THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Judge Steven DeBerry, IV, Circuit Court Judge
Circuit Court Case No. 2022-CP-07-01195

Appellate Case No. 2025-001618

Beaufort County, South Carolina,

Respondent,

v.

Adams Outdoor Advertising Limited Partnership,

Appellant.

APPELLANT'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in granting summary judgment to the County,[1] upholding an implied right to terminate the Lease at will based solely on a case decision distinguishable because it concerned a contract with a unilateral right to renew, as opposed to a bilateral right to terminate, as contained in the subject Lease?

2. By voluntarily burdening the Leased Property with easements which prohibit any construction or improvements, did the County waive or nullify its contractual termination right, which granted the County a right to terminate upon obtaining a building permit for construction on the Leased Property?

3. In its ruling on the motions to reconsider the summary judgment order, filed by both the County and Adams, did the lower court err by only giving consideration to the County's motion?

STATEMENT OF THE CASE

In December 2020, the County purchased a parcel of property subject to a pre-existing lease agreement that allows Adams, as the lessee, to operate and maintain an outdoor advertising structure thereon (the "Lease"). (R. p. 142-146 (County's Deed)); (R. p. 320 (Lease)); (R. p. 230 at Sec. 2). The County subsequently attempted to terminate the Lease, first arguing it was terminated under its terms (R. p. 229 at Sec. 2), and then pivoting, after the alleged date of termination, wrongly asserting the Lease did not explicitly provide the lessor with such a right, and therefore its termination right was implied. (R. p. 141).

The County's claim, seeking a declaration that the Lease is terminated, relies on the Court overlooking the express right of termination that the Lease explicitly grants to the lessor.

[1] Herein, the "County" or "Lessor" refers to Respondent Beaufort County, South Carolina. "Adams" or "Lessee" refers to Appellant Adams Outdoor Advertising Limited Partnership.

Moreover, with knowledge of the Lease, the County took affirmative and voluntary acts in connection with acquiring the leased property which nullified its termination right under the Lease, burdening the leased property with conservation and restrictive easements that prohibit any construction.

The County filed its Complaint with the lower court on June 29, 2022, but did not serve the same on Adams until August 1, 2022. On August 31, 2022, the County filed its Amended Complaint in order to attach and file the exhibits that were referenced in the original pleading but not filed therewith. (R. pp. 39-55 (Am. Compl.)). The County's pleading named two other defendants, former and current employees of Adams, but the lower court dismissed those individuals from the case via an order entered February 21, 2023.

The County's Amended Complaint asserts two causes of action, the second being the only one on appeal (the first claim concerns two of Adams' other billboards on separate parcels of property). (Notice of Appeal); (R. p. 41 (Am. Compl. p. 3)). Adams' responsive pleading asserts four counterclaims, none of which are on appeal. (R. p. 128 (introduction); R. p. 131 (conclusion); R. p. 313; Notice of Appeal). As to the cause of action that is the subject of this appeal, the County sought a declaration that it terminated the Lease as of October 1, 2021, that the billboard and related materials no longer belong to Adams, and that the County could disconnect electric service thereto and dispose of the same. (R. pp. 51-52 at ¶¶ 74.a.-c., R. pp. 53-54 at ¶¶ 79.b.-d.). The County also sought an injunction against Adams, the former individual defendants, and their agents to prohibit them from impeding removal and disposal of the sign, as well as an award of "attorney fees, sanctions, damages, and other monetary relief[.]" (R. pp. 52 at ¶ 75, R. p. 54 at ¶¶ 80-81).

Following a protracted discovery period, the parties filed cross-motions for summary judgment on all claims on March 18, 2025. (R. pp. 128-132 (Adams MSJ); R. pp. 133-134 (County

MSJ)). The motions were heard virtually on June 10, 2025, and the Circuit Court entered a form order on June 25, 2025, denying both parties' requests as to the five unappealed claims, based upon the existence of unidentified disputes of material fact. (R. pp. 18-19 (the "Summary Judgment Order")). In its Summary Judgment Order, the lower court also held that it "grants summary judgment as to the contract between the parties and terminates this agreement at the end of the current term based on Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199 (1994)." (R. p. 18).

