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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Charleston County
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

App. No. 2026-001038

TOWN OF SULLIVAN'S ISLAND,

Respondent,

vs.

NATHAN BLUESTEIN and
THEODORE ALBENESIUS, III,

Petitioners.

REPLY BRIEF OF PETITIONERS

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CLARIFICATION ON REPLY

This appeal is before the Court for review of the Court of Appeals' decision affirming the Circuit Court's order invalidating the Settlement Agreement in the underlying Original Deed Enforcement Action. The issues have been extensively and fully briefed in the filings that already have been submitted. At this stage, there really is nothing new to present in reply to the arguments offered by the Town to justify its efforts to invalidate the Settlement Agreement and evade its obligations under the 1991 Deed as modified by the terms of that Agreement. However, it is perhaps helpful to reiterate and clarify the key points, namely, that there is no dispute about the facts or about the applicable law, and rather, the issue is the incorrect application of the law to these facts.

Under the applicable law, the Town has the power to contract and bind future Town Councils "if the contract involves the exercise of the municipal corporation's business or proprietary powers," and "if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality." Piedmont Pub. Serv. Dist. v. Cowart (Cowart I) 319 S.C. 124, 459 S.E.2d 876, 880 (Ct. App. 1995), *aff'd*, (Cowart II) 324 S.C. 239, 478 S.E.2d 836 (1996). The predominate issue presented to this Court is the error of the Court of Appeals and the Circuit Court in failing to recognize that the Settlement Agreement is a contract that involves the exercise of the Town's business and proprietary powers in its dual role as a landowner under the 1991 Deed and a litigant in the Original Deed Enforcement Action.

The real estate records conclusively establish that the Town entered into a land contract – the 1991 Deed – wherein the Town took ownership of the Accreted Land and accepted certain obligations to maintain the vegetation to specific standards. Likewise, the court records conclusively establish that the Property Owners brought suit against the Town to enforce the

maintenance obligations, and that after years of litigation, the Property Owners and the Town negotiated and executed a settlement of the Original Deed Enforcement Action. Ultimately, the Agreement was duly approved by the Town Council and approved by the Circuit Court.

Any question as to the reasonableness of the Settlement Agreement is conclusively answered by the stipulations of the parties and the finding of the Circuit Court Judge in the order approving the Settlement Agreement: “UPON Motion of all Parties, and it appearing that the said Parties deem the offer of settlement acceptable, advantageous, and to the best interest of all Parties...” [Amd. ROA 221.] Moreover, the record clearly establishes that it was fair, reasonable, and advantageous for the Town to settle the underlying Original Deed Enforcement Action in view of the undisputed facts that after a decade of litigation and the remand after appeal, the Town faced the prospect of incurring the costs of more litigation as well as the risk of a court ruling could enforce the obligations under the 1991 Deed and impose substantial financial burdens of remediation and future maintenance on the Accreted Land and also impose monetary damages for diminished property values. By entering into the very Settlement Agreement, it now seeks to avoid, the Town avoided the cost and risk of more litigation and negotiated a plan under which the Town controls the thinning and trimming and also shifts the vast majority of the cost to the owners of land that adjoins the Accreted Land, such as the Property Owners named in this action.

Accordingly, the Settlement Agreement is valid and is binding on the current, successor Town Council inasmuch as the Agreement was fair and reasonable and necessary or advantageous to the Town to end the costly decades-old litigation and to avoid/limit the prospect of a heavy financial burden to comply with the Town’s obligations to maintain the vegetation and/or to pay damages to the Property Owners for breach of the 1991 Deed covenant.

Neither the facts nor the law supports the Town's attempt to recast the nature of the Settlement Agreement as an improper attempt to limit the Town's legislative functions or governmental powers affecting the public health and safety of the general public. As declared in the Settlement Agreement: "The settlement, and implementing steps associated therewith, are solely undertaken to further specific enumerated, permissible public purposes ***under the Deed.***" [Amd. ROA 47 (emphasis added)]. The isolated phrase mentioning "public purposes" does not transform the essential nature of the Agreement as a contract for resolution of the litigation over the Town's obligations as a proprietor under the 1991 Deed.

At a most basic level, every decision by the Town Council could arguably implicate a "public purpose" the "health, safety and general welfare" of the Town, and arguably any settlement of litigation implicates the general welfare of the Town. Accepting the Town's line of reasoning would present serious concerns about whether a sitting Town Council ever has the power to enter into a binding real estate contract or reach any settlement agreement that would bind a future, elected Town Council. Nothing in the Cowart line of authority or basic jurisprudence supports such allowing the Town to walk away in these circumstances. One of the core concepts of our real estate and contractual jurisprudence is to support and further reliability, certainty, and confidence in our land transactions. The Court of Appeals' decision creates a disturbing degree of uncertainty in considering entering into a land contract with a municipality or in even contemplating any possibility of a settlement of litigation with a municipality.

CONCLUSION

Inasmuch as the evidence in the Record, shows that the Town, as a landowner, made a business decision in 1991 to enter into a real estate transaction governed by property contract law principles, and that the Town, as a litigant and as a landowner, made a business decision to settle

its legal dispute with the Property Owners, now wherefore, under the applicable law, the Town is legally bound to the valid and enforceable Settlement Agreement.

Accordingly, the Petitioners respectfully ask the Court to vacate the decision of the Court of Appeals and reverse the Circuit Court order invalidating the entire Settlement Agreement, and to remand the matter for further proceedings on the Property Owners counter claims. In the alternative, the Severability Clause of the Settlement Agreement should be enforced rather than invalidating the entire Agreement, and this matter should be remanded to the Circuit Court with directions to sever only the unenforceable provisions as might be held by this Court's decision, and to proceed with further proceedings on the remaining claims.

Respectfully submitted,

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