STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4604072

David Grigg *vs.* Rock Hill City Of

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

ORDER GRANTING DEFENDANTS MOTION FOR SUMMARY JUDGMENT

Dated at York, South Carolina, this 16 th day of December, 2010.

Court Reporter:

S/ Thomas L Hughston, Jr

PRESIDING JUDGE - Thomas Leslie Hughston, Jr

This judgment was entered on the 17 th day of December, 2010, and a copy mailed first class this 17 th day of December, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

James S. Meggs Callison Tighe & Robinson LLC PO Box 1390 Columbia, SC 29202
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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

CPFORM4M

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
David Grigg et al.,)	
)	
Plaintiffs,)	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
)	
vs.)	
)	
City of Rock Hill,)	C.A. No.: 10-CP-46-4072
)	
Defendant.)	
)	

THIS MATTER came before the Court on cross motions for summary judgment. Arguments were heard on November 29, 2010 at the York County Courthouse, 2 South Congress Street, York, South Carolina. Plaintiffs were represented at the hearing by Walter L. Heinsohn and James S. Meggs and the City of Rock Hill ("City") was represented by W. Mark White. For the reasons set forth herein, the City's motion for summary judgment is granted and Plaintiffs' motion for summary judgment is denied.

Procedural History

On September 23, 2010, this civil action was commenced by plaintiffs David Grigg, Allen Straw, Todd C. Brinkley, Chris Lynn, Brent Peddy, Rob Simpson, Lori Simpson, Lowell Ashe, Donna Ashe, Robert E. Rodriguez, Timothy Sweatt, Melia Sweatt, Ken Biltcliffe, Erin Biltcliffe and Susan Haugh ("First Plaintiff Group") in their individual capacities and as representatives of a class of persons similarly situated, which class is comprised of all of the property owners in the Miller Pond Subdivision in York County.

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After the First Plaintiff Group amended the complaint, the City answered the amended complaint and lodged counterclaims against each member of the putative class, namely all owners of property in the Miller Pond Subdivision. On November 15, 2010, a Consent Order was entered which eliminated the class action elements. On behalf of the remaining plaintiffs ("Second Plaintiff Group"), Walter L. Heinsohn filed a counterclaim and reply to the City's counterclaim as well as motions for a continuance and a temporary restraining order. On November 17, 2010, the First Plaintiff Group and the City served motions for summary judgment.

At the hearing, the record included Stipulations of Fact executed by each counsel of record. The record also included the Affidavit of James G. Bagley, Jr., Affidavit of William D. Meyer and Affidavit of James G. Bagley, Jr. (In Opposition to Plaintiffs' Motion for Summary Judgment).

During the hearing, the Second Plaintiff Group withdrew its motions, moved to merge the First Plaintiff Group and the Second Plaintiff Group together for all purposes and moved to conform the pleadings of the Second Plaintiff Group to the pleadings (including the motion for summary judgment) of the First Plaintiff Group. The Court granted these motions thereby creating one unified group of plaintiffs (collectively, "Landowners").

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Findings of Fact

As made clear to the Court in the briefs and arguments, the dispute between these parties is not about facts. Although the record contains other undisputed facts, the following facts are hereby noted for purposes of the Court's findings of fact.

1. The City has made significant investment to public health, welfare and safety by investing public funds into business parks, utility services, airport facilities, recreational parks, roads, sidewalks, employment opportunities, and an organized plan for development. A critical element of this investment is to manage the transformation from rural uses and densities to urban uses and densities.

2. Annexation of areas which have become urban or are soon to become urban allows the City to manage growth and changes in density; obtain and facilitate better planning to minimize friction of disparate, proximate uses; alleviate unincorporated areas surrounded by corporate limits; align the cost of municipal benefits to the areas experiencing such benefits; and ensure that new growth areas do not become a suburban, unincorporated ring to the detriment of the City core which generated the public funds to facilitate the growth.

