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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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the lower court erred in granting the County's motion for a directed verdict as to breach of contract?

II. Whether the lower court erred in granting the County's motion for a directed verdict as to specific performance?

III. Whether the lower court erred in granting the County's motion for a directed verdict as to promissory estoppel?

STATEMENT OF THE CASE

This is a dispute about whether Appellant The Station, Inc., d/b/a Company Two, a business that refurbishes airport rescue firefighting (ARFF) trucks, has a contractual or equitable agreement with Respondent Hampton County to test the trucks on the runway of the Hampton County airport.

On April 28, 2017, Company Two and Q&J Properties, LLC, filed this action against Hampton County asserting causes of action for breach of contract, promissory estoppel, and specific performance. (R. pp. 45-49). On February 27, 2018, Company Two filed an amended complaint to remove Q&J Properties from the action. (R. pp. 24, 51). On March 8, 2018, the County filed an answer and counterclaims.[1] (R. p. 56).

On May 4, 2018, the County filed a motion for summary judgment. (R. p. 64). On July 20, 2018, the Honorable Perry M. Buckner, III, denied the motion and subsequent motion to reconsider. (R. p. 26). On August 30, 2019, the lower court entered a Form 4 Order stating the parties settled the case and dismissed it. (R. p. 38). However, after County Council did not approve the settlement, the court restored the case to the jury roster. (Consent Order).

On May 25-27, 2021, the lower court held a trial of this case. On May 26, the lower court granted a directed verdict on Company Two's causes of action for breach of contract and specific

[1] The County withdrew all counterclaims at the end of trial. (R. p. 851).

performance. (R. pp. 622-24). The Court then decided to dismiss the jury and try the remaining promissory estoppel cause of action non-jury. (R. p. 627). After trial, the parties briefed the County's motion for directed verdict as to the remaining cause of action for promissory estoppel and briefed the merits of the claim. (R. p. 95). On October 8, 2021, the lower court granted a directed verdict on the promissory estoppel claim.

Company Two filed a timely notice of appeal on June 24, 2021, and an amended notice of appeal on November 8, 2021. (R. pp. 1, 15).

FACTS

Company Two is a business that buys used fire trucks, refurbishes them, and sells or leases them to customers. (R. p. 224). Only three companies in the world are in the fire truck refurbishment business. (R. pp. 232-33).

There are numerous types of fire trucks. Around 2004, Company Two began to buy and refurbish airport rescue firefighting trucks, known as ARFF trucks. (R. pp. 224-25). An ARFF truck is specifically built for airport operations and emergency services, and the Federal Aviation Administration (FAA) requires an airport to have an ARFF truck to keep its certification. (R. p. 930). An ARFF truck is required to pump water while moving—it must extinguish a fire while en route to a downed airplane. (R. pp. 225-26).

An ARFF truck must be certified for Company Two to sell or lease it to a customer. (R. pp. 228-29). Certification is governed by the FAA and the International Civil Aviation Organization (ICAO). (R. p. 228). Certification entails 15 tests, two of which are particularly relevant to this case—the acceleration test and speed test. (R. pp. 228-29). These tests must be done on asphalt or concrete. (R. pp 234, 909).

The acceleration test requires an ARFF truck to go from zero to fifty-miles-per-hour in a certain amount of time dependent on the size of the truck. (R. p. 229). For example, a 3000-gallon

truck must go from zero to fifty-miles-per-hour in under 50 seconds. (R. pp. 229-30). The truck is tested driving one direction, and then turned around and tested driving in the other direction. (R. p. 230). The average of the tests is the acceleration. (R. p. 230).

The speed test requires an ARFF truck to reach seventy-miles-per-hour. (R. p. 231). This test is required for certain sales bids that Company Two submits. (R. p. 261). Company Two needs at least 3000 feet of runway to conduct this test. (R. p. 232). The Hampton County airport runway is just under 3600 feet. (R. p. 232).

An ARFF truck is not made for use on a highway or interstate, the only types of public roadway where it could legally reach seventy-miles-per-hour. (R. pp. 260-61, 870-81). Transporting an ARFF truck to another location for testing requires a tractor-trailer and oversize permits. (R. pp. 259-60). That transportation increases the cost of Company Two's bid on a contract to lease or sell ARFF trucks, thereby reducing its competitiveness. (R. pp. 257-60, 267, 879-80, 914).

