

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 16 2014

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC Appellants,

v.

South Carolina Coastal Conservation League and Edward Dana Beach Defendants,

Of whom the South Carolina Coastal Conservation League is the Respondent.

**RECORD ON APPEAL
APPENDIX**

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Attorneys for Appellants

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Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

NORTH PLEASANT, LLC AND
VANGUARD DEVELOPMENT
GROUP, LLC,

Plaintiffs,

vs.

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE AND
EDWARD D. BEACH,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-1771

PLAINTIFFS' MOTION TO
ALTER OR AMEND
JUDGMENT
(Rule 59(e))

2013 JAN -2 PM 1:04
CLERK OF COURT
BERKELEY COUNTY, SC

TO: G. TRENHOLM WALKER, ESQUIRE AND W. ANDREW GOWDER, JR., ESQUIRE,

Attorneys for Defendants, South Carolina Coastal Conservation League and Edward D. Beach;

Plaintiffs, North Pleasant, LLC and Vanguard Development Group, LLC, hereby move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering and amending the Order of December 18, 2012 granting in part and denying in part the Motion by Defendants for Summary Judgment in the above styled action. Specifically, Plaintiffs respectfully request the Court to amend the previous order by denying Defendants' Motion for Summary Judgment as to Defendant Beach and as to the Plaintiffs' cause of action for violation of the S.C. Unfair Trade Practices Act.

As to the claims against Defendant Beach, Plaintiffs respectfully submit that there is evidence in the record from which a jury could conclude that Beach in fact directed the actions of the League. While, as the Court noted in the Order, Beach testified that he did not recall specifically speaking with the League employee who took the actions the Court has found could

be found to constitute tortious interference with contract, there is evidence in the record from which a jury could draw the conclusion that he did so, despite his testimony. Charles Lane, a close associate of Beach's and of the League, testified that Beach directs everything the League does. (Lane Depo, p. 10-11, Exhibit 10 to Plaintiffs' Memorandum in Opposition). Moreover, the evidence is undisputed that Beach was personally committed to stopping development of the Keystone tract by North Pleasant or any purchaser of the property. This evidence includes his own testimony and that of former Governor Sanford, with whom Beach spoke directly. (Beach Depo., p. 87-96, Exhibit 8 to Plaintiffs' Memorandum in Opposition). Mr. Beach's conversation with Governor Sanford apparently was instrumental in prompting Sanford to send his extraordinary letter of September 27, 2004 to one of the principals of North Pleasant warning him of "sustained opposition" should North Pleasant attempt to develop the Keystone tract. (Sanford Depo. and Exh. 1 to the Depo, Exhibit 12 to Plaintiffs' Memorandum in Opposition). This evidence is strong in illustrating Beach's personal involvement in the League's effort to prevent development of Keystone. In conjunction with his admission that he probably spoke to Hamilton Davis before his call to the company under contract with North Pleasant to purchase the property, it is sufficient to permit a jury to conclude that Beach directed Davis' actions.


As to the cause of action for violation of the S.C. Unfair Trade Practices Act, Plaintiffs respectfully submit that the evidence is sufficient to permit a jury to conclude that the Defendants in fact were engaged in trade or commerce within the meaning of the Act when they set out to interfere with a contract to purchase the Keystone tract. There is ample evidence (set forth on pages 9-12 of Plaintiffs' Memorandum in Opposition) that in mounting its campaign to prevent development of the Keystone tract, including interfering with its sale by North Pleasant, the League was furthering the interests and wishes of many substantial contributors and

supporters of the League. Moreover, the League's actions did not constitute simple advocacy or support of a public policy position by government agencies – it was manifested in direct interference in a commercial land sale. By interfering in a land sale, the League inserted itself into a quintessential act of commerce and trade and did so on behalf of persons with interests adverse to the contracting parties. This act renders the League no different from a competitor or other adverse party who engages in unfair or deceptive practices in the aid of that party's commercial interests. For this reason, Plaintiffs respectfully believe the Act encompasses the League's actions in this instance.

This Motion may be supported by a more detailed memorandum.