3. In 1978, the City Council began to use City utility services to facilitate annexations. The City's annexation policy has allowed the City to recruit industry and manage growth.

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4. In 1998, Miller Pond L.L.C. ("Developer") owned certain real property located outside the City's municipal limits comprising 126 acres, more or less, ("Miller Pond Subdivision") and sought water services.

5. On May 27, 1998, Developer signed a Non-Reimbursable Waterworks Extension Agreement Without the Corporate Limits ("Extension Agreement").

6. The Extension Agreement references an attached drawing by Fisher-Sherer, Inc., which is entitled the *Overall Water Plan for Miller Pond* ("Overall Water Plan").

7. The Overall Water Plan was recorded in favor of the City on May 29, 1998 at Volume A362, Page 8 with the Office of the Clerk of Court for York County, South Carolina.

8. The Overall Water Plan establishes and dedicates the rights of way in which the infrastructure being dedicated in the Extension Agreement is to occupy. The infrastructure and rights of way dedicated pursuant to the Extension Agreement and exhibits thereto were accepted by the City and added to the City's utility system.

9. Also on May 27, 1998, Developer signed a Water and/or Sewer Agreement and Restrictive Covenant ("Annexation Agreement").

10. The Annexation Agreement was recorded with the records of the Clerk of Court for York County, South Carolina on June 10, 1998 in Volume 2276 at Page 116.

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11. The plat attached to the recorded Annexation Agreement sets forth and creates utility easements in favor of the City.

12. The City would not have agreed to provide water service to the Miller Pond Subdivision without the promise of annexation of the Miller Pond Subdivision and the execution of the Annexation Agreement.

13. The availability of City water service enhanced the value of the Miller Pond Subdivision by increasing the number of buildable lots and design alternatives for the neighborhood. City water service afforded the Developer greater flexibility in development plans. Moreover, City water service enhances marketability of the resulting residential housing.

14. Annexation of the Miller Pond Subdivision will benefit the City and its residents by increasing the tax base; by allowing annexation of additional properties along the Highway 161 commercial corridor; and by increasing the value of the City's rights of way within Miller Pond Subdivision through greater access, use, flexibility and services due to the dedication of the entire roadway to the City.

15. The impact of the Highway 161 annexation is difficult to quantify and further allows the City to implement its planning and zoning to manage growth, including allowing the City to invest public funds to improve this area as a northwest gateway into the City.

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16. In the Annexation Agreement, the Developer agreed that Developer and its successors in title would sign any and every annexation petition which relates to the Miller Pond Subdivision immediately upon presentment.

17. Landowners own property in the Miller Pond Subdivision and have received water service from the City.

18. The City presented annexation petitions to the Landowners. Landowners have refused to sign the annexation petitions. Landowners are in default of the obligations contained in the Annexation Agreement.

Conclusions of Law

I. Summary Judgment

This is a rare case where both parties agree that this case is ripe for summary judgment. "'The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.' . . . [S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Metts v. Mims, 370 S.C. 529, 534-535, 635 S.E.2d 640, 642-643 (Ct.App.2006)(citations omitted). After consideration of the issues framed by the parties, the Court concurs with the parties and concludes that summary judgment is clearly appropriate.

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II. Water Service

This case does not involve any dispute as to whether Landowners are entitled to continue receiving water service from the City without annexation. Landowners abandoned this issue in their pleadings and at the hearing. During the hearing, Landowners acknowledged the law in South Carolina is that a municipality is under no duty to provide or to continue to provide water service outside its municipal limits absent an agreement to provide such service. Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911). Moreover, Landowners acknowledged that the use of utility service to facilitate annexation has been expressly approved by the courts in South Carolina. Sloan v. City of Conway, 347 S.C. 324, 330, 555 S.E.2d 684, 686 (2001); Robarge v. City of Greenville, 382 S.C. 406, 675 S.E.2d 788 (Ct.App.2009). The Court respects Landowners' candor.