In 2005, 2011, and 2014, Hampton County entered into three separate agreements involving the airport. In 2005, Hampton County contracted to allow Company Two access to and use of the airport runway to test fire trucks. (R. pp. 379-80, 428-29). In 2011 and 2014, Hampton County contracted to trade properties with and grant an easement to Q&J Properties, a company that owned property adjacent to the Hampton County airport and leased to Company Two. (R. pp. 1021-27). The parties disagree about the meanings of and relationship between these contracts. Qunicy Jones, the owner of Company Two and partial owner of Q&J Properties, testified that "[t]hey're three separate documents, [involving] three separate entities." (R. p. 321).

I. THE 2005 AGREEMENT BETWEEN COMPANY TWO AND THE COUNTY

In 2005 Company Two operated in Atlanta, Georgia, and was looking for a place to relocate. (R. p. 235). Company Two needed to relocate near an airport to conduct the certification tests. (R. pp. 228, 235). Mr. Jones had family from Hampton County and looked into it, among others, as a potential location. (R. pp. 228, 235-36, 287). Hampton County ended up as "the one that offered [Company Two] the access to the airport." (R. p. 287).

In 2005, the Hampton County airport was minimally used and not well kept. (R. p. 238). The FAA requires airports to do foreign object debris (FOD) clean-up, and Hampton County neglected to do it for a while. (R. p. 239). County Council considered abandoning the County airport and partnering with Allendale County for a regional airport. (R. p. 417).

In 2005, Mr. Jones spoke to Sabrina Graham, then Hampton County Administrator, who told him to contact Jim Daniels, then Economic Development Coordinator. (R. p. 237). Mr. Jones told Mr. Daniels that, for Company Two to relocate to Hampton County, Company Two needed access to the Hampton County airport runway to test fire trucks. (R. pp. 237-38).

In 2005, Mr. Jones attended a Hampton County Council meeting with Mr. Daniels. (R. p. 241). Council routinely discussed economic development matters in executive session for competitive, strategic, and legal reasons. (R. pp. 412-13). In executive session, Mr. Daniels told Council that Company Two needed to use the airport runway to test fire trucks. (R. pp. 368-69). County Council knew that it is critical to Company Two's business to use the airport runway for tests and "that was one of the things [it] needed" to relocate to Hampton County. (R. pp. 375-77, 419-20).

Willard Wilson, a County Councilman at the time, testified that "the airport was doing nothing" and "it was the consensus of the Council to allow him [Company Two] to use that airport

for his instruments [fire truck testing].” (R. p. 369). The full Council gave approval “to form an agreement for the company, and allow . . . [it] to use the runway to test [] equipment.” (R. pp. 374-75). At the time, Hampton County “didn’t have any industry” and Company Two “was exciting, because we had something coming in that was going to give some employment.” (R. pp. 368, 371). Mr. Wilson testified there was no doubt in his mind that, in 2005, “County Council and Company Two reached an agreement where Company Two would have access to the airport property, including the runway to test fire trucks.” (R. pp. 379-80).

Mr. Daniels testified consistently with Mr. Wilson. He said the purpose of the executive session was “to assist a contract on” Company Two’s use of the airport to test fire trucks. (R. p. 411). Mr. Daniels testified there is “no doubt” in his mind “that Company Two and Hampton County reached an agreement that provided Company Two with access to the Airport property to test trucks.” (R. pp. 428-29, 463).

Hampton County agreed to allow Company Two to use the runway to test fire trucks and to provide a taxiway from its adjacent business location to the runway. (R. pp. 240, 242). In exchange, Company Two relocated to Hampton County and performed maintenance and FOD clean-up for the airport. (R. pp. 238-39, 242). After the meeting, Mr. Daniels told Mr. Jones that he would follow-up with a formal letter. (R. p. 243).

On October 12, 2005, Mr. Daniels sent the letter, after approval from the County Attorney and County Administrator. (R. pp. 985, 428). The lower court found it was an agreement to agree in the future about a property swap and taxiway. (R. pp. 18, 21). Company Two testified that, in this letter, County Council and County Economic Development gave Company Two permission to use the airport runway to test fire trucks. (R. pp. 288, 304-06).

> 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 . . . .
>
> 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.

(R. p. 985) (emphasis added). The only actual agreements in the letter are that the County "agrees to" provide Company Two with a "private taxiway right to use from the northeast tip of the airport to the Gemco property line" and "agrees to clear and rough grade the taxiway." (R. p. 985). All other matters in the letter are future prospects of "plans" and "desires." (R. p. 985). Mr. Daniels copied the County Administrator and Airport Commission Chairman on the letter. (R. pp. 985, 245).

The letter's reference to Company Two's use of "the northeast tip of the airport to the Gemco property line" means use of the "entire airport property" because that description includes all of the airport property and runway. (R. pp. 250-53, 308-310, 540).

