

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

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Appeal from the Court of Common Pleas
For Berkeley County
Honorable Dale E. Van Slambrook, Master-In-Equity
Civil Action No.: 2018-CP-08-344
Appellate Case No. 2023-000405

NOV 28 2023

SC Court of Appeals

BCE 2015, LLC,

Appellant,

v.

YVONNE C. KNIGHT and ELEANOR C. BROWN,

Respondents.

**RECORD ON APPEAL
Volume I**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2018-CP-08-00344
	)	
BCE 2015 LLC,	)	
Plaintiff,	)	
	)	
vs.	)	ORDER ON PLAINTIFF'S MOTION
	)	TO RECONSIDER, ALTER AND/OR
YVONNE C. KNIGHT and	)	AMEND THIS COURT'S ORDER DATED
ELEANOR C. BROWN,	)	OCTOBER 31, 2022
Defendants.	)	
	)	

The above-entitled action came back before this court on February 7, 2023, pursuant to Plaintiff's motion filed under Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure seeking an order reconsidering, altering and/or amending the findings of the order issued by this court on October 31, 2022.

Present at the hearing was the Plaintiff, through its' managing member, Jason Maxwell, and the Plaintiff's attorneys, John J. Dodds, III, and Stephen P. Groves, Sr. Also present was counsel for the Defendants, H. Ronald Stanley.

The written motion filed by the Plaintiff sets forth 22 grounds upon which the Plaintiff asked this court to reconsider, alter or amend its previous judgment in favor of the Defendants. All 22 grounds were argued by counsel for the Plaintiff at the hearing. Counsel for the Plaintiff also sought to introduce additional evidence at the hearing which was objected to by counsel for the Defendants. This court denied Plaintiff's motion to introduce any additional evidence into the record at the hearing, but this court did allow counsel for the Plaintiff to make a proffer of the additional evidence that it sought to introduce.

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Upon due consideration of the grounds sets forth by the Plaintiff in its written motion and the able arguments of counsel for the Plaintiff and defendants, this court finds and concludes that Plaintiff's request for post-trial relief pursuant to grounds 1 through 3 and grounds 5 through 22 should be and is hereby denied.

This court further finds and concludes that pursuant to the written motion and the argument of counsel as to ground number 4, the previous order issued by this court on October 31, 2022, should be amended to address and rule upon Plaintiff's claim for entitlement to an easement by necessity.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's motion to reconsider, alter and/or amend the previous order of this court dated October 31, 2022 is denied except as to the amendment of the said order to consider and rule on Plaintiff entitlement to an easement by necessity which this court has addressed through the issuance of an amended order.

AND IT IS SO ORDERED.

s/

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Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2023-03-01 09:07:47 page 3 of 3

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2018-CP-08-00344
	)	
BCE 2015 LLC,	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED ORDER
	)	
YVONNE C. KNIGHT and	)	
ELEANOR C. BROWN,	)	
Defendants.	)	

This action was commenced by the Plaintiff on February 21, 2018, with the filing of a summons and complaint wherein the Plaintiff asked the Berkeley County Court of Common Pleas to issue a decree confirming and/or establishing a fifty (50") foot ingress/egress easement in favor of Plaintiff over and through certain real property owned by the Defendants, Yvonne C. Knight and Eleanor C. Brown.

This matter was referred to this court by an Order of Reference issued by the Berkeley County court of Common Pleas on February 3, 2020. This matter came on to be heard by me on September 15, 2022. The Plaintiff appeared at the hearing by and through its managing member, Jason Maxwell, and was represented by its attorney, John J. Dodds, III, of the Charleston County Bar. The Defendants were present and were represented by their attorney, H. Ronald Stanley, of the Richland County Bar.

It appears from the evidence and testimony presented at the trial of this matter that the Plaintiff is the owner of a tract of unimproved land containing approximately 22 acres that the Plaintiff purchased at a Berkeley County Tax Sale on November 16, 2015. The defaulting taxpayers were the heirs of Lottie Taucer. Upon failure of the heirs of Lottie Taucer to redeem the property from the tax sale within one (1) year from

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the date of the sale, the Berkeley County Treasurer conveyed the property to the Plaintiff, BCE 2015 LLC, on March 9, 2017, and Plaintiff's deed was recorded in the office of the Register of Deeds for Berkeley County on April 10, 2017 in record book 2435 at page 335. The property that was purchased by the Plaintiff at the tax sale is landlocked with no means of ingress and egress and was landlocked at the time of the tax sale. Plaintiff's property is identified as Tax Map Number: 1230002038.

Defendants, Yvonne C. Knight and Eleanor C. Brown, are the owners of a 38.59 acres tract of unimproved land which adjoins the property owned by the Plaintiff on the south side of Plaintiff's property. The property owned by the Defendants is identified as tax map number 1230002001 and is bordered on the south by a public paved road known as Old Cherry Hill Road. Specifically, what the Plaintiff is seeking in this case is access to Old Cherry Hill Road by crossing the property owned by the Defendants.

