The Supreme Court of South Carolina

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May 30, 2017

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Linda Rodarte v. USC - Appellate Case No. 2015-002103
Lower Court Case No. 2012CP4003924

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: J. Lewis Cromer, Esquire
Julius Wistar Babb, IV, Esquire
Robert E. Stepp, Esquire
Bess Jones DuRant, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs,

of whom George M. Lee, III, Mena H. Gardiner, and John Love are Respondents,

v.

University of South Carolina and University of South Carolina Gamecock Club, Petitioners.

Appellate Case No. 2015-002103

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 27718
Heard March 1, 2017 – Filed May 11, 2017

REVERSED

Robert E. Stepp and Bess J. DuRant, both of Sowell Gray Stepp & Laffitte, L.L.C., of Columbia, for Petitioners.

J. Lewis Cromer and Julius W. Babb, IV, both of J. Lewis Cromer & Associates, L.L.C., of Columbia, for Respondents.

JUSTICE KITTREDGE: This case stems from a contract dispute between the University of South Carolina and the university's booster club known as the Gamecock Club (Petitioners) and several Gamecock Club members (Respondents). As part of the bargain Respondents struck with Petitioners, Respondents are entitled to "assigned reserved parking" at home football games. Respondents claim Petitioners violated this contract provision when USC discontinued parking on the "apron" around the football stadium and failed to give Respondents first priority in the selection of new parking spaces. Petitioners assert that the parking provision has no priority requirement and it was satisfied when Respondents were assigned reserved parking spaces in an adjacent lot. As the case comes before this Court on certiorari to the court of appeals, the only issue before us is whether this is an appropriate case for the use of equitable estoppel: the trial court held it was not, but the court of appeals reversed. We agree with the trial court and reverse the court of appeals.

I.

Petitioners USC and the Gamecock Club work together to promote the school's athletic programs. This includes selling tickets to sporting events and offering other privileges that are contingent on the amount of a Gamecock Club member's financial contributions. In the mid-1980s, the Gamecock Club instituted the Lifetime Membership program, which offered[1] Gamecock Club members the opportunity to become Lifetime Members. Lifetime Membership was achieved by making donations at specified levels or purchasing a life insurance policy valued at a minimum of $100,000 and naming USC as the beneficiary. In 1990, Respondents George M. Lee, III and John Love became Lifetime Members. Stuart Hope became a Lifetime Member in 1986, which membership passed to Respondent Mena H. Gardiner, his daughter and named beneficiary, upon his death.[2]

The terms of the Lifetime Membership program were placed in written contracts, signed by Respondents (or their predecessors), which included an attached "Exhibit A" listing the benefits of membership. These benefits included

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[1] The Gamecock Club no longer offers these memberships.

[2] One perk of being a Lifetime Member is the ability to designate a beneficiary to receive the membership interest upon the member's death.

Four Season Football Tickets (Best Available)
Additional Four Season Football Tickets (Total of 8)
Assigned Reserved Parking
Second Priority on Away and Bowl Game Tickets
Tickets May Be Assigned to One Designated Heir
Four Season Basketball Tickets (Best Available)
Assigned Parking[3] at Coliseum (If Available)
Second Priority on Away and Tournament Game Tickets
Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

(emphasis added).

For more than twenty years, Respondents were assigned parking spaces for home football games on the apron immediately surrounding Williams-Brice Stadium. Beginning with the 2012 football season, USC eliminated those parking spaces. The Gamecock Club informed Respondents that they would continue to have assigned, reserved parking spaces pursuant to their Lifetime Membership contracts. The parking-selection process imposed by the Gamecock Club resulted in each Respondent receiving two parking spaces[4] in the Farmers Market parking area across the street from the stadium. Miffed at their perceived lack of *priority* parking, Respondents filed this action.

Respondents' complaint alleged Petitioners failed to comply with their contractual obligation to give Lifetime Members first priority in the selection of parking spaces. The complaint sought an order "enjoining and restraining [Petitioners] from interfering with the contractual rights of the life members of the Gamecock Club, particularly the rights of such members to have the highest priority for parking within locations at or near Williams Brice Stadium."

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[3] Exhibit A to Stuart Hope's contract provided for "Assigned *Reserved* Parking at Coliseum (If Available)." (emphasis added).

[4] When Respondents were allowed to park on the apron of Williams-Brice, they were allotted only one parking space each.

