  
6 Mr. Jones -- where it is confirmed that Hampton was  
7 glad to have Mr. Jones come and they committed to  
8 him that he would have access to the airport  
9 property, from one end of the property to the other.  
10 Mr. Jones did what he was supposed to do, he  
11 relocated, he opened his business, and he went to  
12 work and he did his part. He's kept up the airport,  
13 he's kept up the property, he's done Foreign Object  
14 Debris, he kept up with the runway. Now, what  
15 happened is it started making money, which is why  
16 you're in business. Now what happened, ladies and  
17 gentlemen, in 2015 we got a new Council and we got a  
18 new Administrator. And the new Administrator tells  
19 Mr. Jones, "Stay off the runway, you're not allowed  
20 on the runway anymore." Breaks the agreement,  
21 what's called in the law breaches the contract,  
22 breaks the deal. Now, the purpose of having a  
23 contract and the purpose in having an agreement is  
24 so that somebody can't change the terms on it later  
25 when circumstances change or people change. That's

1 why we have contracts. And the Judge is going  
2 instruct you, ladies and gentlemen, the law is that  
3 written contracts and oral contracts carry the exact  
4 same force, they're equally enforceable. And so  
5 we've got County Council telling Mr. Jones in a  
6 meeting, and Mr. Daniel telling Mr. Jones, himself,  
7 and in a letter, in a writing, that he can have  
8 access to the airport property from one end to the  
9 other, but for whatever reason in 2015 he's told,  
10 "You no longer have access to the runway." And so  
11 that's why we're here, ladies and gentlemen. That's  
12 what this case is about. Now, Mr. Jones tried to  
13 work this situation out, he didn't want to sue  
14 Hampton County, he's a businessman doing business in  
15 Hampton County. People would rather make their  
16 livings -- excuse me, people would rather make  
17 they're living -- I submit to you people would  
18 rather make their living doing business than being  
19 in lawsuits. And Mr. Jones spent a lot of time  
20 trying to avoid having to be here this week, trying  
21 to have to bring you here this week. That's all  
22 he's wanted is for Hampton County to honor its word,  
23 to honor its commitment, to honor the deal, the deal  
24 of the law called contract. And the Judge will tell  
25 you later about contracts, you'll hear words like

1 promissory estoppel and things like that, and we'll  
2 talk a little more about that in a moment. But this  
3 testing, this use of the runway, you're gonna hear  
4 testimony that the test doesn't take very long. I  
5 mean to get this truck up from zero to 50 happens in  
6 like 25 seconds, I think, maybe faster than that.  
7 It's not the speed of a car, 25 seconds, just let me  
8 go out, turn around and come back. And you're not  
9 doing this every day, because these trucks they --  
10 they don't -- I mean it's not like cars, there's not  
11 one sold on the lot every day. So this is not a --  
12 a test that takes a lot of time, this is not a  
13 commitment that shuts Hampton County's Airport down,  
14 and this is not a situation that's a burden. It's a  
15 pretty simple process to honor the commitment, to  
16 honor the deal that was made. Mr. Jones has done  
17 that -- his part, and this deal was struck at a time  
18 when there really wasn't anything going on at the  
19 Airport, and -- and like Bamberg, I'm sure Hampton  
20 County is still out looking for jobs and industry,  
21 but back -- back then in 2005, in that time period,  
22 things were even worse, and I know things have  
23 gotten continually better. But that's simply what  
24 we're here for today, ladies and gentlemen, and what  
25 this case will be about is honoring your word,



1 honoring your promise, honoring your commitment.  
2 It's a rule we all kind of learn at an early age,  
3 we're gonna talk about it in legal terms, the Judge  
4 is going to give you the law and instruction on it,  
5 so when you boil it down you're going to hear, use  
6 your common sense in this trial I'm sure at times.  
7 When you boil it down to your common sense, it's a  
8 concept that we all learned in grade school up.  
9 These were commitments that were vital to Mr. Jones'  
10 business or Company Two, commitments that Company  
11 Two relied on in relocating here and doing what it's  
12 done over the past ten plus years, and what it hopes  
13 to do for the next, and it went on until there was a  
14 change in Council and a change in Administration.  
15 Now, you're gonna see this letter, and I'm sure  
16 you're gonna notice and you're gonna hear it doesn't  
17 say the word "test," and it doesn't say fire truck,  
18 and it doesn't say runway, it says the right-to-use  
19 from one end to the other, which encompasses  
20 everything. You're gonna hear and I'm sure it's  
21 going to be pointed out that it doesn't say right to  
22 test trucks on the runway, right to spray water in  
23 the backfield, right to do whatever, and it says  
24 right to use from one end to the other. Your Honor  
25 -- I mean, excuse me, ladies and gentlemen of the

1 jury, you're gonna hear about contracts that were  
2 lost as a result of this breach of contract,  
3 breaking this promise, you're gonna hear about loss  
4 of business, you're gonna hear about increased cost  
5 to operate, you're gonna hear about all those  
6 things, and we would rather be talking about  
7 something else. The law requires that we come to  
8 this courtroom and bring the claim before you for  
9 monetary damages when something like this happens.  
10 And as I indicated to you earlier, we'd much rather  
11 be doing something else. So what's going to happen  
12 in this trial and what are you gonna hear? I  
13 already told you you'll hear from Jim Daniel, who  
14 was the Economic Development Director at the time,  
15 you'll hear from other members, you'll hear from the  
16 County Council member at the time, and you'll hear  
17 from Mr. Jones about the deal that was struck. And  
18 then you're gonna hear evidence that for that ten-  
19 year time period, from 2005 to 2015, these trucks  
20 were on the runway, and they were seen on the  
21 runway, and they were out on the runway. Not every  
22 day, not every minute, I told you the test didn't  
23 take that long, it didn't happen very often, but you  
24 will hear evidence that that went on for ten years  
25 without anybody saying a word that it was a problem,

1 not one word of that it was a problem with that.  
2 During that time period, Mr. Jones just kept on  
3 doing the cleanup, kept on doing the maintenance,  
4 and kept on running his business. He had to go put  
5 out a brush fire out there one time and cooperate in  
6 any way he could to help maintain the property.

7 I don't know what all you'll hear from Hampton  
8 County to defend the circumstances. You'll probably  
9 hear, "Oh, we didn't make that agreement," or "it  
10 doesn't encompass that," or, "that's not what it  
11 says." But, ladies and gentlemen, at the end of the  
12 day you'll use -- you'll use your common sense. You  
13 will hear the testimony from the people that were  
14 involved in that transaction, you'll see the  
15 documentation from 2005, and you'll see and you'll  
16 know exactly what it says.

17 And at the end I'm going to ask you for a  
18 verdict in favor of Company Two. It's our only  
19 remedy, it's the -- remedy just means it's our only  
20 recourse. It's our only recourse is to stand here  
21 and ask you for a verdict. And after we've proven  
22 to you what this cost and how much Mr. Jones and  
23 Company Two have been damaged, then we'll stand here  
24 and ask that. But make no mistake about it, Company  
25 Two would be -- would rather be in business doing

1 what it does at Hampton Airport and making money,  
2 investing more in Hampton County, and creating more  
3 jobs, all those type things. Now, has Company Two  
4 had to go out of business during that ten-year  
5 period? No. I told you Mr. Jones has got a number  
6 of different areas that he covers. He's been able  
7 to do some of his testing in other ways, it's more  
8 time and it costs more money, but has it affected  
9 and damaged and caused harm to the company? Yes, it  
10 has. He just wants the County to honor its  
11 commitment and honor its word. If you make a deal,  
12 keep it, and, if not, be responsible for it. And so  
13 I thank you for your time listening to me this  
14 morning, we're gonna move through witnesses after  
15 Mr. Ness has the chance to give you his opening  
16 statement, and we'll move through it, and at the end  
17 we'll get a chance to stand back before you, and  
18 I'll stand before you and ask you to return a  
19 verdict in our favor. At the end of the day that's  
20 what we're goin to be asking, but whatever the  
21 verdict is, we're gonna respect the verdict of the  
22 jury, and it shows you we have faith and we have  
23 confidence in the citizens of Hampton County. Thank  
24 you very much.

25 THE COURT: Okay, Mr. Ness?

1 MR. AARON NESS: Thank you, Your Honor, may it  
2 please the Court?

3 **OPENING STATEMENT BY MR. AARON NESS**

4 Ladies and gentlemen, if I ask each and everyone  
5 of you, do you see my hand right now, I bet you each  
6 and every one of you will say, yes, I can see your  
7 hands. Well, what I'd say in return is, no, you can  
8 see half of my hands, there's two sides to every  
9 story. Now, you just heard the Plaintiff's opening  
10 statement. You heard their version of the story  
11 first, and that's a substantial benefit that the  
12 Plaintiff in the case gets. You get to hear their  
13 opening statement first, he gets to put his case in  
14 chief up first, you get to see the witnesses and his  
15 evidence first. You even get to hear his closing  
16 arguments first. And, naturally, as human beings,  
17 we tend to gravitate to a story -- a good story that  
18 we hear first. And psychologists have actually  
19 coined a term for that, it's called anchoring  
20 effect, it's kind of like a boat anchor. Well, the  
21 anchoring effect that people tend to rely too  
22 heavily on information that they hear at first --  
23 cast their anchor out, that's the story. And all  
24 the other information that they hear later just kind  
25 of revolves around that anchor, point being, I'm

1 just asking you to keep an open mind in this trial.  
2 Hampton County has to go second along the entire  
3 process, so keep that in mind.

4 Now the Plaintiff in his story, he wants you to  
5 believe that he has the rights as a private company  
6 to test fire trucks on Hampton Airport runway.  
7 That's his story. He's told you -- he said that he  
8 wants you -- he wants Hampton County to honor  
9 commitments. And I would disagree with honoring  
10 commitments. That's what this case is about. When  
11 Hampton County and Company Two took those  
12 commitments, they just signed contracts. In 2011,  
13 they put pen to paper and signed contracts. And in  
14 those contracts starting in 2011, the terms were  
15 essentially two things. They agreed to swap a  
16 little acreage that's right by Mr. Jones' property,  
17 and Hampton County gave him a little bit of acreage  
18 on the other side of his property that they had,  
19 they just swapped properties. That was the first  
20 commitment that they made in a written contract.  
21 Then the second commitment they made was Hampton  
22 County then gave him a 35-foot-wide strip easement  
23 that he could then make into a taxiway. And the  
24 easement would run from his property line to the tip  
25 of the runway -- to the tip of the runway, 35-foot

1 wide, that was it, that was the terms of the  
2 agreement. The written contracts that was not --  
3 there's no language, no sentences that state that  
4 Hampton County is giving him the right to test fire  
5 trucks on the runway.

6 Now, the agreements I was just referring to,  
7 these may come into evidence. I'm not going to show  
8 them to you today, but we expect they will come into  
9 evidence. That was the agreement they signed in  
10 2011. Well then, they still had to do documents to  
11 actually effectuate the transfer. We have two  
12 deeds. So if you've ever sold a home or if you've  
13 ever sold a property, you sign a deed. And it took  
14 a couple years for all the paperwork to get done and  
15 everybody to sign it. So in 2014 and '15, they  
16 actually signed the deeds to transfer the property,  
17 so that was the first agreement in 2011, and then  
18 they got around to transferring the properties, so  
19 they did that. Then they also still had to give  
20 Mr. Jones his 35-foot wide easement, which ran from  
21 his property to the east tip of the airport runway,  
22 and they did that document, too, as I recall, the  
23 2014 document. It was recorded right after the new  
24 year in '15. And so they did that, they did all of  
25 the documents, everybody put pen to paper, Mr. Jones

1 put pen to paper, Hampton County's Administrator  
2 Sabrina Graham, at that time, put pen -- pen to  
3 paper. That was the agreement. Now, you may have a  
4 couple questions on your mind in listening to the  
5 Plaintiff's opening statement. Now, you may wonder,  
6 well, why give him the access -- why give him a  
7 taxiway from his property to the runway if you're  
8 not going to let him test fire trucks, and it's a  
9 reasonable question. You will hear testimony that  
10 Hampton County was always under the impression and  
11 the understanding that he'd be flying clients in,  
12 they could fly into the airport, use the easement  
13 taxiway to get to Mr. Jones' property, and then they  
14 could handle business at Mr. Jones' company, get  
15 back to their planes, go back on the taxiway, hop on  
16 the runway and then take off, that was the first  
17 understanding. The second understanding was an  
18 employee of Hampton County told Mr. Jones might be  
19 painting airplanes at some point. So he would need  
20 to go get the airplane to his building via the  
21 taxiway. So that's why we gave him the easement.  
22 Another question you may have on your mind, because  
23 the Plaintiff brought it up in his opening statement  
24 is, well, didn't Hampton County know that he was  
25 using the runway for ten years? A reasonable



1 question. And there are some employees and the  
2 Administrator, they did, they knew he was using it,  
3 and here's the reason why things changed. Coming  
4 out of the great recession in 2008 and 2009 and  
5 2010, the Hampton County Council, at the time, they  
6 didn't value the airport as an economic asset to the  
7 County, so they really weren't concerned with what  
8 was happening out there. They just weren't. Well,  
9 starting in 2013, '14 and '15, Hampton County  
10 elected officials, also Hampton County Council, and  
11 those new officials, they did care what was going on  
12 out at the Hampton County Airport. They had gone to  
13 an economic development training, and they had  
14 learned that having an airport in your county is a  
15 treasure, and you really need to exploit it to its  
16 fullest potential. They came back from this  
17 Economic Development Institute and they called their  
18 new Administrator, Rose Elliott Dobson, about, "Hey,  
19 let's get this Airport back going, and let's make  
20 this County better by getting this Airport back and  
21 running." The County Council, collectively, as a  
22 government body decide -- made that decision, "We  
23 want to make our airport better." So they started  
24 paying attention out there a lot closer than they  
25 had in the previous ten years. When they started

1 paying attention out there, well, they learned Mr.  
2 Jones was riding -- testing his fire trucks on the  
3 runway. That was a concern, because Hampton County  
4 wanted to make the airport better, but to do that  
5 you have to make it safer, too, so Hampton County,  
6 their Administrator, they decided it is not safe to  
7 allow a private company to test and certify the  
8 Airport Rescue Fire Fighting trucks on that airport  
9 runway. Not that they're -- the trucks are just  
10 unsafe in general, because they're all over the  
11 world on airports, that's not what we're saying.  
12 What their issue was, was the actual testing  
13 certification of them on the airport runway.  
14 Runways are one thing, landing or taking off of  
15 airplanes. Mr. Jones, for ten years prior, had been  
16 using the runway whenever he wanted and however he  
17 wanted. And Hampton County decided that just wasn't  
18 safe, so that's why they asked him to please stop  
19 using the runway. Now, Hampton County also, while  
20 doing these upgrades, well, as for safety, we have  
21 an expert, and we are going to offer him as an  
22 expert in trial. His name is David Anderson. Mr.  
23 Anderson is a retired colonel from the U.S. Army.  
24 He spent two tours of duty in Vietnam, he's in a  
25 combat aviation battalion, a helicopter pilot, he's

1 a plane pilot, he's an Army Ranger, he's in the 82nd  
2 Airborne, he jumped out -- he jumped out of planes  
3 with parachutes, so a guy who has arguably spent his  
4 entire adult life in a dangerous profession is  
5 expected to testify that running fire trucks,  
6 certifying fire trucks on an airport runway isn't  
7 safe. You may also hear a number of our witnesses,  
8 from County Council. A couple of them are seated  
9 back here, Mr. Roy Hollingsworth and Mr. Buddy  
10 Phillips who is the current Chairman of Hampton  
11 County Council. You'll hear testimony from them.  
12 We're gonna try to -- we expect to put these  
13 contracts into evidence. We may show you some  
14 pictures. I agree with Mr. Wilson, we're -- I'm  
15 going to respect your time today, and I'm going to  
16 try to get through everything as quickly as I can,  
17 but there are certain things we have to do as  
18 attorneys to preserve a record. So that is this  
19 case in a nutshell, it's about firefighting trucks  
20 on the Hampton Airport runway, and whether or not  
21 Mr. Jones has the right to use it. Richard Ness  
22 seated right here is my co-counsel. We look forward  
23 to trying this case in front of you. Thank you for  
24 being here. Thank you for your jury service. Thank  
25 you.

