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SC Court of Appeals

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Respondent's Motion to Dismiss & Reply

Adams Outdoor Advertising v. West & Joyce

Appellate Case No. 2025-001729

South Carolina Court of Appeals

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Exhibit 1

Lease Agreement Dated July 15, 2009, Recorded January
22, 2010, in Book 1058, at Page 7711

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729

South Carolina Court of Appeals



Doc ID: 001968180005 Type: DEE
Recorded: 01/22/2010 at 10:42:15 AM
Fee Amt: \$11.00 Page 1 of 5
Darlington County, SC
Scott B. Suggs Clerk of Court

BK 1058 PG 7711-7715

LEASE AGREEMENT

Lease # 300080066

Board/Structures # 07/005365

THIS AGREEMENT, made this 15th day of July 20 09, by and between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee"), whose address is: 1385 Alice Dr., Florence, SC 29505

and West Oil Company ("Lessor"), whose address is 312 Lakeview Blvd., Hartsville, SC 29550 WITNESSETH:

1. **DEMISE:** Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease, and shall not enter into any agreement for or conditioned upon the removal of Lessee's Structures; the Property is located in the City/County of Darlington in the State of South Carolina, and is more particularly described as:

Existing Structure(s) Address: 105 West Bobo Newsome Highway Tax Parcel #
Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to SC 151 Hwy.

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures.

2. **TERM:** This Lease is for a term of ten (10) years, commencing on the 1st day of October 20 09, and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. **RENT:** Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ 500.00, paid in advance, payable annually, on or before the 15th day of October.

4. **STRUCTURES:** All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. **REPRESENTATIONS:** Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. **CANCELLATION:** If, in Lessee's sole opinion: a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund of any prepaid rent, prorated as of the date of cancellation.

7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third person caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition.

9. **ASSIGNMENT:** This lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease.

10. **RIGHT OF FIRST REFUSAL TO PURCHASE:** Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

11. **NOTICE:** Any notice ("Notice") to Lessor or Lessee described in this Agreement in order to be effective must be in writing and sent certified mail, return receipt requested, and then shall only be effective upon the earlier of a) the date that said Notice is delivered and received by a person at the address specified in the Agreement; or, b) the date that is three (3) days after mailing (postage prepaid) by certified mail, return receipt requested, to such address; provided that in either case Notice shall be delivered to such other address as Lessor or Lessee, as the case may be, has previously designated in writing and provided to the other by Notice as set forth herein.

12. **MEMORANDUM OF LEASE:** Lessor agrees that this Lease Agreement may be recorded.

13. **MISCELLANEOUS:** In the event of litigation between Lessor and Lessee predicated upon this Lease Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, provided, however, that Lessee shall first be given written Notice of default as set forth herein, and shall have failed to cure such default within thirty (30) days of receipt of said Notice. Neither Lessor nor Lessee shall be bound by any terms, conditions or oral representations that are not set forth in this Lease Agreement. The law of the state in which the Property is located shall govern. This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property.

14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP

By: AOA Management Company Limited Partnership

Its: Managing Agent

By: Adams Outdoor Advertising, Inc.

Its: Managing General Partner

Accepted By: Randall F. Romig
Its: Vice President

Approved By: Wanda H. Harty
General Manager

Robert A. Harty
Witness (1)

Nancy Corryman
Witness (2)

By: Alexander C. West, Jr.
Lessor or Authorized Representative
Print Name

Sec. Sec. or FEIN # _____

Lessor's Phone # _____

Sue W. Davis
Witness (1)

Cynthia R. Moore
Witness (2)

Lease # 300080066
Board/Structure # 07/005365

COMPETITIVE ADVERTISING ADDENDUM

THIS ADDENDUM is executed concurrently with, attached to and made part of a LEASE AGREEMENT, dated 7/15/09, ("Lease"), between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee") and West Oil Company ("Lessor"). In addition to the provisions set forth in the LEASE AGREEMENT, Lessee and Lessor also agree to the following:

COMPETITIVE ADVERTISING: No advertising copy may be installed upon the Structures that DIRECTLY COMPETES WITH THE PRODUCTS SOLD OR THE SERVICES PROVIDED BY Lessor, the same being specifically:

Food store, Gasoline/Fuel, Convenience Store

Lessee shall remove any such competitive advertising copy within thirty (30) days after receipt of written Notice from Lessor.

IN THE EVENT OF A CONFLICT between the Lease and this Addendum, the provisions of this Addendum shall take priority; in all other respects, the Lease remains unchanged.

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

By: [Signature]
Lessor or Authorized Representative

Print Name

Soc. Sec. or FEIN #: 57-0444760

Lessor's Phone #: (843) 332-2201

Accepted By: [Signature]
Randall F. Romig
Its: Vice President

Approved By: [Signature]
General Manager

[Signature]
Witness (1)

[Signature]
Witness (2)

[Signature]
Witness (1)

[Signature]
Witness (2)

Exhibit 2

Affidavit of Glynn Willis

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership
v.
West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A #2024-CP-16-00922

Adams Outdoor Advertising Limited)
Partnership,)

Plaintiff,)

vs.)

West & Joyce, LLC, successor in interest)
to West Oil Company,)

Defendant.)

AFFIDAVIT OF
GLYNN F. WILLIS

The undersigned, having been duly sworn, deposes and says as follows:

1. I am over the age of twenty-one, competent to testify regarding the matters contained herein, and know them to be true of my own personal knowledge or of the records of the corporation.
2. I am employed as the Real Estate Manager at Adams Outdoor Advertising ("Adams") in Florence, South Carolina.
3. In July of 2009, I assisted in the negotiation of a Lease Agreement ("the lease") with West Oil Company, which I understand to be the predecessor in interest of West & Joyce, LLC. A lease was entered into on July 15, 2009. A copy of the lease is attached hereto as Exhibit "A."
4. The lease was for property located at 105 West Bobo Newsome Highway in Darlington County. The lease was filed with the Darlington County Clerk of Court on January 22, 2010 in Book 0158 at Page 7711, and is a public record in Darlington County.
5. The lease continued for a number of years and all lease payments were made by Adams.

6. During the month of October 2024, I received a telephone call from Mr. Reginald Joyce advising me that West & Joyce, LLC had moved and failed to advise Adams of its new address; therefore, he was concerned that some lease checks may not have been received. He provided me with their new address and I checked with the accounting department at Adams to see if any checks had been returned.

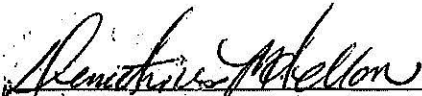
7. At this same approximate time, I checked the records of the Darlington County Tax Assessor to see when the address was changed and came to learn that the property located at 105 West Bobo Newsome Highway had been subdivided and a portion sold to a third party purchaser in 2019.

8. At no time was Adams notified of the pending sale or given its thirty day right of first refusal pursuant to paragraph 10 of the attached lease.

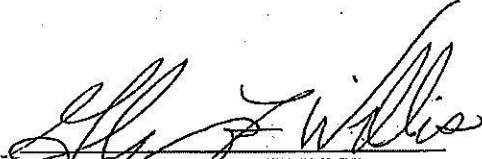
9. Adams was never contacted by the purchaser who would have been on notice of the lease and the right of first refusal from the title search done on the property prior to the purchase.

FURTHER THE AFFIANT SAITH NOT.

SWORN TO BEFORE ME THIS 31st
day of January, 2025.


Notary Public for State of South Carolina
My Commission Expires: 3/15/26

DEMETRIUS MCLELLAN
Notary Public, State of South Carolina
My Commission Expires 3/15/2026


GLYNN F. WILLIS



Doc ID: 001968160005 Type: DEE
Recorded: 01/22/2010 at 10:42:15 AM
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Lease # 300080066

Board/Structures # 07/005365

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WITNESSETH:

1 DEMISE: Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease, and shall not enter into any agreement for or conditioned upon the removal of Lessee's Structures; the Property is located in the City/County of Darlington in the State of South Carolina, and is more particularly described as:

Existing Structure(s) Address: 105 West Bobo Newsome Highway Tax Parcel # _____
Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy, 15 intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to SC 151 Hwy.

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures.

2. TERM: This Lease is for a term of five (5) years, commencing on the 1st day of October 20 09, and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. RENT: Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ 500.00, paid in advance, payable annually, on or before the 15th day of October.

4. STRUCTURES: All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. REPRESENTATIONS: Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. CANCELLATION: If, in Lessee's sole opinion: a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund of any prepaid rent, prorated as of the date of cancellation.

7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third person caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition.

9. **ASSIGNMENT:** This lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease.

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14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP

By: AOA Management Company Limited Partnership

Its: Managing Agent

By: Adams Outdoor Advertising, Inc.

Its: Managing General Partner

By: [Signature]
Lessor or Authorized Representative
ALEXANDER C. WEST, JR
Print Name

Accepted By: [Signature]
Randall F. Romig
Its: Vice President

Sec. Sec. or FEIN / _____

Approved By: [Signature]
General Manager

Lessor's Phone # - _____

[Signature]
Witness (1)

[Signature]
Witness (1)

[Signature]
Witness (2)

[Signature]
Witness (2)

Exhibit 3

Transcript of February 10, 2025 Hearing on West & Joyce's Motion for Summary Judgment

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

I N D E X

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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)
(NO EXHIBITS INTRODUCED DURING HEARING)

P-R-O-C-E-E-D-I-N-G-S

1
2 MR. PAYNE: Good morning, judge.

3 THE COURT: Good morning.

4 MR. PAYNE: I think my motion is first, Your
5 Honor. Jeff Payne here today on behalf of the
6 defendant here West & Joyce, LLC. I've got here
7 before Your Honor I motion for summary judgment.
8 And, Your Honor, what we've got here today is a
9 motion for a summary judgment. We're dealing with a
10 billboard lease that was out on some property on
11 Highway 151 at the intersection of 151 and Highway
12 15. Your Honor, the real issue here is that the
13 billboard lease between the plaintiff and by client
14 expired in October, 2024. We refused to extend the
15 lease. The plaintiff now has decided to claim that
16 they have a right of first refusal when we sold an
17 adjacent piece of property which was a convenience
18 store. There's a Refuel there. They're saying now
19 under this lease they have a right of first refusal
20 to buy this property which we sold for \$8.2 million
21 and they now claim that we violated this lease in the
22 right of first refusal. The convenience store was
23 sold back in 2019 and while we've alleged statute
24 limitations, um, in our defenses. In the case today,
25 we gonna be focusing on the fact that we never sold

1 the property. So our motion for summary judgment
2 here today when you look at the lease, and it's
3 attached to the affidavit of my client, Lex West,
4 which we submitted back in January, we never sold
5 this property. We still own it. So if you look at
6 the affidavit, Your Honor, there's on Exhibit C of
7 it, is an aerial photograph. And this property
8 originally was a 2.5 acre tract of property. When we
9 sold the convenience store we sold 1. or 2.2 acres.
10 We sold 1.7 acres to Refuel. And the sign which is a
11 tenth of a mile up the road is still on a half acre
12 tract of land. We've never sold that half acre tract
13 of land. It's still there. And if you look at the
14 exhibits you could get a better idea of the aerial
15 photo. But when you look at the terms of the lease
16 it specifically says -- they want to focus on it says
17 well, it's 151 West BoBo Newsome Highway. Well, the
18 problem is a sign does not have an address to it.
19 You don't get a physical address from 911 for a sign.
20 It's -- and they ignored the rest of the property
21 description which says "we're going to lease you this
22 piece of property. It's a tenth of a mile west of
23 the intersection of Highway 15 and to BoBo Newsome
24 Highway." That part's been totally ignored. We've
25 never sold it because this sign is one tenth of a

1 mile up the road from the property that we sold and
2 it doesn't -- let's see where does it say, sorry,
3 Your Honor. Oh, it's doesn't say it's at the
4 intersection it specifically says "it's one-tenth of
5 a mile west of Highway 15."

