THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Circuit Court Judge

Appellate Case No. 2021-001081

Robert H. Sarn, Appellant,

v.

James C. Rhea, III;
City Electric Supply Company;
John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military person, who claim any right, title, or interest in, lien upon, the entity designated as "Taschner Textiles Industries, LLC"; and
Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in or lien upon, the entity designated as Taschner Textile Industries, LLC," Defendants.

Of whom James C. Rhea, III and Taschner Textile Industries, LLC are the

Respondents.

AMENDED RECORD ON APPEAL: VOLUME 2

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So, now that we have a general idea of where everything is located and which lots are at issue, I want to walk through the timeline of transactions in this matter because it will be important to understanding what the rights and responsibilities of the plaintiff and defendants are.

In 1996, Mr. Sarn acquired about eight and a half acres from Metromont Materials Corp. Those eight and a half acres would ultimately become the Rental Court development.

In the year 2000 -- in October of 2000 -- Mr. Sarn started to subdivide the property, and he sold the first lot to Defendant Rhea. It's a .88 acre parcel located at 1368 Constitution Boulevard.

In December of 2008, Mr. Sarn sold an 8/10ths of an acre tract located at 146 Rental Court, which is also identified as Lot 3 on the plat that we've previously looked at, to J.D. Properties of the Carolinas, LLC. Yeah, it's a mouthful. We'll just be calling them J.D. Properties as we move forward.

In connection with the sale of Lot 3 to J.D. Properties of the Carolinas, in January of 2009, Mr. Sarn deeded an easement and granted right of way to J.D. Properties for the use of Rental Court.

In January of 2018, J.D. Properties sold Lot 3 to Taschner, and then later, in the summer of 2018, starting in July, Mr. Sarn sold Tract A and the adjacent parcel to be

combined with Tract A to GR Properties of Fort Mill, LLC, for a purchase price of $989,000.

Now, we'll walk through some of the closing documents associated with the sale from Mr. Sarn to GR Properties, but from a bird's-eye view, as a condition of the purchase agreement between Sarn and GR Properties, Mr. Sarn agreed to repave Rental Court, and he agreed to have $49,314 escrowed from the purchase proceeds to complete the resurfacing of Rental Court. And ultimately, Mr. Sarn netted $853,000 and some change from the sale of that property.

Having closed on the sale of Tract A to GR Properties and having received over $850,000, Mr. Sarn turned around in April of 2019 and filed this action seeking contribution from the other owners on Rental Court for the cost of resurfacing.

Now, Your Honor, our argument today in support of summary judgment is going to have two legs, hopefully.

The first is that Mr. Sarn assumed the responsibility for maintaining Rental Court and, therefore, he has no legal or equitable grounds to recover contribution from Taschner or Rhea, or CVS, for that matter.

And the second leg, Your Honor, is that because Mr. Sarn agreed to resurface Rental Court in connection with the sale of Tract A to GR Properties and has been handsomely compensated for doing so, he, again, has no legal or equitable grounds to demand contribution from any Defendant.

Now, starting with our argument that Mr. Sarn assumed the responsibility for maintaining Rental Court, I think it's important as a threshold matter to discuss how grants of easement are construed by South Carolina Courts.

A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. And when a court is interpreting a deed or a written instrument, the primary rule of construction is that the intent of the parties must be ascertained and affected. And the intent of the parties must be found within the four corners of the document.

So, moving forward today, we need to look at the language contained within the four corners of the documents at issue to determine whether or not Mr. Sarn had the intent to maintain Rental Court. And based on these documents, Mr. Sarn's intent could not be clearer.

We're going to start by looking at the deed from Mr. Sarn to Defendant Rhea dated October 20th of 2000. This entire document is attached as an exhibit to our memorandum in support.

If Your Honor will review the language of this deed, nowhere in here does Defendant Rhea agree to contribute to the maintenance of Rental Court.

If we move next to the deed from Mr. Sarn to J.D. Properties of the Carolinas, in this deed, Mr. Sarn grants

J.D. Properties, and the successors and assigns of J.D. Properties, an easement, and that easement language is here on your screen. Now, again, this is not the entire document. It is just a portion of the document that is relevant to our argument.

But this deed contains an easement for the use of Rental Court. You can see it here at the first portion, "Together with the Easement, for use of ingress and egress to use Rental Court to access the property." But the operative language is contained in the latter half of this easement language. And, in this, the Grantor, which is Mr. Sarn, provides that, "Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement." Grantee, in this case, is J.D. Properties of the Carolinas.

So, in this document, which memorializes the transaction in which Mr. Sarn received $570,000, he explicitly agrees to maintain Rental Court for the benefit of J.D. Properties, and the successors and assigns of J.D. Properties, until Rental Court becomes a public road.

Now, again, attendant to the closing on Lot 3 with J.D. Properties, on the same day he signed the deed, Mr. Sarn also

signed this Grant of Easement and Right of Way. Now, this was not recorded until the following January, after the closing, for reasons I'm sure Mr. Foster will discuss, but this is of record. It was executed contemporaneously with the sale of Lot 3 to J.D. Properties. And, again, Mr. Sarn is granting to J.D. Properties, and the successors and assigns of J.D. Properties, an access easement of Rental Court. You can see it on this panel to the left that the easement is granted for use of the private road known as Rental Court for ingress and egress.

And if you'll look to the right, Your Honor, again, the operative language is towards the end of the document. And on the second page, this Grant of Easement and Right of Way provides that, "By signing this agreement, Robert H. Sarn, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost of upkeep and maintenance of said private road." So, again, Mr. Sarn has affirmatively and explicitly undertaken the duty to maintain and upkeep Rental Court at his own cost.

Now, Your Honor, if we fast forward 9 or 10 years, we actually get into one of the defendants in this case, when J.D. Properties sold Lot 3 to Defendant Taschner. And when J.D. Properties sold Lot 3 to Defendant Taschner in 2018, the deed contained identical easement language that was provided by Mr. Sarn to J.D. Properties. And it's important to note

that in the context of Lot 3, Sarn agreed as the Grantor in 2008, to maintain Rental Court for the benefit of J.D. Properties. And, in 2018, it would appear that J.D. Properties agrees to maintain Rental Court for the benefit of Taschner. But at no point does Taschner ever agree to maintain Rental Court.

So, looking at these three documents in concert, it is very clear -- or these four documents in concert, we go back to this threshold issue of how courts determine the affect of an easement -- or construe an easement. And you have to look to the four corners of the document to determine the intent of the parties.