1 THE COURT: Thank you. Mr. Wilson, you can call  
2 your first witness, sir.

3 MR. WILSON: Thank you, Your Honor, we call  
4 Mr. Quincy Jones.

5 (Ivan Quincy Jones was duly sworn  
6 and testified as follows)

7 **DIRECT EXAMINATION BY MR. WILSON**

8 BY MR. WILSON:

9 Q. Mr. Jones, for the jury, would you give your  
10 full name, please?

11 A. Ivan Quincy Jones.

12 Q. Okay. And how long has Company Two been in  
13 business at Hampton County?

14 A. Since 2005.

15 Q. And what's your -- are you the President and  
16 owner, same President and owner of Company Two?

17 A. I am.

18 Q. Okay. Tell the jury a little bit about what  
19 Company Two does.

20 A. We -- in 2000 -- just a couple years before that  
21 we started buying and selling what we call  
22 structural fire trucks. We would refurbish them,  
23 sell to departments that couldn't afford to go out  
24 and buy brand new trucks. In 2003, '04, we started  
25 getting into the aircraft rescue fire trucks, doing

1 the exact same thing with those particular type  
2 vehicles.

3 Q. Okay. So structure fire trucks are what I  
4 referred to maybe earlier as the smaller fire  
5 trucks?

6 A. Correct.

7 Q. And Airport Rescue Fire Fighting trucks is what  
8 I referred to, the larger fire trucks?

9 A. Right,

10 Q. ARFF, A-R-F-F. Okay, I don't think, you know, I  
11 don't think we brought a picture, but describe an  
12 ARFF truck to the jury. And why --

13 A. It's just --

14 Q. -- and why it's special.

15 A. In the -- in the aircraft fire industry, the --  
16 these vehicles have to carry specific types of  
17 agents to handle aircraft rescue or aircraft fires.  
18 So, for example, when an aircraft goes down, they  
19 generally go down not on the runway, they generally  
20 go down or -- at or near a runway, and so the  
21 vehicles have to be at the -- at the site within two  
22 minutes fighting the fire, but they have may have to  
23 be to -- extinguishing the fire along the way, so  
24 they're required to pump and roll at the same time,  
25 which is -- is opposite from a structural world,

1 where a fire -- fire truck that the public normally  
2 sees goes to a location, sets up, starts fighting a  
3 -- a fire from that perspective, but the aircraft  
4 rescue's a little bit different, because they  
5 generally have to fight fires or the, you know, the  
6 rescue or whatever on the roll.

7 Q. Okay. And so they have these huge special  
8 tires, high bumpers, those type things, correct?

9 A. They do.

10 Q. And these big tires, are they kind of like off-  
11 road tires, like I've got bigger tires on my 4-  
12 wheeler?

13 A. Yeah.

14 Q. Kind of like -- I'm not trying to simplify this,  
15 is that what we're looking at?

16 A. Right, in simplistic terms, yes.

17 Q. Okay. All right, so these things are they  
18 designed to operate at airports?

19 A. They are.

20 Q. Are they designed to operate on airport runways?

21 A. They are.

22 Q. Airport taxiways?

23 A. They are.

24 Q. Airport concrete?

25 A. They are.

1 Q. Airport parking lots?

2 A. Yes, sir.

3 Q. Off-road?

4 A. Yes, sir.

5 Q. Any portion of an airport property is what  
6 they're designed to operate?

7 A. Yes, sir. Correct.

8 Q. Okay. How long -- and you said you've been in  
9 that business since the early 2000s?

10 A. In the fire truck industry, yes.

11 Q. Okay, all right. Does part -- does Company Two  
12 do anything other than buy and sell -- buy and --  
13 and remanufacture, refurbish and then sell fire  
14 trucks?

15 A. Yes, sir. In 2000, in the downturn of the  
16 economy and in what, 2006, '07 range, we had  
17 customers come to us not af -- not able to afford to  
18 purchase one of the aircraft trucks, so they  
19 requested leasing, and so I allowed the leasing to  
20 take place, and to this day it's probably 80 percent  
21 of our business now is leasing these fire trucks.

22 Q. Is there some element of your business or  
23 Company Two's business, where it just deals with  
24 equipment, not trucks themselves, but equip -- but  
25 fire equipment?

1 A. Yes, I would probably say on a percentage basis  
2 maybe ten to 15 percent.

3 Q. But the primary focus of Company Two's business  
4 is what?

5 A. Buying and selling and leasing.

6 Q. And -- and of what?

7 A. Of the aircraft rescue trucks.

8 Q. The big fire trucks?

9 A. Correct.

10 Q. How -- how did you end up -- had you ever heard  
11 of Hampton County before moving the company to  
12 Hampton County?

13 A. I have.

14 Q. Tell the jury how you ended up in Hampton  
15 County.

16 A. My grandparents are from -- from Beaufort and  
17 Hampton County.

18 Q. Okay, all right. Why was locating near an  
19 airport so vital to Company Two's business?

20 A. Because the FAA and ICAO, which is the  
21 international equivalent of the FAA, they require  
22 these particular vehicles to be tested under certain  
23 circumstances. There's approximately 15 different  
24 types of tests that -- that are required on these  
25 vehicles to be able to be certified to be used at an



1 aircraft -- or at an airport, but there -- there's  
2 two of the -- of the 15, there's two of the tests  
3 that aren't as safe as I would like to be done out  
4 on a -- on a regular street. One is the  
5 acceleration test, and the two is the overall speed  
6 test.

7 Q. Okay. And a moment ago I told the jury there's  
8 spray tests and pressure tests and, I guess, other  
9 kind of tests that --

10 A. There are.

11 Q. -- matter, but what we're talking about in this  
12 case is a speed test and acceleration test; is that  
13 what you said?

14 A. Correct. The FAA re -- requirement for a -- for  
15 example, they're basically three different types of  
16 vehicles -- three different size of vehicles for the  
17 aircraft fire fighting industry. You have a 1000-  
18 gallon vehicle, you have a 1500-gallon vehicle, and  
19 a 3000-gallon vehicle. The 1000-gallon vehicle has  
20 to go zero to 50 in -- I think it's 32 or 34  
21 seconds, and this is full of equipment, full of  
22 water, full of foam, full of all the agent. The  
23 1500-gallon truck has to go from zero to 50 in  
24 approximately 40 seconds. The 3000-gallon vehicle  
25 has to go from zero to 50 in approximately just

1 under 50 seconds.

2 Q. Okay. My understanding of the test -- the  
3 acceleration test is that has to be done in one  
4 direction, and then turn around and do it back in  
5 the -- in the opposite direction.

6 A. That is correct.

7 Q. Why?

8 A. The reason that they -- they require that is  
9 because most airports are not low-level surface.  
10 Most airports have an incline one direction or the  
11 other in their runways, because they may not be in  
12 -- and here -- here in Hampton County everything is  
13 fairly flat, but the reason they do that is because  
14 of the difference of airports that they're testing  
15 on, so they require you to go in one direction, you  
16 measure it, you go in the other direction, you  
17 measure, you take an average. That way, if you're  
18 going up a hill, obviously, it's slower, but if  
19 you're going down, it's faster, so they take the  
20 average of the two and -- and that's your speed  
21 test.

22 Q. Okay.

23 A. And -- and your -- and your acceleration test.

24 Q. Okay. What is -- so that's the acceleration  
25 test, getting from zero up to 50?

1 A. Correct.

2 Q. What's the speed test?

3 A. Speed test is overall 70 miles an hour. Each  
4 vehicle has to run at least 70 miles an hour to be  
5 able to get to the scene in the allotted time. FAA  
6 requires that -- that each incident -- each vehicle  
7 needs to be on-the-scene within two minutes and op-  
8 -- and in full operation. So, for example, say, for  
9 example, Atlanta International Airport, which is one  
10 of the larger airports in the world, they've got  
11 such long runways, if you have a -- a Fire Station  
12 that is at the fur -- farthest end of the runway, it  
13 may take them a little bit longer to get to the --  
14 to the accident if it's at the far end of the  
15 Airport. So in today's world most airports are  
16 putting their Fire Stations at the air -- at the  
17 airports in the center part of the runway, allowing  
18 cutting their -- the response time in half.

19 Q. Gotcha. So how -- how much distance -- how far  
20 does it take -- how -- how much distance does it  
21 take to do this acceleration test on these trucks to  
22 get up from zero to 50? How many feet or miles,  
23 what does it take?

24 A. Zero to 50 we can do it in approximately 3,000  
25 feet. Actually, a little bit less than that,

1 probably 2,500 feet, but then to get to the 70 we  
2 need the 3000-foot. This particular airport here is  
3 34, 3,500 square -- or feet.

4 Q. That's my next question, do you know the length  
5 of the airport at Hampton?

6 A. I think it's -- FAA registers it just under  
7 3,600 feet.

8 Q. So the runway here at the Hampton Airport is  
9 long enough for your company to accomplish the  
10 acceleration testing and the speed testing on --

11 A. It is.

12 Q. -- these trucks?

13 A. Yes, sir.

14 Q. Okay. All right, so back to my question, well,  
15 let me -- well, let me ask you this first.

16 Mr. Jones, how many companies in the United States  
17 do what you do, or what your Company Two does?

18 A. There's three of us.

19 Q. How about in the world?

20 A. Germany has two. In the European portion of the  
21 world I think there's three or four, but those are  
22 generally new manufacturers. As far as used  
23 manufacturers or -- or, excuse me, used vehicle  
24 companies, there's only three in the entire world.

25 Q. So you don't do -- you don't -- you don't build

1 a ARFF truck from scratch?

2 A. No, we do not.

3 Q. Buy old ones, fix them up, sell them back out?

4 A. That is correct.

5 Q. Well, I guess fix them up, get them certified,  
6 and sell them back out?

7 A. Correct.

8 Q. And there are three companies in the world that  
9 do that?

10 A. Three companies that deal in used.

11 Q. In used?

12 A. Yes.

13 Q. That's what I'm saying, in used, okay. Now --  
14 so to do this, you've got to have a pretty long  
15 straightaway piece -- piece of pavement or asphalt  
16 or concrete or something to do this testing on,  
17 right?

18 A. That's correct.

19 Q. You're not doing this testing on dirt roads, or  
20 grass fields, or anything like that?

21 A. We're not allowed to do them on dirt roads,  
22 because of the -- because of the size of the  
23 vehicles, and we would be asking for trouble, and  
24 would be putting people at -- at -- in harm's way if  
25 we did that.

1 Q. You just can't get a fair accurate test of speed  
2 on a dirt roadway?

3 A. You can, but the -- part of the acceleration  
4 test is, FAA requires you must be able to bring your  
5 vehicle to a -- a fa -- a -- you -- we have to  
6 measure braking test, as well. And so the braking  
7 test, we're -- if -- if we were to take a 60,000-  
8 pound vehicle, run it up to 60, you know, 70 miles  
9 an hour, and then have to break it in the shortest  
10 amount of time without locking the vehicle down,  
11 doing that on -- on -- on anything but asphalt, or,  
12 you know, asphalt or concrete, would be da -- very  
13 dangerous.

14 Q. All right. Let me ask you this, Mr. Jones, are  
15 there some companies that test -- that have -- test  
16 these trucks that test them somewhere other than an  
17 airport runway?

18 A. There are a few companies that do that. Some of  
19 the new manufacturers test them out on the  
20 Interstate, but they -- the two -- there's three  
21 large companies that build these particular  
22 vehicles. A company called Rosenbauer, a company  
23 called E1, and another company called Oshkosh.  
24 Oshkosh in the past has used the -- I think the  
25 Airport's name is Whiteman Airport to do their

1 testing. E1 does their testing at -- in Florida at  
2 the Ocala International Airport. And Rosenbauer is  
3 somewhere in the Midwest, and I'm not sure where  
4 they test their vehicles.

5 Q. Why was it important to your company, to Company  
6 Two, to locate near the Airport in Hampton, and have  
7 access to the runway?

8 A. Because it allowed me to do the speed test and  
9 the acceleration test in a safe manner.

10 Q. When your company was looking to relocate, I  
11 think -- where were you at the time?

12 A. In Atlanta.

13 Q. When your company was looking for you to  
14 relocate were there other opportunities or places  
15 that you considered relocating?

16 A. There were.

17 Q. Did you look real hard at those other  
18 opportunities?

19 A. Not really.

20 Q. Why not?

21 A. Because Hampton -- the County Council in Hampton  
22 actually opened up their arms and rolled out the red  
23 carpet for us to -- whatever we could do to help to  
24 bring your business here.

25 Q. Did it seem like a good fit?

1 A. Very good.

2 Q. Mr. Jones, did you have a contract, a deal, an  
3 agreement -- did you have a deal with Hampton County  
4 that allowed Company Two to use the airport  
5 property?

6 A. I did.

7 Q. Do you have a deal? Do you have a contract with  
8 Hampton County to use the airport property?

9 A. In my opinion, yes.

10 Q. Has Hampton County held up and honored the deal  
11 or the contract for you to use the airport runway to  
12 test fire trucks?

13 A. For approximately ten or 11 years they did,  
14 but --

15 Q. How --

16 A. -- not as of late.

17 Q. How about now?

18 A. No.

19 Q. Sometime later in 2015, I believe, you were  
20 instructed by Ms. Elliott, or someone with the  
21 County, that you were no longer allowed access to  
22 the Airport runway --

23 A. That's correct.

24 Q. -- to test fire trucks?

25 A. Correct.



1 Q. Let's talk about this deal in 2005 based on once  
2 you relocated to Hampton County. Tell -- tell the  
3 jury how that came into existence. Did you have any  
4 conversations with Sabrina Graham, who was the  
5 Administrator?

6 A. I did.

7 Q. And -- and what did that lead to?

8 A. Sabrina was the -- let's see, what was her  
9 position? She was the Administrator for Hampton  
10 County at the time, and I told her that we were  
11 looking at locating in Hampton County, and she said  
12 that she would put me in touch with a gentleman  
13 named Jim Daniels, which was the Economic, I  
14 believe, his title was the Economic Development  
15 Coordinator at the time.

16 Q. Okay. And did you do so?

17 A. I did.

18 Q. And how did things -- tell -- tell me where that  
19 led to -- tell the jury, excuse me, where that led  
20 to.

21 A. We -- I spoke with Jim on several occasions, and  
22 Jim said that Hampton County was basically very  
23 interested in having Company Two locate their  
24 company here. What could they do, and at that time  
25 I told him there was some -- a couple of

1 contingencies that I had, and if they could -- if  
2 they could work around all those problems, then  
3 we'll see what we can put together, and -- and they  
4 did.

5 Q. Was -- was access to the Airport property, in  
6 particular, the runway, to test fire trucks one of  
7 those contingencies?

8 A. It was.

9 Q. Did -- what was -- what was going on at the  
10 Hampton Airport back at that time? What was your  
11 observation of what was going on back in 2005 at the  
12 Hampton Airport?

13 A. Well, very little, to be honest. Unfortunately,  
14 Hampton County's airport had kind of fallen behind.  
15 I don't know if -- I -- I don't know the reason  
16 behind that, but it just wasn't being taken care of  
17 at the time.

18 Q. And so did you come to an agreement and enter  
19 into a deal with Hampton County?

20 A. I did.

21 Q. And what were you doing as a part of that deal  
22 for Hampton County?

23 A. A couple things. What we had -- what we agreed  
24 to do was that we would do the FOD cleanup, which is  
25 for -- for the average person not really familiar

1 with that, it's called Foreign Object Debris, that's  
2 FAA requires every airport, regardless of how large  
3 or how small, to do some sort of a FOD cleanup.  
4 Well, this airport had not had any FOD cleanup -- I  
5 -- I mean I have to assume for years, and it was to  
6 the point that several pilots had requested for us  
7 to go out and start doing -- doing additional.

8 MR. RICHARD NESS: Your Honor, I object. It's  
9 hearsay.

10 BY MR. WILSON:

11 Q. Don't talk about what anybody else --

12 A. Okay.

13 Q. -- the pilots told you.

14 A. All right.

15 Q. As a part of the agreement, was your company,  
16 Company Two, going to do FOD cleanup --

17 A. Yes.

18 Q. -- and some maintenance on the airport runway?

19 A. Yes.

20 Q. And -- and has your company done that since  
21 2005?

22 A. Yes, up until around 2015, yes.

23 Q. Okay. As a part of the agreement, were you  
24 going to relocate your Company to Hampton County and  
25 invest in Hampton County?

1 A. Yes.

2 Q. And what was Hampton County gonna provide to you  
3 as part of the agreement?

4 A. They were going to provide me my own taxiway to  
5 the airport runway itself.

6 Q. And what about with respect to use of the  
7 Airport property, including the runway, what was  
8 Hampton County providing with respect --

9 A. They were going to give me access from the -- I  
10 believe it's worded from the southwest corner of the  
11 runway to the northeast tip of the airport property.

12 Q. Was that -- was that to encompass use of the  
13 airport runway, in particular, to test fire trucks  
14 like you're talking about?