On October 17, 2005, after the agreement between the County and Company Two, Q&J Properties bought the Gemco Property adjacent to the Hampton County airport. (R. pp. 663, 994-97). Company Two began leasing the property from Q&J in reliance on the 2005 agreement. (R. pp. 254, 262, 283-84).

II. THE 2011 AGREEMENT BETWEEN Q&J PROPERTIES AND THE COUNTY

The County did not pursue the property trade mentioned in the 2005 letter until 2011. On June 23, 2011, Hampton County and "Q&J Properties, LLC d/b/a Company Two Fire Apparatus" entered into an agreement to "swap" properties. (R. pp. 1021-28). Hampton County agreed to convey 3.0 acres to Q&J and build a taxiway from Q&J's property to the airport runway in exchange for Q&J conveying to the County 1.767 acres for "future development of the runway." (R. pp. 1021-28). This is completely different property than the property described in the 2005 agreement.

The County also agreed to grant Q&J "an easement in gross of a commercial nature for the sole and exclusive use of the taxiway." (R. p. 1022). The agreement is "the entire understanding and agreement between the parties"—the County and Q&J. (R. p. 1024). Company Two was not a party to the agreement. (R. p. 1021). It states the "land swap and completion of the grass taxiway will be completed no later than June 30, 2011," but the parties did not do it for over three years. (R. p. 1024).

III. THE 2014 EASEMENT AGREEMENT BETWEEN Q&J PROPERTIES AND THE COUNTY

In December 2014, the County and Q&J Properties entered into an easement agreement. (R. pp. 1036-42). The County is the "Grantor", and Q&J is the "Grantee." (R. p. 1036).

The agreement defines the "Easement Area" as the taxiway between the airport runway and Q&J's property. (R. p. 1036). It states Q&J "shall have no other rights in and to any other portion of the Grantor Property[2] except the Easement Area." (R. p. 1036). This is completely different property than the property described in the 2005 agreement. *Compare* R. p. 985 *with* R.

[2] "Grantor Property" is defined as the 1.767 acres that Q&J conveyed to the County in the land swap. (R. p. 1041).

p. 1036. The agreement also states it is "the complete agreement and understanding of the Parties"—the County and Q&J—and all prior agreements are merged. (R. p. 1038). Company Two is not a party to the agreement. (R. p. 1036).

Mr. Jones testified the property trade was a second, "separate deal" from the 2005 agreement for Company Two to relocate to Hampton County and provide maintenance and clean-up in exchange for using the runway to test its trucks. (R. pp. 247-48, 292, 296, 298, 300, 321). He said the airport property referenced in the 2005 letter is completely different from the properties referenced in the 2011 and 2014 deed and easement. (R. p. 321).

IV. COMPANY TWO'S ACTION AGAINST THE COUNTY; DIRECTED VERDICTS IN FAVOR OF THE COUNTY

From 2005 to 2015, the parties performed and complied with the 2005 agreement. Company Two performed FOD clean-up and maintenance, including rock removal and spray cleaning the runway. (R. pp. 242-43, 336, 344-45, 359-60, 784). Company Two conducted fire truck tests on the airport runway an average of one to five times per month, and the tests took less than three minutes. (R. p. 254). County employees knew Company Two tested fire trucks on the runway. (R. pp. 346, 537, 374-75).

The airport does not have a control tower but, instead, operates under visual flight rules that a require pilot to circle the runway to make sure it is clear before landing. (R. p. 254). Company Two cleared the airspace before conducting tests.[3] (R. pp. 254-55).

Kevin Weinberg worked with Company Two as an ARFF mechanic/consultant/technician. (R. pp. 856, 862). From 2007 to 2015, he personally drove trucks on the Hampton County airport runway about 20 times and witnessed between 25 and 50 other runway tests. (R. pp. 900-01).

[3] When an airport temporarily shutdowns for maintenance or any reason, it issues a notification to all airmen (NOTAM) as an advisory. (R. pp. 360-62).

County representatives were sometimes at the airport during the testing. (R. pp. 901-03). Weinberg testified that Company Two did FOD clean-up during that time but he never saw the County do any runway clean-up. (R. pp. 898-99, 918).

In 2015, Rose Elliott became the new Hampton County Administrator. (R. 256, 778). On March 6, 2015, the County and Q&J Properties signed the deeds to complete the property swap. (R. pp. 1029-35). Shortly thereafter, Elliott instructed a County employee to tell Company Two to stay off of the airport runway. (R. 256). The County gave no formal notice of termination. Company Two complied with the request and attempted to reach another agreement with the County before ultimately filing suit in 2017. (R. pp. 998-1000).

