

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

APR 06 2015

APPEAL FROM CHARLESTON COUNTY  
Master in Equity for Charleston County

SC Court of Appeals

Mikell Ross Scarborough, Master In Equity

---

Case No.: 2013-CP-10-4019

---

WASHINGTON LIGHT INFANTRY OF CHARLESTON  
SOUTH CAROLINA, INC.,.....Respondent,

v.

THE SEA GRANT CONSORTIUM, An Agency and Political  
Subdivision of the State of South Carolina.....Appellant.

---

INITIAL BRIEF OF RESPONDENT

---

M. Richardson Hyman, Jr.  
Post Office Box 127  
Charleston, South Carolina 29402  
(843) 416-1047  
Attorney for the Respondent

**TABLE OF CONTENTS**

Table of Authorities.....iii

Statement of Issues on Appeal.....1

Statement of the Case.....1

Facts.....2

Arguments

STANDARD OF REVIEW ON APPEAL.....3

1. THE MASTER CORRECTLY HELD THAT THE RESPONDENT HAS NO RESPONSIBILITY UNDER THE LEASE AGREEMENT TO MAINTAIN, REPAIR, OR REPLACE THE EXISTING HVAC SYSTEM.....4

A. THE SPECIFIC PROVISIONS OF THE LEASE CONTROL THE GENERAL PROVISIONS OF THE LEASE.....5

B. WHAT CONSTITUTES HEATING, AIR CONDITIONING AND VENTILATION UNDER ARTICLE 6 OF THE LEASE?.....6

C. INTEGRATING THE CONTRACTUAL TERMS WITH THE FACTS OF THE CASE.....8

D. APPELLANT’S ARGUMENT REDUCES ARTICLE 6 TO MERE SURPLUSSAGE.....10

E. ARTICLE 8.1(b) DOES NOT NEGATE THE MASTER’S RULING...12

2. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT APPELLANT SEA GRANT CONSORTIUM CANNOT USE THE EXISTING HVAC SYSTEM WITHOUT REPAIR OR REPLACEMENT.....13

3. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT IF APPELLANT SEA GRANT CONSORTIUM 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 MOLD ACCUMULATION.....14

4. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT THAT RESPONDENT WASHINGTON LIGHT INFANTRY IS NOT REQUIRED TO PROVIDE HVAC SERVICES TO THE APPELLANT, NOR IS IT OBLIGATED TO REPAIR OR MAINTAIN THE EXISTING HVAC SYSTEM.....17

5. THE MASTER CORRECTLY HELD THAT THE LEASE AGREEMENT IN NO WAY OBLIGATES APPELLANT SEA GRANT CONSORTIUM TO REPLACE THE HVAC SYSTEM.....18

6. THE MASTER CORRECTLY HOLD THAT IF APPELLANT SEA GRANT CONSORTIUM WISHES TO AVAIL ITSELF OF THE HVAC SYSTEM IN PLACE, THEN THE LEASE AGREEMENT PLACES THE OBLIGATION OF MAINTENANCE AND REPAIR ON IT.....19

7. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT IF THE HVAC SYSTEM CANNOT BE REPAIRED TO PREVENT MOLD ACCUMULATION, THEN THE APPELLANT MUST REPLACE IT IF IT WISHES TO AVAIL ITSELF OF HVAC SERVICES.....21

Conclusion.....24

## TABLE OF AUTHORITIES

### CASES

<i>Deese v. American Bankers Life Assur. Co. of Florida</i> , 263 S.C. 160 208 S.E.2d 736 (1974).....	7
<i>Ellis v. Taylor</i> , 316 S.C. 245, 449 S.E.2d 487 (1994).....	16
<i>Georgetown Mfg. &amp; Warehouse Co. v. South Carolina Dep't of Agric.</i> , 301 S.C. 514, 392 S.E.2d 801, (Ct. App. 1990).....	23
<i>Gamble, Givens &amp; Moody v. Moise</i> , 288 S.C. 210, 341 S.E.2d 147 (Ct.App,1986).....	16,17
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	9, 13(fn), 21(fn)
<i>Jacobs v. Service Merchandise Co.</i> , 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988).....	4
<i>Lewis v. Premium Inv. Corp.</i> , 351 S.C. 167, 568 S.E.2d 361 (2002).....	15
<i>Pope v. Gordon</i> , 369 S.C. 469, 633 S.E.2d 148 (2006).....	4
<i>Pruitt v. South Carolina Med. Malpractice Liability Joint Underwriting Assoc.</i> , 343 S.C. 335, 540 S.E.2d 843 (2001).....	4
<i>Reid v. Life Ins. Co. of North America, Inc.</i> , 718 F.2d 677 (4 <sup>th</sup> Cir. 1983).....	7
<i>Thomas-McCain, Inc. v. Siter</i> , 268 S.C. 193, 232 S.E.2d 728 (1977).....	5
<i>Townes Associates, Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976).....	4
<i>Schulmeyer v. State Farm Fire and Cas. Co.</i> , 353 S.C. 491, 579 S.E.2d 132 (2003).....	4,5,11
<i>Southern Atl. Fin. Sys., Inc. v. Middleton</i> , 439.S.C. 77, 562 S.E.2d 482 (Ct. App. 2002).....	4
<i>Ward v. West Oil Co.</i> , 379 S.C. 225, 665 S.E.2d 618, 627 (Ct. App. 2008).....	5