15 A. That is correct.

16 Q. Did you attempt any kind of -- you said you have  
17 these -- you reached this agreement with Mr. Daniel.  
18 I think I understood you to say you spoke with  
19 Ms. Graham, the Administrator, and she said, "Deal  
20 with Mr. Daniel, he's the Economic Developer  
21 Director," correct?

22 A. Correct.

23 Q. And did you, ultimately, have interactions with  
24 Hampton County Council in 2005?

25 A. I did.

1 Q. And how -- explain to the jury about that.

2 MR. RICHARD NESS: Your Honor, I'll object to  
3 that, too. Parol evidence.

4 THE COURT: I believe the question was did he  
5 attend a County Council meeting?

6 MR. WILSON: Yes, ma'am.

7 THE COURT: I'm going to allow that.

8 BY MR. WILSON:

9 Q. Did you attend the --

10 A. Can you repeat?

11 Q. -- County Council meeting in 2005 with Mr. Jim  
12 Daniel?

13 A. I -- I'm sorry, could you repeat that, please?

14 Q. Did you attend any Hampton County Council  
15 meetings in 2005 where you went with Mr. Jim Daniel?

16 A. I did.

17 Q. And did you reach an agreement with Hampton  
18 County Council, the terms that we just talked about,  
19 where your Company would relocate, and you would do  
20 the FOD maintenance --

21 MR. RICHARD NESS: Your Honor, I object.

22 BY MR. WILSON:

23 Q. -- on the runway?

24 MR. RICHARD NESS: Same objection, Your Honor.

25 THE COURT: And tell me the grounds for -- what

1 are the grounds for your objection?

2 MR. RICHARD NESS: Leading, and it's parol  
3 evidence, both.

4 THE COURT: Do you want to respond?

5 MR. WILSON: It might be leading, Your Honor,  
6 and I think you've already ruled the parol evidence  
7 issue.

8 THE COURT: I'm going to allow it.

9 BY MR. WILSON:

10 Q. When you attended the County Council meeting  
11 that we just talked about, what was the agreement  
12 that was reached?

13 A. The agreement was that they would give me my own  
14 taxiway and access to use the airport to test the  
15 trucks.

16 Q. And what would you do in return?

17 A. Oh, I would do FOD cleanup, and I would also do  
18 maintenance -- whatever maintenance that we could do  
19 for the airport runway itself.

20 Q. Has your company done any maintenance on the  
21 runway in the ten plus years that -- that you were  
22 allowed access to the runway?

23 A. We have.

24 Q. Such as what?

25 A. Such as rock removal, sprayed the -- sprayed the

1 runways down to get rid of the dirt. A lot of the  
2 -- there's been a lot of dirt on the runway for  
3 years. Cracks in -- cracks in the runway have  
4 widened to the point that ant hills are, literally,  
5 eight to ten, maybe 12 inches in height, which is --  
6 actually, could be a hazard to a -- to a airplane,  
7 and so we've actually got rid of a lot of that up  
8 until 2015 or so.

9 Q. Now, there's been some improvements made at the  
10 airport --

11 A. A lot, yes, sir.

12 Q. -- since -- but this was the condition back in  
13 2005 through 2015?

14 A. Correct.

15 Q. When -- when you left -- did you have any  
16 conversation with Mr. Daniel after that meeting that  
17 we just talked about where you reached this  
18 agreement with the County Council?

19 A. I did. Jim said that he would follow-up with  
20 the recommendations from County Council with a  
21 letter, and shortly thereafter we received a letter,  
22 I want to say, in October of '05.

23 Q. Okay.

24 MR. RICHARD NESS: Your Honor, we have the same  
25 objection, parol evidence.

1 THE COURT: Subject to my earlier ruling I'm  
2 going to allow it.

3 MR. WILSON: Okay. Your Honor, we would move  
4 into Exhibit 1 -- excuse me, into evidence, excuse  
5 me, Plaintiff's Exhibit Number 1.

6 (Whereupon, Plaintiff's Exhibit Number 1 is moved  
7 into evidence without objection.)

8 BY MR. WILSON:

9 Q. Mr. Jones, I'm going to show you that letter  
10 right there one moment. Is that the -- is that the  
11 letter that you discussed prior to Mr. Jim Daniel's  
12 follow-up with -- after the agreement was reached  
13 with --

14 A. (Reviews document.) It is.

15 Q. Okay.

16 MR. WILSON: I want to try to put this on the  
17 screen a little bit. Ladies and Gentlemen, I know  
18 that it's hard for everybody to see if you're not  
19 quite as close to it. And you can see it maybe  
20 right here on the screen, too.

21 BY MR. WILSON:

22 Q. What's the date on the top of that letter,  
23 Mr. Jones?

24 A. It's October 12, 2005.

25 Q. And who is it addressed to?



1 A. Myself and Company Two Fire.

2 Q. And who signed it at the bottom?

3 A. Jim Daniels.

4 Q. Do you see right there where it says cc?

5 A. Yes, Sabrina Posey Graham.

6 Q. And who else?

7 A. Lee Ellis.

8 Q. And do you remember Lee Ellis' position at that  
9 time?

10 A. If I'm not mistaken, he was the Airport  
11 Commission Chairman.

12 Q. And so right here at the bottom, where I'm  
13 pointing, that's where Mr. Daniels signed it, and he  
14 sent a copy of it to Ms. Graham, the Administrator,  
15 and Lee Ellis?

16 A. That is correct.

17 Q. And right on top is where I'm talking about,  
18 October 12, 2005, it's dated?

19 A. That's correct.

20 Q. Mr. Jones, I just want you to read that letter,  
21 please.

22 A. Okay. In full or --

23 Q. Yeah, in full, I'm sorry.

24 A. In full? "Hampton County is excited --

25 Q. I have a copy for you so you can see it easier

1 than up there.

2 A. Yeah.

3 Q. Okay.

4 A. Could you hand me my glasses, it will make  
5 easier.

6 Q. (Hands him glasses.)

7 A. Thank you. "Hampton County is excited about the  
8 prospect of having Company Two Fire locate here.  
9 Your -- you requested that certain commitments be  
10 made by the County to assist you in making a  
11 decision about locating in the Gemco building at 283  
12 Foster Road in Varnville. Hampton County Council  
13 has authorized me to make the following commitments  
14 to you concerning Hampton County-Varnville Airport.  
15 Hampton County agrees to provide you with a private  
16 taxiway, right-to-use from the northeast tip of the  
17 Airport to the Gemco property line. The County also  
18 agrees to clear a rough grade the taxiway to the  
19 Gemco property line. County also has plans to move  
20 forward with improvements to the Airport, including  
21 the installation of runway lights as soon possible.  
22 During discussions with Administrator, Sabrina Posey  
23 Graham; Airport Commission Chairman, Lee Ellis; and  
24 myself in earlier -- earlier this year, it was  
25 indicated that to facilitate necessary upgrades we

1 would appreciate your commitment to grant this  
2 portion of property to the County, provided we give  
3 you similar amount of acreage to the west or  
4 southwest of the Gemco property. By way of letter,  
5 Hampton County Council concurs with the -- with that  
6 request. If we can be of any further assistance,  
7 please be able to contact me. We look forward to  
8 welcoming -- welcoming Company Two Fire to the  
9 Hampton County family."

10 Q. Okay. Mr. Jones, I'm just gonna work backwards  
11 through this letter a little bit. If we look right  
12 here in the last sentence -- the last two sentences,  
13 actually, there's a discussion that the  
14 Administrator and Chairman Ellis desire to obtain a  
15 portion of the Gemco property adjacent to the  
16 Airport and asked you to consider granting that in  
17 exchange for Hampton exchanging some property; is  
18 that correct?

19 A. Correct.

20 Q. Okay. Was there a discussion in 2005 of trying  
21 to work out a separate deal, a different deal to  
22 swap property with the County so the County could  
23 get some property that it wanted on the airport side  
24 of --

25 A. There was.

1 Q. -- the property? All right, and -- and in  
2 exchange for that, I guess, the County exchanged the  
3 property with you on the back side, correct?

4 A. Correct.

5 Q. And that was all part of a separate deal from  
6 what you went to Council in 2005 to deal with,  
7 correct?

8 A. That is correct.

9 MR. RICHARD NESS: Objection, leading.

10 THE COURT: That's sustained.

11 BY MR. DANIEL:

12 Q. Was that part of the same deal in 2005 as the  
13 agreement that you just talked about with County  
14 Council, the swap; or was that something that was  
15 worked out and carried out later?

16 A. That was carried -- worked out and carried out  
17 later.

18 Q. Let's go up the -- a little bit further. The  
19 County -- had -- the -- the letter indicates the  
20 County had plans to move forward with some  
21 improvements to the building and some runway lights,  
22 correct?

23 A. Correct.

24 Q. And then ca- -- the County also agreed to clear  
25 and rough grade a taxiway to the Gemco property

1 line?

2 A. Correct.

3 Q. And that would be a taxiway from the edge of the  
4 runway up to the property where you were going to  
5 locate?

6 A. Correct.

7 Q. Now, let's look at the first letter -- the first  
8 sentence of this second paragraph. Read that again.

9 A. "Hampton County Council has authorized me to  
10 make the following commitments to you, concerning  
11 the Hampton County-Varnville Airport."

12 Q. And I want you to read the next sentence. What  
13 is the commitment? Read the next sentence.

14 A. Hampton County agrees to provide you with a  
15 private taxiway right-to-use from the northeast tip  
16 of the Airport to the Gemco property line.

17 Q. Okay. What is the Gemco property line?

18 A: The Gemco property line was the property that we  
19 actually purchased when we moved here. There was an  
20 old building -- an old facility there, and their --  
21 one of their names happened to be Gemco, so it kind  
22 of -- it was just always called the Gemco property.

23 Q. Okay, so what you bought is the old Gemco  
24 property?

25 A. Basically, that's correct.

1 Q. Okay. And what is the northeast tip of the  
2 Airport?

3 A. The northeast tip would be at the farthest --  
4 the -- the runway actually runs east and west, my  
5 building is on the -- my property or the Gemco  
6 property line is on the southwestern corner, and the  
7 northeastern corner would be at the farthest  
8 opposite end north side of the airport.

9 Q. So the whole other end of the airport?

10 A. That's correct.

11 Q. Okay. I want to show you an aerial.

12 I'm gonna show the jury an aerial right here,  
13 and then we'll look at it a little bit closer up.  
14 Can you see that?

15 A. (Reviews photograph.) I can, yes, sir.

16 Q. Okay. That's showing the location of the  
17 Hampton-Varnville Airport?

18 A. That's correct.

19 Q. So you said the runway runs from west to east,  
20 or east to west?

21 A. That's correct.

22 Q. So the top of that picture would be the north?

23 A. That's correct.

24 Q. The bottom of that picture would be the south?

25 A. Yes, sir.

1 Q. And I guess it would make this side of the  
2 picture be the east?

3 A. Correct.

4 Q. And this side of the picture will be the west?

5 A. Correct.

6 Q. Let's look at it a little bit closer up. Is  
7 this the Gemco property right here?

8 A. It is.

9 Q. Mr. Jones, can you come down here and point to  
10 the Gemco property line, please?

11 A. Sure. This is our building here, the taxiway,  
12 the western end of the runway, eastern end. The  
13 property line goes somewhere up in here as far as --

14 Q. I'll come back to that in just a second.

15 A. Okay.

16 Q. Stay right there one second.

17 A. Okay.

18 Q. So what is this right here? This area I see  
19 going through there.

20 A. This -- this here?

21 Q. Yes.

22 A. It's actually the highway, I believe that's  
23 called Airport Road.

24 Q. That's --

25 A. This right here.

1 Q. Okay.

2 A. Yes.

3 Q. All right. And as I understood you to say, this  
4 is the Gemco property -- the property where you  
5 located?

6 A. This is here, correct.

7 Q. Okay. And where's the Gemco property line in  
8 this area?

9 A. The Gemco property line runs from about right  
10 here, I'm not able to see what you're looking at.  
11 It probably -- it runs from about here -- it runs  
12 from about right here to right here, over here, up  
13 to about here, and over to about here.

14 Q. Okay. And so the -- the line between Gemco and  
15 the Airport is kind of right along here where we see  
16 it change? It looks like --

17 A. The airport property is this -- this would be  
18 airport property right here, and our property,  
19 basically, runs through here like so.

20 Q. Okay. And then where's the northeast tip of the  
21 airport?

22 A. The northeast tip of the airport is somewhere up  
23 in here.

24 Q. Okay.

25 A. Yeah, the northeast tip is somewhere up in here.



1 I'm not sure exactly, 'cause I don't know the -- a  
2 lot of those trees burned down in a -- in a fire  
3 several years ago, but somewhere over in here would  
4 be the northeast property.

5 Q. Okay. So, Mr. Jones, does the description in  
6 that letter, from the northeast tip of the airport  
7 to the Gemco property line, does that encompass the  
8 entire airport property?

9 A. It does.

10 Q. Did you rely on this agreement and this contract  
11 to get started in Hampton County?

12 MR. RICHARD NESS: Your Honor, objection,  
13 leading.

14 THE COURT: That's sustained.

15 BY MR. WILSON:

16 Q. In order to come to Hampton County, Mr. Jones,  
17 what did you do?

18 A. I received commitments from Hampton County  
19 allowing me access to the airport runway so I could  
20 test my fire trucks.

21 Q. Did you feel like you could rely on those  
22 commitments?

23 A. I'm sorry?

24 MR. RICHARD NESS: Objection, Your Honor,  
25 leading. Leading the witness.

1 THE COURT: I'm going to allow that. Thank you.

2 BY MR. WILSON:

3 Q. Did you feel like you could rely on those  
4 commitments?

5 A. I did.

6 Q. When -- how long does this speed test and this  
7 acceleration test take, normally, for each truck?

8 A. Realistically, less than three minutes for the  
9 entire test.

10 Q. And how -- is it something you have to do every  
11 day? How often is it done?

12 A. Every vehicle that -- that is either leased or  
13 sold has to be tested. We -- if we put an average  
14 on it, I would say anywhere from one to maybe five  
15 times a month. Maybe eight times a month would be a  
16 -- a lot.

17 Q. Okay. When your people were out -- from 2005 to  
18 2015 when your people were out on the runway testing  
19 and certifying trucks, were there safety precautions  
20 ever taken or --

21 A. For aircraft, yes, sir. We use handheld radios  
22 using the frequency for this area, and we clear the  
23 airspace.

24 Q. That's my question, was that --

25 A. Yep.

1 Q. How is Hampton's airport set up? Is it kind of  
2 like bigger airports where it's instrumentation and  
3 fly in in an airport tower and those kind of things,  
4 you've got to get clearance from the tower?

5 A. No, it's -- it's not. There's two different --  
6 there's two different styles of airport -- or two  
7 different categories of airport. One's a VFR and  
8 one's a IFR type facility. IFR is instrument  
9 rating, and Hampton County is what we call VFR,  
10 which is Visual Flight Rules.

11 Q. What does that mean?

12 A. It means that the -- barring no emergency, the  
13 aircraft that is appro -- that is about to land,  
14 basically, circles the -- the runway to make sure  
15 there's nothing on the runway. For example, animals  
16 or, you know, whatever, other vehicles, whatever.  
17 And then they're -- then they go ahead and fly on  
18 in. They -- they do not clear it with anybody here  
19 in -- at the Hampton Airport.

20 Q. Mr. Jones, when you were having these  
21 discussions about Company Two with Jim Daniel and  
22 Hampton County in 2005, did you explain to them what  
23 your business consisted of?

24 MR. RICHARD NESS: Objection, Your Honor.

25 THE COURT: Based on leading?

1 MR. RICHARD NESS: Yes, ma'am.

2 THE COURT: That's sustained.

3 BY MR. WILSON:

4 Q. What kind of conversations did you have with  
5 Hampton County Council and Jim Daniel about the  
6 nature of your business?

7 A. I told Mr. Daniels that -- that we were -- we  
8 were getting into the aircraft rescue, and that I  
9 needed a -- a taxiway to be -- or a runway to be  
10 able to test our fire trucks safely.

11 Q. So how did things go from 2005 to 2015?

12 A. Without -- without a problem whatsoever.

13 Q. What happened in 2015?

14 A. We have -- we had a new Council come in and then  
15 a new county administrator that came in, and for  
16 whatever reason they said that it was -- that I  
17 wasn't allowed out there any longer, so we were --  
18 we were asked to stay off the runway.

19 Q. Were you asked or were you told?

20 A. Told.

21 Q. Have you tried to get back on the runway? I  
22 mean have you -- let me ask it this way. Have you  
23 -- in contradiction of what you were told, have you  
24 gone back out on the runway?