The parties filed cross-motions for summary judgment.[5] Respondents contended that Petitioners' failure to give them priority in the selection of parking spaces constituted a breach of their "clear and unambiguous contracts" and, furthermore, that Petitioners were "estopped from asserting any position contrary to the existence of [Respondents'] contract rights . . . due to their compliance with the same over several decades." Respondents argued that their contracts with Petitioners, specifically the provision in Exhibit A referring to "assigned reserved parking," unambiguously granted Respondents priority in the selection of parking spaces.

Alternatively, Respondents argued the contracts were ambiguous and extrinsic evidence should be admitted to prove the contracts' terms. Respondents also claimed Petitioners should be equitably estopped from changing Respondents' parking-selection priority because Petitioners "conveyed to [Respondents] that they were entitled to higher priority in parking than non-lifetime donors" and Respondents "reasonably relied on [Petitioners'] actions and changed their positions accordingly by becoming lifetime donors."[6]

In contrast, Petitioners argued that the Lifetime Membership contracts were unambiguous, did not guarantee Respondents a particular parking space, and did not make any promises as to the priority Respondents would receive in the selection of parking spaces. Petitioners also argued Respondents could not rely on parol evidence or equitable estoppel to contradict or supplement the terms of their unambiguous contracts.

At the summary judgment hearing, Respondents referenced a March 5, 2008 letter from Chris Wyrick, the executive director of the Gamecock Club, and the depositions of Love and Marion Hope,[7] as evidence that Respondents were assured

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[5] Prior to this, Linda Rodarte resolved her dispute with Petitioners and the parties entered a stipulation of dismissal, with prejudice, as to her claims. *See* Rule 41(a)(1), SCRCP.

[6] However, Respondents did not bring any claims based on fraud or negligent misrepresentations.

[7] Marion Hope is Stuart Hope's son; his deposition was taken because he participated in the discussions that led to his father entering into the Lifetime Membership agreement with Petitioners.

they would have first priority in the selection of parking spaces. In the 2008 letter, Wyrick informed Lifetime Members that they were "at the top of all Gamecock Club priority." In his deposition, Marion Hope testified that in addition to the benefits contained in Exhibit A to his father's contract, Petitioners gave them "verbal assurances" that they would receive eight basketball tickets—notwithstanding the fact that the contract stated they would receive four tickets—and that they would have "top priority" in the Gamecock Club for everything listed in Exhibit A. Similarly, in his deposition, Love testified that he interpreted "assigned reserved parking" to mean the "best parking spot available around the stadium."

In response, Petitioners argued that evidence was inadmissible under the parol evidence rule, which prohibits courts from considering extrinsic evidence of prior or contemporaneous agreements when the parties have a written contract. Petitioners also pointed out that Respondents could not possibly have relied on the Wyrick letter from 2008 when entering into the Lifetime Membership agreements decades earlier.

The trial court granted Petitioners' motion for summary judgment. In its order, the trial court held that "assigned reserved parking" was unambiguous and parol evidence of its meaning was therefore inadmissible, the Lifetime Membership contracts did not provide Respondents with a right to any particular parking space or selection priority, and Respondents' claim for equitable estoppel failed as a matter of law.

The court of appeals affirmed in part and reversed in part.[8] *Rodarte v. Univ. of S.C.*, Op. No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015). The court of appeals affirmed the trial court's ruling that the Lifetime Membership contracts were unambiguous and extrinsic evidence was therefore inadmissible to prove their meaning.[9] However, the court of appeals reversed the trial court's ruling as to

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[8] By this point J. Perry Kimball had dismissed his claims against Petitioners and he is therefore no longer a party to this action.

[9] We denied Respondents' petition for a writ of certiorari to review that decision, and it is now the law of the case and cannot be challenged by Respondents. *See, e.g.*, *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.").

equitable estoppel. The court of appeals found that Respondents' "affidavits and depositions, which indicate [Respondents] relied on USC's assurances of first and second priority 'always' in exchange for the increased donations made to USC" were "sufficient to create an issue of material fact as to whether [Respondents] suffered a detrimental change in reliance on the representations." *Id.* We granted Petitioners a writ of certiorari to review the court of appeals' decision.

II.

