THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellant Case No. 2015-000602

Dan Abel and Mary Abel,

Appellants,

vs.

South Carolina Department of Health and Environmental Control and Pawleys Island Community Church,

Respondents.

INITIAL REPLY BRIEF OF APPELLANTS

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October 15, 2015

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Summary of Argument

The 2001 Consent Order of Settlement and Dismissal ("Consent Order") placed restrictions on land-disturbing activity on the Church property and specifically required that "the wetland preserved by this Consent Order shall remain in its natural state." (R. p. ___, Consent Order p. 2). The 2014 stormwater permit (SCR10Q459) and coastal zone consistency certification (CZC-12-0149) (collectively "2014 Permit and Certification") issued by the Department to the Church explicitly allow alteration of the protected wetlands in violation of the Consent Order. (R. p. ___, MSJ Ex. 13-15, 18, 19, 21, 22; Motion to Enforce Ex. B).

The ALC acknowledged that the Consent Order is a valid and enforceable document, but failed to apply and enforce it to the proposed land-disturbing activities on the same property, involving the same parties and the same wetlands which were protected under that order and agreement. The ALC erred by fundamental misapplication of principles of contract law; it failed to interpret and apply the plain, unambiguous terms of the Consent Order; and it failed to enforce an Order of its own court. Respondents offer nothing to sustain the legal errors committed by the ALC.[1] The Consent Order unambiguously requires that the wetlands on the Church property "shall remain in its natural state" without limitation. The 2014 Permit and Certification authorize alteration of the protected wetlands in violation of the Consent

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[1] Appellants note that Respondents' Statement of the Case contains inaccuracies and contested matters in contravention of Rule 208 of the South Carolina Appellate Court Rules (SCAR). (Resp't Br. pp. 3,7).

Order. As parties to the Consent Order, the Appellants have standing to enforce its terms and proposed violations thereof, including the land-disturbing activity authorized by the 2014 Permit and Certification.

I. RESPONDENTS OFFER NOTHING TO SUSTAIN THE ALC'S ERRONEOUS INTERPRETATION OF THE CONSENT ORDER

Citing the correct authority is not equivalent to arriving at the correct legal conclusion. Nothing in Respondents' brief demonstrates that the ALC's treatment and analysis of the Consent Order was proper. Respondents recite applicable rules of contract interpretation, but fail to show how those principles were properly applied by the ALC in this case. (Resp't Br. pp. 9-12). As set forth in detail in Appellants' opening brief, the ALC erred by fundamental misapplication of principles of contract law in interpreting the Consent Order. Respondents cannot get around the ALC's error in application of the law by simply restating the governing law.

The error arises from the ALC's interpretation of the Consent Order as a whole, including the ALC's reliance on a "temporal scope" standard without any legal or factual basis. The ALC failed to examine the plain language of an unambiguous document as the parties' intent. Instead the ALC looked to what the parties' intended "surrounding execution" of the Consent Order, which indicates looking beyond the plain language of the document itself. (R. p. __, Order Granting Dismissal pp. 7, 8). The plain language of the Consent Order restricts land-disturbing activity and requires protection for remaining wetlands on the Church Property. There is nothing in the plain language of the Consent Order that limits the

duration of its terms. Therefore, the ALC erred in reading such a limitation into the parties' agreement.[2]

Ascertaining the parties' intent is necessarily the first step in interpretation of a disputed agreement. Where the ALC erred was in failing to interpret the parties' intent as reflected in the plain and unambiguous terms of the Consent Order itself. Respondents cannot get around the ALC's error in application of the law by simply restating the rules of construction. (Resp't Br. pp. 9-12). Respondents advocate, and the ALC adopted, a selectively narrow interpretation of the Consent Order that is inconsistent with the plain language of the agreement and contrary to the law.

