2STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CHARLESTON COUNTY SCHOOL DISTRICT,)
)
Plaintiff,)
)
vs.)
)
CLEMSON UNIVERSITY and CITY OF NORTH CHARLESTON,)
)
Defendants,)

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

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.: 2010-CP-10-10495

ORDER

The following issues were referred to the undersigned as Special Referee:

1. DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?

2. HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?

3. DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?

4. DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON UNIVERSITY?

5. DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

The parties and their attorneys appeared before me for a hearing on September 23, 2014, the hearing continued on September 24, 2014 and was then recessed until October 29, 2014. Thereafter, the hearing was reconvened on October 29, 2014 and continued through October 31, 2014. Written closing arguments were subsequently submitted by CCSD, the City, and a joint closing was submitted by the South Carolina Department of Commerce, Division of Public Railways and Clemson. CCSD also submitted a reply memorandum. Based upon the evidence received during the hearings, the arguments of counsel and the applicable law, I make the following findings of fact and conclusions of law:

DID THE SUBLEASE BETWEEN THE CHARLESTON COUNTY SCHOOL DISTRICT ("CCSD") AND THE REDEVELOPMENT AUTHORITY ("RDA") EXPIRE?

CCSD argues that both the September 10, 1996, Primary Lease between the United States of America and the RDA, and exhibits and amendments to the September 10th lease, (the "Primary Lease") and the September 10, 1996 Sublease between the Charleston Naval Complex Redevelopment Authority and the Charleston County School District (the "Sublease") remained in effect until September 3, 2006. CCSD offers the following arguments in support of this position:

- Section 6 of Sublease says term shall be for five years and shall run concurrent with the term of the Primary Lease.
- Also Section 6 says if the Primary Lease is extended, renewed or replaced, or if

the RCA shall have by any manner or means the power to lease or sublease the Prop for longer than initial term and if the sublease shall not have terminated and if there is no default, then RDA agreed that lease can be extended for a maximum of 25 years in CCSD's sole discretion by CCSD's written notice to RDA prior to expiration of initial term.

- CCSD claims that the January 29, 1998 letter from CCSD to Jack Sprott of RDA which asked to extend the maximum term of the Sublease to 50 years is sufficient notice to extend Sublease.
- Also section 3 of Sublease incorporates terms of Primary lease by reference so CCSD argues that extension of Primary automatically extended Sublease.
- Consideration of the "four corners" of Primary Lease and the Sublease makes it clear that the parties intended to incorporate all terms and conditions of Primary Lease and amendments to the Primary Lease.
- Two additional sections of sublease reflect an intent to incorporate all terms of Primary lease into the Sublease. Section 4 says upon issuance of the FOSL, the Lessee shall be deemed to have acquired all benefits and obligations of RDA under the Primary lease. Section 21 says that Lessee is subject to terms and conditions of the Primary Lease.
- Section 5.2 of the Primary Lease says that copy must be attached to any sublease and that the sublessee is subject to terms and conditions of the Primary Lease; and
- The Primary Lease, the First Amendment to the Primary Lease, the Second Amendment to the Primary Lease and Sublease all refer to the same "reference number" which shows an intent to unify the terms.

The Defendants responded with the following arguments:

- The term of the Sublease is governed by Section 6 which states plainly that "the term of this Sublease shall be for five years and shall run concurrent with the term of the Primary Lease.
- The Primary Lease was extended by amendment for five years from 9-4-01 to 9-3-06, and it is undisputed that there was no similar amendment to the Sublease.

- On February 26, 1998 the Sublease was amended and paragraph 6 of the original Sublease was replaced with a new paragraph 6 which lengthened the maximum length of the Sublease from 25 years to 50 years.
- Defendants dispute that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking to extend the maximum term to 50 years was sufficient notice to extend the Sublease.
- Further, Defendants point out that Paragraph 7 of the Sublease says that CCSD will not stock-pile the property but agrees to make a diligent and good faith effort to conduct operations on premises to enhance redevelopment of former Naval Base and that absent prior written approval by the government the property had to be used as a school.
- In 2002 Board of CCSD decided to move the Academic Magnet school to former Bonds-Wilson campus to co-locate with School of the Arts and that by the Spring of 2010 the CCSD had stopped using the property for educational purposes.
- The Defendants argue that there was no amendment to the Sublease with respect to the trailers on parcel's 12-A and 12-B.

I find that the Sublease expired on September 3, 2001, and thereafter, the CCSD continued as a tenant at will. The construction of an unambiguous written contract is a question of law for the court. J.T.M. Co. v. Vane, 323 S.E.2d 794 (S.C. Ct. App.1984). Where one construction makes the provision unusual or extraordinary and another construction that is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. Farr v. Duke Power, 218 S.E.2d 431 (1975). The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. Bruce v. Blalock, 127 S.E.2d 439 (1962). In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. Superior Automobile Insurance Co. v. Maners, 199 S.E.2d 719 (1973); Farr, 218 S.E.2d 431. When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. Warner v. Weader, 311 S.E.2d 78, 79 (1983). Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. Superior Automobile

Insurance Co., 199 S.E.2d 719.

The term of the Sublease is clearly expressed in Section 6 of that document. I find that the January 29, 1998 letter from CCSD to Jack Sprott of RDA asking for extension to term of 50 years was not sufficient notice to extend the Sublease because it only asked to extend the maximum term from 25 years to 50 years. I further find that the provisions of the Primary Lease cited by CCSD are not sufficient proof of the parties' intent to modify the Sublease. Finally, the plain language of the First Amendment to the Sublease demonstrates an intent to only modify the maximum time period for the lease from 25 years to 50 years as requested in the January 29, 1998 letter.

HOW MUCH PROPERTY WAS INCLUDED IN THE SUBLEASE?

I conclude that the Sublease included both Building 199 (a/k/a Cochrane Hall) and parcels 12-A and 12-B as shown in the cross-hatched area on the sketch attached to Amendment Number 1 to the Primary Lease. In reaching this conclusion, I find it appropriate to consider extrinsic evidence as to this question because of the uncertainty created by the graphic depictions of the "Premises" (as that term is used in the Primary Lease and the Sublease) which were attached to both the Primary Lease and the Sublease. In considering the intent of the parties, it is clear from the language of both the Primary Lease and the Sublease, as well as testimony during the hearing, that the overriding intent of the parties was to lease property to CCSD to locate a school on the former Navy Base. The testimony was that the trailers locted on parcels 12-A and 12-B were used by students at the Academic Magnet High School. Furthermore, Amendment Number 1 to the Primary Lease was executed on January 16, 1997 while the sublease was in effect. The fact that the RDA signed a License on November 21, 1996 for the use of trailers is not dispositive of this question because in my view the trailers themselves were personal property, not party of the real estate and so the fact that they were the subject of a license does not translate into a finding that the license defined CCSD's sole interest in the trailers and real estate on which they were located.

DID CCSD HAVE ANY RIGHTS IN THE PROPERTY AFTER IT WAS CONVEYED BY RDA TO THE CITY OF NORTH CHARLESTON ("CITY")?

DID CCSD HAVE ANY RIGHTS TO THE PROPERTY AFTER IT WAS CONVEYED FROM THE CITY TO CLEMSON?

DID CCSD HAVE ANY RIGHTS TO IN THE PROPERTY AT THE TIME THAT THE

CONDEMNATION NOTICE WAS FILED ON DECEMBER 22, 2010?

CCSD argues that after the RDA conveyed the Property to the City it maintained one or more of the following rights in it: equitable title to the 3.74 acre AMHS campus and 1.87 acre trailer parcel; a 50 year lease on the AMHS parcel; and/or an equitable interest in the 3.74 acre AMHS parcel because of improvements to that property during the lease. I will address those arguments in turn. Additionally, I will address the timing issue (issues #4 and #5) as part of this analysis.

I find that CCSD did not have equitable title to the Property at the time that it was conveyed by the RDA to the City. CCSD claims that RDA passed on CCSD's right to acquire title to the property in the December 21, 2004 Quit Claim Deed and Assignment Agreement to the City. However, I am persuaded by the argument and case law cited by the Defendants that as strangers to the 2004 deed from RDA to the City and the 2010 deed from the City to Clemson, the CCSD did not revive any rights under the Sublease that expired in 2001. In particular, although it is not controlling authority, I find the reasoning in Engle v. Bond-Foley Lumber Co, 173 Ky 35, 189 S.W. 1146 (1916) to be persuasive.

Likewise, I find that CCSD's argument regarding covenants which run with the land to be misplaced. I appreciate counsel's advocacy on that point, but I cannot make the connection between restrictive covenants which bind subsequent purchasers, and CCSD's claim that it has an enforceable right to purchase the property because it is mentioned in subsequent deeds between different parties. I find that argument misconstrues the law of privity.

CCSD's argument that it has a 50 year lease is foreclosed by the same reasoning that I articulated above in ruling that the Sublease expired in 2001. It is a fact that on January 29, 1998 Superintendent Zullinger wrote a letter for CCSD to Jack Sprott of RDA asking to extend the term of the lease to 50 years. However, that request was not sufficient to extend the Sublease beyond 2001, and so whether the maximum term could have been 25 years or 50 years became an academic question at that point. Subsequent amendment of the Primary Lease was not sufficient to amend the Sublease and recitals in subsequent conveyances were similarly insufficient on this point.

However, I cannot ignore that much of the evidence submitted during the hearing does not fit neatly into the analysis advocated by the Defendants and for that reason, I find that CCSD had

an equitable interest in the 3.74 acre AMHS parcel because of improvements made to that Property during the term of the Sublease and CCSD's use of the property thereafter.1 Counsel for Clemson and Railways wrote in his Closing Argument that "[w]hile five days of evidence and argument and a 116 page brief by the District might appear to indicate that this is a complicated case, it is not." I have great respect for all of the attorneys in this case and the fine work done for their clients, but on this point counsel for Clemson and Railways misses the mark. This is quite a complicated analytical puzzle, and the extensive evidence and legal argument by both Plaintiff and the Defendants is proof of that.

