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 and
OmShera Hotel Group, LLC,

Respondents,

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.

FINAL REPLY BRIEF OF APPELLANT

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3. Because the terms of the contract between the City and CSOL for the purchase/sale of the Property are part of the 2004 Ordinance, the Reverter Clause is part of the 2004 Ordinance, as is the mandate that the Reverter Clause 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 [CSOL] divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof." 2

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Submitting, most respectfully, that its principal brief already sufficiently rebuts Respondents'[1] arguments, the City makes the following brief points in reply.[2]

ARGUMENT IN REPLY

1. Respondents admit that the terms of the contract between the City and CSOL for the purchase/sale of the Property are part of the 2004 Ordinance.

As they must, Respondents admit that the 2004 Ordinance "expressly incorporates into its terms and recites in full the provisions of the contract between the CSOL and City, thereby making that contract's terms part of the ordinance." (Br. of CSOL pp. 2–3; Br. of OmShera p. 1 ("join[ing] in every respect with the arguments as propounded by CSOL in its Brief"); *see also* R. p. 394 ("said Agreement of Purchase and Sale [between the City and CSOL] being marked as Exhibit 1, attached hereto and incorporated by reference herein").)

2. Respondents admit that the 2004 Ordinance was not merged out of existence by the 2005 deed of the Property to CSOL.

Despite maintaining that the circuit court "correctly held that the terms of the Purchase and Sale Agreement between the City and the CSOL were merged into the 2005 Deed [of the Property to CSOL],"[3] Respondents admit that the 2004 Ordinance was not extinguished by the deed—and therefore that the 2004 Ordinance remained in effect and could not be repealed or amended absent another ordinance. (Br. of CSOL p. 36 ("[T]he terms of the [circuit court's] order state the antecedent contract between the City and the CSOL concerning the Property (the 2004 Agreement of Purchase and Sale) was merged into the 2005 Deed. It does not state the

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[1] "Respondents" refers, collectively, to The Charleston School of Law, LLC ("CSOL") and OmShera Hotel Group, LLC ("OmShera").

[2] Shorthand references already defined in the City's principal brief (e.g., the "City" refers to Defendant/Appellant, City of Charleston) are continued in this reply.

[3] (Br. of CSOL p. 35 (original bold print omitted).)

2005 Deed extinguished the 2004 Ordinance."); Br. of OmShera p. 1 ("join[ing] in every respect with the arguments as propounded by CSOL in its Brief").)[4]

3. Because the terms of the contract between the City and CSOL for the purchase/sale of the Property are part of the 2004 Ordinance, the Reverter Clause is part of the 2004 Ordinance, as is the mandate that the Reverter Clause 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 [CSOL] divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof."[5]

Again, as Respondents admit, the terms of the contract between the City and CSOL for the sale/purchase of the Property are part of the 2004 Ordinance,[6] and without question, these terms expressly provide for the Reverter Clause[7] and mandate that it 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 [CSOL] divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof." (R. pp. 405–406.)

4. The materiality of the Reverter Clause to the 2004 Ordinance is underscored by the express language of the deed conveying the Property from the City to CSOL.

In the deed conveying the Property from the City to CSOL, the parties "specifically acknowledged . . . that a condition precedent for the conveyance of the property by the [City] to [CSOL] is [CSOL's] obligation to use such property solely for the construction, development, operation and maintenance of a law school to the exclusion of any and all uses unrelated thereto." (R. pp. 90–100.)

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4 And, of course, the doctrine of merger by deed could not possibly extinguish, i.e., repeal, a municipal ordinance authorizing the sale of municipal land pursuant to S.C. Code Ann. § 5-7-260(6), because, pursuant to § 5-7-260(7), the repeal of such an ordinance would require another ordinance.

5 (R. pp. 405–406.)

6 (Br. of CSOL pp. 2–3; Br. of OmShera p. 1.)

7 (R. pp. 90–100, 397.)

5. Because (a) the Reverter Clause is a part of the 2004 Ordinance and (b) the 2004 Ordinance does not allow the mayor to do away with or otherwise alter the Reverter Clause, to do away with or otherwise alter the Reverter Clause constitutes repeal or amendment of the 2004 Ordinance, which, pursuant to § 5-7-260(7), cannot be done without another ordinance.