A. The Consent Order is Unambiguous and Requires Protection of the Wetlands on the Church Property in their Natural State Without Limitation

The Consent Order is a settlement agreement and final order of the ALC. It arose from a challenge by the Abels and David Mims to the Church's 2000 stormwater permit and coastal zone consistency certification (the "2000 Permit and Certification") for expansion of its facilities, including construction of a stormwater retention pond impacting onsite wetlands. (R. p. __, MSJ Ex. 4, 5; Williams Deposition p. 14, line 5-p. 15, line 3). It sets

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See S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct.App.2008) ("Courts are without authority to alter an unambiguous contract by construction or to make new contracts for the parties."); see also Topiwala v. Wessell, 509 F. App'x 184, 187 (4th Cir.) cert. denied, 134 S. Ct. 701, 187 L. Ed. 2d 552 (2013) (upholding an order granting a motion to enforce a settlement agreement where the parties were bound by the agreement and its terms were unambiguous).

forth in nine enumerated paragraphs certain binding concessions regarding land-disturbing activity and protection for wetlands on the Church property in exchange for dismissal of the challenge. The terms of the Consent Order are clear and provide as follows:

> 1. The designs for the storm water pond and other improvements at the site shall be amended so that **approximately one-half (50%) of the wetland area on the site shall be preserved**. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "Proposed Future Building Phase II" so that **no portion of this structure will encroach upon the area of the wetland**.
>
> 2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to **continue to explore additional design changes**, where feasible from a time and cost perspective, **which will allow possible additional expansion of the wetland area to be preserved**.
>
> 3. **The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state**.
>
> 4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to **prevent harm to the wetland beyond that authorized by this agreement** and by the permit and certification as hereby amended. **In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.**
>
> 5. Within the area designated on Exhibit A as the "30' Noise/Visual Buffer," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be leyland cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that **the portions of the vegetated buffer in wetland areas** or in wooded areas not affected by development on the property, **will remain in their natural state**.

(R. p. __, Consent Order pp. 2-3) (emphases added).[3]

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[3] The sixth and seventh clauses address concerns regarding the location of basketball and

The Consent Order then concludes:

> IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a **part of this final order of the Administrative Law Judge Division.**
> IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement or order.
> IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that **the parties shall retain full rights to enforce the agreements stated herein.**

(R. Consent Order p. 3) (emphases added).

Undoubtedly, the 2000 Permit and Certification form part of the Consent Order. (Br. p. 13, 15). The Consent Order arose from a challenge to and modified those authorizations. However, the Consent Order is more than just an amended 2000 Permit and Certification.[4] The parties included language evidencing a clear understanding and agreement that the remaining onsite wetlands be protected in their natural state. (R. p. __, Consent Order p. 2).

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volleyball fields and the lighting on the Church property. (R. p. __, Consent Order p. 3). The eighth clause allows the Church to begin undertaking land-disturbing activity "not inconsistent with this agreement and order" upon its execution. (R. p. __, Consent Order p. 3). And in the ninth clause, the parties agreed to cooperate in the event any further amendments are needed "to carry out the provisions of this agreement and order." (R. p. __, Consent Order p. 3).

[4] Further, the Consent Order and its terms are valid and enforceable in their own right. The time frame during which the authorizations remain valid upon issuance from DHEC is irrelevant. (Br. p. 15). Respondents use Dibble v. Sumter Ice & Fuel Co., 283 S.C. 278, 322 S.E.2d 674 (Ct.App.1984) to imply the context within which the Consent Order should be construed should be limited to the span of time the authorizations remain valid. (Br. p. 15). However, this Court in Dibble applied the principle that an order should be construed within the context of the proceeding in which it is rendered to construe a disputed order *broadly* as opposed to narrowly. Construing the Consent Order in the context of the underlying challenge to the 2000 authorizations and present challenge to the 2014 authorizations demonstrates the import of protection for the wetlands to the Abels in bringing their challenge and agreeing to settle, as well as in now seeking to enforce the Consent Order against a violation of that protection.

The very first clause of the Consent Order sets forth that the land-disturbing activity authorized under the 2000 Permit and Certification must be altered so that approximately one-half (50%) of the onsite wetlands "shall be preserved." (R. p. __, Consent Order p. 2). Had the parties intended only to amend the specific 2000 authorizations, there would have been no reason to include additional language restating the requisite protections for the wetlands remaining on the Church property. Yet that is precisely what they did with clause 3 of the Consent Order.

The language of clause 3 emphasizes that the protected wetland "shall remain in its natural state" independently and without any reference to the 2000 Permit and Certification or other limitation to the provision's force and effect. Respondents cite to law that a contract must be read as a whole but rather than doing so, Respondents' arguments would eliminate clause 3 from that reading. (Resp't Br. pp. 10, 14-15). Indeed, to read the Consent Order as limited in application and enforceability only to the 2000 Permit and Certification renders the language of clause 3 meaningless contrary to principles of contract interpretation. E.g., Stevens Aviation, Inc. v. DynCorp Int'l LLC, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014), reh'g denied (June 25, 2014) ("[A]"n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.").

