

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014-CP-21-2795

James Lee Askins

The town of Timmonsville

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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DEC 22 2016

SC Court of Appeals

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code _____ Date _____
For Clerk of Court Office Use Only

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FLORENCE COUNTY, S.C.

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DEC 22 2016

SC Court of Appeals

JAMES LEE ASKINS)
)
 Plaintiff,)
)
 v.)
)
 THE TOWN OF TIMMONSVILLE)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Case No.: 2014-CP-21-2795

ORDER

PRESIDING JUDGE:
ATTORNEY FOR PLAINTIFF:
ATTORNEY FOR DEFENDANT:
COURT REPORTER:
DATE OF HEARING:

HONORABLE THOMAS A. RUSSO
GARY I. FINKLEA
ELEAZER R. CARTER
KAY H. RICHARDSON
JANUARY 11, 2016

FILED
2016 JUN -8 PM 1:48
JONNIE REEB-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

The above captioned breach of contract case came before the Court at the term of Common Pleas Court for Florence County on January 11, 2016. This case was originally on the jury roster. However, Plaintiff moved to have this case heard non-jury, and the Motion was granted.

Plaintiff's Complaint asserts one (1) cause of action for breach of contract in that the Town of Timmons ville failed to provide sewer services as promised. Plaintiff's Complaint contained the following exhibits: (A) Receipt for payment of the tap fee to the Town of Timmons ville; and (B) A permit. In his prayer for relief, Plaintiff requested an award for actual damages, incidental, consequential and other damages as may be appropriate.

FINDINGS OF FACT

Plaintiff sought to establish water and sewer services at his property located at 634 1/2 Main Street, Timmons ville, South Carolina. On July 1, 2011, Plaintiff paid the appropriate tap fee with the Town of Timmons ville Utility Department (Pl. Trial Ex. 1). The Plaintiff paid the appropriate fee and was issued a permit with the Town of Timmons ville to move a mobile home to that site. Plaintiff contends the payment of the tap fee and issuance of the permit created a

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Connie Reeb Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

binding contract wherefore Plaintiff relied on the Town of Timmons ville to provide sewage services to the aforementioned property.

According to the Plaintiff, the mobile home has been ready for occupancy since November of 2011. However, according to the Plaintiff, because the Town failed to provide sewer service to the property, the property has remained uninhabitable.

A. Trial Testimony

The Plaintiff presented his case as follows:

1. Michael Hemmingway, the City of Florence Utility Director, provided testimony concerning the whereabouts of the manhole and sewer connections near the Plaintiff's property. In order for the Plaintiff to connect to the existing lines, he would have to connect and run his line across a piece of property belonging to a private citizen, Mr. Bowman. Neither the Plaintiff nor the Town of Timmons ville holds a valid, recorded easement as it relates to Mr. Bowman's property. Therefore, the Town of Timmons ville could not run the connection to the Plaintiff's property across property belonging to Mr. Bowman. In addition, Mr. Bowman would not consent to granting an easement to the Town of Timmons ville or the Plaintiff, Mr. Askins, in order to have the lines connected to Mr. Askins property.
2. Eddie Weaver, an engineer, provided testimony regarding the position of the current manhole and the number of additional manholes needed to facilitate proper cleanout and sewage service to Askins' property. Weaver provided expert testimony as to the manner and protocol for positioning the manholes from Askins' property to the highway. According to Weaver, in order to run the lines from Askins' property to the

highway, it would cost approximately \$37,000. Such cost, he testified, would typically be borne by the property owner and not the governmental agency.

3. The Plaintiff, James Lee Askins, provided testimony regarding his payment of the tap fee to the Town of Timmons ville and his basis for believing the Town was contractually obligated to pay the cost for the implementation of the manhole(s) and sewer connections (taps) on his property. Askins testified that he purchased a mobile home to place it on his property located at 634 ½ Main Street, Timmons ville, South Carolina. He further testified he relied on the Defendant's promises to provide water and sewer services on his property. However, due to the lack of sewer service, the property has been uninhabitable since it was purchased. It is worth noting that the home was purchased and placed on the lot prior to the payment for the tap fee. Askins' also claims that he was made oral promises by county officials that service would be provided to his property. Askins contends that he incurred damages because he is unable to lease the property in its current state.

