THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Hon. Eugene Griffith

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SC Court of Appeals

Case No. 2018-CP-10-851
Appeal No. 2019-000728

National Trust for Historic Preservation
In the United States and The City of Charleston, Respondents/Appellants

v.

City of North Charleston, Appellant / Respondent.

Reply of Appellant/Respondent (City of North Charleston)
(Contiguity / Adjacency)

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INDEX

TABLE OF CASES

CASES

STATUTES

Argument

The City of North Charleston believes that, with the exception of the one point specifically addressed below, its main brief in this matter sufficiently sets forth its position regarding the adjacency / contiguity of The Acre.

Reliance by Charleston and the National Trust[1] on the Logic of Town of Forest Acres v. Seigler to Avoid The Plain Words of S.C. Code Ann. 5-3-305 Is Misplaced.

Charleston and the National Trust push Town of Forest Acres v. Seigler, 224 SC 166, 77 SE2d 900 (SC 1953) too far in their effort to avoid the plain words of S.C. Code Ann. 5-3-305. Forest Acres sets forth the unremarkable proposition that, in some circumstances, literal application of statutory amendment language may cause a variance from true legislative intent. In such instances a court should ignore common sense in order to blindly follow words changing long established rules. In other words, when reading new amendment language some thought should go to whether a change was intended or accidental. North Charleston certainly agrees with that logic. However, Charleston and the National Trust overlook the difference in circumstances between Forest Acres and the present case. Facts matter.

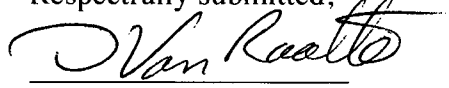
In Forest Acres the Court recognized that the amendment in question sought to "correct a patent typographical error" in the prior version of the statute and, in so doing injected even more confusion because the drafters made "no effort to go back to the original act to make the proper correction." Forest Acres, 224 SC at 179, 77 SE2d at 906. "The effect of it all, it seems to us, is to create further ambiguity." Id. Thus, when the Town of Forest Acres argued that the ill-framed

[1] By letter dated November 15, 2019, the National Trust elected not to file a separate Respondent's Brief and instead joined the City of Charleston's brief on these points. North Charleston offers this Reply to address the position of Charleston and, as a result of the National Trust and Charleston's combined brief, the position of the National Trust.

amendment "'clarified' the meaning of Section 7231 so as to clearly authorize the annexation..." the Court was not convinced. Id. at 171, 902. On these facts the court concluded that a significant change in law would not be assumed from amendment language unless such an intent was clear.

The situation presented by S.C. Code 5-3-305 could not be more different. The South Carolina Legislature passed that statute for the specific purpose of providing a definition of "contiguity." That is pretty clear from the section's title: "Contiguous property defined." Thus, unlike Forest Acres, there can be no question here that the South Carolina Legislature expressly intended to set forth a definition of contiguity. Also, unlike Forest Acres, there can be no argument here that the Legislature was just trying to correct a typo without intending any substantive change in the law. Prior to S.C. Code 5-3-305 there was no statutory definition of "contiguity." Had the Legislature been content with the common law definition of "contiguous" as it existed prior to 5-3-305 it would not have needed to pass a statute at all. Clearly, then the Legislature specifically looked to set forth new guidance with the passage of this statute in year 2000. Equally unmistakable is the fact that the Legislature created a clearly worded two prong test for "contiguous" – *adjacent* AND *shares a continuous border* – such that "contiguous" can no longer be the same as "adjacent."

Respectfully submitted,



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This 7th day of February, 2020

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Certificate of Counsel (Briefing)

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 7, 2020.

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