

2STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

CHARLESTON COUNTY SCHOOL )  
DISTRICT, )

Plaintiff, )

vs. )

CLEMSON UNIVERSITY and CITY OF )  
NORTH CHARLESTON, )

Defendants, )

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

Project: Intermodel Container Transfer )  
Facility )

Tract: 11 )

South Carolina Department of Commerce, )  
Division of Public Railways, )

Condemnor, )

vs. )

Clemson University, )

Landowner, )

and )

Charleston Naval Complex Redevelopment )  
Authority, City of North Charleston, )  
Commissioners of Public Works for the )  
City of Charleston, North Charleston Sewer )  
District, BellSouth Telecommunications, )  
Inc., Business Telecom, Incorporated, )  
South Carolina Electric & Gas Company )  
and Charleston County School District )

Other Condemnees. )

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-10-5093

**RECEIVED**  
FEB 29 2016  
SC Court of Appeals

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-10495

ORDER

This matter is before me for consideration of the City of North Charleston's Motions to Alter or Amend the Order of October 22, 2015 and the Joint Motion of Clemson University and South Carolina Department of Commerce, Division of Public Railways to Alter or Amend the Limited Special Referee's October 22, 2015 Order. For the reasons set forth below, the motions are denied.

First, the City of North Charleston ("the City"), Clemson University ("Clemson"), and the South Carolina Department of Commerce, Division of Public Railways ("Railways") request that I delete the sentence on page 8 of the October 22<sup>nd</sup> order which reads: "Subsequently, in documents conveying the property first to the City and then to Clemson and the RDA, the City and Clemson acknowledged that CCSD would likely have a long term presence on the former Navy Base." The City, Clemson and Railways argue that none of the documents introduced into evidence reflect any acknowledgment by the City that the CCSD would have a long term presence on the Navy Base.

As to the City's acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- In documents which predated the transfer from the RDA to the City are evidence that the City had an expectation that the CCSD would have a long term presence on the former Navy Base. For example, on June 7, 2004, the City's Mayor sent a letter to the Superintendent of CCSD in which Mayor Summey took note of the lease between the RDA to establish the Academic Magnet High School campus. The letter specifically, refers to a 50 year term for the lease and language allowing the CCSD to acquire the property.
  - On October 11, 2004, letter from Raymond Anderson, Special Assistant to the Mayor,
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advised Jack Sprott of the RDA of a meeting between Mayor Summey and the Superintendent of CCSD to discuss “the future of the CCSD facilities on the former Naval Base.” That letter further stated that the CCSD’s plans to locate a training center for teachers should meet the terms of the lease with the Navy. Also, Mr. Anderson indicated the City’s willingness to deed the property to the CCSD and suggested a method of accomplishing that transfer.

- In a letter dated October 29, 2004, Mark Cobb, Executive Director of CCSD, wrote to Mr. Sprott and authorized the transfer of Cochran Hall and the adjacent properties to the City. That letter refers to an agreement between the City and CCSD that those properties would then be transferred to CCSD by the City.
- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 states in part that “[b]y recordation of this deed Grantee [the City] agrees for the Grantee and for Grantee’s heirs, successors and assigns, that Grantee and any future title holder ...is and shall be bound by, and subject to, the rights of lessees, sublessees, and entities and agencies claiming by and through any of them, including but not limited to the following:
  - (a) the right of possession and quiet enjoyment and option to purchase, pursuant to instrument entitled “Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District” (the “CCSD Sublease”) dated September 10, 1996 as amended by “First Amendment to the Sublease Between Charleston Naval Complex Redevelopment Authority and Charleston County School District (the “First Amendment”) dated February 26, 1998, receipt of a copy of which CCSD Sublease and First Amendment is acknowledged by Grantee.”

- The Quit Claim Deed from The Charleston Naval Complex Redevelopment Authority to the City of North Charleston dated December 21, 2004 further states in part that “[b]y recordation of this deed Grantee [the City] acknowledges that the Charleston County School District by letter dated April 20, 2004 has exercised its option to purchase the property that is more fully described in that certain sublease from Charleston Naval Complex Redevelopment Authority, as Lessor, to Charleston County School District as Lessee” (the “CCSD Sublease”) dated September 10, 1996 as amended in writing...”.
- The December 21, 2004 Assignment and Assumption Agreement between RDA and City identified the CCSD Sublease and the notice extending the Sublease for an additional 50 years among those agreements subject to that assignment and assumption agreement.
- Finally, when the City deeded property to Clemson, as described more fully below, the references to the CCSD Sublease that were contained in the Quitclaim Deed from the RDA to the City were repeated in the transfer documentation from the City to Clemson.