The County's conduct caused Company Two's business costs to increase by about 5-6% annually. (R. pp. 257-59). Company Two is forced to pay to transport fire trucks out of the area and put more wear and tear on the special tires that cost $4,000 each and have only about 500 useful miles. (R. pp. 258-60, 956). Company Two leases its business location from Q&J Properties for $3,500.00 per month, and a lease at another facility with access to an airport runway will cost $12,000-$15,000 per month. (R. pp. 262-63).

Company Two also lost a bid on a $4,900,000 contract to sell 10 ARFF trucks to islands in the South Pacific because the bid required on-site testing that it could no longer conduct. (R. pp. 263-73, 968, 986-993). Robert Shaub, Company Two's expert in airport rescue and firefighting trucks and the bid buying and selling process for ARFF trucks, testified that Company Two was "the leader in the ARFF" remanufacture business, which included only three companies, and was "in the best position out of all of the manufacturers" to win the bid. (R. pp. 937, 946, 965). Shaub testified that Company Two was forced to increase its bid due to additional costs to transport the trucks for testing and had to take exception to the requirement for on-site testing. (R. p. 972). This

lost Company Two the bid. (R. pp. 972, 978, 979). It expected a $1,000,000 profit but, instead, made only about $75,000 selling trucks to a competing company that won the bid. (R. pp. 273-74).

On April 28, 2017, Company Two filed this action against Hampton County asserting causes of action for breach of contract, promissory estoppel, and specific performance. (R. p. 45). After reaching a settlement that County Council ultimately did not approve, the parties tried the case from May 25-27, 2021, before the Honorable Kristi Curtis.

At trial, Mr. Jones, Mr. Wilson, and Mr. Daniels testified that Company Two and Hampton County entered into an agreement in 2005 for Company Two to use the airport runway to test fire trucks. (R. pp. 288, 304-06, 379-80, 428-29, 463). Hampton County produced no direct testimony to the contrary.

The County argued with Mr. Daniels that he miswrote the 2005 agreement letter, which Mr. Daniels denied, and questioned why he did not use different language in the letter. (R. pp. 437-51). Mr. Daniels maintained that the letter means Hampton County agreed to provide Company Two with access to and use of the airport runway to test trucks. (R. pp. 437, 451). The County attorney described the agreement language as "broad" and "carte blanche use of the right-to-use a private taxiway from the northeast tip of the airport." (R. pp. 684-85).

James Nilo testified for Company Two as an expert in airport safety operations and compliance and ARFF airport rescue and firefighting truck operations. (R. p. 476). In Nilo's opinion, it is "perfectly acceptable" for Company Two to test fire trucks on the airport runway in whatever manner the County deems safe. (R. pp. 483-85). An FAA airport safety certification inspector told the County that no law or regulation prohibits fire truck testing on an airport runway, and the County may allow it, as it did in the 2005 agreement and for ten years following it. (R. pp. 484-87). The FAA even provides guidance on airport safety for situations when non-aircraft are

on a runway such as emergency operations training, commercial photo shoots, private events, air shows, and VIP arrivals and departures. (R. pp. 491-99). Robert Shaub testified that, when he worked for an original manufacturer of ARFF trucks, it conducted the certification tests on a city airport taxiway under a verbal cooperation agreement. (R. pp. 944, 947). Most of the ARFF truck original manufacturers have an agreement with a local airport to use a runway or taxiway for testing. (R. p. 948).

The lower court directed a verdict for Hampton County on the breach of contract and specific performance causes of action. (R. pp. 622-24, 743-44). It found the 2005 letter is a "memorandum of understanding of what the parties intend to do in the future." (R. pp. 622-23, 743-44). It also found that there is no duration to the agreement and "the most that could be granted is a license or a right-to-use it that was revocable." (R. p. 623, 744). The court denied the directed verdict motion as to promissory estoppel. (R. pp. 623-24).

The County then moved to dismiss the jury and proceed non-jury as to the remaining equitable promissory estoppel claim. (R. p. 627). The court granted the motion, dismissed the jury, and heard the remaining defense witnesses sitting non-jury. (R. pp. 630, 635).

At the end of trial, the County moved again for a directed verdict on promissory estoppel. (R. pp. 825-32). The court allowed allow the parties to brief the issue and took the ruling under advisement. (R. p. 850).

On October 8, 2021, the lower court changed its mind and granted the County's directed verdict motion as to promissory estoppel. (R. pp. 17-23). The court found that 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 to the airport runway." (R. pp. 20, 18).

