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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III

Appellate Case No.: 2017-000620

BURTON FIRE DISTRICT.....Respondent,

vs.

CITY OF BEAUFORT.....Appellant.

And

BURTON FIRE DISTRICT.....Respondent,

vs.

TOWN OF PORT ROYAL.....Appellant.

INITIAL REPLY BRIEF OF APPELLANTS CITY OF BEAUFORT AND TOWN OF PORT ROYAL

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I. **There is an ambiguity in the meaning of the term assessed values as utilized on the tax bills at that time and extrinsic evidence shows that the meaning as set forth by the City and Town is the meaning understood by all parties when the contract was made.**

Burton attempts to misdirect the court for the clear issues in this matter. Initially, Burton claims that the tax bills introduced by the municipalities to show an ambiguity in the settlement agreement should not be considered because they are not 2010 tax bills, but are instead 2011 tax bills.

Paragraph 7 of the Settlement Agreement references the property tax assessed values with specific relation to the values set forth on Beaufort County tax bills. That section provides:

> This Agreement shall be deemed to have commenced on July 1, 2010. The first payment will be due on or before March 1, 2011 and will be calculated using those properties listed on Exhibits B and C, as well as the property tax assessed values for those properties and millage from the tax bills that are scheduled to be sent out on October 16, 2010.

[Page 5 of Settlement Agreement]

Tax Bills were introduced as evidence in this matter as during the testimony of Kathy Todd. During that testimony she explained how she first realized that "assessed value" on the tax bills did not equate to "assessed value" on the spreadsheet she was utilizing. The relevant 2011 payment had been made by the City to Burton but when she took over the Finances for the City the payments were already due. Burton had raised no issue with the amounts paid in 2011 at that point to the Town or the City. She testified that the numbers were not adding up when she was trying to calculate the amount to be paid based on the 2010-11 values from the County. She called the Finance Director for

Beaufort County, David Starkey, and asked for a copy of a tax bill to match up with the 2010-2011 data file she had from the county in order to determine which set of data she should be using. Using the tax bill sent to her by Starkey she determined that the tax bill referred to "assessed value" in a manor inconsistent with the data files she had. The data files, which were utilized to create Exhibits A-D, reflected "taxable value" as the same number reflected on the tax bill as "assessed value" provided by Starkey. Todd could only reconcile the numbers when she realized that the "assessed value" on the tax bills were the same as the "taxable values" on the data files and spreadsheets attached to the agreement and utilizing the 2010 numbers. This is how Todd came to the conclusion that the tax bills (whether it be for 2010 or 2011) indicated a different value as the "assessed value" from the relevant spreadsheets. The payments then for 2011 were made based on the "assessed value" number that was indicated on the tax bill. This was, furthermore, consistent with the numbers agreed upon in various emails by the parties when entering into the agreements as testified to by Harvey and Cantwell.

Whether it is a 2010 tax bill or a 2011 tax bill, it is clear that during this time period there was an ambiguity between what "assessed value" meant on the bill and what it meant on the spreadsheets made exhibits to the contract. Such an ambiguity, needs to be resolved by looking at extrinsic evidence as to the intent at the time of the parties. The emails between the parties indicating the value of the "universe of properties" is clear evidence of the intent of the parties. It is clear when these emails are reviewed, that the contract should be reformed

to reflect that understanding that was obviously that of all the parties at the time the contract was entered as displayed by the emails between those parties. This is further supported by the fact that Burton made no objection to the payments it received in 2011 and did not budget for the greatly increased payments but rather their budgets reflected amounts much closer to those amounts paid by the municipalities.

II. Burton's actions in Contracting with the Town and City were Ultra vires and are not allowed by any relevant statutory authority.

Burton contends it is authorized pursuant to S.C. Code Ann. §6-11-100 to contract with municipalities. However, Chapter 11 of Title 6 specifically addresses public service districts created prior to March 7, 1973, such as Burton, in a specific manner separate from the manner in which it treats post-Home Rule service districts. S.C. Code Ann. §6-11-100 authorizes particular actions to be taken by the post-March 7, 1973 districts. These districts are those established through the authority of Title 6, Chapter 11. In specific sections, however, Chapter 11 addresses with specificity, additional provisions granting authority contrary to the original enabling legislation of the pre-Home Rule public service districts such as Burton. S.C. Code §6-11-271 through 276 provides specifically a for differing rules established for public service district or authority that was created prior to March 7, 1973 or by the General Assembly through a local act. Specifically it recognizes limitations placed on these districts by their enabling legislation which are not an issue for those post-Home Rule districts established under authority of Title 6, Chapter 11, and authorized to act through its

commission at §6-11-100. There is a clear distinction in the authority granted a pre-home rule district and one established under Title 6, Chapter 11. Thus, it is clear that the powers granted to Commissions of Public Service Districts relied upon by Burton and set forth at §6-11-100 do not apply to Burton as it was created prior to March 7, 1973.

Burton next contends that it is specifically authorized under S.C. Code Ann. §5-3-312 to contract with municipalities. However, as set forth above, the statutes set forth by the legislature throughout Title 5 and 6 address public service districts created prior to home rule such a Burton and post-home rule special purpose districts differently. All the districts referred to by S.C. Code Ann. §5-3-311 and 312 are post-Home rule districts which would have the ability pursuant to their own statutory schemes to contract with municipalities for service. These districts differ from the pre-Home rule public service districts which do not have authority to contract except as set forth in their chartering legislation. The laws of this state consistently treat those public service districts such as Burton in a manner separate from post-Home rule special purpose districts except where they are explicitly set forth to be treated the same in a specific article. See S.C. Code Ann. §6-11-350, §6-11-410, §6-11-810. There is no such reference to these pre-1973 districts at S.C. Code Ann. §5-3-311. It is clear that if the legislature had intended to it could have added such inclusive language as it did in the sections set forth above. The exclusion in indicia of a specific intent to exclude. Thus, there is no authority to contract granted to

Burton a pre-Home rule public service district set forth in S.C. Code Ann. §5-3-311 and 312.

CONCLUSION

Based on the foregoing, there is an ambiguity in the meaning of the term assessed values as utilized on the tax bills at that time and extrinsic evidence shows that the meaning as set forth by the City and Town is the meaning understood by all parties when the contract was made. Additionally, Burton's actions in Contracting with the Town and City were Ultra vires and are not allowed by any relevant statutory authority. Therefore, this court should reverse the order of the circuit court.

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PROOF OF SERVICE

The undersigned counsel hereby certifies that she has served the foregoing Initial Reply Brief of Appellants City of Beaufort and Town of Port Royal upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 6 day of October, 2017 addressed to the following:

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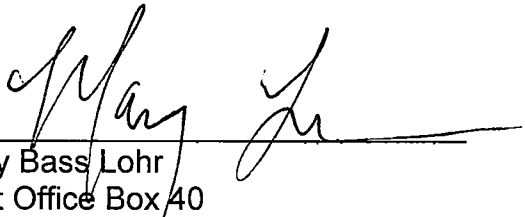
By: 
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October 5, 2017

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Re: Burton Fire District vs. Town of Port Royal and City of Beaufort
Civil Action No.: Appellate Case No.: 2017-000620
Our File No: 11279 MBL

Dear Ms. Kitchings:

Please find enclosed herewith for filing Initial Reply Brief of Appellants City of Beaufort and Town of Port Royal with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

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MBL/ad
Enclosure
cc: H. Fred Kuhn, Jr.

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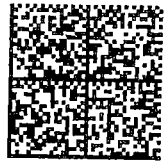

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