Before the
SURFACE TRANSPORTATION BOARD

AB 1242 (Sub-No. 1)

THE GREAT WALTON RAILROAD COMPANY, INC.,
PETITION FOR DECLARATORY ORDER

THE GREAT WALTON RAILROAD COMPANY RESPONSE TO HARTWELL FIRST METHODIST CHURCH REQUEST TO REMOVE PROCEEDING FROM ABEYANCE

The Great Walton Railroad Company (GWRC), by and through its counsel of record, hereby files it response to the Hartwell First Methodist Church's[1] request that the Board should remove this proceeding from abeyance. GWRC agrees that it is time to remove this proceeding from abeyance. It therefore requests the Board to exercise the full extent of its discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or remove uncertainty by finding that GWRC never intended to abandon any segment of its runaround track.

This proceeding involves the resolution of two basic issues. First, whether GWRC had any intent to abandon, rather than temporarily remove, a small segment of its runaround track that has for many years served the sole purpose of enabling the railroad to move the locomotive from the front end of an inbound train from Bowersville, Georgia to Hartwell to be repositioned to the

[1] In 2023, the Church withdrew from the United Methodist Church and will be referred to hereinafter as "the Church."

front end of the outbound train back to Bowersville where the cars would ultimately be forwarded to the Norfolk Southern Railroad or to CSX Transportation. It has never been questioned that the segment of track that is at issue was constructed in 1913 by the Hartwell Railroad or by the Southern Railway, which owned and controlled the Hartwell Railroad. While no deed or written easement has been discovered, there is no question but that it was built with the approval of the Farmers' Union Warehouse Company and their financial backers, particularly McAlpin Thornton, whose property was located at the northern boundary of the Farmers' Union Warehouse lot.

Second, whether the Board should declare that the decision rendered by the Georgia Courts, which have relied on "artificial boundaries" rather than the actual text of deeds in the chain of title, to find that the Church holds fee simple title to the real property on which the spur track must be reconstructed is preempted as it unreasonably burdens and interferers with interstate rail transportation. In addition, the Board should also declare that the courts' alternative finding that the Church holds prescriptive title to the narrow parcel of land on which the segment of the runaround track must be restored is also preempted.

It is noted that the Georgia Court of Appeals correctly recognized that the issue of whether GWRC's runaround track is part of the national rail transportation system has not been resolved and that the Board's jurisdiction over the issue is exclusive. Furthermore, the appellate court vacated the mandatory injunction issued by the superior court that had required GWRC to

remove the reconstructed spur track no later than sixty (60) days after the entry of its Order on October 17, 2022 finding that GWRC had trespassed on the Church's property.

The Board's Previous Decisions

On January 31, 2018, the Board denied the Adverse Abandonment Application, filed by the Church on April 14, 2017, upon finding that because "Hartwell First does not demonstrate that rail service on the Line is unnecessary," (slip op. at 4), the "the present and future PC&N do not support the requested adverse abandonment." (Slip op. at 4). The same conclusion should be reached regarding the segment of the runaround track that is located between two parcels of land that the Church acquired in 2002. Without the ability to conduct efficient and safe freight operations utilizing the runaround track, GWRC's efforts to satisfy its statutory rail common carrier obligations have been adversely impacted. As will be demonstrated, that result clearly clashes with multiple provisions of the rail transportation policy, including 49 U.S.C. § 10101 (5), (8), and (11).

Thereafter, on June 9, 2020, the Board issued a further decision in this docket in which it declined GWRC's prior request that the Board issue a declaratory order that would have found that the "runaround" track was a line of railroad. The Board, however, concluded that the runaround track is ancillary track and held this matter in abeyance until the proceedings before the Georgia courts were concluded. Moreover, "if GWRC is not able to demonstrate that it possesses a property interest in the land underlying the

runaround track, the parties can request that this proceeding be removed from abeyance for consideration of any remaining issues."

As explained above, GWRC has been unable to locate a deed or a written easement to prove its ownership. However, there is no avoiding the conclusion that the strained interpretation of the chain of title improperly disregarded the consistent wording in the chain of title that demonstrates that the lot that the Church acquired from successors-in-interest of The Hartwell Mills in 2002, ***did not*** include the real property that underlies the runaround track.

The Immediate Background

On October 17, 2022, the Hart County Superior Court, after nearly 6 full years had passed since it entered its preliminary injunction against GWRC on November 28, 2016, released its order[2] declaring that, because GWRC has been unable to locate a deed in support its claim of title to the 10-foot parcel of land that is located immediately adjacent to the northern right-of-way of its mainline that a spur track was constructed in 1912-13, GRWC could only hold a prescriptive title under Georgia law.

Based on the Affidavit of Joe M. Whittemore, as summarized by the church's counsel in its proposed order, the superior court concluded that GWRC in 2008 removed the former North Spur track (rails and appurtenances)

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[2] The superior court's opinion, ***which adopted the church's proposed order verbatim***, is not published. It is attached hereto as Exhibit 1. The appellate court's decision is published at 894 S.E.2d 481 (for the convenience of the Board a copy is attach hereto as Exhibit 2).

and left it to the church to remove the remnants of the spur, landscape and make hardscape improvement "all to the complete exclusion of [GWRC] as a railroad."[3] According to the superior court, the Church "thereby exclusively controlled and occupied the subject property under all of the requirements of O.C.G.A. §§ 44-5-161 and 164 for prescriptive title by adverse possession as established by the Whittemore Affidavit from 2008 until [GWRC] reentered the property in 2016 – more than the requisite seven years under color of title."[4]

Based on the foregoing, the superior court, as a matter of law, declared that the Church's "prescriptive title of the subject property would also take precedence over [GWRC's] assertions that [the church] did not hold fee simple title under its 2002 deed."[5] Then, after finding that GWRC's claim of prescriptive easement was "moot due to the fact that the Court finds that [GWRC] abandoned any easement rights to the property pursuant to O.C.G.A."[6], the court dismissed GWRC's claims that it did not have an intent to abandon the spur with the curt comment that it was "not necessary to analyze" GWRC's claims.[7]

In lock step with the church's portrayal of the TORCH lease, and without mentioning the Board's prior handling of the TORCH lease that required clarification and modification of that lease, the court turned its attention to

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[3] Court's Order of October 17, 2022, slip op at 9
[4] *Id.* As will be explained, this finding covers up the fact that the church also lacks a deed to support its ownership claims.
[5] *Id.*
[6] *Id.* at 9
[7] *Id.* at 10.

Georgia law regarding the removal of railroad tracks and the "abandonment of any easement rights, even when those rights were granted by written easements."[8] Moreover, while the superior court's declaratory order recognized that the Board must "authorize the abandonment of a "line of railroad'," the court nevertheless adopted the church's contention that because the Board, in its June 9, 2020 decision (subsequently corrected on June 23, 2020), "determined that the North Spur is not part of GWRC's line of railroad, no STB authority was required before [GWRC] abandoned the North Spur."[9]

Upon finding that the Church was entitled to a judgment declaring it to be the fee simple owner of 0.564 acre parcel of land based on a 1990 Plat drawn by Dean H. Teasley, the superior court found that GWRC's continued occupation of the property is an unlawful trespass, and that the Church was entitled to an injunction enjoining the GWRC from said trespass. Therefore, the superior court ordered GWRC to "remove the rail lines and appurtenances to the reconstructed spur track which lie upon [the Church's] property to its original condition as it existed before its 2016 destruction by GWRC no later than sixty (60) days subsequent to the date of this Order."

On November 4, 2022, GWRC filed a timely Motion for Reconsideration with the superior court that included an Affidavit of Mary Kate Anderson, the widow of Bennie Ray Anderson, and Corporate Secretary of GWRC. She introduced a certified copy of a deed and a recorded plat that involved the gift

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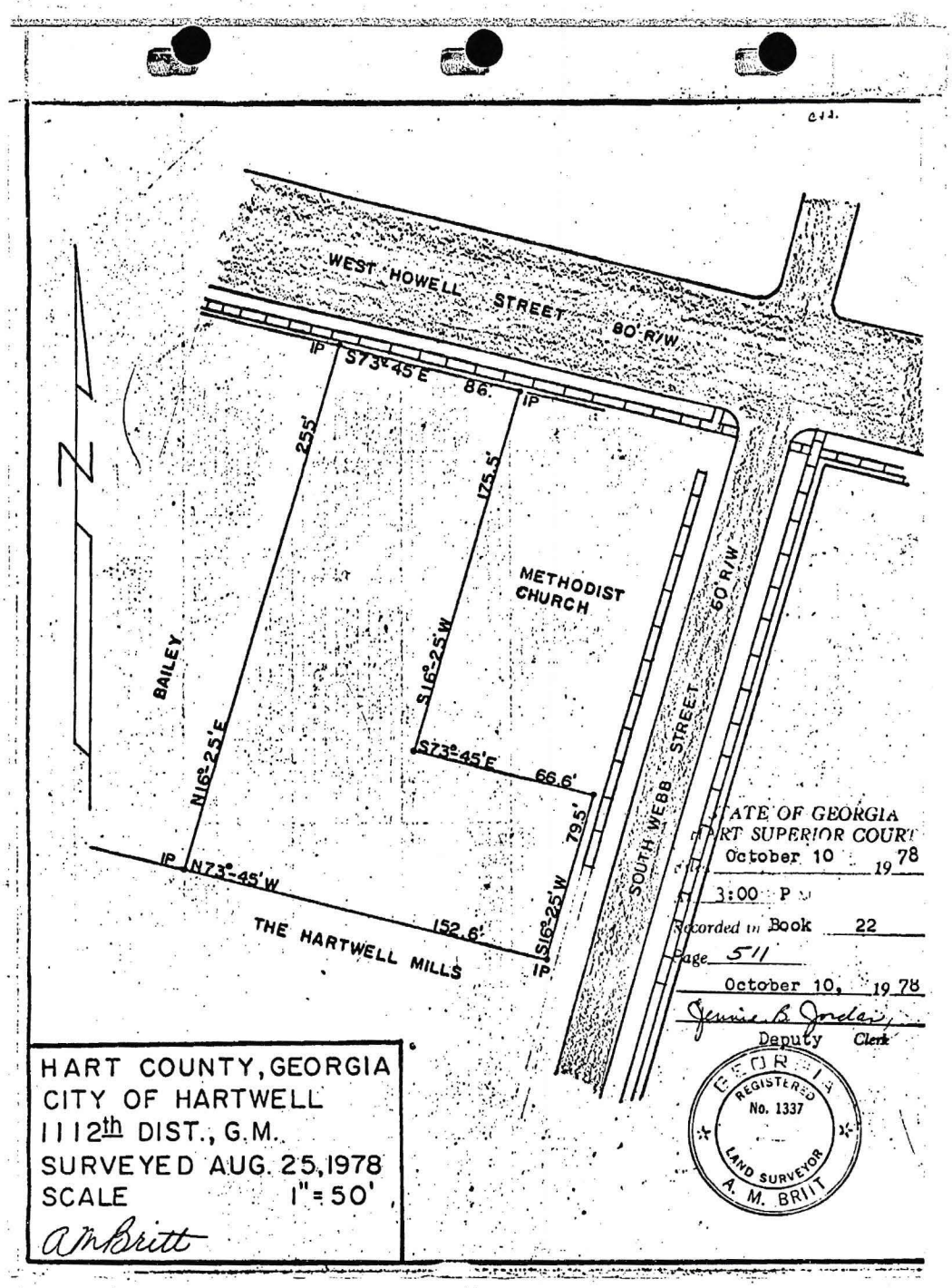
[8] *Id,* at 9-11.
[9] *Id.* at 11-12.

to the Church by the heirs of Lessie K. Page Estate of an L-shaped lot that is mentioned in every deed dating from 1907 through 1937 that involved the Farmers' Union Warehouse, the Perfect Pea Picker Lot and The Hartwell Mills as being the "McAlpin Thornton lot" or "the lot of McAlpin Thornton, now W.C. Page," or the "property of Lessie K. Page estate, formerly McAlpin Thornton homeplace."

The 1978 plat describes the L-shaped lot and its dimensions and graphically shows that it adjoins the Church to the east and north before running along Webb Street on the East to a point on Webb street where reflects the Southern Boundary as being the lot that was acquired by The Hartwell Mills in 1937. A copy of the plat is reproduced on the following page for the Board's convenience. The controlling significance of the plat cannot be overstated in this proceeding as it establishes the precise location of the northern boundary line of The Hartwell Mills' lot that it acquired in 1937 and, therefore the point from which the distance along Webb Street must be calculated. In short, 90 feet from the iron pin on the southeastern tip of the lot will only reach the northernmost boundary of the right-of-way of the spur track.


WEST HOWELL STREET 80' R/W
IP S73°45'E 86' IP
255'
175.5'
METHODIST CHURCH
BAILEY
S16°25'W
N16°25'E
S73°45'E 66.6'
79.5'
SOUTH WEBB STREET
60' R/W
IP N73°45'W 152.6' IP
S16°25'W
THE HARTWELL MILLS
HART COUNTY, GEORGIA
CITY OF HARTWELL
1112th DIST., G.M.
SURVEYED AUG. 25, 1978
SCALE 1"=50'
A M Britt
STATE OF GEORGIA
SUPERIOR COURT
October 10 1978
3:00 P M
Recorded in Book 22
Page 511
October 10, 1978
Jennie B. Jordan
Deputy Clerk
GEORGIA
REGISTERED
No. 1337
LAND SURVEYOR
A. M. BRITT

Thereafter, the superior court, in response to an email from GWRC's counsel, dated November 15, 2022, that advised the court of its intent to appeal its decision and the fact that the Board still had jurisdiction regarding the removal of the tracks, agreed to stay the mandatory injunctive relief.[10] However, while the superior court stayed the mandatory injection relief, the court never ruled on the Motion for Reconsideration.

The Georgia Court of Appeals, by decision dated October 27, 2023, affirmed the superior court's declaratory order. However, it vacated the superior court's permanent injunction that would have required GWRC to remove and abandon the segment of GWRC's runaround track that was the subject of the trespass case that the Church filed in November 2016. The appellate court, similar to the superior court, *never mentioned the 1978 deed and plat,* which was part of the record in its decision and that was discussed in detail in GWRC's Appellate Briefs.

Instead, the appeals court simply misconstrued the consistent description in every deed between 1907 and 1937 that established the northern boundary of the lot, by accepting a specious new theory offered by the Church's counsel[11] that the 1922 deed that conveyed the Perfect Pea Picker lot to C. W. Rice reflected "a potentially deficient legal description" and that it is somehow reasonable to assume that *the Trial Court* may have found that the dimensions

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[10] *See Order Staying Mandatory Injunctive Relief During the Pendency of Appeal.*

[11] The Church's counsel was the same counsel that the Church hired to examine the history of its own title.

referenced within said deed were referring to the manufacturing plant's building footprint."[12] To support its "artificial boundary" theory, the appellate court accepted the Church's strained interpretation "hook, line and sinker."

To accept the Church's approach, it would also be necessary for the Board to assume that Mr. Rice and all the following owners were unaware of the constant usage of the track for years by the railroad after the Farmers' Union Warehouse had been destroyed by fire in February 1914. However, they never once claimed that the lot they acquired bounded 100 feet on Webb Street, instead of only 90 feet. Nor is there any support for the claim that the 1922 deeds that referenced the Southern Railway was intended to show that the frame building, and not the lot, fronted 90 feet on Webb Street. In any event, assuming that the northern boundary of the "frame Building" defined the lot it would have been bounded on the North by property of McAlpin Thornton and would only have reached the northern right-of-way of the spur.

However, over GWRC's objections, the appeals court openly accepted absurd and unsupported theory advocated by the Church. *See Hartwell Railroad Company v. Hartwell First United Methodist Church, Inc.,* 894 S.E. 2d 481, 487-488 (2023), reconsideration denied November 16, 2023, certiorari denied May 14, 2024. In reaching its decision, the court never considered the fact that the Southern Railway System acquired ownership and control of the Hartwell Railway in 1902 and converted it to standard gauge in 1905.

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[12] Brief at 14.

Southern Railway thereafter held the controlling ownership of the Hartwell Railway and its real estate in Hartwell until October 1924. This apparently caused the court to fail to recognize the reason that the 1922 deed referred to the Southern Railway right-of way instead of the right of way of the Hartwell Railroad's mainline.[13]

Despite the foregoing, the appellate court correctly recognized that the Board has exclusive jurisdiction pursuant to 49 U.S.C. § 10501(b)(2) over the abandonment of a "spur" track, even if it is an excepted track under 49 U.S.C. § 10906, and that remedies provided under part A of the Act with respect to rail transportation are exclusive and preempt the remedies provided under Georgia law. As a result, the segment of the ancillary track that is the subject of this proceeding remains in place, leaving a gap of 34 feet that needs to be reconstructed so that GWRC can resume its use of this runaround track and allow it to move the inbound locomotive to the "new front" of the train for the return trip from Hartwell to Bowersville.

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[13] In its decision, the appellate court refers to "Walton" to reflect the history of the short line railroads that have been involved with line of railroad that extends between Hartwell, Georgia and Bowersville and, in particular, the "spur track" that was constructed in late 1912 or early 1913. According to the appellate court they were "Hartwell Railroad Company, fks Hartwell Railway, and The Great Walton Railroad Company. The appellate court, however, failed to mention the Southern Railway's involvement.

Because The Entire Runaround Track Is Required If GWRC Is To Fulfill Its Railroad Statutory Common Carrier Obligations While Operating Its Equipment Without Detriment To The Public Health And Safety And Maintaining Suitable Working Conditions For Its Employees While Simultaneously Meeting The Economic Needs Of The Shipper It Is Serving, The Board Should Find That The Georgia Court's Findings Unreasonably Interfere With Future Interstate Rail Transportation.

GWRC agrees that the Board, as recognized by the Court of Appeals, has the final word. However, GWRC disagrees with the Church's suggested conclusions that the Board should find that GWRC removed the runaround track at issue herein from the interstate rail system and that GWRC may not restore it. Simply put, there is a recognized need to immediately restore the entire runaround track. To confirm the continuing and expanded need for efficient and safe rail operations, Nick Murray, who is the President of Redline Plastics 2, LLC (Redline), has filed a Verified Statement in support of GWRC's continuing efforts to set the record straight. As Mr. Murray has explained, Redline Plastics acquired Quality Holdings in 2023 and rebranded it under the Redline name. As stated in his Verified Statement:

> The ability to receive resin via rail car was one of the leading decisions to buy, invest, and put forth our best effort to continue to grow this facility. As cited by Jonathan [Colehower, the previous President and CEO of Quality] without rail delivery our competitiveness and ability to service and grow in the region, which lacks a skilled rotational molder, would be greatly diminished, as would the jobs of our 60+ employees. Trucking is not a viable option to service this facility from a material perspective and we have future plans to continue to use this rail line and in an increasing manner which is evidenced by the nearly 2.5 million pounds of polyethylene that travel this rail yearly to our facility currently. Additionally, this

> acquisition did not happen because we desired to stay the same size. We have great growth ambitions, and this team and facility are well poised to be able to accomplish this task as verified by the nearly 2,4000% growth realized by Redline in our plastics segment over the past 5 years.

As Mr. Murray also recognized:

> Without restoring and being able to use this turnaround, locomotive operators must push empty railcars by to Bowersville. A seemingly inefficient, but more importantly, risky endeavor as the locomotive operators cannot see what lies ahead without [the brakeman] hanging off the side of the train and hopping off and then back on the train. The damage to the families and the community as a result of an accident and the litigation to follow, for all parties involved, should additionally be considered.

There Has Never Been Any Intent On The Part Of The Owners And Managers Of The Great Walton Railroad To Abandon Any Segment Of The Runaround Track.

As explained in the Verified Statement of Charles David Bishop (hereinafter referred to as Dave Bishop),[14] GWRC has ***never*** intended to abandon any segment of its mainline track or the runaround track, which is a crucial component of its interstate freight operations in northern Georgia where its affiliate railroad connects and interchanges traffic with Norfolk Southern and CSX Transportation. Because there is no realistic substitute for the segment of the runaround segment that is located between the tracts of real property that were legitimately acquired by the Church in 2002, a decision to

[14] Mr. Bishop, who previously served as GWRC's General Manager, has filed his Verified Statement on behalf of the Great Walton Railroad Company, Inc. in his current capacity as the Executor of the Estate of Bennie Ray Anderson, the former president of The Great Walton Railroad Company, Inc.

abandon that segment, while retaining the other segments of the runaround track and the mainline track, would constitute sheer madness. As Mr. Bishop has confirmed, Mr. Anderson was aware that, without that segment of track that is at issue herein, the remainder of the runaround track is worthless in terms of efficient and safe railroad operations. In reaching its decision, the Board is respectfully requested to consider the multiple actions that were taken by GWRC to publicize its intent to restore all of the railroad tracks that it would temporarily remove if new business were to materialize long. before it removed the first piece of rail in October 2008.

Initially, the lack of any intent to abandon the runaround track is clearly demonstrated by the fact that, for the past eight (8) years, GWRC has engaged in continuous litigation before the Board, the Georgia Public Service Commission and various courts to avoid the adverse abandonment of its mainline and the Church's attempts to claim ownership of the real property on which the runaround track was located. That defensive effort is, by itself, proof that GWRC had no intent to abandon the runaround track when it agreed to *temporarily* remove the existing steel rails (leaving intact the track subgrade) to facilitate the Church's expansion of its facilities. As the Board has recognized, a party cannot successfully claim that tracks have been abandoned by non-use when the railroad has been blocked from restoring and rehabilitating the tracks by the plaintiff's actions and litigation. *JGB Properties, LLC—Petition for Declaratory Order,* FD 35817, slip op. at 8 (STB served May 23, 2015).

Moreover, as Mr. Bishop has also explained, GWRC clearly realizes that in order to operate future rail operations between Hartwell and Bowersville, Georgia without detriment to the public safety and to provide suitable working conditions for its employees consistent with the policies expressed in the National Rail Transportation Policies, it must complete the restoration of its runaround track. That realization caused GWRC to continue the restoration of its mainline track while it engaged in its prolonged legal efforts to overturn the preliminary injunction that has prevented it from completely rebuilding the crucial 34-foot stretch of track that is the target of the Church's crusade.

Plainly, if there were preexisting reasonable alternatives that would have allowed GWRC to provide rail service to its shipper, GWRC would have done so years ago without spending 8 years in court. As Mr. Bishop has explained, because there are no reasonable alternatives, GWRC must complete the restoration of its entire runaround track to enable it to provide future rail service that will be efficient and safe while GWRC fulfills its statutory rail common carrier obligations.[15]

The Church's Objectives Cannot Be Reconciled With The Rail Transportation Policies Of the United States Government.

The Church's objective since it acquired a large tract of land located to the north and south of GWRC's mainline and runaround tracks in 2002 has been to eradicate GWRC's railroad operations to promote the Church's

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[15] *See* Verified Statement of Dave Bishop; *see also* Verified Statement of Michael Allen.

development plans. That objective is not consistent with the national interest to prevent the loss of needed rail service.

To clarify the situation, the southern segment of the tract that the Church acquired in 2022 was the former location of a cotton mill that was originally built by the predecessor of The Hartwell Mills in 1894 just to the south of the Hartwell Railroad's mainline track that was extended into Hartwell from Bowersville in 1879. There is no issue about the Church's acquisition of the southern segment of the tract from the successors-in-interest of The Hartwell Mills.

