

Ga. County Says Union Carbide Must Honor Spaceport Deal

By Rosie Manins · [Listen to article](#)

Law360 (July 29, 2022, 8:38 PM EDT) — A Georgia county is trying to force Union Carbide Corp. to honor a deal for the county to buy 4,000 acres of empty land on which it plans to build a spaceport, alleging the company is trying to back out so it can get more money.

Camden County, through its board of commissioners, brought a contract breach and unjust enrichment case on Wednesday against Union Carbide, a subsidiary of The Dow Chemical Co.

The parties agreed in 2015 that the county, in coastal south Georgia, would buy from Union Carbide a 4,011-acre tract of land for development of a rocket launch facility, the county says in the complaint, filed in Camden County Superior Court. The county said it has already spent \$10.3 million on the project, which got sign-off from the Federal Aviation Administration in December.

Union Carbide has since stonewalled the sale, using public opposition to the project as an excuse, in an attempt to obtain more money for the land than what it had agreed to sell it for, the county alleges.

"Union Carbide's intent is to reap more money from the property through lucrative conservation easement tax credits, combined with potentially selling the property for more money," the county said. "The [public opposition] is an after-the-fact pretext for Union Carbide, asserted months after the company began efforts to stonewall on the contract."

Union Carbide told Law360 on Friday that it will review the county's claims once it has been served with the complaint. It had no further comment.

Richard L. Robbins of Robbins Alloy Belinfante Littlefield LLC, an attorney for the county, said the public opposition to the spaceport project comes from a "very well organized vocal minority that's been fighting it for years."

"We respect their right to complain, but the fact is, it is a small minority and not the consensus of the residents and citizens [of the county]," Robbins told Law360 on Friday. "There's enormous support for [the spaceport], and it will be an enormous financial boon."

The county claimed it didn't buy the property outright from Union Carbide in 2015 because the spaceport project was subject to a lengthy review by the FAA, so it entered into an option contract in which it held the exclusive right to purchase the land for a set period of time.

Since 2015, the county's \$10.3 million expenditure on the project, representing 3% of its total budget, has included significant payments related to the property purchase, it said. The county did not disclose in its redacted complaint how much it has already paid Union Carbide or the agreed purchase price for the land, citing a confidentiality clause in their agreement.

Robbins said there will be additional expense incurred by the county if it can go forward with the purchase. The county has asked the court for permission to file an unredacted version of its complaint under seal.

Complicating the dispute between the county and Union Carbide is a public referendum that occurred in response to the county receiving in December its Commercial Space Transportation License for the project.

The county said two residents successfully petitioned the Camden County Probate Court for a referendum election on the question of whether the resolutions of county commissioners — authorizing the contract with Union Carbide and the county's right to buy the land — should be repealed.

The county sought to prohibit the referendum through the Camden County Superior Court, which allowed it to go forward. The county's appeal of that decision is pending in the Georgia Supreme Court, which is scheduled to hear oral arguments on it in late August.

Fewer than 6,000 county residents, representing less than 17% of registered voters, participated in the March referendum, though the majority voted in favor of repealing the resolutions, per the complaint.

The county said Union Carbide used the referendum as an excuse to stall the agreed-upon sale of the property. The county claimed it suggested amending the agreement to extend the option period until a resolution in the referendum appeal, but that Carbide Union refused.

"The parties had previously entered into multiple amendments extending the option period and a further extension would have caused no harm to Union Carbide, avoided this litigation, and simply preserved the status quo while allowing the underlying matter of the referendum's propriety to be resolved by the Georgia Supreme Court," the county said.

Camden County said it sought in April to exercise its right to buy the land, but that Carbide Union claimed the following month it had no obligation to follow through, because the referendum had repudiated their agreement. The landowner's argument, that the county should instead have appealed the probate court decision allowing the referendum to take place, is a nonstarter, the county said.

It said Union Carbide disclosed in a July letter that it now wants to dedicate the property for conservation purposes, which is "disingenuous."

"Union Carbide has continually failed to remediate the property's heavily polluted areas as required by the agreement," the county said. "What Union Carbide instead wants to achieve is more conservation easement tax credits, to monetize the value of the property more than the contract price at the expense of the taxpayers."

The county's preferred resolution is an order forcing Union Carbide to honor the land sale and purchase agreement. In the alternative, the county wants back all it has paid to Union Carbide for the property to date.

"Apparently, Union Carbide believes it is entitled to retain the payments made by Camden County under the option contract while simultaneously claiming that the contract is invalid, a position that lacks any legal, contractual, or equitable basis," the county said.

Robbins said the county's case is likely to go before a Camden County judge who is overseeing a range of cases related to the spaceport project, including one challenging the FAA's approval of it. The spaceport itself would comprise several hundred acres, with the rest of the land essentially used as a buffer, he said.

"It's a very cool project," Robbins said. "It was very well-designed to satisfy concerns people had. We got full FAA approval, and they don't approve these things lightly. It would be a tragedy if this was derailed."

Camden County is represented by Richard L. Robbins, Jeremy U. Littlefield and Brian E. Lake of Robbins Alloy Belinfante Littlefield and John S. Myers of John S. Myers PC.

Counsel information for Union Carbide was not immediately available.

The case is Camden County v. Union Carbide Corp., case number SUCV2022000577, in the Superior Court of Camden County, Georgia.