In looking at the language of these documents, there is no other conclusion that could be drawn other than Mr. Sarn agreed, in connection with the sale of property from which he netted hundreds of thousands of dollars, agreed to maintain Rental Court as an inducement for those sales. There is no basis in law or equity for Mr. Sarn to foist his responsibility -- his voluntarily assumed responsibility -- on to third parties if and when it becomes convenient for him to do so.

Now looking, Your Honor, to the second leg of our argument today that Mr. Sarn is not entitled to recover from the defendants because the resurfacing of Rental Court was done in connection with the sale of Tract A to GR Properties.

So, not only did Mr. Sarn commit to the cost of maintaining Rental Court when he sold Lot 3; not only did he not require Defendant Rhea to contribute to the cost of maintaining Rental Court when he sold Lot 1, but Mr. Sarn privately negotiated to resurface Rental Court as a condition of the sale of Tract A to GR Properties.

Now we'll look, Your Honor, to a portion of the Escrow Agreement for Repairs and Upfitting between Mr. Sarn and GR Properties. This was executed July 20th, 2018, ahead of the closing on Tract A. And you'll see, Your Honor, that in this, Mr. Sarn agrees to resurface Rental Court per the Granite Contracting, LLC, bid $49,314.

In his deposition, Mr. Sarn admits that this is (inaudible) and he signed this agreement. Now, this agreement was made without any consultation or participation by the named defendants in this case. Sarn was not consulted; Taschner was not -- oh, excuse me, Rhea was not consulted; Taschner was not consulted; and, unless Michael will disagree with me, I do not believe that CES was consulted.

MR. HATCH: (inaudible)

MR. PIERCE: And having negotiated for the resurfacing of Rental Court as a term of the sale, Mr. Sarn has no legal or equitable basis to look to these defendants to offset the expense.

You can also see here as part of the Settlement Statement, which is attached in full as an exhibit to our memorandum, that there was $59,564.05 escrowed from the proceeds of the sale of Tract A that matches up directly with the number here from the Escrow Agreement for Repairs and Upfitting. And we can see that Mr. Sarn received $853,815.17 at closing.

I think it's also important to note that based on this Escrow Agreement, Mr. Sarn never even came out-of-pocket for the cost of repaving Rental Court. These funds were escrowed from the nearly $1 million he received in connection with the sale of Tract A.

Now, thus far in this case, until the memorandum in opposition that we received this morning, the sole authority that Mr. Sarn has offered to justify his claim is Hayes v. Tompkins. It's a 1985 South Carolina Court of Appeals case.

And in Hayes, the owner of a subdivided lot claimed an ingress and egress easement over another parcel, both of which were originally part of a larger tract. Now, the Court had to go through an initial analysis to find that the movement was entitled to an easement by necessity, and the Court then imposed on the easement holder, who would be the party having approved the easement by necessity, an equitable duty to contribute to the maintenance of the easement on the serving parcel. And in making it's holding, the Court stated

that in the absence of an agreement, the owners of the servient tenement are under no duty to maintain and repair the easement for the benefit of the dominant tenement.

Now, this presents two issues for Mr. Sarn, this being his only legal -- his only stated legal basis for his claim.

The first is, as we've discussed, there are at least three agreements where Mr. Sarn agrees to maintain Rental Court. Explicitly, voluntarily, and in the course of sales where he netted hundreds of thousands of dollars, he has agreed in writing of record to maintain Rental Court.

He again agreed to bear the cost of Rental Court by specifically factoring in the cost of the sale of Tract A to GR Properties.

And the second issue that Hayes presents for Mr. Sarn's claim is that this case does not operate to give the owner of a servient tenement the right to demand contribution. If you read the case, what the case says is that the owner of the servient parcel is not required -- or, excuse me, the owner of a dominant parcel is not required to maintain the easement.

Excuse me, I'm having a technical difficulty here. If you'll bear with me for just a second.

I apologize, Your Honor, the screen blacked out on me for just a second.

Stepping back to Hayes, Hayes does not grant Mr. Sarn

the right to demand contribution from the owners along Rental Court. What Hayes would operate to do is protect Mr. Sarn from demands of contribution by the owners along Rental Court. What it says is that someone who owns the servient tenement is not required to contribute when the owners of the dominant tenement make repairs.

And what we have in this case is the exact opposite. The owner of the servient estate, Mr. Sarn, has voluntarily undertaken repairs and is now seeking contribution from the owners of the dominant tenements. So, one, Hayes does not stand for a proposition that would give Mr. Sarn the right to seek damages, and, second, even if it did, there are agreements in place that would negate the language -- or the proposition that Mr. Sarn holds Hayes to show.

So, over and again, Mr. Sarn has voluntarily agreed to undertake the responsibility to maintain Rental Court as part of selling parcels. He has no equitable principle to rely on to seek contribution, he has no legal principle to rely upon to seek contribution that would allow him to renounce his obligations when it became convenient.

(inaudible) rely on all that, Your Honor, these documents of public record, these agreements whereby Mr. Sarn agreed to maintain Rental Court, and the total lack of agreements whereby Rhea or Taschner or CES, for that matter, agree to maintain Rental Court, we do not believe there is a

genuine issue material factor in this case, and we're going to ask that summary judgment be granted.

THE COURT: Thank you, Mr. Pierce. Mr. Foster?

MR. FOSTER: Ma'am, do you wish for me to go ahead at this point or do Mr. Hatch or Mr. Ballou wish to say anything? I don't wish to talk over anybody, but -- you are running this, ma'am, but I just wish to be sure do they wish to say anything at this point.

THE COURT: Well, Mr. Foster, I can have Mr. Hatch -- and Mr. Ballou, if you would like to add anything -- I can have them speak and you can address everything at the end or you can go ahead and address what Mr. Pierce has said and then address Mr. Hatch after he's had a chance to speak.

MR. BALLOU: Judge, this is Dan. I don't have anything further at this time. We may have something in reply, but nothing at this time.

THE COURT: Mr. Hatch, you can go ahead.

MR. HATCH: Thank you, Your Honor.

The only thing that I would add to Mr. Pierce's argument is that the operative language in the granting deed from Mr. Sarn to my client -- which I'll call CES, that's appropriate for everybody -- it's the same language. Mr. Sarn undertook the duty to maintain easement and the state of repair for his (inaudible) first class development until it was dedicated to the City, and it has not been dedicated the City. And that

his covenant, his grant, his promise to maintain the easement is still in existence and will be in existence until Rock Hill accepts dedication.

