THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN - 7 2013
S.C. Supreme Court

APPEAL FROM THE KERSHAW COUNTY
Court of common pleas

Roderick M. Todd, Jr. Esquire, Special Referee

UNPUBLISHED OPINION NUMBER 2013-UP-153
(S.C.Ct. APP. FILED APRIL 10, 2013, REFILED MAY 8, 2013)

W. H. Bundy, Jr., Respondent,

vs.

Bobby Brent Shirley, Petitioner.

APPENDIX
VOLUME II OF II

John W. Wells
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Other Counsel of Record:
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Attorney for Respondent

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

RECORD ON APPEAL
VOLUME II OF II

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And

Stephen A. Spitz, Esq.
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Attorney for W. H. Bundy, Jr.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A NO.: 2009-CP-28-00338

W.H. BUNDY, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**STIPULATION OF PARTIES**
	)	**FOR DEFENDANT SHIRLEY'S**
BOBBY BRENT SHIRLEY,	)	**CHAIN OF TITLE**
	)	
	)	
Defendants.	)	
	)	

The parties to this action, by and through their authorized counsel, hereby stipulate to the following:

(1) The Defendant is the current fee owner of certain real property located in Kershaw County and identified as: All that piece, parcel or tract of land lying and being situated near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-seven and Fourteen Hundredths (37.14) acres, more or less, and as depicted on the plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the Register of Deeds for Kershaw County in Plat Book 35 at page 1596 (the "Shirley Property").

(2) On October 8, 2008, Karen J. Shirley transferred the Shirley Property to Bobby Brent Shirley. A true and accurate copy of the deed is attached hereto as **Exhibit A**.

(3) On May 3, 2007, Bobby Brent Shirley transferred the Shirley Property to Bobby Brent Shirley and Karen J. Shirley. A true and accurate copy of the deed is attached hereto as **Exhibit B.**

(4) On February 21, 2005, Bobby Shirley and Nollie T. Shirley transferred the Shirley Property to Bobby Brent Shirley. A true and accurate copy of the deed is attached hereto as **Exhibit C.**

(5) On or about May 10, 1985, D. William Whipple and Diana D. Whipple transferred the Shirley Property to Bobby Shirley and Nollie T. Shirley. A true and accurate copy of the deed is attached hereto as **Exhibit D.**

(6) On May 10, 1985, Donald L. Morris and Harriet Morris transferred their interest in the Shirley Property to D. William Whipple and Diana D. Whipple. A true and accurate copy of the deed is attached hereto as **Exhibit E.**

(7) On September 26, 1980, D. William Whipple transferred the Shirley Property to Donald L. Morris. A true and accurate copy of the deed is attached hereto as **Exhibit F.**

(8) In March 1979, Trius Corporation transferred its interest in the Shirley Property to D. William Whipple. A true and accurate copy of the deed is attached hereto as **Exhibit G.**

(9) On January 16, 1979, David L. Dickson transferred the Shirley Property to Trius Corporation. A true and accurate copy of the deed is attached hereto as **Exhibit H.**

(10) On May 5, 1975, William H. Able, Jr. transferred the Shirley Property to David L. Dickson. A true and accurate copy of the deed is attached hereto as **Exhibit I.**

(11) On or about December 31, 1973, Tetterton & Riddick, Surveyors, prepared a plat of the Shirley Property that is incorporated into every deed dated thereafter. A true and accurate copy of the plat is attached hereto as **Exhibit J.**

(12) On December 21, 1973, W. M. Andrews transferred the Shirley Property to William H. Able, Jr. A true and accurate copy of the deed is attached hereto as **Exhibit K.**

(13) On or about April 29, 1969, J. Douglas Montgomery, Master, transferred an interest in the Shirley Property to W. M. Andrews. A true and accurate copy of the deed is attached hereto as **Exhibit L.**

(14) On November 4, 1968, Hobia Tillman Bennett and Annie Marie Bennett, as surviving children of Elijah Bennett, Sr., deceased, transferred their interest in the Shirley Property to W. M. Andrews. A true and accurate copy of the deed is attached hereto as **Exhibit M.**

(15) On May 6, 1968, English Bennett transferred his interest in the Shirley Property to W. M. Andrews. A true and accurate copy of the deed is attached hereto as **Exhibit N.**

(16) On April 2, 1968, Margretha Harris transferred her interest in the Shirley Property to W. M. Andrews. A true and accurate copy of the deed is attached hereto as **Exhibit O.**

(17) On March 29, 1968, Carrie Williams, et al. transferred their interest in the Shirley Property to W. M. Andrews. A true and accurate copy of the deed is attached hereto as **Exhibit P.**

(18) On December 19, 1947, J.C. Gillis transferred the Shirley Property to Elijah Bennett. A true and accurate copy of the deed is attached hereto as **Exhibit Q**.

Keith M. Babcock
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Mt. Pleasant, South Carolina
_____, 2010

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803-438-4200
803-438-5090 (Fax)

ATTORNEY FOR DEFENDANT

Lugoff, South Carolina
_____, 2010.

Instrument 200800009402 OR | Volume 2432 | Page 76

200800009402
Filed for Record in
KERSHAW COUNTY SC
BILLIE MCLEOD, REGISTER
10-15-2008 At 11:46:35 am.
DEED 10.00
STATE .00
COUNTY .00
OR Volume 2432 Page 76 - 78

Law Office of George W. Speedy
32,130
TITLE NOT SEARCHED - DEED DRAWN ONLY

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

TITLE TO REAL ESTATE

KNOW ALL MEN by THESE PRESENTS, that I, Karen J. Shirley (the "Grantor") in the State aforesaid, for and in consideration of the sum of PURSUANT TO FAMILY COURT ORDER 2007-DR-28-507 to me paid by Bobby Brent Shirley (the "Grantee") in the State aforesaid (receipt of which is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Bobby Brent Shirley, His Heirs and Assigns:

All my right, title and interest fee simple in the following described property:

PARCEL #1: All that piece, parcel or tract of land, with improvements thereon, if any, lying and being situated near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-seven and Fourteen Hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Register of Deeds for Kershaw County in Plat Book 35, at page 1596, and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHEAST by property now or formerly of Perrie; and NORTHWEST by property now or formerly of R. H. Cantey and Camden Equipment Company.

Tax Map #367-00-00-001

PARCEL #2: All those pieces, parcels of lots of land, with improvements thereon, if any, lying and being situate in the City of Camden, County of Kershaw, State of South Carolina, and being more particularly designated and shown on that plat entitled "Property of Bobby Brent Shirley", dated October 10, 1977, prepared by Tetterton & Riddick, R.L.S., and recorded in the Office of the Register of Deeds for Kershaw County in Plat book 35, at page 3014, and having those shapes and courses, metes and bounds as shown on said plat, the incorporation of which is made by specific reference thereto.

Tax Map #C298-08-00-017

The above describe properties are the same conveyed to Bobby Brent Shirley and Karen J. Shirley by deed of Bobby Brent Shirley dated May 3, 2007 and recorded in the office of the Register of Deeds for Kershaw county in Book 2166, at Page 215.

Recorded this 15th Day
Of October, 2008

Robin H. Watkins,
Kershaw County Auditor

EXHIBIT A

GRANTEES' ADDRESS: 611 Wateree St., Camden, SC 29020

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, His Heirs and Assigns forever.

And Grantor does hereby bind herself and her Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, His Heirs and Assigns, against herself and her Heirs and against every person whomever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 8th day of October, 2008.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Karen J. Shirley (Seal)
Karen J. Shirley

_____ (Seal)

STATE OF SOUTH CAROLINA
KERSHAW COUNTY

PERSONALLY appear before me the undersigned witness and made oath that s/he saw the within named Grantor sign, seal and deliver the within deed, and that s/he, with the other witness named above witnessed the execution thereof.

SWORN to before me this 8th day of October, 2008

Notary Public of S.C. (L.S.)

My Commission Expires 12-15-2013

Instrument 200800009402 OR Volume 2432 Page 78

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at Tax Map #C298-08-00-017 was transferred by Karen J. Shirley to Bobby Brent Shirley on October 8th 2008.

The transaction was:

The above transaction is exempt, or partially exempt, from the recording fees as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is transferring realty PURSUANT TO FAMILY COURT ORDER 2007-DR-28-507 .

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined nor more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this 8th day of October, 2008.

Notary Public for S. C.
My Commission Expires: 12-15-2013

FILED FOR RECORD 05/04/2007
AT 10:09A BOOK 02166 PAGE 00215
Billie O. McLeod -Reg of Deeds - RMC
Kershaw County Government Ctr 000004672

4672 BK2166 PG215

000004672
RECORDED 05/04/2007 10:09:20AM
Bk:02166 Ps:00215 Pages:3
Fee:10.00 State:0.00
County:0.00 Exempt:_____
Billie O. McLeod, Register of Deeds
Kershaw County, SC

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF KERSHAW)

KNOW ALL MEN BY THESE PRESENTS that BOBBY BRENT SHIRLEY (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of

FIVE AND NO/100'S ($5.00) DOLLARS, LOVE AND AFFECTION

to the Grantor paid by BOBBY BRENT SHIRLEY AND KAREN J. SHIRLEY (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, for and during their lives and, upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following-described property, to wit:

PARCEL ONE:

All that piece, parcel or tract of land, with improvements thereon, if any, lying and being situated near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-seven and Fourteen Hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Register of Deeds for Kershaw County in Plat Book 35, at page 1596, and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHEAST by property now or formerly of Perrie; and NORTHWEST by property now or formerly of R. H. Cantey and Camden Equipment Company.

The above-described property is the same as that conveyed to Bobby Brent Shirley by deed of Bobby Shirley and Nollie T. Shirley dated February 21, 2005, and recorded in the office of the Register of Deeds for Kershaw County on February 22, 2005, in Book 1712 At page 20.

TMS No.: 367-00-00-001

PARCEL TWO:

All those pieces, parcels or lots of land, lying and being situate in the City of Camden, County of Kershaw, State of South Carolina, and being more particularly designated and shown on that plat entitled "Property of Bobby Brent Shirley," dated October 10, 1977, prepared by Tetterton & Riddick, R.L.S., and recorded in the office of the Register of Deeds for Kershaw County in Plat Book 35 at page 3014, and having those shapes and courses, metes and bounds as shown on said plat, the incorporation of which is made by specific reference

Recorded this 4th Day Of May, 2007
Robin H. Watkins,
Kershaw County Auditor

EXHIBIT
5

thereto.

The above-described property is the same as that conveyed to Bobby Brent Shirley by deed of Bobby Shirley dated October 18, 1977, and recorded in the office of the Register of Deeds for Kershaw County on October 20, 1977, in Book LJ At page 1288.

TMS No.: 2013-00-03-003

GRANTEE'S ADDRESS: 611 Watercee Street
Camden, SC 29020

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the said Grantee, for and during their joint lives and, upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

And the Grantor hereby binds himself, his Heirs, Executors, and Administrators, to warrant and forever defend all and singular the said Premises unto the said Grantee, as hereinabove provided, against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 3 day of MAY in the year of our Lord Two Thousand and Seven.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Annette B. Kelly
Patrick D. Partin

Bobby Brent Shirley (SEAL)
BOBBY BRENT SHIRLEY

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF KERSHAW)

I, Patrick D. Partin, a Notary Public for South Carolina, do hereby certify that Bobby Brent Shirley personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 3rd Day of May, 2007.

Patrick D. Partin
Notary Public for State of South Carolina

My Commission Expires: 02/15/17

DocName: myfiles\deed.dee\shirleybobbybrent.dee

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Bobby Brent Shirley, His Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Bobby Brent Shirley, His Heirs and Assigns, against myself and my Heirs and against every person whomever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 21st day of February in the year of our Lord two thousand five and in the two hundred twenty ninth years of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Joan W. Rebbeca

Deanne W Elliott

Bobby Shirley (Seal)
Bobby Shirley

Nollie T. Shirley (Seal)
Nollie T. Shirley

STATE OF SOUTH CAROLINA
KERSHAW COUNTY

PERSONALLY appear before me the undersigned witness and made oath that s/he saw the within named Grantor sign, seal and deliver the within deed, and that s/he, with the other witness named above witnessed the execution thereof.

SWORN to before me this 21st day of February, 2005

Deanne W. Elliott (L.S.)
Notary Public of S.C.

Joan W. Rebbeca

My Commission Expires 11/10/14

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF KERSHAW)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 37.14 acres, Kershaw County was transferred by Bobby Shirley and Nollie T. Shirley to Bobby Brent Shirley on February 21 2005.

The transaction was:

The above transaction is exempt, or partially exempt, from the recording fees as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is transferring realty to a family member. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined nor more than One Thousand Dollars or imprisoned not more than one year, or both.

Purchaser or Legal Representative

SWORN to before me this 21st day of February, 2005.

Notary Public for S. C.
My Commission Expires: 11/10/14

IV 1824

KNOW ALL MEN BY THESE PRESENTS, THAT

COUNTY OF KERSHAW

We, D. William Whipple and Diana D. Whipple

in the State aforesaid, for and in consideration of the sum of Twenty Nine Thousand and 00/100 ($29,000.00) - - -

FILE FOR RECORD
'85 MAY 10 PM 12:

BARBARA M REEVES
CLERK OF COURT
KERSHAW COUNTY, S.C.

State Of South Carolina

County of Kershaw

D. WILLIAM WHIPPLE AND DIANA D. WHIPPLE

TO

BOBBY SHIRLEY AND MOLLIE T. SHIRLEY

Title To Real Estate

(Jointly for Life With Remainder to Survivor)

I hereby certify that the within Deed was filed for record in my office at 12:49 P. M. o'clock on the 10th day of May 19 85, and was immediately entered upon the proper indexes and duly recorded in Book IV. of Deeds, page 1824

Barbara M. Reeves
Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 10th day of May, A. D. 1985. Recorded in Book AA of Deeds, page 185

Brenda W. Truesdale Auditor for Kershaw County

ROLLY W. JACOBS
ATTORNEY AT LAW
612 Lafayette Avenue
CAMDEN, S.C. 29020

MAY 8 1985 Kershaw County Treasurer

431

THE STATE OF SOUTH CAROLINA,

FILE FOR RECORD

'83 JAN 10 PM 12

BARBARA B REEVES
CLERK OF COURT
KERSHAW COUNTY, S.C.

To All Whom These Presents May Come:

WHEREAS: We, Donald L. Morris and Harriet Morris SEND GREETING:

TV 1823

NOW, KNOW ALL MEN BY THESE PRESENTS, That we the said

Donald L. Morris and Harriet Morris

in consideration of the premises and also in consideration of the sum of five dollars

to us in hand paid at and before the sealing and delivery of these presents by

D. William Whipple and Diana D. Whipple

(the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said

D. WILLIAM WHIPPLE AND DIANA D. WHIPPLE, THEIR HEIRS AND ASSIGNS:

All that piece, parcel or tract of land lying and being situated near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-Seven and Fourteen-Hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 35, at page 1596, and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHEAST by property now or formerly of Perrie; and, NORTHWEST by property now or formerly of R. H. Cantey and Camden Equipment Company.

EXHIBIT E

KERSHAW COUNTY TAX ASSESSOR
TAX MAP # 1062-00-00-008
Tax Year 1985 Max G. Rush

State of South Carolina,

DONALD L. MORRIS AND HARRIET MORRIS

To

D. William Whipple and Diana D. Whipple

QUIT-CLAIM DEED

Filed 10th day

of May , A. D. 19 85 .

at 12:41 o'clock P M.,

and recorded in Book IV

Page 1823 Fee, $

Barbara M. Reeves

R. M. C. or Clerk Court C. P. & G. S.

Kershaw County, S. C.

Recorded this 10th day

of May , 1985 ,

in Book AA Page 185

Fee, $

Brenda W Truesdale

Auditor Kershaw County, S. C.

[illegible] Kershaw County Treasurer

State of South Carolina,

County of Kershaw

T0810

Know All Men by These Presents, That

I, D. William Whipple

in the State aforesaid, for and in consideration of the

sum of Thirty-Two Thousand and 00/100 ($32,000.00) Dollars and assumption of existing indebtedness in the approximate amount of $3,500.00 to me paid by Donald L. Morris

in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said DONALD L. MORRIS, his heirs and assigns:

All that piece, parcel or tract of land lying and being situate near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing thirty-seven and fourteen-hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 35, at page 1496, and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHWEST by property now or formerly of Perrie; and, NORTHWEST by proeprty now or formerly of R. H. Cantey and Camden Equipment Company.

The above tract of real property is conveyed herein subject to any and all outstanding rights of way and easements for utility and roadway purposes in existence, visible or on record.

The above described property is the same conveyed to D. William Whipple dated March, 1979, and recorded in the office of the Clerk of Court for Kershaw County in Book 10, at page 279.

...AW COUNTY TAX ASSESSOR
...T # 1621-00-06 (01)
... TOT 1980
Max G. ...

EXHIBIT F

35.20

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Donald L. Morris, his

Heirs and Assigns, forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Donald L. Morris, his

Heirs and Assigns, against myself and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 26th day of September in the year of our Lord one thousand nine hundred and eighty and in the ~~one hundred and~~ 205th year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Edward M. Kozaly
Patricia C. Morris

D. William Whipple (Seal)
D. William Whipple

(Seal)

STATE OF SOUTH CAROLINA,
KERSHAW County.

PERSONALLY appeared before me Edward M. Royall

and made oath that he saw the within named D. William Whipple

sign, seal and, as his act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that he, with Patricia C. Morris witnessed the execution thereof.

SWORN to before me this 26th day of September, 19 80

Patricia C Morris (L. S.)
Notary Public of S. C.
My Commission Expires: 7/22/87

Edward M Royall

STATE OF SOUTH CAROLINA,
KERSHAW County:

RENUNCIATION OF DOWER

I, Edward M. Royall, a Notary Public, do hereby certify unto all whom it may concern, that Mrs. Diana D. Whipple

the wife of the within-named D. William Whipple

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

Donald L. Morris, his

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 26th day of September Anno Domini 19 80

Edward M Royall (L. S.)
Notary Public of S/C.
My Commission Expires: 12/3/89

Diana D C Whipple

SFK546

State Of South Carolina

County of Kershaw

D. William Whipple

TO

Donald L. Morris

1980 SEP 26 PM 3:54

W. I. DIBBLEN
CLERK OF COURT
KERSHAW COUNTY, S.C.

Title To Real Estate

I hereby certify that the within Deed was filed for record in my office at 3:54P. M. o'clock on the 26th day of September 19 80, and was immediately entered upon the proper indexes and duly recorded in Book IC of Deeds, page 840

M Edward G

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 26th day of Sept., A. D. 1980. Recorded in Book 71 of Deeds, page 227

Dinah W Truesdale Auditor for Kershaw County

SAVAGE, ROYALL, KINARD, SHEHEEN & BYARS
ATTORNEYS
CAMDEN, S. C.

~~STEVE S. KELLY, Kershaw County Treasurer~~

FC

2336

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF KERSHAW)

KNOW ALL MEN BY THESE PRESENTS, that, it TRIUS CORPORATION

IC 279

in the State aforesaid, for in consideration of the sum of TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) subject to the existing mortgage of SEVEN THOUSAND NINE HUNDRED NINE AND NO/100 DOLLARS ($7,909.00) together with accrued interest.

to D. WILLIAM WHIPPLE, Route #3, Waxhaw, North Carolina

in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

D. WILLIAM WHIPPLE

heirs, administrators and assigns forever, all the following described real property, to wit: All that piece, parcel or tract of land lying and being situated near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-Seven and Fourteen-Hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 35 at Page 1596, and bounded as follows: Northeast by property now or formerly of R.H. Cantey and Camden Equipment Company; Southwest by property now or formerly of Perrie; and Northwest by property now or formerly of R.H. Cantey and Camden Equipment Company.

The above tract of real property is conveyed herein subject to any and all outstanding rights of way and easements for utility and roadway purposes in existance, visible or on record.

The foregoing premises are the same conveyed to Grantor by deed of David L. Dickson dated January 23, 1979, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book IL at Page 1523.

EXHIBIT 6

KERSHAW COUNTY TAX ASSESSOR
TAX MAP # 106-00-00-008
Tax Year 1980 Max G Kirsh

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

And It, TRIUS CORPORATION does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said

D. WILLIAM WHIPPLE,

his heirs and assigns, against it and its successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal OF TRIUS CORPORATION, by its proper officers this day of March in the year of our Lord One Thousand Nine Hundred and Seventy Nine and in the Two Hundred Third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

TRIUS CORPORATION

(SEAL)
Robert J. Knapp, President

(SEAL)
John C. Worman, Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me W. P. Fowler and made oath that he saw the within-named TRIUS CORPORATION, by John C. Worman, its Secretary and Robert J. Knapp, its President sign, seal and, as their act and deed of the Corporation deliver the within-written Deed for the uses and purposes therein mentioned and that he, with Janice H. Guthrie witnessed the execution thereof.

SWORN to before me this 26th day of March , 1979.

Notary Public for South Carolina
My commission expires: May 1, 1988

STATE OF SOUTH CAROLINA

TRIUS CORPORATION
3710 Landmark Drive
Suite 107
Columbia, South Carolina 29204

TO

MAIL:
D. William Whipple
Route #3, AERC Plantation
Waxhaw, North Carolina

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 11:53 A.M. o'clock on the 2nd day of July, 1980, and was immediately entered upon the proper indexes and duly recorded in Book IC of Deeds, page 279

R. Howard Q. [illegible] CLERK OF COURT
KERSHAW COUNTY, S. C.

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S.C.

I hereby certify that the within Deed has been this 2nd day of July, A.D. 1980, Recorded in Book Y of Deeds, page 194.

Brenda Truesdale Auditor
for Kershaw County

THE STATE OF SOUTH CAROLINA,

COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, THAT

I, DAVID L. DICKSON,

1415 23

in the State aforesaid for in consideration of the sum of ELEVEN THOUSAND ONE HUNDRED FORTY-TWO AND NO/100 ($11,142.00) ---------- Dollars,

to me in hand paid at and before the sealing and delivery of these Presents, by

TRIUS CORPORATION

in the State aforesaid

(the receipt whereof is hereby acknowledged),

have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

TRIUS CORPORATION

All that piece, parcel or tract of land lying and being situate near Swift Creek in former School District No. 43, about ten (10) miles South of the City of Camden, Kershaw County, South Carolina, containing Thirty-seven and fourteen-hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 35 at page 1596, and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHWEST by property now or formerly of Perrie; and NORTHWEST by property now or formerly of R. H. Cantey and Camden Equipment Company.

The foregoing premises are the same conveyed to Grantor by deed of William H. Abell dated May 5, 1975, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book IE at page 1305. Reference is made to Judgment Roll Nos. 10661 and 13869.

GRANTEE'S ADDRESS: 339 East Main St., Suite 15, Rock Hill, S. C. 29730

KERSHAW COUNTY TAX ASSESSOR
1979
TAX MAP # 1042-00-00-008
John E. Baker Jr.

TAX CODE NO.:

EXHIBIT H

SOUTH CAROLINA COUNTY DOCUMENTARY TAX
P.B. 10810 JAN 25 '79 12.65

SOUTH CAROLINA DOCUMENTARY STAMP
SOUTH CAROLINA DOCUMENTARY STAMP

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned, unto the said

TRIUS CORPORATION,

its successors and assigns forever.

And I *do hereby bind* myself and my *Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said*

TRIUS CORPORATION,

its successors and assigns against me *and* my *Heirs lawfully claiming, or to claim the same or any part thereof.*

WITNESS my *Hand and Seal, this* 31st *day of* January *in the year of our Lord one thousand nine hundred and* seventy-nine *and in the* two *hundred and* third *year of the Sovereignty and Independence of the United States of America.*

Signed, Sealed and Delivered in the Presence of

E. Bell

J. Harkin

(L. S.)

(L. S.)

(L. S.)

STATE OF SOUTH CAROLINA,

COUNTY OF KERSHAW

David L. Dickson

TO

Trius Corporation

TITLE TO REAL ESTATE

Filed 23rd day

of January A. D. 19 79.

at 4:31 o'clock P. M.

and recorded in Book 1L

Page 1523 Fee, $

R. M. C. or Clerk Court C. P. & G. S.

Kershaw County, S. C.

Recorded this day

of 19

in Book Page

Fee, $

Auditor County, S. C.

76 216

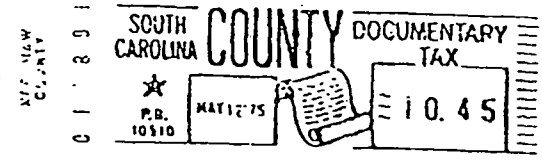
443

COUNTY OF KERSHAW

I E
B05

Know All Men by These Presents, That I, William H. Abell, Jr.,





in the State aforesaid, for and in consideration of the sum of Nine Thousand Five Hundred and No/100 ($9,500.00) Dollars to me paid by David L. Dickson in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

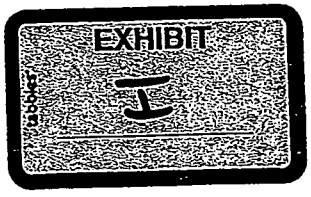
DAVID L. DICKSON

All that piece, parcel or tract of land lying and being situate near Swift Creek in former School District #43, about ten (10) miles south of the City of Camden, Kershaw County, South Carolina, containing Thirty-seven and fourteen hundredths (37.14) acres, more or less, as shown and delineated on a plat prepared by Tetterton & Riddick, Surveyors, dated December 31, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 35 at page 1596 and bounded as follows: NORTHEAST by property now or formerly of R. H. Cantey and Camden Equipment Company; SOUTHWEST by property now or formerly of Perrie; and NORTHWEST by property now or formerly of R. H. Cantey and Camden Equipment Company.

The foregoing premises are the same conveyed to Grantor herein by deed of W. M. Andrews, dated December 21, 1973, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book IC at page 1411; however, a survey of the premises revealed that it contained only 37.14 acres rather than 42 acres.

Tax Code 1062-8.

GRANTEE'S ADDRESS: 5-B Gregg Circle, Columbia, S. C. 29206



TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

DAVID L. DICKSON, his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

DAVID L. DICKSON, his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my *Hand and Seal this* 5th *day of* May *in the year of our Lord one thousand nine hundred and* Seventy-five *and in the one hundred and* Ninety-ninth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Virginia C. Hogan
John K. Dillard, Jr.

William L. Pickle, Jr. (SEAL)

(SEAL)

STATE OF SOUTH CAROLINA.
KERSHAW COUNTY.

PERSONALLY appeared before me Virginia A. Hagan

and made oath that She saw the within-named William H. Abell, Jr.

sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with John K. de Loach, Jr. witnessed the execution thereof.

SWORN to before me this 5th

day of May *19* 75

John K. de Loach, Jr. (L.S.)

Notary Public of S. C.

Virginia A. Hagan

My commission expires: May 28, 1978

STATE OF SOUTH CAROLINA.
KERSHAW COUNTY.

RENUNCIATION OF DOWER

I, John K. de Loach, Jr., Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Ann S. Abell

the wife of the within-named William H. Abell, Jr.

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named David L. Dickson, his heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 5th

day of May

Anno Domini 19 75

John K. de Loach, Jr. (L.S.)

Notary Public of S. C.

Ann S. Abell

My commission expires: May 28, 1978

State of South Carolina,

County of KERSHAW

William H. Abell, Jr.

TO

David L. Dickson

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 11:35A. M. o'clock on the 6th day of May 1975, and was immediately entered upon the proper indexes and duly recorded in Book IE of Deeds, Page 1305

R. Edward Graham

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 6th day of May, A. D. 1975, Recorded in Book Y of Deeds, page 247

Ethel D. Oglesby

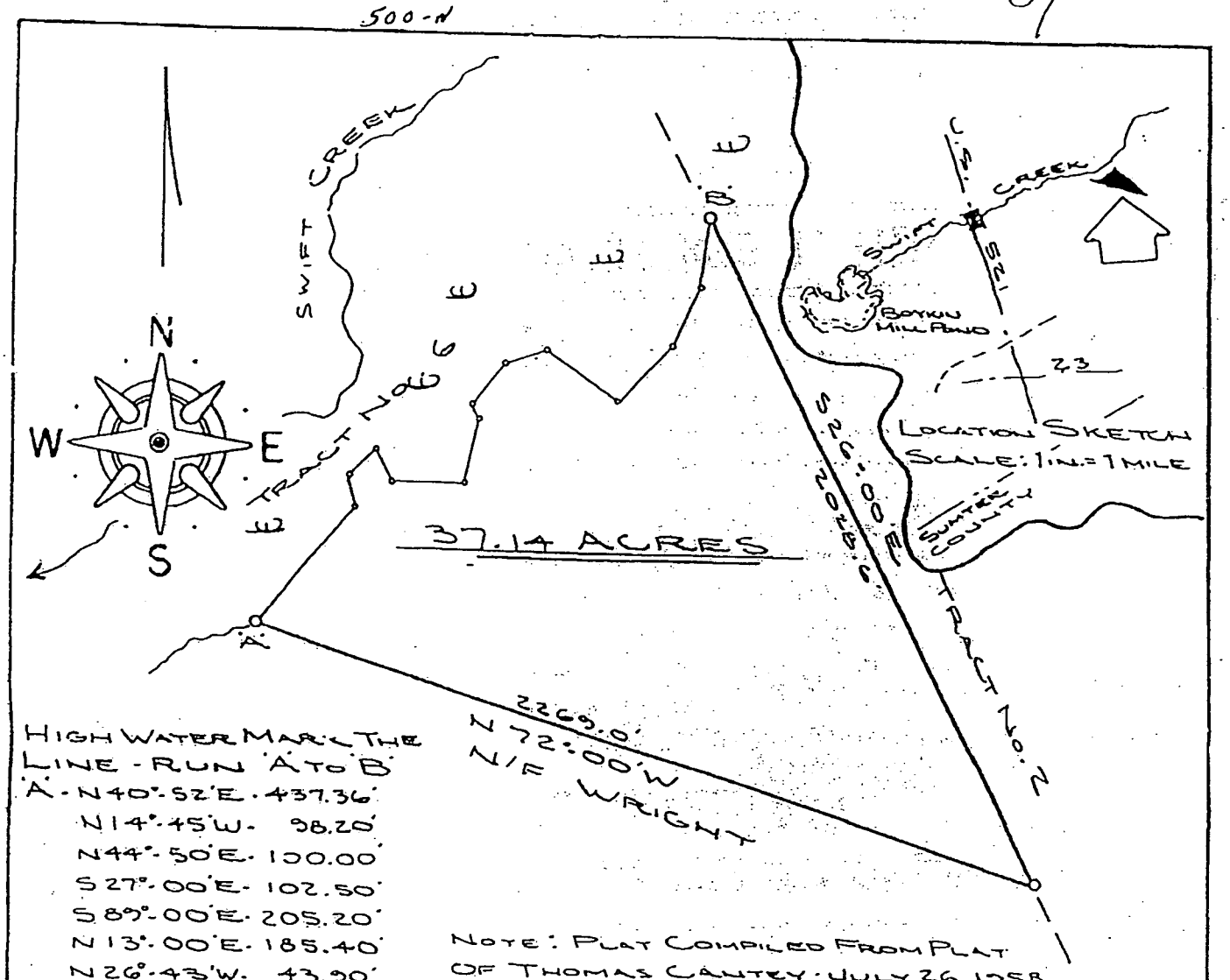
Auditor for Kershaw County

STEVE S. KELLY, Kershaw County Treasurer

MAY -6 AM 11:35
W. E. DEBRUHN
CLERK OF COURT
KERSHAW COUNTY, S.C.

PB 35 1596

Shirley



HIGH WATER MARK THE LINE - RUN 'A' TO 'B'

A - N 40°-52'E - 437.36'
N 14°-45'W - 98.20'
N 44°-50'E - 100.00'
S 27°-00'E - 102.50'
S 89°-00'E - 205.20'
N 13°-00'E - 185.40'
N 26°-43'W - 43.90'
N 38°-00'E - 148.00'
N 72°-15'E - 119.90'
S 53°-15'E - 247.70'
N 43°-45'E - 220.00'
N 29°-00'E - 175.00'
B - N 07°-00'E - 185.00'

NOTE: PLAT COMPILED FROM PLAT OF THOMAS CANTEY - JULY 26, 1958 AND PLAT OF BENNETT ESTATE

EXHIBIT J

37.14 ACRES

PROPERTY OF

WILLIAM H. ABELL

LOCATED 8 MILES SOUTH OF CAMDEN
KERSHAW COUNTY - SOUTH CAROLINA
SCALE: 1 IN. = 400 FT. - DECEMBER 31, 1973
TETTERTON & RIDDICK SURVEYORS

EXHIBIT K

Know All Men by These Presents, That I, W. H. Andrews,



IC 1411

in the State aforesaid, for and in consideration of the sum of Four Thousand Seven Hundred and No/100 ($4,700.00) Dollars to me paid by William H. Abell, Jr. in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

WILLIAM H. ABELL, JR.

All that piece, parcel or tract of land, lying and being situate near Swift Creek, in School District 43, about ten miles South of the City of Camden, in the County of Kershaw, and State of South Carolina, containing Forty-two (42) acres, more or less, and bound as follows: NORTH by property now or formerly of J. A. Dees and by the waters of Swift Creek; EAST by property now or formerly of DuPree; SOUTH by property now or formerly of Dees; and WEST by property now or formerly of Boykin.

The foregoing property is the same conveyed to W. H. Andrews by deed of J. Douglas Montgomery, Master for Kershaw County, dated April 25, 1969, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book HW at page 398; by deed of Hobia Tillman Bennett and Annie Marie Bennett, dated November 4, 1968, and recorded in Deed Book HU at page 2530; by deed of Carrie Williams et al, dated March 29, 1968, and recorded in Deed Book HU at page 1940; by deed of English Bennett, dated May 6, 1968, and recorded in Deed Book HU at page 1937; by deed of Lar retha [illegible], dated [illegible], 1968, and recorded in Deed Book HU at page 1933.

GRANTEE'S ADDRESS:

Route 1, Box 62
Blythewood, S. C. 29016

KERSHAW COUNTY
0 1 0 8 8
SOUTH CAROLINA COUNTY DOCUMENTARY TAX
P.B. 10810
DEC 27 1972
05.50

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

WILLIAM H. ABELL, JR., his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

WILLIAM H. ABELL, JR., his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my *Hand and Seal this* 21st *day of* December *in the year of our Lord one thousand nine hundred and* Seventy-three *and in the one hundred and* Ninety-seventh *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Virginia P. Hagan
John K. Driscoll, Jr.

W. M. Jenkins (SEAL)

(SEAL)

STATE OF SOUTH CAROLINA,)
[illegible])
COUNTY.)

PERSONALLY appeared before me Virginia A. Hagen

and made oath that she saw the within-named W. M. Andrews

sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that she, with John K. de Loach, Jr.

witnessed the execution thereof.

SWORN to before me this 21st

day of December, 1973

John K. de Loach, Jr. (L. S.)

Notary Public of S. C.

My commission expires: May 23, 1978

Virginia A. Hagen

STATE OF SOUTH CAROLINA,)
[illegible])
COUNTY.)

RENUNCIATION OF DOWER

I, John K. de Loach, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Mary S. Andrews

the wife of the within-named W. M. Andrews

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named William M. Abell, Jr., his

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises

Deed A.

State of South Carolina,

County of KERSHAW

W. M. Andrews

TO

William H. Abell, Jr.

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 2:54P. M. o'clock on the 21st day of December, 1973, and was immediately entered upon the proper indexes and duly recorded in Book IC of Deeds, page 1411

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 21st day of Dec, A. D. 1973, Recorded in Book V of Deeds, page 74

Auditor for Kershaw County

The R. L. Bryan Company, Columbia, S. C.

S. KELLY, Kershaw County Treasurer

COUNTY OF HORRY) COURT OF COMMON PLEAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS W. M. Andrews, Plaintiff,

HW 356

On or about the 28th day of September in the year of our Lord nineteen hundred and sixty-eight exhibited Summons and Complaint in the Court of Common Pleas, for the county aforesaid against Annie Ree Bennett (Annie Marie), [illegible] Bennett, Thelma B. Grant, Mattie B. Lewis, Louise Bennett, widow, and Martha Lee Bennett and Bertha Mae Bennett, surviving children of Hayton Bennett, [illegible] and Dorothy Bennett, Mary Lee Bennett, James Bennett, Isabel Bennett, Alice [illegible], Alice and Bertha Bennett, surviving children of Doretha Bennett, deceased, of whom [illegible] Alice and Bertha Bennett are minors over the age of fourteen (14) years; [illegible] Bennett, if he be living, and if he be deceased, James, Annie Mae, Stephen [illegible], Jimmie, Virginia and Evelyn Bennett, surviving children of Joe Lewis Bennett, all of whom are minors under fourteen (14) years of age, and John Doe, representing any and all minors or persons under disability, having any interest in the estate of [illegible] Bennett, deceased, Defendants,

providing judgment in relation to the partition and/or sale of real estate hereinafter mentioned and described, and the cause being at issue, came on to be heard on the 15th day of February, 1969 19___, and such proceedings were had therein as resulted in a Decree of the said Court, whereby it was adjudged and decreed that the said real estate hereinafter mentioned and described, be sold by J. Douglas Montgomery Master in and for the County aforesaid, on the terms and for the purposes mentioned in the said Decree as by reference thereto on file in said Court, will appear; and the said Master, having duly [illegible] said real estate unto [illegible] complied with said Decree, did then sell [illegible]

W. M. Andrews.

EXHIBIT L

for the sum of Three Hundred Sixty eight and 36/100 ($368.36) ----------

---

Dollars,

being at that price the ~~highest bid made at said sale~~ price provided for in said Decree.

NOW, THEREFORE, Know all men by these Presents, that I, J. Douglas Montgomery Master in and for the County of Kershaw, in consideration of the sum of Three Hundred Sixty-eight and 36/100 ($368.36) ----------

Dollars,

to me paid by the said W. M. Andrews

the receipt whereof is hereby acknowledged, HAVE GRANTED, bargained, sold and released, and by these Presents, DO GRANT, bargain, sell and release unto the said W. M. Andrews, his heirs and assigns:

The undivided interest of the following as heirs-at-law of the late Elijah Bennett: Thelma B. Grant, Mattie B. Lewis, Toulbe Bennett, Bartha Lee Bennett, Bertha Mae Bennett, James Bennett, Annie Mae Bennett, Stephen Bennett, Elijah Bennett, Jimmie Bennett, Virginia Bennett, Evelyn Bennett, Richard Bennett, Jr., Heyward Bennett, James Bennett, Isabel Bennett, Harline Bennett and Alice Bennett, in and to the following described property, to wit:

All that piece, parcel or tract of land, situate, lying and being in School District # 43, in Kershaw County, South Carolina, containing forty-two (42) acres, more or less, and bounded as follows: North by property now or formerly of J. A. Dees and waters of Swift Creek; East by property now or formerly of DuPre; South by property now or formerly of Dees; and West by property now or formerly of Boykin."

Being the same property conveyed to Elijah Bennett by deed of J. C. Gillis dated December 19, 1947, recorded in Deed Book DM, page 256 in the office of the Clerk of Court for Kershaw County.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim, and interest whatsoever, of the parties to the cause aforesaid, and of each of them, in and to the same; and of all other persons rightfully claiming from, under, or by these or any of them.

Rec'd

The State of South Carolina
COUNTY OF KERSHAW

J. Douglas Montgomery,
MASTER

TO

W. M. Andrews.

FILED FOR RECORD
'69 APR 29 PM 3 10

W. E. SQUIRN
CLERK OF COURT
KERSHAW COUNTY, S.C.

TITLE TO REAL ESTATE
(Master's Title)

Filed 29th day
of April A. D., 19 69
and recorded in Book HW
Page 398 at 3:10 P.M.
Fee, $

Register of Mesne Conveyance.
Kershaw County, S. C.

Recorded this 29th day
of April 19 69
in Book A Page 248
Fee, $

Auditor, Kershaw County, S. C.

STEVE S. KELLY, Kershaw County Treasurer

MM Bk 230

State of South Carolina,
County of KERSHAW

Know All Men by These Presents. That

WE, ROBIA TILLMAN BENNETT AND ANNIE MARIE BENNETT, AS SURVIVING CHILDREN OF ELIJAH BENNETT (SR.) DECEASED,

in the State aforesaid, FOR AND in consideration of the sum of ONE HUNDRED SEVENTY-SIX AND 82/100 ($176.82) DOLLARS to us paid by W. M. ANDREWS in the State aforesaid RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

W. M. ANDREWS, HIS HEIRS AND ASSIGNS FOREVER:

ALL OUR RIGHT, TITLE, AND UNDIVIDED INTERESTS AS SURVIVING CHILDREN OF ELIJAH BENNETT (SR.), DECEASED, IN AND TO:

ALL THAT PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING IN SCHOOL DISTRICT #48, IN KERSHAW COUNTY, SOUTH CAROLINA, CONTAINING FORTY-TWO (42) ACRES, MORE OR LESS, AND BOUNDED AS FOLLOWS: NORTH BY PROPERTY NOW OR FORMERLY OF J. A. DEES AND WATERS OF SWIFT CREEK; EAST BY PROPERTY NOW OR FORMERLY OF DUPRE; SOUTH BY PROPERTY NOW OR FORMERLY OF DEES; WEST BY PROPERTY NOW OR FORMERLY OF BOYKIN.

BEING SAME PROPERTY CONVEYED TO ELIJAH BENNETT BY DEED OF J. C. G ILLIS DATED DEC. 19, 1947, RECORDED DEED BOOK DM, P. 256, OFFICE OF CLERK OF COURT FOR KERSHAW COUNTY.

THE GRANTORS HEREIN ARE TWO OF THE SURVIVING CHILDREN OF ELIJAH BENNETT (SR.) DECEASED, WHO DIED INTESTATE.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY DOCUMENTARY TAX

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

W. M. ANDREWS, HIS

Heirs and Assigns forever.

And WE do hereby bind OURSELVES AND OUR Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

W. M. ANDREWS, HIS

Heirs and Assigns, against US and OUR Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS OUR Hand S and Seal S this 4th day of NOVEMBER in the year of our Lord one thousand nine hundred and sixty-EIGHT and in the one hundred and NINETY-THIRD year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Louise B. Jones (L.S.)

W. M. Andrews (L.S.)

Her Annie Marie Bennett (Seal)
+ mark

CITY OF WASHINGTON

458

State Of South Carolina

County of KERSHAW

HOBIA TILLMAN BENNETT
AND ANNIE MARIE BENNETT

TO

W. M. ANDREWS

Title To Real Estate

I hereby certify that the within Deed was filed for record in my office at 1:01 P.M. o'clock on the 10th day of December 19 68, and was immediately entered upon the proper indexes and duly recorded in Book HU of Deeds, page 2338

R. Edwards

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 10 day of Dec., A. D. 1968. Recorded in Book U of Deeds, page 2338

Auditor for Kershaw County

STEVE S. [illegible], Kershaw County Treasurer

FILED FOR RECORD
'68 DEC 10 PM 1 01

Know All Men by These Presents, That

I, ENGLISH BENNETT

HU 1937

in the State aforesaid, FOR AND in consideration of the sum of EIGHTY-EIGHT AND 42/100 ($88.42) DOLLARS to ME paid by W. M. ANDREWS in the State aforesaid RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said W. M. ANDREWS, HIS HEIRS AND ASSIGNS FOREVER:

ALL MY RIGHT, TITLE AND UNDIVIDED INTEREST AS A SURVIVING SON OF ELIJAH BENNETT, DECEASED, IN AND TO:

ALL THAT PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING IN SCHOOL DISTRICT # 43, IN KERSHAW COUNTY, SOUTH CAROLINA, CONTAINING FORTY-TWO (42) ACRES, MORE OR LESS, AND BOUNDED AS FOLLOWS: NORTH BY PROPERTY NOW OR FORMERLY OF J. A. DEES AND WATERS OF SWIFT CREEK: EAST BY PROPERTY NOW OR FORMERLY OF DUPRE: SOUTH BY PROPERTY NOW OR FORMERLY OF DEES: WEST BY PROPERTY NOW OR FORMERLY OF BOYKIN.

BEING SAME PROPERTY CONVEYED TO ELIJAH BENNETT BY DEED OF J. C. GILLIS DATED DEC. 19, 1947, RECORDED DEED BOOK UM, P. 256, OFFICE OF CLERK OF COURT FOR KERSHAW COUNTY.

THE GRANTOR HEREIN IS A SURVIVING SON OF ELIJAH BENNETT, DECEASED,

EXHIBIT N

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

W. M. ANDREWS, HIS

Heirs and Assigns forever

And I do hereby bind MYSELF AND MY Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

W. M. ANDREWS, HIS

Heirs and Assigns, against ME and MY Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS MY Hand and Seal this 6TH day of MAY

in the year of our Lord one thousand nine hundred and sixty-EIGHT

and in the one hundred and NINETY-SECOND year of the Sovereignty and Independence of the United States of America

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Pearl Byrd (Seal)

Annie Jones (Seal)

State Of South Carolina

County of KERSHAW

ENGLISH BENNETT

TO

W. H. ANDREWS

KERSHAW COUNTY, S.C.

Title To Real Estate

I hereby certify that the within Deed was filed for record in my office at 2:32P M. o'clock on the 12th day of September 19 68. and was immediately entered upon the proper indexes and duly recorded in Book HU of Deeds, page 1937

Edward [illegible]

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 12 th day of Sept. A. D. 1968. Recorded in Book A of Deeds, page 339

Ethel D. Ogburn Auditor for Kershaw County

STEVE B. KELLY. Kershaw County Treasurer

HU 1938

Form No. 2—TITLE TO REAL ESTATE, Short Form

FROM Margretha Harris TO W. M. Andrews

The State of South Carolina

'68 SEP 12 PM 2 32

County of Kershaw

W. E. DRUIRN
CLERK OF COURT
KERSHAW COUNTY, S.C.

KNOW ALL MEN BY THESE PRESENTS, That

I, Margretha Harris, only surviving daughter and heir at law of Alice B. Rowie, deceased daughter of Elijah Bennett

in the State aforesaid, for and in consideration of the sum of Eighty-eight and 42/100 ($88.42) Dollars to me paid by W. M. Andrews in the State aforesaid receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

W. M. Andrews, his heirs and assigns:

All my right, title, and undivided interest as a surviving grand-daughter of Elijah Bennett in and to:

All that piece, parcel or tract of land, situate, lying and being in School District 43, in Kershaw County, South Carolina, containing forty-two (42) acres, more or less, and bounded as follows: NORTH by property now or formerly of J.A. Dees and waters of Swift Creek; EAST by property now or formerly of DuPre; SOUTH by property now or formerly of Dees; WEST by property now or formerly of Boykin.

Being same property conveyed to Elijah Bennett by deed of J. C. Gillis dated Dec. 19, 194[illegible] recorded Deed Book DM, p. 256, office of Clerk of Court for Kershaw County.

The grantor herein is a daughter and sole heir at law of Alice B. Rowie, a deceased daughter of Elijah Bennett who is now deceased.

EXHIBIT O

...REAL ESTATE Short Form

...heir at law ...

...daughter of Elijah Bennett

...in Colored District 41, ... more or less, and ...ween and waters of ...erly now or formerly ...

...dated ...ber 10,1947, ...County.

...R. Rhett, a deceased

TOGETHER with all and singular, the rights, members ... or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises ... unto the

W. M. Andrews, his

Heirs and Assigns forever:

And I do hereby bind myself, my Heirs

and Administrators, to warrant and forever defend all and singular ... unto the

W. M. Andrews, his

Heirs and Assigns, against me and

person whomsoever lawfully claiming

WITNESS my Hand and Seal

in the year of our Lord one thousand nine hundred and forty-seven

and in the one hundred and ninety-second

and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Mrs. Ellen Nelson
Mrs. Mary Jackson

STATE OF ~~SOUTH CAROLINA~~ New York
Kings County.

Personally appeared before me Mrs. Ellen Nelson

and made oath that (s)he saw the within-named Margaretta Harris

sign, seal and, as her act and deed, deliver the within written Deed

and that he, with Mrs. Mary Jackson

execution thereof.

SWORN to before me this 25th day of August

Notary Public for ...

STATE OF SOUTH CAROLINA,
County.

I,

unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

and assigns, all interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this day of

(L.S.)

Notary Public for ...

Rec'd

The State of South Carolina

County of ..... Kershaw

Margretta Harris

to

W. M. Andrews

HU 1940

State of South Carolina,
County of KERSHAW

Know All Men by These Presents. That

WE, CARRIE WILLIAMS, MAE GARY, CORA BELLE CHISHOLM, FRANCES McCANTS, ELIZABETH STOVIS, JAMES BENNETT, HEYWARD BENNETT, ELIJAH BENNETT, LUCY BENNETT, DAN BENNETT, BOBBIE JEAN RICHARDSON, SHIRLEY STUCKEY, AND OLLIE MAE HICKMAN SURVIVING HEIRS AT LAW OF ELIJAH BENNETT, DECEASED,

in the State aforesaid, FOR AND in consideration of the sum of $1,061.04 to US paid by W. M. ANDREWS in the State aforesaid RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

W. M. ANDREWS, HIS HEIRS AND ASSIGNS:

ALL OUR RIGHT, TITLE, AND UNDIVIDED INTERESTS AS HEIRS AT LAW OF ELIJAH BENNETT, IN AND TO:

ALL THAT PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING IN SCHOOL DISTRICT 43, IN KERSHAW COUNTY, SOUTH CAROLINA, CONTAINING FORTY-TWO (42) ACRES, MORE OR LESS, AND BOUNDED AS FOLLOWS: NORTH BY PROPERTY NOW OR FORMERLY OF J.A. DEES AND WATERS OF SWIFT CREEK; EAST BY PROPERTY NOW OR FORMERLY OF DuPRE SOUTH BY PROPERTY NOW OR FORMERLY OF DEES; WEST BY PROPERTY NOW OR FORMERLY OF BOYKIN.

BEING SAME PROPERTY CONVEYED TO ELIJAH BENNETT BY DEED OF J. C. GILLIS DATED DEC. 19, 1947, RECORDED DEED BOOK DM, P. 256.

THE GRANTORS HEREIN ARE SOME OF THE SURVIVING CHILDREN AND GRANDCHILDREN (BOBBIE JEAN RICHARDSON AND SHIRLEY STUCKY BEING 1 OF THE 8 CHILDREN OF DORETHA BENNETT, DECEASED) OF ELIJAH BENNETT WHO IS NOW DECEASED. LUCY BENNETT IS THE WIFE OF JOE LEWIS BENNETT WHO HAS NOT BEEN HEARD FROM IN MANY YEARS AND MAY POSSIBLY BE DECEASED.

EXHIBIT 7

SOUTH CAROLINA COUNTY DOCUMENTARY 464

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said W. M. ANDREWS, HIS

Heirs and Assigns forever.

And WE do hereby bind OURSELVES AND OUR Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said W. M. ANDREWS, HIS

Heirs and Assigns, against US and OUR Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS OUR Hand S and SealS this 29TH day of MARCH in the year of our Lord one thousand nine hundred and sixty- EIGHT and in the one hundred and ~~eighty~~ NINETY-SECOND year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

James E. Cooper

Mary L. Andrews

Willie Mae Richardson

Carrie Williams (Seal)

Mae Gary (Seal)

~~Cora Bell Bennett~~ (Seal)

Frances McCants (Seal)

Elizabeth Stavis (Seal)

James Bennett (Seal)

Heyward Bennett (Seal)

Elijah Bennett (Seal)

Lucy Bennett (Seal)

Dan Bennett (Seal)

Bobby Lynn Bennett (Seal)

Shirley Hickey (Seal)

STATE OF SOUTH CAROLINA,
KERSHAW County.

PERSONALLY appeared before me JAMES E. COOPER and made oath that HE saw the within named CARRIE WILLIAMS, MAE GAR, CORA BELL JAS. BENNETT, HEYWARD BENNETT, ELIJAH BENNETT, JR., LUCY BENNETT, DAN BENNETT, BOB JEAN RICHARDSON, SHIRLEY HICKEY and WILLIE MAE RICHARDSON,

State Of South Carolina

County of KERSHAW

CARRIE WILLIAMS, MAE GARY, CORA BELLE CHISHOLM, FRANCES McCANTS, ELIZABETH STOVISS, JAMES BENNETT, HEYWARD BENNETT, ELIJAH BENNETT, LUCY BENNETT, DAN BENNETT, ROBBIE JEAN RICHARDSON, SHIRLEY STUCKEY, OLLIE MAE HICKMAN

TO

W. M. ANDREWS

Title To Real Estate

I hereby certify that the within Deed was filed for record in my office at 2:32 P.M. o'clock on the 12th day of September 1968, and was immediately entered upon the proper indexes and duly recorded in Book HU of Deeds, page 1940

Clerk of Court of Common Pleas and General Sessions for Kershaw County, S. C.

I hereby certify that the within Deed has been this 12th day of Sept. A. D. 1968, Recorded in Book 4 of Deeds, page 239

Ethel D. Sykes Auditor for Kershaw County

STEVE S KELLY. Kershaw County Treasurer

CLERK OF COURT
KERSHAW COUNTY, S.C.