In its complaint, the Plaintiff alleges that it has no access to its property except over and through an unimproved dirt road running through the property owned by the Defendants. The Plaintiff further alleges that it is entitled to a judicial declaration granting Plaintiff a fifty (50') foot easement for ingress and egress. The Plaintiff does not plead, allege or assert in its complaint the legal basis, principle or theory under which it is entitled to an easement over and through the Defendants' property.

At the trial of this case, the Plaintiff, by and through the testimony of its managing member, Jason Maxwell, asserted that Plaintiff's claim for entitlement to an easement was based upon the law of implied easement by prior use, upon Plaintiff's right to claim a prescriptive easement and upon plaintiff's right to claim an easement by necessity.

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The law in South Carolina is well settled that if a Plaintiff is asserting the right to an easement by prior use, the Plaintiff must establish the following elements: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of the unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. *Boyd v. BellSouth*, 369 SC 410, 633 SE 2d 136 (S. Ct. 2006).

In the case at bar, the Plaintiff is claiming that the unity of title occurred when the Plaintiff's property and the Defendants' property were both part of a 300-acre tract of land owned by P.D. Meree. The Plaintiff alleges that P. D. Meree received 300 acres of land under the last will and testament of William Meree. There is no deed conveying the 300 acres to P. D. Meree. On February 6, 1882, it appears that Paul D. Meree, who Plaintiff alleges is the same person as P. D. Meree, conveyed out of the 300-acre tract what was described as a 30-acre tract of land to Nero Smalls. Nero Smalls was the great great grandfather of the Defendants. The Plaintiff maintains that the property conveyed to Nero Smalls is the same property now owned by the Defendants which is subject of this action. On February 29, 1884, the Plaintiff maintains that P. D. Meree conveyed out of the 300-acre tract of land what was described as a 29 3/4 acre tract of land to Jupiter Tate. The Plaintiff maintains that the property conveyed to Jupiter Tate in the above described conveyance is the same property as the property now owned the Plaintiff which is subject of this action.

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Based upon the above mentioned conveyances by Paul D. Meree and P. D. Meree, who appears to be the same person, it appears plausible to conclude that there was unity of title to the two tracts of land that are subject of this action prior to February 6, 1882. It also appears plausible to conclude that the severance of title, which is the second element that the Plaintiff must prove, occurred on February 6, 1882, when the 30-acre tract of land was conveyed to Nero Smalls. The difficulty for the Plaintiff in this case, however, appears to be providing any evidence or testimony regarding elements 3, 4, 5, 6 and 7.

Under the established case law, the third element that the Plaintiff must prove to establish the right to an easement by prior use is that "the prior use was in existence at the time of unity of title." There is no testimony or evidence in this case to prove that the unimproved dirt road running through Defendants' property existed at the time of unity of title. Even if the unimproved dirt road did exist at the time of unity of title, there is no evidence or testimony in the record of this case to show who, if anyone, was using the unimproved dirt road for ingress and egress to the property now owned by the Plaintiff. With no evidence or testimony being presented to show specifically who, if anyone, was using the dirt road on Defendants' property to access the property now owned by the Plaintiff at the time that the property was owned by a common owner, the Plaintiff cannot establish the third element for claiming an implied easement by prior use.

The fourth element that the Plaintiff must establish is that "the prior use was not merely temporary or casual." As previously stated, there is no evidence or testimony in the record to show who, if anyone, was using the unimproved dirt road running through Defendant's property for ingress and egress to the property now owned by Plaintiff. It

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therefore follows that if there is no testimony or evidence in the record to prove that there was any prior use being made of the dirt road to gain access to the property now owned by the Plaintiff, the Plaintiff certainly cannot carry its burden of showing that there was prior use of the dirt road that was not merely temporary or casual. The Plaintiff has failed to establish the fourth element for claiming an easement by prior use.

The fifth element requires the Plaintiff to prove that "the prior use was apparent or known to the parties". The Plaintiff came into ownership of its property on April 10, 2017. The Plaintiff's managing member, Jason Maxwell, testified that he had no knowledge of the two (2) tracts of land which are subject of this action prior to Plaintiff's purchase of its property identified as Tax Map Number 1230002038. Since Plaintiff's personal knowledge of any prior use that was made of the unimproved dirt road was limited to the five (5) years that the Plaintiff has owned its property, it was incumbent upon the Plaintiff to present evidence and testimony from prior owners to establish what prior use was apparent and known to the parties. The Plaintiff presented no testimony or evidence from any prior owners of the property now owned by the Plaintiff or from anyone at all who previously used the dirt road for ingress and egress to Plaintiff's property. Therefore, the Plaintiff has not and cannot establish the fifth element which requires a showing that the prior use of the dirt road on Defendants' property for gaining access to the property now owned by the Plaintiff was apparent and known to the parties.

