

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON

CIVIL ACTION: 2017-CP-25-00170

THE STATION, INC., D/B/A COMPANY  
TWO, INC.

FINAL ORDER

PLAINTIFF,

v.

HAMPTON COUNTY,

DEFENDANT.

Company Two brought this lawsuit against Hampton County in 2017 alleging causes of action for breach of contract, specific performance, and promissory estoppel. The case proceeded to a jury trial on May 24, 2021. At the conclusion of Company Two's case, County moved for a directed verdict on all causes of action. The court granted County's motion as to the breach of contract and specific performance causes of action, and dismissed the jury for the court to consider the remaining equitable cause of action for promissory estoppel. At the conclusion of County's case, County renewed its motion for a directed verdict. The parties requested additional time to submit written briefs regarding the remaining legal issues, and the court took the matter under advisement.

After reviewing the memoranda, exhibits, and relevant case law, the court finds in favor of County.

#### FINDINGS OF FACT

In 2005, Quincy Jones began negotiations with Hampton County to relocate his business Company Two to Hampton County. On October 12, 2005, the Executive Director of the Hampton County Economic Development Commission, Jim Daniel, wrote to Mr. Jones regarding the company's relocation. The letter states, in relevant part:

Hampton County is excited about the prospect of having Company Two Fire locate here. You requested that certain commitments be made by the county to assist you in making a decision about locating in the Gemco building at 283 Foster Road in Varnville.

Hampton County has authorized me to make the following commitments to you concerning the Hampton-Varnville Airport. **Hampton County agrees to provide you with a private taxiway right to use from the northeast tip of the airport to the Gemco property line. The county also agrees to clear and rough grade the taxiway to the Gemco property line.** The county also plans to move forward with improvements

to the airport including the installation of runway lights as soon as possible. During discussions with Administrator Sabrena Posey Graham, Airport Commission Chairman Lee Ellis and myself in earlier this year it was indicated that the county desires to obtain a portion of the Gemco property adjacent to the airport to facilitate necessary upgrades. We would appreciate your commitment to grant this portion of property to the county provided we give you a similar amount of acreage to the west or southwest of the Gemco property. By way of letter, Hampton County Council concurs with that request. [Plaintiff's Ex. 1]

This lawsuit centers around the meaning of the October 2005 letter. Company Two contends this was an unambiguous promise to give Company Two a perpetual right to use the entire airport property to test its Airport Rescue Firefighting vehicles. County argues the letter was an offer to grant Company Two an easement for a private taxiway from the Gemco property line to the airport runway, in exchange for County's commitment to swap a portion of the Gemco property adjacent to the airport with a comparable parcel of County-owned land adjacent to the Gemco property.

I find that the October 2005 letter was an offer to engage in a property swap with Company Two if it relocated the business to the Gemco property and to provide Company Two with a private taxiway from its property line to the airport runway. I further find that County made good on this offer by entering into a written agreement with Company Two in 2011 detailing the proposed property swap, construction of the taxiway, and grant of an easement to Company Two for the taxiway, and by executing and recording the appropriate documents in 2015 to conclude this agreement.

Company Two is in the business of refurbishing fire trucks so that they can be certified and sold as Airport Rescue Firefighting vehicles (ARFFs). Company Two needs to use the airport runway in order to perform the required speed testing for its ARFF trucks. Company Two, through its owner Quincy Jones, contends that he relocated his business to Hampton County based on the County's promise to allow him the use of the entire airport runway and property to test his trucks.

On October 17, 2005, Q & J Properties (also owned by Quincy Jones) purchased the former Gemco property in Hampton County, and Company Two began operating from that location. [Plaintiff's Ex. 3] In 2011, Hampton County Council introduced an ordinance to swap some property with Company Two, and to give Company Two an easement across County's property for a taxiway. First reading of the proposed ordinance took place at the February 22, 2011 County Council meeting [Def. Ex. 2], and second reading took place at the March 21, 2011 meeting. [Def. Ex. 3]. Third reading of the ordinance and a public hearing took place at the April 18, 2011 County Council meeting. [Def. Ex. 4]

The minutes of the April 18, 2011 Hampton County Council Meeting contain a Memo from Sandy Fowler, the Economic Development Director for Hampton County at the time. The Memo pertains to the Agenda item "Third Reading – Ordinance 2011-001," and states, "In 2005, Hampton County committed to providing a taxi way to Company Two if they would locate here. In addition, Hampton County asked Company Two to swap land parcels with them so that

