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Honorable Marvin H. Dukes, III

Order dated October 24, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-07-1463

BURTON FIRE DISTRICT

CITY OF BEAUFORT

BURTON FIRE DISTRICT

TOWN OF PORT ROYAL

PLAINTIFF(S)

2016 OCT 24 AM 10:47

DEFENDANT(S)

Submitted by: H. Fred Kuhn,

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Attorney for : Plaintiff Defendant
or
 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; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- 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 : CASE # 2013-CP-07-1464 WAS CONSOLIDATED INTO 2013-CP-07-1463

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)
BURTON FIRE DISTRICT	CITY OF BEAUFORT	\$91,458.07
BURTON FIRE DISTRICT	TOWN OF PORT ROYAL	\$178,618.20
		\$

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

October 24,
2016
Date

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) 2013 OCT 24 AG 1114 ACTION NO.: 2013-CP-07-01463
 BURTON FIRE DISTRICT,)
) JERRI ANN ROSENEAU
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT
 Plaintiff,) FINAL ORDER
) OF JUDGMENT
 vs.)
)
 CITY OF BEAUFORT,)
)
 Defendant.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2013-CP-07-01464
 BURTON FIRE DISTRICT) (Consolidated into 2013-CP-07-01463)
)
 Plaintiff,) FINAL ORDER
) OF JUDGMENT
 vs.)
)
 TOWN OF PORT ROYAL,)
)
 Defendant.)

These consolidated breach of contract cases were commenced by the filing of Summonses and Complaints in the Beaufort County Court of Common Pleas on June 4, 2013. In its Complaints, the Plaintiff Burton Fire District ("Burton") alleges that the Defendant City of Beaufort ("Beaufort") and the Defendant Town of Port Royal ("Port Royal") breached a Settlement Agreement entered into between the parties on September 2, 2010 by failing and refusing to pay to Burton the full amount of the annual payments mandated by the Settlement Agreement. The

Defendants take issue with the Plaintiff's interpretation of the Settlement Agreement. These consolidated cases were tried before me on December 1 and 2, 2015. Based upon the admitted allegations of the pleadings, the stipulations of the parties, and the evidence properly admitted at trial, I find and conclude that judgment should be entered in favor of the Plaintiff Burton, as hereinafter set forth.

PROCEDURAL HISTORY

Civil Action Number 2013-CP-07-1463 was commenced by the filing of a Summons and Complaint against the Defendant City of Beaufort on June 4, 2013. The Defendant Beaufort was duly served and filed its Answer on July 9, 2013.

Civil Action Number 2013-CP-07-1464 was commenced by the filing of a Summons and Complaint against the Defendant Town of Port Royal on June 4, 2013. The Defendant Port Royal was duly served and filed its Answer on July 11, 2013.

On January 23, 2014, pursuant to motion of the Defendant Port Royal and with the consent of all parties, the foregoing two (2) cases were consolidated under Case Number 2013-CP-07-1463.

On October 2, 2015 these consolidated cases were referred to me as the Beaufort County Master-In-Equity in accordance with Section 14-11-85 of the South Carolina Code of Laws.

This matter came to be heard before me on December 1 and 2, 2015 in the Beaufort County Court of Common Pleas for the purpose of conducting a final trial. Present at the hearing on behalf of the Plaintiff was its attorney H. Fred Kuhn, Jr., Esquire. Present and appearing on behalf of the Defendants Beaufort and Port Royal was their attorney Mary B. Lohr, Esquire. Numerous witnesses testified on behalf of the parties, and I personally observed each witness'

demeanor and weighed the credibility of his or her testimony. At the conclusion of the trial, I took the matter under advisement at the request of the parties, as they desired to further explore the possibility of settlement. The parties, through their respective attorneys, have now reported to me that, despite extensive settlement talks and negotiations, they have been unable to reach a settlement to this dispute and request my final ruling.