The sixth element that the Plaintiff must establish is that "the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use." In the case at bar, the Plaintiff provided no testimony

or evidence from any prior owner of the property now owned by the Plaintiff, running from the time that the property was owned by Jupiter Tate, who took title on February 29, 1884, to the ownership of Lottie Taucer, the last owner prior to Plaintiff, who owned the property from June 15, 1955, through April 10, 2017, showing how the prior owners accessed the subject property. There is no evidence or testimony in the record showing that any of the prior owners accessed the property now owned by the Plaintiff by way of the unimproved dirt road running through Defendants' property.

Finally, in order to establish an easement by prior use, the Plaintiff must prove that "the common grantor indicated an intent to continue the prior use after the severance of title." As stated previously in this order, the severance of the two tracts of land occurred on February 6, 1882, and the Plaintiff has no knowledge, testimony or evidence to provide as to how the property now owned by the Plaintiff was being accessed prior to February 6, 1882. At the trial, the Plaintiff presented no evidence or testimony establishing that the property now owned by the Plaintiff was being accessed through the dirt road running through the Defendants' property. Additionally, the Plaintiff presented no evidence or testimony that the common grantor, P. D. Merree, ever indicated that there was a dirt road running through the property now owned by the Defendants that was providing access to the property now owned by the Plaintiff and that it was the intent of P. D. Merree for that dirt road to continue to be used to provide access to the property now owned by the Plaintiff after the severance of title on February 6, 1882. In the deed from Paul D. Merree to Nero Smalls, there is no mention of an easement being reserved across the property being conveyed to Nero Smalls to provide ingress and egress to the property now owned by the Plaintiff. Also, in the deed

from P. D. Meree to Jupiter Tate, there is no mention of an easement being provided across the property previously conveyed to Nero Smalls to provide ingress and egress to Jupiter Tate. The Plaintiff has failed to establish the seventh element for claiming an implied easement by prior use.

Based upon the application of the above stated seven elements required to establish an easement by prior use to the evidence and testimony presented by the Plaintiff in this case, this court finds and concludes that the Plaintiff has failed to establish legal entitlement to an implied easement by prior use. The Plaintiff has failed to establish that the dirt road running through the property now owned by the Defendants was in existence at the time the property was severed on February 6, 1882, and the Plaintiff has failed to establish that the dirt road was providing access to the property now owned by the Plaintiff prior to the severance of title. The Plaintiff has failed to establish that any prior use of the dirt road for providing access to the property now owned by the Plaintiff was not merely temporary or casual. The Plaintiff has failed to establish that there was prior use of the dirt road running through Defendants' property to provide access to the property now owned by Plaintiff that was apparent and known to the parties. The Plaintiff has failed to establish that there was a prior use of the dirt road being made to provide access to the property now owned by the Plaintiff and that this prior use was necessary in that there could be no other reasonable made of enjoying the dominant tenement without the prior use. Finally, the Plaintiff has failed to establish that the common grantor, P. D. Meree, ever acknowledged the existence of a dirt road running through the property now owned by the Defendants that was providing access to the property now owned by the Plaintiff prior to the severance of

title, and the Plaintiff has failed to establish that even if the dirt road existed prior to severance of title, that the dirt road was being used to provide access to the property now owned by the Plaintiff. Also, even if the dirt road existed prior to severance of title and even if the road was being used to provide access to the property now owned by the Plaintiff, the Plaintiff has failed to show that the common grantor, P. D. Meree, indicated an intent to continue the prior use after severance of title.

The second claim of the Plaintiff is that it is entitled to claim a prescriptive easement. Under South Carolina law, to establish a prescriptive easement, the Plaintiff asserting the right must show: (1) continued use for 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 (1993); Boyd v. BellSouth, *Supra*; Shia v. Pendergrass, 222 S.C. 342 (1952). A prescriptive easement is not implied but is established by the conduct of the dominant tenement owner. Boyd v. BellSouth, *Supra*.

In the case at bar, the party asserting the right to a prescriptive easement is the Plaintiff and the dominant tenement owner is the Plaintiff. Therefore, the Plaintiff has the burden of showing that it has used the dirt road running through Defendants' property for 20 years to gain access to its property. As discussed earlier in this order, the Plaintiff took ownership of the property which is subject of this action on April 10, 2017. As of the date of this order, the Plaintiff has owned the subject property for five (5) years. To establish continuous use for the purposes of a prescriptive easement, a party need not show that the use is continuous to him personally *Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997). "A party may 'tack' the period of use of prior owners in order to satisfy the twenty-year requirement *Kelley*, 396 S.C. at

575, 722 S.E.2d at 819 "The time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the twenty-year period" (first alteration by court) (quoting *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct. App. 1997); *id.* (providing that if tacking is used, the predecessors-in-title's use must also meet the required elements of a prescriptive easement *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170 providing that because "a prescriptive easement results in diminished rights of the property owner...a claimant seeking a prescriptive easement must be held to a strict standard of proof" and therefore "has the burden of proving all elements by clear and convincing evidence.")

