THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Court of Common Pleas
Joe M. Crosby, Master-In-Equity

Appellate Case No. 2022-001145
Circuit Court Case No. 2020 CP-22-00808

3D Land Holdings, LLC,

Respondent,

v.

Willis J. Johnson, Virginia Smith,
Marcella Coachman, Toni Owens,
Brandon L. Carr and Henry Lee Green,

Appellants.

FINAL BRIEF OF RESPONDENT 3D LAND HOLDINGS LLC

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STATEMENT OF THE ISSUES ON APPEAL

Plaintiff/Respondent would respectfully restate the issues on appeal as follows:

The Sufficiency of the Allegations/Evidence of an Easement by Prescription

I. Do the factual allegations of the complaint, as deemed admitted by the Defendants' default, together with the evidence presented at the hearing support the claim for an easement by prescription under the simplified test articulated in *Simmons v. Berkeley Electric*[1]?

The Master's Discretionary Evidentiary Rulings

II. Did the Master act within his discretion, under Rule 702, SCRE, in qualifying an experienced real estate attorney as an expert in the area of title review and easements?

III. Did the Master act within his discretion, under Rule 703, SCRE, in allowing the expert to testify based on his research of county aerial photos and Google Earth historical imagery even though those photos were not admitted into evidence?

IV. Did the Master act within his discretion, under Rule 704, SCRE, in allowing the expert to testify about the implication of the facts that Georgetown County Water and Sewer, and Georgetown County Planning signed off on the 2006 plat?

V. Did the Master properly adhere to the holding in *Limehouse v. Hulsey*[2] by denying the request from the Defendants in default to testify and submit testimony from their own expert at the hearing?

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[1] 419 S.C. 223, 797 S.E.2d 387 (2016).

[2] 404 S.C. 93, 744 S.E.2d 566 (2013).

STATEMENT OF THE CASE

Almost 100 years ago, the South Carolina Supreme Court noted that the right to use a road was one of the "most constantly recurring" land disputes. *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375, 377 (1927)[3]. This action presents yet another case involving the perpetually recurrent issue of easements for road access.

This declaratory judgment action involves a claim for a prescriptive easement over a 30-foot private, dirt road which provides the only ingress and egress to Lots B/B-1 of the "Noble Dereef" tract in the Pawleys Island area of Georgetown County. In 2020, Edward Derrick Dereef, the owner of Lots B/B-1, filed this action naming the owners of the land across which the access road runs as defendants. [ROA 19; Complaint, filed 9/29/2020.] Each of the named Defendants (referred to collectively as the Coachman heirs) were served, but none of them timely filed an answer. [ROA 5-6; Order ¶ 2-5.] Accordingly, the Plaintiff filed an Affidavit of Default on October 18, 2021, along with a motion to refer the matter to the Master-in-Equity which was granted by Order of Reference filed November 18, 2021. [See ROA 25, 15; Affidavit, Order of Reference.] During the pendency of the action, Edward Dereef sold Lots B/B-1 to 3D Land Holdings, LLC, which was substituted as plaintiff. [ROA 12; Motion and Order Substituting Plaintiff, filed 2/17/22.]

A hearing was held before the Master on January 10, 2022, at which the Court ruled and ordered a declaratory judgment for the Plaintiff granting a right of access over the road in question. [See ROA 72; 6/16/22[4] Tr. 16:11-14.] It appears that there also was a hearing on February 14,

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[3] The issue was easement by necessity.

[4] Since only the June 16, 2022 hearing was transcribed, all record citations to "Tr." refer to that hearing.

2022. [See ROA 32; Defendants' Request for a Scheduling Conference ¶ 6, filed 3/21/22.] The docket evidences that the Defendants had been given notice of both hearings,[5] and it further appears that several Defendants appeared but without counsel. [See ROA 169, 32, 38; Docket sheet, Defendants' Request for a Scheduling Conference, filed 3/21/22; Rule 55(c) motion ¶¶ 19-20, filed 3/25/22.] The Master thought a resolution had been reached[6]; however, before he entered a formal written order based on his bench ruling, the Defendants retained counsel and appeared in the action by filing several motions.

It appears that the Defendants never sought to retain legal counsel in regards to this action until 3D Land Holding applied for a zoning change for Lots B/B-1 after which Defense Counsel became involved and made an appearance in this case on March 21, 2022, by filing a Request for a Scheduling Conference. [ROA 31; Request.] Thereafter, Defendants filed a Rule 55(c) motion to set aside entry of default on March 25, 2022. [ROA 34; Motion.] The Defendants also filed a Rule 12(b)(6) motion to dismiss, or in the alternative, for judgment on the pleadings. [ROA 43; Motion to Dismiss, filed 6/10/22.]

In their motion to dismiss, the Defendants generally argued that the allegations of the complaint were "devoid of any facts to support the elements of a prescriptive easement," but the only ground stated with particularity was "the Complaint alleges that Plaintiff Dereef owned the property for a mere ten months prior to filing the Complaint." [ROA 53; Motion ¶ 53.][7]

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[5] [ROA 27, 28, 29, 30; 12/29/21 Notice of Hearing with certificate of service, 1/13/22 Notice of Hearing with certificate of service.]

[6] [ROA 66; Tr. 10:1-3.]

[7]The Defendants also made other arguments, but those are not relevant to the issues in this appeal.

Since the earlier hearings had not been transcribed, the Master convened a third hearing on June 16, 2022, at which Defendants appeared with Counsel. [ROA 72; Tr. 16:17-21.] The Master denied their motion to dismiss and the motion to set aside entry of default; however, the Defendants were allowed to cross examine the Plaintiff's witness and make evidentiary objections. [ROA 65-67; Tr. 9-11.]