Having carefully considered the admitted allegations of the pleadings, the stipulations of the parties, and the properly admissible testimony and evidence rendered at trial, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Plaintiff, Burton Fire District ("Burton"), is a public service district existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.
2. The Defendant, City of Beaufort ("Beaufort"), is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.
3. The Defendant, Town of Port Royal ("Port Royal"), is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.
4. On September 2, 2010 the parties entered into a contract entitled "Settlement Agreement," which requires Beaufort and Port Royal to make annual payments to Burton. These annual payments are due on March 1st of each year, commencing on March 1, 2011 and ending on March 1, 2018.
5. The dispute these parties concerns the amount of each annual payment. Burton contends that the payment due each year should be calculated utilizing the assessed value of the

subject annexed properties. Beaufort and Port Royal contend that the amount of each annual payment should be calculated utilizing the taxable value of the subject annexed subject properties, which results in a lower payment amount.

6. For the reasons set forth herein, I find and conclude that the annual payments owed to Burton by Beaufort and Port Royal are to be calculated based upon the assessed value of the subject properties. Accordingly I enter judgment in favor of Burton.

7. Burton is a public service district that provides fire protection, firefighting, and first response emergency medical services to the properties located within its district. Beaufort and Port Royal are municipalities that are adjacent to and border Burton's district.

8. Over the years, both Port Royal and Beaufort have annexed into their respective municipalities properties that were formerly located in Burton's district.

9. The Settlement Agreement that is the subject of this lawsuit recites that Burton is indebted to the federal government by virtue of loan awarded to it in 1993 by the Farmers Home Administration, now the Rural Development Authority. A federal statute, 7 U.S.C. § 1926(b), provides certain protections to the service area of a federal debtor from certain aspects of municipal annexation while this federal loan remains outstanding.

10. The Settlement Agreement further recites that Sections 5-3-310 through 5-3-313 of the South Carolina Code of Laws, which went into effect on May 1, 2000, provide that upon annexation of a portion of a special purpose district, the annexing municipality and the effected special purpose district must devise a plan to provide for the continuation and/or transfer of services, which plan must balance the equities between the municipality and the special purpose district so that each can efficiently and effectively serve their respective constituents.

11. In 1996, Burton instituted an action in the Court of Common Pleas in Beaufort County, *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2006-CP-07-0551, seeking a declaration of its rights under the aforementioned federal statute. This litigation resulted in a settlement by way of consent orders that governed the relationship between the parties through July 16, 2010.

12. In apparent anticipation of the pending expiration of the foregoing consent orders, Burton instituted an action in 2009 in the Beaufort County Court of Common Pleas, *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2009-CP-07-3020 (hereinafter "Burton Litigation"). This action, Burton sought a declaration of its rights under both the aforementioned federal statute and state statutes.

13. Shortly thereafter, Port Royal and Beaufort filed their own action in the Beaufort County Court of Common Pleas, *City of Beaufort and Town of Port Royal v. Burton Fire District*, case Number 2009-CP-07-4008. In this suit, Beaufort and Port Royal sought to maintain the status quo with respect to the provision of fire service and emergency medical service by and among Port Royal, Beaufort and Burton, pending the disposition of the recently filed Burton Litigation.

14. Once again, the parties were able to resolve their differences and on September 2, 2010 memorialized the terms of their agreement in the Settlement Agreement that is the subject of these lawsuits. In connection with the negotiation, drafting and execution of the Settlement Agreement, each of the parties was independently represented by experienced and competent counsel.

15. In the Settlement Agreement, Burton acknowledges the right of Port Royal and Beaufort to annex property out of Burton's service area. In turn, Port Royal and Beaufort

acknowledge the right of Burton to be compensated **both** for the loss of tax revenue as a result of annexation **and** for providing services to Beaufort and Port Royal as set forth in the Agreement.

16. Attached to the Settlement Agreement¹ as an exhibit thereto is a list of all the properties subject to the Settlement Agreement that had been annexed by Port Royal out of Burton's district ("Port Royal Annexed Properties"). A similar exhibit lists all of the properties subject to the Settlement Agreement that had been annexed by Beaufort out of Burton's district ("Beaufort Annexed Properties"). On these exhibits each annexed property is separately listed and identified by its PIN or Property Identification Number. For each annexed property three columns, labeled "Appraised" "Assessed" and "Taxable VA," show the appraised, assessed, and taxable values for each annexed property.