### STATUTES

South Carolina Code Annotated § 27-40-440(5).....	9(fn), 19
---	-----------

### OTHER AUTHORITIES

RESTATEMENT (SECOND) OF CONTRACTS § 202(2) (1979).....	5
RESTATEMENT (SECOND) OF CONTRACTS § 203(a) (1979).....	10
RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (1979).....	6
RESTATEMENT (SECOND) OF CONTRACTS §207 (1979).....	14
11 Samuel Williston & Richard A. Lord, <i>A Treatise on the Law of Contracts</i> § 32:3 (4th ed.1999).....	7
11 Samuel Williston & Richard A. Lord, <i>A Treatise on the Law of Contracts</i> § 32:5 (4th ed.1999).....	10
11 Samuel Williston & Richard A. Lord, <i>A Treatise on the Law of Contracts</i> § 32:10 (4th ed.1999).....	6

## **STATEMENT OF ISSUES ON APPEAL**

1. DID THE MASTER CORRECTLY HOLD THAT THE RESPONDENT HAS NO RESPONSIBILITY UNDER THE LEASE AGREEMENT TO MAINTAIN, REPAIR, OR REPLACE THE EXISTING HVAC SYSTEM?
2. DID THE MASTER CORRECTLY HOLD THAT UNDER THE LEASE AGREEMENT APPELLANT SEA GRANT CONSORTIUM CANNOT USE THE EXISTING HVAC SYSTEM WITHOUT REPAIR OR REPLACEMENT?
3. DID THE MASTER CORRECTLY HOLD THAT UNDER THE LEASE AGREEMENT IF APPELLANT SEA GRANT CONSORTIUM 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 MOLD ACCUMULATION?
4. DID THE MASTER CORRECTLY HOLD THAT UNDER THE LEASE AGREEMENT THE RESPONDENT WASHINGTON LIGHT INFANTRY IS NOT REQUIRED TO PROVIDE HVAC SERVICES TO THE APPELLANT, NOR IS IT OBLIGATED TO REPAIR OR MAINTAIN THE EXISTING HVAC SYSTEM?
5. DID THE MASTER CORRECTLY HOLD THAT THE LEASE AGREEMENT IN NO WAY OBLIGATES APPELLANT SEA GRANT CONSORTIUM TO REPLACE THE HVAC SYSTEM?
6. DID THE MASTER CORRECTLY HOLD THAT IF APPELLANT SEA GRANT CONSORTIUM WISHES TO AVAIL ITSELF OF THE HVAC SYSTEM IN PLACE, THEN THE LEASE AGREEMENT PLACES THE OBLIGATION OF MAINTENANCE AND REPAIR ON IT?
7. DID THE MASTER CORRECTLY HOLD THAT UNDER THE LEASE AGREEMENT THAT IF THE HVAC SYSTEM CANNOT BE REPAIRED TO PREVENT MOLD ACCUMULATION, THEN THE APPELLANT MUST REPLACE IT IF IT WISHES TO AVAIL ITSELF OF HVAC SERVICES?

## **STATEMENT OF THE CASE**

This is an appeal from an action to construe a commercial lease agreement between Appellant and Respondent. The nature of the Plaintiff's (Respondent's) case was to seek construction of the lease, and have the Court declare the rights of the parties

in regard to use, maintenance and replacement of the Heating, Air and Ventilation (HVAC) system in the demised premises. Defendant (Appellant) counterclaimed for monetary damages resulting from a period of time that the demised premises could not be used because of mold infestation and remediation. The Charleston County Master-in-Equity granted summary judgment in favor of Respondent on the Counterclaim, and that order was not appealed.

The remaining claims of Respondent were tried before the Charleston County Master-in-Equity, the Honorable Mikell R. Scarborough, on 1 December 2014. The Court found in favor of Respondent, and construed the lease pursuant to the prayers of relief of the Respondent by Order of the Court, dated 3 December 2014. On 2 January 2015, the Appellant appealed the order of 3 December 2014.

#### **FACTS**

The Respondent, Washington Light Infantry of Charleston, South Carolina, Inc., or Washington Light Infantry, is a non-profit corporation licensed under the laws of the State of South Carolina. (Para. 1., Stipulation of Fact, TR., p. 5, lines 17-22.) The Appellant, Sea Grant Consortium, is an agency and political subdivision of the State of South Carolina. (Para. 2., Stipulation of Fact, TR, p. 5, lines 22-24.) The Respondent owns certain property located on Meeting Street, Charleston, South Carolina, commonly known as the Washington Light Infantry Armory. (Para. 3., Stipulation of Fact, TR., p. 5, line 23, & p. 6, lines 1-3.) The Appellant has leased the first floor of the Washington Light Infantry Armory from the Respondent. (Para. 4., Stipulation of Fact, TR, p. 3, lines 3-6.) The lease in question (hereinafter "lease") was entered into evidence in the case

(Exhibit 1 of Plaintiff). The lease was supported by full, fair and valuable consideration. (Para. 6., Stipulation of Fact, TR., p. 6, lines 17-19).

There is a Heating, Ventilation and Air Conditioning (herein alternatively “HVAC”) unit or system on the first floor of the Washington Light Infantry Armory, which constitutes the Appellant’s leasehold. (Para. 7., Stipulation of Fact, TR, p. 6, lines 19-23.) The HVAC unit was present when the Respondent acquired the armory. (Para. 8., Stipulation of Fact, TR, p. 6, lines 23-25.) The Appellant has been using the HVAC system that was in place when the Respondent acquired the armory. (Para. 9., Stipulation of Fact, TR, p. 6, line 23, & p. 7, lines 1-3.)

It was recently discovered that the HVAC system has caused mold accumulation which can present a threat to health and welfare. (Para. 10., Stipulation of Fact, TR, p. 7, lines 4-7.) The Respondent has remediated the mold which has accumulated to date. (Para. 11., Stipulation of Fact, TR, p. 7, lines 7-9.) The HVAC system needs to be repaired or replaced to prevent re-accumulation of mold. (Para. 12., Stipulation of Fact, TR, p. 7, lines 9-11.)

The lease in question was drafted by Defendant. (Para. 14., Stipulation of Fact, TR., p. 7, lines 15-16.)