THE COURT: Thank you, Mr. Hatch. Mr. Foster?

MR. FOSTER: That's me. Okay, ma'am, I hope I can be heard. It seems the gentlemen are fading in and out, so I hope I'm talking loud enough without shouting at anybody.

I did indeed send over our memorandum this morning, referring to the documents that we had earlier, according to your instructions, submitted. I need to make a point of civil procedure first.

There's a rule in summary judgment, which I need not tell this Court, that says it is prosper to deal with summary judgment if, and only if, all discovery has been taken care of. There is no scheduling order in this case.

Well, the first we learned there were documents on those already in our possession and raising issues on the legal issues we knew of was at Mr. Sarn's deposition in September. In response to that, we issued subpoenas both to a closing attorney on one of these matters, Mr. Hyatt, and to the brokers that acted for Mr. Sarn. We have submitted those documents to all parties.

We have also asked for discovery from Morton & Gettys, being Mr. Ballou and Mr. Pierce. I would note at this point that we had originally sent requests for production to them

that has not been answered. That is a nice tangle because Mr. Pierce's position was that we had not served his client because my position -- I'm sure Mr. Pierce will say it better -- we had not put the umlaut out over the "a" in Taschner. That is arguable, and certainly the Court agreed. They did not hold them in default.

There was, however, included in our memorandum a later stipulation by the parties saying, basically, we're going to cure the matters that we had problems with; here is the new complaint. That was from us. The new complaint was basically to cut out the umlaut and just say Taschner with the umlaut. We have re-served requests for production on all parties.

My understanding in that situation is that it is improper for the Court to deal with summary judgment until discovery is completed. And to that extent, we believe this is untimely.

Now, my intent at this point -- and I can be stopped by the Court or told otherwise -- is to go forward with our argument to be sure that we've made all points. I'm not trying to waive our point on civil procedure by saying that.

To go back again, this rises out of a piece of property off of Constitution Boulevard in Rock Hill that was developed by Mr. Sarn. There is a central roadway off of I believe it's seven lots, and the question is whose responsibility is

it to pay for the upkeep. There is no question that Mr. Sarn has, on several occasions, signed documents saying, "I will pay." That is not the question in our view. In our view, the point is, is he the only one that is required to pay.

The counsel for Taschner and I have a disagreement about South Carolina procedure -- pardon me, South Carolina precedent. We've cited what we believe is relevant on page 4 of our memo. Hoping that I'm not putting the Court to sleep with this, out of 1985, they say -- this is Court of Appeals -- "In the absence of an agreement" and the only one here would be the deeds -- "the owners of the servient tenement" that would be us, Sarn -- "are under no duty to maintain or repair." "Ordinarily, the owner of an easement" that would be my opponents -- "has the duty to keep it in repair."

And we go on to cite an even older case, from 1839, saying, rather simply, "He who has used the right of way" -- pardon, let me say this correctly -- "He who has used the way must repair it," comma, "or bear the inconvenience."

Our understanding of the law is quite simply this: unless there is something here that says we have relieved these parties of any duty to contribute, they have that duty.

Now, there are two things that I understand that they cite on the alternative.

One is the language of the deed -- or the deeds, I should say. We've cited them in our memo; they have cited

them at length. I say it again, there is no question Mr. Sarn has said, "I will be responsible." There's no question he's taken that duty. The question is quite simply are we entitled to contribution.

I see nothing in that language that relieves these people of the duty to contribution except -- and I can be corrected by Mr. Pierce -- I saw him cite this, but I don't think he cited the part that I'm going to argue to the Court -- in 2008, the sale to Taschner's predecessor, J.D. Properties of the Carolinas, took place. In that document, there is a statement that says, "By signing this agreement, Robert H. Sarn, his heirs or assigns, hereby agrees to be fully responsible for the total cost and maintenance of said private road." Well, that certainly seems (inaudible). I can go on, and I do in our memo, to cite the fact that Mr. Sarn did his best, in my opinion, to rescind that document; that he never agreed to it being recorded; and that he did not believe that it was requiring him to do what it said.

But that is not my main argument to this court because right before that statement, on the page before, which I don't believe has been cited here, there's this statement: "Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, now Taschner, shall not be the responsibility of Robert H. Sarn, his heirs and assigns,

including but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, his successors, or assigns.@ That, to me, is the nub of this case. And what the Court is faced with in that document quite simply is a contract that says white, black, this, no, up, down.

The idea in (inaudible) law, as I understand it, is that a contract has to be looked at at it@s four corners. I don@t think there@s been anything here to dispute that, though there@s been a great deal of talk about the money being set aside, which, to my mind, doesn@t say anything except that, yes, the money was set aside from Mr. Sarn to do what he said he would do.

There is no way that I am aware of to take a contract that says two completely contradictory things and make it enforceable. It@s not a matter of an ambiguity. It@s not a matter of saying, @well, we need people to come here and say this is what it means, it@s unclear.@ It is directly and completely contradictory. And to that extent, (inaudible) is not comparable of something and it can be relied upon by the parties to say they@re right or to prevail in this case. I cited all the reasons why we believe it@s improper. I will simply leave those to the Court in my memo, if I may.

Your Honor, I refer again this Court to the South

Carolina precedent which was cited about what it means to have use in easement and the cost thereof. Beyond that, I am simply going to repeat, as Counsel quite properly repeated, the language about what a summary judgment is. I'm going to repeat what's in our memo, which says basically, in South Carolina, even a scintilla of evidence is enough to defeat summary judgment. I certainly believe we've accomplished that. It is obviously the Court's decision.

Ma'am, I'm sure that any of the counsel here would be happy to supply anything further the Court may require of us in this case.

That is my argument.

THE COURT: Thank you, Mr. Foster.

First, Mr. Foster, did you e-file your memo or did you just e-mail it?

MR. FOSTER: I e-filed it, ma'am.

THE COURT: Because I didn't see a memo from you.

MR. FOSTER: I believe about 9:30 this morning.

THE COURT: Okay, that's why I didn't see it. All right.

MR. FOSTER: Ma'am, I should say -- and I don't mean to interrupt the Court -- I read the instructions we were given. The evidence had to be pre-filed. I did not read that as to the memo. If that is at fault, it is my fault. I don't wish to deprive anyone here of their right to reply.

THE COURT: No, I just wanted to make sure that it was something that we had received and, if not, then we just needed to get you to resend it. But if you've e-filed it, I can access it. Thank you, Mr. Foster.

Mr. Pierce?