Petitioners argue there is no evidence to support Respondents' claim for equitable estoppel and, therefore, the trial court properly granted Petitioners' motion for summary judgment. According to Petitioners, the court of appeals erred because (1) equitable estoppel cannot be used to alter the terms of an unambiguous contract; (2) Respondents are attempting to use equitable estoppel offensively, when it can only be used defensively; and (3) equitable estoppel is unavailing against Petitioners because they are government entities. We agree the court of appeals erred by holding that equitable estoppel can be used to alter the terms of an unambiguous, written contract, and we reverse.[10]

Because this case requires us to answer a question of law—whether equitable estoppel may be used to prevent the enforcement of an unambiguous contract—we apply a different standard of review than in the typical fact-based challenge to summary judgment.[11] *Cf. Eagle Container Co. v. County of Newberry*, 379 S.C.

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[10] Because we reverse the court of appeals on this ground we need not consider Petitioners' other arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting that when resolution of one issue is dispositive, there is no need to consider other issues).

[11] In those situations we "review[] the granting of summary judgment under the same standard applied by the trial court," which "may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 234–35, 692 S.E.2d 499, 505 (2010) (quoting Rule 56(c), SCRCP). We are also required to view "'the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party.'" *Id.* at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)).

564, 567–68, 666 S.E.2d 892, 894 (2008) (noting that interpretation of an unambiguous ordinance is a question of law and the Court has a broader scope of review in those instances than when it reviews questions of fact (footnote omitted)). Accordingly, we review this issue de novo. *See, e.g.*, *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("[T]his Court reviews questions of law de novo.").

"In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." 28 Am. Jur. 2d *Estoppel and Waiver* § 27 (2011); *see, e.g.*, *Parker v. Parker*, 313 S.C. 482, 488, 443 S.E.2d 388, 391 (1994) (holding that equitable estoppel was a valid defense to a paternity challenge brought by the children of an intestate decedent against a putative heir because the children had "lulled her into a position where she could no longer defend her parentage"). "The essence of equitable estoppel is that the party entitled to invoke the principle was misled to his injury." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

> The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped;[12] and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

Id. at 84–85, 650 S.E.2d at 470.

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[12] Obviously, Respondents could not have been induced into becoming Lifetime Members by statements made years after signing the Lifetime Membership agreements. Therefore, subsequent representations, such as those found in the 2008 Wyrick letter, lend no support to Respondents' claim for equitable estoppel.

In reversing the trial court, the court of appeals relied on this Court's opinion in *Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014). The plaintiffs in *Springob* were individuals that had entered into agreements with the Gamecock Club to receive access to premium seating at basketball games and other benefits in exchange for cash contributions. 407 S.C. at 493–94, 757 S.E.2d at 385–86. The brochure promoting this program offered Gamecock Club members "the opportunity to purchase these tickets over a 'five year term.' Members were to pay $5,000 per seat in the first year and $1,500 per seat each year in years two through five." *Id.* at 494, 757 S.E.2d at 386.

At the end of the five-year period, the Gamecock Club contended that the plaintiffs had to continue making annual payments of $1,500 per seat. *Id.* Believing no further payments were required under the terms of their agreements, the plaintiffs brought a breach of contract claim against USC and the Gamecock Club. *Id.* The plaintiffs submitted affidavits stating they were promised that after year five "they would only have to maintain their Gamecock Club membership and pay the face value of season tickets to retain the[ir] premium seats." *Id.* The parties filed cross-motions for summary judgment; the trial court granted the defendants' motion, "finding that due to the absence of a written contract the statute of frauds barred [the plaintiffs'] claims." *Id.*

We affirmed the trial court's ruling that there was no valid contract between the parties—the agreements, which were not capable of being performed in one year, were not in writing as required by the statute of frauds. *Id.* at 495–97, 757 S.E.2d at 387 (citations omitted). However, we reversed the trial court's decision as to the plaintiffs' equitable estoppel claim because "there [wa]s proof of an oral contract between the parties" that was "sufficient to create an issue of material fact as to whether [the plaintiffs] suffered a definite, substantial, and detrimental change in reliance on th[o]se purported oral representations." *Id.* at 498, 757 S.E.2d at 388.

The facts of this case are easily distinguishable from those of *Springob*. In *Springob*, there was no written contract between the parties, and the plaintiffs raised equitable estoppel to counter USC and the Gamecock Club's statute of frauds defense. *See id.* at 495, 497, 757 S.E.2d at 386–87. In contrast, here Respondents seek to use equitable estoppel to alter the terms of unambiguous, written contracts. The court of appeals' expansive interpretation of *Springob* effectively sanctioned an end-run around the parol evidence rule and was erroneous. *Cf. Spoone v. Newsome Chevrolet-Buick*, 309 S.C. 432, 434, 424 S.E.2d 489, 490 (1992) (noting that "equitable estoppel could not be invoked to

nullify a mandatory statutory restriction" and "equity will not prevail over a positive enactment of the legislature" (citations omitted)). *See generally* 30A C.J.S. *Equity* § 128 (2007 & Supp. 2016) (discussing the equitable maxim "equity follows the law").