17. Ordinarily, once a municipality annexes property into its jurisdiction, that municipality assumes responsibility for providing municipal services, such as fire protection, to the annexed property. Pursuant to the terms of the parties' Settlement Agreement, however, Burton is required to provide first response fire and emergency medical services to all of the Port Royal Annexed Properties and to all of the Beaufort Annexed Properties throughout the term of the Agreement.

18. The Settlement Agreement mandates that Port Royal will pay Burton for providing first response fire and emergency medical services to the Port Royal Annexed Properties. The payment is an annual, lump sum payment that is due on March 1st of each year during term of the Settlement Agreement. The Settlement Agreement mandates that the following formula will be used to calculate the amount of each annual payment by Port Royal:

"Burton Total Millage X Assessed Value of Port Royal Annexed Properties X 25%"

¹ The parties have stipulated that there were four (4) Exhibits to the Settlement Agreement: "A", which is a 6 page document headed "STADDRESS", "B" which is actually marked "Exhibit 2 City Inside", "C" which is marked "Exhibit 4 Town Inside", and "D" "Cooperation Poices (sic) and Procedures".

(emphasis mine). There is a footnote following the phrase "Assessed Value" which provides as follows:

"Defined as the **assessed value** of each subject property for the applicable service year. For example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the **assessed** value established for the October 16, 2010 Beaufort County property tax bills.

(emphasis mine).

19. The Settlement Agreement contains similar provisions regarding Beaufort's payment to Burton for the first response fire and emergency medical services provided by Burton to the Beaufort Annexed Properties, *i.e.*, an annual lump sum payment due March 1st of each year. The Settlement Agreement mandates that the following formula will be used to calculate the amount of each annual payment by Beaufort:

Burton Total Millage X **Assessed Value** of Beaufort Annexed Properties X 19%.

(emphasis mine). As can be seen, the formulas for calculating the annual payment to Burton by Beaufort and Port Royal, except for the final percentage multiplier, are identical. Significantly, both formulas are based upon the "Assessed Value" of each municipalities' annexed properties.

20. Pursuant to the terms of the Settlement Agreement, Burton provided first response fire and emergency medical services to all of the Beaufort and Port Royal Annexed Properties, and has continued to satisfactorily fulfill its obligations under the Settlement Agreement through the date of the trial.

21. The initial payment by Beaufort and Port Royal to Burton was due no later than March 1, 2011. At that time, Beaufort paid \$195,456.39 to Burton, while Port Royal paid \$154,493.34. At some point thereafter, a disagreement arose as to the accuracy of the payment



under the settlement agreement. The process involved in calculating the amount due is somewhat complex, as evidenced by the sheer number of annexed properties involved. The parties initially communicated directly with each other without involving their respective attorneys in an attempt to ascertain the source of the discrepancy in their calculations. The parties eventually concluded that Beaufort and Port Royal were calculating their annual payment by utilizing the taxable values of the Annexed Properties, while Burton was calculating the annual payment based upon the assessed values of the Annexed Properties. Each of the parties re-involved their respective attorneys in an attempt to resolve the dispute. These negotiations were unsuccessful and eventually culminated in the filing of this lawsuit.

22. Through the March 1, 2015 payment, the City of Beaufort has paid the following amount towards each annual payment:

<u>Amount Paid</u>	<u>Due Date</u>
\$195,456.39	March 1, 2011
\$187,850.44	March 1, 2012
\$197,831.98	March 1, 2013
\$188,561.11	March 1, 2014
\$189,904.15	March 1, 2015

Each of the forgoing payments by the City of Beaufort was calculated by Beaufort utilizing the taxable values of the Beaufort Annexed Properties, as opposed to the assessed values.

23. If the payments by Beaufort to Burton for each of the foregoing years had been calculated utilizing the assessed values of the Beaufort Annexed Properties, then the payments for 2011, 2012 and 2013 would have been \$13,477.90 higher each year, and the payments for

2014 and 2015 would have been \$14,905.18 higher each year, resulting in a total shortfall of \$70,244.06 through March 1, 2015 (Beaufort County underwent a reassessment between tax years 2013 and 2014).

24. Through the March 1, 2015 payment, the Town of Port Royal has paid the following amount towards each annual payment:

<u>Amount Paid</u>	<u>Due Date</u>
\$154,493.34	March 1, 2011
\$167,346.21	March 1, 2012
\$170,752.14	March 1, 2013
\$186,765.37	March 1, 2014
\$199,007.20	March 1, 2015

Each of the foregoing payments by the Town of Port Royal, like those paid by the City of Beaufort, was calculated by Port Royal utilizing the taxable values of the Port Royal Annexed Properties, as opposed to the assessed values.