On July 3, 2025, Adams timely filed and served a Rule 59(e), SCRCP, motion, requesting that the lower court reconsider and alter or amend the latter ruling in the June 25 order. (R. pp. 313-318). The County subsequently filed a motion to reconsider, on July 7, 2025, asking the circuit court to alter its order to find that the County's April 1, 2021 attempt to terminate the Lease as of October 1, 2021 was valid and effective, and to grant the County summary judgment on all claims. (R. pp. 323-328). The lower court denied both motions via an order entered July 14, 2025, stating therein it had "duly considered the motion of the Plaintiff [Beaufort County][.]" (R. p. 21).

Adams timely served its Notice of Appeal on the County on August 12, 2025, and filed the same with the lower court and this Court on August 13, 2025.

STATEMENT OF THE FACTS

The Lease at issue was entered into by the County's predecessor-in-title, L. Paul Trask, as the lessor, and Adams' predecessor-in-interest, Peterson Outdoor Advertising Corporation, as the lessee, with an original term of three years that commenced on October 1, 1989. (R. p. 320) (Lease)). The Lease specifies that, after its original term, it continues in force from year to year, on the same terms, unless terminated at the end of the original or any renewal term "upon written notice of termination by Lessee to Lessor," sent at least 30 days in advance. (R. p. 320). The Lease also states that if the Lessor obtains a building permit for the property, then "Lessor shall

have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice." (R. p. 320). Pursuant to the succession clause therein, the Lease is binding on both parties' heirs, successors, and assigns. (R. p. 320).

The leased property, located adjacent to US-21/Trask Parkway in Beaufort County, was formerly a 3.73-acre parcel that previously bore TMS No. R100-020-000-0047-000 (the "Kling Parcel" or "Leased Property"), which, apart from Adams' billboard, remains vacant. (R. p. 320; R. p. 166, line 17–p.169, line 22 (discussing R. p. 211 (Consolidation Plat)); R. pp. 219-220; R. p. 230 at introduction, Sec. 2).

In December 2020, the County took title to the Kling Parcel. (R. pp. 142-146 (County's deed recorded Dec. 30, 2020, in Book 3953, at Page 1605)).[2] After the County's purchase, it combined the Kling Parcel with adjacent tracts it had also acquired to create a 13.88-acre parcel, known as the Port Royal Island Battlefield. (R. pp. 211, 230). The County acquired the Kling Parcel and surrounding land with funding from the Rural and Critical Land Preservation Program, South Carolina Battleground Preservation Trust (the "Battleground Trust"), and U.S. Department of the Navy, as it was the site of a former Revolutionary War battlefield and lies in proximity to the Marine Corps Air Station Beaufort. (R. pp. 213, 219-222; R. pp. 233-235; R. p. 244, line 12–p. 245, line 25).[3]

[2] The County does not dispute that it took title to the Leased Property subject to the Lease. (R. p. 230 at ¶ 2 ("The County acknowledges Parcel #R100-020-000-0047-0000 is subject to a billboard lease agreement dated October 1, 1989 (Lease No. 40133)[.]")).

[3] Pursuant to the lower court's October 24, 2024 order (R. pp. 12-17) regarding the reconvened deposition of Eric Greenway, the former County Administrator, quotations of the transcript of said deposition (contained at R. pp. 237-259) are redacted in the publicly filed copy of this brief.

A few months after taking title to the Kling Parcel, the County, via a letter from former County Administrator Greenway to Liz Mitchum (now Liz Ware),[4] attempted to terminate the Lease "[i]n accordance with the Lease terms[.]" (R. p. 230). Therein, the County asserted that the Lease would terminate as of October 1, 2021, and demanded that the billboard be removed within 30 days thereafter. (R. p. 230). Via letter dated September 29, 2021, Adams enclosed a check for payment of the annual rent for the upcoming term, advising that the County did not have a right to terminate the Lease and thus Adams' sign would remain on the Leased Property. (R. p. 138). The County waited until December 1, 2021, two months after the Lease renewed on October 1, 2021, to return the rent check to Adams. (R. p. 141).

Eight months later, on August 1, 2022, the County served Adams with the Summons and Complaint in this matter.

