

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STOW AWAY STORAGE, LLC,)

Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

ORDER

RECEIVED

JAN 17 2014

SC Court of Appeals

FILED
2013 NOV 25 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ 2

This case concerns an Access Easement granted by the Plaintiff, Stow Away Storage, LLC (Stow Away) to the Defendant, George W. Sisson (Sisson), on October 17, 2000, involving property on Highway 17 at its intersection with Porcher Drive in and near Mt. Pleasant, South Carolina. In exchange for the Access Easement, Sisson agreed to abandon the pre-existing access to his property.

Subsequently, on January 3, 2007, the Defendant Sweetgrass entered into a 20 year lease of a parcel adjacent to Sisson's property, owned by Defendant Timarand. When Sweetgrass finished the renovation and enlargement of a commercial building on the property and opened it for business as a hardware store, Sweetgrass allowed its customers to use Sisson's pre-existing access for ingress to and egress from the store, notwithstanding Sisson's agreement to abandon it. The South Carolina Department of Transportation (SCDOT) eventually shut off the pre-existing access, whereupon the customers began using the easement granted by Stow Away to Sisson. After challenge by Stow Away, Sweetgrass secured a License Agreement from Timarand and, despite language in the License prohibiting it, granted its customers the right to continue use of

Stow Away's easement. Suit was filed by Stow Away on April 12, 2011, seeking damages including attorney's fees and costs and a permanent injunction.

The property owned by Stow Away is identified as Parcel 024 on a Charleston County tax map attached to this Order as Exhibit 1. The property initially owned by Sisson and subsequently by Defendants 4.0 LLC and the Sisson Foundation Limited Partnership, (hereinafter Sisson's Property) is designated on the tax map as Parcels 026 and 034. The property leased by the Defendant Sweetgrass from the Defendant, Timarand is identified on the tax map as Parcel 27. Timarand was made a party to Stow Away's Complaint, but was adjudged in default by Judge Harrington on August 16, 2011, and a Motion to Reconsider by Counsel for the Defendant was heard and denied by Judge Harrington on January 25, 2013.

The case came before me for trial on August 14, 2013, and the legal and equitable issues were bifurcated by the Court from the issues of damages and injunctive relief. At the outset, counsel for the Defendants stipulated that the allegations of Paragraphs 1-29 of Stow Away's Complaint were admitted and constitute the facts upon which the case should be considered. Counsel for both parties and the Court also agreed that the Easement conveyed by Stow Away to Sisson was an Easement Appurtenant.

The Facts

1. Stow Away Storage, LLC (hereinafter "Stow Away") is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Stow Away is the owner of two adjoining tracts of land on the north side of U.S. Highway 17 North, aggregating 8.82 acres of land and described as follows:


ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M.

Seabrook, Jr., Inc. dated May 17, 1989, entitled 'Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina.' Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND



ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled 'Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina' by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

3. Defendant George W. Sisson (hereinafter "Sisson") is a resident of Charleston County and a prior owner of the property hereinafter described in paragraph


4. Sisson, in his individual capacity, signed the Access Easement and Abandonment of Encroachment Permit hereinafter referenced in paragraph 14.

4. Defendant 4.0 LLC is a South Carolina Limited Liability Company, created by Sisson, its sole member, which owns a 99% interest in a 5.862 acre tract of land abutting the property of the Plaintiff on the east and described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, shown and designated as Tract 4A, 255.357 sq. ft. 5.862 acres, as shown on a plat entitled 'A Subdivision Plat of Tract 4 containing 17.828 acres', prepared by John T. Byrnes, II, R.L.S., dated July 6, 1995, and recorded at the Charleston County RMC Office in Plat Book EA, at page 742; said tract having such actual size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

Subject to all easements and restriction of record.

The said property was conveyed to 4.0 LLC by its sole member, George W. Sisson, by deed dated December 31, 2002 and recorded in the RMC Office for Charleston County in Book V431 at page 450.