256 D. M.

Form No. 1. TITLE TO REAL ESTATE

Filed and indexed on 3/P ... M. 19 46 and recorded this the 5th day of January 19 46

C/F/// J.C.Gillis To Elijah Bennett

THE STATE OF SOUTH CAROLINA.
County of Kershaw

KNOW ALL MEN BY THESE PRESENTS That I, J. C. Gillis (unmarried)

in the State aforesaid, in consideration of the sum of Two HunGred Sixty Dollars ($260.00)

Dollars, to me ~~[illegible]~~ hereby paid by Elijah Bennett

in the State aforesaid, ... / / ~~[illegible]~~ have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Elijah Bennett, his heirs and assigns:-

All that piece, parcel or tract of land located in School District No. 43, county of Kershaw, State of South Carolina, containing Forty-two (42) acres, more or less, and being bounded as follows: North by lands of J.A.Dees, and by Swift Creek, South by lands of Dees, East by lands of DuPre, and West by sands of Boykin.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in any wise incident or appertaining

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto Elijah Bennett, his

~~[illegible]~~ Heirs and Assigns forever

~~[illegible]~~ copy LHC/Clerk

WITNESS my Hand and Seal, this 19th day of December in the year of our Lord one thousand nine hundred and forty-seven and in the one hundred and seventy-second year of the Sovereignty and Independence of the United States of America

Signed, Sealed and Delivered on the Presence of:

Wilbur M. Barrett — $1.00 state .55 cts Federal — J.C.Gillis (Seal) / / / (L.S.)

Florence B. Hay

(L.S.)

(L.S.)

THE STATE OF SOUTH CAROLINA, Kershaw County,

PERSONALLY appeared before me Wilbur M. Barrett and made oath that he saw the within named J.C.Gillis sign, seal and as his act and deed, deliver the within written Deed, ~~[illegible]~~ for the uses and purposes therein mentioned, ~~[illegible]~~ and that he with Florence B. Hay witnessed the execution thereof

SWORN to before me, this 19th day of December

Florence B. Hay — ~~[illegible]~~ to 47 (LS) / / / — Wilbur M. Barrett

N.P.Seal. Notary Public for South Carolina

THE STATE OF SOUTH CAROLINA, County,

I Grantor unmarried RENUNCIATION OF DOWER

that Mrs. , Notary Public for S. C. do hereby certify unto all whom it may concern, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

Heirs and Assigns, all her interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released

GIVEN under my hand and seal this,

day of , Anno Domini 19

(SEAL)

EXHIBIT Q

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A NO.: 2009-CP-28-00338

W.H. BUNDY, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**STIPULATION OF PARTIES FOR PLAINITFF BUNDY'S CHAIN OF TITLE**
BOBBY BRENT SHIRLEY,	)	
	)	
Defendants.	)	

The parties to this action, by and through their authorized counsel, hereby stipulate to the following:

(1) The Plaintiff is the current fee owner of the seven tracts of property described in **Exhibit A** (the "Bundy Property").

(2) On December 22, 2003, Walter H. Bundy, Jr. conveyed a conservation easement on the Bundy Property to the Congaree Land Trust. A true and accurate copy of the easement is attached hereto as **Exhibit B**.

(3) On March 14, 2003, Bowater Timber 1, LLC conveyed the Bundy Property to Walter H. Bundy, Jr. A true and accurate copy of the deed is attached hereto as **Exhibit C**.

(4) On November 27, 2001, Bowater Incorporated conveyed the Bundy Property to Bowater Timber 1, LLC. A true and accurate copy of the deed is attached hereto as **Exhibit D**.

(5) On May 13, 1968, R.H. Cantey transferred a portion of the Bundy Property to Catawba Timber Company. A true and accurate copy of the deed is attached hereto as **Exhibit E.**[1]

(6) On December 20, 1960, Camden Equipment Company transferred a portion of the Bundy Property to Catawba Timber Company. A true and accurate copy of the deed is attached hereto as **Exhibit F.**

(7) On October 31, 1960, Camden Equipment Company, Inc. and R.H. Cantey transferred a portion of the Bundy Property to Catawba Timber Company. A true and accurate copy of the deed is attached hereto as **Exhibit G.**

(8) On October 24, 1960, H.E. Beard, Jr. and Roderick H. Cantey transferred a portion of the Bundy Property to Catawba Timber Company. A true and accurate copy of the deed is attached hereto as **Exhibit H.**

(9) On October 19, 1960, James L. Sweet transferred a portion of the Bundy Property to Catawba Timber Company. A true and accurate copy of the deed is attached hereto as **Exhibit I.**

(10) On or about September 26, 1960, R.H. Marett, RLS, prepared a plat of the Bundy Property. A true and accurate copy of the plat is attached hereto as **Exhibit J.**

[Signature Page Follows]

[1] That Bowater Incorporated was the owner of all outstanding shares of Catawba Timber Company. Catawba Timber Company merged into Bowater Incorporated on December 31, 1980. At such time Bowater Incorporated was vested with all the property of Catawba Timber Company.

Keith M. Babcock
LEWIS & BABCOCK, LLP
1513 Hampton Street
Columbia, SC 29201
(803) 771-8000

Steven Spitz
P.O. Box 535
Charleston, SC 29402
(843) 377-2154
(843) 723-0618

M. Brent McDonald
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Blvd., Bldg. F, Suite 100
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623

ATTORNEYS FOR THE PLAINTIFF

Mt. Pleasant, South Carolina
_____, 2010

John W. Wells, Esquire
Baxley, Pratt & Wells, PA
Three The Common at Lugoff
PO Box 10
Lugoff, South Carolina 29078
803-438-4200
803-438-5090 (Fax)

ATTORNEY FOR DEFENDANT

Lugoff, South Carolina
_____, 2010.

EXHIBIT A

TRACT: CDW-026800
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43, DeKalb Township, of Kershaw County, South Carolina, being Tract 1 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of Kershaw County, South Carolina, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner, being a corner common to this tract, Tract 2 and Tract 4 as shown on said plat and being also a corner common to DuPre's 6.2 acre tract and Rembert's 1 acre tract; running thence North 25 degrees 30 minutes West with the line of Tract 2 as shown on said plat, 3930 feet; more or less, to Swift Creek; thence South 54 degrees East with said creek 216 feet; thence South 83 degrees 30 minutes East with said creek 205 feet to the mouth of Shoe Make Branch; thence up said branch South 86 degrees East 100 feet, South 24 degrees 30 minutes East 184.5 feet and South 40 degrees 45 minutes East 103.5 feet to the South line of the property now or formerly owned by Jim Sweet; thence leaving said branch North 66 degrees East with Sweet's line 900 feet to an iron pin at an old corner and in Nelson's line; thence with Nelson's line and with the approximate high water line of the swamp line along Shoe Make Branch the following courses and distances; South 03 degrees 45 minutes West 153.5 feet, South 39 degrees 45 minutes East 88.3 feet, South 82 degrees East 93.7 feet, North 53 degrees 30 minutes East 116 feet, North 74 degrees east 87.3 feet, South 51 degrees 45 minutes East 73.7 feet, South 18 degrees East 132 feet, East 416.8 feet, South 201 feet, South 86 degrees 30 minutes East 172 feet, South 45 degrees East 129 feet, South 20 degrees East 208 feet, South 14 degrees East 119 feet, South 74 degrees East 175.2 feet, South 30 degrees 30 minutes East 142 feet, South 43 degrees East 335 feet, and South 23 degrees 30 minutes East 176 feet to an iron pin at an old corner; thence South 66 degrees 30 minutes West 121 feet to a 4-inch black gum on said branch; thence with said branch South 33 degrees 30 minutes East 114 feet, South 09 degrees East 165 feet to an iron pin; thence leaving said branch South 01 degree 15 minutes West with Wooten's line 1585.6 feet to an angle iron; the Northeast corner of Tract 3 as shown on said plat; thence with the line of said Tract 3, South 59 degrees 30 minutes West 445 feet to a corner, North 21 degrees West 462 feet to a corner and South 78 degrees West 990 feet to the Beginning, containing 153 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of H.E. Beard, Jr. and R.H. Cantey dated October 24, 1960, recorded in Book GA, page 517.

Tax Map Number: 367-00-00-002.

Being the same property as conveyed to Bowater Timber 1, LLC from Bowater Incorporated by Deed dated November 27, 2001 and recorded in Book 1094 Page 1 in Kershaw County, South Carolina.

::ODMA\PCDOCS\ATL\531978\1
LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A

EXHIBIT A

TRACT: CDW-026900
KERSHAW COUNTY, SOUTH CAROLINA

All those certain tracts or parcels of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 2, Tract No. 3 and Tract No. 6 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said County, and being more fully described according to said plat as follows:

Tract No. 2

BEGINNING at an iron pin at an old corner, being a corner common to Tract No. 1, Tract No. 2 and Tract No. 4 shown on said plat and being also a corner common to B.C. DuPre's 6.2-acre tract and Audrey Rembert's 1-acre tract; running thence North 84 degrees West with DuPre's line 900 feet to an iron pin in an old corner, DuPre's Northwest corner; thence South 05 degrees 30 minutes West with DuPre's line 399 feet to an iron pin, DuPre's Southwest corner; thence South 81 degrees 15 minutes East 450 feet to an angle iron in the North line of Tract No. 4 shown on said plat; thence South 52 degrees 45 minutes West with the line of Tract No. 4, 680.2 feet to an iron pin at an old corner, being the Northeast corner of Tract No. 5 shown on said plat; thence North 26 degrees West 800 feet to an iron pin, Charles Wright's Southeast corner; thence North 26 degrees 30 minutes West with Wright's line 288.7 feet to an iron pin, Wright's Northeast corner; thence North 26 degrees West with the line of the Bennett Estates 2028.6 feet to an angle iron at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek, being a corner of Tract No. 6 shown on said plat; thence continuing North 26 degrees West, crossing said swamp, 841 feet, more or less, to the center of Swift Creek, being also a corner of said Tract No. 6; thence up and with the center of said creek North 48 degrees 45 minutes East 166.5 feet, North 41 degrees 30 minutes East 364 feet, North 54 degrees 30 minutes East 361 feet, North 52 degrees East 275 feet and North 72 degrees 30 minutes East 255 feet to the Northwest corner of Tract No. 1 shown on said plat; thence, South 25 degrees 30 minutes East 3930 feet to the Beginning, containing 113 acres, more or less.

Tract No. 3

BEGINNING at an iron pin located 320 feet North 78 degrees East from the Beginning corner of Tract No. 2 hereinabove described, being the easternmost corner of the Audrey Rembert 1-acre tract in the south line of Tract No. 1 shown on said plat; thence with the line of said Tract No. 1 North 78 degrees East 670 feet to a corner; South 21 degrees East 462 feet and North 59 degrees 30 minutes East 445 feet to an angle iron in the line of the lands of Wooten, being the Southeast corner of Tract No. 1; thence South 04 degrees 30

minutes West 1706 feet to an angle iron in Boykin's line; thence North 78 degrees 15 minutes West 1077 feet to an iron pin, a corner of Tract No. 4 shown on said plat; thence with the line of Tract No. 4 North 03 degrees 30 minutes East 904 feet, South 62 degrees 30 minutes West 298 feet and North 15 degrees 20 minutes West 473 feet to the South corner of said Rembert Tract; thence North 35 degrees 42 minutes East with Rembert's line 409.6 feet to the Beginning.

EXCEPTING AND RESERVING out of the above described Tract No. 3, a 6-acre tract more fully described as follows: Beginning at an iron pin located North 60 degrees 30 minutes East 379.7 feet from a corner of Tract No. 4 shown on said plat; running thence North 17 degrees 45 minutes East 416 feet; thence North 75 degrees 15 minutes West 92 feet; thence North 17 degrees 45 minutes East 26 feet; thence South 71 degrees 30 minutes East 92.1 feet; thence North 17 degrees 45 minutes East 625 feet to an iron pin; thence South 72 degrees 15 minutes East 292 feet to an iron pin; thence South 22 degrees 42 minutes West 1064 feet to an iron pin; thence North 72 degrees 15 minutes West 200 feet to the Beginning.

The above described Tract No. 3 less the exception, contains 36 acres, more or less. There is included within the above described Tract No. 3 a parcel 10' x 12' containing three graves and this conveyance is made subject thereto.

Tract No. 6

BEGINNING at an iron pin at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek in the line of Tract No. 2 hereinabove described, being also a corner of the lands of the Bennett Estate; thence with said high water line and the line of the lands of the Bennett Estate and the line of the lands of Perry, along the various courses and distances more fully shown between point "A" and point "B" on said plat, a total distance of 3812.1 feet to an iron pin at an old corner in the line of the lands of Capehart; thence North 09 degrees 45 minutes East with Capehart's line 681.5 feet to an iron pin at a branch, being point "C" shown on said plat; thence down and with the meanders of said branch to Swift Creek and continuing down and with Swift Creek, along the various courses and distances more fully shown on said plat, a total distance of 3606.5 feet to the Northwest corner of Tract No. 2 shown on said plat; thence South 26 degrees East 841 feet, more or less, to the Beginning, containing 30 acres, more or less.

Additional Property

All that certain tract or parcel of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 5 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner in the West line of Tract No. 4 shown on said plat and being the Northeast corner of the lands now or formerly owned by Boykin;

running thence with Boykin's line South 88 degrees 45 minutes West 2050.4 feet to an iron pin and South 86 degrees 15 minutes West 1300 feet to an iron pin at an old corner; thence North 22 degrees West 160 feet to an iron pin at an old corner; thence North 82 degrees East 3250 feet to an iron pin, being a corner common to Tract No. 2 and Tract No. 4 shown on said plat and the Northeast corner of the property herein conveyed; thence South 22 degrees 15 minutes East with the West line of Tract No. 4, 503 feet to the Beginning, containing 23 acres, more or less.

Additional Property

All that parcel or tract of land situated in School District No. 43, DeKalb Township, Kershaw County, South Carolina, containing 1 acre, more or less, and being more fully shown on a plat of property of Catawba Timber Company, by R.H. Marett, R.L.S., dated September 26, 1960, and recorded in Plat Book 27, page 39, in the Office of the Clerk of Court of Kershaw County, South Carolina, and designated thereon as Parcel "B" and being triangular in shape and bounded on all sides by lands of Catawba Timber Company, and being more fully described as BEGINNING at a corner common to Tracts 1, 2, 4, and this property, as shown on the above referred to plat; thence with the line of Catawba Timber Company North 78 degrees East 320 feet to a metal fence post; thence continuing with the line of Catawba Timber Company South 35 degrees 42 minutes West 409.6 feet to a metal fence post, a corner common to this tract, Tract No. 3, and a point in the northeast line of Tract No. 4; thence North 15 degrees 20 minutes West with the line of Catawba Timber Company 275 feet to a metal fence post and the point of Beginning.

Being the same tracts of land conveyed to Catawba Timber Company by deed of Camden Equipment Company, Inc. and R.H. Cantey dated October 31, 1960, recorded in Book GA, page 523, by deed of Camden Equipment Company dated December 20, 1960, recorded in Book GA, page 561; and by deed of R.H. Cantey dated May 13, 1968, recorded in Book HU, page 1374.

All the Property described above contains 203 acres, more or less.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated November 27, 2001, and recorded in Book 1098 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A

TRACT: CDW-027000
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being Tract 4 shown on the plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county as follows:

BEGINNING at a point in the center of a road marked by an iron pin on the East side of said road and being 47 feet North 78 degrees 15 minutes West from the Southwest corner of Tract 3 as shown on said plat; running thence South 06 degrees 42 minutes West with said road 1066 feet to an iron pin on the East side of said road; thence South 51 degrees 37 minutes West, partially with said road 575 feet to an iron pin on the East side of another road and in the line of the land now or formerly owned by Boykin; thence North 19 degrees 15 minutes East, partially with said road and with Boykin's line 1760 feet to an iron pin, being the Southeast corner of Tract 5 shown on said plat; thence North 22 degrees 15 minutes West with the line of Tract 5, 503 feet to an iron pin, being the Northeast corner of Tract 5 and the Southwest corner of Tract 2 as shown on said plat; thence North 52 degrees 45 minutes East with the line of Tract 2, 680.2 feet to an iron pin at a corner of the B. C. Dupre 6.2 acre tract; thence continuing North 52 degrees 45 minutes East with Dupre's line 610.6 feet to an iron pin, being a corner common to Tract 2 and Tract 1 as shown said plat and being also a corner common to the 6.2 acre tract owned by B. C. Dupre and the 1-acre tract owned by Audrey Rembert; thence South 15 degrees 20 minutes East with Rembert's line and the line of Tract 3, 746 feet to a corner of Tract 3 as shown on said plat; thence North 62 degrees 33 minutes East with the line of Tract 3, 293 feet to a corner; thence South 03 degrees 30 minutes West with the line of Tract 3, 904 feet to a corner in Boykin's line, being the southwest corner of Tract 3; thence North 78 degrees 15 minutes West with Boykin's line 47 feet to the Beginning, containing 56 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of James L. Sweet dated October 19, 1960, recorded in Book GA, page 516.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated December 27, 2001, and recorded in Book 1078 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A

TRACT: CDW-035600
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being more fully described according to a plat of a survey made by R.H. Marett, Registered Surveyor, on November 22, 1960, a copy of which appears of record in Plat Book 28, page 67, in the records of Kershaw County, as follows:

BEGINNING at an iron pin on the North side of a road and in the line of other lands of Catawba Timber Company, said iron pin being 228 feet North 51 degrees 37 minutes East from the Southwest corner of the lands of said timber company; running thence North 77 degrees East with a new line severing the lands of the grantor, in all 1686 feet to an iron pin in the line of the lands of Letcher Boykin; thence North 15 minutes West 635.3 feet to an iron pin; thence North 78 degrees 15 minutes West, passing a corner common to Letcher Boykin and Catawba Timber Company at 185.3 feet, in all 1262.3 feet to the center of a road; thence South 06 degrees 42 minutes West with said road and the line of Catawba Timber Company 1066 feet to an iron pin on the East side of said road, a corner of said Timber Company; thence South 51 degrees 37 minutes West with said road and the line of said Timber Company 347 feet to the Beginning, containing 28 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of Tom Boykin dated December 12, 1960, recorded in Book GA, page 551.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated November 27 2001, and recorded in Book 814, Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

FILED FOR RECORD 12/23/2003
AT 10:20A BOOK 01496 PAGE 00068
Billie O. McLeod -Reg of Deeds - RMC
Kershaw County Government Ctr 000015389

THIS CONSERVATION EASEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT CODIFIED IN SECTION 15-48-10 ET. SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

STATE OF SOUTH CAROLINA)
) CONSERVATION EASEMENT
COUNTY OF KERSHAW)

FILED FOR RECORD 12/23/2003
AT 10:20:45AM BOOK 01496 PAGE 00068
Billie O. McLeod, Register of Deeds
Kershaw County Courthouse 000015389

THIS CONSERVATION EASEMENT, made this 22 day of December, 2003, by and between Walter H. Bundy, Jr. (referred to herein as "Grantor"), and The Congaree Land Trust (referred to herein as "Grantee"), a nonprofit corporation organized and existing under the laws of the State of South Carolina.

RECITALS:

A. Grantor is the owner of real property located near the Boykin community in Kershaw County, South Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").

B. The Property consists predominately of woodlands, fields, wetlands and other lands that Grantor desires to use primarily for recreation, agriculture, timber production and preservation of natural habitat for plants and animals. The Property contains, among other things, freshwater wetlands, creeks, streams and other waters and lands that provide habitat for fish, wildlife and/or plants or similar ecosystems. Portions of the Property (including farmland and/or forest land) abut a public highway (Saxon Road) and other areas from which such it may be viewed by and provide scenic enjoyment to the general public. Grantor believes that the Property is a significant natural area that qualifies as a "... relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," and/or "... open space (including farmland and forest land)...for the scenic enjoyment of the general public or pursuant to a clearly defined Federal, State, or local governmental conservation policy, and will yield a significant public benefit" as those phrases are used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii) and (iii), as amended, and in regulations promulgated thereunder.

C. Grantee is a publicly supported, non-profit corporation qualified under Section 501(c)(3) of the Internal Revenue Code, whose purpose is to preserve and conserve lands containing natural areas having conservation, aesthetic, scientific, charitable and/or educational values, including lands such as the Property.

D. The Conservation Easement Act (as defined herein) permits the creation of conservation easements for purposes of retaining or protecting natural, scenic, or open-space aspects of real property, ensuring the availability of real property for agricultural, forest, recreational, educational or open-space use, protecting natural resources, maintaining or enhancing water quality, and preserving the historical, architectural, archeological, or cultural aspects of real property.

E. Grantor and Grantee recognize the natural, scenic, aesthetic, open-space and special character of the Property as described above, and desire to conserve and protect the same in perpetuity by Grantor granting and conveying to Grantee a conservation easement on the Property pursuant to the

EXHIBIT 13

Conservation Easement Act, and by Grantor thereby placing voluntary restrictions upon the use of the Property and giving Grantee certain affirmative rights for the protection of the Property.

NOW, THEREFORE, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift by Grantor to Grantee, Grantor does hereby freely give, grant, bargain, sell and convey unto Grantee, its successors and assigns, forever, a conservation easement in, upon, on and over the Property in accordance with the following terms, conditions, and restrictions hereof.

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Property will be retained forever predominantly in a natural, scenic and open space condition; to protect native plants, animals, or plant communities on the Property; to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property; and to assure the availability of the Property for traditional uses that are compatible with the Conservation Values of the Property, such as forestry, farming, wildlife management and observation, hunting, fishing and other permitted uses as set forth herein.

2. **DEFINITIONS.** The following terms shall have the meanings ascribed to them below when used in this Conservation Easement.

2.1 "Baseline Documentation Report": The Baseline Documentation Report prepared by Grantee for Grantor, which report contains an assessment of the condition of the Property as of the date of this grant, including the characteristics of the Property, its current use and its current state of improvement. Grantor worked with Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. Grantor and Grantee will use the Baseline Documentation Report to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement.

2.2 "Conservation Easement Act": The South Carolina Conservation Easement Act of 1991, codified in Section 27-8-10 et seq. of the Code of Laws of South Carolina of 1976, as amended.

2.3 "Conservation Values": Whenever this Conservation Easement refers to the Conservation Values of the Property (or terms similar thereto such as natural, scenic, open-space, educational or historic values of the Property) such terms shall, without limiting the generality of such terms, mean the relatively natural habitats, ecosystems and open spaces (including farmland and forest land) of the Property at the time of this grant as evidenced by the Baseline Documentation Report.

2.4 "Property": The real property described on Exhibit A attached hereto and incorporated herein by reference. The Property consists of two (2) separate tracts of land, one containing 440 acres, more or less (referred to herein as the "Bowater Tract"), and the other containing 45 acres, more or less (referred to herein as the "Rooster Pit Tract").

2.5 "Purposes of this Conservation Easement": The purposes set forth above under Paragraph 1 of this Conservation Easement.

3. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly allowed or which are expressly

prohibited. Additional retained rights of Grantor are set forth in Paragraph 4 below.

3.1 Protection of Conservation Values. Grantor covenants and agrees that Grantor shall, to the extent reasonably practicable, take all actions reasonably necessary to protect, preserve and maintain the Conservation Values of the Property and to prevent any damage or degradation to or destruction of the Conservation Values of the Property. Conversely, Grantor covenants and agrees that Grantor shall take no action or exercise any right, including the exercise of a right reserved hereunder, or allow any action to be taken or right exercised, in a manner that would cause or could reasonably be expected or anticipated to cause any damage or degradation to or destruction of any Conservation Values of the Property.

3.2 Prohibited Uses and Improvements. Except to the extent provided below, there shall be (a) no residential development or commercial, manufacturing or industrial development, activities or uses undertaken or allowed on any portion of the Property, (b) no right of passage across or upon any portion of the Property if that right of passage is used in conjunction with a residential development or commercial, manufacturing or industrial development, activity or use, and (c) no construction or placing on the Property of any temporary or permanent buildings or other improvements or fixtures, including without limitation any manufactured or mobile homes, modular homes, advertising signs, billboards, or other advertising material, airplane landing strip, utility lines, towers, or conduits, radio transmission antennas, utility transmissions, cellular phone transmission antennas or other structures. Furthermore, all outdoor lighting shall be placed and shielded so as to minimize the impact on surrounding areas.

3.3 Subdividing of Property. The Property consists of two (2) separate parcels of land, which are the Bowater Tract and the Rooster Pit Tract. There shall be no further dividing or subdividing of the Property. The Bowater Tract and Rooster Pit Tract may be conveyed separately, but any transfer or conveyance of title (inter vivos, at death or by operation of law) of the Bowater Tract shall include all, but not less than all, of the Bowater Tract, and any transfer or conveyance of title (inter vivos, at death or by operation of law) of the Rooster Pit Tract shall include all, but not less than all, of the Rooster Pit Tract. Grantor, on behalf of Grantor and the heirs, successors and assigns of Grantor, hereby absolutely and irrevocably waive all rights to seek a partition (including a judicial partition) of the Property or any portion thereof. Without limiting the generality of the foregoing, Grantor shall not indirectly subdivide the Property through the recordation of a subdivision plat or the creation of a horizontal property regime or other means, such as timesharing or the creation of condominium ownership.

3.5 Roads. Grantor shall have the right to repair and maintain existing roads on the Property and construct and repair additional driveways, access roads, walkways, hiking trails (raised and natural elevation) and boardwalks to accommodate permitted improvements on the Property or reasonably necessary to engage in agricultural, forestry, recreational or other activities permitted hereunder. Grantor shall have the right to re-pave any existing paved roads within the Property. All other driveways and roads, and all walkways and trails, shall be of a permeable material (sand, clay, crushed rock or stone, etc.), unless otherwise required by governmental authorities having jurisdiction over the Property.

3.6 Utilities; Easements. Grantor shall have the right to construct and install utilities, drill wells and install septic tanks reasonably necessary to accommodate the use of permitted improvements on the Property, provided such utilities, wells and tanks are constructed in accordance with all local,

state and federal laws. Utilities lines shall be placed underground or within or along the edge of the primary access road or roads within the Property. Except as otherwise permitted herein and where required by action of eminent domain by a body having jurisdiction, Grantor shall otherwise grant no electricity, sanitary sewer, water, storm-water drainage, access or other utility easements over any portion of the Property without the prior written consent of Grantee, which consent shall not be unreasonably withheld.

3.7 Other Permitted Improvements. Grantor shall have the right to (a) maintain, remodel, and repair existing buildings, structures, docks, fences, water wells, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvements with another of similar size, function, capacity, location and material, (b) construct cabins for hunting, fishing and other recreational purposes (such cabins not to exceed 1,500 square feet in the aggregate on the Bowater Tract and 1,500 square feet in the aggregate on the Rooster Pit Tract), (c) construct picnic shelters and pavilions for recreational uses (such shelters and pavilions not to exceed 1,500 square feet in the aggregate on the Bowater Tract and 1,500 square feet in the aggregate on the Rooster Pit Tract), (d) construct stands, blinds, decks and other similar improvements for hunting, wildlife observation and other recreational activities permitted herein, and (e) construct within permitted agricultural fields barns, silos, greenhouses, storage buildings and sheds, and similar improvements reasonably necessary to engage in agricultural activities permitted herein.

3.8 Timber Management. Grantor desires to reserve the right to engage in forestry and timbering activities consistent with the Purposes of this Conservation Easement. Grantor therefore shall have the right to engage in forestry and silvacultural activities and harvest timber from the Property in accordance with this section. Prior to engaging in the harvesting of any timber on the Property, Grantor shall first obtain a forest management plan, and all forestry activities shall be conducted pursuant to the plan. Such management plan shall be (a) updated at least every ten (10) years, (b) prepared by a registered professional forester and (c) designed to ensure the maintenance of good quality growing stock of native timber, the preservation of bottomland hardwood forests, wetlands, floodplains and floodways, and the protection of soil stability and water quality. The plan may allow for prescribed burning. All forestry, silvacultural and timbering practices and operations (including logging activities) shall (i) meet or exceed the then applicable standards accepted as Best Management Practices ("BMP") by the South Carolina Forestry Commission ("SCFC") or successor thereto, (ii) be conducted in accordance with all applicable laws, and (iii) be carried out under the supervision of a registered professional forester. Grantee shall have the right to require Grantor to obtain from the SCFC (or its successor) a BMP review of any proposed logging and cutting operations, and all such operations shall be conducted in accordance with the findings and recommendations of such review.

3.9 Agricultural Uses. Grantor shall have the right to engage in any lawful agricultural and farming activities or operations (other than those prohibited below) on any existing open fields or agricultural fields previously converted to upland timber stands. Grantor shall not convert by ditching, filling, draining or other method any other lands (including hardwood bottoms, ponds, reservoirs, wetlands, flood plains, floodways, streams or creeks) into agricultural fields. Grantor shall have no right to engage in any agricultural or farming operations, uses or other activities (whether lawful or not) that generate significant animal waste that is directly or indirectly released into lakes, ponds, lagoons, rivers, streams, groundwater or other waters (Example: factory hog farms and turkey farms), nor may any level of grazing be allowed that would result in an unreasonable deterioration of the pastures. All agricultural operations on the Property shall be conducted in a manner consistent with a conservation plan

prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, utilizing the standards and specifications of the Natural Resources Conservation Service field office technical guide, which plan shall provide for management of the Property in a manner consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable law.

3.10 Wildlife Management. In order to maintain wildlife numbers and diversity, Grantor shall be entitled to maintain existing fields through mechanical means or grazing and to establish wildlife food plots with plant species commonly used for that purpose in the area. Grantor shall have the right to conduct other activities that promote, manage and propagate wildlife on the Property, including actions taken to protect and restore wetlands, control non-native or invasive plants, maintain vegetative riparian buffers, improve water quality, prevent erosion and restore damaged ecosystems and habitats.

3.11 Wetland Impoundments. Subject to applicable governmental regulations, Grantor shall have the right to maintain, enhance and manage historic or existing wetland impoundments for the purposes of providing habitat for alligators, waterfowl, colonial wading birds, shore birds and other native wildlife or for other purposes allowed by this Easement. Subject to the prior written approval by Grantee, which approval shall not be unreasonably withheld, Grantor shall also be allowed to create new ponds, lakes or green tree reservoirs for such purposes provided (a) such ponds, lakes or reservoirs are (i) created for aesthetic, fishing, education and/or recreational purposes and (ii) will not adversely affect the Conservation Values of the Property, and (b) Grantor complies with all applicable laws, ordinances, rules and regulations.

3.12 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting, fishing, hiking, trapping and horseback riding, that require no surface alteration or other development of the land, except as provided herein. Grantor shall also have the right to lease the Property (or portions thereof) to hunting and fishing clubs and groups for hunting or fishing. All activities shall be performed in accordance with all applicable laws, ordinances, rules and regulations.

3.13 Excavation. Except as necessary to accommodate the activities expressly permitted under this Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance of the soil in any manner.

3.14 Destruction of Plants, Disturbance of Natural Habitat. Grantor shall have the right to cut and remove diseased or exotic trees, shrubs, or plants, and to cut firebreaks. Grantor shall also have the right to cut and remove trees, shrubs or plants to accommodate the activities expressly permitted under this Easement. There shall be no additional removal, harvesting, destruction or cutting of native trees, shrubs or plants. Except to accommodate the activities expressly permitted under this Easement, there shall be no planting of non-native trees, shrubs or plants, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

3.15 Hydrology. Except as necessary to accommodate the activities expressly permitted

under this Easement, there shall be no alteration, depletion or extraction of surface water, natural watercourses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property.

3.16 Signage. No signs or billboards or other advertising displays are allowed on the Property, except those signs whose placement, number and design do not significantly diminish the scenic character of the Property. Signs may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use.

3.17 Use of Chemicals. There shall be no use of pesticides or other chemicals, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except (a) as necessary for agricultural, farming, silvacultural and forestry practices, (b) as necessary in and around improvements on the Property (e.g., termite and pest control), and (c) as approved by Grantee to protect, promote or enhance the Conservation Values of the Property (e.g., to control invasive species). All uses and applications shall be in compliance with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations and with the product label for the chemical being used.

3.18 No Dumping. There shall be no storage, release, discharge or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste on the Property. Except as needed to service permitted improvements, there shall be no placement of underground storage tanks on the Property. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property that could cause erosion or siltation on the Property, unless authorized herein.

3.19 No Pollution. There shall be no pollution, of surface water, natural water courses, lakes, ponds, wetlands, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity. Except as provided in Section 3.11, no activities shall be conducted that could alter the natural water level or flow in or over the Property.

3.20 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals subject to state and local laws.

3.21 Vehicles. There shall be no operation or use of dune buggies, motorcycles, four wheelers, all-terrain vehicles or any other types of off-road motorized vehicles on any portion of the Property consisting of streams, wetlands or bottomland forests or other environmentally sensitive portions of the Property except and only to the extent such use (a) is reasonably necessary to engage in permitted recreational activities, and (b) is performed in a manner that does not adversely affect the Conservation Values of the Property [For example, the proper and careful use of a four-wheeler over upland areas to access a deer stand, which would be permitted, as opposed to driving four wheelers throughout a sensitive wetland area or hardwood bottomland for enjoyment purposes, which would not be permitted]. All vehicle use on the Property shall be conducted in such a manner as to minimize its impact on the Conservation Values of the Property.

3.22 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, is allowed, provided that the traffic generated by the home business does not adversely impact the Purposes of this Conservation Easement.

3.23 Other Uses. Grantor shall have the right to use the Property for all other purposes that

are consistent with the Purposes of this Conservation Easement and are not inconsistent with the restrictions or limitations on use of the Property contained herein. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.24 Notice of Exercise of Rights. In the event Grantor has reserved any right herein the exercise of which may impair the Conservation Values of the Property, Grantor agrees to notify Grantee, in writing, before exercising such right, and Grantee shall have the right to disallow or modify such use so as to protect the Conservation Values of the Property.

4. **GRANTOR'S RIGHT TO CONVEY, MORTGAGE, ETC.** Grantor retains the right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

5. **GRANTEE'S RIGHTS.** To accomplish the Purposes of this Conservation Easement, Grantor grants and gives to Grantee the following additional rights:

5.1 Right to Enforce. The right to (a) prevent and correct violations of the terms of this Conservation Easement and (b) inspect the Property to determine if Grantor is complying with the covenants and purposes of this Easement. With advance written notice given by Grantee to Grantor, Grantee may enter the Property for the purposes outlined above in 5.1 (a) and (b), unless there is an ongoing or imminent violation that Grantee reasonably believes could substantially diminish or impair the Conservation Values of the Property, in which case Grantee shall have the right to immediately enter the Property without notice to Grantor. If Grantee finds a violation, it may at its discretion take appropriate legal action. Grantee shall give Grantor written notice of the alleged violation and 60 days to correct it, or to begin good faith efforts to correct in the event the violation is of a type that cannot be reasonably corrected within 60 days (the "cure period"), before filing any legal action. Notwithstanding the forgoing, where there is an ongoing or imminent violation that could substantially diminish or impair the Conservation Values of the Property, Grantee may dispense with the written notice and cure period and immediately file a legal action to correct the violation(s). If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

5.2 Discretionary Consent. Grantee's consent for activities otherwise prohibited or requiring Grantee's consent under Paragraph 3 hereof may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Paragraph 3 are deemed desirable by both Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring Grantee's consent shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the Purposes of this Conservation Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the Purposes of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement.

6. **MEDIATION; ARBITRATION.** Grantor and Grantee agree that the terms of this section shall control the method of resolving any dispute, controversy or claim arising out of or relating to this Conservation Easement.

(a) If a dispute arises out of or relates to this Conservation Easement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure. If the parties are unable to resolve the dispute by mediation, the parties shall submit the dispute to binding arbitration pursuant to paragraph (b) below.

(b) Grantor and Grantee agree that any dispute, controversy or claim arising out of or relating to this Conservation Easement, or the breach hereof, if not resolved pursuant to mediation as provided in paragraph (a) above, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

(c) Notwithstanding paragraphs (a) and (b) above, Grantor and Grantee shall have the right (before, during or after institution of mediation or arbitration proceedings) to seek a temporary restraining order, temporary or permanent injunction, or other equitable relief from a court of competent jurisdiction when there is an ongoing or imminent violation of this Conservation Easement that, if not immediately enjoined or restrained, could diminish or impair the Conservation Values of the Property or result in other immediate and irreparable injury, loss or damage to the party seeking such relief.

7. **RESPONSIBILITIES OF GRANTOR NOT AFFECTED.** This Conservation Easement is not intended to affect in any way any existing obligation of the Grantor as owner of the Property. Among other things, Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property and shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

8. **ACCESS.** This Conservation Easement conveys no right of access by the general public to any portion of the Property. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

9. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this Easement are not divisible and are assignable in whole but not in part. Grantee shall have the right to transfer or assign this Conservation Easement to any organization that at the time of transfer is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, and the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) or applicable state law, and the parties are unable to agree upon a substitute Grantee, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

10. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is

transferred by Grantor to any third party, Grantor shall notify Grantee in writing within thirty (30) days of such transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of Grantor to perform any act required by this Paragraph shall not impair or limit the validity or enforceability of this Conservation Easement or the transfer.

11. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Purposes of this Conservation Easement and shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Conservation Easement Act and any regulations promulgated pursuant to that law. Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

12. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

If this Conservation Easement is terminated through judicial action or condemnation and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantee shall not be entitled to a percentage of any proceeds from such judicial sale or condemnation that are attributable to the value of improvements made after the date of this Easement. The Grantee shall use the proceeds consistently with the conservation Purposes of this Conservation Easement.

13. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the Purposes of this Conservation Easement.

14. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Property.

15. **TITLE.** Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all mortgages, judgments, liens or other encumbrances which are superior in priority to this Conservation Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. **Any and all mortgages, liens or encumbrances must be subordinated to this Conservation Easement.**

16. NOTICES. Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

Walter H. Bundy, Jr.
9
Camden, SC 29020

To Grantee:

Congaree Land Trust
Post Office Box 232
Columbia, SC 29202
Attn: Executive Director

With a copy to:

President of Board of Directors
Congaree Land Trust
Post Office Box 232
Columbia, SC 29202

17. ENVIRONMENTAL CONDITION. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property in violation of applicable law.

18. SEVERABILITY. If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

19. PARTIES. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

20. RE-RECORDING. In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

21. MERGER. The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

22. SUBSEQUENT LIENS ON PROPERTY. No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

23. ACCEPTANCE. This Conservation Easement is not accepted by Grantee until such time as it has been properly signed, witnessed and acknowledged by Grantee on the spaces provided below.

24. FORCE MAJEURE. Nothing herein shall be construed to entitle Grantee to institute any proceedings against Grantor for any changes to the Property due to causes beyond the Grantor's control such as changes caused by fire, floods, storm or unauthorized wrongful acts of third persons.

25. WAIVER; ESTOPPEL. The failure by Grantee to notify Grantor of a breach or violation by Grantor or others of any restriction, limitation, term, obligation, covenant or agreement contained in this Conservation Easement shall not constitute a waiver by Grantee of the right to strictly enforce the terms of this Conservation Easement, including the right to require the correction or remedying by Grantor of such breach or violation. Grantor further waives and relinquishes all defenses of waiver, estoppel and laches with respect to any action by Grantee relating to any such breach or violation.

26. PARAGRAPH HEADINGS. Article, section and paragraph headings are solely for the purpose of reference and convenience and shall not alter, expand, modify, qualify or amend any term or provision contained herein.

27. ENTIRE AGREEMENT. This agreement represents the final fully integrated Conservation Easement between the parties hereto, and all other prior and contemporaneous oral and written agreements and understandings between the parties are excluded hereby.

28. GENDER; TENSE. All references herein to gender shall, where appropriate or necessary, include the masculine, feminine or neuter. All references to or uses of the singular tense or the plural tense shall, where appropriate or necessary, include reference to the other tense.

29. ADDITIONAL REMEDIES. The rights and remedies hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee in law or in equity for enforcement of this Conservation Easement. Notwithstanding anything to the contrary contained herein, Grantor agrees to immediately reimburse Grantee upon demand for all costs and expenses, including court costs and reasonable attorneys' fees, incurred by Grantee in connection with any violation by Grantor of the terms of this Conservation Easement. Such reimbursement obligation shall include, without limitation, any such costs and expenses incurred by Grantee in any legal action or proceeding (including administrative, equitable and appellate proceedings) to enforce the terms of this Conservation Easement upon a violation hereof by Grantor.

30. REAL PROPERTY INTEREST. This Conservation Easement constitutes a real property interest immediately vested in Grantee.

THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

31. LEGAL, TAX AND OTHER ADVICE. GRANTOR REPRESENTS THAT IT HAS CONSULTED GRANTOR'S ATTORNEY, ACCOUNTANT AND OTHER APPROPRIATE EXPERTS FOR ADVICE RELATING TO THIS CONSERVATION EASEMENT AND ANY POTENTIAL TAX BENEFITS THAT MAY INURE TO GRANTOR IN CONNECTION WITH THIS EASEMENT. GRANTOR WARRANTS, REPRESENTS AND AGREES THAT GRANTEE HAS GIVEN NO LEGAL OR OTHER EXPERT ADVICE TO GRANTOR AND THAT GRANTEE HAS MADE NO WARRANTY OR REPRESENTATION RELATING TO (A) THE VALUE OF THE PROPERTY OR METHODOLOGY OR TECHNIQUES USED OR USEFUL IN ASCERTAINING OR APPRAISING THE VALUE OF THE PROPERTY (EITHER BEFORE OR AFTER THE GRANTING OF THIS CONSERVATION EASEMENT), (B) ANY ENTITLEMENT TO TAX BENEFITS BY GRANTOR OR THE AMOUNT OF ANY SUCH BENEFITS, OR (C) WHETHER THE CONVEYANCE BY GRANTOR OF THIS CONSERVATION EASEMENT CONSTITUTES A "QUALIFIED CONSERVATION CONTRIBUTION," AS SUCH TERM IS DEFINED IN SECTION 170 (h) OF THE INTERNAL REVENUE CODE.

TO HAVE AND TO HOLD, this Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound, have set their hands and seals the day and year first above written.

Signed, sealed, and delivered in the
Presence of:

Witness

By: _____ (SEAL)
Walter H. Bundy, Jr.

Witness

THE CONGAREE LAND TRUST

Witness

By _____
Its: Executive Director

Witness

(CORPORATE SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Kershaw)

15389 BK1496 PG80

The foregoing Conservation Easement was acknowledged before me this 22nd day of December, 2003, by Walter H. Bundy, Jr..

Walter B. Bundy Jr
Notary Public for South Carolina
My Commission Expires: 1-10-13

(SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

The foregoing Conservation Easement was acknowledged before me this 15th day of December, 2003, by Ann R. Stringer, the Executive Director of The Congaree Land Trust, a South Carolina nonprofit corporation, on behalf of said entity.

K. Brooke Sahlinker
Notary Public for South Carolina
My Commission Expires: My Commission Expires
July 2, 2011

(SEAL)

EXHIBIT A

Legal Description

That tract of land located in Kershaw County, South Carolina, containing 439 acres, more or less, being more particularly described on pages 1 through 6 attached to this Exhibit.

The above described property is the same property conveyed to Walter H. Bundy, Jr., by deed of Bowater Timber 1, LLC, dated March 14, 2003, and recorded in Book 1316, page 143 on March 20, 2003.

Tax Map #367-00-00-002

ALSO that tract of land located in the State of South Carolina, County of Kershaw, containing 45.13 acres, more or less, and being more particularly described on page 7 attached to this Exhibit.

The above described property is the same property described in that deed of Nancy S. Bundy to W. H. Bundy, Jr., dated January 25, 2001, and recorded in Book 956, page 184 on February 14, 2001.

Tax Map #366-00-00-006

EXHIBIT A-1

TRACT: CDW-026800
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43, DeKalb Township, of Kershaw County, South Carolina, being Tract 1 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of Kershaw County, South Carolina, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner, being a corner common to this tract, Tract 2 and Tract 4 as shown on said plat and being also a corner common to DuPre's 6.2 acre tract and Rembert's 1 acre tract; running thence North 25 degrees 30 minutes West with the line of Tract 2 as shown on said plat, 3930 feet; more or less, to Swift Creek; thence South 54 degrees East with said creek 216 feet; thence South 83 degrees 30 minutes East with said creek 205 feet to the mouth of Shoe Make Branch; thence up said branch South 86 degrees East 100 feet, South 24 degrees 30 minutes East 184.5 feet and South 40 degrees 45 minutes East 103.5 feet to the South line of the property now or formerly owned by Jim Sweet; thence leaving said branch North 66 degrees East with Sweet's line 900 feet to an iron pin at an old corner and in Nelson's line; thence with Nelson's line and with the approximate high water line of the swamp line along Shoe Make Branch the following courses and distances; South 03 degrees 45 minutes West 153.5 feet, South 39 degrees 45 minutes East 88.3 feet, South 82 degrees East 93.7 feet, North 53 degrees 30 minutes East 116 feet, North 74 degrees east 87.3 feet, South 51 degrees 45 minutes East 73.7 feet, South 18 degrees East 132 feet, East 416.8 feet, South 201 feet, South 86 degrees 30 minutes East 172 feet, South 45 degrees East 129 feet, South 20 degrees East 208 feet, South 14 degrees East 119 feet, South 74 degrees East 175.2 feet, South 30 degrees 30 minutes East 142 feet, South 43 degrees East 335 feet, and South 23 degrees 30 minutes East 176 feet to an iron pin at an old corner; thence South 66 degrees 30 minutes West 121 feet to a 4-inch black gum on said branch; thence with said branch South 33 degrees 30 minutes East 114 feet, South 09 degrees East 165 feet to an iron pin; thence leaving said branch South 01 degree 15 minutes West with Wooten's line 1585.6 feet to an angle iron; the Northeast corner of Tract 3 as shown on said plat; thence with the line of said Tract 3, South 59 degrees 30 minutes West 445 feet to a corner, North 21 degrees West 462 feet to a corner and South 78 degrees West 990 feet to the Beginning, containing 153 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of H.E. Beard, Jr. and R.H. Cantey dated October 24, 1960, recorded in Book GA, page 517.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber 1, LLC from Bowater Incorporated by Deed dated November 27, 2001, and recorded in Book 1094, Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER 1, LLC

EXHIBIT A-2

TRACT: CDW-026900
KERSHAW COUNTY, SOUTH CAROLINA

All those certain tracts or parcels of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 2, Tract No. 3 and Tract No. 6 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said County, and being more fully described according to said plat as follows:

Tract No. 2

BEGINNING at an iron pin at an old corner, being a corner common to Tract No. 1, Tract No. 2 and Tract No. 4 shown on said plat and being also a corner common to B.C. DuPre's 6.2-acre tract and Audrey Rembert's 1-acre tract; running thence North 84 degrees West with DuPre's line 900 feet to an iron pin in an old corner, DuPre's Northwest corner; thence South 05 degrees 30 minutes West with DuPre's line 399 feet to an iron pin, DuPre's Southwest corner; thence South 81 degrees 15 minutes East 450 feet to an angle iron in the North line of Tract No. 4 shown on said plat; thence South 52 degrees 45 minutes West with the line of Tract No. 4, 680.2 feet to an iron pin at an old corner, being the Northeast corner of Tract No. 5 shown on said plat; thence North 26 degrees West 800 feet to an iron pin, Charles Wright's Southeast corner; thence North 26 degrees 30 minutes West with Wright's line 288.7 feet to an iron pin, Wright's Northeast corner; thence North 26 degrees West with the line of the Bennett Estates 2028.6 feet to an angle iron at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek, being a corner of Tract No. 6 shown on said plat; thence continuing North 26 degrees West, crossing said swamp, 841 feet, more or less, to the center of Swift Creek, being also a corner of said Tract No. 6; thence up and with the center of said creek North 48 degrees 45 minutes East 166.5 feet, North 41 degrees 30 minutes East 364 feet, North 54 degrees 30 minutes East 361 feet, North 52 degrees East 275 feet and North 72 degrees 30 minutes East 255 feet to the Northwest corner of Tract No. 1 shown on said plat; thence, South 25 degrees 30 minutes East 3930 feet to the Beginning, containing 113 acres, more or less.

Tract No. 3

BEGINNING at an iron pin located 320 feet North 78 degrees East from the Beginning corner of Tract No. 2 hereinabove described, being the easternmost corner of the Audrey Rembert 1-acre tract in the south line of Tract No. 1 shown on said plat; thence with the line of said Tract No. 1 North 78 degrees East 670 feet to a corner; South 21 degrees East 462 feet and North 59 degrees 30 minutes East 445 feet to an angle iron in the line of the lands of Wooten, being the Southeast corner of Tract No. 1; thence South 04 degrees 30

minutes West 1706 feet to an angle iron in Boykin's line; thence North 78 degrees 15 minutes West 1077 feet to an iron pin, a corner of Tract No. 4 shown on said plat; thence with the line of Tract No. 4 North 03 degrees 30 minutes East 904 feet, South 62 degrees 30 minutes West 298 feet and North 15 degrees 20 minutes West 473 feet to the South corner of said Rembert Tract; thence North 35 degrees 42 minutes East with Rembert's line 409.6 feet to the Beginning.

EXCEPTING AND RESERVING out of the above described Tract No. 3, a 6-acre tract more fully described as follows: Beginning at an iron pin located North 60 degrees 30 minutes East 379.7 feet from a corner of Tract No. 4 shown on said plat; running thence North 17 degrees 45 minutes East 416 feet; thence North 75 degrees 15 minutes West 92 feet; thence North 17 degrees 45 minutes East 26 feet; thence South 71 degrees 30 minutes East 92.1 feet; thence North 17 degrees 45 minutes East 625 feet to an iron pin; thence South 72 degrees 15 minutes East 292 feet to an iron pin; thence South 22 degrees 42 minutes West 1064 feet to an iron pin; thence North 72 degrees 15 minutes West 200 feet to the Beginning.

The above described Tract No. 3 less the exception, contains 36 acres, more or less. There is included within the above described Tract No. 3 a parcel 10' x 12' containing three graves and this conveyance is made subject thereto.

Tract No. 6

BEGINNING at an iron pin at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek in the line of Tract No. 2 hereinabove described, being also a corner of the lands of the Bennett Estate; thence with said high water line and the line of the lands of the Bennett Estate and the line of the lands of Perry, along the various courses and distances more fully shown between point "A" and point "B" on said plat, a total distance of 3812.1 feet to an iron pin at an old corner in the line of the lands of Capehart; thence North 09 degrees 45 minutes East with Capehart's line 681.5 feet to an iron pin at a branch, being point "C" shown on said plat; thence down and with the meanders of said branch to Swift Creek and continuing down and with Swift Creek, along the various courses and distances more fully shown on said plat, a total distance of 3606.5 feet to the Northwest corner of Tract No. 2 shown on said plat; thence South 26 degrees East 841 feet, more or less, to the Beginning, containing 30 acres, more or less.

Additional Property

All that certain tract or parcel of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 5 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner in the West line of Tract No. 4 shown on said plat and being the Northeast corner of the lands now or formerly owned by Boykin;

EXHIBIT A-4

running thence with Boykin's line South 88 degrees 45 minutes West 2050.4 feet to an iron pin and South 86 degrees 15 minutes West 1300 feet to an iron pin at an old corner; thence North 22 degrees West 160 feet to an iron pin at an old corner; thence North 82 degrees East 3250 feet to an iron pin, being a corner common to Tract No. 2 and Tract No. 4 shown on said plat and the Northeast corner of the property herein conveyed; thence South 22 degrees 15 minutes East with the West line of Tract No. 4, 503 feet to the Beginning, containing 23 acres, more or less.

Additional Property

All that parcel or tract of land situated in School District No. 43, DeKalb Township, Kershaw County, South Carolina, containing 1 acre, more or less, and being more fully shown on a plat of property of Catawba Timber Company, by R.H. Marett, R.L.S., dated September 26, 1960, and recorded in Plat Book 27, page 39, in the Office of the Clerk of Court of Kershaw County, South Carolina, and designated thereon as Parcel "B" and being triangular in shape and bounded on all sides by lands of Catawba Timber Company, and being more fully described as BEGINNING at a corner common to Tracts 1, 2, 4, and this property, as shown on the above refered to plat; thence with the line of Catawba Timber Company North 78 degrees East 320 feet to a metal fence post; thence continuing with the line of Catawba Timber Company South 35 degrees 42 minutes West 409.6 feet to a metal fence post, a corner common to this tract, Tract No. 3, and a point in the northeast line of Tract No. 4; thence North 15 degrees 20 minutes West with the line of Catawba Timber Company 275 feet to a metal fence post and the point of Beginning.

Being the same tracts of land conveyed to Catawba Timber Company by deed of Camden Equipment Company, Inc. and R.H. Cantey dated October 31, 1960, recorded in Book GA, page 523, by deed of Camden Equipment Company dated December 20, 1960, recorded in Book GA, page 561; and by deed of R.H. Cantey dated May 13, 1968, recorded in Book HU, page 1374.