MR. FOSTER: We can't hear you. I can't hear Mr. Pierce.

MR. PIERCE: Yes, Your Honor, I'm sorry. I muted myself.

We would like to respond to this, both regarding the allegations of incomplete discovery, as well as the substance of the arguments raised by Mr. Foster -- or, excuse me, by Mr. Sarn here today through Counsel, both at the hearing and in their memorandum of opposition.

I would like to say that in preparing my response, I did cite in my notes quite a bit to the deposition testimony of Mr. Sarn that I think cuts directly against the arguments that have been raised here today, and I will do my best not to sound like a robot quoting lines and page numbers as I move through. And if the Court would prefer, I can provide a written summary of my citations to the deposition transcript following this hearing because I will be throwing out a lot of lines and page numbers as we go through this.

So, I apologize if it seems a little bit convoluted, but I can provide some written clarification afterwards if the

Court would like.

Starting with the issue of the incomplete discovery, Your Honor, the status of discovery does not preclude summary judgment in this case. Mr. Sarn has alleged that this motion is premature and part of that allegation is because Taschner's alleged to not have responded to discovery. And this should not bar summary judgment for two reasons.

The first is that the substance of the information sought by Mr. Sarn will not change and cannot change the outcome of this matter.

And, two, procedurally, the responses to discovery are simply not due and are not even on the radar at this point.

As far as the substance goes, it's important to contextualize what Mr. Sarn claims to have requested in relation to the documents that are before the Court today on this summary judgment motion, and the simple fact is that there is nothing in Taschner's possession, there's nothing in Rhea's possession, and there's nothing in CES's possession that can change the recorded documents and Mr. Sarn's own testimony that are already in this case.

The signed, recorded deed from Sarn to J.D. Properties contains a clause whereby Sarn agrees to maintain Rental Court. This easement is appurtenant, this easement runs with the land, this easement benefits anyone who owns the land.

The signed, recorded Grant of Easement and Right of Way

from Mr. Sarn to J.D. Properties contains a clause whereby Sarn agrees to undertake the full responsibility of maintaining Rental Court. This easement is appurtenant, this easement runs with the land, this easement benefits anyone who owns the land.

And there is a signed, recorded deed from J.D. Properties to Taschner containing language whereby either Sarn or J.D. Properties, but in no case Taschner, agrees to maintain Rental Court. Again, this easement is appurtenant, this easement runs with the land, and this easement benefits anyone who owns the land.

Now, nothing that Mr. Rhea, nothing that Taschner, and nothing that Mr. Hatch for his client could turn over would change those recorded documents. None of them have been rescinded, none of them have been superseded, no action has been taken by Mr. Sarn at this point to mitigate and voluntarily assume responsibilities for the maintenance of Rental Court, and that is more than adequately supported by Mr. Sarn's deposition testimony.

In his testimony, Mr. Sarn agrees -- admits that he agreed to be responsible for the maintenance of Rental Court on November 7th, 2008. That's at page 59, lines 10 through 12.

Mr. Sarn agrees that Taschner is not responsible under any written document for the maintenance of Rental Court.

That's page 73, lines 13 through 22.

Mr. Sarn admits that there's no agreement between himself or Rhea requiring Rhea to maintain Rental Court. That's page 74, lines 18 through 21.

Mr. Sarn admits that he cannot prove he ever asked Toy Rhea to contribute to the maintenance of Rental Court. That's at page 75, line 24, through page 76, line 8.

Mr. Sarn admits in his deposition that there's no agreement between Taschner, Rhea, or CES requiring them to pay a pro rata share of the maintenance of Rental Court. That's page 35, lines 2 through 7.

Mr. Sarn admits that he agreed to repave Rental Court as a condition of the sale to GR Properties. That's page 26, lines 21 through 25, and page 31, lines 6 through 9.

Mr. Sarn admits that in exchange for his agreement to resurface Rental Court and sell Tract A to GR Properties that he received $989,000. That's page 29, lines 11 through 15.

Mr. Sarn admits that he never paid out-of-pocket for the resurfacing of Rental Court, rather that the funds were escrow. That's page 30, lines 18 through 24.

Mr. Sarn admitted that he did not ask Taschner, Rhea, or CES to contribute to the resurfacing of Rental Court at the time he was negotiating with GR Properties. That's page 35, lines 20 through 24.

The only evidence at his deposition that Mr. Sarn puts

forward that anyone besides himself agreed to maintain Rental Court is an e-mail from a third party to a fourth party in the midst of a conversation to which Mr. Sarn was not a party, and there is no evidence of any response or agreement. That's at page 71, lines 15 through 18.

Throughout the entire course of a fairly lengthy deposition, the only grounds that Mr. Sarn can conjure for why Rhea, CES, or Taschner were liable to him was an alleged moral responsibility. That's at page 78, lines 22 through 23, and 79, lines 16 through 25.

So, there is no document to contradict the recorded documents in which Mr. Sarn agrees to maintain Rental Court.

Mr. Sarn's own deposition testimony cuts the legs out from under any argument that he had to the contrary. He has admitted that there's no agreements for these defendants to be liable for the maintenance of Rental Court; he's admitted that he has agreed to resurface Rental Court in the pursuit of an arm's length transaction with a third party; and he has alleged only a moral responsibility that is not supported by South Carolina law to operate -- to require a contribution by the defendants.

So, substantively, there's nothing that any party to this case can turn over that would change the undisputed facts of this case.

Now, if we look to the procedural aspect of this

discovery argument, Mr. Foster cites Dawkins v. Fields in support of his proposition that summary judgment is inappropriate when discovery has not been fully completed. Now, Mr. Foster does not incorrectly state the law of that case, but he does not completely state the law of this issue in South Carolina.

The dispositive case is Baughman v. American Telephone that's cited 306 S.C. 101. Your Honor, I can provide a brief memorandum in reply, if Your Honor would like to have this in response to the memo in opposition that was submitted this morning. But while the Dawkins Court did state that in certain situations summary judgment is premature and inappropriate when discovery has not been completed, the Court in Baughman, which is the South Carolina Supreme Court, found that the inquiry needs to go further. It's not simply a bright line rule that discovery not being complete is an absolute bar to moving for and receiving summary judgment.

The Baughman Court said that the Court must determine, one, whether further discovery would uncover additional relevant evidence, and, second, that the plaintiff was not dilatory in seeking discovery. Those were the two things that the Court has to ask itself before it finds that summary judgment is premature.

