RECEIVED
OCT 20 2016
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2015-002103
Unpublished Opinion No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015)

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner, and John Love, Plaintiffs,

Of Whom George M. Lee, III, Mena H. Gardiner and
John Love are the Respondents,

v.

The University of South Carolina and the University of
South Carolina Gamecock Club Petitioners.

BRIEF OF PETITIONERS

Robert E. Stepp (SC Bar No. 5335)
Bess J. DuRant (SC Bar No. 77920)
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400
Attorneys for Petitioners

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2015-002103
Unpublished Opinion No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015)

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner, and John Love, Plaintiffs,

Of Whom George M. Lee, III, Mena H. Gardiner and
John Love are the Respondents,

v.

The University of South Carolina and the University of
South Carolina Gamecock Club Petitioners.

BRIEF OF PETITIONERS

Robert E. Stepp (SC Bar No. 5335)
Bess J. DuRant (SC Bar No. 77920)
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400
Attorneys for Petitioners

TABLE OF CONTENTS

Table of Authorities iii

Statement of Issue on Appeal 1

Introduction 2

Statement of the Case 2

Argument 5

I. Equitable Estoppel Cannot Be Used to Add Rights to an Unambiguous Contract 5

A. The Terms of The Unambiguous Contract Control. 6

1. The Plain Meaning of the Contract 8

2. Equitable Estoppel Cannot Add Terms to an Unambiguous Contract 8

B. Equitable Estoppel Is Defensive, Not Offensive 9

C. Equitable Estoppel Does Not Lie Against the Governmental Petitioners 10

Conclusion 12

TABLE OF AUTHORITIES

Federal Cases

Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 (4th Cir. 2000) 10

State Cases

Autrey v. Bell, 114 S.C. 370, 103 S.E.2d 749 (1920) 7

Davis v. KB Home of South Carolina, Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011) 7

DeStefano v. City of Charleston, 304 S.C. 250, 403 S.E.2d 648 (1991) 11

Eason v. Eason, 384 S.C. 473, 682 S.E.2d 804 (2009) 9

Estes v. Roper Temp. Servs., 304 S.C. 120, 403 S.E.2d 157 (Ct. App. 1991) 10

Greenville County v. Kenwood Enters., Inc., 353 S.C. 157, 577 S.E.2d 428 (2003) 10

Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992) 9, 10

Jordan v. Sec. Grp., Inc., 311 S.C. 227, 428 S.E.2d 705 (1993) 7

Layman v. State, 368 S.C. 631, 630 S.E.2d 265 (2005) 9

Lee v. University of South Carolina, 407 S.C. 512, 757 S.E.2d 394 (2014) 5, 6, 7, 8

Madden v. Bent Palm Investments, LLC, 386 S.C. 459, 688 S.E.2d 597 (Ct. App. 2010) 6

McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) 6

McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 33 S.E.2d 501 (1945) 7

Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008) 10, 11

Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25 (Ct. App. 1987) 7

Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (1994) 9

Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) 9

Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799
(Ct. App. 2009) 7

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 747 S.E.2d 178
(2013) 6

Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 499 (2010) 10, 11

Rodarte v. University of South Carolina, Op. No. 2015-UP-357
(S.C. Ct. App. filed July 15, 2015) 5

Rosen v. The University of South Carolina, et. al., Op. No. 2011-UP-331
(S.C. Ct. App. filed June 27, 2011) 5

S.C. *Dep't of Transp. v. M&T Enters. of Mt. Pleasant*, 379 S.C. 645, 667 S.E.2d 7
(Ct. App. 2008) 7

Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 579 S.E.2d 132
(2003) 6

Service Mgmt., Inc. v. State Health & Human Servs. Fin. Comm'n,
298 S.C. 234, 379 S.E.2d 442 (Ct. App. 1989) 11

Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539
(Ct. App. 2008) 7

Smothers v. U.S. Fidelity & Guar. Co., 322 S.C. 207, 470 S.E.2d 858
(Ct. App. 1996) 11

Springob v. The University of South Carolina, 407 S.C. 490, 757 S.E.2d 384 (2014) 5

Stevens Aviation, Inc. v. DynCorp Int'l LLC, 394 S.C. 300, 715 S.E.2d 655
(Ct. App. 2011) 6, 11