## **ARGUMENTS**

### **STANDARD OF REVIEW ON APPEAL**

Appellant asserts that “[because this is an action in equity referred to a master-in-equity for final judgment, this Court may find facts in accordance with its own view of the preponderance of the evidence.” (Appellant’s Initial Brief, p. 7) However, on the contrary, Respondent respectfully asserts, and the South Carolina Supreme Court has so

held, that an action to construe a written contract is an action at law. *Pruitt v. South Carolina Med. Malpractice Liability Joint Underwriting Assoc.*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001).<sup>1</sup> “In an action at law, tried, without a jury, the appellate court’s standard of review extends only to the correction of errors of law.” *Pope v. Gordon*, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006). As our Supreme Court has held, actions to construe contracts are “reviewable under an ‘any evidence’ standard.” *Pruitt*, 343 S.C. at 339, 540 S.E.2d at 845. Under the “any evidence” standard, “the lower court must be affirmed where there is ‘any evidence’ to support its findings.” *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Such is the case, even when there has been a reference to a master-in-equity. *Id.*

**1. THE MASTER CORRECTLY HELD THAT THE RESPONDENT HAS NO RESPONSIBILITY UNDER THE LEASE AGREEMENT TO MAINTAIN, REPAIR, OR REPLACE THE EXISTING HVAC SYSTEM.**

In all actions to construe contracts, the critical inquiry before the court, and the guiding polestar for adjudicating such matters, is to ascertain the parties’ intent, and to give such intent full effect. *Southern Atl. Fin. Sys., 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.* See also *Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). In this case, the Master found the lease to be unambiguous.

---

<sup>1</sup> To the extent that the construction of the contract is declaratory in this case, our Courts have consistently held that a declaratory action is neither legal or equitable in and of itself, and that in such situations, the Court must look to the underlying issues being sought to be declared; and if legal, then the standard of review at law is applied. In this case, the action, to the extent that it was declaratory, was an action for the construction of a written contract. Under the holding in *Pruitt, supra*, this is therefore an action at law.

Respondent agrees, and Appellant has not suggested otherwise. Therefore, the language of the lease in question alone determines the result in this case.

**A. The Specific Provisions of the Lease Control the  
General Provisions of the Lease**

Appellant has asserted, and Respondent acknowledges, that the lease places a general obligation on the Respondent for the maintenance and repair of the demised premises. Article 7.1(f) of the lease states that:

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. (Exhibit 1, Para. 7.1(f)).

When read with Article 16.1<sup>2</sup> and Article 8.1(b), it initially appears that the totality of the burden of maintenance and repair falls upon the Respondent.

However, as the trial court noted citing *Ward v. West Oil Co.*, “[t]he parties’ intention must be gathered from the contents of the entire agreement and not from any particular clause thereof.” 379 S.C. 225, 665 S.E.2d 618, 627 (Ct. App. 2008). Accord, *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977); *Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134. See also Restatement (Second) Contracts § 202(2) (1979).

If the Court examines the whole of the lease, and not merely the piecemeal provisions that the Appellant would urge the Court to examine, one can see that the trial court correctly concluded that Article 6 of the lease specifically removes certain limited

---

<sup>2</sup> 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... (Exhibit 1, Article. 16.1)

items from the landlord's or Respondent's general duty of maintenance and repair, and places the obligation upon the tenant. This provision 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). (Exhibit 1, Article 6).

Under this provision, among other things, "heating or air conditioning, ventilating," or HVAC services are not required of the landlord. In fact, the language specifically states that such services must be contracted for by Tenant, and at Tenant's own cost. *Id.*

In situations where there is a conflict between general and specific provisions in a contract, the specific clause will control its meaning. 11 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 32:10 (4th ed.1999). Accord Restatement (Second) Contracts § 203(c)(1979) ("[S]pecific terms and exact terms are given greater weight than general language") In this case, Article 6, manifestly and specifically removes HVAC services from the obligation of landlord, and requires the tenant to contract for them independently, and at the sole and exclusive cost of tenant without contribution from the landlord.

Thus, it is manifest that the Master correctly determined that HVAC services are removed from the general obligation of maintenance and repair, and are the responsibility of the tenant. Under the "any evidence" standard, his holding should be upheld.

**B. What Constitutes Heating, Air Conditioning and Ventilation under Article 6 of the Lease?**

Since it is manifest that "heating, air conditioning, and ventilation" or HVAC is the sole responsibility of the Appellant under the lease, and is expressly excluded from

the Respondent's general maintenance and repair obligations, it begs the question of precisely what is meant by those terms in Article 6. With the exception of HVAC services and artificial lighting, all other listed exclusions in Article 6 are either: (1) utilities,<sup>3</sup> or (2) labor services.<sup>4</sup> In regard to artificial lighting, if tenant wants artificial lighting it must contract for the same which means having someone install lighting fixtures, placing light bulbs in the fixtures, and having electricity connected to it.

Likewise, HVAC systems are not a utility which can be acquired like electricity, water or telephone services, nor is it a labor service where a person comes in and fans the premises and its inhabitants with a large hand-held fan. HVAC services consist of a heating and cooling unit, which is run off of electricity, which pumps acclimatized air through ventilation ducts. The heating and cooling unit, and its ventilation ducts, or HVAC system, is the only thing to which the language in Article 6 can refer. There is no other meaning which can reasonably be imported to such language in Article 6. A contract must be construed according to the plain meaning of its terms. 11 Williston & Lord § 32:3. Accord, *Deese v. American Bankers Life Assur. Co. of Florida*, 263 S.C. 160, 164, 208 S.E.2d 736, 737 (1974). Under no circumstances should a construction be applied which would "torture the meaning of [the contract] language." *Reid v. Life Ins. Co. of North America, Inc.*, 718 F.2d 677 (4<sup>th</sup> Cir. 1983).<sup>5</sup>

In this case, there is no ambiguity in regard to what is meant by HVAC systems in Article 6. If there were, the ambiguity would be construed in favor of Respondent and

---

<sup>3</sup> Electric, gas, and electric and gas services, water, sewer, and telephone services and infrastructure or equipment relating thereto are all utilities.