Although the City could lawfully discontinue utility service to Miller Pond Subdivision given Landowners' actions, the City has elected not to pursue this remedy as its primary objective. As set forth in this Order, the Court concludes that the City is entitled to judgment on its primary relief and, accordingly, the Court need not render judgment on the City's alternative cause of action.

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III. Annexation Agreement

The Court's consideration of this case begins with the Annexation Agreement. Landowners do not dispute that the

Annexation Agreement was properly executed by the owner of the subject property or that the copy before the Court is a genuine copy. Landowners do not claim that any language found in the Annexation Agreement is ambiguous.

Landowners have not argued that the Developer did not intend to create a restrictive covenant to run with the land to Developer's successors in title. The Annexation Agreement abundantly manifests the intention that it run with the land through its express language. The title of the document includes the words "restrictive covenant." The document obligates Developer to inform subsequent owners that the obligations run with the land; states future owners are bound; describes the time that the obligations remain enforceable; and directs the agreement to be recorded with the real estate office of the Clerk of Court for York County to give record notice to any future prospective purchasers.

The Court concludes that the Annexation Agreement was properly made and executed, was intended to bind Landowners, and was properly recorded. Moreover, the Court finds that Landowners took title to their property within Miller Pond Subdivision with legal notice of the Annexation Agreement.

IV. Restrictive Covenants

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"Restrictive covenants will be enforced unless they are indefinite or contravene public policy." Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368

S.C. 342, 362, 628 S.E.2d 902, 913 (Ct.App.2006). "Real covenants have been defined as 'agreement[s] . . . to do, or refrain from doing, certain things with respect to real property.' Therefore, covenants, 'in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract.' Restrictive covenants are construed like contracts and may give rise to actions for breach of contract. . . Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." Queen's Grant, 368 S.C. at 361, 628 S.E.2d at 913 (citations omitted). "A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title." Harbison Community Ass'n, Inc. v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct.App.1995)(citations omitted).

A restrictive covenant runs with the land, "if the covenanting parties intended that the covenant run with the land, and the covenant touches and concerns the land." West v. Newberry Elec. Co-op., 357 S.C. 537, 542, 593 S.E.2d 500, 503 (Ct.App.2004)(citations omitted). Intent may be shown "by its express language or by a plain and unmistakable implication." West, 357 S.C. at 542, 593 S.E.2d at 503.

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V. Landowners' Grounds for Summary Judgment

Landowners assert that they are not bound by the Annexation Agreement despite its clear, unambiguous intent for two primary reasons.[1] Landowners claim that the Annexation Agreement fails to obligate them because the City lacks horizontal privity and the Annexation Agreement fails to touch and concern the land.

A. Horizontal Privity

Based on their briefs and arguments, Landowners' prime argument before the Court is founded on horizontal privity. Landowners' counsel argued ably and eloquently, but, again showing rare candor, acknowledged that there is no holding in a South Carolina case which imposes horizontal privity as a required element for a restrictive covenant to run with the land and bind successors in title. In studying precedent, the Court noted many occasions where the supreme court could have installed horizontal privity as a requirement for a restrictive covenant, but for whatever reason did not do so.

Given the holdings of South Carolina's appellate courts, this Court is disinclined to be the first court to impose horizontal

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[1] Landowners also claim the Annexation Agreement should not be enforced on the grounds it is a contract of adhesion, impermissibly coerces some voting right, violates public policy, and breaches the covenant of good faith and fair dealing. As to coerced voting, Landowners failed to articulate any cause of action under South Carolina law or otherwise support and prove this claim. Moreover, the Court finds the claim not applicable in this matter. See Berry v. Bourne 588 F.2d 422, 424 (4thCir. 1978). The remaining claims are rejected in light of supreme court precedent which specifically validates a municipality's use of its utility system and annexation policy for the betterment of its citizens and public fisc. Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911); Sloan v. City of Conway, 347 S.C. 324, 330, 555 S.E.2d 684, 686 (2001).

privity as a required element. The Court's decision is buttressed by two factors. First, the modern trend has moved demonstrably away from the ancient English common law elements because the primary reasons for these elements have been satisfied by the Statute of Frauds and Recording Acts. See Restatement (Third) Property (Servitudes) § 2.4 Comment b. Second, given the subject matter of the case presented, the Court concurs with the reasoning and conclusions from sister jurisdictions cited in Part VI(B) of this Order.