5. Defendant The Sisson Foundation Limited Partnership (hereinafter "Sisson Foundation") is a South Carolina Limited Partnership, created by Sisson, which owns a 1% interest in the 5.862 acre tract of land abutting the property of Plaintiff on the east as described in paragraph 4 above. Sisson Foundation acquired said property by deed of Double G. Foundation LLC, dated April 29, 2003, and recorded in the RMC Office for Charleston County in Book A447 at page 99. Double G. Foundation, LLC was created by Sisson, who is its sole member. It acquired the property by deed of its sole member, Sisson, dated December 31, 2002, and recorded in the RMC Office for Charleston County in Book V431 at page 453. Sisson Foundation is a necessary party to these proceedings by virtue of its ownership of a 1% interest in the property described in paragraph 4.

6. Sweetgrass Hardware, Inc. (hereinafter "Sweetgrass") is a corporation organized and existing under the laws of the State of South Carolina, holding a leasehold interest in property east of the 5.862 acre tract owned by Defendant 4.0 LLC and Sisson Foundation, and operating a hardware store thereon. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139.

TMS#: 598-00-00-027

7. Timarand, Inc. (hereinafter "Timarand") is the owner of the tract of land described in paragraph 6 above and the landlord of the Defendant Sweetgrass. As owner of said tract, Timarand is a necessary party to these proceedings.

8. On July 13, 1999, Stow Away, by its managing member, filed with the South Carolina Department of Highways and Public Transportation (hereinafter "SCDHPT") an Application for Encroachment Permit requesting access to drive to the parcel described in paragraph 2. The access was from U.S. Highway 17 (hereinafter "Hwy. 17") opposite the Porcher Bluff Road intersection with Hwy. 17 and was to be 24' wide with a 30' radius on the south side and a 40' radius on the north side.

9. In the course of negotiations with SCDHPT, its name changed to the South Carolina Department of Transportation (hereinafter "SCDOT").

10. In response to Stow Away's application for an encroachment permit, SCDOT ultimately agreed to the encroachment permit requested and required Sisson, then the owner of the property now held by Defendants 4.0 LLC and Sisson Foundation, to abandon the access previously used by him for ingress to and egress from Hwy. 17.

11. On March 21, 2000, E.L. Pooser, III, the managing member of Stow Away, wrote a letter to Mr. Sisson offering him an easement across Stow Away's property to and from Hwy. 17 in exchange for his abandonment of his original access.

12. Included with the letter was a draft of the easement offered.

13. Sisson "Acknowledged and Agreed" to the offer and the abandonment of his original access by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1)

14. On October 17, 2000, the ACCESS EASEMENT AND ABANDONMENT OF ENCROACHMENT PERMIT was signed by both E.L. Pooser, III, as Managing Member of Stow Away, and George W. Sisson a/k/a George W. Sissons. The document was subsequently recorded in the RMC Office for Charleston County on November 16, 2000 in Book U358, page 109. (Exhibit 2)

15. Following several telephone conversations with Stow Away's member, Bert Pooser, on September 27, 2006, Tim Askins, the sole shareholder of Timarand, had his wife fax a sketch to Pooser, depicting a proposed extension of the Access Easement previously provided to Sisson which would have allowed access over Stow Away's Access Easement to Timarand's property, which he subsequently leased to Sweetgrass. (See Exhibit 3) Pooser never agreed to the proposed extension.

16. On January 3, 2007, the Defendant Timarand and the Defendant Sweetgrass entered into a lease of the property described below, pursuant to the provisions of which Timarand leased the property to Sweetgrass for a term of ten (10) years with an option to extend the term for two additional five (5) year periods. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

(See Memorandum of Lease, Exhibit 4)

17. The deed and plat by which Timarand acquired the property leased to Sweetgrass provided access to Hwy. 17 North only to the east of Sisson's property as shown on plat recorded in the RMC Office for Charleston County in Plat Book CD at page 139 and plat recorded in the RMC Office for Charleston County in Plat Book EA at page 742. (Exhibits 5 and 6)

18. Shortly after Sweetgrass leased the property from Timarand, it renovated and enlarged a commercial building on the property for use as a retail hardware store.

