

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 Town of Lexington South Carolina,)
)
 Plaintiff,)
)
 v.)
)
 Patty Cox Wingard, as Trustee for PLCW)
 Trust, and Scott's Furniture Company, Inc.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-03352

ORDER

RECEIVED

Jul 29 2020

SC Court of Appeals

Patty Cox Wingard, as Trustee for PLCW Trust, and Scott's Furniture Company, Inc. ("Defendants") filed a Rule 59(e) Motion and Motion for Reconsideration, in response to the Court's Order filed on May 4, 2020. Town of Lexington South Carolina ("Plaintiff") responded to Defendant's Motion to Reconsider.

DISCUSSION

Defendants seek reconsideration of the Order arguing: (1) the Court did not rule on the Defendant's counterclaim to return the water line if the Contract was rescinded by the Town; and (2) the Court erred when it decided that the words "heirs and assigns" contained in the Agreement between Wingard and the Town do not create a permanent agreement.

1. Defendants' Counterclaim

The Defendants brought a counterclaim asserting: if the Agreement is not enforceable, the Town must return the consideration given – ownership and control of the water lines – to it for entering into the Agreement. (Def. Ans. ¶19(d), (e)). Defendants, in their Answer, wanted the Court to declare that the Wingard family owned the water lines that were the subject of the 1961 Agreement and the 1961 Resolution. (Ans. ¶19(f)) Further, the Wingard family was seeking to charge a reasonable fee for the Town using the water line to deliver water to its customers. (Ans. ¶19(g)). The Defendants argue the Court did not address the counterclaim in the May 4, 2020 Order.

The Town argues that the two documents – the 1961 Agreement and the 1961 Resolution (collectively "1961 Agreements") – relate to different water lines. (Pl. Response p. 2-3). The 1961 Agreement allowed Wingard to connect a six inch line to the new six inch line the Town was

installing in 1961 along Northwoods Road to extend water to the Lakewood area - Georgia Lane Road. The Town's water project, called Northwoods Waterline Project, began in 1961 and was finished in 1962. The project installed six inch water lines from Wessinger Drive to Highway 378 and 565 feet on a portion of Northwoods to Hamilton Street.

The October 1961 Resolution allowed Wingard to "take up" the old two inch line along Northwoods Road (which was replaced by the Town's six inch line). The Resolution further allowed Wingard to use the old two inch line on Hamilton Street to provide water service to Lakewood subdivision. The Lakewood subdivision was developed north of Northwoods Road, except Block E, where Scott's Furniture is located, which is on the south side of Northwoods Road. The two inch line Wingard installed on Hamilton Street does not touch or intersect the property upon which Scott's Furniture Store sits.

Defendants Exhibit 5 is a 1958 plat of the Lakewood subdivision. It shows that Hamilton Street runs parallel to Northwoods Road (delineated on the plat as S.C. Hwy. No S-32-392). The October 1961 Resolution referencing the two inch line to be installed on Hamilton Street has no relationship to the September 1961 Agreement that involves the six inch line Wingard installed on Georgia Lane to connect to the Town's line on Northwoods Road. Georgia Lane Road intersects both Hamilton Street and Northwoods Road. All of these streets are north of the Scott's Furniture property. Georgia Lane Road and Northwoods Road intersect at the rear entrance of Scott's Furniture property.

Scott's Furniture property is serviced by the six inch line on Northwoods Drive that was installed by the Town during the 1961 Northwoods Waterline Project. When Scott's Furniture property was developed in 1972, the lines from the property were connected to the six inch line on Northwoods Drive. The 1961 Agreements do not refer to any property contiguous to the Town. The Town is not seeking to annex the property affected by the 1961 documents. Wingard received the benefit of his bargain.

Defendants assert that the contract was rescinded and therefore, they are entitled to be returned to the *status quo ante*. Rescind, as it relates to a contract amounts to the unmaking of the contract, or undoing of it from the beginning, not merely a termination. *Black's Law Dictionary* (5th Ed. 1979). It is declaring the contract void in its inception, putting an end to it as though it never was. *Id.* The parties performed under the 1961 Agreements. They received benefit from the agreements since 1961. The sole issue before the Court was to construe the contract and

determine whether the Town was required to continue to provide water service in perpetuity. The parties cannot be returned to the *status quo ante*.

Based upon the interpretation of the agreements between the parties, the allegations in the Defendants' Answer and Counterclaim are inconsistent with those documents and the decision of the Court, thus must be denied.

2. Perpetuity of the 1961 Agreement

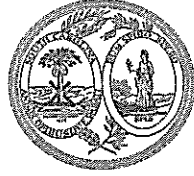
The Court determined the 1961 Agreement is silent as to express terms creating a perpetual nature of the agreement. After careful consideration of the record in this case and the arguments raised by Defendants, this Court is unable to discover any new material fact or principle of law that was either overlooked or disregarded in the previous Order on this issue.

ORDER

Therefore, it is **ORDERED** that Defendants' Counterclaim is **DENIED** and the Motion to Reconsider is also **DENIED**.

AND IT IS SO ORDERED!

Signature page to follow.



Lexington Common Pleas

Case Caption: Town Of Lexington South Carolina VS Patty C Wingard Trustee
Plcw Trust , defendant, et al
Case Number: 2018CP3203352
Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP3203352

Official File Stamp: 07-15-2020 02:39:30 PM
Court: CIRCUIT COURT
Common Pleas
Lexington
Case Caption: Town Of Lexington South Carolina VS Patty C Wingard Trustee Plcw Trust , defendant, et al
Document(s) Submitted: Order/Other Order/Other
Filed by or on behalf of: Alison Lee

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Clifford O. Koon, Jr. for Town Of Lexington South Carolina
Bradford T. Cunningham for Town Of Lexington South Carolina
James Edward Bradley for Patty C Wingard Trustee Plcw Trust et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means: