

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

ENTERED
Office of Proceedings
November 28, 2017
Part of
Public Record

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

Motion to Rebut Erroneous Statement and Clarify Legal Position

Pursuant to 49 C.F.R. § 1117.1, The Great Walton Railroad Company, Inc. (GWRC), by and through counsel, respectfully requests leave to file sur-rebuttal testimony in response to a material misstatement. In its Reply, filed November 20, Hartwell First United Methodist Church (Hartwell First), without any citation to the record, states that “GWRC acknowledges that it does not have any title to the land where it wants to construct a piece of the runaround (where the north spur was previously located).”¹ This is simply not true. Although it has not been able to locate a deed that conveyed the parcel of land on which the northern segment of the runaround track is located, it is GWRC’s position that it acquired title to the real property from the Hartwell Railway Company pursuant to Georgia law.

GWRC claims title by prescription pursuant to O.C.G.A. §44-5-160, which states that “[t]itle by prescription is the right to property which a

¹ Hartwell First Reply at 3.

possessor acquires by reason of the continuance of his possession for a period of time fixed by law.” As herein relevant, O.C.G.A. § 44-5-163 provides that “[p]ossession of real property in conformance with the requirements of Code Section 44-5-161 for a period of 20 years shall confer good title by prescription to the property against everyone except the state and those persons laboring under the disabilities stated in Code Section 44-5-170.”

GWRC relies on the provisions of O.C.G.A. § 44-5-161, which spell out the governing tests for establishing prescriptive title through adverse possession. As provided therein:

- (a) In order for possession to be the foundation of prescriptive title, it:
 - (1) Must be in the right of the possessor and not of another;
 - (2) Must not have originated in fraud except as provided in Code Section 44-5-162;
 - (3) Must be public, continuous, exclusive, uninterrupted, and peaceable; and
 - (4) Must be accompanied by a claim of right.

Because GWRC can easily satisfy each requirement, it is GWRC’s position that it does hold title to the property, if not by conveyance, then at least through adverse possession.

That GWRC and the predecessor railroad have continuously and openly exercised possession of the parcel at issue for over a century is not open to

question.² The initial occupation is well documented by records generated by the Interstate Commerce Commission during its valuation of the Hartwell Railway Company. The valuation documents show that the track in question was constructed in 1913 and that it extended beyond the Hartwell Railway's original right-of-way and over the parcel in question.³

There is no indication that GWRC or the predecessor railroad ever relinquished possession. Even when GWRC temporarily removed the steel rails, it deliberately left the crossties and ballast in place. Because it would have required authority from the Board to abandon the runaround track, GWRC cannot be said to have abandoned the right-of-way on which the track was constructed. Of course, as Hartwell First's own witnesses have testified, Mr. Anderson repeatedly rebuffed their demands that he "remove the tracks and donate the Railroad property"⁴ to Hartwell First with the comment that he "had 'no plans to do so.'"⁵

Furthermore, in the July 31, 2008 License Agreement, whereby GWRC granted Hartwell First the right to cross over both of its tracks, GWRC "reserve[d] and accept[ed] unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad

² The Supreme Court of Georgia has expressly recognized that possessory interests can be tacked together. *Georgia Power Co. v. Irvin*, 267 Ga. 760, 482 S.E.2d 362 (Ga., 1997).

³ GWRC Exhibits Nos. 1 and 35.

⁴ Rebuttal Verified Statement of Jack Edmunds at 5.

⁵ *Id.* at 6.

purposes.”⁶ By accepting the License Agreement, Hartwell First ***expressly renounced any claim to title of real property underlying GWRC’s tracks.***

As the record reflects, Mr. Whittemore, on behalf of Hartwell First, agreed to the plainly worded contractual provision that “Licensee shall not at any time own or ***claim any right, title or interest in or to 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 any right of interest in Licensee other than the license created hereby.***”⁷ As the “C100 Site Plan” attached to the recorded Agreement reflects, the crossings covered by the License Agreement involve the parcel of land at issue herein. Promissory estoppel binds Hartwell First to the terms of the contract to which it agreed.

The Board’s attention is also invited to the warranty deeds that describe the Farmers Union or Perfect Pea Picker Lot. From 1922 forward, those deeds, including the 1937 warranty deed that conveyed the Perfect Pea Picker Lot from J. H. Mays to The Hartwell Mills Corporation, reduced the footage on Webb Street to only 90 feet from the original 100-foot measurement. Such deeds clearly evidence the railroads’ “public, continuous, exclusive, uninterrupted and peaceable” possession of the parcel that serves as the foundation of the railroads’ prescriptive title. O.C.G.A. § 44-5-161(a)(3).

⁶ GWRC Exhibit No. 8, ¶11.

⁷ *Id.* (emphasis added).

Hartwell First takes further liberty with the facts by suggesting that the filing of the condemnation proceeding is an implied admission by GWRC that it lacks title.⁸ Hartwell First's position cannot be squared with condemnation practice in Georgia. As shown above, GWRC is confident in its title to the property. Furthermore, the deeds of record in this proceeding clearly show that Hartwell First *cannot* establish its own title.⁹

In such circumstances, both parties face a long and expensive fight to establish title in the state courts. The fair market value of the parcel in dispute is only \$8000.00. GWRC has recognized the absurdity of spending many thousands of dollars on attorney's fees to establish title to its own property, with no assurance that the title litigation would be quickly resolved. Accordingly, GWRC elected to utilize its condemnation power to "clear" its own title to the property as permitted by O.C.G.A. §22-1-1(9)(A)(iv). This code section recognizes that one specific use of condemnation is to remove clouds on title when ownership is unclear. That is the purpose for GWRC's condemnation, not some concession that it lacks confidence in its own title. In short, condemnation is merely a very practical realization that this process will be the quickest and least expensive way to resolve the issue.

⁸ Hartwell First Reply at 3, n.1.

⁹ GWRC Motion Seeking Leave to File Sur-Rebuttal and Motion to Strike, pp. 14-25 and attached GWRC Exhibit Nos. 25 through 33.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard H. Streeter, certify that on this 28th day of November, 2017, I served a true copy of the foregoing on all parties of record by first-class mail, postage prepaid, and/or email.

/s/ Richard H. Streeter

Richard H. Streeter