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument." *Gilliland v. Elmwood Props.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990) (citing *Iseman v. Hobbs*, 290 S.C. 482, 483, 351 S.E.2d 351, 352 (Ct. App. 1986)). "'Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties *as found within the agreement*.'"[13] *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014) (emphasis added) (quoting *Miles v. Miles*, 393 S.C. 111, 117, 711 S.E.2d 880, 883 (2011)). "'Interpretation of a contract is governed by *the objective manifestation of the parties' assent at the time the contract was made*, rather than the subjective, after-the-fact meaning one party assigns to it.'" *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 241 (2015) (emphasis added) (quoting *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 143–44 (Ct. App. 2009)).

Nonetheless, Respondents seek to use equitable estoppel to introduce evidence of "the promises and assurances given by employees of Petitioners to Respondents." This is the very type of evidence the parol evidence rule excludes. *See, e.g.*, *Sanders v. Allis Chalmers Mfg. Co.*, 237 S.C. 133, 138, 115 S.E.2d 793, 795 (1960) ("Where parties reduce an agreement to writing, it is to be presumed that the sole agreement of the parties and the extent of the undertaking was included therein, and parol evidence cannot be introduced to contradict it." (citations omitted)); *see also Welch v. Edisto Realty Co.*, 170 S.C. 31, 40, 169 S.E. 667, 671 (1933) ("If plaintiffs desired that the parol agreement, for which they now contend,

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[13] Indeed, Lee has previously benefited from this Court's refusal to allow USC to add to the terms of the Lifetime Membership agreement. *See Lee v. Univ. of S.C.*, 407 S.C. 512, 518–19, 757 S.E.2d 394, 398 (2014) (holding that the Lifetime Membership agreement, which guaranteed Lee "the opportunity to purchase tickets," precluded USC and the Gamecock Club "from imposing additional fees that Lee must pay before being allowed" that opportunity). As the old saying goes, what's good for the goose is good for the gander.

be incorporated in the written instrument, they should have taken legal steps to reform that paper."). Allowing Respondents' equitable estoppel claim to go forward—with the introduction of parol evidence that would entail—would be tantamount to permitting a party to convert an unambiguous contract into an ambiguous one based on little more than "the subjective, after-the-fact meaning one party assigns to it." *N. Am. Rescue Prods., Inc.*, 411 S.C. at 378, 769 S.E.2d at 241 (citation omitted); *see, e.g.*, *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 157, 161 S.E.2d 179, 181 (1968) (recognizing that parol evidence is admissible to prove the meaning of an ambiguous, written contract). A party cannot avoid the parol evidence rule simply by claiming he thought the contract he signed meant something other than what it said. We agree with the Supreme Court of Rhode Island that "quasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract." *Zarrella v. Minn. Mut. Life Ins. Co.*, 824 A.2d 1249, 1260 (R.I. 2003). Simply put, Respondents cannot use equitable estoppel to let in through the back door what the parol evidence rule prevents from coming in the front door.

Indeed, an unambiguous, written contract is inherently incompatible with the doctrine of equitable estoppel. To succeed on a claim for equitable estoppel, a party must prove "lack of knowledge, and the means of knowledge, of the truth as to the facts in question." *Strickland*, 375 S.C. at 84, 650 S.E.2d at 470. However, an unambiguous contract is by definition capable of only one reasonable interpretation. *See Carolina Ceramics, Inc.*, 251 S.C. at 155–56, 161 S.E.2d at 181 (stating that a contract is *ambiguous* if it is "capable of being understood in more senses than one"). Therefore, a party to an unambiguous contract cannot prove lack of knowledge or the means of acquiring knowledge of the contract's meaning, which bars an equitable estoppel claim in the first instance.

III.