Moreover, even if horizontal privity were a required element for a restrictive covenant to run with the land, Landowners' claims still must fail because the horizontal privity requirement is satisfied in this matter. According to Landowners' brief, "[h]orizontal privity means that at the time of and in connection with the creation of the covenants, the two covenanting parties must have transferred some interest in the lands burdened or benefitted by the covenants." The only case cited by Landowners applying this standard specifically states that an easement is "a sufficient interest in the land to create the necessary privity of estate." Clear Lake Apartments, Inc. v. Clear Lake Utilities Co., 537 S.W.2d 48, 51 (Tex.Civ.App.1976).

In this matter, the restrictive covenant was granted by Developer upon execution of the Annexation Agreement on or about May 27, 1998. As a part of the Annexation Agreement and the Extension Agreement (also executed on May 27, 1998), the Developer

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simultaneously granted the City easements within the Miller Pond Subdivision for the City's water system.[2] Thus, the horizontal privity requirement as articulated by Landowners is satisfied in this matter.

B. Touches and Concerns the Land

Landowners' second argument is that the subject restrictive covenant does not touch and concern the land. A covenant touches and concerns the land if it "relate[s] to the realty demised, having for its object something annexed to, or inherent in, or connected with the land; that its performance or nonperformance must affect the nature, quality, value or mode of enjoyment of the demised premises . . ." Epting v. Lexington Water Power Co., 177 S.C. 308, 181 S.E.2d 66, 71 (1935). "A covenant is merely personal if it does not affect the land demised." Epting, 181 S.E.2d at 71.

The Annexation Agreement cannot be deemed a personal covenant given it has significantly affected the land under the undisputed facts of this case. The City would not have agreed to provide water service to the Miller Pond Subdivision without the imposition of the annexation restrictive covenant on the land; thus, the provision of water service and the annexation

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[2] The recordation of the plats attached to the Annexation Agreement and Extension Agreement established and dedicated the subject rights of way for the water lines and infrastructure. Vick v. South Carolina Department of Transportation, 347 S.C. 470, 556 S.E.2d 693 (2001); see also Boyd v. Bellsouth Telephone Telegraph Co. Inc., 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006) ("Easements may be implied by necessity, by prior use, from map or boundary references, or from a general plan").

requirements found in the Annexation Agreement cannot be bifurcated. Without water service, this neighborhood could not have been developed as it was and would not exist as it is. The value of the land within Miller Pond Subdivision was made more valuable due to the availability of water service.[3] Moreover, the location and construction of utility lines, dedication to and acceptance by the City, the City's upgrade of the facilities and the City's provision of water and fire protection services all directly touch and concern the burdened land.

In addition, the Annexation Agreement benefits the City's property interests within Miller Pond Subdivision. The City owns, operates and maintains water lines and related infrastructure within the easements dedicated to the City by Developer. Based on the uncontested facts of this matter, the restrictive covenant benefits the City's utility rights of way in many ways, not the least of which is the City's use, enjoyment and access to its utility rights of way which will be magnified significantly upon annexation by dedication of the entire roadway to the City.[4]

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[3] These factors are not unique to this property or to South Carolina. See Jewell v. City of Bardstown, 260 S.W.3d 348, 350 (Ky.App.2008) (provision of water and sewer services "significantly improves his or her land"); Gregg v. Whitefish City Council, 99 P.3d 151, 158 (Mont.2004)(the annexation waivers for water service "are proper because the waivers directly benefit the property").