<sup>4</sup> Security service, janitorial services, maintenance services and other related services are labor related services.

<sup>5</sup> Both *Reid* and *Deese* were insurance policy cases. Nevertheless, the policies were contracts; and the same rules of contractual construction apply to policies as to commercial leases, save the fact that insurance policies have the additional construction element of being construed in favor of the insured.

against Appellant as drafter of the lease, and the Master's findings would be the same. However, as stated above, the Master found no ambiguity in the lease, and neither party has asserted ambiguity on appeal.

Therefore, it is manifestly clear that the HVAC system for the leasehold, i.e., the ductwork, ventilation, and heating and air unit, is precisely what Article 6 of the lease requires tenant to "contract[] for independently" and "at its own cost[]... ." Conversely, it is this same system that Article 6 of the lease removes from the landlord's general obligation of maintenance under Articles 7.1(f) and 16.1. Thus, the Master correctly determined that Article 6 places all issues regarding HVAC services upon the Appellant, which would naturally include maintenance, repair, and replacement.

**C. Integrating the Contractual Terms with the Facts of the Case.**

Having reviewed the controlling portions of the lease, it is somewhat helpful to appreciate the background of the case, which explains to some degree why the Master ruled in this case as he did. There was an existing HVAC system in place when the Respondent acquired the building. (Para. 8., Stipulation of Fact, TR, p. 6, lines 23-25.) It was anticipated that Appellant, as Tenant, would procure an HVAC system which was suited to the leasehold. Article 6 specifically states that HVAC services are the sole responsibility of the Appellant tenant to be procured at its own cost. Therefore, it is evident that the parties did not contemplate the tenant using the system that was in place at the time of the creation of the leasehold.<sup>6</sup>

---

<sup>6</sup> The Master specifically made this finding:

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

Article 6 further states that the “Landlord has provided separate water, gas and electric meters for Tenant to use in acquiring any of [the services mentioned in Article 6] it may desire.” Thus is clear that Respondent landlord was not providing the HVAC system for the unit. The lease specifically lists the infrastructure that landlord would provide. The HVAC system is absent from that list. The canon of construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*” holds that “to express or include one thing implies the exclusion of another.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). Therefore, under *expressio unius*, the exclusion of the HVAC system from the list of infrastructure that the landlord was providing the tenant under the lease demonstrates that the use of the old existing HVAC was not contemplated by the parties. The fact that it was the Appellant who drafted the lease shows that there was no confusion on Appellant’s part as to what it would be getting as far as infrastructure – and the HVAC system was not a part of it.

However, what actually happened was that the Appellant did not replace the existing HVAC system, and instead apparently used it up until the time that it was discovered that its use was generating mold production. (Para. 10., Stipulation of Fact, TR, p. 7, lines 4-7.) Since it was discovered that the existing system is producing mold, both the lease and circumstances dictate, as discussed more fully, *infra*, that the HVAC system must be either replaced or repaired to prevent mold accumulation. (Para. 12., Stipulation of Fact, TR, p. 7, lines 9-11.) In general, as was indicated at the trial,

---

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. (Order pp. 5-6.)

Respondent is not averse to Appellant using the existing system if repairs are made, as long as the financial responsibilities for repair and maintenance remain with the Appellant tenant as required by Article 6.

However, the Respondent is wholly unwilling to take on a burden that was not a part of the bargain, i.e. (1) supplying HVAC systems, maintaining the HVAC system, or repairing the HVAC system. Appellant bargained for those obligations, and the Master correctly found that the burden of repair or replacement falls upon Appellant based on the plain and unambiguous language of Article 6.

As addressed below, while the Master found that there was no general obligation upon tenant to make repairs to the existing system at all, he correctly determined that the tenant bears the responsibility of maintaining and repairing the existing system if it wishes to use it because its use was (1) never a part of the bargain between the parties, and (2) all HVAC services are the responsibility of tenant under the lease. Likewise, as will be discussed in greater detail, *infra*, in response to Appellant's other exceptions, the use of any HVAC system is limited to use that does not endanger the health or property of others.

**D. Appellant's Argument Reduces Article 6 to mere Surplussage**

Only two constructions can be had from the document. Either the obligation of HVAC repair, maintenance and replacement falls upon the Appellant, or it falls upon the Respondent. "An interpretation which gives effect to all provisions of the contract is preferred to one which renders a portion of the writing superfluous, useless or inexplicable." 11 Williston & Lord § 32:5. See also Restatement (Second) of Contracts § 203(a) (1979) ("an interpretation which gives a reasonable, lawful, and effective meaning

to all the terms [of an agreement] is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect”) Accord; *Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134.

If the Court were to accept Appellant’s argument that Respondent is responsible for (1) supplying the HVAC, (2) maintaining and repairing the HVAC, and (3) in the event of the necessity of replacement, replacing the HVAC, it would reduce entirety of the following to mere surplussage which was of no effect from the inception of the lease:

**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: ... heating or air conditioning, ventilating,...** . Tenant shall be responsible financially for any services for which it contracts hereunder. (Emphasis added). (Exhibit 1, Article 6).

The only construction which gives meaning to both this clause and all other clauses is the construction rendered by the Master, to wit: the landlord bears the responsibility of general maintenance, but the responsibility and financial burden of the HVAC system lies with the Appellant. If it lies with the Respondent, then this provision of the lease has no meaning whatsoever, and is superfluous. Moreover, such a construction would mean that it was nothing more than surplussage from its inception.