Wachovia Bank v. Blackburn, 394 S.C. 579, 716 S.E.2d 454 (Ct. App. 2011) 7

Warner v. Warner, 280 S.C. 81, 311 S.E.2d 78 (1983) 6

Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249 (R.I. 2003) 8

Other Authorities

28 Am. Jur. 2d *Estoppel and Waiver* § 31 (2011) 8

STATEMENT OF ISSUE ON APPEAL

I. **Can equitable estoppel be used affirmatively to add contractual rights to an unambiguous contract?**

INTRODUCTION

This case is about parking assignments for University of South Carolina home football games for certain Lifetime Members of the Gamecock Club ("Lifetime Members"). An unambiguous, written contract ("Contract") governs parking assignments and the benefits afforded to Lifetime Members. The Contract provides that Lifetime Members are entitled to "assigned reserved parking" – nothing more, nothing less. Respondents, however, claim that equitable estoppel should be applied to add a new term to the Contract that would entitle them to the best available parking, even though there is no such provision in the agreement.

Equitable estoppel cannot be used affirmatively to create new rights; it can be used to defensively to preclude the assertion of a right by another party. The necessity and propriety of this rule are reinforced when the contract sought to be amended is unambiguous. A court must enforce an unambiguous contract in accordance with its terms because they alone express the parties' intent. A court cannot apply equitable estoppel to an unambiguous contract to add contractual terms because that would be contrary to the parties' clearly expressed intent. The Court of Appeals, however, overlooked this principle of law when it remanded the case on the issue of equitable estoppel. This Court should reverse the Court of Appeals' decision.

STATEMENT OF THE CASE

Respondents, Mena Gardiner, George M. Lee, III, and John Love ("Respondents"), are Lifetime Members. (App. at 14.) Their Lifetime Memberships are governed by the Lifetime Membership Contract, which includes an attached Exhibit A that lists the rights and privileges of a Lifetime Member. (App. at 15, 93-103.) Among other things, the Contract provides that the Lifetime Member is entitled to "assigned reserved parking." (App. at 96, 99 & 103.)

Prior to the 2012 football season, the parking assigned to and reserved for Respondents was on the apron of Williams Brice Stadium. (App. at 15.) Beginning with the 2012 football season, parking on the apron was no longer available to Gamecock Club members. (*Id.*) Respondents were given the opportunity to participate in a parking selection process governed by Gamecock club priority points system, or receive "assigned reserved parking" in the new Farmers' Market parking area. (*Id.*) In June of 2012, each of the Respondents chose to participate in the priority points parking selection process and selected spaces in the Farmers' Market parking area. (*Id.*) Moreover, each received two spaces in the Farmers' Market, rather than the one space they had on the apron. (*Id.*) It is undisputed that Respondents were provided with parking that was assigned and reserved for them.

Respondents thereafter filed this breach of contract action alleging that Petitioners breached their Contracts by (1) not allowing them to park on the Stadium's apron and (2) not affording them the "appropriate priority" with respect to the selection of parking spaces. (App. at 14-15, 194-99.) In response, Petitioners contend (and the trial court and Court of Appeals agreed) that the Contracts do not grant Respondents the right to park on the Stadium's apron, or provide any priority with respect to the selection of parking spaces. (App. at 17, 213-219.)

The parties engaged in written discovery, and Petitioners deposed Respondents and Marion Hope, who is the brother of Respondent Mena Gardiner. The parties then filed cross motions for summary judgment. (App. at 115-23.) Respondents contended they were entitled to summary judgment because they were "parties to separate clear and unambiguous contracts with the defendants guaranteeing them assigned and reserved parking privileges as lifetime members . . . ." Respondents then argued that Petitioners breached the Contracts by "taking each plaintiffs' priority in parking . . . ." (App. at 116-17.) Additionally, Respondents asserted that they were entitled to

summary judgment based on theories of equitable estoppel and collateral estoppel. (App. at 117.) In support of their Motion, Respondents filed the affidavit of George Lee that stated that Lee was promised "guaranteed assigned and reserved parking" in his Contract. (App. at 297-298.)

Petitioners moved for summary judgment on the grounds that Respondents were provided with "assigned reserved parking," as required by the unambiguous Contracts. (App. at 121-22.) Petitioners also pointed out that the Contracts do not grant the right to any specific parking space to Respondents or any priority with respect to parking. (*Id.*) In support of their Motion for Summary Judgment, Petitioners relied on the affidavit of Marcy Girton. (App. at 275-96.) Marcy Girton was the Deputy Director of Athletics for the University, and she testified in her affidavit that Respondents were provided assigned reserved parking. (App. at 275-78.)