Now, for all the reasons that we've already stated, and I won't repeat them ad nauseum here, there is no additional

relevant evidence that can refute the public record and Mr. Sarn's own testimony. Plain and simple. Period. End of sentence.

And, further, the status and the position of discovery in this case is due to the plaintiff alone. The case was filed April of 2019. Now, Mr. Foster was a little bit reductive when he said that the case against my client was initially dismissed for lack of an umlaut -- which is not a word I ever thought I'd say on the record to South Carolina -- but the case was not dismissed because Taschner was spelled without an umlaut. Judge Hall dismissed the case because Mr. Foster could not prove that my client was ever properly served within the South Carolina Rules of Civil Procedure and this was dismissed under Rule 12 for failure of service of process. So, Taschner was not served properly under the Rules of Civil Procedure.

Now, after we became aware that a lawsuit had been filed and named Taschner, we reached out to Mr. Foster, offered to accept service, and to move forward with an answer. Rather than going through with that, Mr. Foster and his client filed for default against our client, Taschner. We filed a motion to dismiss on August 26th for failure of service process. And because he could not prove with his own devices that Taschner had been properly served, Sarn served discovery requests on Taschner on September 3rd, 2019. A week after we

had filed for motion to dismiss.

Now, this presented some -- well, interesting may not be the right word -- but some novel issues to me, where the plaintiff had issued both discovery requests to a party it was attempting to hold in default -- and by rule in South Carolina law, including limous (phonetic) that, you know, a party whose being held in default is not entitled to participate in discovery. I guess the question was are we required to participate rather than have the opportunity to participate. But, in any case, a party who was being held in default was served discovery and a subpoena, which raised issues under Rule 45.

Putting all that aside, Your Honor, based on the inability for Sarn to prove that Taschner had been properly served, the case was dismissed, as to Taschner. And, at that time, the outstanding discovery request from September 3rd, 2019, dissolved; the subpoena that was served on September 3rd, 2019, dissolved; and there was no case or outstanding obligation as far as Taschner was concerned.

Now, because this was dismissed without prejudice and we understood that Taschner could be simply re-served, we offered a number of times to simply accept service and move forward, even after the case had been initially dismissed. We ultimately did accept service, filed an answer, and moved forward.

At no point after Taschner accepted service, filed an answer, and began to move forward with the case was it served with discovery.

On September 11th of last year, Mr. Sarn was deposed, and Mr. Foster has stated that this was the first time any of these documents came to Mr. Sarn's awareness. Well, there was not a single document, other than documents presented by Mr. Foster at the deposition, there was not a single document put in by Taschner, Rhea, or CES that was not a recorded document in York County and had record knowledge for every party involved and everyone living in this County or a document that was signed by Mr. Sarn. So, there was not some sort of deposition by ambush, as it might be made to seem in this case. These were all recorded documents that Mr. Sarn had seen before and had received a substantial sum of money for having executed.

Following the deposition and the receipt of the transcripts, Taschner and Rhea moved for summary judgment on October 6th of 2020. The hearing was initially scheduled for January 12th of 2021, and the notice of hearing was filed on December 1st, 2020.

Now, Mr. Foster states that they have re-served request for production on all the parties. And in his own memorandum, which I don't have an electronic copy of, but right here he says that he served it on January 11th, 2021.

One day before the initial day for this hearing. Ultimately, there was a continuance granted until today, and I do not believe we have received those discovery requests at this time.

So, to the extent that the plaintiff is relying on the status of the discovery in this case as grounds for the denial of summary judgment, under the Baughman Court's analysis, first, there is no relevant information that can be gleaned from these discovery responses to the extent they're outstanding. And, two, the plaintiff has been dilatory in seeking discovery by only serving discovery one day prior to a summary judgment hearing and four months after the deposition of his client.

Now, I don't believe -- excuse me, under Baughman, Plaintiff's argument regarding the premature nature of this motion simply fails.

Now, moving into the substantive arguments that were raised by the plaintiff, first, it appears that the argument is that South Carolina law dictates that the defendants must pay, and, two, that somehow the Grant of Easement and Right of Way is invalid or inapplicable in this situation.

Now, as a threshold matter -- hopefully, I'm not overusing that phrase -- there is no South Carolina law quoted in this memorandum in opposition. It's a South Carolina -- or a North Carolina case quoting a West Virginia

case.

For the proposition that I believe they intended to cite from Tompkins, there is this case from South Carolina, 1893, which, of course, would be superseded by the Tompkins case we've already discussed.

Now, assuming momentarily that the proposition from Tompkins is properly before the Court, again, we cite to the language from that holding, which provides that absent an agreement to the contrary, the owner of a servient estate is not required to maintain or repair an easement owned by a dominant estate. And this argument fails for two reasons.

First, as we've discussed, there is an agreement whereby Mr. Sarn agreed to maintain Rental Court. In fact, there are three of them signed by Sarn and both of record in York County.

Second, again, the case law that Plaintiff relies on does not envision the situation where the owner of a servient estate demands contribution from the owner of a dominant estate. Rather, Tompkins provides that the owner of a dominant estate cannot seek contribution from the owner of a servient estate for repairs that are made.

So, as previously discussed, Mr. Sarn voluntarily, in the course of a $900,000 transaction, agreed to resurface Rental Court. No case cited, no moral obligation alleged gives Mr. Sarn the right to seek from Taschner, Rhea, or CES,

for that matter, contribution for this voluntary act.

In looking to the language of the Grant of Easement and Right of Way that is cited -- or that was recently cited by Mr. Foster, provides that "any damage that it may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, should not be the responsibility of Robert H. Sarn, his heirs or assigns, including but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, it's successors or assigns." This is not a situation where trees, natural occurrences, or debris have caused damage and, therefore, Mr. Sarn is alleviated -- or his responsibilities are alleviated. Rather, he has voluntarily, in the course of the sale of commercial property, agreed to resurface Rental Court as a condition of that sale, and that should not allow him to (a) flip the script and demand contribution from an owner of a dominant estate and (b) circumvent his obligations under this Grant of Right of Way, which he signed and is of record in York County.

Okay, finally, Your Honor, Mr. Sarn seems to argue in his memorandum in opposition that because he regrets signing the Easement and Grant of Right of Way in November of 2008, that somehow it's not in effect.

The Grant, first of all, that they intend is no longer

operable because he did not agree -- or he was not happy that he signed it and he didn't consent to it being filed, the Grant was signed and recorded over 12 years ago at this point. The time to rescind that agreement or the time to object to the filing of that agreement has long since passed. I think, generously, there would be a three-year statute of limitations there. More likely, a two-year statute of limitation to seek to rescind that agreement. And that clock has long since run, especially considering Mr. Sarn stated in his deposition that he realized his displeasure with the Grant of Easement and Right of Way one hour after he signed at closing.