STANDARD OF REVIEW

When reviewing a grant of summary judgment, an appellate court applies the same standard of review applied by the trial court under Rule 56(c), SCRCP. *See, e.g.*, *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).[5] "Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law." *Joyner v. Greenville Hotel Assocs., Ltd. P'ship*, 364 S.C. 237, 239-240, 612 S.E.2d 727, 728 (Ct. App. 2005) (citing Rule 56(c), SCRCP). "[T]he 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892

[4] Ms. Mitchum, now Ware, is employed by Adams and was one of the previously named individual defendants dismissed from the case. The County's letter attempting termination was not addressed to and did not contain the word Adams. (R. p. 230-231).

[5] Unless otherwise stated herein, all internal citations are omitted.

S.E.2d 297, 301 (2023). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 434, 904 S.E.2d 889, 894-895 (Ct. App. 2024).

ARGUMENT

Due to the absence of findings in the lower court's orders on appeal, it is difficult to discern its reasoning for the decision reached. The Summary Judgment Order does not state the prevailing party's name or that it ruled on any specific claim, only that it was granting summary judgment as to the contract and terminating the agreement at the end of the current term based on *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994). (R. pp. 18-20). The order on both parties' motions to reconsider simply states that, based upon the County's motion, it was determined that the Summary Judgment Order is fully supported by the law and evidence.

Nevertheless, the *Carolina Cable* opinion is irrelevant to the contract and claim at hand, and the lower court erred in granting the County's request for termination as a result.

I. THE LOWER COURT ERRED IN HOLDING THAT THE LEASE WAS TERMINABLE BASED ON *CAROLINA CABLE*.

Because the circuit court relied upon a case interpreting a contract that was fundamentally different in material terms, i.e., termination rights, its analysis and conclusion were steered awry, and the lower court ruling should be reversed. As a preliminary matter, the County never issued a notice attempting to terminate the Lease based on an implied right to terminate at will. The County's only correspondence giving advance notice of purported termination stated that it was terminating "[i]n accordance with the Lease terms[.]" (R. p. 230 at § 2; *see also* R. p. 40 ("In April 2021, pursuant to the terms of the lease, the County notified Adams in writing that the lease would be terminated as of October 1, 2021.")). However, the County made no mention of the grounds

which would support its right to terminate, *e.g.*, a building permit or even a stated intention to develop the Leased Property. Subsequently, the County sent a letter dated December 1, 2021, two months after the Lease term renewed, asserting the Lease had terminated on October 1, 2021, and claiming for the first time its alleged right to terminate at will based on *Carolina Cable*. (R. p. 141). As a result, the lower court erred in granting summary judgment on the County's attempt to terminate the Lease at will based on *Carolina Cable*, as the County failed to timely attempt such a termination.

However, to the extent that this Court finds it proper to examine whether the County or lower court properly terminated the Lease under *Carolina Cable*, that case decision and the County's misinformed arguments on the same are examined herein, which show the lower court erred in terminating the Lease.

A. By Providing the County with an Express, Independent Right of Termination, the Lease Does Not Create an Indefinite Right of Renewal and the Lower Court Erred in Relying on *Carolina Cable*.

The County's claim hinges entirely on a finding that the terms of the Lease confer on Adams an indefinite right of renewal, meaning the contract is entirely analogous to the one at issue in *Carolina Cable* and therefore could be terminated at will with reasonable notice. (R. p. 134 at Count Two). The County alleges that the Lease only provides the lessee with a right of termination, and therefore, because both parties should have such a right, the County has an *implied* right to terminate the Lease. (R. pp. 48-49 at ¶¶ 57-58); (*see also* R. p. 202, line 23–p. 203, line 7; R. p. 204, lines 1-9; R. p. 205, lines 3-20); (R. p. 295, line 18–p. 296, line 12); (R. p. 309 (County Br. in Supp. of Mot. for Summ. J. p. 22)).

But the County's argument is entirely misplaced and there is no basis for its requested finding. The Lease ***did*** give the County, the Lessor, an independent right to terminate the agreement, which necessarily limits the duration of the Lease term and extinguishes any contention

that the Lessee, Adams, has a unilateral perpetual right of renewal. In relevant part, the Lease provides:

> **In the event the property is improved by the erection of buildings thereon by Lessor or at Lessor's direction, as evidenced by a building permit, Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice, together with a rebate of all unearned rent.**

(R. p. 320 (Lease, fifth clause (emphasis added)); R. p. 322 (enlarged version of the fifth clause of the Lease)).

