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Oct 04 2022  
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 REPLY BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

ARGUMENT ..... 1

I. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON BREACH OF CONTRACT..... 1

    A. The County’s conduct and formal actions in this case created a contract..... 1

    B. The 2005 County Council could enter into a valid contract that extends beyond four years..... 2

    C. There is ample evidence of the terms of the agreement under a written breach of contract theory..... 3

II. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON PROMISSORY ESTOPPEL..... 6

III. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON ALL CAUSES OF ACTION..... 8

CONCLUSION..... 9

**TABLE OF AUTHORITIES**

**Cases**

*Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 691 S.E.2d 170 (Ct. App. 2010) ..... 3, 4  
*Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012) ..... 7  
*Carolina Amusement Co. v. Conn. Nat’l Life Ins. Co.*, 313 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993)..... 6  
*Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020)..... 8  
*Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006)..... 3  
*Hilton Head Air Serv. v. Beaufort Cnty.*, 308 S.C. 450, 418 S.E.2d 849 (Ct. App. 1992) ..... 9  
*Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)..... 4  
*Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014)..... 9

**Statutes**

S.C. Code Ann. § 4-9-630 ..... 2

**Rules**

Rule 201, SCRE ..... 3

## ARGUMENT

Nothing in the County’s brief dispels two key arguments— that the 2011 and 2014 agreements are with a different legal entity than the 2005 agreement and that the County actually allowed Company Two to use the runway for ten years. The County’s attempt to frame this case as one about self-governance is unavailing. The conduct at issue in the contract and promise involves Company Two’s use of the County airport runway for about 25 minutes per month. That is hardly an encumbrance of property.

The County also ignores the standard of review and asks the Court to weigh the evidence and decide conflicts in the testimony. “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.” *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188-89, 691 S.E.2d 170, 173 (Ct. App. 2010). “If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.” *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). Here, the evidence is susceptible of more than one reasonable inference, and the lower court should have submitted all three causes of action to the jury.

### **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 County’s arguments to the contrary are factually disingenuous and legally incorrect.

#### **A. The County’s conduct and formal actions in this case created a contract.**

“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). The County contends that it is treated differently from a normal contracting party and may only enter into a contract through written conduct. It cites no law for this special treatment.

The County contends that it could not enter into a contract via the 2005 letter because that letter was written by Jim Daniels. This argument ignores that Daniels copied the County Administrator on the letter. (R. p. 985). In a County-Administrator form of government, “[t]he powers and duties of the administrator shall include, but not be limited to, the following: (1) to serve as the chief administrative officer of the county government; (2) to execute the policies, directives and legislative actions of the council.” S.C. Code Ann. § 4-9-630. Giving actual notice to the County Administrator of a letter that states “Hampton County Council has authorized me to make” commitments to a potential business is evidence, viewed in a light most favorable to Company Two, of the existence of a contract. (R. p. 895). That the County disputes authority is not a basis for ruling as a matter of law but is, instead, evidence that “yields more than one inference” and warrants the denial of a motion for a direct verdict. *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010).

The County also ignores that it acted in accordance with the contract for ten years by allowing the runway testing with actual knowledge by County representatives and that it accepted Company Two’s FOD clean-up. (R. pp. 898-903). The County should not be allowed to accept the benefits of a contract and then deny its existence.

**B. The 2005 County Council could enter into a valid contract that extends beyond four years.**

The County argues that one Council cannot bind another. Because Hampton County Council members serve four-year terms, the County necessarily argues that it can never contract for a period longer than four years. This is non-sensical. Government entities regularly enter into

contracts whose terms extend beyond four years. Company Two does not dispute that a subsequent County Council may choose to not abide by the terms of the contract that a prior council entered into, but the consequence of that choice is breach of contract. A party contracts with Hampton County and not with a particular County Council.

Further, the County's argument is belied by its own conduct. It enters into contract with terms that extend beyond four years. Appellant moves the Court to take judicial notice of two official records of the Hampton County Council showing that it entered into agreements with a duration of longer than four years. "Judicial notice may be taken at any stage of the proceeding." Rule 201(f), SCRE. The two records are: (1) January 3, 2005 meeting minutes stating Council approved a **twenty-year** lease of property for a communications tower, (2) and September 19, 2005 meeting minutes stating Council approved a **five-year** lease agreement with the town of Varnville.<sup>1</sup>

These records show the fallacy of the County's argument that it could not legally enter into the contract with Company Two. By entering into these two contracts, Council clearly believes it has the ability to contract past a four-year term, thus defeating this argument. There is no legal restriction on a County's ability to contract for a term that exceeds the current Council's term.