6 Now, in addition to that part of the lease, Your
7 Honor, when you look at it there's another specific
8 provision that says, not only you have a right to
9 lease this property a tenth of a mile west of Highway
10 15, but we also give them an easement over our
11 adjacent property. And the only adjacent property
12 that we have is where the convenience store is
13 located. So once again, we haven't signed it,
14 haven't sold it. We gave them a lease if they needed
15 to go across this adjacent property, and we think
16 it's very clear. When you look at the exhibits that
17 are on the affidavits, we did submit a memo this
18 morning, you can see that we just haven't sold it.
19 And why they have the grounds to bring this kind of
20 lawsuit is beyond me. And like I say we sold it back
21 in 2019 and now they decided to sue us on this issue.
22 So we think it's very clear. But, alternatively, if
23 you don't think it's, it's clear the plaintiff
24 drafted the links. And in South Carolina they've got
25 a duty to clearly define what it is that they have a

1 right of first refusal only. And if it's unclear, it
2 could be deemed an unreasonable restraint on the
3 alienation of property. You can't put these kind of
4 provisions in leases and other documents that
5 unreasonably restrain a party's ability to sell the
6 property. There's a recent case that came out called
7 Clarke versus Fine Housing. It's cited by both of us
8 in our briefs. And in that case the Court determined
9 that that particular right of first refusal in that
10 agreement it was unclear. It was difficult to define
11 what it was they had a right refusal, right of first
12 refusal to purchase and it was missing some other
13 things. And they said, look we, we're going to find
14 that this is an alienation, a restraint on the
15 alienation of property. We're going to void it.
16 We're going to say you have no right of first
17 refusal. So while we think it's clear we've never
18 sold this property. And we think when you look at
19 the language of it you'll see that the one-tenth of a
20 mile aspect of this description is very important
21 because that sign is one-tenth of a mile from that
22 intersection. But should you need to look at some of
23 the other alternative actions at Clarke versus Fine
24 Housing, I think would support our requested to
25 relief here as well. So we thank you. We would

1 request that you grant our motion for summary
2 judgment.

3 THE COURT: Thank you, counsel. Yes, sir?

4 MR. HOPEWELL: Good morning, Your Honor, and
5 happy birthday. Mike Hopewell representing the
6 plaintiff. We brought this action to enforce a right
7 of first refusal. The lease is a two page lease. As
8 counsel said my client drafted the lease but there
9 was negotiation that was done. The first provision
10 of the lease, paragraph one, describes the property.
11 It says, it's 105 West Bobo Newsome Highway. There's
12 a blank for tax parcel that's left empty. And then
13 it describes the location adjacent to State Road 151
14 By Pass approximately one-tenth mile west of the US
15 15 intersection on the north side of the roadway.
16 More described as on the west end of West Oil Company
17 store property adjacent to SC 151 Highway. It's got
18 the address. It's got a description of where it is.
19 The property location is clear. The very next term,
20 two, it has type this leases for a term of five years
21 but the defendants struck through that, I'm sorry, it
22 says ten and it struck through and changed to five -
23 everybody initiated it. So though my client drafted
24 it clearly there was some negotiation that was done
25 as to the terms after it was drafted. They could

1 theoretically have sought to change any other term as
2 well. As counsel stated as both of our memorandums
3 cite from the same case, Clarke versus Fine Housing,
4 and RRJR, in that case South Carolina Supreme Court
5 basically made a test for whether or not these rights
6 of first refusal are reasonable and allowable under
7 South Carolina law. In the Clarke case they found
8 that it was not and they threw that one out. But our
9 case is different. The test, the first part is
10 legitimacy of the purpose of the right to first
11 refusal, here clearly my company, you know, leases
12 these billboards. They lease the land from the land
13 owner and then they place billboards on them and
14 lease them to their customers and it's to keep that
15 writing intact so that if the property sold they at
16 least have an opportunity to negotiate with the new
17 land owner to keep the right and, of course, they
18 have the right to buy the property. In the Clarke
19 case the Court, specifically, found that there was no
20 price element in the, in the case with Clarke. In
21 our case on Page 2, of the two page lease it's very
22 clear, the price is - if the owner gets an offer
23 there to present it to my client - my client has the
24 option to buy it at the same price. So the price is
25 crystal clear. It stated in there the same price.

1 In the Clarke case they, they said there are no
2 procedures for how they exercise this right. In our
3 lease it's crystal clear. It says, "Adams Outdoor
4 has 30 days to accept it and buy it at the same
5 price. If not it's deem rejected." So it's 30 days
6 and it's at the same price. So the two things that
7 they found not to be present in Clarke are present in
8 our case. And the last prong of the Clarke test is
9 to clarify what property the right involves. In the
10 Clarke case, the language basically said it's a
11 parking lot with a number of parking places and -
12 here it is - so on Page 3 of our memorandum, "the
13 premises is unimproved property to be used as a
14 parking lot by both the lessor and the lessee. The
15 parties agree the unimproved property is the parking
16 spaces." Then it went on to say, "the lessee and the
17 lessor shall be entitled to use of one-half of the
18 spaces contained in the parking lot." It was a strip
19 club in a, in a mall where they're saying you can use
20 half the parking spaces but it doesn't say which one.
21 So it was so unspecific as to be almost nothing. In
22 our case it's very specific. So the fact that the
23 Clarke case the Court found that it was an
24 unreasonable alienation of property rights, is just
25 different than our case. The very test that, that

1 they would throw out the Clarke right of first
2 refusal on, we match it right down the line. So, you
3 know, we would request that the defendant's motion
4 for summary judgment be denied.

5 THE COURT: Thank you, sir.

6 MR. PAYNE: Judge, I don't know if you want to
7 see these now or I can handle one of these up to you
8 ---

9 THE COURT: If you will.

10 MR. PAYNE: --- Just to -- I'm kind of a picture
11 guy. That -- just so we're clear, if you look at
12 Exhibit C on my client's affidavit, Your Honor, it's
13 showing so you see what we're talking about. The
14 billboard there to the left that whole tract, that
15 half acre tract has not been sold. We still own it.
16 And I don't think there's any dispute that we own it.
17 Their contention is when we sold Refuel in 2019 for
18 \$8.2 million that they had a right of first refusal
19 to buy all the land at that point in time because we
20 sold this adjacent property. And so that's, that's
21 what we're talking about. The next exhibit, Exhibit
22 D actually has - that's off of the GIS site and you
23 can, it's a little different view but we actually use
24 the measurement tool there and you can see it says
25 .088 down there running along Bobo Newsome Highway.

1 So that's the distance from the side to the
2 intersection which tells you that the description in
3 the lease which says "we're leasing you the property,
4 a tenth of a mile up the road from that
5 intersection." And so that's what it is. That's
6 where the sign is. That's what they leased. You
7 know, they didn't lease all this other property,
8 these other 1.7 acres. That's why we gave them the
9 easement. If they needed some kind of utility
10 easement or whatever on the adjacent property, that's
11 what that other provision in the lease that is
12 referenced. If you see the lease which is Exhibit A
13 on the affidavit, in the part I'm talking about
14 there, is there's a block there under Paragraph 1 and
15 then the next paragraph under that block says, "that
16 the lessor agrees to grant them the following
17 easements over the property." There's just no need
18 for that provision if they already are leasing the
19 whole property by virtue of their property
20 description. So I think when you look at those
21 exhibits, look at the aerial photos you'll agree that
22 we haven't sold the property. There's -- there's
23 just no issue for this Court to resolve and he was
24 like for the Court to grant our motion for summary
25 judgment.

1 Thank you.

2 THE COURT: Twenty days to quick for purposed
3 orders?

4 MR. PAYNE: No, sir.

5 MR. HOPEWELL: It's fine, sir.

6 THE COURT: If you need more time just let each
7 other know and let's us know, okay.

8 MR. HOPEWELL: Very good. Thank you, Your Honor.

9 THE COURT: Well, take a look at it. Y'all give
10 us some orders, it would be very appreciated.

11 MR. PAYNE: Thank you, judge.

12 MR. HOPEWELL: Thank you.

13 (CONCLUSION OF HEARING HELD ON FEBRUARY 10, 2025)

14

15

16

17

18

19

20

21

22

23

24

25

Exhibit 4

Summons and Complaint

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A #2024-CP-16-_____

Adams Outdoor Advertising Limited)
Partnership,)
)
Plaintiff,)

vs.)

West & Joyce, LLC, successor in)
interest to West Oil Company,)
)
Defendant.)
_____)

SUMMONS
(Breach of Contract)
(Non-Jury)

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 470 W. Evans Street, Post Office Box 148, Florence, South Carolina, 29503, within thirty (30) days from the service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

September 19, 2024

s/Michael S. Hopewell
Michael S. Hopewell (S.C. Bar #65335)
Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 (fax)
mhopewell@amhattorneys.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A #2024-CP-16-_____

Adams Outdoor Advertising Limited)
Partnership,)
)
)
)
Plaintiff,)

vs.)

West & Joyce, LLC, successor in interest)
to West Oil Company,)
)
Defendant.)
_____)

COMPLAINT
(Breach of Contract)
(Non-Jury)

The Plaintiff, complaining of the Defendant herein, would allege and show unto the court as follows:

JURISDICTION

- 1. The Plaintiff is a limited partnership organized and existing pursuant to the laws of a state other than South Carolina which is registered to conduct business in South Carolina and conducts business in South Carolina.
- 2. The Defendant is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Darlington County, and is successor in interest to West Oil Company.
- 3. Jurisdiction and venue are proper in Darlington County.

FOR A FIRST CAUSE OF ACTION
(Breach of Lease)

- 4. On or about July 15, 2009, the Plaintiff and the Defendant’s successor in interest, West Oil Company, entered into a Lease Agreement pursuant to which the Plaintiff leased property

owned by the Defendant in Darlington County for the purpose of erecting a billboard. A copy of the Lease Agreement is attached hereto and incorporated herein by reference as Exhibit "A."

5. Exhibit "A" was filed in the Office of the Darlington County Clerk of Court on January 22, 2010 in Book 1058 at Page 7711.

6. The property subject to the Lease Agreement is identified in paragraph 1 of Exhibit "A" as "105 West Bobo Newsome Highway." Paragraph 1 of Exhibit "A" further grants to Plaintiff an easement for reasonable access, an easement to maintain an unobstructed view of Lessee's structure, and an easement to connect utilities to Lessee's structure.

7. The term of the lease was for a period of five years commencing from October 1, 2009 with terms in place for automatic extension or termination as set forth therein.

8. In paragraph 10 of Exhibit "A", the Defendant granted to the Plaintiff a right of first refusal to purchase the property that is the subject of the lease. It reads as follows:

RIGHT OF REFUSAL TO PURCHASE: Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

9. The Plaintiff has continued to pay the annual rent to the Defendant, in full and on time, each and every year since the execution of Exhibit "A."

10. Despite having complied with the terms of Exhibit "A", the Plaintiff learned, in October of 2023, that the Defendant had sold the subject property to a third party on or about December 23, 2019.

11. The Plaintiff is informed and believes that the sale of the property to the third party violates the terms of paragraph 10 of Exhibit "A" in the following particulars:

(a) Defendant failed to provide Plaintiff notice that the property was being offered for sale;

(b) Defendant failed to advise Plaintiff that an acceptable offer had been received;

(c) Defendant failed to provide Plaintiff with a thirty (30) day period to agree, in writing, to purchase the property for the price and on the terms set forth in the offer or to waive its right to do so; and

(d) Defendant failed to advise the third party buyer that the Plaintiff had a right of first refusal on the property.

11. The Plaintiff has been harmed by the Defendant's breach of contract in that it was deprived of the opportunity to purchase the property or to negotiate with the third party buyer for a lease agreement.

WHEREFORE, the Plaintiff prays for the following relief:

(a) That it be granted judgment against the Defendant in an amount proved at trial and deemed appropriate by the court;

(b) For its attorney's fees pursuant to the terms of Exhibit "A."

(c) For the costs of this action; and

(d) For such other and further relief as the court deems just and proper.

s/Michael S. Hopewell

Michael S. Hopewell (S.C. Bar #65335)

Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC

Post Office Box 148

Florence, SC 29503

(843) 669-0089

(843) 669-0085 fax

mhopewell@amhattorneys.com

September 19, 2024



Doc ID: 001988160006 Type: DEE
Recorded: 01/22/2018 at 10:42:15 AM
Fee Amt: \$11.00 Page 1 of 5
Darlington County, SC
Scott B. Suggs Clerk of Court

BK 1058 PG 7711-7715



LEASE AGREEMENT

Lease # 300080066

Board/Structures # 07/005365

THIS AGREEMENT, made this 15th day of July 20 09, by and between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee"), whose address is: 1385 Alice Dr., Florence, SC 29505

and West Oil Company ("Lessor"), whose address is 312 Lakeview Blvd., Hartsville, SC 29550 WITNESSETH:

1 DEMISE: Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease, and shall not enter into any agreement for or conditioned upon the removal of Lessee's Structures; the Property is located in the City/County of Darlington in the State of South Carolina, and is more particularly described as:

Existing Structure(s) <input checked="" type="checkbox"/>	Address: 105 West Bobo Newsome Highway	Tax Parcel #
Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to SC 151 Hwy.		

