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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants Of Whom City of Greenville and Mayor Knox H. White are the Respondents/Appellants,...Respondents/Appellants.

SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

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INDEX

Index 1
City's Motion to Alter or Amend Judgment 2
Transcript of Record for October 26, 2011 Hearing, pp. 26-27...........................23
Certificate of Counsel 25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NUMBER: 2008-CP-23-2255
The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of all others similarly situated,	)	Motion to Alter or Amend Rule 59(e)
Plaintiffs,	)	
v.	)	
City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,	)	
Defendants.	)	

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The January 22, 2009 order from Judge Few states that there are complex issues involved in determining a boundary line in the mountainous region of the North Saluda Reservoir, issues so complicated that he devoted three pages to the matter (pages 2-4). The affidavit of Mr. McKinney discusses the same complexity and the research he was required to do (paragraphs 2-3) and adds in the political issues as well (paragraph 7).

The order also states that "at about the same time" that [Sloan] commenced this action, the City and The Cliffs had come to an agreement on the complex issue of the boundary line (page 5). The order notes that on April 28, 2008, the Greenville City Council issued an ordinance (second reading) formalizing the agreement. At that point, the pleadings were filed less than 30 days prior. In fact, the City's answer, filed April 23, notes that there was a first reading of the ordinance with the agreement on April 4, 2008. At the point of first reading, Sloan's pleadings were less than one week old. The ordinance at both readings clearly states that the parties have reached an agreement as to the boundary line separating the two properties.

Sloan did not like the agreement reached by City Council as he wanted the encroaching road removed instead of a transfer of property. He persisted in his lawsuit even though it is well established that Courts steadfastly restrain from supplanting their judgment for that of governing bodies which exercise lawful, discretionary authority in a manner that is both reasonable and legitimate.

He maintained his lawsuit along two fronts. The first line of attack was the validity of the transfer of property from the City to the Cliffs. The Court' order found that those claims were not valid (pages 8-11). The second line of attack was that the wrong boundary line was used. The Court stated, "The City and The Cliffs have mutually agreed upon the location of their common boundary. Therefore, the Court will not pass upon the wisdom of the City and The Cliffs. "

The cases cited by Sloan in argument for his attorney's fees all have the basic premise: The plaintiff is pursuing the lawsuit to force the governing body to do want is legally required under a specific law and the governing body refuses to do so until the last minute, thereby causing the plaintiff to expend the money on a lawsuit.

The matter before the Court differs in two very important ways from these cases. First, this is not an FOIA matter. There is not comparable state or local law requiring a governing body to act within a given time frame on a matter involving a property dispute. Second, this is not a case where the governing body was doing nothing. It is not refuted that long before Sloan's action was filed, significant research and negotiations were in progress to resolve the complex matter. A mere week after the lawsuit was filed, the first reading of an ordinance announcing a settlement was passed by City Council, said settlement could credibly have been resolved prior to any filing by Sloan.

It just wasn't the settlement Sloan wanted. And he spent money trying to get a court to get a governing body to adopt his time frame and his boundary line without any statutory authority for the Court to do so. And indeed, the Court refused to grant either, stating instead that this matter lies within the lawful, discretionary authority of City Council. The City Council came to a good settlement without Mr. Sloan's contributing in any way to any variation to that final settlement and therefore should not be awarded any attorneys' fees.

WHEREFORE, Defendant, City of Greenville prays the Court to deny the Plaintiffs' award of attorneys' fees and cost.