The court held the 2005 agreement was "an offer to agree in the future" that lacked a duration. (R. p. 21).

The court held that, even if the 2005 agreement is a promise to Company Two to use the runway, it "should have been included in the 2011 written agreement" between the County and Q&J Properties. (R. pp. 20-21). The lower court held that a promise that is an alleged permanent burden to County land could not be given by the economic development director without a full public hearing. (R. p. 21).

The court gave no explanation as to why the evidence at the close of Company Two's case was sufficient to deny the directed verdict motion but the evidence at the close of the County's case was insufficient.

Company Two appealed from all of the lower court's rulings on the three causes of action.

STANDARD OF REVIEW

"When reviewing the circuit court's ruling on a directed verdict motion, this court must apply the same standard as the circuit court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *LeFont v. City of Myrtle Beach*, 430 S.C. 534, 539, 846 S.E.2d 355, 357 (Ct. App. 2020) (internal quotation marks omitted). "The trial court must deny a directed verdict motion when the evidence yields more than one inference or its inference is in doubt." *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). "When considering a directed verdict motion, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* at 188-89, 691 S.E.2d at 173. "If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury." *Erickson v. Jones St. Publrs., LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

Company Two argued that, because the court heard the promissory estoppel claim non-jury, the County should have made a motion for an involuntary nonsuit under Rule 41, SCRCP, rather than a motion for a directed verdict. (R. pp. 95-96). The lower court's order references that the County "renewed its motion for a directed verdict" as to promissory estoppel and then simply states it "finds in favor of County" without specifying the applicable standard. (R. p. 17). Regardless, "[i]n reviewing the denial of motions for involuntary nonsuit, directed verdict, new trial and judgment n.o.v., this Court must review the evidence and all inferences deducible from it in the light most favorable to the nonmoving party." *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C. 40, 41-42, 348 S.E.2d 173, 174 (1986).

ARGUMENT

In all of its rulings, the lower court failed to take into account that Company Two is a separate legal entity from Q&J Properties. Company Two is the business that relocated to Hampton County and needed use of the runway. Q&J Properties is the entity that negotiated and performed the land swap and easement agreements. Neither business could legally participate in the other's business with the County. Once this fact is taken into account, it is plain that Company Two sets forth sufficient evidence of all three causes of action to deny a directed verdict motion.

The lower court also failed to consider the true nature of the agreement Company Two entered into with the County. It is an agreement for Company Two to use the property for less than three minutes at a time for one to five times per month – for a total of about twenty minutes per month *at the most*. (R. pp. 254, 958). It is not a perpetual burden on the land. It does not require an ordinance.

Finally, the lower court failed to take into account that the County and Company Two actually performed the 2005 agreement for ten years.

Taking all of the correct facts into consideration, this Court should find the lower court erred in directing a verdict on the three causes of action and remand for a jury trial.

I. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON BREACH OF CONTRACT.

The lower court erred in granting a directed verdict as to the breach of contract claim because, viewing the evidence in a light most favorable to Company Two, there is evidence of a contract for Company Two to use the Hampton County airport runway to test fire trucks.

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). The lower court ruled on only the first element by finding a contract did not exist.

"A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 439 (Ct. App. 2003). A "contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Carolina Amusement Co. v. Conn. Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993) (internal quotation marks omitted). "The essentials of a contract include an offer and acceptance." *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984).

Viewing the evidence in a light most favorable to Company Two, it presented evidence from three witnesses who testified without a doubt that Hampton County and Company Two entered into an agreement for Company Two to use the airport runway to test fire trucks. (R. pp. 379-80, 428-29, 288, 304-06). Their testimony is uncontradicted.

The evidence of the agreement contains all necessary terms. The exchanged promises and consideration are that Company Two could use the airport runway in exchange for relocating to

Hampton County and providing maintenance and FOD clean-up. The term is for a reasonable time of Company Two's life as a business in Hampton County. These are all of the terms needed for a contract. There was no further negotiation needed for the parties' performance.

Perhaps the most telling evidence that the lower court ignored is the parties' actual performance of the agreement for ten years. The County knew that Company Two needed to use the runway to test its trucks to move to Hampton County and knew that it was testing fire trucks. (R. pp. 346, 375-77, 419-20, 537, 674-75, 901-03). Viewing the evidence and inferences in the light most favorable to Company Two, if the County did not agree to that usage, it presumably would have stopped it. Instead, consistent with the 2005 agreement, the County allowed the usage and accepted Company Two's maintenance and FOD clean-up for ten years, until a new County administrator wrongfully denied the usage without reasonable notice or a valid basis. The evidence shows the parties entered into an agreement, performed it, and intended to be bound by that agreement.