Respondents attempt to advance the ALC's erroneously narrow interpretation of the Consent Order as limited to the 2000 Permit and Certification, citing cases providing that intent may be found in the introductory clauses of an agreement. (Resp't Br. p. 13). Contrary to Respondents' implication, merely because intent ***may*** be found in background provisions

or recitals to a contract does not mean such language ***necessarily*** evidences intent, nor that it should be given more weight than any other contractual provision in determining the parties' intent. Rather the court must look at the particular agreement and all of its language as a whole in order to ascertain the parties' intent.

Indeed in M & M Grp. Inc. v. Holmes, 379 S.C. 468, 477, 666 S.E.2d 262, 266 (Ct.App.2008), this Court looked at the particular language in dispute and determined it was clear and that the parties' use of specific language stating something was "contingent upon" was unequivocal; that it patently indicated their intent to make the buyer's ability to secure financing a condition precedent to the subject sale; and that no other meaning could be deduced from such clear and common language.

Likewise this Court is being asked to look to the language of the Consent Order. The Consent Order may begin with background on the challenge to the 2000 Permit and Certification as giving rise to the terms of the agreement to follow; however, this Court must look to the agreement as a whole and merely because the introduction references the 2000 authorizations does not end the inquiry into the parties' intent. Especially where, as here, looking at the plain language of the document as a whole it cannot be read as limited only to the work associated with the 2000 authorizations. The express provisions simply do not contain such limitation. The inclusion and use of language in clause 3 that "the wetland preserved by the Consent Order shall remain in its natural state" without any reference to a specific project or permit is clear and the only meaning that can be deduced therefrom is that such wetlands are required to remain protected in their natural state indefinitely. To conclude otherwise would severely disincentivize resolution of permit appeals through settlement

agreements.[5]

Certainly the subject matter and purpose of an agreement are relevant in determining the parties' intent. (Resp't Br. p. 13). The purpose of the Consent Order was to settle a challenge to DHEC authorizations for land-disturbing activities on the Church property that were going to cause adverse impacts. The parties agreed to resolve their differences by entering into the Consent Order which modified the authorizations for land-disturbing activity on the Church property such that the Church could still carry out some of the proposed work but with protections in place to address the challengers' underlying concerns. For the Abels that meant protection of the wetlands.

The introduction to the Consent Order references the 2000 Permit and Certification in order to provide context to the challenge giving rise to the parties' agreement and the concessions made therein. As all contracting parties, the Appellants and Respondents were free to make their own contract according to mutually agreeable terms.[6] The Consent Order

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See, e.g., R. p. __, Aff. Dan Abel p. 2 ("The primary basis of my challenge to the authorizations for construction on the Church property was the impacts to the wetlands. . . . As with many compromises, the decision to fill in the wetlands left us (and the church as well, we suspect) with a bittersweet feeling. We were saddened at the loss of half of the wetlands, but were comforted that the remaining half would continue to exist.").

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"The parties have the right to make their own contracts, and when such contracts are capable of clear interpretation, the Court's province is confined to the enforcement thereof. The Court cannot exercise its discretion as to the content of such contract or substitute its own construction for the agreement clearly entered into between the parties." Bruce v. Blalock, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962). In that case, the plain language of the contract evidenced an agreement between the parties that the district would pay a certain rate, and looking at that sentence in isolation, the appellants' argument that the rate was a ceiling appeared sound; however, the Court explained it must consider all of the language used by the parties in order to arrive at a proper interpretation of their agreement and the very next sentence provided that the contract

contains provisions amending the land-disturbing activity authorized under the 2000 Permit and Certification, but it also contains protections for the remaining wetlands on the Church property. If the parties intended for the protection of the wetlands to lapse after a certain amount of time or upon completion of the work associated with the 2000 Permit and Certification, then they could have included language to that effect. If they did not intend for the preservation of the wetlands to be mandatory and unconditional, then they could have used language imparting some discretion moving forward.[7] Instead, no limiting language was used and the Consent Order states unambiguously: "The Church agrees that the wetland preserved by this Consent Order ***shall remain in its natural state***." (R. p. __, Consent Order p. 2) (emphasis added).