CITY OF GREENVILLE

Greenville, South Carolina

Date: March 12, 2012 BY:

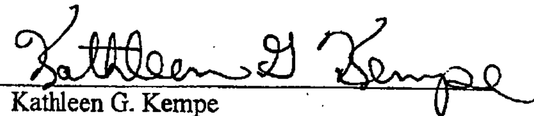

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Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, Individually and as Taxpayers of the City of Greenville, South Carolina, and on behalf of Others Similarly Situated, Plaintiffs, vs. City of Greenville, Knox H. White, Mayor, and The Cliffs at Glassy, Inc., Defendants.	Civil Action No. 2008–CP–23–2255 **OPINION & ORDER**

This matter came before the Court with a brief, but complicated, procedural history. This action was commenced on March 24, 2008. In May, the Plaintiffs filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. That September, the City of Greenville and Mayor White (collectively referred to as "the City") and The Cliffs at Glassy, Inc. ("The Cliffs"), moved respectively for summary judgment pursuant to Rule 56. On October 2, 2008, a hearing upon these motions was held, at which time the Court granted the Defendants' motions for summary judgment and denied the Plaintiffs' motion for judgment on the pleadings.[1]

[1] Prior to the October 2 hearing, but after the Defendants moved for summary judgment, the Plaintiffs filed a motion to supplement the Complaint pursuant to Rule 15(d). With the Defendants' consent, the Complaint was amended. Therefore, the Court's order of judgment against the Plaintiffs was based upon the First Amended Complaint.

On October 28, the Plaintiffs filed motions to alter or amend the judgment and to again, supplement the Complaint.[2] The Defendants opposed these motions. A hearing on this matter was held December 17, 2008.[3] After due consideration, the Court declined to alter its previous order granting summary judgment.

This opinion has been issued in order to explain the disposition of this case.

I. FACTUAL & PROCEDURAL BACKGROUND

This lawsuit involves the location of a common boundary between the City and The Cliffs, and a resulting property transfer that was intended to bring certainty to the location of that boundary. The line in dispute is a portion of the western boundary of the City's North Saluda Reservoir. The northern terminus of the boundary is located at a point on top of Corbin Mountain, which sits along the border between North and South Carolina. From the northern terminus, the boundary runs a southeasterly course to a point approximately two thousand feet away. Throughout this opinion, this southeasterly running line is referred to as "the Corbin Mountain Line."

The earliest known depiction of the Corbin Mountain Line is shown on map of northern Greenville County dating from 1918–1921. (Register of Deeds, Greenville County, S.C., Plat Book Y, Pages 114–18.) The map was drawn by Howard Wiswall, a civil engineer who had been retained by the Saluda Land & Lumber Company to identify

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[2] Procedurally, the Plaintiffs filed only one motion, which was for leave to supplement the Complaint. However, summary judgment cannot be set aside with a simple Rule 15 motion. Instead, the Plaintiffs must proceed under the more exacting Rule 59(e), which authorizes the filing of motions to alter or amend judgments that have not been reduced to a written order.

[3] The Plaintiffs attached a revised complaint to their motion for leave to supplement. This pleading was captioned as the Second Amended Complaint. However, immediately prior to the hearing on December 17, the Plaintiffs submitted a Third Amended Complaint for the Court's consideration. The Third Amended Complaint formed the basis of the Court's decision of December 17, 2008.

relative timber rights in mountainous portions of Greenville and Pickens Counties. Wiswall shows the Corbin Mountain Line running southeasterly from the top of Corbin Mountain at 20 degrees; however, the Wiswall map does not describe the terminal points of the Corbin Mountain Line with any evidence of or reference to monumentation.

In the 1950s, the City acquired the tract of land to the east of the Corbin Mountain Line. This tract was incorporated into and became a part of the North Saluda Reservoir. At that time, a crew working on behalf of the City attempted to mark the Reservoir's western boundary, which in this case, was the Corbin Mountain Line. The City's crew did this by leaving hacks and blazes on trees. In surveying, a tree with two marks (either hacks or blazes) indicates the course of a property line; a tree with three marks indicates a property corner. A number of trees along the Corbin Mountain Line were marked with two hacks or blazes, witnessing the location of the property boundary. One particular tree bears three markings, which indicates a property corner. This tree is located on a ridgeline approximately 2000 feet southeast of the crest of Corbin Mountain.