"A trial court should submit to the jury the issue involving the existence of a contract where its existence is questioned and the evidence is either conflicting or admits of more than one inference." *Benya*, 282 S.C. at 628, 321 S.E.2d at 60. The lower court erred in failing to submit to the jury the existence of a contract when the evidence is susceptible of the inference that a contract existed between the County and Company Two for use of the airport runway.

The lower court stated two bases for its decision to grant a directed verdict. First, it found the 2005 agreement was an agreement to agree in the future with "right to use" language that does not carry a "particular legal definition." (R. pp. 743, 622-23). Second, it found the 2005 agreement did not contain a duration. (R. pp. 623, 743). The law and evidence do not support these findings.

The lower court relied on *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014), to find that the 2005 agreement is an agreement to agree in the future. (R. pp. 622-23). In *Stevens*, numerous parties entered into a "Memorandum of Understanding" (MOU) with the City of Columbia to develop a hotel. *Id.* at 572, 762 S.E.2d at 698. After various events inhibited the development, the City put out a new request for proposal and entered into a contract with another developer. *Id.* at 574-75, 762 S.E.2d at 699. Stevens, the original developer, sued for breach of contract, and the Supreme Court held that the MOU was "an agreement to agree in the future" and not a contract. *Id.* at 579, 762 S.E.2d at 701. The Supreme Court found the parties left open material terms and " consciously agreed to finalize binding agreements at some point in the future" and *Id.* at 579-80, 762 S.E.2d at 702-03.

The 2005 agreement is vastly different from the MOU in *Stevens*. In the 2005 agreement letter, the County dealt with separate parties regarding separate subject matter. First, the County granted to **Company Two** a present "right to use" the runway and a taxiway from the Gemco property to the airport. Second, the County stated its desire to agree in the future to swap properties with **Q&J Properties**.

The lower court essentially lumped together the 2005 agreement with the 2011 and 2014 agreements. This is legal and factual error because the parties to the present and future agreements are not the same. Company Two did not agree to do anything in the future with the County. The 2011 and 2014 agreements are between Hampton County and Q&J Properties. Further, the lower court specifically distinguished between the two entities in its pretrial rulings. *See* R. pp. 181-82 ("Q&J is not the Plaintiff, [Company] Two is the Plaintiff. . . . [Company] Two is not the owner of the property, so you can't have it both ways. So if Q&J owns the property and [Company] Two leases the property from Q&J [] they are separate entities.").

In response to the 2005 agreement, Company Two immediately began providing maintenance and FOD clean-up, and the County immediately allowed it to test trucks on the runway. The parties' immediate performance is evidence that it was not an agreement to agree in the future. For these reasons, the future-agreement reasoning of *Stevens* does not apply, and the lower court erred in relying on it.

The lower court incorrectly found the agreement lacked duration. The absence of a specific duration is not fatal to the existence of a contract. "Although the Agreement is silent as to the material element of its duration, that merely made the contract terminable at will by either party upon reasonable notice to the other, and Doe gave no notice of termination." *Doe v. TCSC, LLC*, 430 S.C. 602, 611, 846 S.E.2d 874, 879 (Ct. App. 2020). Here, the duration is plainly limited by the lifetime of Company Two as a business in Hampton County.

Further, the County did not provide reasonable notice. *See In re McDowell*, 378 S.C. 371, 377, 662 S.E.2d 591, 595 (2008) (describing "giving reasonable notice to client" of an attorney terminating representation as "allowing time for employment of other counsel").

After ten years of Company Two's use of the airport runway for testing without incident, a County employee verbally instructed it to immediately get off of the runway without providing any reason or basis for doing so. (R. p. 256). The County provided no written notice or period of time for Company Two to address an abrupt disruption to its business. The question of whether notice is reasonable is a jury question. *See Seaside Resorts v. Club Car, Inc.*, 308 S.C. 47, 60, 416 S.E.2d 655, 664 (Ct. App. 1992) ("Whether the seller had reasonable notice in a particular case is a question of fact to be determined by the jury."). The lower court erred in finding as a matter of law that a contract did not exist based on an alleged lack of duration.