25. If the payments by Port Royal to Burton had been calculated utilizing the assessed values of the Port Royal Annexed Properties, then the annual payments for 2011, 2012 and 2013 would have been \$25,117.37 higher each year, and the payments for 2014 and 2015 would have been \$31,361.43 higher each year, resulting in a total shortfall of \$138,194.97 through March 1, 2015.

26. The dispute between these parties centers on their construction of the Settlement Agreement's formulas for calculating the annual payment. Burton contends the annual payment is calculated utilizing the assessed values of the Annexed Properties, while Beaufort and Port Royal contend that the annual payment is calculated utilizing the taxable values of the Annexed

Properties. Although the formulas expressly recite that the "Assessed Value" is to be used, Beaufort and Port Royal contend that as used in the Settlement Agreement this phrase is intended to mean taxable, as opposed to assessed, value.

27. Critical to my analysis of the agreement is the undisputed fact that the compensation is for more than simply just the loss of revenue. Without this fact, it would be difficult to reconcile the Plaintiff's interpretation of the Settlement Agreement with common sense. *Why would the Defendants pay Burton for loss of revenue that Burton was not actually losing?* With this fact, however, it is reasonable that the provision of services portion of the Settlement Agreement was in an amount that would balance out this phantom loss.

28. The cardinal rule of contract interpretation is "to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer vs. State Farm Fire and Casualty Company*, 353 S.C. 491, 495, 579, SE 2nd 132, 134 (2003). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Id.*, 235 S.C. at 495, 579 SE 2nd at 134. "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the Court must construe it according to its plain, ordinary and popular meaning. *Ellie, Inc. vs. Miccichi*, 358 S.C. 78, 93, 594 SE 2nd 485, 493 (Ct App 2004). "Where an agreement is clear and capable of legal interpretation, the Court's only function is to interpret its lawful meaning, discover the intention of the parties **as found within the agreement**, and give effect to it." *Heins vs. Heins*, 244 S.C. 146, 158, 543 SE 2nd 224, 230 (Ct App 2001)(emphasis added).

29. The Settlement Agreement plainly, clearly, and explicitly requires that the annual payment be calculated using the "Assessed Value" of the Annexed Properties. The Beaufort County Assessor, Gary N. James, was called as a witness by Burton and testified as to the

generally accepted meaning of the term "assessed value." The assessed value of properties is calculated by multiplying the fair market value of a property by its assessment ratio.² The assessed value is then multiplied by the millage rate to determine the property tax owed for that property. In most cases, the assessed value of a property is the same as the taxable value. Certain types of properties, however, such as churches or government owned properties, are entitled to tax exemptions, which reduce the property's assessed value to a lower "taxable" value. In short, the term "assessed value" has a well-established and well understood meaning which is separate and distinct from "taxable value." I find the Beaufort County Tax Assessor's testimony to be credible.

30. The Tax Assessor's testimony is consistent with South Carolina's statutory and case law. See, e.g., *Beaufort County v. State*, 353 S.C. 240, 243-44, 577 S.E. 2d 457,459 (2003)(multiplying the fair market value of a property by its assessment ratio results in the assessed value).

31. The fact that the parties were aware that the terms assessed value and taxable value have separate and distinct meanings is reinforced by the exhibits of Beaufort Annexed Properties and Port Royal Annexed Properties which are part of the Agreement. As to each annexed property, a value is given not only for the appraised or fair market value of the property, but each property's assessed value and taxable value is listed separately. A fairly cursory examination of this list shows that often the assessed and taxable values are the same; but for some properties the taxable value is substantially less than the assessed value or in some instances is zero.