Respectfully submitted,

BY:


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ATTORNEYS FOR PLAINTIFFS

January 2, 2013
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE


I, Cindy Glover, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that a true and correct copy of Plaintiffs' Motion to Alter or Amend Judgment was served on the undersigned parties by depositing a copy of same in the United States Mail, postage prepaid, first class, this 2nd day of January, 2013 addressed as follows:

W. Andrew Gowder, Jr., Esquire
G. Trenholm Walker, Esquire
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413

The Honorable Roger M. Young
Judge, Ninth Judicial Circuit Court
100 Broad Street, Suite 368
Charleston, SC 29401

2013 JAN -2 PM 1:04
CLERK OF COURT
BERKELEY COUNTY, SC

BC


Cindy Glover

Mt. Pleasant, South Carolina

1 and nobody from the conservation league was at that
2 meeting, were they?

3 A. I don't know. Not to my recollection. You'll
4 have to ask somebody else that. I just -- I remember
5 Frampton and the governor.

6 Q. And -- but you have no recollection of anybody
7 from the conservation league being there?

8 A. I don't, but I would be speculating if I told they
9 weren't there.

10 Q. And when you got into this deal with Pittinger,
11 you didn't call up Pittinger or have any of your people
12 call them up and say, Hey, did you know, not too long
13 ago, the State of South Carolina was really interested in
14 preserving this property and there are a lot of people
15 down here that would like to see it protected?

16 You didn't disclose that to Mr. Pittinger, did
17 you?

18 A. I never talked to Mr. Pittinger.

19 Q. You didn't have any of your people tell
20 Mr. Pittinger that, did you?

21 A. I did not have anybody say that to them.

22 Q. Now, the Department of Natural Resources, that's
23 the entity in South Carolina that charged with overseeing
24 hunting and fishing and preserving habitat? Is that your
25 understanding?

1 A. You know, I was chairman of the department natural
2 resources in Georgia and that's what we did. And we were
3 in the environmental protection division too. I was
4 chairman of that. So we served two roles in Georgia. I
5 don't know what you do here in South Carolina.

6 Q. You were aware, and didn't you receive, a copy of
7 a letter that was sent in September 22, 2005 from John
8 Frampton, as the head of the South Carolina Department of
9 Natural Resources, offering your company, the Ohio
10 company and your Georgia company, \$26 million for this
11 property?

12 A. Could I see that document, please?

13 Q. It's a letter dated September 22, 2005 to Mercer
14 Reynolds you told us was one of the principals in the
15 company.

16 A. Yes. This was sent to Mercer, not me.

17 Q. You were aware at the time that this letter had
18 been sent to be received your company?

19 A. I am sure that I would have been. Something of
20 this magnitude I would have been told about. Why are the
21 blanks in here? A bargain sale price of blank and an
22 average price of blank.

23 Q. What does that mean? My question here is, did you
24 received a copy of this letter around the time
25 Mr. Reynolds received it since you were involved in it?

1 it, wouldn't you?

2 A. Well, it would be going to Mercer.

3 Q. But when it was copied and circulated within your
4 organization, you would have received a copy, correct?

5 A. I'm sure I was exposed to this letter. I just
6 can't answer with somebody handing me a copy of this or
7 not. I'm not saying I didn't see it. I'm just saying I
8 don't know if anybody gave me a copy.

9 Q. When you get down to the first paragraph, Mr.
10 Frampton says, On behalf of DNR, we have analyzed the
11 development opportunity on Keystone and its corresponding
12 value. We continue to believe that our offer of 26
13 million is extremely fair. In fact, we have serious
14 concerns that an appraised value would not support a
15 higher offer. As you may know, there has been much
16 publicity about an agreement between local officials to
17 prevent water and sewer extensions and limit the density
18 of developments near the national forest.

19 This would create substantially more development
20 opportunity for the entire Cooper River area. For these
21 reasons we stand committed to our offer of \$26 million
22 and are leaving it on the table for your consideration.

23 So he left it on the table for your group to
24 consider, correct?

25 A. I think that actually may have been an offer that

1 you to consider them and the effects they will have on
2 the development scenarios you proposed. For your
3 convenience, I'm enclosing a copy of a recent article
4 that describes this proposal.

5 So in this letter, he also mentions conservation
6 efforts being initiated by local officials back in
7 December 2005, correct?

8 A. That's what it says in this letter, yes.

9 Q. He makes no mention of the Coastal Conservation
10 League, does he?

11 A. No.

12 Q. Talks about local officials with their
13 conservation efforts, and I've got here what I understand
14 to be the article that he was talking about that he
15 enclosed, which I'm going to mark as Defendant's Exhibit
16 7. This was enclosed in that letter.

