RECEIVED
Jul 17 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2021-CP-10-05645

Appellate Case No. 2024-000064

The Charleston School of Law, LLC,
a South Carolina limited liability company,

Respondent,

v.

City of Charleston, a municipal corporation, and
OmShera Hotel Group, LLC,
a North Carolina limited liability company,

Defendants.

Of which City of Charleston, a municipal corporation, is the

Appellant.

INITIAL BRIEF OF APPELLANT

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Wilbur E. Johnson (SC Bar No. 3062)
Brian L. Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authority

STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court err in granting Plaintiff's[1] motion for a partial judgment on the pleadings against the City[2]?[3]

A. Did the circuit court misapply the legal standard for deciding a motion for judgment on the pleadings?

B. Did the circuit court misinterpret subsections (6) and (7) of S.C. Code Ann. § 5-7-260 and wrongly find them inapplicable?

C. Did the circuit court misinterpret the 2004 Ordinance[4] and wrongly find that the City's mayor could extinguish the Reverter Clause[5]?

D. Did the circuit court err in finding that the merger doctrine extinguished the 2004 Ordinance?

E. Out of an abundance of caution, assuming, *arguendo*, that the circuit court might be said to have done so, to the extent that the circuit court found the City liable as to any of Plaintiff's claims based on its interpretation of § 5-7-260, did it err in doing so?

STATEMENT OF THE CASE

Filed in the Charleston County Court of Common Pleas on December 17, 2021, this lawsuit arises out of a dispute between Plaintiff, a for-profit limited liability company that owns and operates the Charleston School of Law,[6] and the City over a parcel of real property in downtown Charleston commonly known as 431 Meeting Street (the "Property"). (Summons; Compl. (exhibits omitted).)

---

1 "Plaintiff" refers to Plaintiff/Respondent, The Charleston School of Law, LLC.

2 The "City" refers to Defendant/Appellant, City of Charleston.

3 To be clear, this issue, and the corresponding argument below, includes and covers circuit court error both in granting Plaintiff's motion and in denying the City's corresponding motion for reconsideration.

4 The "2004 Ordinance" is defined below.

5 The "Reverter Clause" is defined below.

6 (Am. Compl. ¶ 6; City's Am. Answer ¶¶ 173, 200.)

The City sold the Property to Plaintiff by deed dated July 1, 2005, subject to certain conditions,[7] which, as mandated by the City ordinance authorizing the sale, "are a binding servitude on the Property . . . deemed to run with the land in perpetuity" and are required to be included "in any deed or other legal instrument by which [Plaintiff] divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof," most notably, a possibility of reverter (the "Reverter Clause"), providing that ownership of the Property automatically reverts back to the City in the event that, at any point within the following six (6) years, the Property is not used solely for law school purposes and if permanent development construction to facilitate that usage (i.e., a law school building) is not commenced within the six (6)-year period. (Ex. 2 to Am. Compl. [Deed to Plaintiff]; Ex. A to City's Am. Answer [2004 Ordinance].)

Plaintiff's operative complaint alleges causes of action against the City for (1) breach of contract seeking monetary damages, (2) breach of contract seeking specific performance, (3) declaratory judgment, (4) estoppel, (5) injunctive relief, and (6) attorney fees and costs. (Am. Compl. [with exhibits].) Plaintiff contends that, in the years following Plaintiff's purchase of the Property, the City entered into certain agreements under which it is obligated to extinguish the Reverter Clause and that, by refusing to do so, the City has wrongly prevented Plaintiff from selling the Property to Defendant Omshera Hotel Group, LLC ("OmShera"). (*Id.*)

In its defense, the City denies the validity of the alleged agreements on which Plaintiff relies, contending they are illegal and unenforceable pursuant to S.C. Code Ann. § 5-7-260 (requiring the passage of a municipal ordinance to accomplish certain acts). (City's Am. Answer (with exhibits).) Besides its responses to Plaintiff's allegations, the City pleads numerous