This conclusion is particularly manifest in light of the fact, as stated above, the general duties of maintenance and repair, lie with the landlord under other provisions of the lease. If HVAC services were included in the general maintenance obligations, why reference it at all, much less state that it was exempted from the “Landlord’s obligations to the Tenant?”

However, such a construction cannot stand. A construction must be had which gives effect to each and every provision of the contract. The Master's construction gives effect to Article 7.1 by acknowledging that the Respondent bears the general duty of maintenance under the lease. However, it also gives effect to Article 6. The argument Appellant would urge this Court to adopt negates Article 6 completely. Such a construction is inconsistent with the canons and rules of contractual construction and the common law of South Carolina.

Because there is more than sufficient evidence to uphold the Master's findings under the "any evidence" standard, the Master's order should be upheld.

**E. Article 8.1(b) does not Negate the Master's Ruling**

Appellant asserts that the Master should have determined that Article 8.1(b) controls and places the burden of HVAC maintenance, repair and replacement on Respondent. This provision states that

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. (Exhibit 1, Article 8.1(b).

This argument is more fully examined *infra*. However, in addition to incorporating that argument herein by reference so as to not be repetitive, it should also be noted that this provision must be reconciled in a manner so as to give both it, and Article 6, full force and effect. As noted above, HVAC is expressly excluded by the lease from Respondent's obligations. As discussed, *supra*, Article 6 clearly indicates that

the Respondent was not supplying HVAC under the lease, **and that Appellant was not expecting Respondent to supply an HVAC system under the lease.**<sup>7</sup>

The fact that the Appellant chose to use a system which was there when the Respondent acquired the building, rather than contract for such services independently as the language of the lease clearly contemplates, is wholly irrelevant to the outcome of this case. The Master acknowledged that the Appellant was under no obligation to repair the existing system under **any** clause of the lease. However, that does not mean that Article 6 does not apply. The landlord is certainly not obligated to fix equipment which it did not provide as part of the bargain, and which was excluded from the bargain as explained, *supra*. On the contrary, while Appellant may not be obligated to repair the existing system, if it wishes to use it, then it must repair and maintain it.

**2. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT APPELLANT SEA GRANT CONSORTIUM CANNOT USE THE EXISTING HVAC SYSTEM WITHOUT REPAIR OR REPLACEMENT**

In this instance, a plain language reading of the contract clearly not only supports the Master's conclusion, but mandates it in regard to use of the existing HVAC system. The parties stipulated that "the HVAC system has caused mold accumulation which can present a threat to health and welfare." (Para. 10., Stipulation of Fact, TR, p. 7, lines 4-7.) The lease unambiguously states that "Tenant agrees and covenants that it shall..."

---

<sup>7</sup> Article 6 states that the "Landlord has provided separate water, gas and electric meters for Tenant to use in acquiring any of [the services mentioned in Article 6] it may desire." Thus is clear that Respondent landlord was not providing the HVAC system for the unit. The lease specifically lists the infrastructure that landlord would provide. The HVAC system is absent from that list. "The canon of construction *"expressio unius est exclusio alterius"* or *"inclusio unius est exclusio alterius"* holds that "to express or include one thing implies the exclusion of another. *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). As stated above, the HVAC system was not infrastructure to be provided under the lease.

(Exhibit 1, Article 8.1) “use reasonable cautions to protect persons and property against fire [sic] or other casualty.” (*Id.*, at subsection (f)).

Because use of the current HVAC system is creating mold accumulation, and because the mold accumulation “presents a threat to health and welfare” to those present, as well as physical damage to the demised premises, Article 8.1(f) of the lease itself precludes the use of the HVAC system until such time as it no longer causes mold to accumulate and threaten the health and welfare of persons and the demised premises. As the Master correctly concluded, the prevention of mold accumulation can be practically had in one of three ways. The system can be repaired. The system can be replaced, or use of the system can be discontinued.

Based on the stipulation of fact, and the express language of Article 8.1(f), the Master correctly determined that the HVAC system cannot be used without repair or replacement. If any question could possibly exist in regard to this holding, “[i]n choosing among the reasonable meanings of a promise or agreement or a term thereof, a meaning that serves the public interest is generally preferred.” Restatement (Second) Contracts § 207 (1979). Mold accumulation presents a danger to the public, particularly to persons who may be exposed to it.

In light of the standard of “any evidence” which must be applied in this case, it is manifest that there was more than sufficient evidence to justify the Master’s decision, and it must be upheld.

**3. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT IF APPELLANT SEA GRANT CONSORTIUM 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 MOLD ACCUMULATION.**

As Appellant noted in its brief, its “exceptions are intertwined and all embraced and covered by the Lease... .” Respondent has elected to address the exceptions taken by the Appellant individually. However, rather than recite each argument already made, Respondent will incorporate the previous arguments into its reply to each exception where applicable to avoid undue duplication of work, and unnecessary extension of the Brief.

In regard to this exception, it was established, *supra*, that the circumstances of the case, to wit: mold accumulation causing a threat to persons and their property, require either: repair, disuse or replacement of the HVAC system to avoid harm to others or their property. This is mandated by Article 8.1(f) of the lease. (Exhibit 1, Article 8.1(f))

Appellant would have the Court rewrite the lease which it, itself, drafted. However, “[i]t is not the function of the court to rewrite contracts for parties.” *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002). The Master adeptly construed a very inartful lease, and in a manner that gave effect to each provision in the lease. The inevitable result of giving effect to each provision was to come to the conclusion that Article 8.1(f) prohibits Appellant from using the system if it will create harm to persons or property, which in this case, it will. (See Exhibit 1, Article 8.1(f)). As a result of that holding, non-use of the HVAC system is one of three options that Appellant can elect. Repair is another option that the Appellant can elect, and lastly a third option is replacement. No other options exist which would prevent the harm which Article 8.1(f) prohibits.