The northern tract, which is the lot that was acquired by The Hartwell Mills in 1937, has a recorded deed that plainly reflects that it "faces ninety (90) feet on Webb Street". Apparently, this deed was somehow overlooked in 1990 when The Hartwell Mills merged into Dundee Mills, Incorporated. Nor was it thereafter discovered in 1997 when Dundee Mills merged with and into Springs Industries, Inc. in 1997. In 1990, Dundee Mills, as successor to The Hartwell Mills, entered into a financing arrangement with the Hart County Industrial Building Authority whereby it conveyed all of the above real property in Hartwell, Georgia, along with other property of Dundee Mills to the Authority. The foregoing events, which are undisputed, triggered the preparation of a plat of survey of the entirety of The Hartwell Mills real property on both sides of GWRC's tracks that was prepared by Dean H. Teasley, surveyor, dated August 24, 1990. There is nothing to suggest that Mr. Teasley ever considered the 1937 deed while preparing his 1990 plat.

In 2002, the Church acquired ownership of the real property that had been owned by The Hartwell Mills via multiple quit claim deeds. As the decisions of the Georgia courts reveal, the Teasley Plat is at the core of the Church's claim that it acquired title to the property on which the spur track had been located for over 77 years without any prior suggestion that it was not owned by a railroad.

Board and Court Precedents Support a Conclusion That The Church's Adverse Possession Claims Are Preempted.

GWRC will acknowledge that the Church has prevailed before the Georgia courts based on the appellate court's strained acceptance of the Church's counsel's unsupported theory, which served to open the door to the "artificial boundary" approach employed by the courts. However, that is not the end of the track. As the Board has repeatedly explained, questions of property law *generally* are more appropriately decided by courts. However, as the Board explained in *Ingredion Incorporated—Petition for Declaratory Order,* FD 36014, slip op. at 4-5 (STB served Sept. 30, 2016) and in the various cases cited therein:

> the Board and the courts have also held that suits concerning property rights can result in a finding that an action is preempted if the relief sought would amount to regulation and would unreasonably interfere with interstate commerce. For example, in *Jie Ao—Petition for Declaratory Order*, FD 35539 (STB served June 6, 2012), the Board held that an adverse possession claim regarding rail-banked property was preempted because such a seizure of railroad property could interfere with possible future reactivation and rail use. Further, in *14500 Ltd. [--Pet. For Declaratory Order, FD-35778], slip op, at 4-5 [(STB served June 5, 2014),*

> the Board agreed with the court that claims of adverse possession and prescriptive easement were preempted when they would force a rail carrier off of property that it uses for transportation or when it would remove assets from the interstate rail network. Indeed, the Board has held that a party may not evict a rail carrier from yard track that was necessary for its operations without the Board's authorization to do so, even if the property lease had expired, because the track was still under the Board's exclusive jurisdiction. *See Pinelawn Cemetery—Pet. For Declaratory Order*, FD 35468, slip op. 9-11 (STB served Apr. 21, 2015); *see also, e.g., Thompson v. Tex. Mexican Ry.*, 328 U.S. 134, 144-145 (1946)(even if a contract for use of trackage were terminated, a rail carrier's operations subject to the jurisdiction of the Board's predecessor agency could not be abandoned without the agency's authorization); *Fillmore & W. Freight Serv., LLC—Emergency Pet. For Declaratory Order,* FD 35813, slip op. at 3 (STB served Mar. 12, 2015)("It is well settled that, without abandonment or discontinuance authority from the Board, the enforcement of a state or local order that would prevent operation over a railroad line is precluded .... Any party seeking the abandonment of a rail line, or discontinuance of rail service, must first obtain appropriate authority from the Board . . .notwithstanding any contractual arrangement (or the termination thereof between parties regarding cessation of rail service or use of a rail line").

Furthermore, as explained in *Tri-City Railroad Company—Petition for Declaratory Order,* FD 35915 (STB served September 14, 2016) (which somewhat mirrors the factual situation herein):

> Courts and the Board have found that state or local actions that "have the effect of managing or governing," and not merely incidentally affecting, rail transportation are preempted under § 10501(b). *Tex. Cent. Bus Lines Corp. v. City of Midlothian,* 669 F.3d 525, 532 (5th Cir. 2012); Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 414 (5th Cir. 2010)(en banc) ("[L]aws that have the effect of managing or governing rail transportation will be expressly preempted."); *CSX Transp., Inc.—Petition for Declaratory Order*, FD 34662, slip op. at 3 (STB served May 3, 2005) (actions by a state or local entity that directly conflict with

the "exclusive federal regulation of railroads" are preempted).

The foregoing precedents must be applied in this matter.

As Mr. Bishop explained, if GWRC is not allowed to restore the entirety of the runaround track, its rail operations will be unreasonably interfered with as it would be forced to continue the unsafe and uneconomical practice of requiring crew members to hang on to the side of the front car on the return trip to Bowersville and dismounting at crossings. Mr. Bishop's testimony is based in part on a serious injury that he suffered while acting as the conductor on a train that was involved in positioning a rail car. Consistent with the precedent cited above, the Board should find that the runaround track is required and that it continues to be part of the interstate rail network.

GWRC's Reservation Of Its Right To Utilize The Track To Resume Rail Operations In The Future Is Memorialized In The Three Licenses That It Negotiated With The Church in 2007and 2008 and Must Be Considered By The Board.

As Mr. Bishop, who was the author of the licenses, has explained, it was only because the two licenses were jointly agreed to and duly executed by representatives of both the Church and the railroad on July 31, 2008 and August 1, 2008, that Mr. Anderson agreed in October 2008 to temporarily remove the runaround track. As Mr. Bishop has also explained, because no prior decision had been made to discontinue rail operations, the licenses deliberately included multiple cautionary warnings that any person who might cross over the tracks had to "stop, look and listen" before starting across the track. Indeed, in their Rebuttal Verified Statements, Mr. Edmonds and Mr.

Whittemore, voiced their irritation with Mr. Anderson's refusal to commit to an abandonment of the tracks and confirmed that he only agreed to remove a segment of the runaround track in October when the Church was completing construction of the circular drive on the north side of the spur track.

Based on Mr. Anderson's repeated sworn statements, and Mr. Bishop's Verified Statement, it is evident that he rationally believed that GWRC owned the underlying land and that the licenses openly and clearly indicated his intent to be able to reconstruct the segment of the runaround track that is located between the two parcels of real property that the Church acquired in 2002 and would be honored by the Church. Furthermore, because architectural drawings were attached to the licenses that clearly reflected the very close location of the mainline and the runaround track, Mr. Anderson reasonably assumed, consistent with the provisions of Article 19 of the "AGREEMENT, made and entered into [the 1st day of August, 2008, that GWRC could engage in the "maintenance, *reconstruction*, repair, or relocations of "any trackage," which would include both of its tracks.

GWRC notes that O.C.G.A. 46-8-120(a)(1), which defines, the "Powers of railroad companies generally," specifically provides that "[a]ny railroad company owning or operating a railroad in this state ... is authorized and empowered ...[t]o reconstruct its lines or tracks." Even if GWRC's attorney failed to emphasize this statutory right when he also sought power to condemn a twenty (20) foot parcel of real property, that does not warrant the courts' unsupported interpretation that suggests that the reference to a "*building* ...

facing 90 feet on Webb Street" somehow alter the boundary line for the underlying property." Ultimately, it is immaterial that GWRC's former attorney focused on the condemnation of a 20 foot parcel when all that is needed is the 10-foot parcel that is the focus of this proceeding. The rehabilitation of 34 feet of track will be done immediately after the Board preempts the courts' rulings that plainly unreasonably interferes with future interstate transportation and, therefore, must be preempted.

As the Board's decision, dated January 31, 2018 reflects, GWRC has consistently claimed that "the runaround track is needed to make service to a customer, Quality Holdings, LLC (Quality) safer and more economical." While Mr. Anderson may not have anticipated Quality's future growth in 2008, he nevertheless anticipated that the Church, in return for the temporary removal of the segment of the runaround track that allowed it to expand its facilities, would honor the terms of the licenses in the event that new rail traffic would develop, and would appreciate the language in the licenses that clearly alerted the Church and the general public of their responsibilities to exercise extreme care while in the vicinity of the *tracks* (*plural not singular*). Those warnings rebut any suggestion that Mr. Anderson cratered to the pressure that the Church's representatives placed on him to abandon the tracks in 2007 and 2008.

Even if the licenses would not be enforceable under Georgia law to prove title to the underlying real property, that was not the purpose of the License Agreements. As the court recognized, even though GWRC assumed that it

owned the underlying real property, "[t]he 'property' within the agreements refers to the personal property of the rail lines."[16]

Given the Church's willingness to enter the License Agreements some seven years before it bothered to begin its extensive research to examine its own title, the language in the license agreements and attachments thereto can no longer be ignored.[17] Furthermore, attention must be paid to the Armentrout Roebuck Matheny drawing (labeled C100 Site Plan for Project 06067 July 7, 2007) that was attached to the License Agreement, dated July 31, 2008, and thereafter recorded on Oct 2, 2014, by the Church's counsel in the Hart County Superior Court. That license and the attached architectural drawing reflected the continued existence of the mainline and runaround track and the proposed structural changes to the Church's facilities. When Mr. Bishop, GWRC's General Manager, and Joe M. Whittemore, in his capacity as the Chair of the Applicant's Church's Building Committee, signed the Agreement on July 31, 2008, Mr. Bishop and Mr. Anderson unquestionably relied on Mr. Whittemore's and the Church seeming agreement that the plain language in

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[16] Superior Court Order at p. 8.

[17] These same documents were introduced by Mr. Anderson in his Verified Statement that was filed on May 30, 2017. Jack Edmonds' and Joe E. Whittemore filed responsive Verified Statements that confirmed Mr. Anderson's unwillingness to abandon the tracks and his agreement to enter into license agreement that would allow individuals and cars to cross over GWRC's tracks. As their statements confirm, the negotiations never resulted in an explicit agreement that Mr. Anderson would abandon the lines and donate the real property to the Church. They also confirm that following the signing of the licenses that Mr. Anderson, in October, 2008, as the Church was completing construction of the circular drive on the north side of right of way, "the Railroad finally came in and pulled the spur." V.S. Edmonds at 6.

the licenses demonstrates that GWRC intended to retain the right to resume freight operations over the track if it were subsequently removed but not abandoned. The same cannot be said of Mr. Whittemore.

As was explained in Mr. Anderson's Verified Statement, executed on May 27, 2017 and filed with the Board on May 30, 2017, "Had I been aware of the undisclosed drawings that showed the tracks being removed at the time that the License Agreements were being negotiated, I would not have temporarily agreed to remove the spur track rails. Nor would I have allowed Hartwell First's landscaper to cover the crossties and ballast with dirt."

That statement shows that it was only after the Church filed its adverse abandonment application that Mr. Anderson was alerted to the fact that the drawings that are attached to the License Agreements and filed of record in the Superior Court did not disclose the fact that earlier drawings, which were withheld from disclosure by the Church, showed that the Church intended to have all of GWRC's tracks *permanently* removed. A review of the Armentrout Roebuck Matheny drawing (labeled C100 Site Plan for Project 06087), which was attached to Mr. Anderson's Verified Statement as Attachment 12 in AB No 1242, reveals that the Seal of the Georgia Registered Engineer reflects the handwritten date of 11-28-07. In other words, eight months before the August 1, 2008 license agreement was signed, the Church clearly had executed plans to remove the track but had refrained from revealing its intent to GWRC's representative. In short, it appears that Mr. Anderson was, in effect, tricked

into temporarily removing the tracks in October 2008 so as to create the illusion that he intended to abandon them.

Mr. Bishop's Verified Statement confirms Mr. Anderson's testimony and also points out that he too was deceived by that same tactic, which caused him to misunderstand what was actually at stake. As he has also explained, had he been aware of the earlier drawings that were not disclosed during the negotiations, he would have advised Mr. Anderson to not take any steps to temporarily remove the tracks without having a written contractual agreement with the Church that the Church would not oppose the restoration of any track that might be temporarily removed for any reason.

Although the superior court rigidly avoided consideration of the language in the licenses that reflected the potential future use of the tracks to resume rail operations, the Board, consistent with its precedents, must carefully examine the language in the licenses that signaled GWRC's intent to retain the ability to restore and thereafter utilize the runaround track and the mainline track. Such language included the requirement that "[i]n each instance when a individual shall approach said crossing, the same shall not proceed over said track of Railroad until they have ascertained that no train engine or car of Railroad is approaching said crossing." The same is true of the provisions that the Church "accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury and property loss or damage which may be caused "by railroad operations, at or in the vicinity of said crossing"; and that the Church would specifically agree to indemnify, defend and save harmless

Railroad, and all corporate affiliates of the Railroad, from and against all cost, expense, liability, of loss resulting from death, personal injury, or property loss, including attorney fees, arising out of, connected with, or caused by railroad operations , at or in the vicinity of said crossing. In addition, the Church, by virtue of Joe Whittemore's signature, agreed that in order to contribute toward the safety of train and motor vehicle operations at the two private sidewalk crossings that the Church would, at all times during the life of the agreement, keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the crossing from either direction to see approaching trains before such person reaches a position of danger on or near the crossing. Moreover, the Church agreed that it would also prevent the erection on its premises of any structures which would interfere with the view of approaching trains or other rail equipment operating on said track.

The Board, unlike the Georgia courts, should consider the provision that states that "Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes." The same is true of the provision that Railroad shall not be obligated to make cuts in its trains for the crossing. Plainly, if GWRC intended to abandon the track, there would have been no reason to include such information. Instead, knowing that it did not intend to abandon the tracks, GWRC expressly protected its rights to resume freight operations.

As their orders and decisions reflect, in order to avoid the actual purpose of the license Agreements, which was recognized as being the future ability of

the railroad to "cross the North Spur track and the main line," the Georgia Courts, by assertedly focusing on Georgia's rules of contract interpretation, focused only on the sentence that the Church "shall not at any time own or claim any right, title or interest in or to railroad's property occupied by [Church's] crossings, nor shall the exercise of the Agreement for any length of time give rise to any title to said property or any right of interest in [Church] other than the license created hereby." That approach avoided "construing the intent of the contract as whole."

When GWRC's intent is construed by considering the contract as a whole, there is no avoiding the conclusion that the licenses plainly support GWRC's position that it had no intent to abandon the line and runaround track. This is so whether the Church or GWRC is the owner of the real property on which the track was constructed in 1912-13.

In reaching its conclusion, the Board should find that GWRC did not intend to use the licenses to take property from the Church. Instead, its intent was to make it clear to the Church that, given the intended location of the crosswalks, it was in the best interests of the Church and the general public to exercise extreme care at all times when using the crosswalks over the tracks.

Hence, the courts' distorted interpretation of GWRC's intent, must be disregarded. For purposes of this proceeding, the licenses clearly reflect GWRC's future intent to use the "spur" track as part of its interstate rail operations.

Because The 1978 Deed And Plat Reflect A Significant Part Of The Church's Chain Of Title, They, As Well As The Deeds Between 1922 And 1937, Cannot Be Ignored.

Plainly, until the controversy over the TORCH Agreement erupted, the Church never questioned the license agreements.[18] Indeed, in their Rebuttal Verified Statements, filed on June 13, 2017, in support of the Church's adverse abandonment application, Mr. Whittemore and Mr. Edmonds admitted that they waited for seven years after entering into the license agreements before bothering to engage in "extensive research" to examine the Church's own title "as well as the Railroad's title."[19] If the Church's extensive research was thorough, there is no possibility that the 1978 deed and plat, which fully discloses the fact that the Church's expanded real property adjoins the lot that The Hartwell Mills acquired in 1937, could have been overlooked!

However, instead of acknowledging the deed and plat, the Church suppressed any mention of the 1978 deed and plat that had to have been discovered during the "extensive research of [the Church's] own title."[20] By choosing to suppress that information, the Church was able to avoid consideration of a plat that unquestionably repudiates the Church's claims, repeated verbatim by the Superior Court that "there is no evidence within the title chain of the parcel north of [GWRC's] twenty foot right of way and running

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[18] Given that the Board authorized GWRC and TORCH to restructure their agreement to remedy the parts that were identified by the Board, the TORCH Agreement as modified is not at issue herein.

[19] *See* Whittemore Rebuttal Verified Statement at p. 5.

[20] Rebuttal V.S. Whittemore at p. 5.

along Webb Street on the east was not intended to be conveyed, ultimately being surveyed as 0.564 of an acre."[21]

GWRC respectfully submits that it is only because the Church and its local counsel suppressed the deed and plat, that the court was able to accept the Church's argument that "if a gap existed[,] the gap would be found along the southern property line(as argued by [GWRC] versus the northern property line of the parcel."[22] In sum, had the courts bothered to consider the 1978 deed and plat that GWRC introduced in its "Moton for Reconsideration," filed November 4, 2022,[23] they would have been compelled to reject the Church's "legal analysis" and the Teasley Plat consistent with legal analysis presented in the Affidavit of Janney Sander's. Instead, based solely on its finding that the deeds that define the lot that is at issue "reference the Hartwell Railroad as the southern boundary line,"[24] the appeals court determined that "to the extent that the 1922 deed's description of a 90-foot frontage on Webb Street conflicted with its description of being bound on the 'South by Southern Railway right-of-way,' the artificial boundary controls."[25] The court's reliance on the artificial boundaries does not withstand close scrutiny.

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[21] Superior Court's decision, slip op at 5.
[22] *Id. at 6.*
[23] *See* Exhibit 3.
[24] 894 S.E. at 487.
[25] *Id.*

The Plain Language Of All The Deeds That Are In The Chain Of Title Proves That The Hartwell Mills' Lot Faced Ninety (90) Feet On Webb Street.

As the appellate court recognized, in contending that "the superior court erred in concluding that the Church acquired fee simple title to the property underlying the spur track by deed," GWRC:

> points out that every deed in the chain of title from 1922 until 1990 described the Church's lot north of the mainline as fronting 90 feet on Webb Street, and because the lot extended only 90 feet, it did not reach the railroad's mainline right of way and a gap of 10 feet results from the southernmost point of the lot and the northernmost point of the mainline right of way.

However, the appellate court never focused on the fact that every deed between 1907 and 1937 that involved the Farmers' Union Warehouse lot, subsequently referred to as the Perfect Pea Picker lot and The Hartwell Mills lot, between 1907 and 1937, consistently defined the northern boundary of the lot by stating that the lot is bounded on the North by property of McAlpin Thornton, or "the lot of McAlpin Thornton, now W. C Page," or "property of Lessie K. Page Estate, formerly McAlpin Thornton homeplace." In other words, that boundary of the lot on the north never changed, only the owners.

With the exception of the 1907 deed and the 1920 deed, which measure the frontage on Webb Street as 100 feet, all of the others refer to a 90-foot frontage on Webb Street. This difference is explained by the fact that in 1907, the spur track did not exist. Hence, the original lot extended to the right-of way of the Hartwell Railroad.

Furthermore, while the 1920 deed also describes the distance as 100 feet running from a stake corner on the Hartwell Railroad to stake corner on McAlpin Thornton's line, the Board must accept the fact that at that moment, the railroad tracks were still nationalized. As a result, the Southern Railway System could not immediately intervene to correct the situation. Because both of the 1922 deeds plainly reflect the Southern Railway's ownership, it is reasonable to assume that, following the return of the tracks to it from the Director General of Railroads, Southern Railway voiced its objections to the National Bean and Pea Picker Company and the Perfect Pea Picker Company, Inc. regarding the wording used by Clark and Mouchet in the 1920 deed that failed to recognize Southern Railway's ownership of the land on which its track was located. Of course, by the time that the lot was resold in February 1926, the Southern Railway had already sold the railroad to the citizens of Hartwell who formed the new Hartwell Railway Co.

The Board should also note that after the Southern Railway System sold all of its property in Hartwell to citizens of Hartwell in October 1924, the later deeds correctly recognized that the southern boundary would reflect the northernmost edge of the Hartwell Railway's spur track and, therefore, would be bounded on the east for 90 feet along Webb Street. Because the ICC's prior approval was not required under the Transportation Act of 1920, no application was filed with the ICC. Because neither the Perfect Pea Picker Company nor any of the parties that thereafter either bought or sold the lot ever questioned the change of the names of the railroad in their deeds until 2016, it is

submitted that the lack of any challenge to the wording reflects the prior owners' awareness of the change in ownership.

As a result, had the Church and its lawyers conducted a thorough review of the ownership of the tracks and real property, they would have found far more than the five (5) deeds that Mr. Whittemore attached to his Rebuttal Verified Statement. In particular, his list did not include any of the warranty deeds between 1922 and 1937 that reflect the chain of title leading to The Hartwell Mills' acquisition of the lot that is the subject of this matter.[26] When that is done, it would include the order of the United States District Court for the Middle District of Georgia, dated May 6, 1937, that conveyed the lot that is the subject of this proceeding from Fred White, as Trustee in Bankruptcy of the estate of T. H. Johnson, Bankrupt to J. N. Mays. That deed, as well as the earlier and later deed in the chain of title plainly describe the lot:

> as being "known as the "Pea Picker Lot or Union Warehouse lot, bounded on the north by lot of McAlpin Thornton now W.C. Page, on the east by Webb Street, on the south by Hartwell R. Co., on the West by lot of C. I. Kidd; said lot has a frontage on Webb St. of 90 feet and runs back in parallel lines 80 feet

Twenty days later, on May 24, 1937, J. N. Mays conveyed the lot to The Hartwell Mills. Without question, the Georgia state courts failed to consider the implications of the Federal Court's actions.[27]

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[26] Copies of those deeds, which were filed with the Board in the 2017 in AB-1242, are, for the convenience of the Board, attached herein as well, using the same numbers that were used in 2017.

[27] Although the October 17, 1924 edition of the Hartwell Sun reported that the sale of the stock and deeds had been transferred a week earlier, the deeds were not filed in the Clerk's Office of Hart County Superior Court. Without question,

Following the sale to the citizens of Hartwell who established the new Hartwell Railroad in October 1924, the deeds continued to state that the lot fronted 90 feet on Webb Street. Simply stated, when all of the warranty deeds between 1926 and the deed that conveyed the property to The Hartwell Mills on May 24, 1937 are closely examined, there is no avoiding the significance of the statements that the lot was bounded "***on the North by property of McAlpin Thornton***" ***and "being bounded on the South by the Hartwell Railway"*** (emphasis added) and have a frontage on Webb Street of 90 feet. Those statements demonstrate that it was only the Church, and the courts that blindly adopted the Church's proposed order, that disregarded the plain language and intent of the deeds. Given the operational importance of the runaround track to GWRC and Redline, the Board should find that the irrational interpretation employed to convey title to the Church of the real property that has been used to provide rail service for 110 years, must be preempted under 49 U.S.C. § 10501(b)(2), which plainly states that the Board's jurisdiction over the construction, acquisition, operation, abandonment or discontinuance of spur, switching, and side tracks is exclusive.

As the foregoing indicates, the Church's manipulation of the Georgia appellate court by claiming that the 1922 deed that conveyed the Perfect Pea Picker lot to C. W. Rice reflected "a potentially deficient legal description" and

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that sale explains the change in the identity of the railroad and discredits the "tempest in the teapot" that the state courts used to create the need to turn to artificial boundaries to cover up their decision to not accept the plain words that were used deed after deed to define the boundary along Webb Street.

that it was reasonable to *assume*, without any supporting evidence, *that the Trial Court* "found that the dimensions referenced within said deed were referring to the manufacturing plant's building footprint" is a travesty of justice and should not be tolerated by the Board. Simply stated, while the Church's ownership of the lot that was actually acquired from the successors of The Hartwell Mills is not challenged, the chain of title, when properly construed, definitively shows that the lot that The Hartwell Mills acquired in 1937 "faces 90 feet on Webb Street" and is bounded on the North "by property of Lessie K. Page Estate, formerly McAlpin Thornton home place" Because that 90-foot description does not reach the northern edge of the spur track, The Hartwell Mills never acquired ownership of the parcel.