² Different classes of properties have different assessment ratios. *S.C. Const. Art. X, § 1*

32. Beaufort and Port Royal argue that footnote #3 found on page 3 of the Settlement Agreement support their interpretation of the contract. This footnote, which immediately follows the phrase "Assessed Value" found in the formula for calculating Port Royal's annual payment, indicates that "Assessed Value" is "defined as the **assessed value** of each subject property for the applicable service year." This footnote then states that, "(f)or example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the **assessed values** established for the October 16, 2010 Beaufort County Property Tax Bills." (emphasis mine):

Accordingly, contrary to the arguments of Burton and Port Royal, this footnote twice redundantly defines and reinforces the fact that "Assessed Value" as utilized in the formula means "assessed value."

33. Testimony was presented at the trial that it was the intention of Beaufort and Port Royal that the formula for calculating their annual payments should be based upon taxable values as opposed to assessed values. Although I find their testimony and intent to be truthful and credible, for the purposes of interpreting this contract, the testimony is immaterial. As previously noted, in order to ascertain the intention of a contract, the Court must first resort to the language of the contract, and if the language is perfectly plain and capable of legal construction, then the *language of the contract* determines the force and effect of the instrument **and** the intentions of the parties. See, e.g., *Blakeley vs. Rabon*, 266 S.C. 68, 72, 221 SE 2nd 767, 769 (1976). See also *Kable vs. Simmons*, 217 S.C. 161, 60 SE 2nd 79 (1950) ("Parties are governed by their outward expressions and the Court is not at liberty to consider their secret intentions.")

34. Beaufort and Port Royal also argue that their interpretation of the contract is supported by referring to certain property tax bills which were admitted into evidence. I have

examined these bills and I do not find that they support the interpretation of Beaufort and Port Royal that "Assessed Value" as used in the Settlement Agreement has a definition equivalent to "taxable value." In their Settlement Agreement, the parties agreed to a relatively simple formula for the annual payment which expressly references "Assessed Value." If the parties had meant "taxable value," it would have been very easy to have so stated. The simple fact is that the phrase "taxable value" is not referenced or found anywhere within the four corners of the Settlement Agreement, much less within the formula for the annual payment. While footnote #3 to the Settlement Agreement contains a reference to "the October 16, 2010 Beaufort County Tax Bills," this same footnote twice redundantly reiterates that "assessed values" as used in the formula means "assessed value." Furthermore, there is nothing in the Settlement Agreement which indicates that the language "...assessed value established for..." as used in footnote #3 in referring to the October 16, 2010 Property Tax bills is in conflict with Exhibits B and C of the Settlement Agreement, which plainly and clearly recognize the difference between "assessed value" and "taxable value." A contract is read as a whole document so that one may not, by pointing out a single sentence or a clause, create an ambiguity. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009); *Southern Atlantic Financial Services, Inc. vs. Middleton*, 356 S.C. 444, 597 SE 2nd 27 (2003).

Additionally, any individual tax bill is extrinsic evidence, the footnote having referred generally to tax bills and not including or attaching any example. The parties have stipulated that the Settlement Agreement is unambiguous³. Even in the absence of their stipulation, I find and conclude that the Settlement Agreement is unambiguous. When a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by

³ The parties previously filed cross motions for summary judgment arguing that the agreement was unambiguous.



its plain terms. *Bates vs. Lewis*, 311 S.C. 158, 162, fn. 1, 427 SE 2nd 907, 909, fn. 1 (1993). The tax bills, accordingly, are inadmissible.

35. Finally, Beaufort and Port Royal argue that utilization of the assessed values of the annexed properties in calculating the annual payments is unfair, Beaufort and Port Royal reason that if a property has a taxable value of zero due to its exempt status, it is unfair for them to pay Burton for that annexed property since that property pays no property taxes. As previously discussed, this argument overlooks the fact that the Settlement Agreement is designed to compensate Burton "...both for the loss of properties to annexation and for providing services..." (Settlement Agreement page 2, emphasis mine). This is significant in that a reasonable, plain language interpretation of this sentence is that Burton would receive an amount that exceeds its total "loss" of tax revenue as a result of annexation in the form of additional compensation for providing the agreed upon first response fire and emergency medical services to all of the Port Royal and Beaufort annexed properties. Indeed, the section of the Settlement Agreement in which the annual payment formula is set forth is entitled "Payment for Service" (emphasis mine) and the paragraph introducing the formulas for both Port Royal and Burton provides that said payment is "for the services provided to the (Port Royal or Beaufort) annexed properties" (Settlement Agreement, pages 3 and 4, emphasis mine). It is clear from reading the Settlement Agreement that the annual payment is designed as much to compensate⁴ Burton for continuing to provide first response fire and emergency medical services to all of the properties annexed by Beaufort and Port Royal, as much as for the lost revenue suffered by Burton as a result of these annexations.