As addressed, *supra*, and in more detail, *infra*, the Appellant is not obligated to repair the existing HVAC system. The lease contemplated from its inception that Appellant would acquire its own system. It did not. The lease also exempted the HVAC system from the infrastructure being supplied by Respondent. Therefore, while it has no obligation to repair the existing system, if Appellant wishes to use it, it must be fixed in a manner which would prevent mold accumulation. The burden of responsibility for HVAC services under the lease never leaves the Appellant under Article 6.<sup>8</sup> If the unit cannot be repaired to prevent mold accumulation, then it must be replaced, if, and only if, Appellant wants heating and air conditioning. Again, Article 6 places the financial burden and responsibility for the procurement of HVAC on Appellant, only if it elects to have heating, air and ventilation. If it does not make such an election, then it does not need to incur the cost. However, under all circumstances, mold accumulation or not, there is not now, nor has there ever been, a time that the Respondent was obligated to provide HVAC to the Appellant under the lease.

This holding does not leave Appellant with a Hobson's Choice, it leaves Appellant with three choices under the express language of the lease which the Appellant, and not Respondent, drafted. The Master's duty was "to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). Such is the case even when it creates hardship. "Hardship alone provides no

---

<sup>8</sup> Article 8.1(b) is a non-player in this consideration. No one, including the Master is asserting that Appellant must repair the existing HVAC unit under that provision. What the Master has held was that Article 6 places the burden and cost of HVAC services on the Appellant, and excludes HVAC services from the obligations of the Respondent under the lease. His holding further indicates that if HVAC services are elected by the Appellant, then Article 6 mandates that Appellant address it. Because the current system cannot be used in accordance with Article 8.1(F) which precludes harm to persons and property, it cannot be used.

basis for relieving one from a contract.” *Gamble, Givens & Moody v. Moise*, 288 S.C. 210, 218, 341 S.E.2d 147, 151 (Ct.App.1986). Again, how much more is such the case when it was the Appellant that drafted the document which expressly and unambiguously placed the exclusive burden of HVAC services upon itself and not Respondent?

Under the unambiguous and express language contained within the four corners of the lease, and not the isolated provisions upon which Appellant relies, all matters regarding HVAC, including maintenance and / or replacement, fall upon the Appellant. Likewise, under the unambiguous and express language of the lease, use is permissible only when it will not present a harm to others or their property. Use of the HVAC system in its present state does pose a harm to others or their property. The Master correctly determined that the Appellant had one of three options, non-use, repair or replacement, and that the latter two are the responsibility of the Appellant and not Respondent. Under the “any evidence” standard, or any other standard for that matter, the Master’s decision should be upheld.

**4. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT RESPONDENT WASHINGTON LIGHT INFANTRY IS NOT REQUIRED TO PROVIDE HVAC SERVICES TO THE APPELLANT, NOR IS IT OBLIGATED TO REPAIR OR MAINTAIN THE EXISTING HVAC SYSTEM.**

Appellant’s fourth exception or issue on appeal is nothing more than the converse of its first. Under a lease agreement such as the one before the Court, it is almost axiomatic that one, and only one, of the two parties will be responsible for a given duty or responsibility under a lease – in this instance the HVAC system. It was fully demonstrated in Issue on Appeal 1, *supra*, that the sole responsibility for HVAC services falls upon the Appellant and not Respondent. Such argument as set forth therein is

incorporated herein by reference, and fully justifies the Master's conclusion that it is Appellant, and not Respondent who bears the obligation to supply HVAC services, as well as repair and maintain the existing system if it is using the existing system. Because there is ample evidence to support the Master's construction, the decision should be upheld under the "any evidence" standard.

**5. THE MASTER CORRECTLY HELD THAT THE LEASE AGREEMENT IN NO WAY OBLIGATES APPELLANT SEA GRANT CONSORTIUM TO REPLACE THE HVAC SYSTEM.**

Almost assuredly, Appellant is not contending the Master was wrong in holding that Appellant has no duty to replace the HVAC system. It appears to be the crux of its appeal that it has no duty to do anything to the HVAC system except to use it. Yet the exception expressly protests the Master's holding that it has no obligation to replace the system.

Respondent agrees with Appellant to an extent. There is no provision in the lease which obligates Appellant to use, or even to have an HVAC system. The only provision in the lease in regard to HVAC systems at all is as follows:

**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). (Exhibit 1, Article 6).**

Neither the Master, nor the Respondent reads this provision to mean that the Appellant **must** contract for such services or replace the system. What the Master noted, with which the Respondent agrees, is that **if** the Appellant wishes to have HVAC services, then it, and it alone, is responsible for them.

As was explained above, mold production stemming from the use of the current system precludes use of the current system under Article 8.1.(f) of the lease. If the system cannot be repaired to prevent mold accumulation, it simply must be replaced or unused in light of the totality of the lease provisions. If use is desired, and the unit cannot be repaired, then replacement would be necessary. Under Article 6, the Appellant must replace the system. This is precisely the same result that would have occurred if the Appellant had never used the existing system, and had installed a new one as was anticipated by the parties at the time of the formation of the contract.

The Master correctly construed each provision of the lease, reconciling the general with the specific, and in accordance with all accepted canons of construction. In the end, he reached the inevitable conclusion that any and all HVAC services are the obligation of Appellant, if, and only if, it elects to have such services. Under no circumstances are they the responsibility of the Respondent. Under the "any evidence" standard the Master's decision should be upheld.