We reiterate that this is a breach of contract case involving unambiguous, written contracts. Respondents have made no claims of fraud or negligent misrepresentations by Petitioners; therefore, the general rule that written contracts must be respected, and effect must be given to their plain terms, prevails. *Cf. Slack v. James*, 364 S.C. 609, 616, 614 S.E.2d 636, 640 (2005) (stating that the parol evidence rule will not "prevent[] one from proceeding on tort theories of negligent misrepresentation and fraud"); *Shumpert v. Serv. Life & Health Ins. Co.*, 220 S.C. 401, 411, 68 S.E.2d 340, 344 (1951) (noting the tension between "recognition of

the rule of sanctity of written contracts and the rule of relief from fraudulent representations which induced the making of a contract"). We reverse the court of appeals and reinstate the entry of summary judgment for Petitioners.

REVERSED.

BEATTY, C.J., HEARN, FEW, JJ., and Acting Justice J. Cordell Maddox, Jr., concur.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs,

Of whom George M. Lee, III, Mena H. Gardiner and John Love are Appellants,

v.

University of South Carolina and University of South Carolina Gamecock Club, Respondents.

Appellate Case No. 2013-002295

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-357
Heard April 21, 2015 – Filed July 15, 2015

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Julius W. Babb, IV, and J. Lewis Cromer, both of J. Lewis Cromer & Associates, LLC, of Columbia, for Appellants.

Robert E. Stepp and Bess J. DuRant, both of Sowell Gray Stepp & Laffitte, LLC, of Columbia, for Respondents.

PER CURIAM: Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love filed this action against The University of South Carolina and The University of South Carolina Gamecock Club (collectively, USC), alleging breach of contract. Lee, Gardiner, and Love (Appellants) appeal the circuit court's order granting summary judgment to USC. Appellants argue the circuit court erred by (1) finding the contract was unambiguous; (2) excluding extrinsic evidence; (3) excluding evidence of the parties' conduct; and (4) rejecting Appellants' estoppel arguments. We affirm in part, reverse in part, and remand.

II. BACKGROUND FACTS

Appellants acquired Lifetime Scholarship Memberships[1] in the Gamecock Club, an organization supporting athletics at the University of South Carolina. The Lifetime Scholarship Membership program was established by the Gamecock Club in the mid-1980s. In exchange for donations to the Gamecock Club, the donors received lifetime rights and privileges that were memorialized in a Membership contract. Pursuant to Exhibit A of each contract, Appellants were entitled to the following:

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Reserved Parking[2] at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events

The advertising circular that introduced the Lifetime Scholarship Membership program listed "Priority on season Football Tickets and Parking" as one of the

[1] There are two donor levels of Lifetime Memberships—Lifetime Silver Spur Members, who donate more than $40,000, and Lifetime Full Scholarship Members, who donate between $25,000 and $40,000.

[2] Lee and Love's contracts provided, "Assigned Parking at Coliseum (If Available)."

benefits of membership. A 1986 brochure described Lifetime Scholarship Membership football parking benefits as "Assigned Reserved Parking." For approximately twenty-five years, Appellants and other Gamecock Club members parked on the apron of the University's football stadium in reserved parking spaces.

Marcy Girton, the Deputy Director of Athletics for the University, averred by affidavit that on November 3, 2006, the Board of Directors of the Gamecock Club amended its Constitution and By-Laws to approve a priority point system for the allocation of benefits associated with membership in the Gamecock Club. The amendments provided that assignments for parking at home football games would be based on a member's priority point ranking.

Under the priority point system, points would be awarded as follows: (1) Gamecock Club members receive one point for every $100 donation and two points for each consecutive year of giving; and (2) Gamecock Club members receive one point for every season ticket purchased for football, baseball, and men and women's basketball. Lifetime Scholarship Members were deemed to have made donations to the Gamecock Club in the amount of cash contributions they made when they became Lifetime Scholarship Members or the amount of the value of the life insurance policies they assigned to the Gamecock Club. By letter to Lifetime Scholarship members dated March 5, 2008, from Chris Wyack, Executive Director of the Gamecock Club, USC stated "Life[time] Members are at the top of all Gamecock Club priority."

Beginning with the 2012 football season, parking on the apron around the stadium was no longer available to Gamecock Club members. Prior to the football season, Appellants were informed they could no longer park on the apron of the stadium, and they could either participate in a parking space selection process based on the priority point system or the Gamecock Club would assign their parking. Lifetime Scholarship Members were not given priority over other Gamecock Club members in the priority point system. Appellants were each permitted to select two parking spaces. Members could select reserved parking from numerous outlying USC parking facilities, including the Armory, Carolina Park at the South Carolina State Fairgrounds, and the Farmers' Market. Appellants each selected parking spaces at the Farmers' Market.