Looking at the entirety of the Consent Order, it clearly and unambiguously restricts land-disturbing activity on the Church property and protects the remaining onsite wetlands. Just as did the ALC, Respondents maintain that clause 3 of the Consent Order cannot be looked at in isolation but ultimately refuse to consider its language altogether. (Resp't Br. pp. 12-14). It is not possible to arrive at the erroneous interpretation of the Consent Order that it is limited to the 2000 Permit and Certification without disregarding the language of

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"shall at times be subject to" certain rules and regulations and any changes that may result. Id. at 161-62.

[7] Compare Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001) ("The use of the word '***may***' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning") with Plaza Dev. Servs. v. Joe Harden Builder, Inc., 294 S.C. 430, 433-34, 365 S.E.2d 231, 232-33 (Ct.App.1988) (interpreting "***shall remain***" as prospective and permanent as to the object the phrase modified in contract) (emphases added).

clause 3. As such interpretation is a patent error of law, the ALC's ruling that the Consent Order was temporally limited to the 2000 Permit and Certification cannot stand.

B. Respondents Fail to Overcome the Plain Language and Expression of Intent Found Within Clause 3 of the Consent Order

Respondents do not and cannot refute the language of clause 3: "The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state." (R. p. __, Consent Order p. 2). They instead assert that the language should be interpreted other than according to its plain and ordinary meaning.

Respondents' reliance on S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001) is misplaced. It does not support the ALC's erroneous construction of the Consent Order, and clause 3 in particular. (Resp't Br. p. 16). Town of McClellanville involved interpretation of a restriction in a deed between the Department of Natural Resources (DNR) and the Town that "the parking area and boat launching ramp shall remain accessible to and remain available for use by the public." The Town enacted an ordinance requiring users of the boat to obtain a permit and all revenue from the permits was to be used for operation and maintenance of the ramp and related parking area. DNR sought to enjoin the Town from charging a fee for use of the boat ramp alleging it violated the restriction in the deed.

The master refused to grant DNR's request for an injunction, ruling the ordinance did not violate the deed which merely required the public have access to the facilities but did not

address how they were to be maintained or operated.[8] On appeal, the word "remain" was found unambiguous meaning "to continue unchanged" and that the only reasonable interpretation of the deed was that the public's access was to continue unchanged, which meant *any* restrictions imposed by the Town on the public's access were prohibited.

The Supreme Court agreed that the covenant was unambiguous but concluded that the only reasonable interpretation of the deed would not prohibit the Town from charging a permit fee. "We do not interpret the deed as prohibiting the town from imposing any restrictions whatsoever on the public's use of the ramp in response to unforseen future need." Id. at 624, 550 S.E.2d at 303. Rather, the Supreme Court explains that the covenant as a whole requires that the parking area and boat ramp remain *accessible* and *available* for use by the public but nothing in the plain language of the deed provides that the facilities must remain unchanged from how they were when the Town took title to them in order to do so. Id. at 623-24. The Court determined that imposition of a permit fee by the Town does not prevent the accessibility and availability of the boat ramp and associated parking by the public, and therefore the ordinance did not violate the deed.

Respondents argue the parallel to be drawn from Town of McClellanville is that the word "remain" in clause 3 does not forever restrict the Church from seeking new authorizations for future construction. (Resp't Br. p. 16). Appellants have never argued the Consent Order places such a broad restriction on the Church's ability to carry out construction activities on its property. Rather, the Consent Order requires that in doing so,

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8 "The master refused to read restrictions into the deed which 'DNR could have effortlessly written in itself.'" 345 S.C. at 621, 550 S.E.2d at 301-02.

the Church must provide for the protection of the onsite wetlands.[9] Unlike DNR's argument in Town of McClellanville, Appellants do not argue the requirement that the wetlands remain preserved means that the Church is prohibited from any and all future land-disturbing activity on its property.

The plain language of the Consent Order requires that the onsite wetlands ***"shall remain in its natural state."*** (R. p. __, Consent Order p. 2) (emphasis added). Use of the word "remain" coupled with "shall" in this context expresses a clear intent that the protection for the wetlands be perpetual in nature. The Church is free to apply for permits to conduct future land-disturbing activity on its property so long as such activity does not disturb the natural state of the remaining onsite wetlands. Since the 2014 Permit and Certification authorize disturbance to the natural state of the protected wetlands, they violate the Consent Order.