[7] In this context, "conditions" refers collectively to [t]he notices, terms, covenants,

affirmative defenses and counterclaims against Plaintiff for fraudulent inducement and declaratory relief, alleging that the alleged agreements on which Plaintiff relies are not only unenforceable pursuant to § 5-7-260 but also because Plaintiff misrepresented to the City that the Property was not suitable for a permanent law school and, indeed, that, pursuant to the self-executing Reverter Clause, the Property automatically reverted back to the City when six (6) years passed without the construction of a law school building. (*Id.*)

By motion filed November 7, 2022, Plaintiff sought a judgment on the pleadings in its favor against the City as to (1) the City's liability under its breach of contract and declaratory judgment causes of action and (2) the City's defenses and/or counterclaims based on § 5-7-260. (Pl.'s Mot. for J. on the Pleadings.) The motion was briefed[8] and, on September 26, 2023, came on for hearing in the circuit court, the Honorable Roger M. Young, Sr., presiding. (Tr. of 9/26/23 Mot. Hr'g.) The circuit court granted Plaintiff's motion by order filed November 20, 2023,[9] and thereafter denied the City's timely motion for reconsideration[10] by order filed December 13, 2023. (Order Denying the City's Mot. for Reconsideration.)

By notice served January 12, 2024, this appeal timely follows. (Notice of Appeal; Proof of Service.)

STATEMENT OF FACTS

In or about 2004, the City's former mayor Joseph P. Riley brokered a deal with the U.S. Government to procure the Property with City funds to aid Plaintiff in building a permanent law school on the Charleston peninsula. (City's Am. Answer ¶¶ 178-179.) In accordance with this

---

restrictions, and reservations" in Plaintiff's deed. (Ex. 2 to Am. Compl. [Deed to Plaintiff].)

[8] (Pl.'s Mem. in Supp. of Mot. for J. on the Pleadings (with exhibits); City's Mem. in Opp'n to Pl.'s Mot. for J. on the Pleadings.)

[9] (Order Granting Mot. for J. on the Pleadings.)

[10] (City's Mot. for Reconsideration.)

plan, the City purchased the Property and shortly thereafter sold it to Plaintiff. (City's Am. Answer ¶¶ 179-180.) Based on Plaintiff's commitment to build a permanent law school building on the Property, the City sold the Property to Plaintiff for nearly $300,000 *less* than the City had just paid for it and financed Plaintiff's purchase of the Property at a low rate (either 1% below prime or 5%, whichever was lower), allowing Plaintiff to pay interest only for ten (10) years before payment of the principal balance came due. (City's Am. Answer ¶¶ 180, 182; Ex. 3 to Am. Compl. [Promissory Note].) But for the City's efforts, Plaintiff never would have had any rights in the Property. (City's Am. Answer ¶ 181.)

The City sold the Property to Plaintiff on or about July 1, 2005. (City's Am. Answer ¶ 186; Ex. 2 to Am. Compl. [Deed to Plaintiff].) As required by § 5-7-260(6),[11] the sale was specifically authorized and approved by the City's municipal council ("City Council") via its passage of City Ordinance No. 2004-150 (the "2004 Ordinance"). (City's Am. Answer ¶ 184; *see also* Ex. 1 to Am. Compl. [Codified 2004 Ordinance]; Ex. A to City's Am. Answer [2004 Ordinance].) The Reverter Clause is mandated by and a material provision of the 2004 Ordinance,[12] and again, the Reverter Clause was duly included in Plaintiff's deed and is "a binding servitude on the Property . . . deemed to run with the land in perpetuity" that is required to be included "in any deed or other legal instrument by which [Plaintiff] divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof." (Ex. 2 to Am. Compl. [Deed to Plaintiff]; *see also* City's Am. Answer ¶¶ 183-85.) During the six (6)-year period established by the Reverter Clause, the Property was not used for law school purposes and no law school building was built thereon. (City's Am. Answer ¶ 190.)

