THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482
Appellate Docket No. 2013-000329

Harrison Partners, LLC, ...Appellant,

v.

Renewable Water Resources, ...Respondent

APPELLANT'S RETURN TO RESPONDENT'S SECOND MOTION TO DISMISS

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RETURN

Appellant's brief contains citations to specific facts that it contends are supportive of its case. As to the inferences the Appellant draws from a particular set of facts, or from the record as a whole, no specific citation can be made, however, the Appellant submits that they are adequately supported by the record.

Rule 208 (b)(1)(D) ***Argument.*** The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, *which may include contested matters and summarize the party's contentions.*

The Appellant argues the facts from record as well as the inferences it draws from those facts. The Appellant's interpretation of the facts, as well as the inferences drawn from therefrom may well be contested. They are however, the Appellant's interpretation of the of the record.

The Respondent complains of Appellant's argument as to ReWa allowing forced mains by a private company to come on to ReWa property. Specifically Respondent makes issue with the Appellant's view that "it was standard practice to do so and no objection had been raised previously." The Respondent's motion takes this statement out of context. The statement in context is part of Appellant's argument as to what it believes the record shows:

> "The last wrinkle was that [ReWa] basically told us that they weren't going to allow the force main owned by a private utility coming onto ReWa property." Despite the fact that it was standard practice to do so and no objection had been raised previously. In fact, Re-Wa routinely encouraged the use of private easements and provided access to their system and data to facilitate the process. In other words, the new regulations were a complete '180 from the practice prevailing at the time Appellant's application was submitted.

Appellant's Brief pg. 13.

While the Respondent claims that the Appellant's contention as to the record is "altogether false," the record shows that prior to ReWa's denial of the Appellant's application "the traditional pump station force main from River Trace all the way up to the treatment plant was fairly standard practice." R. p. 103, l. 21-24. The record further shows that at one point the Appellant had workable plans, at least until the Respondent changed its practice in order to own and make money on forced mains. R. 104-105. At some point in 2007 the Respondent decided that "instead of Condor making money on pump stations, we're going to make - - we ought to be making the money on pump stations." R. p. 105, l. 1-4. From the Appellant's point of view the record shows that the Respondent previously allowed force main access to its property in a way that it later changed so that it could make additional money. While the Respondent may not agree with the Appellant's interpretation of the record, it is a party's prerogative to argue the facts that party views them.

There is ample evidence in the record to support the Appellant's view of the facts. The record shows that the old sewer policy in Greenville County allowed private ownership of lines into the public system. 228, l. 2-16. The record further shows private pump stations going into the public system had occurred at least 12 times in the past. R. p. 55, l. 1-25. There was testimony that would indicate the ReWa Board changed its policy about letting a private line go across ReWa property. R. p. 56, l. 1-25. The existence of the policy being considered a standard practice is evidenced by the existence of other substantial private projects planning to connect to ReWa in a manner similar to that proposed by the Appellant. R. p. 228, l.2-16; 222, l. 6-9; 311, l. 4-15; 321, l. 2-25; 430, l. 1-12. Appellant has simply argued his version of the relevant facts as well as the inferences he draws from the record as a whole. He is entitled to his view of what the

record shows, inferences included.

Respondent also complains of the Appellant's argument concerning the Vulcan case. Appellant does not contend that Respondent has conceded that Vulcan controls the outcome of the case to their detriment. Appellant's argument is intended as his view of the facts and inferences derived from the record. The reference to Vulcan arose during the Appellant's testimony. The Appellant in his testimony compared the facts of the present case to that of Vulcan, and went on to explain the facts and holding of Vulcan. The Appellant's testimony initially received an objection from the Respondent's counsel. 71, 21-23. Although it is unclear what the basis of the objection was from the transcript, it does not appear to the Appellant that Respondent was necessarily arguing against the relevance of the testimony, or the application of Vulcan in general, but rather to the witness' giving his interpretation of the Vulcan case. The Appellant went on to testify that Vulcan held that regulations can not be retroactive. 72, l. 1-2. The Respondent did not object to this testimony. 72. Appellant interprets the record therefore as showing the Respondent has not argued against the viability of Vulcan in regards to the prohibition of retroactive regulations. There is no question that the Respondent has taken the position below that Vulcan does not apply if the Appellant's neighborhood was not yet actually established or a flow letter issued before the new regulations went into effect. 22.