Rather than interpret the plain language of clause 3 as requiring preservation of the onsite wetlands in their natural state indefinitely, Respondents argue that South Carolina law generally disfavors perpetual contracts. (Resp't Br. pp. 16-17). However, Respondents overlook the exception to that rule. A perpetual contract will be upheld so long as the perpetual nature of the agreement is an express term or can be implied from the nature or

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Appellants maintain that the Consent Order is not a restrictive covenant, but even if this Court were to find otherwise, it is improper to construe a restriction "beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written" and even the rule of strict construction of restrictions on real property "should not be applied so as to defeat the plain and obvious purpose of the instrument." Town of McClellanville, 345 S.C. at 622, 550 S.E.2d at 302.

circumstances surrounding the contract. Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199, 200 (1994); Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296, 298 (1911).

In its plain and ordinary meaning, the language of clause 3 and requisite protection for the wetland is arguably express but at a minimum impliedly perpetual under the circumstances of the Consent Order and its context as a whole. There is no ambiguity, rather a clear expression that the onsite wetlands continue to exist in their natural state indefinitely. The fact that Respondents sought to amend the Consent Order to allow modification of clause 3 and the wetlands protection shows that Respondents also believed the preservation requirement was perpetual and could only be lifted by consent of all parties and order of the court. Respondents simply cannot overcome the plain language of clause 3 and its expression of the parties' intent.

II. APPELLANTS HAVE STANDING TO ENFORCE THE CONSENT ORDER

Respondents argue the Abels lack standing to enforce the Consent Order based on principles of property law (Resp't Br. pp. 20-21), which the ALC correctly determined are inapplicable to this case. While the requirement that the onsite wetlands remain preserved in their natural state is perpetual in nature, the Consent Order is not a restrictive covenant. The Abels' standing derives from contract law as they are parties to the Consent Order with express rights to enforce the agreements therein. The fact that the Abels since moved after entering into the Consent Order is irrelevant. Nor do the Abels have to prove they were entitled to enter into the Consent Order in the first place in order to enforce its terms.

It is an indisputable fact that the Abels are parties to the Consent Order. In addition

to the express rights of enforcement provided in the Consent Order itself (R. p. __, Consent Order p. 3), the Abels have standing to enforce the agreement by law.

"South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it." Trancik v. USAA Ins. Co., 354 S.C. 549, 553, 581 S.E.2d 858, 861 (Ct. App. 2003). Thus, an individual who is a party to a contract is presumed to be able to enforce it. "[T]he presumption is that parties contract for their own benefit, and not for that of others not parties to the contract." Ancrum v. Camden Water, Light & Ice Co., 82 S.C. 284, 64 S.E. 151, 155 (1909). Just as did the Respondents, the Abels entered the Consent Order and agreed upon its terms for their own benefit. Accordingly, so long as Appellants remain parties to the Consent Order, they retain the right to enforce its terms.

Respondents' arguments regarding the Consent Order as a restrictive covenant are without merit. (Resp't Br. pp. 17-19). While in a sense restrictive covenants may be contractual in nature, they are distinct from a contract. "Restrictive covenants differ from contracts in that they 'run with the land'" and cannot be understood without resort to property law. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct.App.2006). Restrictive covenants are also created by deed, declaration or implication from a general development plan or scheme. Id. at 362. The point of a restrictive covenant is that it will be enforceable by and against later grantees. By contrast, a contract is enforceable by and between the parties thereto.

The Consent Order is not a restrictive covenant and principles of property law have

no bearing on its interpretation or enforcement.[10] Rather, the Consent Order is a settlement agreement and final court order, which is treated as a contract under South Carolina law. Byrd v. Livingston, 398 S.C. 237, 241, 727 S.E.2d 620, 621-22 (Ct.App.2012). As contracting parties to the Consent Order, the Appellants hold rights to enforce its terms, including that the onsite wetlands remain protected in their natural state.

III. THE CONSENT ORDER IS APPLICABLE TO AND ENFORCEABLE AGAINST THE 2014 PERMIT AND CERTIFICATION

None of Respondents' arguments effectively refute that the Consent Order is applicable to and enforceable against the 2014 Permit and Certification, which authorizes the same type of land-disturbing activity on the same property impacting the same wetlands as protected under that agreement. The parties' agreement was made part of and issued as a final order of the ALC.