[11] Section 5-7-260(6) requires a municipal council to pass an ordinance to "[s]ell or lease or contract to sell or lease any lands of the municipality[.]"

Given that subjection (6) of § 5-7-260 required the City's sale of the Property to Plaintiff to be accomplished by ordinance (namely, the 2004 Ordinance), subsection (7) of the § 5-7-260 applies to require any amendment or repeal of the 2004 Ordinance to be accomplished by ordinance, too. § 5-7-260(7) (providing that an ordinance is required to "[a]mend or repeal any ordinance described in items (1) through (6) above"). The City has never enacted an ordinance amending or repealing the terms of the 2004 Ordinance. (City's Am. Answer ¶ 187.) Consequently, the 2004 Ordinance remains in full force and effect to this day.

In or around 2017, Plaintiff approached the City seeking relief from the Reverter Clause. (City's Am. Answer ¶ 196.) Plaintiff represented to the City that the Property "wouldn't work" to build a law school and that it planned to sell the Property and use the proceeds to build the law school in another location within the City. (*Id.*) Discussions between Plaintiff and the City never resulted in City Council's passage of any ordinance amending or repealing the 2004 Ordinance. (City's Am. Answer ¶ 187.)

Plaintiff contends the 2017 discussions led to the City's mayor signing agreements with Plaintiff requiring the City to extinguish the Reverter Clause, including the documents Plaintiff refers to as the "2017 Modification Agreement" and the "2019 Modification Agreement." (City's Am. Answer ¶ 198.) The City denies that the 2017 Modification Agreement and the 2019 Modification Agreement were properly executed and contends they were illegally executed and are unenforceable. (City's Am. Answer ¶ 187.) Plaintiff also contends that the six (6)-year period established by the Reverter Clause was extended,[13] and the City likewise denies any valid extension. (City's Am. Answer ¶ 187.)

---

[12] (City's Am. Answer ¶¶ 183-186, 188-189; *see also* Exhibit A to City's Am. Answer [2004 Ordinance].)

[13] (Am. Compl. ¶¶ 21-23.)

Subsequently, in 2021, the City discovered that in 2013 a consultant prepared a "feasibility study" for Plaintiff that concludes the Property is suitable for a law school building. (City's Am. Answer ¶¶ 193-95; *see also* Ex. B to City's Am. Answer [Feasibility Study].) The feasibility study proposes a law school building for the Property that meets Plaintiff's building needs within Plaintiff's cost estimates. (City's Am. Answer ¶ 194.) The feasibility study states that the Property is "ideal" for Plaintiff and that Plaintiff was "very pleased" with the proposed building plan for the Property. (*Id.*)

Plaintiff did not disclose the feasibility study to the City. (City's Am. Answer ¶¶ 195, 197.) The feasibility study directly conflicts with Plaintiff's 2017 representations to the City that the Property "wouldn't work," and the City would never have entertained Plaintiff's proposal to sell the Property to a third party if it had known of the feasibility study. (City's Am. Answer ¶¶ 199, 202; *see also* Ex. B to City's Am. Answer [Feasibility Study].) Plaintiff proposed the sale of the Property in 2017 to the City under false pretenses of needing a different location. (City's Am. Answer ¶ 202.) Plaintiff never had plans to reinvest the funds from the sale of the Property into construction of a permanent law school building as represented to the City. (City's Am. Answer ¶ 203.) Rather, the undisclosed purpose of Plaintiff's 2017 discussions with the City was to distribute the funds from the Property sale to enrich the small number of owners of the for-profit LLC. (City's Am. Answer ¶¶ 201, 204.)

Plaintiffs have demanded that the City issue a quit claim deed that extinguishes the Reverter Clause so as to aid Plaintiff's sale of the Property to hotel developer OmShera. The City has not done so and seeks to enforce its rights under the Reverter Clause.

