



The Supreme Court of South Carolina

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September 26, 2018

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: McGuinn Construction v. Saul Espino
Lower Court Case No. 2005CP3202712, 2008CP3204192
Appellate Case No. 2016-001291

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

Andrew A. Aun, Esquire
Blake A. Hewitt, Esquire
S. Jahue Moore, Esquire
John Calvin Bradley, Jr., Esquire
Andrew F. Lindemann, Esquire

**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 Supreme Court**

McGuinn Construction Management, Inc., Respondent,

v.

Saul Espino and Mara Espino, Petitioners.

And

Saul Espino and Mara Espino, Petitioners,

v.

Gates Commons, LLC, S. Wade McGuinn, Individually,
and Town of Lexington, Defendants,

Of whom Town of Lexington is the Respondent.

Appellate Case No. 2016-001291

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Lexington County
James W. Johnson Jr., Circuit Court Judge,
William P. Keesley, Circuit Court Judge

Memorandum Opinion No. 2018-MO-030
Heard April 17, 2018 – Filed August 29, 2018

REVERSED

Andrew A. Aun, of Aun & McKay, PA, of Irmo, and Blake A. Hewitt, of Bluestein Thompson Sullivan, LLC, of Columbia, for Petitioner.

S. Jahue Moore, and John Calvin Bradley Jr., of Moore Taylor Law Firm, P.A., of West Columbia, and Andrew F. Lindemann, of Lindemann, Davis & Hughes, PA, of Columbia, for Respondents.

PER CURIAM: This is a consolidated action primarily concerning the scope of a sewer easement across Petitioner's property. In 2005, McGuinn Construction Management, Inc., brought an action (the McGuinn action) against Petitioners for declaratory relief concerning the scope of the easement and also for slander of title and tortious interference with contract. McGuinn and Petitioners filed cross motions for summary judgment. The circuit court granted summary judgment to Petitioners in 2008. McGuinn moved for reconsideration. Later in 2008, Petitioners commenced an action against the Town of Lexington (the Town action) for negligence, gross negligence, slander of title, regulatory taking, trespass, and conversion. That action is still pending in the circuit court. While McGuinn's motion for reconsideration was still pending, the circuit court granted the Town's motion to consolidate both actions. In its order denying McGuinn's motion for reconsideration, the circuit court specifically noted it was not making a determination as to whether the Town was bound by the grant of summary judgment to Petitioners in the McGuinn action. In an unpublished decision, the court of appeals reversed the grant of summary judgment in the McGuinn action and remanded the McGuinn action and the Town action back to the circuit court. *McGuinn Const. Mgmt., Inc. v. Espino*, Op. No. 2016-UP-138 (S.C. Ct. App. filed Mar. 23, 2016). This remand placed both actions in the circuit court for trial.

In the McGuinn action, we reverse the court of appeals and reinstate the circuit court's grant of summary judgment regarding the scope of the sewer easement and regarding McGuinn's claims for slander of title and tortious interference with a contract. We do so pursuant to Rule 220(b), SCACR, and the following authorities: *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 329, 673 S.E.2d 801, 802 (2009) ("Summary judgment is appropriate where there is no genuine issue of

material fact and it is clear the moving party is entitled to a judgment as a matter of law."); *id.* at 329-30, 673 S.E.2d at 802 ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party."); *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRPC."); *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016) ("[C]ross motions for summary judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties.") (quoting *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319 n.2, 731 S.E.2d 869, 872 n.2 (2012)); *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) ("Where cross motions for summary judgment are filed, the parties concede the issue before [the court] should be decided as a matter of law."); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing when the disposition of a prior issue is dispositive of an appeal, an analysis of the remaining issues is unnecessary).

Petitioners acknowledged at oral argument that the Town action is not before this Court and that there has been no ruling as to whether the circuit court order in the McGuinn action is binding on the Town. The Town action will be tried before the circuit court. *See Ellis by Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992) ("Under a consolidation order, the parties and the pleadings are not merged and each action retains its own identity.").

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
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EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

McGuinn Construction Management, Inc., Appellant,

v.

Saul Espino and Mara Espino, Respondents.

And

Saul Espino and Mara Espino, Respondents,

v.

Gates Commons, LLC, S. Wade McGuinn, Individually,
and Town of Lexington, Defendants,

Of whom Town of Lexington is the Appellant.

Appellate Case No. 2014-001519

Appeal From Lexington County
James W. Johnson, Jr., Circuit Court Judge
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2016-UP-138
Heard February 1, 2016 – Filed March 23, 2016

REVERSED AND REMANDED

Andrew F. Lindemann, of Davidson & Lindemann, PA, of Columbia, for Appellant Town of Lexington; and S. Jahue Moore and John Calvin Bradley, Jr., both of Moore Taylor Law Firm, P.A., of West Columbia, for Appellant McGuinn Construction Management, Inc.