Appellants and Respondents are all parties to the Consent Order and obligated to comply with the terms agreed to thereunder. See Shelton v. Bressant, 312 S.C. 183, 439

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Respondents question whether the ALC had jurisdiction to impose a perpetual restriction on the Church under the Consent Order, citing SGM-Moonglo, Inc. v. S.C. Dep't of Revenue, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct.App.2008), which found restrictions in the chain of title were not a legitimate concern of the ALC in determining whether a proposed location is suitable in connection with an off-premises beer and wine permit. (Resp't Br. p. 13). This case is not on point. First, the subject matter is entirely unrelated as there the ALC was dealing with a permit for sale of alcoholic beverages. Second, this Court determined, under the circumstances of that case, the ALC shouldn't have considered extraneous restrictions in title; however, here, the Consent Order is directly at issue and is not a restrictive covenant but a settlement agreement and final order issued *by the ALC* concerning the same parties to the dispute. Courts have inherent jurisdiction to enforce their own orders especially where, as here, the parties to the same are before it. E.g., Kumar v. Third Generation, Inc., 324 S.C. 284, 289-90, 485 S.E.2d 626, 629 (Ct.App.1995).

S.E.2d 833 (1993) (affirming that party to valid settlement agreement could not subsequently repudiate such agreement and its enforcement); see also City of N. Myrtle Beach v. E. Cherry Grove Realty Co., LLC, 397 S.C. 497, 504, 725 S.E.2d 676, 679 (2012) ("[W]hen parties settle a lawsuit, either may include property or other concessions not a part of the original suit" or in other words, the parties' settlement need not necessarily be limited to what was at issue when the dispute originated). The 2014 Permit and Certification authorize disturbance to wetlands expressly protected under the Consent Order. Therefore, Appellants properly challenged the 2014 Permit and Certification as a violation of the Consent Order and the ALC erred in failing to enforce it.

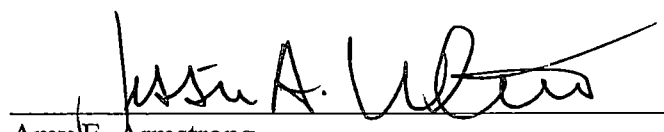
Certainly the parties to a valid settlement agreement and court order must be able to rely on the court to ensure the terms of that agreement and order are obeyed. Without confidence that their agreement will be honored in the future, parties would have no incentive to settle. This thwarts strong public policy favoring the resolution of parties' disputes through settlement rather than litigation. E.g., Poston by Poston v. Barnes, 294 S.C. 261, 264, 363 S.E.2d 888, 890 (1987); Smith & Furbush Mach. Co. v. Johnston, 102 S.C. 130, 86 S.E. 489 (1915) ("The policy of the law is to encourage parties to settle out of court"); Farmers' & Merchants' Nat. Bank of Lake City v. Foster, 132 S.C. 410, 129 S.E. 629, 631 (1925) ("It is the policy of the law to avoid a multiplicity of suits, and to settle all matters between the parties relative to the same subject-matter in the same suit"). The ALC's interpretation of the Consent Order renders the protection of the wetlands agreed to by the parties meaningless. Since such interpretation undermines bedrock principles of public policy it must be overturned.

CONCLUSION

Respondents advocate, and the ALC adopted, an erroneously narrow interpretation of the Consent Order that is contrary to its plain language and the law. The Consent Order is clear and unambiguous – it restricts land-disturbing activity on the Church property and protects the remaining onsite wetlands from disturbance to their natural state. The Consent Order is not a restrictive covenant, but rather a settlement agreement that is governed by principles of contract law and is enforceable as a final order of the ALC. As parties to the Consent Order, Appellants have the right to enforce its terms, including protection of the onsite wetlands in their natural state. The 2014 Permit and Certification authorize land-disturbing activity that will disturb the natural state of the wetlands remaining on the Church property inconsistent with the Consent Order. The ALC erred in interpretation of the Consent Order and in failing to enforce it against a patent violation of its terms.

For the foregoing errors of law, the ALC should be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Initial Reply Brief of Appellants on Respondents SCDHEC and Pawleys Island Community Church by placing copies of same in the U.S. Mail addressed to:

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