Because every deed, both before and after 1922 firmly establishes the northern border of the lot, the court's fixation on the reference to the Southern Railway to define the distance on Webb Street is indefensible. The pin that is set at northern tip of the Hartwell Mills lot on Webb Street is the only thing that establishes the point to be used to measure the distance to the northern edge of both the spur and mainline tracks. When that is done, there is no way to deny that the southern boundary is located to the north of the spur track and that the Teasley Plat is erroneous and cannot be relied upon to establish the southern boundary of The Harwell Mills lot that the Church acquired in 2002.[28]

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[28] It is anticipated that the Church will argue that the Board lacks the ability to reverse the courts' decision that the lot that the Church acquired in 2002 somehow includes the 10-foot parcel of land on which the spur track was

The Agreement That GWRC Reached With The Georgia Department Of Highways Also Reflects The Lack Of An Intent To Abandon The Runaround Track As Well As The Mainline Track.

In his Rebuttal Verified Statement, Mr. Whittemore sought to discredit the testimony of Joseph Dorsey by claiming that the letter that Mr. Bishop sent to Mr. Todd Wood, the Area Engineer for the Georgia Department of Transportation failed to understand that "the Railroad does not have an automatic right to re-install the crossings" and that "the installation of crossing(s) of Webb Street for the main line and/or spur track will require the Railroad to apply for and receive permits from Georgia Department of Transportation."[29] As Mr. Bishop has testified, no special permits were required by the Georgia Department of Transportation which, contrary to the Church, honored the understanding that GWRC would, if needed for future rail service, be permitted to restore its tracks without having to wait for a drawn out review. As a result, the restoration work was completed a mere 44 days after the Board issued its decision on January 31, 2018 that denied the Church's Adverse Abandonment Application.

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constructed in 1912-13 with the unquestioned consent of the owners of the Farmers' Union Warehouse. To make it crystal clear, GWRC is not asking the Board to "reverse" the courts' decision. Rather, it is simply asking the Board, consistent with the holding of the appellate court that vacated the lower courts permanent injunction and the Board's long-settled precedents, to hold that the courts' conclusions conflict with the Board's exclusive jurisdiction over the acquisition, operation and abandonment of spur, switching or sidetrack tracks and are preempted.

[29] Rebuttal V.S. Whittemore at p. 9.

Since that date, thanks to the appellate court's conclusion that the Board must decide whether the track must be restored, GWRC respectfully requests the Board to expeditiously declare that the entire runaround track is part of the interstate rail system and that the courts' decisions are preempted on the grounds that they unreasonably burden and interfere with future rail transportation. Rather ironically, GWRC has also been unreasonably deprived of the right accorded all railroads that operate in the State of Georgia to reconstruct a crucial track that has been used for a full century without any prior objections.

A Miracle On Webb Street

In the end, the repeated references in the chain of title to the "property of Lessie K. Page, formerly McAlpin Thornton homeplace" cannot be ignored or downplayed any longer. As revealed by the deed and an accompanying plat that the courts declined to consider, the heirs of the Lessie K. Page estate conveyed the real property that simultaneously established the 1978 southern boundary of the Church and the northern boundary of The Hartwell Mills lot. The significance of the 1978 warranty deed is demonstrated by the certified copy of the plat, which is reproduced above on page 8. That plat shows The Hartwell Mills is the owner of the lot that adjoins the southern boundary of the real property that the Church was gifted. Given the fact that the gift increased the church's campus from 11,670.75 square feet to 38, 913 square feet, it is inconceivable that it could have been overlooked by Mr. Whittemore.

The Board must question why it was ***not discovered and disclosed*** by the Church after it engaged in a "more extensive research of its own title as well as of the Railroad's title." According to the Rebuttal Verified Statement of Joe M. Whittemore, filed June 13, 2017, the research revealed the 2002 Springs [Industries] Deed to Hartwell First, the 2002 IBA Deed to Hartwell First, the Sun Trust Deed to Hartwell First, the 1891 Townsend Deed to Various Individuals, and the 1907 Various Individuals Deed to Farmers' Union Warehouse.

Of course, had that deed been revealed in 2017, it would have exposed the error in the Teasley plat and destroyed the Church's argument that the 10-foot "gap" in the frontage along Webb Street was on the northern end of the real property. Hence, it is disingenuous to suggest that the Church and its representative could have failed to uncover the 1978 plat that definitively proves that the lot that The Hartwell Mills acquired in 1937, borders the real property the Church acquired from the heirs of the Lessie K. Page estate.

Conclusion

Because the evidence of record shows that: (1) GWRC never intended to abandon any segment of the runaround track; (2) the state court's resolution of this matter cannot be reconciled with the provisions of O.C.G.A. 46-8-120(a)(1) which state that "[a]ny railroad company owning or operating a railroad in this state ... is authorized and empowered ...[t]o reconstruct its lines or tracks"; and (3) the courts' interpretation of the literal wording of the deeds that constitute

the chain of title clashes with the fact that no one, including The Hartwell Mills, ever quested the consistent description in every deed in the chain of title that the lot fronted on Webb Street for ninety (90) feet, the Board should hold that it has exclusive jurisdiction over acquisition and the abandonment of the spur/runaround track. Moreover, the Board should hold that the state courts' rulings that authorized the Church to acquire the rail property to prevent GWRC from reconstructing the spur/runaround track unreasonably interfere with the future reactivation and use of the track in interstate transportation are preempted by the ICCTA.

Respectfully submitted,

/s/ Richard H. Streeter

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October 30, 2024

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Response and all Attachments thereto, has been electronically served this 39th day of October, 2014, on Eric M. Hockey at ehocky@clarkhill.com and on Justin J. Marks at jmarks@clarkhill.com.

/s/ Richard H. Streeter

Attachments and Exhibits to
GWRC Response AB 1242(1)

Exhibit 1 to
GWRC Response AB 1242(1)

IN THE SUPERIOR COURT OF HART COUNTY

STATE OF GEORGIA

HARTWELL FIRST UNITED METHODIST CHURCH, INC.	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO. 16HV00611**
HARTWELL RAILROAD COMPANY, F/K/A HARTWELL RAILWAY, AND GREAT WALTON RAILROAD COMPANY,	)	
Defendants.	)	

ORDER ON PETITION, MOTION AND CROSS MOTION FOR DECLARATORY JUDGMENT AND FOR PERMANENT INJUNCTION

This matter came before the Court on August 17, 2022 for oral argument following significant briefing by both parties on Plaintiff's Motion for Declaratory Judgment and for Permanent Injunction and Defendants' Cross Motion for Declaratory Judgment. Plaintiff was represented by attorneys Walter J. Gordon, Sr. and Kimberly W. Higginbotham. Defendants were represented by attorneys Mark E. Toth and Marc S. Kaufmann. After reviewing the evidence, pleadings, briefs and hearing argument of counsel, the Court makes the following:

FINDINGS OF FACT

Plaintiff, Hartwell First United Methodist Church, Inc. took title to 0.564 of an acre by deed dated June 6, 2002 from Springs Industries, Inc. which incorporated a plat of survey of the subject property by Dean H. Teasley, Georgia Registered Surveyor dated August 24, 1990 and

recorded August 29, 1990 at Plat Book 2D, Page 236, and recorded again May 13, 2002 at Plat Book 2H, Page 260, Hart County, Georgia deed records (Exhibit 2, Plaintiff's March '22 Motion). Lying upon the property and along a portion of the southernmost property line was several feet of Defendants' railroad track (referred to by the parties as "the North Spur track" or "the industrial spur"). The exact length and width of the track upon the subject parcel was not established before the Court, nor is the former spur track's exact location delineated by survey, but the parties agree generally that when Plaintiff obtained the deed in 2002, a spur track had been in place since the early 1900's until its removal by Defendants in 2008.

After entering the property at issue from the railroad's main line, the North Spur track ran roughly parallel with Defendants' main line railroad track located upon a twenty-foot right of way to Webb Street in the City of Hartwell. Defendants aver that they are owners' of the property beneath the spur track by an unrecorded unknown instrument or by adverse possession/prescriptive title, or that they acquired a prescriptive easement where the former spur track lay. Defendants further aver that due to variations in the footage along Webb Street in the legal descriptions of the Plaintiff's parcel over the last 100+ years, that Plaintiff does not have fee simple title to ten feet on the southernmost portion of the property and that the former North Spur track fell within that ten feet. Defendants further unfoundedly aver that, by the execution of License Crossing Agreements, Plaintiff acquiesced in Defendants' title to the property contrary to law as more fully discussed below.

Originally upon Plaintiff's Emergency Motion, Defendants claimed a forty-foot easement which encompassed both the main line and the former North Spur track. The Railroad Valuation Map of 1916 (Exhibit B, Plaintiff's Petition) shows that the Defendants have only a twenty foot right of way (ten feet on either side of the centerline) for the main line track, and nothing more

the Plaintiff caused to be published in the *Hartwell Sun* the final Notice of Adverse Abandonment. On that day, Defendants forcibly reentered the subject property and began reconstructing the former North Spur track and causing damage to the landscaping and hardscape belonging to Plaintiff. The instant case came before the Court on Plaintiff's Petition for Declaratory Judgment and For Injunctive Relief on the next available business day, November 28, 2016, wherein this Court granted a Preliminary Injunction on further track construction.

On December 23, 2016, Defendants filed a Notice of Removal of the subject case to the U.S. District Court of the Middle District of Georgia, docketed as Case No. 3:16-CV-169. On February 9, 2017 the case was remanded back to this Court as exclusively a matter for adjudication in the Superior Court of Hart County as the situs of the land at issue for a determination of ownership rights of the subject property based upon state law.

Then, the land beneath the entirety of the former North Spur track became the subject of an October 27, 2017 condemnation action filed by Defendants before the Georgia Public Service Commission. Upon an unfavorable PSC decision, Defendants filed for reconsideration. The reconsideration was denied and the decision denying the condemnation was upheld through appeals in Fulton County Superior Court (docketed as The Great Walton Railroad Company, Inc. v. Georgia Public Service Commission Case No. 2019CV316156), the Georgia Court of Appeals (Case No. A20A1065) and the Georgia Supreme Court which denied Certiorari on May 17, 2021 (Case No. S21 C047). Following remittitur, the matter now rests with this Court for a final decision.

CONCLUSIONS OF LAW

A. Fee Simple Title: The Court concludes that Plaintiff is the fee simple title owner of the entirety of the 0.564 of an acre as acquired by deed dated June 6, 2002 from Springs

Industries, Inc. (subject to any outstanding liens or interests of record other than the claims of the Defendants herein) which incorporated a plat of survey of the subject property by Dean H. Teasley, Georgia Registered Surveyor dated August 24, 1990 and recorded August 29, 1990 and recorded again May 13, 2002 in the Hart County, Georgia deed records. It is undisputed that Defendants do not have a deed or any other written instrument which grants any interest in or to any portion of the subject property. Defendants argue that Plaintiff only took title to 90 feet along Webb Street, Plaintiff's easternmost line, thus creating a gap.

In analyzing the title chain for the subject parcel, this Court utilized the instruction from Atlanta Development Authority v. Clark Atlanta University, Inc., 298 Ga. 575 (2016), in which the Georgia Supreme Court said,

> In construing a deed, the paramount consideration and overriding goal is to ascertain and give effect to the intent of the parties. *Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar,* 282 Ga. 721, 724–725(2), 653 S.E.2d 462 (2007); *Moore v. Wells,* 212 Ga. 446, 449(1), 93 S.E.2d 731 (1956). And, in general, the parties' intent is to be determined from the deed's text alone, and extrinsic evidence will be used to interpret the deed only when its text is so ambiguous that its meaning cannot be determined through application of the ordinary rules of textual construction. *Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar,* supra at 724–725(2). Furthermore, the deed must be examined in its entirety in order to determine the parties' intent and to be given a construction which is consistent with reason and common sense. *Woodbery v. Atlas Realty Co.,* 148 Ga. 712, 98 S.E. 472 (1919). Each provision of the Deed is to be given effect and interpreted so as to harmonize with the others. *Horwitz v. Weil,* 275 Ga. 467, 569 S.E.2d 515 (2002). So too, the circumstances and purpose of the Deed must be given due weight. Id. at 468, 569 S.E.2d 515.

There is no evidence within the title chain that the whole of the parcel north of the Defendants' twenty foot right of way and running along Webb Street on the east was not intended to be conveyed, ultimately being surveyed as the 0.564 of an acre. Furthermore, regarding the differing footage along Webb Street within the title chain, this Court applies the long-established

principles set forth by Justice Lumpkin in 1854 in Riley v. Griffin, 16 Ga. 141 in which the Court set out fourteen rules in the construction and application of legal descriptions which remain good law today. These cases and principles ultimately give courses and distances in a legal description low priority when there are monuments or surveys to utilize. There is no competent evidence before the Court to conclude that there is a gap in the property conveyed to Plaintiff by deed and plat of survey, and there is no evidence before the Court to support that if a gap existed the gap would be found along the southern property line (as argued by Defendants) versus the northern property line of the parcel, and there is no evidence to support that if a gap existed the location of the former North Spur track was within such a gap. The Defendants' Affidavits, while making the ultimate conclusion, do not account for this legal analysis or proffer any differing valid legal analysis. The only survey of record, completed in 1990 by Dean H. Teasley and filed twice in the public records of Hart County, Georgia, sat uncontroverted for twenty-six years until this action. Mr. Teasley, the county surveyor with sixty-five years of local Hartwell surveying experience, certified by Affidavit that he utilized the Rules and Regulations of the State of Georgia, Chapter 180-7 entitled "Technical Standards For Property" in conducting the survey of the 0.564 of an acres, and that in his professional opinion by using the Technical Standards his plat of survey is true and correct regarding the lines, corners and dimensions of the subject tract of this action. The Court agrees that the 1990 Dean H. Teasley survey of 0.564 of an acre does accurately reflect the property granted to the Plaintiff in 2002.

Because Defendant does have the main line's twenty foot right of way to the south of Plaintiff's parcel, also important to the analysis is O.G.G.A. § 44-5-167 entitled "Possession under deed extends to what bounds" which states

> Possession under a duly recorded deed shall be construed to extend to all the contiguous property embraced in such deed. To the extent that any such property is

> bounded on one or more sides by a railroad, and the description of the property contained in such deed makes reference to the railroad or the railroad right of way as a boundary for such property, such reference shall be construed to mean that the boundary line is located at the edge of the tract depicted on the official map of the railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended, and such depictions contained on such official railroad map shall be conclusive as to the location of the boundary line between the property of the railroad and any adjoining property owner as of the date of such railroad map; provided, however, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land depicted on such official railroad map is situated. Any court of this state shall take judicial notice of the information set forth in any such official map properly filed and recorded by such railroad corporation or railroad company.

Defendants' claims that Plaintiff's signing of Defendants' license/crossing agreements in 2008 (Exhibits to the Affidavit of Bennie Ray Anderson) admitted that Defendants held title to the subject property are without merit. The crossing agreements, or licenses, must be construed by Georgia's rules of contract interpretation set forth in O.C.G.A. §13-2-2 wherein words are given their usual and common meaning, that narrow focus must not be given to language instead of construing the intent of the contract as a whole, more importantly that estates and grants by implication are not favored, and when in doubt the contract must be construed against the drafter (the drafter of the license agreements here is Defendants). See also Langley v. MP Spring Lake, LLC, 307 Ga. 321 (2019).

The purpose of the licenses/crossing agreements was to cross the North Spur track and the main line. In their brief and before Court, the Defendants argued "the terms of the license agreements executed by Plaintiff provide the church 'shall not at any time own or claim any right, title or interest in or to the railroad's property occupied by licensee's crossing, nor shall the exercise of this agreement for any length of time give rise to any title to said property or right of interest in licensee other than by license created hereby.'" The Defendants' "property" at the

time of the signing of the agreements consisted of the main track (rails and appurtenances), the twenty foot right of way, and the former north spur track (rails and appurtenances). The Defendant railroad did not own the real property, and therefore the licenses should be interpreted for their purpose – to cross the railroad tracks. The licenses should not be interpreted to convey ownership in real property, to divest ownership in real property, or to forcibly admit ownership of the real property in and to the Defendants when no ownership existed. The "property" within the agreements refers to the personal property of the rail lines. To interpret the crossing agreements for any other purposes other than as a license is against both codified and Georgia case law.

Lastly Defendant's survey by Brewer (Exhibit 1 to the Affidavit of John F. Brewer) fails to delineate Plaintiff's easternmost line on Webb Street by courses, and list the footage thereon as "90+ feet." Argument at court established that the relevant portion of the survey was drawn from legal descriptions of newspaper notices of proposed sales of parcels within the 0.564 of an acre and not from legal descriptions found within the real property records of Hart County. The methodology of the survey in its creation and lack of courses and distances is not persuasive to the Court that the survey is correct or valid, and the Court finds that the survey is uncertain and lacking the requisite definitiveness for this Court to rely upon as being true and accurate – especially regarding the Plaintiff's easternmost property line on Webb Street which is central to this analysis.

B: Defendants' Prescriptive Title Claims: The analysis of Defendants' claim of ownership by prescriptive title is moot due to the undisputed fact that the Defendants removed the former North Spur track (rails and appurtenances) in 2008. Then, as established by testimony in the Affidavit of Joe M. Whittemore, Plaintiff removed the remnants of the former North Spur

track (decaying cross ties and the gravel of the ballast), filled in the void with soil, graded the area by heavy equipment, landscaped, and made hardscape improvements thereto, all to the complete exclusion of Defendants as a railroad. Plaintiff thereby exclusively controlled and occupied the subject property under all of the requirements of O.C.G.A. §§ 44-5-161 and 164 for prescriptive title by adverse possession as established by the Whittemore Affidavit from 2008 until Defendants reentered the property in 2016 – more than the requisite seven years under color of title. Plaintiff's prescriptive title of the subject property would also take precedence over Defendant's assertions that Plaintiff did not hold fee simple title under its 2002 deed.

C: Defendants' Prescriptive Easement Claims: The analysis of Defendants' claim of prescriptive easement of the land underlying the former North Spur is also moot due to the fact that the Court finds that Defendants abandoned any easement rights to the property pursuant to O.C.G.A. § 44-9-6. Entitled "Forfeiture or abandonment of easement" O.C.G.A. § 44-9-6 states that "[a]n easement may be lost by abandonment or forfeited by nonuse if the abandonment or nonuse continues for a term sufficient to raise the presumption of release or abandonment." While there are heightened requirements to abandon an express easement or an easement obtained by grant (which Defendants do not have), there are no such requirements for a prescriptive easement. "While an easement acquired by user or prescription may be lost by abandonment or nonuse, a different rule applies when an easement has been acquired by a grant. As was said in Teintjen v. Meldrim, 169 Ga. 678 (1930): 'Where an easement of way is acquired by mere user, the doctrine of extinction by mere nonuser may in reason apply...'" Westbrook et al. v. Comer et al., 197 Ga. 433 (1944). When, however, such nonuser is accompanied by acts manifesting a clear intent to abandon, and which destroy the object for which the easements were created or the means of their enjoyment, an abandonment will take place. 19 C. J. 943, § 153 (4).

There is no dispute that Defendants removed the rails in 2008, that Plaintiff graded and planted the area, and that Defendant had no further use of the parcel until the attempted partial reconstruction in 2016. While not necessary to analyze, Defendants claim a failure of intent to abandon any easement rights. However, Defendants leased their rights in and to the main line in the 99 year lease to TORCH. Since the North Spur line is appurtenant to the main line, the main line would be necessary for the utilization of the spur line, but the lease included language that is indicative of Defendants' intent to abandon its main line rail use and is instructive and clearly indicative of the Defendants' intention to cease any further rail traffic over the land and to effectively abandon the property and potential easement rights of the North Spur. The Defendants' intention to abandon its use is abundantly clear as shown by the lease terms which acknowledge that the property "has not been regularly maintained for several years and are [sic] in a state of disrepair." Lease Sec 8.1 (see relevant Lease portions as Exhibit C to Plaintiff's Petition of 11/28/2016). The Lease relieves the Defendants of any duty to maintain or insure the property (Lease Sec 8.2 and 9.1) and requires TORCH to accept liability for injuries and all responsibility for maintenance and insurance (Lease Sec 8.1, and Sec 9.1 through 9.5), and all utilities and all taxes, (Lease Sec 3.2 and 3.3). In Lease Section 7.2, Defendants agreed that they would not interfere with TORCH's use of the leased property as a public park, playground and walking trail. Likewise in Lease Sec 7.3, the Railroad guarantees that TORCH "shall peaceably and quietly have, hold and enjoy the premises, without hindrance or molestation from Lessor…" The subsequent Amendment of the Lease does not change the facts adverse to Defendant in the original lease.

More importantly, in title questions, the Georgia Courts have consistently held that removal of railroad tracks was abandonment of any easement rights, even when those rights were

granted by written easements. See Atlanta Consul. St. Ry. Co. v. Jackson et al., 108 Ga. 634 (1899), where the Court found that abandonment of a specific easement grant expired the minute the tracks were removed in stating,

> "[h]ad its successor, the purchaser at the judicial sale, continued to use the right of way as stipulated in the deed, the fee would have remained in it. The moment it tore up its track and removed it to another locality, abandoning this right of way, the estate granted its predecessor was lost, and the land reverted immediately to the grantor or to his heirs; he having died before the abandonment of the right of way."

See also in 1936 where in dicta the parties agreed that railroad abandonment had occurred because the rails and ties had been removed and railroad operations ceased, as follows

> ... that the railroad and its successors have permanently abandoned the use of the said property for railroad purposes, and that the railroad property has been sold under a decree of the United States District Court, with the right to the purchaser to dismember it and discontinue to operate the railroad; that the rails and ties have been taken up and moved and the property permanently abandoned as railroad property..." in Rogers v. Pitchford, 181 Ga. 845 (1936).

Lastly see Atlanta, B. & A. Ry. Co. v. Coffee County, 152 Ga. 432 (1921), where the railroad sued the county for an injunction after Coffee County paved a road over the previous location of the railway bed, and the Court stated,

> ... [t]he uncontroverted evidence discloses that the track was thereafter removed from the land in question, and that said right of way has not since been used or occupied by the railroad company. It is true that a part of the strip was never abandoned, but was at the time of the filing of the petition in the present case used by the plaintiff for certain of its industrial and spur tracks. The judge was authorized to find, however, that the county had not constructed the public highway over or upon any part of the strip so used by the plaintiff in error. In these circumstances the judge did not abuse his discretion in denying the interlocutory injunction.

Ordinarily, it is the Surface Transportation Board (hereinafter "STB," formerly the Interstate Commerce Commission) that must authorize the abandonment of a "line of railroad." However, the STB has specifically determined that the North Spur is not part of the Defendants'

line of railroad, and thus, no STB authority was required before the Defendant abandoned the North Spur. The cases herein demonstrate how the Georgia courts have determined under state law the loss of property rights by a railroad when railroad tracks have been removed. In the subject case, though unnecessary for the Court's conclusion, Defendants met the heightened requirements of the abandonment of a granted easement (a grant of which Defendants did not have or were unable to produce) by clear, unequivocal, and decisive evidence of an intent to abandon any easement rights to the underlying real estate beneath the former North Spur through the removal of the rails and usable pieces of the appurtenances for more than eight years. Further, it is undisputed that Defendants failed to object to the Plaintiff's work upon the subject property including the removal of the remnants of the North Spur tracks and to Plaintiff's occupation of the subject property to the exclusion of the Defendants use as a railroad for a period of more than seven (7) years, thus prescriptively terminating any easement rights. It is apparent that Defendants' interest in the North Spur and intent to claim title to the property underneath the former spur only arose when the TORCH lease income may have been threatened by the Plaintiff's adverse abandonment claims of the main line before the STB in 2016.