Marion Hope (Hope) testified in deposition that he participated in the negotiations when his father, Stuart Hope (Mr. Hope),[3] entered his Lifetime Scholarship Membership contract with USC on May 8, 1986. Mr. Hope had contributed $5,000 and agreed to contribute an additional $20,000 to become a Lifetime Scholarship Member. Hope testified a USC representative gave verbal assurances of privileges beyond those listed in Exhibit A of the contract, including eight basketball tickets (the contract said four) and top priority in the Gamecock Club. According to Hope, Mr. Hope was assured Lifetime Silver Spur Members had top priority and Mr. Hope's level, Lifetime Scholarship Membership, had second priority.

George Lee signed his contract in March 1990 and testified in deposition he was given Lifetime Scholarship Membership privileges in exchange for a life insurance policy on his life for $100,000, payable to USC. Lee stated he received a specific parking space, space 214,[4] per a letter signed by Art Baker on behalf of USC. By sworn affidavit, Lee averred he was given priority parking from the time he entered the contract until the summer of 2012. Lee stated, "[t]hrough the Gamecock Club's actions[,] persons have been given priority ahead of mine and in contravention of my contract rights." Lee claimed USC's actions violated his "rights under the contract and disregard[ed] the Gamecock Club's past course of dealing, over decades, regarding the assignment of reserved parking."

John Love testified in deposition that he sought out a Lifetime Scholarship Membership at the behest of his friends, Harry Gregory, Sr., and Harry Gregory, Jr., so they could park together next to the stadium. Love executed his contract for a Lifetime Scholarship Membership in March 1990 in exchange for purchasing a $100,000 whole life policy and designating USC as the beneficiary. Love had been a Full Scholarship member since 1982, when he donated $10,000 and pledged $1,000 per year. Love testified that his communications with USC prior to executing the contract involved instructions to obtain the insurance policy and USC's assurances confirming that parking for the three spaces would be adjacent. Love testified he already had a good parking space; thus, the appeal of the Lifetime Scholarship Membership was that it would "define what my contributions for my lifetime would be to have the best priorities for tickets and parking. So those were the gist of my conversations."

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[3] Mr. Hope's rights and privileges under the contract passed to his named beneficiary, Mena Gardiner, at the time of his death.

[4] Lee's deposition indicates parking spot 214; his affidavit names space 314.

Between 1990 and 2011, Love parked with Harry Gregory, Sr., and Harry Gregory, Jr., on either side of him. Love testified he met with two representatives from the Gamecock Club in the spring of 2012 to verify his membership entitled him to the best available parking. Love stated, "it was not a good conversation because when I said . . . our parking is the best available[,]" the representatives said, "I think you are going to be happy, but [we] can't tell you that that is what is going to happen with you" and referred Love to the contract language.

In June 2012, Appellants filed this action, alleging USC breached the Lifetime Scholarship Membership contracts by requiring Appellants to move to parking spaces at the Farmers' Market and by not giving Appellants first priority in the selection of new parking spaces.[5] Appellants alleged their contracts entitled them to priority in parking ahead of non-lifetime donors; however, USC breached their contracts by giving numerous non-lifetime donors priority ahead of them. The parties filed cross-motions for summary judgment.[6]

On August 9, 2013, the circuit court heard the motions. Appellants argued the point system resulted in Appellants' priority being intertwined with the general populace of Gamecock Club members in priority rather than continuing as first priority within the Gamecock Club. Appellants argued the Lifetime Scholarship Membership contract unambiguously provided them with priority, or in the alternative, the contract was ambiguous.

By order filed August 27, 2013, the circuit court noted its order related only to the portion of Exhibit A to the contract addressing parking, making "no determination as to any other provision of the agreement." The court concluded the contract was unambiguous, the parole evidence rule precluded consideration of extrinsic evidence, and the parties' conduct could not be used to vary the terms of the contract. The court also found Appellants were not entitled to relief under either equitable or collateral estoppel. Thus, the court granted USC's motion for summary judgment and denied Appellants' motion for summary judgment. The court denied Appellants' motion for reconsideration. This appeal follows.

III. STANDARD OF REVIEW

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[5] In July 2012, Appellants filed an amended summons and complaint replacing plaintiff Mitchell Bailey with plaintiff John Love.

[6] Appellants' previous motion for summary judgment was withdrawn, and USC's motion to dismiss was denied.