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures.

2. TERM: This Lease is for a term of 10 years, commencing on the 1st day of October 20 09, and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. RENT: Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ 500.00, paid in advance, payable annually, on or before the 15th day of October.

4. STRUCTURES: All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. REPRESENTATIONS: Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. CANCELLATION: If, in Lessee's sole opinion: a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund of any prepaid rent, prorated as of the date of cancellation.

EXHIBIT "A"

7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third person caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition

9. **ASSIGNMENT:** This lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease

10. **RIGHT OF FIRST REFUSAL TO PURCHASE:** Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

11. **NOTICE:** Any notice ("Notice") to Lessor or Lessee described in this Agreement in order to be effective must be in writing and sent certified mail, return receipt requested, and then shall only be effective upon the earlier of a) the date that said Notice is delivered and received by a person at the address specified in the Agreement; or, b) the date that is three (3) days after mailing (postage prepaid) by certified mail, return receipt requested, to such address; provided that in either case Notice shall be delivered to such other address as Lessor or Lessee, as the case may be, has previously designated in writing and provided to the other by Notice as set forth herein.

12. **MEMORANDUM OF LEASE:** Lessor agrees that this Lease Agreement may be recorded.

13. **MISCELLANEOUS:** In the event of litigation between Lessor and Lessee predicated upon this Lease Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, provided, however, that Lessee shall first be given written Notice of default as set forth herein, and shall have failed to cure such default within thirty (30) days of receipt of said Notice. Neither Lessor nor Lessee shall be bound by any terms, conditions or oral representations that are not set forth in this Lease Agreement. The law of the state in which the Property is located shall govern. This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property.

14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

By: [Signature]
Lessor or Authorized Representative
ALEXANDER C WEST, JR
Print Name

Accepted By: [Signature]
Randall F. Romig
Its: Vice President

Sec. Sec. or FEIN /

Approved By: [Signature]
General Manager

Lessor's Phone # - _____
[Signature]
Witness (1)

[Signature]
Witness (1)
[Signature]
Witness (2)

[Signature]
Witness (2)

Lease # 300080066
Board/Structure # 07/005365

COMPETITIVE ADVERTISING ADDENDUM

THIS ADDENDUM is executed concurrently with, attached to and made part of a LEASE AGREEMENT, dated 7/15/09, ("Lease"), between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee") and West Oil Company ("Lessor"). In addition to the provisions set forth in the LEASE AGREEMENT, Lessee and Lessor also agree to the following:

COMPETITIVE ADVERTISING: No advertising copy may be installed upon the Structures that DIRECTLY COMPETES WITH THE PRODUCTS SOLD OR THE SERVICES PROVIDED BY Lessor, the same being specifically:

Food store, Gasoline/Fuel, Convenience Store

Lessee shall remove any such competitive advertising copy within thirty (30) days after receipt of written Notice from Lessor.

IN THE EVENT OF A CONFLICT between the Lease and this Addendum, the provisions of this Addendum shall take priority; in all other respects, the Lease remains unchanged.

ADAMS OUTDOOR ADVERTISING LIMITED
PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

By: [Signature]
Lessor or Authorized Representative

Print Name

Soc. Sec. or FEIN #: 57-0444760

Lessor's Phone #: (843) 332-2201

Accepted By: [Signature]
Randall F. Romig
Its: Vice President

Approved By: [Signature]
General Manager

[Signature]
Witness (1)

[Signature]
Witness (2)

[Signature]
Witness (1)

[Signature]
Witness (2)

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

Acknowledgment from Grantor
OR
Maker of the Instrument

I, Susan W. Davis, do hereby certify that
Name of Official or Notary Public

ALEXANDER C. WEST, JR., personally appeared
Name of Grantor or Maker

before me this 4th day of September, 2009 and
acknowledged the due execution of the foregoing instrument.

Cynthia R. Moore
Witness Signature

Susan W. Davis
Notary Signature

SWORN TO before me this
4th day of September 2009

Notary Public for South Carolina
My Commission Expires: 06-05-2016

STATE OF GEORGIA

Acknowledgement from Grantor

COUNTY OF COBB

Maker of the Instrument

I, Nancy B. Cormican do hereby certify that
(Name of Official or Notary Public)

Randall F. Romig personally appeared
(Name of Grantor or Maker)

before me, this 13 day of October 2009 and
acknowledged the due execution of the forgoing instrument.

[Signature]
(Witness)

Nancy B. Cormican
(Notary)

SWORN TO before me this

13 day of October 2009

Notary Public for Georgia

My Commission Expires: 4-6-13

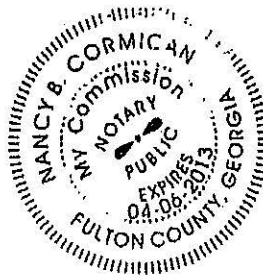


Exhibit 5

West & Joyce's Answer and Counterclaim

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited
Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to
West Oil Company,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A # 2024-CP-16-00922

**ANSWER AND COUNTERCLAIM
OF DEFENDANT**

The Defendant West & Joyce, LLC, hereby answers the Plaintiff's Complaint and counterclaims thereto, as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The Defendant admits the allegations contained in Paragraph 1.
3. Answering the allegations contained in Paragraph 2, the Defendant admits all allegations except that it is not a successor in interest to West Oil Company.
4. The Defendant admits the allegations contained in Paragraph 3.
5. Answering the allegations contained in Paragraph 4, the Defendant admits that the Plaintiff and Defendant entered into a lease agreement pursuant to which the Plaintiff leased certain property owned by the Defendant. However, it is believed that the billboard ("Billboard") was already located on the property at the time that the lease was signed.
6. The Defendant admits the allegations contained in Paragraph 5.
7. Answering the allegations contained in Paragraph 6, the Defendant denies the allegations as they are written. The Defendant admits all allegations that are consistent with the terms of the lease.
8. The Defendant admits the allegations contained in Paragraph 7.
9. Answering the allegations contained in Paragraph 8, the Defendant denies the allegations as they are written. The Plaintiff only had a right of first refusal to purchase the property

on which the Billboard was located. The Defendant admits the allegations consistent with the terms of the Lease.

10. The Defendant admits the allegations contained in Paragraph 9.

11. The Defendant denies the allegations contained in Paragraphs 10, 11 and the second paragraph numbered as 11.

FOR A SECOND DEFENSE
(Rule 12 (b)(6)(SCRCP))

12. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against the Defendants and should be dismissed with prejudice.

FOR A THIRD DEFENSE
(Statute of Limitations)

13. The Plaintiff's claims are barred by the Statute of Limitations.

FOR A FOURTH DEFENSE
(No Breach of Lease)

14. The Defendant has not sold the property described in the Lease, and consequently, there has been no breach of the Lease.

FOR A FIFTH CAUSE OF ACTION
(Unreasonable Restraint and Alienation)

15. The right of first refusal that the Plaintiff seeks to enforce is an unreasonable restraint and alienation of real property, and consequently, it is of no force and effect.

FOR A SIXTH CAUSE OF ACTION
(Reservation of Rights)

16. Further answering, the Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. The Defendant gives notice of the intent to assert any further affirmative defenses that any investigation supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, the Defendant reserves the right to amend this pleading to assert any such defenses.

FOR A FIRST CAUSE OF ACTION AND BY WAY OF COUNTERCLAIM
(Injunction)

17. On July 15, 2009, the Plaintiff and Defendant entered into a Lease Agreement pursuant to the Plaintiff which leased an existing billboard structure (“Billboard”) on the property owned by West & Joyce, LLC that was located on Hwy 151 Bypass 1/10 mile west of US Hwy 15 intersection on the north side of the roadway (“Property”). A true and correct copy of the Lease is attached as Exhibit A.

18. The term of the Lease was extended several times, but it ultimately expired on October 1, 2024.

19. The Defendant properly notified the Plaintiff that the Lease terminated on October 1, 2024, and it would not be renewed.

20. The Defendant notified the Plaintiff in writing that it expected the Plaintiff to remove its Billboard from the Property.

21. Notwithstanding the notice to remove the Billboard, the Plaintiff has failed and refused to remove the Billboard, and it has abandoned it.

22. Despite the termination of the Lease, the Plaintiff is trespassing on the Defendant’s Property by continuing to access the Property and use it for its advertising needs.

23. As a result of the Plaintiff’s wrongful trespass, the Defendant is entitled to an injunction, both temporary and permanently, which prohibits the Plaintiff from trespassing on the Property.

FOR A SECOND CAUSE OF ACTION AND BY WAY OF COUNTERCLAIM
(Damages)

24. The Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs.

25. As a result of the Plaintiff’s knowing, willful, reckless and malicious trespass upon the Defendant’s Property, the Defendant is entitled to recover a judgment against the Plaintiff for actual, consequential and punitive damages.

FOR A THIRD CAUSE OF ACTION AND BY WAY OF COUNTERCLAIM
(Declaratory Judgment)

26. The Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs.

27. The Defendant requests that the Court issue a declaratory judgment finding that the Plaintiff has no right to access the Property or use the Billboard.

28. The Defendant further requests that the Court issue a declaratory judgment finding that the Defendant did not sell the Property that is subject to the Lease such that the Plaintiff had no right to purchase the real estate located adjacent to the Property.

29. The Defendant further requests that the Court issue a declaratory judgment finding that the Defendant has the right to remove and destroy any structures, including the Billboard, and that that the Plaintiff shall pay for the cost of their removal and destruction.

WHEREFORE, the Plaintiffs request the following relief:

1. As to the First Cause of Action – that the Court issue an order mandating that the Plaintiff remove the Billboard and after that is accomplished that the Court issue an Order restraining and enjoining (temporarily and permanently) the Plaintiff from trespassing on the Property;
2. As to the Second Cause of Action – that the Court award the Defendant a judgment against the Plaintiff for actual and consequential damages, prejudgment interest, punitive damages as are warranted and attorney’s fees that may be allowed under South Carolina law;
3. As to the Third Cause of Action – that the Court issue a declaratory judgment finding that: (1) the Plaintiff has no right to use the Billboard or access the Property; (2) the Defendant has not sold the Property; and (3) The Defendant has the right to remove and destroy the Billboard on the Property.
4. As to All Causes of Action – that the Court award the Defendant its costs and reasonable attorney’s fees (as are allowed by the Lease) and the Court award such other and further relief as it deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/ Jeffrey L. Payne

Jeffrey L. Payne, Esquire (SC Bar #: 15136)

1831 W. Evans Street, Suite 400

Florence, South Carolina 29501

Telephone: (843) 662-9008

Fax: (843) 667-0828

Email: jpayne@turnerpadget.com

ATTORNEYS FOR PLAINTIFF

Florence, South Carolina

October 25, 2024

Exhibit 6

Adams' Memorandum in Opposition to West & Joyce's Motion for Summary Judgment

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729

South Carolina Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to West Oil Company,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A #2024-CP-16-00922

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

The Plaintiff, through its undersigned attorney, respectfully submits this Memorandum in Opposition to the Defendant's Motion for Summary Judgment.

BACKGROUND

On September 19, 2024, the Plaintiff, Adams Outdoor Advertising Limited Partnership ("Adams"), filed the present action for breach of contract based upon the lease it entered into with the Defendant on July 15, 2009. A copy of the Lease Agreement is attached to the Affidavit of Glynn F. Willis, copies of which are attached hereto.

The basis for Plaintiff's case is that the Defendant failed to provide Adams with its right of first refusal to purchase as set forth in paragraph 10 of the two page lease. That paragraph states, in total:

RIGHT OF FIRST REFUSAL TO PURCHASE: Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be

deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the least of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

Pursuant to its terms, the lease was extended by five years every five years; therefore, the final agreed upon extension occurred on or about July 15, 2019 and could be terminated no sooner than July 15, 2024. On October 18, 2023, the Defendant sent a letter to Adams announcing its intention to terminate the lease upon the 2024 expiration date.

By contacting the Darlington County Tax Assessor's office, Adams learned that on or about December 23, 2019, the Defendant had sold the vast majority of the property to a third party.

ARGUMENT

In analyzing the law pertaining to rights of first refusal, the Supreme Court of South Carolina set forth a test in the case of Clarke v. Fine Housing, Inc. and RRJR, L.L.C., 438 S.C. 174, 882 S.E.2d 763 S.C. 2023. In Clarke, the Supreme Court cited to the Restatement (Third) of Property and held that three factors were to be considered in assessing whether a right of first refusal unreasonably restrains alienation. The three factors are:

1. The legitimacy of the purpose of the right;
2. The price at which the right may be exercised; and
3. The procedures for exercising the right.