Finally, the lower court erred in holding no contract existed based on its finding that the "right to use" language in the 2005 letter did not carry a legal meaning and was, at most, a revocable license. The language means what it says—Company Two has a right to use the property. Whether it is a license does not affect whether it is a valid contract. A "license to be on the premises for an agreed purpose is a contractual right personal to the licensee." *Hilton Head Air Serv. v. Beaufort Cnty.*, 308 S.C. 450, 457, 418 S.E.2d 849, 853 (Ct. App. 1992). That a license is revocable does not affect whether a valid contract exists. Revocability also does not mean that one party may revoke at will for no reason without breaching a contract. Regardless, "even if the language creates an ambiguity, a court will construe any doubts and ambiguities in an agreement against the drafter of the agreement", which is the County. *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 309, 698 S.E.2d 773, 778 (2010). Finally, the lower court's finding about the letter language is contrary to testimony of the County Attorney that the agreement is "broad" and indicates "carte blanche use of the right-to-use a private taxiway from the northeast tip of the airport." (R. pp. 684-85). The lower court erred in finding the right-to-use language cannot form a contract as a matter of law.

For these reasons, the Court should reverse the lower court's decision to grant a directed verdict as to breach of contract and remand this cause of action for a new jury trial.

II. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON SPECIFIC PERFORMANCE.

The lower court granted a directed verdict on specific performance because it granted a directed verdict on breach of contract. "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to

perform his or her part of the contract." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). The lower court granted a directed verdict on the first element based on its decision that there was no valid contract. Therefore, if this Court reverses the lower court's ruling as to breach of contract, it must reverse this ruling as well.

There is no dispute as to the second and third elements because the evidence shows that both parties performed the agreement when the County allowed Company Two to test fire trucks and accepted Company Two's maintenance and FOD clean-up. (R. pp. 242-43, 336, 344-46, 359-60, 537, 674-75, 784, 898-903, 918).

III. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON PROMISSORY ESTOPPEL.

The lower court erred in granting a directed verdict as to promissory estoppel because, viewing the evidence in a light most favorable to Company Two, there is evidence Hampton County made an unambiguous promise for Company Two to use the airport runway to test fire trucks and Company Two reasonably relied on that promise to its detriment.

The elements of "promissory estoppel [are] as follows: (1) the presence of a promise unambiguous in its terms, (2) reasonable reliance upon the promise by the party to whom the promise is made, (3) the reliance is expected and foreseeable by the party who makes the promise, and (4) the party to whom the promise is made must sustain injury in reliance on the promise." *Thomerson v. DeVito*, 430 S.C. 246, 255-56, 844 S.E.2d 378, 383 (2020). Although the lower court's directed verdict ruling addressed only the first element, Company Two presented evidence of all four elements.

As to the first element, two disinterested witnesses—Mr. Daniels and Mr. Wilson—testified without a doubt that Hampton County unambiguously promised Company Two that it

could use the airport runway to test fire trucks in exchange for runway maintenance and FOD clean-up. (R. pp. 369, 374-75, 379-80, 346-47, 463).

As to the second element, Company Two relied on the County's agreement when it relocated to Hampton. (R. p. 254).

As to the third element, Mr. Daniels, the economic development coordinator in 2005, testified that businesses rely on County promises and expect the County to honor its commitments. (R. pp. 421-22). Sandy Steele, the economic development coordinator from 2009-2015, testified it "would be very reasonable [for] industries to rely on representations and commitments that were made to them when making big time decisions about where to locate and where to do business." (R. p. 543).

As to the fourth element, Company Two sustained an injury in reliance on the County's promise. It lost almost $1,000,000 in profit on a bid project that it would have won but for the County's refusal to follow its promise. (R. pp. 273-74, 972, 978-79). Company Two relocated to Hampton County based on its ability to use the runway for testing and now it must spend at least four times its current monthly rent to lease a facility with access to an airport runway. (R. pp. 262-63). But for Hampton County's conduct inconsistent with its promise, Company Two's injuries would not have occurred.

Because Company Two presented evidence, viewed in a light most favorable to it, of all of the elements of promissory estoppel, the lower court erred in granting a directed verdict.

"The applicability of the [promissory estoppel] doctrine 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, 484, 570 S.E.2d 535, 538 (Ct. App. 2002) (internal quotation marks omitted). "Unlike a contract which requires a meeting of the minds and consideration,

promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property." *Id.* at 484, 570 S.E.2d at 538-39.