17 MR. REYNOLDS: Your Honor, I'll object to
18 Exhibit 7. This is just plain hearsay.

19 THE COURT: I can't hear you.

20 MR. REYNOLDS: It's just hearsay, Your Honor.

21 THE COURT: Well, what is it?

22 MR. REYNOLDS: It's a newspaper article, it
23 looks like.

24 THE COURT: Well, that's hearsay. What are
25 you trying to put a newspaper article in for?

1 Q. And that's all he did? He didn't work with the
2 lawyers for North Pleasant at all? That's your
3 testimony?

4 A. I don't know what work he did.

5 Q. You don't know?

6 A. I don't know.

7 Q. You don't know. All right. We talked a little
8 bit about due diligence. In the due diligence phase, did
9 you talk to Mr. Fogarty about the availability of water?

10 A. Yes.

11 Q. All right. Did you tell him that the water line
12 was only for industrial use for Nucor and that the owners
13 of that property would not have access to it?

14 A. No.

15 Q. What did you tell them?

16 A. I told them water was available at the property.

17 Q. Was that correct?

18 A. There is a water line in front of the property.

19 Q. Did you have any information whether or not that
20 water line could be accessed for residential use by the
21 owners of this property?

22 A. I didn't represent that there was available for
23 residential use. I told him there was water in front of
24 the property.

25 MR. GOWDER: That's all. Thank you.

1 A. No, sir.

2 Q. In 2007, were you even aware of the existence of
3 Vanguard Development Group, LLC's broker?

4 A. I don't believe so.

5 Q. All right. So you would not have been aware of
6 their contracts with anybody?

7 A. No.

8 Q. Would you?

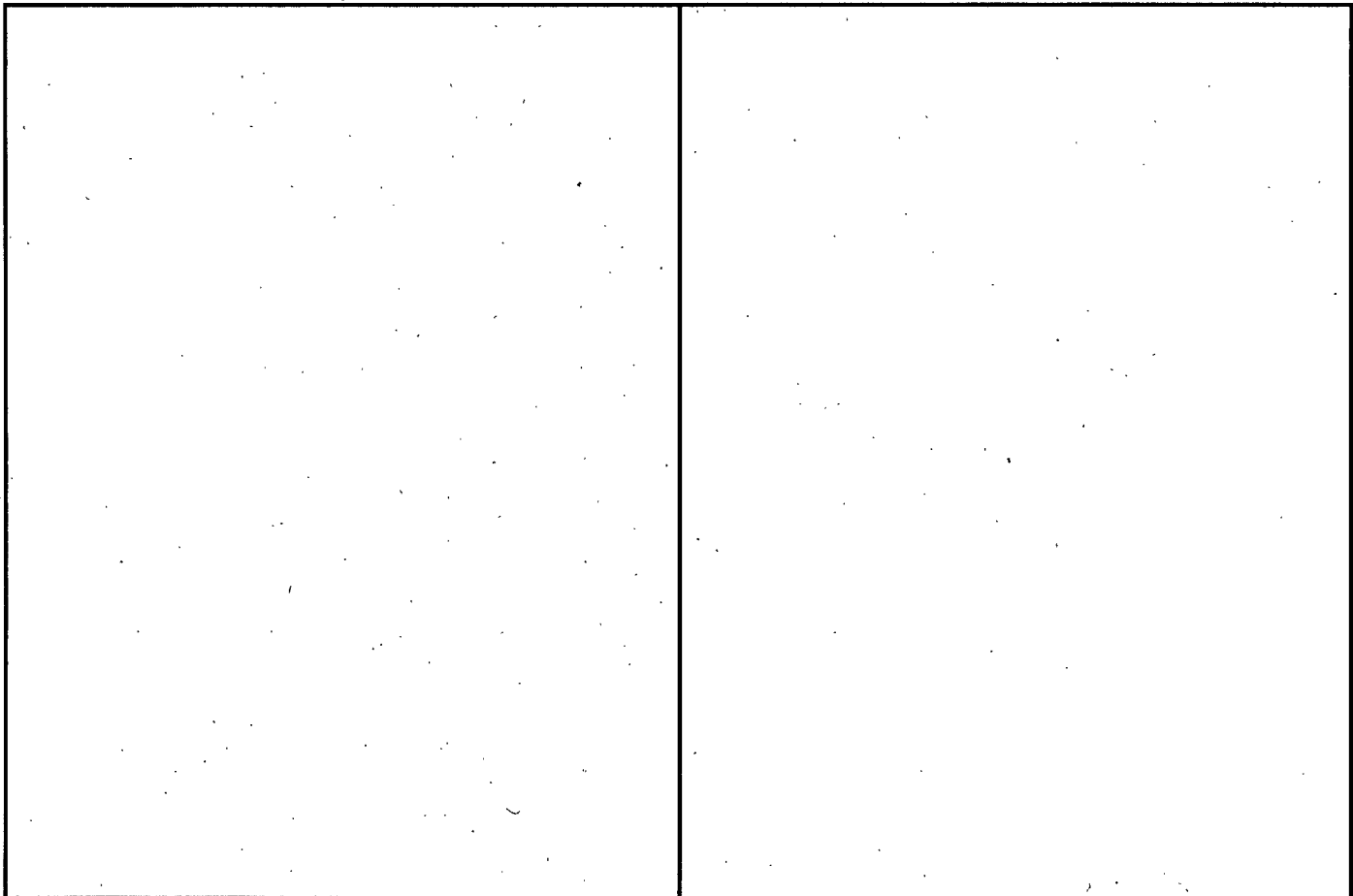
9 A. No, sir.