**C. There is ample evidence of the terms of the agreement under a written breach of contract theory.**

Company Two incorporates its initial brief argument as to the terms of the contract. The County makes three arguments on reply—the 2005 agreement does not use language about testing fire trucks, the testimony of 2005 Council members that the 2005 agreement was for fire truck

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<sup>1</sup> Attached to reply brief and publicly available at <http://www.hamptoncountysc.org/Archive.aspx?ysnExecuteSearch=1&txtKeywords=years&lngArchiveMasterID=0&txtDateRange=&dtiStartDate=&dtiEndDate=>.

testing on the airport carries no weight, and the parties' 10-year conduct cannot establish a contract. (Br. of Resp't pp. 9-14). These arguments are all without merit.

**First**, as to the 2005 agreement language, it plainly states that Council "authorized [Mr. Daniels] 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.**" (R. p. 985) (emphasis added). "Agrees to" is present, not future, language. The property description includes the entire runway.<sup>2</sup> That is entirely consistent with Company Two's desired and actual use of the airport runway. 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 agreement does not need to specify "testing of fire trucks" because "right to use" is sufficient for the contractual purposes. That the letter **later** contains future language does not change that the first commitment is a **present** commitment for Company Two's right to use the airport runway.

**Second**, as to witness testimony that the County did contract with Company Two to test fire trucks on the runway, the County still resorts to a parol evidence argument. (Br. of Resp't p. 11). That is irrelevant at this stage of the case because the lower court admitted the evidence. Therefore, it must be included in the consideration of a directed verdict motion. Regardless, the County does not dispute that 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). That evidence was properly

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<sup>2</sup> The County does not provide an alternate explanation for what this passage means.

part of the lower court's consideration and, viewed in a light most favorable to Company Two, should result in a denial of the County's motion.

**Third**, as to the County's conduct, the County does not deny that it allowed Company Two to test fire trucks on the runway for ten years. The County misstates Company Two's argument on this point. Company Two does not argue for a contract implied by conduct. Company Two argues that conduct shows that the 2005 agreement is what Company Two says it is—an agreement granting Company Two a right to use the runway. That the parties performed the agreement matters in this case and is a proper consideration. “The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and subsequent acts are relevant to show whether a contract was intended.” *Byrd v. Livingston*, 398 S.C. 237, 243, 727 S.E.2d 620, 623 (Ct. App. 2012) (“We find no error with the court's determination that the subsequent conduct of the parties and attorneys established the parties had a meeting of the minds and intended to be bound by the Agreement.”). Finally, the County incorrectly argues that Company Two “maintains that the agreement isn't written” but asserts that ambiguity should be construed against the County as the drafter. (Br. of Resp't p. 13). Company Two consistently maintained that the 2005 agreement is a written contract. The arguments as to the parties' conduct is in direct response to the County's assertion that it never agreed to any use. If the County is going to argue that it never agreed to something, then evidence that it allowed that exact thing is certainly relevant.

**Fourth**, as to the necessary terms, they are all contained within the agreement. (Br. of App. pp. 14-15, 17). The County incorrectly insinuates that Company Two and Q&J Properties are not separate legal entities. (Br. of Resp't p. 14). It does not cite evidence for this insinuation. *Id.* At trial, Quincy Jones gave testimony showing that Company Two and Q&J Properties are separate

entities. Mr. Jones owns and is the president of Company Two. (R. p. 225). Company Two leases property from Q&J Properties. (R. p. 262). Mr. Jones testified that the 2005, 2011, and 2014 agreements involved “three separate entities.” (R. p. 321). The County **agreed** to remove Q&J Properties as a plaintiff with Company Two pursuing the case as the sole Plaintiff—meaning they must be two entities. (R. pp. 24-25). Next, the County argues there is not a meeting of the minds as to duration, expiration, or method of cancellation. (Br. of Resp’t p. 14). Because the lower court addressed only duration (R. p. 21), and the County cites no law that expiration or method of cancellation are necessary for a meeting of the minds, duration is the only relevant term in this appeal. Company Two cited law that a specific duration is not necessary for a meeting of the minds and, in absence of that term, a contract is terminable at will with reasonable notice. *Doe v. TCSC, LLC*, 430 S.C. 602, 611, 846 S.E.2d 874, 879 (Ct. App. 2020). The County neither refutes this law nor cites law requiring every term of a contract to appear in writing. (Br. of Resp’t pp. 14-16). This absence of legal support defeats the County’s argument on this issue.