The Plaintiff presented circumstantial evidence of the prior use of the road by way of aerial photography and testimony indicating that the roadway had been in place for many years. However, that evidence did not rise to the level of "clear and convincing" evidence sufficient to satisfy the statutory requirement.

Therefore, the Plaintiff cannot satisfy the first element for establishing an easement by prescription which requires continued use for 20 years. Since the Plaintiff cannot establish the first element for a prescriptive easement, there is not a need to discuss whether the Plaintiff can establish the remaining two (2) elements for establishing a prescriptive easement.

The third claim of the Plaintiff is that the Plaintiff is entitled to claim an easement by necessity. The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity. *Kennedy v. Bendenbaugh*, 352 S.C. 56, 572 S.E. 2d 452 (2002); *Boyd v. Bellsouth*, Supra.

This court has already found that there was unity of title and severance of title in this case. Therefore, in order to establish the right to an easement by necessity, the

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Plaintiff must prove necessity by showing that there could be no other reasonable mode of ingress and egress for its property without this easement and the Plaintiff must prove that the lack of any reasonable mode of ingress and egress existed at the time of severance. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 197 S.E. 2d 914 (1973); Boyd v. Bellsouth, Supra.

In the case at bar, the severance of the property occurred on February 6, 1882. Therefore, under our established law, the Plaintiff must prove that on February 6, 1882, when Paul D. Merece conveyed the property now owned by the defendants severing the said property from his remaining property, there was no reasonable mode of ingress and egress for the property now owned by the Plaintiff. The only evidence of necessity offered by the Plaintiff is a survey included in Exhibit 23. This court has reviewed and considered the survey included in Exhibit 23 and has found and concluded that this survey, by itself, does not provide proof that the Plaintiff's real property was without other reasonable means of ingress and egress at the time of the severance. Therefore, the Plaintiff has failed to prove entitlement to an easement by necessity.

Based upon the testimony and evidence presented by the Plaintiff at the trial of this case and, upon due consideration of the applicable law in South Carolina setting forth the legal requirements for establishing entitlement to an implied easement by prior use; entitlement to claim a prescriptive easement, and, entitlement to establish an easement by necessity, this court finds and concludes that the Plaintiff's prayer for a decree granting to the Plaintiff a fifty (50') foot ingress and egress easement over and through the Defendants' property should be and is hereby denied.

It is, therefore, hereby **ORDERED, ADJUDGED AND DECREED** that judgment is hereby rendered in favor of the Defendants and that Plaintiff's prayer for relief is

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hereby denied. The above entitled action is hereby dismissed and each party shall bear their own costs and expenses.

AND IT IS SO ORDERED.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)

014



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2023-03-01 09:06:46 page 12 of 12

015

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015 LLC,
Plaintiff,

vs.

YVONNE C. KNIGHT and
ELEANOR C. BROWN,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-00344

ORDER

This action was commenced by the Plaintiff on February 21, 2018, with the filing of a summons and complaint wherein the Plaintiff asked the Berkeley County Court of Common Pleas to issue a decree confirming and/or establishing a fifty (50") foot ingress/egress easement in favor of Plaintiff over and through certain real property owned by the Defendants, Yvonne C. Knight and Eleanor C. Brown.

This matter was referred to this court by an Order of Reference issued by the Berkeley County court of Common Pleas on February 3, 2020. This matter came on to be heard by me on September 15, 2022. The Plaintiff appeared at the hearing by and through its managing member, Jason Maxwell, and was represented by its attorney, John J. Dodds, III, of the Charleston County Bar. The Defendants were present and were represented by their attorney, H. Ronald Stanley, of the Richland County Bar.

It appears from the evidence and testimony presented at the trial of this matter that the Plaintiff is the owner of a tract of unimproved land containing approximately 22 acres that the Plaintiff purchased at a Berkeley County Tax Sale on November 16, 2015. The defaulting taxpayers were the heirs of Lottie Taucer. Upon failure of the heirs of Lottie Taucer to redeem the property from the tax sale within one (1) year from

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the date of the sale, the Berkeley County Treasurer conveyed the property to the Plaintiff, BCE 2015 LLC, on March 9, 2017, and Plaintiff's deed was recorded in the office of the Register of Deeds for Berkeley County on April 10, 2017 in record book 2435 at page 335. The property that was purchased by the Plaintiff at the tax sale is landlocked with no means of ingress and egress and was landlocked at the time of the tax sale. Plaintiff's property is identified as Tax Map Number: 1230002038.

Defendants, Yvonne C. Knight and Eleanor C. Brown, are the owners of a 38.59 acres tract of unimproved land which adjoins the property owned by the Plaintiff on the south side of Plaintiff's property. The property owned by the Defendants is identified as tax map number 1230002001 and is bordered on the south by a public paved road known as Old Cherry Hill Road. Specifically, what the Plaintiff is seeking in this case is access to Old Cherry Hill Road by crossing the property owned by the Defendants.