**6. THE MASTER CORRECTLY HELD THAT IF APPELLANT SEA GRANT CONSORTIUM WISHES TO AVAIL ITSELF OF THE HVAC SYSTEM IN PLACE, THEN THE LEASE AGREEMENT PLACE, THE OBLIGATION OF MAINTENANCE AND REPAIR ON IT.**

In his order, the Master stated:

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. (Order, pp. 5-6)

The lease itself clearly bears out the conclusion that the parties anticipated that the Appellant would install a new HVAC system in the premises. There was an old HVAC system in place at the time of the drafting and execution of the lease in question. (Para. 7., Stipulation of Fact, TR, p. 6, lines 19-23 & Para. 8., Stipulation of Fact, TR, p. 6, lines 23-25.) Despite the existence of the system in place, the Appellant, drafted the lease to hold that Appellant was responsible for HVAC services. (Plaintiff's Exhibit 1, Article 6). The same provision lists the infrastructure for services incidental to enjoyment of the property which landlord was supplying. The list did not include HVAC systems. As discussed, *supra*, under *expressio unius*, it can only be concluded that the Appellant intentionally drafted Article 6 to exclude HVAC systems from the infrastructure to be provided by landlord. If it had not, it would have certainly HVAC systems in the list of equipment to be supplied by landlord.

However, instead of replacing the old system, Appellant apparently used the old system. Because it did not get a new system as contemplated by the parties, it somehow is under the impression that it not responsible for the maintenance and repair of the old system. Again, as stated above, it is not. It is merely responsible for (1) any HVAC systems in the leasehold (Exhibit 1, Article 6), and (2) insuring that use of its HVAC system will not pose a threat to others or their property (Exhibit 1, Article 8.1(f)). If it elects to use the system in place, which the lease gives it no right to do, then it must use it in a manner that protects others and their property. If it needs repairs or will not work, then Appellant must repair it. If it needs modifications which will allow it to perform without mold accumulation, then Appellant must make the modifications.

In summary, the Respondent never challenged the Appellant's right to use the existing system, which the evidence and the language of the lease demonstrate it had none. However, it did challenge the Appellant's ability to use it if it resulted in harm. In light of the express and explicit language of Article 6 placing the burden of all aspects of HVAC on the Appellant, the Master was correct in concluding that if the Appellant wishes for HVAC services to come from the existing system, it and it alone was responsible for seeing that it did so safely. Based on the "any evidence" standard, there is more than sufficient evidence to uphold the ruling of the Master.

**7. THE MASTER CORRECTLY HELD THAT UNDER THE LEASE AGREEMENT THAT IF THE HVAC SYSTEM CANNOT BE REPAIRED TO PREVENT MOLD ACCUMULATION, THEN THE APPELLANT MUST REPLACE IT IF IT WISHES TO AVAIL ITSELF OF HVAC SERVICES**

Exception 7 taken by the Appellant is fundamentally a reiteration of the previous arguments. The Respondent would assert that it has been manifestly established, both herein and in the Master's Order, that all HVAC services are the sole obligation of the Appellant, and with the costs thereof to be born by the Appellant. This would include the burden of maintenance and repair of any HVAC system used by Appellant in the demised premises because the Respondent is under no obligation to provide HVAC or any infrastructure relating to HVAC under the lease.<sup>9</sup> As the Master noted:

---

<sup>9</sup> Without restating the whole of the argument already adequately addressed, *supra*, Article 6 states that the "Landlord has provided separate water, gas and electric meters for Tenant to use in acquiring any of [the services mentioned in Article 6] it may desire." Thus is clear that Respondent landlord was not providing the HVAC system for the unit. The lease specifically lists the infrastructure that landlord would provide. The HVAC system is absent from that list. "The canon of construction *"expressio unius est exclusio alterius"* or *"inclusio unius est exclusio alterius"* holds that "to express or include one thing implies the exclusion of another. *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). Moreover, the same provision states that "[t]he 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: ...heating or air conditioning, ventilating ... ." (Exhibit 1, Article

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. (Emphasis added)(Order at pp. 6-7)

Under the contractual terms of the Lease, the Respondent may not use the HVAC if its use presents a danger to the property and welfare of others. (Exhibit 1, Article 8.1(f)). The parties stipulated that the "HVAC system has caused mold accumulation which can present a threat to health and welfare." (Para. 10., Stipulation of Fact, TR, p. 7, lines 4-7.) Therefore, the Court correctly noted that if the system cannot be used without creating a mold risk to the demised premises or persons therein, it would have to be replaced. (Order, p. 7).

Respondent asserts that the Master should have determined that Article 8.1(b) controls. This provision states that

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. (Exhibit 1, Article 8.1(b)).

The clause creates two classes of items that Tenant shall be exempt from repairing. The first is settling. It is unqualified. The second class is "defects in labor, workmanship, materials, fixtures or equipment..." Respondent generally agrees with Petitioner that the word "or" is disjunctive. However, Respondent would assert that the remainder of

---

6). It has therefore been manifestly established that HVAC is excluded from any obligation under the Lease by the Landlord, and solely and squarely placed on the Tenant.

the clause only modifies "equipment" and not, labor, workmanship, materials" or "fixtures." However, it is evident that the clause is designed to relieve tenant of the obligation to make repairs which were caused by actions taken by or on behalf of the landlord and not repairs. Appellant's construction would mean not only that it was not responsible for repairs caused by "equipment employed, supplied or installed by or on behalf of Landlord." Omitting this limiting language from defects in "labor, workmanship, materials," and "fixtures" would also mean that it was not responsible for repairing defects in "labor, workmanship, materials," and "fixtures" for which even it contracted or performed. However, such a construction would create an absurdity. Common sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to avoid an absurd result. *Georgetown Mfg. & Warehouse Co. v. South Carolina Dep't of Agric.*, 301 S.C. 514, 518, 392 S.E.2d 801, 804 (Ct. App. 1990).