25 MR. RICHARD NESS: Objection, Your Honor.

1 Leading.

2 THE COURT: I'm going to --

3 MR. RICHARD NESS: Your Honor?

4 THE COURT: No, I'm going to allow that.

5 MR. WILSON: Thank you, Your Honor.

6 BY MR. WILSON:

7 Q. In contradiction of your being told to stay off  
8 the runway, have you gone back out on the runway to  
9 test fire trucks since --

10 A. No.

11 Q. -- 2015?

12 A. No.

13 Q. Why not?

14 A. Because they won't allow it. They own the  
15 runway, so they have the right to say that I can't  
16 use it, and I'm not going to put my people at risk  
17 of going to jail for trespassing.

18 Q. Have you made attempts to try to get Hampton  
19 County to honor the 2005 agreement?

20 A. I have.

21 Q. Not being able to use the runway, what has that  
22 done for your business?

23 A. It's escalated my cost.

24 Q. How is that?

25 A. These vehicles get approximately three to five

1 miles per gallon, so now we're having to take our  
2 vehicles out of the area to do their -- to do the  
3 test, not to mention the wear and tear on the -- on  
4 the -- on the tires have just been unbelievable.  
5 So, for example, the --

6 Q. How has that impacted your business?

7 A. Well, for example, these -- these tires are  
8 approximately \$4,000 apiece. We have anywhere from  
9 four to six per truck, and the average mileage on  
10 these tires are about 500 miles. So if I take a new  
11 tire and put it out --

12 Q. So --

13 A. -- there and --

14 Q. -- that's before --

15 A. -- just do -- I'm sorry?

16 Q. That's before it wears out?

17 A. Yes.

18 Q. Go ahead, I'm sorry.

19 A. Yeah, under most circumstances they will wear  
20 out that, unless you're just doing straight runs.  
21 If you're doing straight runs, you don't get that  
22 kind of wear and tear, but at a normal airport use,  
23 putting them on the road, making a lot of turns,  
24 they will -- they will -- they will deteriorate the  
25 tires, and at \$4,000 a tire, it starts adding up

1 pretty quick.

2 Q. So you said not being able to get on the runway,  
3 I think I understood you to say, has caused your  
4 cost to escalate?

5 A. They have -- it has.

6 Q. On a yearly basis how much has it affected your  
7 cost? How much has it caused it to go up?

8 A. Probably between three and si -- five or six  
9 percent.

10 Q. What does that mean on a yearly basis in  
11 dollars?

12 A. Probably somewhere between 60 and \$80,000  
13 minimum, if not more.

14 Q. How do you test and certify trucks if you're not  
15 able to use the airport runway any longer?

16 A. Well, we have to take them to other facilities.  
17 Several -- several years ago we actually contracted  
18 with a -- or got verbal permission to use the Ocala  
19 International Airport down in Ocala, Florida, but  
20 the costs started running up so much, that we didn't  
21 do that very much at all.

22 Q. What does that entail, if you've got to take one  
23 of these trucks and go somewhere else?

24 A. These vehicles are oversize permitted loads.  
25 They're -- you don't put this type of vehicle on a

1 tractor-trailer without having to have oversize  
2 permits, meaning over height, over width and over  
3 length.

4 Q. So you don't drive the vehicle to --

5 A. No.

6 Q. -- the testing site?

7 A. These vehicles are not made for highway use as  
8 far as the -- the drive train cannot handle a lot of  
9 highway heat. So, for example, if I were to drive  
10 one of my vehicles from here to Atlanta, I would  
11 probably destroy the -- the drive train in it in  
12 that length of time because of the highway heat that  
13 it produces.

14 Q. So if you're going to take the ARFF vehicle  
15 somewhere else to test it, what do you have to do  
16 with it?

17 A. Put it on a tractor-trailer and ship it at a --  
18 somewhere -- it'll cost somewhere between five and  
19 \$7 per mile.

20 Q. How far is it to Ocala, Florida?

21 A. I think it's just under 350 miles, maybe give or  
22 take.

23 Q. Have you made arrangements to do some of your  
24 other testing locally?

25 A. We -- we -- we're doing some of our -- our



1 testing locally. We do all of the tests that are  
2 required on-site at our facility. The only two  
3 tests that we do away from our site is the speed  
4 test and the acceleration test, and we're not doing  
5 acceleration at all right now.

6 Q. So the spray tested, those -- those other  
7 things, the pumper and spray, those kind of things,  
8 you're able to do that on the --

9 A. On my own property, yes.

10 Q. Now, you said a moment ago about the -- the 70  
11 mile an hour speed test, is -- is that something  
12 that's required for certification?

13 A. It is not required, only on certain bid -- bid  
14 aspects. Certain bids require a full acceleration  
15 test.

16 Q. And are you able to pursue those bids without  
17 the ability to do the acceleration -- I mean the  
18 speed -- the 70 mile an hour speed test?

19 A. The only way that I could do that is if I drove  
20 the vehicle to -- to I-95 and put inter -- put --  
21 put the truck out on I-95, because that's the only  
22 legal speed limit I get 70 miles an hour out of.

23 Q. Is that feasible?

24 A. Not really.

25 Q. Does Company Two own or lease the building where

1 you're located?

2 A. They -- Company Two leases the property that I  
3 own there now. It -- my wife and I have a company  
4 called Q&J Properties, and we, basically, lease it  
5 from -- from that company.

6 Q. And what's your monthly lease?

7 A. I think it's \$3,500 a month.

8 Q. How does that compare to where -- if you had to  
9 relocate somewhere to find some other property and  
10 lease?

11 A. I think it would prob -- my --

12 MR. RICHARD NESS: Your Honor, this is  
13 speculative --

14 WITNESS CONTINUES:

15 A. -- my cost, I --

16 MR. RICHARD NESS: Objection, Your Honor, that's  
17 speculative testimony, he doesn't know.

18 MR. WILSON: I'll ask him how he knows it.

19 THE COURT: Yeah, I'm going to allow the  
20 question.

21 MR. WILSON: I'll -- I'll follow it up and ask  
22 him how he knows.

23 BY MR. WILSON:

24 Q. Do you -- do you know what it would cost you to  
25 lease a property similar to what you have located

1 next to an airport with access to a runway?

2 A. It would probably cost me 12 to 14, maybe  
3 \$15,000 per month.

4 Q. And how do you know that?

5 A. Because I've done some research on a leasing the  
6 property of our size.

7 Q. Is that since the --

8 A. I'm sorry?

9 Q. Have you done that since the 2015 instructions  
10 to stop --

11 A. We have.

12 Q. Mr. Jones, was there a -- was there a certain  
13 contract that you were pursuing at or around about  
14 2015 time that you were instructed to stay off the  
15 runway?

16 A. We were.

17 Q. Tell the jury about that.

18 A. A contract came across my desk asking for ten  
19 ARFF trucks to go to various islands in the South  
20 Pacific. The World Bank was actually bankrolling  
21 this particular venture, and they went out for used  
22 remanufactured or refurbished ARFF trucks.

23 Q. Okay.

24 A. And so we were in the process of bidding that,  
25 when the -- when the note came down or the word came

1 down not to use the airport after that.

2 Q. Okay. So South Pacific, an overseas  
3 international contract?

4 A. Correct.

5 Q. And who do you say was backing that?

6 A. It was the World Bank.

7 Q. Okay. And what was that for? What did it  
8 entail?

9 A. It went to several different islands in the  
10 South Pacific, that they were -- their ARFF fleet at  
11 these various islands were deteriorated to the  
12 point, that the ICAO -- the ICAO started pulling  
13 back their index ratings. Those who aren't familiar  
14 with --

15 Q. How many trucks did the bid entail is what I'm  
16 getting at?

17 A. If I remember right, it was either nine or ten,  
18 I can't remember.

19 Q. And were these ARFF trucks?

20 A. They were.

21 Q. What was the amount of the contract?

22 A. My bid was 4,900,000 and some few change.

23 Q. Tell the jury what would have gone into putting  
24 that bid together. Cost, manpower, those type  
25 things. Did you have to bring anybody to help?

1 Tell the jury what would have gone into that bid.

2 A. I had to hire a consulting agent out of Florida  
3 to come help me put the bid package itself together,  
4 because I had never handled a -- a bid of this size.  
5 I did not understand a lot of the -- the rules and  
6 regulations of the ICAO -- or ICAO and the World  
7 Bank, but these people that I hired out of Florida  
8 did, and they had done it --

9 Q. Who's that?

10 A. -- they had done it in the past.

11 Q. Who was that?

12 A. A gentleman named Bobby Shaub, and I believe his  
13 company's name is SGW or SWG, or something like  
14 that.

15 Q. Did you have to pay Bobby for his time --

16 A. I did.

17 Q. -- and his work?

18 A. I'm sorry?

19 Q. Did you have to pay -- did you have to pay Mr.  
20 Shaub's company for their time and their work?

21 A. I did.

22 MR. RICHARD NESS: Your Honor, objection, he's  
23 leading.

24 THE COURT: I'm going to allow it. Thank you,  
25 continue.

1 BY THE WITNESS:

2 A. I did.

3 Q. Okay. Your best estimate, tell the jury what  
4 you paid Mr. Shaub's company for the work they  
5 performed.

6 A. I'm going back several years, if I remember  
7 correctly, it was somewhere in the \$15,000 range,  
8 just to put this package together.

9 Q. Now, did you have time in the bid package  
10 yourself?

11 A. Oh, very much. We had -- we had -- I actually  
12 hired an extra person to come in and help put --  
13 help Bobby put the package together. This package  
14 was not something that would take a couple of days  
15 to put together, it took us, approximately, one  
16 month to put this together.

17 Q. Was it something that your -- that your company  
18 had worked on prior to that? But when you say put  
19 the bid package together, am I understanding you to  
20 say that means to just put the paperwork together?

21 A. The paperwork to abide by the World Bank's  
22 requirements.

23 Q. And what were the World Bank's requirements?

24 A. Well, for example, one -- one of their  
25 requirements was that -- that we had to be pre-

1 qualified to be able to meet this bid. Number two,  
2 one of their requirements, that we had on-site  
3 testing. The reason they require on-site testing is  
4 because of a project of this size, if you start  
5 moving vehicles from one location to another, your  
6 overall cost just starts accelerating.

7 (Whereupon, Plaintiff's Exhibit Number 2 is marked  
8 for the record.)

9 BY MR. WILSON:

10 Q. Okay. I'm going to show you what I've marked as  
11 Plaintiff's Exhibit Number 2, and ask you, if you  
12 recognize that?

13 A. (Reviews document.) I do.

14 Q. And what is it?

15 A. This is the -- this is the bidding documents for  
16 the procurement for the -- for the four different  
17 islands in question.

18 Q. Is that the entire bid document or is that a  
19 portion?

20 A. Well, this here's just basically for the  
21 procurement of goods.

22 Q. Okay.

23 A. I think what you have in your hand is -- is an  
24 overall -- it doesn't look thick enough, but, yeah.

25 Q. Okay, all right.

1 MR. WILSON: Your Honor, I'm going to move that  
2 in as Plaintiff's Exhibit Number 2.

3 THE COURT: Any objection?

4 MR. RICHARD NESS: No objection.

5 THE COURT: Number 2 is admitted.

6 (Whereupon, Plaintiff's Exhibit Number 2 is admitted  
7 into evidence.)

8 BY MR. WILSON:

9 Q. Mr. Jones, you -- you said a moment ago that  
10 there was some conditions with respect to that  
11 contract bid that was placed on it by the World  
12 Bank?

13 A. Yes, sir.

14 Q. And you -- I think I heard you say one of those  
15 was on-site testing?

16 A. Correct.

17 Q. What does that mean?

18 A. It means that if you're going to be able to bid  
19 this particular project, that you must have on-site  
20 testing facilities for all of the ARFF vehicles.  
21 One of the other requirements was that it was what  
22 we call a no exceptions bid.

23 Q. What does that mean?

24 A. That means that you -- if you -- if you take an  
25 exception to any part of the bid, they have the



1 right to kick your bid out.

2 Q. All right, I want you to take a look at the  
3 third -- fourth page of that document. I think I'm  
4 looking at Section 5.34.2.

5 A. Correct.

6 Q. The little three I's right there?

7 A. Yes, sir.

8 Q. What -- what did that -- what did that condition  
9 of the bid require, if you'll read that?

10 A. "Factory acceptance testing on completion of the  
11 project at the supplier's manufacturer's facility  
12 before shipping to the final destination."

13 Q. Were you able to meet that condition of the bid  
14 after you were told in 2015 to stay off the runway?

15 A. I was -- I was not.

16 Q. Were you able to meet that condition of the bid  
17 prior to being told to stay off the runway in 2015?

18 A. I was.

19 Q. Well, it was Company Two, I guess, not you, but  
20 Company Two.

21 A. I'm sorry?

22 Q. Not you, but was Company Two able to do that?

23 A. Correct.

24 Q. Were you able -- was Company Two able to meet  
25 the condition of that bid prior to your starting

1 work on the bid process?

2 A. Yes.

3 Q. How about the time the bid was submitted, were  
4 you able -- was Company Two able to meet that bid  
5 condition?

6 A. No.

7 Q. Take a look at the next page. I'm looking at  
8 5.32A. What does that require, the last --

9 A. Would you like for me to read it?

10 Q. No, just if you could tell the jury, what --  
11 what is this list of things I pointed --

12 A. Oh, oh, I apologize, I apologize. This is,  
13 basically, the tests that are required for the  
14 acceptance of the bid.

15 Q. And what is this part right here that I've got  
16 highlighted in red?

17 A. Maximum speed and acceleration performance  
18 tests.

19 Q. And where does it say they will be conducted?

20 A. Let's see, "Carried out at the supplier's  
21 manufacturing facility before shipment, and the  
22 following tests shall be repeated in a final  
23 destination, before final acceptance."

24 Q. Prior to 2015, when you were told to get off the  
25 runway, were you able -- was Company Two able to

1 meet that condition?

2 A. Yes.

3 Q. How about afterwards?

4 A. No.

5 Q. Then I want you to take a look at the next page,  
6 Bates stamped 00172. I'm looking at the little two  
7 ii section there. The supplier is what it says,  
8 right?

9 A. (Reviews document.) Right here?

10 Q. It says, "The supplier," who would be the  
11 supplier in this situation?

12 A. "The supplier shall also show that he has the  
13 facilities locally for testing these vehicles and  
14 the major components to rate their performance in  
15 all aspects."

16 Q. Let me ask this, back up, my question was, who  
17 would be the supplier in this setting?

18 A. Company Two.

19 Q. And what would the World Bank or -- or the South  
20 -- the South Pacific be called?

21 A. Repeat the question, I'm sorry?

22 Q. The buyer, what would they be called in the  
23 circumstance?

24 A. In -- it was a PI -- I'm trying to remember what  
25 it was. PIP something, I can't remember the

1 exact --

2 Q. But supplier here would refer to the company  
3 that's providing the trucks?

4 A. That's correct.

5 Q. And that would have been Company Two?

6 A. That's correct.

7 Q. And what did that require the supplier to be  
8 able to show?

9 A. The on-site testing.

10 Q. Prior to 2015, when you were told to stay off  
11 the runway, did Company Two have that ability?

12 A. They did.

13 Q. How about after 2015?

14 A. No, sir.

15 Q. What -- so you said the bid was \$4.9 million, I  
16 think, is what I heard you say?

17 A. Correct.

18 Q. Now, there would have been costs involved for  
19 Company Two to put together the trucks, to refurbish  
20 them, to get them ready to ship, to do all those  
21 things, correct?

22 A. Correct.

23 Q. And 4.9 million wouldn't have been the net  
24 profit that Company Two would have enjoyed, had it  
25 won -- had it won the bid?

1 A. It would have been nice, but, no.

2 Q. I gotcha. All right, what was the expected  
3 profit margin?

4 A. We had estimated somewhere right around the one  
5 million dollar mark.

6 Q. Okay. Now, did you submit the bid, or did  
7 Company --

8 A. We did.

9 Q. -- Two submit the bid?

10 A. We did.

11 Q. Did the bid have any chance of being successful  
12 of taking exceptions?

13 A. I'm -- I'm sorry?

14 Q. Did the bid have any real chance of being  
15 successful with those exceptions in it?

16 A. We were hoping that we would, due to the fact  
17 that we were one of the only companies that had the  
18 vehicles to be able to supply the pros -- the bid,  
19 but, eventually, we ended up losing the contract,  
20 because we took exception to on-site testing.