The Plaintiff presented exhibits consisting of recorded documents evidencing the Plaintiff's chain of title and the relevant property lines, which were admitted without objection. [ROA 59-60, 70-71; Tr. 3-4, 14-15. ROA 133-166; Exhibits A-K.] The Plaintiff also presented testimony from Gregory Weathers, a local real estate attorney, whom the Master qualified as an expert in the area of title review and easements. [ROA 78; Tr. 22.] Defense Counsel was allowed to cross examine Mr. Weathers and interpose evidentiary objections, but the Master refused to allow the Defendants to testify in their own behalf or to present other expert testimony since they were in default. [ROA 66-67, 129-131; Tr. 10-11, 73-75.]

At the conclusion of the hearing, the Defendants renewed their motion to dismiss:

> MS. PERSON: -- I want to renew my motion to dismiss. There has been no evidence on the easement by necessity or the implied easement, so I would request that they be dismissed. [ROA 129; Tr. 73:1-4.][8]

By order filed July 20, 2022, the Master issued his ruling that "an easement by prescription over and across the existing 30' right of way, as shown on Exhibit A, be granted to Plaintiff, its successors and assigns, over and across the existing dirt road that connects from Coachman Drive to Noble Place and lands of the balance of Defendants." [ROA 7; Final Order.] Defendants timely served and filed a notice of appeal on August 16, 2022. [ROA 55; NOA.]

[8] Defense Counsel also raised a legal point about an alleged failure to join necessary parties. [ROA 129; Tr. 73:12.] However, that point is not raised in this appeal.

ARGUMENT

I. THE FACTUAL ALLEGATIONS OF THE COMPLAINT, AS DEEMED ADMITTED BY THE DEFENDANTS∞DEFAULT, TOGETHER WITH THE EVIDENCE ADMITTED AT THE HEARING SUPPORT THE CLAIM FOR AN EASEMENT BY PRESCRIPTION.

A. STANDARD OF REVIEW: *Challenge to the Sufficiency of the Allegations of the Complaint and Evidence Admitted at the Hearing*

In their Statement of Issues on Appeal, the Appellants/Defendants challenge the Master's denial of their motion to dismiss or in the alternative for judgment on the pleadings, and assert that this Court should apply the traditional Rule 12 standard of review. *Mut. Sav. & Loan Ass'n v. McKenzie*, 274 S.C. 630, 635, 266 S.E.2d 423, 426 (1980). In *McKenzie*, one of the defendants in a foreclosure action was granted a default judgment on a cross claim for fraud, but the appellate court reversed the order denying the appellant's motion to set aside the default judgment on the grounds that the cross claim failed to adequately allege all nine elements of fraud. While Respondent/Plaintiff does not contest the basic holding of *McKenzie*, it does maintain that the procedural posture in this case is uniquely distinguishable from that in *McKenzie*.

As shown by their Statement of Issues on Appeal, Defendants do not challenge the Master's findings that they were all served, and they do not challenge the denial of their Rule 55(c) motion to set aside the entry of default.[9] Accordingly, as parties in default, the Defendants are deemed to have admitted the truth of the Plaintiff's allegations and to have conceded liability. *Roche v. Young Bros., of Florence,* 332 S.C. 75, 81–82, 504 S.E.2d 311, 314 (1998). When damages are unliquidated, a damages hearing must be held of which the defaulting party may be entitled to notice, but the defaulting party is limited to cross-examining witnesses and objecting to evidence.

[9] Rule 208(b)(1)(B) "...Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."

Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 578–79 (2013) (adhering to the procedures adopted in *Howard* – "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default.").

Although this is not an action for monetary damages, the Master did not grant the easement by a default judgment on the pleadings alone. Instead, the Master conducted a hearing as authorized pursuant to Rule 55(b)(2), SCRCP, which provides for post-default hearings:

> If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages ***or to establish the truth of any averment by evidence or to make an investigation of any other matter***, the court may conduct such hearing or order such references as it deems necessary and proper. [Emphasis added.]

The Master expressed that he was confused about the recorded real estate records and anticipated clarification from the testimony of the Plaintiff's expert. [ROA 61, 63; Tr. 5:9-14, Tr. 7:7-8.]

At the hearing, the Master admitted evidence – without objection by the Defendants -- consisting of recorded titles/deeds/plans/plats that establish the chain of title and land descriptions for over the last 100 years. [ROA 70-71; Tr. 14:11 – 15:17.] The Master also heard testimony from a real estate expert expounding upon the land records and the dirt road in question. Thus, to the extent that there was evidence adduced supplementing the pleading, the question is no longer limited to the allegations of the complaint. *See Gilbert v. Miller*, 356 S.C. 25, 27–28, 586 S.E.2d 861, 862–63 (Ct. App. 2003) (documents submitted by plaintiff on Rule 12(b)(6) motion without objection from defendant movant).

In a nonjury matter, the standard of review of the factual basis of a trial court's ruling depends on whether the action is a matter of law or a matter of equity. Since this nonjury action is a declaratory judgment action, the standard of review depends on the nature of the underlying

controversy. *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015). In this action, the Plaintiff seeks a declaration as to the existence of an easement by prescription. Defendants contend that this action for an easement is a matter in equity which is subject to de novo review, citing to *Plott v. Justin Enterprises*, 374 S.C. 504, 510–11, 649 S.E.2d 92, 95 (Ct. App. 2007). While the Court did state in *Plott* that "the determination of the ***extent*** of an easement is an equitable matter," this action does not involve the ***extent*** of an easement. *Id.* (emphasis added). Rather, the question is the ***existence*** of an easement, and the full statement on this point in *Plott* applies: "Although the ***existence*** of an easement is a question of fact in a law action, the determination of the ***extent*** of an easement is an equitable matter." *Id.* (footnotes omitted) (emphasis added). *See also Kelley v. Snyder*, 396 S.C. 564, 576, 722 S.E.2d 813, 820 (Ct. App. 2012) ("the existence of an easement is a question of fact in a law action"). Accordingly, Respondent maintains that the appropriate scope of review extends only to correction of errors of law and the Master's findings of fact should not be disturbed on appeal where the admitted allegations together with the evidence of the real estate records supports the finding of an easement by prescription. *Kelly, id.*