A Declaratory Judgment is proper when the facts, even if disputed can lead to only one judgment. This is such a case. In cases of actual controversy, the respective superior courts of this state shall have power to declare rights and other legal relations of any interested party petitioning for such a declaration, and, in addition thereto, the superior courts likewise have powers upon petition therefor to declare rights and other legal relations of any interested party in any civil case in which it appears that the ends of justice require that such a declaration should be made. O.C.G.A. §9-4-2. In cases of this nature, the Court may grant ancillary relief as may be necessary such as injunctions or other plenary relief including damages. O.C.G.A. § 9-4-3.

IT IS THEREFORE ORDERED THAT Plaintiff is entitled to a judgment declaring Plaintiff the fee simple title owner of 0.564 of an acre, described by deed dated June 6, 2002 recorded in Deed Book 449, Pages 488-490, Hart County, Georgia deeds records and delineated by the 1990 Teasley survey dated and recorded August of 1990 in Plat Book 2D, Page 236 in the Hart County, Georgia deed records, subject to any outstanding interests of record but free and clear of all claims by Defendants. Defendants' continued occupation of the subject property of the Plaintiff is an unlawful trespass, and Plaintiff is also entitled to an injunction enjoining the Defendants from said trespass. Defendants shall remove the rail lines and appurtenances to the reconstructed spur track which lie upon Plaintiff's property and shall restore Plaintiff's property to its original condition as it existed before its 2016 destruction by Defendant no later than sixty (60) days subsequent to the date of this Order.

Defendants' Cross Motion and all relief requested therein is denied in its entirety.

An award of attorneys' fees is reserved.

A copy of this Order is being sent via email to counsel for the Plaintiff and for the Defendants.

SO ORDERED this 17 day of October, 2022.

JEFFERY S. MALCOM, Chief Judge
Superior Court, Northern Judicial Circuit

Exhibit 2 to
GWRC Response AB 1242(1)

370 Ga.App. 134
Court of Appeals of Georgia.

HARTWELL RAILROAD COMPANY et al.
v.
HARTWELL FIRST UNITED METHODIST CHURCH, INC.

A23A1021
|
October 27, 2023
|
Reconsideration Denied November 16, 2023
|
Certiorari Denied May 14, 2024

Synopsis

Background: Church filed a petition for declaratory judgment and for injunctive relief against railroad, seeking to quiet title to a 10-foot strip of land adjacent to the church's parcel. The Superior Court, Hart County, Jeffery S. Malcom, J., granted the petition, issued a permanent injunction against railroad, and denied railroad's cross-motion for declaratory judgment. Railroad appealed.

Holdings: The Court of Appeals, Brown, J., held that:

[1] church's parcel included land underlying spur track;

[2] license agreements did not to convey ownership of the disputed land to railroad; and

[3] land containing spur track was subject to Surface Transportation Board's (STB) exclusive jurisdiction and trial court had no authority to issue permanent injunction requiring railroad to remove the tracks and restore the property to its previous condition.

Affirmed in part and vacated in part.

Procedural Posture(s): On Appeal; Motion for Declaratory Judgment; Motion for Permanent Injunction.

West Headnotes (16)

[1] **Declaratory Judgment** 🡐 Verdict and findings

Declaratory Judgment 🡐 Scope and extent of review in general

A trial court's findings of fact after a declaratory judgment hearing are analogous to a jury verdict and will not be interfered with if there is any evidence to support them.

[2] **Appeal and Error** 🡐 Granting or refusing

The Court of Appeals reviews trial court's grant of permanent injunction for a manifest abuse of discretion.

[3] **Appeal and Error** 🡐 De novo review

Appeal and Error 🡐 Plain or palpable error

The Court of Appeals reviews issues of law de novo, applying the plain legal error standard of review.

[4] **Appeal and Error** 🡐 Any evidence

Appeal and Error 🡐 Verdict, Findings, and Sufficiency of Evidence

With respect to factual issues, the Court of Appeals construes evidence in favor of the trial court's findings and affirms if there is any evidence to support them, regardless of whether the evidence would also support opposite findings.

[5] **Boundaries** 🡐 Control of natural objects and monuments over other elements in general

Boundaries 🡐 Control of metes and bounds or courses and distances over other elements

Where the calls of a deed are for natural as well as known artificial objects, both courses and distances, when inconsistent, must be disregarded.

[6] **Boundaries** Artificial monuments and marks

Artificial boundaries such as fences, roads, streets, and land lot lines are evidence of points that landowners, past and present, had in mind in their contractual dealings with one another.

[7] **Boundaries** Control of natural objects and monuments over other elements in general

Boundaries Control of metes and bounds or courses and distances over other elements

What is most material and most certain in a deed description shall prevail over that which is less material and less certain; thus courses and distances yield to natural, visible, and ascertained objects.

[8] **Boundaries** Control of metes and bounds or courses and distances over other elements

Courses and distances occupy the lowest, instead of the highest grade, in the scale of evidence, as to identification of land.

[9] **Boundaries** Control of metes and bounds or courses and distances over other elements

Church's parcel bordering railroad property included 10-foot strip of land underlying spur track, although the description of lot owned by the church varied regarding whether it included street frontage of 90 or 100 feet, where the deeds in the chain of title called for the railroad right of way as the boundary line, it was undisputed that the spur track resides outside the right of way, and the artificial boundary of the railroad right of way took precedence over frontage description.

[10] **Boundaries** Railroad rights of way

Where a deed description calls for the railroad right-of-way as the boundary line, the railroad right-of-way is fixed as the boundary line, wherever it may be.

[11] **Licenses** Nature and extent of rights

Railroads Title, estate, or interest acquired

License agreements between church and railroad allowing for the installation of underground pipes under railroad's main track and a disputed 10-foot strip of land containing railroad spur in which church agreed that it would not at any time claim any right, title, or interest to the railroad's property did not to convey ownership of the disputed 10-foot strip of land to railroad, where railroad never had any interest in the property underlying the spur track.

[12] **Railroads** Abandonment and Forfeiture of Land or Rights

Ten-foot strip of land containing spur track was subject to Surface Transportation Board's (STB) exclusive jurisdiction and trial court had no authority to issue permanent injunction requiring railroad to remove the tracks and restore the property to its previous condition, although the land was owned by church and the spur track had been determined to be ancillary by the STB, where the STB had deferred ruling on whether the track was removed from the interstate rail system such that it was no longer within its exclusive jurisdiction pending church's declaratory judgment action against railroad, and a further determination by the STB might be necessary before railroad was required to permanently remove the track. 49 U.S.C.A. §§ 10501(b) (1) (2), 10906.

[13] **Railroads** Abandonment and Forfeiture of Land or Rights

The interpretation of deeds and the determination of who owns good title to property are issues of state law that are outside of the expertise of the Surface Transportation Board in an adverse abandonment proceeding, and the most appropriate course of action is to direct property disputes to state court to get underlying property law issues resolved.

[14] **Federal Preemption** Railroads
Railroads Judicial supervision

State law tort claims which would interfere with rail carrier operations, including operations involving spur, industrial, team, switching, or side tracks, are preempted under the Interstate Commerce Commission Termination Act (ICCTA). 49 U.S.C.A. §§ 10501(b) (1) (2), 10906.

[15] **Federal Preemption** Railroads
Railroads Constitutional and statutory provisions

Recognizing that the Surface Transportation Board (STB) is uniquely qualified to determine whether state law should be preempted by the Interstate Commerce Commission Termination Act (ICCTA), courts have traditionally looked to STB decisions when analyzing a claim of preemption. 49 U.S.C.A. §§ 10501(b) (1) (2), 10906.

[16] **Federal Preemption** Railroads
Municipal Corporations Political Status and Relations
Railroads Supervision by Public Officers
Railroads Abandonment and Forfeiture of Land or Rights

Even a railroad track excepted under the statute governing abandonment of railroad track from the need to obtain Surface Transportation Board (STB) authority for construction, abandonment, or operation is nevertheless subject to STB's jurisdiction and is not subject to state or local regulation. 49 U.S.C.A. § 10906.

Attorneys and Law Firms

****483** Hall Bloch Garland & Meyer, Mark Edward Toth, Macon, John Ellsworth Hall IV, for Appellant.

The Gordon Law Firm, Walter James Gordon, Sr., Hartwell, Kimberly Wilkerson Higginbotham, for Appellee.

Opinion

Brown, Judge.

***134** In this dispute over a ten-foot-wide strip of land on which sits a railroad spur track constructed in 1913, Hartwell Railroad Company, fks Hartwell Railway, and The Great Walton Railroad Company (collectively "Walton"), appeal from the superior court's order entering declaratory judgment and a permanent injunction in favor of The Hartwell First United Methodist Church, Inc. ("the Church"), and denying Walton's cross-motion for declaratory judgment. For the reasons set forth below, we affirm the superior court's grant of declaratory judgment in favor of the Church but vacate the permanent injunction.

[1] [2] [3] [4] "A trial court's findings of fact after a declaratory judgment hearing are analogous to a jury verdict and will not be interfered with if there is any evidence to support them. However, we review the trial court's conclusions of law de novo." (Citation and punctuation omitted.) *Brown v. Brown*, 359 Ga. App. 511, 517, 857 S.E.2d 505 (2021). Additionally,

> [w]e review a trial court's grant of a permanent injunction for a manifest abuse of discretion. We review issues of law de novo, applying the plain legal error standard of review. With respect to factual issues we construe the evidence in favor of the trial court's findings and affirm if there is any evidence to support them, regardless of whether the evidence would also support opposite findings.

(Citations and punctuation omitted.) *Doxey v. Crissey*, 355 Ga. App. 891, 846 S.E.2d 166 (2020).

Viewed in this light, the record shows that the property at issue is a roughly ten-foot-wide strip of land which runs parallel to the railroad mainline just west of Webb Street in Hartwell, Georgia. On this strip of land sits a railroad spur. Both the spur and mainline sit adjacent to the Church's campus, but the Church owns the land to the north and south of the mainline. The parties generally agree that a predecessor of Walton obtained a 20-foot-wide right of way (10 feet on either side of the centerline) for the mainline through an 1880 condemnation award and that the mainline, along with the ***135** spur track, [1] are depicted on the valuation map [2] for the Hartwell Railroad dated June 30, 1916 ("the 1916 Map"). However, as the trial court found, the spur track is depicted *within* the 20-foot-wide right of way of the mainline although it is undisputed that the spur track at issue has never resided in the mainline's 20-foot right of way. In 1919, the spur was extended across Webb Street and was later linked back to the mainline at a point located between Webb and Jackson Streets, making it a runaround track. [3] The runaround track was still in use in 1990 when the railroad was acquired by Walton through a quitclaim deed. The quitclaim deed includes the following description:

> A right of way and associated property between Bowersville and Hartwell, Georgia, being approximately 9 and 6/10th miles in length, and which is approximately as shown on the drawing below.

****484** The drawing depicts the mainline, a portion of which is circled and labeled "Hartwell." It does not depict a spur or runaround track. Walton continued to use the runaround track for the next ten to twelve years.

In 2002, the Church acquired the roughly half-acre parcel of land immediately north of the mainline pursuant to a quitclaim deed with Springs Industries, Inc. The parcel was acquired in 1907 by Farmers Union Warehouse Company. The recorded deed pertinently describes the parcel as "lying on the north side of The Hartwell Railroad at the crossing of Webb Street and running north with said street ... about (100) one hundred feet, to the corner[.]" After a break in the chain of title, The Perfect Pea Picker Company acquired the parcel by deed in 1920, with the description "[b]eginning at a stake corner on the Hartwell Railroad, and running along Webb Street in a northerly direction about 100 feet[.]" The deed does not mention the spur, which the parties agree had been built at this point. A 1922 deed conveying a "certain manufacturing plant consisting of a building and grounds upon which it rests" describes a "building ... facing ***136** 90 feet on Webb Street" and "being bounded on the East side by Webb Street; South by Southern Railway right-of-way[.]" Thereafter, deeds in the chain of title describe the relevant portion of the property as fronting Webb Street 90 feet and being bound on the south by the railroad right of way. In 1990, a plat survey was prepared in connection with a conveyance to the Hart County Industrial Building Authority. Both the deed and plat reflect that the parcel contains 0.564 of an acre with 97.74 feet fronting on Webb Street beginning at the centerline of the railroad mainline right of way. Thus, this plat survey shows the spur track as being within the boundaries of the parcel acquired by the Church.

The License Agreements

In 2007 and 2008, Walton and the Church entered into three license agreements, allowing for the installation of underground pipes under the spur and mainline tracks and for pedestrian and vehicular traffic crossing. The two agreements allowing for crossings contain a provision providing that the Church would not "at any time own or claim any right, title or interest in or to railroad's property occupied by [the Church's] crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest." The third agreement, allowing for underground pipes, does not include this language. In 2008, Walton removed the rail from the spur track, but not the underlying crossties. After removal of the rails, the Church graded, filled, and installed a concrete sidewalk and landscaping.

A Dispute Arises

In 2015, Walton entered into a 99-year Lease/Purchase Agreement with Transformation Opportunities in Revitalizing Communities of Hartwell, Inc. of Hartwell, Inc. ("TORCH"), for the entirety of Walton's holdings in the area, including the mainline adjacent to the Church property. [4] TORCH is a non-profit group working to convert portions of the mainline railroad and ancillary buildings in downtown Hartwell for use as a public park, playground, farmer's market, and walking trail.

***137** In 2016, the Church filed an adverse abandonment action with the Surface Transportation Board ("STB"), requesting that the STB authorize adverse abandonment and discontinuance of 0.25 miles of Walton's rail line in Hartwell in order to quiet title to the property underlying the rail line.[5] In August and October 2016, Walton notified the Church that it intended to "rehabilitate its tracks." On November 10, 2016, the Church published ****485** notice of its intent to file proceedings before the STB seeking authority for the adverse abandonment and discontinuation of a section of the railroad tracks and right of way, which included the mainline adjacent to the Church's 0.564-acre parcel. The final Notice of Adverse Abandonment was published on November 23, 2016, in the *Hartwell Sun*.[6] On the same day, Walton removed the Church's landscaping and sidewalk and began reconstructing the spur track.[7] The Church filed a Petition for Declaratory Judgment and for Injunctive Relief in the Superior Court of Hart County on November 28, 2016, and the trial court granted a preliminary injunction halting further construction of the spur track outside of the 20-foot right of way.

In December 2016, Walton filed a notice of removal of the case to federal district court, but the district court found that "federal law does not completely preempt a determination of the parties' relative state law property rights" and remanded the case to the Superior Court of Hart County in 2017 to make that determination.

The Condemnation Proceedings

After the attempted removal to federal court, Walton filed a condemnation action pursuant to OCGA § 46-8-120 before the Georgia Public Service Commission in October 2017.[8] The Church intervened in the proceedings pursuant to OCGA §§ 46-2-59 and 50-13-14. ***138** A hearing was held before a hearing officer who rendered a decision in favor of Walton. Upon full Commission review of the hearing officer's decision, the Commission reversed the hearing officer's decision and denied Walton's petition. Walton filed a motion for reconsideration which also was denied. The Commission's decision denying the condemnation was subsequently upheld on appeal in the Superior Court of Fulton County. In an unpublished opinion, this Court affirmed the superior court, finding that there was ample evidence to support the Commission's finding that condemnation of the subject property would serve no public purpose.[9] *Great Walton R. Co. v. Ga. Public Svc. Comm.*, 356 Ga. App. XXVIII (Case No. A20A1065) (Sept. 30, 2020) (unpublished). The Supreme Court denied certiorari, and following remittitur, the case was returned to the Superior Court of Hart County for a final decision on the Church's petition.

Further Proceedings Before the STB

In November 2019, Walton filed a petition for declaratory order with the STB, asserting that the STB has exclusive jurisdiction over the spur/runaround track and therefore efforts to block Walton's restoration of the track are preempted. In a June 23, 2020 order, the STB concluded that the spur/runaround track is ancillary track that never became part of Walton's regulated rail line. According to the STB's order, a regulated rail line is within the STB's exclusive jurisdiction and can only be abandoned upon receiving abandonment authority from the STB. Ancillary track is also within the STB's exclusive jurisdiction, but STB authorization is not required for the abandonment or discontinuance of ancillary track. However, the STB deferred ruling on whether the track was removed from the interstate rail system ****486** (such that it was no longer within the STB's exclusive jurisdiction) pending the state court proceedings. The STB noted that if Walton established a property interest in the land ***139** underlying the spur/runaround track in the state court proceedings, it would be free to reconstruct the track regardless of whether it had previously been removed from the interstate rail system. If Walton was unsuccessful in establishing such an interest, the STB concluded it "may need to determine whether the runaround track remains part of the interstate rail system." The STB held the matter in abeyance pending the state court proceedings.

The Final Decision in Superior Court

When the case was returned to the superior court, the Church moved for a decision on its petition. Walton subsequently put forth a new survey of the subject property prepared by a land surveyor retained by Walton. The surveyor averred that "the southern property line of the [Church] does not extend to the railroad's mainline right of way" and that the spur track at issue "is not located on the Church's property ... based upon my review of the property deeds and the survey that I conducted." A final hearing was held in August 2022.

After the hearing, the superior court issued a detailed 13-page order finding that Walton has never had fee simple title to the property underlying the spur track, and that the Church is the fee simple title owner of the 0.564-acre parcel delineated in the recorded 1990 survey, including the property underlying the spur track. The court rejected Walton's argument regarding the variation in footage fronting Webb Street, finding as follows:

> There is no competent evidence before the Court to conclude that there is a gap in the property conveyed to [the Church] by deed and plat of survey, and there is no evidence before the Court to support that if a gap existed the gap would be found along the southern property line (as argued by [Walton]) versus the northern property line of the parcel, and there is no evidence to support that if a gap existed the location of the former North spur track was within such a gap.

The superior court further found that the 1990 survey accurately reflects the property granted to the Church. As to the survey proffered by Walton, the court found that "the methodology of the survey in its creation and lack of courses ... is not persuasive" and further "that the survey is uncertain and lacking the requisite definitiveness for this Court to rely upon as being true and accurate — especially regarding the [Church's] easternmost property line on Webb Street[.]"

***140** As to the parties' adverse possession claims, the court concluded that Walton's claim of ownership by prescriptive title was "moot due to the undisputed fact that [Walton] removed the former North Spur track (rails and appurtenances) in 2008." Conversely, the court found that the Church "exclusively controlled and occupied the subject property under all of the requirements ... for prescriptive title by adverse possession ... from 2008 until [Walton] reentered the property in 2016 — more than the requisite seven years under color of title." The superior court further concluded that if Walton ever acquired a prescriptive easement of the land underlying the spur track, Walton abandoned any easement rights to the property pursuant to OCGA § 44-9-6, by removing the rails in 2008 and ceasing all use until the attempted reconstruction in 2016. The court also noted the 99-year lease Walton signed with TORCH was indicative of Walton's intent to abandon its main line rail use and cease any further rail traffic over the land. [10]

In sum, the superior court declared the Church the fee simple title owner of the 0.564-acre parcel delineated in the recorded 1990 survey, including the property underlying the spur track, free and clear of all claims by Walton. Finding Walton's continued occupation of the Church's property an unlawful trespass and that the Church was entitled to ****487** an injunction enjoining Walton from said trespass, the court ordered Walton to remove the rail lines and appurtenances to the reconstructed spur track on the Church's property and restore it to its condition as it existed before Walton reentered the property in 2016. The court denied Walton's cross-motion.

Walton's Appeal

Walton now appeals from the superior court's order. Walton contends that the superior court disregarded the unambiguous language in the subject deeds showing that the Church did not own the property and disregarded the three license agreements between Walton and the Church expressly providing that the Church did not own and would not assert title to the property. It also contends that the court erred in alternatively concluding that the Church acquired title to the property by adverse possession. Finally, Walton asserts that the trial court erred in entering a permanent injunction requiring it to remove the spur track because the Surface Transportation ***141** Board has exclusive jurisdiction of matters related to the removal of railroad tracks.

Walton does not enumerate as error the superior court's rulings that Walton does not have a real property interest in the land via adverse possession or prescriptive easement. As such, those rulings are not before us. See *Russell v. Barnett Banks*, 241 Ga. App. 672, 673, 527 S.E.2d 25 (1999).

1. *Title by Deed.* Walton contends that the superior court erred in concluding that the Church acquired fee simple title to the property underlying the spur track by deed. Specifically, Walton points out that every deed in the chain of title from 1922 until 1990 described the Church's lot north of the mainline as fronting 90 feet on Webb Street, and because the lot extended only 90 feet, it did not reach the railroad's mainline right of way and a gap of 10 feet results from the southernmost point of the lot and the northernmost point of

the mainline right of way. According to Walton, the spur track fits entirely within this gap. Walton asserts that the plat survey prepared in 1990 by Teasley, and relied on by the superior court, erroneously shows a total of 97.4 feet fronting on Webb Street, which conflicts with the deeds in the chain of title.

[5] **[6]** **[7]** **[8]** Walton's theory disregards the plain language of the deeds in the chain of title, which all reference the Hartwell Railroad as the southern boundary line, as well as well-established principles for determining property boundaries based on deed descriptions.

> Where the calls of a deed are for natural as well as known artificial objects, both courses and distances, when inconsistent, must be disregarded.... Artificial boundaries as applied to this case include fences, roads, streets, and land lot lines. They are evidence of the points which land owners, past and present, had in mind in their contractual dealings with one another.... What is most material and most certain in a description shall prevail over that which is less material and less certain. Thus courses and distances yield to natural, visible, and ascertained objects.

(Citations and punctuation omitted.) *Martin v. Patton*, 225 Ga. App. 157, 162-163 (2), 483 S.E.2d 614 (1997) (physical precedent only). See also *Riley v. Griffin*, 16 Ga. 141, 147 (1854).[11] "[C]ourses and ***142** distances occupy the lowest, instead of the highest grade, in the scale of evidence, as to identification of land." *Riley*, 16 Ga. at 148.

[9] **[10]** To the extent that the 1922 deed's description of a 90-foot frontage on Webb Street conflicted with its description of being bound on the "South by Southern Railway right-of-way," the artificial boundary controls. See *Kobryn v. McGee*, 232 Ga. App. 754, 755 (1), 503 S.E.2d 630 (1998) (where deed's metes and bounds description of property line conflicted with deed provisions setting the western property line as the " 'center line of a ditch,' " natural boundary prevailed). See also *Lyons v. Bassford*, 242 Ga. 466, 470 (1), 249 S.E.2d 255 (1978) (boundary fence referred to in deed prevailed ****488** over distances called for in the deed). And, it is undisputed that the spur track has never been in the railroad's 20-foot right of way. Indeed, every deed in the chain of title for the Church's lot has described the southern boundary line as the railroad right of way — even prior to the spur track's existence. It follows that the deed descriptions embrace the property underlying the spur track. This description of the lot has been consistent in spite of the varying metes and bounds descriptions. To hold that this change or variation from 100-foot to 90-foot frontage on Webb Street controls over the artificial boundary described in the deeds would conflict with our well-established rules of interpreting descriptions in deeds. As our Supreme Court explained in *Morgan v. Godbee*, where a deed description calls for the railroad right of way as the boundary line, the railroad right of way is fixed as the boundary line, "wherever it may be."[12] 146 Ga. 352, 354 (2), 91 S.E. 117 (1917). Here, because the deeds in the chain of title call for the railroad right of way as the boundary line, and the spur track resides outside the right of way, the Church's lot adjacent to the railroad necessarily includes the property underlying the spur track.