Thus, the County's argument that it must be provided with and has an *implied* right of termination based on equity fails — it cannot have an ***implied*** right to terminate at will because the Lease provides it with an ***express*** right of termination, the exercise of which is under its own control and not contingent on any act, omission, or failure to perform by Adams.

When interpreting or construing a contract, ascertaining the intention of the parties is the paramount consideration, which is first accomplished by examining the text of the contract. *See, e.g.*, *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 273-74, 777 S.E.2d 425, 428 (Ct. App. 2015) ("Lease provisions are construed under rules of contract interpretation. One cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties. To determine the intention of the parties, the court must first look at the language of the contract."). In making such a determination, the text of the contract itself controls if it is clear and unambiguous, in which case the court may not resort to examining extrinsic materials. *Warner v. Weader*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983) ("Where a contract is unambiguous, clear and explicit, it must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary, and popular sense."); *see also HK New Plan Exchange Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007).

The intent of the contract parties must be measured at the time of contract execution. *Bannon v. Knaus*, 282 S.C. 589, 593, 320 S.E.2d 470, 471 (Ct. App. 1984) ("Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it."); *see also, e.g., Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 342, 811 S.E.2d 779, 784 (2018).

On its face, the Lease is clear that both parties possess an express right to terminate that each can freely exercise on their own volition. Under the unambiguous text of the Lease, the Lessor controls its ability to exercise its right to terminate and can do so at any time if it obtains a building permit to commence construction — an independent right not dependent on any act or omission of the Lessee. Moreover, the Lessor's termination right is arguably less restrictive, as the Lessee has to wait to terminate until the expiration of the term, while the Lessor can cancel the Lease regardless of the point in time of the term.[6]

As a result, *Carolina Cable*, the lower court's only source of authority, is not persuasive or relevant here. In that case, Carolina Cable Network, or CCN, was akin to the lessee, and Alert Cable TV, Inc., or Alert, akin to the lessor. As to its term, the lease only stated that "[The] period covered by this agreement is one year with the right of renewal by Carolina Cable Network at is expiration." *Carolina Cable*, 316 S.C. 98, 102, 447 S.E.2d 199, 201 (alteration in original).

Additionally, Alert could only cancel the contract if CCN did not make timely payments or if CCN misused the equipment or office space provided by Alert. *Id.* at 102, 447 S.E.2d at 201-02. Thus, because Alert had no independent at-will termination right — it could only cancel based

[6] And, as the government entity with jurisdiction over the Leased Property, obtaining a building permit would in all likelihood not be difficult for the County (if it had not contracted away its right to build).

on specific CCN misconduct — and the contract "was completely devoid of any term of duration[,]"it created a "seemingly perpetual right of renewal" in favor of CCN. *Id.* at 102, 447 S.E.2d at 201-02.

In moving for summary judgment, the County misstated Adams' argument, in essence creating a straw man to attack and utilize as a basis for repeatedly trumpeting *Carolina Cable*'s holding. Contrary to the County's contentions (R. p. 134 at Count Two; R. pp. 308-309), Adams does not assert that the Lease's provisions give Adams a perpetual right of renewal or that they prevent the lessor from ever terminating the Lease. Quite the opposite, Adams argued before the lower court that the Lease explicitly provided the lessor with a termination right, but that the County took steps to nullify that contractual right through restrictive covenants it placed on the property. (R. pp. 130-131 at ¶¶ 3.a.-b.; R. pp. 155-157).

The lower court erred in not recognizing that the Lease was not terminable at will because it provided the County, the Lessor, with an express right of termination that it was free to exercise. Here, by its terms, the Lease renewed annually for successive one-year terms unless it was terminated by the Lessor after receipt of a building permit or terminated by the Lessee in advance of the next renewal term. It is quite plain, then, that the Lease is not devoid of any term of duration and does not seemingly, or actually, create an indefinite right of renewal. As a result, *Carolina Cable* is not applicable and the lower court erred in relying on the opinion to find that the Lease was terminated, or as a basis to terminate the Lease. (R. p. 18 ("the Court . . . terminates this agreement …")).

B. The Lower Court Erred in Failing to Consider this Court's *Prestwick Golf Club* Decision, Binding Precedent that Applies to the Lease at Issue.

Previous case law from this Court, in which it analyzed the applicability of *Carolina Cable*, reflects that the Lease at issue here is not a contract of perpetual duration that is terminable at will.

Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 503 S.E.2d 184 (Ct. App. 1998) concerned a contract between a golf club (the "Club") and the owner of the golf course and club (the "Partnership") regarding the schedule and availability of tee times for Club members. 331 S.C. at 387-88, 503 S.E.2d at 185-86. The contract imposed a sliding scale as to the availability of tee times for Club members versus non-members, with the percentage reserved for members increasing as the number of members increased. *Id.* When membership in the Club reached full capacity of 550 members, all of the tee times would be exclusively reserved for members, such that the Club would return to fully private status, thereby ending the need for the tee-time contract. *Id.* at 388, 391-92, 503 S.E.2d at 185-86, 187.

The trial court granted summary judgment to the Partnership on its breach of contract claim, finding, in part, that the contract was for an indefinite duration. *Id.* at 388, 503 S.E.2d at 186. This Court reversed, holding that if a right of termination is contingent on an objective event, rather than a specific calendar date of the term expiration, the lease still sufficiently describes its duration such that the contract is <u>not</u> perpetually renewable and is <u>not</u> terminable at will.

> The trial court also incorrectly relied on *Carolina Cable Network*, to find the tee-time schedule was terminable at will by either party. In *Carolina Cable*, the plaintiff sought redress for a contract which contained the following clause: "[The] period covered by this agreement is one year with the right of renewal by [the plaintiff] at its expiration." [*Carolina Cable*,] at 102, 447 S.E.2d at 201. After analyzing this provision, the *Carolina Cable* court announced that a unilateral perpetual right of renewal in a contract is not valid.
>
> In this case, we are not dealing with a unilateral perpetual right of renewal. … Just because the rights of the parties were keyed to membership levels rather than calendar time does not mean that the schedule should be considered an indefinite period. … "**<u>a contract which ... provides that it will terminate upon the occurrence of a specific event is not deemed perpetual in duration and is not terminable at will</u>.**"

Prestwick Golf Club, 331 S.C. at 391-92, 503 S.E.2d at 187-88 (emphasis added) (quoting *Carolina Cable*, 316 S.C. at 102; 447 S.E.2d at 201; *Jespersen v. Minnesota Mining & Mfg. Co.*, 288 Ill. App. 3d 889, 893, 681 N.E.2d 67, 70 (Ill. App. Ct. 1997)) (last alteration added).

In the lower court, the County attempted to distinguish *Prestwick* by merely quoting language from a separate decision which this Court quoted in the foregoing passage, the *Jespersen* decision, without attempting to apply the same to the instant matter. (R. p. 326). That could be because *Jespersen* actually cuts against the County's argument. Regarding termination rights contingent on a specific event, *Jespersen* held that "[t]he event upon which the contract will terminate must be an 'objective event' so as to make the contract sufficiently definite in duration. 'If one of the parties could institute a termination-triggering event, then the contract should be considered terminable at will.'" *Jespersen*, 288 Ill. App. 3d at 893, 681 N.E.2d at 70.

In that case, because only one contract party, Jespersen, had complete control over instituting a termination-triggering event, "the agreement offered the possibility of perpetual duration and was terminable at will by the parties." *Id.* at 893-94, 681 N.E.2d at 70. The contract provided that unless Jespersen terminated by initiating one of the subjective termination-triggering events, then the contract would "continue in force indefinitely." *Id.* at 894, 681 N.E.2d at 70. Thus, because only "one party ha[d] the option or decision to either comply with the contract or not, the duration of the contract [wa]s indefinite and terminable at will." *Id.*

In the instant matter, under the Lease at issue, both parties are provided with rights of termination which they each may independently exercise on their own accord. (R. p. 320 (Lease) at fifth clause ("In the event the property is improved…"), ninth clause ("After the original term hereof, …")). Both parties' rights of termination are based upon objective events and not contingent upon the conduct of the other respective party. (R. p. 320 at fifth, ninth clauses).

Therefore, consistent with this Court's holding in *Prestwick Golf Club*, the Lease is not perpetual in duration and is not terminable at will, and the lower court erred in terminating the same.

II. THE COUNTY WAIVED AND NULLIFIED ITS CONTRACTUAL RIGHT TO TERMINATE, MEANING ITS ATTEMPTED TERMINATION WAS INVALID AND A BREACH OF THE LEASE.

