

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
MAR 09 2016
SC Court of Appeals
FILED
2016 OCT 27 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

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

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.

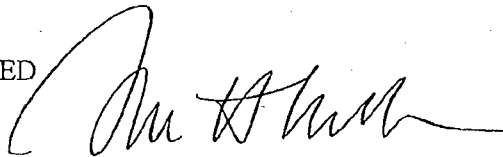
As for the length of CCSD's equitable interest, I find that it extended up to and including December 22, 2010, when the condemnation action was fined. At that time, my understanding of the evidence is that the Academic Magnet High School had relocated to the former site of Bonds-Wilson High School and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

2STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

CHARLESTON COUNTY SCHOOL)
DISTRICT,)

Plaintiff,)

vs.)

CLEMSON UNIVERSITY and CITY OF)
NORTH CHARLESTON,)

Defendants,)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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.)

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 22nd 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,
-

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 1st. 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 22nd 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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Charleston County School District,)
)
Plaintiff,)

v.)

Clemson University and City of North)
Charleston,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2012-CP-10-5093

**CONSENT ORDER OF
LIMITED REFERENCE
AND SCHEDULING ORDER**

FILED
2014 APR 25 AM 9:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Project: Intermodal Container)
Transfer Facility)
Tract: 11)

South Carolina Department of Commerce,)
Division of Public Railways,)
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North Charleston Sewer District,)
BellSouth Telecommunications, Inc.,)
Business Telecom, Incorporated,)
South Carolina Electric & Gas Company,)
and Charleston County School District,)
)
Other Condemnees.)

CIVIL ACTION NO. 2010-CP-10-10495

The two above-captioned actions involve related matters. The first action, initiated by the Charleston County School District ("District"), involves its claim to certain real property where the District previously operated its Academic Magnet High School. The other action, which is a condemnation case initiated by the South Carolina Department of Commerce, Division of Public Railways ("Railways"), includes not only the same property at issue in the action initiated by the District, but also additional property. In the condemnation case, Clemson University ("Clemson") is listed as the Landowner in the caption, and the District is one of eight Other Condemnees.

There are several issues which are critical to deciding both of these cases. The parties all agree that in 1996, a sublease was entered into between the Charleston Naval Complex Redevelopment Authority ("RDA") and the District concerning the Academic Magnet High School. However, there are various issues about which the parties do not agree, and they are presented as follows: (1) whether the sublease expired; (2) how much property was covered by the sublease ("Property"); (3) whether the District had any rights to the Property after it was conveyed from the RDA to the City of North Charleston ("North Charleston"); (4) whether the District had any rights in the Property after the Property was conveyed from North Charleston to Clemson; and (5) whether the District had any rights in the Property at the time of the filing of the Notice of Condemnation in December of 2010.

The parties all agree that judicial economy and issue resolution consistency dictate that both cases should be stayed until these questions are answered. The parties have all also agreed that the matters at issue in this Order should be referred to a Limited Special Referee. The parties have all agreed that John Massalon, Esquire should be appointed as the Limited Special Referee, and he has agreed to this appointment. However, the parties agree this Court shall

maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing.

This list of issues to be referred to the Limited Special Referee may be amended by written agreement signed by all the parties hereto without further order from the Circuit Court. Once decided, these issues can then be applied in both the above-captioned actions. The role of the Limited Special Referee shall be to resolve only these specific issues, unless the list is expanded or limited, as set forth above. The parties recognize, and I concur, that since the purpose of this Order is to resolve specific issues which are germane to the above-captioned actions, any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions themselves are resolved by the Circuit Court.

While the parties have been conducting discovery for some time, they agree that discovery should only continue at this time on those matters relevant to this reference. To that end, they have agreed on the following scheduling deadlines:

1. The District shall identify all expert witnesses to be called in the reference hearing no later than April 4, 2014;
2. Railways, Clemson, and North Charleston shall identify all expert witnesses to be called in the reference hearing no later than April 11, 2014;
3. Discovery concerning the matters at issue in this reference shall be completed by July 12, 2014;
4. The hearing by the Limited Special Referee shall be held not before August 1, 2014;
5. Within 15 days after the Limited Special Referee has issued his final order, the

parties shall contact this Court and advise the Court as to their positions as to the impact of the Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.