In 2000, The Cliffs acquired the tract of land to the west of the Corbin Mountain Line. A local surveying company, Lindsey & Associates, Inc. ("Lindsey"), was commissioned to survey properties acquired by The Cliffs. Lindsey conducted a survey of the Corbin Mountain Line, and identified the tree with three hack marks as its southern terminus. Lindsey created a plat of his survey, and identified the southern terminus of the Corbin Mountain Line as "Station 115."

Lindsey also tried to locate the northern terminus of the Corbin Mountain Line, which was believed to be the crest of Corbin Mountain. However, at some point in time, the mountain's historical crest had been graded and leveled for construction. This

affected the location of the Line in two ways. *First*, grading the crest of Corbin Mountain changed the mountain's geography and created a new crest on the mountain that differed in location from the historical crest. *Second*, the precise location of the historical crest was not preserved for future reference. Using historical evidence, Lindsey identified a location where he believed the historical crest to have been. This point was chosen as the northern terminus of the Corbin Mountain Line.

Lindsey's survey of the Corbin Mountain Line was consistent with the City's understanding of the location of its own property boundary. Lindsey and the City understood Station 115, the tree with three marks, to witness the southern terminus. Lindsey and the City also found that the northern terminus was the crest of Corbin Mountain. Finally, Lindsey's survey of the Corbin Mountain Line resulted in a line that followed the hacks and blazes left by the City's crew. Therefore, in reliance upon the undisputed location of the Corbin Mountain Line, The Cliffs began to develop its properties for residential estates.

In 2004, there was some concern that a roadway constructed by The Cliffs for the use of its residents crossed over the Corbin Mountain Line and encroached upon City property. Lindsey surveyed the alleged encroachment and found: (1) that the roadway did, in fact, encroach onto approximately 0.29 acres of City property, (Register of Deeds, Greenville County, S.C., Plat Book 1069, Page 58); and (2) that a fire tower constructed by the City appeared to encroach onto 0.04 acres of property owned by The Cliffs. At that time, neither the City nor The Cliffs took any action to exclude the other from their encroachments.

Four years later, the Plaintiffs commenced this civil action. The central cause of action alleged is for purpresture, a claim that is more broadly preserved today in the doctrine of public nuisance. Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 573, 614 S.E.2d 619, 620–21 (2005). Simply stated, a purpresture is an encroachment by private use upon public rights and easements. Lowcountry Open Land Trust v. South Carolina, 347 S.C. 96, 109, 552 S.E.2d 778, 785 n.8 (2001). Actions for purpresture are comparable to corporate derivative suits, in that citizens may bring actions on behalf of their government to enjoin unlawful, unrestrained encroachments onto public property. See, e.g., Sloan v. City of Greenville, 235 S.C. 277, 111 S.E.2d 573 (1959).

However, at about the same time that this action was commenced, the City and The Cliffs came to the following agreement: (1) that the Corbin Mountain Line would be established at the location depicted by Lindsey's 2004 survey; (2) that the 0.29 acres which encroached upon City property would be quitclaimed to The Cliffs; (3) that the 0.04 acres which encroached upon The Cliffs' property would be quitclaimed to the City; (4) that The Cliffs would reconstruct a fire tower on City property; and (5) that The Cliffs would pay the City (and parties related to the City) a certain amount in cash. The value of the consideration paid by The Cliffs to the City and related parties totaled $210,166.44.

On April 28, 2008, the Greenville City Council issued an ordinance that authorized the foregoing agreement. (City of Greenville, S.C., Ord. No. 2008-33.) Through this ordinance, the City was to "convey its interest in fee simple to approximately 0.29 acre[s] of real property on Mountain Summit Road, a private road, to The Cliffs at Glassy, Inc." (Id., § 2.) "The title conveyance by The City to The Cliffs at

Glassy, Inc., [was to] be in consideration of a payment from [T]he Cliffs at Glassy, Inc. . . ." (Id., § 3.) The City and The Cliffs were to "execute mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." (Id. § 5.) "The identification of the locations of these property transfers and recognition of the mutual boundary [were to] be based upon the same plats and legal descriptions as have been agreed to . . . ." (Id. § 7.) Finally, "[t]he City Manager [was] authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for . . . upon receipt of the payment described in Section 3." (Id., § 7.)