In *Satcher*, a grandfather promised to give grandson his house if grandson lived there and worked on the farm. *Id.* at 481, 570 S.E.2d at 537. When grandfather died and his will left the property to his sons, grandson brought an action for promissory estoppel. *Id.* at 482, 570 S.E.2d at 537. This Court ruled in favor of grandson despite the presence of the will. It found "ample testimony from several disinterested witnesses" about the promise. *Id.* at 484, 570 S.E.2d at 539. This Court found "that Grandfather's action during the court of the time [grandson] lived with him reinforced [grandson]'s reliance on that promise," and "Grandfather's subsequent inconsistent actions do not weaken [grandson]'s promissory estoppel claim." *Id.* at 486, 570 S.E.2d at 540 (citing *Furman Univ. v. Waller*, 124 S.C. 68, 87, 117 S.E. 356, 362 (1923) (finding that in the presence of a clear promise, the promisee may make the promise irrevocable by spending money or incurring liabilities in furtherance of the enterprise or undertaking as intended by the promisor)). In sum, the Court held "it would be an injustice not to apply the doctrine of promissory estoppel []because of the extreme amount of time and energy [grandson] has expended in reliance on Grandfather's promise." *Satcher*, 351 S.C. at 486, 570 S.E.2d at 540.

This case is similar to *Satcher* because the County's inconsistent action to terminate Company Two's usage of the runway does not weaken its original promise. It would be an injustice to not apply the doctrine of promissory estoppel after Company Two relocated its business to Hampton County in reliance on the County's promise of access to the airport runway, especially in light of Company Two's unique business and particular need that is plainly expressed to Hampton County before deciding to relocate.

The lower court stated four bases for its decision to grant a directed verdict as to promissory estoppel. First, the language of the 2005 letter does not refer to the runway but is a promise for the taxiway that the County provided in 2014. (R. p. 20). Second, even if the 2005 letter is a promise to use the runway, that promise should have been included in the 2011 agreement. (R. pp. 20-21). Third, the "County could not permanently burden public lands" without a full public hearing. (R. p. 21). Fourth, the 2005 letter is an agreement to agree in the future that lacks a duration. (R. p. 21). Each of these bases are incorrect, and this Court should reverse.

First, the 2005 letter is not a promise to provide the taxiway easement to Company Two. It is a present statement to allow Company Two a "right to use" the airport property and clearly describes the property it applies to and includes the runway. (R. p. 985). Properly considering that Company Two is the business that needed (and received) the right to use the runway and Q&J Properties is the business that could do the property swap and acquire an easement, the lower court's first basis for directed a verdict is unsupported by the evidence.

Second, a promise to allow Company Two to use the airport runway for testing could not have been included in the 2011 agreement between the County and Q&J Properties. The two agreements involve different properties, parties, and purposes. The lower court relied on *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015). (Order p. 5). In *Richardson*, two parties entered into an outline of a business relationship and an oral agreement regarding a stock purchase. *Id.* at 374-75, 769 S.E.2d at 238-39. They then executed an agreement of termination that specified it terminated the outline and anything arising out of it. *Id.* at 375-76, 769 S.E.2d at 239. The Supreme Court affirmed a directed verdict on a promissory estoppel claim for the stock purchase because it found the termination agreement "precludes any promissory estoppel claim that could have arisen between the parties prior" to it. *Id.* at 380, 769

S.E.2d at 241-42. The reasoning of *Richardson* does not apply to the facts of this case. In *Richardson*, the agreements involved the same parties and subject matter. Here, the 2005 promise involves different parties and different subject matter from the 2011 agreement. Further, the 2011 agreement states that it is "the entire understanding and agreement between the parties"—the County and Q&J. (R. pp. 1021-28). That indicates an intent not to affect an agreement with a non-party such as Company Two. The lower court's second basis is not supported by the evidence.

Third, the agreement to allow Company Two to test trucks on the airport runway is not a permanent burden on public lands. It is an agreement with a reasonable duration for use of the airport runway for about twenty minutes a month at the most. That is hardly a permanent burden, and there is ample testimony that airport runways are frequently used for non-public purposes in a safe manner. There is no legal requirement for a public reading for such a minimal, infrequent, non-exclusive usage of the runway. This usage is not an action to "sell, lease or contract to sell or lease real property owned by the county", S.C. Code Ann. § 4-9-130(6), as the lower court indicated. (Order p. 5). Further, during trial, the lower court stated it ruled "as a matter of law [that] an ordinance was not required for [Company Two] to be able to access to use the runway." (R. p. 293). The lower court's third basis is not supported by the evidence or the law.

Fourth, as explained above in section I., the 2005 agreement is not an agreement for the County and Company Two to agree in the future and contains a reasonable duration. The lower court's fourth basis is not supported by the evidence or the law.

For these reasons, the Court should reverse the lower court's decision to grant a directed verdict as to promissory estoppel and remand this cause of action for a new jury trial.

CONCLUSION

For the reasons stated above, the Court should reverse the decisions of the lower court and remand the case for a new jury trial.

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