As explained, the Reverter Clause is without question a part of the 2004 Ordinance. Even so, Respondents contend that the 2004 Ordinance authorizes the mayor to do away with or otherwise alter the Reverter Clause, and thus, the mayor's doing so does not constitute a repeal or amendment of the 2004 Ordinance requiring an ordinance under § 5-7-260(7). Respectfully, Respondents are mistaken.

To be clear, Respondents do not contend that there is any express language in the 2004 Ordinance authorizing the mayor to do away with or otherwise alter the Reverter Clause. Rather, they contend that such authority is implied by the 2004 Ordnance's grant of mayoral authority to "execute the necessary documents to enter into that certain Agreement of Purchase and Sale Between the City of Charleston and The Charleston School of Law for the property . . . *and to undertake and perform the transactions contemplated thereby*"[8] in combination with its prohibition against CSOL "selling or otherwise transferring the Property to a third-party or entity without the [City's] prior written consent." (R. p. 397.) According to Respondents, consenting to a future sale of the Property by CSOL to another party is something the 2004 Ordinance pre-authorizes the mayor to do and that this authority necessarily includes authority to do away with or otherwise alter the Reverter Clause.

At a minimum, Respondents' argument overlooks the fact that the Reverter Clause 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 [CSOL] divests itself of either the

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[8] (R. p. 394 (emphasis added).)

fee simple title or any other lesser estate in the Property or any portion thereof." (R. pp. 405–406.) By its plain language, this requirement expressly contemplates that even if CSOL were to sell the Property the Reverter Clause must remain, which means that even assuming, *arguendo*, the 2004 Ordinance empowers the mayor to consent to a sale of the Property, it does not empower the mayor to do away with or otherwise alter the Reverter Clause—which, again, must remain in the event of any sale, according to the express language of the 2004 Ordinance. Accordingly, even assuming, *arguendo*, the 2004 Ordinance empowers the mayor to consent to a sale of the Property, the Reverter Clause is part of the 2004 Ordinance; the mayor is not empowered to do away with or otherwise alter the Reverter Clause; and, because the existence of the Reverter Clause is required by the 2004 Ordinance, to do away with or otherwise alter Reverter Clause is to repeal or amend the 2004 Ordinance, which, pursuant to § 5-7-260(7), cannot be done without another ordinance.

And last but not least, while the City contends that this view (i.e., the view that even assuming, *arguendo*, the 2004 Ordinance empowers the mayor to consent to a sale of the Property, the mayor is not empowered to do away with or otherwise alter the Reverter Clause) is undeniable, even assuming, *arguendo*, there is some question in this regard, the circuit court erred in granting judgment on the pleadings against the City. At the early stage of this litigation at which the circuit court ruled, the court was required to assume the truth of the City's allegations regarding the lack of any intention for the 2004 Ordinance to authorize the mayor to do away with or otherwise alter the Reverter Clause. *Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445 (Ct. App. 2019) ("When considering [a] motion [for judgment on the pleadings], the court must regard all properly pleaded factual allegations as admitted."); *see also id.* at 384, 831 S.E.2d at 446 ("'[A] judgment on the pleadings is considered to be a drastic procedure by

our courts.'") (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). Again, there is no express language in the 2004 Ordinance authorizing the mayor to do away with or otherwise alter the Reverter Clause, and Respondents seek to establish such authority via implication. While the City maintains it is clear that no such authority can be read into the 2004 Ordinance, even assuming, *arguendo*, the intent of the 2004 Ordinance could be said to be ambiguous in this regard (i.e., capable of more than one reasonable interpretation), it was improper for the circuit court to not view the matter in the light most favorable to the City and to instead take the drastic step of granting judgment on the pleadings against the City without the benefit of discovery. *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).

CONCLUSION

For the foregoing additional reasons, together with those set forth in the City's principal brief, the motion for judgment on the pleadings should have been denied in its entirety, and the circuit court's grant of the motion should be reversed.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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