On June 19, 2008, the City Attorney signed a deed for 0.29 acres in favor of The Cliffs, and provided the deed to the closing attorney to hold in trust. Closing occurred on June 23, 2008. On June 24, the deed was duly recorded.

II. Disposition of the First Hearing

The hearing on October 2 was held as to determine: (1) whether the City had allowed an unlawful encroachment onto public property; (2) whether the City had acted without authority in transferring property to The Cliffs; and (3) whether the City's transfer of property had been unconstitutional pursuant to Article III, § 31 of the South Carolina Constitution. Summary judgment was entered against the Plaintiffs as to each of these claims.

A. Standard of Review

Summary judgment is to "be rendered forthwith 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." S.C. R. Civ. P. 56(c). To rebut a motion for summary judgment, the non-moving party must come forward with specific facts showing the existence of genuine, triable issues, and may not rest merely upon the allegations or denials set forth in his pleading. S.C. R. Civ. P. 56(e). If the non-moving party cannot set forth specific facts showing the existence of genuine, triable issues, summary judgment is proper. Id.

B. Summary judgment was properly granted with respect to purpresture pursuant to the doctrine of mootness.

The Plaintiffs contend that The Cliffs has unlawfully encroached onto municipal property, and that the City has failed to enjoin The Cliffs from continuing in the encroachment. However, the Defendants correctly argue that the issue of purpresture is moot. On June 23, 2008, The Cliffs received a deed for 0.29 acres from the City, thereby terminating any unlawful encroachment upon municipal property. (Register of Deeds, Greenville County, S.C., Book 2329, P. 817–20)

The Court will generally refrain from deciding issues that have become moot. Sloan v. Greenville County, ___ S.C. ___, ___ S.E.2d ___, 2008 WL 4693071, *3 (Ct. App. Oct. 22, 2008); Sloan v. South Carolina Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). A case becomes moot when judgment, if rendered, will have no practical legal effect. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

In this case, the Court was requested to declare that a purpresture existed with respect to the 0.29 acres that were the subject of the June 2008 conveyance. However, whether or not a purpresture may have existed at some point along the Corbin Mountain Line is irrelevant. The Court is concerned only with whether a purpresture continues to exist. The deed by which the City transferred property to The Cliffs removed any

condition of encroachment that may have been occurring. Once The Cliffs came into ownership of the property, it could no longer have been committing an encroachment.

In an action for purpresture, the only relief that can be obtained is an order enjoining further encroachment. However, The Cliffs now owns the very property that was the subject of encroachment. Under these circumstances, the Court will not order the rightful owner of property to quit his possession or surrender his title. Accordingly, summary judgment was properly granted with respect to the Plaintiff's action for purpresture.

C. <u>The June 2008 conveyance was not ultra vires and will not be rescinded.</u>

The Plaintiffs also claimed that the June 2008 conveyance was not properly authorized and should be set aside. However, the Defendants persuasively argued that the transaction was not ultra vires and should be sustained.

In relevant part, the enabling ordinance provides that "[t]he City Manager shall be authorized to approve and execute such deeds . . . upon receipt of the payment." (City of Greenville, S.C., Ord. No. 2008-33 ¶ 7.) On June 19, 2008, the City signed the deed regarding the property to be transferred to The Cliffs, and transferred the deed to the closing attorney to hold in escrow. On June 23, The Cliffs transferred the full amount of cash due and owing under the conveyance agreement to the escrow account of the closing attorney, whereupon the attorney made appropriate disbursements of real property and cash incident to closing. All deeds were recorded on June 24, 2008.