STANDARD OF REVIEW

A judgment on the pleadings is "'a drastic procedure'"[14] that "'is not favored by the courts'"[15] and should not be granted "if there is an issue of fact raised by the [challenged pleading] which, if resolved in favor of the [pleader], would entitle him to judgment." *Russell*, 305 S.C. at 89, 406 S.E.2d at 339. When considering a motion for a judgment on the pleadings, the challenged pleading must "'be liberally construed in favor of the pleader;'"[16] "the court must regard all properly pleaded factual allegations as admitted;"[17] and as to every fact so pleaded, "any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." *Russell*, 305 S.C. at 89, 406 S.E.2d at 339. "Moreover, a [pleading] is sufficient if it states any cause of action or it appears that the [pleader] is entitled to any relief whatsoever." *Id.*; *see also Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987) ("A motion for judgment on the pleadings will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated.").

---

[14] *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013) (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

[15] *Wooten v. Standard Life & Cas. Inc. Co.*, 239 S.C. 243, 248, 122 S.E.2d 637, 639 (1961) (quoting 41 Am. Jur. Pleading § 336 p. 521).

[16] *Wooten*, 239 S.C. at 248, 122 S.E.2d at 639 (quoting 41 Am. Jur. Pleading § 336 p. 521).

ARGUMENT

I. The circuit court erred in granting Plaintiff's motion for a partial judgment on the pleadings against the City.

A. The circuit court misapplied the legal standard for deciding a motion for judgment on the pleadings.

A judgment on the pleadings is improper in this case because the allegations in Plaintiff's operative complaint and the City's operative answer conflict.[18] The circuit court failed to consider all allegations in the City's operative answer as true for purposes of the motion.

Moreover, discovery is necessary on Plaintiff's allegations—which renders judgment on the pleadings inappropriate. The circuit court granted judgment in Plaintiff's favor on critical issues in this case without allowing the City an opportunity to conduct discovery on Plaintiff's claims, and without the opportunity to pursue discovery in support of all of the City's defenses and counterclaims in this case. No depositions have been taken. Plaintiff has refused to respond to many of the City's written discovery requests, which required the City to file a motion to compel. (City's Mot. to Compel Pl.'s Full and Complete Discovery Responses.) The circuit court never heard the City's motion to compel and instead granted Plaintiff's motion for a judgment on the pleadings. The circuit court erred in doing so and should be reversed.

B. The circuit court misinterpreted subsections (6) and (7) of § 5-7-260 and wrongly found them inapplicable.

In 2004, City Council authorized the sale and transfer of the Property to Plaintiff via City *ordinance*, i.e., the 2004 Ordinance,[19] which is the *statutorily required* method for selling lands

---

[17] *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000).

belonging to a municipality. § 5-7-260(6). The 2004 Ordinance, which has never been amended, repealed, or otherwise modified, remains in full force and effect to this day. One of the key provisions of the 2004 Ordinance is the Reverter Clause. (City's Am. Answer ¶¶ 183-186; *see also* Ex. A to City's Am. Answer [2004 Ordinance].) The Reverter Clause states that if the Property is not used for law school purposes and a law school is not built within six (6) years, ownership *automatically* reverts back to the City. (City's Am. Answer ¶¶ 183-85.) Without question, Plaintiff never built a law school. (City's Am. Answer ¶ 190.) Therefore, the Property automatically reverted back to the City after six (6) years, the City owns the Property in fee simple absolute, and Plaintiff has no rights in the Property to sell to OmShera.

The validity of the 2017 and 2019 Modification Agreements, and of the alleged extension of the six (6)-year period established by the Reverter Clause before them, is essential to Plaintiff's claims. These alleged agreements seek to amend or repeal the 2004 Ordinance to eliminate the Reverter Clause. To be valid under § 5-7-260, they had to be approved by ordinance, which they never were.