In its complaint, the Plaintiff alleges that it has no access to its property except over and through an unimproved dirt road running through the property owned by the Defendants. The Plaintiff further alleges that it is entitled to a judicial declaration granting Plaintiff a fifty (50') foot easement for ingress and egress. The Plaintiff does not plead, allege or assert in its complaint the legal basis, principle or theory under which it is entitled to an easement over and through the Defendants' property.

At the trial of this case, the Plaintiff, by and through the testimony of its managing member, Jason Maxwell, asserted that Plaintiff's claim for entitlement to an easement was based upon the law of implied easement by prior use and upon Plaintiff's right to claim a prescriptive easement.

The law in South Carolina is well settled that if a Plaintiff is asserting the right to an easement by prior use, the Plaintiff must establish the following elements: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of the unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. Boyd v. BellSouth, 369 SC 410, 633 SE 2d 136 (S. Ct. 2006).

In the case at bar, the Plaintiff is claiming that the unity of title occurred when the Plaintiff's property and the Defendants' property were both part of a 300-acre tract of land owned by P.D. Mere. The Plaintiff alleges that P. D. Mere received 300 acres of land under the last will and testament of William Mere. There is no deed conveying the 300 acres to P. D. Mere. On February 6, 1882, it appears that Paul D. Mere, who Plaintiff alleges is the same person as P. D. Mere, conveyed out of the 300-acre tract what was described as a 30-acre tract of land to Nero Smalls. Nero Smalls was the great great grandfather of the Defendants. The Plaintiff maintains that the property conveyed to Nero Smalls is the same property now owned by the Defendants which is subject of this action. On February 29, 1884, the Plaintiff maintains that P. D. Mere conveyed out of the 300-acre tract of land what was described as a 29 3/4 acre tract of land to Jupiter Tate. The Plaintiff maintains that the property conveyed to Jupiter Tate in the above described conveyance is the same property as the property now owned the Plaintiff which is subject of this action.

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Based upon the above mentioned conveyances by Paul D. Meree and P. D. Meree, who appears to be the same person, it appears plausible to conclude that there was unity of title to the two tracts of land that are subject of this action prior to February 6, 1882. It also appears plausible to conclude that the severance of title, which is the second element that the Plaintiff must prove, occurred on February 6, 1882, when the 30-acre tract of land was conveyed to Nero Smalls. The difficulty for the Plaintiff in this case, however, appears to be providing any evidence or testimony regarding elements 3, 4, 5, 6 and 7.

Under the established case law, the third element that the Plaintiff must prove to establish the right to an easement by prior use is that "the prior use was in existence at the time of unity of title." There is no testimony or evidence in this case to prove that the unimproved dirt road running through Defendants' property existed at the time of unity of title. Even if the unimproved dirt road did exist at the time of unity of title, there is no evidence or testimony in the record of this case to show who, if anyone, was using the unimproved dirt road for ingress and egress to the property now owned by the Plaintiff. With no evidence or testimony being presented to show specifically who, if anyone, was using the dirt road on Defendants' property to access the property now owned by the Plaintiff at the time that the property was owned by a common owner, the Plaintiff cannot establish the third element for claiming an implied easement by prior use.

The fourth element that the Plaintiff must establish is that "the prior use was not merely temporary or casual." As previously stated, there is no evidence or testimony in the record to show who, if anyone, was using the unimproved dirt road running through Defendant's property for ingress and egress to the property now owned by Plaintiff. It

therefore follows that if there is no testimony or evidence in the record to prove that there was any prior use being made of the dirt road to gain access to the property now owned by the Plaintiff, the Plaintiff certainly cannot carry its burden of showing that there was prior use of the dirt road that was not merely temporary or casual. The Plaintiff has failed to establish the fourth element for claiming an easement by prior use.

The fifth element requires the Plaintiff to prove that "the prior use was apparent or known to the parties". The Plaintiff came into ownership of its property on April 10, 2017. The Plaintiff's managing member, Jason Maxwell, testified that he had no knowledge of the two (2) tracts of land which are subject of this action prior to Plaintiff's purchase of its property identified as Tax Map Number 1230002038. Since Plaintiff's personal knowledge of any prior use that was made of the unimproved dirt road was limited to the five (5) years that the Plaintiff has owned its property, it was incumbent upon the Plaintiff to present evidence and testimony from prior owners to establish what prior use was apparent and known to the parties. The Plaintiff presented no testimony or evidence from any prior owners of the property now owned by the Plaintiff or from anyone at all who previously used the dirt road for ingress and egress to Plaintiff's property. Therefore, the Plaintiff has not and cannot establish the fifth element which requires a showing that the prior use of the dirt road on Defendants' property for gaining access to the property now owned by the Plaintiff was apparent and known to the parties.

The sixth element that the Plaintiff must establish is that "the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use." In the case at bar, the Plaintiff provided no testimony

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or evidence from any prior owner of the property now owned by the Plaintiff, running from the time that the property was owned by Jupiter Tate, who took title on February 29, 1884, to the ownership of Lottie Taucer, the last owner prior to Plaintiff, who owned the property from June 15, 1955, through April 10, 2017, showing how the prior owners accessed the subject property. There is no evidence or testimony in the record showing that any of the prior owners accessed the property now owned by the Plaintiff by way of the unimproved dirt road running through Defendants' property.