It is the Plaintiffs' contention that under the enabling ordinance, the City could not sign any deed until The Cliffs had rendered full performance of its obligations under the agreement. But this interpretation is inconsistent with the language of the ordinance.

The analysis begins with reference to familiar rules of statutory construction. "The cardinal rule of statutory construction is . . . to ascertain and effectuate the actual intent of the legislature," Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989), which in this case is the City Council. It is presumed that the legislature did not insert idle verbiage or superfluous language, but that each word of a legislative enactment is necessary, and that it has its own, independent meaning. Lee v. Thermal Eng'g Corp., 352 S.C. 81, 94, 572 S.E.2d 298, 305 (Ct. App. 2002).

The Plaintiffs contend that the phrase "approve and execute," as it is used in the ordinance, requires the City to withhold any act of approval or execution (such as signing a deed and tendering the deed to a closing attorney) until The Cliffs has rendered full performance. However, to accept the Plaintiffs' interpretation would require the closing between the Cliffs and The City to have occurred in a way that deviated from modern real estate practice. The process of most closings involves an escrow agent receiving consideration from the parties and making an appropriate, simultaneous distribution of cash and property. In fact, this is the way that the closing occurred between the City and The Cliffs on June 23, 2008.

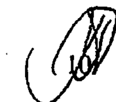
The more credible interpretation is the one provided by the City and The Cliffs. The Defendants distinguish between approval and execution and argue that approval is a condition precedent to execution. For the City to approve the property conveyance, it must lend its assent, which is evidenced by all necessary signatures. Approval was complete upon acquiring all necessary signatures; however, approval and execution were complete only upon the closing agent's simultaneous distribution of cash and property on June 23, 2008.

The Court is persuaded by the Defendants' interpretation. But even if that interpretation were not correct, the violation of the ordinance cited by the Plaintiffs is technical only, and would have no practical effect upon the outcome of an otherwise legitimate transfer of property.

D. The June 2008 conveyance did not violate the South Carolina Constitution.

The Plaintiffs further contend that the property transfer violated the South Carolina Constitution, specifically Article III, § 31, and should be set aside. However, Section 31 does not prohibit municipalities from making transfers of property to private corporations.

In relevant part, Section 31 provides that "[l]ands belonging to or directly under the control of the State shall never be donated, directly or indirectly, to private corporations . . . . Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals." S.C. Const. art. III, § 31. A clear line of precedents establish that Section 31 applies only to the State of South Carolina in its capacity as sovereign proprietor. It does not touch or concern lands owned by other governmental subdivisions, such as cities and counties. E.g., McKinney v. City of Greenville, 262 S.C. 227, 244, 203 S.E.2d 680, 689 (1974) (observing that Section 31 is "inapplicable" where "no lands belonging to or under the control of the State [in its capacity as sovereign proprietor] are involved"); Bobo v. City of Spartanburg, 230 S.C. 396, ___, 96 S.E.2d 67, 70 (1956); Haesloop v. City Council, 123 S.C. 272, 278, 115 S.E. 596, 598 (1923) ("[W]e think[] the reference in this constitutional provision is to public lands belonging to and controlled by the state in its capacity as sovereign proprietor.").



In addition, the Plaintiffs have provided no evidence to suggest that The Cliffs paid anything less than fair market value for the land that was conveyed. The evidence shows that the City was paid a very reasonable amount, over two hundred thousand dollars for less than one-third of an acre in northern Greenville County.

The Court is satisfied that the transaction between the City and The Cliffs was conducted at arms' length in a manner that was both fair and reasonable. The Court is further convinced that Section 31 does not restrict the sale of municipal property to private corporations. Summary judgment was therefore properly granted with respect to the constitutional claim.

