STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE No.: 2013-CP-10-4019
THE WASHINGTON LIGHT INFANTRY OF CHARLESTON SOUTH CAROLINA, INC., Plaintiff, vs. THE SEA GRANT CONSORTIUM, An Agency and Political Subdivision of the State of South Carolina, Defendant,	**DECLARATORY JUDGMENT**

This matter came before the Court on 1 December 2014. Present at the hearing were Plaintiff and Defendant and counsel of record for both. The parties entered into a stipulation of fact which was read into the record. In accordance with the stipulation of fact, the Court makes the following findings of fact:

The Plaintiff, Washington Light Infantry of Charleston, South Carolina, Inc., (hereinafter "Washington Light Infantry" or "WLI"), is a non-profit corporation licensed under the laws of the State of South Carolina. The Defendant, Sea Grant Consortium (hereinafter "Sea Grant"), is an agency and political subdivision of the State of South Carolina.

The Plaintiff owns certain property located on Meeting Street, Charleston, South Carolina, commonly known as the Washington Light Infantry Armory. Sea Grant has leased the first floor of the Washington Light Infantry Armory from the WLI. The agreement of the parties is reduced to a written lease. The Lease was entered into

evidence as Exhibit 1, and is supported by full, fair and valuable consideration. The lease was drafted by the Defendant.

There is a Heating, Ventilation and Air Conditioning (HVAC) unit for the first floor of the Washington Light Infantry Armory, which constitutes the Sea Grant Leasehold. The HVAC unit was present when the Washington Light Infantry acquired the armory. It was recently discovered that the HVAC system has caused mold accumulation which can present a threat to health and welfare. The Washington Light Infantry has remediated the mold which has accumulated to date. The HVAC system needs to be repaired or replaced to prevent re-accumulation of mold.

DISCUSSION

This action is a declaratory judgment to construe the Lease between the Washington Light Infantry and the Sea Grant Consortium. "In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Southern Atl. Fin. Svs., Inc. v. Middleton*, 439.S.C. 77, 80, 562 S.E.2d 482, 484 (Ct. App. 2002). "The parties' intention must, in the first instance, be derived from the language of the contract." *Id.*

Plaintiff has sought the Court to declare the rights of the parties in regard to the following questions:

1. **Who is responsible for the maintenance and repair of the HVAC system?**
2. **Who is responsible for replacement of the HVAC system?**

As indicated above, the current HVAC system in the leasehold premises is creating mold within the leased premises and building. Mold constitutes a significant threat to human

life and the WLI property. Article 8.1(f) states that the Tenant shall "use reasonable precautions to protect persons and property against fir [sic] or other casualty." As the use of the existing HVAC system constitutes a threat to persons and property, use of the HVAC system in its current condition is prohibited by Article 8.1(f) of the Lease. Thus, the parties have sought clarification as to whose responsibility it is to repair or replace the HVAC system.

In this case, there are several relevant and separate provisions in the WLI –Sea Grant Lease. The Defendant asserts that there are two provisions which hold place the onus of repair and replacement on the Plaintiff, and one that expressly removes it from the Defendant. In regard to the former, the Defendant asserts Article 7 of the Lease at subparagraph (1)(f). It states in full:

> Landlord will keep the Land. [sic] the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises.

Similarly, Article 16.1 states in relevant part:

> If at any time during the initial Term or Extended Term, if any, Tenant shall find in the demised Premises items in need of repair or replacement ... Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair replace or otherwise cure the deficiencies... .

In regard to these two provisions, read alone, the Court agrees that it would appear that the onus of repair or replacement of the HVAC system is on Plaintiff.

Sea Grant also holds that the Lease does not require it to make repairs, citing Article 8.1(b) which states:

> Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1), settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord.

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Under this provision, Tenant is exempted from making repairs to fixtures and equipment supplied or installed by or on behalf of Landlord which were defective in "labor, workmanship, materials," etc. Even if, *arguendo*, the HVAC were supplied with by Landlord which the Court rejects *infra*, there is no evidence which was introduced that the repairs in question were necessitated by "defects in labor, workmanship, materials," etc. Defendant drafted the lease, if Defendant wished the provision to be universally inclusive of relieving Defendant of the obligation of making **any** repairs, it should not have limited the repair exclusion to repairs which are necessitated by "defects in labor, workmanship, materials," etc.

On the other hand, Plaintiff asserts that a correct construction of the Lease cannot be had by reading the Lease piecemeal; and that consideration of the whole lease, and not these isolated provisions, is necessary. The Court agrees. The Lease must be read as a whole in accordance with the "four corners" rule. Our courts have consistently held that when construing a lease, "[t]he primary test as to the character of a contract is the intention of the parties, **such intention to be gathered from the whole scope and effect of the language used**." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct.App.2000). (Emphasis added). In other words, "[t]he parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof." *Ward v. West Oil Co.*, 379 S.C. 225, 665 S.E.2d 618, 627 (Ct. App. 2008).