B. APPLICABLE LAW OF EASEMENTS BY PRESCRIPTION

An easement is a right given to a person to use the land of another for a specific purpose. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct.App.2008). There are a number of common law concepts/doctrines by which an easement may be created, including easement by necessity and easement by prescription. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 420, 633 S.E.2d 136, 141 (2006)[10]; *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375, 382 (1927) (identifying nine methods to create an easement). As pled in the Complaint, the Plaintiff

[10] "Easements by prescription, implied by prior use, and implied by necessity have different elements and are applicable to different factual scenarios..." *Boyd*, 633 S.E.2d at 141.

sought to establish an easement by necessity or by prescription. However, since the Master granted an easement by prescription, the Defendants' arguments about the lack of allegations and/or proof to support an easement by implication or an easement by necessity are irrelevant.

A prescriptive easement is established by the conduct of the dominant tenement owner(s) – in this case the owners of Lots B/B-1. *Boyd, id.* The controlling law in regards to the elements and burden of proof for establishing a prescriptive easement, as clarified by the Supreme Court, is found in *Simmons v. Berkeley Elec. Coop., Inc.,* 419 S.C. 223, 797 S.E.2d 387, 390 (2016):

> To establish a prescriptive easement, the claimant must prove by clear and convincing evidence: "(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right." *Darlington Cnty. v. Perkins*, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977). "[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917). "[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." [*Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015)].

The Court found it necessary to "clarify" the third element because prior appellate opinions had used different language requiring the claimant's use to be "adverse or under a claim of right." The Court explained, "we hold adverse use and claim of right cannot exist as separate methods of proving the third element of a prescriptive easement as the two terms are, in effect, one and the same." *Id.* at 391. The Court further articulated a simplified test for a prescriptive easement, *id.* at 391-92:

> In sum, we conclude that when analyzing the third element of a prescriptive easement, courts in this state should apply the test for adverse use. *See Williamson*, 107 S.C. at 400, 93 S.E. at 16 ("[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse."). However, because the "continuous" and "uninterrupted" elements for adverse use are already required to establish a prescriptive easement, the subtest for "adverse use" only further requires the claimant's use be "open" and "notorious." Thus, we believe the test for a prescriptive easement can be simplified

as follows:

> In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years.

As to the 20-year element, the law allows a party to "tack" use of prior owners in the chain of title. *Kelley v. Snyder*, 396 S.C. 564, 575, 722 S.E.2d 813, 819 (Ct. App. 2012) (citing *Getsinger v. Midlands Orthopaedic Profit Sharing Plan,* 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct.App.1997) ("[T]he time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the 20–year period.")).

The factual allegations of the complaint, as deemed admitted by the Defendants' default, together with the public land records and the expert testimony presented at the hearing support each of the three elements of the claim for an easement by prescription.

C. Proof of a Prescriptive Easement for the Dirt Road over the Coachman lot

1. The Facts as Deemed Admitted by Default

The allegations in the Complaint, which are deemed admitted by the Defendants' default, establish the following facts:

- The original plaintiff (Edward Dereef) acquired ownership of the Lots B/B-1, as shown on a 2008 plat, by virtue of a 2019 deed:

> ¶ 6. The Plaintiff acquired the real property which is the subject matter of these pleadings by Deed from Leon Young, Kenneth Young, Russell Young, Noble Young, Vermell Young, and George Medina, dated October 30, 2019 and recorded November 13, 2019 in the Office of the Register of Deeds for Georgetown County in Book 3638 at Page 62. More particular described as follows:
>
> > All that certain piece, parcel or tract of land situate, lying and being in the County of Georgetown, State of South Carolina, measuring and containing **1.54 Acres shown and designated as Lot B and .24 Acres shown and designated as Lot B-1** on that certain "Plat of Two Lots on Waccamaw Neck Being the Remaining Portion of the "Noble Dereef' Tract, Surveyed for Lot A

- Heirs of Ruby Young Lot B - Edward Dereef', dated June 5, 2008, prepared by Wendell C. Powers, SCPLS, and recorded in the Office of the Register of Deeds for Georgetown County in Plat Slide 689 at Page 4A. Said tract having such size, shape, distances and measurements as will appear on said plat, and, being made pro tanto, a part and parcel hereof.

- A dirt road over land owned by the Defendants is the only means of access to Lots B/B-1:

  ¶ 7. That the only means of access to the subject property owned by Plaintiff, is over and across the existing dirt road that connects from Coachmen Drive to Noble Place and lands of the balance of Defendants, which is more particularly described in Plat book/slide 689 Page 4A, which is incorporated hereto as "Exhibit A".

- The dirt road has been utilized for many years as the only access to Lots B/B-1:

  ¶ 8. That said existing dirt road running along the southern boundary of lands owned by "Defendants" provides the only means of access to the subject property and said means of access has been utilized for many years as evidenced by its presence on aerial photographs and other resources.

- The Defendants have never challenged the use of this access road in decades:

  ¶ 9. That Plaintiff has utilized this roadway as its means of access since acquiring the property in the deed above, and has not been challenged in its access by Defendants for decades.

- Lots B/B-1 have an absolute right of access over the Defendants' lands:

  10. That the property in question has an absolute right of access to the right-of-way known as that existing road over and across the lands of Defendants as shown on the Plat attached as Exhibit A.