III. DISPOSITION OF THE SECOND HEARING

After the Court entered summary judgment against the Plaintiffs on October 2, the Plaintiffs filed motions to alter or amend the judgment and to amend the Complaint. This time, the Plaintiffs took the position that the City and The Cliffs had come to an incorrect agreement about the location of the entire Corbin Mountain Line. According to the Plaintiffs, the Corbin Mountain Line should have been placed at a location further west. The Plaintiffs therefore claimed that a continuing encroachment existed along the entire length of the Corbin Mountain Line and should be enjoined.

Motions to alter or amend are made through Rule 59(e). The purpose of this Rule is to provide a means through which the Court may reconsider matters that were encompassed in a decision on the merits. Arnold v. South Carolina, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (citations omitted). However, this rule cannot be used to inject an issue into the case that was not previously before the Court, id., which the Plaintiffs appear to have attempted. To be specific, the first time that the Plaintiffs took

the position that the City and The Cliffs had come to an incorrect agreement about the location of the Corbin Mountain Line was after summary judgment had already been granted on October 2. This fact alone was more than enough reason to merit summary dismissal on December 17.

However, the Plaintiffs' motion to file an amended Complaint was denied on December 17 pursuant to an alternative procedural basis: claim preclusion. The doctrine of claim preclusion exists to bring a measure of finality to repetitive litigation. See, e.g., Garris v. Governing Bd., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). It is generally applicable when: (1) the parties in subsequent litigation are the same as those in prior litigation; (2) the subject matter in subsequent litigation is the same as that in prior litigation; and (3) the prior litigation was resolved through a prior adjudication by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250, 452 S.E.2d 832, 833 (1994).

On October 2, the Defendants were awarded summary judgment with respect to purpresture on the procedural grounds of mootness. As previously addressed, the issue before the Court on October 2 was moot because the City had made a proper conveyance of land to The Cliffs which resolved any unlawful encroachment. The conveyance was based on the location of "the common property line," (Register of Deeds, Greenville County, S.C., Deed Book 2329, Page 817–20), which was itself a reference to Lindsey's survey of the location of the Corbin Mountain Line, (id., Plat Book 1069, Page 58). This deed, as well as the ordinance that enabled the City's conveyance, (City of Greenville, S.C., Ord. No. 2008-33), establish a mutual intent to regard Lindsey's survey of the Corbin Mountain Line as the recognized boundary between the City and The Cliffs. This

fact was necessarily decided by the Court on October 2 in determining that any claim of unlawful encroachment had been mooted.

As of the December 17 hearing, the claim remained moot. There were no new or additional facts that occurred which could have changed the legal relationship among the parties to this action. Instead, the Plaintiffs had requested that the Court review the prudence of the City's decision to establish the location of the Corbin Mountain Line according to Lindsey's survey. But to exercise such review would far exceed the scope of the Court's proper judicial function. As a matter of sound judicial policy, the Court steadfastly refrains from supplanting its judgment for that of a governing political body which has exercised lawful, discretionary authority in a manner that is both reasonable and legitimate.

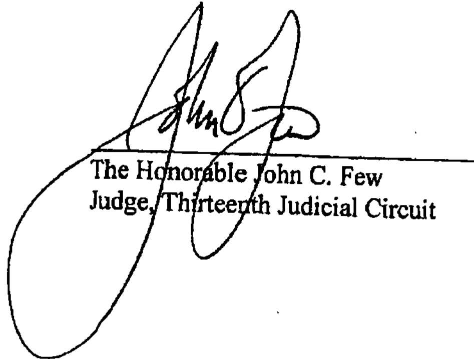
The City and The Cliffs have mutually agreed upon the location of their common boundary. Therefore, the Court will not pass upon the wisdom of the City and The Cliffs in giving preference to Lindsey's survey to establish that line. Instead, the scope of the Court's review is limited to whether an unlawful encroachment exists with regard to the line that was actually agreed to.

In this case, there is no unlawful encroachment. Any purpresture that may have existed was resolved by the transfer of property in June 2008. That transfer mooted the purpresture issue pending before the Court on October 2, and it remained moot on December 17. A claim that has been deemed moot remains moot, and due to the doctrine of preclusion, cannot support a subsequent action without some change in material fact.