Article 6 of the Lease unambiguously specifies certain services which are not included in the Landlord's obligations to the tenant under Article 7. It states in relevant part.

> **The following services** incidental to the use and enjoyment of the demised premises **are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs**: electric, gas, and electric and gas services, water, sewer, security service, **heating or air conditioning, ventilating**, artificial lighting or other lighting, telephone services and infrastructure or equipment relating thereto… . (Emphasis added).

Heating, air conditioning and ventilating or HVAC are one of these certain services are specifically excluded from any obligations of the Landlord to the Tenant. When a Lease provides a general provision, such as maintenance on the Plaintiff in this instance, the canons of construction require the general to give way to the more specific provisions regarding the same classifications. In this case, the Lease created a general duty on Landlord to make repairs, but excluded certain items from the general requirement in Article 6.1. Among these exclusions is "heating or air conditioning, ventilation" or HVAC.

Defendant argues that this provision only applies to services and not the actual HVAC system itself. This argument is negated by the express language contained in Article 6.1. This provision expressly states that "infrastructure or equipment relating thereto" is included within the exception, and that "infrastructure or equipment relating [to HVAC]" must be contracted for by Tenant, at Tenant's expense.

It is common for Landlords in commercial settings to provide a shell building only for Tenant to fill out, including HVAC. The language of the Lease clearly does so in this case. Returning to Defendant's argument that the HVAC system in place is the

express responsibility of Landlord to maintain, even the South Carolina Residential Landlord Tenant Act (which is not expressly applicable to this commercial Lease, but helpful by analogy) holds that "[a]ppliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement." South Carolina Code Annotated § 27-40-440(5). In this case, the clear and unambiguous language of the Lease excludes the HVAC system in place from that which is provided by the Landlord under the Lease.

If the Court were to adopt the Defendant's arguments, it could only do so by completely rejecting the whole of the language of Article 6.1. However, not only must the court look to the whole of a contract, or its four corners, when construing it, the Court must do so in a manner which gives reasonable meaning and effect to all of the language contained in the Lease. See *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952). "A court, however, under the guise of 'interpretation' or 'construction' may not rewrite an agreement for the parties." *Gamble, Givens & Moody v. Moise*, 288 S.C. 210, 215, 341 S.E.2d 147, 150 (Ct.App.1986). The Court cannot adopt a construction which is contrary to the express language of the Lease, and which reduces an entire article of the Lease to mere surplussage.

Having reviewed the law and the language of the contract, the Court must then turn to the questions before it and declare the rights of the parties. As stated above, the WLI is not required to provide HVAC services to the Defendant, nor is the WLI obligated to repair or maintain the existing HVAC system. On the other hand, the Lease in no way obligates the Defendant to replace the HVAC system. However, if the Defendant wishes to avail itself of the HVAC system in place, then the Lease places the

obligation of maintenance and repair on the Defendant. If the HVAC system cannot be repaired to prevent mold accumulation, then the Defendant must replace it **if it wishes to avail itself of HVAC services**, keeping in mind that the Lease does not mandate that it does avail itself HVAC services.

IT IS THEREFORE, ADJUDICATED ADJUDGED AND DECREED that the Plaintiff has no responsibility under the Lease to maintain, repair or replace the existing HVAC system.

IT IS FURTHER ADJUDICATED, ADJUDGED AND DECREED Defendant cannot use the existing HVAC system without repair or replacement as such would present a potential harm to persons or property and be in violation of the provisions of Article 8.1(f) of the Lease.

IT IS FURTHER ADJUDICATED, ADJUDGED AND DECREED that if Defendant wishes to avail itself of HVAC services, it must repair the existing system, if it can be repaired, in a manner so as to prevent mold accumulation, and if it cannot be repaired, to replace the current HVAC system with a system which will function without causing mold accumulation.

AND IT IS SO ORDERED, ADJUDICATED AND DECREED this 3rd day of December in the City and County of Charleston, State of South Carolina.

Mikell Ross Scarborough
Master in Equity for Charleston County

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Plaintiff,)	
vs.)	Certificate of Service
THE SEA GRANT CONSORTIUM, An Agency and Political Subdivision of the State of South Carolina,)	
Defendant,)	

The undersigned hereby certifies that on this 11th day of December, in the Year of Our LORD 2014 that he served a copy of the Declaratory Judgment of the Court on the attorney for the Defendant by placing a copy of the same in the United States Post, with sufficient first class postage attached thereto, and properly addressed to his address of record.

BY: _____

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Charleston, South Carolina

11 December 2014