It also is noteworthy that the first deed describing a 90-foot frontage on Webb Street was the 1922 deed conveying a "certain manufacturing plant consisting of a building and grounds upon which it rests" and the description therein refers to a "*building* ... facing 90 feet on Webb Street." (Emphasis supplied.) Thus, it is unclear whether this description was intended to alter the boundary line for the underlying property.

***143** As to Walton's purported ownership of the property underlying the spur track, it is undisputed that Walton's predecessor only received a 20-foot right of way for its mainline, and that the spur track sits outside that 20-foot right of way. Simply put, there is nothing in the record showing that Walton ever had any interest in the land on which the spur track sits.[13] Accordingly, the superior court was correct in concluding that the Church acquired fee simple title to the property underlying the spur by deed.

[11] 2. *The License Agreements.* Walton next contends that the superior court erred in disregarding the language in the license agreements providing that the Church would not "at any time own or claim any right, title or interest in or to railroad's property occupied by [the Church's] crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest." Without citation to law, Walton argues that the Church's petition claiming ownership of the at-

issue property violates and directly contradicts the license agreements, which should govern the present dispute. There is no merit to this argument. The license agreements and attached renderings are immaterial if Walton never had any interest in the property underlying the spur track, as concluded above. As the superior court stated, the license agreements "should not be interpreted to convey ownership in real property, to divest ownership in real property, or to forcibly admit ownership of the real property in and to [Walton] when no ownership existed."

3. *Adverse Possession by the Church.* Given our holding, supra, we need not address Walton's assertion that the superior court erred in concluding that the Church acquired prescriptive title to the property underlying the spur.

4. *Permanent Injunction.* Walton contends that the superior court erred in granting the Church's requested injunctive relief because the removal and abandonment of railroad tracks falls under the exclusive jurisdiction of ****489** the STB. Essentially, Walton argues that the remedy ordered by the superior court is preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), because it forces abandonment of the track and that the removal of railroad track falls under the exclusive jurisdiction of the STB. As explained below, Walton appears to be correct.

In its petition, the Church sought a permanent injunction preventing Walton "from any further occupation or use of the Church property ***144** north of the railroad track as it existed on November 23, 2016." The superior court agreed that the Church was entitled to an injunction enjoining Walton from trespassing on the Church's property and ordered Walton to remove the rail lines and appurtenances to the reconstructed spur track and restore it to its condition as it existed before Walton reentered the property in 2016. In its order, the court noted that the STB must authorize abandonment of a rail line, but "the STB has specifically determined that the North Spur is not part of [Walton's] line of railroad, and thus, no STB authority was required before [Walton] abandoned the North spur."

[12] [13] [14] [15] [16] As already recounted, the STB concluded that the spur/runaround track is ancillary track under 49 U.S.C. § 10906.[14] Because the spur track is ancillary, Walton "could have, and might have, removed it from the interstate rail system by its conduct and intent without needing to seek Board authority to do so." However, the STB deferred ruling on whether the track was removed from the interstate rail system such that it was no longer within the STB's exclusive jurisdiction pending the state court proceedings. If Walton was unsuccessful in establishing a property interest, the STB concluded it "may need to determine whether the runaround track remains part of the interstate rail system." The STB held the matter in abeyance pending the state court proceedings.[15]

> Congress has placed the power to regulate railroads with the STB (formerly known as the Interstate Commerce Commission), and it has granted the STB broad jurisdiction over transportation by rail carriers. This power to regulate railroads derives from the Interstate Commerce Act, as modified by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), which is among the most pervasive ***145** and comprehensive of federal regulatory schemes and has consequently presented recurring pre-emption questions from the time of its enactment.

(Citations and punctuation omitted.) *McCloud-Pue v. Atlanta Beltline, Inc.*, 364 Ga. App. 789, 791-792, 874 S.E.2d 482 (2022).

> [P]rior to the passage of ICCTA, state regulatory agencies had some authority over excepted [ancillary] track, [but] ICCTA added a new provision that specifically establishes the exclusivity of the Board's jurisdiction over "transportation by rail carriers." This jurisdiction includes exclusive jurisdiction over "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. 10501(b) (1)[-](2). When sections 10501 (b) and 10906 are read together, it is clear that Congress intended to occupy the field and preempt state jurisdiction over excepted ****490** track [under section 10906], even though Congress allowed rail carriers to construct, operate, and remove such facilities without [STB] approval. Therefore, Federal courts have

> uniformly held that state law tort claims ... — which would interfere with rail carrier operations, including operations involving spur, industrial, team, switching, or side tracks — are preempted.

(Citations and footnotes omitted.) *Joseph R. Fox—Petition for Declaratory Order*, STB Finance Docket No. 35161, 2009 WL 1383503, at *3 (May 18, 2009).[16] In other words, "even a railroad track excepted under 49 U.S.C. § 10906 from the need to obtain [STB] authority for the construction, abandonment, or operation, is nevertheless subject to the [STB's] jurisdiction and is not subject to state or local regulation." (Citation and punctuation omitted.) *Wichita Terminal Assn. v. F.Y.G. Investments*, 48 Kan.App.2d 1071, 305 P.3d 13, 21 (2013). Thus, while the STB has deemed the spur track at issue ancillary track excepted under § 10906 and thus STB approval is not required for abandonment, the track is still under the STB's jurisdiction. Moreover, given the STB's conclusion that it may need ***146** to determine whether the spur/runaround track remains part of the interstate rail system if Walton was unsuccessful in the superior court proceedings in establishing a property interest in the land underlying the track, a further determination by the STB may be necessary before Walton is required to permanently remove the track. At this juncture, we cannot say that the superior court's permanent injunction requiring removal of the track is appropriate, and we vacate that portion of the superior court's order.

Judgment affirmed in part and vacated in part.

McFadden, P. J., and Markle, J., concur.

All Citations

370 Ga.App. 134, 894 S.E.2d 481

Footnotes

1 According to the affidavit of Walton's owner, the spur track was constructed in 1913 by the Hartwell Railway Company.

2 According to the National Archives, railroad valuation maps originally were created between 1915 and 1920, pursuant to the Valuation Act of 1913. The Interstate Commerce Commission used these maps, which detailed the rail lines, railroad facilities, and land adjacent to the railroad, to determine rates. https://www.archives.gov/files/citizen-archivist/images/03-21-2019-railroad-valuation-maps.pdf.

3 Only the portion of the runaround track west of Webb Street — the original spur track — is at issue. In its order, the trial court refers to this portion as the "North Spur track."

4 Walton's owner testified that Walton did not lease the railroad tracks to TORCH, that the track behind the Church is no longer part of the lease, and that this was clarified in an "amended lease." But this "amended lease" does not appear to be part of the appellate record.

5 According to the STB, the parties dispute whether the spur/runaround track was included in the STB's decision. In the Church's original filing before the STB, it asserted that the spur/runaround track was no longer in existence and thus was not included as the target of its adverse abandonment application. Accordingly, the STB's denial of the application was limited to the track identified, which did not include the spur/runaround track. The STB was silent on the regulatory status of the spur/runaround track.

6 The Church's adverse abandonment application was denied by the STB on January 31, 2018.

7 Walton asserts that it began rehabilitating the track and replacing the rail because it was necessary to resume using the runaround track as a safer alternative to "push[ing]" or "shoving" railroad cars.

8 According to the Commission's order, "[t]he real estate parcel at issue [in the condemnation proceedings] is a certain strip of land, measuring twenty (20) feet by two hundred sixty (260) feet, abutting the southern portion of the original property of [the Church] ... beside the Hartwell Railroad main line."

9 See OCGA § 46-8-121, which provides:

> Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be necessary for all of the purposes mentioned in Code Section 46-8-120. If the real estate cannot be acquired by purchase or gift, then it may be acquired by condemnation in the manner provided in Title 22, provided that the right of condemnation under this Code section shall not be exercised until the commission, under such rules of procedure as it may provide, first approves the taking of the property.

"If the Commission ultimately determines such condemnation to serve a public purpose, it shall issue a final order approving any condemnation petition by a railroad company." Ga. Comp. R. & Regs, r. 515-16-16-.03.

10 The superior court found that Walton's "interest in the North Spur and intent to claim title to the property underneath the former spur only arose when the TORCH lease income may have been threatened by the [Church's] adverse abandonment claims of the main line before the STB in 2016."

11 As stated by Pindar's Ga. Real Estate Law & Procedure § 19:165 (7th ed.), the 14 principles espoused by Justice Lumpkin in *Riley*, supra, for determining actual boundaries based on descriptions in deeds, are still good law.

12 In that case, the seller of the property represented to the purchaser "that he was selling to the plaintiff the land on the north side of the center line of the railroad up to within 50 feet thereof." 146 Ga. at 353-354, 91 S.E. 117. However, the actual railroad right of way extended 100 feet from the center of the track. Id. The Court held that the plaintiff-purchaser was not entitled to "possession of that portion of the land which lies between lines drawn 50 feet and 100 feet from the center of the railroad track" because that portion was "not embraced in the description in the deed." Id. at 354, 91 S.E. 117.

13 As already explained, whether Walton acquired prescriptive title to the property underlying the spur track is not before us because Walton has not enumerated the superior court's ruling on that issue.

14 This Code section provides:

> Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the [STB], a rail carrier providing transportation subject to the jurisdiction of the [STB] under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The [STB] does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

15 [I]t is well settled that the interpretation of deeds and the determination of who owns good title to property are issues of state law that are outside of the expertise of the Board, [and] the most appropriate course of action at this point was to direct petitioners to state court to get the underlying property law issues resolved.

(Citations omitted.) *Central Kansas Railway, Ltd. Liability Co. — Abandonment Exemption — in Marion & McPherson Counties, Kansas*, No. AB-406 (SUB-No. 6X), 2001 WL 489991, at *2 (May 8, 2001).

16 "Recognizing that the STB is uniquely qualified to determine whether state law should be preempted by the ICCTA, courts have traditionally looked to STB decisions when analyzing a claim of preemption." (Citation and punctuation omitted.) *McCloud-Pue*, 364 Ga. App. at 792-793, 874 S.E.2d 482.

End of Document

Attachment No. 3 to V.S. Bishop

WARRANTY DEED

UNITED STATES OF AMERICA.

THIS INDENTURE, Made this 12th day of September in the Year of Our Lord One Thousand Nine Hundred and Seventy-eight, between GEORGE H. PAGE, individually and as Executor of the Will of Maude H. Page, deceased, of the State of New York, County of Westchester, SYLVIA C. PAGE and JAMES W. PAGE, of the State of Georgia, County of Hart, and WILLIAM J. PAGE of the State of Illinois, County of Cook, of the first part, and HUGH MARET, HUGH BAILEY, BETTYE SIMS, JOE ADAMS, I. T. BROWN, FAY DICKERSON, BETTY BARTON, MARGARET CUNNINGHAM and ANNIE MAE JOHNSON, Trustees of Hartwell First United Methodist Church of the State of Georgia, County of Hart, of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of FORTY-THREE THOUSAND AND 00/100 ($43,000.00) ---------- DOLLARS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns, the following described property, to-wit:

All that lot of land, with improvements located thereon, lying and being in the City of Hartwell, Hart County, Georgia, being bounded on the Northeast by West Howell Street and other property of the grantee; on the Southeast by other property of the grantee and South Webb Street; on the Southwest by property of The Hartwell Mills, and on the Northwest by the Bailey property, and is more particularly described as to courses and distances in the following manner:

BEGINNING at an iron pin located on the southwest side of West Howell Street, at the point where this property and the Bailey property corner on the southwest side of West Howell Street, and running thence along the southwest side of West Howell Street South seventy-three (73) degrees forty-five (45) minutes East eighty-six (86) feet to an iron pin; thence South sixteen (16) degrees twenty-five (25) minutes West one hundred seventy-five and five-tenths (175.5) feet to a point; thence South seventy-three (73) degrees forty-five (45) minutes East sixty-six and six-tenths (66.6) feet to a point located on the northwest side of South Webb Street; thence along the northwest side of South Webb Street South sixteen (16) degrees twenty-five (25) minutes West seventy-nine and five-tenths (79.5) feet to an iron pin; thence North seventy-

three (73) degrees forty-five (45) minutes West one hundred fifty-two and six-tenths (152.6) feet to an iron pin; thence North sixteen (16) degrees twenty-five (25) minutes East two hundred fifty-five (255) feet to an iron pin located on the southwest side of West Howell Street, the beginning point.

This lot of land is also shown on a plat made by A. M. Britt, Registered Land Surveyor, dated August 25, 1978, of record in Plat Book _____, at page _____, Clerk's Office, Hart County, Georgia, which plat and the recordation thereof are by reference incorporated herein in aid of this description.

The property above described is the remainder of that lot conveyed by Josephine Thornton Randolph, Executrix of the Will of Claire Dodd Thornton, to W. C. Page, Executor of the Will of Lessie K. Page, who died testate, a resident of Hart County, Georgia, her Will having been duly probated and is on file in the Office of the Probate Judge. Item Three of said Will devised all of her property to her three children, namely, Callaway Page, James Page and William Page, who are now more than 21 years of age.

All of the legacies and devises provided for in said Will have been fully discharged and satisfied. Callaway Page, James Page and William Page are all of the legatees and devisees under said Will. Sylvia C. Page, one of the Grantors herein, acquired her interest in the subject property from her husband, Callaway Page, in Deed dated November 15, 1974, and being recorded in Deed Book 129, at page 858, Records, Hart County, Georgia.

The estate of Callaway Page was not of sufficient size to require a United States Estate Tax Return.

All of the debts of the estate of Maude H. Page have been paid and her estate was not of sufficient size to require a United States Estate Tax Return.

This Deed ratifies and confirms a Deed from W. C. Page, Executor of Lessie K. Page estate, Callaway K. Page, James W. Page and William Page to the Trustees of the Hartwell Methodist Church, dated May 8, 1947, and recorded in Deed Book 49, at page 310, Records, Hart County, Georgia, and conveys whatever rights, if any, the grantors have in the property described in said Deed.

TO HAVE AND TO HOLD the said tract or parcel of land with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said parties of the second part, their successors and assigns, for ever, in Fee Simple.

And the said parties of the first part, for their heirs, executors and administrators, will warrant and forever defend the right and title to the above described property unto the said parties of the second part, their successors and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and affixed their seals, the day and year above written.

Signed, sealed and delivered
in the presence of:

Notary Public, Westchester Co., New York.
My Commission Expires 3/30/80
(Seal)
Witnesses as to No. 1.

(1) _____ (Seal)
GEORGE H. PAGE, individually and as Executor of the Will of Maude H. Page, deceased.

(2) _____ (Seal)
SYLVIA C. PAGE

Notary Publoc, Hart County, Georgia.
My Commission Expires _____
(Seal)
Witnesses as to Nos. 2 and 3.

(3) _____ (Seal)
JAMES W. PAGE

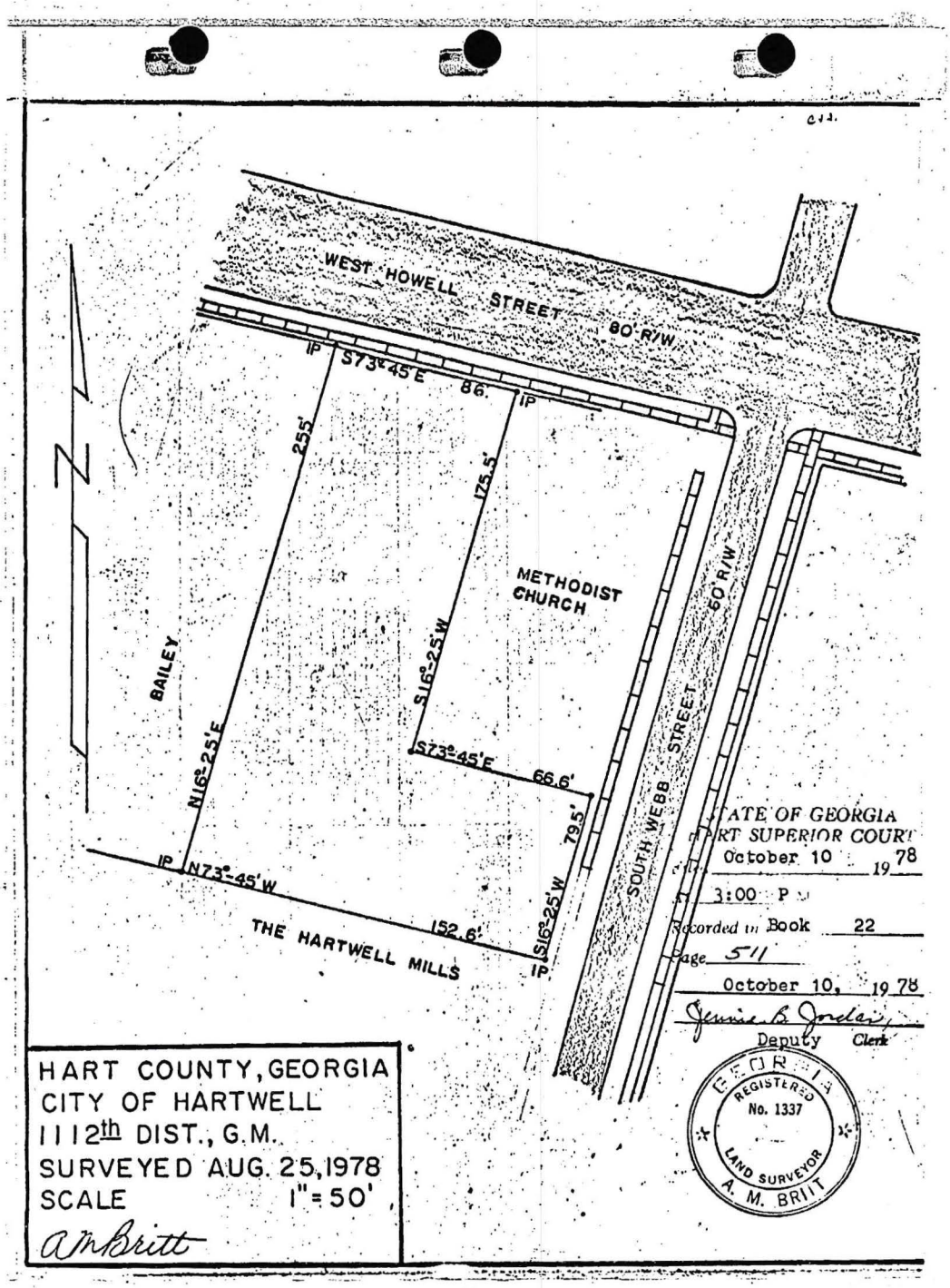
(4) _____ (Seal)
WILLIAM J. PAGE

Notary Public, Cook County, Illinois.
My Commission Expires 3-3-79
(Seal)
Witnesses as to No. 4.

FILED
OCT 9 1978
IN OFFICE
C.S.C.

Hart County, Georgia
Real Estate Transfer Tax
Paid $ 43.00
Date October 10, 1978
Betty W. Isbell
Clerk of Superior Court

STATE OF GEORGIA
HART SUPERIOR COURT
Filed October 9, 1978
At 3:30 PM
Recorded in Book 142
Page 828-830
October 10, 1978
Betty W. Isbell
Clerk



STATE OF GEORGIA
CLERK SUPERIOR COURT
October 10 19 78
3:00 P M
Recorded in Book 22
Page 511
October 10, 1978
Jennie B. Jordan
Deputy Clerk

AB 1242

GWRC EXHIBIT 25

DEED RECORD

STATE OF GEORGIA, Hart COUNTY.

This Indenture, made this 3rd. day of February, in the year of our Lord One Thousand Nine Hundred and Twenty, between Geo. S. Clark and L.L. Mouchet of the County of Hart and State of Georgia, of the first part, and The Perfect Pea Picker Company, a corporatin of the County of Hart and State of Georgia, of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of

Twenty Five Hundred ($2500.00) Dollars,

in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm, unto the said party of the second part, its successors and assigns, all the following described property, to-wit:

All that lot or parcel of land lying and being in the City of Hartwell, said State and County, known as the Farmers Union Warehouse lot, and more fully described as follows: Beginning at a stake corner on the Hartwell Railroad, and running along Webb Street in a northerly direction about 100 feet to a stake corner on McAlpin Thornton's line; thence along said Thornton's line a westerly course 100 feet to a stake on C.I. Kidds line; thence along said Kidds line a southerly course about 86 feet to the Hartwell Railroad; thence along said Railroad an easterly course 100 feet to the beginnign corner.

To Have and to Hold the said above granted and described property, with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of the said party of the second part, its successors heirs, executors, administrators, and assigns, in fee simple. And the said party of the first part, the said bargained property above described unto the said party of the second part, its successors heirs, executors, administrators, and assigns, against the said parties of the first part, their heirs, executors, administrators, and assigns, and against all and every other person or persons, shall and will, and does hereby warrant and forever defend by virtue of these presents.

In Witness Whereof The said parties of the first part have hereunto set their hand and affixed their seal, and delivered these presents, the day and year first above written.

Signed, sealed and delivered in presence of

AS.Skelton — George S. Clark (L. S.)

Julius D. Matheson
W.E. Meredith N.P.
A.N. Adams — L.L. Mouchet. (L. S.)

Recorded February 5th. ,19 20 Jno.G. Richardson. , Clerk.

AB 1242

GWRC EXHIBIT 26

WARRANTY DEED

NATIONAL BEAN & PEA PICKER COMPANY
BY
W. B. HENRY TEMP. PRES.
P. A. HOOBER, TEMP. SEC.

STATE OF GEORGIA, FULTON COUNTY.

THIS INDENTURE, made this 5th day of January in the year of Our Lord One Thousand Nine Hundred and Twenty-Two between NATIONAL BEAN & PEA PICKER COMPANY, a corporation of the State of Georgia and County of Fulton of the first part, and PERFECT PEA PICKER COMPANY, a corporation of the State of Georgia and County of Hart of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of THREE THOUSAND ($3,000.00) & 00/100 DOLLARS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, its assigns,

That certain manufacturing plant consisting of a building and grounds upon which it rests and machinery of all kinds for the manufacture of the pea picking machines in said building, it being a frame building in the City of Hartwell, Hart County, Georgia, facing 90 feet on Webb Street, running back equi-distant 80 feet, being bounded on the East side by Webb Street; South by Southern Railway right-of-way; West by lot owned by G. I. Kidd; North by property of Dealgin Thornton.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof to the same being, or in anywise appertaining, to the only proper use, benefit and behoof of the said party of the second part, its assigns, forever, in FEE SIMPLE.

AND THE SAID party of the first part, for itself its executors and administrators, will warrant and forever defend the right and title to the above described property, unto the said party of the second part, its assigns, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand ---- and seal -----, the day and year above written.

Signed, Sealed and Delivered in Presence of

T. F. Moody

Ellis B. Barrett, N.P. Fulton Co. Ga.

NATIONAL BEAN & PEA PICKER CO.

By W. B. Henry, Temp. Pres. (L.S.)

P. A. Hoober, Temp. Sec. (L.S.)

Recorded Jan. 12, 1922,
Jno. G. Richardson, C.S.C.

(Continued on page 579)

AB 1242

GWRC EXHIBIT 27

(continued from page576)

IN TESTIMONY WHEREOF, the said R. C. Thornton and Bessie Peek, as executors of B. W. Peek, deceased, hath hereunto set their hands and affixed their seals, the day and year above written.

Signed, Sealed and Delivered in the Presence of

J. D. Matheson

Jno. G. Richardson, C.H.C.

R. C. Thornton (L.S.)

Bessie Peek (L.S.)

Exrs. B. W. Peek Est.

Recorded Jan. 12, 1922.
Jno. T. Richardson, C.H.C.

****

WARRANTY DEED

THE PERFECT PEA PICKER COMPANY, INC.
BY
T. B. MOUCHET, Pres.
J. L. MASSEY, Sec.