[ROA 22-23; Complaint.]

2. The Facts as Established by the Recorded Documents

The recorded land records, admitted without objection, establish the Dereef Family's chain of title for Lots B/B-1 for over 100 years, and the identity and location of the dirt access road since at least 1953.

Plaintiff's ancestor, Edward Dereef, acquired a six-acre[11] tract on Pawley's Island in Georgetown County in 1916 from the Estate of Jacob Dorell (at a Sheriffs sale). Edward Dereef transferred the six acres to Nobel Dereef in May 1932. [ROA 133; Title - Ex. A.] Over the years the property – referred to as the "Dereef tract" -- was transferred between Dereef family members and subdivided at various times as established by various recorded real estate filings. [ROA 136, 139, 141, 144, 151; 1960 Titles – Ex. C & D, 1972 Title – Ex. E, 2008 Title – Ex. G, 2019 Title – Ex. I. ROA 143, 150; 2006 Plat – Ex. F, 2008 Plat – Ex. H.] Currently, the Dereef tract consists of six parcels:

- 1.70 parcel together with a .14 acre parcel;
- Lot A (1.45 acres) together with A-1 (.25 acres); and
- Lot B (1.54 acres) together with B-1 (.15 acres).

As of 2019, Edward Derrick Dereef[12] was the sole owner of Lots B and B-1. [ROA 151; 2019 Title - Ex. I.] During the pendency of this DJ action, the B lots were transferred to the current Plaintiff, 3D Land Holdings, LLC. [ROA 162; 2021 Title – Ex. K]

The easement at issue in this declaratory judgment action involves a 30-foot private, dirt road over the land owned by the Defendants which provides the only means of ingress and egress for the Dereef Lots B/B-1. There are three recorded plans/plats that establish the existence of this road:

- a 1953 Survey and Plan for subdivision of 17.5 acres of land owned by C.H. Martin, Jr. [ROA 135; Ex. B];

[11] "more or less."

[12] As trustee for the Edward Dereef Living Trust.

- a 2006 Plat subdividing the Dereef Tract, creating a 1.7 acres parcel [ROA 143; Ex. F]; and
- a 2008 Plat subdividing the remaining 3.38 acres of the Dereef tract into Lots A/A-1 and B/B-1. [ROA 150; Ex. H.]

In 1953 a plan was recorded for subdivision of a 17.5-acre tract, including 28 lots on property owned by C.H. Martin Jr. The 1953 Plan shows a proposed road running from US Highway 17 through the Martin property, currently known Coachman Drive. The 1953 Plan also shows a road running over/between Martin lots C6[13] and D1 from the proposed road [Coachman Drive] to the property owned by "Edward Dereef" along the eastern border of the Martin property. The 2006 plat also shows the same road – identified as "existing 30' Private Road" -- between Coachman Drive and that parcel of the Dereef Tract identified as "Noble Place." The 2008 plat shows the same 30-foot private road – identified as "Existing 30' R/W."

3. Expert Testimony Regarding the Public Land Records

The Plaintiff's expert, Gregory Weathers, testified as to the chain of title and tracked the ownership of Lots B/B-1 for more than 20 years. The expert also testified that, based on the public records, the 30' road had been in place and consistently and constantly used for more than 20 years. [ROA 88; Tr. 32.] The expert further testified that the identity of the 30' road has been established, not only by visibility on the ground and consistent use, but also by the public records beginning with the 1953 plan and confirmed by the 2006 and 2008 recorded plats. [ROA 89, 93; Tr. 33, 37.] On appeal, Appellants raised several challenges to the expert's testimony, but as discussed below, those issues were not preserved at trial and do not, otherwise, support reversing the judgment for a prescriptive easement.

[13] The Defendants currently own Lot C6.

D. Summary - Discussion of the Evidence Proving the Elements

1. Identity of the Thing Enjoyed

There is no dispute as to sufficient proof identifying the dirt road as the "thing enjoyed." Paragraph 7 of the Complaint sufficiently describes an existing dirt road as shown on the plat attached to the complaint. The dirt road is also established on the 1953 plan and the 2006/2008 plats which were admitted without objection. Ultimately, the Defendants/Appellants have affirmatively declared that they do not dispute this element: "The Coachman heirs have never disputed the existence of a dirt road on their private property." [Appellants' Initial Brief, pp. 21-22.]

2. Use that Has Been Open, Notorious, Continuous, Uninterrupted, and Contrary to the True Property Owner's Rights for a Period of Twenty Years

As discussed above, the law does not require any additional showing of "adverse" use when it is shown that "claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years." *Simmons,* 797 S.E.2d at 390.

"Open" and "notorious" are discussed in *Simmons*, *id.* at 392:

- 'Open' generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent."
- 'Notorious' generally means that the use is actually known to the owner, or is widely known in the neighborhood.'

In *Simmons*, the Court found that "open" and "notorious" were questions of fact because the easement in issue was a water main that was located underground on heavily wooded and undeveloped tracts and it was unclear if the location of the water main was widely known in the neighborhood. Here, however, the dirt road is clearly depicted on the 1953 plan as well as the 2006 and 2008 plats. Paragraph 8 of the Complaint establishes that the access road has been utilized

for many years as evidenced by its presence on aerial photographs. The expert testified that in addition to the location of the road on the 1953 plan, his research of the county aerial photos and Google Earth historic imagery confirmed that the road had been there for more than 20 years and further revealed that there has been a structure on the property for more than 20 years. [ROA 86-87; Tr. 30-31.]