21 Q. Who won the contract?

22 A. A company called Fire Trucks Unlimited out of  
23 Las Vegas, Nevada.

24 Q. After they won the contract, did they have to  
25 get in touch with you for any reason?

1 A. They did.

2 Q. For what?

3 A. They bought a few trucks from us.

4 Q. Why did they have to do that?

5 A. Because they didn't have the trucks to supply  
6 the contract.

7 Q. Okay. So I guess you were able to -- or Company  
8 Two was able to make some money in that transaction,  
9 right?

10 A. Well, I mean nothing like -- when we actually  
11 purchased the vehicles in question, they had not  
12 been refurbished, they were about to be refurbished,  
13 so we had not done refurbishment on these vehicles  
14 and sell them to Fire Trucks Unlimited. Fire Trucks  
15 Unlimited happens to be actually good friends of  
16 ours, and, obviously, we're competitors, but the  
17 owners called me and said, "Do you -- can we buy a  
18 couple of trucks from you?" So we actually helped  
19 them by selling a couple of trucks just a dirt cost.  
20 I mean we made a couple of dollars out of them,  
21 but --

22 Q. What'd -- what'd you make in profit on those two  
23 trucks?

24 A. Approximately -- I don't know, approximately 75,  
25 \$80,000.

1 Q. All right, what would have been --

2 A. Between the two.

3 Q. -- more profitable for Company Two? To have  
4 taken older trucks, refurbished them, and either  
5 sold them to the World Bank in a total of ten, and  
6 Fire Trucks Unlimited in a total of two; or as I  
7 understood what you just said a moment ago, you just  
8 bought -- you had two trucks, if you did refurbish  
9 them and you sold them to Fire Trucks Unlimited as  
10 they were, what would have been more profitable?

11 MR. RICHARD NESS: Your Honor, objection. It's  
12 way speculative and it's leading. He's asking him  
13 what he would have made on the trucks if he sold  
14 them on the market once they were fixed, I think is  
15 what he was asking him. He didn't fix them. He  
16 decided to sell them to the Unlimited in Las Vegas.

17 THE COURT: I'm going to ask you to rephrase  
18 your question. I thought I heard him say that he  
19 sold the trucks unrefurbished.

20 MR. WILSON: That's what I was trying to ask. I  
21 didn't do a very good job.

22 BY MR. WILSON:

23 Q: I was trying to ask, was it as profitable for  
24 you to sell the trucks to Fire Trucks Unlimited  
25 unrefurbished as it would have been if you would

1 have gone through the refurbishment process as part  
2 of a bid and sold it to someone else?

3 A. No. I would have made a lot more money, if I'd  
4 have been able to refurbish the trucks and sell them  
5 out with a contract.

6 Q. Why is that? Why do you make more money on a  
7 truck that you actually refurbish and resell, than a  
8 truck you just send right back out in the same  
9 condition that you got it in?

10 A. Because it's -- it's -- if you buy a -- if you  
11 buy a used vehicle, and, for example, if you're --  
12 if you're buying a car and you're wanting to sell  
13 that car at a -- at a used car lot, the more money  
14 you put into that vehicle, the more money you would  
15 actually sell the vehicle for. The same, in this  
16 particular case, if we would have been able to  
17 refurbish the truck, obviously, they would have been  
18 worth a lot more, but then that would have taken  
19 profit out of Fire Trucks Unlimited hands to be able  
20 to meet that contract, so I was able to sell a  
21 couple of trucks to them to where he could refurbish  
22 the vehicles.

23 Q. Mr. Jones, let me ask you this, I think we're  
24 gonna hear testimony from a gentleman named Kevin  
25 Weinberg this week.



1 A. Yeah.

2 Q. Did Kevin work with you?

3 A. He did.

4 Q. And what did he do with Company Two?

5 A. He was an ARFF technician.

6 Q. Was he ever an owner or a partner of yours?

7 A. No.

8 Q. Okay. You said he was an ARFF technician?

9 A. He was.

10 Q. Was he good at what he did?

11 A. Very.

12 Q. Does he still work for you?

13 A. He does not.

14 Q. And did y'all have an amicable split, or did you

15 have a tough split?

16 A. Well, we just had a split.

17 Q. Okay. Does Company Two pay taxes in Hampton

18 County?

19 A. A lot, yes, sir.

20 Q. How many employees -- how many employees in

21 Company Two?

22 A. As of today?

23 Q. Yes, sir.

24 A. I believe there's nine, including me, including

25 myself.

1 Q. Do you do business with other businesses in  
2 Hampton County?

3 A. I don't -- very -- very much so. We -- for  
4 example, we do not own our own paint facility, so we  
5 sub out all of our paint work to Mixon's Auto Body.  
6 NAPA store we probably spend, approximately, 250 to  
7 \$300,000 a year with them, with the NAPA store here  
8 in town. The metal shops in this area we probably  
9 spend another 300,000 or better with them.

10 Q. Well, let me ask you this because Mr. Ness  
11 brought it up in his opening statement. He  
12 mentioned something about you wanting to be in or  
13 getting into the business of painting airplanes.  
14 Have you ever -- has Company Two ever been in the  
15 business of painting airplanes?

16 A. Never.

17 Q. Ever had any interest in being in the business  
18 of painting airplanes?

19 A. Never.

20 Q. Ever told anybody that you or Company Two needed  
21 any of these agreements, or this agreement, for  
22 purposes of painting airplanes?

23 A. Never.

24 Q. Would you need to use the airport runway from  
25 the Gemco property line to the northeast tip of the

1 airport, the entire airport property that we looked  
2 at a moment ago on that plat, in any way, shape, or  
3 form for painting airplanes?

4 A. Never, no.

5 Q. When a fire truck has to be refurbished, is it  
6 repainted sometimes?

7 A. Sometimes it is, sometimes it's not, it just  
8 depends on the condition of the vehicle.

9 Q. And do you do that in-house or do you send -- do  
10 you send that out?

11 A. If we paint them, we send them out.

12 MR. WILSON: Mr. Jones, I think that's all the  
13 questions I have for you at this time. It took a  
14 little longer than I expected, but I appreciate your  
15 patience in doing this. And I think Mr. Ness has  
16 some questions.

17 THE COURT: I'm going to let the jury take a  
18 break, we've had them in here for a couple hours  
19 now. Ladies and gentlemen, please don't begin  
20 discussing the case during your break. We're gonna  
21 take about ten minutes. I know I told you to select  
22 a foreperson, I'm going to ask you to hang on and do  
23 not select a foreperson quite yet. We've got one  
24 issue we're gonna take up regarding the foreperson,  
25 but we'll be at recess for ten minutes.

1 cross-examination --

2 MR. RICHARD NESS: Thank you, Your Honor.

3 THE COURT: -- the floor is yours.

4 **CROSS-EXAMINATION BY MR. RICHARD NESS**

5 MR. RICHARD NESS: May it please the Court?

6 Mr. Jones, what's your background before you got to  
7 be in ARFF -- in the ARFF business? What's your  
8 background? What kind of background did you have?

9 A. I was a heavy equipment operator. I drove a  
10 tractor-trailer for, approximately, seven years.

11 Q. Are you an engineer? Are you an engineer?

12 A. I'm -- I'm sorry?

13 Q. Are you any type of engineer?

14 A. No, I'm not.

15 Q. Okay. You started the ARFF business in 2007?

16 A. The AARF business?

17 Q. Yes.

18 A. Started, approximately, 2004 into 2005.

19 Q. Do you have an attorney here in town that's  
20 located locally?

21 A. Do I have an attorney?

22 Q. You have one -- Kevin Brown?

23 A. I do.

24 Q. So Mr. Brown helped you draft some agreements,  
25 didn't he, or helped with Q&J?

1 A. I believe, yes, sir, I believe it was.

2 Q. With these easements we talked about earlier?

3 A. Yes.

4 Q. Well, I want to show you a couple of these  
5 documents, all right?

6 A. Okay.

7 MR. WILSON: Do you mind showing me before  
8 you --

9 MR. RICHARD NESS: Yes.

10 MR. WILSON: Your Honor, 14, 15, 12, 13 and 16  
11 of the Defendant, that's the four -- 2015 easement  
12 agreement and the -- the deeds on the property, so  
13 that's just something to our objection that we made  
14 yesterday.

15 (Whereupon, Defendant's Exhibit Numbers 12, 13, 14,  
16 15, and 16 were marked and admitted into evidence  
17 without objection.)

18 THE COURT: Yes, sir.

19 MR. WILSON: We'll just renew that.

20 BY MR. RICHARD NESS:

21 Q. Mr. Jones, you and your attorney talked earlier  
22 today about an agreement here, dated June 23, 2011?

23 A. (Reviews document.) Yes, sir.

24 Q. That document -- Mr. Brown did that document,  
25 right?

1 A. He did.

2 Q. This easement agreement was done later on in  
3 2014, and recorded in 2015?

4 A. Yes, I believe he did, yes.

5 Q. Okay. Mr. Jones, could you look at this -- this  
6 document right here, the one copy you put out as  
7 Number 2, Plaintiff's Exhibit Number 2. Look at the  
8 provisions in this contract, and tell us what you're  
9 talking about on here.

10 A. (Reviews document.) Yes, sir, item number two?

11 Q. No, page -- no, that's Exhibit Number 2 what I'm  
12 talking about.

13 A. Oh okay, I'm sorry.

14 Q. What's this right here say?

15 A. "The supplier shall engage services of a  
16 professional engineer suitably qualified as its own  
17 cost acceptable to the Professional Engineers  
18 Registration Board, and purchaser to the su -- to  
19 supervise the production. He or she shall -- and  
20 issue a certificate at the end of the work  
21 certifying that the whole work's production has been  
22 carried out as per vehicle principle's original  
23 design, drawings and instructions."

24 Q. And you don't have any professional engineer for  
25 the work you do?

1 A. I do not.

2 Q. You didn't meet that condition either, did you?

3 A. I'm sorry?

4 Q. You did not meet that condition either, did you?

5 When Mr. Wilson asked you about -- about not having

6 a test place -- a place to test the ARFFs, --

7 A. Right.

8 Q. -- you didn't meet this condition either, did

9 you?

10 A. I wouldn't be able to answer that, I'm not sure.

11 Q. You didn't have a professional engineer working

12 for you, do you?

13 A. No, I did not.

14 Q. No? I'm going to have you read on page 172.

15 You discussed this stuff with Jim Daniels in 2005 --

16 didn't you discuss it with Jim -- Jim Daniels?

17 A. Correct.

18 Q. So you were located at the airport, weren't you?

19 A. Yes, sir.

20 Q. This right here.

21 A. Yes, sir.

22 Q. Been here for three or four years, hadn't you?

23 A. I had already been here for three of four years.

24 Q. Yes, sir.

25 A. I had already been leasing some property here in

1 town, yes.

2 Q. Oh, so you didn't move from Atlanta to Bam -- to  
3 -- to Hampton just to start a business, did you?

4 A. We --

5 Q. Correct?

6 A. We had started leasing property, but I was still  
7 in Atlanta. We were looking for suitable -- a  
8 suitable size building for our operation.

9 Q. And when you moved from Atlanta to Hampton, when  
10 did you do that?

11 A. I'm -- I'm sorry?

12 Q. When did you move from Atlanta to Hampton, when?

13 A. Somewhere in the 2004 range. I don't remember  
14 years.

15 Q. It wasn't two or three years earlier than that?

16 A. At least two.

17 Q. At least two before, 2000 -- so 2002?

18 A. 2002, maybe 2003, somewhere in there.

19 Q. Maybe 2001, wasn't it?

20 A. I'm sorry?

21 Q. 2001, as well, wasn't it?

22 A. Well, my family's been here for years, so I was  
23 -- I was back and forth on a regular basis.

24 Q. When did you buy the house here?

25 A. When did I buy a house here?



1 Q. Yes, sir.

2 A. Six years ago.

3 Q. Now --

4 A. I've owned a -- I've owned a piece of property  
5 in the -- in Hampton County for 40 years.

6 Q. You won't probably --

7 A. It was my grand -- it was my grandparents'  
8 property.

9 Q. You actually owned property that you lived in in  
10 2001, didn't you?

11 A. I'm sorry?

12 Q. You had a house in 2001, didn't you?

13 A. Could you repeat the question?

14 Q. You had a house here in 2001; did you not?

15 A. Did I have a house here --

16 Q. Yes.

17 A. -- in 2001?

18 Q. Yes, sir.

19 A. It would have been my grandfather's house, yes.

20 Q. This is your residence, isn't it?

21 A. Well, I mean, if you want to consider me the  
22 resident, but -- but I never lived there. My  
23 brother lived there.

24 Q. You owned it though, didn't you?

25 A. I do to this day.

1 Q. Well, it shows here there's a Residence Code 100  
2 on it, right?

3 A. I'm sorry?

4 Q. It shows on this document right here, which is  
5 from the Assessor's Office, Code 100, right?

6 A. Let me see what you're looking at.

7 Q. Okay, so what's that right here, 100, right?

8 A. Correct.

9 Q. What's that next to it, R?

10 A. R, residence.

11 Q. Residence, yes, sir.

12 A. Uh-huh.

13 Q. Do you -- this -- what's the date of this  
14 document?

15 A. 2001.

16 Q. Okay. That meeting with Jim Daniel was what the  
17 proposal was?

18 A. I -- I'm sorry, I can't hear you.

19 Q. Sorry. What you had with Jim Daniels was a  
20 proposal, wasn't it? He proposed something to you?

21 A. Yes.

22 Q. And after that you just -- propose -- this is a  
23 proposal, isn't it? What does that say?

24 A. "You requested that certain commitments be made  
25 by the County --

1 Q. No, before --

2 A. -- to assist you in -- in --

3 Q. Before that, right there.

4 A. Oh, "Hampton County's excited about the prospect  
5 of having Company Two Fire locate here."

6 Q. It's a prospect, a proposal, right?

7 A. Yes.

8 Q. You had decided to be here that one time?

9 A. Well I was actually looking for other  
10 properties. I was looking at -- at various  
11 locations, it just so happened that Hampton County's  
12 the one that offered me the -- the access to the  
13 airport.

14 Q. Well, it would be nothing a fire truck, did it?

15 A. I'm sorry?

16 Q. It would be nothing about a fire truck, did it?

17 A. No, we discussed fire trucks the entire time.

18 Q. Where's -- where's the language that you rely  
19 on? Where does it say a fire truck?

20 A. I can't say that it says fire truck.

21 Q. It does not, does it?

22 A. It does not.

23 Q. Is there anything -- it doesn't say any other  
24 type of vehicles in here, does it?

25 A. No, sir, I can't say that they do.

1 Q. So we don't have any -- we have nothing in  
2 writing that talks about a fire truck?

3 A. To my knowledge, you're correct.

4 Q. But this lawsuit's all about whether you had  
5 access to the runway, right? You could put them on  
6 the runway?

7 A. Correct.

8 Q. But you have nothing in writing? Nothing?

9 A. I had a commitment from Hampton County Council  
10 and Hampton County Economic Development that I would  
11 have access to the airport to test fire trucks.

12 Q. No, they didn't get anything from Hampton County  
13 Council.

14 THE COURT: I'm sorry?

15 MR. AARON NESS: They didn't get anything from  
16 the Hampton County Council because they don't have  
17 anything.

18 THE COURT: Well, I mean I think that's fine for  
19 cross-examination.

20 BY MR. RICHARD NESS:

21 Q. The letter shows a cc to Sabrina Graham then?

22 A. The letter came --

23 Q. And that's --

24 A. -- from -- I'm sorry?

25 Q. This letter shows a cc and copy to a Sabrina

1 Posey Graham, right?

2 A. That's -- that's correct.

3 Q. Okay. You agree with the language in this  
4 letter, right?

5 A. I agree with the --

6 Q. Right?

7 A. -- language, yes.

8 Q. Okay. You signed the document in 2005, nothing  
9 else, was there?

10 A. No, I don't remember signing any other  
11 documents. I believe that was about it.

12 Q. And then in 2011 Sandy Steele came to you,  
13 didn't she?

14 A. I believe Sandy approached me, yes.

15 Q. In 2011, or it was a little bit earlier?

16 A. It was -- it was a little bit earlier than that.

17 Q. And that was at the request of Ms. Graham,  
18 wasn't it?

19 A. I'm sorry?

20 Q. Because it was at the request of Ms. Graham,  
21 wasn't it?

22 A. County Council had asked, in this particular  
23 letter that you just referred to, about -- asking if  
24 I would -- see how the word states here. "We would  
25 appreciate your commitment to grant this portion of

1 property to the County provided we give you similar  
2 amount of acreage." Basically, what she had -- was  
3 doing was following up on that commitment or request  
4 by Hampton County, for me to give the Airport  
5 Council or Airport Commission or Hampton County, if  
6 you want to call it that, I owned 1.78 or either .87  
7 acres that Hampton County Airport needed to be able  
8 to do some expansion -- or future expansion I sh --  
9 I should say, that they were discussing.