All the Property described above contains 203 acres, more or less.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated December 27, 2001, and recorded in Book 1091 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A-5

TRACT: CDW-027000
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being Tract 4 shown on the plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county as follows:

BEGINNING at a point in the center of a road marked by an iron pin on the East side of said road and being 47 feet North 78 degrees 15 minutes West from the Southwest corner of Tract 3 as shown on said plat; running thence South 06 degrees 42 minutes West with said road 1066 feet to an iron pin on the East side of said road; thence South 51 degrees 37 minutes West, partially with said road 575 feet to an iron pin on the East side of another road and in the line of the land now or formerly owned by Boykin; thence North 19 degrees 15 minutes East, partially with said road and with Boykin's line 1760 feet to an iron pin, being the Southeast corner of Tract 5 shown on said plat; thence North 22 degrees 15 minutes West with the line of Tract 5, 503 feet to an iron pin, being the Northeast corner of Tract 5 and the Southwest corner of Tract 2 as shown on said plat; thence North 52 degrees 45 minutes East with the line of Tract 2, 680.2 feet to an iron pin at a corner of the B. C. Dupre 6.2 acre tract; thence continuing North 52 degrees 45 minutes East with Dupre's line 610.6 feet to an iron pin, being a corner common to Tract 2 and Tract 1 as shown said plat and being also a corner common to the 6.2 acre tract owned by B. C. Dupre and the 1-acre tract owned by Audrey Rembert; thence South 15 degrees 20 minutes East with Rembert's line and the line of Tract 3, 746 feet to a corner of Tract 3 as shown on said plat; thence North 62 degrees 33 minutes East with the line of Tract 3, 293 feet to a corner; thence South 03 degrees 30 minutes West with the line of Tract 3, 904 feet to a corner in Boykin's line, being the southwest corner of Tract 3; thence North 78 degrees 15 minutes West with Boykin's line 47 feet to the Beginning, containing 56 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of James L. Sweet dated October 19, 1960, recorded in Book GA, page 516.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated December 27, 2001, and recorded in Book 1078 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A-6

TRACT: CDW-035600
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being more fully described according to a plat of a survey made by R.H. Marett, Registered Surveyor, on November 22, 1960, a copy of which appears of record in Plat Book 28, page 67, in the records of Kershaw County, as follows:

BEGINNING at an iron pin on the North side of a road and in the line of other lands of Catawba Timber Company, said iron pin being 228 feet North 51 degrees 37 minutes East from the Southwest corner of the lands of said timber company; running thence North 77 degrees East with a new line severing the lands of the grantor, in all 1686 feet to an iron pin in the line of the lands of Letcher Boykin; thence North 15 minutes West 635.3 feet to an iron pin; thence North 78 degrees 15 minutes West, passing a corner common to Letcher Boykin and Catawba Timber Company at 185.3 feet, in all 1262.3 feet to the center of a road; thence South 06 degrees 42 minutes West with said road and the line of Catawba Timber Company 1066 feet to an iron pin on the East side of said road, a corner of said Timber Company; thence South 51 degrees 37 minutes West with said road and the line of said Timber Company 347 feet to the Beginning, containing 28 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of Tom Boykin dated December 12, 1960, recorded in Book GA, page 551.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber 1, LLC from Bowater Incorporated by Deed dated November 27 2001, and recorded in Book 894 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER 1, LLC

EXHIBIT A-7

Legal Description, Exhibit "A"

All that piece, parcel or tract of land, with the improvements thereon lying and being situate in the State of South Carolina, County of Kershaw, Northeast of the intersection of U.S. Highway 521 and Secondary Highway No. 23, a short distance from the Kershaw County-Sumter County line, containing 45.13 acres, more or less, and is bounded as follows: North by property of C.B. Boykin and by property of William, Baynard Boykin; East and South by property of Bowater Incorporated; and West by property of C.B. Boykin.

The above described tract of land is more particularly shown on that plat prepared by Daniel D. Riddick, R.L.S., dated March 31, 1978 and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book 36 at Page 311.

The above described tract of is the same conveyed to W.H. Bundy, Jr. and Nancy S. Bundy by deed of Richard M. Driscoll and Francis A. Driscoll, dated February 28, 1990 and recorded in the Office of the Clerk of Court for Kershaw County on March 2, 1990 in Deed Book JG at Page 2403.

ALSO, a non-exclusive easement of ingress and egress being 30 feet in width leading from Saxton Road (a County maintained unpaved access road that leads from Swift Creek Road) more particularly shown on that plat prepared for Catawba Timber Company by C.A. Holland, Surveyors, Inc., dated March 27, 1989 and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book 38 at Page 1386.

The above described Easement is the same conveyed W.H. Bundy, Jr. and Nancy S. Bundy by deed of Richard M. Driscoll and Francis A. Driscoll dated March 1, 1990 and recorded March 2, 1990 in the Office of the Clerk of Court for Kershaw County in Deed Book JG at Page 2404.

TMS #366-00-00-006

Grantee's Address:

...d this 23rd Day
December 2003

367-00-00-002

018861 SRS-CP

3239 BK1316 PG143

000003239
RECORDED 03/20/2003 10:35:32AM
Bk:01316 Ps:00143 Pages:11
Fee:15.00 State:1246.70
County:527.45 Exempt:_____
Billie O. McLeod, Register of Deeds
Kershaw County, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

LIMITED WARRANTY DEED

(Kershaw Co., SC)

KNOW ALL MEN BY THESE PRESENTS, that BOWATER TIMBER I, LLC, a Delaware limited liability company (hereinafter called "Grantor") for due consideration from WALTER H. BUNDY, JR. (hereinafter called "Grantee") has granted, bargained, sold and released; and by these presents, does grant, bargain, sell and release unto said Grantee whose address is P. O. BOX 1559, Camden, South Carolina 29020, his heirs, successors and assigns that certain property being more particularly described as follows:

SEE ATTACHED EXHIBIT "A" WHICH IS MADE A PART HEREOF

SUBJECT to the matters set forth on Exhibit "B" attached hereto and by reference made a part hereof;

TOGETHER with any and all rights, members, structures, easements, alleyways, appurtenances, improvements, shrubbery, trees, plants, fixtures, or privileges located thereon or appertaining thereto (hereinafter referred to as the "Property");

TO HAVE AND TO HOLD all and singular the Property before mentioned unto said Grantee, his heirs, successors and assigns forever; so that neither the Grantor nor any person in its name and behalf, shall or will hereafter claim or demand any right or title to the Property or any part thereof, but they and every one of them shall by these presents be excluded and forever barred; and

GRANTOR hereby binds itself and its successors to warrant and forever defend all and singular the said premises unto the said Grantee, and his heirs, successors and assigns, against the lawful claims of all persons whomsoever claiming by, through or under Grantor, but not as to those claiming otherwise, except as hereinabove stated.

Recorded this 20th Day
of March 2003
In Book AH Page 97
Kevin H Yarbrough
Auditor Kershaw County

[SIGNATURE ON FOLLOWING PAGE]

Grantee's Address:
PO Box 1559
Camden, SC 29020

KERSHAW COUNTY ASSESSOR
PART OF #
TAX MAP #367-00-00-002
CALENDAR YEAR 03 TAX YEAR 04
CLARENCE M. CAUDILL III, ASSESSOR BY AFB

FILED FOR RECORD 03/20/2003
AT 10:35A BOOK 01316 PAGE 00143
Billie O. McLeod -Reg of Deeds - RMC
Kershaw County Government Ctr 000003239

EXHIBIT C

WITNESS the execution hereof by Grantor this 14 day of March, 2003.

Bowater Timber 1, L.L.C.
By: IPC Industries, Inc.
As its: Manager

By: _____
Kathy P. Sherman
Vice President

WITNESSED:

_____

_____

STATE OF Alabama)
)
COUNTY OF Mobile)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantor, BOWATER TIMBER 1, L.L.C., by IPC Industries, Inc., by its manager and member, sign, seal and as the Grantor's act and deed, deliver the within written Limited Warranty Deed for the uses and purposes therein mentioned; and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.

_____ (L.S.)

SWORN to before me this
14 day of March, 2003.

_____ (L.S.)
Notary Public for Alabama
My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE MY COMMISSION EXPIRES: May 21, BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT A

TRACT: CDW-026800
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43, DeKalb Township, of Kershaw County, South Carolina, being Tract 1 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of Kershaw County, South Carolina, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner, being a corner common to this tract, Tract 2 and Tract 4 as shown on said plat and being also a corner common to DuPre's 6.2 acre tract and Rembert's 1 acre tract; running thence North 25 degrees 30 minutes West with the line of Tract 2 as shown on said plat, 3930 feet, more or less, to Swift Creek; thence South 54 degrees East with said creek 216 feet; thence South 83 degrees 30 minutes East with said creek 205 feet to the mouth of Shoe Make Branch; thence up said branch South 86 degrees East 100 feet, South 24 degrees 30 minutes East 184.5 feet and South 40 degrees 45 minutes East 103.5 feet to the South line of the property now or formerly owned by Jim Sweet; thence leaving said branch North 66 degrees East with Sweet's line 900 feet to an iron pin at an old corner and in Nelson's line; thence with Nelson's line and with the approximate high water line of the swamp line along Shoe Make Branch the following courses and distances; South 03 degrees 45 minutes West 153.5 feet, South 39 degrees 45 minutes East 88.3 feet, South 82 degrees East 93.7 feet, North 53 degrees 30 minutes East 116 feet, North 74 degrees east 87.3 feet, South 51 degrees 45 minutes East 73.7 feet, South 18 degrees East 132 feet, East 416.8 feet, South 201 feet, South 86 degrees 30 minutes East 172 feet, South 45 degrees East 129 feet, South 20 degrees East 208 feet, South 14 degrees East 119 feet, South 74 degrees East 175.2 feet, South 30 degrees 30 minutes East 142 feet, South 43 degrees East 335 feet, and South 23 degrees 30 minutes East 176 feet to an iron pin at an old corner; thence South 66 degrees 30 minutes West 121 feet to a 4-inch black gum on said branch; thence with said branch South 33 degrees 30 minutes East 114 feet, South 09 degrees East 165 feet to an iron pin; thence leaving said branch South 01 degree 15 minutes West with Wooten's line 1585.6 feet to an angle iron; the Northeast corner of Tract 3 as shown on said plat; thence with the line of said Tract 3, South 59 degrees 30 minutes West 445 feet to a corner, North 21 degrees West 462 feet to a corner and South 78 degrees West 990 feet to the Beginning, containing 153 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of H.E. Beard, Jr. and R.H. Cantey dated October 24, 1960, recorded in Book GA, page 517.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated November 27, 2006 and recorded in Book 1084 Page 1 in Kershaw County, South Carolina.

:ODMA\PCDOCS\ATL\531978\1
LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT A

TRACT: CDW-026900
KERSHAW COUNTY, SOUTH CAROLINA

All those certain tracts or parcels of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 2, Tract No. 3 and Tract No. 6 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said County, and being more fully described according to said plat as follows:

Tract No. 2

BEGINNING at an iron pin at an old corner, being a corner common to Tract No. 1, Tract No. 2 and Tract No. 4 shown on said plat and being also a corner common to B.C. DuPre's 6.2-acre tract and Audrey Rembert's 1-acre tract; running thence North 84 degrees West with DuPre's line 900 feet to an iron pin in an old corner, DuPre's Northwest corner; thence South 05 degrees 30 minutes West with DuPre's line 399 feet to an iron pin, DuPre's Southwest corner; thence South 81 degrees 15 minutes East 450 feet to an angle iron in the North line of Tract No. 4 shown on said plat; thence South 52 degrees 45 minutes West with the line of Tract No. 4, 680.2 feet to an iron pin at an old corner, being the Northeast corner of Tract No. 5 shown on said plat; thence North 26 degrees West 800 feet to an iron pin, Charles Wright's Southeast corner; thence North 26 degrees 30 minutes West with Wright's line 288.7 feet to an iron pin, Wright's Northeast corner; thence North 26 degrees West with the line of the Bennett Estates 2028.6 feet to an angle iron at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek, being a corner of Tract No. 6 shown on said plat; thence continuing North 26 degrees West, crossing said swamp, 841 feet, more or less, to the center of Swift Creek, being also a corner of said Tract No. 6; thence up and with the center of said creek North 48 degrees 45 minutes East 166.5 feet, North 41 degrees 30 minutes East 364 feet, North 54 degrees 30 minutes East 361 feet, North 52 degrees East 275 feet and North 72 degrees 30 minutes East 255 feet to the Northwest corner of Tract No. 1 shown on said plat; thence, South 25 degrees 30 minutes East 3930 feet to the Beginning, containing 113 acres, more or less.

Tract No. 3

BEGINNING at an iron pin located 320 feet North 78 degrees East from the Beginning corner of Tract No. 2 hereinabove described, being the easternmost corner of the Audrey Rembert 1-acre tract in the south line of Tract No. 1 shown on said plat; thence with the line of said Tract No. 1 North 78 degrees East 670 feet to a corner; South 21 degrees East 462 feet and North 59 degrees 30 minutes East 445 feet to an angle iron in the line of the lands of Wooten, being the Southeast corner of Tract No. 1; thence South 04 degrees 30

minutes West 1706 feet to an angle iron in Boykin's line; thence North 78 degrees 15 minutes West 1077 feet to an iron pin, a corner of Tract No. 4 shown on said plat; thence with the line of Tract No. 4 North 03 degrees 30 minutes East 904 feet, South 62 degrees 30 minutes West 298 feet and North 15 degrees 20 minutes West 473 feet to the South corner of said Rembert Tract; thence North 35 degrees 42 minutes East with Rembert's line 409.6 feet to the Beginning.

EXCEPTING AND RESERVING out of the above described Tract No. 3, a 6-acre tract more fully described as follows: Beginning at an iron pin located North 60 degrees 30 minutes East 379.7 feet from a corner of Tract No. 4 shown on said plat; running thence North 17 degrees 45 minutes East 416 feet; thence North 75 degrees 15 minutes West 92 feet; thence North 17 degrees 45 minutes East 26 feet; thence South 71 degrees 30 minutes East 92.1 feet; thence North 17 degrees 45 minutes East 625 feet to an iron pin; thence South 72 degrees 15 minutes East 292 feet to an iron pin; thence South 22 degrees 42 minutes West 1064 feet to an iron pin; thence North 72 degrees 15 minutes West 200 feet to the Beginning.

The above described Tract No. 3 less the exception, contains 36 acres, more or less. There is included within the above described Tract No. 3 a parcel 10' x 12' containing three graves and this conveyance is made subject thereto.

Tract No. 6

BEGINNING at an iron pin at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek in the line of Tract No. 2 hereinabove described, being also a corner of the lands of the Bennett Estate; thence with said high water line and the line of the lands of the Bennett Estate and the line of the lands of Perry, along the various courses and distances more fully shown between point "A" and point "B" on said plat, a total distance of 3812.1 feet to an iron pin at an old corner in the line of the lands of Capehart; thence North 09 degrees 45 minutes East with Capehart's line 681.5 feet to an iron pin at a branch, being point "C" shown on said plat; thence down and with the meanders of said branch to Swift Creek and continuing down and with Swift Creek, along the various courses and distances more fully shown on said plat, a total distance of 3606.5 feet to the Northwest corner of Tract No. 2 shown on said plat; thence South 26 degrees East 841 feet, more or less, to the Beginning, containing 30 acres, more or less.

Additional Property

All that certain tract or parcel of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 5 shown on a plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner in the West line of Tract No. 4 shown on said plat and being the Northeast corner of the lands now or formerly owned by Boykin;

running thence with Boykin's line South 88 degrees 45 minutes West 2050.4 feet to an iron pin and South 86 degrees 15 minutes West 1300 feet to an iron pin at an old corner; thence North 22 degrees West 160 feet to an iron pin at an old corner; thence North 82 degrees East 3250 feet to an iron pin, being a corner common to Tract No. 2 and Tract No. 4 shown on said plat and the Northeast corner of the property herein conveyed; thence South 22 degrees 15 minutes East with the West line of Tract No. 4, 503 feet to the Beginning, containing 23 acres, more or less.

Additional Property

All that parcel or tract of land situated in School District No. 43, DeKalb Township, Kershaw County, South Carolina, containing 1 acre, more or less, and being more fully shown on a plat of property of Catawba Timber Company, by R.H. Marett, R.L.S., dated September 26, 1960, and recorded in Plat Book 27, page 39, in the Office of the Clerk of Court of Kershaw County, South Carolina, and designated thereon as Parcel "B" and being triangular in shape and bounded on all sides by lands of Catawba Timber Company, and being more fully described as BEGINNING at a corner common to Tracts 1, 2, 4, and this property, as shown on the above referred to plat; thence with the line of Catawba Timber Company North 78 degrees East 320 feet to a metal fence post; thence continuing with the line of Catawba Timber Company South 35 degrees 42 minutes West 409.6 feet to a metal fence post, a corner common to this tract, Tract No. 3, and a point in the northeast line of Tract No. 4; thence North 15 degrees 20 minutes West with the line of Catawba Timber Company 275 feet to a metal fence post and the point of Beginning.

Being the same tracts of land conveyed to Catawba Timber Company by deed of Camden Equipment Company, Inc. and R.H. Cantey dated October 31, 1960, recorded in Book GA, page 523, by deed of Camden Equipment Company dated December 20, 1960, recorded in Book GA, page 561; and by deed of R.H. Cantey dated May 13, 1968, recorded in Book HU, page 1374.

All the Property described above contains 203 acres, more or less.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber 1, LLC from Bowater Incorporated by Deed dated November 27, 2001, and recorded in Book 1098 Page 1 in Kershaw County, South Carolina.

::ODMA\PCDOCS\ATL\531978\1
LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER 1, LLC

EXHIBIT A

TRACT: CDW-027000
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being Tract 4 shown on the plat of a survey made by R.H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county as follows:

BEGINNING at a point in the center of a road marked by an iron pin on the East side of said road and being 47 feet North 78 degrees 15 minutes West from the Southwest corner of Tract 3 as shown on said plat; running thence South 06 degrees 42 minutes West with said road 1066 feet to an iron pin on the East side of said road; thence South 51 degrees 37 minutes West, partially with said road 575 feet to an iron pin on the East side of another road and in the line of the land now or formerly owned by Boykin; thence North 19 degrees 15 minutes East, partially with said road and with Boykin's line 1760 feet to an iron pin, being the Southeast corner of Tract 5 shown on said plat; thence North 22 degrees 15 minutes West with the line of Tract 5, 503 feet to an iron pin, being the Northeast corner of Tract 5 and the Southwest corner of Tract 2 as shown on said plat; thence North 52 degrees 45 minutes East with the line of Tract 2, 680.2 feet to an iron pin at a corner of the B. C. Dupre 6.2 acre tract; thence continuing North 52 degrees 45 minutes East with Dupre's line 610.6 feet to an iron pin, being a corner common to Tract 2 and Tract 1 as shown said plat and being also a corner common to the 6.2 acre tract owned by B. C. Dupre and the 1-acre tract owned by Audrey Rembert; thence South 15 degrees 20 minutes East with Rembert's line and the line of Tract 3, 746 feet to a corner of Tract 3 as shown on said plat; thence North 62 degrees 33 minutes East with the line of Tract 3, 293 feet to a corner; thence South 03 degrees 30 minutes West with the line of Tract 3, 904 feet to a corner in Boykin's line, being the southwest corner of Tract 3; thence North 78 degrees 15 minutes West with Boykin's line 47 feet to the Beginning, containing 56 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of James L. Sweet dated October 19, 1960, recorded in Book GA, page 516.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber 1, LLC from Bowater Incorporated by Deed dated January 27, 2001, and recorded in Book 1018 Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER 1, LLC

EXHIBIT A

TRACT: CDW-035600
KERSHAW COUNTY, SOUTH CAROLINA

All that certain tract or parcel of land situated in School District 43 of Kershaw County, South Carolina, being more fully described according to a plat of a survey made by R.H. Marett, Registered Surveyor, on November 22, 1960, a copy of which appears of record in Plat Book 28, page 67, in the records of Kershaw County, as follows:

BEGINNING at an iron pin on the North side of a road and in the line of other lands of Catawba Timber Company, said iron pin being 228 feet North 51 degrees 37 minutes East from the Southwest corner of the lands of said timber company; running thence North 77 degrees East with a new line severing the lands of the grantor, in all 1686 feet to an iron pin in the line of the lands of Letcher Boykin; thence North 15 minutes West 635.3 feet to an iron pin; thence North 78 degrees 15 minutes West, passing a corner common to Letcher Boykin and Catawba Timber Company at 185.3 feet, in all 1262.3 feet to the center of a road; thence South 06 degrees 42 minutes West with said road and the line of Catawba Timber Company 1066 feet to an iron pin on the East side of said road, a corner of said Timber Company; thence South 51 degrees 37 minutes West with said road and the line of said Timber Company 347 feet to the Beginning, containing 28 acres, more or less.

Being the same property as conveyed to Catawba Timber Company by deed of Tom Boykin dated December 12, 1960, recorded in Book GA, page 551.

Reference is made to those merger documents into Bowater Incorporated recorded in Book IR, page 1262, and Book 20, page 34.

Tax Map Number: 367-00-00-002

Being the same property as conveyed to Bowater Timber I, LLC from Bowater Incorporated by Deed dated November 27 2001, and recorded in Book 994, Page 1 in Kershaw County, South Carolina.

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LEGAL DESCRIPTION FOR KERSHAW COUNTY, SC – BOWATER TIMBER I, LLC

EXHIBIT B

PERMITTED ENCUMBRANCES
(KERSHAW COUNTY, SOUTH CAROLINA –TRACT 313300)

The following encumbrances affect each tract listed on Exhibit "A":

1. Taxes for the year 2003 which are a lien, but not yet due and payable, and taxes for all subsequent years.

2. Rights of the public to use for vehicular and pedestrian access that portion of the property conveyed herein with the boundaries of any public road or highway.

3. Rights of upper and lower riparian owners in and to the continued uninterrupted flow of the waters of any creeks, streams, or branches affecting the insured premises as shown on a plat recorded in Plat Book 27, page 39.

The following encumbrances affect only the specific tract listed:

CDW-026800:

None.

CDW-026900:

4. Easement to Black River Electric Cooperatives, Inc., recorded in Book JG, page 2401.

5. Easement to Richard M. Driscoll and Frances A. Driscoll, recorded in Book JG, page 2402.

CDW-027000:

6. Easement to Black River Electric Cooperatives, Inc., recorded in Book JG, page 2401.

7. Easement to Richard M. Driscoll and Frances A. Driscoll, recorded in Book JG, page 2402.

CDW-035600:

None.

3239 BK1316 PG152

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF KERSHAW)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Tract CDW-026800 and Tract CDW-026900 and Tract CDW-027000 439 acres on Saxon Road, bearing Kershaw County Tax Map Number 367-00-00-002, and interest was transferred by Bowater Timber I, LLC to Walter H. Bundy, Jr. on March 14, 2003.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity,

or is a transfer to a trust or as a distribution to a trust beneficiary.

(c)_____exempt from the deed recording fee because (See information section of Affidavit):

_____

(if exempt, please skip items 4-7 and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or 3(b) above has been checked (See Information section of this affidavit.)

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 479,160.00.

(b)_____ The fee is computed on the fair market value of the realty which is _____

(c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes_____ or No_____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $479,160.00
(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 479,160.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is $1,774.15.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction.

Moultrie B. Burns, Jr
Print or Type Name Here

SWORN to before me this 19
day of March, 2003.

Notary Public for South Carolina
My Commission Expires: 9-24-08

Tract No. 269 (Additional)

HU1374

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, That

I, R. H. CANTEY, of Kershaw County in the State aforesaid, in consideration of the sum of One Hundred and No/100 ($100.00) Dollars, to me in hand paid at and before the sealing and delivery of these Presents by CATAWBA TIMBER COMPANY, a Delaware corporation with its principal office at Catawba, South Carolina, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said CATAWBA TIMBER COMPANY all that certain tract or parcel of land situated as follows:

All that parcel or tract of land situated in School District No. 43, DeKalb Township, Kershaw County, South Carolina, containing 1 acre, more or less, and being more fully shown on a plat of property of Catawba Timber Company, by R. H. Marett, R.L.S., dated September 26, 1960, and recorded in Plat Book 27, page 39, in the Office of the Clerk of Court of Kershaw County, South Carolina, and designated thereon as Parcel "B" and being triangular in shape and bounded on all sides by lands of Catawba Timber Company, and being more fully described as BEGINNING at a corner common to Tracts 1, 2, 4, and this property, as shown on the above referred to plat; thence with the line of Catawba Timber Company North 78° East 320 feet to a metal fence post; thence continuing with the line of Catawba Timber Company South 35° 42' West 409.6 feet to a metal fence post, a corner common to this tract, Tract No. 3, and a point in the northeast line of Tract No. 4; thence North 15° 20' West with the line of Catawba Timber Company 275 feet to a metal fence post and the point of Beginning.

THIS BEING all the property acquired by the Grantor herein by deed from Grover C. Rush, Delinquent Tax Collector of Kershaw County, dated November 29, 1963, and recorded in Deed Book GU, page 433, in the Office of the Clerk of Court of Kershaw County, South Carolina.

This conveyance is SUBJECT to all existing easements and rights of way for public roads and highways and public utilities, if any, extending into, through, over, or across the above described property.

Catawba Timber Company assumes and agrees to pay all taxes assessed against the above described property for the year 1968.

EXHIBIT E

Form A24-SC-2

South Carolina

TOGETHER with all and singular the rights. Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the Premises before mentioned unto said CATAWBA TIMBER COMPANY, its Successors and Assigns, forever.

AND I do hereby bind myself . my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said CATAWBA TIMBER COMPANY, its Successors and Assigns, against myself and my Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand and seal . this 13th day of May in the year of our Lord one thousand nine hundred and sixty-eight and in the one hundred ~~and~~ ninety-second year of the Independence of the United States of America.

Signed, sealed and delivered in the presence of

Hazel M. Williams

Annie P. Truesdale

R. H. Cantey (L. S.)

THE STATE OF SOUTH CAROLINA

KERSHAW COUNTY

PERSONALLY appeared before me Hazel M. Williams and made oath that s he saw the within named R. H. Cantey sign, seal and as his act and deed deliver the within written deed, and that s he with Annie P. Truesdale witness the execution thereof.

SWORN TO before me this 13th day of May A. D. 19

Hazel M. Williams

Annie P. Truesdale (L. S.)

Notary Public for South Carolina

5R+K,
1612

I hereby certify that the within Deed was filed for record in my office at 2:26 P.M. o'clock on the 13th day of May 19 68, and was immediately entered upon the proper indexes and duly recorded in book HII of Deeds, page 1374

Clerk of County Court, Marion County, S.C.

Recorded this 13th Day
of May 1968
In Book 4 Page 235
Estelle L. Gilmore
Clerk of Court Marion County

STEVE S. KELLY, Marion County Treasurer

Recorded December 29, 1960 at 11:46 AM

Title to Cemetery lot at "Quaker Burying Ground," Camden, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

KNOW ALL MEN BY THESE PRESENTS, That The Cemetery Association of Camden... in the State and County aforesaid, in consideration of the sum of Nine Hundred Thirty-six and No/100 ($936.00) - - - - - - Dollars paid by David R. Williams have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said David R. Williams all that lot of land in the town of Camden, in the State aforesaid, in the limits of the said Cemetery Grounds of the said Association, fronting Northwest on Quaker Avenue a distance of Thirty-six (36) feet, and extending back Southeastwardly therefrom with a uniform width to a depth of Forty (40) feet, containing One Thousand Four Hundred Forty (1440) square feet, and bound as follows: NORTHWEST by Quaker Avenue aforesaid; NORTHEAST by premises of The Cemetery Association of Camden; SOUTHEAST by premises of The Cemetery Association of Camden and SOUTHWEST by premises of The Cemetery Association of Camden, all as shown on that plat entitled, "Plat of a lot in the Cemetery to be conveyed to David R. Williams", dated September 30th, 1960, by A. B. Boykin, Surveyor, and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 2F, at page 79.

To have and to hold the said lot, unto the said David R. Williams, his heirs and assigns forever, as a burial ground and for no other purpose, and subject to the rules by-laws and regulations of said Association and under its supervision and control.

Witness the hand and seal of The President of the Cemetery Association of Camden, the Executive Committee consenting to the same, this 31st day of October A. D., 1960

Signed and sealed in the presence of

The Cemetery Association of Camden

Faith de Loach
John K. de Loach

by Margaret E. Trotter (L. S.)
President.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

Personally appeared before me Faith de Loach and made oath that she saw the within-named Margaret E. Trotter, President of the Cemetery Association of Camden, sign, seal and as its act and deed deliver the within written deed and that she with John K. de Loach witnessed the execution thereof.

Sworn to before me this 31st day of October 1960)
John K. de Loach (L.S.)
N.P.Seal NOTARY PUBLIC FOR SOUTH CAROLINA

Faith de Loach
$2.00 S. C. Stamps
1.10 Fed. Rev.

Recorded December 29, 1960 at 12:02 PM

Tract No. 269 (Additional Property)

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, That Camden Equipment Company, Inc., a South Carolina corporation with offices at Camden, South Caroline, and R. H. Cantey of Camden, in the State aforesaid, in consideration of the sum of One Thousand Eight Hundred Seventeen and No/100 ($1,817.00) Dollars, to us in hand paid at and before the sealing and delivery of these Presents by CATAWBA TIMBER COMPANY, a Delaware corporation with its principal office at Catawba, South Carolina, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said CATAWBA TIMBER COMPANY all that certain tract or parcel of land situated.

In School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 5 shown on a plat of a survey made by R. E. Barrett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said county, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner in the West line of Tract No. 4 shown on said plat and being the Northeast corner of the lands now or formerly owned by Boykin; running thence with Boykin's line South 88 degrees 45 minutes West 2050.4 feet to an iron pin and South 86 degrees 15 minutes West 1300 feet to an iron pin at an old corner; thence North 22 degrees West 160 feet to an iron pin at an old corner; thence North 82 degrees East 3250 feet to an iron pin, being a corner common to Tract No. 2 and Tract No. 4 shown on said plat and the Northeast corner of the property herein conveyed; thence South 22 degrees 15 minutes East with the West line of Tract No. 4, 503 feet to the Beginning, containing 23 acres, more or less.

Being the same property, a 3/4 undivided interest in which was conveyed to R. H. Cantey and Camden Equipment Company, Inc., by deed from H. Benthall Marshall, Jr., dated June 26, 1958, recorded in Book FV, page 247, in the records of Kershaw County, South Carolina, and a 1/4 undivided interest which was conveyed to R. H. Cantey and Camden Equipment Company, Inc. by deed from H. Benthall Marshall, Jr., dated July 8, 1960, recorded in Book GE, page 408, in the records of said county. Reference is also made to the quitclaim deed from the heirs of T. C. Coxe to R. H. Cantey and Camden Equipment Company dated September 3, 1960, recorded in Book GA, page 543, in the records of said county.

SUBJECT to any public roadways or rights of way extending into, throug, over or across the above described property.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto said CATAWBA

EXHIBIT F

TIMBER COMPANY, its successors and assigns, forever.

AND we do hereby bind ourselves, our successors, heirs, assigns, executors and administrators, to warrant and forever defend all and singular the said premises unto the said CATAWBA TIMBER COMPANY, its successors and assigns, against us and our successors, heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our hands and seals this 20th day of December in the year of our Lord one thousand nine hundred and sixty and in the one hundred eighty-fifth year of the Independence of the United States of America.

Signed, sealed and delivered by Camden Equipment Company, Inc., in the presence of

Hazel M. Williams
Sarah B. Melton

CAMDEN EQUIPMENT COMPANY, INC.

By H. E. Beard Jr. (SEAL)
President

Signed, sealed and delivered by R. H. Cantey in the presence of

Annie P. Truesdale
Sarah B. Melton

R. H. Cantey (L.S.)
R. H. Cantey

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

PERSONALLY appeared before me Hazel M. Williams who, on oath, says that he saw the within named Camden Equipment Company, Inc. by H. E. Beard, Jr., its President, sign the within Deed, and the said Corporation, by said officer, seal said Deed, and, as its act and deed, deliver the same, and that she with Sarah B. Melton witness the execution thereof.

SWORN TO before me this 20th)
day of December, 1960 A.D.)

Sarah B. Melton
N.P.Seal Notary Public, S. C.

Hazel M. Williams
Witness

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

PERSONALLY appeared before me Annie P. Truesdale and made oath that she saw the within named R. H. Cantey of Camden, South Carolina, sign, seal and as his act and deed, deliver the within written Deed, and that she with Sarah B. Melton witness the execution thereof.

SWORN TO before me this 29th)
day of December, 1960 A.D.)

Sarah B. Melton
N.P.Seal Notary Public, S. C.

Annie P. Truesdale

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

RENUNCIATION OF DOWER

I, Sarah B. Melton, do hereby certify unto all whom it may concern that Barbara Z. Cantey, the wife of the within named R. H. Cantey, did this day appear before me and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Catawba Timber Company, its successors and assigns, all her interest and estate and also all her right and claim of Dower of, in or to, all and singular, the premises within mentioned and released.

GIVEN under my hand and seal)
this 29th day of December 1960 A.D.)

Sarah B. Melton
N.P.Seal Notary Public, S. C.

Barbara Z. Cantey

$4.00 S. C. Stamps
2.20 Fed. Rev.

Recorded December 29, 1960 at 4:46 PM

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

POWER OF ATTORNEY

Know all men by these presents, That I, Ara H. Elliott, have constituted, made and appointed, and by these presents do constitute, make and appoint, John P. Elliott, my true and lawful Attorney for me and in my name and stead, to ask, demand, sue for, levy recover and receive all such sum and sums of money, debts, rents, goods, accounts, and other demands whatsoever, which are or shall be due, owing or payable to me, or detained from me in any manner or ways or means whatsoever;

Giving and granting unto John P. Elliott, my said attorney, by these presents full and whole power and authority, in and about the premises to have, use and take all lawful ways and means in my name for the recovery thereof, including the right to bring ejectment proceedings and distress warrant for non-payment of rent, and upon receipt of any such debts, dues, or sums of money aforesaid, acquittances or other sufficient discharges for me and in my name to make, seal and deliver; and generally all and every other act and acts, thing and things, devise and devises in law whatsoever, needful and necessary to be done in and about the premises, for me and in my name to do, execute and perform, as fully, largely and amply to all intents and purposes, as I might or could do if I were personally present, ratifying, allowing and holding, for firm and effectual, all and whatsoever my said attorney shall lawfully do in and about the premises, by virtue hereof.

Frazier Pulpwood Company Inc., its successors and assigns, for a period of Eighteen (18) months for the date of this conveyance.

AND I do hereby bind myself and my heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Frazier Pulpwood Company, Inc. its successors and assigns, against me and my heirs and every other person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 28th. day of October, 1960, and in the One Hundred and Eighty-Fifth year of the Independence of the United States of America.

Signed, sealed and delivered
in the presence of: George P. Turner

Mary Jean Todd

Billie K. Trapp

STATE OF SOUTH CAROLINA,
COUNTY OF KERSHAW.

PERSONALLY APPEARED me Mary Jean Todd who, being duly sworn says that she saw the above named George Franklin Turner sign, seal and as his act and deed deliver the within Timber Deed and that she with Billie K. Trapp witnessed the execution thereof.

SWORN to before me this 28 day
of October, 1960 Mary Jean Todd

Billie K. Trapp
N.P.Seal Notary Public for South Carolina. $4.00 S. C. Stamps
2.20 Fed. Rev.

RENUNCIATION OF DOWER
(Grantor and Wife Legally Separated and dower renounded)

Recorded October 31, 1960 3:58 PM

Camden Equipment Company, Inc., and R. H. Cantey to Catawba Timber Company

Tract No. 269

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, That Camden Equipment Company, Inc., a South Carolina corporation with offices at Camden, South Carolina, and R. H. Cantey of Camden, in the State aforesaid, in consideration of the sum of Fourteen Thousand One Hundred Forty-One and No/100 ($14,141.00) Dollars, to us in hand paid at and before the sealing and delivery of these Presents by CATAWBA TIMBER COMPANY, a Delaware corporation with its principal office at Catawba, South Carolina, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said CATAWBA TIMBER COMPANY

All those certain tracts or parcels of land situated in School District 43, DeKalb Township of Kershaw County, South Carolina, being Tract No. 2, Tract No. 3 and Tract No. 6 shown on a plat of a survey made by R. H. Merett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of said County, and being more fully described according to said plat as follows:

Tract No. 2

BEGINNING at an iron pin at an old corner, being a corner common to Tract No. 1, Tract No. 2 and Tract No. 4 shown on said plat and being also a corner common to B. C. DuPre's 6.2-acre tract and Audrey Rembert's 1-acre tract; running thence North 84 degrees West with DuPre's line 900 feet to an iron pin in an old corner, DuPre's Northwest corner; thence South 05 degrees 30 minutes West with DuPre's line 399 feet to an iron pin, DuPre's Southwest corner; thence South 81 degrees 15 minutes East 450 feet to an angle iron in the North line of Tract No. 4 shown on said plat; thence South 52 degrees 45 minutes West with the line of tract No. 4, 680.2 feet to an iron pin at an old corner, being the Northeast corner of Tract No. 5 shown on said plat; thence North 26 degrees West 800 feet to an iron pin, Charles Wright's Southeast corner; thence North 26 degrees 30 minutes West with Wright's line 288.7 feet to an iron pin, Wright's Northeast corner; thence North 26 degrees West with the line of the Bennett Estate 2028.6 feet to an angle iron at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek, being a corner of Tract No. 6 shown on said plat; thence continuing North 26 degrees West, crossing said swamp, 841 feet, more or less, to the center of Swift Creek, being also a corner of said Tract No. 6; thence up and with the center of said creek North 48 degrees 45 minutes East 166.5 feet, North 41 degrees 30 minutes East 364 feet, North 54 degrees 30 minutes East 361 feet, North 52 degrees East 275 feet and North 72 degrees 30 minutes East 255 feet to the Northwest corner of Tract No. 1 shown on said plat; thence South 25 degrees 30 minutes East 3930 feet to the Beginning, containing 113 acres, more or less.

Tract No. 3

BEGINNING at an iron pin located 320 feet North 78 degrees East from the Beginning corner of Tract No. 2 hereinabove described, being the easternmost corner of the Audrey Rembert 1-acre tract in the South line of Tract No. 1 shown on said plat; thence with the line of said Tract No. 1 North 78 degrees East 670 feet to a corner, South 21 degrees East 462 feet and North 59 degrees 30 minutes East 445 feet to an angle iron in the line of the lands of Wooten, being the Southeast corner of Tract No. 1; thence South 04 degrees 30 minutes West 1706 feet to an angle iron in Boykin's line; thence North 78 degrees 15 minutes West 1077 feet to an iron pin, a corner of

EXHIBIT G 514

Tract No. 4 shown on said plat; thence with the line of Tract No. 4 North 03 degrees 30 minutes East 904 feet, South 62 degrees 30 minutes West 298 feet and North 15 degrees 20 minutes West 473 feet to the South corner of said Rembert Tract; thence North 35 degrees 42 minutes East with Rembert's line 409.6 feet to the Beginning.

EXCEPTING AND RESERVING out of the above described Tract No. 3, a 6-acre tract more fully described as follows: Beginning at an iron pin located North 60 degrees 30 minutes East 379.7 feet from a corner of Tract No. 4 shown on said plat; running thence North 17 degrees 45 minutes East 416 feet; thence North 75 degrees 15 minutes West 92 feet; thence North 17 degrees 45 minutes East 26 feet; thence South 71 degrees 30 minutes East 92.1 feet; thence North 17 degrees 45 minutes East 625 feet to an iron pin; thence South 72 degrees 15 minutes East 292 feet to an iron pin; thence South 22 degrees 42 minutes West 1064 feet to an iron pin; thence North 72 degrees 15 minutes West 200 feet to the Beginning.

The above described Tract No. 3, less the exception, contains 36 acres, more or less. There is included within the above described Tract No. 3 an acre 10' x 12' containing three graves and this conveyance is made subject thereto.

Tract No. 6

BEGINNING at an iron pin at an old corner in the approximate high water line of the swamp lying Southeast of Swift Creek in the line of Tract No. 2 hereinabove described, being also a corner of the lands of the Bennett Estate; thence with said high water line and the line of the lands of the Bennett Estate and the line of the lands of Perry, along the various courses and distances more fully shown between point "A" and point "B" on said plat, a total distance of 3812.1 feet to an iron pin at an old corner in the line of the lands of Capehart; thence North 09 degrees 45 minutes East with Capehart's line 681.5 feet to an iron pin at a branch, being point "C" shown on said plat; thence down and with the meanders of said branch to Swift Creek and continuing down and with Swift Creek, along the various courses and distances more fully shown on said plat, a total distance of 3606.5 feet to the Northwest corner of Tract No. 2 shown on said plat; thence South 26 degrees East 841 feet, more or less, to the Beginning, containing 30 acres, more or less.

The above described lands, less the exceptions, contain in the aggregate 179 acres, more or less.

The Grantors acquired the above described property by deed from B. C. DuBose dated May 19, 1958, recorded in Book FV, page 147; and by deed from Tallulah K. Deas dated November 25, 1958, recorded in Book FX, page 73; and by deed from James L. Sweet dated September 30, 1958, recorded in Book FV, page 483, all in the records of Kershaw County, South Carolina.

SUBJECT to any public roadways or rights of way extending into, through, over or across the above described property.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto said CATAWBA TIMBER COMPANY, its successors and assigns, forever.

AND we do hereby bind ourselves, our successors, heirs, assigns, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Catawba Timber Company, its successors and assigns, against us and our successors, heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our hands and seals this 31st day of October in the year of our Lord one thousand nine hundred and sixty and in the one hundred eighty-fifth year of the Independence of the United States of America.

Signed, sealed and delivered by Camden Equipment Company, Inc., in the presence of

Annie P. Truesdale

Edward M. Royall

CAMDEN EQUIPMENT COMPANY, INC.

BY H. E. Beard Jr. (Seal)
Pres.

President

Signed, sealed and delivered by R. H. Cantey in the presence of

Annie P. Truesdale

Edward M. Royall

R. H. Cantey (L.S.)
R. H. Cantey

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

PERSONALLY appeared before me Annie P. Truesdale and made oath that she saw the within named Camden Equipment Company, Inc. by H. E. Beard, Jr., its President, sign the within Deed, and the said Corporation, by said officer, seal said Deed, and, as its act and deed, deliver the same, and that she with Edward M. Royall witnessed the execution thereof.

SWORN TO before me this 31st) day of October 1960, A.D.)

Annie P. Truesdale
Witness

Edward M. Royall)
N.P.Seal Notary Public, S. C.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

PERSONALLY appeared before me Annie P. Truesdale and made oath that she saw the within named R. H. Cantey of Camden, South Carolina, sign, seal and as his act and deed, deliver the within written Deed, and that she with Edward M. Royall witness the execution thereof.

SWORN TO before me this 31st.)
day of October 1960, A. D.)

Annie P. Truesdale

Edward M. Royall
N.P.Seal Notary Public, S. C.

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

RENUNCIATION OF DOWER

I, Edward M. Royall, do hereby certify unto all whom it may concern that Barbara Z. Cantey, the wife of the within named R. H. Cantey, did this day appear before me and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Catawba Timber Company, its successors and assigns, all her interest and estate and also all her right and claim of Dower of, in or to, all and singular, the premises within mentioned and released.

GIVEN under my hand and seal)
this 31st day of October 1960, A.D.)

Barbara Z. Cantey

Edward M. Royall (L.S.) $29.00 S.C.Stamps Barbara Z. Cantey
N.P.Seal Notary Public, S. C. 15.95 Fed. Rev.

Recorded November 4, 1960 11:41 A.M.

John M. Catoe to John M. Catoe and John Maxie Catoe, as Trustees for John Maxie Catoe, Alma Grace D. Catoe and John M. Catoe

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

John M. Catoe)
)
to)
) CONVEYANCE IN TRUST
)
John M. Catoe, and John Maxie Catoe)
as Trustees for John Maxie Catoe,)
Alma Grace D. Catoe and John M. Catoe)

KNOW ALL MEN BY THESE PRESENTS, That I, John M. Catoe, of Kershaw County, and State of South Carolina, in consideration of assumption of mortgage indebtedness and gift, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto John M. Catoe and John Maxie Catoe, as Trustees, their successors and assigns, the following parcels of real estate.

Parcel #1:

All that parcel or tract of land in the State of South Carolina, County of Kershaw, Buffalo Township, School District #22, containing Three Hundred and Two (302) acres, more or less, and being bounded as follows: NORTH by property of Estate of B.W. Best and of Howard McKinnon and J. M. Catoe; EAST by property of Williams Furniture Company; SOUTH by property of G. H. King and of Williams Furniture Company; and WEST by property of Williams Furniture Company.

The above described property is the remaining portion of that conveyed to J. M. Catoe by the following deeds recorded in the office of the Clerk of Court for Kershaw County: (1) dated July 17, 1948, Book DQ, at page 52; (2) dated November 7, 1950, Book EA, at page 479; (3) dated January 7, 1937, Book CL, at page 541; (4) dated January 20, 1947, Book DJ, at page 496; (5) dated February 6, 1954, Book EL, at page 504; and by inheritance from his mother, Annie S. Catoe.

The above described property is subject to possible easement to Carolina Power and Light Company; and rights of way granted to Williams Furniture Company.

Parcel #2:

All that parcel or tract of land in the State of South Carolina, County of Kershaw, Buffalo Township, School District #22, containing Seventy-four and 5/10 (74.5) acres, more or less, as shown on plat prepared by H. R. Oliver, R.L.S., dated August 11, 1959, and being bounded as follows: NORTH by property of Copeland; EAST by property of Darlington Veneer Company; SOUTH by property of Copeland (Harold) and by Pleasant Hill Baptist Church; and WEST by Pleasant Hill Baptist Church and by property of Copeland.

The above described property is the same conveyed to J.M. Catoe by deed of W. T. Copeland, et al, dated April 13, 1954 and recorded in the office of the Clerk of Court for Kershaw County in Book EL, page 569; and therein described as 63 acres, more or less.

The above described property is subject to possible easement to Carolina Power and Light Company; and to Timber Deed to Darlington Veneer Company, dated April 31, 1954, and recorded in said office in Book EL, page 570, covering hardwood timber.

1. To take, hold and manage the above described property, collecting the income therefrom, and expending said income as follows: First, to the payment of taxes and insurance premiums on the improvements upon the above described properties; and Second, to the payment of the existing mortgage held by C. S. Newsom, provided, however, that if there is an overage above the amortization payments upon said mortgage, and if in the opinion of the Trustees, repairs are needed upon the buildings, the Trustees shall have the right to expend any portion of such income over and above amortization payments for such repairs, unless casualty insurance funds have been received from which such repairs may be made.

2. When the mortgage above referred to (held by C.S. Newsom) has been fully paid and satisfied, the Trustees shall forthwith convey a one-half (1/2) interest in the second parcel above described (the 74.5) acre tract) unto the trust this day established by John M. Catoe

this 19th day of October

A. D. 1960

Charlotte DuBose Sweet
Charlotte DuBose Sweet

Henry Savage Jr. (L.S.) $5-00 U. S. Stamps
N.P.Seal Notary Public for South Carolina

Recorded October 24, 1960 3:27 P.M.

H.E. Beard, Jr. and Roderick H. Cantey to Catawba Timber Company

Tract No. 268

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

KNOW ALL MEN BY THESE PRESENTS, That H. E. Beard, Jr., and Roderick H. Cantey of Camden, Kershaw County, in the State aforesaid, in consideration of the sum of Twelve Thousand Eighty-seven and no/100 ($12,087.00) Dollars, to us in hand paid at and before the sealing and delivery of these Presents by Catawba Timber Company, a Delaware corporation with its principal office at Catawba, South Carolina, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Catawba Timber Company all that certain tract or parcel of land situated

in School District 43, DeKalb Township, of Kershaw County, South Carolina, being Tract 1 shown on a plat of a survey made by H. H. Marett, Registered Surveyor, on September 26, 1960, a copy of which appears of record in Plat Book 27, page 39, in the records of Kershaw County, South Carolina, and being more fully described according to said plat as follows:

BEGINNING at an iron pin at an old corner, being a corner common to this tract, Tract 2 and Tract 4 as shown on said plat and being also a cornercommon to DuPre's 6.2 acre tract and Reubert's 1 acre tract; running thence North 25 degrees 30 minutes West with the line of Tract 2 as shown on said plat, 3930 feet, more or less, to Swift Creek; thence South 54 degrees East with said creek 216 feet; thence South 83 degrees 30 minutes East with said creek 205 feet to the mouth of Shoe Make Branch; thence up said branch South 86 degrees East 100 feet, South 24 degrees 30 minutes East 184.5 feet and South 40 degrees 45 minutes East 103.5 feet to the South line of the property now or formerly owned by Jim Sweet; thence leaving said branch North 66 degrees East with Sweet's line 900 feet to an iron pin at an old corner and in Nelson's line; thence with Nelson's line and with the approximate high water line of the swamp line along Shoe Make Branch the following courses and distances; South 03 degrees 45 minutes West 153.5 feet, South 39 degrees 45 minutes East 68.1 feet, South 82 degrees East 93.7 feet, North 53 degrees 30 minutes East 116 feet, North 74 degrees east 87.3 feet, South 51 degrees 45 minutes East 73.7 feet, South 18 degrees East 132 feet, East 416.8 feet, South 201 feet, South 86 degrees 30 minutes East 172 feet, South 45 degrees East 129 feet, South 20 degrees East 208 feet, South 14 degrees East 119 feet, South 74 degrees East 175.2 feet, South 30 degrees 30 minutes East 142 feet, South 43 degrees East 335 feet, and South 23 degrees 30 minutes East 176 feet to an iron pin at an old corner; thence South 66 degrees 30 minutes West 121 feet to a 4-inch black gum on said branch; thence with said branch South 33 degrees 30 minutes East 114 feet, South 09 degrees East 165 feet to an iron pin; thence leaving said branch South 01 degree 15 minutes West with Wootenis line 1585.6 feet to an angle iron; the Northeast corner of Tract 3 as shown on said plat; thence with the line of said Tract 3, South 59 degrees 30 minutes West 445 feet to a corner, North 21 degrees West 462 feet to a corner and South 78 degrees West 990 feet to the Beginning, containing 153 acres, more or less.

The Grantors acquired the above described property by deed from M.C. Arnett, ex officio Master, dated August 13, 1946, recorded in Book CJ, page 255, in the records of Kershaw County, South Carolina; and by deed from C.W. Wooten dated July 6, 1953, recorded in Book EQ, page 403, in the records of said County.

SUBJECT, to any public roadways or rights of way extending into, through, over or across the above described property.

TOGETHER with all and singular the rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the Premises before mentioned unto the said Catawba Timber Company, its successors and Assigns, forever.

AND we do hereby bind ourselves, our Heirs, Executors and Administrators to warrant and forever defend all and singular the Premises unto the said Catawba Timber Company, its Successors and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hands and seals this 24th day of October, in the year of our lord one thousand nine hundred and sixty and in the one hundred eighty-fifth year of the Independence of the United States of America.

Signed, sealed and delivered
in the presence of
Annie P. Truesdale
Edward M. Royall

H.E. Beard, Jr. (L.S.)
H.E. Beard, Jr.
Roderick H. Cantey (L.S.)
Roderick H. Cantey

EXHIBIT 4

CA

Recorded October 20, 1950 at 10:14 AM

Tract No. 270

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, That James L. Sweet of Camden in the state aforesaid, in consideration of the sum of Two Thousand Two Hundred Forty and No/100 ($2,240.00) Dollars, to me in hand paid at and before the sealing and delivery of these Presents by CATAWBA TIMBER COMPANY, A Delaware corporation with its principal office at Columbia, South Carolina, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said CATAWBA TIMBER COMPANY all that certain tract or parcel of land situated

in School District #3 of Kershaw County, South Carolina, being Tract 4 shown on the plat of a survey made by R. E. Kareth, Registered Surveyor, on September 25, 1950, a copy of which appears of record in Plat Book 22, Page 39, in the records of said County as follows:

BEGINNING at a point in the center of a road marked by an iron pin on the East side of said road and being 27 feet North 19 degrees 15 minutes West from the Southwest corner of Tract 3 as shown on said plat; running thence South 66 degrees 30 minutes West with said road 1066 feet to an iron pin on the East side of said road; thence South 71 degrees 17 minutes West, partially with said road 525 feet to an iron pin on the East side of another road and in the line of the land now or formerly owned by Hopkins; thence North 19 degrees 15 minutes East, partially with said road and with Hopkin's line 1750 feet to an iron pin, being the Southeast corner of Tract 5 shown on said plat; thence North 22 degrees 15 minutes West with the line of Tract 5, 893 feet to an iron pin, being the Southeast corner of Tract 5 and the Southwest corner of Tract 2 as shown on said plat; thence North 52 degrees 45 minutes East with the line of Tract 2, 699.2 feet to an iron pin at a corner of the B. S. Dupre 5.2 acre tract; thence continuing North 52 degrees 45 minutes East with Dupre's line 910.5 feet to an iron pin, being a corner common to Tract 2 and Tract 1 as shown said plat and being also a corner corner to the 5.2 acre tract owned by B. S. Dupre and the 1-acre tract owned by Audrey Herbert; thence South 19 degrees 15 minutes East with Herbert's line and the line of Tract 3, 150 feet to a corner of Tract 1 as shown on said plat; thence South 52 degrees 30 minutes East with the line of Tract 1, 648 feet to a corner; thence South 03 degrees 30 minutes West with the line of Tract 1, 935 feet to a corner in Hopkin's line, being the Southwest corner of Tract 1; thence South 70 degrees 15 minutes West with Hopkin's line 50 feet to the Beginning, containing 69 acres, more or less.

Being all the land conveyed to James L. Sweet by deed from C. L. Dees et al dated October 20, 1950, recorded in Deed Book 2C, Page 240, in the records of Kershaw County, South Carolina.

SUBJECT to any public roadways or rights of way existing into, through, over or across the above described lands.

Together with all and singular the rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the Premises before mentioned unto said CATAWBA TIMBER COMPANY, its Successors and Assigns, forever.