The Court went on to state that those factors were not exclusive and in the Clarke case identified another point which was the amount of clarity as to what real property the right encumbers. (438 S.C. 182).

In the Clarke case, the court found that the leased property was not adequately identified because it referred only to non-specific parking spaces which were described in the lease as follows:

"The premises is unimproved property to be used as a parking lot by both the Lessor and the Lessee. The parties agree the unimproved property is the parking spaces." The lease went on to state "the Lessee and Lessor shall be entitled to use of one-half of the spaces contained in the parking lot." (438 S.C. 180).

In the present case, the property is described in the lease with particularity as follows:

105 West Bobo Newsome Highway. Tax Parcel # _____ adjacent to State Road 151 Bypass, approximately one-tenth mile west of U.S. Highway 15 Intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to S.C. 151 Highway.

The property is well identified by its address as well as location; therefore, there is no uncertainty as to what property is involved.

In Clarke, the Court further emphasized that the right of first refusal in that case did not provide any instruction as to pricing. In the present case, however, paragraph 10 of the lease is clear when it states:

In the event such sale of the property is proposed whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third party to Lessor, either case being referred to herein as the "offer", Lessor shall first provide each and every such offer in writing to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty days to agree in writing to purchase the property for the price and on the terms set forth in the offer; otherwise, the offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an offer, Lessor may proceed to consummate the sale with the third party at the same price and on the same terms as those set forth in the offer.

The terms set forth are precise and clear. The third part of the test was that the procedures would be analyzed for exercising the right. In our case, the procedures are clear and reasonable –

Adams was to be given thirty days to match any offer that the Defendant found to be acceptable. If the offer was not matched within the thirty day period, the Defendant could proceed with the sale.

In the present case, all of Adams' rights agreed upon in the lease in paragraph 10 were ignored. Adams was not given notice of the sale let alone an opportunity to exercise its right of first refusal.

Because the terms of the right of first refusal in the lease comply with the law of South Carolina as set forth in Clarke, there is no unreasonable restraint on alienation and the Defendant's Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,

February 7, 2025

s/Michael S. Hopewell

Michael S. Hopewell (S.C. Bar #65335)

Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC

470 W. Evans Street

Post Office Box 148

Florence, SC 29503

(843) 669-0089

(843) 669-0085 fax

mhopewell@amhattorneys.com

Exhibit 7

Adams' Memorandum in Support of Motion to Alter or Amend Judgment, with Accompanying Exhibits

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729

South Carolina Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Adams Outdoor Advertising Limited)
 Partnership,)
)
 Plaintiff,)
 vs.)
)
 West & Joyce, LLC, successor in interest)
 to West Oil Company,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 C/A #2024-CP-16-00922

**PLAINTIFF’S MEMORANDUM
 IN SUPPORT OF MOTION TO
 ALTER OR AMEND JUDGMENT**

The Plaintiff, through its undersigned attorney, respectfully submits this Memorandum in Support of its Motion to Alter or Amend Judgment.

PROCEDURAL BACKGROUND

On September 19, 2024, the Plaintiff, Adams Outdoor Advertising Limited Partnership ("Adams"), filed the present action for breach of contract based upon the lease it entered into with the Defendant on July 15, 2009. The basis of the lawsuit was for Plaintiff to enforce its Right of First Refusal pursuant to the Lease Agreement. The purpose of the lease was for Adams to continue to lease a billboard, the structure for which was already located on the property owned by the Plaintiff.

On October 25, 2024, the Defendant filed an Answer and Counterclaim which inter alia, sought a declaratory judgment finding that the Defendant had the right to remove and destroy any structures, including the billboard, and that the Plaintiff shall pay for the costs of their removal and destruction. (Paragraph 29, Defendant’s Answer and Counterclaim).

On January 13, 2025, the Defendant filed a Motion for Summary Judgment which stated, in part:

"Plaintiff's billboard lease that ended on October 1, 2024 has terminated and Plaintiff has no further right to use West & Joyce's property for the billboard structure thereon." (Paragraph 3, Plaintiff's Motion for Summary Judgment.

On October 14, 2024, after the filing of the Complaint and prior to the filing of the Answer and Counterclaim, counsel for the Defendant sent a certified letter to John Weiss, General Manager of Adams, providing notice of alleged default. A copy of the letter is attached as Exhibit "A" to this Memorandum.

Shortly thereafter, on November 1, 2024, counsel for the Defendant sent a certified letter to Richard Zecchino, Chief Legal Officer for Adams, which included a trespass notice indicating that Adams' personnel were not allowed on the property and if they trespassed, they would be subject to arrest. A copy of this letter is attached as Exhibit "B."

On February 10, 2025, the Defendant's Motion for Summary Judgment came before the court for oral argument. Thereafter, on April 9, 2025, the court entered an Order Granting Summary Judgment to the Defendant.

In the Order, the court ruled that "Defendant has the right to remove and destroy the billboard if it elects to do so." (Paragraph 4, Conclusion to the Order.)

ARGUMENT

Paragraph 4 of the Lease Agreement reads, in its entirety:

All structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

A copy of the Lease Agreement is attached as Exhibit "C."

The purpose of the instant motion is to ask the court to alter or amend the judgment to delete that portion of the Order that grants the Defendant the right to remove and destroy the billboard if it elects to do so. It is implicit in that ruling that the Defendant is being granted ownership of the monopole and the billboard that is upon it, and it is the Plaintiff's position that there is no legal basis for that ruling.

As set forth in the lease, the structure itself is to remain the property of the Lessee (Adams) and removed by the Lessee before or within a reasonable time of termination or expiration of the lease. It appears to be the Defendant's position that its letter purporting to terminate the lease and the trespass notice, both of which were sent during the pendency of the litigation, result in the legal conclusion that the Plaintiff abandoned the billboard.

In fact, the litigation itself was about the billboard and the property on which it was located and its removal during the pendency of the litigation would have rendered the litigation moot.

The billboard requires two permits, one from the county and one from the SCDOT. At this point the billboard location is grandfathered because it was permitted at the time it was erected. However, due to changes in ordinances and regulations, if it is removed, it could not be replaced by another billboard.

Other than the conclusory statement that the Defendant has the right to remove and destroy the billboard, the Order does not contain any analysis for the transfer of ownership of the monopole structure or the billboard on which it sits from the Defendant to the Plaintiff.

THEREFORE, the Plaintiff respectfully requests that the Order be amended to remove the finding that the Defendant has the right to remove and destroy the billboard or any other

reference that could be construed to transfer ownership of the monopole and billboard to the Defendant.

RESPECTFULLY SUBMITTED,

May 9, 2025

s/Michael S. Hopewell
Michael S. Hopewell (S.C. Bar #65335)
Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mhopewell@amhattorneys.com

Turner Padget

ELECTRONICALLY FILED - 2025 May 12 8:58 AM - DARLINGTON - COMMON PLEAS - CASE#2024CP1600922

Jeffrey L. Payne

REPLY TO
E-Mail: JPayne@TurnerPadget.com
Writer's Direct Dial: (843) 656-4432
Writer's Direct Fax: (843) 413-5825

October 14, 2024

VIA US MAIL, CERTIFIED MAIL, RRR

John Weiss, General Manager
Adams Outdoor Advertising Limited Partnership
1385 Alice Drive
Florence, SC 29501

Re: Lease Agreement – West & Joyce, Lessor and Adams Outdoor Advertising Limited Partnership, Lessee – Hartsville, South Carolina
TPGL File No.: 21193.101

Dear Mr. Weiss:

I represent West & Joyce, LLC (“West & Joyce”). This is your formal notice that Adams Outdoor Advertising Limited Partnership (“Adams”) is in default on the sign lease (“Lease”) between West Oil Company and Adams dated July 15, 2009 for property located on West Bobo Newsome Highway, Hartsville, South Carolina (“Property”). Particularly, Adams is in default for its failure to remove its sign from the Property after the Lease terminated on October 1, 2024. As you know paragraph 4 of the Lease requires the removal of Adams’ structures after the termination of the Lease. Despite multiple notices from me telling Adams to remove its sign by October 7, 2024, Adams has failed to remove its sign. As a consequence of this blatant breach, my client will seek the recovery of its damages along with its costs and attorney’s fees as are allowed to be recovered pursuant to the terms of the Lease.

Sincerely,

TURNER PADGET GRAHAM AND LANEY P.A.


Jeffrey L. Payne

JLP:alb
Enclosures



Letter to John Weiss
October 14, 2024
Page 2 of 2

cc: Michael S. Hopewell, Esquire

Glenn Willis, Real Estate Manager
Adams Outdoor Advertising Limited Partnership
1385 Alice Drive
Florence, SC 29505

Reginald Joyce

Turner Padget

ELECTRONICALLY FILED - 2025 May 12 8:58 AM - DARLINGTON - COMMON PLEAS - CASE#2024CP1600922

Jeffrey L. Payne

REPLY TO
E-Mail: JPayne@TurnerPadget.com
Writer's Direct Dial: (843) 656-4432
Writer's Direct Fax: (843) 413-5825

November 1, 2024

VIA CERTIFIED MAIL, RRR

Richard J. Zecchino, Chief Legal Officer
Adams Outdoor Advertising Limited Partnership
3801 Capital City Blvd.
Lansing, Michigan 48906

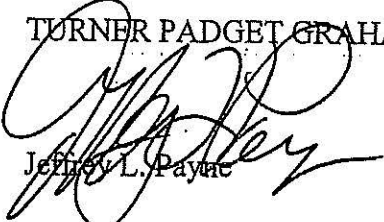
Re: Lease Agreement – West & Joyce, Lessor and Adams Outdoor Advertising Limited Partnership, Lessee – Hartsville, South Carolina
TPGL File No.: 21193.102

Dear Mr. Zecchino:

As you know, I represent West & Joyce, LLC (“West & Joyce”). I have enclosed a Trespass Notice to Adams Outdoor Advertising Limited Partnership. As of November 1, 2024, you have failed to remove the Billboard structure located on West & Joyce, LLC’s property located on Highway 151, Hartsville, South Carolina (see attached property description). Please be advised that you should not set foot on this property or it will be deemed a trespass, and you and your company will be prosecuted to the full extent of the law.

Sincerely,

TURNER PADGET GRAHAM AND LANEY P.A.


Jeffrey L. Payne

JLP:alb
Enclosures



Letter to Richard J. Zecchino
November 1, 2024
Page 2 of 2

cc: **VIA CERTIFIED MAIL, RRR**
John Weiss, General Manager
Adams Outdoor Advertising Limited Partnership
1385 Alice Drive
Florence, SC 29505

VIA CERTIFIED MAIL, RRR
Glynn Willis, Real Estate Manager
Adams Outdoor Advertising Limited Partnership
1385 Alice Drive
Florence, SC 29501

Reginald Joyce

TRESPASS NOTICE

Date: November 1, 2024

Glynn Willis; Real Estate Manager
Adams Outdoor Advertising Limited
Partnership
1385 Alice Drive
Florence, SC 29501

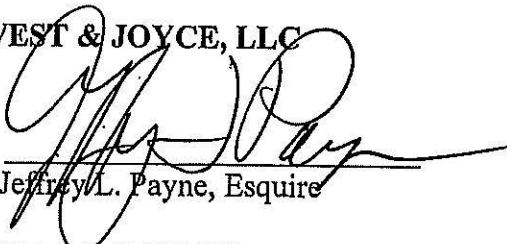
THIS LETTER IS BEING GIVEN OR SENT TO YOU INFORMING YOU THAT YOU ARE NOT ALLOWED ON THE PROPERTY OF: **WEST & JOYCE, LLC LOCATED ON HIGHWAY 151, HARTSVILLE, SOUTH CAROLINA (SEE ATTACHED "PROPERTY DESCRIPTION")**.

IF YOU COME ON THIS PROPERTY, YOU WILL BE TRESPASSING AND WILL BE SUBJECT TO BEING ARRESTED BY A LOCAL LAW ENFORCEMENT AGENCY.

THIS LETTER IS YOUR TRESPASS NOTICE.

WEST & JOYCE, LLC

By:



Jeffrey L. Payne, Esquire

Title: ATTORNEY



Doc ID: 001008160005 Type: DEE
Recorded: 01/22/2010 at 10:42:15 AM
Fee Amt: \$11.00 Page 1 of 5
Darlington County, SC
Scott B. Suggs Clerk of Court
BK 1058 PG 7711-7715



LEASE AGREEMENT

Lease # 300080066
Board/Structures # 07/005365

THIS AGREEMENT, made this 15th day of July 20 09, by and between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee"), whose address is: 1385 Alice Dr., Florence, SC 29505

and West Oil Company ("Lessor"), whose address is 312 Lakeview Blvd., Hartsville, SC 29550 WITNESSETH:

1. **DEMISE:** Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease, and shall not enter into any agreement for or conditioned upon the removal of Lessee's Structures; the Property is located in the City/County of Darlington in the State of South Carolina, and is more particularly described as:

Existing Structure(s) Address: 105 West Bobo Newsome Highway Tax Parcel # _____
Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to SC 151 Hwy.