The circuit court erroneously concluded that the requirements in § 5-7-260 do not apply. (Order Granting Mot. for J. on the Pleadings p. 23.) Based on this error, the circuit court wrongly found that the alleged agreements on which Plaintiff relies did not have to be approved by City ordinance to be valid and enforceable.

---

[18] (*Compare* Am. Compl. *with* City's Am. Answer.) *See Firemen's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co*., 302 S.C. 234, 237, 394 S.E.2d 855, 857 (Ct. App. 1990) (finding that where there are conflicting allegations, the allegations are subject to proof, requiring denial of a motion for judgment on the pleadings); *Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445-46 (Ct. App. 2019) ("[A] judgment on the pleadings is considered to be a drastic procedure by our courts.").

[19] (City's Am. Answer ¶ 184; *see also* Exhibit A to City's Am. Answer)

Section 5-7-260 specifies the acts that a municipality must approve by ordinance to be legal and enforceable:

> In addition to other acts required by law to be done by ordinance, *those acts of the municipal council shall be by ordinances which*:
>
> (1) Adopt or amend an administrative code or establish, alter or abolish any municipal department, office or agency;
> (2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations;
> (3) Adopt budgets, levy taxes, except as otherwise provided with respect to the property tax levied by adoption of a budget, pursuant to public notice;
> (4) Grant, renew or extend franchises;
> (5) Authorize the borrowing of money;
> (6) *Sell or lease or contract to sell or lease any lands of the municipality; and*
> (7) *Amend or repeal any ordinance described in items (1) through (6) above*.

(emphasis added). According to this statute, the sale of municipal lands requires an ordinance (*see* subsection (6)), as does the amendment or repeal of an ordinance approving the sale of municipal lands (*see* subsection (7)).

Here, the 2004 Ordinance approves the sale of municipal lands, as required by § 5-7-260(6). Therefore, § 5-7-260(7) requires another ordinance to amend or repeal the 2004 Ordinance. The alleged agreements on which Plaintiff relies purport to alter or extinguish the Reverter Clause. To alter or extinguish the Reverter Clause—a key provision of the 2004 Ordinance—is to *amend the 2004 Ordinance*. Because the City did not approve the alleged agreements on which Plaintiff relies by ordinance in accordance with subsection § 5-7-260(7), the alleged agreements on which Plaintiff relies are invalid and unenforceable.

The circuit court emphasizes that the Reverter Clause independently is not an estate in land to erroneously conclude that the effort to alter or extinguish it did not require an ordinance

under § 5-7-260(7). The circuit court's interpretation not only disregards the plain language of § 5-7-260(7) but indeed renders it meaningless. It is well settled that a court cannot construe a statute in a way which leads to an absurd result or renders it meaningless. *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995). Section 5-7-260(7) requires a *new ordinance* to amend or repeal a previous ordinance that was already enacted pursuant to (1)-(6). The amendment itself does not independently have to be a sale of municipal land or otherwise covered by items (1)-(6), the prior ordinance, i.e., the ordinance that is being amended or repealed, simply has to be any ordinance "described in items (1) through (6) above." Under the circuit court's interpretation, there would be no need for subsection (7). The circuit court, therefore, erred because its interpretation renders the legislature's specific inclusion of subsection (7) meaningless.

The circuit court's interpretation of § 5-7-260 is inconsistent with South Carolina Supreme Court precedent. In *Berkeley Electric Cooperative, Inc. v. Town of Mount Pleasant*, our Supreme Court voided a contract between the town and the co-op notwithstanding the fact that it had been signed the town's mayor signed and approved by the town council via *resolution* because the town council had not approved the contract by *ordinance*. 308 S.C. 205, 417 S.E.2d 579 (1992). In applying the same statute at issue here, § 5-7-260, the Supreme Court held that "when a municipality goes beyond the law, the person who deals with it in doing so does so at his own risk." *Id.* at 211, 417 S.E.2d at 583.