IV. Conclusion

For the foregoing reasons, summary judgment was entered in favor of the Defendants on October 2, 2008. The Plaintiffs' motion for judgment on the pleadings was denied. Additionally, the Court declines the invitation to reconsider its previous decision, and shall not grant the Plaintiffs leave to amend the Complaint.

It is SO ORDERED.



The Honorable John C. Few
Judge, Thirteenth Judicial Circuit

Entered this 22 day of January 2009

Exhibit B

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF GREENVILLE)

PERSONALLY appeared before me the undersigned who, being first duly sworn, Deposes and says that:

1. He is Ronald W. McKinney, City Attorney for the City of Greenville. He has held the position of City Attorney at all relevant times during the dispute and negotiations relevant to an encroachment upon property on Corbin Mountain near the North Saluda reservoir. The property is titled in the name of City of Greenville and managed by the Greenville Water System. This affidavit is not intended to waive any attorney-client confidentiality but offered for the limited purpose of establishing a time line and the circumstances associated with the resolution of an encroachment.

2. In his capacity as city attorney, the affiant learned that some type of encroachment occurred on the periphery of the North Saluda Reservoir property sometime in 2005, when a proposed settlement agreement was forwarded to the City for signature. The Water System board had settled for $5,000 and a Fire tower. The Nature Conservancy had agreed to accept $50,000 for the encroachment upon its conservation easement. There was no provision at all for the City receiving a settlement in the document forwarded to the City for signature. The City government had not been officially notified by the other parties of the encroachment or of the negotiations for settlement.

3. The affiant began inquiry into the facts, and learned the boundary line was not clearly identifiable, and that there was a genuine issue of fact as to whether there had been *any* encroachment at all. The terrain is very steep, the deed descriptions were those generally used in Northern Greenville County in the 1950's, and the description markers were not clearly decipherable. The affiant met with Water System personnel, studied documents relating to the acquisition of the property with Water system revenue under the terms of a revenue bond issued in the name of the City of Greenville but supported solely by Water System revenue. The affiant studied the underlying boundary descriptions and such plats as were maintained in Water System offices.

4. Over the next several months, he interviewed on more than one occasion Water System personnel who were familiar with the circumstances of the encroachment. He also met at the site key Water System personnel, Mr. Jim Anthony, Mr. Anthony's surveyor, two members of Council, at least one representative of the Nature Conservancy, and concerned environmentalists in order to make judgments about the disputed measurements of the confusing boundary line. He also reported periodically to Council in executive session on the details and the strengths and weaknesses of the parties' respective legal positions. There were divergent views as to the merits on the part of all key participants.

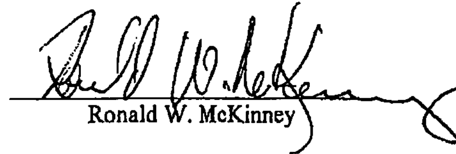
5. The City Attorney's Office retained the professional services of Mark Ratchford, a certified MAI appraiser, to advise on the value impact of the encroachment, which was a small geographical area. After holding discussions with Mr. Ratchford following his study and reaching a conclusion, the affiant realized that the City Attorney's Office was not likely to be able to present any expert evidence that there was any measureable impact on the value of the reservoir proeprty.

6. Information received from the Nature Conservancy, which has a conservation easement on the

land in question, indicated to the affiant that "taking up" the road as constructed would have a far more adverse environmental impact than allowing it to remain.

7. The affiant nonetheless undertook negotiations with Mr. Jim Anthony by telephone and in person on a settlement amount. The negotiations were protracted in part because various financial figures taken to the City Council did not result in a readiness by the affiant to put the settlement document on the agenda for Council action. Eventually the affiant and Mr. Anthony negotiated a settlement of $100,000 payment to the City for the road encroachment. The City Council dedicated the sum to a resolution of future boundary issues on reservoir related proeprty. The affiant's study of the relevant law and detailed facts as well as his negotiations and conversations with Council started long prior to the filing of the lawsuit by Mr. Sloan. Those negotiations and conversations made substantial progress long before Mr. Sloan filed his law suit in March 2008. City Council passed an ordinance settling the matter in April 2008.