John S. Nichols and Blake Alexander Hewitt, both of Bluestein Nichols Thompson & Delgado, LLC, of Columbia; and Andrew A. Aun, of Aun & McKay, PA, of Irmo, for Respondents.

PER CURIAM: In this consolidated action, McGuinn Construction Management, Inc. (McGuinn) appeals the circuit court's grant of summary judgment in favor Saul and Mara Espino (the Espinos) as to the scope of a sewer easement on their property. Additionally, McGuinn appeals the grant of summary judgment to the Espinos as to McGuinn's claims against them for slander of title and tortious interference with contract. The Town of Lexington (the Town) also appeals the circuit court's ruling as to the scope of the easement. In particular, it appeals the circuit court's refusal to vacate the summary judgment order because the Town did not participate in the summary judgment hearing. We reverse and remand.

1. Regarding the scope of the sewer easement on the Espinos property, we find the circuit erred in granting summary judgment. Summary judgment is a drastic remedy that should be cautiously invoked. *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Tupper v. Dorchester Cty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Id.* "In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *K & A Acquisition Grp, LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009). "The intention of the grantor must be found within the four corners of the deed. When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it. The instrument is not thereby varied or contradicted but is explained or corrected." *Id.* (quoting *Gardner v. Mazingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987)).

When a deed incorporates plans by reference, they should be read in conjunction with the deed itself. See *Fuller-Ahrens P'ship v. S.C. Dep't of Highways & Pub. Transp.*, 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993) (stating when a deed incorporates highway plans by reference, those plans and the notations thereon must be read with the deed). "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). "Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009) (citations omitted).

Ambiguities . . . are patent and latent; the distinction being that in the former case the uncertainty is one which arises upon the words of the will, deed, or other instrument as looked at in themselves, and before any attempt is made to apply them to the object which they describe, while in the latter case the uncertainty arises, not upon the words of the will, deed, or other instrument as looked at in themselves, but upon those words when applied to the object or subject which they describe.

Hann v. Carolina Cas. Ins. Co., 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969).

A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.

Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997).

The deed at issue demonstrates Coventry Associates, Inc. conveyed to the Town an easement for the maintenance of sewer lines located on property of the grantor

known as Coventry Lake Subdivision. The deed also specifically referenced "as-built" plans for further description of the easement. According to undisputed testimony and plats presented at the summary judgment hearing, the as-built plans show the sewer pipe at issue was an inactive spur line "to nowhere." The pipe was positioned to extend to land owned by Coventry Associates at the time of the conveyance and adjoining the Espinos' property. We conclude further inquiry into the facts surrounding the grant of the easement was necessary to determine the grantor's intent. Language in the deed, when applied to the object it describes, reveals a potential latent ambiguity rendering the grant of summary judgment as to the scope of the easement inappropriate in this case. Therefore we reverse and remand as to this issue.

2. With respect to the grant of summary judgment in favor of the Espinos on McGuinn's claims for slander of title and tortious interference with contract, we also reverse and remand. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Jones v. Lott*, 387 S.C. 339, 347, 692 S.E.2d 900, 904 (2010). However, "an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." *Penza v. Pendleton Station, LLC*, 404 S.C. 198, 206, 743 S.E.2d 850, 854 (Ct. App. 2013). When a case is at the summary judgment stage it is inappropriate for the appellate court to decide an issue when the facts and arguments are not fully developed. *See id.* (declining to affirm the grant of summary judgment on basis of additional sustaining ground when facts and arguments as to that issue had not been fully developed in the lower court).

The circuit court premised its rulings as to McGuinn's slander of title claim and tortious interference with contract claim on its conclusion regarding the scope of the sewer easement. Because we reverse and remand the scope of the easement issue, we also reverse and remand the grant of summary judgment on the slander of title and tortious interference with contract claims as any other sustaining grounds for these rulings were not fully developed in the circuit court.

3. With respect to the Town's contention the circuit court erred in refusing to vacate the summary judgment order because the Town did not have an opportunity to be heard regarding the scope of the sewer easement, we decline to address the issue. Because the cases involving McGuinn and the Town have been consolidated, and we remand the question of the scope of the easement, the Town will have an opportunity to be heard. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an

appellate court need not address appellant's remaining issues when its determination of a prior issue is dispositive).

REVERSED and REMANDED.

HUFF, A.C.J., and KONDUROS and GEATHERS, JJ., concur.