19. In the course of preparing its leased property for use as a hardware store, large trees and shrubbery blocking access to Sisson's property were removed and Sweetgrass constructed a gate on its west property line, thereby providing access to its property from the access to Hwy. 17 that Sisson had agreed with Stow Away to abandon.

20. Upon completion of renovations and opening of the store, customers of Sweetgrass, with the permission of Sisson, began using the old easement to Sisson's property which he had agreed to abandon under the terms of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000. Indeed, Sisson and/or Sweetgrass paved the old easement on April 19, 2009, to facilitate its use, notwithstanding Sisson's contractual agreement to abandon it.

21. Despite the SCDOT's objection, Sweetgrass and its customers continued to use the access Sisson had agreed to abandon to reach the hardware store. (See Letter from Richard L. Turner, P.E., Resident Maintenance Engineer dated July 21, 2008 attached as Exhibit 7)

22. Shortly thereafter, the SCDOT erected barriers to prohibit further use of the access Sisson had agreed to abandon, thereby limiting access to both Stow Away's

property and Sisson's property and extinguishing the access of the customers of Sweetgrass.

23. Thereupon, Sweetgrass and its customers began using the access constructed by Stow Away on its property to access Sweetgrass' hardware store.

24. By letter dated August 20, 2008, counsel for Stow Away wrote Sweetgrass' President demanding that he notify his customers to cease using Stow Away's access to reach Sweetgrass' store. (See letter attached as Exhibit 8)

25. This demand was met by a written response from Sweetgrass' attorney, dated November 10, 2008, advising that: "Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (See letter attached as Exhibit 9)

26. Counsel for Stow Away then sent an email to Sweetgrass' attorney asking him to email him a copy of the document by which Sweetgrass Hardware, Inc. had become "a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (Exhibit 10)

27. It developed that, in point of fact, Sweetgrass did not hold any written lawful assignment, but counsel for Sweetgrass then proceeded to obtain a License Agreement from 4.0 LLC to Sweetgrass dated November 13, 2008 (three days after counsel had advised that Sweetgrass was already a "lawful assignee of Mr. Sissons [sic]."). (See License Agreement attached as Exhibit 11)

28. The License Agreement, by its terms and according to law, was and is personal to Sweetgrass and "may not be sold, transferred, assigned or given to any third party." (License Agreement ¶ 10)

29. Nonetheless, both Sisson, individually and as sole member of 4.0 LLC, and Sweetgrass have persisted in asserting that the License Agreement allows Sweetgrass to assign to its customers the use of Stow Away's Easement and have

refused to relent in their insistence that Sweetgrass' customers have the right to use Stow Away's Easement and have threatened that "any further attempt by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business." (See letter from Sweetgrass' counsel, Exhibit 12, and letter from George Sisson, Exhibit 13)

Conclusions of Law

Plaintiff argues that because Defendant Sweetgrass merely obtained a License Agreement to use the easement from Defendant Sission, by law and by express provisions in the License Agreement, Sweetgrass is prohibited from assigning those rights to any third party, including the customers of Sweetgrass.

The assignment of [one's rights in land] conveys an interest in the land. An assignment is a conveyance of the lessee's entire interest in the demised premises without retaining any reversionary interest in the leasehold. See, Neal v. Craig Brown, Inc., 86 N.C.App. 157, 356 S.E.2d 912 (1987). . . . In contrast, a license to be on the premises for an agreed purpose is a contractual right *personal to the licensee*. See, Bunn v. Offutt, 216 Va. 681, 222 S.E.2d 522 (1976). A license does not vest in the licensee any estate or interest in the land. See, Hill v. Smith, 51 N.C.App. 670, 277 S.E.2d 542, review denied, 303 N.C. 543, 281 S.E.2d 392 (1981). It conveys only the temporary privilege of being on the land for some agreed purpose. See, Henson v. Airways Service, Inc., 220 Ga. 44, 136 S.E.2d 747 (1964).


