

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	C/A NO.: 2016-CP-29-00467
	)	
NBI Investments III, LLC, d/b/a McClancy	)	
Seasoning Company,	)	
	)	
Plaintiff,	)	
	)	<b>ORDER TO DISMISS WITH</b>
vs.	)	<b>PREJUDICE</b>
	)	
Lancaster County, South Carolina,	)	
	)	
Defendant.	)	

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**Apr 30 2020**  
**SC Court of Appeals**

This matter come before the Court on Defendant Lancaster County, South Carolina’s (“Defendant”) Motion to Dismiss filed on January 14, 2020. A hearing took place on March 16, 2020, at which time G. Murrell Smith, Jr. appeared on behalf of Defendant and Gregory J. English appeared on behalf of Plaintiff NBI Investments, III, LLC d/b/a McClancy Seasoning Company (“Plaintiff”). The Court has reviewed the submissions of the parties and heard arguments on this matter, and, for the reasons discussed herein, grants Defendant’s Motion to Dismiss.

**PROCEDURAL HISTORY**

Plaintiff operates a spice processing and distribution business at 182 Spice Road, Fort Mill, South Carolina (TMS # 0010-00-001.00) in Lancaster County. The property was zoned R-15, a residential zoning designation, on September 28, 1998, when the Lancaster County Unified Development Ordinance was adopted. The property was later downzoned from R-15 to R-15P, a lower density zoning designation, by ordinance adopted on July 25, 2005.

On March 25, 2015, Plaintiff filed an application seeking to rezone the property from R-15P, a residential designation, to I-1, light industrial designation, to allow for expansion of

Plaintiff's industrial operations on the property. Lancaster County Council denied the rezoning application on December 14, 2015, leaving Plaintiff's property zoned R-15P.

As a result of the denial of Plaintiff's rezoning application, Plaintiff filed the instant suit on April 19, 2016. Plaintiff's first cause of action alleges that Plaintiff has vested rights in the subject property such that Plaintiff is entitled to injunctive and declaratory relief regarding the zoning designation, alleging that the zoning designation should be I-1. Plaintiff's second cause of action essentially alleges that, if the residential zoning designation stands, Defendant has enacted a taking by inverse condemnation. Plaintiff also sought an order requiring Defendant to issue a permit for Plaintiff's building plans in an Amended Complaint filed on December 28, 2016.

In January 2017, the parties entered into a consent Order Staying Case, which the Honorable Brian Gibbons signed on January 17, 2017, providing, among other provisions, that: "If the rezoning application has been approved on or before April 14, 2017 the lawsuit will be resolved and the parties shall proceed to dismiss this action." Lancaster County Council passed an ordinance on March 27, 2017, that rezoned Plaintiff's property from a residential zoning designation to light industrial zoning designation. After the rezoning, Plaintiff resubmitted plans to Defendant for a building permit to complete the expansion on the property. Defendant denied the plans, sending a letter to Plaintiff noting deficiencies in the plans.

Defendant filed the instant Motion to Dismiss with Prejudice on January 14, 2020, after Plaintiff refused to dismiss the case with prejudice. As outlined below, the Court grants Defendant's Motion to Dismiss with Prejudice in accordance with the January 17, 2017 Order Staying Case.

#### APPLICABLE LAW

"No agreement between counsel affecting the proceedings in an action shall be binding

unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.” Rule 43(k), SCRCP. “This rule ‘is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation’ and ‘to relieve the court of the necessity of determining such disputes.’” *Kinghorn as Tr. for the Mildred Ann Kinghorn Tr. dated 28 Apr. 2004 v. Sakakini*, 426 S.C. 147, 152–53, 825 S.E.2d 748, 751 (Ct. App. 2019) (quoting *Ashfort Corp. v. Palmetto Constr. Grp., Inc.*, 318 S.C. 492, 494, 458 S.E.2d 533, 534 (1995)).

It has long been the policy of the [C]ourt to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.

*Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992).

#### DISCUSSION

The Court finds the agreement entered into by the parties was proper and binding pursuant to Rule 43(k) as it was reduced to the form of a consent order, signed by counsel for both parties, and entered into the record. The parties agreed that if Defendant approved Plaintiff’s rezoning application on or before April 14, 2017, the instant case would be fully resolved and the parties would dismiss the action. Contrary to Plaintiff’s argument, Defendant’s obligation to rezone Plaintiff’s property was the only condition precedent to dismissal of this case according to the agreement. There is no indication in the Consent Order that the parties agreed that Defendant must approve Plaintiff’s building plans and issue a building permit prior to dismissal of this suit. Instead, the plain language only required rezoning prior to dismissal. In fulfillment of its obligation under the Consent Order, Defendant passed an ordinance on March 27, 2017, that

rezoned Plaintiff's property from a residential zoning designation to a light industrial zoning designation.

However, Plaintiff has improperly refused to dismiss the instant case with prejudice. Although Plaintiff has offered to dismiss the case without prejudice, the Court finds the consent order and binding agreement between the parties contemplates the parties dismissing the case with prejudice. According to the Consent Order, the approval of the rezoning application by April 14, 2017 would resolve the lawsuit, which necessarily includes all causes of actions contained therein. Thus, the plain language used in the Consent Order shows all issues in the instant action are now resolved, and there are no remaining issues contained in this action for Plaintiff to reassert. *See Collins v. Sigmon*, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989) ("A dismissal of a case 'without prejudice means that the plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal. By contrast, dismissals with prejudice are intended to bar relitigation of the same claim.'" (quoting FRIEDENTHAL, KANE & MILLER, CIVIL PROCEDURE 651 (1985))). As Lancaster County has complied with the only condition precedent contained in the Consent Order and binding agreement between the parties, the Court finds dismissal of this action in its entirety and with finality is warranted.

Accordingly, Defendant's Motion to Dismiss with Prejudice is **GRANTED**, and this case is hereby **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



Lancaster Common Pleas

**Case Caption:** NBI Investment III, LLC , plaintiff, et al VS Lancaster County, SC  
**Case Number:** 2016CP2900467  
**Type:** Order/Dismissal

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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