STATE OF GEORGIA, HART COUNTY.

THIS INDENTURE, made this 5th day of January in the Year of Our Lord One Thousand Nine Hundred and Twenty-Two between PERFECT PEA PICKER COMPANY, a corporation of the State of Georgia and County of Hart of the first part, and G. W. Rice of the State of Georgia and County of Hart of the second part,

WITNESSETH: That the said party of the first part, for and in consider ation of the sum of THREE THOUSAND ($3,00.00) & 00/100 DOLLARS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns,

That certain manufacturing plant consisting of a building and grounds upon which it rests and machinery of all kinds for the manufacture of the pea picking machines in said building, it being a frame building in the City of Hartwell, Hart County, Georgia, facing 90 feet on Webb Street, running back equidistant 80 feet, being bounded on the East side by Webb Street; South by Southern Railway right-of-way; West by Lot owned by C. I. Fidd; North by property of Woolpin Thornton.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever, in FEE SIMPLE.

AND THE SAID party of the first part, for itself its executors and administrators, will warrant and forever defend the right and title to the above described property, unto the said party of the second part, his heirs and assigns, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and----- seal ----, the day and year above written.

Signed, Sealed and Delivered in presence of
WITNESS:

I. J. Phillips, Jr.

H. B. Phillips, N.P. Hart Co. Ga.

THE PERFECT PEA PICKER CO.INC.

By T. B. Mouchet, Pres. (L.S.)

J. L. Massey, Sec. (L.S.)

Recorded Jan. 12, 1922.
Jno. T. Richardson, C.H.C.

****

AB 1242

GWRC EXHIBIT 28

manner as the same was possessed or enjoyed by the said Nancy E.Brown,deceased,in his life time.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.
Signed,sealed and delivered in the presence of

W.B.McMullan,Ordinary — J.W.Holbrook (L.S.)

P.C.Brown — J.L.Brown (L.S.)

Recorded November 8th,1923. Jno.T.Richardson,C.S.C.

BOND FOR TITLE

C.W.Rice
To
T.H.Johnson

STATE OF GEORGIA,
HART COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That C.W.Rice of the County and State aforesaid,party of the first part,is held and firmly bound unto T.H.Johnson,party of the second part,heirs and assigns,in the penal sum of Six Thousand----------Dollars,for the payment of which well and truly to be made,the said party of the first part hereby binds heirs,executors and administrators,jointly, severally and firmly by these presents,signed with hand and sealed with his seal,this 11th day of October in the year of our Lord One Thousand Nine Hundred and Twenty Two.

The Condition of the foregoing obligation is,That whereas the said party of the first part has this day agreed to sell to the said party of the second part a certain tract or parcel of land,situated,lying and being in The State of Georgia and the County of Hart and the Town of Hartwell,said lot or parcel of land being known as the Pea Picker lot, formerly known as the olf Union Warehouse lot. It is bounded by the Hartwell Railway South,on the East by Webb St.,on the North by McAlpin Thornton,West by C.I.Kidd. This tract of land is fully described by deed from the National Pea and Bean Picker Co.,to C.W.Rice which deed appears of record in the office of the Clerk of the Superior Court,and the same is hereby referred to as a part of this description. for the consideration or sum of Three Thousand----------Dollars,said sum to be paid as follows:---------- Dollars this day paid,the receipt whereof is hereby acknowledged; Check for $250.00 due November 15th,1922; Check for $250.00 due December 31st,1922; Note for $2500.00 due January 1st, 1924,for which deferred payments the said party of the second part has given one promissory note,and two checks,dated this day,bearing interest at the rate of 8 per cent.per annum,from January 1st,1923 until paid,and stipulating that said party of the second part shall pay attorney's fees and cost of suit,should suit be instituted.

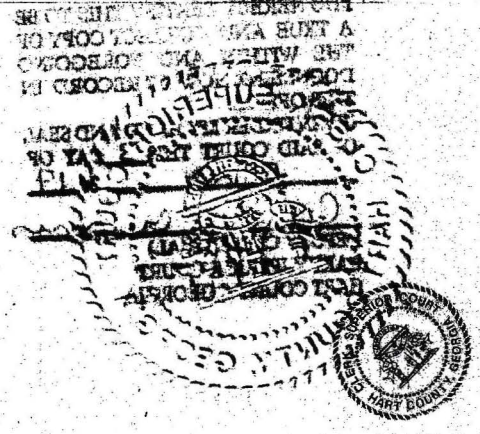
Now,is the said party of the second part shall well and truly pay the said several sums of money at the times specified,then the said party of the first part is bound to make and execute to the party of the second part or assigns a good and sufficient title to the above described lot or parcel of land; but on failure of the said party of the second part to pay the said sums of money or either of them at the times specified,then the said obligation to be void and of no effect.

IN Witness Whereof,the said party of the first part has hereunto set his hand and affixed his seal,the day and year above named.
Signed,sealed and delivered in the presence of

H.S.Cleveland N.P. — C.W.Rice (Seal)

Tom L.Matheson

Recorded November 8th,1923. Jno.T.Richardson,C.S.C.



AB 1242

GWRC EXHIBIT 29

STATE OF GEORGIA, HART COUNTY

This Indenture, made this 5th. day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-Nine, between T. H. Johnson of the County of Hart and State of Georgia, of the first part, and J. N. Mays of the County of Hart and State of Georgia, of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of ——————

——Six Hundred Fifty & NO/100—— Dollars,

in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, all the following described property, to wit:

All that lot or parcel of land lying and being in the City of Hartwell, Hart County, Georgia, known as the Pea Picker lot or Union Warehouse lot, bounded on the North by lot of Mealpin Thornton, now W. O. Page, on the East by Webb St., on the South by Hartwell R. CO., and on the West by lot of C. I. Kidd. Said Lot has a frontage on Webb St. of 90 feet and runs back in parallel lines 80 ft.

This deed is executed for the purpose of securing a certain note dated this day for $ 670.00, due December 25th. 1929, with interest from maturity of note, and when this loan is paid in full this deed is to be cancelled of record according to law.

To Have and to Hold the said above granted and described property, with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit and behoof of the said party of the second part, his heirs, executors, administrators, and assigns, in fee simple. And the said party of the first part, the said bargained property above described unto the said party of the second part, his heirs, executors, administrators, and assigns, against the said party of the first part, his heirs, executors, administrators, and assigns, and against all and every other person or persons, shall and will, and does hereby warrant and forever defend by virtue of these presents.

In Witness Whereof the said party of the first part has hereunto set his hand and affixed his seal, and delivered these presents, the day and year first above written.

Signed, sealed and delivered in presence of
J. L. Massey
Myrtice Hayes, N. P. Hart CO., Ga.

T. H. Johnson (L. S.)

(L. S.)

Recorded August 5th., 1929 Jno. G. Richardson, Clerk.

Additional Deed May 6, 1937 Deed In Bankruptcy

Fred White, as Trustee in Bankruptcy of Estate

Of T. H. Johnson To J. N. Mays

The occupation of said rented premises by the said Toombs Heaton is conditioned solely upon his full compliance with the terms of payment due on said leased premises as is herein stupulated and no other.

In witness whereof, the parties hereto have hereunto set their hands and affixed their seals, this 7th day of May, 1937.

Lucy A.Hulme (L.S.)

Signed, sealed and delivered in the presence of:
R.H.Seawright J.P.
James C.Richardson

Toombs Heaton (L.S.)

Recorded May 7th, 1937
Jno.G.Richardson
C.S.C.

****

DEED

Fred White, as Trustee in Bankruptcy of the estate of T.H.Johnson, Bankrupt

To

J.M.Mays

****

UNITED STATES OF AMERICA
MIDDLE DISTRICT OF GEORGIA
HART COUNTY, GEORGIA.

THIS INDENTURE, made this 6th day of May, 1937, between Fred S.White as Trustee in Bankruptcy of the Estate of T.H.Johnson, Bankrupt, party of the first part, and J.M.Mays, party of the second part, both of Hart County, Georgia.

WITNESSETH: That whereas a petition for adjudication in bankruptcy was on the 16th day of September, 1936, filed in the District Court of the United States for the Middle District of Georgia by the said T.H.Johnson, who was thereupon adjudged a bankrupt, and the said party of the first part was on 9th day of October, 1936, appointed and qualified trustee and assignee of the estate and effects of said Bankrupt:

AND WHEREAS, the parcel of land and premises hereinafter described was in possession of said bankrupt at the time of the filing of said petition and said adjudication in bankruptcy and formed part of the said Bankrupt's estate, and was, pursuant to the order of Hon W.G.Cornett, Referee in Bankruptcy to whom said Bankruptcy matter was referred and is now pending, dated April 24th, 1937, on the 4th day of May, the same being the first Tuesday in May, 1937, offered for sale at public auction before the courthouse door of Hart County, Georgia, at eleven o'Clock A.M.E.S.T., according to the terms of said order of sale and the advertisement of said sale done pursuant to said order, at which sale the said party of the second part, being the highest bidder, was declared the purchaser of said premises at and for the sum of $525.00,

AND WHEREAS, said sale was confirmed by order of said Referee in Bankruptcy, dated May 6th, 1937.,

NOW THEREFORE, in consideration of the sum of five Hundred Twenty five and no/100 dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the party of the first part has bargained, sold and conveyed and confirmed, and by these presents does sell, convey and confirm unto the party of the second part, his heirs and assigns,

ALL THAT LOT OR parcel of land lying and being in the City of Hartwell, Hart County, known as the Pea Picker lot or Union Warehouse lot, bounded on the north by lot of McAlpin Thornton now W.C.Page, on the east by Webb Street, on the south by Hartwell R.Co. and on the west by lot of C.I.Kidd; said lot has a frontage on Webb St. of 90 feet and runs back in parallel lines 80 feet;

TO HAVE AND TO HOLD the said described property, with all and singular the rights, members and appurtenances thereunto appertaining to the only proper use, benefit, and behoof of the party of the second part, his heirs, executors, administrators and assigns, in FEE SIMPLE.

IN WITNESS WHEREOF the said Fred S.White as such Trustee in Bankruptcy of the Estate of T.H.Johnson, has hereunto set his hand and official signature and seal and delivered these presents the day and year first above written.

Fred S.White (Seal)
As Trustee in Bankruptcy of the Estate of T.H. Johnson, Bankrupt.

Signed, sealed and delivered in the presence of:
Elsie Bowers
Warren H.Williams
Deputy Clerk Superior Court
Hart County, Georgia.

Recorded May 10th, 1937
Jno.G.Richardson

The occupation of said rented premises by the said Toombs Heaton is conditioned solely upon his full compliance with the terms of payment due on said leased premises as is herein stupulated and no other.

In witness whereof, the parties hereto have hereunto set their hands and affixed their seals, this 7th day of May, 1937.

Lucy A.Hulme (L.S.)

Signed, sealed and delivered in the presence of:
R.H.Seawright J.P.
James C.Richardson

Toombs Heaton (L.S.)

Recorded May 7th, 1937
Jno.G.Richardson
C.S.C.

****

DEED

Fred White, as Trustee in Bankruptcy of the estate of T.H.Johnson, Bankrupt

To

J.M.Mays

****

UNITED STATES OF AMERICA
MIDDLE DISTRICT OF GEORGIA
HART COUNTY, GEORGIA.

THIS INDENTURE, made this 6th day of May, 1937, between Fred S.White as Trustee in Bankruptcy of the Estate of T.H.Johnson, Bankrupt, party of the first part, and J.M.Mays, party of the second part, both of Hart County, Georgia.

WITNESSETH: That whereas a petition for adjudication in bankruptcy was on the 16th day of September, 1936, filed in the District Court of the United States for the Middle District of Georgia by the said T.H.Johnson, who was thereupon adjudged a bankrupt, and the said party of the first part was on 9th day of October, 1936, appointed and qualified trustee and assignee of the estate and effects of said Bankrupt:

AND WHEREAS, the parcel of land and premises hereinafter described was in possession of said bankrupt at the time of the filing of said petition and said adjudication in bankruptcy and formed part of the said Bankrupt's estate, and was, pursuant to the order of Hon W.G.Cornett, Referee in Bankruptcy to whom said Bankruptcy matter was referred and is now pending, dated April 24th, 1937, on the 4th day of May, the same being the first Tuesday in May, 1937, offered for sale at public auction before the courthouse door of Hart County, Georgia at eleven o'Clock A.M.E.S.T., according to the terms of said order of sale and the advertisement of said sale done pursuant to said order, at which sale the said party of the second part, being the highest bidder, was declared the purchaser of said premises at and for the sum of $525.00,

AND WHEREAS, said sale was confirmed by order of said Referee in Bankruptcy, dated May 6th, 1937.,

NOW THEREFORE, in consideration of the sum of five Hundred Twenty five and no/100 dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the party of the first part has bargained, sold and conveyed and confirmed, and by these presents does sell, convey and confirm unto the party of the second part, his heirs and assigns,

ALL THAT LOT OR parcel of land lying and being in the City of Hartwell, Hart County, known as the Pea Picker lot or Union Warehouse lot, bounded on the north by lot of McAlpin Thornton now W.C.Page, on the east by Webb Street, on the south by Hartwell R.Co. and on the west by lot of C.I.Kidd; said lot has a frontage on Webb St. of 90 feet and runs back in parallel lines 90 feet;

TO HAVE AND TO HOLD the said described property, with all and singular the rights, members and appurtenances thereunto appertaining to the only proper use, benefit, and behoof of the party of the second part, his heirs, executors, administrators and assigns, in FEE SIMPLE.

IN WITNESS WHEREOF the said Fred S.White as such Trustee in Bankruptcy of the Estate of T.H.Johnson, has hereunto set his hand and official signature and seal and delivered these presents the day and year first above written.

Fred S.White (Seal)
As Trustee in Bankruptcy of the Estate of T.H. Johnson, Bankrupt.

Signed, sealed and delivered in the presence of:
Elsie Bowers
Warren H.Williams
Deputy Clerk Superior Court
Hart County, Georgia.

Recorded May 10th, 1937
Jno.G.Richardson

AB 1242

GWRC EXHIBIT 30

STATE OF GEORGIA, HART COUNTY

This Indenture, Made this 24th day of May, in the year of our Lord One Thousand Nine Hundred and 37 between J.N.Mays of the County of Hart and State of Georgia, of the first part, and The Hartwell Mills, a corporation of the County of Hart and State of Georgia, of the second part,

Witnesseth: That the said part y of the first part, for and in consideration of the sum of Six Hundred - Dollars, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha s granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do es grant, bargain, sell, alien, convey, and confirm, unto the said part y of the second part, its, successors heirs and assigns, all the following described property, to wit:

A certain tract or parcel of land, situated, lying and being in the City of Hartwell, said State and County, and formely known as the Perfect Pea Picker plant and lot, and being bounded by Hartwell Railway Co,, on the south; on east by Webb Street; on the north by property of Lessie K.Page estate, formely McAlpin Thornton homeplace, and on the west by C.I.Kidd estate.

This tract of land is fully described by a deed from Perfect Pea Picker Co., to Clarence Rice of record in office of Hart Superior Court.

This lot faces ninety (90) feet on Webb Street and runs back in parallel lines (80) feet, more or less.

U. S. REVENUE AMOUNT $1.00 STAMPS AFFIXED

To Have and to Hold the said above granted and described property, with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit and behoof of the said part y of the second part, its successors heirs, executors, administrators, and assigns, in fee simple. And the said part y of the first part, the said bargained property above described unto the said part y of the second part, its successors and heirs, executors, administrators, and assigns, against the said part y of the first part, his heirs, executors, administrators, and assigns, and against all and every other person or persons, shall and will, and does hereby warrant and forever defend by virtue of these presents.

In Witness Whereof, The said part y of the first part ha s hereunto set his hand and affixed his seal, and delivered these presents, the day and year first above written.

Signed, sealed and delivered in presence of

Carey Skelton
Hugh Skelton
Notary Public, Hart County, Ga.

J.N.Mays (L. S.)

(L. S.)

Recorded June 4th, 19 37 Jno.G.Richardson C.S. Clerk.

Before the
SURFACE TRANSPORTATION BOARD

STB Docket AB No. 1242 (1)

THE GREAT WALTON RAILROAD COMPANY, INC.-
PETITION FOR DECLARATORY ORDER

Verified Statement of Charles David Bishop

---

1. My name is Charles David Bishop. I am filing this Verified Statement on behalf of the Great Walton Railroad Company, Inc. in my capacity as the Executor of the Estate of Bennie Ray Anderson, the former president of The Great Walton Railroad Company, Inc. ("GWRC"). I am duly authorized to present this Verified Statement on behalf of GWRC. In my capacity as Executor, my business address is 1096 North Cherokee Road, Social Circle, GA 30025. Before I retired, I occupied the position of General Manager for GWRC. Following my retirement, I served as a consultant for Mr. Anderson until his death on September 6, 2022.

2. In my capacity as the General Manager, I handled administrative duties that included matters that involved regulatory compliance, various agreements with customers, day-to-day activities regarding train crews, and reviewing licenses and agreements with other parties. Such agreements involved gas lines, pipelines, sidings, crossings, and anything that encroached on the rights-of-way of the tracks of all the railroad companies that were owned and controlled by Mr. Anderson and members of his family. In this capacity, I

reviewed all applications for licenses to cross over or under the tracks. As a result, I had responsibility to review all drawings and other materials that were submitted to GWRC, as well as leases and agreements with certain customers and day-to-day activities regarding train crews. I estimate that I spent 50% or of my time working on real estate issues that impacted railroad operations.

3. By way of background, I have a B.S. Degree in transportation from the University of Tennessee. Between 1970 and 1975, I served in the Air Force and a bomber pilot with the Strategic Air Command. From 1976 until October 1995, when I was hired by Mr. Anderson, I worked in the trucking industry.

4. Based on my review of Mr. Anderson's sworn statements filed in the adverse abandonment case, his testimony under oath before the state courts in Georgia and the U.S. District Court, and before the Hearing Examiner of the Georgia Public Service Commission, and my daily communications with Mr. Anderson, as well as my own sworn testimony, I hereby confirm that he never suggested to me that he intended to abandon any part of the runaround track or the mainline track even though the tracks were not actively operated over for several years. Nor did he ever take any steps to formally discontinue rail service over them.

5. The lack of any intent to abandon is also based on my own involvement in drafting the original TORCH Agreement, and my participation in lengthy and repeated negotiations over a period of two years with Jack Edmonds and Joe M. Whittemore that involved their continuous efforts to have

Mr. Anderson agree to abandon the segment of the runaround track and the mainline track that were located between the two tracts of real estate that were formerly owned by The Hartwell Mills and conveyed to the Church, via quit claim deeds, from The Hartwell Mills' successors by merger and successors and assigns , and numerous conversations with Mr. Anderson.

6. My comments and any conclusions that are offered herein are based on my personal observations of the tracks; highly relevant topographical issues; the lack of any feasible alternative location at which to construct an alternative runaround track that could be used to service the facilities of Quality Holdings, LLC; the inability to construct a new spur at Quality's facility (now Redline Plastics,2, LLC); the unsafe nature of the operations that have been forced upon GWRC and its employees by the November 28, 2016 injunction issued by the superior court that has prevented GWRC from completing the restoration of 34 feet of track; and my review of the deeds that constitute the chain of title that impact the railroad and the adjoining real property, as well as newspaper articles dating back to 1914 that discuss the railroad and the owners of the adjacent lot that borders the railroad's tracks. In addition, I have considered the repeated statements of the future need for efficient and safe railroad service that have been expressed first by Jonathan Talbot Colehower, the previous President and CEO of Quality Holdings LLC (Quality), and most recently by Nicholas (Nick Murry), the President of Redline Plastics,2, LLC, which acquired Quality in March of 2023. Given the above, it is impossible for me to avoid the conclusion that the courts' decisions have

unreasonably impacted and interfered with GWRC's current and future railroad operations and with Redline's current and future needs for rail service over the runaround track, which includes the segment of that track that is sandwiched between tracts of real property that the Church acquired in 2002.

7. Because GWRC has not been able to complete the rehabilitation of the runaround track, in order for it to honor its rail common carrier obligations, it has been forced to shove the cars back to Bowersville. As George Carter, a former GWRC employee, testified during the hearing before the Georgia Public Service Commission's Hearing Examiner, because the locomotive engineer cannot see through a high-topped covered hopper car, the brakeman is required to hang on the front of the moving train to alert the engineer, whose vision is blocked, of vehicular traffic and the need to stop the train at numerous crossings. As he explained during his testimony, which included a brief cross examination, having to hang onto the grab bar that is mounted at the front and side on the front of a railcar while standing on a stirrup for over an hour and a half is not only exhausting, but it is also very dangerous, especially when a heavy storm pops up that exposes the brakeman to rain and the risk of lightning. His testimony was not questioned. A copy of the transcript is attached hereto. I too can attest to the danger of having to hang onto the side of a railcar based on my own experience when I was the conductor on a train that was involved in positioning a rail car. As I dismounted, I slipped and fell and broke my hip, which eventually resulted in a hip replacement. Given that our crew members must hang on to a moving

train in all kinds of inclement weather while the train is being pushed over an hour over approximately 10 miles back to Bowersville while having to hop off the train at multiple public crossings to flag the train, the current mode of operations cannot be said to a suitable working condition.

8. Although the Church has claimed that there are alternatives, the Board should note that the Public Service Commission's Hearing Examiner, after reviewing the oral and written testimony of the Church's professed expert who claimed that there were alternative locations at which alternative runaround tracks could be constructed, rejected the expert's testimony. Although the PSC's staff agreed with the Hearing Examiner, the PSC chose to reverse the Hearing Examiner's decision when it found that GWRC should not be allowed to condemn the land on which the spur track had been constructed. As Michael Allen has explained in his Verified Statement, which is tendered herewith, a thorough unbiased review of the alleged alternatives, will not support a conclusion that there is a reasonable alternative.

9. While it is true that before Quality notified Mr. Anderson that it anticipated a substantial growth of business, GWRC was able for a brief period of time after it temporarily removed the rails from its track to shove the empty westbound rail cars across the trestle that is located over Lake Hartwell just to the west of Quality's facility to the top of the incline on the west side. The cars were then shoved just past a switch that had been installed by the Army Corps of Engineers for the purpose of building the Lake Hartwell Dam. At which point, the brakes on the cars were locked and the engine was cut off and

parked on the stub track. The cars were then allowed to roll back down the mainline track back onto the trestle. The engine was then backed down the hill where the cars were recoupled to the engine. This alternative was eliminated when the Army Corps of Engineers required GWRC to cease using its switch. As a result, after Quality Holdings notified him of the anticipated increase in business, Mr. Anderson had no reasonable alternative than to rehabilitate the runaround track.

10. Because the runaround track had not been used for several years to move freight in point to point service, GWRC's sole purpose in leaving it intact on the east side of Webb Street, was to enable GWRC to switch and move the locomotive incidental to line-haul transportation if future traffic were to materialize. While the new traffic has materialized, until the runaround is rehabilitated, GWRC has no reasonable option, other than to shove the empty cars to Bowersville. If it is to be able to provide safe and efficient rail service to Redline Plastics, it must be able to utilize the entire runaround track.

11. I must acknowledge that in 2016, GWRC's former attorney sought to condemn a 20-foot parcel of land, which required the filing of a condemnation application before the Georgia Public Service Commission, rather than focusing on the provisions of O.C.G.A §46-8-120(a)(1) which authorizes all operating railroads in Georgia to reconstruct their lines and spur tracks. Because GWRC's former counsel focused on the condemnation procedures, GWRC was thereafter denied the statutory right to finalize the reconstruction of the spur on the 10-foot parcel of real property on which the

spur track was constructed in 1913. Claiming that GWRC had failed to preserve the argument that sub-section (a)(1) entitled it to restore the track, the Superior Court of Fulton County denied GWRC's appeal of the PSCS's decision that reversed the initial decision of its Hearing Examiner. However, there is no denying the fact that GWRC has spent six plus years repeatedly stating the need to reconstruct the runaround track in order to provide future safe and efficient rail service clearly shows the lack of any intent to abandon the spur track, which is a critical component of the runaround track.