And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said CATAWBA TIMBER COMPANY, its Successors and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand and seal, this 19th day of October in the year of our Lord one thousand nine hundred and fifty and in the one hundred eighty-fifth year of the Independence of the United States of America.

Signed, sealed and delivered in the presence of

James L. Sweet (L.S.)
James L. Sweet

Annie P. Truesdale

Henry Savage Jr.

THE STATE OF SOUTH CAROLINA
KERSHAW COUNTY

PERSONALLY appeared before me Annie P. Truesdale and made oath that she saw the within named James L. Sweet of Camden, South Carolina, sign, seal and as his act and deed deliver the within written deed, and that she with Henry Savage, Jr. witness the execution thereof.

SWORN TO before me this 19th day of October A.D. 1950

Annie P. Truesdale

Henry Savage Jr. (L.S.)
N.P.Seal Notary Public for South Carolina

THE STATE OF SOUTH CAROLINA)
)
KERSHAW COUNTY)

RENUNCIATION OF DOWER

I, Henry Savage, Jr., a Notary Public, do hereby certify unto all whom it may concern that Charlotte DuBose Sweet, the wife of the within named James L. Sweet, did this day appear before me and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named CATAWBA TIMBER COMPANY, its Successors and Assigns, all her interest and estate and also all her right and claim of Dower of, in or to, all and singular the Premises within mentioned and released.

Given under my hand and seal

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	C/A NO.: 2009-CP-28-00338

W.H. BUNDY, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**STIPULATION OF FACTS**
	)	
BOBBY BRENT SHIRLEY,	)	
	)	
Defendants.	)	

The parties to this action, by and through their authorized counsel, hereby stipulate to the following:

(1) Plaintiff W.H. Bundy, Jr. is the fee owner of seven (7) tracts of contiguous property located in Kershaw County, South Carolina and more fully described in the deed from Bowater Timber 1, LLC to W.H. Bundy, Jr., dated March 14, 2003 (the "Bundy Property").

(2) From 1985 to 2003, the Bundy Property was leased by the Plaintiff's predecessors in title Bowater Incorporated and Bowater Timber 1, LLC to the South Carolina Department of Natural Resources (the "Lease").

(3) Between 1985 to 2003, the South Carolina Department of Natural Resources had a legal interest in the Bundy Property.

(4) As a result of the Lease, the Bundy Property was enrolled in the South Carolina Department of Natural Resources Wildlife Management Area program.

(5) The Lease and the Wildlife Management Area program allowed public access to all portions of the Bundy Property from 1985 to 2003 subject to the rules and regulations of the Wildlife Management Area program.

(6) That Bowater Incorporated was the owner of all outstanding shares of Catawba Timber Company. Catawba Timber Company merged into Bowater Incorporated on December 31, 1980. At such time Bowater Incorporated was vested with all the property of Catawba Timber Company.

(7) Neither Kershaw County nor any other public entity maintains or repairs any timber roads located on Tract 2 of the Bundy Property which is the tract at issue.

(8) In 2004, Shirley put up a gate located on the property line between the Bundy Property and the property owned by the Miller Family with the permission of Bundy.

[Signature Page Follows]

Keith M. Babcock
LEWIS & BABCOCK, LLP
1513 Hampton Street
Columbia, SC 29201
(803) 771-8000

Steven Spitz
P.O. Box 535
Charleston, SC 29402
(843) 377-2154
(843) 723-0618

M. Brent McDonald
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Blvd., Bldg. F, Suite 100
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
(843) 881-1623

ATTORNEYS FOR THE PLAINTIFF

Mt. Pleasant, South Carolina
_____, 2010

John W. Wells, Esquire
Baxley, Pratt & Wells, PA
Three The Common at Lugoff
PO Box 10
Lugoff, South Carolina 29078
803-438-4200
803-438-5090 (Fax)

ATTORNEY FOR DEFENDANT

Lugoff, South Carolina
_____, 2010.

PLAINTIFF'S EXHIBIT 1

Original Trial Exhibit is being transferred by the Kershaw County Clerk of Court to the South Carolina Court of Appeals pursuant to Rule 210(f), SCACR

PLAINTIFF'S EXHIBIT 2

Original Trial Exhibit is being transferred by the Kershaw County Clerk of Court to the South Carolina Court of Appeals pursuant to Rule 210(f), SCACR

PLAINTIFF'S EXHIBIT 3

Original Trial Exhibit is being transferred by the Kershaw County Clerk of Court to the South Carolina Court of Appeals pursuant to Rule 210(f), SCACR

SMITH, BUNDY, BYBEE & BARNETT, P.C.
ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465-1542
(843) 881-1623
FAX # (843) 881-4406

ELLISON D. SMITH IV
W. H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT
JOHN P. WORKS
FED. ID # 57-0988087

September 12, 2005

Mr. Brent Shirley
611 Wateree Street
Camden, South Carolina 29020

Dear Mr. Shirley:

Ths will confirm that I called you on Monday morning, September 12th, to request that you remove your gate from my property. It is my understanding from our conversation that you refused to do so and claim that you have a right to maintain a gate on my property. The purpose of this letter is to formally request, in writing, that you remove your gate from my property.

Based upon our conversation, I have no reason to believe that you will voluntarily do so, however, it is necessary for me to put my request in writing.

Unless I hear from you to the contrary, I assume that you refuse to remove your gate and I will, in order to resolve this problem, file a declaratory judgment action in the Court of Common Pleas in Camden and ask the Court to make a determination as to our respective rights with regard to the gate.

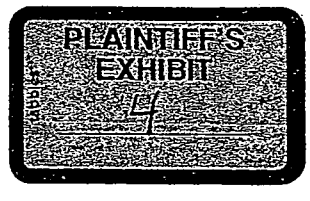
I have retained the services of Ken DuBose and would request that if either you or your attorney wishes to discuss this matter further, that you contact Mr. DuBose directly and not me.

Sincerely,

W. H. Bundy, Jr.

WHB:jrs

cc: Ken DuBose, Jr., Esquire
Shirley's Hunting & Fishing Supplies



LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: 803 / 771-8000
FAX: 803 / 733-3534
INTERNET: FIRM@LEWISBABCOCK.COM

DATE RECD. MAR 0 9 2006
FILE NO.

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAIL E. KING
PETER D. PROTOPAPAS
WILLIAM A. MCKINNON*
BRADY R. THOMAS

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

March 8, 2006

George W. Speedy, Esquire
FURMAN, SPEEDY & STEGNER
Post Office Drawer 100
Camden, South Carolina 29020

Re: W.H. Bundy, Jr. - Brent Shirley, Our File No. 06-112

Dear George:

Bill Bundy has requested that I assist him with regard to the matter involving Brent Shirley. In that regard, he has forwarded to me some correspondence from this past fall.

There does not appear to me to be any legal basis for Mr. Shirley maintaining a gate on a road located on Mr. Bundy's property. Regardless of whether Mr. Shirley has any right of access over Mr. Bundy's land, which we would contest, he clearly has no right to maintain a gate. Therefore, please advise Mr. Shirley that unless the gate is removed no later than March 31, 2006, we will institute an action to have the gate removed and for damages for trespass.

As indicated above, we do contest Mr. Shirley's right to access across Mr. Bundy's property. Mr. Shirley apparently indicated at some point in the past that he had some type of order. We have not been able to locate any such document, and if one does exist, I would appreciate it if you would provide it to me.

With best regards, I am

Very truly yours,

LEWIS & BABCOCK, L.L.P.

Keith M. Babcock

KMB:cg

cc: W.H. Bundy, Jr., Esquire

PLAINTIFF'S EXHIBIT 5

South Carolina Form (Revised)

KERSHAW COUNTY 3424 0 SOUTH CAROLINA COUNTY DOCUMENTARY TAX P.O. 10810 MAR-9'90 5665

Warranty Deed

The State of South Carolina,
COUNTY OF KERSHAW

KNOW ALL MEN BY THESE PRESENTS, THAT

RICHARD M. DRISCOLL AND FRANCES A. DRISCOLL

in the State aforesaid, for and in consideration of the sum of Five Dollars and other valuable consideration---------- Dollars, to us in hand paid at and before the sealing of these presents by

W.H. BUNDY, JR. AND NANCY S. BUNDY

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto said

W.H. BUNDY, JR. AND NANCY S. BUNDY

for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

All that piece, parcel or tract of land, with improvements thereon, lying and being situate in the State of South Carolina, County of Kershaw, Northeast of the intersection of U.S. Highway No. 521 and Secondary Highway No. 23, a short distance from the Kershaw County-Sumter County line, containing 45.13 acres, more or less, and is bounded as follows: North by property of C.B. Boykin and by property of William Baynard Boykin; East and South by property of Bowater Incorporated; and West by property of C.B. Boykin.

The above described tract of land is more particularly shown on that plat prepared by Daniel D. Riddick, R.L.S., dated March 31, 1978 and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 36 at page 311.

ALSO, a non-exclusive easement of ingress and egress over and across the above described property being 30 feet in width leading from Saxton Road, as more particularly shown on that plat prepared by C.A. Holland, Surveyors, Inc., dated March 27, 1989 and recorded in the office of the Clerk of Court for Kershaw County in Plat Book 38 at page 1386.

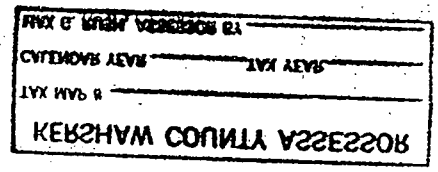
The above described property is the same conveyed to Richard M. Driscoll and Frances A. Driscoll by deed of Peter B. McKoy, dated March, 1989, and recorded in the office of the Clerk of Court for Kershaw County in Deed Book JD at page 3041.

Grantees' Address: Post Office Box 579
Charleston, South Carolina 29402



PLAINTIFF'S EXHIBIT 6

KERSHAW COUNTY ASSESSOR
TAX MAP # 366-00-00-026
CALENDAR YEAR 90 TAX YEAR 91
MAX G. RUSH, ASSESSOR BY TWB



Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said W.H. Bundy, Jr. and Nancy S. Bundy,

for and during their joint lives and upon the death of either of them then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, and we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said W.H. Bundy, Jr. and Nancy S. Bundy, as hereinabove provided

against us and our Heirs and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS our hands and seals this 28th day of February in the year of our Lord one thousand nine hundred and ninety.

Signed, Sealed and Delivered in the Presence of

Pamela C. Coan

Richard M. Driscoll (SEAL)
RICHARD M. DRISCOLL

Frances Driscoll (SEAL)
FRANCES A. DRISCOLL

(SEAL)

THE STATE OF SOUTH CAROLINA,
County of Kershaw

PERSONALLY appeared before me PAMELA C. COAN and made oath that she saw the within-named Richard M. Driscoll and Frances A. Driscoll sign, seal, and as their Act and Deed, deliver the within-written Deed; and that she with R.W. JACOBS witnessed the execution thereof.

SWORN to before me this 28th day of FEBRUARY, A. D. 1990.

(SEAL)

Pamela C. Coan

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 29 April 1993

THE STATE OF SOUTH CAROLINA,

County of.....

RENUNCIATION OF DOWER

I do hereby certify unto all whom it may concern, that Mrs. _____

the wife of the within-named _____

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named _____

_____

for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, all her interest and estate, and also all her right and claims of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal this _____ day of _____, A. D. 19____

_____ (SEAL) _____

_____

CORPORATIONS

THE STATE OF SOUTH CAROLINA,

County of _____

PERSONALLY appeared before me _____

and made oath that he saw _____ and

_____, sign, affix the Corporate Seal, and as the Act and Deed of said Corporation, deliver the within-written Deed; and that he with _____ witnessed the execution thereof.

_____

SWORN to before me this _____

day of _____, 19____

_____ (SEAL)

Notary Public for S. C.

COOPER

FILED FOR RECORD
1990 MAR -2 AM 9:28
MATILDA W. GOODSON
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of Kershaw

RICHARD M. DRISCOLL AND
FRANCES A. DRISCOLL
TO
W.H. BUNDY, JR. AND
NANCY S. BUNDY

WARRANTY DEED

(Jointly for Life With Remainder to Survivor)

Filed this 2nd day
of March, A. D. 19 90,
at 9:28 o'clock A. M.,
and recorded in Book JG
Page 2403 Fee, $
Matilda W. Goodson
R. M. C. or Clerk Court C. P. & G. S.
Kershaw County, S. C.

Recorded this 2nd day
of March, 19 90,
in Book A-C Page 233
Fee, $
Brenda W. Truesdale
Auditor Kershaw County, S. C.

R. C. GAINEY KERSHAW COUNTY TREASURER

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF TRUE CONSIDERATION
COUNTY OF KERSHAW)

PERSONALLY APPEARED before me, G. Thomas Cooper, Jr., who, being duly sworn, deposes and says: That he is an attorney of record in the transfer of certain property containing 45.13 acres, located 10 miles south of Camden, from Richard M. Driscoll and Frances A. Driscoll to W.H. Bundy, Jr. and Nancy S. Bundy; that he knows of his own knowledge that the true consideration for the transfer of said property is $51,500.00.

G. Thomas Cooper, Jr.

SWORN TO before me this 26th
day of February, 1990.

Ellen N. Ingram
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 1-26-92

LAW OFFICES
COOPER, BEARD & DIBBLE
P. O. DRAWER 99
CAMDEN, S.C. 29020

Instrument 200800004605 OR Volume 2362 Page 167

Instrument 200800004122 OR Volume 2355 Page 208

200800004605
Filed for Record in
KERSHAW COUNTY SC
BILLIE MCLEOD, REGISTER
05-13-2008 At 10:49:43 am.
EASEMENT 11.00
STATE .00
COUNTY .00
OR Volume 2362 Page 167 - 173

200800004122
Filed for Record in
KERSHAW COUNTY SC
BILLIE MCLEOD, REGISTER
04-29-2008 At 11:05:43 am.
EASEMENT 11.00
STATE 26.00
COUNTY 11.00
OR Volume 2355 Page 208 - 214
FOR RECORDER'S USE

STATE OF SOUTH CAROLINA)
: AGREEMENT
COUNTY OF KERSHAW)

WHEREAS, L. Clinton Baker, Jr. is the owner of a certain tract of land containing 146.10 acres, more or less, in the County of Kershaw, State of South Carolina as shown on Plat recorded in Plat Book 11 at page 50, and Kershaw County TMS#367-00-00-003; and

WHEREAS, Kevin C. Baker, is the owner of a cerain tract of land containing .50 acre, more or less, in the County of Kershaw, State of South Carolina, as shown in Record Book RB422 at Page 79 and as Kershaw County TMS#367-00-00-023; and

WHEREAS, David H. Wilson is the owner of a certain tract of land containing 2.03 acres, more or less in the County of Kershaw, State of South Carolina, as evidenced by deed recorded in the Office of the ROD for Kershaw County in Book 0422 at page 80 and Kershaw County TMS#367-00-00-024; and

WHEREAS, each of the above Parcels access Saxton Road over an existing roadway known as Blackhawk Lane, which has served as historical access and has been in use for a considerable time; and

WHEREAS, question has arisen as to the width of Right of Way of Blackhawk Lane and the specific rights of L. Clinton Baker, Jr., Kevin C. Baker and David E. Wilson; and

WHEREAS, Walter H. Bundy, Jr. has agreed to convey to L. Clinton Baker, Jr., Kevin C. Baker, and David E. Wilson an easement for ingress, egress and utilities over, upon and across a 30 foot access utility easement being 15 feet on each side of the center of the existing Blackhawk lane; and

WHEREAS, it is the desire of the parties to establish in writing the rights, obligations, of the parties in and to the easement for ingress, egress and utilities over, upon and across said roadway.

NOW THEREFORE for and in consideration of the sum of Five ($5.00) Dollars in hand paid and other valuable consideration, the

PLAINTIFF'S EXHIBIT 12

Recorded this 29th Day
Of April, 2008

Robin H. Watkins,
Kershaw County Auditor

receipt and sufficiency of which is hereby acknowledged, Walter H. Bundy Jr. (hereinafter referred to as "Grantor") does hereby grant, bargain, sell, release and convey unto L. Clinton Baker, Jr., Kevin Clinton Baker and David E. Wilson (hereinafter referred to as "Grantee") a perpetual nonexclusive easement 30' feet in width, being 15' on each side of the center of the existing Blackhawk Lane. Said easement is commercial in nature and is for ingress, egress and utilities to land owned by Grantee for the sole purpose described herein and for no other purpose and is appurtenant to and shall run with the land. It is expressly understood and agreed that this right-of-way and easement is granted and accepted subject to the following terms, conditions, limitations and stipulations to which the Grantee, by acceptance of the benefits of this easement, agree to be bound:

1. Grantor hereby reserves for himself and his heirs, successors, assigns and guests the right to use the easement area for all purposes which do not interfere with the use of the premises for ingress and egress by Grantee.

2. It is understood and agreed that this easement is for the purpose of ingress and egress, both pedestrian and vehicular, by the Grantee to the adjacent land and for the delivery of normal and customary utility services for the benefit of the Grantee. This Agreement is not to be construed as conveyance of title to the easement area, but to be construed as a granting a servitude across, under, over and along the easement area. Grantor does not convey any oil, gas or minerals in, upon or under the easement area but reserves them in their entirety.

3. This grant and all rights hereunder are made without warranty of title and subject to any and all liens, easements, servitudes, right-of-ways, leases and other grants, whether of record or not, affecting the easement area.

4. Grantor, their heirs and assigns are in no way bound to construct, maintain, improve or to keep repaired the easement area or any part thereof, nor does Grantor, their heirs and assigns, assume any liability or responsibility to Grantee, its successors and assigns or to any other persons using the easement area by way any expressed or implied invitation or any business reason being conducted in connection with Grantee, its successors and assigns. Grantor, their successors and assigns, covenant with Grantee, and Grantee's heirs and

assigns, to at all times maintain and make necessary repairs at its own expense should the roadway require same for the proper upkeep and maintenance as a result of Grantor's use thereof.

5. Grantee, his heirs and assigns, covenant with Grantor, and Grantor's successor and assigns, to at all times maintain and make necessary repairs at its own expense should the roadway require same for the proper upkeep and maintenance as a result of Grantee's use thereof.

6. Grantee, for himself and his heirs and assigns acknowledges that the easement granted herein was not construed with reference to traffic engineering safety standards, such construction being for forest management and recreational purposes only, and any use of the easement area shall be at the user's risk.

7. Grantee shall indemnify and hold harmless Grantor from and against any and all loss, costs, damages, claims, actions or liability on account of the injury or death of any person or persons or damage to or destruction of any property arising from or growing out of the Grantee's exercise of rights herein granted or of its exercise of rights assumed in connection thereof.

8. The Grantor expressly grants and covenants with Grantee that should any easement for utilities be required along the portion of the roadway easement as herein conveyed, that Grantor will cooperate with Grantee to the extent said easement does not expand the easement area to allow Grantee to obtain power, telephone, water and other related utilities.

9. Any and all merchantable timber which must be cut in the maintenance of the roadway and easement area shall remain the property of the Grantor and shall be cut and stacked at the edge of the right of way for the use of the Grantor.

TO HAVE AND TO HOLD, the aforesaid rights, privileges and easements in the Grantee, his heirs and assigns forever, subject to the conditions, limitations and restrictions contained herein.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed, this 15 day of April, 2008.

WALTER H. BUNDY, JR. (Seal)

WITNESSES:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, the Undersigned Notary Public for the County and State Aforesaid, Do Hereby Certify That Walter H. Bundy, Jr., Personally Appeared Before Me this Day and Acknowledged the Due Execution of the Foregoing Agreement.

Witness My Hand and Seal this 15th Day of April, 2008.

(NOTARIAL SEAL) NOTARY PUBLIC (L.S.)
MY COMMISSION EXPIRES: 10/10/13

STATE OF SOUTH CAROLINA)
: CONSENT
COUNTY OF KERSHAW)

Congaree Land Trust hereby consents to the within granting of access easement pursuant to the terms and conditions contained therein and subject to the terms of the Conservation Easement dated December 22, 2003 recorded in the Office of the ROD for kershaw County in Book 1496, at Page 68.

Congaree Land Trust, a South Carolina Non Profit Corporation

By: _____
Its: EXECUTIVE DIRECTOR

WITNESSES:

_____

_____

STATE OF SOUTH CAROLINA)
:
COUNTY OF)

I, the Undersigned Notary Public for the County and State Aforesaid, Do Hereby Certify That Congaree Land Trust by WILLIAM P. CATE Personally Appeared Before Me this Day and Acknowledged the Due Execution of the Foregoing Instrument.

Witness My Hand and Seal this 14 Day of April, 2008.

_____
Notary Public
My Commission Expires: 10/01/14

(Notarial Seal)

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in Kershaw County, SC and was transferred by Walter H. Bundy to L. Clinton Baker, Jr., Kevin C.Baker and David E. Wilson on April 15, 2008.

3. Check one of the following: The deed is

(a) ___X___ subject o the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information Section of affidavit): _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) ___X___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 10,000.00

(b) _____ The fee is computed on the fair market value of the realty which is _____ _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes___ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____ _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $_____

(b) Place the amount listed in item 5 above here: $_____

(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $_____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $_____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:_____

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year , or both.

_____
Responsible Person Connected with the Transaction

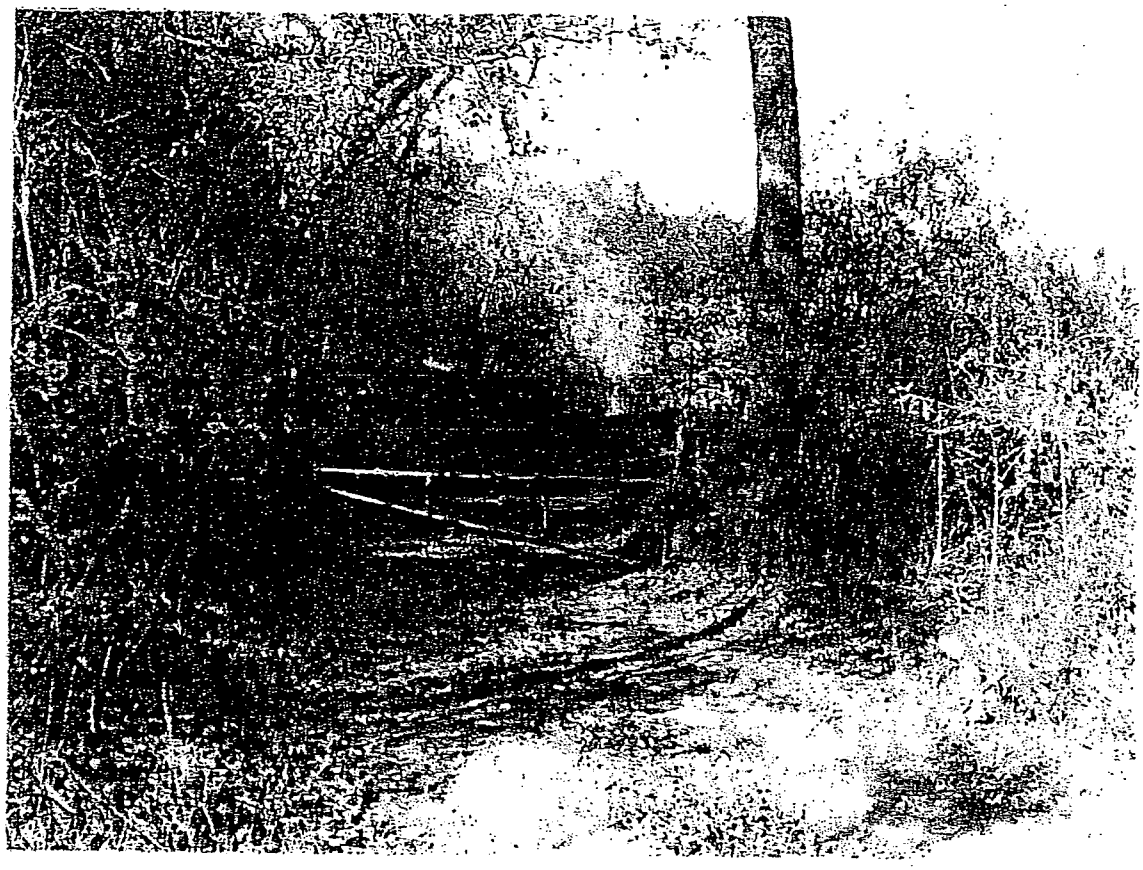
AllenB. Wise
Print or Type Name Here

SWORN to before me this 28th
day of April, 2008.

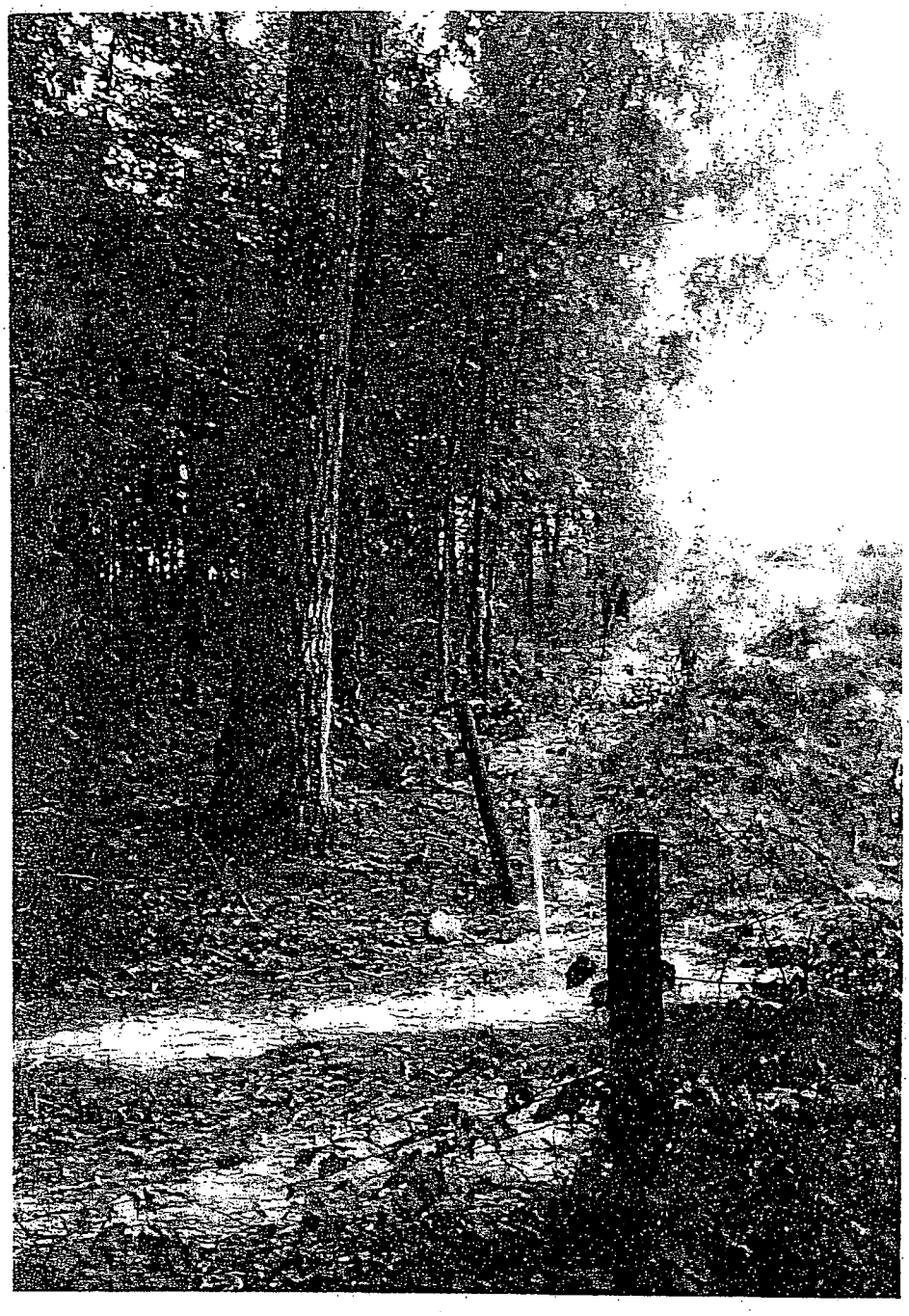
_____
Notary Public for South Carolina
My Commission Expires: 4-28-09

INFORMATION

Except as provided in this paragraph, the term " value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any



PLAINTIFF'S EXHIBIT 18

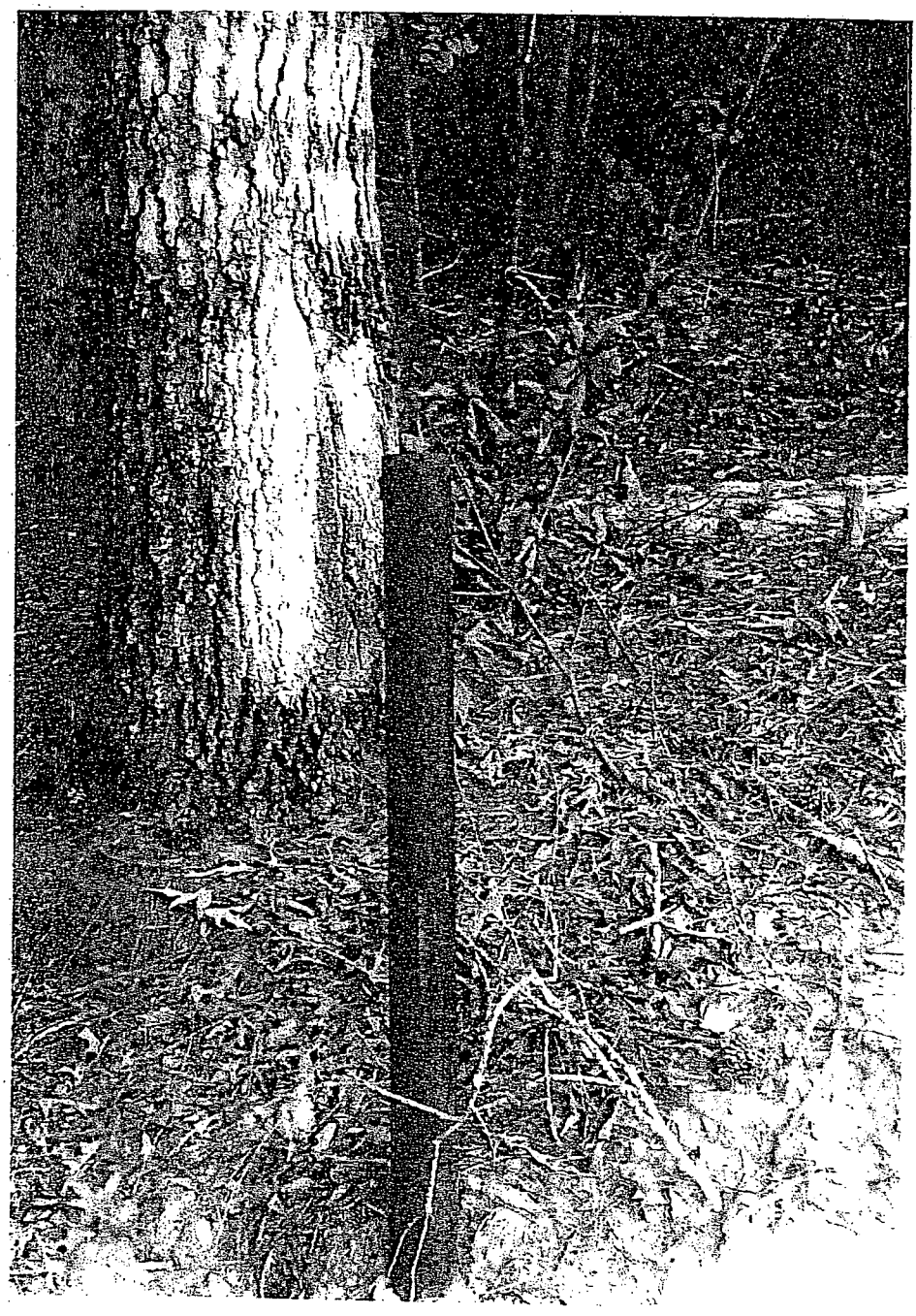


PLAINTIFF'S EXHIBIT
503

10

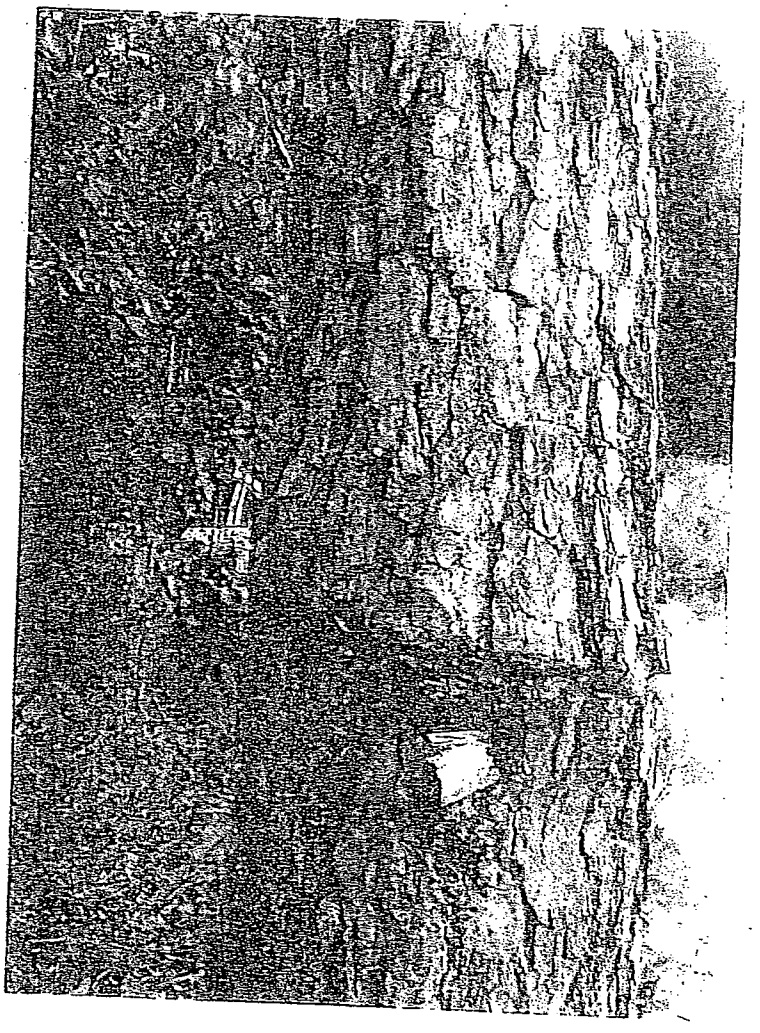


PLAINTIFF'S EXHIBIT 10

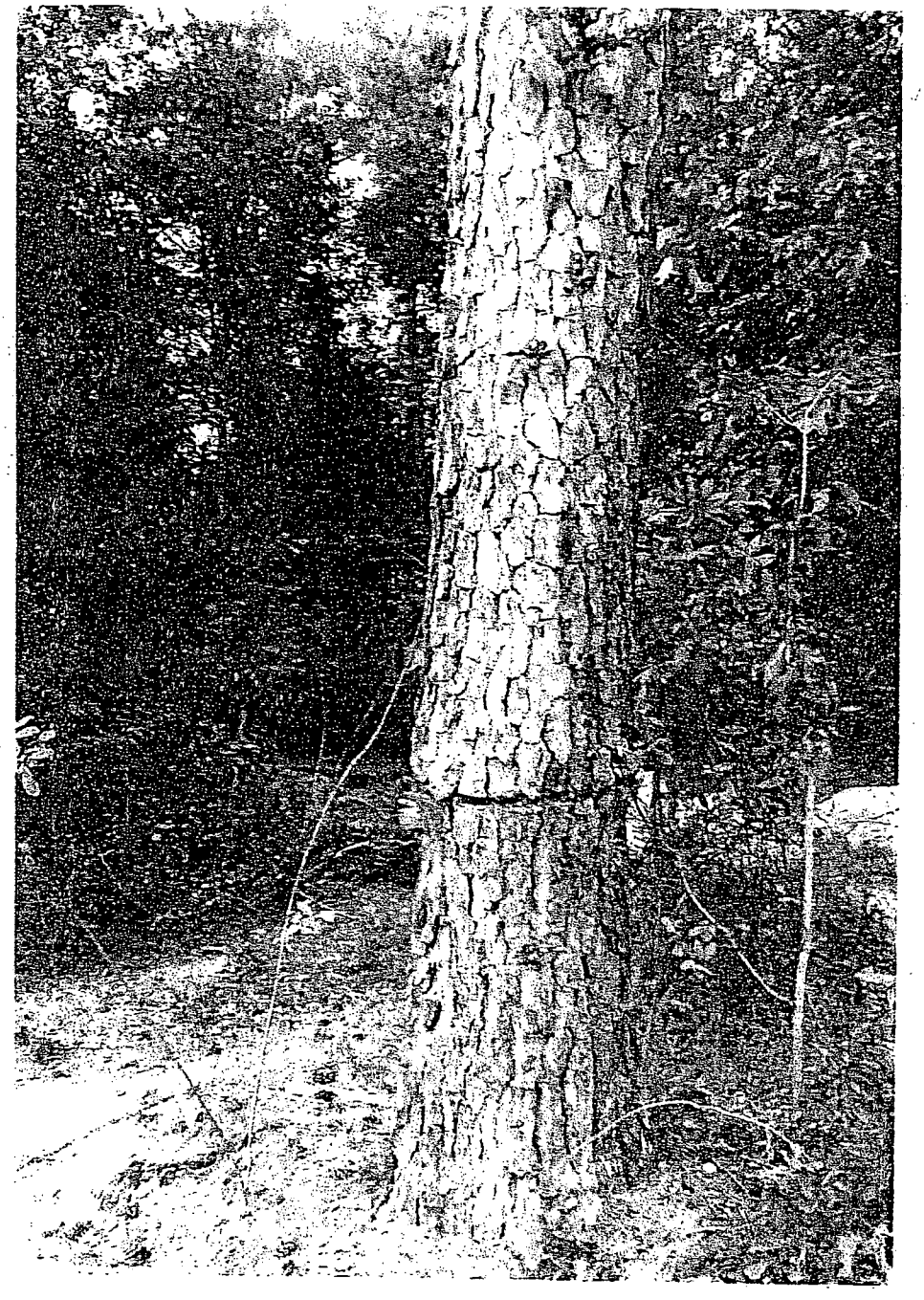


PLAINTIFF'S EXHIBIT

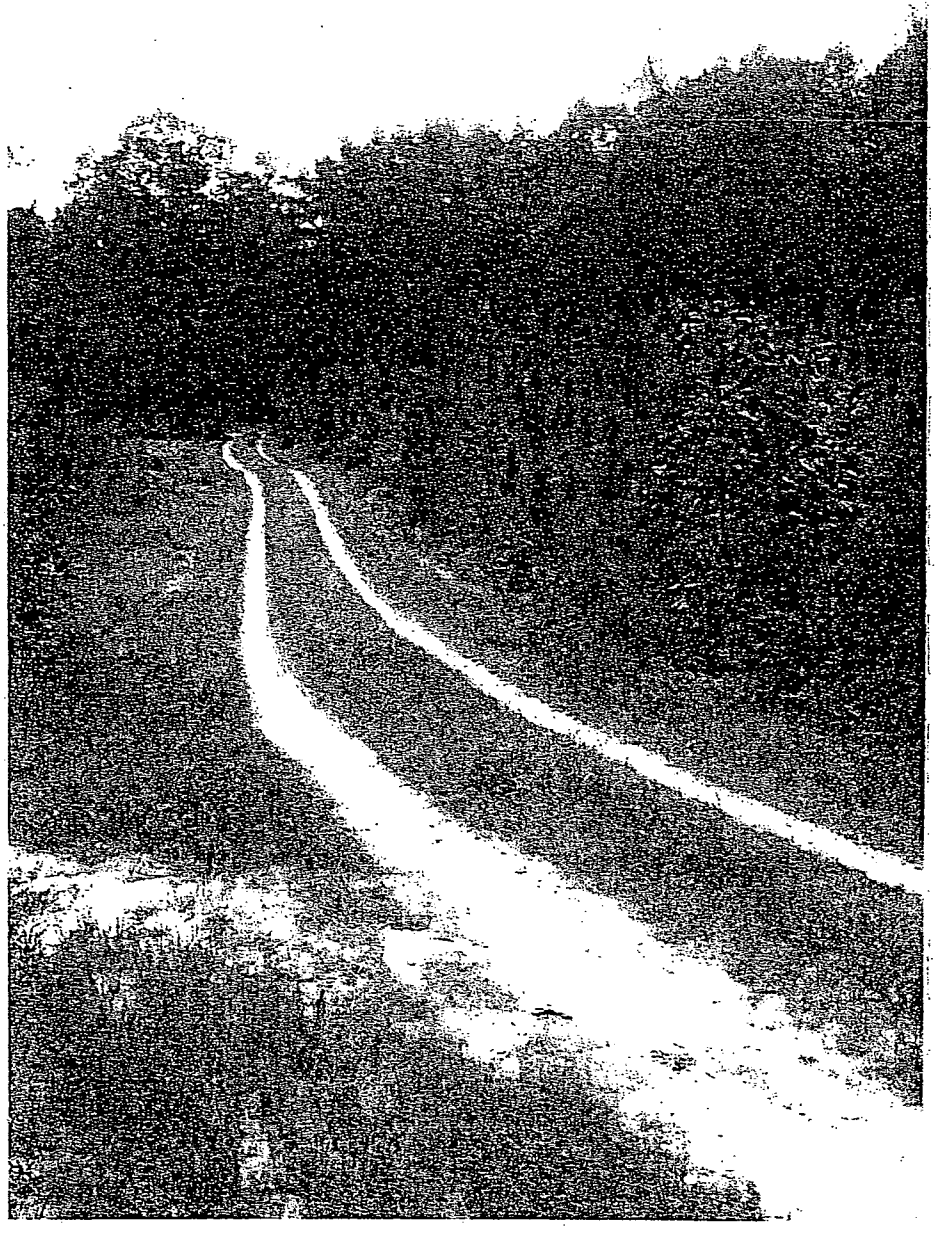
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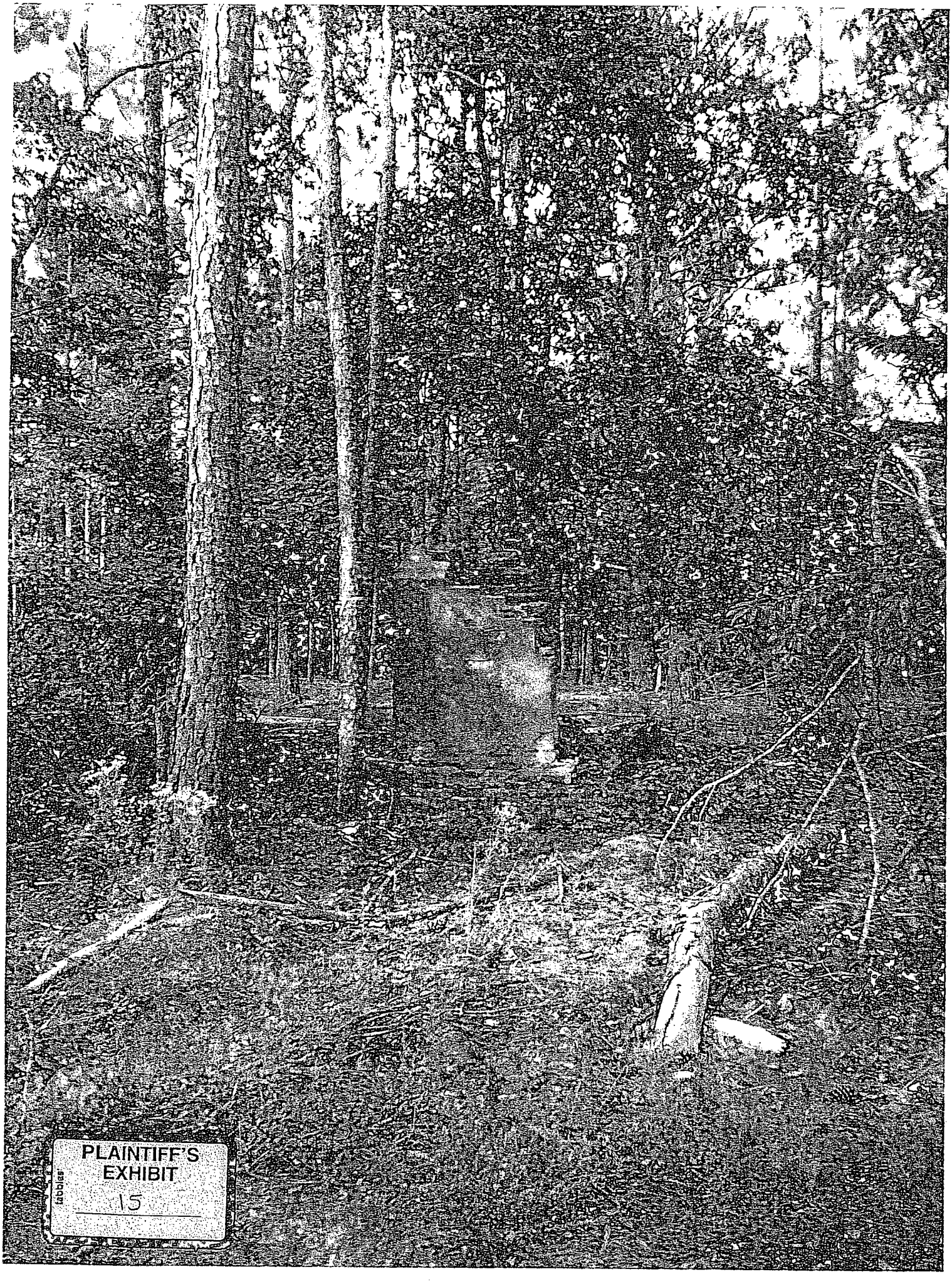
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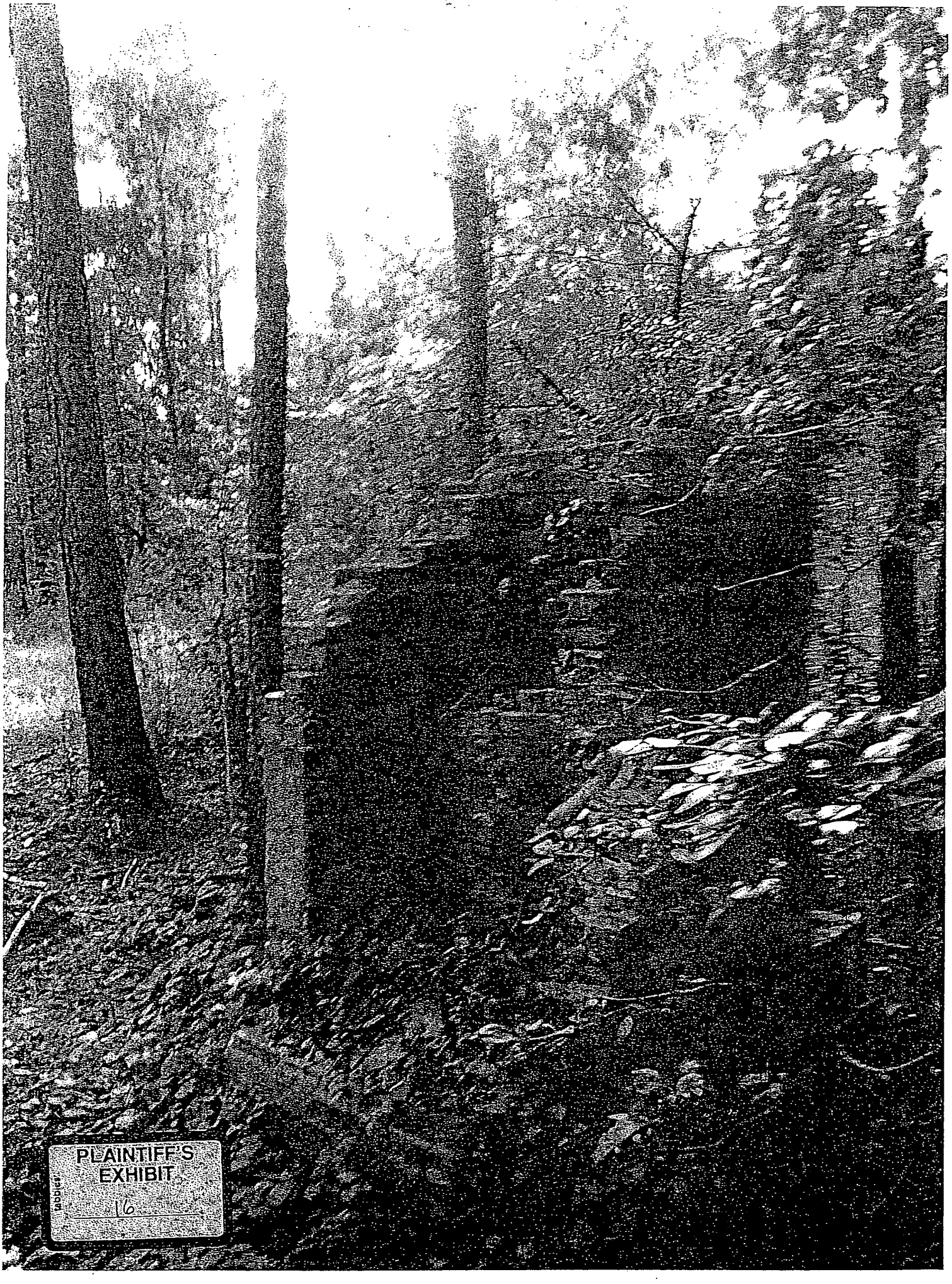