That being established, there is nothing in the record which would suggest that the landlord or Respondent employed, supplied or installed the HVAC system. On the contrary, it was present with the Respondent acquired the premises. (Para. 8., Stipulation of Fact, TR, p. 6, lines 23-25.) The Master determined that the existing HVAC system was not part of the bargained-for lease. (Order, pp. 5-6). He could reach no other conclusion in light of the fact that Article 6 states that HVAC services are expressly excluded from the Landlord's obligations under the lease. Under the standard of "any evidence," the Court of Appeals must uphold the Master's conclusions.

Secondly, even if the HVAC system could be, *arguendo*, determined to have been supplied by the Respondent, there is a complete void of any evidence in the record that

the HVAC system was defective in “labor, workmanship, materials, fixtures or equipment.” That it creates mold now could be the result of innumerable reasons from global warming to a lack of proper maintenance of the system (which again was the responsibility of the Appellant). In the absence of any evidence that the repairs are necessitated by defective “labor, workmanship, materials, fixtures or equipment,” as in this case, the Master was wholly justified in not applying Article 8.1(b) to the determination of the case.

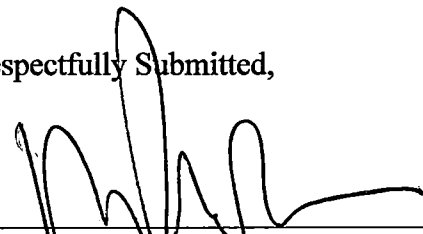
However, the real problem with the argument is that this provision must still be reconciled with Article 6 and not read in isolation. All HVAC services are the responsibility of tenant. Tenant never had a right under the lease to use the existing system. The lease clearly demonstrates that it was to secure a system for the building. It did not. It is not a question of repairing or replacing equipment supplied under the lease, because HVAC was not supplied under the lease. It is a question of who is responsible for installing and maintaining HVAC services – period. As already demonstrated, it is the responsibility of Appellant.

### CONCLUSION

For the reasons stated, this Court should uphold the judgment of the Master-in-Equity.

31 March 2015

Respectfully Submitted,



---

M. Richardson Hyman, Jr.  
P.O. Box 127  
Charleston, South Carolina 29402  
(843) 416-1047  
Attorney for the Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Master in Equity for Charleston County

Mikell Ross Scarborough, Master In Equity

**RECEIVED**

APR 06 2015

Case No.: 2013-CP-10-4019

SC Court of Appeals

WASHINGTON LIGHT INFANTRY OF CHARLESTON  
SOUTH CAROLINA, INC.,.....Respondent,

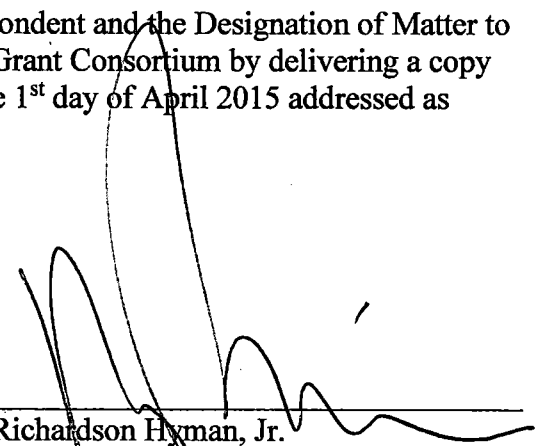
v.

THE SEA GRANT CONSORTIUM, An Agency and Political  
Subdivision of the State of South Carolina.....Appellant.

PROOF OF SERVICE

I certify that I served the Initial Brief of the Respondent and the Designation of Matter to be included in the Record on Appeal on the Sea Grant Consortium by delivering a copy via U.S. Mail, First Class Postage Pre-paid on the 1<sup>st</sup> day of April 2015 addressed as follows:

James A. Stuckey, Jr. Esquire  
Alissa C. Lietzow, Esquire  
123 Meeting Street  
Charleston, South Carolina 29401

  
\_\_\_\_\_  
M. Richardson Hyman, Jr.  
Post Office Box 127  
Charleston, South Carolina 29402  
(843) 416-1047  
Attorney for the Respondent

1 April 2015



**M. RICHARDSON HYMAN, JR.**  
ATTORNEY AT LAW  
P.O. BOX 127  
CHARLESTON, SOUTH CAROLINA 29402

(843) 416-1047  
(843) 323-4101 (FACSIMILE)

MRHCHAS@COMCAST.NET

**RECEIVED**

APR 06 2015

SC Court of Appeals

1 April 2015

The Honorable Jenny Abbot Kitchings  
Clerk of Court  
For the South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Case No.: 2013-CP-10-4019

WASHINGTON LIGHT INFANTRY OF CHARLESTON  
SOUTH CAROLINA, INC.,.....Respondent,

v.

THE SEA GRANT CONSORTIUM, An Agency and Political  
Subdivision of the State of South Carolina.....Appellant.

Dear Madam Clerk:

Please find enclosed for filing, the Initial Brief of the Respondent and Designation of Matter to be Included on the Record on Appeal, as well as Proof of Service upon the Appellant.

I thank you for your assistance in this matter and am and remain,

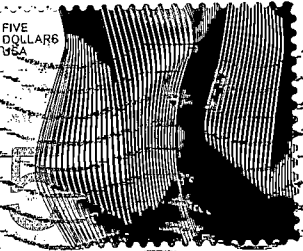
yours very truly,

M. Richardson Hyman, Jr.

Cc: James A. Stuckey, Esquire  
Alisssa C. Lietzow  
123 Meeting Street  
Charleston, South Carolina 20401  
Attorney for Appellant



FIVE  
DOLLARS  
USA



CHARLESTON SC 294

THU 02 APR 2015 PM

RECEIVED

APR 06 2015

SC Court of Appeals

ton, Jenny Abbott Kitchings  
K of the South Carolina  
rt of Appeals.  
Sumter Street  
mbia, S.C. 29201