On August 9, 2013, the trial court heard the cross-motions for summary judgment. (App. at 14.) On August 27, 2013, the trial court granted Defendants' Motion for Summary Judgment and denied Plaintiffs' Motion for Summary Judgment. (App. at 13-27.) The trial court held that "Defendants did not breach the clear, unambiguous provision of the Lifetime Membership contract regarding parking" because Respondents were provided with "assigned reserved parking." (App. at 17.) It further held that the Contracts do not grant any selection priority or specific parking spaces to Respondents. (*Id.*) It also concluded that there was no evidence to support a claim for equitable estoppel. (App. at 24-25.)

On September 9, 2013, Respondents filed a motion for reconsideration. (App. at 9-12.) On September 17, 2013, the trial court denied the motion for reconsideration. (App. at 7-8.) Respondents then filed and served their Notice of Appeal. (App. at 4-6.)

In an unpublished opinion, the Court of Appeals affirmed in part and reversed in part. The opinion holds that: (1) the Contract is unambiguous; (2) extrinsic evidence is inadmissible to vary

its terms because the Contract is unambiguous; (3) evidence of custom and usage is inadmissible because the Contract is unambiguous; and (4) collateral estoppel does not bar Petitioners from arguing that the Contract is unambiguous because the issue of parking was not litigated in the unpublished opinion of *Rosen v. The University of South Carolina*, Op. No. 2011-UP-331 (S.C. Ct. App. June 27, 2011) (App. at 547-56.) The Court of Appeals, however, reversed the trial court on the issue of equitable estoppel and remanded the case on this issue. (App. at 554-56.) The Court of Appeals concluded there is a factual issue "as to whether USC was equitably estopped from denying Appellants the highest priority to available parking as Lifetime Scholarship Members." (App. at 555-56.) The Court of Appeals' decision was based in part on *Springob v. The University of South Carolina*, 407 S.C. 490, 757 S.E.2d 384 (2014). (App. at 555.) Both Petitioners and Respondents petitioned the Court of Appeals for rehearing, but both petitions were denied. (App. at 557-83.)

Both parties filed petitions for writs of certiorari on October 25, 2015, along with returns on November 30, 2015 and replies on December 10, 2015. This Court granted Petitioners' petition and denied Respondents' petition on September 8, 2016.

ARGUMENT

I. EQUITABLE ESTOPPEL CANNOT BE USED TO ADD RIGHTS TO AN UNAMBIGUOUS CONTRACT.

This Court, the Court of Appeals, and the trial court have all declared the Contract to be unambiguous. *See Lee v. University of South Carolina*, 407 S.C. 512, 518-519, 757 S.E.2d 394, 397-98 (2014) (holding the contract is unambiguous and "[t]he language of the Agreement is clear); *Rodarte v. University of South Carolina*, Op. No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015 (agreeing with trial court's conclusion that "assigned reserved parking" was unambiguous). Despite this conclusive determination, the Court of Appeals' decision permits

equitable estoppel to be employed to add terms to an unambiguous contract. Equitable estoppel, however, has no application in the face of an unambiguous contract because it would assail the well-established principle that an unambiguous contract is governed exclusively by its terms. Moreover, equitable estoppel cannot create new rights. It can only prohibit the assertion of rights. Finally, equitable estoppel, which has only a limited application against the government, cannot be applied against the facts and circumstances of this case.

A. <u>The Terms of The Unambiguous Contract Control</u>.

The imposition of equitable estoppel onto an unambiguous contract is improper and antithetical to the principles of law regarding unambiguous contracts. "The law in this state regarding the construction and interpretation of contracts is well settled." *Lee*, 407 S.C. at 517, 757 S.E.2d at 397 (internal quotation marks and citation omitted). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore,* 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). To determine the parties' intention, courts first look to the contractual language. *Warner v. Warner*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983). Contracts are unambiguous when they have only one reasonable interpretation. *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011).

When a contract is unambiguous, "'the contract's language determines the instrument's force and effect.'" *Lee*, 407 S.C. at 518, 757 S.E.2d at 397 (quoting *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013)); *see also Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) ("If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."). "'A

court ***must enforce*** an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.'" *Id.* (emphasis added) (quoting *S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008)). Therefore, a court must look only to the four corners of the contract to determine the parties' intent and "'when such contract is clear and unequivocal, its meaning must be determined by its contents alone.'" *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)).