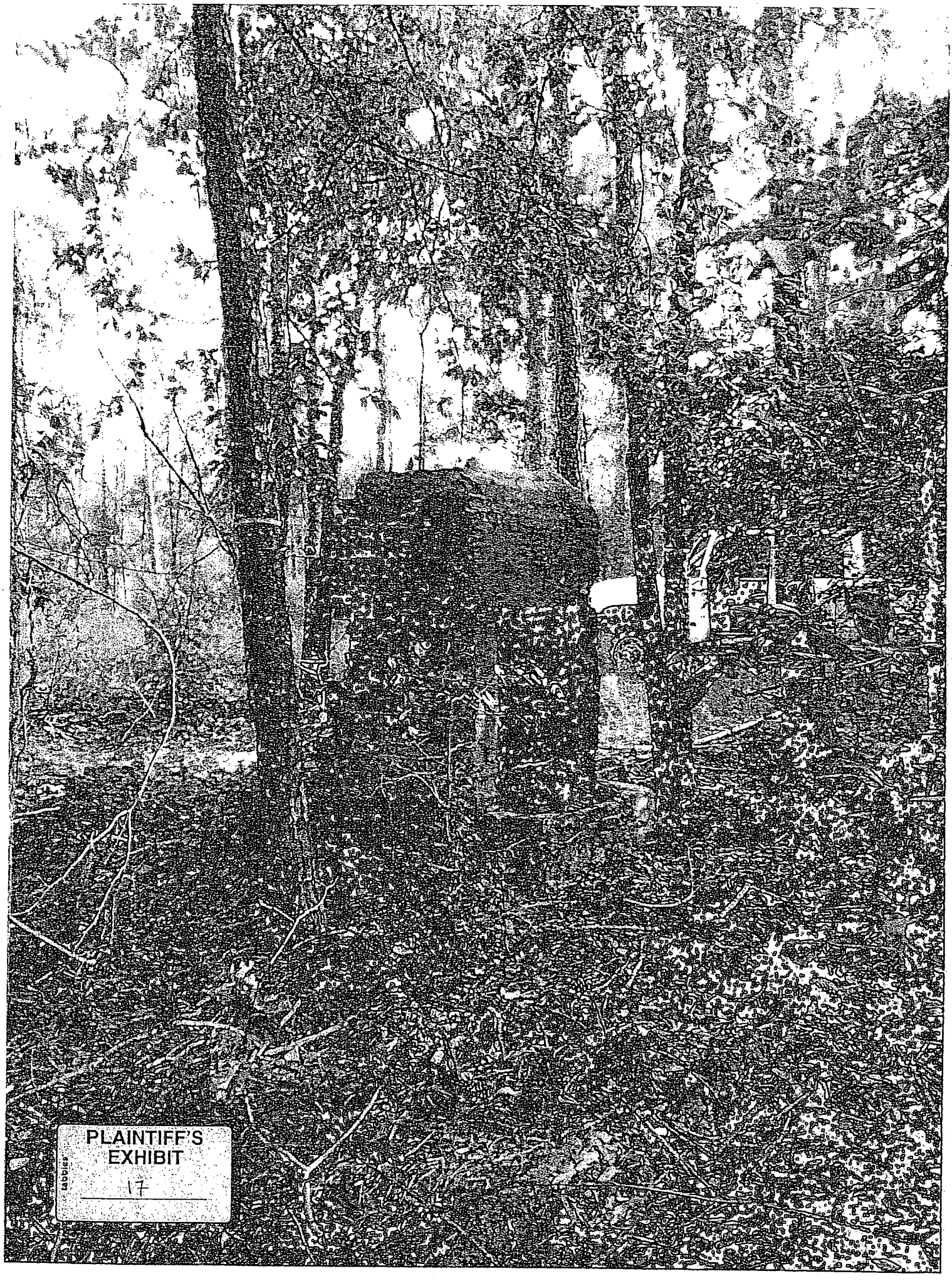
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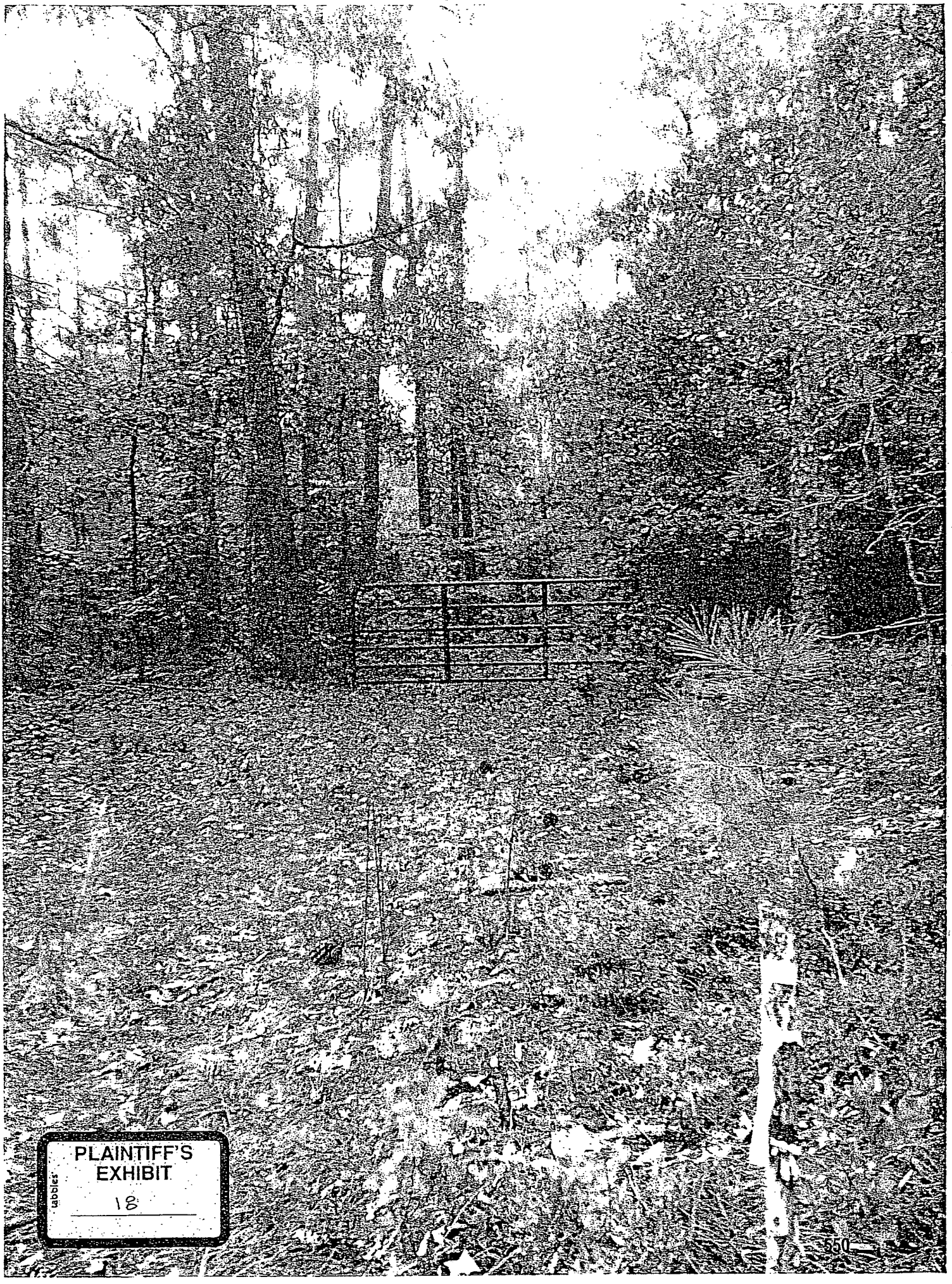
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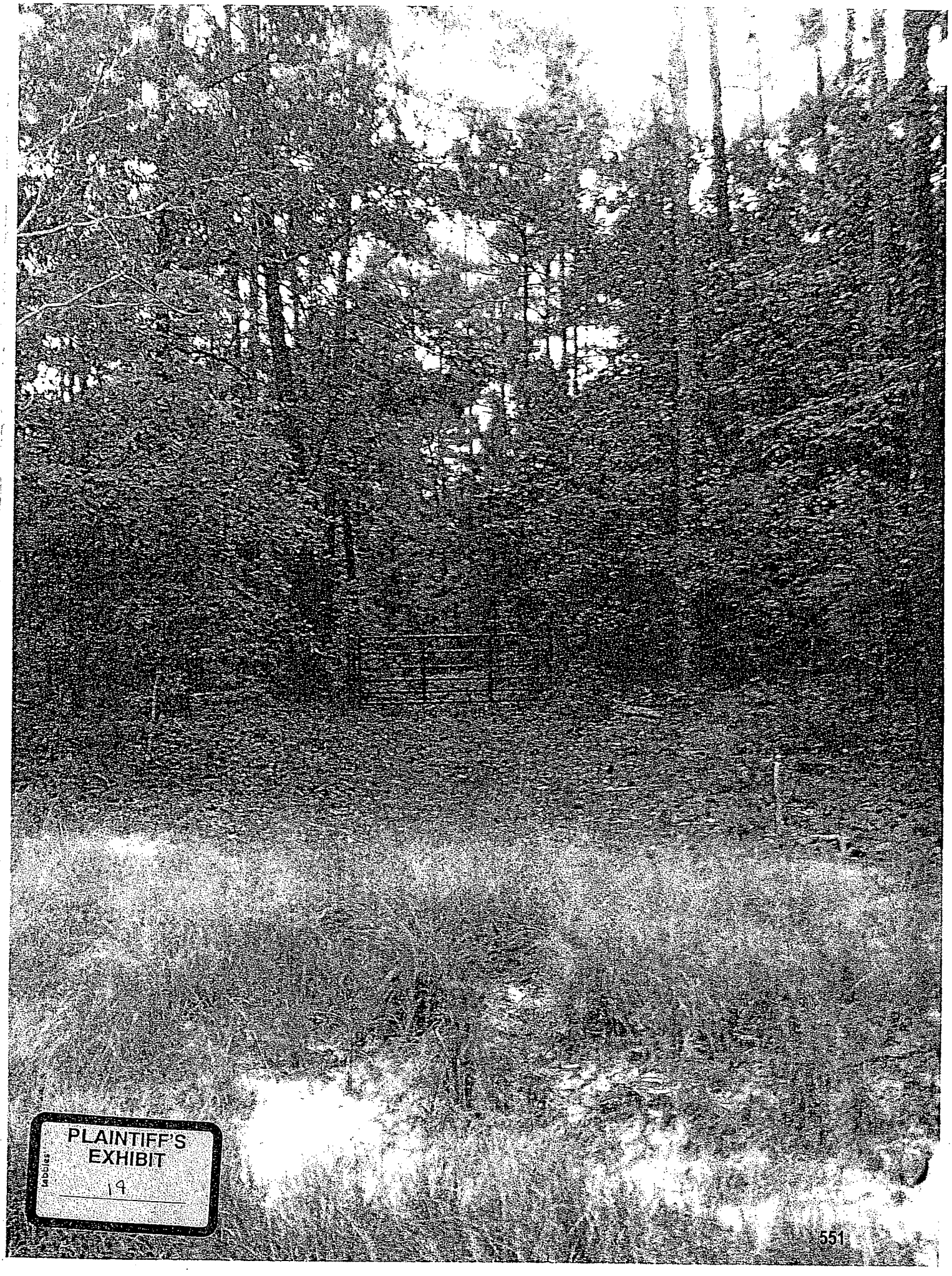


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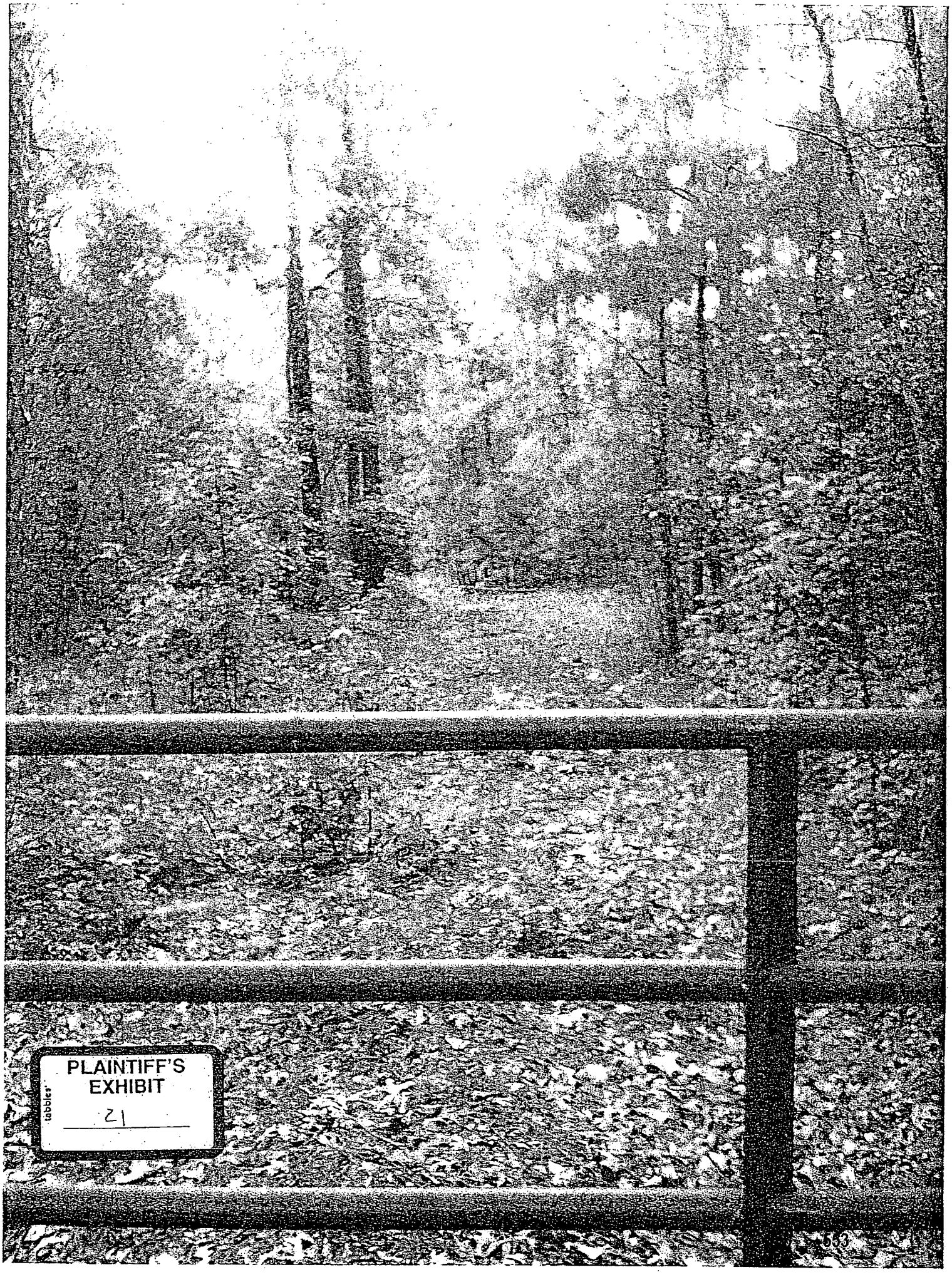


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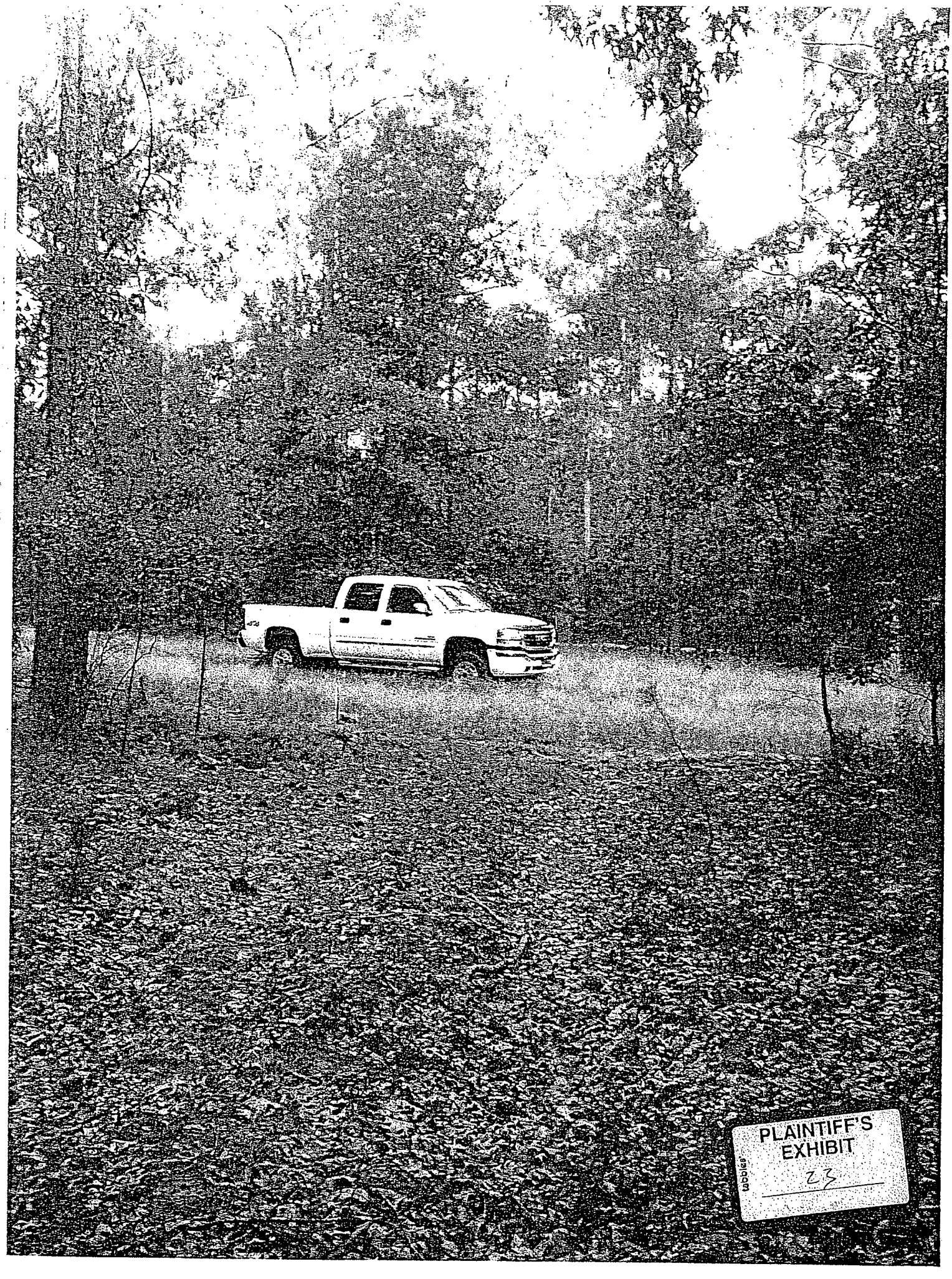


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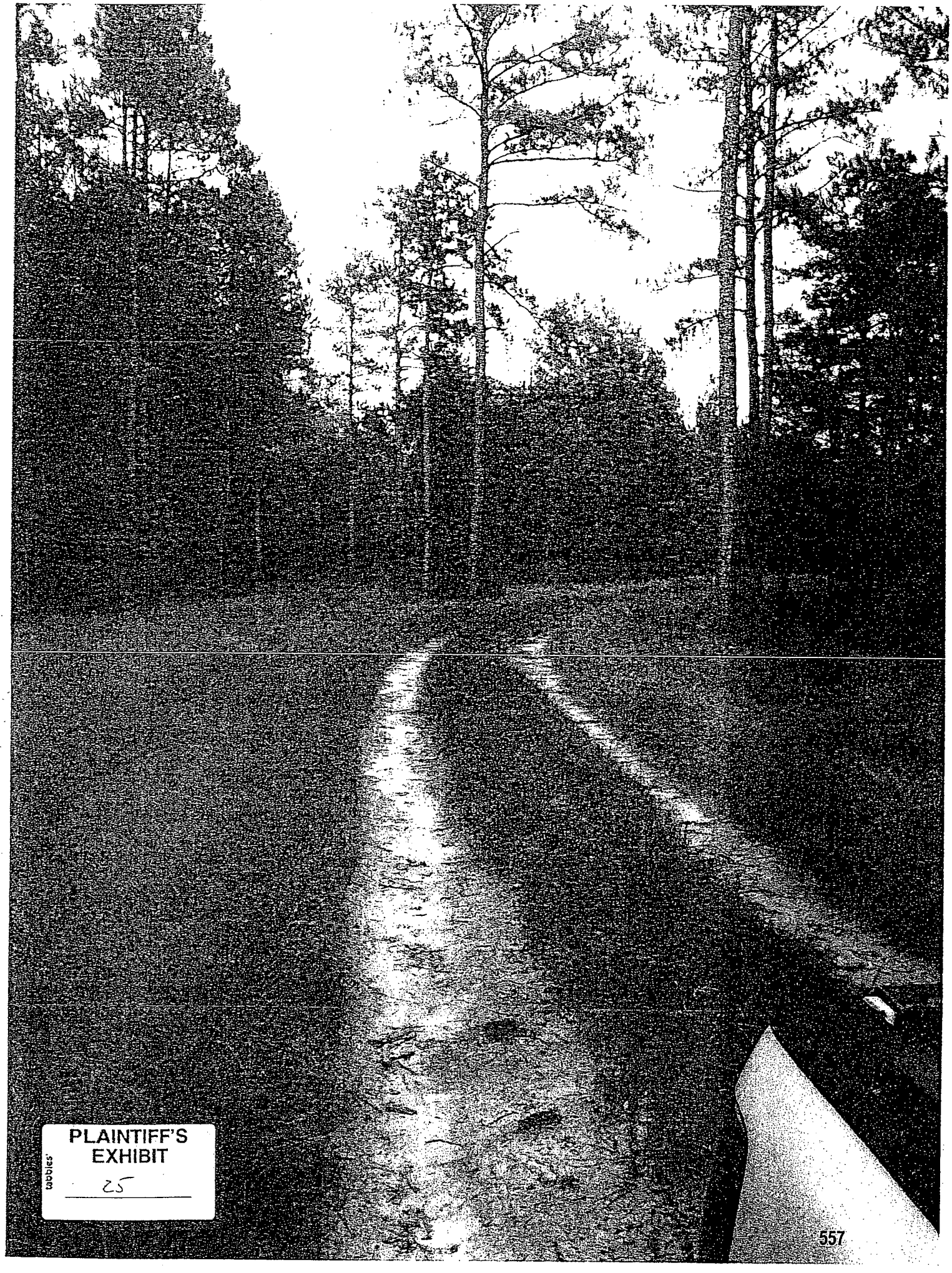
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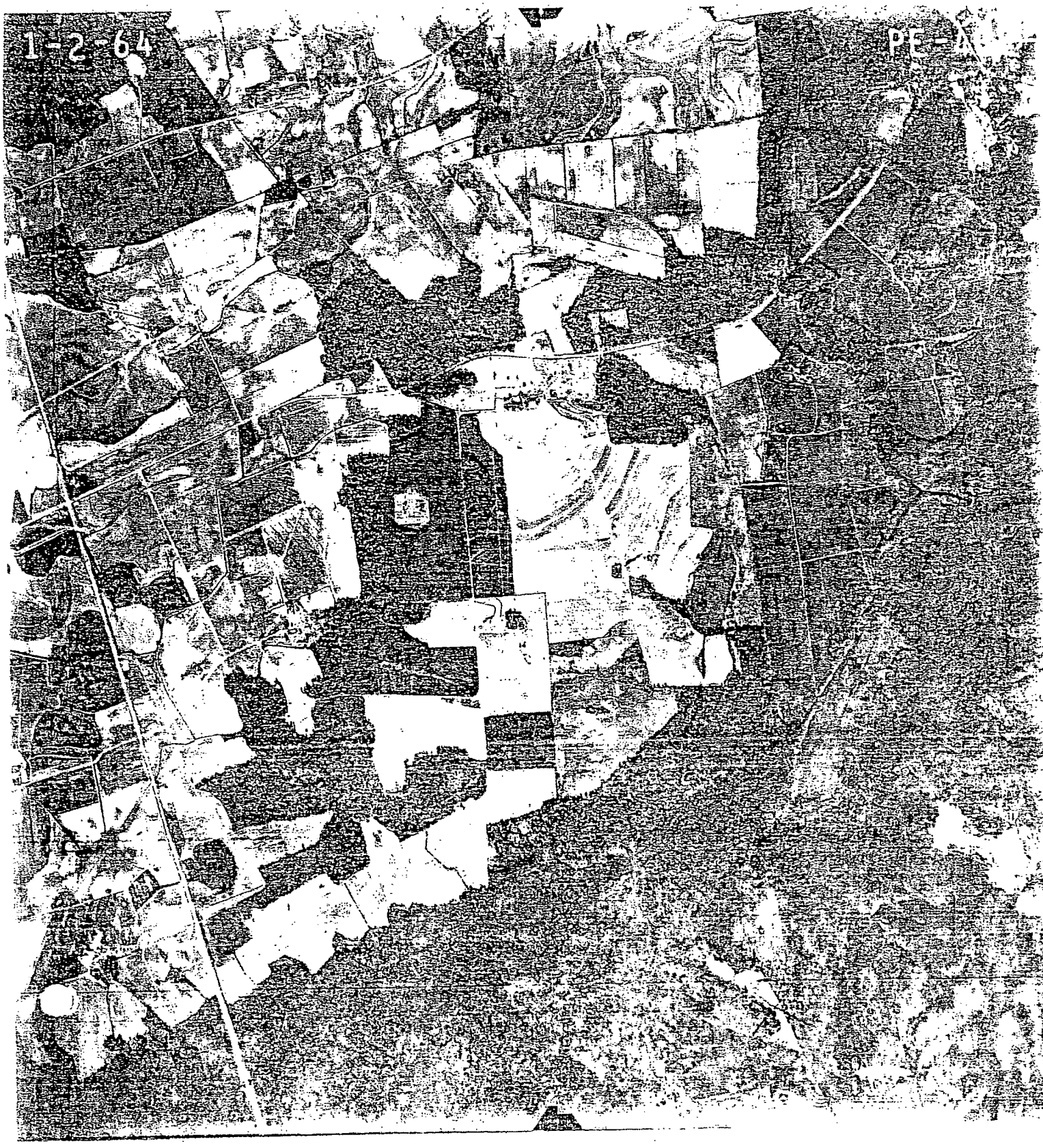
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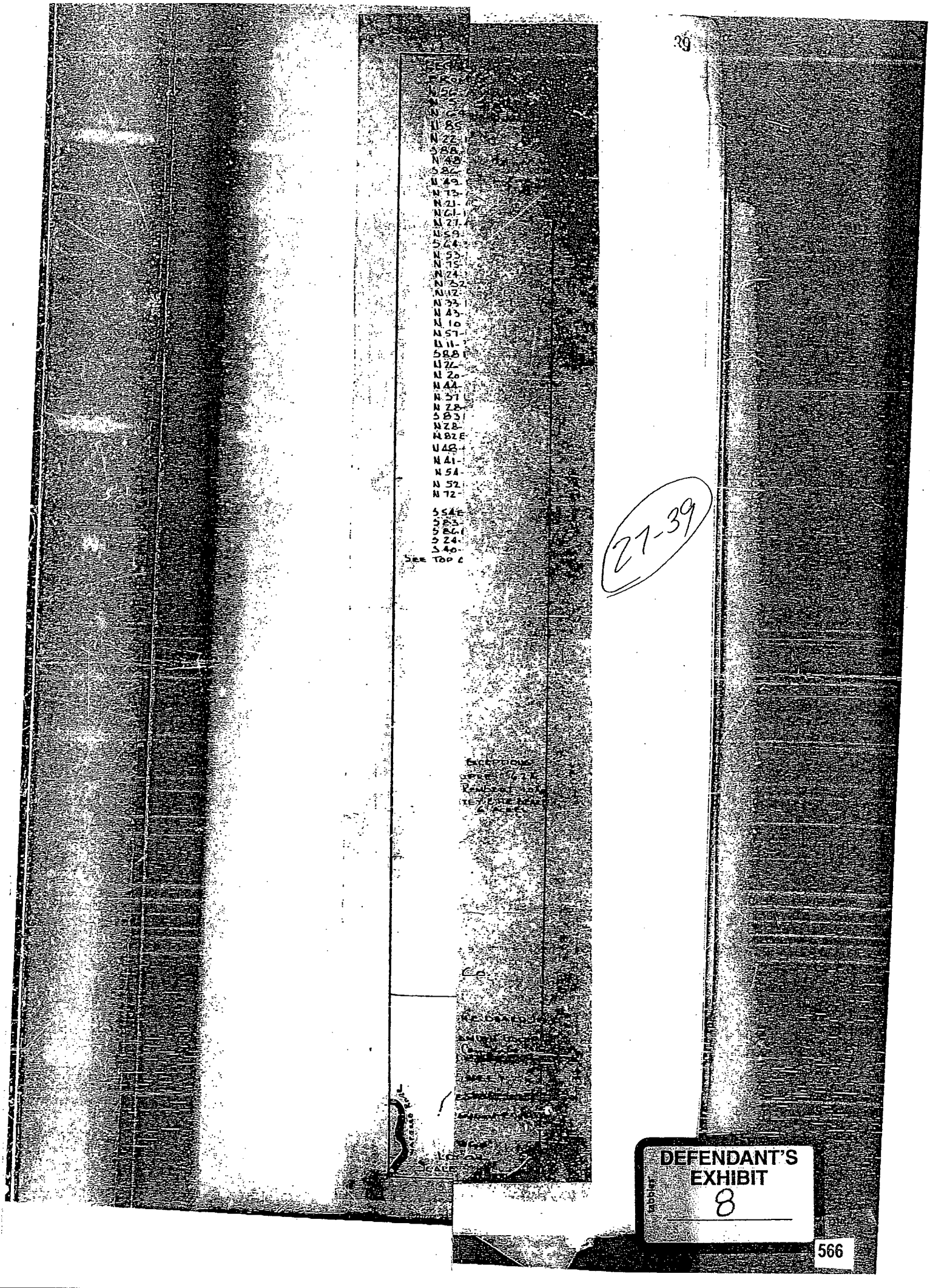
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DEFENDANT'S EXHIBIT 6

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

CERTIFICATE OF COUNSEL

I, M. Brent McDonald, Esquire, Counsel for Appellant, certify that the Record on Appeal and the exhibits to be transferred from the Kershaw Clerk of Court contains all material proposed to be included by any party and not any other material.

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Statement of Issues on Appeal

I. **The Special Referee erred in failing to require Shirley to establish any right to an easement by prescription by the standard of proof of clear and convincing evidence.**

II. **The Special Referee erred in finding that Shirley established a prescriptive easement over the Bundy Property.**

A. Shirley failed to establish uninterrupted use for 20 years.

B. Shirley failed to prove the identity of the thing enjoyed.

C. Shirley failed to establish his use was "adverse" or under "claim of right."

1. Shirley did not establish a valid claim of right.

2. Shirley did not establish that his use was adverse.

3. Permissive use defeats any claim of adverse use or use under a claim of right.

4. Shirley cannot adversely acquire a prescriptive easement over property in which the State of South Carolina has a legal interest.

III. **The Special Referee erred in failing to rule that the inequitable conduct of Shirley barred any relief sought by him in this action due to the doctrine of unclean hands and the doctrine that a party cannot profit from his own wrongs.**

Statement of the Case

This is an appeal from a declaratory judgment action brought pursuant to S.C. Code Ann. 15-53-10 *et seq.* On March 24, 2009, Plaintiff W.H. Bundy, Jr. ("Bundy") filed a summons and complaint pursuant to the South Carolina Declaratory Judgment Act asking the Court to declare what rights, if any, Defendant Bobby Brent Shirley (hereinafter sometimes referred to as "Shirley") had to use a logging road located on the Bundy Property as a means of access to the Shirley Property. Bundy asserted that Shirley did not have any right to use the Bundy Property. Bundy filed an Amended Complaint

substituting Shirley as the Defendant on April 20, 2009 and seeking the same declaration of rights. *See* (R. p. 30, Amended Complaint filed April 20, 2009). Shirley filed an Answer and Counterclaim on June 19, 2009 alleging as follows: (1) that the logging road on the Bundy Property was dedicated to the public; and (2) that Shirley had a prescriptive easement over the Bundy Property. On July 9, 2009, Bundy replied to the Counterclaim and denied Shirley or the public had a right to use the logging road. Bundy also asserted various affirmative defenses—including unclean hands. On April 15, 2010, Shirley filed an Amended Answer and Counterclaim. *See* (R. p. 40, Amended Answer and Counterclaim filed April 15, 2010). Bundy again replied, on April 26, 2010, to the Counterclaims. *See* (R. p. 46, Reply to Amended Counterclaim filed April 26, 2010).

On April 22, 2010, the action was referred to Special Referee Roderick M. Todd, Jr. by Order of the Honorable James R. Barber, III. A hearing without a jury was held before Special Referee Todd on August 25-26, 2010. *See* (R. p. 113, Transcript of Hearing Vol I, pp. 1-224, August 25, 2010). *See* (R. p. 339, Transcript of Hearing Vol II, pp. 226-301, August 25, 2010).

The Special Referee entered an Order on July 11, 2011. *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011). The July 11, 2011 Order found that Shirley carried his burden of proof in showing that the logging road was dedicated to the public and that Shirley met his burden of proof in showing that he had a prescriptive easement to use the logging road. The Court rejected Bundy's affirmative defenses. On July 12, 2011, Shirley's Counsel moved to be relieved as counsel. *See* (R. p. 52, Respondent's Counsel's Motion to Withdraw, dated July 12, 2011). This motion was supported by an affidavit signed by Counsel for Shirley. *See* (R. p. 53, July 25, 2011 Affidavit of John W. Wells). Bundy served a motion to Alter or Amend pursuant to Rule

59, SCRCP and a Motion to Amend the Complaint to conform to the evidence pursuant to Rule 15(b), SCRCP on July 20, 2011. *See* (R. p. 55, Appellant's Motion to Alter or Amend pursuant to Rule 59, SCRCP, dated July 20, 2011). *See* (R. p. 87, Appellant's Motion to Amend the Complaint to Conform to the Evidence pursuant to Rule 15(b), SCRCP, dated July 20, 2011). A hearing was held before the Special Referee on August 15, 2011. Counsel for Shirley withdrew his motion to be relived as counsel at the hearing. The Special Referee entered an order on February 9, 2012, granting Bundy's Motion to Amend to conform to the evidence. *See* (R . p. 29, Order on Appellant's Rule 15, SCRCP Motion, filed February 9, 2012). The Special Referee, also on February 9, 2011, entered an Order granting Bundy's motion to alter or amend in part, and denying it in part. *See* (R . p. 22, Order on Appellant's Rule 59, SCRCP Motion, filed February 9, 2012). The Special Referee amended his Order and found that the logging road was not public and it had not been dedicated to the public. The Special Referee, however, again found that Shirley had a prescriptive easement to use the logging road. Bundy served his Notice of Appeal of the July 11, 2011 Order and the February 9, 2012 Order denying his 59(e) motion on the prescriptive easement issue on February 14, 2012.

The central issue in this appeal is whether or not Shirley has a prescriptive easement to use a logging road on property owned by Bundy located in Kershaw County, South Carolina.

Stipulated Facts

In the present case, the parties have stipulated to the following facts:

(1) Plaintiff W.H. Bundy, Jr. is the fee owner of seven (7) tracts of contiguous property located in Kershaw County, South Carolina and more fully described in

the deed from Bowater Timber 1, LLC to W.H. Bundy, Jr., dated March 14, 2003 (the "Bundy Property").

(2) From 1985 to 2003, the Bundy Property was leased by the Plaintiff's predecessors in title Bowater Incorporated and Bowater Timber 1, LLC to the South Carolina Department of Natural Resources (the "Lease").

(3) Between 1985 to 2003, the South Carolina Department of Natural Resources had a legal interest in the Bundy Property.

(4) As a result of the Lease, the Bundy Property was enrolled in the South Carolina Department of Natural Resources, Wildlife Management Area program.

(5) The Lease and the Wildlife Management Area program allowed public access to all portions of the Bundy Property from 1985 to 2003 subject to the rules and regulations of the Wildlife Management Area program.

(6) Bowater Incorporated was the owner of all outstanding shares of Catawba Timber Company. Catawba Timber Company merged into Bowater Incorporated on December 31, 1980. At such time Bowater Incorporated was vested with all the property of Catawba Timber Company.

(7) Neither Kershaw County nor any other public entity maintains or repairs any timber roads located on Tract 2 of the Bundy Property, which is the tract at issue.

(8) In 2004, Shirley put up a gate located on the property line between the Bundy Property and the property owned by the Miller Family with the permission of Bundy.

See (R. p. 520, Stipulation of Facts). The parties also stipulated to the chain of title for the Bundy Property and the chain of title to the Shirley Property. *See* (R. p. 468,

Stipulation of Parties for Plaintiff Bundy's Chain of Title). *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).

Statement of the Facts

A. The Dispute

By way of background, Saxon Road is a dirt road in Kershaw County that runs from Swift Creek Road until it reaches a cul-de-sac or "turn around" at property owned by the Miller family. *See* (R. pp. 523-525, Plaintiff's Exhibits 1-3). *See* (R. p. 558, Plaintiff's Exhibit 26). Saxon Road is maintained by Kershaw County. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 130). *See* (R. p. 520, Stipulation of Facts). *See* (R. p. 558, Plaintiff's Exhibit 26). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 61-62).

The land in dispute in this case is a dirt logging road. *See* (R. p. 558, Plaintiff's Exhibit 26). *See* (R. pp. 523-525, Plaintiff's Exhibits 1-3). The logging road is located on the Bundy Property. It terminates at a gate located on a 37 acre piece of property owned by Shirley. Lying between the terminus of Saxon Road, at the cul-de-sac or "turn around", and the logging road in dispute is the property owned by the Millers. The County does not maintain the logging road in dispute or the path over the Miller Property. The County has never maintained it. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 130). *See* (R. p. 520, Stipulation of Facts). *See* (R. p. 558, Plaintiff's Exhibit 26). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 61-62). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, p. 146).

Shirley contended in the action that he has the right to use the logging road in

dispute because it is a portion of Saxon Road which he contends was dedicated to the public. *See* (R. p. 113, Transcript of Hearing Vol I, Shirley Testimony, pp. 187-188; 202-203). On this basis, he also contended at trial that he has a prescriptive easement to use the pathway in dispute because he thought it was a portion of the public road. Id. Bundy contended at trial that the logging road in dispute is a private logging road to which neither the public nor Shirley have the right to use. *See* (R. p. 113, Transcript of Hearing Vol I, Bundy Testimony, p. 87).

B. The Bennett Property/Shirley Property

On December 19, 1947, Elijah Bennett purchased a 37.14[1] acre tract of farm land. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).

The deed describes the Bennett Property as being surrounded on all sides by private property. Id. Elijah Bennett's son, Edward Bennett, testified at trial that his family began to farm the property in the spring of 1948. *See* (R. p. 339, Transcript of Hearing Vol II, Testimony of Edward Bennett, pp. 239-240). The Bennetts farmed the property for six or seven years until Elijah Bennett fell ill and passed away. Id. Edward Bennett testified that during that time, his family would access the Bennett Property by traveling over the Miller Property and over what would become the logging road on the Bundy Property with wagons in order to farm their property. *See* (R. p. 339, Transcript of Hearing Vol II, Testimony of Edward Bennett, pp. 232-243). Edward Bennett, however, was only able to testify as to what his family did with the property from 1948 until the time he was married prior to 1960. *See* (R. p. 339, Transcript of Hearing Vol II, Testimony of Edward Bennett, pp. 241-242). Edward Bennett has no first hand

[1] At the time it was thought to be 42 acres, but a later survey corrected the inaccuracy. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title). This property would eventually become the Shirley Property when it was purchased by his father.

knowledge of the use of the property by his family after 1960. Id. No other evidence of the Bennett family's ownership or use of the property was put into evidence by Defendant Shirley.

From 1968 to 1985, the Bennett Property was owned by six (6) separate owners. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).There was no evidence presented by Shirley as to any access or use of the Bennett Property during this time. There was no evidence presented by the Shirley as to any use of the disputed logging road during this time.

C. The Miller Property

Richard Miller has lived on the Miller property his entire life. The Miller family has owned their property for at least 80 years and continues to own their property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 142-144). He testified that the Bennetts used various routes to access their property and that they asked for and received permission from the Miller family to travel across the Miller property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 147-148). Moreover, after the Bennett family stopped farming the Bennett Property, due to Elijah Bennett's illness, the Bennetts did not access or use the property in any way. Indeed, the Miller family began farming the property starting in 1964 and continued farming it for a few years. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 149-150). During this time, the Miller family paid the taxes on the Bennett Property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 154-155). In 1968, the Bennett Family sold the Bennett Property. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).

D. The Bowater Property/Bundy Property

In late 1960, Catawba Timber Company (n/k/a Bowater[2]) began to purchase various tracts of land located in Kershaw County, South Carolina. *See* (R. p. 468, Stipulation of Parties for Plaintiff Bundy's Chain of Title). [3] These various tracts were not subdivided by Bowater but were acquired individually and shared a common fee owner only. Id. Bowater used its property for timber purposes. At the time of purchase, the Bowater property was contiguous to various tracts of property owned by the Miller family, Elijah Bennett and others. *See* (R. pp. 523-525, Plaintiff's Exhibits 1-3). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 142-144).

E. 1985 to Present

While Bowater owned the Bundy Property, in 1985, it enrolled the property in a program established by the South Carolina Department of Natural Resources ("SCDNR") called the Wildlife Management Area ("WMA") program. *See* S.C. Code Ann. § 50-11-220; S.C. Code Ann. § 50-3-100. This program allowed SCDNR to enter into a lease with Bowater wherein the public was allowed to enter upon Bowater's property and hunt, bird watch, hike and do other outdoor activities. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 40-41).

In 1985, while hunting on the Bowater property pursuant to the public rights granted by the WMA lease, Shirley became aware of the property formerly owned by the Bennett Family. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 176). On May 10, 1985, Shirley's father purchased the 37.14 acre parcel of property

[2] Bowater went through a number of iterations in their name during the time period of relevance in this case. For ease of briefing, the company will be referred to as "Bowater."
[3] The Bowater Property would eventually become the Bundy Property.

(hereinafter referred to as the "Shirley Property"). *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).

Shirley's father purchased the Shirley Property pursuant to a deed that expressly states that the property is surrounded on all sides by privately owned property. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title). The Plat referenced in the deed shows the property as landlocked. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 205-208). No access roadways or easements are expressly included or referenced in any way in the deed. Id. Saxon Road does not appear in anyway in the deed or plat. Id. The disputed pathway does not appear in any way in the deed or on the plat. Id.

Until the early 1990s, Shirley and his father accessed the property by driving over property owned by Mr. Whit Boykin. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 144-146; 165). They would then proceed over the property of Mr. and Mrs. Driscoll (also known as the Rooster Pit) and then over the property of Baynard Boykin, which is contiguous to the Shirley Property. Id. Due to a dispute with one of the Shirleys, however, Mr. Whit Boykin eventually put up a gate to prevent Defendant Shirley from crossing over his property. Id.

At the hearing, Shirley initially denied that he ever used or was aware of this route; however, on cross examination he eventually admitted that he was aware of the route and in fact had used it on foot while hunting the Bowater property with other members of the public. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 196-199). Shirley also denied any dispute with Whit Boykin relative to this route, but

admitted that a dispute with Whit Boykin occurred over another private road on another property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 200-202).

After Mr. Boykin erected the gate, Shirley began to access his property by driving his truck or walking up Saxon Road until it ended in the cul de sac or turnaround, where the public maintenance ended at the Miller Property. He would then drive through the yard of the Millers until he reached the Bowater property—the property that was subject to the subject to the WMA lease and open to the public. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 144-145). *See* (R. p. 524, Plaintiff's Exhibit 2). Shirley would then drive over the Bowater property to access his property. Id.

The Millers initially asked Shirley to stop driving over their property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 150-151). Eventually, subsequent to Shirley's use of the disputed pathway in the early 1990s, the Millers put up a wooden gate on their property to prevent Shirley from accessing his property by driving or walking over their property. Id; *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 185-186). Shirley pulled the gate down with a winch. Id.

In addition to the Millers' gate, Bowater also had a cable gate strung at the property line between the Miller Property and the Bowater property which eventually would become the Bundy Property. *See* (R. p., 541, Plaintiff's Exhibit 9). *See* (R. p. 541-543, Plaintiff's Exhibits 9, 10, and 11). *See* (R. p., 558, Plaintiff's Exhibit 26). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 120-122). *See* (R. p. 520, Stipulation of Facts). During this time, the public was permitted to access the entire Bowater Property and the logging roads on the property pursuant to the WMA lease. *See*

(R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 118-119). *See* (R. p. 520, Stipulation of Facts).

Shirley testified that Bowater would take the cable down during hunting season to allow public access and put it back up during non-hunting season to prevent public access. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 127). He testified that he was given a key to the cable by an SCDNR game warden to access the Bowater Property and the disputed pathway in the instances in which Bowater had locked the cable. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 130-134; 208-209). The Bowater cable was erected until the time Bundy purchased the Bowater property in 2003. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 135-136).

Bowater permitted Shirley to travel over its property because it permitted the entire public to travel over their property pursuant to the WMA lease. The only people Shirley observed using the Bowater property were hunters pursuant to the WMA lease. *See* (R. p. 113, Transcript of Hearing Vol I, 2010, Testimony of Shirley, pp. 138-139). Moreover, Shirley testified that he did not have any evidence of any hunters using the disputed pathway across the Miller's property and onto the Bowater WMA property until Bowater enrolled the property in the WMA program in 1985. *See* (R. p. 113, Transcript of Hearing Vol I, 2010, Testimony of Shirley, p. 140). *See* (R. p. 520, Stipulation of Facts). Richard Miller testified that the hunters used Shirley's original route to access the Bowater property and only very rarely did he see any hunters using the disputed pathway. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 152-153).

At the hearing on this matter, Shirley testified that he believed that any individual wishing to "go on" property subject to the South Carolina Department of Natural Resources Game Management Program was required to have a permit. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 177-178). The parties stipulated that the property over which the disputed pathway traverses was subject to the South Carolina Department of Natural Resources Game Management Program from 1985 until 2003. *See* (R. p. 520, Stipulation of Facts, Stipulated Fact 5, p. 521). Shirley, however, testified that after he purchased his property, he no longer purchased a game management permit, though he testified he continued to "go on" the game management property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 183-184).

On March 14, 2003, Bundy purchased the Bowater property in order to put the property under a conservation easement for long leaf pines. *See* (R. p. 468, Stipulation of Parties for Plaintiff Bundy's Chain of Title). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 38-39). Bundy's deed from Bowater references a 1960 Plat by R.H. Marett, a registered land surveyor, which depicts a dotted line in the vicinity of the logging road. *See* (R. p. 468, Stipulation of Parties for Plaintiff Bundy's Chain of Title). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, p. 97). It also depicts other private logging roads. This plat is not in the chain of title of Shirley. *See* (R. p. 417, Stipulation of Parties for Defendant Shirley's Chain of Title).

Up until the time Bundy purchased the Bundy Property, the property was subject to the WMA lease, and it had public access via that lease. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 135-136). *See* (R. p. 520, Stipulation of Facts). Upon conveyance, the WMA lease was extinguished and the public no longer had a right

to access the property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 204-205). In an effort to accommodate a neighbor, Bundy initially gave Shirley permission to continue to use the disputed pathway over that portion of the Bundy property despite the fact the property was no longer WMA property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 72-73). Shirley also asked Bundy if he could put up a gate on Bundy's property at the location of the previous Bowater cable in order to now keep people out. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 72-75). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 117-118; 127-130; 211). *See* (R. p. 540, Plaintiff's Exhibit 8). Bundy gave Shirley permission to erect the gate. Id. *See* (R. p. 520, Stipulation of Facts). At this time, Shirley did not assert any right to use the disputed pathway. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, p. 74). Shirley did not assert that the disputed pathway was a public road. Id. In fact, the erection of a gate is contrary to that position.

Shortly after the erection of the gate, as Bundy testified, Shirley called him in a fit of rage regarding Bundy's timber operations on the Bundy property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 75-80). Shirley admits to this conversation and admits to "losing his cool" and "cussing him out." *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 190; 212-214). Shirley testified that the reason he lost his temper and cussed out Bundy was because a tree had fallen on the disputed pathway and his wife could not get out to his young son who was camping out for the first time by

himself with some young friends on the Shirley property.[4] Id. Bundy testified that Defendant Shirley not only cussed him out but that he threatened to kill him if anything like this ever happened again. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 75-80).

In the summer of 2005, as a result of the 2004 incident, Bundy called Shirley and demanded that he remove the gate and informed him that he no longer had permission to use his property to access the Shirley property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 80-84). It was during this 2005 telephone conversation that Shirley first asserted to Bundy that he had some type of ownership rights in the disputed pathway and some type of right to maintain a gate on Bundy's property. Id. Shirley again threatened to kill Bundy. Id. Shirley, however, refused to take the gate down and stop using Bundy's property to access the Shirley property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 84-85).

In an exchange of letters dating from September 12, 2005 to March 23, 2006, Bundy demanded that the gate be taken down and expressly informed Shirley that he no longer could travel across the Bundy property to access his property. *See* (R. pp. 526-527, Plaintiff's Exhibits 4 and 5). Shirley eventually removed the gate. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 86-87).

[4] Shirley's testimony was inconsistent on the issue of his son. Shirley testified that the first confrontational incident occurred in 2004 when his only son was only 13 or 14 years old. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 211). He also testified that his son was 28 years old at the August 2010 hearing. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 189). Therefore, in 2004 his son would have been 21 or 22 years old rather than a young boy.

Standard of Review

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (S.C. 1991).

The determination of the existence of an easement is an action at law and establishing the existence of the alleged easement is a question of fact in the law action. Pittman v. Lowther, 355 S.C. 536, 540, 586 S.E.2d 149, 151 (Ct.App. 2003). However, the question of the extent of a grant of an easement is an action in equity. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C. 1997); *see also* Binkley v. Rabon Creek Watershed Conservation Dist., 348 S.C. 58, 558 S.E.2d 902 (Ct. App. 2001) (scope of easement is equitable matter in which reviewing court may take its own view of preponderance of evidence).

Argument

I. The Special Referee erred in failing to require Shirley to establish any right to an easement by prescription by the standard of proof of clear and convincing evidence.

The Special Referee failed to rule that Shirley was required to establish the elements of a prescriptive easement by clear and convincing evidence. The burden is on the party asserting the right to an easement to prove the existence of the easement. Mack v. Edens, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct.App. 1995); *see also* Clark v. Hargrave, 323 S.C. 84, 473 S.E.2d 474 (Ct. App. 1996).

The party asserting the prescriptive right must prove the existence of the easement by clear and convincing evidence. Clark v. Hargrave, 473 S.E.2d 474; King v. Hawkins, 282 S.C. 508, 319 S.E.2d 361 (Ct. App. 1984); 12 S.C. Jur. Easements § 10 (2011) ("A prescriptive easement is analogous to adverse possession...and cases concerning adverse

possession may amplify and further define the elements of a prescriptive easement."); 25 AmJur.2d Easements and Licenses § 39 (2011) ("To establish an easement by prescription, the claimant must ordinarily prove by clear and convincing evidence a use of the subject property which is characterized as open and notorious, continuous and uninterrupted, adverse and under a claim of right, with the actual or imputed knowledge of the owner of the servient tenement."); Jones v. Leagan, 384 S.C. 1; 681 S.E.2d 6 (Ct.App. 2009); Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (S.C. 1986); Thomas v. Dempsey, 53 S.C. 216, 31 S.E. 231 (S.C. 1898). *See also,* Zinnerman v. Williams, 211 S.C. 382, 386, 45 S.E.2d 597, 599 (S.C. 1947) ("The Thomas-Dempsey case establishes the principle that a party, in order to acquire title to real estate by adverse possession, must show such possession by clear and convincing evidence."); Lusk v. Callahan, 287 S.C. 459, 461, 339 S.E.2d 156, 157 (Ct.App.1986) (The party making the claim "ha[s] the burden of proving adverse possession by clear and convincing evidence."). Therefore, the required standard proof in an adverse possession case or a prescriptive easement case is the clear and convincing standard. The reason behind this heightened standard of proof is that the party claiming property rights pursuant to either of the two theories is seeking something for nothing. They are claiming property rights for which they have not given any consideration.

The special referee cited to the case of Tyler v. Guerry, 251 S.C. 120, 160 S.E.2d 889 (S.C. 1968) in support of its holding that the standard of proof required to establish a prescriptive easement is less than that to establish a claim of adverse possession. Tyler v. Guerry, however, did not directly deal with the establishment of a standard of proof. Instead Tyler v. Guerry merely noted that it was the exception on appeal of the Appellant that the party asserting an easement across the Defendant's land failed to do so even by

the preponderance of the evidence.[5] Moreover, Tyler v. Guerry does not evaluate the establishment of a prescriptive easement pursuant to the current three-part test adopted in South Carolina. *See* Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (S.C. 1993) ("To establish a prescriptive easement, the party asserting the right must show: (1) continued and uninterrupted use and enjoyment for the full period of 20 years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or under a claim of right."). The current test requires the establishment of "adverse" rights. It would be wholly inconsistent to apply two separate standards of proof for a prescriptive easement and adverse possession.

Therefore, the Special Referee erred in failing to find that Shirley was required to establish his claim for a prescriptive easement by clear and convincing evidence.

II. The Special Referee erred in finding that Shirley established a prescriptive easement over the Bundy Property.

The Special Referee found that Shirley established a private prescriptive easement to use an eight foot wide portion of the logging road over the Bundy Property.[6] This was in error.

To establish a prescriptive easement, the party asserting the right must show: (1) continued and uninterrupted use and enjoyment for the full period of 20 years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or under a claim of right. Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (S.C. 1993). "Laychur,..., emphasized as to the first prerequisite not only that there must be a continued use for twenty years, there must be 'continued and **uninterrupted** use or

[5] The Court found that they did not establish a prescriptive claim.

[6] As stated above, the Special Referee used the wrong standard of proof in evaluating the establishment of a prescriptive easement. For the purposes of this section, however, it is contended that Shirley failed to meet his burden of proof under any standard of proof as he failed to put in evidence establishing the required elements.

enjoyment of the right for a period of 20 years.'" Pittman v. Lowther, 355 S.C. 536, 540, 586 S.E.2d 149, 151 (Ct.App 2003) *citing* (emphasis in original) Horry County v. Laychur, 315 S.C. at 368, 434 S.E.2d at 261. Moreover, in Pittman v. Lowther, Lowther was the servient owner and his "repeated attempts to prevent Pittman, [the party seeking the prescriptive easement], from crossing Lowther's land constitute[d] interruptions, however brief, in Pittman's use and enjoyment of that portion of Wellington Road." 355 S.C. at 541, 586 S.E.2d at 152 *citing* 25 Am.Jur.2d Easements § 69 (1996) ("Any unambiguous act of the owner of the land which evinces his intention to exclude others from the uninterrupted use of the right claimed breaks its continuity so as to prevent the acquisition of an easement therein by prescription...."). More recently, in Kelley v. Snyder, S.C. Court of Appeals Order dated January 25, 2012 (Shearouse Adv. Sheet No. 3), the Court of Appeals reiterated that erection of barriers and verbal conveyances by the servient estate owner refusing to acquiesce in the use of the easement or demanding the cessation of the use of the easement constitute an interruption.

In the present case, Defendant Shirley failed to establish all the elements.

A. Shirley failed to establish uninterrupted use for 20 years.

Shirley did not use the disputed pathway uninterrupted for the full 20 years. Edward Bennett's testimony did not establish a prescriptive easement under which Shirley could claim rights. Bennett testified that his family only farmed the property and used the path for 6 or 7 years. He also testified that his knowledge of the Bennett/Shirley property was only up to 1960. The Bennett's purchased the Bennett/Shirley property in 1948. Therefore, Edward Bennett's testimony is limited to only a 12 year period. This is insufficient to reach the 20 year requirement for a prescriptive easement. Moreover, Richard Miller testified that his family leased the property from 1964 until the Bennetts

sold it in 1968 and that the Bennetts did not use or access the property during that time. Therefore, since the Bennett Family only owned the property for 20 years, any interruption or non-use prevents a claim to a prescriptive easement allegedly established by the Bennett Family.

Shirley also introduced various aerial photographs from 1956 to 1974, with each purporting to show the disputed pathway. These aerials, however, are insufficient to establish the use of the disputed pathway by anyone in particular other than Bowater Timber Company. Indeed, the aerial photographs depict other logging roads on the timber property. The photographs fail to show the use of the disputed pathway by the Defendant or his predecessors in interest.

With regard to Shirley's attempted establishment of the uninterrupted use of the disputed pathway for 20 years, his father acquired the property on May 10, 1985.[7] Until the early 1990s, the evidence shows that the Shirleys accessed their property from another direction—over the property of Mr. Whit Boykin and others. These years do not count toward the 20 years because that route is not the same as the disputed pathway. Therefore, even if this court were to assume the Shirleys began to use the disputed pathway in 1990, this action was commenced in 2009 and the Defendant is unable to prove use for the requisite 20 years.