Hampton could obtain land near the runway that is needed for FAA clearance. For various reasons, this transaction has never been done. **Company Two is asking that the promise be fulfilled, the land parcels swapped, and the taxiway be created.**” Under the “Points to Consider” section, the memo further states, “Hampton County made this commitment in writing, and it needs to be honored. **Since the commitment is to build a taxi way to Company Two’s property line**, the land parcels need to be swapped before the taxi way is created. Council is being asked to approve an Ordinance to transfer a parcel to Company Two and receive a parcel from Company Two (sketch attached). The Hampton County Attorney, Company Two and their attorney have developed a detailed agreement to finalize this arrangement. Council is being presented with and asked to approve the agreement under a separate agenda item.” An attachment to the memo contains a plat showing the location of the proposed taxiway from the end of the runway nearest Company Two’s property to Company Two’s property line. [Def. Ex. 8] The ordinance received unanimous approval. [Def. Ex. 4, 7]. Nothing in the ordinance or in the minutes of the Council meetings refer to Company Two requesting use of the airport runway for the testing of its trucks, in the form of a lease, easement, license, or any other “right to use.”

On June 23, 2011, Company Two and County entered into an Agreement to swap the properties, and for County **“to construct a taxiway for access by Company Two to the paved runway.”** [Def. Ex. 12]. Paragraph 5 of the Agreement obligates County to **“clear, rough grade and initially grass a taxiway from Parcel B to the paved runway** of the Hampton County Airport, and shall grant Company Two an easement in gross of a commercial nature **for the sole and exclusive use of the taxiway** by Company Two and its heirs, successors, and assigns.” Paragraph 11 states, “This Contract contains the entire understanding and agreement between the parties. It shall not be modified or amended in any way except by a written instrument executed by both parties.” No mention is made in the Agreement for an easement, lease, license, or any use of the airport runway or property other than the proposed taxiway.

In 2015, the respective deeds were recorded to execute the property swap. [Def. Ex. 13 and 14]. In addition, an Easement Agreement was executed in December of 2014 and recorded in March of 2015. [Def. Ex. 15] This Easement Agreement gives Company Two “an easement in gross of a commercial character for the purpose of vehicular and airplane access to and from the Hampton County Airport runway from the Grantee property.”

County Administrator Sabrina Posey Graham testified she became aware that Company Two was using the airport runway to test its ARFF vehicles in 2015 when she received reports from a pilot of fire-suppressing foam on the runway. Shortly thereafter she instructed Company Two to keep the ARFF vehicles off of the airport runway.

In October of 2015, Quincy Jones wrote to the Hampton County Airport Commission requesting that Company Two be allowed continued use of the runway. In this letter he states “the big reason we (Co2 Fire) chose the property adjacent to the county airport was twofold, (1) having direct access to the airport itself & (2) the willingness of Hampton County officials to help us grow as a company in any way they could as the governing body of the airport. . . Up until recently, Hampton County Admin has cooperated with us in any way they could. Recently, Rose asked us to stay clear of the runways & we have done so but now this request is starting to increase our production costs dramatically . . . **When Co2 Fire agreed to purchase this**

**property, the sale was contingent upon several conditions, one of which was that Hampton County would build us a grassed taxiway to the runway itself (they agreed & did so). Co2 Fire has used and maintained it since day one without incident.” [Def. Ex. 20]**

Jones wrote a subsequent letter to the Commission in February of 2016 again requesting that Company Two be allowed continued use of the runway and addressing Commission members’ concerns. [Def. Ex. 19] In the letter, Jones offers to pay for the use of the runway for testing the ARFF vehicles. At no time in either the 2015 or 2016 letter does Jones complain that he was promised perpetual use of the runway as an incentive to Company Two in Hampton County. Jones’ request was ultimately denied by both the Airport Commission and the County Administrator, citing concerns with allowing these large vehicles to operate on an active runway. [Def. Ex. 21 & 22].

### PROMISSORY ESTOPPEL

Promissory estoppel is a “quasi-contract” remedy. Higgins Constr. Co. v. S. Bell Tel. & Tel. Co., 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981). Courts have used the doctrine where the refusal to apply it “would be virtually to sanction the perpetration of a fraud or would result in other injustice.” Satcher v. Satcher, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct. App. 2002). To prevail in a cause of action for promissory estoppel, Plaintiff must prove (1) a promise unambiguous in its terms, (2) reasonable reliance upon the promise, (3) the reliance is expected and foreseeable, and (4) the party to whom the promise is made sustains injury in reliance on the promise. North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 241 (2015).