IT IS THEREFORE ORDERED THAT:

1. John Massalon, Esquire shall be appointed as Limited Special Referee in deciding the issues set forth above;
2. The scheduling deadline set forth above are adopted by this Court;
3. Both of the above-captioned actions are stayed, except for the matters assigned to the Limited Special Referee;
4. This Court shall maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing; and,
5. Within 15 days after the Limited Special Referee has issued his final order, the parties shall contact this Court and advise the Court as to their positions as to the impact of the Limited Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.
6. The Scheduling Order may be altered or amended by written consent of all parties, with the exception of the Limited Special Referee hearing date, which shall not be altered unless ordered by the Court.

AND IT IS SO ORDERED this _____ day of April, 2014.

s/Stephanie P. McDonald

Stephanie P. McDonald
Chief Administrative Judge
Ninth Judicial Circuit

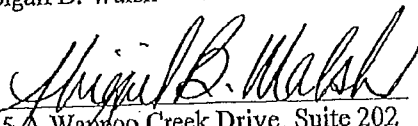
Charleston, South Carolina .

April, 2014

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF A.G.C.
By Judy [Signature]
DEPUTY CLERK

**WE SO MOVE AND CONSENT IN
CIVIL ACTION NO. 2012-CP-10-5093:**

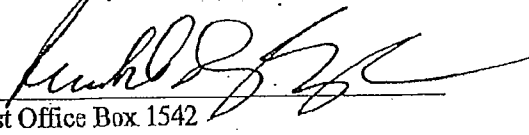
WALSH & WILLIAMS, LLC
Abigail B. Walsh


125 A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843)722-0157

-and-

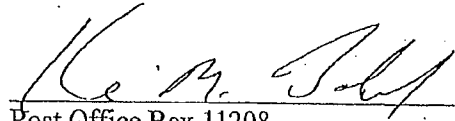
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Keith M. Babcock



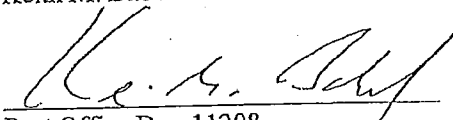
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**WE SO MOVE AND CONSENT IN
CIVIL ACTION NO. 2010-CP-10-10495:**

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Keith M. Babcock



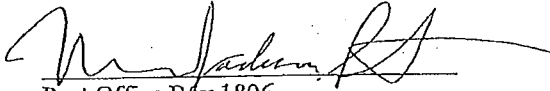
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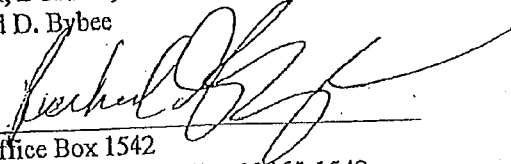
WE CONSENT:

YOUNG CLEMENT RIVERS, L.L.P.
Wilbur E. Johnson

A handwritten signature in cursive script that reads "Wilbur E. Johnson". The signature is written in black ink and is positioned above a horizontal line.

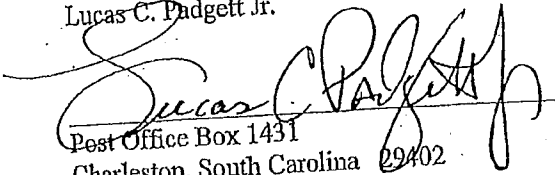
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Charleston Naval Complex Redevelopment Authority

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Richard D. Bybee

A handwritten signature in black ink, appearing to read "Richard D. Bybee", written over a horizontal line.

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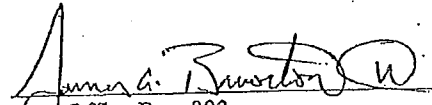
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Attorney for Other Condemnee

Commissioners of Public Works of the City of Charleston

ROSEN ROSEN & HAGOOD, LLC

~~David G. Jennings~~ James A. Burton IV

A handwritten signature in black ink, appearing to read "James A. Burton IV". The signature is written in a cursive style with a large, stylized initial "J".

Post Office Box 893

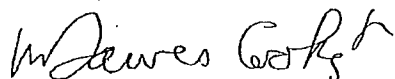
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North Charleston Sewer District

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M. Dawes Cooke, Jr.



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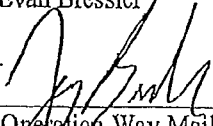
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Jeffrey L. Payne 3-27-14

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AS TO CASE No: 2010-CP-10-10295

-and-

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