Bowater erected a gate either prior to his purchase or shortly thereafter. This constitutes an interruption in the 20 years. Moreover, in the early 1990s, the Millers constructed a wooden gate in an attempt to stop Shirley from crossing over their property which is a portion of the disputed pathway and necessary to show the identity of the thing

[7] Shirley acquired the property from his father in 2005.

enjoyed. Though Shirley ripped the gate down with his winch, this gate would constitute a legal interruption under Lowther as explained previously.

In 2004, Shirley sought and Bundy gave permission to erect a gate on the Bundy Property to keep people out as the land was no longer used a WMA. Shirley also sought permission to travel over the Bundy Property. This is another interruption. Unlike the facts of the Kelley v. Snyder case, Shirley put up the gate with Bundy's permission. This permissive use also constitutes an interruption of any adverse use.

B. Shirley failed to prove the identity of the thing enjoyed.

A party seeking to establish a prescriptive easement must prove the second element of a prescriptive easement which is that the identity of the thing enjoyed must remain uninterrupted for the full period. Pittman v. Lowther, *supra*. Said another way, the nature, location and character of the easement sought by prescription must remain consistent and not subject to change or alteration.

Shirley has failed to satisfy the second element. The evidence shows that the location of the easement sought by Shirley has changed over time. Moreover, the particular rights asserted by Shirley have also changed over time. For example, Shirley now argues that the disputed pathway is a public road and his right to use it based solely on the premise that the public has a right to use the disputed pathway. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 127-129; 202-203). However, as set forth above, Shirley put a gate up on the disputed pathway to prevent the public from using it. Whatever rights he asserted in 2004 to establish the identity of that which he sought to use or enjoy are different from the rights he now asserts which are rooted in public rights. Therefore, Shirley failed to establish the second element of a prescriptive easement.

C. Shirley failed to establish his use was "adverse" or under "claim of right."

As to third element necessary to establish a prescriptive easement, the claimant must establish that the use was open, hostile, notorious, continuous, and uninterrupted in order to have shown the use to have been adverse. Poole v. Edwards, 197 S.C. 280, 283, 15 S.E.2d 349, 350 (S.C. 1941). The claimant may also prove the third element by establishing that the use was under a "claim of right."

1. Shirley did not establish a valid claim of right.

South Carolina courts have held that a party may establish a prescriptive easement under a claim of right if "he demonstrate[s] a substantial belief that he had the right to use the parcel or road **based upon the totality of circumstances surrounding his use**" and in a manner consistent with the alleged easement. Hartley v. John Wesley United Methodist Church of Johns Island, 355 S.C. 145, 151, 584 S.E.2d 386, 389 (Ct.App. 2003) (emphasis added); *see also* 25 Am.Jur.2d Easements and Licenses, § 57, at 552 (2004) (stating "an intent to claim adversely may be inferred from the acts and conduct of the dominant users" and defining "claim of right" as "without recognition of the rights of the owner of the servient estate").

In the present case, Shirley attempted to present evidence to show that he used the disputed pathway "under a claim of right." The asserted claim of right was that he thought he had a right to use the disputed pathway because it was public. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, p. 187). This is insufficient. In Morrow v. Dyches, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct.App.1997), the South Carolina Court of Appeals specifically rejected an argument of a party seeking to establish a prescriptive easement under a claim of right merely because he "thought" he had a right to use the road. An example of a "claim of right" actually based in fact is

found in the case of Revis v. Barrett, 321 S.C. 206; 467 S.E.2d 460 (Ct.App. 1996). In Revis, the road in question was in fact formerly a public road that was abandoned and the claimant, Revis, had a letter from the adverse party that specifically recognized her rights in the road. This letter served as the basis for the dismissal of a previous lawsuit over the right to use the road brought by Revis' parents. In Revis, therefore, the claim of right had some basis in evidence other than what Revis "thought."

Moreover, Shirley sought a key and erected a gate on the disputed pathway. Therefore, based upon the totality of the circumstances, Shirley is unable to now argue that his easement by prescription was established under a claim of right when in the past he has acknowledged he had no absolute right.

2. Shirley did not establish that his use was adverse.

Shirley failed to show that his use was open, hostile, notorious, continuous, and uninterrupted. *See* Poole v. Edwards, 15 S.E.2d 349, 350. The failure of the continuous and uninterrupted elements is addressed above.[8] Shirley's use also failed to be open and notorious. Shirley is attempting in this case to establish a prescriptive easement by submitting evidence that he periodically used a logging road over the unenclosed woodland property of a timber company that the timber company allowed the general public to enter upon for the benefit of the general public. He argues and the Special Referee erroneously agreed that this use is open and notorious in such a way as to put the owner on notice that Shirley was seeking to exercise rights both different and distinct from the public and detrimental to the rights of the timber company. In South Carolina, however, "[t]he long-term use by the public of a road through unenclosed and

[8] This also applies to the Bennett Family's use of the logging road as there is no evidence of continuous and uninterrupted use for the full 20 year period by the Bennett Family.

unimproved woodland does not give rise to a right-of-way by prescription." Cleland v. Westvaco, 314 S.C. 508, 511, 431 S.E.2d 264, 267 (Ct.App. 1994). The use must be exclusive and different from any rights asserted by the general public in order to establish a private right of prescription. Cleland v. Westvaco, 314 S.C. at 511, 431 S.E.2d at 266. Shirley's claim to a prescriptive easement, to be valid, must be based upon notice to the real owner that someone is truly entering the property and that their entry is different than the public using the property. Shirley must have had an independent claim of right that he was entitled to be on the property. However, the testimony of Shirley is clear that he has no "independent right," but was merely present on the property along with the other members of the public – all of whom were invited on the land by Bowater. Shirley cannot show that his use was open and notorious for the full 20 year period.

Shirley's claim of that his use was hostile also fails. The Special Referee's reliance on the death threats and verbal assaults of Shirley to establish the hostility element of a prescriptive easement is unfounded in both equity and law. The element of hostility is meant to require the claimant of a prescriptive easement to establish that his conduct was such as to put the owner of the servient estate on actual or constructive notice that the claimant was seeking to establish a property right that will in fact detract from the property rights the servient estate possessed prior to the establishment of the easement. In the present case, Shirley cannot show hostility because he used the logging road with permission from Bowater and then Bundy. It was not until 2005, that Shirley first stated he had a right to use the logging road without permission. Therefore, Shirley cannot show the hostility element for the full 20 year period.

3. Permissive use defeats any claim of adverse use or use under a claim of right.

Permissive use is fatal to both a claim of right assertion and an adverse possession theory. "It is the well settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." Williamson v. Abbott, 107 SC 397, 93 S.E. 15 (S.C. 1917). The Special Referee expressly found and based his ruling on the legal conclusion that permissive use does not apply to a claim for a prescriptive easement under a claim of right pursuant to Revis v. Barrett, *supra*. This is clear error. Revis specifically recognizes that a prescriptive easement based on a claim of right is subject to the defense of permission. The facts of Revis, however, showed that Revis believed that her right to use the road was based on the letter from the adverse party rather than any permission.

From 1985 to 2003 the Bundy Property was subject to the WMA lease wherein the public could enter upon the lands of Bowater and use the roads located on the property or simply walk the entirety of the property, including the disputed pathway. These years do not count toward the 20 year period because the use, if any, was permissive. Shirley testified that he was aware of the public's WMA access over the land during this period and he was aware of that right prior to purchase of the Shirley property. The law is clearly set forth in Williamson v. Abbott, 93 S.E. 15 (S.C. 1917) where the South Carolina Supreme Court held that use that begins as permissive "cannot ripen into an easement by prescription."

Bowater, in short, granted permission through the State program and the State Game Wardens to authorize and permit people on their property. This Court should not seek to and the law does not allow the transformation of this good faith, highly valuable public service into a program that could give rise to secret claims that individuals are actually on the land to claim an adverse prescriptive easement.

The testimony reflects that Shirley was on the logging road by permission and that the state program of open access was the reason he was on the property. His testimony is also clear that he had to have a key to use the property, and that he obtained the key from the State Game Warden. These facts prevent his current argument that he was using the disputed pathway under his own independent claim of right because the road was public. The State itself was only on the property and managing the premises by express permission and consent of the owner—Bowater.

The key itself, which Shirley admits he obtained from the State Game Warden, and which he testified "he had to use," is clear evidence that he was on the Bowater land by permission and not adversely. *See* Tomlin Enterprises, Inc. v. Althoff, 103 P.3d 1069 (Mont. 2004) (adjacent property owner's use of strip of land on property owned by company, which strip of land was owned by company, and which strip provided access to road, was permissive based on neighborly accommodation, and thus adjacent owner's use of strip was not adverse when the adjacent property had a key to the gate); Vandervoort v. McKenzie, 412 S.E.2d 696 (N.C. App. 1992) (key was evidence of permissive use). Douglas v. Knox, 502 S.E.2d 490 (Ga. App. 1998) (where a record owner has placed a locked gate across an access way, but has provided the adverse claimant with a key or other means of entry, such conduct may be taken as "strong evidence" of a mere license to use the road).

Finally, Bundy and Shirley both testified that Shirley put up a gate with the "permission" of Bundy. This is also a stipulated fact. It is undisputed. Shirley testified that he took the gate down when Bundy told him to take it down. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 129; 123-124). Shirley's use has been permissive ever since his father purchased the Shirley Property.

4. Shirley cannot adversely acquire a prescriptive easement over property in which the State of South Carolina has a legal interest.

One cannot adversely acquire a prescriptive easement over property in which the State of South Carolina or its political subdivisions has a legal property interest. *See* Davis v. Monteith, 289 S.C. 176, 179-80, 345 S.E.2d 724, 726 (S.C. 1986) ("[A]dverse possession does not run against the [S]tate or its duly constituted political subdivisions."). That period of time wherein the government has a legal interest in the property may not be used to satisfy any portion of the prescriptive period. *See e.g.* Kempner v.Aetna Hose, Hook & Ladder Co., 394 A.2d 238 (Del. 1978).

The State of South Carolina had a legal interest in the property from 1985 to 2003 due to its lease and the property's enrollment in the WMA program. These are stipulated facts. The Special Referee erred in finding that "South Carolina" did not have a "legal interest in the [Bundy] property." *See* (R. p. 22, Order on Appellant's Rule 50, SCRCP Motion filed February 9, 2012, p. 3). This finding is in direct conflict with Stipulation No. 3. During this time, no rights of prescription could be gained by Shirley. It would be bad public policy, contrary to South Carolina law, and spell the end of the WMA program if private individuals could quietly gain private rights in the property that was enrolled in the WMA program.

Pursuant to the foregoing, Shirley failed to establish by clear and convincing evidence the necessary elements of an easement by prescription over the property of Bundy. The Order of the Special Referee should be reversed.

III. The Special Referee erred in failing to rule that the inequitable conduct of Shirley barred any relief sought by him in this action due to the doctrine of unclean hands and the doctrine that a party cannot profit from his own wrongs.

The Special Referee erred in ruling that the inequitable conduct of Shirley was not a bar to his recovery.

At the hearing on this matter, Bundy testified that the Shirley threatened to kill him on at least two occasions relative to the dispute over the pathway which is the subject of this action. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 129; 75-84). Shirley testified and admitted to "losing his cool" and "cussing him out." *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 190; 212-214). Shirley also testified that he ripped down a gate put up by the Miller family in order to access the pathway which is the subject of this action. ." *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 185-186). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 150-151; 166-167).

Shirley acknowledged that he believed that any individual wishing to "go on" property subject to the South Carolina Department of Natural Resources Game Management Program was required to have a permit. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 177-178). The parties stipulated that the property over which the disputed pathway traverses was subject to the South Carolina Department of Natural Resources Game Management Program from 1985 until 2003. *See* (R. p. 520, Stipulation of Facts, Stipulated Fact 5, p. 521) Shirley, however, testified

that after he purchased his property, he no longer purchased a game management permit, though he testified he continued to "go on" the game management property. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 183-184). Shirley based his claim asserting a prescriptive easement over the Bundy Property based upon evidence that he broke game management laws.

The Special Referee found as a matter of fact and/or law in the July 11, 2011 Order as follows:

> a. "That the Shirley Family's use of the disputed road was adverse. As the Plaintiff put it, 'It was hostile. There was a death threat. Yes. It was as hostile as you can get.'" *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 10).
>
> b. "Using the disputed road over the Bowater property without a Game Management permit would be use without permission and adverse to the interest of the owner, Bowater." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 10).
>
> c. "When Rick Miller's mother erected a gate without giving the Defendant a key, the Defendant pulled the gate down with his truck." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 11).
>
> d. "He [the Defendant] reacted very badly to any interference with his right to use the road and control the use of the road by others." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 19).
>
> e. "As to the Defendant's claim that the use was adverse, the Plaintiff himself testified that the Defendant's use was 'about as hostile as it gets.'" *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 20).
>
> f. "As to the Game Management Program, it was never established that the Defendant complied with the Department of natural Resources rules and regulations for entering the Game Management lands, specifically, the need to obtain a permit." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 20).

g. "As to the evidence presented by the Plaintiff of permissive use, I find that the preponderance of the evidence including that of the violent outburst by the Defendant establishes that the use of the disputed road by the Defendant was adverse and hostile." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 20).

The Special Referee based his legal and equitable conclusion on the illegal, violent, criminal, wrongful, inequitable and improper acts found a prescriptive easement in Shirley's favor. The Special Referee found in his Order on Bundy's Motion to alter or amend as follows:

"The hostile or even illegal acts Plaintiff complains of on the part of the Defendant do not, in the Court's opinion, destroy or pollute his prescriptive easement theory. I would suggest that the acts do show the adversity and notorious and hostile nature of the character and use of the road."

See (R. p. 22, Order on Appellant's Rule 50, SCRCP Motion filed February 9, 2012, p. 3). Shirley, however, cannot be permitted to profit from his own wrongs or to take advantage of his own wrongs or to found any claim upon his own inequity or to acquire property by his own crime. Whitlock v. Creswell, 2 S.E.2d 838 (S.C. 1939); Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889). Any relief sought by Shirley should be denied on this independent ground. *See* Wachovia v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct.App. 2010) (holding that the doctrine of unclean hands bars equitable relief and further holding that no person should profit from their own wrongdoing or rest a cause of action on their own unlawful acts); *see also* Buckley v. Shealy, 635 S.E.2d 76 (S.C. 2006) (holding that a party by their own misdeeds can be found by the South Carolina Supreme Court of not be deserving of equitable relief).

Conclusion

For all the foregoing reasons, the ruling of the Special Referee finding that Shirley has a prescriptive easement over the Bundy Property should be reversed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

CERTIFICATE OF COUNSEL

I certify that this final brief complies with Rule 211(b), SCACR.



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I certify that I served the Final Brief of Appellant on Respondent by depositing a copy of said documents in the United States Mail, postage prepaid, on June 25, 2012, addressed to his attorney of record, John W. Wells, Esquire, Baxley, Pratt & Wells, PA, PO Box 10, Lugoff, South Carolina 29078.

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Statement of the Case

This is an appeal from a declaratory judgment action brought pursuant to S.C. Code Ann. 15-53-10 *et seq*. On March 24, 2009, Plaintiff, W.H. Bundy ("Bundy") filed a Summons and Complaint pursuant to the South Carolina Declaratory Judgment Act asking the Court to declare what rights, if any, Defendant, Bobby Brent Shirley, (hereinafter sometimes referred to as "Shirley") had to use a road located on the Bundy Property as a means of access to the Shirley Property. Bundy asserted that Shirley did not have any right to use the Bundy Property. Bundy filed an Amended Complaint substituting Shirley as the Defendant on April 20, 2009, and seeking the same declarations of rights. Shirley filed an Answer and Counterclaim on June 19, 2009, alleging as follows: (1) that the road on the Bundy Property was dedicated to the public; and (2) that Shirley had a prescriptive easement over the Bundy Property. On July 9, 2009, Bundy replied to the Counterclaim and denied Shirley or the public had a right to use the road. Bundy also asserted various affirmative defenses - including unclean hands. On April 15, 2010, Shirley filed an Amended Answer and Counterclaim. Bundy again replied, on April 26, 2010, to the Counterclaim.

On April 22, 2010, the action was referred to Special Referee Roderick M. Todd, Jr., by Order of the Honorable James R. Barber, III. A hearing without a jury was held before Special Referee Todd on August 25-26, 2010.

The Special Referee signed an Order on July 7, 2011, filed on July 11, 2011. The July 7, 2011, Order found that Shirley carried his burden of proof in showing that the road was dedicated to the public and that Shirley met his burden of proof in showing that he had a prescriptive easement to use the road. The Court rejected

Bundy's affirmative defenses. On July 12, 2011, Shirley's Counsel moved to be relieved as counsel. This motion was supported by an affidavit signed by Counsel for Shirley. Bundy served a motion to Alter or Amend pursuant to Rule 59, SCRCP and a Motion to Amend the Complaint to conform to the evidence pursuant to Rule 15(b), SCRCP on July 20, 2011. A hearing was held before the Special Referee on August 15, 2011. Counsel for Shirley withdrew his motion to be relived as counsel at the hearing. The Special Referee entered an order on February 9, 2012, granting Bundy's Motion to Amend to conform to the evidence. The Special Referee, also on February 9, 2011, filed an Order granting Bundy's motion to alter or amend in part, and denying it in part. The Special Referee amended his Order and found that the road was not public and it had not been dedicated to the public. The Special Referee, however, again found that Shirley had a prescriptive easement to use the road. Bundy served his Notice of Appeal on the July 7, 2011, Order and the February 9, 2012, Order denying his 59(e) motion on the prescriptive easement issue on February 14, 2012.

The central issue in this appeal is whether or not Shirley or not Shirley has a prescriptive easement to use a road on property owned by Bundy located in Kershaw County, South Carolina.

Statement of the Facts

The Respondent is the owner of a thirty-seven (37) acre tract of land that was purchased by his parents in 1985 and deeded to the Respondent in 2005 (R. p. 3, lines 1-8). The sole access to the Respondent's tract is a dirt road known as Saxon Road. On Defendant's Exhibit 6, (R. p. 564) the Respondent's tract is the triangular 37.14 acre tract in the upper left hand corner or northwestern corner shown as Tract

1. The Appellant's tract acquired from Bowater Timber, LLC, in 2003, is Tract 2 on Defendant's Exhibit 6, containing four hundred thirty-nine (439) acres. Saxon Road is shown on Defendant's Exhibit 6, (R. p. 564) as first a solid line and then a dotted line terminating at the Respondent's tract. The portion of Saxon Road depicted on the tax map, Defendant's Exhibit 6, (R. p. 564) as a solid line is county maintained. The portion of Saxon Road depicted as a dotted line is the disputed road that is the subject of this appeal. The small lots shown of Defendant's Exhibit 6, (R. p. 564) as tracts 21, 22, and 26, are residences owned by various members of a Miller Family. In about 1968, the county began maintaining Saxon Road up to the last Miller house so that the children would not have to walk out to the state highway to catch the school bus (R. p. 259, line 20-p. 260, line 7). From that time on, the portion of Saxon Road shown as a solid line on Defendant's Exhibit 6, (R. p. 564), was county maintained, and the uninhabited portion shown on Defendant's Exhibit 6, (R. p. 564) as a dotted line was not county maintained. Kershaw County did not obtain a deeded easement from the owner of the servient tract before beginning maintenance services. (Finding of Fact 10 July 7, 2011, Final Order) (R. p. 96, lines 19-20)

Although Saxon Road is the Respondent's sole access to his property, the Respondent's tract and the Appellant's tract have no common owner in their respective chains of title, and so one of the essential elements of an easement by necessity is missing. Therefore, the Respondent sought to establish and easement by prescription.

The Respondent's tract was acquired by a farmer named Elijah Bennett in December of 1947. (Shirley chain of title) (R. p. 4). Elijah Bennett and his sons, of

whom eighty-five (85) year old Edward Bennett testified at trial, began farming the Respondent's tract (hereinafter the dominant tract) and getting to it via Saxon Road on mule back. (R. p. 349, lines 8-22). The Bennett Family owned the dominant tract from 1947 through 1969. (Shirley chain of title) (R. p. 4). During their ownership of the dominant tract, Saxon Road was the only access to it used by the Bennett Family. (R. p. 357, lines 1-17)

From 1969 to 1985, the dominant tract was owned by six (6) different owners. It was acquired by the Respondent's parents in 1985 and transferred to the Respondent in 2005. (see Shirley chain of title) (R. pp. 3-4) The dominant tract was used by the Shirley Family for hunting and other outdoor recreation. (R. p. 302, lines 12-20) In about 1989, they built a pond on it for fishing, moving bulldozers over Saxon Road to construct the pond. (R. p. 297, line 19-298 line 9) As it was for the Bennett Family, Saxon Road, including the part now in dispute, was the only access to the dominant tract used by the Shirley Family. (R. p. 301, lines 2-8)

The servient tract was acquired by the Catawba Timber Company in 1960. At that time, a plat of the servient tract was prepared by R. H. Marett on September 26, 1960, and recorded with the deeds to the Catawba Timber Company. (Defendant's Exhibit 8) (R. p. 566) The Marett plat depicts all of Saxon Road as a continuous dotted line leading to the dominant tract, noted on the plat as the Bennett Estate. The Marett plat shows no other road, path or access to the dominant tract, just Saxon Road including the part now in dispute. The Marett plat was incorporated into the March 14, 2003, deed conveying the servient tract to the Appellant, (see July 7, 2011, Final Order Finding of Fact 5) (R. p. 6, lines 4-5) so the Appellant took title to the servient tract with notice of the disputed road incorporated

into the deed.

After weighing and evaluating the conflicting evidence and the arguments of the parties over the meaning of the evidence, the Special Referee made thirty-four (34) separate findings of fact in the July 7, 2011, Final Order (R. p. 1-12). As to the proof of the facts required to establish the elements of an easement by prescription, the Special Referee's findings of fact are conclusive on those factual issues as long as they are supported by some evidence of record. The Respondent defers to the thirty-four (34) findings of fact in the July 7, 2011, Final Order as the facts in this case pertaining to the elements of an easement by prescription.

Saxon Road including the disputed portion is an ancient road predating travel by motor vehicle to the dominant tract. (R. p. 349, lines 6-22) It was included on the 1960 Marret plat of the servient tract (Defendant's Exhibit 8) (R. p. 566) and the Kershaw County tax maps. (Defendant's Exhibit 8) (R. p. 566) It is visible on aerial photographs of the area taken in 1956, 1964, 1969, 1974, 1977, and the current aerial photograph from the Kershaw County mapping department. (Defendant's Exhibits 1, 2, 3, 4, 5, and 7) (R. pp. 559 - pp.563, R. p.565) It has withstood the test of time.

STANDARD OF REVIEW

The determination of the existence of an easement is a question of fact in a law action. Jowers v. Hornsby 292 S.C. 549, 357 S.E.2d 710 (1987). In an appeal from an action at law tried by a Judge, the Judge's factual findings will not be disturbed unless found to be without evidence which reasonably supports them. Towns Associates LTD v. City of Greenville 266 S.C. 81, 221 S.E. 2d 773 (1976).

ARGUMENT

Issue I raised by the Appellant is a question of law. Issue II is a question of fact controlled by the thirty-four (34) findings of fact in the July 7, 2011, Final Order (R. p. 1-12). Evidence in the record conflicting with those findings of fact is irrelevant because the trier of fact is allowed to accept or reject testimony based upon his view of the credibility of the witness or the document being presented. Issue III raises the novel issue of whether or not a party who proves all of the elements of a prescriptive easement in an action at law can be deprived of that easement under the equitable defense of unclean hands for misconduct during the twenty (20) year period of his adverse use. Can the Court encourage adverse use, use in derogation of the rights of the servient tract owner, by requiring it as an element of a prescriptive easement, and then turn around and punish the dominant tract owner for the very conduct it required? Illegal conduct, at a bare minimum a trespass, is mandated to prove an easement by prescription. Civil, courteous and polite conduct by the dominant landowner is expressly discouraged by the requirement that he prove adverse and even hostile use of the easement. It would be a bit duplicitous to require illegal conduct on the one hand, and punish it on the other.

I. The Special Referee erred in failing to require Shirley to establish

any right to an easement by prescription by the standard of proof of clear and convincing evidence.

The Appellant seeks to create a new rule in prescriptive easement cases requiring clear and convincing evidence as the burden of proof by citing adverse possession cases: Clark v. Hardgrave 473 S.E.2d 474; King v. Hawkins 282 S.C. 508 319 S.E.2d 361(Ct. App. 1984); Jones v. Leagan 384 S.C. 1, 681 S.E.2d 6(Ct. App. 2009); Davis v. Monteith 289 S.C. 176 345 S.E.2d 724(1986); Zinnerman v. Williams 2011 S.C. 382, 45 S.E.2d 597 (1947); Lusk v. Callahan 287 S.C. 459, 339 S.E.2d 156 (S.C. App. 1986). The reason that the Appellant's Brief cites seven (7) adverse possession cases and no prescriptive easement cases as authority for the heightened burden of proof in prescriptive easement cases is this: of all the reported prescriptive easement cases in this state over the past Two Hundred (200) years, not one mentions the clear and convincing standard as the Plaintiff's burden of proof.

The alchemy to transform the adverse possession burden of proof into the prescriptive easement burden of proof is achieved by citing 12 S.C. Jur. Easements §10 (2011). The article in South Carolina Juris Prudence notes that some of the elements of a prescriptive easement are essentially similar to the elements of adverse possession, i.e. open, notorious, continuous and uninterrupted use to prove adversity, and suggests that adverse possession cases can be used to amplify those elements that are common to both types of cases. Thus, an adverse possession case discussing the common element of open and notorious possession might be instructive on the meaning of open and notorious use of the prescriptive easement. However, the elements of adverse possession and the elements of the

prescriptive easement are not uniform, so that all of the elements of adverse possession are not held in common with the elements of the prescriptive easement, for example, the ten (10) year limitation period for adverse possession as opposed to the twenty (20) year limitation period for the prescriptive easement. The burden of proof is not and has never been a common element of adverse possession and the prescriptive easement. The South Carolina Juris Prudence article does not suggest that the elements of the two (2) causes of action are interchangeable. The reasoning in the article applies only to the common elements.

The burden of proof for prescriptive easement cases is discussed in Tyler v. Guerry 251 S.C. 120, 160 S.E.2d 889(1968). The Court in Tyler v. Guerry supra. had before it two (2) issues:

> "By proper exceptions the landowners raised two (2) questions for determination by this Court: First have the Plaintiffs established by the preponderance of the evidence, an easement across the Defendant's land; and Secondly, have the Plaintiffs established a dedication by the landowners of the new road?"

The Court then proceeded to rule on the first question by applying the preponderance of the evidence standard to the prescriptive easement cause of action.

> "The evidence preponderates to the effect that people living in general area had, through the tolerance of the landowners if not with acquiescence, used the old road and recreational area for more than Fifty (50) years."

The Tyler v. Guerry Court then took up the public dedication cause of action:

> "To show a dedication the law required a higher degree of proof than by the preponderance of the evidence."

In Tyler v. Guerry supra. the Court consciously applies the preponderance

of the evidence standard to the prescriptive easement cause of action, and to show that the application of the preponderance of the evidence standard was a deliberate choice, the Court then switched to the elevated "strict, cogent and convincing" standard to rule on the public dedication cause of action. The changing of the burden of proof from one cause of action to the next demonstrates that the application of the preponderance of the evidence standard in the prescriptive easement cause of action was not an inadvertent mistake by a Court not paying attention. The Appellant argues in his brief that the exceptions use the wrong standard of proof and the Court did not bother to correct it. However, a careful reading of the case leads to the conclusion that the Tyler v. Guerry supra. Court read and approved the exceptions, "By proper exceptions," and that the Court was entirely aware of the different standards of proof for different easement theories.

In summary, the preponderance of the evidence burden of proof is the default standard in civil actions. It can be elevated for a cause of action by precedent, but in the absence of precedent applying an elevated standard in the prescriptive easement cases, the preponderance of the evidence standard applies. Tyler v. Guerry supra. is the only precedent on the burden of proof in prescriptive easement cases, and it applies the preponderance of the evidence standard.

II. The Special Referee erred in finding that Shirley established a prescriptive easement over the Bundy property.

The determination of the existence of an easement is a question of fact in a law action. Jowers v. Hornsby supra. This question of fact is controlled by Thirty-Four (34) separate findings of fact (R. p. 1-12), most of which are annotated with references to the supporting testimony and exhibits from the Transcript in the

Special Referee's Final Order dated July 7, 2011. The Special Referee's findings of fact cover the essential elements of an easement by prescription as set forth below. The evidence from the record that conflicts with the findings of the Special Referee does not justify a reversal as long as some evidence supports the finding of fact made by the Special Referee.

A. Shirley failed to establish uninterrupted use for 20 years.

In 2003, the Court of Appeals decided two (2) prescriptive easement cases, Hartly v. John Wesley United Methodist Church of John's Island 355 S.C. 145, 584 S.E.2d 386(S.C. App. 2003) decided in May of 2003 and Pittman v. Lowther 355 S.C. 536, 586 S.E.2d 149(S.C. App. 2003) decided in August 2003 which reinserted the word "uninterrupted" into the first element of a prescriptive easement after a ten (10) year absence in such cases as Revis v. Barrett 321 S.C. 206, 467 S.E.2d 460(Ct.App. 1996) and Morrow v. Dyches 328 S.C. 522, 492 S.E.2d 420(Ct.App. 1997). In Hartly, the Court stated that the first element of the easement by prescription is: (1) there must be a continued and uninterrupted use or enjoyment of the right for a period of twenty (20) years. Although the Court treated the terms continued and uninterrupted as different and distinct requirements, the English meaning of the two words is the same. The term "continued" is defined as "lasting or extended without interruption". [1] The term used by the Special Referee in his findings of fact is "continuous use". The term "continuous" is defined as "marked by **uninterrupted** extension in space, time of sequence."[2] Using the plain English

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[1]Merriam-Webster's Collegiate Dictionary 10th Edition Copyright 2000 Merriam-Webster's Inc.

[2] Ibid

meaning of the terms continued and uninterrupted, they are synonyms and the use of both in the first element of proof for a prescriptive easement is a redundancy rather than two (2) distinct elements that must each be proven. If the use of the easement is continued, it is without interruption by definition. If the use of the easement is found by the Special Referee to be "continuous" during the twenty (20) year period, then the Special Referee has, by definition, found the use to be uninterrupted.

The findings of fact by the Special Referee in the July 7, 2011, Final Order are set out below:

20. That Elijah Bennett and his family used Saxon Road including the disputed road portion, as their sole access to the Defendant's property from 1947 until 1969, a period of over twenty (20) years. (July 7, 2011, Final Order p. 7)

21. That the testimony of Edward Bennett, the eighty-five (85) year old son of Elijah Bennett is clear and unequivocal that Saxon Road was the only road to the Defendant's property during the twenty-one (21) year ownership by the Bennett family. (Transcript page 243 l.4,5,l. 13-14) (July 7, 2011, Final Order p. 7) (R. p. 7, lines 18-24)

24. I find that the use of Saxon Road, including the disputed portion, to access the property now owned by the Defendant between December 19, 1947, and April 29, 1969, was continuous. After the farming operations ceased, the Bennetts used the road to cut firewood (Transcript page 236 l.22-page 237 l.3) and they kept the field plowed (Transcript page 237 l. 14-18).
The Miller family rented the property from the Bennetts during the 1960s, paying the taxes as rent and used the disputed road to access it (Transcript page 155 l. 1-17). It appears that the disputed road was in use in 1960 when R. H. Marett decided to depict it on his plat. The USDA aerial photographs from 1957, 1964, and 1969, introduced as Defendant's exhibits 1, 2, and 3, show the disputed road as clear of vegetation during the period from 1957 to 1969, indicating that it was being used frequently enough to resist the over growth of the surrounding forest and underbrush. I find the testimony of Edward Bennett, the aerial photographs and the R. H. Marett plat that the disputed road was in continuous use from 1948 until 1969 by the Bennett family and their tenant, Rick Miller' father. (July 7, 2011, Final

Order p. 8-9) (R. p. 8, line 13-p.9, line 3)

27. I find that the Defendant's parents who acquired the thirty-seven (37) acre tract on May 10, 1985, and the Defendant who acquired the property on February 21, 2005, used the disputed road continuously from 1985 until 2009 when the lawsuit was filed. The Defendant testified that the disputed road is the only way to get to his property. (Transcript page 175 l.19 - page 176 l.2) Rick Miller, just as he had for the Bennett family, testified that the alternate blue line route was used for a period of time just long enough to cut down the use period to under twenty (20) years. However, the use of an alternate route does not mean that the Shirley's never used the disputed road. Second, Rick Miller stated that he wanted to stop the Defendant from using the disputed road that runs through the Miller houses (Transcript page 152 l. 10-13) giving him an interest in the outcome of this case. Finally, the credibility of Rick Miller as to the use of the blue line route is already badly compromised by his testimony concerning what would have to have been his prenatal observations of Elijah Bennett's use of the blue line route. Therefore, I find by a preponderance of the evidence that the Shirleys used the disputed road continuously for the required twenty (20) year period. (July 7, 2011, Final Order p. 9-10) (R. p. 9 line 15- p. 10 line 6)

Even if evidence of an interruption appears in the record as argued by the Appellant, the evidence of an interruption cannot serve as a basis for reversal because the trier of fact in the lower Court has already evaluated that evidence and the found the use to be "continuous" i.e. "uninterrupted". Under the applicable standard of review, the findings of facts set forth above are dispositive on the issue of uninterrupted use as long as they are supported by some evidence.

Assuming that continued and uninterrupted are two (2) distinct requirements, there was no evidence of any action by the servient tract owner during the twenty (20) year ownership of the dominant tract by the Bennett family from 1947 to 1969 that might constitute an interruption. The Special Referee cites the testimony upon which he relied in making finding of fact 24, that the use during the Bennett period of ownership was continuous. As to the period during which the Shirley family

owned the dominant tract from 1985 until the filing of the lawsuit, the Appellant points to testimony of alternate routes used by the Respondent to access property, which testimony was rejected by the Special Referee in finding of fact 27 (R. p. 9, line 15-p. 10, line 6).

The Appellant points to a gate erected by Bowater during its ownership of the servient tract. The interruption by gate case is Pittman v. Lowther supra. In that case, the Court of Appeals reversed the lower Court based on an interruption in the use of the road because the interruption, the breaking down of more than Two Thousand and 00/100 ($2,000.00) dollars worth of barriers costing approximately Two Hundred and 00/100 ($200.00) dollars each, (10 separate barriers by simple math) was a finding of fact by the trial court. The Appellant Court did not rewrite the findings of fact by the Special Referee. It reversed the trial court because the ruling of continued use was inconsistent with the findings of fact contained in the Order regarding the erection of multiple barriers by the servient tract owner. The holding of Pittman v. Lowther supra. is that repeated attempts by the servient tract owner to prevent the dominant tract owner from using the easement can defeat the prescriptive easement. However, the Court in Pittman v. Lowther supra. stated as follows:

> "though the mere erection of gates by the servient landowner for the greater convenience of his operations, and not as a barrier to passage, will not defeat a claim to a prescriptive easement, a passage, an easement of way cannot arise by prescription if the owner of the servient estate has habitually broken or interrupted its use at will by the maintenance of gates." Pittman v. Lowther supra.

The Bowater gate cited by the Appellant in it's brief was the classic gate erected by the servient landowner for the greater convenience of his operations.

That gate was not erected as a barrier to the Respondent's use. The cable was down most of the time, and the Respondent had a key to the gate. (R. p. 249, line 6-14) There is no evidence that the Bowater gate ever interrupted the Respondent's use of the prescriptive easement.

The Appellant also raises a gate erected by the Miller family on their property which was torn down the next day. (R. p. 298, line 10-p. 299, p. 17) The Miller gate is not an interruption that would defeat the prescriptive easement for the following reasons: (1) the Miller gate was not erected by the servient landowner nor was it on the servient estate. It was erected on property not the subject of this lawsuit. (2) The Miller gate was erected and destroyed the next day. It was not the "repeated attempts" to block the Respondent's use required by Pittman v. Lowther supra.

The final gate was erected by the Respondent himself in 2004. (R. p. 302, line 21-p. 303, line 3) The gate demonstrates more than anything else the Respondent's belief that he had a right to control the use of the disputed road. The gate erected by the Respondent and controlled by him was not erected by the servient landowner to interrupt the use by the dominant landowner. The Respondent's gate is like the gate erected by the dominant tract owner in Kelly v. Snyder 2012 W.L.243316 (S.C. App. 2012)

There is no evidence in the record tending to show Pittman v. Lowther supra. repeated attempts to interrupt the Respondent's use of the easement. Therefore, the findings of fact by the Special Referee that the first element of the prescriptive easement was proven should be affirmed.

B. Shirley failed to prove the identity of the thing enjoyed.

As to this factual issue, the Special Referee made the following findings of

fact:

25. That the disputed roadway was identifiable between December 19, 1947, and April 29, 1969, based on the aerial photographs, Defendant's exhibit 1, 2, 3, and the R. H. Marett plat that identified its location. (July 7, 2011, Final Order p. 9) (R. p. 9, lines 4-6)

34. That the disputed road is the upper portion of Saxon Road which has been in existence for at least sixty (60) years, that the disputed road is the primary access to the thirty-seven (37) acre tract owned by the Defendant, if not the only access, and that the disputed road has been the primary access to the Defendant's property for over sixty (60) years. To the extent that owners have needed to access to the Defendant's tract over the past sixty (60) years they have used the disputed road continuously. Looking at the tax maps, plats, sketches, and aerial photographs of the area, the disputed road prominently appears while no other access way consistently appears. (July 7, 2011, Final Order p. 12) (R. p. 12, lines 6-14)

The Special Referee's findings of fact that the road was identifiable are supported by Defendant's Exhibit 8 which is the Marett plat from September 26, 1960, (R. p. 566) which clearly shows Saxon Road included the disputed portion. The Special Referee's finding is supported by Defendant's Exhibit 6, the 1994 Mylar Tax Map of Kershaw County (R. p. 564) which shows the disputed road in the same location as the 1960 Marett plat. The Special Referee's findings are further supported by the current aerial photo tax map of Kershaw County, Defendant's Exhibit 5, (R. p. 563) showing the disputed road in the same location as the 1994 tax map and the 1960 plat. In addition, the 1956 aerial photo (Defendant's Exhibit 1) (R. p. 559) the 1964 aerial photo (Defendant's Exhibit 2) (R. p. 560), 1969 aerial photo (Defendant's Exhibit 3) (R. p. 561) and the 1974 aerial photo (Defendant's Exhibit 4) (R. p. 562) all show the disputed road in the same location. The Respondent submits that the Special Referee's findings of fact are supported by evidence in the record.

C. Shirley failed to establish his use was "adverse" or under "claim of right."

The Appellant's challenge to the third element of proof for a prescriptive easement is a challenge to the findings of fact by the Special Referee.

1. Shirley did not establish a valid claim of right.

The Special Referee's finding of fact on the issue of a claim of right is finding of fact number 32 in the Final Order dated July 7, 2011, which stated as follows:

32. I find that the Defendant used the disputed road under the belief that he had a right to use the road from 1985 until 2009. This finding is based on the following testimony:

    a. The Defendant stated that he believed that he had the rights to use the road. (Transcript page 187 . 7-14)

    b. When the Millers blocked the disputed road with a gate on their property, the Defendant took it down the next day after he visited Judge Hardin(sic). (Transcript page 185 l. 10-page 186 l. 17)

    c. When the Plaintiff's timber operation blocked the disputed road in 2004, the Defendant told the Plaintiff that the disputed road was his road. (Transcript page 100 l. 17-25) (July 7, 2011, Final Order p. 11) (R. p. 11-p. 12, line 1)

In order to establish that the use was under a claim of right, the party asserting the easement must show a belief that he has a right to use the road based on reasons for that belief. Revis v. Barrett 321 S.C. 206, 457 S. E.2d 460 (S.C. App. 1996) In Revis v. Barrett supra. the belief of the right to use the road derived from the fact that the Plaintiff and her parents had always used the road to access the dominant tract, as in the case at bar (R. p. 288, line1-p.289, line 2); and in Revis v. Barrett supra. the road in question was a former state highway that had been abandoned when the highway changed course. In this case the disputed road is the

continuation of a county maintained dirt road, Saxon Road, and that fact gave the Respondent the belief that he had the right to use the road. (R. p. 301, line 2-8). The Respondent had reasons for his belief that he had the right to use the road which are set out in finding of fact number 32.

The Appellant's reliance on Morrow v. Dyches supra. for the proposition that the South Carolina Court of Appeals specifically rejected an argument of a party seeking to establish a prescriptive easement under a claim of right merely because he "thought" he had a right to use the road. The witness in Morrow v. Dyches supra. was unable to give any reasons to support the belief he had a claim of right. In this case, the Respondent's reasons for the belief that he had the right to use the road derived from longtime use of the road by himself and his parents, the fact that part of the road was publicly maintained, and as set forth in finding of fact number 32, he consulted a local magistrate, Judge Hardis, when the Miller family blocked a portion of the road on their property, and as a result of that meeting with the Judge, his belief that he had a right to use the road was strong enough for him to take down the barrier. Unlike the Plaintiff in Morrow v. Dyches supra., the Respondent was able to articulate reasons for his belief that he had a right to use the road. These reasons satisfied the trier of fact, and finding of fact number 32 is now controlling on this issue.

2. Shirley did not establish that his use was adverse.

As to adverse use during the period when the Bennett family owned the dominant tract from 1947 to 1969, this issue was controlled by finding of fact number 26 of the Special Referee's July 7, 2011, Final Order set out below with references to the supporting testimony in the Transcript:

26. That the use of the disputed road was adverse from December 19, 1947, until April 29, 1969. Edward Bennett stated that their use of the road was open obvious and without permission. (Transcript page 236 l. 1-14) Rick Miller testified that the Bennetts used the road only with permission from his grandmother. However, Rick Miller's grandmother could not give permission to use the disputed portion of the road because she is not in the Plaintiff's chain of title. Therefore, the grandmother's permission, even if given, does not defeat the adverse use of the disputed portion of the road because it was not on her property. (July 7, 2011, Final Order p. 9) (R. p. 9, line 7-14)

As to the adverse use during the period from 1985 until 2009 when the Shirley family owned the dominant tract, finding of fact 28 of the Special Referee's July 7, 2011, Final Order together with the reference to the supporting testimony in the Transcript controls this issue.

28. That the Shirley family's use of the disputed road was adverse. As the Plaintiff put it, "It was hostile. There was a death threat. Yes It was as hostile as you can get". (Transcript page 99 l. 18-19) (July 7, 2011, Final Order p. 10) (R. p. 10, line 7-9)

The Special Referee's finding that the use by the Respondent and his family was adverse is further supported by the Respondent's testimony that they transported bulldozers over the road to build a pond on the dominant tract (R. p. 298, line 2-9). The Respondent submits that the transportation of a bulldozer is an open and notorious exercise. The pond built with bulldozers is apparent on the dominant tract on Defendant's Exhibit 5 (R. p. 563).

The Appellant contends that South Carolina law does not permit a prescriptive easement through unenclosed woodlands citing Cleland v. Westvaco 314 S.C. 511, 431 S.E.2d 266 (S.C. App. 1993). Cleland is one of the river landing cases where the prescriptive easement Plaintiff is not the owner of the dominant tract but a member of the public who seeks to establish a prescriptive easement so that the Plaintiff and the public can continue to use the river landing or swimming

hole as the case may be. Tyler v. Guerry supra. is another river landing case. Those cases can be distinguished from the case at bar because they lack a dominant tract and a dominant tract owner Plaintiff. In Cleland, the Plaintiff failed to establish a prescriptive easement because he could not establish that his use was exclusive and was different from the right that could be asserted by members of the general public, i.e. he did not own the land at the far end of the easement. The Court stated, "long term us **by the public** of a road through unenclosed and unimproved woodlands does not give rise to an easement by prescription." (emphasis added) In this case, the Respondent did not rely on use by the public. Respondent's use was exclusive and different from the right that could be asserted by the general public because his family owned the dominant tract at the end of the disputed road over which he claimed the prescriptive easement.

As to adverse use, the Special Referee made a specific finding of fact supported by evidence in the record. Therefore, the Appellant's challenge on the issue of adverse use must fail.

3. Permissive use defeats any claim or adverse use or use under a claim or right.

The Appellant cites the case Williamson v. Abbott 93 S.E. 15 (S.C. 1917) for the proposition that permissive use cannot ripen into adverse use or use under a claim of right. In Williamson the dominant landowner's predecessor in title asked permission of the tenant of the servient estate to dig a drainage ditch across the servient estate before creating the ditch. Permission was given and the ditch was created by permission. The ditch was used for a period of twenty (20) years, but the Court reasoned that the act of requesting permission by the dominant landowner

was contrary to any claim of right by him or claim of hostile, adverse use. In Williamson, the ditch was created by permission. In the case at bar, the road was in existence for decades before any alleged permissive use occurred. In the case at bar, the Respondent never asked for permission to use the road because he believed that he had the right to use it. He did ask the Appellant for permission to obstruct the road by erecting a gate on the servient tract (R. p. 185, line 8-23) but permission to obstruct the road and permission to use the road for ingress and egress are very different.

The Appellant contends that the Respondent's use of the disputed road while the servient tract was owned by Bowater and under a Game Management Program from 1985 until 2003, was permissive because the Game Management Plan allowed the public access to the servient tract for hunting and other wildlife activities. However, the Game Management Program required participants to obtain a permit, separate and distinct from a hunting license in order to enter upon the Game Management leased property. (R. p. 290, line 5-p. 291, line 21) The Respondent testified that he bought the Game Management permits in order to hunt on the servient tract up until his parents bought the dominant tract in 1985, and then he stopped obtaining the Game Management permits. (R. p. 297, line 8-18) Without the required permit, the Respondent was without permission to access the servient tract under the terms of the Game Management Program, and the Special Referee so found (July 7, 2011, Final Order, Finding of Fact 29 p. 10) (R. p. 10, line 10-20). The Special Referee as the trier of fact considered the Appellant's argument that the Respondent received permission from the Department of Natural Resources or Bowater to use the disputed road and rejected the Appellant's argument based on

the lack of evidence of permissive use as a matter of fact. (July 7, 2011, Final Order, Finding of Fact 31 p. 11) (R. p. 11, lines 7-15)

The Appellant argues that testimony to the affect that the Respondent was given a key to a gate or cable on the disputed road during the Bowater ownership of the servient tract proves permissive use. The Special Referee addressed the issue of the key in Finding of Fact 30 which is set out as follows:

> 30. The Plaintiff introduced testimony from the Defendant's deposition to the effect that a game warden who was a friend of the Defendant gave the Defendant a key to a lock on a cable across the disputed road. (Transcript page 119 l. 15-18, page 133 l. 18-20) Chuck Thompson did not testify as to the reason for giving the Defendant the key or whether he had the authority of the owner to give out the key. But the testimony as a whole strongly indicates the Defendant was going to use the disputed road with or without a key by going over the cable when it was down. (Transcript page 131 l. 7-10) When Rick Miller's mother erected a gate without giving the Defendant a key, the Defendant pulled the gate down with his truck. (Transcript page 166 l. 4-18). (July 7, 2011 Final Order, p. 10-11) (R. p. 10, line 21-p. 11, line 6)

The Special Referee as the trier of fact considered the Appellant's argument and rejected it because there was conflicting evidence as to when and whether the cable was actually used to block the road (R. p. 244, line 7-10), and the person who gave the Respondent a key did not testify as to why or under what authority he gave the Respondent a key. (July 7, 2011, Final Order, Finding of Fact 30 page 10) (R. p. 10, line 21-p. 11, line 6) The Bowater or Game Management cable, the record does not clarify who erected it, is like the gate erected by the servient owner for the greater convenience of his operations, not as a barrier to passage mentioned in Pittman v. Lowther supra. which does not defeat an easement by prescription.

The Special Referee ruled against the Appellant on the factual issue of permissive use as a trier of fact because the evidence of permissive use was so

weak, vague and open to more than one interruption. (July 7, 2011, Final Order, Finding of Fact 31, page 10) (R. p. 11, line 7-15) The record contains no evidence where the Respondent ever requested permission to use the road from any party. The Special Referee also cited Revis v. Barrett supra. for the proposition that even the letter from the servient estate's attorney granting the dominant estate's owner written permission to use the road was insufficient to defeat a prescriptive easement based on a claim of right. Under a claim of right theory, proof of adverse use is not required. Finally, the issue of permissive use does not defeat the twenty (20) year adverse use during the years 1947 through 1969 when the Bennett family owned the dominant tract. As to the use during the period from 1985 through 2009 when the Shirley family owned the dominant tract, permissive use is a factual issue that was decided against the Appellant by the trier of fact and is not grounds for reversal.

4. Shirley cannot adversely acquire a prescriptive easement over property in which the State of South Carolina has a legal interest.

To support this argument, the Appellant cites no cases from South Carolina or any other jurisdiction involving Game Management leases. To support this argument, the Appellant cites no cases from South Carolina or any other jurisdiction involving lands leased by a state or its subdivisions, or any other temporary arrangement terminable at will by the landowner. The Appellant cites an adverse possession case, Davis v. Monteith 289 S.C. 176, 345 S.E.2d 724 (S.C. 1986) involving land owned in fee simple by a school district. The Appellant also cites Kempner v. Aetna Hose, Hook & Ladder Co., 394 A.2d 238 (Del. 1978) involving land owned in fee simple by the City of Newark, Delaware and used by the city for public purposes. That case held:

"**Title to realty held in fee** by the state or any of its political subdivisions for a public use cannot be acquired by adverse possession." Kempner Supra

"In our opinion there is no reason for not applying the same rule to property which is dedicated or reserved to public use, **when title is held** by the municipality, as is applicable when **it is held by the state**. The same principles which prevent an adverse possession from ripening into a title when the **title belongs to the public**, and is held for public use, apply in the one case as in the other." Kempner supra. emphasis added.

The cases on this issue apply to property owned by the state or it's subdivisions, not to private lands under Game Management. The Special Referee correctly ruled that the WMA program does not rise to the level of fee simple ownership by the state required to defeat a prescriptive easement claim. (February 9, 2012, Order p. 3) (R. p. 24, line 11-19)

Again, this argument does not apply to the prescriptive easement period from 1947 to 1969 when the dominant tract was owned by the Bennett family. The nature of the interest of the State of South Carolina in the servient tract during the WMA period was a question of fact that was considered by the trier of fact. The ruling of the Special Referee on this issue should be affirmed.

III. The Special Referee erred in failing to rule that the inequitable conduct of Shirley barred any relief sought by him in this action due to the doctrine of unclean hands and the doctrine that a party cannot profit from his own wrongs.

The Appellant argues in Section II c (2) above that the Respondent failed to prove that his use of the easement was adverse. The Appellant argues here that the Respondent's conduct was too adverse, too open, too notorious and too much in derogation of the rights of the owner of the servient tract, and that the Respondent's claim to a prescriptive easement should have been denied under the equitable defense of unclean hands even though this action is one at law. The Appellant is

asking the Court to put the party asserting a prescriptive easement in a box where he can never win. If the evidence of adverse use is too weak, he loses for failing to prove adverse use. If the evidence of adverse use is too strong, he loses because he acted badly and has unclean hands. Like the soup in the story of the three bears, the dominant tract owner must prove adverse use that is not too hot; not too cold; it has to be "just right". To agree with the Appellant on this issue is essentially abolish the prescriptive easement by inventing contradictory obstacles to the proof required of the dominant landowner so that he cannot win. If the Court wishes to abolish the prescriptive easement, it should do so by overruling the prescriptive easement cases rather than by pretending to keep it but requiring proof that sets up every case as a failure in advance.

In this case, there is no evidence that the Respondent assaulted anyone. He did not vandalize any property on the servient estate. He did tear down the gate on the Miller property adjacent to the servient estate, but only after consulting with the local magistrate. (R. p. 298, line 10-p. 299, line 17) His illegal activity was limited to trespassing, which is required to establish a prescriptive easement, and unkind words to the Appellant on the telephone. Considering the circumstances that the Respondent was defending the sole access to his property, his less than exemplary conduct which was mostly verbal, was not that bad.

The judgment as to the level of the Respondent's bad acts was in the province of the trier of fact. The Special Referee heard all of the evidence and the arguments from both sides. He ruled in the February 9, 2012, Order that "the hostile or even illegal acts the Plaintiff complains of on the part of the Defendant do not, in

the Court's opinion, destroy or pollute his prescriptive easement theory." (February 9, 2012, Order p. 3) (R. p. 24, line 6-10) The question of whether the Respondent's conduct was so bad as to bar the relief he sought was one of fact which was decided against the Appellant by the trial Court. The Order of the Special Referee should be affirmed.

CONCLUSION

Prescriptive easement cases are, by nature, fact intensive. The two legal issues raised in this appeal are whether to create a heightened burden of proof in prescriptive easement cases, and whether to apply the equitable doctrine of unclean hands as a bar to recovery in this case. All other issues raised by the Appellant are issues of fact that were decided by the trial judge. Though not perfect, the two Orders from the lower Court herein demonstrate that the trier of fact was aware of the factual disputes raised by the Appellant on appeal and made conscious and deliberate rulings on them based on the evidence in the record. Those rulings on matters of fact should not be disturbed here.