Specifically, the evidence such as the following weigh in favor of an equitable resolution of this dispute2:

- In 2002 the South Carolina General Assembly passed Act No. 356 which required the RDA to convey property to the City and the South Carolina Ports Authority and in the process honor all existing leases.
- On April 20, 2004 Mark Cobb of CCSD wrote to Jack Sprott of the RDA and asked to exercise its claimed right to transfer the Property to CCSD at no cost under the Sublease.
- Defendants argue (correctly I think) that the April 20, 2004 letter was ineffective on its own to exercise an option, but in the Quitclaim Deed dated December 21, 2004 from the RDA to the City, Mr. Cobb's letter is specifically mentioned.
- The 2004 Assignment and Assumption Agreement, Exhibit A, between the RDA and the City refers to both the 50 year lease claimed by CCSD and the Sublease.
- The 2007 Quitclaim Deed from the City to Clemson states that it is expressly subject to the rights of the lessees of several properties (including Building 199) and the Sublease.
- The 2010 Assignment and Assumption Agreement, Exhibit A, between the City and Clemson again recognizes the Sublease.

I am persuaded that CCSD spent a substantial amount of money on upgrades to the

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1 In support of its equitable interest argument, CCSD argues the ultimate equitable maxim that "In Equity Good Guys Should Win and Bad Guys Should Lose." Here we have "good guys" on all sides and so in reaching this decision I relied most on the equitable maxims that equity will not suffer a wrong to be without a remedy and equity regards substance more than form.

2 This list is intended to be illustrative and not exhaustive.

Academic Magnet High School campus with the reasonable expectation that it would occupy and use the property for an extended period of time. That expectation is consistent with the RDA's mission and purpose as stated in the Lease and the Sublease to revitalize the former Navy base. The proof offered at trial established conclusively that the RDA wanted CCSD to locate a school on the property and worked cooperatively with CCSD to make that a reality. In 1998 Mr. Zullinger asked to extend the maximum lease term to 50 years, and although that was not sufficient to extend the Sublease according to its terms, that letter demonstrated a long-term commitment to the property by CCSD and a shared interest by the RDA. Subsequently, in documents conveying the property first to the City and then to Clemson the RDA, the City and Clemson acknowledged that CCSD would likely have a long-term presence on the former Navy Base. In this context, I find that CCSD's investment was entirely reasonable and not consistent with short term use of the property. Moreover, I find that RDA, the City and Clemson were aware of that financial commitment and accepted or at least acquiesced in it.

The Defendants argue that CCSD's claims should be barred because it abandoned the 3.74 acre AMHS parcel after it had agreed in the Sublease to use the AMHS parcel as a school and not to "stockpile" the property. I find that argument to be unpersuasive for several reasons. First, in construing the Sublease, I am obligated to interpret it according to its terms, but not read emphasize one portion to the exclusion of another so as to give effect to the entire agreement. I therefore find, that to accomplish that one must review the last sentence of paragraph 6 of the sublease in conjunction with paragraph 7. Read in that manner, I find that the parties to the Sublease expected the CCSD to use diligence and good faith to operate the AMHS parcel for education purposes, but that such a use was not restricted solely to its use as a school. Furthermore, I find that the Sublease anticipated that the AMHS parcel did not need to be operated at "100% capacity". Second, because the CCSD exists solely to operate and manage public schools in Charleston County, it is hard for me to envision a use of property by the CCSD that is not for "educational purposes". Third, this argument is primarily a legal argument under the Sublease and so I find that it does not bar equitable relief for CCSD.

As for the length of CCSD's equitable interest, I find that it extended up to and including December 22, 2010, when the condemnation action was fined. At that time, my understanding of the evidence is that the Academic Magnet High School had relocated to the former site of Bonds-Wilson High School and CCSD was using the AMHS parcel for storage. However, for the

reasons articulated in the prior paragraph, I find that the relocation of the AMHS did not automatically trigger the reverter clause of the Sublease and does not bar CCSD's equitable claim.

My understanding of the reference to me is that my authority is limited to a determination of whether or not the CCSD had an equitable interest in the property at the time the condemnation notice was filed, but that my authority does not include whether that interest has any monetary value, and if so, how much. I do not want to exceed that authority, but I will offer the comment that some of the arguments raised by the Defendants, particularly those raised by the City, which are not addressed specifically here bear on the issue of whether CCSD's equitable interest has value or what that value may be. I point this out as an explanation for my decision not to address certain arguments and not as a comment on the merits of those arguments.

Lastly, Clemson, Railways and the City argue that the CCSD equitable claims are barred by the statute of limitations. It is well settled that the statute of limitations does not apply in equitable actions. Dixon v. Dixon, 362 S.C. 388, 608 S.E. 2d 849 (2005); citing Anderson v. Purvis, 211 S.C. 255, 44 S.E. 2d 611 (1947) and Anderson v. Purvis, 220 S.C. 259, 67 S.E. 2d 80 (1951). Therefore, I decline to dismiss CCSD's claim for an equitable interest in the AMSH parcel based on the statute of limitations arguments raised by the Defendants at trial and in their closing arguments.

AND IT IS SO ORDERED

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SPECIAL REFEREE

CHARLESTON, SC

October 22, 2015