Each of the acts required to be approved by ordinance under § 5-7-260(1)-(6) should be treated the same. There is no distinction between (4) and (6) as it relates to whether an ordinance is required. If the law requires an ordinance to approve acts pursuant to subsection (4) to the detriment of the party dealing with the municipality on that issue, it likewise requires an

ordinance to approve acts pursuant to subsection (6) to the detriment of the party dealing with the municipality on that issue. Here, like *Berkeley*, the law requires an *ordinance* to amend the 2004 Ordinance's Reverter Clause. The circuit court erred in failing to follow *Berkeley*.

C. The circuit court misinterpreted the 2004 Ordinance and wrongly found that the City's mayor could extinguish the Reverter Clause.

The circuit court erroneously found that even if the City's interpretation of § 5-7-260 is correct, a judgment on the pleadings is still appropriate because the City's mayor had the authority under the 2004 Ordinance to approve transfer of the Property to a third party by mere "written consent." (Order Granting Mot. for J. on the Pleadings pp. 24-26.) The circuit court reasoned that a transfer to a third party necessarily implies that the mayor also had authority to extinguish the Reverter Clause by written consent to facilitate a transfer. The circuit court misinterpreted the 2004 Ordinance.

The Reverter Clause within the 2004 Ordinance states:

> In addition, in the event the Property *is not used* for law school purposes and the permanent development or construction to facilitate such usage is not commenced within six (6) years of the Closing Date, title to the Property shall revert to the Seller.

(*See* Ex. 1 to Am. Compl. (emphasis added).) By its own terms, the Reverter Clause triggers based on *the use* of the Property, regardless of whether Plaintiff used the Property or a subsequent third-party owner made use of the Property. The choice of the passive language ("the Property *is not used*") is significant. The Reverter Clause could have limited the reversion to only "*Buyer's use*" of the Property. It did not. The clause uses passive language instead. The *use* of the Property, regardless of owner, triggers the reversion. Therefore, the Reverter Clause contemplates that the Reverter Clause would follow any transfer of the Property by Plaintiff to a third party. And, indeed, the Reverter Clause is, as mandated by the 2004 Ordinance, "a binding

servitude on the Property . . . deemed to run with the land in perpetuity" that is required to be included "in any deed or other legal instrument by which [Plaintiff] divests itself of either the fee simply title or any other lesser estate in the Property or any portion thereof." (Ex. 2 to Am. Compl. [Deed to Plaintiff]; Ex. A. to City's Am. Answer [2004 Ordinance].)

Moreover, the "written consent" language is separate from the Reverter Clause. The written consent provision is as follows:

> The Buyer shall be prohibited from selling or otherwise transferring the Property to a third-party or entity without the Seller's prior written consent, unless such sale or transfer is to facilitate an exchange of property by Buyer or other good faith accommodation with the owner of the Mid-Town Development, which is generally described as that certain block of land lying generally between Meeting, King, Wolfe and Spring Streets.

(*See* Ex. 1 to Am. Compl.)

The written consent provision says nothing about the ability to also eliminate the Reverter clause by written consent. As such, the written consent provision has no bearing on the Reverter Clause. Any transfer to a third party by written consent would be subject to the Reverter Clause. Therefore, the circuit court's interpretation of the 2004 Ordinance is incorrect.

The circuit court's interpretation of the 2004 Ordinance also improperly failed to consider the parties' intent as to the subject terms in the light most favorable to the City as required on a 12(c), SCRCP, motion. *Pope*, 427 S.C. at 384, 831 S.E.2d at 445-46. At this stage of the litigation, the circuit court is required to assume all the allegations by the *City* regarding the parties' intent are true. *Id.* At best for Plaintiff, the terms in the 2004 Ordinance on "written consent" are ambiguous, and therefore subject to a determination, *in discovery*, of the parties' intent behind those terms. *See Wallace v. Day*, 390 S.C. 69, 76, 700 S.E.2d 446, 450 (Ct. App. 2010) (finding contract terms reasonably susceptible to more than one interpretation and,

therefore, ambiguous, creating a question of fact). The circuit court improperly granted judgment on the pleadings without discovery on this issue.