As to the legal issue of the burden of proof, prescriptive easement precedent support the preponderance of the evidence standard applied by the Special Referee. As to the equitable defense of unclean hands, no precedent can be found for its application in a prescriptive easement case. For the reasons outlined above, the application of the doctrine of unclean hands will throw prescriptive easement law into utter confusion as to the standard for adverse use. Finally, the factual issue of the Respondent's conduct as it relates to the defense of unclean hands was considered by the trial Court. The trial Court found that the Respondent's conduct

was not so outrageous as to trigger a bar to relief under the doctrine of unclean hands.

The judgment of the trial Court that the Respondent has established an easement by prescription over the servient tract should be affirmed.

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Dated: June 22, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

FINAL REPLY BRIEF OF APPELLANT

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12. March 14, 2003	Plaintiff Bundy purchased the Bowater/Bundy Property from Bowater. *See* (R. p. 468, Stipulation of Parties for Plaintiff Bundy's Chain of Title).
13. December 22, 2003	Plaintiff Bundy conveyed a conservation easement on the Bowater/Bundy Property to the Congaree Land Trust. *See* (R. p. 468, Stipulation of Parties for Plaintiff Bundy's Chain of Title). This easement prevents development and subdivision of the Property in the future and allows Plaintiff Bundy to plant and grow long leaf pines. Id; *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 38-39).
14. Late 2003/Early 2004	Subsequent to Plaintiff Bundy's purchase of the Bowater/Bundy Property, Defendant Shirley requested and received permission from Plaintiff Bundy to put up a gate at the entrance to the Bowater/Bundy Property and the disputed logging road at the same location of the Bowater cable. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 72-73). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 117-121). Plaintiff Bundy gave Defendant Shirley a key to the gate. Id.
15. 2004	Notwithstanding Plaintiff Bundy's agreement to let Defendant Shirley use the disputed logging road and put up a gate, Defendant Shirley called Plaintiff Bundy and cussed him out and yelled at him. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 76-80). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 211-213).
16. 2005	As a result of the threatening phone call, Plaintiff Bundy called Defendant Shirley and asked him to take the gate down and to stop using the disputed logging road. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 76-80). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 214-217). Defendant Shirley again cussed out and yelled at Plaintiff Bundy. Id. At this time, Defendant Shirley asserted for the first time to Plaintiff Bundy that he had a right to use the disputed logging road. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, p. 81).
17. March 24, 2009	The present action was filed.

Introductory Statement

Plaintiff Bundy is not going to merely repeat what he briefed and argued in his Initial Brief. It is important to once again reiterate that the Special Referee found that the disputed logging road was **not** a public road because there was not sufficient evidence to establish that the disputed logging road was a public road. *See* (R . p. 22, Order on Appellant's Rule 59, SCRCP Motion, filed February 9, 2012, p. 1). This ruling was not appealed by Defendant Shirley, though Defendant Shirley testified at trial on six (6) occasions that his claim to use the road was solely based on his contention that the disputed logging road was a public road. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 123-125, 134, 138-140, 187, 188, 202-205). This issue is **not** before this Court.

The only issue before this Court is Defendant Shirley's claim that he has established a prescriptive easement over the property of Plaintiff Bundy. Without waiving any of his prior positions or arguments disputing the existence of any prescriptive easement, Plaintiff Bundy respectfully has limited this Reply to **three principal arguments.**

First, it is fully settled as a general rule of South Carolina, and most other states as well, that neither adverse possession nor prescriptive rights runs against the State or any of its municipalities. Indeed, this principle is a universal property rule. *See* 1960 S.C. Op. Attorney General 236 (An easement may not be taken by adverse possession or prescription against State); Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (S.C. 1952) (It is well established in this State that title to property dedicated to and used by the public

cannot be acquired by prescriptive or adverse possession); Ark Game & Fish Comm'n v. Lindsey, 730 S.W.2d 474 (Ark. 1987)(limitations period for presumption did not run against the State, and thus hunters and fisherman could not argue prescriptive rights to road across State land). State owned land

In 1985, when Bowater (Plaintiff Bundy's immediate predecessor in title) entered into a lease with the State of South Carolina, which all parties have stipulated lasted for 18 consecutive years, until 2003, the property was temporarily converted from purely private timber land to lands open to the public during the leasehold period. During this **entire** time period, while the property was open to the public, and the public was invited on the property, the time clock for prescriptive rights simply stopped as a matter of law. Thus, the Special Referee was clearly in error in finding that 20 consecutive years existed by including the time period from 1985–2005. Notwithstanding anything that Defendant Shirley claimed or felt or believed or even did, this period of time simply does not count because it was leased to the State. As a matter of law, therefore, this simple, uncontested, undisputed, stipulated fact, bars Defendant Shirley's claims of an unwritten prescriptive easement.

Moreover, there is no evidence in the record of any open, continued, adverse, exclusive, hostile, notorious, and uninterrupted use of the disputed logging road for twenty (20) consecutive years, either by Defendant Shirley, his parents, or any of his predecessors in title prior to 1985.

Second, an equally settled property rule is that entry by permission prevents the prescriptive time from even starting. *See* C.J.S. Easement Section 45 ("a permissive use exercised in subordination to owner's claim of ownership . . ."). Here, as a matter of

uncontested fact, even Defendant Shirley admitted that in 1985 he and his father were given keys to the Bowater cable gate at the entrance of the Bowater/Bundy Property by a DNR Game Warden. In short, the property was open to all of the public, temporarily owned by the State by virtue of an uncontested lease, and it was specifically open to Defendant Shirley and his father by permission to enter with a key from DNR. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 132-136; 191; 208-210).

However, this was not the only permission sought and the only key delivered to Defendant Shirley. Upon the transfer of ownership from Bowater to Plaintiff Bundy of the Bowater/Bundy Property, it is uncontested that Defendant Shirley again sought permission to erect a gate from Plaintiff Bundy and was given a key to use the gate and the disputed logging road. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 72-73). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 117-121). This was also permissive use. On this truly uncontested, undisputed, second ground as well - the Lower Court Order is simply in clear error. Permission is not hostile. It ever has been. It never will be. The Special Referee was in error in ruling that this permissive use was adverse or under a claim of right or under a substantial belief of right.

Third, and finally, there are some extremely important **public policy** implications lingering just beneath the surface in this case. They are very important and very fundamental to all property inside of South Carolina. The first highly important public policy is to encourage private landowners, such as Bowater and many others, to lease their lands to the State for public purposes. A ruling for Defendant Shirley, notwithstanding a public lease and a permissive key received directly from DNR to enter to property, turns the law upside down and inside out. If private owners are put on notice

that their generosity may turn into a nightmare of complex prescriptive, unwritten easements, criss-crossing their property at the end of long leasehold, it is very clear that there will be severe public consequences. The WMA lease program itself may be in jeopardy.

The second highly important public policy stems from equity cases, but is equally applicable in the appropriate legal setting. There is something fundamentally wrong with Defendant Shirley's conduct as reflected on this Record. To make it very clear, it is not hostile use, or prescriptive easements per se, or adverse possession that is the problem, it is conduct that goes so far beyond the norm and outside societal boundaries that it should give this Court great pause to ever affirmatively grant Defendant Shirley any kind of rights when he threatened to physically harm Plaintiff Bundy and his family. *See* Whitlock v. Creswell, 2 S.E.2d 838 (S.C. 1939)[1](standing for the legal premise that a Defendant cannot be permitted to profit from his own wrongs or to take advantage of his own wrongs or to found any claim upon his own inequity or to acquire property by his own crime.); *se also* Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889). The Record has to be carefully looked at in this area.

Argument

I. While the Property Was Being Actively Leased to the State of South Carolina DNR State Agency, from 1985 to 2003, the Prescriptive Easement Clock was Stayed, Turned Off, Abandoned, and Interrupted As A Matter of Law.

It is settled law that no one can adverse possess lands owned by the State. Similarly, it is equally settled law of South Carolina, and almost every other State, that

[1] Whitlock was authored by the late famous United States Senator Strom Thurmond when he was a South Carolina Circuit Court Judge. The Supreme Court thought so highly of the opinion they reported his lower court opinion and adopted it verbatim as their own.

the doctrine of prescriptive easement does not run against State lands. Nonetheless, the Special Referee apparently ignored this settled rule of law and ignored the parties own stipulation of fact.

In the Special Referee's Final Order, bottom of Pg. 4, the Special Referee purported to recognize in its Findings of Fact Section of that Order "that the parties entered into the following stipulation of facts prior to the trial of this case." The Special Referee then went on to discuss some of those stipulations as follows:

> **b. From 1985 to 2003, the Bundy Property was leased by the Plaintiff's predecessors in title Bowater Incorporated and Bowater Timber 1, LLC, to the South Carolina Department of Natural Resources (the "Lease")**
>
> **c. Between 1985 to 2003, the South Carolina Department of Natural Resources had a legal interest in the Bundy Property.**
>
> **d. As a result of the Lease, the Bundy Property was enrolled in the South Carolina Department of Natural Resources Wildlife Management Area Program.**
>
> **e. The Lease and the Wildlife Management Area program allowed public access to all portions of the Bundy Property from 1985 to 2003 subject to the rules and regulations of the Wildlife Management Area program.**

See (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 5).

However, contrary to settled law and the parties own stipulations of fact,[2] quoted above, the Special Referee inexplicably ignored his own Findings of Fact a few pages later by first holding that "using the disputed road over the Bowater property without a

[2] Of course, it is settled everywhere "the jury or the court cannot find contrary to the stipulated admissions of the parties" 83 C.J.S. Stipulations Section 789 (2012). Or, as stated by one Court, "valid stipulations are controlling and conclusive" Burstein v. United States, 232 F.2d 19 (8th Cir. 1956).

Game Management permit would be use without permission and adverse to the interests of the owner." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 10). Then, repeating this error, the Special Referee further held as follows:

> As to the Game Management Program that allowed public hunting on the Plaintiff's property, it was never established that the Defendant complied with the Department of Natural Resources rules and regulations for entering the Game Management lands, specifically, the need to obtain a permit. As to the evidence presented by the Plaintiff of permissive use, I find that the preponderance[3] of evidence including that the violent outburst by the Defendant establishes that the use of the disputed road by the Defendant was adverse and hostile.

See (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 20).

Finally, and again in error and in disregard of the stipulated facts, in response to Plaintiff Bundy's Rule 59(e), SCRCP Motion to Reconsider the Special Referee found as follows:

> The Court is simply of the opinion that the enrolling of the Bundy property into the game management program, and the use of the road presumably by public third parties, does not affect any rights of Shirley in and to the prescriptive use of the road. **Furthermore, the state of South Carolina never owned the Bundy parcel so therefore I find that any enrollment as a game management land does not rise to the level of a legal interest in the property.**

(emphasis supplied) *See* (R . p. 22, Order on Appellant's Rule 59, SCRCP Motion, filed February 9, 2012, p. 3).

On almost any level of analysis, these conclusions of law are plainly in error. **First**, directly based upon the Stipulations of Fact, the entire property was under lease to

[3] An additional error of law, or so Plaintiff Bundy genuinely believes, is the Special Referee's continued insistence that the proper standard of proof for adverse possession and prescriptive easement claims is a mere preponderance of the evidence. As argued below and in Appellant's Initial Brief on Appeal to this Court at Pages 13-15, Appellant believes the proper standard of proof for a prescriptive easement and adverse possession claim is the clear and convincing standard.

a State agency. How can real property, validly leased to a State Agency for **17 years**, and thus temporarily converted as a matter of law to state leased WMA property, ever create a prescriptive, hostile easement? The entire property was wide open to the public to use during this period. Anyone, and everyone, for years and years on end, could travel across it and use its roads. *See* Ark Game & Fish Comm'n v. Lindsey, 730 S.W.2d 474 (Ark. 1987), which squarely following South Carolina law,[4] held that hunters and fisherman could not argue prescriptive rights to roads across State land.

For all practical, and certainly for legal purposes, this land, under the Department of Natural Resources legal control and sovereign dominion by virtue of the valid lawful leasehold granted the State of South Carolina, over the entire property, for 17 consecutive years, temporarily became state land, and there could not possibly be hostile and adverse possession on the part of anyone. Any other rule, would be so contrary to public policy, and would intimidate real property owners in the future from ever again participating in anything like the State Game Management Program. It is almost unthinkable that a real property owner's kindness and gracious acts in favor of the public can be cruelly turned into a loss of title and use. One of the primary reasons for both adverse possession and prescriptive easements is to punish a real owner, who is so indifferent to his or her own property rights, that they do not bother to even check on who is using their property for what purposes for long, long periods of time. Not a single part of that reason is found on

[4] Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952)(recognizing that property used by the public cannot be acquired by prescription or adverse possession against the State.).

this Record.[5] To the contrary, here a private owner has voluntarily elected to lease what was once private property to a State Agency for the good of the public and to actually invite the public onto what was formerly private land. To turn this policy, which is a wise and good one, into a snare and a trap is contrary to all reason and directly contrary to the policy underpinnings of the reasons for adverse possession and prescriptive use to begin with. On this ground alone, the Lower Court Order is clearly wrong, wrong as a matter of law, and even more wrong as a matter of public policy.

Moreover, even ignoring public policy, simply as a matter of established prior law, it is crystal clear that any prescriptive claims that Mr. Shirley may have had in 1985, were totally interrupted, stayed, and utterly abandoned for 17 consecutive years. It goes without saying that not a single case cited by the Special Referee to support its unusual and unprecedented findings of fact or conclusions of law even remotely mirror the facts of the present case where it is undisputed that the State had control, the State had possession, and the State had a leasehold interest for 17 straight and continuous years.

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[5] Fundamental to a claim for a prescriptive easement or adverse possession, the party asserting the claim must show, in addition to other elements, that his use was open, exclusive, notorious, and hostile. The central point of the showing of these elements is to provide notice to the record owner of the property. 3 Am.Jur.2d Adverse Possession § 65 ("It is the legal owners knowledge, either actual or imputable, of another's possession of lands that is required for adverse possession*** The true owner is generally chargeable with knowledge of what is openly done, and therefore calculated to attract attention, on the owner's land."). Here, Defendant Shirley did not present any evidence that Bowater had any notice of his use of the property. Indeed, as stated herein, his use was consistent with the use the general public made or could have made of the Bowater/Bundy Property and the disputed road pursuant to the WMA program. Defendant Shirley testified six (6) separate times that his use was consistent only with the use the public made of the logging road because it was public while it was enrolled in the WMA Program. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 123-125; 134; 138-140; 187; 188; 202-205). The Special Referee found the disputed road was not a public road. Defendant Shirley's use does not arise to a prescriptive easement. There was no way for the landowner, Bowater, to prevent or uncover this type of secret use while the property is leased into the WMA program because everyone in the general public was allowed to use the logging road. Indeed, in Cleland v. Westvaco, 314 S.C. 508, 431 S.E.2d 264 (Ct.App. 1994), the South Carolina Court of Appeals has already recognized, even in the absence of a WMA lease, that large unenclosed timber property is different and, therefore, prescriptive rights cannot arise because of notice problems to the owner.

Defendant Shirley's sole attempt at trial to circumvent this inconvenient fact of state control of state leased land in a state program, was to assert that he stopped buying or holding a valid WMA permit. The response, of course, is: who cares?

As a matter of law, the lease was governed by State regulations—even the Stipulation of Facts recognized that the lease was governed by rules and regulations of DNR—and those Regulations make it crystal clear that the "Department land is made **available to the general public for reasonable uses** not prohibited by statute or regulation" S.C. Code Ann. Regs. Section 123-202. The general public was always allowed on the land. Indeed, the general public was invited and encouraged to be on the land and to engage in countless activities—even without acquiring any permit or hunting license. For example, the general public could:

land owned in fee simple 123-201

(1) hike anywhere on the property

(2) operate motorized vehicle

(3) swim

(4) camp for less than four nights

(5) horse ride

(6) boat

No one, not the record owner, not a D.N.R. game warden, not a policeman, not even the Governor of this State, could bar Defendant Shirley from any and all of these activities on the Bowater/Bundy Property for 17 years. *See* S.C. Code of Ann. Regs. Section 123-203 (C) (D) (E) (F) (G) (H). Nor, does even this specific list, exhaust the uses that anyone, including Defendant Shirley, might lawfully be permitted to do on the property while it was leased to the State. In light of S.C. Code Ann. Regs. Section 123-

203 (A), quoted earlier, where property leased to the State becomes public lands during the lease and where the public is invited to make "reasonable uses" of the property, certainly bird watching, photography, walking, running, mountain biking, sporting, and picnicking are further uses that could and were lawful, valid uses.

Defendant Shirley, in short, was granted as a matter of law access and permission to use the Property pursuant solely to the Lease. Although the Special Referee notes that Shirley claims he stopped purchasing permits to hunt, and even assuming for purposes of this appeal that this statement is true, there is no evidence that Defendant Shirley actually hunted on the Bundy/Bowater property from 1985 to 2003, and he claims a prescriptive right to use a road on the property, not to hunt. There was no permit required to use the road on the property.

Moreover, in addition to the permission given to Defendant Shirley by the WMA lease, Defendant Shirley also sought and received permission from Bowater by receiving and using the Bowater key and Defendant Shirley sought and received permission from Plaintiff Bundy by receiving and using the Bundy key.

Here, the manifest indications all over this record are that Defendant Shirley regularly sought permission to use the disputed road – again and again and again - and only in 2006 did it become that he was actually hostile. Permissive use cannot arise into a prescriptive easement. Moreover, if the 1985-2003 time period does not count (and Appellant believes it cannot count as a matter of law) no argument, creative, actual, or fictional, can be used to give the Respondent a prescriptive right on this road.

The Special Referee's finding that Defendant Shirley's use was not permissive[6] and the finding of a prescriptive easement based upon the years 1985-2003 is in error and in disregard to the stipulated facts, South Carolina law and public policy.

II. The Special Referee Made Three, Interconnected Errors of Law Regarding The Issue of Permissive Use and Continuous Hostile Use for 20 Years.

A. First, As A Matter of Law There Was No Evidence of Continuous Use from 1947-1968 by the Bennett Family Over The Disputed Road. Thus, They Really did Not Have a Prescriptive Easement.

B. Second, Even Assuming the Bennetts had a Prescriptive Use, The 16 Year Gap of Time Between 1969 - 1985 After Bennetts and Before Shirley Coupled With Shirley's Use of a Permissive Key to Gain Access in 1985, Bars Shirley from Using Bennett's Claims of Prescriptive Use From 1947 -1969 As A Matter of Law

C. Third, Shirley's Undisputed Request For Permissive Use From The Brand New Owner Bundy, In 2004, Clearly Defeats All of His Alleged Prescriptive Time

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[6] Defendant Shirley argued and the Special Referee found that mere permissive use does not necessarily bar a claim for a prescriptive easement, *citing* Reavis v. Barrett, 321 S.C. 467 S.E.2d 460 (S.C. 1996). But, for several reasons, that case is clearly distinguishable on its very facts from the facts found on this record. Reavis recognizes a very limited and special exception to the long standing general South Carolina rule, that permissive use does bar a prescriptive right. See State v. Murphy, 124 S.C. 274, 117 S.E. 529 (1923) (long ago recognizing the general South Carolina rule that even long use of property by permission does not turn into prescriptive right). First, in Reavis, there was a written letter where one side acknowledged to the other that he "recognizes [referring to the disputed road in that case] to be a joint and common right of way." This was not permission to use the disputed road. It was the recognition of a right to use the disputed road. In contrast, in this case, there is absolutely no written statement - anywhere at any time - by Plaintiff Bundy or any predecessor in title - that Defendant Shirley or his parents had a "joint and common right of way." Second, there was substantial independent evidence to support the Master's finding that Reavis had a valid belief about her right to use the road flowing from a "claim of right." By contrast, Defendant Shirley and his father used the road in 1985 - the very year they purchased the property - by asking for and receiving a key from D.N.R. They sought and obtained permission. And, when Plaintiff Bundy became the new owner, in 2004, they again sought and obtained permission to put a gate. Finally, and perhaps most importantly, there was no state public lease inviting the entire public to use the road for seventeen (17) straight years in Reavis v. Barrett.

Periods, Whether The First (1947-1969) or the Second (1985-2005) Period of Time Is Considered

Introduction to Argument No. 2

Plaintiff Bundy believes that the Special Referee committed three interrelated errors of law, even beyond **the inappropriate conclusions made about the State lease.** Again, even using what Plaintiff Bundy believes was the incorrect and erroneous standard of proof, the mere preponderance of evidence standard, as compared to clear and convincing standard, the first error of law was the Special Referee's Conclusion of Law that there was a prescriptive easement established by the Elijah Bennett Family between 1947 and 1969 over the disputed road.[7] *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 16).

Although the chain of title to the property is quite complex, it is relatively clear that one J. C. Gillis transferred what is now the Shirley Property to Elijah Bennett on December 19, 1947. Thereafter, English Bennett (Elijah's son) on May 6, 1968, approximately 20 years and five months later, in turn, transferred his interests from his deceased father, in what is now known as the Shirley Property, to W. M. Andrews. Shirley did not own the land until 1985. As Plaintiff Bundy sees this chain of distant events, they raise three different, interrelated, **questions of law:**

[7] The Special Referee's Final Order is not always numbered on each page. But, there is a number on Page 15 and the very next page contains the Conclusion of Law under the Caption Prescriptive Easement. After citing Horry County v. Laychur in the first paragraph under Prescriptive Easement the Special Referee's Final Order contains the following "I find by a preponderance of the evidence that the Elijah Bennett Family, including Elijah Bennett and his children established a 20 year period of use of the disputed roadway between 1947 and 1969." The Special Referee went on to hold in his Order on the Plaintiff's Rule 59(e) Motion that the establishment of the prescriptive easement was done by evidence of the Bennett Family's use of the disputed logging road for more than 20 years. *See* (R . p. 22, Order on Appellant's Rule 59, SCRCP Motion, filed February 9, 2012, p. 2).

First, does the Record reflect that the logging road to what is now the Shirley property was used by the Bennett Family in a continuous, adverse and hostile manner from 1947 to 1968?

Second, irrespective of what the Bennett Family did or did not do for access, during their time of ownership, is Defendant Shirley—who did not even purchase the property until 1985 - as a matter of law—permitted to ignore the gap from 1969 -1985?

Third, as late as 2004, it is uncontested that Defendant Shirley sought the new owner's, Plaintiff Bundy, permission to put up a gate. Does this uncontested act of seeking access by permission with a new owner end all his prior claims of prescriptive use as a matter of law?

A. First, as a matter of law there was no evidence of continuous use from 1947-1968 by the Bennett Family over the disputed road.

Defendant Shirley claims that he should be permitted to gain the benefit of the Bennett Family's alleged prescriptive use of the disputed logging road when the Bennetts owned what his now Shirley's property way back from 1947 through 1969. The Special Referee found that the Bennett's had a prescriptive use from 1947 through 1969. In part, the Special Referee extensively relied upon evidence of various aerial photographs, which the Special Referee ruled proved the **existence of the road** in 1956, and 1964, and 1969.[8] *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, Conclusions of Law Section, p. 17). However, the Record is crystal clear that Elijah Bennett's own son, Edward, testified that his Dad stopped all farming in 1955, when he became sick. *See* (R. p. 113, Transcript of Hearing Vol II, Testimony of Edward 'Jack' Bennett, p. 240:3-14). His son also testified, again in a very clear and uncontested

[8] Although there are only a few pages that are actually numbered, one such page is 15. The following page, referred here as 16, contains in the middle of the page, as a distinctive heading, Prescriptive Easement. And the next page, referred to here as 17, contains Defendant's argument and the Special Referee's argument that the road was in existence in aerial photographs in 1956, 1964, and 1969.

manner, that Elijah died in 1957. *See* (R. p. 113, Transcript of Hearing Vol II, Testimony of Edward 'Jack' Bennett, pp. 241-242). Without any specific citation to anything in the actual Record, the Special Referee simply concluded that the Bennetts must have continuously used the road throughout a 20 year period of time, even though the **only testimony** is that Edward 'Jack' Bennett has no knowledge of the property or disputed logging road after he married and moved way prior to 1960 and Richard Miller[9]'s testimony that his "father started to [lease] the farm" in 1964 "for a few years" with permission from Bowater. *See* (R. p. 113, Transcript of Hearing Vol II, Testimony of Edward 'Jack' Bennett, pp. 241-242). *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 154:8-15).

The question of law is simple enough: Does the mere **existence of the road** in aerial photographs in **1956, 1964, and 1969, coupled with uncontested evidence that Elijah Bennett died in 1957,** and the **uncontested evidence** that his son moved away from the area and had nothing further to do with the property after 1960, and with the further **uncontested evidence** that the Millers started in 1964 to lease the property "for a few years" add up to "continuous use for 20 years?"

Plaintiff Bundy respectfully submits to this Court that even adopting every piece of evidence in the record in favor of Shirley, and ignoring all the evidence with regard to Plaintiff Bundy, and fully recognizing that the Special Referee's factual findings are entitled to be and should be given deference on appeal, **unless there is no evidence that reasonably supports the findings,** there are simply too many time gaps in the Record of the time from 1957, the death of Elijah Bennett, until the 1960s (probably 1964) when

[9] Rick Miller was 55 at the time of the lower court hearing in 2010. He would have thus been 9 years old when his father first entered into the lease and since the lease lasted "for a few years" he would have perhaps been 10, 11, 12, or a little more – depending upon when the lease ended.

the lease started to factually support the conclusion that the Bennett Family prescriptively used the road continuously from 1947 through 1969.

From 1957 until 1960, there is no evidence of any use of the disputed road by the Bennett family or anyone else. From 1957 until 1964, there is no evidence of any use of the disputed road by the Bennett family or anyone else. From 1964, but only for a "few years", the Miller family began to lease the Bennett/Shirley property and did use the disputed road. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Richard Miller, pp. 149-150, 154:8-15).

Collectively, this evidence simply does not add up to 20 years of continuous use. The mere existence of the road is not enough. There are simply too many gaps of time unaccounted for in any way. And, the testimony of only "for a few years" is way too indefinite to claim to be five full years from 1964 through 1969[10].

In short, there is, quite literally, no evidence of uninterrupted, continuous use of the road by the Bennett family or the Miller family during the critical 1947 - 1969 time period. Accordingly, Plaintiff Bundy asserts that it was an error of law to make a critical factual finding that lacks any evidentiary support. See Townes Associates Ltd v. City of Greenville, 266 S.C 81, 221 S.E.2d 773 (S.C. 1976) (recognizing the general rule that for factual findings below to stand there must be some evidence in the record to support them); Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 615 S.E.2d 112 (S.C. 2005) (finding Special Referee's determination of valid service of process was unsupported by the evidence. Since there was no evidence to support a legal relationship

[10] Moreover, even assuming it was a full complete five year period of time – which is almost certainly more than "for a few years" - it still nowhere near comes close to 20 years. From 1947 - 1957 the death of Elijah Bennett is only 10 years. And, from 1964 through 1969, at best, and giving Shirley every possible benefit of the doubt is only 5 more years. It quite simply – does not add up to 20 years.

between Blair & Southern Finance, service was improper and default judgment was void); *See also* Watford v. S.C. State Highway Department, 269 S.C. 130, 236 S.E.2d 588 (S.C. 1977) (finding the trial judge's explanation of an accident was based on factual analysis which had no evidentiary support).

There is also simply no evidence that the use of the logging road by Elijah Bennett was ever adverse, hostile, notorious or under a claim of right. There is no evidence of any use between 1960 and 1964. There is no evidence that any use of the disputed logging road by the Miller family was done in an adverse, hostile, or notorious manner or under a claim of right.

The existence of a road on a photograph does not prove use or type of use. It certainly does not prove hostile use, adverse use, use under a claim of right, notorious use, or continuous use. *See* Frazier v. Smallseed, 384 S.C. 56, 682 S.E.2d 8 (S.C. App. 2009)(holding no prescriptive easement simply because the 20 years had not been proven).

B. The gap of time between 1969-1985 and the use of a permissive key to gain access in 1985, received from the S.C.D.N.R., bars Defendant Shirley from using the Bennett's claims of prescriptive use from 1947-1969 as a matter of settled law.

Even if we assume merely for sake of academic argument only, that the Bennett's did establish prescriptive use over the road, from 1947 through 1969, what in the world are we to make of the sixteen (16) year gap of time that everyone agrees Defendant Shirley did not own any property in the area and everyone agrees there is no evidence of any adverse or prescriptive use of the disputed logging road? What is to be made of the fact that, in 1985, Defendant Shirley sought a permissive key from Bowater to use the

disputed logging road? The Special Referee dealt with these inconvenient, but undisputed facts, in two different ways. First, he erroneously concluded that he did not have to go beyond the Bennett prescriptive use period. *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 19). Second, the Special Referee ruled that "the Defendant adamantly testified that the disputed road was the only way to access to his property and his testimony on this point is supported by the maps, plats, and photographs in the record." The Special Referee also ruled that "the testimony as a whole strongly indicates the Defendant was going to use the disputed road with or without a key..." *See* (R. p. 1, Order of the Special Referee Roderick M. Todd, Jr. filed July 11, 2011, p. 11).

With regard to the first finding, Shirley only claims that he purchased the land he now owns in 1985. In short, there are sixteen (16) years where even taking Defendant Shirley's side of the case, the Bennetts stopped any use and Defendant Shirley did not yet start. This gap of time is deadly to his prescriptive easement. There is no evidence that Defendant Shirley was aware prior to this action of any use by the Bennett Family. He is not, as a matter of law, in privity of title with the Bennett Family. He cannot, as a matter of law "tack" onto the Bennett Family's use or time of use. *See* Marrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (1997).[11] Defendant Shirley has not, as a matter of law, shown any direct legal connection by deed, or grant, or implied use, or any other theory, between him and the Bennett Family. Therefore, even assuming the Bennett Family established prescriptive use for a period of twenty (20) years, which is disputed above,

[11] The Special Referee expressly found that "tacking" was unnecessary to his ruling that Defendant Shirley had a prescriptive easement. *See* (R . p. 22, Order on Appellant's Rule 59, SCRCP Motion, filed February 9, 2012, p. 2). This is in conflict with his finding that the Bennett Family established a prescriptive easement for Defendant Shirley.

the Bennett Family's use is legally irrelevant to Defendant Shirley's prescriptive easement claim.

With regard to the second finding, when Defendant Shirley did show up in 1985, even he admits that he asked for and used a key by permission from the Department of Natural Resources. Defendant Shirley's first use of the disputed logging road was done with permission. The permissive use is not consistent with any of his own alleged prescriptive use or any prescriptive use by the Bennett Family. The law is crystal clear. Permission at the very start of his use in 1985, after he did acquire the property, stops all claims of prescriptive right.

The Special Referee's conclusion that Defendant Shirley established a prescriptive easement based upon use by the Bennett Family and in the face of the permissive nature of his own use was in error.

C. Third, Defendant Shirley's undisputed request for permissive use from the brand new owner, Plaintiff Bundy, in 2004, defeats all of his alleged prescriptive time periods, whether the first (1947-1969) or the second (1985-2005) period of time is considered.

It is undisputed in this case that upon Plaintiff Bundy's purchase of the Bowater/Bundy Property, Defendant Shirley sought and received permission to erect a gate on the disputed logging road from Plaintiff Bundy, the new owner. This completely uncontested fact is mutually exclusive from a claim for a prescriptive easement[12] by Defendant Shirley. Just as he sought permission from Bowater, Defendant Shirley sought permission from the new owner. Therefore, regardless of whether or not the Bennett Family established anything, Defendant Shirley used the disputed logging road with

[12] This fact is also mutually exclusive from Defendant Shirley's claim in this action that he believed the road was a public road.

permission from the beginning. He re-affirmed this permissive use again in 2004. This defeats any claim by Defendant Shirley for a prescriptive easement.

III. Defendant Shirley is the author of his own dilemma and this Court should not grant him rights due and owing to his inequitable conduct to solve the dilemma he created.

Defendant Shirley's father purchased a piece of property that according to his own testimony is landlocked without the use of the disputed logging road.[13] The property did not have any structures on it and does not have any structures on it today. The plat referenced in the deed shows the property is landlocked. Defendant Shirley admitted this key fact. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Shirley, pp. 205-206). As such, Defendant Shirley does not claim an easement by necessity. He does not claim that the property was landlocked by Plaintiff Bundy's predecessor in title. There is no unity of title between Plaintiff Bundy and Defendant Shirley. This case is about an individual whose father acquired a piece of landlocked property. Defendant Shirley's father did not attempt to acquire an easement to access the property. He and Defendant Shirley chose to access the property pursuant to the permission from the State and Bowater in 1985 and then from Plaintiff Bundy in 2004. They simply chose not to acquire a legal easement as individuals in South Carolina do every day. In fact, others in the area, including Plaintiff Bundy, have sought and purchased necessary easements. *See* (R. p. 113, Transcript of Hearing Vol I, Testimony of Bundy, pp. 51, 59). *See* (R. p. 528, Plaintiff's Exhibits 6). *See* (R. p. 533, Plaintiff's Exhibits 7). In 2005, once Defendant Shirley received title to the Property from his parents he began to behave in such a manner that those who had extended permission to use their property no longer wished to

[13] The Plaintiff put evidence into the record of other ways to access the Shirley Property; however, these means of access would also require the purchase of an easement from others.

have Defendant Shirley on their property. He has created his own dilemma at every turn. Incredibly, it is this behavior that Defendant Shirley now seeks to use to establish a right to use his neighbors' property to access his landlocked property. He still does not seek to legally and justly acquire an easement. His claim of a prescriptive easement should not stand. Defendant Shirley cannot and should not benefit from his bad and secretive behavior, especially in light of the fact that he is the author of his own dilemma.

Conclusion

For the reasons stated herein and the reasons stated in the Initial Brief of the Appellant, the Orders of the Special Referee should be **REVERSED** as there is insufficient evidence in the Record to establish a prescriptive easement on behalf of Defendant Shirley over the property of Plaintiff Bundy.

Respectfully submitted,

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_____, 2012
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

CERTIFICATE OF COUNSEL

I certify that this final reply brief complies with Rule 211(b), SCACR.



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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

W.H. Bundy, Jr., Appellant,

v.

Bobby Brent Shirley, Respondent.

Appellate Case No. 2012-208007

Appeal From Kershaw County
Roderick M. Todd, Jr., Special Referee

Unpublished Opinion No. 2013-UP-153
Heard March 29, 2013 – Filed April 10, 2013

REVERSED

M. Brent McDonald, of Smith Bundy Bybee & Barnett, P.C., of Mount Pleasant, and Stephen A. Spitz, of Charleston, for Appellant.

John W. Wells, of Baxley, Pratt & Wells, P.A., of Lugoff, for Respondent.

PER CURIAM: This appeal arises out of a declaratory judgment action seeking a determination as to whether Respondent Bobby Brent Shirley has a prescriptive easement over a road (the Disputed Road) on rural property owned by Appellant

W.H. Bundy, Jr. The special referee found that Shirley established a right to use the Disputed Road. On appeal, Bundy argues the special referee erred by: (1) failing to require Shirley establish a right to a prescriptive easement by clear and convincing evidence; (2) finding that Shirley established a prescriptive easement over the Disputed Road; and (3) failing to rule that Shirley's inequitable conduct barred any relief sought by him in this action due to the doctrine of unclean hands. We reverse.

1. As to Bundy's argument that the special referee erred by finding that Shirley established a prescriptive easement over the Disputed Road, we agree because Shirley did not establish his use of the Disputed Road was adverse or under a claim of right for twenty years. *See S.C. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 82, 705 S.E.2d 21, 24 (2011) (stating an appellate court "will not overturn a trial court's finding that an easement exists unless that conclusion is controlled by an error of law or without evidentiary support"); *Jones v. Daley*, 363 S.C. 310, 316, 609 S.E.2d 597, 599-600 (Ct. App. 2005) ("In order to establish an easement by prescription, a party must only show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right."). Relying on *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996), the special referee found that permission "does not defeat an easement by prescription based on a claim of right." We find this to be an error of law. *See Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) ("The asking and obtaining of permission, whether from the tenant or owner of the servient estate, stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription."). Here, the parties stipulated the property Shirley now owns was transferred to Shirley's parents on May 10, 1985. The parties also stipulated Shirley asked Bundy for permission to build a gate on the Disputed Road in 2004. Assuming Shirley's use of the Disputed Road was permissive from 1985 until Shirley asked permission to build the gate in 2004, the nineteen-year time period is insufficient to establish a prescriptive easement. In *Revis*, the landowner did not give the party asserting a prescriptive easement permission to use the disputed road; rather, the landowner recognized the right of the party to use the road. *See Revis*, 321 S.C. at 210, 467 S.E.2d at 462 (finding evidence supported the master's finding that Revis' right to use the disputed road flowed from a "claim of right" and not from a grant of permission). Based on the parties' stipulations, Bundy's grant of permission for Shirley to build the gate defeats a claim of right or adverse use of the Disputed Road. *See McCrea v. City of Georgetown*, 384 S.C. 328, 332, 681 S.E.2d 918, 921 (Ct. App. 2009) (noting stipulations are binding on

the parties as well as the court); *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 586, 735 S.E.2d 528, 538 (Ct. App. 2012) (stating the party asserting a prescriptive easement indicated the reason for seeking permission to install a gate on the access road was to avoid interfering with the property owner's access, which is an implicit acknowledgement of the property owner's rights and is inconsistent with a claim of right). Furthermore, we also find the special referee erred by determining that because Shirley established "a prescriptive easement during the Bennett ownership period, it is unnecessary to establish a prescriptive easement during the Shirley ownership period." The Bennett family owned the property Shirley now owns from 1947-1968. In order to use the Bennett family's prescriptive use of the Disputed Road, Shirley was required to offer evidence that the Disputed Road continued to be used under a claim of right or in an adverse manner between the Bennett family's use and the Shirley family's use. However, Shirley presented no evidence that the use of the Disputed Road between 1968 and 1985 was adverse or under a claim of right. *See Kelley v. Snyder*, 396 S.C. 564, 575, 722 S.E.2d 813, 819 (Ct. App. 2012) (noting parties may "tack" the period of prior owners to satisfy the twenty-year prescriptive easement period if the prior owners are in privity and the prior owners' use was adverse or under a claim of right). Therefore, even if the special referee was correct that the Bennett family had a prescriptive easement over the Disputed Road, Shirley is unable to tack the Bennett family's use to establish his prescriptive easement claim. For the foregoing reasons, we find the special referee erred by finding Shirley established a prescriptive easement.

2. As to Bundy's remaining arguments on appeal, we decline to address these issues because the above findings are dispositive of the appeal. *See Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 311, 725 S.E.2d 107, 111 (2012) (declining to address additional remaining issues when the disposition of a prior issue was dispositive of the appeal).

REVERSED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012-208007

W. H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

The Respondent petitions the Court of Appeals for a rehearing of the above captioned case based on the following points that were overlooked or misapprehended by the Court:

I. The Appellant's entitlement to judgment as a matter of law based on permission granted to the Respondent to erect a gate on the disputed road in 2004 was not raised to the trial court by a proper motion, objection or exception and was therefore not preserved for review.

II. The Court of Appeals misapprehended the language of Stipulation 8(R.p.521) by adding a crucial fact, the Respondent's request for permission to erect a gate in 2004, which fact does not appear in the text of Stipulation 8, or anywhere else in the Record on Appeal and which fact served as the factual basis for the Court's reversal of the trial court.

III. The Court of Appeals over looked the language in Williamson v. Abbott 107 S.C. 397, 93 S.E.2d 15 (1917) that limits the holding of that case to permission granted "in the inception" of the twenty (20) year prescriptive use period by applying Williamson v. Abbott supra. to permission granted nineteen (19) years into the use period.

IV. The Court of Appeals misapprehended the holding of Paine Gayle Properties, LLC vs. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) by ruling that permission to build a gate automatically defeats an easement by prescription as a matter of law.

V. The Court of Appeals impermissibly invaded the province of the trial court as fact finder in ruling that evidence in the record establishes a permissive character of the Respondent's use of the disputed road; and that the facts

of the case at bar are consistent with the facts in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. which fact finding by the Court of Appeals is directly contrary to the fact finding by the trial court.

VI. The Court of Appeals misapprehended the established twenty (20) year use period requirement to prove a prescriptive easement by ruling that the Respondent was required to offer evidence that the disputed road continued to be used under a claim of right or in an adverse manner between the Bennett Family's use and the Shirley Family's use thereby imposing upon the Respondent a requirement to prove a use period in excess of twenty (20) years.

VII. The Court of Appeals misapprehended the South Carolina common law on the retroactive application of civil decisions when it ruled that Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. can be retroactively applied to the case at bar.

STATEMENT OF THE CASE

The April 10, 2013, Opinion of the Court of Appeals reversed the judgment of the trial court granting the Respondent an easement by prescription. The Court of Appeals held that Stipulation 8 (R. p. 521) included a request for permission to build a gate in 2004 by the Respondent, and that the grant of permission to the Respondent to build the gate defeats a prescriptive easement by claim of right or adverse use of the disputed road under Paine Gayle Properties, LLC vs. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).

The Court of Appeals also held that the twenty (20) year use period from 1947 to 1968 of adverse use by the Bennett Family could not be used by the Respondent to establish an easement by prescription. The Court ruled that in order to use the Bennett Family's prescriptive use of the disputed road, Shirley was required to offer evidence that the disputed road continued to be used under a claim of right or in an adverse manner between the Bennett Family's use and the Shirley Family's use.

ARGUMENT

I. The Appellant's entitlement to judgment as a matter of law based on permission granted to the Respondent to erect a gate on the disputed road in 2004 was not raised to the trial court by a proper motion, objection or exception and was therefore not preserved for review.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues and thus provide us with platform for meaningful appellant review. Queens Grant II Horizontal Property Regime vs. Greenwood Development Corp. 368 S.C. 342 628 S.E.2d 902 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.

Wilder Corp v. Wilke 330 S.C. 71, 76 S.E.2d 731 (1998). "It is axiomatic that an issue cannot be raised for the first time on appeal. Imposing such a requirement on the Appellant is meant to enable the lower court to rule properly after it has considered all of the relevant facts, law, and arguments." Heron v. Century BMW 395 S.C. 461, 719 S.E.2d 640 (2011).

The Court of Appeals ruled, "Based on the parties stipulations, Bundy's grant of permission for Shirley to build the gate defeats a claim of right or adverse use of the Disputed Road." This would have entitled the Appellant to a directed verdict based on Stipulation 8 (R. p. 521). That motion was not made below. In his final argument, the Appellant stated "we've also cited some cases, your Honor when you've got situations with gates and keys. There is an indication that that is permissive use. We've cited cases for that proposition in our brief. When you look at all of those facts and apply it to the law and the standard required the prescriptive easement fails and fails miserably." (R. p. 375, lines 12-18)

The reference to the cases cited in the trial brief all have to do with the Respondent obtaining a key to use an earlier gate erected by an owner prior to the Appellant, and not to the 2004 gate erected by the Respondent. The Appellant's argument cited above is that gate facts should be reviewed in the context of the applicable standard of proof required to determine whether or not the use was permissive which, as the Respondent will show below, is the correct law of South Carolina. The Appellant never asserted that the erection of a gate by the Respondent with permission from the Appellant entitles the Appellant to judgment as a matter of law which is the holding of the Court of Appeals.

If the Appellant did raise his entitlement to a judgment as a matter of law based on Stipulation 8, the trial judge did not realize it, and failed to rule on it in his extensive twenty-one (21) page Final Order. The trial judge understood the

Appellant's argument to pertain to the Bowater gate as explained above. See Findings of Fact 30 and 31 (R. p. 10-11).

If the issue had been raised by the Appellant, and the trial judge merely forgot to rule on it, the Appellant could have raised the issue with the thirty-seven (37) other exceptions taken to the trial judge's Final Order in the Appellant's Motion to Alter or Amend pursuant to Rule 59 S.C.R.C.P(R.p.55-61) The Appellant raised thirty-seven (37) exceptions to the ruling of the trial judge in his Motion to Alter or Amend, but the issue of the Appellant's entitlement to judgment as a matter of law based on Stipulation 8 was not among the thirty-seven (37) exceptions.

The case cited by the Court of Appeals as authority for the ruling that permission to erect a gate automatically defeats a prescriptive easement, Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. was not decided or published until after the Final Briefs had been filed in this appeal. The Appellant did not raise the issue below because he did not know to do so. This is the difficulty inherent in retroactively applying cases decided after a case has been tried. If the Respondent is to suffer the consequences of retroactive application of a case he could not know would affect his trial strategy, then the Appellant must also suffer the consequences of his failure to see the future and raise the issue at trial.

The issue of whether permission to build a gate automatically defeats an easement by prescription was never litigated in this case, nor was it even mentioned in oral argument on January 9, 2013. The Respondent was given no opportunity to argue against the proposition cited by the Court of Appeals as it's grounds for reversal. As to this issue, the Petition for Rehearing is actually a petition to have this matter heard for the first time. The decision of the Court of Appeals is grossly unfair to the Respondent and amounts to a denial of his right to procedural due process including the right to be heard on this issue.

II. **The Court of Appeals misapprehended the language of Stipulation 8 (R. p. 521) by adding a crucial fact, the Respondent's request for permission to erect a gate in 2004, which fact does not appear in the text of Stipulation 8, or anywhere else in the Record on Appeal and which fact served as the factual basis for the Court's reversal of the trial court.**

The April 10, 2013, Opinion of the Court of Appeals is based on one essential fact, that the Respondent sought the Appellant's permission to erect a gate and received that permission, erecting the gate in 2004. The opinion states, "The parties also stipulated that Shirley asked Bundy for permission to build a gate on the disputed road in 2004" It further states, "Assuming Shirley's use of the disputed road was permissive from 1985 until Shirley asked permission to build the gate in 2004...". The Court's reference to the Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. case as the legal authority for the reversal, makes reference to the party seeking permission to install a gate on the access road. It is clear from these statements that the Court of Appeals read into Stipulation 8 a request by the Respondent for permission to build a gate.

The actual text of Stipulation 8 is as follows:

(8) In 2004, Shirley put up a gate located on the property line between the Bundy property and the property of the Miller Family with the permission of Bundy. (R. p. 521)

Stipulation 8 does not say that Shirley asked Bundy for permission. When Shirley was asked about the erection of the gate in his deposition on September 17, 2009, the Respondent testified that the gate was Bundy's idea as follows:

Q. Okay. Did you put a gate up out there at any point?

A. Me and Mr. Bundy both agreed to put the gate up.

Q. Okay.

A. He was the one that wanted me to put the gate up.

Q. Mr. Bundy wanted you to put the gate up?

A. Yes, sir. He said listen, I said well I got a gate and we'll both put it up.

(R. p. 230 lines 14-23)

Q. Did you bring the posts to help him put the gate up?

A. Yes, I did.

Q. Why did you put the gate up?

A. Why did I put the gate up? Because Mr. Bundy wanted a gate up. That would serve for both of us.

Q. Why would it serve for both of you?

A. It would keep people from taking trash out and dumping it in the roads that we had to clean up, and keep night riders out.

(R. p. 235 lines 7-17)

Q. So you thought if you had Mr. Bundy's permission to put a gate up–

A. No, he wanted to put it up.

Q. Okay, But you put the gate up, that much is clear?

A. Yeah, I guess. I put the gate up.

Q. And you put the gate up because you thought you had Mr. Bundy's permission?

A. Mr. Bundy wanted to do that.

Q. Okay.

A. And I said hey, that's just right, that's just right for both pieces of property.

Q. Okay. Is that a yes?

A. Yes, sir. That's just what I said. He wanted to do it. That was just right

for me. I said that's just right. Keep people out.

(R. p. 241 lines 2-17)

So the Respondent testified clearly that the gate was the Appellant's idea. The Appellant testified about the gate, he testified as follows:

> And I was out in front of my house. I may have had a mail box then. I may not have. I may have been out there walking. I don't know what I was doing. I can't remember. Mr. Shirley said that I was jogging. That may well be true. At any rate, his – he and his father pulled over to the side of the road, and we had a discussion. And the notion of a gate came up at – where I showed you when we saw the video that Mr. Shirley and I had a discussion about a gate. And I gave him permission to put a gate up and permission to cross my land. And my recollection is at some point in time he may have delivered a key to me, but I never used it. That was not an access or a route that I used. So I never – I doubt I ever used that key.

(R. p. 185 lines 8-23)

The Appellant also testified as follows:

A. Well, yeah, but the property right he was asserting was a little different the second time. The second time he was asserting that I had no right to have him remove his property from my property. That once I had given him permission — as near as I can reconstruct it, is that once I had given him permission to put a gate on my property, that from that point forward the gate could not be moved. That it was his gate. And it was — to the extent that it was there, I had no dominion or control over what was on my property.

Q. Was it in that conversation or the first one that he said, "That is my damn road," or something to that effect?

A. That isn't what he said, but that is close enough. He took – yeah. He took the position that it was his road, his gate. And essentially, you know, I had no rights in and about that road. It was not only his right, but the fact that I had none. He was going to tell me what to do, how to use my property, when I could use my property, and for what use

I could make of my property. That is pretty –

(R. p. 213 lines 6 - p. 214 line 3)

The Respondent testified that the Appellant's grant of permission was spontaneous without a request for permission or seeking permission from the Respondent. The Appellant's testimony does not contradict spontaneous grant of permission. The assumption by the Court of Appeals that the Respondent sought permission to erect the gate is wholly absent from the record. The repeated references to the request for permission in the Court's opinion and the reference to the party asserting a prescriptive easement seeking permission to install a gate after the citation of Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. clearly establishes that the Court of Appeals based its ruling on the Respondent's request for permission to erect the gate which in turn, made Paine Gayle Properties, LLC vs. CSX Transportation, Inc. applicable. Without the request for permission, Paine Gayle Properties, LLC, becomes factually distinguishable from this case, and the legal authority for the ruling of the Court of Appeals collapses.

III. The Court of Appeals over looked the language in Williamson v. Abbott 107 S.C. 397, 93 S.E.2d 15 (1917) that limits the holding of that case to permission granted "in the inception" of the use of the easement by applying Abbott to permission granted nineteen (19) years into the use period.

Williamson v. Abbott supra. Involves a logical fact situation where permission to use the right of way to maintain a ditch was sought by the dominant tract owner at the outset, before the ditch was dug. Williamson v. Abbott held, "if permissive **in it's inception** such permissive character will continue of the same nature and no adverse user can arise until there is a distinct and positive assurance of right hostile to the owner and brought home to him."

The facts in this case relied upon by the Court of Appeals in its ruling are that the Respondent requested permission to use the road nineteen (19) years after his family acquired title to the dominant tract. This fact situation has no precedent in the common law because it has probably never happened that an adverse user decides to seek permission for the use after nineteen (19) years of adverse use. Williamson v. Abbott supra. does not apply because its language limits its holding to permission at the inception of the easement. There is no case in South Carolina common law holding that the adverse/claim of right use period can be cutoff by the spontaneous grant of permission by the servient landowner. The South Carolina permissive use cases all go back to Williamson v. Abbott supra. which requires permission in the inception of the use period.

On page 2 of the Opinion, the following sentence appears, "Assuming Shirley's use of the Disputed Road was permissive from 1985 until Shirley asked permission to build the gate in 2004, the nineteen (19) year time period is insufficient to establish a prescriptive easement." The Respondent cannot tell whether the Court meant to say assuming Shirley's use the Disputed Road was adverse from 1985 until Shirley asked permission to build the gate in 2004 the nineteen (19) year time period is insufficient, or whether the Court is actually applying an assumption relating the perceived 2004 request for permission back to 1985 under some sort of retroactive application. If this statement is an assumption written backwards, it is indicative of the inattention to detail that pervades the entire opinion (note that even the date of oral argument in the caption is wrong). If this sentence is an attempt to relate 2004 permission back to 1985 in order to equate the 2004 permission with permission in the inception in 1985, no authority is cited by the Court for the retroactive application of permission, so it appears to have no basis in law or fact. Either way, the sentence beginning, "Assuming Shirley's use of

the Disputed Road was permissive from 1985," is unintelligible and is reason, in and of itself, to grant a Rehearing in this case so the Court can explain what that sentence meant.

Williamson v. Abbott supra. applies to permission given in the inception of the use period, not to spontaneous permission granted nineteen (19) years later. There is no authority for a nineteen (19) year retroactive application of permission as assumed by the Court of Appeals.

IV. The Court of Appeals misapprehended the holding of Paine Gayle Properties, LLC vs. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) by ruling that permission to build a gate automatically defeats an easement by prescription as a matter of law.

The case relied upon by the Court of Appeals to reverse the trial court is Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. filed on November 14, 2012, after the Final Briefs had been filed on this appeal, and which case was not mentioned in the oral arguments on January 9, 2013. The trial court had no opportunity to rule on any matters of law arising from Paine Gayle Properties, LLC as discussed above. The Respondent had no opportunity to brief that case or even respond to it in oral argument as it was not mentioned. The ruling of the Court of Appeals is that permission to build a gate automatically defeats a prescriptive easement which is contrary to the existing law in South Carolina at the time of the filing of this case, and is contrary to the holding in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra.

Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra came to the Court of Appeals as an appeal from a grant of Summary Judgment to the servient tract owner based on the facts set out in testimony and various affidavits which form the record in that case. The Court of Appeals cites Williamson v. Abbott supra. as

its authority on permissive use which applies only to the use of the right of way itself. Williamson v. Abbott supra. does not involve a gate or any other ancillary structure on or about the right of way. Its discussion of permission applies only to the use of the right of way itself. In order to make the leap from permission to erect a gate to permission to use the right of way the Court must find some authority other than Williamson v. Abbott supra. because it does not involve a gate.