Mr. Sarn admitted that he had to sign the Grant of Easement and Right of Way to receive $570,000 from J.D. Properties. That's page 93 of his deposition, lines 20 through 23. And while he may have regretted doing so, Mr. Sarn knew that he'd signed the Grant of Easement and Right of Way at the closing with J.D. Properties. Again, that's page 95, lines 12 through 16.

Now, when he was questioned about the actions that he had taken to actually rescind this Grant of Easement and Right of Way, Mr. Sarn states that he hired an attorney to try and track that down; that attorney was Mr. Foster. And in communications between Mr. Foster and other parties interested in Rental Court, it is stated that Mr. Sarn is not

trying to take back any commitments that he made at the closing with J.D. Properties in 2008. That's at page 66, line 1, through page 67, line 6. It's also page 98, line 25, through page 99, line 1 -- or line 4, excuse me.

And, finally, Mr. Sarn admits that the Grant of Easement and Right of Way has not been rescinded.

So, to say that because he did not agree -- or he was not happy that he had signed this Grant of Easement and Right of Way that somehow it is inoperative to require him to maintain Rental Court simply does not stand to reason and it certainly is not supported by the law.

If you bear with me for a moment, Your Honor, I just want to make sure I haven't missed anything.

I believe that's all I have, Your Honor.

THE COURT: Okay. Mr. Ballou, anything you'd like to add?

MR. BALLOU: No, I think Nate has covered our points. We certainly don't think that discovery sent out less than two weeks ago should prevent this Court from ruling on summary judgment.

THE COURT: Mr. Hatch, (inaudible)?

MR. HATCH: Yes, Your Honor, I agree with Mr. Pierce and Mr. Ballou about discovery.

All documents -- my client and the plaintiff's attorney -- or me for my client have already been through discovery

and provided everything that was in our possession. Of course, the transaction -- the sale to my client's predecessor occurred almost 16 years ago, and so -- but the most important thing I think, which Nate has emphasized, in this case is the most important document is the document record in York County. It's the grant of the deed to both of his clients and also my client, which contains the operative language that Mr. Sarn will maintain the easement. He undertook a duty to maintain it and in the first class nature of the development. And he agreed, covenanted at that time -- or 16 years ago, excuse me, and that agreement hasn't gone away. And I think that it's important to point out that, as I understand, courts are reluctant to rewrite instruments, especially instruments of record -- or even if it's not of record, contracts. And in this case, the documents are decades old -- or almost a decade old, at least in my client's case -- and there is no basis under South Carolina law to remove operative language from a deed, especially easement language.

And what the plaintiff is asking for in this case, for my last point, is that if the Court were to agree that Mr. Sarn could file a case in York County -- or any county in South Carolina -- to remove language from a deed that he signed that he now doesn't like, it would undo countless numbers of instruments which have been drafted by attorneys

over the years, not just in York, but it could have negative effects all across South Carolina and upset, you know, negotiations between parties, their efforts to buy or sell properties. And so the concept of being able to remove language from a deed that someone doesn't like -- unless the other party agrees, of course -- is not a good idea.

And we just ask that if -- or I ask on behalf of CES that if you agree with Mr. Pierce and Mr. Ballou and their motion for summary judgment that they are entitled, that because the operative documents -- the deeds -- at issue in the case the language is the same that my client is also entitled to summary judgment.

That's all, Your Honor.

MR. PIERCE: Your Honor, I have one thing to add, if I may, very briefly.

Certainly we don't agree that this motion should be denied based on the status of discovery; however, if Your Honor is inclined to agree with Mr. Foster, we would ask that rather than the motion being denied with prejudice that Your Honor's ruling be held in advance until we could move forward. And, again, that's not to say that we agree that it should be, but we wanted to just request that if you were inclined to allow discovery to move forward, although we are quite far into this case, that we have the opportunity to be heard on summary judgment following that discovery.

THE COURT: Thank you, Mr. Pierce.

And, Mr. Hatch, can you -- when I was looking back through the file, I noticed that perhaps a motion for summary judgment from CES had been heard before another judge and I didn't see -- it just said something like it had been continued or it was taken under advisement?

MR. HATCH: Yes, that's my recollection of the Form 4, that the judge had not actually ruled on it.

THE COURT: Okay.

MR. FOSTER: If I may be allowed, having dealt with that particular judge, that is rather common practice, I'm afraid, from him, if I may say so.

THE COURT: Okay. I just wanted to make sure that I didn't miss if there had been some ruling or something that I overlooked in the case file.

MR. HATCH: Yes, Your Honor, understood. Thank you.

THE COURT: Okay. Thank you.

I'm going to take this under advisement. I'm going to review -- Mr. Foster, I want to review your memo.

And, Mr. Pierce, if you would like to e-mail parts of the deposition that you have referenced that are not contained in your memo. I did review the ones that you marked and kind of had cited in your memorandum. So, if there's anything that you would like me to consider in addition to that, that you stated here today, you can e-mail

me. That would be fine.

MR. PIERCE: Okay.

THE COURT: And I don't need a reply. If you would like to file a reply, just let me know, and I'll certainly wait and review that before (inaudible)

MR. PIERCE: Understood. I will certainly send the deposition citations that I've run through today.

THE COURT: Okay. Okay. All right. Anything further from --

MR. FOSTER: I hope I made it clear, Your Honor, I was sent the entire deposition.

THE COURT: Yes, I have the entire deposition so that doesn't need to be sent. I have that.

MR. FOSTER: Yes, ma'am.

THE COURT: Okay. Well, this concludes the hearing. Thank you.

MR. PIERCE: Thank you, Your Honor.

MR. HATCH: Thank you very much, Your Honor.

[END OF RECORDING]

[END OF TRANSCRIPT]

P R O C E E D I N G S

THE COURT: This is case number 2019-CP-46-1446, Robert H. Sarn versus James C. Rhea and others.

Present on behalf of Plaintiff is Mr. Martin Foster; present on behalf of James C. Rhea, III, is Mr. Dan Ballou; present on behalf of City Electric Supply Company is Mr. Michael Hatch; and present on behalf of Taschner Textile Industries, LLC, is Mr. Nate Pierce.

This is Plaintiff's motion to reconsider an order granting summary judgment to Taschner Textile Industries and James C. Rhea, III.