The Defendant presented its case as follows:

1. Mary Bines, Town Administrator for the Town of Timmons ville, provided testimony to the Court regarding the process of payment and connection to the water and sewer disposal system in the Town of Timmons ville. Bines indicated that Ordinance 469 requires that any additional money required to provide a tap is to be borne at the owner's expense plus twenty percent. Further, the Ordinance requires a fee of \$375 and any additional expenses to be paid by the owner. Bines further testified that the Town of Timmons ville does not enter into contracts with citizens to provide water or sewer services. Citizens request services through the Town of Timmons ville, and if the services

can be provided, the Town will provide them. However, the tap fee paid is merely for the services, and providing the services is contingent on the Town being able to legally provide the services.

Bines also testified that she did not promise Mr. Askins services. She indicated that she was aware of the connection issues Askins was having on his property. But, she merely informed Askins that she would inform county council and contact Drew Griffin in Florence County and the Department of Justice to resolve the issues. It is worth noting that the United States Environmental Protection Agency (EPA) filed a complaint against the Town of Timmonsville (prior to the filing of this lawsuit). Because of the previous history and issues with the Town of Timmonsville, the Department of Justice and the Department of Health and Environmental Control got involved in the investigation, and the Town of Timmonsville's water and sewage is currently being managed by Florence County.

CONCLUSIONS OF LAW

Based on the testimony, evidence, admissions, and arguments presented, this Court makes the following conclusions of law:

A. Contract Formation

To recover for a breach of contract, the plaintiff must prove: (a) the existence of a binding contract; (b) a breach of contract; and (c) damages proximately resulting from the breach. With certain exceptions, a contract need not be in writing to be enforceable. If there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral. Hennes v. Shaw, 397 S.C. 391, 399, 725 S.E.2d 501, 505-06 (Ct. App. 2012).

1. The Court finds the Plaintiff did not present evidence sufficient to establish the parties had a meeting of the minds regarding the essential terms of the contract. As such, the Court fails to find the existence of a contract.
2. The Plaintiff paid a tap fee to the Town of Timmons ville (the Town's application was not presented as evidence). The Court finds the receipt (Pl Trial Ex.1) evidencing payment of the tap fee does not create a contract to provide the tap connection, but instead creates a contract to provide services;
3. Based on the testimony of Michael Hemmingway, the tap could not be connected to the Plaintiff's property because the Town of Timmons ville, the Plaintiff, nor the City of Florence was granted an easement across Mr. Bowman's privately owned property. Therefore, the Court finds the Town did not refuse to provide services but was in fact incapable of providing services by way of using Mr. Bowman's property. Further, the Town of Timmons ville nor the City of Florence are contractually obligated to provide water/sewer connections but rather services; and
4. The Court also finds the fact that the Plaintiff was provided services in the past does not create reliance that he would be provided services in the future. At the time the prior services were provided to Mr. Atkins, Mr. Bowman, allowed the lines to run across his property. The Town's inability to secure an easement does not impose the cost of providing the lines from Mr. Atkins property to Highway 76 on the Town of Timmons ville.

B. Promissory Estoppel

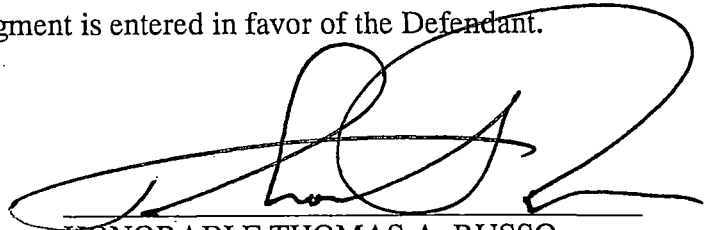
1. During the bench trial, the Plaintiff requested to amend his complaint to include promissory estoppel. The Court held this matter in abeyance. This Court did not find

the existence of a valid oral or written contract in this case. Therefore, promissory estoppel is not applicable.

CONCLUSION

IT IS ORDERED that the Town of Timmons ville did not enter into a contract with the Plaintiff through the payment of the tap fee. Moreover, the payment of the tap fee did not create a contract because there was not a meeting of the minds as is required for contract formation nor is there clear evidence of the existence of an oral contract.

IT IS THEREFORE ORDERED that judgment is entered in favor of the Defendant.

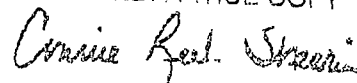


HONORABLE THOMAS A. RUSSO
CHIEF ADMINISTRATIVE JUDGE

June 8, 2016
Florence, South Carolina.

FILED
2016 JUN -8 PM 1:48
JONNIE REEL-SHEARIN
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, SC

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