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures.

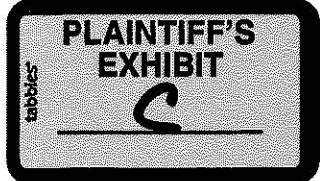
2. **TERM:** This Lease is for a term of five (5) years, commencing on the 1st day of October 20 09 and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. **RENT:** Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ 500.00, paid in advance, payable annually, on or before the 15th day of October.

4. **STRUCTURES:** All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. **REPRESENTATIONS:** Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. **CANCELLATION:** If, in Lessee's sole opinion; a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund of any prepaid rent, prorated as of the date of cancellation.



7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third person caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition

9. **ASSIGNMENT:** This lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease

10. **RIGHT OF FIRST REFUSAL TO PURCHASE:** Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

11. **NOTICE:** Any notice ("Notice") to Lessor or Lessee described in this Agreement in order to be effective must be in writing and sent certified mail, return receipt requested, and then shall only be effective upon the earlier of a) the date that said Notice is delivered and received by a person at the address specified in the Agreement; or, b) the date that is three (3) days after mailing (postage prepaid) by certified mail, return receipt requested, to such address; provided that in either case Notice shall be delivered to such other address as Lessor or Lessee, as the case may be, has previously designated in writing and provided to the other by Notice as set forth herein.

12. **MEMORANDUM OF LEASE:** Lessor agrees that this Lease Agreement may be recorded.

13. **MISCELLANEOUS:** In the event of litigation between Lessor and Lessee predicated upon this Lease Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, provided, however, that Lessee shall first be given written Notice of default as set forth herein, and shall have failed to cure such default within thirty (30) days of receipt of said Notice. Neither Lessor nor Lessee shall be bound by any terms, conditions or oral representations that are not set forth in this Lease Agreement. The law of the state in which the Property is located shall govern. This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property.

14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

By: [Signature]
Lessor or Authorized Representative
ALEXANDER C WEST, JR
Print Name

Accepted By: [Signature]
Randall F. Romig
Its: Vice President

Sec. Sec. or FBIN /

Approved By: [Signature]
General Manager

Lessor's Phone # - _____
[Signature]
Witness (1)

[Signature]
Witness (1)
[Signature]
Witness (2)

[Signature]
Witness (2)

Lease # 300080066
Board/Structure # 07/005365

COMPETITIVE ADVERTISING ADDENDUM

THIS ADDENDUM is executed concurrently with, attached to and made part of a LEASE AGREEMENT, dated 7/15/09, ("Lease"), between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee") and West Oil Company ("Lessor"). In addition to the provisions set forth in the LEASE AGREEMENT, Lessee and Lessor also agree to the following:

COMPETITIVE ADVERTISING: No advertising copy may be installed upon the Structures that DIRECTLY COMPETES WITH THE PRODUCTS SOLD OR THE SERVICES PROVIDED BY Lessor, the same being specifically:

Food store, Gasoline/Fuel, Convenience Store

Lessee shall remove any such competitive advertising copy within thirty (30) days after receipt of written Notice from Lessor.

IN THE EVENT OF A CONFLICT between the Lease and this Addendum, the provisions of this Addendum shall take priority; in all other respects, the Lease remains unchanged.

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

Accepted By: Randall F. Romig
Randall F. Romig
Its: Vice President
Approved By: Mark W. Darr
Mark W. Darr
General Manager
Witness (1): Stephanie A. Harty
Stephanie A. Harty
Witness (1)
Witness (2): Nancy Coleman
Nancy Coleman
Witness (2)

By: [Signature]
Lessor or Authorized Representative

Print Name
Soc. Sec. or FEIN #: 57-0444760
Lessor's Phone #: (843) 332-2201
Sen W. Darr
Witness (1)
Cynthia R. Moore
Witness (2)

Exhibit 8

West & Joyce's Memorandum in Support of its Motion for Summary Judgment

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited
Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to
West Oil Company,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2024-CP-16-00922

**DEFENDANT'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

Defendant West & Joyce, LLC, successor in interest to West Oil Company (“Defendant”) respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment. This Motion is based upon the grounds that all evidence shows that there is no genuine issue of material fact and that the Defendant is entitled to judgment as a matter of law.

FACTUAL BACKGROUND

This lawsuit centers on a controversy about the lease of a billboard located on property owned by Defendant. On July 15, 2009, Plaintiff Adams Outdoor Advertising Limited Partnership (“Plaintiff”) and West Oil Company entered into a Lease Agreement pursuant to which the Plaintiff leased an existing billboard structure (the “Billboard”) on a portion of the property owned by West Oil Company. (Exhibit A, Lease Agreement). The Billboard is shown on the aerial view of the .5479-acre parcel shown below (“Billboard Property”) which is still owned by the Defendant:



Adjacent to the Billboard Property is a 1.95+- acre parcel and a convenience store thereon that was owned and operated by the Defendant (“Convenience Store Property”) and is shown on the below aerial view:



The Defendant sold the Convenience Store Property and the convenience store business on April 27, 2019.

The Lease Agreement expired on October 1, 2024 and the Defendant timely notified the Plaintiff to remove the Billboard. The Plaintiff however has failed and refused to remove its Billboard and it continues to use the Billboard for its advertising purposes.

The Lease describes the Billboard Property leased by Plaintiff as “105 West Bobo Newsome Highway. . .Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 intersection on the north side of the roadway, more described as on the west end of West Oil Company’s store property adjacent to SC 151 Hwy.” (Exhibit A, pg. 1). The description also contains a checked box next to the term “Existing Structure(s)”, which refers to the Billboard. *See id.* The Lease does not provide the Plaintiff with a leasehold interest in the Defendant’s adjacent property on which it operated its Convenience Store and instead the Plaintiff tenant was granted an Easement over the adjacent property to provide it with access to the Billboard. Specifically the Lease states the following:

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee’s Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and c) an easement to connect utilities to Lessee’s structures.

Exhibit A, pg. 1. Stated another way, Plaintiff only leased the Billboard and the land around it which was located 1/10 of a mile from the intersection of Hwy. 15 and Bobo Newsome Highway. Exhibit B, Aff. of Alexander West. The Plaintiff did not lease all of the Defendants’ property fronting on the Bobo Newsome Highway including its Convenience Store that is located at the

corner of Hwy. 15. Instead it was only granted an easement across the adjacent property such that it could access the Billboard as needed. If Plaintiff was in fact leasing the adjacent property there was no need for the easement language in the lease. Hence, Plaintiff does not have, nor did it ever have, rights in the entirety of the Defendant's Property which included its convenience store which was assigned the address 105 West Bobo Newsome Highway.

On or about April 27, 2019, the Defendant sold the Convenience Store Property and the store thereon which are located at the intersection of Hwy. 15 and Bobo Newsome Highway to Refuel Operating Company, LLC. **The purchase price for the land and business was \$8,245,000.** The Defendant has not sold the .549-acre parcel that surrounds the Billboard which is shown on the aerial view of the Billboard Property shown above.

Plaintiff brings this lawsuit based on the Right of First Refusal contained in the Lease, which reads as follows:

Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of the Lease Agreement.

(Exhibit A, pg. 2). In its Complaint, Plaintiff claims that Defendant sold the Billboard Property to a third party without informing Plaintiff, thereby breaching the Lease. However, Defendant has not sold the Billboard Property, and therefore has not committed the act that Plaintiff contends would constitute a breach of the Lease. Defendant repeatedly notified Plaintiff that the Lease was going to end on October 1, 2024. Instead of taking steps to vacate the Property, Defendant brought this action and since the expiration of the Lease, has continued to appear on the Property and use it for its advertising purposes. *See* Aff. of Alexander West.

Plaintiff has brought one cause of action against Defendant, for Breach of Lease. Plaintiff contends that Defendant breached the Lease by selling the Convenience Store Property without giving Plaintiff the right of first refusal. Defendant has brought counterclaims against Plaintiff, specifically for an injunction prohibiting Plaintiff from using the Billboard Property for its advertising, damages, and declaratory judgment finding that Plaintiff no longer has any right to access the Property or use the Billboard.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. When reviewing a summary judgment motion, the court will review the pleadings, depositions, discovery, and affidavits on file in the case and will grant the motion if the evidence shows that there is no issue of material fact and that the movant is entitled to summary judgment as a matter of law. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Moore v. Weinberg, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App.

2007). Rather, the nonmoving party must come forward with specific facts showing a genuine issue for trial. Id.

LEGAL ARGUMENT

Plaintiff has no evidence to support its cause of action for breach of lease, and therefore, it should be dismissed pursuant to Rule 56, SCRCP. Further, there is no issue of material fact to refute Defendant's counterclaims. The decisive facts for both are the same: Defendant did not sell the Billboard Property, alternatively it is not clear what property the right of first refusal encumbers, and the lease term has ended. As such, this Court should dismiss Plaintiff's cause of action, issue a declaratory judgment finding that the Plaintiff no longer has any right to access the Property, and enjoin Plaintiff from further trespasses to Defendant's Property.

I. Defendant did not sell the Billboard Property and therefore did not breach the Lease.

As an initial matter, Plaintiff's cause of action for breach of lease is based entirely on its contention that Defendant sold the Billboard Property in October of 2023. *See* Compl. ¶ 10. However, no such sale took place. The Defendants still own the Billboard Property. While the Defendants sold the Convenience Store Property and the store and fuel pumps thereon to Refuel Operating Company, LLC for \$8,245,000, the Plaintiff had no rights in this property and certainly had no right of first refusal as to this transaction. For Defendant to be held liable for breaching the Lease, it must have actually breached it. The facts clearly show that the act Plaintiff contends breached the Lease ie. the sale of the Billboard Property did not occur; therefore, the cause of action for Breach of Lease should be dismissed per Rule 56, SCRCP.

II. The right of first refusal clause is an unreasonable restraint on alienation.

In addition, and alternatively, the right of refusal constitutes an unreasonable restraint on alienation, and is therefore unenforceable since the Lease that the Plaintiff drafted failed to adequately describe the property that was subject to the Lease and subject to the right of first refusal and thus, constitutes an unreasonable restraint on alienation which is unenforceable under South Carolina law.

“A servitude that imposes a direct restraint on alienation of the burdened estate is invalid if the restraint is unreasonable. Reasonableness is determined by weighing the utility of the restraint against the injurious consequences of enforcing the restraint.” Restatement 3rd of Property, § 3.4, Direct Restraints on Alienation. A right of first refusal is a direct restraint on alienation. *See Id.*, Comment(b). Restraints on alienation can be harmful in a variety of ways, including “imped[ing] [t]he operation of a free market in land, limiting the prospects for improvement, development, and redevelopment of land, and limiting the mobility of landowners and would-be purchasers.” *Id.*, Comment (c). “Other harmful consequences include the demoralization costs associated with subordinating the desires of current landowners to the desires of past owners, and frustrating the expectations that normally flow from land ownership.” *Id.* “In determining the injurious consequences likely to flow from enforcement of a restraint on alienation, the nature, extent, and duration of the restraint are important considerations. . . .The greater the practical interference with the owner’s ability to transfer, the stronger the purpose that is required to justify a direct restraint on alienation.” *Id.*

The South Carolina Supreme Court, applying the Restatement, has identified four non-exclusive factors for determining whether a right of first refusal is an unreasonable restraint on alienation:

[T]he factors to be considered in assessing whether a right of first refusal unreasonably restrains alienation include (1) the legitimacy of the purpose of the

right, (2) the price at which the right may be exercised, and (3) the procedures for exercising the right. These factors are not exclusive, and in this case, we will address another point. . .the *lack of clarity as to what real property the Right encumbers*.

Clarke v. Fine Housing, Inc., 438 S.C 174, 181, 882 S.E.2d 763, 767 (2023) (emphasis added).