And, Mr. Foster, whenever you're ready.

MR. FOSTER: Thank you, ma'am. I have taken off my mask, which I hope is okay.

THE COURT: Yes.

MR. FOSTER: I'm also, as you know, a bit deaf, so I will try not to say 'eh' too often.

I'm going to discuss two points, ma'am, in main.

First of all, in terms of the beginnings of this, at the time of the original hearing on this matter, we raised the fact that discovery had not been completed. Let me be clear. We have, on two occasions, served discovery upon the attorneys for Mr. Rhea -- I believe I'm correct -- and Taschner Textile Industries. We have received no responses whatsoever.

Now, in this order, the Court here has cited two reasons believing that has no affect.

One is the is the fact that I am supposed to show what additional evidence would be uncovered by the discovery. I subject to this Court that I cannot do that in total absence of discovery. If we were talking about issue A or theory B, I could look at the discovery and say, "Well, we have not had this much on that," or, "We can have more on that." In the total absence of discovery, I do not believe it's up to me to say, "This is what we might find." I think that is misreading of the rules as to when discovery can be put off.

THE COURT: Well, Mr. Foster, your client said that there were no other documents or agreements that were entered into the parties. There were no other agreements entered into by the parties that --

MR. FOSTER: Yes, ma'am.

THE COURT: So, what other documents would be relevant to this issue?

MR. FOSTER: Ma'am, once again, you're asking me to speculate on what I might get from the other side.

THE COURT: Right, but if it's a document -- if there's no other agreements between the parties -- what outside of an agreement between the parties would affect this issue? That's what I'm trying to --

MR. FOSTER: I cannot and, with respect, I will not

speculate on what discovery might say or what we might determine to be the case. I have literally nothing. I cannot speak to what we might have or what affect it might have on the documents you already have.

THE COURT: I understand. But we're talking about agreements between the parties or the intentions of the parties, so what other documents -- if there are no other agreements, I'm not sure how I could determine what agreements or what the intentions of the parties were.

MR. FOSTER: It is not a matter of what agreement there would be. I can sit here -- or stand here, more accurately, and speculate about "it could be this, it could be that." In the total absence of discovery, I am not required, in my opinion, to stand before the Court and say, "Well, what we might have is such and such." I have nothing. And when I have nothing, I can't very well say to this Court, "Well, here's what we might have." "Here's what correspondence""

THE COURT: Well, you had your client.

MR. FOSTER: Excuse me?

THE COURT: You had your client.

MR. FOSTER: Ma'am, that is once again putting the burden upon us to show what we might find. I have no idea what they have because I have been given nothing. It could be anything, and that is, in my opinion, not a situation in which the Court can, with respect, invoke the rule, which I'm

aware of, that says when discovery is necessary, there's some necessity to show what more discovery might show. We have nothing.

Now, I do have to respond to one other thing that this Court said in it's order, which is that it pointed out that -- I hope I'm saying this correctly -- that Mr. -- I'm sorry I'm being slow -- that opposing counsel has said that he knew of nothing that would be relevant. Ma'am, with respect, that is irrelevant, in my opinion, to any system of adversary justice. It is not up to the gentleman to say, 'I think such and such is not relevant.' The idea of the system is two parties on opposite sides with the same information arguing on the basis of legal theories or facts to set forward an opinion before this Court. So, that, in my opinion, with respect, is an irrelevant matter.

To go on to the substance of the thing, madam, and I hope I don't seem to be -- I'm not attempting to abandon one position by arguing this. Here is the situation as to what we have, and I'm sure the Court's aware of it because it's always prepared.

The Court quotes, quite properly, (inaudible) to J.D. Properties of the Carolinas, which my client said in writing, 'Until such time as the easement area is dedicated for uses of public right of way, he shall keep the same in such a state of repair and condition as is commensurate with the

first class nature of the development,” et cetera. I’m summarizing that. I think I’m summarizing right.

However, that was signed in December of 2017. In November of 2008, my client signed an agreement. I didn’t make no comments about who drafted this agreement because I don’t know. That agreement says, “Any damage that may occur to the use of this easement, which runs across the lines of J.D. Properties, shall not be responsible (inaudible) Robert Sarn, his heirs and assigns,” et cetera. And then it goes right on in the next paragraph to say, “By signing this agreement, Robert H. Sarn, his heirs and assigns, agrees to be fully responsible for the total cost of the upkeep and maintenance of the private road.” Nothing can be based upon a document that says, on its face, X and not X, white and black, up and down. I fail to see how anything can be (inaudible) on that basis.

I made no comment about it, I did not draft the thing, I have no idea what the drafter -- pardon -- intended to accomplish by it. But the only thing that either I or the Court can go on is the words on the document. So, what are we left with? Well, if we are left with the thing that we have, which is the November 2008 document, it says he’s going to keep it the same, up in the state of repair. Does that say, “I will make no claim upon the other parties who are along the easement for their contribution”? It does not. It

says he will be responsible to keep it up. That is a completely separate proposition in the question of who's going to pay for it in the long run.

Ma'am, that is our position. On that basis, we would respectfully ask the court to reconsider it's rulings.

THE COURT: Mr. Pierce?

MR. PIERCE: Thank you, Your Honor.

I want to start by addressing a couple of points that Mr. Foster made at the beginning of his argument.

He claims that there was discovery served twice and that he's received nothing. The first time he served discovery was after he had moved for default against Taschner Textiles Industries. Judge Hall ordered that we were not required to respond to that discovery and dismissed the case against Taschner. That discovery died at that time.

The second time discovery was served was days before the summary judgment hearing and there would not have been sufficient time to answer. And, frankly, it was not required to answer due to the procedural posture of the case.

And moving into sort of the substance of Mr. Foster's argument, he says that he cannot be required to speculate or guess or state what we might or might not have. He said there's not issues or theories that he can point to. Well, the issues and theories in this case are delineated by his complaint.

There are issues in this case. Who's going to pay for the maintenance of Rental Court? What are the theories that we're required to pay for it? So, the issues and theories are straight out of the complaint that was drafted by Mr. Foster. He's not required to speculate on what the issues and theories are, he knows them.

And the scope of the relevant discovery is defined by the issues and theories that Mr. Foster's put out. And as the Court noted in page 4 of it's order, there is no more relevant discovery that could come out that would change the outcome of this matter because Mr. Foster's own client stated that there were no other agreements that would invalidate the multiple times that he undertook the responsibility to maintain Rental Court.