When a contract is clear and unambiguous, courts must give the contractual terms contained in the document their plain, ordinary, and popular meaning. *Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 457-58 (Ct. App. 2011). Courts cannot read words into a contract that "import an intent wholly unexpressed when the contract was executed." *McPherson*, 206 S.C. at 204; 33 S.E.2d at 509. As a result, "'[t]he court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.'" *Davis v. KB Home of South Carolina, Inc.*, 394 S.C. 116, 127, 713 S.E.2d 799, 805 (Ct. App. 2011) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). An agreement's silence with respect to a specific point does not permit the Court to look beyond the four corners of the contract to garner the parties' intent. *See Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). Similarly, a court cannot look to evidence of custom or usage to contradict, vary, or explain the terms of an unambiguous contract. *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 448, 357 S.E.2d 25, 27 (Ct. App. 1987); *Autrey v. Bell*, 114 S.C. 370, __, 103 S.E. 749, 750 (1920) ("The

evidence of custom and usage had nothing to do with the express contract, the basis of plaintiff's claim, and could not vary or explain the same; it was unambiguous in its terms.").

1. The Plain Meaning of the Contract

The Contract provides that Respondents are entitled to "assigned reserved parking." It does not provide that Respondents are entitled to the best parking or have a certain priority with respect to parking. If the Contract did entitle Respondents to a certain space or priority, it would have said so, as it did with respect to other benefits. (*See, e.g.* App. at 228, 237, 282.) Respondents receive the "best available" tickets for up to four football and basketball tickets. "Best available" or any similar language is conspicuously missing as to parking assignments. It only follows that the parties did not agree that Respondents would have the "best available" parking or a certain parking space. The plain language of the Contract reveals there was no intent to create any priority for parking, and equitable estoppel should not be permitted to otherwise inform the parties' intent.

2. Equitable Estoppel Cannot Add Terms to an Unambiguous Contract.

Equitable estoppel cannot be applied to create new rights in an unambiguous contract. Courts cannot add terms or write new contracts when the parties have entered into an unambiguous contract. *Lee*, 407 S.C. at 518, 757 S.E.2d at 398 (stating "the clear and unambiguous language of the Agreement prohibits the University from imposing" an additional term to the agreement). Consequently, estoppel "cannot be applied in the presence of an unambiguous contract . . . ." 28 Am. Jur. 2d *Estoppel and Waiver* § 31 (2011); *see also Zarrella v. Minnesota Mut. Life Ins. Co.*, 824 A.2d 1249, 1260 (R.I. 2003) ("[Q]uasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract." (citing numerous cases)). Similarly, Respondents cannot rely on equitable estoppel in an attempt to modify unilaterally the unambiguous terms of the Contract. *Lee*, 407 S.C. at 518, 757 S.E.2d at 398 ("Indeed, '[o]nce [a]

bargain is formed, and the obligations set, a contract may only be altered by mutual agreement and for further consideration." (quoting *Layman v. State*, 368 S.C. 631, 640, 630 S.E.2d 265, 269 (2005))). The four corners of the Contract provide that Respondents are entitled to "assigned reserved parking." Equitable estoppel does not permit the Court to rewrite the unambiguous contract to add additional rights.

B. <u>Equitable Estoppel Is Defensive, Not Offensive.</u>

Equitable estoppel is a defensive shield, not an offensive weapon. In *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992), this Court declared:

> Estoppel and waiver are ***protective only***, and are to be invoked as shields, and not as offensive weapons. Their operation in all cases should be limited to saving harmless or making whole the party in whose favor they arise and should not, in any case, be made the instruments of gain or profit. While the doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims, ***they may not be asserted in a complaint as offensive weapons.***

Janasik, 307 S.C. at 345, 415 S.E.2d at 388 (citations omitted) (emphasis added). "Equitable estoppel is ***the inhibition to assert such right*** by reason of mischief following one's own fault and may arise even thought there was no intention on the part of the party estopped to relinquish or change any existing right." *Id.* at 344, 415 S.E.2d at 387 (emphasis added). "'Equitable estoppel occurs ***where a party is denied the right to plead or prove*** an otherwise important fact because of something which he has done or failed to do.'" *Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (emphasis added) (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)); *see also Pearson v. Hilton Head Hosp.*, 400 S.C. 281 290, 733 S.E.2d 597, 601 (Ct. App. 2012) ("'Equitable estoppel ***precludes a party from asserting rights*** he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.'"

(emphasis added) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000)).

The Court of Appeals did not consider these established principles of law when it transformed equitable estoppel into the basis for an affirmative claim for modification of an unambiguous contract. By allowing equitable estoppel to add to the unambiguous, contractual terms, the Court of Appeals turned the shield into a sword. Stated differently, the Court of Appeals turned a protective measure into an instrument of gain and profit, contrary to *Janasik*. The decision allows Respondents to add to the clear, unambiguous terms, while prohibiting the Petitioners from enforcing them. This result flies in the face of the principles of law regarding both unambiguous contracts and equitable estoppel. Equitable estoppel may not afford contractual rights to Respondents that are not contained within the Contract.