The facts of Clarke v. Fine Housing are analogous to the facts in this case. In Clarke, the plaintiff brought an action for specific performance of a right of first refusal. Id., 438 S.C. at 178, 882 S.E.2d at 764. The plaintiff had leased a handful of parking spaces from the defendant's predecessor, which represented only a portion of the parcel. Id., 438 S.C. at 179, 882 S.E.2d at 766. The right of first refusal simply stated: "Lessor grants the Lessee the right of first refusal should it wish to sell." Id. The right of first refusal did not specify what property was encumbered by the right, and there was nothing in the Lease "stating either how the purchase price would be set when the time came for Clarke to exercise the Right or what procedures would govern Clarke's exercise of the Right." Id. When the property was conveyed to the defendant, plaintiff was not notified of the sale of the property, leading to the lawsuit. Id., 438 S.C. at 180, 882 S.E.2d at 766. The Court held that the right of first refusal constituted an unreasonable restraint on alienation and was unenforceable. Id., 438 S.C. at 187, 882 S.E.2d at 770. The Court reached this conclusion because it was unclear what property was encumbered by the right of first refusal, and there were no price provisions or procedures governing the exercise of the right of first refusal. Id. The Court closely analyzed the issue of clarity as to the property encumbered, particularly in the context of a lease where the lessee only has rights in a small portion of the property:

The Lease is unclear as to whether the Right encumbers all of the Subject Property or only the leased parking spaces. . .[the right of first refusal] begs the obvious question, Sell what?. . .Other provisions in the Lease strongly indicate the Right encumbers only the leased parking spaces. . .it is readily apparent that a right of first refusal that does not identify the property it encumbers can substantially restrain alienation of real property.

Clarke, 438 S.C. at 183, 882 S.E.2d at 768.

In the instant case, there is a similar lack of clarity as to what property is encumbered by the right of first refusal. As in Clarke, the Plaintiff does not have rights in the entirety of the parcel containing the Billboard. Rather, the Lease only gave Plaintiff the right to use and access the Billboard. The right of first refusal only refers generically to “the Property” and does not specify whether it encumbers only the Billboard, or the entirety of the parcel. *See Exhibit A*, pg. 2. The property description on the lease contains a check box next to the term “existing structures.” It is unclear whether this indicates that only the existing structures are “property” for purposes of the terms of the lease, or whether the existing structures are simply included with a portion of land. If the latter, it is impossible to determine what portion of land is included in the Leased Property. As applied to the right of first refusal, there are no reasonable interpretations of the Lease. If the entire parcel is subject to the right of first refusal, then the lessor cannot sell the Property without giving the lessee of the Billboard an opportunity to purchase the entire parcel. If only the Billboard is subject to the right of first refusal, then the lessor must potentially sever the portion of land the Billboard sits on from the rest of the parcel. Either way, the provision seriously interferes with the property owner’s ability to sell the property as it sees fit and is an unreasonable restraint on alienation.

Admittedly, the lease in this case is much clearer on price and procedure for exercising the right of first refusal than the lease in Clarke. Yet, without any clarity on what the right of first refusal encumbers, Defendant is still left with an unreasonable restraint on the alienation of its property. This lack of clarity is particularly stark when taken with the fact that Defendant had no hand in the drafting of the Lease, and cannot be expected to ascertain the proper application of the right of first refusal. To hold Defendant’s Property hostage over Plaintiff’s now expired Lease to

utilize a Billboard, unreasonably interferes with Defendant's rights in its property, and is an unreasonable and unenforceable restraint on alienation.

III. Any ambiguity in the lease should be construed against Plaintiff

In the alternative, if the court does not find that the right of first refusal rises to the level of an unreasonable restraint on alienation, the ambiguity should be construed against Plaintiff, as the drafter of the Lease. "Ambiguous language in a contract. . . should be construed liberally and interpreted strongly in favor of the non-drafting party." Southern Atlantic Financial Services, Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003). This is because "the drafting party has the greater opportunity to prevent mistakes in meaning." Id. Therefore, the drafting party "is responsible for any ambiguity and should be the one to suffer from its shortcomings." Id.

Even if the right of first refusal is not ambiguous enough to constitute an unreasonable restraint on alienation, it is nonetheless ambiguous. It is not clear from a reading of the Lease what portion of the property the right of first refusal encumbers. Defendant had no part in the drafting of the Lease, which was in fact drafted by the Plaintiff. *See* Aff. Alexander West. Therefore, the ambiguity should be "construed liberally and interpreted strongly" in the Defendant's favor. *See* Southern Atlantic Financial Services, supra. To interpret the Lease in Defendant's favor, the Court must find that the right of first refusal did not encumber the entirety of the Property, and that Defendant is able to sell the Property without first offering it to the lessor of the Billboard.

IV. Summary judgment is proper on Defendant's counterclaims

For the reasons set forth above, the Plaintiff no longer has any rights in the Leased Property. As Plaintiff is well aware, the term of the Lease ended on October 1, 2024. Plaintiff is no longer entitled to use the Billboard for its advertising, or to use Defendant's property to access the Billboard. Therefore, this court should issue an order enjoining the Plaintiff from continuing to

enter Defendant's Property. Further, Defendant is entitled to a declaratory judgment finding that Defendant has full access and control over its property, including but not limited to the ability to remove the Billboard if it chooses.

CONCLUSION

For the foregoing reasons, Plaintiff's Complaint against Defendant should be dismissed with prejudice pursuant to Rule 56, SCRPC, and this Court should grant judgment in favor of Defendant on its counterclaims.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/ Jeffrey L. Payne

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ATTORNEYS FOR PLAINTIFF

Florence, South Carolina

February 10, 2025

Exhibit 9

April 9, 2025, Order of the Darlington County
Court of Common Pleas

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited
Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to
West Oil Company,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A # 2024-CP-16-00922

ORDER

INTRODUCTION

This matter is before the Court on motion by Defendant West & Joyce, LLC, successor in interest to West Oil Company (“Defendant”) for summary judgment as to the breach of lease cause of action asserted against it by Plaintiff Adams Outdoor Advertising Limited Partnership (“Plaintiff”) in its Complaint, and as to Defendant’s counterclaims for injunctive relief, damages and declaratory judgment. The Court heard oral argument on Defendant’s Motion, filed on January 13, 2025, on February 10, 2025. Present were Michael Hopewell, attorney for Plaintiff, and Jeffrey Payne, attorney for Defendant. After hearing oral argument and reviewing the parties’ submissions, the Court hereby grants Defendant’s motion in its entirety for the reasons set forth below in greater detail.

LEGAL STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP; Baughman v. Am. Telephone & Telegraph Co., 306 S.C. 101, 114-

115, 410 S.E.2d 537, 545 (1991). The party seeking summary judgment bears the “initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman, 306 S.C. at 115, 410 S.E.2d at 545 (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Once this initial burden has been met, the party opposing summary judgment must, under Rule 56(e), “do more than simply show that there is some metaphysical doubt as to the material facts’ but must come forward with ‘specific facts showing that there is a genuine issue for trial.’” Id. (quoting Rule 56(e), SCRPC; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). “Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.” Id., (citing Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988) (additional citation omitted)).

In determining the appropriateness of granting summary judgment, the Court is not “required to single out some one morsel of evidence . . . to create an issue of fact that is not genuine.” Englert, Inc. v. Netherlands Ins. Co., 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (quoting Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)). Where a defendant establishes an entitlement to judgment as a matter of law, the court must grant summary judgment. *See* Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) (“Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.”) (citation omitted); Dyer v. Moss, 284 S.C. 208, 210-211, 325 S.E.2d 69, 70 (Ct. App. 1985).

FACTS

I. Plaintiff’s cause of action for breach of lease.

Plaintiff's breach of lease cause of action hinges on the distinction between two separate parcels of property: a .5479 acre parcel bearing TMS No. 058-00-01-167 and containing a billboard ("Billboard Property") and a 1.95+ acre parcel of land bearing TMS No. 058-00-01-101 and containing a convenience store that was owned and operated by the Defendant ("Convenience Store Property"). The Billboard Property is still owned by Defendant, a successor to West Oil Company. On April 27, 2019, Defendant sold the Convenience Store Property and the convenience store business located thereon for Eight Million Two Hundred Forty-Five Thousand and 00/100 (\$8,245,000.00). Plaintiff contends that it has rights in both parcels of land, while Defendant asserts that Plaintiff's rights are limited to the Billboard Property. Ultimately, the question is whether a lease between the parties gave Plaintiff a right of first refusal in the Billboard Property or in both the Billboard Property and the Convenience Store Property.

On July 15, 2009, Plaintiff and West Oil Company entered into a Lease Agreement ("Lease") pursuant to which the Plaintiff leased an existing billboard structure (the "Billboard") and some amount of the surrounding property which was owned by West Oil Company for the price of \$500.00 annually. (Exhibit A, Lease Agreement). The Lease Agreement described the Billboard Property as:

105 West Bobo Newsome Highway. . .Adjacent to State road 151 bypass, **approximately 1/10 mile west of US Hwy. 15** intersection on the north side of the roadway, more described as *on the west end of West Oil Company's store property* adjacent to SC 151 Hwy.

Exhibit A, pg. 1 (emphasis added). The description also contains a checked box next to the term "Existing Structure(s)", which refers to the Billboard. *See id.* Plaintiff claims that it holds an interest, not just in the billboard and the portion of land on the west end of the store property, but in all of the Billboard Property and the Convenience Store Property, such that it was entitled to a right of first refusal if the Convenience Store Property was sold. Defendant contends that the plain

language of the Lease provides that Plaintiff leases a parcel of land located on the west end of the store property, not the entirety of the Convenience Store Property. Defendant argues that an easement provision in the Lease further supports the interpretation that Plaintiff's lease did not extend to any property beyond the Billboard Property. Specifically, the Lease provides that:

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and c) an easement to connect utilities to Lessee's structures.

Exhibit A, pg. 1. Defendant argues that if Plaintiff had a leasehold interest in the Convenience Store Property, then it would not have needed an easement over the adjacent Property. By extension, Defendant argues that Plaintiff would not have a right of first refusal in property that it did not lease from Defendant.

II. Defendant counterclaims for injunction, damages and declaratory judgment.

Defendant also moved for summary judgment on its counterclaims for injunction, damages and declaratory judgment. Defendant has presented facts that show that the term of the Lease expired on October 1, 2024, and that Defendant decided not to renew the Lease. Defendant notified Plaintiff that the Lease would not be renewed, and that it expected Plaintiff to remove the Billboard from the Billboard Property. To date, Plaintiff has failed and refused to do so. Accordingly, Defendant seeks an injunction enjoining Plaintiff from trespassing on the Billboard Property and a declaratory judgment finding that Plaintiff has no right to access the Billboard Property, Defendant has not sold the Billboard Property, and Defendant has the right to remove and destroy the Billboard.

In support of its Motion for Summary Judgment, Defendant presented the Affidavit of Alexander West, which stated that the Lease had ended on October 1, 2024 and that Defendant had notified Plaintiff of the same. Plaintiff has not presented any contradictory evidence, nor does the Plaintiff address this issue in its Memorandum in Opposition to Defendant's Motion for Summary Judgment.

DISCUSSION

In its Complaint, Plaintiff claims that Defendant breached the Lease by selling the Convenience Store Property without offering Plaintiff the right of first refusal. In its Motion for Summary Judgment, Defendant relies upon the plain language of the Lease and its context to argue that the Lease only encompasses the Billboard Property. Defendant also submitted aerial photographs of the properties and an affidavit by Defendant's representative. In response, Plaintiff merely restates its claim that the Lease is clear that Plaintiff has a right of refusal in the Convenience Store Property. This Court would agree that the Lease is clear. However, it is clear that Defendant only leased the Billboard Property to the Plaintiff. As stated in the Lease, Plaintiff was leased a portion of Property on the west end of the "store property". Not the entirety of the Convenience Store Property. Defendant's position is further supported by the fact that the Convenience Store Property and the business was sold for over eight million dollars. It defies logic that Plaintiff, who leased only a Billboard and a small parcel of land for \$500.00 per year, should have a right of first refusal in an adjacent property and a business worth over eight million dollars. For these reasons, the weight of the evidence indicates that Plaintiff did not lease the Convenience Store Property. Because Plaintiff only leased the Billboard Property, Defendant cannot have breached the Lease by selling the Convenience Store Property without honoring a right of first refusal.

This Court also finds that summary judgment is appropriate on Defendant's counterclaims. Defendant has presented ample evidence to show that the Lease term has ended, and Plaintiff has not presented any contradictory evidence. When the moving party puts forward facts and evidence in support of its Motion, and the opposing party makes no factual showing in opposition to the Motion, the Court must grant summary judgment. *See Humana Hospital-Bayside v. Lightle*, 305 S.C. at 216, 407 S.E.2d at 638, *supra*. Therefore, summary judgment is appropriate on Defendant's counterclaims.