Hilton Head Air Serv., Inc. v. Beaufort Cnty., 308 S.C. 450, 456-57, 418 S.E.2d 849, 853 (Ct. App. 1992) (emphasis added). It is well settled law in South Carolina that licenses are personal to the licensee. Id. Therefore, the law prohibits assignments of licenses because of a license's very nature. Furthermore, as stated in Paragraph 28 of this Order, the License granted by Sisson to Sweetgrass expressly prohibits any assignments of the License Agreement. Therefore, by virtue of the laws regarding licenses and the License Agreement, Sweetgrass may not assign the benefits of the License to a third party. However, the Court is not entirely persuaded that the License granted to Sweetgrass does not encompass the customers of Sweetgrass as licensees,

which would in effect eliminate the Court's finding of an assignment of the License to a third party. If the License does implicitly include Sweetgrass' customers as licensees, the Court must then determine whether the License Agreement in itself materially increases the burden on the dominant estate.

"In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed." Rhett v. Gray, 401 S.C. 478, 491 (Ct App. 2012). Furthermore, "[t]he language of an easement determines its extent. . . . [The] court must construe unambiguous language in the grant of an easement according to the terms the parties have used. . . . The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." Plott v. Justin Enterprises, 374 S.C. 504, 513-14 (Ct App. 2007). "In South Carolina, an owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden." Rhett, 401 S.C. at 493.

The Access Easement and Abandonment of Encroachment Permit (hereinafter the "Easement Agreement") states in part, "Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sisson's Property'. . . for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17. . . . The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property." Based on the

evidence presented to the Court regarding the substantial increase in vehicular traffic using the easement as a result of the License Agreement, the Court finds that by allowing the customers of Defendant Sweetgrass to use the easement for access to Defendant's store and the post office facility, Defendants have materially increased the burden on the servient estate; thus, expanding the dominant estate and materially increasing the scope of the easement.



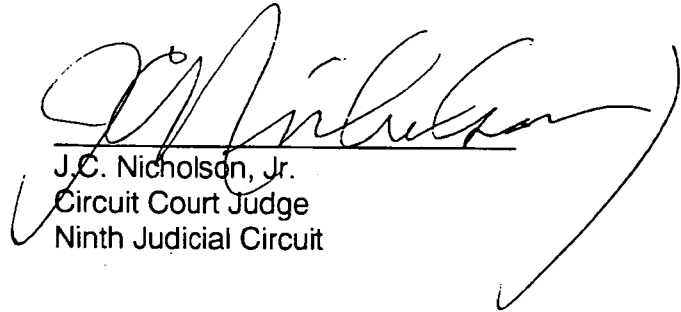
It is the Defendants' position that the language in the Easement Agreement which states that the assignment "shall not be deemed to be an unlawful increase or burden upon the Grantor's property . . ." evidences that the Easement Agreement contemplated a material change in the scope of the easement. However, in reading the Easement Agreement as a whole, as required by South Carolina precedent, the Court finds that this language refers specifically to the assignment of the rights held by the dominant estate holder and does not address a change in the scope of the easement. The Court further finds that in order for there to be a finding that the Easement Agreement contemplates the material increase in the scope of the Easement and the burden on the servient estate by the dominant estate holder, there must be specific language indicating such, and none exists.

In conclusion, the Court finds that even if the language of the License Agreement implicitly includes the customers of Sweetgrass as licensees, the increased volume of vehicular traffic as a result of the License materially increased the scope of the easement and the burden on the servient estate, thus, expanding the dominate estate in violation of the Easement Agreement between Plaintiff and Defendant Sisson and the law of South Carolina.

Therefore, the Court finds in favor of the Plaintiff and grants the Plaintiff the right to shut off traffic entering and/ or crossing the easement for the purpose of entering the Defendant Sweetgrass' property by whatever means that are reasonably necessary.

This does not give the Plaintiff the right to limit Defendant Sisson's use of the easement as provided for in the Easement Agreement. Whatever means the Plaintiff uses to block traffic crossing the easement and entering Defendant Sweetgrass' property must remain on Plaintiff's property and may not go farther than the property line of Defendant Sisson's easement. The Defendants are restrained from interfering with Plaintiff's efforts to shut off such traffic.

IT IS SO ORDERED!



J.C. Nicholson, Jr.
Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

11/22, 2013