12. During the course of negotiating with Jack Edmonds and Joe M. Whittemore, I drafted the three licenses that authorized the Church and its members to cross over the tracks. Because the tracks were fully operational when the licenses were signed by Mr. Whittemore and me, the licenses were intended to address several matters, including the need to alert everyone who chose to cross over the tracks to be aware of the possibility of a moving train. If GWRC had any intent to abandon the tracks, I would not have wasted my time drafting provisions that would not have been needed.

13. However, because Mr. Anderson was trying to be a good neighbor, he asked me to prepare the documents to protect the Church and its congregants from the dangers of moving trains if the track were to be crossed, as well as protect GWRC from potential claims that it failed to exercise due care by failing to alert the public to the potential dangers and the need "to stop, look and listen" before walking across a railroad track. At the time that the licenses were being negotiated and signed, no decision had been made to temporarily

remove the tracks. It was *only after* Mr. Whittemore and I had signed the agreement on July 31, 2008 and August 1, 2008, that Mr. Anderson finally agreed to remove the rail in mid-October to assist the Church's ongoing construction efforts.

14. I must also repeat Mr. Anderson's sworn testimony filed May 30, 2017, that "had I been aware of the undisclosed drawings that showed the tracks being removed at the time that the License Agreement were being negotiated, I would not have temporarily agreed to remove the spur track rails. Nor would I have allowed Hartwell First's landscaper to cover the crossties and ballast with dirt." During the course of preparing the license agreements, I carefully reviewed the various drawings that were forwarded to me by Bret Thurman, who was employed by Armentrout Roebuck Matheny Consulting Group, P.C., and who prepared various mechanical engineering drawings for the Hartwell First United Methodist Church in his capacity as the Registered Engineer. As I would later learn in December 2016, the drawings that I had received from Mr. Thurman in 2008 significantly differed from his earlier drawings that he personally signed and dated "11-28-07" on the Registered Engineer's Seal that is printed on the drawings. These drawings clearly reflected the removal of both the mainline and spur tracks and the property line that separated the tracks from the real property that was owned by the Church. Had I been alerted to these changes in 2008; I would have advised Mr. Anderson to not take any steps to temporarily remove the tracks without having a written contractual agreement with the Church that the Church

would not oppose the restoration of any track that might be temporarily removed for any reason.

15. That approach would have been consistent with my standard approach when dealing with proposed applications and requests for activities that could encroach on the railroad's right-of-way. By way example, the letters that I wrote in 2009 to David Aldrich, the City Manager of Hartwell and Mr. Todd Wood, the Area Engineer for the Georgia Department of Transportation reflect steps that were consistently taken to ensure that any authorized encroachment on track that was not being actively used for rail service would be removed if the railroad needed to use the track to fulfill its statutory obligations to provide transportation or service on reasonable request. Furthermore, while Mr. Whittemore previously claimed that it would be necessary to apply for and receive permits from the Georgia Department of Transportation, the record plainly indicates that the tracks across Webb Street were restored shortly after the Board denied the Church's Adverse Abandonment Application without having to apply for and receive permits from the Georgia Department of Transportation. Unlike the Church, the Department, as it had done in the past, honored our prior informal agreement.

16. Because Redline's request is reasonable, GWRC must provide it with the service it requires. Being that the evidence of record shows that: (1) GWRC never intended to abandon any segment of the runaround track; (2) that the state court's resolution of this matter cannot be reconciled with the provisions of O.C.G.A. 46-8-120(a)(1) which state that "[a]ny railroad company owning or

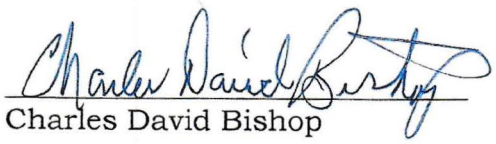
operating a railroad in this state ... is authorized and empowered ...[t]o reconstruct its lines or tracks"; and (3) that the courts' misinterpretation of the literal wording of the deeds that constitute the chain of title, which plainly ignored the fact that the conveyance of a lot that faces ninety feet words was never contested or questioned before or after the lot that was conveyed to The Hartwell Mills in 1937, the Board should hold that it has exclusive jurisdiction over the acquisition and the abandonment of the spur/runaround track. Moreover, it should hold that the state court's decisions authorizing the Church's efforts to acquire the rail property to prevent GWRC from reconstructing the spur/runaround track unreasonably interferes with the future reactivation and use of the track in interstate transportation and is preempted by the ICCTA.

17. While searching for deeds that would confirm the ownership of the 10-foot parcel, I reviewed issues of the *Hartwell Sun* that included notices of a Sheriff's Sale in November 1914 of the Farmers' Union Warehouse lot. The notices did not include the 10-foot parcel at issue herein. The October 7, 1914 notice, a copy of which is attached hereto, was published on October 9, 1914, and republished on October 16 and October 30, 2014. The omission of the 10-foot parcel indicates that the Farmers' Union had previously conveyed ownership of that parcel to the Southern Railway so that it would build the spur track. It also explains the reference to the Southern Railway in the 1922 deed that the Church seized upon to mislead the Court of Appeals.

VERIFICATION

I, Charles David Bishop, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 30th day of October, 2024.



Charles David Bishop

Attachment to V.S. Bishop

Transcript of George Carter

AB 1242 (1)

please?

Whereupon,

GEORGE CARTER

appeared as a witness herein and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Please state your full name.

A George Jackson Carter, C-a-r-t-e-r.

Q And where do you live, Mr. Carter?

A I live in Conyers, Georgia.

Q And what is your profession?

A Locomotive engineer on the Fulton County Railroad.

Q And where is that located?

A In Atlanta, Georgia.

Q And how long have you been in that position?

A This coming March 20th will be 13 years with that company.

Q And where were you prior to that?

A I was with the Great Walton Railroad.

Q And where did you work for them?

A I worked two lines. I worked Social Circle to Monroe and when he had the Covington line, I worked from Covington to Machen.

Q In total time, how long have you been a

railroader?

A I've been a railroader full time, be 30 years next year.

Q Did you say --

A That's full time.

Q Okay. Did you work at another railroad prior to the Great Walton?

A I worked with the Hartwell Railway before Bennie Ray bought it.

Q And what years were you there?

A I was full time from 1989 to 1991.

Q And what was your position with the Hartwell Railway?

A Railway, I was a brakeman later promoted to engineer.

Q Did you have any railroad experience prior to that?

A Yes.

Q Who were you with then?

A I was with various museums and also I helped -- volunteered on railroad restorations.

Q Turning to your experience at the Hartwell Railway, this was prior to Mr. Anderson's purchase?

A Yes.

Q Tell me about the company at that time, please.

A Well, it was going through some hard times, you know, like everything else, living day to day. And then they had a group that also helped resurrect the Hart County Scenic, to keep the passenger service going. That was helping the community too. So I worked -- actually I volunteered a lot of my time with the Hart County Scenic and then I worked on the freight end.

Q And what did you do for the Hart County Scenic?

A If they needed a brakeman, I helped brakeman, and being a conductor.

Q And describe the Hart County Scenic, what was its operation?

A It was a classic tourist railroad and what they would do is they would run on the weekends and they would do charter dinner trains during the weekdays, on a charter basis.

Q And where did they go?

A Mainly from Hartwell to Airline and back to Hartwell.

Q Which is a distance of how far?

A Probably 11 -- about 11 mile round trip.

Q And what -- it's a scenic railroad, what's scenic between Hartwell and Airline?

A Lot of woods and hills, going across the Lightwood Log Bridge, climbing the hills and going through people's

front and back yards and side roads. In other words, almost like Petticoat Junction.

Q Okay. When you are traveling from Hartwell to Airline, you're going west basically?

A Yes.

Q As you leave Hartwell, describe the terrain please, heading towards the trestle over the lake.

A When you leave Hartwell, it's basically level. When you cross highway 29, it starts descending grade and before you get to Lightwood Log Bridge, there's some part in there it's almost as steep as a four percent grade which is very steep, it's almost like a little mini-mountain, and then you cross the trestle, you climb another hill and it's basically up and down hill all the way until you get to Airline and it continues to be up and down hills until you get to Bowersville. In other words, the rail was laid practically on the terrain of the land when they built it back in 1879.

Q Four percent grade to a motorist doesn't sound like a lot. How much is it for a railroad?

A I don't have my figures with me and everything. It's just very, very steep for what a locomotive can pull per car tonnage.

Q And you have -- as you're leaving the trestle over the lake, that's an ascending grade?

A Talking about going towards the trestle from Hartwell?

Q No, after you cross the trestle going towards Bowersville.

A Yes, you climb, ascending, yes.

Q And how far is that climb?

A The climb is probably about a quarter of a mile, half a mile, and then continues on because it's hill and dale all the way.

Q In that ascent that you just described, is that in the vicinity of those old tracks that used to be there?

A Yes.

Q Okay. Are those old tracks on a hill?

A You talking about the one down there by the bridge?

Q Yes.

A The old Army Corps of Engineer track?

Q Correct.

A It was there back then, yes.

Q I mean, it was on -- that's on a hill.

A Yeah, on what we call the Airline side.

Q Right. How far is it -- I think I asked you -- did I ask you how far it is from Hartwell to Airline?

A About five and a half miles I think, if I'm not mistaken.

Q Okay. Did you operate the steam engine?

A No.

Q Okay. But it was there while you were there?

A Yes.

Q Describe the business, how the business did while you were there in terms of the scenic railway.

A While we were there, it was really bringing in the people and it helped revitalize the old town. The old part, the old town, was not doing very well. It brought in a lot -- we had a lot of tourism coming in and doing so, a lot of the shops in the old part were actually revitalized, several restaurants, other shows, the old bluegrass, I believe Bluegrass Express, and all the others came back. So it was doing a nice revitalization. In fact, we were the only ones before the Blue Ridge Scenic up there above Atlanta and before the Great Smoky Mountains, we were the only ones at that time in this area.

Q What kind of equipment was the railroad operating?

A Well, we had the steam locomotive, it was number 11. And we had two coaches and we had a caboose. And on days when the steam wasn't running, we used one of the freight diesels.

Q How many passengers would the passenger cars handle?

A I believe each one handled about 48 total, they

were the old commuter coaches.

Q Were they typically both used on the train?

A When the steam engine went.

Q Was the train full?

A Most of the time, yes. Any time there was overflow traffic, we put the caboose behind the train to handle any of the excess, what would carry safely.

Q Separate from the passenger train, was the railroad also providing freight service?

A Yes, but that was the Hartwell Railway.

Q Okay. Was the Hartwell Scenic a different company?

A It was separate, it was a -- I'm trying to remember the exact thing, like a non-profit group that was handling that part.

Q What happened to the Hartwell Scenic?

A I wish I knew the whole story about it. I don't know if was a combination of finances, the track conditions, or somehow just couldn't get additional financing, and then the railroad was sold shortly after that when they just couldn't quite make a go of it. I wasn't privy to all the information going on with it.

Q What happened to the equipment of the Hartwell Scenic?

A Unfortunately, the steam engine was sold almost

immediately and the two passenger cars were kept, and it was my understanding for future excursions. But after it last ran, we never ran another excursion while I was there.

Q Do you know what happened to the caboose?

A I believe the caboose is still there. I haven't been to Hartwell in quite a few years, but I believe the caboose is still there.

Q You ever operate on the runaround track?

A Many times, freight and passenger.

Q How often?

A Every time we had to make a switching move in downtown, when it came to the freight operations. We had to bring the train in from Bowersville, we'd pull up there with the freight cars on the mainline, take the locomotive through the runaround and then push the cars up to the feed mill when the Hartwell Feed and Elevator was there, because you couldn't run the locomotive straight in through to the plant, because if you did that, the locomotive would be trapped. There'd be no way to get the engine back. So we had to use that runaround every single time we used the Hartwell Feed and Elevator and also when we'd go out and switch I believe it was Monroe Shock Absorbers, I think it's Tenneco now. We would also go out there, fetch the cars, bring them back into town and runaround that. When you go out and get the cars, that was a steep hill and we didn't

like switching on that steep hill because of safety reasons.

Q Is it -- would you describe the runaround as an essential part of the railroad's operations then?

A Yes, because I had -- there was a videotape I provided earlier that they took of one of our steam excursions that showed that every time we brought the train from the excursion, we'd have to put the cars there and take the locomotive through the runaround, recouple to the passenger cars and push it back to the depot. That way, everything would be right for the next run.

Q How would you envision operating the railroad without a runaround?

A You'd have to literally just push it all the way back and pull it back one way. It's not recommended in my opinion from a railroad standpoint when a man has to ride the side of a car and especially with a passenger train, that's almost taboo, you don't just back a train for that long period of time like that, because of the hazard.

Q Describe the hazard, what hazards do you foresee?

A Well, just say like we were doing a passenger train, and you had to do a backup move that far, that's 11 miles. You know, there's not much clearance you can see because you can't -- the ways the cars are, there's not very much of a lookout. And also, it's kind of hard to know when traffic comes. So that engineer looking out, you've got

passengers like that, so you don't want to do that.

When it comes to freight, when you're trying to hang onto the side of the car like that and you've got inclement weather, it's very dangerous. And I can tell you through the years when I was a brakeman when a heavy storm come out like that, you run the risk of lightning strikes and also in inclement weather, you know, you could fall off from, you know, cold and everything if you've got to do a love distance shove.

Q Typically how long would it take to get from Hartwell to Bowersville on a freight move?

A On a regular run or a shoved move?

Q Regular run first.

A Regular run by locomotive, I'd say probably about an hour's time, maybe less.

Q Which would you prefer, would you rather ride in the cab or ride on the side of a car?

A A cab definitely, because I've got a clear view and, like I said, I can see and I don't have to worry about, you know, my fellow brakeman riding the train like that having to stop all the time because that's time-consuming plus riding the side of the car it's very dangerous for hanging on because of the fatigue part. While we're up in the cab going, like I say, I've got a clear view and I can keep moving. I've got my horn and bell and my lights are on

like that, and I keep moving.

Q How long would it take on a shoved moved to get from Hartwell to Bowersville?

A With all them crossings, probably an hour and a half, maybe an hour and forty-five minutes. It all depends on, you know, traffic and everything else, and plus what we're pushing, because remember we're pushing up those steep hills, you've got a lot of load. That's also a lot of struggle on the locomotive to keep moving once you stop on a hill.

Q In a shove move, as an engineer, what's the view like?

A I've got a very clear view. I wish I had some picture of the locomotive I had back then, but I've got a top front view and where the window's at, I can see forward and I've got a clear view on both sides as I approach a crossing. So I've got an unobstructed view.

Q Is that in a shoved move or in a --

A Regular move.

Q -- in a regular move.

A In other word, I'm the lead engine on a regular move pulling my train.

Q Okay. What's the view like in a shove move?

A On a shove move, I have to lean out the window because I've got cars, especially if you've got box cars,

covered hoppers, what we call high-top cars.

Q Okay.

A I try to keep an eye on my brakeman because preferably he's supposed to stay on the side, on the engineer's side where I can see him. Going around curves and anything else that's obstructing like that, it's pretty hard to see, even though we've normally got radios. I still have to lean out the window just to make sure he's still there and everything, because, you know, you can't take your eyes off your business for one minute.

Q What's the longest you've ever ridden the side of a car in a shove?

A I'd say probably about three -- might be about three, four miles.

Q And how would you characterize that?

Q Well, that's just, you know, switching various industries where you don't have a runaround to go to, you've got to straight shove back on those long industrial spurs. And that's where you stop and shove it and once you reach the other end, that way once we get all the cars there we can pull normally. That's if you don't have a runaround track at the south end as we call it.

Q Is hanging on the side of the car for that long difficult?

A It can be.

Q How so?

A Well, like I said, in inclement weather and, you know, also if you've got fatigue like in the summer time, the heat, and sometimes, you know, we actually have, you know, one of my brakemen or I have in the earlier days, I had to stop, you know, and say I need to stop and give my arms a rest because when you hang on, you hang on like this, with arms up like that and then your feet down on what they call a stirrup. So there's a lot of pull on your shoulders and your back. It can be fatiguing at times.

Q Do you consider -- which do you consider safer, the riding in the cab or hanging on the side of a car?

A In the cab, no doubt, with the train pulling.

Q Have you ever shoved all the way from Hartwell to Bowersville?

A No, never. Not in the time I was with the company, I never once shoved there.

Q The runaround track that you operated on, what was the grade there?

A Which runaround?

Q I'm sorry, the runaround track in town.

A In downtown Hartwell?

Q Yeah, behind the church.

A Level track.

Q What is the advantage of having level track on a

runaround track?

A Well, you've got your cars right there and there's no danger of the cars rolling away. Just because you've got hand brakes on a train -- when you stop on a hill and if there's a runaround track there -- now Airline has a slight hill too, but hand brakes are not what they call fail safe. Just like all our trains have air brakes. Air brakes will sometimes leak off and the car is bad. Just like a hand brake, sometimes you get a hand brake that's not tight, you know, it's old and worn. And we actually had a car to start rolling on a hill. It's very, very safe to have it on a straight level track and there's very little danger about rolling away.

Q Did you ever have an accident on the runaround track in Hartwell?

A Never.

Q Do you consider it safe to operate there?

A When I was there, yes. But like I said, I worked on the Hartwell full time from 1989 to 1991.

Q And you would cross Webb Street each time?

A Every single day when I had to go switch the feed and elevator or on the weekends when we'd run the excursion train.

Q What would be your opinion of constructing a runaround track on the ascending hill on the Airline side of

the trestle?

A I wouldn't recommend it.

Q Why not?

A For the simple fact because those cars could roll. And if you get a roll, we call it running through a switch, and you've got switch damage and you won't be able to use that switch until it's repaired. Also, if it's going to roll, it's going to roll across that trestle and if it starts going fast enough, it's going to roll to where that crossing is, I believe it's where Quality is, if I'm not mistaken, and if it's going to roll there unmanned like that, then, you know, there's a danger it might hit a car. So I never recommend building a runaround on a hill. That's my personal opinion.

MR. WILLIAMS: One second, if I may.

(Brief pause.)

MR. WILLIAMS: That's all I have. Thank you, Mr. Carter.

HEARING OFFICER SMITH: Cross?

MR. MIDDLETON: Just a couple of questions, Mr. Carter.

CROSS EXAMINATION

BY MR. MIDDLETON:

Q What years did you say you were employed by the Hartwell Railroad?

A Hartwell Railroad?

Q Yeah.

A When B.R. bought it, I believe it was from 1990 to 1991.

Q Okay. And you talked about operating a runaround in downtown Hartwell; correct?

A Right.

Q And what were the years of that? Did you ever operate the runaround after 1996?

A I believe when I came back to work for B.R., I came back to him in 1993 -- I believe 1993, I came back to Great Walton, and I did come back I believe in 1995 to work a couple of trips when he needed extra help. And yes, I did use the runaround at that time, yes.

Q So you never used it after 1996?

A I never went back there because I was mainly working the Social Circle and Covington line.

MR. MIDDLETON: Okay, thank you.

HEARING OFFICER SMITH: Redirect?

MR. WILLIAMS: No redirect.

HEARING OFFICER SMITH: Thank you, Mr. Carter, you may be excused.

(Witness excused.)

HEARING OFFICER SMITH: Next witness.

MR. WILLIAMS: Dave Bishop, please.

Attachment to V.S. Bishop

...Ga., in Deed Book R, page ... of Hart ... and lots levied on as the prop... E. Brown to satisfy a fi fa ... from the Justice Court of the ... district, G. M., Hart County, ... in favor of Lammie Hodges, A. ... & F. T. Vanduzer, and against T. ... Brown. Written notice given ten... in possession as required by law.
This October 8th, 1914.
A. S. Johnson, Sheriff Hart Co., Ga.

o

Sheriff's Sale

Georgia—Hart County.
Will be sold on the first Tuesday in November, 1914, before the Court House door in Hartwell, Ga., during the legal hours of sale to the highest bidder for cash the the following described property, to-wit:

All that tract or parcel of land lying and being in the 1115th district, G. M., Hart County, Ga., containing 196 and 3-40 acres, more or less, as fully shown by plat and survey of the same of record in Deed Book R, page 663, office of the Clerk of the Superior Court of said County, adjoining lands with the Hatton's Shoals Power Co., on the north; R. A. Sullivan lands on the east; Laura Beam on the south, and T. N. Madden and D. W. Johnson which said tract of land is more fully described in deed from J. W. Parker to the Atlantic Life Insurance Co., of Richmond, Va., appearing of record in Deed Book R, page 663, office of the Clerk of the Superior Court of said County, dated September 24th, 1913.
Levied on as the property of J. W. ... to satisfy two Justice Court ... favor of A. S. Skelton trans... M. C. Saylors, principal and W. Parker security. Property poin... out by J. W. Parker and in his ...session. Written notice given ten... in possession.
This October 7th, 1914.
O. P. Cleveland, Deputy Sheriff,
Hart Co., Ga.

o

Sheriff's Sale

...orgia—Hart County.
...ll be sold on the first Tuesday in ...mber, 1914, before the Court ...e door in Hartwell, Ga., during ...gal hours of sale to the highest ... for cash the the following ...ed property, to-wit:
...that tract or parcel of land ly... ...d being in the City of Hartwell, ...nd known in the original plan ...town of Hartwell as part of lot ... the same being the South side ... lot No. 53, and bounded as fol... ...iz: Beginning at the North... ...r ... of the lot No. 56, known ...C. Presnell lot and running ...e ...une of said in an Easterly ... 150 feet to Geo. J. Page's ...ce along said Page's line in ...

...to me for the pur... sale. Written notice given to tenant in possession as required by law.
This October 8th, 1914.
A. S. Johnson, Sheriff Hart Co., Ga.

o

Sheriff's Sale

Georgia—Hart County.
Will be sold on the first Tuesday in November, 1914, before the Court House door in Hartwell, Ga., during the legal hours of sale to the highest bidder for cash the the following described property, to-wit:

All that tract or parcel of land lying and being in the City of Hartwell, said state and county, and described as follows. Commencing at a corner on the Hartwell Railroad and running North along Webb St. 35 feet and 8 inches to a stake; thence West 80 feet to a stake; thence South 26 feet to a stake on Hartwell Railroad, thence East along said railroad 80 feet to the beginning corner, and known as lot No. 1 in the division of the Farmer's Union Warehouse Co. property.

Also all that tract or parcel of land lying and being in the City of Hartwell, said state and county, and beginning at a corner of lot No. 1 and Webb street and running North along said Webb st. 28 ft. to stake; thence west 90 feet to a stake; thence south 35 feet to a stake on the Railroad; thence along said railroad east 10 feet to a stake; thence along the line of lot No. 1 north 26 feet to stake; thence east 80 feet to the beginning corner, and known as lot No. 2 in the division of the aforesaid property.

Also all that tract or parcel of land lying and being in the City of Hartwell, said state and county, beginning at a corner on lot No. 2 and Webb street and running north along said Webb street 28 feet to McAlpin Thornton's line, thence along said Thornton line west 100 feet to stake on line of C. I. Kidd; thence along said Kidd line South 80 feet to stake on the Railroad; thence along railroad east 10 feet to stake; thence north 53 feet along the line of lot No. 2 to stake; thence along the line of lot No. 2 east 90 feet to the beginning corner, and known as lot No. 3.