The record shows a substantial amount of testimony throughout the remainder of the case concerning the retroactive application of the Respondent's policy. 102; 186; 212-213; 235-236; 153; 164; 328; 330; 354-355; In particular, Orvin (ReWa) admitted that the Board was never advised of the retroactive application of the new policy or regulations. 79 (490). ReWa did however offer testimony that the new regulations/policy would not be retroactive if the Appellant

had not been issued a flow letter. 101 (513). Appellant's argument was not intended as a contention that the Respondent conceded that its actions constitute a retroactive application as prohibited under Vulcan. Rather, that the Respondent did not object to the testimony of Scott Bolo as to Vulcan's holding, and thus conceded the viability of Vulcan as a prohibition to retroactive regulations. At issue is whether Vulcan applies given the record in this case. The Respondent has taken the position that it does not, the Appellant that it does. The Appellant's argument is based on his interpretation of the record.

Respondent has further complained of the Appellant's argument that the Respondent had flagged their application as early as August 2007 and put a hold on the processing of the Appellant's plan prior to the implementation of the regulation. Respondent claims this simply to be "false". The record contains ample evidence to support the Appellant's contention. There was testimony that ReWa wanted to "hold up on approving the pump station portion of [Appellant's] proposal until such time as we can come up with a firm policy, *i.e.*, regulation." R. 465, l. 13-13. Months prior to the implementation of the regulation ReWa employees were told to hold up on approving any pump stations. R. p. 80. Scott Bolo testified that "you delayed me and delayed me and delayed me and delayed me and prevented us from getting a permit." R. 294, l., 9-11. "And the easement agreement was something that ReWa refused to work out because they could just hold it up and say, "Oh, you're not grand fathered. You don't have a vested - we're holding this out." R. 235, l. 19-23. ReWa intentionally delayed the project. R. p. 219, R. p. 781(Ex. 7). Bolo testified that the delay was to allow ReWa the ability to implement a retroactive policy and that all of ReWa's excuses in delaying the Appellant's project were a subterfuge. R. p. 235-236. Bolo further testified that "if you [ReWa] never allow our route and you never allow us to finalize it,

you just keep us in perpetual limbo forever." R. p 236, 15-17. Appellant's argument that ReWa intentionally flagged and held up the Appellant's project is amply supported by the record:

> No. The reason it is important to ReWa was because you [ReWa] were delaying the process to implement a retroactive law, violating the Constitution of the United States of America. That's why it was important. It was subterfuge designed to draw out the process. Look, you had 20 other - seven other developments that didn't have any technical challenge, and you wouldn't let them connect either, right? They didn't connect. No one did."

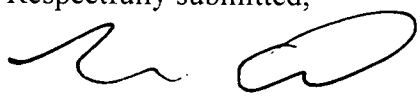
R. p. 253, l. 6-14.

Throughout the brief the Appellant raises what he believes to be the facts relevant to the issues. Whether specifics or in generalities, the Appellant is entitled to argue his view of the facts as well as the record as a whole. This includes any inferences which the Appellant believes can be drawn from the record. Appellant's arguments are supported by the record. Appellant has ample citations to specific facts in the record. As to facts alleged drawn on inference, those facts are amply supported by the record as a whole. Appellant' brief therefore complies with Rule 208.

Respondent has further objected to the length of the Appellant's brief. Argument in this case did not exceed 50 pages when prepared for printing. Reformatting and printing altered the page numbering and overall length of the Appellant's Initial Brief. Prior to reformatting and printing the Appellant's argument in its Initial Brief did not exceed fifty pages. Appellant does not anticipate the argument of its Final Brief to exceed fifty pages. In the event that the argument of the Appellant's Final Brief does exceed fifty pages, then pursuant to Rule 208(b)(5) the Appellant will file a motion to exceed the page limit. Appellant's motion to dismiss the Appellant's Initial Brief or, to strike the last eight pages, should therefore be denied.