D. The circuit court erred in finding that the merger doctrine extinguished the 2004 Ordinance.

The circuit court also erroneously found the Reverter Clause void pursuant to the merger doctrine. The circuit court reasoned that because the 2004 Ordinance attached as an Exhibit to the Purchase and Sale Agreement between the Plaintiff (buyer) and City (seller) for the Property the ordinance's requirements merged into the deed to Plaintiff, and the deed to Plaintiff extinguished the 2004 Ordinance. (Order Granting Mot. for J. on the Pleadings p. 27 ("The execution, delivery, and acceptance of the 2005 Deed extinguished any antecedent agreements between the CSOL and the City involving the Property by operation of law. Wilson v. Landstrom, 281 S.C. 260, 264, 315 S.E.2d 130, 132 (Ct. App. 1984); Charleston & W. C. Ry. Co. v. Joyce, 231 S.C. 493, 504, 99 S.E.2d 187, 192 (1957).").) This reasoning is flawed.

Besides the fact that the circuit court's logic is self-defeating on its own terms—as the extinguishment of the 2004 Ordinance would itself invalidate the sale of the Property to Plaintiff for lack of the ordinance required by § 5-7-260(6)—the sole legal authority relied on by the circuit court speaks only to extinguishment of antecedent *agreements* between *private* parties, not the invalidation of duly enacted municipal laws. A municipal ordinance has separate legal significance from a property sales contract. A simple deed cannot override the requirements of a municipal ordinance. The parties must comply with the ordinance as local law. There is no authority—and indeed the circuit court cited none—supporting the circuit court's use of the merger doctrine to conclude otherwise.

E. Out of an abundance of caution, assuming, *arguendo*, that the circuit court might be said to have done so, to the extent that the circuit court found the City liable as to any of Plaintiff's claims based on its interpretation of § 5-7-260, it erred in doing so.

As an additional error, out of an abundance of caution, it is premature to find the City liable for any claims in Plaintiff's operative complaint, even if § 5-7-260 does not apply, due to the City's viable counterclaims and defenses that even the circuit court itself recognized must survive its decision.[20] If the City proves its defenses in discovery in this case, regardless of the circuit court's ruling as to § 5-7-260, the City is not liable for Plaintiff's claims. Therefore, assuming, *arguendo*, that the circuit court might be said to have done so, it erred to the extent that it made any findings at this point in the case as to liability.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for judgment on the pleadings should have been denied in its entirety, and the circuit court's grant of Plaintiff's motion should be reversed.

<SIGNED ON THE FOLLOWING PAGE>

[20] (Order Granting Mot. for J. on the Pleadings p. 27 ("*[P]artial judgment in favor of the CSOL* and against the City is appropriate *as to liability* only (1) under the First, Second, and Third causes of action in the CSOL's Amended Complaint . . . and (2) the City's affirmative defenses and/or counterclaims based on or asserting . . . § 5-7-260 as a defense or counterclaim. The Court is cognizant the City argued in its opposition memorandum and at the motion hearing that even if the 2017 Modification Agreement and 2019 Modification Agreement are not illegal or invalid under § 5-7-260(6) or (7), *the City has raised additional affirmative defenses, including fraudulent inducement, that do not depend on the applicability of § 5-7-260(6) or (7) and, which if the City proves, could defeat the CSOL's claims. . . . This Order leaves unresolved for now the City's affirmative defenses to the extent they are not based on § 5-7 260(6) or (7). Those other affirmative defenses will be determined by future adjudication of the Court*.") (emphasis added).)

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Stephen L. Brown (SC Bar No. 66468)
Wilbur E. Johnson (SC Bar No. 3062)
Brian L. Quisenberry (SC Bar No. 73637)
Zachary M. Kern (SC Bar No. 103731)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellant

Charleston, South Carolina

July 17, 2024