⁴ Burton also received non-monetary compensation in the form of municipal services to the Burton properties listed on Exhibit A.



36. "The Court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." *Blakely vs. Rabon*, 266 S.C. 68, 73, 221 SE 2nd 767, 769 (1976). This is basically a complex service agreement in which both side have contracted to serve property in each other's district. It is only partially about Burton's loss of revenue due to annexation. These are sophisticated entities, with decades of experience in this field. The Settlement Agreement is the result of extended and careful settlement negotiations in which all parties were represented by competent and experienced counsel.

37. In the final analysis, I am not at liberty to rewrite the contract, and it is my duty to enforce the contract as written and executed by the parties. The formula expressly calls for "Assessed Value" to be used and the word "assessed" has a well-established meaning. As noted in Finding of Fact and Conclusion of Law, Beaufort owes Burton as additional \$70,244.06 and Port Royal owes Burton an additional \$138,194.97 for the March 1, 2011 through March 1, 2015 payments.

38. In its Complaints, Burton prays for prejudgment interest on the past due amounts owed by Beaufort and Port Royal. Section 34-31-20 of the South Carolina Code of Laws provides that in "all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."

39. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at time the claim arose. *GTR Rental, LLC v. DalCanton*, 547 F.Supp.2d 510 (D.S.C. 2008). The fact that the sum due is disputed does not render the claim unliquidated for purposes

of awarding of prejudgment interest. *Id.* See also, *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) (The fact that the amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest; rather, the proper test is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose). Prejudgment interest may be awarded when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010).

40. In the case *sub judice*, the precise amount of each annual payment was capable of calculation to the penny with certainty, was fixed by the conditions existing at the time of payment, and had a precise due date. An itemization of the prejudgment interest as to each annual payment by each municipality was introduced into evidence at trial. The amount of prejudgment interest owed by Beaufort through the date of trial is \$21,214.01 and the amount of prejudgment interest owed by Port Royal through the date of trial is \$40,543.23.

41. As of the date of trial, the amount owed to Burton by Beaufort for the annual payments due from March 1, 2011 through March 1, 2015, including principal (\$70,244.06) and prejudgment interest (\$21,214.01), is \$91,458.07.

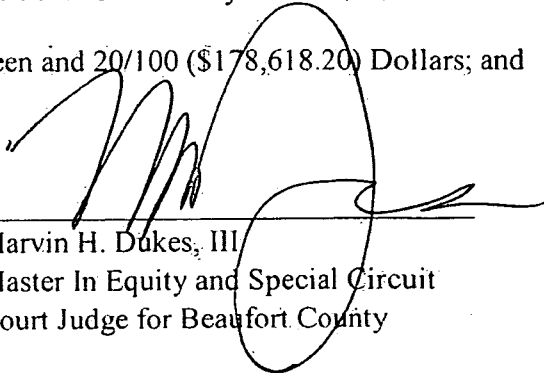
42. As of the date of trial, the amount owed to Burton by Port Royal for the annual payments due from March 1, 2011 through March 1, 2015, including principal (\$138,194.97) and prejudgment interest (\$40,543.23), is \$178,618.20.

IT IS, THEREFORE, ORDERED that judgment shall be and is hereby entered in favor of the Plaintiff Burton Fire District against the Defendant City of Beaufort in the amount of Ninety One Thousand Four Hundred Fifty Eight and 07/100 (\$91,458.07) Dollars; and



IT IS, THEREFORE, ORDERED that judgment shall be and is hereby entered in favor of the Plaintiff Burton Fire District against the Defendant Town of Port Royal in the amount of One Hundred Seventy-Eight Thousand Six Hundred Eighteen and 20/100 (\$178,618.20) Dollars; and

IT IS SO ORDERED.



Marvin H. Dukes, III
Master In Equity and Special Circuit
Court Judge for Beaufort County

10/24/16
~~Thursday, October 20, 2016~~ *W*
Beaufort, South Carolina