As to Clemson’s acknowledgement that CCSD would likely have a long term presence on the former Navy Base, I refer the parties to the following documents:

- On February 1, 2007 a Transfer and Option Agreement was signed among the City, Clemson, the Hunley Commission and Friends of the Hunley, Inc. That Agreement contemplated the transfer of 82 acres to Clemson for the Clemson University Restoration Institute (CURI). Significantly, the 3.74 acre parcel used by the CCSD for the Academic Magnet High School (“AMHS”) was not part of the 82 acre tract described in the February 1, 2007, T&O Agreement.

- The Quit-Claim Deed from the City to Clemson dated February 28, 2007 conveyed the 82 acre tract described in the T&O agreement signed on February 1<sup>st</sup>. The property description attached to that Deed contained a specific reference to the CCSD Sublease.
- In the Quit-Claim Deed from the City to Clemson dated February 8, 2010 the City conveyed additional property to Clemson, including the 3.74 acres on which the AMHS had been located that was omitted from the 2007 Quitclaim Deed. Again, the 2010 Quitclaim Deed contained language in which by recording the deed the Grantee, Clemson, acknowledged the right of possession and quiet enjoyment of the tenants of building 199 and the CCSD Sublease.
- In the interim between the 2007 and 2010 Quitclaim deeds, evidence was introduced that documented the CCSD's plans to have a long-term presence on the former Navy Base. In particular, I refer the parties to the following exhibits: 101; 102; 105; 108; 112; 116 and 124.

Second, the City, Clemson and Railways ask me to delete the following sentence, also on page 8 of the October 22<sup>nd</sup> Order: "Moreover, I find that the RDA, the City and Clemson were aware of that financial commitment and accepted or acquiesced in it." The movants claim that there is no evidence of acceptance or acquiescence by the City in the CCSD's expenditure of funds, and that most of the funds expended by the CCSD occurred before the City or Clemson received title to the property so the City and Clemson could not have acquiesced to those expenditures. The evidence of acceptance or acquiescence is found in the communications from the City before it acquired the property and in the communications to and from Clemson between the 2007 and 2010 Quitclaim Deeds that it received from the City.

- As for the City, probably the best evidence of the City's knowledge of the CCSD's
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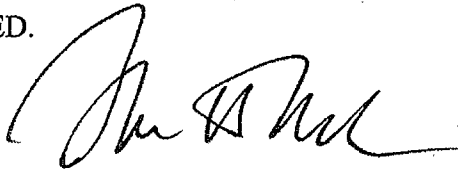
financial commitment to the property is contained in the June 7, 2004 correspondence referenced above. In particular, that letter refers to communications between the City and the District (CCSD) “during the time of the development of the large bond issue, on potential sites of various schools in the area ...”. Later in that same letter, it states “I realize that CCSD has invested funds into the current campus.”

- As for Clemson, several communications stand out as evidence that it was aware of the CCSD’s expenditure of funds before receiving the Quitclaim Deed to the AMHS property. First, the email from Mr. Lewis of CCSD to Mr. Godfrey on October 27, 2008 states in part that “the District has made significant capital improvements to the AMHS campus and have [sic] a plan to use the campus to support another district wide magnet school to this campus once the new AMHS facility is completed in August, 2010...”. The March 19, 2009 letter from Mr. Emerson to Mr. Godfrey specifically refers to the recent capital improvements that the CCSD has made to the property. Finally, the email from Mr. Godfrey to Ms. Arena dated September 2, 2009 says in part “[m]ake JK aware that preliminary contact with CCSD on the Magnet School indicated that they would want to recoup the \$5M or so capital investment in the magnet school to ‘allow’ it to be released from what they consider a 50 year lease.”

Finally, the City, Clemson and Railways ask that the order be amended to rule on the laches defense to the CCSD equitable interest claim. “In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed assertion of a right, resulting in prejudice to the party asserting the defense of laches.” Historic Charleston Holdings LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009). Under the circumstances presented in this case, I find that the CCSD’s delay in filing suit did not prejudice the Defendants. The

evidence proved that both the City and Clemson proceeded with their plans for the property while CCSD communicated with both regarding the interests it claimed in the AMHS parcel before and after the City and Clemson received deeds for the property. In 2004, the City received a Quitclaim Deed from the RDA. Three years later, a portion of the property was conveyed by the City to Clemson and three years after that in 2010, additional property including the AMSH parcel was conveyed to Clemson. The original condemnation action was filed in 2010, and CCSD, Clemson and the City were all named as parties. I could not discern any prejudice to either Clemson or the City from the delay. Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the laches defense.

AND IT IS SO ORDERED.



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SPECIAL REFEREE

CHARLESTON, SC

February 23, 2016