CONCLUSION

For all of the reasons stated herein, the Court is persuaded that no genuine issue of material fact exists for trial. As such, summary judgment is awarded to Defendant and all claims against it in Plaintiff's Complaint are hereby dismissed with prejudice. Further, summary judgment is hereby awarded to the Defendant on its counterclaims. THEREFORE, it is hereby ORDERED that Defendant's Motion for Summary Judgment be, and hereby is, GRANTED, and the Court finds and declares as follows:

1. Plaintiff's Complaint is hereby dismissed with prejudice;
2. Plaintiff is hereby enjoined from continuing to access the Billboard Property, and has no continued right to access the Billboard Property or any right to remove the Billboard located thereon;
3. The Billboard Property is the only property Plaintiff had a right of first refusal in, and the Defendant did not sell the Billboard Property; and
4. Defendant has the right to remove and destroy the Billboard if it elects to do so;
5. Defendant shall file a separate motion with supporting affidavit as to its request for attorney's fees as set forth in its Answer and Counterclaim.

AND IT IS SO ORDERED.

DATE: _____

Electronic Signature to Follow
Paul M. Burch, Circuit Court Judge



Darlington Common Pleas

Case Caption: Adams Outdoor Advertising Limited Partnership VS West & Joyce Llc , defendant, et al
Case Number: 2024CP1600922
Type: Order/Summary Judgment

So Ordered

s/Paul M. Burch, Judge #2048

Exhibit 10

Adams' Reply to Counterclaim

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership
v.
West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

Adams Outdoor Advertising Limited)
Partnership,)
)
)
Plaintiff,)
vs.)
)
West & Joyce, LLC, successor in interest)
to West Oil Company,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A #2024-CP-16-00922

PLAINTIFF'S REPLY
TO COUNTERCLAIM

The Plaintiff, replying to the counterclaim of the Defendant, would allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. The Plaintiff reiterates and realleges each and every allegation contained within its Complaint as if repeated verbatim herein.
2. The Plaintiff admits only so much of the allegations contained within paragraph 17 as could be construed to allege that the parties entered in to a Lease Agreement on or about July 15, 2009, which Lease Agreement speaks for itself.
3. The Plaintiff admits only so much of the allegations contained within paragraph 18 as could be construed to allege that the term of the lease was extended on more than one occasion.
4. The Plaintiff admits only so much of the allegations contained within paragraph 19 as could be construed to allege that it received notice that the Defendant was attempting to terminate the lease as set forth therein.
5. The allegations contained within paragraph 20 are admitted.
6. The Plaintiff would admit only so much of the allegations contained within paragraph 21 as could be construed to allege that the billboard remains at its location.

7. The Plaintiff admits only so much of the allegations contained within paragraph 22 as could be construed to allege that it has not removed the billboard.

8. The allegations contained within paragraph 22 are denied.

9. The allegations contained within paragraph 23 are denied.

10. In response to paragraph 24, the Plaintiff reiterates and realleges each and every allegation contained within this pleading as if repeated verbatim.

11. The allegations contained within paragraph 25 are denied.

12. In response to paragraph 26, the Plaintiff reiterates and realleges each and every allegation contained within this pleading as if repeated verbatim.

13. The allegations contained within paragraph 27 are denied.

14. The allegations contained within paragraph 28 are denied.

15. The allegations contained within paragraph 29 are denied.

FOR A SECOND DEFENSE

19. Each and every allegation contained within the Complaint not hereinabove admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A THIRD DEFENSE

20. The allegations of the counterclaim fail to state facts sufficient to constitute a cause of action; therefore, the Plaintiff prays that the same be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE
(Unclean Hands)

21. The Plaintiff raises the defense of unclean hands as a complete and total bar to the counterclaim of the Defendant.

WHEREFORE, having fully replied to the Defendant's counterclaim, the Plaintiff prays that the same be dismissed, with costs, and that it be granted relief as set forth within its Complaint.

Respectfully submitted,

November 25, 2024

s/Michael S. Hopewell

Michael S. Hopewell (S.C. Bar #65335)

Attorney for Plaintiff

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Exhibit 11

Transcript of May 12, 2025 Hearing on Adams' Motion to Alter or Amend Judgment

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

State of South Carolina) In Common Pleas Court
) Fourth Judicial Circuit
County of Darlington) 2024-CP-16-00922

Adams Outdoor Advertising)
Limited Partnership,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
West & Joyce, LLC, successor)
in interest to West Oil Company,)
)
Defendant.)
)
)
_____)

Darlington, South Carolina
May 12, 2025

B E F O R E:

The Honorable Paul M. Burch

A P P E A R A N C E S:

Mr. Michael S. Hopewell, Esquire
Attorney for Plaintiff

Mr. Jeffrey L. Payne, Esquire,
Attorney for Defendant

Lisa Carter
Court Reporter

I N D E X

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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)
(NO EXHIBITS INTRODUCED DURING HEARING)

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Good morning, gentlemen.

3 MR. HOPEWELL: Good morning, sir. Mike Hopewell
4 here for the plaintiff, Adams Outdoor Advertising.
5 This is Rule 59, a motion to alter or amend judgment.
6 The Court entered judgment in favor of the
7 defendant's summary judgment on April 9th. And the
8 purpose of this motion is to, I guess, clarify one
9 issue in Paragraph 4 of the conclusion. The Court
10 ruled that and quoting, "defendant has the right to
11 remove and destroy the billboard if it elects to do
12 so." This litigation was about a right of first
13 refusal on a lease. My company leased property on
14 which it placed a billboard and the Court - after,
15 after we argued the motion - the Court ruled in favor
16 of the defendant and in the order it granted the
17 right to the billboard to the defendant. And we
18 don't believe that, that was proper. The language of
19 the lease is clear that the billboard remains the
20 property of my client at all times and there was no
21 mechanism for ownership to be transferred. So we
22 would ask the Court to just delete that line from the
23 order that grants ownership of the billboard to the
24 landlord.

25 The other argument may be that we abandoned it.

1 But had we removed it during the litigation it would
2 have made the litigation mute. That billboard is
3 grandfathered in its location and if removed it could
4 not be replaced there because the permitting
5 requirements for DOT and for the County of Darlington
6 have changed. So had we removed it the litigation
7 would have had no, no further meaning in terms of the
8 billboard. So we would ask the Court to not transfer
9 ownership of the billboard, itself, to the defendant.

10 THE COURT: All right.

11 MR. PAYNE: Thank you, Your Honor. Jeff Payne
12 here for the defendant West & Joyce, LLC. Your
13 Honor, in my motion I had a motion for summary
14 judgment to deal with my counterclaims. One of which
15 was a declaratory judgment action which was the
16 lease, it terminated, the lease terminated on October
17 1, 2014 which was before I filed my answer and
18 counterclaim. So we filed the DJ claim and said,
19 look, we got a right to deal with this billboard.
20 They've terminated the lease. The lease is over. As
21 he's got attached to his, whatever he filed today
22 with the Court, I wrote him, we wrote him numerous
23 times. The lease is terminated. Come get you sign.
24 The lease says they had a reasonable time to remove
25 their sign. They never removed it. They've never

1 done anything. So they took a chance, basically.
2 This case was about a right of first refusal to buy
3 the land and they didn't have the right to first
4 refusal because we never sold the land. But the
5 issue of the billboard has been before the Court. It
6 was in my counterclaim, and in my motion we put in
7 there we, we wanted a DJ on the, I mean, we wanted a
8 judgment on the counterclaims. We have the right to
9 move the billboard in our memo that we submitted to
10 the Court. We've got the right to remove the
11 billboard if we choose to do so. The affidavit that
12 we filed in support of the motion mentioned that the
13 lease was terminated. We failed to remove it. I
14 don't know of anything about grandfathering or
15 licensing or whatever about the billboard. All I
16 know is they took a chance. They decided to leave it
17 up and go with the argument that they had a right to
18 buy this land. And despite all our requests, all the
19 letters, all everything, they decided not to remove
20 it. And they left it up in a hope of a miracle that
21 they were somehow going to say, oh, yeah we have the
22 right to buy land that has never been sold. But now
23 that they've lost they want to come in here and claim
24 they want a metal pole out there. And the reason is
25 they don't want us to stick a sign up. They don't

1 want us to advertise because they got a billboard
2 right up, I mean, it's hundreds of feet away from
3 ours and that's what it's about. It's not about the
4 pole being worth anything or whatever, it's about
5 they don't want us to use it now. But I think it was
6 clearly before the Court. They took a chance. They
7 didn't want to remove it. And so we would ask that
8 we have the right, that the order stay as it is.
9 That we've got a right to remove the billboard if we
10 choose to do so.

11 Thank you.

12 THE COURT: Thank you, counsel. Anything else?

13 MR. HOPEWELL: This is an issue that we didn't
14 argue in the prior motion hearing and there's just no
15 explanation for why the ownership changed. So we
16 believe that we should still own the property as set
17 forth in Paragraph 4 of the lease.

18 THE COURT: Going back to law school days,
19 counsel, you consider this sign being permanently
20 attached to the property?

21 MR. PAYNE: Your Honor -- Your Honor, honestly, I
22 don't know. I think it can be removed from what I
23 understand, but I'm not sure how they do it. I know
24 it's -- it's a nice pole and it's bolted in the
25 ground, but I can't say one way or the other as far

1 as is it removable or not. I think it is. They seem
2 to do it all the time. But to be honest....

3 THE COURT: Let me take a look at. I'll -- I'll
4 let me review that order. I'll get something out in
5 a few days.

6 Thank, y'all.

7 MR. PAYNE: Yes, sir.

8 MR. HOPEWELL: Thank you, Your Honor.

9 (CONCLUSION OF HEARING HELD ON MAY 12, 2025)

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CERTIFICATE

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I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit of the Circuit Court for Darlington County, South Carolina, on the 12th day of May, 2025.

That said proceedings are transcribed to the best of my ability from the audio recording and supporting information.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

s/ Lisa S. Carter

Lisa S. Carter
Circuit Court Reporter

September 10, 2025

Exhibit 12

Affidavit of Alexander C. West (with Attachments)

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to West Oil Company,

Defendant.

**IN THE COURT OF COMMON PLEAS
C/A # 2024-CP-16-00922**


**AFFIDAVIT OF ALEXANDER C.
WEST**

Personally appeared before me, Alexander C. West, who being first duly sworn, deposes and says that:

1. I am a member of West & Joyce, LLC (“West & Joyce”) and a shareholder of West Oil Company, Inc. (“West Oil”). I am authorized to make this affidavit on behalf of West & Joyce and West Oil.
2. The Plaintiff leased a small portion of land from West Oil and the billboard structure located thereon pursuant to a Lease Agreement that is dated July 15, 2019. A true and correct copy of the lease (“Lease”) is attached hereto as Exhibit A. The Lease expired on October 1, 2024. The Lease is a form lease used by the Plaintiff and it is a lease that the Plaintiff drafted and presented to West Oil to sign.
3. The Lease describes the land and structure that was being leased as being located approximately one tenth of a mile west of intersection of Hwy. 151/Bobo Newsome Hwy and Hwy. 15.
4. Exhibit B attached hereto is a picture of the Billboard.
5. Exhibit C attached hereto is an aerial view of the property (“Billboard Property”) on which the Billboard sits and an adjacent property on which sits a convenience store (“Convenience Store Property”) that was operated by West Oil for many years until 2019. The Billboard Property is known as Darlington County TMS 058-00-01-167 and contains .55 acres.


6. As is shown on Exhibit D the Billboard is located approximately .088 tenths of a mile from the intersection of Hwy. 151/Bobo Newsome Hwy and Hwy. 15.
7. The Convenience Store Property contains 1.987 acres and is known as Darlington County TMS 058-00-01-101.
8. On or about April 27, 2019, West & Joyce and West Oil sold the Convenience Store Property and the convenience store business operated thereon to Refuel for a total sales price of \$8,245,000. This sale did not create any obligation on West & Joyce to provide the Plaintiff with any notice of any right of first refusal as this Convenience Store Property was not being leased to the Plaintiff.
9. The Lease expired on October 1, 2024 and West & Joyce decided not to extend the Lease. The Plaintiff was reminded of the termination date of the Lease and it requested that the Plaintiff remove the Billboard from the Billboard Property. The Plaintiff failed to remove the Billboard as requested.
10. West & Joyce never sold the Billboard Property during the term of the Lease and it is still this owner of this property.

FURHTER AFFIANT SAYETH NOT.