10 Q. And when -- when you -- when did you did that --  
11 when she came to see you in 2 -- 2009, 2010, or  
12 2011, whatever it was, you signed this agreement,  
13 right?

14 A. Correct.

15 Q. Why don't you talk about it right here?

16 A. (Reviews document.)

17 Q. Right here. This was the deal, and Hampton  
18 County did what they were supposed to, didn't they?

19 A. I'm sorry?

20 Q. Hampton County did everything it was supposed to  
21 do?

22 A. Hampton -- at the -- at the time Hampton County  
23 gave me access to the airport to test fire trucks up  
24 until 2015, yes.

25 Q. It doesn't mention fire trucks, does it?

1 A. That's not part of -- that's not part of the --  
2 it doesn't say fire trucks, but that's not part of  
3 what you're asking about.

4 Q. But you agreed to trade a fire truck, didn't  
5 you? I mean you agreed to trade --

6 A. Property.

7 Q. -- property, right?

8 A. Yes, sir.

9 Q. Okay. You got 1.7 acres?

10 THE COURT: Just let the record reflect the  
11 document you're referring to is Defendant's Exhibit  
12 12.

13 THE RICHARD NESS: The agreement was Exhibit 12.

14 THE COURT: Okay.

15 THE COURT: Can I get you to turn, so the court  
16 reporter can --

17 MR. RICHARD NESS: I'm sorry.

18 THE COURT: -- maybe see --

19 MR. RICHARD NESS: I'm sorry.

20 THE COURT: Do you want him basically facing  
21 you?

22 COURT REPORTER: Just so I can hear him.

23 BY MR. AARON NESS:

24 Q. The ordinance is in 2011, isn't it?

25 A. I'm not certain about that.

1 Q. You traded property after the ordinance, right?

2 A. As I understand it, I think they do have to have  
3 some sort of ordinance, and I believe that was done  
4 -- I believe it was. I'm not -- I'm not a  
5 politician, so I can't tell you for sure.

6 Q. Who told you could use the airport for fire  
7 truck testing? Who said that to you?

8 A. Who told me to use airport -- fire trucks on the  
9 airport? Didn't -- no one told me to -- to use  
10 airport fire trucks on the airport. They told me I  
11 have access to it, and go ahead and test my trucks,  
12 so I did for --

13 Q. It doesn't say anything about trucks, did it?

14 A. -- ten plus years. I'm sorry?

15 Q. The letter's not saying anything about trucks,  
16 does it? The same thing on this letter, it's not  
17 saying anything about trucks.

18 A. Well, it might not say fire trucks in that  
19 letter, you're -- but that letter there, in your  
20 hand, has nothing to do with the commitment Hampton  
21 County made to me. That letter there is a second of  
22 -- of an additional contract.

23 Q. Truth is you just made the assumption, you  
24 assumed you could use fire trucks on the runway, but  
25 nobody ever told you to do that, nobody.



1 A. Nobody told me to do anything. We did it,  
2 because we were -- we were allowed to do it through  
3 Hampton County Council.

4 Q. But there are no orders saying it.

5 A. I --

6 MR. WILSON: Your Honor --

7 A. -- don't believe --

8 MR. WILSON: Your Honor, I -- I hate to object.  
9 We -- we took up the ordinance issue yesterday, and  
10 you determined as a matter of law an ordinance was  
11 not required for him to be able to access to use the  
12 runway, so I'll object to any questions in that  
13 regard.

14 THE COURT: I'll let you certainly clear up  
15 anything on redirect, but, yes, that was my ruling.  
16 BY MR. RICHARD NESS:

17 Q. They gave you a taxiway in 2014 by these  
18 documents, right?

19 A. The County?

20 Q. Yes, ma'am -- yes, sir.

21 A. The -- to leave my piece of property to get to  
22 the airport, after I gave them that 1.7 or eight  
23 acres, whatever it was, they needed to give me an  
24 easement to go across that piece of property.

25 Q. To get to the airport?

1 A. To get to the runway, yes. And County Council  
2 approved all of that.

3 Q. Well, the easement document doesn't say anything  
4 about you getting the right -- the right to go on  
5 the runway, does it?

6 A. Say it again, I'm sorry?

7 Q. The easement document does not say anything  
8 about giving you the right to go on the runway, does  
9 it?

10 A. Has nothing to do with the runway at all.

11 Q. That's right. Look at the bottom of this page  
12 right there.

13 THE COURT: First of all, tell us what document  
14 you're handing him.

15 BY THE WITNESS:

16 A. (Reviews document.) Exhibit 15.

17 THE COURT: This is Defendant's Exhibit 15, the  
18 2015 Agreement?

19 MR. RICHARD NESS: Yes, ma'am.

20 BY THE WITNESS:

21 A. Well, 2014. Which one do you want me to read  
22 there, Mr. Ness?

23 Q. I'm sorry, the one that starts with "Grantee" --

24 A. Oh, "Grantee shall have no other rights in" --

25 Q. Yes, sir, yes.

1 A. Let's see, "Grantee shall have no other rights  
2 in and to other portion of the Grantor property,  
3 except an easement area as defined herein."

4 Q. So that means no other part of the airport,  
5 didn't it?

6 A. It has nothing to do with the airport.

7 Q. That easement says airport runway, but it didn't  
8 -- doesn't say anything --

9 A. No, sir.

10 Q. -- else about it, does it?

11 A. That document there is -- is for me to get  
12 across my -- my old property and get to the runway.  
13 That is a land swap.

14 Q. This document is an easement for you.

15 A. I'm sorry?

16 Q. It's just an easement, isn't it?

17 A. It's an easement, but I gave the -- well, I  
18 should -- well, I allowed Hampton County to take  
19 possession of one -- 1.87 or .78, I don't remember  
20 the -- the exact -- and then they -- and then they  
21 gave me -- I believe it was three acres, which is  
22 actually behind my piece of property, that they were  
23 never going to use, so they swapped three swamp  
24 acres for one very good acre, or one and a half very  
25 good acres.

1 Q. Let me read this first. It says, "Grantee shall  
2 have no other rights in and into any other portion  
3 of the Grantor property." You're the Grantee in  
4 this case, right?

5 A. Correct.

6 Q. The Grantor is Hampton County, right?

7 A. Correct.

8 Q. "The Grantee shall have no other rights in and  
9 into any of other portion of the Grantee property?"

10 A. That's on the -- that's on the easement, yes,  
11 sir.

12 Q. Were there any other rights on the property at  
13 the airport, right?

14 A. It has nothing to do with the airport.

15 Q. That's right I think.

16 A. That document was strictly for the -- for the  
17 swap of property, allowing me to go across it.

18 Q. They didn't give you rights to any other  
19 property, did they?

20 A. Again, that's -- that document is a separate  
21 entity from the promise Hampton County made.

22 Q. What does integrated mean?

23 A. I'm sorry?

24 Q. Integrated, what does that mean; do you know?

25 A. In- -- I'm -- I'm sorry, I don't.

1 Q. Just read paragraph Number 12, if you don't  
2 mind.

3 THE COURT: Again, tell me what document you're  
4 handing him.

5 MR. RICHARD NESS: It's Number 15 -- Number 12.

6 BY THE WITNESS:

7 A. "This agreement is an integrated agreement and  
8 expresses the complete agreement and understanding  
9 of the parties. Any or all prior or contemporaneous  
10 oral agreement or prior written agreement regarding  
11 the agreement will be merged herein."

12 Q. Is there anything else?

13 A. But this -- again, this is strictly for a --  
14 another piece -- this was for a piece of property,  
15 this has nothing to do with my access to the airport  
16 itself, to the runway. They -- for example, they  
17 did not -- they did not want me to go out there and  
18 plant -- plant crops on the taxiway or the easement.  
19 And as a matter of fact, I was required to upkeep  
20 that piece of property, which I've done since 2005.

21 Q. Yeah, but it says, "The integrated agreement  
22 expresses the complete agreement and understanding  
23 of the parties," nothing else, period, that's it.

24 A. As far as that piece of land is concerned,  
25 you're -- that -- that's correct.

1 Q. "Any and all prior contemporaneous oral  
2 agreements, or prior agreements will be merged  
3 herein."

4 A. But, again, Mr. Ness, you're mixing up two  
5 different documents. One document was for the use  
6 of the airport, and the other -- that document there  
7 is for a land swap.

8 Q. You are misinterpreted it, aren't you?

9 A. I'm sorry.

10 Q. You're misinterpreting it, aren't you?

11 A. I don't -- I don't believe I am.

12 Q. Yes, sir.

13 MR. RICHARD NESS: Just put it up on the screen;  
14 if you will.

15 BY MR. RICHARD NESS:

16 Q. I'm talking about the bottom four lines, Mr.  
17 Jones. "The Grantee shall have no other rights in  
18 and to any other portion of Grantor's property,  
19 except the easement herein -- defined herein, right?

20 A. That document does say that, yes.

21 Q. Any other portion of the property, right? Any  
22 other property, what does that mean?

23 A. The document is talking about the easement  
24 itself.

25 Q. But it's talking about the other portion of the

1 property.

2 A. I -- I don't know what to tell you, Mr. Ness,  
3 it's -- I understand that document to -- to be  
4 strictly for the easement itself.

5 Q. Look back at 12, you talked about it, the  
6 integration. That means the integration is all put  
7 together, right?

8 A. That's correct.

9 Q. So this agreement an integrated agreement  
10 expressing the complete agreement between the  
11 parties?

12 A. That's correct.

13 Q. That's it.

14 A. But, again, I believe that you're confusing the  
15 two documents. One is for a land swap, and one is  
16 for the use of the runway.

17 Q. What's your position in this case as far as the  
18 2005 document and 2011 document?

19 A. I'm sorry?

20 Q. What's your position in this case regarding the  
21 2005 document and the 2011 document?

22 A. I couldn't hear all -- I couldn't hear all of  
23 that.

24 THE COURT: Mr. Ness, if I can get you to speak  
25 up a little bit and slow down.

1 BY MR. RICHARD NESS:

2 Q. Mr. Jones, what is your position on regarding  
3 the 2005 letter to Jim Daniels --

4 A. Yes, sir.

5 Q. -- and the 2011 document we just put on the  
6 screen?

7 A. What happened in between; is that what you're  
8 asking?

9 Q. I'm asking you what is your position on the two  
10 documents? Do they go together or not?

11 A. They do not, they're separate documents.

12 Q. They are?

13 A. They are.

14 Q. Totally separate?

15 A. Totally separate.

16 BY MR. AARON NESS:

17 Q. Mr. Jones, I'm gonna hand you a copy of your  
18 deposition. Turn to page 35.

19 A. Page 35?

20 Q. Yes, sir. Do you remember me taking your  
21 deposition back in January of 2018, I think it was?  
22 Do you remember me taking your deposition in 2018?

23 A. I do.

24 Q. Page 35, look at the line of questioning on  
25 number six -- line six.



1 A. (Reviews document.)

2 Q. Can you read that to the jury? I'll read it to  
3 the jury, okay? The last question you gave the  
4 answer.

5 A. Okay.

6 Q. (He's reading from the deposition of Quincy  
7 Jones.)

8 THE COURT: Mr. Ness, we're gonna need you to  
9 slow down and I don't know that the court reporter  
10 can get all that. I need you to slow down a little  
11 bit for me, please.

12 MR. RICHARD NESS: Thank you, Your Honor.

13 BY MR. AARON NESS:

14 Q. -- about the easement, and I had you read that  
15 paragraph. Is there any other language in this  
16 document, the easement agreement, that you believe  
17 supports your position that you can use to test fire  
18 trucks on the runway? What's your answer?

19 A. And I -- I stated that I don't know the exact  
20 language.

21 Q. Keep on reading, read the whole paragraph.

22 A. Oh, okay, I'm sorry. I'd have to reread the  
23 entire document, but I don't remember there being  
24 any about airport fire truck testing per se.

25 Q. Okay. Mr. Jones, I'm handing you -- see the

1 Bates stamp on the bottom of that page, page 40?

2 A. Okay. Page what now?

3 Q. Page 40, please.

4 A. 40?

5 Q. Yes, sir.

6 A. (Reviews document.) There is no page 40 in  
7 here.

8 MR. RICHARD NESS: I beg the Court's indulgence  
9 for a minute.

10 THE COURT: Sure.

11 MR. RICHARD NESS: Sorry.

12 BY MR. AARON NESS:

13 Q. Mr. Jones, would you agree with me that a deed,  
14 from a legal standpoint, this document where you --  
15 one person gives property to one person who's  
16 supposed to get it, right, receives the property?

17 A. Correct.

18 Q. And that's how you transfer land in South  
19 Carolina?

20 A. I believe so, yes.

21 Q. The 2005 agreement you thought allowed you to  
22 use the runway to do testing on, right? That's your  
23 testimony.

24 A. And could you repeat the question?

25 Q. Yes, sir, sorry. This shows you thought the

1 2005 agreement, letter, Mr. Daniels allows you to  
2 use the runway to do testing on, correct?

3 A. That's correct.

4 Q. You're satisfied with the letter, right?

5 A. I'm sorry?

6 Q. You're satisfied with the letter what you got?

7 A. That was in the letter, yes, as far as having  
8 access, yes.

9 Q. What else were you given document-wise, anything  
10 else that was recorded, during the time 2005 to  
11 2011, no other documents recorded?

12 A. You're talking about any other documents  
13 after --

14 Q. After 2005.

15 A. -- concerning the 2005 document?

16 Q. Yes, 2005 to 2011, when you recorded the  
17 agreement, right?

18 A. There was no other documents between the two,  
19 correct, that I remember.

20 Q. Now the meeting that you attended with Council  
21 was between that period of time?

22 A. Various, yes.

23 Q. You don't recall meeting with Sabrina Graham,  
24 did you?

25 A. I'm sorry?

1 Q. You didn't meet with Sabrina Graham Posey --  
2 Sabrina Posey Graham, did you?

3 A. We -- I did. I met with Sabrina, I can't  
4 remember, we're going back a lot of years, but I do  
5 -- I do remember meeting with her several times.

6 Q. In 2015, right?

7 A. Up until -- I'm sorry?

8 Q. In 2015?

9 A. I don't remember the -- I can't remember the  
10 dates, Mr. Ness, sorry.

11 Q. You had no other meeting with her between 2005  
12 and 2011?

13 A. I had various meetings with Council on the  
14 upgrades that were coming up at the airport and  
15 about the land swap.

16 Q. When did they start to give you permission to  
17 use the runway? Who gave --

18 A. Who gave me permission --

19 Q. Yeah, yeah.

20 A. -- to use the runway?

21 Q. Yes.

22 A. The Hampton County Council did, along with  
23 Mr. Jim Daniels. It was being discussed amongst all  
24 of the County Council members.

25 Q. Did it ever occur to you that you need to put

1 all of this into writing about the fire trucks and  
2 runways?

3 A. Repeat the question, I'm sorry?

4 Q. Did it ever occur to you that you should put all  
5 this stuff in writing concerning the runway if you  
6 made an agreement?

7 A. I'm not an attorney, I can't -- I can't --

8 Q. You had an attorney, Mr. Brown, right?

9 A. I did, but if you'll notice, Mr. Ness, the --  
10 the -- the only time the attorney got involved was  
11 when there was a land swap.

12 Q. Well, wasn't Mr. Daniels involved?

13 A. In the -- in the land swap?

14 Q. No. Wasn't Mr. Daniels involved in telling you  
15 could use the runway?

16 A. If they had no problem with it, yes.

17 Q. Mr. Daniels alone?

18 A. No, Daniels and several of the Council members.

19 Q. All verbal?

20 A. Yeah, I don't -- I can't remember of there being  
21 any documents, but, again, I'm not an attorney, I  
22 didn't -- the County made the commitment to me and I  
23 accepted the letter. I mean I just couldn't ask for  
24 a much better relationship with the County.

25 Q. Well, in this case, we'll give the jury all the

1 documents they need to look at, right? The 2005 --

2 A. I'm sorry?

3 Q. We'll give all -- the jury all the documents  
4 they need to look at, 2005, 2011, 2014, right is  
5 all?

6 A. 2005, 2011 and 2014, there's three separate  
7 entities there. The first 2005 was the access and  
8 the commitment that the County made to me for me to  
9 move my business here and use the airport. I did  
10 that. This -- the -- in that same letter one of the  
11 last sentences in that letter, if you'll read it, it  
12 states that the County is asking me to give them a  
13 portion of my property for their airport expansion,  
14 which I had no problem with working with the County  
15 at all.