## **II. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON PROMISSORY ESTOPPEL.**

The lower court granted a directed verdict based on only the first element of promissory estoppel—an unambiguous promise. (R. pp. 19-20). The lower court did not rule on the element of reasonable reliance, yet that is the focus of the County’s promissory estoppel argument. Company Two relies on and incorporates its initial argument as to the sufficiency of the evidence of promissory estoppel and responds to specific arguments made by the County not already addressed in the initial brief.

**First**, the County asserts that promissory estoppel does not apply because the contract for Company Two to use the runway is subject to the statute of frauds. (Br. of Resp’t p. 16). This is legally incorrect. “If there is a possibility that a contract might be performed within one year, the

statute of frauds is not a bar to enforcement of the contract.” *Springob v. Univ. of S.C.*, 407 S.C. 490, 495-96, 757 S.E.2d 384, 387 (2014). Company Two’s use of the runway could be performed within one year and, therefore, is not subject to the statute of frauds.

**Second**, the County asserts that Company Two did not raise the issue of sufficient notice of contract termination. (Br. of Resp’t p. 16 n.5). This is factually incorrect. At trial, Mr. Jones testified that, in 2015 after 10 years of Company Two testing fire trucks on the runway without incident, the County ordered Company Two to immediately stop using the runway, and Company Two lost business and suffered an increase in the cost of business with no available option for on-site testing. (R. pp. 256-59).

**Third**, the County argues that, because a license is revocable, promissory estoppel fails as a matter of law. (Br. of Resp’t p 17). This argument ignores that a revocable license is still a legal property right. *Hilton Head Air Serv. v. Beaufort Cnty.*, 308 S.C. 450, 457, 418 S.E.2d 849, 853 (Ct. App. 1992) (A “license to be on the premises for an agreed purpose is a contractual right personal to the licensee.”). Revocability also does not mean that one party may revoke at will for no reason without legal consequence.

**Fourth**, the County seems to argue that no one had authority to agree to the 2005 agreement and Company Two was on notice of a lack of authority. (Br. of Resp’t pp. 17-19). This ignores the fact that, in 2005, the County Administrator told Mr. Jones to go through Mr. Daniels to discuss a potential new business with the County. (R. p. 237). Further, the letter that Mr. Daniels sent as a follow-up to the 2005 County Council meeting says “Hampton County Council has **authorized me to make**” certain commitments. (R. p. 985) (emphasis added). It is not unreasonable to rely on promises in a letter that says the promises are made with authorization.

**Finally**, the County incorrectly characterizes the promise as “unfettered and perpetual access” in an effort to persuade the Court that it is unreasonable. (Br. of Resp’t p. 20). The promise is for Company Two to use the property for less than three minutes at a time for one to five times per month – a total of about twenty minutes per month *at the most*. (R. pp. 254, 958). It is not unfettered or perpetual.

The Court should address the true nature of the promise and find that the lower court erred in granting a directed verdict as to promissory estoppel.

### **III. THE LOWER COURT ERRED IN GRANTING A DIRECTED VERDICT ON ALL CAUSES OF ACTION.**

The County addresses all three causes of action in its final argument section IV. Many of those arguments are adequately addresses in Company Two’s initial brief. The remaining arguments are addressed below.

**First**, the County incorrectly and improperly asserts that “Company Two Fire is a legal fiction.” (Br. of Resp’t p. 22). It cites to **no** evidence for this assertion. There is evidence that Company Two is a separate entity. Mr. Jones testified that Company Two leases property from Q&J Properties and that the 2005, 2011, and 2014 agreements involved “three separate entities.” (R. pp. 262, 321). Further, the County **agreed** to remove Q&J Properties as a plaintiff with Company Two pursuing the case as the sole Plaintiff. (R. pp. 24-25). It cannot now argue that they are really the same entity.

**Second**, the County cites to a 2016 letter that Company Two sent to Council after it ordered Company Two to stop using the runway. (Br. of Resp’t p. 24). The County argues this is evidence that Company Two “was aware that it did not have a legal right to test fire trucks.” (Br. of Resp’t p. 24). Factually, there is no support for that argument. An attempt to negotiate a disagreement is not a concession of any party’s legal rights. Whether Company Two chose to aggressively pursue

legal rights or attempt a more cooperative negotiation has no bearing on the legal issue before the Court of whether there was sufficient evidence of the causes of action. Legally, the evidence is inadmissible and improper for the County's purpose under Rule 408, SCRE.

Properly applying the directed verdict standard, the lower court erred in granting a directed verdict as to all three causes of action.

### **CONCLUSION**

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

Dated: October 4, 2022

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