Finally, in order to establish an easement by prior use, the Plaintiff must prove that "the common grantor indicated an intent to continue the prior use after the severance of title." As stated previously in this order, the severance of the two tracts of land occurred on February 6, 1882, and the Plaintiff has no knowledge, testimony or evidence to provide as to how the property now owned by the Plaintiff was being accessed prior to February 6, 1882. At the trial, the Plaintiff presented no evidence or testimony establishing that the property now owned by the Plaintiff was being accessed through the dirt road running through the Defendants' property. Additionally, the Plaintiff presented no evidence or testimony that the common grantor, P. D. Meree, ever indicated that there was a dirt road running through the property now owned by the Defendants that was providing access to the property now owned by the Plaintiff and that it was the intent of P. D. Meree for that dirt road to continue to be used to provide access to the property now owned by the Plaintiff after the severance of title on February 6, 1882. In the deed from Paul D. Meree to Nero Smalls, there is no mention of an easement being reserved across the property being conveyed to Nero Smalls to provide ingress and egress to the property now owned by the Plaintiff. Also, in the deed

from P. D. Meree to Jupiter Tate, there is no mention of an easement being provided across the property previously conveyed to Nero Smalls to provide ingress and egress to Jupiter Tate. The Plaintiff has failed to establish the seventh element for claiming an implied easement by prior use.

Based upon the application of the above stated seven elements required to establish an easement by prior use to the evidence and testimony presented by the Plaintiff in this case, this court finds and concludes that the Plaintiff has failed to establish legal entitlement to an implied easement by prior use. The Plaintiff has failed to establish that the dirt road running through the property now owned by the Defendants was in existence at the time the property was severed on February 6, 1882, and the Plaintiff has failed to establish that the dirt road was providing access to the property now owned by the Plaintiff prior to the severance of title. The Plaintiff has failed to establish that any prior use of the dirt road for providing access to the property now owned by the Plaintiff was not merely temporary or casual. The Plaintiff has failed to establish that there was prior use of the dirt road running through Defendants' property to provide access to the property now owned by Plaintiff that was apparent and known to the parties. The Plaintiff has failed to establish that there was a prior use of the dirt road being made to provide access to the property now owned by the Plaintiff and that this prior use was necessary in that there could be no other reasonable made of enjoying the dominant tenement without the prior use. Finally, the Plaintiff has failed to establish that the common grantor, P. D. Meree, ever acknowledged the existence of a dirt road running through the property now owned by the Defendants that was providing access to the property now owned by the Plaintiff prior to the severance of

title, and the Plaintiff has failed to establish that even if the dirt road existed prior to severance of title, that the dirt road was being used to provide access to the property now owned by the Plaintiff. Also, even if the dirt road existed prior to severance of title and even if the road was being used to provide access to the property now owned by the Plaintiff, the Plaintiff has failed to show that the common grantor, P. D. Meree, indicated an intent to continue the prior use after severance of title.

The second claim of the Plaintiff is that it is entitled to claim a prescriptive easement. Under South Carolina law, to establish a prescriptive easement, the Plaintiff asserting the right must show: (1) continued use for 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 (1993); Boyd v. BellSouth, *Supra*; Shia v. Pendergrass, 222 S.C. 342 (1952). A prescriptive easement is not implied but is established by the conduct of the dominant tenement owner. Boyd v. BellSouth, *Supra*.

In the case at bar, the party asserting the right to a prescriptive easement is the Plaintiff and the dominant tenement owner is the Plaintiff. Therefore, the Plaintiff has the burden of showing that it has used the dirt road running through Defendants' property for 20 years to gain access to its property. As discussed earlier in this order, the Plaintiff took ownership of the property which is subject of this action on April 10, 2017. As of the date of this order, the Plaintiff has owned the subject property for five (5) years. To establish continuous use for the purposes of a prescriptive easement, a party need not show that the use is continuous to him personally Morrow v. Dyches, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997). "A party may 'tack' the period of use of prior owners in order to satisfy the twenty-year requirement Kelley, 396 S.C. at

575, 722 S.E.2d at 819 "The time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the twenty-year period" (first alteration by court) (quoting *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct. App. 1997); *id.* (providing that if tacking is used, the predecessors-in-title's use must also meet the required elements of a prescriptive easement *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170 providing that because "a prescriptive easement results in diminished rights of the property owner...a claimant seeking a prescriptive easement must be held to a strict standard of proof" and therefore "has the burden of proving all elements by clear and convincing evidence."

The Plaintiff presented circumstantial evidence of the prior use of the road by way of aerial photography and testimony indicating that the roadway had been in place for many years. However, that evidence did not rise to level of "clear and convincing" evidence sufficient to satisfy the statutory requirement.