[4] City of Myrtle Beach v. Parker, 260 S.C. 475, 485, 197 S.E.2d 290, 295 (1973) ("'By the dedication of land for a street, the municipality acquires not only the easement of passage, but also the right to grade and improve the surface of the street, and to lay sewers, drains, and pipes for various utilities beneath the surface.'").

In sum, the Court concludes that the subject restrictive covenant fully and properly touches and concerns the land as required by Epting and to a greater degree than was accepted by the court of appeals in West v. Newberry Elec. Co-op., 357 S.C. 537, 593 S.E.2d 500 (Ct.App.2004). Therefore, as set forth in this Order, the Court cannot render judgment in favor of Landowners on any of their causes of action or grounds for summary judgment. Accordingly, Landowners' motion for summary judgment is denied.

VI. The City's Grounds for Summary Judgment

As set forth in its pleadings and briefs, the City seeks specific performance of the Annexation Agreement. Based on the foregoing, specific performance is the appropriate remedy in this matter.

A. Specific Performance

"Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." Ingram v.

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Kasey's Associates, 340 S.C. 98, 105-06, 531 S.E.2d 287, 291 (2000)(citations omitted).

The City has no adequate remedy at law. The Court cannot begin to quantify damages resulting from a failed annexation. Computing the damages to the public T.L.H. [redacted] over an extended time would be difficult, if not impossible. However, the damage to the City is not just lost revenue and no legal damages award can be fashioned and imposed to redress the impairment to the City's police power and governmental control.

Specific performance is equitable between these parties. The City is within its conferred rights. South Carolina law specifically authorizes the use of annexation agreements as a requirement for municipal utility service outside municipal limits. These facts do not raise any sort of fairness issue between the City and the Landowners. Landowners do not dispute the Annexation Agreement, that it was recorded properly and that it is in their chain of title. The City has complied with the terms of the Annexation Agreement; hence, equity and justice are served by fulfillment and enforcement of the Annexation Agreement. Further, as set forth herein, the remaining elements of specific performance are satisfied. Therefore, the Court concludes that specific performance is the appropriate remedy and that the City is entitled to judgment requiring Landowners to execute any and all annexation petitions for property located within Miller Pond Subdivision.

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B. Alternative Grounds

In addition to the foregoing and as separate and independent grounds for this Order, the Court further finds and concludes as follows.

First, Landowners are estopped from claiming the Annexation Agreement is unenforceable after receipt of water services made available solely because of the Annexation Agreement. Jewell v. City of Bardstown, 260 S.W.3d 348, 350 (Ky.App.2008) (holding "that a recorded, restrictive covenant consenting to city annexation in exchange for valuable consideration from the city estops the owner of the land so restricted from opposing annexation by the city").

Second, Landowners have waived the right to withhold consent to the annexation petitions. Gregg v. Whitefish City Council, 99 P.3d 151, 158-59 (Mont.2004) (holding that subsequent owners were bound by recorded "waivers executed by the previous owners to secure a benefit for the land" and that "the waivers are proper because the waivers *directly benefit the property.*"); Matter of City of Fort Wayne, 381 N.E.2d 1093, 1096 (Ind.App.1978)(holding that because the annexation covenants "were duly recorded in the Office of the Recorder of Allen County . . . . each subsequent owner of real estate . . . is charged with constructive notice of the waiver of the right to remonstrate so as to be deemed to have also waived that right").

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Third, Landowners have ratified the Annexation Agreement through their receipt and acceptance of water service from the City. People for Preservation and Development of Five Mile Prairie v. City of Spokane, 755 P.2d 836, 841 (Wash.App.1988)(holding although "[h]orizontal privity of estate is one of the requirements for an agreement to run with the land and bind successors in interest . . . . the Reeds ratified their predecessor's contract by accepting city water service with constructive notice of the covenant").