On appeal from the grant of a summary judgment motion, this court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is proper under Rule 56(c) when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Singleton v. Sherer*, 377 S.C. 185, 196, 659 S.E.2d 196, 202 (Ct. App. 2008).

"It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). "[A] reviewing court is free to decide questions of law with no particular deference to the trial court." *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 569, 595 S.E.2d 846, 848-49 (Ct. App. 2004).

IV. LAW/ANALYSIS

A. Ambiguity

Appellants argue the circuit court erred in holding the "assigned reserved parking" clause in their contracts was unambiguous. We disagree.

We are bound by our supreme court's ruling in *Lee v. The University of South Carolina*, 407 S.C. 512, 757 S.E.2d 394 (2014). In *Lee*, the court reversed the circuit court's entry of judgment for USC in a declaratory judgment action. *Id.* at 514, 757 S.E.2d at 396. George M. Lee, III, had been a member of the Gamecock Club for many years when, in 1990, he elevated his membership to the Lifetime Full Scholarship level by purchasing a life insurance policy and designating USC as the sole, irrevocable beneficiary. *Id.* at 515, 757 S.E.2d at 396. Lee entered an agreement with the Gamecock Club similar to the agreement in this case. *Id.* at 515 n.2, 757 S.E.2d at 396 n.2. Lee agreed to pay the policy premiums for eight years until the policy was paid up, at which time the Gamecock Club would own the policy. *Id.* at 515, 757 S.E.2d at 396. The agreement also stated Lee would "have the *opportunity to purchase tickets* entitled to the Gamecock Level or membership presently held." *Id.* at 516, 757 S.E.2d at 396. At the end of the eight year period, the Gamecock Club notified Lee that it had not realized the cash necessary to insure the face value of the policy and Lee was required to either revert back to Full Scholarship level, contribute $500 or more per year to remain a Lifetime Full Scholarship member, or continue paying the premium. *Id.* Lee began paying $500 per year. *Id.*

In 2008, USC instituted a Yearly Equitable Seating (YES) program, requiring all Gamecock Club members, regardless of membership level, to pay a seat license fee each year for the opportunity to purchase their seats. *Id.* at 516, 757 S.E.2d at 397. Lee was required to pay $325 per year for each of his eight seats. *Id.* Lee filed a declaratory judgment action to determine whether he was entitled to purchase season tickets without paying the seat license fees. *Id.* The circuit court found the agreement was unambiguous and even though Lee was required to pay the seat license fee, he retained the opportunity to purchase season tickets; thus, USC complied with the contract. *Id.* at 517, 757 S.E.2d at 397.

Our supreme court reversed, finding the agreement was unambiguous, but the seat license fee requirement constituted the imposition of an additional term to the agreement that the parties did not agree upon. *Id.* at 518, 757 S.E.2d at 398. The court held USC was required by the terms of the agreement to permit Lee the opportunity to purchase tickets without being subjected to any other conditions, including the payment of seat license fees. *Id.* Thus, although the supreme court ultimately reversed the circuit court in *Lee*, we are bound by the supreme court's finding that the substantially identical contract was unambiguous.[7] Accordingly, we affirm the circuit court's finding that the contract was unambiguous.

B. Extrinsic Evidence

Appellants argue the circuit court erred in refusing to consider extrinsic evidence. We disagree.

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[7] We find no merit in Appellants' reliance on this court's unpublished opinion in *Rosen v. The University of South Carolina*, Op. No. 2011-UP-331 (S.C. Ct. App. filed June 27, 2011), finding the same contract was ambiguous. *See* Rule 220(a), SCACR (providing unpublished opinions have no precedential value); Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."). Further, we find no merit in Appellants' reliance on the Richland County circuit court's order in *Timmons v. The University of South Carolina*, 2012-CP-40-03931. *See* 21 C.J.S. *Courts* § 212 (2006) ("Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court." (footnotes omitted)).

"[E]xtrinsic evidence may only be considered if the contract is ambiguous." *Preserv. Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 320, 751 S.E.2d 256, 261 (2013) (citing *Duncan v. Little*, 384 S.C. 420, 425, 682 S.E.2d 788, 790 (2009)). "Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties. *McGill v. Moore*, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009). Because we affirm the circuit court's finding that the contract is unambiguous, we likewise affirm the circuit court's refusal to consider extrinsic evidence.

C. The Parties' Conduct

Appellants also argue the circuit court erred in holding the parties' conduct after the execution of the contract could not be considered to determine their intent. We disagree.