16 Q. That's where we have 2011, right? You agreed to  
17 the 2011 --

18 A. That's where the 2011 letter came in. From 2005  
19 to 2011 it took the County approximately one year  
20 before they even started the construction of it.  
21 That's why there's such a gap between 2005 to 2011.

22 Q. Was there anything else in writing in between  
23 those two times?

24 A. The only in writing that I needed was the 2005  
25 letter.

1 Q. Nothing else?

2 A. I didn't need anything else. I was using the  
3 runway for -- all the way from 2005 all the way up  
4 to 2015 without incident.

5 Q. 2015 County Council changed its direction?

6 A. I believe they did, yes.

7 Q. You have nothing in writing that says you can  
8 use a fire truck on the runway?

9 A. I'm sorry?

10 Q. Nothing in writing that says you can use a fire  
11 truck on the runway, nothing?

12 A. I -- I don't know that it says I can use a fire  
13 truck, but the commitment from Hampton County was  
14 that I could go test my trucks on the airport runway  
15 and I did.

16 Q. The northeast tip down to Gemco property  
17 sideways, right?

18 A. Sideways?

19 Q. Yeah, supposed -- that's what the agreement  
20 said.

21 A. Well, I don't know --

22 Q. You said --

23 A. -- about the word sideways, but it says, if I  
24 remember correctly, it says from the -- from the  
25 Gemco property line to the northeast tip of the

1 airport, which if -- which encompasses the entire  
2 airport, along with the runway, including the --  
3 including the outlaying properties of the runway or  
4 the airport.

5 Q. Mr. Jones, it shows your building, right?

6 A. I'm sorry, I couldn't hear -- understand you.

7 Q. I showed -- I showed you a little bit earlier,  
8 right? It's your building, right?

9 A. I -- that is my building, correct.

10 Q. And this shows earlier it goes in this  
11 direction, right?

12 A. Well, I mean if you angle it there, you go --

13 Q. Is that better?

14 A. -- a little bit further to your right. Yeah, a  
15 little bit more, a little bit more. That's pretty  
16 close to what the -- what the letter states, that I  
17 got use to -- I've got use of the airport from one  
18 end of your pen to the other.

19 Q. But it didn't say on a straight line. There's a  
20 straight line where it's perpendicular almost to the  
21 runway, doesn't it?

22 A. I'm -- I'm not certain of the que -- I'm not --  
23 could you rephrase the question or repeat it,  
24 please?

25 Q. I'll try to. The pen that's sitting there,



1 right?

2 A. Yes, sir.

3 Q. That's -- that's not -- you said that these are  
4 the ones, right?

5 A. At that angle.

6 Q. Well, what about the runway? The runway's down  
7 here on the bottom part, isn't it? Going the  
8 opposite way?

9 A. I'm not sure what you're asking, but the letter  
10 states in 2005 that I've got access to use the  
11 entire airport property from the southwest tip to  
12 the northeast tip. I'll be glad to come down there  
13 and move the pen for you, if -- if you'd like.

14 Q. No, that's all right. You said it's a entire --  
15 entire property, right, whole property.

16 A. Of the airport.

17 Q. So Plaintiff's Exhibit 1 again, dated October  
18 12, 2005.

19 A. Okay.

20 Q. Where does it say "entire property"?

21 A. (Reviews document.) Let's see, "Hampton County  
22 agrees to," let's see, "Hampton County agrees to  
23 provide you with a private taxiway right-to-use from  
24 the northeast tip of the airport to the Gemco  
25 property line," which is from the tip of your pen

1 down to the bottom of your pen.

2 Q. It didn't say anything about a runway though,  
3 does it? Nothing.

4 A. Well, the word -- the word "runway" may not be  
5 on that document, but it's --

6 Q. Well, it's not -- it's not, but we're  
7 interpreting the documents --

8 MR. WILSON: Your Honor, I would object. Just  
9 let him finish his answer, please.

10 THE COURT: Yes, sir. Let him finish his -- his  
11 response. Thank you.

12 BY THE WITNESS:

13 A. Would you like me to continue or --

14 THE COURT: You can finish your response, yes,  
15 sir.

16 BY THE WITNESS:

17 A. My -- my response is, it might not say fire  
18 trucks on that letter, but the right-to-use it is  
19 there to go across the property line to get to the  
20 runway, and use runway and the property of the  
21 Airport to the northeast tip.

22 Q. How do you interpret it?

23 A. That's exactly how I interpret it.

24 Q. Now, when it says -- we're in a courtroom and  
25 that's not what it says, is it?

1 A. From the -- from the southwest Gemco property  
2 line to the northwest -- northeast tip of the  
3 airport property.

4 Q. Well, I mean earlier you said the entire  
5 property, the entire property was included. It's  
6 not what it says, is it?

7 A. That's how -- that's how I believe it says, yes.

8 Q. It doesn't say entire -- or entire anywhere,  
9 does it?

10 A. I can't say that it does, no.

11 MR. RICHARD NESS: I beg the Court's indulgence  
12 one moment.

13 BY MR. AARON NESS:

14 Q. Mr. Jones, let's look at this tax -- these are  
15 tax returns you provided to me, right?

16 A. (Reviews document.) I believe it is, yes.

17 MR. RICHARD NESS: Exhibit Number 34B, Your  
18 Honor, 34B.

19 MR. WILSON: Your Honor -- Your Honor, may we  
20 approach just a moment?

21 (Whereupon, a Sidebar is held off the record.)

22 BY MR. RICHARD NESS:

23 Q. Mr. Jones, I've got a bunch of numbers here.  
24 2014 your gross receipts for your business were  
25 three million -- 3.7 million, right?

1 A. (Reviews document.) Yes, I believe that's  
2 correct.

3 Q. Those receipts right here.

4 A. Okay.

5 Q. 3.7 million, right?

6 A. Yes, sir.

7 Q. The cost of doing business here was two -- was  
8 1. -- was 2.4, right?

9 A. 2.8405, I believe, yes.

10 Q. Yeah, roughly, that's 2014, basically, before  
11 deductions and a lot of things, plus you've got 1.99  
12 -- or 1.3 million, didn't you?

13 A. Give or take a few, yes.

14 Q. Okay. 2015, there was nothing that would stop  
15 you from working, right?

16 A. Okay.

17 Q. 4.8 million versus 2.4, right?

18 A. Correct.

19 Q. Looking at that as 1.4, right?

20 A. Correct.

21 Q. When you filed in '16, the year after was 4 --  
22 4.1, which is 4.7, right?

23 A. Correct.

24 Q. The number here is 1.4?

25 A. Okay. Yes, sir.

1 Q. Do you agree?

2 A. Yes, sir.

3 Q. In 2017, you made 2.5 million versus 1.7  
4 million.

5 A. Okay.

6 Q. Right?

7 A. Correct.

8 Q. So you've got a number right here of about 1.2  
9 million.

10 A. Correct.

11 Q. All right. So what I'm saying is, according to  
12 these documents is, you didn't really stop business,  
13 did you?

14 A. By all means, no. I, obviously, was doing  
15 something right.

16 MR. RICHARD NESS: Your Honor, may I please have  
17 this marked?

18 THE COURT: And tell me -- that Exhibit Number?

19 MR. RICHARD NESS: 34B.

20 THE COURT: Mr. Wilson?

21 MR. RICHARD WILSON: Your Honor, the  
22 information's before the jury. I would object to  
23 the documents themselves as confidential tax  
24 returns, Your Honor, subject to what we discussed at  
25 the Bench, I would object to them being an exhibit,

1 because of the nature and the information that's  
2 contained within them, some of which is --

3 MR. RICHARD NESS: I might suggest this as a way  
4 to resolve this issue. I'm going to take these  
5 numbers up that he paid for separately for each  
6 year.

7 THE COURT: I will say, if we can just pull that  
8 particular portion out and redact the remainder.

9 MR. WILSON: Yeah, we don't have any objection  
10 to the information that the jury heard, and that can  
11 be put in a summary or whatever, I don't care how  
12 it's done.

13 THE COURT: Yeah, I think that's fine.

14 MR. WILSON: I just object to the document  
15 itself, as some of the other things it will contain,  
16 because tax returns are confidential.

17 THE COURT: Sure. So the in -- the information  
18 that you just cross-examined him on is admissible,  
19 subject to us reducing it to a little bit different  
20 format.

21 MR. RICHARD NESS: Yes, ma'am, thank you.

22 BY MR. AARON NESS:

23 Q. This is income for The Station, Inc.?

24 A. I'm sorry, go ahead?

25 Q. Income tax return for The Station, Inc.?

1 A. That's correct.

2 Q. All five of them I showed you?.

3 A. I believe they were. I didn't --

4 Q. Yeah.

5 A. -- check the date -- the -- yes, all of them are  
6 The Station, Inc. That is the name of my  
7 corporation doing business as Company Two.

8 Q. Yes.

9 A. Yes.

10 MR. RICHARD NESS: And I will just enter as  
11 evidence 34B.

12 THE COURT: Yes, sir.

13 MR. RICHARD NESS: Thank you.

14 (Whereupon, Defendant's Exhibit Number 34A is marked  
15 and admitted into evidence without objection.)

16 BY MR. RICHARD NESS:

17 Q. Mr. Jones, based on those numbers you made about  
18 1.3, 1.4 million dollars?

19 A. Is probably pretty accurate.

20 MR. RICHARD NESS: Your Honor, I have no more  
21 questions for Mr. Jones.

22 MR. WILSON: Your Honor, I've got a little bit  
23 of redirect, I suspect ten minutes or so. I'd like  
24 to go ahead and do it now.

25 THE COURT: Ladies and gentlemen, we're gonna go

1 ahead and get through this redirect, and then I'm  
2 going to have us break for lunch, so if you'll just  
3 bear with us. If it's any consolation, we're just  
4 as hungry as you are.

5 **REDIRECT EXAMINATION BY MR. WILSON**

6 Q. Mr. Jones, Mr. Ness asked you about some  
7 language in Exhibit 2. I want to show that to you.  
8 It was the bid. We talked about the Southeastern  
9 Asian bid. I want you to look at that. I'm gonna  
10 stand up here so we can look at it together. He  
11 asked you about this language right here, "That the  
12 supplier shall engage the services of -- of a  
13 professional engineer suitably qualified at its own  
14 cost to supervise the production," correct? Did you  
15 ever -- did Company Two ever get to production on  
16 this bid?

17 A. No.

18 Q. Why not?

19 A. Because the airport took our access away from  
20 us.

21 Q. If you would have gotten to production, if you'd  
22 been awarded the bid and gotten to production, could  
23 Company Two or would Company Two have engaged the  
24 services of a professional engineer?

25 A. We were going to have to engage the services



1 with several.

2 Q. You don't fit that mold, do you?

3 A. I do not.

4 Q. The October 2005 letter, where -- this was after  
5 -- my understanding is that this letter was given to  
6 you or -- or provided to you after the County  
7 Council meeting that you referenced you attended,  
8 where the -- you reached an agreement with the  
9 County on what we've been talking about?

10 A. That's correct.

11 Q. And just to be clear, does that letter say the  
12 word fire truck in it anywhere?

13 A. No.

14 Q. Does it say runway in it anywhere?

15 A. I don't believe it does.

16 Q. Does it say test anywhere in it?

17 A. No.

18 Q. Did you need it to say those exact words for the  
19 agreement that you had reached with Hampton County?

20 A. No.

21 Q. Hampton County gave you what -- in exchange for  
22 your relocating, Hampton County gave you what?

23 A. They gave me access to the airport from the  
24 northeast property to the southwest property.

25 Q. Were you clear with Hampton County about --

1 A. Very much.

2 Q. -- what you needed?

3 A. Very much so.

4 Q. Is Company Two -- has it been a profitable  
5 company?

6 A. Sometimes I -- I wonder, but, yes, it has.

7 Q. And we just went through your numbers. Is it a  
8 stable company?

9 A. In my opinion, very.

10 Q. And this is the -- this ARFF business, I think  
11 they're -- you -- you testified earlier that it's --  
12 there are very few in the world that do this, it's a  
13 competitive business, correct?

14 A. For example, yes. To answer your question, yes.  
15 When I got in the -- started dealing with the fire  
16 trucks 20 plus years ago, 25 plus years ago, there  
17 were four people doing structure fire trucks in the  
18 entire United States, refurbishing and selling used  
19 fire trucks. Today there's over 20, but when I got  
20 back into fire trucks back in those years, there  
21 were three people doing ARFF trucks, and today there  
22 are now three people doing ARFF trucks.

23 Q. And is that why Company Two wanted to get  
24 further into the ARFF business?

25 A. That is exactly the reason.

1 Q. Because it could produce -- produce numbers like  
2 what we just talked about?

3 A. That is correct. And I believe I could have  
4 done much higher numbers the particular year  
5 Mr. Ness spoke of if I was awarded that one  
6 contract, because that one contract was going to put  
7 at least two more ARFF technicians, a technical  
8 staff together that would have lasted, hopefully,  
9 for years to come.

10 Q. In looking at your numbers, they stayed pretty  
11 stable, the numbers that he went over with you just  
12 a little bit earlier.

13 A. Yes, sir.

14 Q. Do you believe that those numbers -- were you  
15 growing your business?

16 A. We had some up -- up and down years, but, yes,  
17 overall, I think -- I think the years overall were  
18 -- were growing, yes.

19 Q. And this Southeastern Asian contract, was that a  
20 big deal?

21 A. Yeah, in my opinion very large.

22 Q. If you get that deal, does it lead to other  
23 things?

24 A. Oh, very much so.

25 Q. Like what?

1 A. Similarity contracts that use them as  
2 references, because when you deal with the -- when  
3 you deal with the ICAO and the third world countries  
4 that some of our vehicles go to, they rely on  
5 similar contracts, and sometimes they award them as  
6 a -- as a sole source. If they do a sole source  
7 contract, then they're not requi -- required to go  
8 out for bid.

9 Q. So if you get a bid -- if you get one of these  
10 big bids and you do a good job, the chances are  
11 likely that you're gonna get more in the future?

12 A. Without a doubt.

13 Q. I -- I -- you explained to the jury the  
14 difference between some of these documents that are  
15 in evidence, and I just want to be very clear.  
16 These are some 2011 -- something called an agreement  
17 and a Title to Real Estate in 2015.

18 MR. WILSON: And, I'm sorry, Your Honor.

19 BY MR. WILSON:

20 Q. These are Exhibit 12 is the 2011 Agreement --  
21 Defendant's Exhibit 12. Defendant's Exhibit 15 is  
22 the Easement Agreement from 2015. Defendant's  
23 Exhibit 14 is a deed from the County of Hampton to  
24 Q&J Properties.

25 A. Correct.

1 Q. And Q&J Properties' deed to Hampton County is  
2 Defendant's Exhibit 13.

3 A. Correct.

4 Q. And then Defendant's Exhibit 16 is a -- is a  
5 plat, okay?

6 A. Correct.

7 Q. Do you remember all those documents?

8 A. I do.

9 Q. Do any of those documents have anything to do  
10 with the same property that is encompassed in  
11 airport property and the airport runway?

12 A. None whatsoever.

13 Q. Were any of these documents or any of these  
14 agreements or any of this paperwork part of the same  
15 agreement as your agreement and your contract with  
16 Hampton County in 2005 for you to be able to test -  
17 - use airport run -- airport property, right-to-use  
18 from the Gemco property line to the northeast tip,  
19 which encompasses testing trucks on the -- on the  
20 runway?

21 A. They're three separate documents, three separate  
22 entities.

23 Q. Mr. Ness asked you if your had an attorney,  
24 Kevin Brown, and Mr. Brown was involved in the  
25 drafting these documents in 2011 and 2014, correct?

1 A. That is it, yes.

2 Q. Okay. Are you -- were you able to -- or did you  
3 feel like Mr. Jim Daniel or anybody with Hampton  
4 County would have been able to prepare documents  
5 that were going to be recorded at the Courthouse  
6 deeds to transfer property?

7 A. No.

8 Q. Is that why you got lawyers involved?

9 A. Very much so.

10 Q. Okay. In 2005, when you met with County Council  
11 and you reached this agreement with them, that was  
12 evidenced by the two -- by Plaintiff's Exhibit  
13 Number 1, the 2005 letter where we looked at a  
14 bunch, was there any property being transferred?

15 A. No, but they had requested that I do a transfer.

16 Q. But was there any property being transferred as  
17 part of this agreement?

18 A. No.

19 Q. Was there any need for deeds or easements to be  
20 done in connection with this agreement?

21 A. No.

22 Q. Was there any need for lawyers to be involved in  
23 this agreement?

24 A. No.

25 Q. Let's look real quick at two different things.

1 This is Defendant's Exhibit se -- 16. Let's look  
2 right here at Defendant's Exhibit 16, this is an  
3 attached plat to the easement and property swap that  
4 -- that the jury's heard about; is that correct?