So, Mr. Foster's position is he's not required to speculate. The Supreme Court of South Carolina disagrees. In Baughman, it says if you think that summary judgment should be precluded by incomplete discovery, you have to show -- the party objecting to summary judgment has to show that additional relevant evidence might turn up that would change the outcome of the case. That's a burden, and he's required to speculate, and if he chooses not to, all the more reason that this should not be altered or amended.

The clear evidence -- I'm sorry -- the Court's ruling had a legal foundation, primarily through Baughman; had a

factual foundation primarily through the deposition testimony of the plaintiff to support it's ruling on the insufficient discovery grounds, so there's no reason this Court should reconsider, alter, or amend it's judgment.

Moving into this newly alleged issue of ambiguity in the document. Again, that would not be grounds to overturn a summary judgment motion. Contract construction is the province of the Court. And the Court has reviewed the contract -- well, easier to say contracts -- three separate contracts in which the plaintiff undertook to maintain Rental Court. And the Court has made the determination that those contracts manifest a clear intent that the plaintiff would maintain Rental Court until it became a private [sic] road. The Court has also held in it's order that he undertook those responsibilities as a material inducement to get other people to pay him hundreds of thousands of dollars for individual properties.

And getting sort of more into a substantive argument, the ambiguity that's raised is clearly delineated responsibility. Mr. Sarn states that he and his assigns and heirs will be required to maintain Rental Court in full until it's a public road. They say that in the Grant of Easement and Right of Way; they say that in the deed from Mr. Sarn to J.D. Properties; it says it from the deed from J.D. Properties to Taschner; and he says it in the grant from Mr.

Sarn to GR Properties of Fort Mill. Four separate occasions in which Mr. Sarn undertakes to maintain Rental Court.

This one provision in the Grant of Easement and Right of Way states that Mr. Sarn will not be responsible to damage to the use of the easement. That's clearly delineated from the responsibility to maintain. And it goes on to say in that provision that if a natural occurrence, debris block or damage the use of the easement -- that is if a tree were to fall across Rental Court and Taschner could not use Rental Court to get to it's business -- Mr. Sarn is not responsible for the damage to that use. That has nothing to do with Mr. Sarn's responsibility to maintain or repair Rental Court.

So, procedurally, there are no grounds to overturn, alter, or amend this Court's judgment on the alleged ambiguity. Substantively, there is no ambiguity. The Court has read the contracts and has determined the clear intent for Mr. Sarn to maintain Rental Court.

THE COURT: Well, Mr. Pierce, when I was reading the part about the damage -- and I don't know that I made this clear in my order -- it says, "Any damage that may occur to the use of the easement or right of way which runs across the land of J.D. Properties." This doesn't run across any land of J.D. Properties. That's my understanding.

MR. PIERCE: That's correct.

THE COURT: As alleged by the plaintiff in the

complaint, he owns the easement.

MR. PIERCE: Exactly.

THE COURT: Okay.

MR. PIERCE: That's all we have, Your Honor. Thank you.

THE COURT: Mr. Ballou or Mr. Hatch?

MR. HATCH: I don't have anything.

MR. BALLOU: Your Honor, the only thing I would add is that -- remind the Court that this is an equitable -- this is a claim for an equitable contribution to what Plaintiff contends was a covered expense that should be shared among various property owners. Equity militates against the plaintiff's claim. The plaintiff negotiated at arm's length with one of those parties, was paid handsomely for the property that was sold to that party, and now wants to get reimbursed for the deal that he cut in order to get benefitted by the sale of that transaction. There is no basis in equity to take that cost and then spread it around the other members of this community that he claims should equitably be required to pay for it. They're not benefitting off it. This is purely for the plaintiff's benefit and that's what this case is all about.

We'd ask you just to maintain your original (inaudible). Thank you.

THE COURT: It would also seem, Mr. Foster, that you argue that your client would have to specifically waive right

to contribution in an agreement for it to -- I mean, I know you say that despite the agreements, he still has his right to contribution.

MR. FOSTER: He is waiving I believe -- he is saying that he -- pardon me, ma'am -- he is saying that he will be responsible for taking care of the situation. I don't see anything here about the cost.

If this Court wish for me to go ahead and apply the other points.

THE COURT: I just -- that's what it sounds like to me is that regardless of what the Hayes case says, agreements and otherwise, it would seem to me he's made the agreements, but your -- would extend it to he would have to specifically waive his right to contribution.

MR. FOSTER: I'm going to the points to what it actually said is against what is being implied that he said.

I would remind the Court, if I'm allowed at this point -- I don't want to run on -- the law in South Carolina is that those who use an easement have the responsibility for it's upkeep. Period. That is the law. The law unestablished.

So, that's what we're changing. How far has it been changed, that's what we're arguing. We unquestionably take on the responsibility of doing the work. We have not waived the right to seek contribution.

MR. PIERCE: My only response, Your Honor, is that the

law in South Carolina is not that those who use an easement pay for the maintenance of the easement, period. It's those who use an easement pay for the maintenance of the easement, comma, unless there's an agreement otherwise. And there are four agreements otherwise in the Court's record that the plaintiff agreed to undertake the maintenance of Rental Court. And to draw some sort of arbitrary post hoc argument about the responsibility of work versus cost I think is disingenuous and is clearly not manifested within the four corners of these documents.

THE COURT: Thank you, Mr. Pierce.

Well, Mr. Foster, motion denied.

MR. FOSTER: Okay.

THE COURT: And would a Form 4 suffice for this order?

MR. PIERCE: That would suffice for us, Your Honor.

THE COURT: Okay. Anything further?

MR. PIERCE: No, Your Honor.

[END OF RECORDING]

[END OF TRANSCRIPT]

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Case No. 2017-CP-46-02339

ROBERT H. SARN, Appellant,

v.

JAMES C. RHEA, III,
CITY ELECTRIC SUPPLY COMPANY, and
TÄSCHNER TEXTILE INDUSTRIES, LLC,

of whom

JAMES C. RHEA, III, and
CITY ELECTRIC SUPPLY COMPANY are the Respondents.

NOTICE OF APPEAL

Robert H. Sarn appeals the following orders:

the Order Granting Defendant's Motion for Summary Judgment, filed March 31, 2021, by the Honorable Teasa K. Weaver; and

the Order denying Plaintiffs' Motion to Alter or Amend Judgment, filed August 25, 2021, by the Teasa K. Weaver.

Appellant received written notice of entry of the final Order listed above on August 25, 2021.

September 24, 2021

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CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not an other material.

July 11, 2022

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