Evidence of custom and usage may not be used to contradict, vary, or explain the terms of an unambiguous contract. *Autrey v. Bell*, 114 S.C. 370, 374, 103 S.E. 749, 750 (1920); *see Town of McClellanville*, 345 S.C. at 623, 550 S.E.2d at 303 ("Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties."). Because we affirm the circuit court's finding regarding ambiguity, we likewise affirm the circuit court's refusal to consider the parties' conduct after the execution of the contract in determining the parties' intent.

D. Estoppel

Appellants lastly argue the circuit court erred in rejecting their estoppel arguments. We agree as to equitable estoppel and disagree as to collateral estoppel.

1. Equitable Estoppel

The elements of equitable estoppel for the party asserting the estoppel are the following: (1) a lack of knowledge and of a means of knowing the truth as to the facts in question; (2) a reliance upon the conduct of the estopped party; and (3) a prejudicial change in position. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). The elements as to the party being estopped are the following: (1) conduct by the estopped party amounting to a false representation or a concealment of material facts; (2) an intention that such conduct be acted upon by the other party; and (3) actual or constructive knowledge

of the true facts. *Id.* The party asserting estoppel carries the burden of proof. *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 122, 145 S.E.2d 922, 927 (1965).

The circuit court rejected Appellants' equitable estoppel claim. In reversing the circuit court, we again rely on recent South Carolina Supreme Court precedent. In *Springob v. The University of South Carolina*, 407 S.C. 490, 493, 757 S.E.2d 384, 385-86 (2014), the court considered the plaintiffs' challenges to the Gamecock Club's imposition of premium seating fees on Gamecock Club members. The premium seating was originally offered to high-level Gamecock Club members via a brochure offering the seats and other amenities, including preferred parking, access to a private club in the arena, and the option to purchase the best tickets to all events held at the arena. *Id.* at 493-94, 757 S.E.2d at 386. The brochure offered the opportunity to purchase the tickets over five years at $5,000 per seat in the first year and $1,500 per seat in years two through five. *Id.* at 494, 757 S.E.2d at 386. USC employees allegedly promised the plaintiffs that after year five, they would only have to pay the face value of the season tickets and maintain their Gamecock Club memberships to retain the premium seats. *Id.* After the fifth year, USC requested a $1,500 per seat fee and informed the plaintiffs they would be required to pay $1,500 per seat each year to retain the premium seating. *Id.* The plaintiffs filed an action alleging breach of contract, and the circuit court granted USC's motion for summary judgment, finding that due to the absence of a written contract between the parties, the statute of frauds barred the plaintiffs' claims. *Id.*

Our supreme court affirmed in part, finding the circuit court correctly found the agreement was barred by the statute of frauds. *Id.* at 495, 757 S.E.2d at 386. However, the court reversed in part and remanded, finding there was a factual issue as to whether USC was equitably estopped from asserting the statute of frauds as a defense based on an alleged oral promise that the plaintiffs would not have to pay the fee beyond year five. *Id.*

Taking the evidence in the light most favorable to Appellants, we find there was proof supporting Appellants' estoppel claim, including Appellants' affidavits and depositions, which indicate Appellants relied on USC's assurances of first and second priority "always" in exchange for the increased donations made to USC. This is sufficient to create an issue of material fact as to whether Appellants suffered a detrimental change in reliance on the representations. *See id.*, 407 S.C. at 498, 757 S.E.2d at 388 (finding a fact question existed, which precluded summary judgment on the Gamecock Club members' estoppel claim based on oral representations by USC). Thus, we reverse and remand, finding a factual issue exists in this case as to whether USC was equitably estopped from denying

Appellants the highest priority to available parking as Lifetime Scholarship Members.

2. Collateral Estoppel

Appellants argue USC is collaterally estopped from asserting the term "assigned reserved parking" is unambiguous because the issue was litigated in *Rosen*. We disagree.

"Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." *S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

We find the issue decided in *Rosen* involved the ambiguity of the contract as to whether USC could charge a fee for parking rather than whether USC could change parking spots and priorities, which is the issue this action. Thus, Appellants have not established the elements of collateral estoppel.

V. CONCLUSION

We affirm the circuit court's findings as to the ambiguity of the contract, the admissibility of extrinsic evidence and the parties' conduct after the execution of the contract, and collateral estoppel. However, as to equitable estoppel, we reverse and remand to the circuit court.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT, LOCKEMY, and McDONALD, JJ., concur.