10 Q. All right, sir. I'd like to go back to that
11 telephone conversation, Mr. Davis. Why did you call
12 Daniel Burns in the first place?

13 A. That's -- we found out that they were interested
14 in the property, and that's kind of how we work on these
15 projects. Everyone that's involved, we tend to be in
16 some type of conversation, and so there was potential
17 that a new buyer was going to be there, would be the kind
18 of thing that we wanted to work with them, to, again, get
19 the property into a state that everybody thought was a
20 good place.

21 Q. All right. What do you remember about the
22 conversation?

23 A. I mean, just that it was an introduction to the
24 league, what was going on in the corridor and the
25 opportunity to do something that was -- you know, the



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1 be.

2 Q. Is your understanding of the structure
3 the deal as set forth in this contract, that
4 certain monies were to be put down and that those
5 monies were fully refundable up to the end of the
6 inspection period?

7 A: Correct.

8 Q. What is the typical due diligence that
9 your firm would perform for an acquisition of
10 property like this?

11 A. We want to see Phase I, environmental.
12 We look for archeological, endangered species,
13 wetlands. We want to know about zoning. We want
14 to know about utilities.

15 Q. When you acquired this property, did you
16 consider that its entire use would be single
17 family residential?

18 A. Correct.

19 Q. At any time, did you consider that there
20 would be commercial uses on this property?

21 A. We didn't see that. There is a major
22 commercial corridor three or four miles away or
23 two, whatever it is. That was never in the game
24 plan.

25 Q. At the time you entered this contract,

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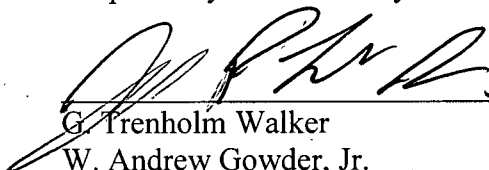
South Carolina Coastal Conservation League and Edward Dana Beach.....Defendants,

Of whom the South Carolina Coastal Conservation League is the.....Respondent.

CERTIFICATE OF COUNSEL

I certify that Respondent South Carolina Conservation League's Appendix to the Record on Appeal contains no matter which is irrelevant to this appeal.

Respectfully Submitted By:


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On this 17th day of October, 2014
Charleston, South Carolina

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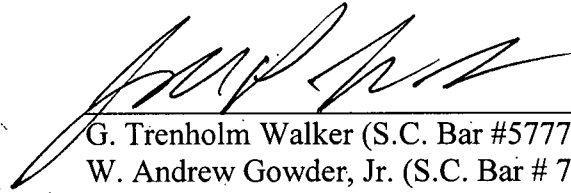
I certify that I served the Appellants North Pleasant, LLC and Vanguard Development Group, LLC with (1) the Consent Motion to Correct and Supplement the Record on Appeal and (2) the Appendix to the Record on Appeal, by depositing a copy of it in the United States Mail; Postage prepaid, to the addresses below, on October 14, 2014.

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Charles R. Reynolds, Esquire
Santen & Hughes
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[Signature on following page]

Respectfully Submitted,
PRATT-THOMAS WALKER, PA



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October 14, 2014
Charleston, South Carolina