Defendants' challenge to the sufficiency of the witness' testimony because he did not have personal knowledge of the structure or the use of the dirt road to access the structure does not negate his expert testimony. From one perspective, the law holds the "personal knowledge" requirement [of Rule 56, SCRCP] is satisfied when an expert witness has reviewed documents and pleadings. *Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 436–37 (2003). At most, the fact that the expert had not personally observed the dirt road or its use might go to the weight of his opinion, but judging credibility and weighing evidence is a matter entirely within the Master's purview. *See Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 401, 826 S.E.2d 874, 879 (Ct. App. 2019).

"[I]n order to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant." *Jones v. Daley*, 363 S.C. 310, 318, 609 S.E.2d 597, 601 (Ct. App. 2005).[14] Continuity "does not necessarily require daily, weekly, or even monthly use" but merely "requires more than occasional or sporadic use of the easement." 25 Am. Jur. 2d *Easements and Licenses* § 51 (2014). As to the "uninterrupted" component, the Court has held that acquiescence to use can support the uninterrupted requirement, and that overt acts of erecting physical barriers or verbal threats can interrupt the use to preclude an easement by prescription. *Pittman v. Lowther*, 363 S.C. 47, 52, 610 S.E.2d 479, 481 (2005); *Jones v. Daley*, *id.* at 600.

[14] *Overruled on other grounds by Simmons*, supra, as discussed above.

Uninterrupted and continual use is established by the allegations – deemed true -- that the dirt road was used as the only access to the Dereef property (Lots B/B-1) for many years and that the use had not been challenged by the Defendants for decades. [ROA 23; Complaint ¶9.] The expert further testified that, based on his research and review of county photographs, the dirt appeared to be well used, and he opined that the "road has been used consistently and constantly ... for a period of greater than 20 years dating back at least to the late '90s."[15] [ROA 88; Tr. 32.] There is no evidence of barriers or threats to amount to any disruption of the use.

While the Defendants made a general argument in their pretrial motion to dismiss challenging the sufficiency of the allegations in the complaint to state a claim for a prescriptive easement, the only argument on this point stated with particularity[16] was that "Plaintiff Dereef owned the property for a mere ten months prior to filing the Complaint." [ROA 53; Motion ¶ 53.] That argument fails from a legal and factual basis, because the law allows tacking. *Bundy*, 772 S.E.2d at 174. To the extent that Edward Dereef only owned the land since 2019 and 3D Land Holdings purchased the property in 2021, the law allows them to tack on the use by their predecessors in the chain of title to establish the required 20-year duration of the adverse use. And, while the full chain of title was not alleged in the complaint, the public land records, admitted without objection, establish a 100+year chain of title through the Dereef family to the recent transfer to 3D Land in 2021.[17]

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[15] Defense counsel objected to this opinion testimony based on the fact that the aerial photographs were not admitted into evidence. As discussed below, Rule 703, SCRE, allows an expert to base his opinion on evidence not admitted, if the information is commonly relied upon in his practice.

[16]Rule 7(b)(1), SCRCP requires that motions "shall state with particularity the grounds therefor..." When the Defendants perfunctorily renewed their motion to dismiss at the close of the hearing, they argued that "there is no evidence on the easement by necessity or the implied easement," but they did not even mention the claim for a prescriptive easement. [ROA 129; Tr. 73:1-4.]

[17] Defense counsel objected to the expert's testimony about tacking, but as discussed below, the testimony was permissible under Rule 704, SCRE.

As to the adverse nature of the use for the requisite 20-year period, the period of use is not specified in the Complaint with exactitude as "20 years," but the facts as alleged establish the use of the dirt road for "many years" and "decades." The allegations of the complaint are to be liberally construed and a cause of action does not have to be pleaded in exact, precise legal language. *Outlaw v. Calhoun Life Ins. Co.*, 236 S.C. 272, 275, 113 S.E.2d 817, 819 (1960) ("it is not necessary to plead fraud *in haec verba*"). It is sufficient if the language used in a complaint reasonably infers the requisite element. Given the basic understanding that a decade is ten years[18], the allegation of "decades" -- meaning at least two decades -- provides sufficient proof of the requisite 20-year period irrespective of the expert's testimony about the history of use of the dirt road.

On appeal, the Appellants/Defendants argue that the expert's testimony defeats the adverse use element for a prescriptive easement because he "seems to imply" that 3D Land had permission to use the dirt road.[19] [Appellants' Initial Brief, p. 22.] As discussed above, in *Simmons*, the Court considered the body of conflicting precedent on prescriptive easements and affirmatively clarified the applicable law by simplifying the test for proving an easement by prescription. On the point of permissive use, the *Simmons* Court quoted from *Bundy, supra* on the proposition that "evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse." 797 S.E.2d at 392. The *Simmons* Court expressly emphasized that "a claimant's belief regarding the permissiveness of his use of property is irrelevant when determining the existence of a prescriptive easement." 797 S.E.2d at 392. The *Simmons* Court referenced that a presumption

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[18]https://www.merriam-webster.com/dictionary/decade

[19] It does not appear that the Defendants made this permissive use argument in their motion to dismiss or at the hearing. [ROA 53, 129; Motion ¶ 53, Tr. 73:1-4.] Under appellate preservation rules, Defendants are bound to the grounds as stated at trial, and they should not be allowed to argue this ground on appeal. *See State v. Bailey,* 298 S.C. 1, 5–6, 377 S.E.2d 581, 584 (1989); *Easterlin v. Green*, 248 S.C. 389, 395, 150 S.E.2d 473, 476 (1966); *Crawford v. Henderson*, 356 S.C. 389, 409, 589 S.E.2d 204, 215 (Ct. App. 2003).

of adversity arises from proof of open, notorious, continuous and uninterrupted use. Upon proof to invoke the presumption, the burden shifted to the Defendants to rebut the presumption with proof that they gave permission. *Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 161, 857 S.E.2d 16, 25 (Ct. App. 2021).[20]

Here, contrary to the Defendants' vague, conclusory argument about inferring permission from the expert's testimony, the transcript will show the witness did not provide any testimony to support any reasonable inference that any of the Coachman heirs had granted permission to any of the Dereef heirs for use of the dirt road. On cross examination, Defense Counsel attempted to elicit testimony regarding permission,[21] but the witness clearly stated that he was not aware of any granted permission. [ROA 123; Tr. 67:1-4.]