Based on the language of the 2005 letter, the language of the proposed Ordinance and accompanying documents, the documents executed in 2015, and in Jones’ own letters to the Airport Commission, I find that the language of the 2005 letter was a promise to give Company Two exactly what the County ultimately provided - a grassed taxiway for Company Two’s private use from his property line to the airport runway. When either of the parties refer to the commitments made in the 2005 letter, they uniformly refer only to the County’s promise to construct a grassed taxiway. No reference is made in the 2005 letter, in the minutes of any County Council meeting, in the proposal to County Council submitted by Economic Development Director Sandra Steele-Fowler, or in Company Two’s own correspondence to the Airport Commission to any promise to allow Company Two to use the runway or other airport property for business purposes to test his ARFF vehicles. The very language of the offer of a “private taxiway right to use” contradicts Company Two’s assertion that it covered the entire runway. If the right encompasses the entire public airport runway, then it cannot also be a “private taxiway” in any sense.

Assuming *arguendo* that the County had made such a promise in the 2005 letter (although this court specifically finds that the evidence does not support this notion) any agreement to provide a permanent easement, license, or permanent “right to use” for the airport runway should have been included in the 2011 written agreement. The 2011 agreement sets forth the parties’ respective obligations regarding the property, and contains language that the

contract contains the entire understanding between the parties, and cannot be modified or amended except by a written instrument. Any promise made prior to this comprehensive written agreement, yet inexplicably not included in the agreement, cannot form the basis of a claim for promissory estoppel.

The South Carolina Supreme Court reached a similar result in North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 769 S.E.2d 237 (2015). North American Rescue Products (NARP) brought a declaratory judgment action to determine whether Richardson had the right to purchase NARP's stock at a discounted price, despite the existence of a termination agreement which purported to end the parties' relationship. The court found the trial court erred in denying NARP's motion for directed verdict as to Richardson's promissory estoppel claim, holding that the Termination Agreement severed any agreements between the parties. The Termination Agreement thus precluded any promissory estoppel claim that could have arisen between the parties before its execution. Similarly, in this case the parties executed the 2011 Agreement memorializing their understanding, which states it is the entire agreement. Any promises made prior to the written agreement, but not included in the 2011 written agreement, cannot form the basis of any promissory estoppel claim.

In addition, I find that any promise made by the Economic Development Director without the formal approval of County Council cannot form the basis of a promissory estoppel claim. Public hearings, after reasonable public notice, must be held before final council action is taken to sell, lease, or contract to sell or lease property owned by the county. S.C. Code Ann. § 4-9-130(6). Company Two claims a permanent right to use the public airport runway to conduct his private business, including speed-testing his ARFF vehicles on the runway. Company Two offered the testimony of Jim Daniel and former County Councilman Willard Wilson, who testified that Company Two's use of the airport runway to test his firetrucks was discussed and approved during an Executive Session of County Council in 2005, and that Council approved Company Two's use of the runway for this purpose in Executive Session. I find that Hampton County could not permanently burden public lands by giving Company Two a right to use the airport runway for its private business in perpetuity, without a full public hearing. See Davis v. Greenwood School Dist., 365 S.C. 629, 620 S.E.2d 65 (2005) (A promise of a government body, on which promissory estoppel is to be based, must be made in compliance with the law and procedures of the body.).

I find that the October 2005 letter was, in essence, an offer to agree in the future. It lacks the material terms of the agreement, such as exactly which parcels of property would be swapped. It refers to unspecified improvements to the airport in the future with the only time frame for those improvements being "as soon as possible." Most notably, if the court were to adopt Company Two's reasoning, then the commitment to give Company Two a "private taxiway right to use" the entire airport runway lacks a duration. In the absence of a duration, Company Two is asking the Court to assume the right continues upon public lands in perpetuity. An agreement which leaves open material terms is unenforceable. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d 696 (2014). To be binding, material terms cannot be left for future agreement. Id.

For the above reasons, the Court finds in favor of the Defendant.

IT IS SO ORDERED.

October 7, 2021

Sumter, SC

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Kristi Curtis, Circuit Court Judge



Hampton Common Pleas

**Case Caption:** Q & J Properties LLC , plaintiff, et al VS Hampton County

**Case Number:** 2017CP2500170

**Type:** Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762