In its April 1, 2021 letter, the County attempted to terminate the Lease "[i]n accordance with the Lease terms[.]" (R. p. 230 at Sec. 2). However, the County had not obtained a building permit or commenced construction of a building on the Leased Property, as was required by the Lease for the Lessor to exercise its right of termination. (R. p. 320; *see also* R. p. 322). More importantly, three months earlier, after it had acquired the property, the County encumbered it with conservation and restrictive easements, which prohibit the County from erecting any improvements thereon, forever barring its ability to cancel the Lease. In exchange for funding from the U.S. Department of the Navy and the Battleground Trust to purchase the Kling Parcel and other battleground properties, the County conveyed each entity a perpetual easement prohibiting development. (R. p. 172, line 3–p. 175, line 5; R. p. 190, lines 6-10; R. p. 196, line 15–p. 197, line 4; R. p. 233-234 at 7th, 9th, and 16th Recitals; R. p. 235 at ¶¶ 3, 4).

The perpetual restrictive easement conveyed to the United States of America, by and through the Department of the Navy, was recorded in the Beaufort County Register of Deeds on December 30, 2020, in Book 3953, at Page 1610. (R. pp. 261-272 (the "Restrictive Easement")). The Restrictive Easement provides that the only permissible activities on the battleground properties are silviculture and use of natural resources, restricting harm to the archeological integrity or the existing topography or natural resources of the property, and maintaining a

commercial building and parking lot that exists on other parcels separate from the Kling Parcel.[7] (R. pp. 262-264 at ¶¶ 3.a., c.). Otherwise, all other activities, including "**[n]ew construction of any structure or edifice, and any other additions to, or alterations of the Property are prohibited**[.]" (R. pp. 262-264 at ¶¶ 3, 3.a., 3.h.).

Separately, in the perpetual conservation easement it conveyed to the Battleground Trust, recorded January 13, 2021, in Book 3958, Page 2410, ***the County agreed to preserve the property "as is," and to not make any material changes or alterations to the topography of the property***. (R. p. 289 (emphasis added); R. pp. 274-289 (the "Conservation Easement"); *see also* R. p. 190, line 6–p. 193, line 20)). The Conservation Easement specifically prohibits the County from constructing buildings on the Kling Parcel. (R. pp. 277-278 at ¶¶ 4(B), (C), (G)). Pursuant to the Preservation Plan, which is attached to and forms the heart of the Conservation Easement, **the County agreed that there would be "no structures, temporary or permanent, placed or constructed upon the [Kling Parcel]**…" (R. p. 289).

In addition, the Conservation Easement specifies that the County may only deviate from the Preservation Plan with permission from the Battleground Trust and State Historic Preservation Office ("SHPO"). (R. pp. 277 at ¶ 3.(A)). Even though the County "agree[d] to preserve the [Kling Parcel] 'as is[,]'" it has never notified the Battleground Trust or SHPO of its attempts to materially alter the property and deviate from the Preservation Plan by seeking to remove Adams' sign. (R. p. 192, line 20–p. 193, line 20; R. p. 196, lines 7-10).

[7] Section 3.c. specifies that the only existing structures which may be repaired or improved are located on the properties that bore Parcel ID Nos. R100-020-000-0165-0000 and R100-020-000-047C-0000. (R. pp. 263-264 at ¶ 3.c.). As the County acknowledged, the only parcel subject to the Lease was that which bore Parcel ID No. R100-020-000-0047-0000. (*See, e.g.*, R. pp. 230 at ¶ 2). Therefore, the Easements do not permit, and expressly prohibit, any construction activity on the Leased Property.

Prior to purchasing the battlefield property, including the Kling Parcel, and encumbering the same with the Restrictive and Conservation Easements, the County was fully aware of the existence of Adams' billboard on the Kling Parcel, as well as Adams' other signs on adjacent parcels that were combined to create the larger battlefield parcel. (R. p. 144 (property description of the County's deed referencing the Consolidation Plat (R. p. 211), which depicts Adams' sign on the Kling Parcel); R. p. 250, lines 15-18 ("[redacted]"); R. p. 175, line 24–p. 176, line 15; R. p. 246, line 10–p. 247, line 24).