5 A. That's correct.

6 Q. What's this property right here, that I'm  
7 pointing at, this three acres?

8 A. That was the three acres that Hampton County  
9 owned that was basically waterlogged, it's just kind  
10 of a swampy area.

11 Q. So Hampton owned that at one time, but after the  
12 property swap, you became owner of it?

13 A. That is correct.

14 Q. Okay. What is this piece of property right  
15 here? It's got -- I'm -- and I'm gonna kind draw  
16 the lines with my fingers, but it runs kinda like  
17 this right here.

18 A. The diamond shape.

19 Q. The diamond shape, yup.

20 A. Okay, I believe that says 1.78 acres; am I  
21 correct?

22 Q. Something to that effect, yes.

23 A. Right. That is the piece of property that I  
24 owned that the Hampton County Airport needed to be  
25 able to expand their airport. They couldn't -- they

1 could not expand without it.

2 Q. Okay. Let me ask -- and so -- and you were  
3 willing -- in 2005 they asked you to work with them  
4 to consider to try and reach an agreement in the  
5 future about swapping property, correct?

6 A. They did.

7 Q. And you told them you were willing to consider  
8 that, correct?

9 A. Very much so.

10 Q. Okay. You want to see the Hampton Airport grow,  
11 don't you?

12 A. More than anybody in this room, yes.

13 Q. You want to see -- you think that'll help  
14 Hampton grow?

15 A. I -- I believe it will.

16 Q. You just -- do -- do you want that to preclude  
17 the County from honoring the contract and agreement  
18 that made you in 2005 to be able to use the runway?

19 A. I want them to honor what they promised me in  
20 2005.

21 Q. What is this right here that I'm pointing at?  
22 That up there?

23 A. That that -- if I'm not mistaken, that's the tip  
24 of the airport -- the western tip of the airport  
25 runway itself.



1 Q. And so that's the edge of the runway close to  
2 your property?

3 A. That's correct. Where your th -- where your  
4 finger is, that thin piece going through there is  
5 actually the -- the easement or taxiway over from my  
6 piece of property over to the runway itself.

7 Q. At one time your property line ran all the way  
8 out to here?

9 A. That's correct.

10 Q. And then when you swapped property, your  
11 property line would have moved to here?

12 A. That is correct.

13 Q. And you needed to be able to go across what you  
14 had just given Hampton County so that you could get  
15 to the airport runway, correct?

16 A. That -- that's correct.

17 Q. And so there was an easement agreement put in  
18 place to give you the rights to go across this?

19 A. That's correct.

20 Q. And that's what these documents are right here?

21 A. That's all they are, yes.

22 Q. To swap -- to swap this and this, and put an  
23 easement across this?

24 A. That is correct.

25 Q. Does this piece of property right here in any

1 way, shape or form encompass the same property that  
2 the 2005 letter encompassed from the Gemco property  
3 line to the northeast tip of the runway shown in  
4 this aerial that we've talked about from the Gemco  
5 property line to the northeast tip of the airport  
6 property? Do any of those documents encompass the  
7 same property as this agreement?

8 A. Those documents there are for the taxiway or  
9 easement only.

10 Q. Okay. Do they encompass -- does -- does all of  
11 those documents encompass any of the same property  
12 as this?

13 A. No.

14 Q. Okay. One other thing, Mr. Jones, just to be  
15 very clear. The easement agreement that Mr. Ness  
16 put up and read to the jury, and he made a big deal  
17 about reading this language, "Grantee shall have no  
18 other rights in and to any other portion of the  
19 Grantor property, except the easement area as  
20 defined," okay? You would have been Grantee,  
21 Hampton was Grantor.

22 A. Correct.

23 Q. And -- and he relied on -- and he made a point  
24 about the no other rights to the Grantor property.

25 A. Correct.

1 Q. Okay. Will you look here and see what Grantor  
2 property is described as in this agreement? Does --  
3 does the agreement define the word Grantor property,  
4 as what's shown on Exhibit A?

5 A. (Reviews document.) It does.

6 Q. So what's shown on Exhibit A is what is defined  
7 as Grantor property in that document?

8 A. That's correct.

9 Q. Let's flip to Exhibit A. Exhibit A, what does  
10 Exhibit A refer to?

11 A. (Reviews document.) "All that certain piece,  
12 parcel,"

13 Q. You don't -- you don't have to -- you don't have  
14 to read that all because it's long.

15 A. As to the -- pertaining to -- go ahead, I'm  
16 sorry.

17 Q. Does it refer to .147 acres?

18 A. It does.

19 Q. That's shown as a 35 wide foot easement?

20 A. It does.

21 Q. And does it also reply to -- apply to -- or --  
22 or define it as also a .247 acres, as part of the 35  
23 wide --

24 A. It does.

25 Q. -- foot easement?

1 A. It does.

2 Q. And if I look back on this plat real quick, if I  
3 look back on that plat, and I tighten it in a little  
4 bit, and I get to right here, can you see that right  
5 there?

6 A. Yes, sir.

7 Q. Can you see that writing? What does that say?

8 A. "A 35-foot wide easement."

9 Q. Is that what the easement agreement is referring  
10 to?

11 A. Correct.

12 Q. Anything to do with an airport property --

13 A. No.

14 Q. -- and the runway?

15 A. No.

16 Q. So when it says you don't have any rights in the  
17 Grantor property, other than the easement to get  
18 across, what did you -- what is that referring to,  
19 as far as you know?

20 A. For the -- for the easement only.

21 MR. WILSON: I don't have any more questions,  
22 Your Honor.

23 THE COURT: Mr. Ness, anything further, sir?

24 **RE CROSS-EXAMINATION BY MR. RICHARD NESS**

25 Q. Mr. Jones, the 2005 and 2011 agreements went

1 together, didn't they?

2 A. 2005 and 2011?

3 Q. Went together?

4 A. No, sir.

5 Q. You don't think? It's totally separate, right?

6 A. Totally separate.

7 Q. Absolutely separate?

8 A. Absolutely.

9 Q. All right. You came here in 2001 with your  
10 business, right?

11 A. I'm sorry?

12 Q. You came to Hampton County in 2001 with your  
13 business, right?

14 A. Okay, can you repeat the question?

15 Q. You came here in 2001 with your business, right?

16 A. Off and on 2000, 2001, 2002, yes.

17 Q. Okay. You said earlier you came in in 2005 to  
18 2007, right?

19 A. Or 2005 I bought the property, yes.

20 Q. Oh Gemco property, but you were already  
21 operating somewhere else, weren't you?

22 A. I was operating in -- in the Atlanta area  
23 storing my vehicles here until I could find a  
24 location suitable for our facility.

25 Q. You had people working in Hampton County though,

1 didn't you?

2 A. I'm sorry?

3 Q. You had people working in Hampton County, didn't  
4 you?

5 A. Did people work in Hampton County that -- that  
6 worked for me?

7 Q. Yeah, 2001 to 2005.

8 A. I think it -- I think during that time I may  
9 have employed at least -- maybe two people.

10 Q. Had them working for which company? Company  
11 Two?

12 A. Company Two, yes.

13 MR. RICHARD NESS: That's all I have, thank you.

14 THE COURT: Thank you, sir, you can step down.

15 Okay, Ladies and gentlemen, it's 1:29, we are  
16 going to break until 3 o'clock for lunch. When you  
17 come back from lunch, please select a foreperson?  
18 Most importantly, please don't begin discussing the  
19 case. You've only heard a very small portion of the  
20 testimony, so it would be premature for you to have  
21 any deliberations or any conversations with anyone  
22 about the case. Enjoy your lunch, we'll see you  
23 back at 3:00.

24 Okay, anything we need to discuss, if we're  
25 going to redact those tax return records at some

1 thing in the morning. We'll try to get you, the  
2 first witness, up and get you on first.

3 MR. DANIEL: Thank you, I appreciate your time.

4 THE COURT: Okay, 9:30.

5 MR. DANIEL: Okay.

6 THE COURT: Thank you.

7 Are we ready for the jury?

8 MR. WILSON: Yes, ma'am.

9 THE COURT: We'll bring the jury in. Hey,  
10 Ladies and gentlemen, I hope you had a good lunch.  
11 Have you had an opportunity to select a foreperson?

12 THE FOREPERSON: Yes.

13 THE COURT: And if you'll just raise your hand.  
14 Okay, and tell me your name.

15 MS. STANLEY: Diane Stanley.

16 THE COURT: Okay, Ms. Stanley, thank you. Okay,  
17 Mr. Wilson?

18 MR. WILSON: Your Honor, the Plaintiff calls  
19 Mr. Kenny Hughes.

20 (Kenneth Alan Hughes was duly sworn  
21 and testified as follows.)

22 **DIRECT EXAMINATION BY MR. WILSON**

23 BY MR. WILSON:

24 Q. Mr. Hughes, I think you can pull that down, if  
25 you're comfortable with it while you're up there, if

1 the Judge is okay with it, that way we can hear you  
2 a little better.

3 A. Okay.

4 Q. All right, are you doing okay today?

5 A. Yeah.

6 Q. If you'll give your full name to the jury,  
7 please?

8 A. Kenneth Alan Hughes.

9 Q. Mr. Hughes, where are you from?

10 A. Right here in Hampton.

11 Q. Okay. How long have you been living in Hampton  
12 County?

13 A. My whole life.

14 Q. All right, and how -- and just how old are you,  
15 sir -- how long that is?

16 A. Fifty-Five.

17 Q. Okay. And so you grew up here in Hampton  
18 County?

19 A. Yes, sir.

20 Q. And what do you do for a living?

21 A. I have a landscaping, lawncare and small  
22 construction company.

23 Q. Okay, and what's that called?

24 A. Quality Lawn Care and Construction.

25 Q. And how long have you been doing that?



1 A. Since 2004.

2 Q. Okay, all right. And I think it speaks for  
3 itself, but tell the jury what that -- what your  
4 Company does.

5 A. Mow grass, clean out flowerbeds and design  
6 flowerbeds, plant shrubs, painting, construction.

7 Q. Okay. Have you ever -- have you ever been  
8 employed by Company Two as a direct employee of  
9 Company Two?

10 A. No, sir.

11 Q. Do you know Quincy Jones?

12 A. Yes, sir.

13 Q. Okay. I think y'all are -- are y'all somehow  
14 distantly related or something like that?

15 A. Yes, we're third cousins.

16 Q. Okay, all right. And have you ever done any  
17 work for Company Two?

18 A. Yes, sir.

19 Q. And what type of work have you done for Company  
20 Two?

21 A. Lawn care, painting, hydrostock, and building.

22 Q. And that's -- that's all been through Quality  
23 Lawn and Care and Construction?

24 A. Yes, sir.

25 Q. Okay. And did you say Lawn Care?

1 A. Yes, sir.

2 Q. Okay. So tell -- tell the jury what lawn care  
3 for Company Two means?

4 A. Cutting the grass, weedeating, blowing, making  
5 sure the trash is all picked up.

6 Q. Okay, the entire property rental building that  
7 Company Two operates out of?

8 A. Yes, sir.

9 Q. Where is that located?

10 A. Varnville, behind the jailhouse.

11 Q. But where's Company Two's -- okay, behind the  
12 jailhouse.

13 A. Right.

14 Q. I know there's jail's out there, my bad.

15 A. 283 Foster Road.

16 Q. Okay, is that out near the airport?

17 A. Yes, sir.

18 Q. Right next to the airport?

19 A. Right next to it.

20 Q. Okay, all right. Have you also in the past been  
21 involved in cutting the grass on the taxiway or the  
22 access-way between Company Two's property and the  
23 airport runway?

24 A. Yes, sir.

25 Q. And that's been going on, you said, since about

1 2005 or so, 2004?

2 A. 2005.

3 Q. 2005? Okay. Have you been out there around  
4 enough to see what Company Two does?

5 A. Yes, sir.

6 Q. Okay. Are you familiar with the difference --  
7 and we've talked with this jury something about  
8 regular fire trucks and big old ARFF, airport fire  
9 trucks.

10 A. Yes, sir.

11 Q. Have you seen the difference between those two  
12 while you've been out there?

13 A. Yes, sir.

14 Q. So you know the difference between those two?

15 A. Yes, sir.

16 Q. Okay. Have you ever seen these big ARFF trucks  
17 on Hampton County Airport runway during the time  
18 that you've been out there doing work, or cutting  
19 grass between 2005 and 2015?

20 A. Yes, sir.

21 Q. How many times?

22 A. 12, 15, possibly more.

23 Q. And what were the trucks doing when you saw  
24 them?

25 A. Get up a good bit of speed and they do like a

1 brake test and so forth.

2 Q. And would this be on the runway itself?

3 A. Yes, sir.

4 Q. Have you ever seen Company Two or any of its  
5 employees doing anything that looked like  
6 maintenance or upkeep, with respect to the Hampton  
7 Airport runway?

8 A. Yes, sir.

9 Q. And what is that?

10 A. They were cleaning it off, I think, with brooms.

11 Q. Okay. And then you -- how many -- do you know  
12 how many times you've seen that occur?

13 A. Don't recall how many, but it was a couple  
14 times.

15 Q. Okay.

16 MR. WILSON: I think that's all the questions.  
17 Give me one second, Mr. Hughes.

18 That's all the questions I have Mr. Hughes.  
19 Answer anything Mr. Ness might have for you.

20 **CROSS-EXAMINATION BY MR. AARON NESS**

21 BY MR. AARON NESS:

22 Q. Mr. Hughes, you said you and Mr. Jones are  
23 cousins?

24 A. Yes, sir.

25 Q. How close of cousins?

1 A. Third, my mom and his mom are first cousins.  
2 His granddaddy, Uncle Alvin, is my grandmother's  
3 brother.

4 Q. Okay. And then you said you do -- you cut his  
5 grass and do other, what, odd jobs around his  
6 facility?

7 A. Yes, sir.

8 Q. How about around his house?

9 A. Yes, sir.

10 Q. And you charge for this?

11 A. Yes, sir.

12 Q. On a yearly basis, how much money do you make  
13 from Mr. Jones?

14 A. I'm not real sure right off -- right now. I'd  
15 say a few thousand.

16 Q. What's a few thousand? Between one and five?

17 A. More.

18 Q. Between five and ten?

19 A. Somewhere in there, more -- maybe more.

20 Q. Maybe more? Ten, 15?

21 A. Could be.

22 Q. Fifteen, 20?

23 A. I doubt it. I mean -- I mean, like I said, I  
24 didn't --

25 Q. Just somewhere between five and 20?

1 A. Somewhere, yeah.

2 Q. Okay. You said a minute ago you saw some of  
3 Mr. Jones' employees sweeping the runway?

4 A. Yes, sir.

5 Q. So they were physically out there with a broom  
6 sweeping the runway?

7 A. Yes, sir.

8 Q. That's a big runway, isn't it?

9 A. Yeah, I know. I thought it was a little odd  
10 myself, but --

11 Q. Well how many guys were out there?

12 A. Three or four, I think.

13 Q. And what kind of brooms are we talking about?  
14 Little brooms that we like to use on the front  
15 porch? Are we talking industrial --

16 A. Push -- push brooms.

17 Q. Did you go watch them?

18 A. No, sir, I was on the lawnmower.

19 Q. Did you go ask them why they were using push  
20 brooms to sweep a 3,500-foot runway?

21 A. No, I didn't. I didn't think to go ask them  
22 that.

23 Q. Okay. Did you find it a little odd?

24 A. Yeah.

25 Q. Okay. And what were they -- what were they

1 sweeping?

2 A. The edges.

3 Q. They were sweeping the edges of the runway?

4 A. Yes, sir.

5 Q. Closer to where Mr. Jones' building is, that

6 side of the runway, or the other side of the runway?

7 A. It was up toward the administration building  
8 actually a little bit.

9 Q. You didn't see what they were sweeping though,  
10 water, dirt --

11 A. No, sir.

12 Q. -- rocks, foam?

13 A. No, sir.

14 Q. You just saw them sweeping the runway?

15 A. Yeah.

16 MR. AARON NESS: Your Honor, that's all the  
17 questions I have on cross.

18 MR. WILSON: No other questions for Mr. Hughes,  
19 I ask that he be excused.

20 THE COURT: Mr. Hughes, you can step down.

21 MR. HUGHES: Thank you.

22 THE COURT: Any need for Mr. Hughes to stay?

23 MR. AARON NESS: No, Your Honor.

24 THE COURT: You're free to go, sir.

25 MR. HUGHES: Thank you.