Ultimately, 3D Land Holdings has established a prescriptive easement for the dirt road over the Coachmans' land, under the simplified test articulated in *Simmons*, by identification of the dirt road, and proof that the use of the dirt road by the Dereef family, as 3D's predecessors in title, had been open, notorious, continuous, uninterrupted, and contrary to the Coachman family's rights for a period of at least twenty years. Accordingly, the Master's order of judgment granting a prescriptive easement should be affirmed.

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[20] Case law supports the conclusion that acquiescence does not amount to permission. *Bundy*, 772 S.E.2d at 174 ("Bundy did not merely acquiesce in Shirley's use of the property but expressly granted Shirley permission to use his property to build a gate."); *Sanitary & Aseptic Package Co. v. Shealy*, 205 S.C. 198, 31 S.E.2d 253, 255 (1944); *see also Walker v. Phillips*, 427 P.3d 92, 100 (Mont. 2018) (permission is not proven by evidence of passive acquiescence).; *Akers v. D.L. White Const., Inc.*, 127 P.3d 196, 207 (Idaho 2005) (passive acquiescence cannot establish permissive use).

[21] [ROA 122-124; Tr. 66:21 – 68:9.]

EVIDENTIARY RULINGS

II. THE MASTER'S EVIDENTIARY RULINGS DO NOT PROVIDE ANY BASIS FOR VACATING THE JUDGMENT GRANTING A PRESCRIPTIVE EASEMENT.

Relevant Rules of Evidence

Rule 702, SCRE, provides

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703, SCRE, provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704, SCRE, provides:

> Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 103, SCRE, provides:

> (a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
>
> (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; ...

These Rules encompass several principles which are relevant to rejecting the Appellants' challenges to the Master's rulings allowing testimony from the expert. The record will show that certain evidentiary challenges raised on appeal were not preserved at trial by timely, specific objections. As to those objections that were made at trial, Master acted within his discretion in

ruling on the objections, because they were not well founded in these evidentiary rules. Ultimately, there was no prejudice from any of the testimony elicited from the expert witness.

Preserving Evidentiary Objections for Appeal

To preserve for appeal an issue regarding the admissibility of evidence, a contemporaneous objection must be made at trial and the objection must be sufficiently specific to inform the judge as to the precise nature of the objection. *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75–76 (Ct. App. 1996; *see also* 15 S.C. Jur. *Appeal and Error* § 79 ("A contemporaneous objection must be made to preserve any error for appeal. ... The objection must set forth specific grounds for excluding the evidence.") An appellant is bound by the objection as made at trial and cannot assert a different ground on appeal. *McKissick, id.* ("The same ground argued on appeal must have been argued to the trial judge.").

Standard of Review of Evidentiary Rulings

As a general rule, the admission or exclusion of evidence lies within the sound discretion of the trial court. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005). More particularly, qualification of an expert and admission of the expert's testimony lies within the sound discretion of the trial court. *Id.* The trial court's decision on these evidentiary matters will not be disturbed on appeal absent an abuse of discretion. *Id.* "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Id.*

In this case there was no jury and the standard for admission of evidence is, in some respects, different. "A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting." *Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001).

If a trial judge, sitting nonjury, errs in admitting evidence, the appellant must show that "the trial judge either affirmatively relied on the incompetent evidence, or could not have reached the same result without relying on the incompetent evidence." 542 S.E.2d at 725.

A. The Master did not abuse his discretion in admitting expert testimony from a real estate attorney explaining/clarifying the publicly-recorded real estate documents.

On appeal, the Appellants present a challenge to the Master's decision to allow expert testimony, stating their issue on appeal:

> THE TRIAL COURT ERRED IN PERMITTING A LOCAL REAL ESTATE ATTORNEY TO TESTIFY AS AN EXPERT WHERE HIS OPINIONS AMOUNTED TO LEGAL CONCLUSIONS AND HE POSSESSED NO SPECIAL EXPERTISE BEYOND THAT OF THE JUDGE THAT WOULD ASSIST THE JUDGE IN UNDERSTANDING THE EVIDENCE OR IN MAKING FACTUAL FINDINGS ON THE THREE ELEMENTS OF PRESCRIPTIVE EASEMENT.

Defendants/Appellants assert that they objected to the Master hearing any expert testimony. However, Respondent maintains that the transcript does not demonstrate the Appellants/Defendants made any objection to the witness's expertise sufficient to the preserve this issue for appeal. Respondent further maintains that, independent of the expert's opinions, the Master's rulings are sustainable based on the publicly-recorded titles and plats/plans to which the Defendants did not object.

1. Qualification of the Expert

In this appeal, Defendants argue that Attorney Weathers "did not possess any special expertise beyond that of the trier of fact, who in this case was a judge, that would assist the judge in understanding the evidence or making factual findings on the three elements of prescriptive easement ..." In support of this contention, Defendants rely upon the broad proposition that "generally, expert testimony pertaining to issues of law is inadmissible," citing *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008), and *Dawkins*

v. Fields, *supra*. However, when the Plaintiff's expert was initially proffered, Defense Counsel did not make any such comparable objection.

Rather, when the Plaintiff's expert was proffered, Defense Counsel initially refused to stipulate ***on the stated ground that she did not know the witness***:

> THE COURT: And Mr. Stacy, what do you intend to offer him as?
>
> MR. STACY: As an expert in matters of real estate generally and easements in particular.
>
> THE COURT: Ms. Person, will you stipulate?
>
> MS. PERSON: I don't know Mr. Weathers, so --
>
> THE COURT: Fair enough.
>
> MS. PERSON: -- I cannot stipulate. [ROA 73-74; Tr. 17:18 - 18:2.]