Almost a year before attempting to terminate the Lease, which the lessor can only terminate if it initiates construction, County Council approved execution of the Restrictive and Conservation Easements. (R. pp. 233-235 (County Ordinance No. 2020/12); *see also* R. p. 183, lines 3-24). Months before the County breached the Lease by attempting to terminate the same, the easements were executed and publicly recorded. (R. pp. 261-272; R. pp. 274-289). These agreements that the County entered into, after much due diligence and debate,[8] prohibit it from constructing a building on the Leased Property, the Kling Parcel, meaning the County willingly and knowingly contracted away its ability to terminate the Lease.

Additionally, it is not as if the Lease is an onerous, complex, or even lengthy contract such that the County could argue that the clause containing its termination right was buried therein or undiscernible. The document is one page in length with the substantive provisions taking up less

[8] (R. p. 175, line 8–p. 176, line 15 (discussing R. pp. 218-223); R. p. 178, line 19–p. 180, line 14; R. p. 181, line 2–p. 182, line 8; R. p. 183, line 3–p. 184, line 15; R. p. 189, lines 3-16); (R. p. 217 ("This project has been presented several times …")); (R. p. 244, line 14–p. 245, line 10; R. p. 246, line 10-p. 248, line 14; R. p. 249, line 15-p. 250, line 25); (R. p. 300).

than half of it. (R. p. 320). Adams' termination right is separated from the County's termination right by 3 paragraphs (consisting of 5 sentences).

The County attempted to side-step its nullification, arguing in its Rule 59(e) motion that regardless of whether it has an express termination right, it also possesses an implied right of termination. (R. pp. 324, 326-327 ("the implied right of termination exists independent of the express right. …So Adams's claim that the County contracted away, or waived, its express right to terminate upon erecting a building upon the leased property is entirely irrelevant because the perpetual right of renewal given to Adams makes the contract of indefinite duration and thus terminable at will.")).

Simply put, this is faulty logic that requires reading the County's express right out of the Lease to even allow for the requisite preliminary finding that the Lease creates or provides a perpetual right of renewal. If a lessor has an express right of termination and the lessee has no control over the lessor's exercise of that right, then it is impossible for the lease to be of an indefinite duration or for the lessee to have an indefinite right of renewal. **The lessee cannot indefinitely renew if the lessor can terminate on its own volition.**

Because the County affirmatively waived and nullified its contractual right of termination by agreeing to prohibit any construction on the Leased Property, the County's second claim, seeking to terminate the Lease, fails as a matter of law and the lower court erred in ruling in favor of the County on summary judgment.

III. THE LOWER COURT'S ORDER DENYING ADAMS' RULE 59(e) MOTION ERRED BY NOT CONSIDERING THE MOTION.

The lower court's July 14, 2025 order denying both parties' motions to reconsider the preceding Summary Judgment Order states, *in toto*:

> The Plaintiff, Beaufort County, South Carolina, and Defendant, Adams Outdoor Advertising Limited Partnership, requests the Court to

> reconsider the Order dated June 25, 2025 and in the Beaufort County Clerk of Court's office.
>
> Having **duly considered the *motion* of the *Plaintiff*, this Court has determined** that its original ruling of June 25, 2025 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The ***motions*** **are therefore DENIED**.

(R. pp. 21-22 (emphasis added)).

Although it makes clear that the County's motion was duly considered, absent from the order is any indication that Adams' motion to reconsider was analyzed before a final, dispositive ruling was made in the County's favor. This is clear error which warrants reversal.

CONCLUSION

The Lease between Adams and the County provides both parties with an express right of termination based on objective events that are independent of any conduct of the other party. As a result, the Lease does not convey a right of perpetual renewal, is not of an indefinite duration, and is therefore not terminable at will, meaning the lower court erred in applying the *Carolina Cable* opinion to terminate the contract. Additionally, because the County agreed to prohibit its ability to construct any improvements on the Leased Property, it voided and nullified the right of termination provided to it under the Lease.

Because the County's attempt to terminate the Lease was invalid, the lower court erred in granting the County's motion for summary judgment on its second cause of action and erred in denying Adams' motion for summary judgment on the same. As a result, the lower court's rulings must be reversed, with an order entered granting summary judgment to Adams on the County's second cause of action and awarding Adams its reasonable attorneys' fees and costs incurred, pursuant to the South Carolina statutory authority referenced in its requests to the lower court for the same (R. p. 71 at ¶ 78; R. pp. 96-97 (Prayer)); (R. p. 131); (R. p. 160).

[*Signature Follows*]

Respectfully submitted,

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