C. Equitable Estoppel Does Not Lie Against the Governmental Petitioners.

The record in this case does not support the application of equitable estoppel. Generally, "'estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.'" *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) (quoting *Greenville County v. Kenwood Enters., Inc.*, 353 S.C. 157, 171, 577 S.E.2d 428, 435 (2003)). Estoppel can be available against the government in certain limited situations. In these situations, the party claiming estoppel against the government "must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Id.* at 236-37, 692 S.E.2d at 506. "'The party asserting estoppel bears the burden of establishing all its elements.'" *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting *Estes v. Roper Temp. Servs.*, 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct.

App. 1991)). "Absent even one element, estoppel will not lie against a government entity." *Id.* at 320, 659 S.E.2d at 267.

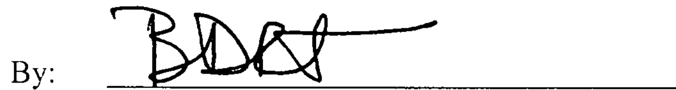
Here, the parties' rights are governed by an unambiguous contract that by definition has only one reasonable interpretation. *See Stevens Aviation, Inc. v. DynCorp. Int'l, LLC*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) ("A contract or provisions within it are unambiguous if they are not susceptible to more than one reasonable interpretation . . . ." (internal quotation marks and citation omitted)), *aff'd in part, rev'd in part*, 407 S.C. 407, 756 S.E.2d 148 (2014). Under the Contract, Respondents are entitled only to "assigned reserved parking" – not the best available parking or a specific parking space. Therefore, Respondents cannot claim that they lacked knowledge or the means of knowledge as to their contractual rights with respect to parking. Nor can Respondents claim that they have justifiably relied on the Petitioners' conduct[1] or that they suffered a prejudicial change. Under the record before the Court, it is apparent that equitable estoppel has no application in this matter.

[1] Respondents cannot rely on a letter from Chris Wyrick, dated March 5, 2008, which references priority (App. at 305, 549.) "'*The public cannot be estopped, however, by the unauthorized or erroneous conduct* ***or*** *statements of its officers or agents which have been relied on by a third party to his detriment.*'" *Quail Hill, LLC*, 387 S.C. at 236, 692 S.E.2d at 506 (emphasis in original) (quoting *DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991)). Similarly, "[a]n erroneous misconstruction of the contract by a State employee does not change its explicit terms . . . ." *Service Mgmt., Inc. v. State Health & Human Servs. Fin. Comm'n*, 298 S.C. 234, 237, 379 S.E.2d 442, 444 (Ct. App. 1989). "[P]arties entering into agreements with the state assume the risk of ascertaining that he who purports to act for the state stays within the bounds of his authority." *Id.* at 238, 379 S.E.2d at 444. Additionally, "citizens are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'" *Morgan*, 377 S.C. at 320, 659 S.E.2d at 267 (alterations in original) (quoting *Smothers v. U.S. Fidelity & Guar. Co.*, 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996)).

CONCLUSION

The terms of the unambiguous contract govern the contractual rights of the parties, and equitable estoppel cannot serve to add to those contractual terms. The right to priority parking cannot be added to the Contract under the doctrine of equitable estoppel, as a matter of law. The decision of the Court of Appeals should be reversed.

SOWELL GRAY STEPP & LAFFITTE LLC

By: 

Robert E. Stepp
SC Bar # 5335
Bess J. DuRant
SC Bar # 77920
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Petitioners the University of South Carolina and the University of South Carolina Gamecock Club

Columbia, South Carolina
October 19, 2016

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
OCT 20 2016
S.C. SUPREME COURT

Appellate Case No.: 2015-002103
Unpublished Opinion No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015)

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs,

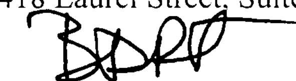
Of Whom George M. Lee, III, Mena H. Gardiner and John Love are the Respondents,

v.

The University of South Carolina and the University of South Carolina Gamecock Club Petitioners.

PROOF OF SERVICE

I certify that I have caused service of Brief of Petitioners and Appendix upon Respondents by hand delivery on October 20, 2016, to their attorney of record, Julius W. Babb, IV, Esquire, J. Lewis Cromer & Associates, LLC, 1418 Laurel Street, Suite A, Columbia, South Carolina.



Robert E. Stepp
Bess J. DuRant
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

Attorneys for Petitioners