Wherefore, the Appellant moves this Court to deny the Respondent's motion.

Respectfully submitted,



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February 18, 2014.

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Edward W. Miller, Circuit Court Judge

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Harrison Partners, LLC, ...Appellant,

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CERTIFICATE OF SERVICE

I certify that I have served that Appellant's Return on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 18th day of February, 2014, addressed to counsel of record as indicated below:

Rivers Samuel Stilwell
Lane Whittaker Davis
Nelson Mullins Riley & Scarborough, LLP
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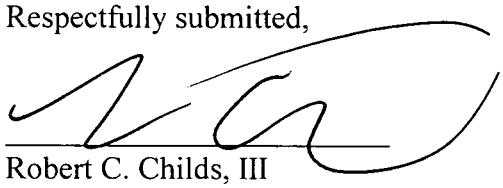
Respectfully submitted,



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February 18, 2014

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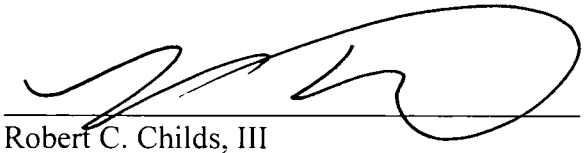
Re: Harrison Partners, LLC, Appellant v. Renewable Water Resources, LLC, Respondent
Appellant Case No.: 2013-329
C. A. No.: 2011-CP-23-6482

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Appellant's Return to Respondent's Second Motion to Dismiss and the Certificate of Service for the above referenced case. Please return a filed stamped copy in the self-addressed stamped envelope.

With kind regards, I remain

Sincerely,



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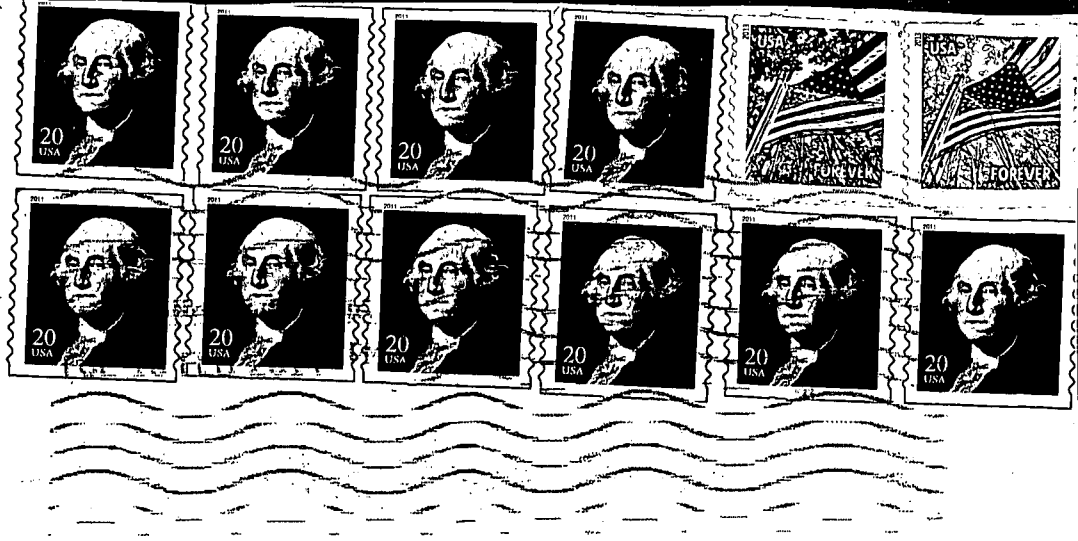
Enclosure
cc: Mr. Rivers Samuel Stilwell (w/ enclosure)
Mr. Lane Davis (w/ enclosure)
J. Falkner Wilkes (w/ enclosure)



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