Whereupon, Plaintiff's Counsel questioned the witness as to his education and legal practice in the subject area, which established that:

- He is a 2004 graduate of the University of South Carolina School of Law
- He was admitted to the South Carolina Bar in 2004.
- He has a general practice with a heavy emphasis in both residential and commercial real estate, including closings and issuance of title insurance.[22]
- His practice also includes real estate litigation involving easements. [ROA 74-75; Tr. 18:4 – 19:14.]

Defense Counsel further questioned the witness on his credentials which established that:

- In addition to his Bar license, he holds a license as a real estate broker;

[22] He also is an agent for Chicago Title Insurance and Old Republic National Title. [ROA 74; Tr. 18:18-20.]

- He does not hold any advanced degrees, but he has met continuing education requirements for his law and broker licenses;
- He has never taught property law or published any treatises or articles about real estate, but he has given presentations on easements. [ROA 76-77; Tr. 20:8 - 21:23.]

Even after this testimony as to his education and experience, Defense counsel still objected to his qualification as an expert "for the record" ***without articulating any grounds***:

THE COURT: Okay. Ms. Person?

MS. PERSON: I object.

THE COURT: Okay.

MS. PERSON: For the record. [ROA 78; Tr. 22:11-14.]

Such a bald refusal to stipulate with a groundless objection "for the record" does not preserve any issue for appeal regarding the Master's qualification of Mr. Weathers as an expert. *State v. White*, 311 S.C. 289, 296, 428 S.E.2d 740, 744 (Ct. App. 1993) (holding that objection "for the record" did not preserve any alleged error for appeal.); *Busillo v. City of N. Charleston*, 404 S.C. 604, 608, 745 S.E.2d 142, 145 (Ct. App. 2013) ("mere statement 'objection' during a witness's testimony does not preserve any argument for appeal because such a general statement does not bring the specific grounds for the objection to the attention of the trial court").

As to the argument that "expert testimony pertaining to issues of law is inadmissible," this general proposition does not preclude any and all expert testimony from an attorney. Interestingly, both the *Dawkins* and *Vortex* opinions as cited by Appellants, involved the admissibility of expert opinion evidence from a prominent law professor, John Freeman. In *Dawkins*, the Court found that an expert affidavit from Professor Freeman mostly consisted of legal arguments and "inappropriately attempted to usurp the trial court's role in determining whether the petitioners

were entitled to summary judgment." 580 S.E.2d at 437. However, the Court did note that the affidavit also contained "helpful, factual information." *Id.*

In *Vortex*, Professor Freeman testified at a trial where a key legal issue was whether a former owner of the company owed a fiduciary duty. The defendant/appellant argued that the trial court erred in allowing expert testimony from Professor Freeman under the holding in *Dawkins*. However, the Court found no abuse of discretion in *Vortex:*

> We find Professor Freeman's testimony consisted of specialized knowledge that assisted the trier of fact to understand the evidence or to determine a fact in issue. He was qualified as an expert, and thus, was allowed to testify as to his opinion relating to those facts. He did not make improper legal conclusions or instructions but simply opined regarding acts Ware committed that breached his fiduciary duty. Accordingly, the trial court did not abuse its discretion in admitting Professor Freeman's expert testimony.

662 S.E.2d at 450. Here, the Master expressed some confusion about the plats and Attorney Weathers provided specialized knowledge that assisted the Master. [ROA 61; Tr. 5:9-11.]

2. Expert's Testimony on Tacking

As noted above, the law allows the 20-year period to be established by tacking periods of ownership in the chain of title. Defense Counsel objected to the expert testifying regarding this element on the ground that tacking was the ultimate issue for the court to decide:

> Q. Is it your expert opinion that 3D Land Holdings successfully tacked on to the holding period of the Dereef family by its purchase of the land?
>
> A. Based upon my review –
>
> MS. PERSON: Your Honor, I'm going to object to matters that are really the ultimate issue for the court to decide. I think Mr. Weathers was called to testify about, as I understand it, the nature, scope and character of this easement, not to draw legal conclusions about whether or not 3D has a tacked prescriptive easement.
>
> MR. STACY: I think it's right at the heart of the matter, your Honor.

> THE COURT: My understanding, he is qualified to testify regarding access to property and that would certainly be an aspect of it. Of course you are right, it is for me to decide. He can offer an opinion, but you are correct.
>
> MS. PERSON: Thank you. [ROA 94-95; Tr. 38:17 – 39:12.]

This was not a proper objection under Rule 704, SCRE -- "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Moreover, the transcript excerpt above shows that the Master understood that the final, ultimate decision was his,[23] and as discussed above, the public records fully support the existence of an easement.by prescription.

B. The Master did not abuse his discretion in allowing the expert to testify based on his research of county aerial photos and Google Earth historical imagery.

When the expert offered testimony about how long the road had existed, the defense counsel made an objection on that ground that the witness was relying on aerial photographs that were not in evidence. [ROA 87-88; Tr. 31:22 – 32:1.] The Master noted the objection, and questioned the witness to confirm that his opinion did not rest solely on the aerial photographs:

> THE COURT: Based on your research, Mr. Weathers, and as an expert, is your opinion that this road has been used consistently and constantly since roughly when?
>
> THE WITNESS: For a period of greater than 20 years dating back at least to the late '90s. That's based on research, research that is common in my practice, looking at tax map records, aerial photos, GIS information, but also Google Earth because it's a great source for historical aerial imagery, something that I do in my normal practice in addition to this case.
>
> THE COURT: Right. And I note the objection, but the Google historical photos is not the sole basis of your opinion?