Therefore, the Plaintiff cannot satisfy the first element for establishing an easement by prescription which requires continued use for 20 years. Since the Plaintiff cannot establish the first element for a prescriptive easement, there is not a need to discuss whether the Plaintiff can establish the remaining two (2) elements for establishing a prescriptive easement.

Based upon the testimony and evidence presented by the Plaintiff at the trial of this case and, upon due consideration of the applicable law in South Carolina setting forth the legal requirements for establishing entitlement to an implied easement by prior use and for establishing a prescriptive easement, this court finds and concludes that the

OZK

Plaintiff's prayer for a decree granting to the Plaintiff a fifty (50') foot ingress and egress easement over and through the Defendants' property should be and is hereby denied.

It is, therefore, hereby **ORDERED, ADJUDGED AND DECREED** that judgment is hereby rendered in favor of the Defendants and that Plaintiff's prayer for relief is hereby denied. The above entitled action is hereby dismissed and each party shall bear their own costs and expenses.

AND IT IS SO ORDERED.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)

025



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2022-10-31 12:48:25 page 11 of 11

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CYNTHIA B FORTE
BERKELEY COUNTY
REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

*** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE ***



2018-CP-08-344

Instrument #: 2020051719

Receipt Number: 193260

Return To: BERKELEY COUNTY CLERK OF COURT

Recorded As: ORDER/WC

PO BOX 219

Recorded On: December 22, 2020

MONCK'S CORNER, SC, 29461

Recorded At: 02:38:17 PM

Received From: BERKELEY COUNTY CLERK OF COURT

Recorded By: SAMANTHA EVANS

Parties:

Book/Page: RB 3628: 79 - 89

Direct- TAUCER, LOTTIE

Total Pages: 11

Indirect- BCE 2015 LLC

*** EXAMINED AND CHARGED AS FOLLOWS ***

Recording Fee: \$0.00

Tax Charge: \$0.00

APC

FILED

20 DEC 23 PM 3:17
LEAH QUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC



Cynthia B. Forte
Cynthia B Forte - Register of Deeds

027

Doc 1 2020051719
Total Pages: 11

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

BCE 2015 LLC,)

Plaintiff,)

vs.)

ESTATE OF LOTTIE TAUCER, by and)
through her Personal Representative,)
Amelie Batson, and AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM.)
TAUCER, KENT A. TAUCER, STANLEY A.)
TAUCER, TERRY TAUCER SAMSON,)
JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI)
NICOLE TAUCER AND DEIDRE AMELIE)
TAUCER, sole heirs of Lottie Taucer,)
deceased, and if any of the said heirs be)
deceased, then JOHN DOE, adults, and)
RICHARD ROE, infants, insane persons,)
incompetents, and persons in the Military of)
The United States of America, being fictitious)
names designating as a class any unknown)
person or persons who may be an heir,)
distributee, devisee, legatee, widower, widow,)
assign, administrator, executor, creditor,)
successor, personal representative, issue or)
alliance of AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER,)
TERRY TAUCER SAMSON, JANIS)
TAUCER SMITH, SHERYL L. TAUCER,)
PATSY J. TAUCER, LORI NICOLE TAUCER)
AND DEIDRE AMELIE TAUCER, if any of)
them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons or legal)
entities, known and unknown, claiming any)
right, title, interest or estate in or lien upon the)
parcel of real estate described in the Lis)
Pendens and Complaint herein filed, YVONNE)
C. KNIGHT AND ELEANOR C. BROWN,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

FINAL ORDER
(Action to Quiet Tax Title)
(Reference with Finality)

028

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

DATE

Deaf. Summary Quorum
12/17/2020 DW

CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

10

THIS MATTER comes before me pursuant to the Consent Order of Reference filed herein on February 3, 2020, for a merits hearing upon the first cause of action of Plaintiff, BCE 2015 LLC ("Plaintiff"), to quiet its tax title to real property granted by the Berkeley County Tax Collector (the "Tax Collector") and seeking an order of the Court confirming marketable, fee simple title in the name of Plaintiff. The Hearing occurred on December 15, 2020 and present was the attorney for Plaintiff, John J. Dodds, III, of Cisa & Dodds, LLP, the Plaintiff, BCE 2015 LLC, by and through Jason Maxwell, its Managing Member, the Guardian ad Litem, Walter R. Kaufmann, and Lourenza Greene, Berkeley County Tax Collector. Also appearing via WebEx were Defendants, Sheryl L. Taucer, Janis Taucer Smith, Patsy J. Taucer, Lori Nicole Taucer, Deidre Amelie Taucer and Kent A. Taucer, all appearing *Pro se*. After confirming that none of the Defendants were desirous of continuing the Hearing to secure legal counsel, that none of the Defendants had any objection to Plaintiff proceeding with its cause of action to quiet its tax title and that none of the Defendants had any objection to the Court accepting as evidence the sworn Record of Hearing prepared by Plaintiff's counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The real property that is the subject of this action is an approximate twenty-two (22) acre tract of land near Old Cherry Hill Road, 1st St. Johns Parish, Berkeley County, South Carolina, T.M.S. # 123-00-02-038 (the "Property"), as is more fully described in Plaintiff's Complaint and Lis Pendens.