 Alexander C. West

SWORN to before me this
 13th day of January, 2025



 Notary Public for South Carolina
 Print Name: *Derek R. Jenner*
 My Commission Expires: *July 18, 2026*

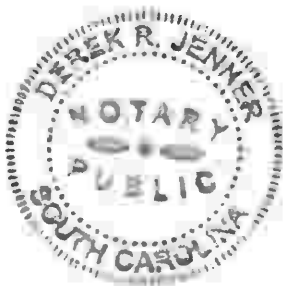


EXHIBIT A

ELECTRONICALLY FILED - 2025 Jan 13 10:53 AM - DARLINGTON - COMMON PLEAS - CASE#2024CP1600922



LEASE AGREEMENT

Doc ID: 881868160066 Type: DEE
Recorded: 01/22/2010 at 10:42:16 AM
Fee Amt: \$11.00 Page 1 of 5
Darlington County, SC
Scott B. Suggs Clerk of Court
BK 1058 PG 7711-7715

Lease # 300080066
Board/Structures # 07/005365

THIS AGREEMENT, made this 15th day of July 20 09, by and between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee"), whose address is: 1385 Alice Dr., Florence, SC 29505 and West Oil Company ("Lessor"), whose address is 312 Lakeview Blvd., Hartsville, SC 29550. WITNESSETH:

1 DEMISE: Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that Lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease, and shall not enter into any agreement for or conditioned upon the removal of Lessee's Structures; the Property is located in the City/County of Darlington in the State of South Carolina, and is more particularly described as:

Existing Structure(s) [X] Address: 105 West Bobo Newsome Highway Tax Parcel #
Adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 Intersection on the north side of the roadway, more described as on the west end of West Oil Company's store property adjacent to SC 151 Hwy.

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures.

2. TERM: This Lease is for a term of five (5) years, commencing on the 1st day of October 20 09, and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. RENT: Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ 500.00, paid in advance, payable annually, on or before the 15th day of October.

4. STRUCTURES: All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. REPRESENTATIONS: Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. CANCELLATION: If, in Lessee's sole opinion: a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund of any prepaid rent, prorated as of the date of cancellation.

7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third person caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition

9. **ASSIGNMENT:** This lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease

10. **RIGHT OF FIRST REFUSAL TO PURCHASE:** Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

11. **NOTICE:** Any notice ("Notice") to Lessor or Lessee described in this Agreement in order to be effective must be in writing and sent certified mail, return receipt requested, and then shall only be effective upon the earlier of a) the date that said Notice is delivered and received by a person at the address specified in the Agreement; or, b) the date that is three (3) days after mailing (postage prepaid) by certified mail, return receipt requested, to such address; provided that in either case Notice shall be delivered to such other address as Lessor or Lessee, as the case may be, has previously designated in writing and provided to the other by Notice as set forth herein.

12. **MEMORANDUM OF LEASE:** Lessor agrees that this Lease Agreement may be recorded.

13. **MISCELLANEOUS:** In the event of litigation between Lessor and Lessee predicated upon this Lease Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, provided, however, that Lessee shall first be given written Notice of default as set forth herein, and shall have failed to cure such default within thirty (30) days of receipt of said Notice. Neither Lessor nor Lessee shall be bound by any terms, conditions or oral representations that are not set forth in this Lease Agreement. The law of the state in which the Property is located shall govern. This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property.

14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP
By: AOA Management Company Limited Partnership
Its: Managing Agent
By: Adams Outdoor Advertising, Inc.
Its: Managing General Partner

By: *[Signature]*
Lessor or Authorized Representative
ALEXANDER C. WEST, JR
Print Name

Accepted By: *[Signature]*
Randall F. Romig
Its: Vice President

See Sec or FEIN: _____

Approved By: *[Signature]*
General Manager

Lessor's Phone #: _____

[Signature]
Witness (1)

[Signature]
Witness (1)

[Signature]
Witness (2)

[Signature]
Witness (2)

12/27/24, 9:30 AM

124 W Bobo Newsom Hwy - Google Maps



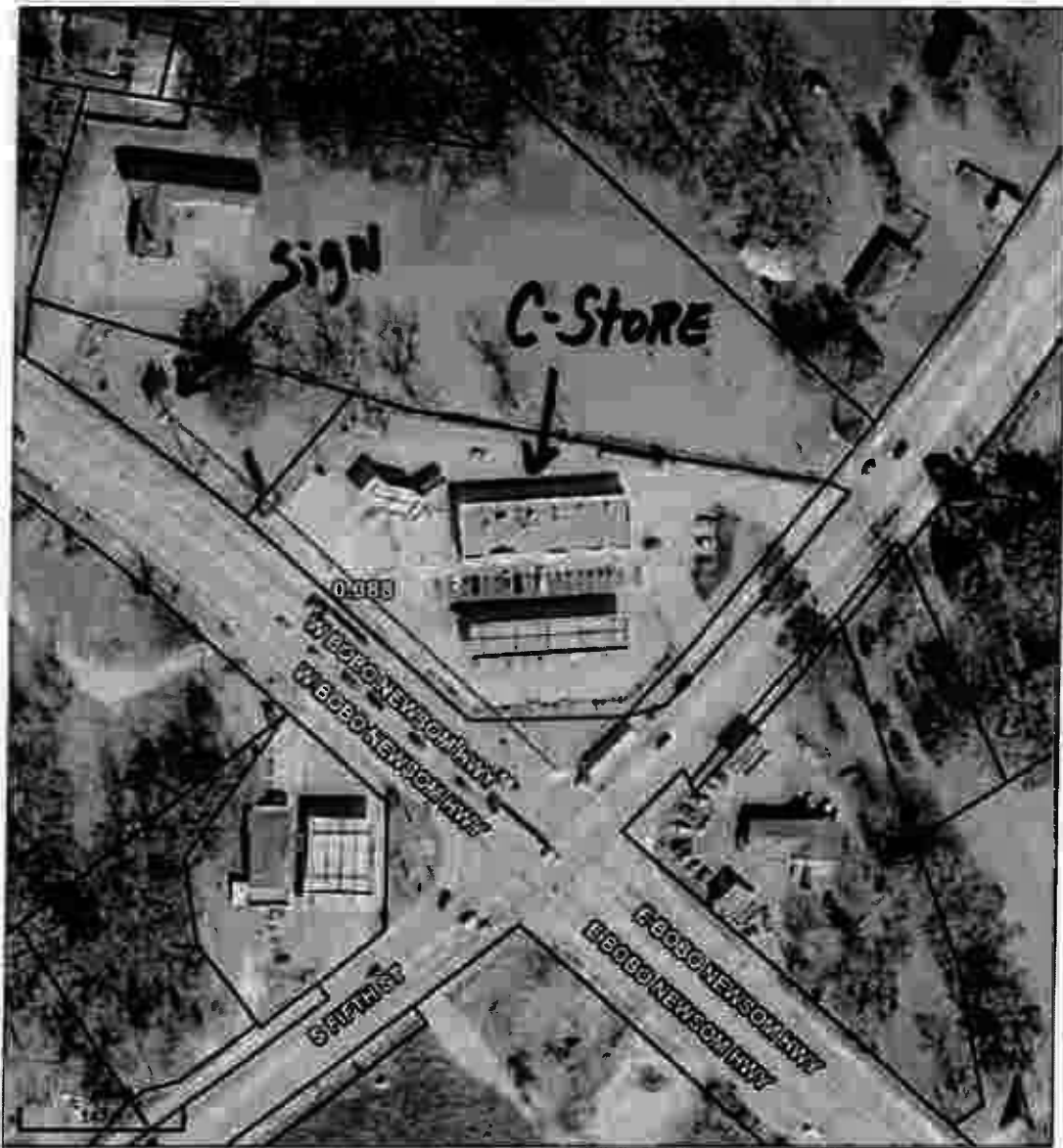
EXHIBIT B

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West & Joyce

EXHIBIT C





Overview



Legend

- Parcels
- Roads

Date created: 12/26/2024
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Exhibit 13

West & Joyce's Motion for Summary Judgment

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Adams Outdoor Advertising Limited
Partnership,

Plaintiff,

vs.

West & Joyce, LLC, successor in interest to
West Oil Company,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2024-CP-16-00922

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

TO: THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that ten days after service of this notice upon you or as soon thereafter as counsel may be heard, counsel for the Defendant West & Joyce, LLC (“West & Joyce”) will move before the Court of Common Pleas for Darlington County for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in favor of West & Joyce. The grounds for this Motion are: 1. West & Joyce did not sell the Property that was subject to the billboard lease and consequently the Plaintiff had no right of first refusal to purchase West & Joyce’s adjacent property; 2. Alternatively, the right of first refusal clause contained within the billboard lease the Plaintiff seeks to enforce is an unreasonable restraint on alienation of real property since the billboard lease that the Plaintiff drafted and presented to West & Joyce failed to readily identify the property being leased; and 3. Plaintiff’s billboard lease that ended on October 1, 2024 has terminated and Plaintiff has no further right to use West & Joyce’s property or the billboard structure thereon. As a result, Plaintiff’s sole cause of action for breach of lease must fail.

Summary Judgment is also proper as to West & Joyce's counterclaims. There is no issue of material fact that can contradict West & Joyce's position that the billboard lease terminated on October 1, 2024. Plaintiff no longer has any right of access to the billboard in question and that West & Joyce has the right to remove the billboard from its property.

This Motion is based on the pleadings and discovery in this case, the Memorandum in Support and any exhibits attached thereto, any affidavits filed with the Court and any arguments made at a hearing on this motion.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/ Jeffrey L. Payne

Jeffrey L. Payne, Esquire (SC Bar #: 15136)

1831 W. Evans Street, Suite 400

Florence, South Carolina 29501

Telephone: (843) 662-9008

Fax: (843) 667-0828

Email: jpayne@turnerpadget.com

ATTORNEYS FOR DEFENDANT

Florence, South Carolina

January 13, 2025

Exhibit 14

Adams' Motion for Summary Judgment (filed 2/4/2025)

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

Adams was entitled to a thirty day period after notice during which to make a decision as to whether to purchase the property or not.

3. As set forth in the attached Affidavit, Adams was not notified of the pending sale, given this right of first refusal or even advised that the sale had taken place until some five years after the fact.
4. The terms of the right of first refusal are in line with the analysis provided by the Supreme Court of South Carolina as set forth in the relevant case law, which will be examined in a Memorandum in Support of Motion to be filed hereafter.

RESPECTFULLY SUBMITTED,

January 31, 2025

s/Michael S. Hopewell

Michael S. Hopewell (S.C. Bar #65335)

Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC

470 W. Evans Street

Post Office Box 148

Florence, SC 29503

(843) 669-0089

(843) 669-0085 fax

mhopewell@amhattorneys.com

Exhibit 15

Adams' Motion to Alter or Amend Judgment (filed 4/21/2025)

Respondent's Motion to Dismiss

Adams Outdoor Advertising Limited Partnership

v.

West & Joyce, LLC, successor in interest to West Oil Company

Appellate Case No. 2025-001729
South Carolina Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Adams Outdoor Advertising Limited)
 Partnership,)
)
 Plaintiff,)
 vs.)
)
 West & Joyce, LLC, successor in interest)
 to West Oil Company,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 C/A #2024-CP-16-00922

**PLAINTIFF'S MOTION TO
 ALTER OR AMEND JUDGMENT**

TO: THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that ten days henceforth or as soon thereafter as counsel may be heard, counsel for the Plaintiff will move for an Order pursuant to Rule 59(c) to alter or amend the court's Order filed April 9, 2025.

In the Order, the court ruled that "Defendant has the right to move and destroy the billboard if it elects to do so." The billboard in question is owned by the Plaintiff and was the basis for the lease that is the subject of the litigation. The Defendant, in its counterclaim, appears to take the position that the Plaintiff abandoned the billboard by failing to remove it while the litigation was ongoing.

Had the billboard been removed, it is unlikely that it could have been returned if the Plaintiff prevailed in the litigation due to the rules regarding the permitting of billboards. Therefore, the billboard was the subject of the litigation and its removal during the litigation would have rendered the litigation moot.

Counsel does not believe the issue was discussed at the motion hearing and the Order does not set out the reasoning for the transfer of ownership of the billboard from the Plaintiff to the Defendant.

RESPECTFULLY SUBMITTED,

April 21, 2025

s/Michael S. Hopewell

Michael S. Hopewell (S.C. Bar #65335)

Attorney for Plaintiff

ABBOTT, MCKISSICK & HOPEWELL, LLC

470 W. Evans Street

Post Office Box 148

Florence, SC 29503

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(843) 669-0085 fax

mhopewell@amhattorneys.com