Fourth, the Annexation Agreement is enforceable against Landowners under the doctrine of equitable servitudes. City of Perrysburg v. Koenig, 1995 WL 803592 (Ohio App. 6 Dist.1995)(citing Boyer, Survey of Law of Property (1988), pp. 539-559, 5 Restatement at 3226-3227, Section 539)(enforcing annexation covenant because "there is little question that agreements to provide water and sanitary sewers provide a benefit to the physical use or enjoyment of the land thereby satisfying the element which requires that the covenant touch and concern the land" and "an equitable servitude or obligation is formed if the following elements exist: (1) there must be an agreement between the parties in which the parties demonstrate an intent to bind the successors to the land, (2) the agreement must be within the statute of frauds, (3) there must be vertical privity between the party who agreed to burden the land and his or her successors, (4) the promise must touch and concern the land, and (5) successors in

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interest must take with actual or constructive notice of the burden").

C. Attorneys' Fees

In its counterclaim and in its motion, the City prays for recovery of attorneys' fees. "A party cannot recover attorney's fees unless authorized by contract or statute." Clardy v. Bodolosky, 383 S.C. 418, 428, 679 S.E.2d 527, 532 (Ct.App.2009)(finding the right to recover attorneys' fees in contract's default clause and affirming an award of attorneys' fees in a claim for specific performance in the amount of $42,849.42). "'[C]ourt[s] should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.'" Id. (citations omitted).

In this matter, the Annexation Agreement provides that "[i]n the event Owner defaults on any of his obligations hereunder, the City shall be entitled to recover the costs and attorneys' fees incurred by the City in the enforcement of any provision contained herein." Further, the Annexation Agreement mandates that "future owners of the subject property, or any part thereof, be bound by the same terms, conditions and covenants as are set forth in this Agreement." Based thereon, the Court finds and concludes that

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Landowners are in default of the Annexation Agreement and the default clause, including the attorneys' fees component, is binding on Landowners.

However, the Court hereby reserves this issue for 60 days from entry of this Order. During this 60 day period, the City may file and serve a motion seeking the Court to address the issue and tax costs, including attorneys' fees against Landowners. It is the Court's hope that during the intervening period, the parties may reach some accord which may moot this issue.

NOW, THEREFORE, based upon the foregoing,

IT IS HEREBY DECLARED, ORDERED AND DECREED, that Landowners' motion for summary judgment is denied;

IT IS FURTHER ORDERED that the City's motion for summary judgment is granted and the City is entitled to specific performance of the Annexation Agreement against Landowners;

IT IS FURTHER ORDERED that the Landowners shall sign the annexation petition (which shall be immediately tendered by the City to counsel for Landowners) within [redacted] TEN T.L.H. days of receipt of this Order by Landowners' counsel, and that Landowners shall sign any additional annexation petitions for property in the Miller Pond Subdivision received by Landowners from the City within [redacted] TEN T.L.H. days of receipt;

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IT IS FURTHER ORDERED that any Landowners who do not sign any annexation petition(s) as set forth in this Order, shall be in violation of this Order and the Clerk of Court for York County,

South Carolina is hereby directed to and shall sign such annexation petitions in accordance with Rule 70, SCRCP;

IT IS FURTHER ORDERED that additionally pursuant to Rule 70, SCRCP, any Landowners who fail, refuse or otherwise do not comply with this Order, may be adjudged to be in contempt of this Court, may have additional costs taxed against them and may have a writ of attachment or sequestration against property issued against them to compel obedience to this Order and Judgment;

IT IS FURTHER ORDERED that the Court reserves the issue of awarding costs and attorneys' fees in favor of the City against Landowners for 60 days and, on motion, the City may bring the issue of costs and fees before the Court during this period;

IT IS FURTHER ORDERED that Landowners' claims against the City are dismissed with prejudice.

AND IT IS SO ORDERED.

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Date: DEC. 16, 2010.

Charleston, SC

Thomas L. Hughston

Thomas Leslie Hughston, Jr.
Circuit Court Judge
Sixteenth Judicial Circuit