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[23]The transcript also shows that the expert witness understood the permissible scope of his opinions and the Master's role as the factfinder: "I don't believe I'm the finder of fact in this matter. I can rely upon what I believe to be accurate information and render an opinion. It will be the Judge's determination as to what constitute facts based upon the pleadings and the other evidence in the case." [ROA 119; Tr. 63:4-9.]

> THE WITNESS: That is not. There is other information, including the plats and my understanding in review of the pleadings and other information that is readily available in the public record.
>
> THE COURT: Okay. Thank you. [ROA 88; Tr. 32:4-24.]

In accordance with Rule 703, SCRE, the witness was allowed to give his opinion based on information not admitted since the information was common in his practice, i.e., "of the type reasonably relied upon in the field." *Dawkins v. Fields,* 580 S.E.2d at 436; *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005). In addition, the expert witness affirmatively stated that his opinion was founded on the land records that had been admitted without any objection from Defense Counsel.

C. The Master did not abuse his discretion in allowing testimony from the expert about the fact that Georgetown County Water and Sewer and Georgetown County Planning signed off on the 2006 plat.

During the expert's testimony about the 2006 subdivision plat, Defense Counsel made a hearsay objection:

> [Witness]: ...[I]n 2006 when they did the subdivision plat, Georgetown County Water and Sewer signed off on it. Georgetown County Planning signed off on it. They wouldn't sign off on a plat that's owned by a property without proper access. So the county and the water and sewer department deemed that road, based upon their signatures and executions of the plats and approval for recording, to be essentially the accepted right-of-way.
>
> MS. PERSON: Your Honor, I'm going to object to Mr. Weathers's conclusions about what the planning commission or planning department actually, not the planning commission, the planning department, was actually saying about the existence of that road without -- first of all, it's hearsay.
>
> THE COURT: Well, I think he can testify regarding his opinion. I understand your hearsay. So his testimony will be based upon his opinion, and if there were statements that he attributed, I will sustain that objection.
>
> THE WITNESS: Your Honor, just to clarify, it's based upon my understanding of the rules required for recording plats.
>
> THE COURT: Very well. Thank you, sir. [ROA 90-91; Tr. 34:10 – 35:8.]

From one perspective, the expert's testimony about the meaning of the county departments' signoff on the 2006 plat does not constitute hearsay as defined in Rule 801(c), SCRE, as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The expert did not testify as to what any county official "said;" rather, he explained the significance of the approvals as it related to a basis for his opinion on the existence of the dirt road.

Moreover, as discussed above, Rule 703 allows an expert to base his opinion on hearsay if the information is of the type reasonably relied upon in the field to make opinions. Accordingly, "an expert may testify as to matters of hearsay for the purpose of showing what information he or she relied on in giving an opinion." *In re Manigo*, 389 S.C. 96, 106, 697 S.E.2d 629, 634 (Ct. App. 2010), *aff'd*, 398 S.C. 149, 728 S.E.2d 32 (2012) (citing *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 295, 529 S.E.2d 45, 50 (Ct. App. 2000)). Accordingly, the Master did not abuse his discretion in allowing testimony from the expert about the fact that Georgetown County Water and Sewer and Georgetown County Planning signed off on the 2006 plat.

D. If there was any error in the evidentiary rulings, it was harmless.

On a final note, the decision in *Proctor v. Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012), supports the ultimate conclusion that the judgment granting a prescriptive easement should be affirmed regardless of the challenges to the Master's rulings on the expert testimony in this case. In *Proctor*, a property owner brought a declaratory judgment action seeking to establish an appurtenant easement. On appeal, the defendant argued that the special referee erred in admitting expert testimony from an attorney[24] on the ground that it would be improper for an attorney to give

[24] The attorney had practiced in the area of real property law for over twenty-seven years and he performed his own title examinations and wrote title insurance. 730 S.E.2d at 362.

an expert opinion as to what would be the ultimate legal issue in question. Without holding that the testimony was improper, the Court found that admission of the expert's testimony was harmless because the deed itself supported the special referee's finding.[25] 730 S.E.2d at 367. As fully discussed above, the allegations (as deemed admitted) together with the public land records fully support the Master's finding of a prescriptive easement irrespective of the evidentiary challenges.

III. THE DEFENDANTS IN DEFAULT WERE NOT ENTITLED TO TESTIFY OR PRESENT TESTIMONY FROM THEIR OWN EXPERT AT THE HEARING.

At the hearing, Defense Counsel asked permission to present testimony from one of the Defendants who was present. [ROA 129; Tr. 73.] Defense Counsel also requested the right to bring their own expert. [ROA 130; Tr. 74.] The Master properly denied those requests because the Defendants were in default. As noted above, the law is clear on this point. If a hearing is held pursuant to Rule 55(b), the defaulting party may be entitled to notice, but the defaulting party is limited to cross-examining witnesses and objecting to evidence. *Howard v. Holiday Inns Inc.*, *supra*; *Roche v. Young Bros., of Florence*, *supra*; *Limehouse v. Hulsey*, 744 S.E.2d at 578–79 (adhering to the procedures adopted in *Howard* – "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default."). Since the Appellants have not challenged the Master's denial of their Rule 55(c) motion to set aside entry of default in this appeal, they cannot complain about the limits on their participation in the hearing. As defendants in default, they were not entitled to testify or present testimony from their own expert at the hearing.

[25] The Court also noted that there was no dispute as to the expert's objective results of his title examination. 730 S.E.2d at 367 n.12.

CONCLUSION

WHEREFORE, based on the foregoing, the Respondent 3D Land Holdings respectfully submits that the Master's order and judgment granting an easement by prescription should be affirmed.

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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