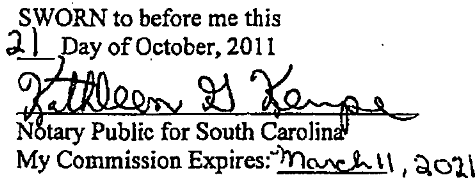
8. Mr. Sloan never came to Council with a request to settle or with a suggested settlement. There is no reflection in the pleading s of Mr. Sloan of an understanding of the respective legal interests of the Greenville Water System, the Nature Conservancy, or the City of Greenville.



DATE: Oct. 21, 2011

Ronald W. McKinney

SWORN to before me this
21 Day of October, 2011



Notary Public for South Carolina
My Commission Expires: March 11, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE) CASE NUMBER: 2008-CP-23-2255

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of all others similarly situated,

Plaintiffs,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc.,

Defendants.

Certificate of Service

I hereby certify that the **MOTION TO ALTER OR AMEND RULE 59(e) OF DEFENDANT, CITY OF GREENVILLE,** was served on the Plaintiffs through Plaintiffs' attorney, James G. Carpenter, by placing a copy of the same in the United States Mail with proper postage affixed this 12th day of March, 2012 and addressed as follows:

James G. Carpenter, Esquire
The Carpenter Law Firm, P.C.
819 East North Street, Suite 230
Greenville, SC 29601

BY: Nadiya Myers
Nadiya Myers
Administrative Assistant
City of Greenville
Office of the City Attorney
P.O. Box 2207
Greenville, SC 29602

1 MR. CARPENTER: For the Court's reference, a lot of
2 the facts I was listing are in a motion to amend filed in
3 February of 2009.
4 THE COURT: Okay. Thank you all.
5 ****************END OF TRANSCRIPT OF RECORD***************
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CERTIFICATE OF REPORTER

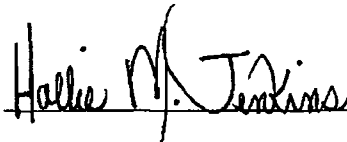
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 26th day of October, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 15, 2012

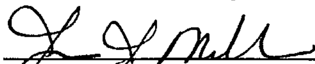


Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

Certificate of Counsel

Appellant/Respondent certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Jennifer J. Miller, Esq.
S.C. Bar No. 13611
Carpenter Law Firm, PC
819 E. North St.
Greenville, SC 29601
(864) 235-1269
Attorney for Appellant/Respondent

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

Appellate Case No. 2012-212137

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated,.. Appellants/Respondents,

v.

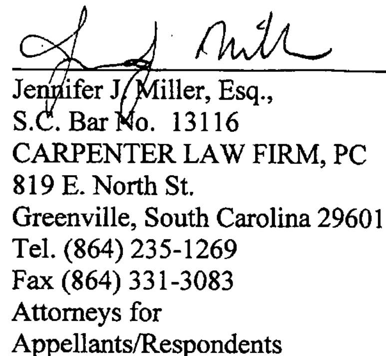
City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants, Of Whom City of Greenville and Mayor Knox H. White are the Respondents/Appellants,...Respondents/Appellants.

RECEIVED
JUN 06 2013
SC Court of Appeals

PROOF OF SERVICE

The undersigned attorney hereby certifies that she caused to be served the Supplemental Record on Appeal upon counsel for the Respondents by US Mail, postage prepaid this Friday, May 31, 2013, addressed as follows:

Kathleen Kempe
City Attorney's Office
P.O. Box 2207
Greenville, SC 29602
February 11, 2013



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