All of said property levied on as the property of the Farmers' Union Warehouse Co. to satisfy a certain execution issued from the Superior Court of Hart County, Ga., in favor of T. M. Myers, J. W. Scott, S. L. Thornton, and T. B. Thornton against the said Farmers' Union Warehouse Co. Written notice given tenant in possession as in such cases provided.

Said property lies on the West side of Webb St., between the Methodist church and the Hartwell Cotton Mills.

This October 7th, 1914.
A. S. Johnson, Sheriff Hart Co., Ga.

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Administrator's Sale

...1113th ...
...Ga., adjoining lands ... on the ... Brown on south and east; on the north b... by E. W. Brown; and on the north by lot No. 2,containing 48 acres, more o... less.

Lot No. 2. All that tract or parc... of land lying and being in the 1113... district, G. M., Hart County, Ga., a... joining lands of Mrs. Mary Poore ... the east; lot No. 1 on the south; ... the west by S. J. Ridgway; and on t... north by lot No. 3, and containi... 50.7 acres, more or less.

Lot No. 3. All that tract or par... of land lying and being in the 111... district, G. M., Hart County, Ga., ... joining lands of Mrs. Mary Poore ... the east; lot No. 2 on the south; S... Ridgway on the west; and on ... north by Hancock and E. R. Ray, ... containing 46 acres, more or le...

Aforesaid lots known as the J... W. Cook place, lying on Beave... Creek, and sold for the purpo... distribution among the afo... heirs.

Plat of same may be seen by ... ing on E. N. Duncan, Roysto... or N. J. Ridgway, Canon, Ga.

Terms of Sale: One-third ... one-third November 1st, 191... third November 1st, 1916, ei... cent. interest on deferred p... from date.

E. N. Dun...
Jno. M. Wl...
Asa Br...
Commiss...

o

Sheriff's Sale.

Georgia—Hart County.
Will be sold before the c... door in Hartwell, Ga., duri... gal hours of sale, to the h... der for cash on the first ... November, 1914, the foll... cribed property to-wit:

All that tract or parcel ... ing and being in the 111... G. M., Hart County, Ga... lands of L. C. Brown on t... east; Moses Moss, form... Brown, on the south; lan... Brown, deceased, on th... more fully described by ... made by B. Bowers, Ja... said land known as th... Brown old home place, ... acres, more or less, sar... ted about six miles ... Hartwell, Ga. Also a... parcel of land lying a... counties of Hart an... state, the northern ... more or less, lying ... and in the 1114th di... said Hart County, a... portion thereof lying ... bert county, all of ... and being on the ... vannah River, and ...

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242 (1)

Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—Hartwell Railroad Company
and The Great Walton Railroad Company, Inc.,
in Hart County, GA

Verified Statement of Nicholas Murray

My name is Nicholas (Nick) Murray and I am the President of Redline Plastics 2, LLC (Redline), a rapidly growing full service supplier to a very diverse group of markets whose products are produced via rotational molding, vacuum forming, compression molding, cut and sew, 3D printing, and several other capabilities. We acquired Quality Holdings, LLC (Quality) in March of 2023 and rebranded it under the Redline name. This facility is located at 300 Fisher Drive., Hartwell, Georgia.

I have recently learned about this active and, seemingly continual, case cited above and would like to opine as to the importance of this rail line to the success and sustainability of our business and to the safety of the rail line operators as well as the overall Hartwell community. You will find the details similar to the details contained in the two verified statements provided by Jonathan Talbot Colehower, previous President and CEO of Quality, echoing the importance of the rail line to the success of our business; nothing has changed, the rail service is a core necessity for our business.

The ability to receive resin via rail car was one of the leading decisions to buy, invest, and put forth our best effort to continue to grow this facility. As cited by Jonathon, without rail delivery our competitiveness and ability to service and grow in this region, which lacks a skilled rotational molder, would be greatly diminished, as would the jobs of our 60+ employees. Trucking is not a viable option to service this facility from a material perspective and we have future plans to continue to use this rail line and in an increasing manner which is evidenced by the nearly 2.5 million pounds of polyethylene that travel this rail yearly to our facility currently. Additionally, this acquisition did not happen because we desired to stay the same size. We have great growth ambitions, and this team and facility are well poised to be able to accomplish this task as verified by the nearly 2,400% growth realized by Redline in our plastics segment over the past 5 years.

It is pivotal to point out that we desire to be good community partners, as well as advocates for the safety of our employees, and the many Redline supporters who visit this plant daily to support our operations. Without restoring and being able to use this turnaround, locomotive operators must push empty railcars back to Bowersville. A seemingly inefficient, but more importantly, risky endeavor as the locomotive operators cannot see what lies ahead without hanging off the side of the train and hoping off and then back on the train. The damage to the families and the community as a result of an accident and the litigation to follow, for all parties involved, should additionally be considered. The fact that this

issue has not been discussed and resolved effectively and efficiently is seemingly ridiculous. Our business, along with the livelihood of our employees and customers are dependent upon the rail service that has been in operation in this area for decades. I implore both parties to figure out a solution and end the ineffective use of the courts and dollars that could be put to better use and allow this rail to operate safely and effectively for the benefit of all.

VERIFICATION

I, Nicholas Murray, President of Redline Plastics 2, LLC, verify under penalty of perjury under the laws of the United States that the facts recited in the foregoing statement are true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this Verified Statement to be filed.

Name: Nicholas Murray

President of Redline Plastics 2, LLC

Date: 10/24/24

Before the
SURFACE TRANSPORTATION BOARD

STB Docket AB No. 1242(1)

The Great Walton Railroad Company, Inc.

Petition for Declaratory Order

Verified Statement of Michael E. Allen

My name is Michael E. Allen. I am employed as the Senior Manager – Right of Way and Title by R. L. Banks & Associates, Inc, (RLBA), 2107 Wilson Boulevard, Suite 750, Arlington VA 22201.

I have been retained through RLBA by Richard Streeter, Esq. on behalf of The Great Walton Railroad Company in connection with the case captioned above pending before the United States Surface Transportation Board to render expert opinions on the matters set forth herein.

The analysis contained herein is based on my current understanding of the facts and may be modified or supplemented as additional information becomes available or otherwise brought to my attention.

My career in the railroad industry spans 50 years. My first consulting assignment was evaluating the real estate holdings including rights-of-way of a major bankrupt eastern carrier and I have since worked with several carriers, customers and engineering firms on railroad right-of-way issues. I have qualified before the Bankruptcy Court as an expert witness in rail operations and equipment utilization and have entered appearances before the Surface Transportation Board

in matters concerning property ownership and condition. I have appeared in state courts to establish damages due to theft of and vandalism to railroad equipment and property.

I have held various positions on several shortlines including operations, customer relations, and business development. While serving as an officer in the United States Army Reserve, I was responsible for safety and security of various Army rail facilities including an Army-operated shortline and later served as the Operations Officer of a Movement Control Battalion.

Particularly pertinent in this proceeding is the experience I gained from train service on several of the short lines, serving as the Safety Officer with an emphasis on rail-highway grade crossings and trespassing, and sitting on the Board of Directors of New Jersey Operation Lifesaver.

My understanding of the situation is that this matter stems from the temporary removal of the rails on a short section of a runaround track to facilitate construction by the First United Methodist Church of Hartwell on adjacent properties and the refusal of the Church to permit its replacement claiming, first, that the removal of the track to facilitate the construction was proof of abandonment and, secondly, that the track in question was not essential to the operation of the railroad.

On the first point, that the temporary removal of the tracks to facilitate construction constituted 'abandonment', I do not believe this to be true. Railroad track is removed and replaced regularly in the normal course of business. This is done primarily as part of periodic maintenance involving component[1] replacement but may also be done to facilitate the installation of culverts and pipelines

[1] This is normally rails, ties and other track material but may go as far as removing and replacing ballast and sub-ballast.

under the track or a significant civil structure adjacent to the track. This is conceptually no different than the temporary closure of a public street for the same reasons.

Regarding the second point, having done a desktop evaluation of the line using publicly available map and satellite imagery, having discussed the operating characteristics with both its counsel and with Joey Dorsey, General Manager of the Great Walton Railroad Company, and reading the testimony of George Carter, a locomotive engineer on the Great Walton, I have concluded that retaining the track in question is essential to the safe and efficient operation of the railroad. For purposes of discussion the railroad will be presumed to run east-west, and "forward" will be defined as the intended direction of travel on the main track notwithstanding any reverse movement for the purpose of switching cars.

The track in question is at the east end of the railroad, Milepost 0.20[2] in Hartwell, GA. The primary customer, Redline Plastics, is accessed through a single switch at MP 1.20, approximately one mile to the west. This switch is facing point westbound meaning that a westbound movement may use the switch to select its routing, but an eastbound movement will have to pass the switch and then reverse direction. There is a sidetrack at Airline, GA, MP 6.00, and a wye track at the west end of the railroad at Bowersville, GA, MP 9.40. The track at issue is operated as Excepted Track[3] with a maximum legal speed of ten miles per hour.

The line is of light construction with minimal grading typical of rural branch lines built in the late eighteen- early nineteen-hundreds. The terrain is rolling hills allowing the railroad a line of route much of which is neither straight nor level. Some short grades may be as steep as four

[2] All mile posts used herein are extrapolated from the Federal Railroad Administration Geographic Information System (FRA-GIS) Safety Map https://fragis.fra.dot.gov/gisfrasafety/.
[3] 49 CFR Part 213.4 Excepted track.

percent. Much of the area traversed is forested with a dense tree line along one or both sides of much of the right-of-way. The grades, curvature, and tree line combine to limit visibility to the sides of the railroad. This is of particular importance where the railroad crosses a road or a driveway.

RLBA has identified at least fifty-six rail-highway grade crossings which a train will pass through between Hartwell and Bowersville. Approximately two thirds of these crossings are between Hartwell and Airline. This is a density of slightly over six crossings per mile giving a mean distance between crossings of slightly over eight hundred sixty-seven feet, slightly less than three football fields. These are all passive crossings, i.e.: no warning lights or gates. The vast majority of these crossings are equipped with either 'STOP' or 'YIELD' signs and/or Crossbucks[4].

To serve Redline Plastics a train will come east from Bowersville on the main track pulling what cars it has for delivery to Redline. The locomotive is on the front (Hartwell) end of the train. After passing the switch the train will stop, and a crewman will throw the switch so that the train can enter Redline's siding. The train will then reverse direction and back into the siding. If there are any cars to remove from the siding, the train will couple to them, pull forward onto the main track and stop. A crewmember will throw the switch, and the train will then reverse along the main track until it has passed the switch. The cars which were removed from Redline will be uncoupled and left on the main track while the train repeats the moves to leave at Redline the cars it brought from Bowersville. When these moves are complete the train will be sitting on the main track

[4] Manual of Uniform Traffic Control Devices, Section 8B.04 Crossbuck Assemblies with YIELD or STOP Signs at Passive Grade Crossings

connected to the cars it removed from Redline. The locomotive will still be on the Hartwell end of the train, however, since the train will be returning to Bowersville, this is now the rear of the train.

There are two options. The first, preferred, option is for the train to continue east with the locomotive leading to Hartwell and use the runaround track to reposition the locomotive on the west end of the train so that it is leading on the return trip to Bowersville. This is the conventional mode of operation for a freight train. The engineer is in the front with full visibility of the track ahead and the locomotive's head and ditch lights are visible indicating the approach of the train. The conductor is able to be in the cab with the engineer providing a second set of eyes.

The second option is for the locomotive to remain on the rear, Hartwell, end of the train and shove the cars approximately eight miles to Bowersville where the whole train can be turned. This is essentially backing up since the engineer is at the rear of the train without a clear view ahead and no head or ditch lights are visible in the direction of travel. The sound of the locomotives horn may be deflected somewhat by the railcars ahead of it. The engineer must rely on a second person to watch the leading end of the train and provide instruction on speed and stopping distance and hope that any persons near or crossing the track will be aware of the approach of the train and exercise due care despite the absence of a headlight showing in the direction of travel. The problems with exercising this option are discussed in greater detail below.

Shoving railroad cars is considered an inherently dangerous process, is not intended for lengthy moves, and which is governed primarily by Federal Railroad Administration rules, specifically *49 CFR § 218.99 - Shoving or pushing movements*.

The rules require that a fully qualified employe who is in a position to view the leading end of the shoving movement, and is in constant communication with the engineer, controls the

movement. That employe is barred by FRA regulations from performing any tasks not directly related to controlling the shoving movement. The controlling employe may be on the ground in a position where he can view both the end of the train and the track in the direction of movement, or he can be riding the leading end of the leading car. The communication can be either visual, using standard hand signals, or by radio. If the controlling employe is using hand signals to communicate with the engineer, that employe must remain in a position visible to the engineer. If the engineer cannot see that employe for any reason at all, the engineer must immediately stop the train until he again has visual contact with the employe. If the communication is by radio and the engineer has any reason to believe that he has lost communication with the employe, the engineer must bring the movement to a stop until communication is restored. *What must be remembered here is that during a shoving move the crew members are separated, the engineer does not have a clear view in the direction of travel, and the controlling employe does not normally have the ability to stop the train on his own.*

To perform the eight-mile shoving move to Bowersville directly from Redline's facility, it is necessary for the controlling employe to ride the leading end of the leading car. To accomplish this, it is necessary for the employe to either place his feet in a strap-steel stirrup on the side of car and hold a small steel grab bar with one hand or stand on a narrow grating on the end of the car holding a railing with one hand. This leaves one hand free to either give hand signals or manipulate a radio. Unless the controlling employe is riding on the same side of the train as the engineer's control stand in the locomotive, the engineer will not be able to see the employe at all. Even if the controlling employe is on the same side of the train as the engineer, the engineer still may not be able to see that employee without putting his head out of the window (itself a potentially unsafe act) and may not be able to see that employe at all on some curves.

The controlling employe is in an inherently precarious position hanging on the leading end of the train. There is no protection from foul weather. There is no protection in the event of a collision either with debris on the track or at a rail-highway crossing. Traversing the railroad between Redline and Bowersville at a speed of less than ten miles per hour will take at least one hour and in view of the need to stop at grade crossings while shoving, will take even longer westbound. Even Class 1 track with jointed rail is not a smooth ride and the train will experience a significant lateral rocking motion. Maintaining balance and clinging to the grab bar for an hour or more is fatiguing and can result in serious injury. These are not only repetitive motion injuries to muscles and joints from the constant mounting and dismounting on the end of the car but also slip and fall injuries with potentially catastrophic results. This is not hypothetical. While acting as a conductor, David Bishop, Executor of the Estate of Bennie Ray Anderson, suffered a fall from a freight car, receiving a broken hip which ultimately resulted in a hip replacement.[5]

Between Redline and Bowersville there are approximately fifty rail-highway grade crossings including private driveways. While the train may legally have the right-of-way at these crossings, and a significant portion of these crossings have been equipped with 'STOP' or 'YIELD' signs, safe operation requires that the train approach must be prepared to stop clear of the crossing in the event that highway traffic does not stop. This is particularly true of a shoving move where the normal visual clues to an approaching train of a locomotive sounding its horn with its headlight on are not available to the users of the highway. If there is approaching traffic (not stopped waiting for the train) at a passive crossing, the proper procedure is that the controlling employe order the train to stop, dismount from the leading car, and walk out into the roadway with a red flag or a lit fusee and signal traffic to stop so that the train can proceed, Depending on the terrain, this can

[5] Bishop VS at 4

require a step of two feet or more onto rock and gravel with a high risk of injury. Riding through a crossing is considered hazardous enough that the National Transportation Safety Board has recommended a rule change requiring that the train stop and that the controlling employe dismount to stop traffic at all passive crossings during shoving moves.[6]. If dismounting from the steps of a locomotive this risk is reduced substantially.

Taken as a whole, I view the adverse employe working conditions, risks of serious personal injury or death to an employe, and the risk of collision with a motor vehicle as being too high to allow the eight-mile shoving move on a regular basis.

There are limited alternatives which can be considered other than the replacement of the run around track at Hartwell. These are: shoving partway and performing the runaround at the Airline siding; using a shoving platform[7]; and using a second locomotive. All three of these options have severe shortcomings.

Using the siding at Airline would still require a five-mile shove and all of the objections which apply to shoving to Bowersville apply to shoving to Airline – the risk of injury or collision is simply too high.

A shoving platform gives the controlling employe a place to stand which is far preferable to hanging on the side of a freight car, however, the majority of the other objections to a lengthy shoving move still apply. While a top-of-the-line shoving platform may be equipped with shelter, headlights, horn, and an emergency brake valve this is rare and may not be cost effective and it does not obviate the need to for the controlling employe to dismount at passive crossings.

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[6] NTSB Railroad Investigation Report RIR-23-13 Watco Dock and Rail, L.L.C. Employee Fatality.
[7] A shoving platform is a former caboose or other railcar intended as a place for the controlling employee to ride.

The final option, the use of a second locomotive, may also not be cost effective. While it eliminates all of the objections to a shoving move, it doubles the locomotive fuel and maintenance costs and increases track wear.

Based on my experience and in view of the foregoing operational and safety issues, it is my conclusion that the Great Walton Railroad must restore, rehabilitate, and use the runaround track in Hartwell, Georgia, in order to provide safe and economically efficient rail transportation service consistent with the national rail transportation policy.

I also have been asked to comment on the report[8] filed on January 15th, 2018 before the Georgia Public Utilities Commission by Mr. John O'Brien of GeoRisk Management Associates LLC,[9] concerning the Hartwell Railroad's Petition regarding its intention to construct a runaround track.

Mr. O'Brien's report demonstrates a disturbing lack of substantive knowledge of the freight railroad industry and the operating and safety issues involved in it and this matter.

Beginning on Page 2 under **Terminology** he refers to a "runaround loop" and implies that this term is preferable to the term "runaround track' as used in the Hartwell Railroad's Petition. It is not. The use of "loop" instead of "track" or "siding" is British terminology not generally used in the United States. He goes on to state that such tracks were historically used at terminals

[8] Review of Alternatives for Development of a Run Around Loop, Petition for Approval to Acquire Real Estate by Condemnation, Georgia Public Service Commission Docket No. 41607

[9] GeoRisk Management Associates LLC 6220 Blackwater Trail Atlanta, GA 30328

to allow locomotives to move to the other ends of trains to facilitate the trains' return journeys. While true as far as it goes, that statement ignores the fact that a "runaround" also is used to allow a locomotive to be placed in a position relative to its train which allows it to switch freight sidings facing in the train's direction of travel. He further goes on to state that, "*The use of multiple units and push-pull locomotives limit the need for run arounds on larger rail lines. Run arounds remain common on smaller railways such as that operated by the (Hartwell) Railroad.*" That statement is totally erroneous and even if it were correct, it would not apply here. The term "multiple unit" to refers a method of controlling several power units from a single control station and can apply to locomotives in either freight or passenger service or a train of self-propelled passenger cars. It has no relationship per se to the need to run around a train,[10] 'Push-pull' is not a type of locomotive but generally refers to a system where a locomotive can be controlled directly from either end of a train. Unlike a shoving move where an engineer is receiving instructions from a controlling employee on the leading end of a train, an engineer is at a control station in the leading car and has full control of a train.

The use of "multiple units and push-pull locomotives" obviating the need for a runaround track is not a function of the size or length of a line but of the nature of the service. As this type of equipment is used almost exclusively in passenger service, its application to this statement has no relevance to this matter.

The next major issue is at the top of page 4 where Mr. O'Brien states: "*The Petition is silent regarding any evaluations by the Railroad that have led to selection of the run around described therein. It is usual that planning for action such as the new run around include an evaluation of*

[10] A train of self-propelled passenger cars can normally be operated in either direction without the need to rearrange the consist however this is simply not relevant on this railroad.

the 'benefits' and expected cost of alternative decisions or alternatives." He is again incorrect. Were this a greenfield project, he might be able to justify the need for such analysis, however this is not a greenfield project. It is merely the return to service of an existing track to be used as it was originally intended – to expedite the movement of freight cars on a common carrier railroad.

Also, on page 4, Mr. O'Brien identified three, proposed alternatives to the Great Walton's project in addition to the current operating mode which he refers to as "Alternative 0". All three of these alternatives require a main line shove over grade crossings, one of them is a shove to Airline. One of the primary purposes of the project is to eliminate the inherently dangerous mainline shove. He states in the discussion that "Alternative 0" is the railroad's "preferred" operating mode. If it were the preferred mode, the railroad would not be seeking to restore its runaround track.

On page 5 Mr. O'Brien states: "*Current operations do not threaten public safety- It is assumed that as cars have been pushed to Bowersville for the last decade that appropriate personnel have been in place to ensure safety at crossings. GeoRisk is advised that there have been no notable safety issues that required any change in operations.*" It is clear from this statement that Mr. O'Brien is unfamiliar with the inherent risks in shoving movements over crossings and the various regulations which have been promulgated due to those risks. The fact that there have been no reported collisions is a testament to the diligence and caution of the train crew rather than the absence of safety issues. Shoving over crossings is per se a safety issue.

On page 9 in his discussion of the risk factors of Alternative 4, restoration of the runaround track, Mr. O'Brien has developed an almost fictional account of the impact on downtown

Hartwell of operating the runaround track. First, he has misstated the number of grade crossings which will utilize claiming that there will be seven rather than the actual six. He fails to articulate that the movements over this section primarily will be a locomotive leading, rather than the inherently dangerous shoving, movements which he seems to believe are acceptable in Alternatives 0 and 3. He has cited Federal Highway Administration (FWHA) policy guidance on crossing closure as a justification to deny the railroad access to its property without providing any specific analysis of the potential problems cited. He also has misapplied this guidance significantly. It is intended for analysis of specific crossing improvements. The FWHA has no jurisdiction over railroad operations, and it is not intended or expected to be a justification to deny a railroad the use of its property. More importantly, he did not apply this same test to the crossings in Alternative 0 or he could never have made the statement that he did: "*GeoRisk is advised that there have been no notable safety issues that required any change in operations.*" I read this as professing an opinion that a locomotive-led move over a total of twelve crossings entails a higher risk than the shoving movements over four times that number; an absurd premis on its face. The three issues cited are red herrings. Crossing occupation time will be minimal. Trains will be there just long enough to make their move and then leave. Even if the crew is stopping to take a break, the train can be positioned so as to not block traffic. The additional safety stops by special vehicles (school buses, etc.) can be waived if the likelihood of a collision due to the stop is higher than that of a collision with a train[11]. Given the volume of trains, approval of the waiver is probable; it is unclear whether the concern of "lowered speeds at the crossing surface due to concerns for trains" is over the possibility of a rough surface or the possibility of an approaching train. The rough surface is dealt with by proper maintenance. As to the presence

[11] 49 CFR 392.10(b)(5) Railroad grade crossings; stopping required

of trains, motor vehicle drivers have an obligation to exercise due care approaching any intersection. A railroad crossing is no different.

Finally, Mr. O'Brien cites several ways in which he believes the presence of the railroad will disrupt the community. The train normally will not remain in town long enough for any of these to be more than de minimis. The citation of the CSX standard[12] that no cars may be left within two hundred feet of a roadway is also out of context as it is purported to be a design standard regarding track construction rather than train crew operation.

I, Michael E. Allen, Senior Manager of Right-of-Way and Title of R L Banks & Associates, do hereby verify under penalty of perjury under the laws of the United States of America, that the facts recited in the forgoing statement are true the best of my knowledge and belief. Further I certify that I am qualified and authorize this statement to be filed.

Michael E. Allen

/s/ *Michael E Allen*
Michael E. Allen
Senior Manager, Right-of-Way and Title
R L Banks & Associates, Inc.
Dated: 29 October 2024

[12] no source given