The Court of Appeals in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. did not confuse permission to erect a gate with permission to use the road in dispute. The Court of Appeals treated permission to erect the gate as one fact tending to shed light on the relationship between the dominant tract owner and servient tract owner. It considered the dominant tract owners' intent in seeking permission to build the gate together with the rest of the testimony and affidavits, some of which admitted that the railroad had given tacit permission to cross the right of way. The Court of Appeals affirmed the trial court's determination that "the overall tenor of the affidavit (discussing the gate) is that the landowner's use was with the railroad's permission and in recognition of the railroad's rights." In Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra., the Court of Appeals focused on the permission to use the road, not permission to erect the gate which is a correct application of South Carolina law.

Contrast the "overall tenor" of Gayle's affidavit in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. with the "overall tenor" of the following testimony from the Appellant, Bundy, about Shirley's attitude concerning the gate in the case at bar:

> A. Well, yeah, but the property right he was asserting was a little different the second time. The second time he was asserting that I had no right to have him remove his property from my property. That

once I had given him permission — as near as I can reconstruct it, is that once I had given him permission to put a gate on my property, that from that point forward the gate could not be moved. That it was his gate. And it was — to the extent that it was there, I had no dominion or control over what was on my property.

Q. Was it in that conversation or the first one that he said, "That is my damn road," or something to that effect?

A. That isn't what he said, but that is close enough. He took – yeah. He took the position that it was his road, his gate. And essentially, you know, I had no rights in and about that road. It was not only his right, but the fact that I had none. He was going to tell me what to do, how to use my property, when I could use my property, and for what use I could make of my property. That is pretty –

(R. p. 213 lines 6 - p. 214 line 3)

The "overall tenor" of the evidence in Paine Gayle Properties when the Court of Appeals analyzed all of the evidence was that the dominant tract owners showed great deference and submissiveness toward the railroad in using the right of way. The conversation surrounding the erection of the gate was but one piece of evidence shedding light on that relationship. The "overall tenor" of the evidence in the case at bar, according to the Appellant, is that the Respondent showed no respect for the Appellant's rights in using the road or in the gate itself. The deference and submissiveness demonstrated in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. is altogether absent in this case. The cases are factually distinguishable.

The trial judge in the case at bar considered Stipulation 8 regarding the gate erected by the Respondent in context with all of the other evidence of record just as

the Court of Appeals did in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. reaching the opposite conclusion that in this case, the "overall tenor" of the Respondent's use was adverse and under a claim of right. In reversing the trial court, the Court of Appeals took Stipulation 8 out of context and even altered its language, ignoring the balance of the evidence introduced over a two (2) day trial.

Again, permission to erect a gate or any other ancillary device about the easement is not fatal to the prescriptive easement. It is only relevant in so far as the discussions surrounding the grant of permission to erect the gate shed light on the character of the use of the road. Permissive use of the road from its inception is fatal; permission to erect a gate may be a relevant fact, but it is not automatically fatal under Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra or Williamson vs. Abbott, supra. Permission to build a gate is to be considered with other evidence by the trier of fact following the model analysis in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. in order to reach a correct result on the real issue which is permission to use the road itself.

V. The Court of Appeals impermissibly invaded the province of the trial court as fact finder in ruling that evidence in the record establishes a permissive character of the Respondent's use of the disputed road; and that the facts of the case at bar are consistent with the facts in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. which fact finding by the Court of Appeals is directly contrary to the fact finding by the trial court.

The determination of the existence of an easement is a question of fact in a law action Jowers vs. Hornsby 292 S.C. 549, 357 S.E.2d 710 (1987). In an appeal from an action at law tried by a judge, the judges factual findings will not be disturbed unless found to be without evidence which reasonable supports them.

Towns Associates, LTD, vs. City of Greenville 266 S.C. 81, 221 S.E. 2d 773 (1976).

As demonstrated above, the issue used by the Court of Appeals to reverse the trial court was never raised below, i.e. the permission to erect a gate from Stipulation 8 automatically entitled the Appellant to judgment as a matter of law. However, the trial judge did consider and rule on the correct issue which is whether the road itself was used by the Respondent with permission. The ruling of the trial court is stated on page 20 of the Final Order dated July 7, 2011, as follows, "As to the evidence presented by the Plaintiff of permissive use, I find that the propondernce of the evidence including that of the violent outburst by the Defendant establishes that the use of the disputed road by the Defendant was adverse and hostile." (R. p. 20)

In its April 10, 2013, Opinion, the Court of Appeals substituted its finding of fact of permissive use for the clear finding of fact by the trial court on that issue. Even if the Court of Appeals were to go back and correctly analyze the permission to erect the gate in context with the other evidence, the issue of permissive use of the road is still controlled by the factual finding of the trial court concisely stated above. Prescriptive easement cases are controlled by their facts, and where a trial judge meticulously rules on the factual issues in a twenty-one (21) page order as was done in this case, then a reversal of the trial court under the law of South Carolina is nearly impossible. In this case, the Court of Appeals either ruled that permission to erect a gate automatically defeats a prescriptive easement which issue was not raised to the trial court, or it performed an analysis of the evidence of record and substituted its finding of permission use for the finding of fact by the trial court which is not permitted under the standard of review. Either way, the trial court should have been affirmed and Rehearing is warranted.

VI. The Court of Appeals misapprehended the established twenty (20) year

use period requirement to prove a prescriptive easement by ruling that the Respondent was required to offer evidence that the disputed road continued to be used under a claim of right or in an adverse manner between the Bennett Family's use and the Shirley Family's use thereby imposing upon the Respondent a requirement to prove a use period in excess of twenty (20) years.

To establish an easement by prescription one must show: (1) continued and uninterrupted use for twenty (20) years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or other a claim of right. Horry County v. Laychur 315 S.C. 364, 434 S.E.2d 259 (1993). The common law does not require that the use period be the most recent twenty (20) years. The common law does not require that the use period include the ownership period of the parties seeking to prove the easement. Neither of these requirements have ever made an appearance in a South Carolina prescriptive easement case. To require either is to add requirements to the proof of a prescriptive easement without any authority or precedent; reading into the cases a requirement that is not there. The requirement is a twenty (20) year use period, and it has been repeated over and over again without any reference to the most recent twenty (20) year period or a twenty (20) year period including the party's ownership of the dominant tract.

A party may "tack" the period of use of prior owners in order to satisfy the twenty (20) year requirement period Morrow v. Dyches 328 S.C. 522, 492 S.E. 2d 420 (1997). This means that a party with an ownership period of less than twenty (20) years may combine, tack, his sub twenty (20) year period with a prior owner or owners until the combined ownership periods add up to twenty (20) years .

Tacking is not an issue in the case at bar because the Shirley family owned the dominant tract for twenty (20) years, and the Bennett family owned the dominant

tract for twenty (20) plus years. Neither the Shirley period nor the Bennett period had to be supplemented by another ownership period by employing the doctrine of "tacking".

Following the common law as it is written and repeated verbatim in every prescriptive easement case, the trial court's ruling that the Bennett family met the prescriptive easement requirements as a matter of fact from 1948 until 1969 establishes a prescriptive easement without resort to tacking. "Once a right of way by prescription has been established by twenty (20) years on continuous use, a later diminishment in the frequency of that use does not necessarily nullify the established right by prescription." Cuthbert vs. Lawton 3 McCord 194, 14 S.C.L. 194 (Ct. App. 1825); Jones vs. Daley 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005). The common law requires one twenty (20) year period, not twenty (20) years and one (1) day, not twenty (20) plus the time between 1969 and 1985, just twenty (20) years. To require more is to add elements of proof to the prescriptive easement that are not there. Once again, the trial court accurately followed South Carolina common law on prescriptive easements as it written and should be affirmed as to the establishment of a prescriptive easement during the Bennett period. Again, this is an issue of fact which should not be disturbed on appeal where there is any basis for the findings of fact made by the trial judge.

VII. The Court of Appeals misapprehended the South Carolina common law on the retroactive application of civil decisions when it ruled that Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. can be retroactively applied to the case at bar.

The general rule regarding retroactive application of civil decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied

retrospectively. Toth vs. Square D Company 298 S.C. 6, 377 S.E. 2d 584 (1989). Prospective application is required when liability is created where formerly none existed Marcum vs. Bowden 372 S.C. 452, 643 S.E.2d 85(2007).

The rules on retroactive application of cases are most often set forth in situations where the newly decided case is decided after the facts of the case on appeal arose, but before the trial of the case on appeal so the issue of retroactivity can be raised to the trial court. The rules on retroactive application do not abrogate the rules on issue preservation or relieve the party to benefit from the newly decided case from the duty to raise the issue to the trial judge. In the case at bar, Payne Gayle Properties, LLC vs. CXS Transportation, Inc. supra. was decided after the trial so that the gate permission rule was not, and could not have been ruled on by the trial court.

In its April 10, 2013, Opinion, the Court of Appeals has ruled that Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra creates a new substantive right for the servient landowners in prescriptive easement cases, that being the right to judgment as a matter of law where permission to erect a gate, as opposed to permission to use the right of way, is granted to the dominant tract owner. The case, as interpreted by the Court of Appeals in its April 10, 2013, Opinion, creates a new affirmative defense in prescriptive easement cases. The Court of Appeals stated, "Based on the parties stipulations, Bundy's grant of permission for Shirley to build the gate defeats the claim or right or adverse use of the disputed road." Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra is cited as the authority for this new affirmative defense in prescriptive easement cases. As demonstrated above, permission to erect a gate, by itself, has never been held to defeat a prescriptive easement before in South Carolina common law. A decision creating a new affirmative defense creates a new substantive right just as surely as a decision

creating a new cause of action.

The injustice of applying a case decided after the appeal briefs were filed is manifest. The Court of Appeals has decided this case on an issue that was never litigated by the parties or addressed to the trial judge. On this basis alone, rehearing should be granted.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W. H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

PROOF OF SERVICE

I certify that I served the Respondent's Petition for Rehearing by depositing a copy of said documents in the United States Mail, postage prepaid, on April 24, 2013, addressed to his attorney of record, M. Brent McDonald, Esquire, Smith Bundy Bybee & Barnett, P.C., PO Box 1542, Mt. Pleasant, South Carolina 29464 and Stephen A. Spitz, Esquire, 1134 Clearsprings Drive Charleston, S.C. 29412.

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SC Court of Appeals

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Argument in Reply

I.

Respondent's New Argument, First Made In His Petition For Rehearing, That A Stipulation of Fact Was Never Raised Or Argued Below, And Therefore Was Not Properly Preserved For Appellate Consideration, Is Clearly Erroneous As A Matter of Law.

In Bundy v. Shirley, this Court reversed the Special Referee. As Appellant Bundy ("Bundy") reads the Court's recent decision, this reversal was based on two independent reasons:

1. Respondent Shirley did not establish on the record that his use of the Disputed Road was adverse or under a claim of right for twenty years, in part, based upon a Stipulation of Fact made by the parties themselves in this Record. *See* Stipulation #8 ("In 2004, Shirley put up a gate located on the property line between the Bundy Property and the property owned by the Miller Family with the **permission** of Bundy") Emphasis supplied.

2. The Special Referee made an error of law in finding that if Respondent Shirley established "a prescriptive easement during the Bennett ownership period of time, it [was] unnecessary to establish a prescriptive easement during the Shirley ownership period" because Shirley was unable to "tack" the period of prior owners to satisfy the 20 year prescriptive easement time period to his own time period due to his failure to put in any evidence of the use of the disputed road from 1968 to 1985.

3. In light of the first two conclusions, this Court further concluded it was simply unnecessary to address Bundy's remaining arguments on appeal.

Respondent Shirley ("Shirley"), in his Petition for Reconsideration, now argues for the very first time, that the question of the permissive use, and the stipulation of facts, particularly Stipulation Number 8, was neither raised nor argued below to the Special Referee and was not preserved for review by this Honorable Court.

There are several responses to this brand new argument. The first is for this Court to simply review Bundy's brief on appeal to this Court. In that document, Bundy repeatedly argued,

among many other matters, that Shirley's use with permission and consent defeated his adverse possession claims and that this was based upon the Stipulation of Fact:

1. See Page 13 of the Bundy Brief on Appeal (Squarely arguing permission comes directly from Stipulation of Facts);

2. See Page 20 of the Bundy Brief on Appeal (Again, squarely arguing permission came directly from Shirley's request to put up a gate and constituted an "interruption" of any adverse use);

3. See Page 26 of the Bundy Brief on Appeal (Again, squarely arguing permission came from both testimony of Bundy and Shirley and from a stipulated fact: "Finally, Bundy and Shirley both testified that Shirley put a gate with the 'permission' of the Bundy. **This is also a stipulated fact.**" (emphasis supplied).

Therefore, Bundy repeatedly argued the significance of the stipulated fact as establishing permission as a matter of law. It is also interesting to look carefully at Shirley's Brief on appeal.

In Shirley's brief in this Court, in direct response to Bundy's brief, it is telling (and highly significant in Appellant's opinion) that Shirley **never raised any concern** that a stipulated fact was being argued for the first time on appeal. He never argued that this was an issue that he was surprised or shocked about, or that it was a matter that Shirley had never heard of previously, or that the stipulated facts had not been properly put into the case, or that (somehow) this argument was now being raised for the very first time. Not a single word concerning preservation of issues or surprise or failure to preserve was even mentioned by Shirley in his Appellate brief. In fact, all of these arguments only showed up, for the very first time ever in this case in Shirley's Petition for Rehearing. In short, on the ground that Shirley has never even argued this question previously, this brand new argument is unavailing.

Second, and perhaps even more fundamentally significant and totally independent of the fact that this issue of error preservation was never previously discussed in Shirley's Brief on Appeal, it is a truly uncontested fact that Bundy raised these issues repeatedly at every stage of this action.

Specifically, the Court is asked to take note of the following:

1. The very first thing that happened in the lower court was the following, "The Court is informed that there exists certain stipulations of evidentiary matters which might simplify the process going forward. **See R. at p. 117, lines 14-16.**

2. Appellant's counsel then read into the record a number of matters, specifically including - at the very start of the case - Stipulated Fact No. 8. **See R. at p. 122, lines 18-21. Stipulated Fact No. 8 was explicitly raised and submitted to the Lower Court without objection of any kind whatsoever.**

3. In short, this matter was fully raised and put into the case for all purposes below, at the very start of the lower court proceeding, with the Lower Court itself noting: **"I will file these stipulations** which I will note for the record have been executed by Mr. Babcock and by Mr. Wells on behalf of their respective clients. **See R. at p. 122, lines 22-25.**

4. The Lower Court added the following in admitted the Stipulations of Fact into the case, "There is no issue as to any of these – anything in the chain of title, plats. **All of that comes in.** No clerk, no other stuff therein?"

   Mr. Babcock: "That's correct, Your Honor."

   The Court: Very well. All right. **R. at p. 123, lines 1-7.**

Shirley's current argument misconstrues the legal significance and effect of a stipulated fact. As a general rule of law, in South Carolina and everywhere else as best as Appellant can determine, it is settled that "A stipulation admitting or agreeing on the existence of designated facts for the purpose of the trial is binding on the parties and the court." C.J.S. Stipulations, Section 78 (Effect of Stipulation to Facts). C.J.S. expressly further notes:

> Parties routinely stipulate to easily proven facts and courts encourage such stipulations to narrow issues and to promote judicial economy. Whenever the enforceability of a stipulation among parties in a civil case is put in issue, the trial court must begin its analysis with the recognition that **fashioning of stipulations has long been favored and encouraged** as a means of expediting and simplifying the resolution of disputes.

C.J.S. Stipulations, Section 78 (Emphasis supplied). Naturally, a stipulated fact is hardly the ultimate legal conclusion, as it is very clear that courts are still required to reach their own conclusions of law. Still, it has also been long settled, to quote C.J.S. Section 78 one more time:

> A plaintiff may even stipulate so as to vitiate their claim entirely, where the party admits facts that conclusively bar a right to recovery. On the other hand, a defendant may, by stipulation, admit every fact essential to a valid cause of action against him or her, or become foreclosed from relying on a particular ground of defense[1].

Id. Indeed, under South Carolina law (as well as elsewhere), where neither party has even asked to be relieved from the terms of the stipulation the parties remain bound by their agreement to admit facts stated in the agreement. See American Sur. Co. v. Hamrick Mills, 194 S.C. 221, 9 S.E.2d 433 (1940).

Of course, merely because there was a stipulation of facts in this case, it hardly means that this Court did not very properly review whether the trial court properly applied the law to those facts. In such cases, the Appellate Court is not required to defer to the trial court's own legal conclusions.[2] It turns settled law concerning Stipulations of Fact truly upside down and inside out, to insist, as Shirley argues now in his Petition for Rehearing, that a matter he voluntarily, willingly, and knowingly stipulated to – was never even raised or argued below at trial.

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[1] Citing for authority cases from Ohio, Utah, Tex, Tenn, Idaho, Kan, Idaho, Okla, and a number of federal decisions, including 2nd Circuit cases and Court of Claims cases.

[2] See for a fairly recent example, then Chief Judge of the Court of Appeals, the Honorable Judge Hearn, in the Allstate Insurance Co. v. Estate of Hancock, 345 S.C. 81, 545 S.E. 845 (S.C. App. 2001) (drawing this very distinction)

The very process of stipulating in open court to eight specific factual points – brings these matters into the case, and as a matter of law, they are deemed to have been properly raised and argued both at the trial and appellate level based upon the very act of stipulation. It goes without saying that stipulations are binding upon those who make them. See Thompson v. Steel Erectors, 632 S.E.2d 874 (S.C. App. 2006); Kirkland v. Allcraft Steel Co., Inc, 329 S.C. 389, 392, 496 S.E.2d 626 (1998). Thus, on the ground that Respondent and Appellant both knowingly, willingly and in open court below, authorized the question of the gate being put up with Bundy's permission to be "stipulated as a fact," Stipulation No. 8 was properly preserved for argument on appeal. It seems quite odd to suggest this matter was not properly preserved when Shirley himself agreed to its admissibility below.

Additionally, it is quite significant that long before Stipulation No. 8 was ever agreed to between the parties, and long prior to the actual court hearing below being held, Shirley was fully aware of Paragraph 11 of the Bundy's Amended Complaint. In the Amended Complaint, the special Referee and Shirley were fully appraised that one of Bundy's primary theories in this case was that Shirley's use had always been based upon permission from Bundy himself (as well as Bundy's predecessors).

Specifically, Bundy's Amended Complaint reads:

> 11. After becoming aware of the revocable license or **permission** given by his predecessor in title to the Defendant and / or Defendant's parents, the Plaintiff extended the same courtesies and **granted the Defendant permission** to travel over his property. *See* R. at p. 33 (Amended Complaint of Appellant) (Emphasis supplied).

As stated in C.J.S. Section 84 (Effect of Admission of Fact on Pleading), it is settled law that "a stipulation as to facts incorporates into the pleadings all the facts agreed on, and may cure a defect in the pleadings." In fact, C.J.S. Section 84 further notes that, "if the parties stipulate or

admit facts into the record, it is unnecessary to plead them at all." In this case, Shirley was on full notice that Bundy was claiming permissive use from the outset of the case, as one of many legal defenses to Shirley various claims of a prescriptive easement pursuant to a claim of right. Stipulation No. 8 was entered onto the record because Shirley and Bundy both fully agreed that this fact is totally accurate and was truly uncontested. *See* Bundy Brief on Appeal, Pg. 13 (citing testimony from both Bundy and Shirley that everyone agreed that Shirley asked Bundy if he could put up a gate on Bundy's property). Upon the admission of this fact, it was then only up to the Special Referee at trial, and ultimately this Court on appeal, to determine the proper legal conclusions to be drawn from this agreed upon fact. On this ground as well, and particularly in light of the Amended Complaint, it is untenable to even argue that the question of permissive use was not properly raised and argued and properly preserved[3].

In sum, permissive use was properly pled by Bundy and directly raised to the trial court. Shirley was on notice that Bundy intended to raise this as a defense. Prior to trial, permissive use was knowingly stipulated to in open court. *See* Stipulation No. 8. Permissive use was also addressed in the closing argument and directed verdict motions as well as post trial motions. It was repeatedly and vigorously relied upon and argued in Bundy's brief on appeal. In short, at every level, and based on overwhelmingly clear law, it is wrong as a matter of law to argue that this issue is not in this case and not properly preserved.

[3] Permissive use was even mentioned in the Appellant's closing argument which also served as the appropriate directed verdict motions. R. at pp. 360-361. *See* R. at p. 375, lines 12-15. (We've also cited some cases, Your Honor, when you've got situations with gates and keys. There is an indication that that is a permissive use). The Court's failure to rule that Bundy gave Shirley express permission was also raised in Bundy's Rule 59(e) motion to alter or amend. *See* R. at p. 58.

II.

The Court of Appeals Applied the Express Language of Stipulation Number 8 to the Existing Law in South Carolina and Did Not "Misapprehend" the Meaning of Stipulation Number 8.

Shirley stipulated that "In 2004, Shirley put up a gate at the property line between the Bundy property and the property of the Miller Family **with the permission of Bundy.**" Stipulation Number 8 (emphasis supplied). This is a stipulated fact. Now, in the Petition for Reconsideration, Shirley is attempting to qualify, and in part, contradict the parties own stipulation. This is not proper. The general rule of law is quite simple:

> In the absence of grounds sufficient to authorize a party to withdraw from or rescind the stipulation, or the court to set it aside, an agreed statement of facts on which the parties submit the case for trial is binding and conclusive on them. **Thus, the parties will not be permitted to deny the truth of the facts stated, or the truth, admissibility or sufficiency of any factual statement in the agreement. The parties cannot maintain a contention that is contrary to the agreed statement, or allege that the facts were other than as stipulated, or that any material fact was omitted.**

See C.J.S. Stipulations, Section 86 (Emphasis supplied).

The law in South Carolina is quite clear, that in general, permission is a bar to a claim for a prescriptive easement. *See* Williamson v. Abbott, 107 S.C. 397, 401, 93 S.E.2d 15, 16 (1917). Shirley denies that this is an accurate statement of law. But, no matter how it is read, and no matter what "spin" Shirley wants to now put on Stipulation of Fact Number 8, indisputably Stipulation No. 8 does conclusively establish Bundy's permission to Shirley. As this Court noted in McCrea v. City of Georgetown, 681 S.E.2d 918 (S.C.App. 2009)

> A stipulation is an agreement, admission, or concession made in judicial proceedings by the parties or their attorneys and is binding

> upon those who made them. [citation omitted] The Court must accept stipulations as binding upon the parties. Id. at 681 S.E. 2d 921.

Shirley now argues that this stipulated fact does not say that Shirley "asked for" permission. Petition for Rehearing of Respondent, p. 6. Accordingly, Shirley argues that the permission was actually "spontaneous" and without a "request" for the permission, and, so the argument goes, this means that there was actually no permission at all[4]. Petition for Rehearing of Respondent, p. 9. This argument is untenable for at least three reasons. First, Shirley's argument seeks to negate the very fact established by the stipulation (i.e. that Shirley acted "with the permission of Bundy"). Permission in a prescriptive easement case is a term of art. Second, his argument ignores the plain language of the stipulation and attempts to insert the word "spontaneous" before the word "permission" into the text of the stipulation. Though the Appellant is unaware of any factual or legal distinction between spontaneous permission and permission, even if there were a distinction, the stipulation did not state that the permission was spontaneous. The stipulation stated that it was with permission. Third, the argument ignores the actual holding of the Court. In its opinion, the Court holds as follows:

> "Based upon the parties stipulation of the parties, Bundy's grant of permission for Shirley to build the gate defeats a claim of right or adverse use of the Disputed Road."

Order, p. 2. The Court held, based on the stipulation of the parties that permission was granted. Shirley does not argue that this holding was incorrect and does not address the holding at all in his Petition.

[4] In support of his argument that the grant of permission was spontaneous, Shirley cites his own deposition testimony read at the hearing. The deposition, however, was taken prior to the stipulation being entered, and as stated by the Court in its Order "stipulations are binding on the **parties** as well as the Court." Order pp. 2-3 (Emphasis supplied).

In sum, Stipulation Number 8 states that the erection of the gate was done with the permission of Bundy. The argument put forth by Shirley attempts to change the stipulation by adding words that do not exist in the stipulation and that seek to change the very fact stipulated.

III.

This Court Neither Misread nor Misapplied Williamson v. Abbott, 107 S.C. 397, 93 S.E. 15 (1917).

Almost 100 years ago, in Williamson v. Abbott, 107 S.C. 397, 93 S.E. 15 (1917) the South Carolina Supreme Court held that a ditch which one party claimed the prescriptive right to drainage over another person's land was not a prescriptive right, in part, because the permission to drain the water was a full defense to claims of prescriptive easement based upon the following general principle, quoting directly from that case:

> The asking and obtaining of permission, whether from the tenant or ownership of the servient estate, stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription. The question is not whether Mrs. Marco was bound by the permission given by her tenant, but it is whether the use of the ditch on her land was claimed and enjoyed as a right or as a favor[5]. Id at 93 S.E. 16.

Stipulation of Fact Number 8 (and there was no such stipulation of permission in Williamson as found in this case) suggests precisely the same legal result. When the gate was put up with Bundy's permission on the property line – it is obvious that use of the road was claimed not as a matter of right but enjoyed as a favor and with permission.

---

[5] It is true that in a much earlier part of the opinion in Williamson v. Abbott, there is indeed some discussion by the Court about the permission coming at the inception of the use. But, that language is not found in the concluding part of the opinion, quoted verbatim in this Return, and it is clear the Court was summing up its reasoning near the very end of the opinion itself (that is in the language quoted above when it explained the principle upon which it was relying).

IV.

The Court of Appeals Correctly Applied the Long Established Law of the State of South Carolina Regarding Permission as a Bar to a Prescriptive Easement Claim and Did Not "Misapprehend" the Holding in Paine Gayle Properties, LLC v. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).

Shirley next argues that the Court improperly cited Paine Gayle Properties, LLC v. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) and "misapprehended" its holding.

Paine Gayle was decided on November 14, 2012, nearly two months prior to oral argument in this matter. The Court in Paine Gayle relied on two long standing legal principals governing a claim for a prescriptive easement in South Carolina. The first principal is that permission is a bar to a prescriptive easement claim. 735 S.E.2d at 536-538. The second is that a prescriptive easement claim based on a claim of right must be based on a claim of the right to use "without recognition of the rights of the owner of the servient estate." Id. The Paine Gayle Court held that the acquisition of permission was in fact a recognition of the rights of the owner of the servient estate, and, as such, no claim of right could be established.

The Paine Gayle Court did not make new law, it applied long standing law. The Special Referee and Shirley each indeed took a contrary position to the stated law in Paine Gayle in this case. They took the position that permission was not a defense to a claim for a prescriptive easement pursuant to a claim of right. As noted in the Court of Appeals' Order, this position is an error of law and was based upon a misreading of the facts and holding in the Reavis v. Barrett, 321 S.C. 206, 467 S.E.2d 460 (Ct.App. 1996) case. This does not, however, mean that the Paine Gayle Court established new law.

Additionally, the Court of Appeals did not "misapprehend" the holding in Paine Gayle. Shirley argues that the Court failed to compare and contrast the "overall tenor" of the affidavits

submitted by the parties in Paine Gayle with the testimony in the present record on appeal. In the present case, however, it was stipulated that Shirley had permission to erect the gate in 2004. Stipulation Number 8. There is no reason to compare and contrast facts that were argued to be at issue in Paine Gayle with the stipulated fact in the present case because the fact was conclusively established by the stipulation. Moreover, notwithstanding the stipulation, Shirley seeks to use other portions of the record to attempt to change the stipulated fact. This is improper for two reasons. First, as stated by the Court in its Order, "stipulations are binding on the parties as well as the court." Therefore, neither the finder of fact in this non-jury case nor the parties can change the stipulated fact. Second, the testimony of the Appellant cited by Shirley is taken out of context. In the testimony cited, Bundy is testifying about conversations that occurred **after** 2004—the date of the stipulated fact regarding permission. As of 2004, the Court held, based on the stipulation, that Shirley did not have a prescriptive easement. Shirley's conduct after that date, regardless of hostility, is irrelevant to the stipulated fact.

In sum, the Paine Gayle court applied the current and correct law and this Court properly cited to the case as apposite to the present set of facts.

V.

The Court of Appeals correctly found that the Special Referee was bound by the stipulated fact regarding permission.

Shirley argues that the Court of Appeals impermissibly invaded the province of the trial court in ruling that evidence in the record establishes a permissive character of Shirley's use of the road. The Court of Appeals, however, did no such thing. The Court applied the stipulated fact to the law. The Court simply found that the Special Referee could not make findings of fact contrary to the stipulated fact. In applying the stipulated fact to the law, the Court correctly found

that Shirley could not legally establish a claim for a prescriptive easement. The Court of Appeals is free to correct errors of law which is what was done in the present case.

VI.

The Court of Appeals Properly Ruled that Shirley Could Not as a Matter of Law "Tack" any Years From The Bennett Ownership Period to Establish His Claim to a Prescriptive Easement.

This Court ruled that "Shirley is unable to tack the Bennett family's use to establish **his** prescriptive easement claim." Order, p. 3 (Emphasis supplied). This is a correct statement of law. Shirley argues in his Petition for Rehearing that he was not required to tack because he owned the property for 20 plus years. This argument ignores the first portion of this Court's Order that found Shirley did not establish the requisite elements of a prescriptive easement for the full 20 years as a result of the Stipulation of Fact.

Moreover, the Bennett family owned the property Shirley now owns from 1947-1968. Shirley's father acquired the property in 1985. He did not acquire it from Bennett, however. There was no evidence presented by Shirley of any use at all for the period of time between 1968 and 1985. The critical question of law is whether or not this 17 year gap of time, after Bennett and before Shirley, defeats any connection or privity or tacking to link the Bennett use[6] to the Shirley use to allow Shirley to establish a prescriptive easement. This Court correctly found that this gap prevents Shirley from "tacking" any of the Bennett use to establish his claim. First, in order to "tack," the parties must be in privity with one another. Shirley's father did not purchase from the Bennett family. The privity requirement is also necessary as any use must be "continuous." Shirley did not present any evidence of continuous use by a prior owner because

[6] As a very practical matter, there is no evidence in the record that the Bennett use met the elements of a prescriptive easement. The reason for this is that the evidence was in fact offered at trial to prove the disputed road was public. The Special Referee ruled it was not a public road and this issue is not on appeal.

he did not put in any evidence of at least 17 years prior to his ownership. Therefore, he cannot "tack," though he was required to do so in order to meet the elements of a prescriptive easement.

In Shirley's Petition for Reconsideration, Shirley's counsel has elected to cite, Cuthbert v. Lawton, 3 McCord 194, 14 S.C.L. 194 (Ct.App. 1825) which was not found previously in his Respondent's brief to this Court. (See his Petition for Rehearing, Pg. 17 and compare that with his Table of Cases in his Respondent's Brief, Pg. ii.). Shirley now argues for the first time that Cuthbert is legal justification for the 17 year period of delay between the first period of use and the second period of claimed adverse use.

Bundy submits that the old South Carolina case of Cuthbert v. Lawton, 3 McCord 194, 14 S.C.L. 194 (S.C. Ct. App. 1825) actually supports Bundy's arguments. In Cuthbert, the Court found that a prescriptive easement had been proven by use from 1769 to 1800, and that while after 1800 the property had not been used as much by the prescriptive easement holder, it was continued to be used and that the mere diminished intensity use - after the prescriptive easement had been fully established - did not call for the jury verdict in that case to be overturned as contrary to law. The Court of Appeals, added however, in highly significant language for this case that had there been "adverse and continued obstruction for five years" after the prescriptive easement had first been established (which was not proven in that old case) then the result would have been quite different[7].

In this case, there was no evidence at all of any continued prescriptive use of the disputed road for the 17 years prior to his father acquiring the land. Therefore, as stated above, there is no evidence of continuous use by a prior owner upon which Shirley is able to tack.

[7] Jones v. Daley is merely a modern version of the old Cuthbert case. The use diminished over time but did continue - even after the prescriptive easement period had been established and this Court held that mere diminished use - especially when there was common community knowledge that the prescriptive use continued - was no reason to end the easement altogether. By contrast, none of the unique factorsexist here (no evidence of prescriptive use to the Shirley property could possibly have existed as there was no ownership until 1985).

Moreover, between 1985-2003, there are four different relevant Stipulations of Fact dealing with this period of time. See Stipulation of Fact No. 2 (during the entire period of time from 1985 - 2003, the Bundy property was leased to the State of South Carolina); Stipulation of Fact No. 3 (the State's agent, the South Carolina Department of Natural Resources, had a legal interest in the property now owned by Bundy from 1985 - 2003); Stipulation of Fact No. 4 (The now Bundy property, during the 1985 -2003 period of time, was enrolled in the State Wildlife Management Area Program) Stipulation of Fact No. 5 (Public Access to all portions of the Bundy property existed from 1985 to 2003).

In light of the absence of any evidence of adverse use from 1969 - 1985, and in the presence of the "legal roadblocks" found in the Four Stipulations of Fact that existed between 1985-2003, it is clear as a matter of law, that the Bennett prescriptive easement, even if it existed, was blocked, obstructed, and ended, from 1968 until 2003 (34 years in total, almost seven times as long as the dictum found in Cuthbert that five years would end the prior prescriptive easement as a matter of law).

In sum, this Court was correct when it held that Shirley failed to present any evidence sufficient to allow him to "tack" to establish his prescriptive easement.

VII.

The Court of Appeals properly cited to Paine Gayle Properties, LLC v. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) in its Order in the present case.

Shirley argues that the Court of Appeals misapprehended the common law and retroactively applied the decision of Paine Gayle Properties, LLC v. CSX Transportation, Inc.,

735 S.E.2d 528 to the present case. The Court, however, did not improperly cite the Paine Gayle case to the present case.[8]

First, as stated above, Paine Gayle did not establish new law but merely reasserted long standing law. The case was the most current statement of two fundamental legal principles regarding prescriptive easements—(1) permission is a bar to establishing a prescriptive easement; and (2) recognition of the servient owner's rights is a bar to establishing a prescriptive easement as a claim of right. Second, a decision of an appellate court is, as a general rule, retroactively applied. The only instances where a decision may not be applied retroactively is when it either creates "new substantive rights" or when it "liability is created where formerly none existed." Toth v. Square D Co., 298 S.C. 6, 377 S.C. 584 (1989). The Paine Gayle case did not establish new substantive rights nor did it create new liabilities. In this case, Shirley asserted he had a prescriptive easement over the property of Bundy. The Paine Gayle case did not change the elements of a prescriptive easement in any way. It did not establish permissive use as a bar to a prescriptive easement. It certainly did not subject Shirley to any new liabilities where none previously existed. In this case, Shirley simply could not and did not prove all the elements of a prescriptive easement.

In sum, the Court of Appeals properly cited to and relied on Paine Gayle Properties, LLC v. CSX Transportation, Inc., 735 S.E.2d 528 as a statement of current and longstanding South Carolina law.

[8] The Paine Gayle case was entered nearly two months prior to oral argument.

VIII

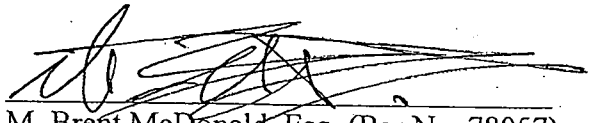
The Court Never Found It Necessary to Reach A Number of Bundy's Arguments.

Bundy truly believes the Court's decision is a sound one, following the law of this State. But if the Court does see fit to have a Rehearing in this case, Bundy respectfully requests that he permitted to continue to argue the other issues he previously had raised and that any rehearing not be limited solely to the matters requested by Shirley.

Conclusion

For all the aforementioned reasons and for all the reasons stated in the Appellant's Final Brief and Reply Brief, the Respondent's Petition for Rehearing should be **DENIED**.

Respectfully submitted,



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May 3, 2013
Mt. Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W.H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

PROOF OF SERVICE

I certify that I served the Return of Appellant to Respondent's Petition for Rehearing on Respondent by depositing a copy of said document in the United States Mail, postage prepaid, on May 3, 2013, addressed to his attorney of record, John W. Wells, Esquire, Baxley, Pratt & Wells, PA, PO Box 10, Lugoff, South Carolina 29078.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012-208007

W. H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

REPLY

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ARGUMENT

The Respondent replies to the Appellant's Return of Appellant to Respondent's Petition for Rehearing as to each of the points raised in the Petition for Rehearing as follows:

I. **The Appellant's entitlement to judgment as a matter of law based on permission granted to the Respondent to erect a gate on the disputed road in 2004 was not raised to the trial court by a proper motion, objection or exception and was therefore not preserved for review.**

To give the trial court the opportunity to rule on whether or not Stipulation 8[1] entitled the Appellant to judgment as a matter of law, the Appellant would have made a motion for summary judgment on that issue, motion for directed verdict on that issue, or a post trial motion on that issue. One would expect the Appellant's response to the Petition for Rehearing to simply point to the page number and the line number in the Record on Appeal where such a motion was made, and the page and line number of the trial judge's order ruling on that issue. That would settle the matter. This the Appellant cannot do because the issue was not raised below.

The Appellant points to general references in the record to his contention that the Respondent's use of the disputed road was with his permission, but he cannot point to a directed verdict motion on the more specific issue cited by the Court of Appeals in it's April 10, 2013, Opinion that permission to build a gate defeats an easement by prescription. The Appellant's references to permissive use being raised in it's Final Brief on Appeal are not helpful. "It is 'axiomatic that an issue cannot be raised for the first time on appeal.' Imposing such a requirement on the

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[1] (8) In 2004, Shirley put up a gate located on the property line between the Bundy property and the property of the Miller Family with the permission of Bundy. (R. p. 521)

Appellant 'is meant to enable the lower Court to rule properly after it has considered all relevant facts, law and arguments.'" Herron v. Century BMV 395 S.C. 461, 719 S.E. 2d 640 (2011) "As this Court observed, issue preservation rules prevent a party from keeping an ace card up his sleeve-intentionally or by chance - in the hope that an Appellate Court will accept that ace card and, via a reversal, give him another opportunity to prove his case." Herron v. Century BMV Supra. If the directed verdict motion had been made below, it would be cited in the Appellant's Response. The issue was not preserved.

II. **The Court of Appeals misapprehended the language of Stipulation 8 (R. p. 521) by adding a crucial fact, the Respondent's request for permission to erect a gate in 2004, which fact does not appear in the text of Stipulation 8, or anywhere else in the Record on Appeal and which fact served as the factual basis for the Court's reversal of the trial court.**

The text of Stipulation 8 speaks for itself. It does not say that Shirley requested permission to build a gate. The April 10, 2013, Opinion of the Court speaks for itself. It says "The parties also stipulated **Shirley asked Bundy for permission** to build a gate on the disputed road in 2004." (emphasis added) This statement of fact by the Court of Appeals is inaccurate, and it is clearly important because the request for permission was mentioned three (3) times by the Court of Appeals in a two (2) page Opinion.

The reversal of the trial court was based on a fact invented by the Court of Appeals, i.e. the Respondent's request for permission to erect a gate.

III. **The Court of Appeals over looked the language in Williamson v. Abbott 107 S.C. 397, 93 S.E.2d 15 (1917) that limits the holding of that case to permission granted "in the inception" of the twenty (20) year**

prescriptive use period by applying Williamson v. Abbott supra. to permission granted nineteen (19) years into the use period.

The limitation of the holding of Williamson v. Abbott to permission to use the right of way granted "in the inception" of the use rather than nineteen (19) years later was not addressed by the Appellant in his response.

IV. The Court of Appeals misapprehended the holding of Paine Gayle Properties, LLC vs. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) by ruling that permission to build a gate automatically defeats an easement by prescription as a matter of law.

The Appellant misreads Paine Gayle Properties, LLC vs. CSX Transportation, Inc. 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012) in the same manner as the Court of Appeals did in the April 10, 2013, Opinion. The Appellant states, "In the present case, however, it was stipulated that Shirley had permission to erect the gate in 2004. Stipulation 8. There is no reason to compare and contrast facts that were argued to be at issue in Paine Gayle with the Stipulated fact in the present case because the fact was conclusively established by stipulation." Like the Court of Appeals, the Appellant reads Paine Gayle Properties, LLC supra. to hold that permission to build a gate, no matter how obtained, defeats a prescriptive easement. This is the same simplistic and superficial analysis of Paine Gayle Properties, LLC supra. of which the Respondent complained in the Petition for Rehearing. The language in the case clearly indicates that the focus of the Court in Paine Gayle Properties, LLC supra. was not on the permission to erect the gate but on permission to use the right of way. "**This permissive character of landowner's use of the right of way** is confirmed by Payne's affidavit." (emphasis added) "In sum, **Railroad gave permission to landowner to use it's right of way**" Paine Gayle Properties, LLC vs. CXS Transportation, Inc., supra. See also

Williamson v. Abbott supra. "The question is not whether Mrs. Marco was bound by the permission given by her tenant, but it is whether **the use of the ditch** on her land was claimed and enjoyed as a right or a favor."

As demonstrated in the Petition for Rehearing, the permission to build a gate was one fact to be considered by the trier of fact to determine whether or not permission was given to use the right of way. Permission to erect a gate and permission to use the right of way are not interchangeable facts that can be freely substituted each for the other. They are separate and distinct facts and should be treated as such.

V. The Court of Appeals impermissibly invaded the province of the trial court as fact finder in ruling that evidence in the record establishes a permissive character of the Respondent's use of the disputed road; and that the facts of the case at bar are consistent with the facts in Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. which fact finding by the Court of Appeals is directly contrary to the fact finding by the trial court.

In his response to this point, the Appellant states, "In applying the stipulated fact to the law, the Court correctly found that Shirley could not legally establish a claim for a prescriptive easement." If that is true, then the Appellant would have been entitled to a directed verdict on that basis. The Appellant failed to make a motion for a directed verdict on that basis and therefore failed to preserve that issue for appeal.

Stipulation 8 did one of two things. It either entitled the Appellant to a directed verdict which motion was not made and not preserved, or it was a fact favorable to the Appellant to be considered by the trier of fact along with other evidence in the record on the relevant issue of permission to use the right of way.

In the latter case, the Court of Appeals is now imposing its view of the facts, i.e. that Stipulation 8 trumps all of the other evidence in the record on this issue of permissive use of the right of way by reversing the trial court. Either way, the trial court's order should be affirmed.

VI. The Court of Appeals misapprehended the established twenty (20) year use period requirement to prove a prescriptive easement by ruling that the Respondent was required to offer evidence that the disputed road continued to be used under a claim of right or in an adverse manner between the Bennett Family's use and the Shirley Family's use thereby imposing upon the Respondent a requirement to prove a use period in excess of twenty (20) years.

As set forth in the Petition for Rehearing, the law of South Carolina is that once the twenty (20) year prescriptive use requirement has been met, the road is established, and no further use must be proved. The case on point cited by the Respondent in the Petition for Rehearing is Cuthbert v. Lawton 3 McCord 194, 14 S.C. L 194 (Ct. App. 1825). In that case the Plaintiff attempting to establish the easement proved thirty-one (31) years of adverse use from 1769 to 1800 under a former owner. The Court stated:

> "In considering the general right of way, I was of the opinion that this had been fully established by evidence of Mrs. Rivers, W. Royal, Gen. Cuthbert and Wm Lawton, who proved that **it had been enjoyed by the former owners of the land now held by the plaintiff** as an ancient and uninterrupted right from the year 1769 to 1800. It appeared indeed, that since that period the road had not been much used; that it had been obstructed three or four times in different years, and that there had been some wide deviations from it's original course; but I thought that these would not affect the right, if it had been before perfected by twenty (20) years uninterrupted enjoyment. If it had only began to accrue since the year 1800, the obstruction of one (1) year only in twenty (20) would prevent its legal consummation; but **after twenty (20) years of uninterrupted use, it could**

> **only be defeated by an adverse and continued obstruction** of five (5) years which was not proven in this case." Cuthbert v. Lawton supra. (emphasis added)

According to Cuthbert v. Lawton, supra., once a road has been used for the required twenty (20) year period, the prescriptive easement is "fully established". Interruptions and deviations in the road's course that would have defeated the prescriptive easement during the twenty (20) year use period do not affect the right of way after it has been "perfected" by uninterrupted use for twenty (20) years. After the twenty (20) year use period is established, the servient tract owner must do some adverse act to close the road, such as a five year obstruction.

The trial judge found that the Bennett Family had used the disputed road adversely and continuously from 1947 to 1968. As to the seventeen (17) year period between 1968 and 1985, the Appellant has the burden of showing some adverse act to obstruct the road after 1968 under Cuthbert v. Lawton supra. in order to defeat the "perfected" prescriptive easement. That obstruction was not proved by the Appellant. The absence of evidence as to what occurred during the seventeen (17) year period works against the Appellant rather than the Respondent. The holding of the Court of Appeals on this issue is in error and should be corrected on rehearing. Once a road, always a road is the law of South Carolina. See Cuthbert v. Lawton, supra. The rules of "tacking" do not apply in this case.

VII. The Court of Appeals misapprehended the South Carolina common law on the retroactive application of civil decisions when it ruled that Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. can be retroactively applied to the case at bar.

The Respondent agrees with the Appellant that Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. did not establish permissive use of the right of way as a bar to a prescriptive easement. However, the interpretation of the case by

the Court of Appeals in it's April 10, 2013, Opinion, that permission to erect a gate defeats a prescriptive easement, does create a new substantive right for servient tract owners. The new rule announced by the Court of Appeals in it's April 10, 2013, Opinion to wit, permission to erect a gate automatically defeats a prescriptive easement, based on the Court's reading of Paine Gayle Properties, LLC vs. CSX Transportation, Inc. supra. is a new rule in South Carolina prescriptive easement law and should not be applied retroactively. This is particularly true where the retroactively applied case was decided after the present case was tried giving the trial judge no opportunity to rule on any legal issues arising from it.

CONCLUSION

The Petition for Rehearing should be granted in order to consider Stipulation 8, as it is written, in context with the other evidence of record on the issue of permissive use of the Disputed Road. Rehearing should be granted to review the existing precedent in South Carolina common law regarding the "perfected" status of a prescriptive easement after the twenty (20) year use period runs. If the Bennett period from 1947 to 1968 "perfected" a prescriptive easement to use the Disputed Road, then the permissive use issue arising in 2004 would not affect the "perfected" prescriptive easement.

BAXLEY, PRATT & WELLS, P.A.

BY: _____

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY COURT OF COMMON PLEAS

Roderick M. Todd, Jr. Esquire, Special Referee

Case No.: 2012208007

W. H. Bundy, Jr., Appellant,

vs.

Bobby Brent Shirley, Respondent.

PROOF OF SERVICE

I certify that I served the Respondent's Reply by depositing a copy of said documents in the United States Mail, postage prepaid, on May 8, 2013, addressed to his attorney of record, M. Brent McDonald, Esquire, Smith Bundy Bybee & Barnett, P.C., PO Box 1542, Mt. Pleasant, South Carolina 29464 and Stephen A. Spitz, Esquire, 1134 Clearsprings Drive Charleston, S.C. 29412.

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MAY 08 2013
SC Court of Appeals

The South Carolina Court of Appeals

W.H. Bundy, Jr., Appellant,

v.

Bobby Brent Shirley, Respondent.

Appellate Case No. 2012-208007

ORDER

On April 10, 2013, this court reversed the order of the special referee finding Respondent Bobby Brent Shirley established a prescriptive easement over Appellant W.H. Bundy, Jr.'s property. On April 24, 2013, Shirley filed a petition for rehearing. After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. However, in order to avoid any confusion about the parties' stipulation, Unpublished Opinion No. 2013-UP-153, filed April 10, 2013, is withdrawn and the attached opinion is substituted.

John Cannon Few C.J.

J.

Daniel G. Pieper J.

Columbia, South Carolina

cc:

FILED
May 8, 2013

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

W.H. Bundy, Jr., Appellant,

v.

Bobby Brent Shirley, Respondent.

Appellate Case No. 2012-208007

Appeal From Kershaw County
Roderick M. Todd, Jr., Special Referee

Unpublished Opinion No. 2013-UP-153
Heard January 9, 2013 – Filed April 10, 2013
Withdrawn, Substituted and Refiled May 8, 2013

REVERSED

M. Brent McDonald, of Smith Bundy Bybee & Barnett, P.C., of Mount Pleasant, and Stephen A. Spitz, of Charleston, for Appellant.

John W. Wells, of Baxley, Pratt & Wells, P.A., of Lugoff, for Respondent.

PER CURIAM: This appeal arises out of a declaratory judgment action seeking a determination as to whether Respondent Bobby Brent Shirley has a prescriptive

easement over a road (the Disputed Road) on rural property owned by Appellant W.H. Bundy, Jr. The special referee found that Shirley established a right to use the Disputed Road. On appeal, Bundy argues the special referee erred by: (1) failing to require Shirley establish a right to a prescriptive easement by clear and convincing evidence; (2) finding that Shirley established a prescriptive easement over the Disputed Road; and (3) failing to rule that Shirley's inequitable conduct barred any relief sought by him in this action due to the doctrine of unclean hands. We reverse.

1. As to Bundy's argument that the special referee erred by finding that Shirley established a prescriptive easement over the Disputed Road, we agree because Shirley did not establish his use of the Disputed Road was adverse or under a claim of right for twenty years. *See S.C. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 82, 705 S.E.2d 21, 24 (2011) (stating an appellate court "will not overturn a trial court's finding that an easement exists unless that conclusion is controlled by an error of law or without evidentiary support"); *Jones v. Daley*, 363 S.C. 310, 316, 609 S.E.2d 597, 599-600 (Ct. App. 2005) ("In order to establish an easement by prescription, a party must only show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right."). Relying on *Revis v. Barrett*, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996), the special referee found that permission "does not defeat an easement by prescription based on a claim of right." We find this to be an error of law. *See Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) ("The asking and obtaining of permission, whether from the tenant or owner of the servient estate, stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription."). Here, the parties stipulated the property Shirley now owns was transferred to Shirley's parents on May 10, 1985. The parties also stipulated: "In 2004, Shirley put up a gate located on the property line between the Bundy Property and the property owned by the Miller Family with the permission of Bundy." Assuming Shirley's use of the Disputed Road was not permissive from 1985 until Bundy gave Shirley permission to build the gate in 2004, the nineteen-year time period is insufficient to establish a prescriptive easement. In *Revis*, the landowner did not give the party asserting a prescriptive easement permission to use the disputed road; rather, the landowner recognized the right of the party to use the road. *See Revis*, 321 S.C. at 210, 467 S.E.2d at 462 (finding evidence supported the master's finding that Revis' right to use the disputed road flowed from a "claim of right" and not from a grant of permission). Based on the parties'

stipulations, Bundy's grant of permission for Shirley to build the gate defeats a claim of right or adverse use of the Disputed Road because the use of the Disputed Road was permissive. *See McCrea v. City of Georgetown*, 384 S.C. 328, 332, 681 S.E.2d 918, 921 (Ct. App. 2009) (noting stipulations are binding on the parties as well as the court); *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 585-86, 735 S.E.2d 528, 537-38 (Ct. App. 2012) (discussing permissive use of the disputed property and finding the granting of permission to use the property defeats a prescriptive easement claim). Furthermore, we also find the special referee erred by determining that because Shirley established "a prescriptive easement during the Bennett ownership period, it is unnecessary to establish a prescriptive easement during the Shirley ownership period." The Bennett family owned the property Shirley now owns from 1947-1968. In order to use the Bennett family's prescriptive use of the Disputed Road, Shirley was required to offer evidence that the Disputed Road continued to be used under a claim of right or in an adverse manner between the Bennett family's use and the Shirley family's use. However, Shirley presented no evidence that the use of the Disputed Road between 1968 and 1985 was adverse or under a claim of right. *See Kelley v. Snyder*, 396 S.C. 564, 575, 722 S.E.2d 813, 819 (Ct. App. 2012) (noting parties may "tack" the period of prior owners to satisfy the twenty-year prescriptive easement period if the prior owners are in privity and the prior owners' use was adverse or under a claim of right). Therefore, even if the special referee was correct that the Bennett family had a prescriptive easement over the Disputed Road, Shirley is unable to tack the Bennett family's use to establish his prescriptive easement claim. For the foregoing reasons, we find the special referee erred by finding Shirley established a prescriptive easement.

2. As to Bundy's remaining arguments on appeal, we decline to address these issues because the above findings are dispositive of the appeal. *See Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 311, 725 S.E.2d 107, 111 (2012) (declining to address additional remaining issues when the disposition of a prior issue was dispositive of the appeal).

REVERSED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

The South Carolina Court of Appeals

W.H. Bundy, Jr., Appellant,

v.

Bobby Brent Shirley, Respondent.

Appellate Case No. 2012-208007

ORDER

On April 24, 2013, Respondent filed a petition for rehearing regarding this court's April 10, 2013 decision reversing the order of the special referee. On May 3, 2013, Appellant filed a return to Respondent's petition for rehearing. On May 8, 2013, Respondent filed a reply the same day this court entered its order denying the petition for rehearing. We have reviewed the reply and we do not alter our decision denying the rehearing and substituting the opinion attached to our prior order.

John Cannon Jr. C.J.

H. B. W. J.

Daniel G. Pieper J.

Columbia, South Carolina

cc:

FILED
May 20, 2013

John W. Wells
Michael Brent McDonald
Stephen A. Spitz