The Tax Sale and Tax Deed

Plaintiff purchased the Property for \$50,000.00 at the Berkeley County tax sale conducted on November 16, 2015 (the "Tax Sale"). After the expiration of the statutory one-year redemption period following the Tax Sale, the Tax Collector issued a Tax Title to Plaintiff, which is dated March 9, 2017, and was recorded on April 10, 2017, in the Berkeley County Register of Deeds (the "ROD") in Deed Book 2435, Page 335. (A copy the tax deed to the Plaintiff is attached as Exhibit 1 to the Record of Hearing).

Procedural History and Relevant Title History

On February 21, 2018, Plaintiff filed its Civil Action Cover Sheet, Certificate of Exemption, Summons, Notice, Complaint, and Lis Pendens (collectively the "Pleadings"). Plaintiff named as Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the said heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents, and persons in the Military of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, as parties to this action because Lottie Taucer, who died intestate on November 1, 1962, was the defaulting taxpayer and record title owner of the Property at the time of the Tax Sale. Plaintiff also named as Defendants Yvonne C. Knight and Eleanor C. Brown, however these Defendants have nothing to do with Plaintiff's first cause of action to quiet its tax title. Lottie Taucer acquired fee simple title to the Property by deed recorded September 24, 1956 in the ROD in Book A-103, Page 108.

Service of the Pleadings and Status of the Defendant

After filing the Pleadings, Plaintiff served the Pleadings upon Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis

Taucer Smith, Sheryl I. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the said heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents, and persons in the Military of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed via publication of the Summons, Lis Pendens, Notice, and Petition for Appointment of Guardian ad Litem once per week for three (3) consecutive weeks in *The Berkeley Independent* as per the Order of Publication filed herein on December 4, 2019. Although having been timely and properly served, the aforesaid Defendants (all Defendants except Yvonne L. Knight and Eleanor C. Brown), failed to file or serve a response to the Pleadings. As a result, Plaintiff's counsel filed an Affidavit of Default in regards to the said Defendants on January 28, 2020. The Honorable Leah Guerry Dupree, Clerk of Court, executed a Rule 55(a) Entry of Default on January 28, 2020 as to these Defendants. Thus, the said Defendants (all Defendants except Yvonne C. Knight and Eleanor C. Brown) are in default.

Despite their default status, Plaintiff served the Notice of the Hearing on November 4, 2019 on the said Defendants at the address provided to Plaintiff's counsel by the said Defendants following the Status Conference on October 1, 2020. Plaintiff also filed the Notice of Hearing on November 4, 2020. Only the Defendants, Sheryl L. Taucer, Janis Taucer Smith, Patsy J. Taucer, Lori Nicole Taucer, Deidre Amelie Taucer and Kent A. Taucer, appeared via WebEx at the Hearing.

Evidence Presented at the Hearing

The Court accepted five (5) exhibits offered into evidence by Plaintiff, which are attached to the Record of Hearing, consisting of the tax deed and the relevant portions of the Tax Collector's file for the Tax Sale of the Property. No parties appeared in objection to or opposed Plaintiff's action to quiet its tax title. No objection being made to Plaintiff's action to quiet its tax title, the Court accepted the allegations of the Complaint as set forth therein and reaffirmed at the hearing.

The Plaintiff, BCE 2015 LLC, by and through Jason Maxwell, its Managing Member, testified through the Record of Hearing, without objection from any party, that based upon his review of the Tax Collector's file regarding the Tax Sale of the Property, which Plaintiff's attorney secured pursuant to the South Carolina Freedom of Information Act, all notices of delinquent taxes, the execution, levy, advertisements, Tax Sale, and notice of redemption as to Tax Sale were duly sent to the interested parties entitled to notice in accordance with the usual procedures of the Berkeley County Tax Collector and were in strict conformity with all statutory requirements. Lourenza Greene, Berkeley County Tax Collector, also testified through the Record of Hearing, without objection from any party, that all notices of delinquent taxes, the execution levy, advertisements, Tax Sale, and notice of redemption as to Tax Sale were duly sent to the interested parties entitled to notice in accordance with the usual procedures of the Berkeley County Tax Collector and were in strict conformity with all statutory requirements. Walter R. Kaufmann, Esquire, the duly appointed Guardian ad Litem, testified that he had not been contacted by any person or entity claiming any interest in the Property.

CONCLUSIONS OF LAW

Based upon the pleadings filed and evidence presented, and the arguments of Plaintiff's counsel at the merits hearing, I make the following conclusions of law:

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.
2. This matter is properly before the Court. Notice of the Hearing was properly given to all parties, and the Court has personal jurisdiction over all parties. Further, this matter is within the subject

matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause, with any appeal to the Court of Appeals of South Carolina.

3. Prior to the November 16, 2015 Tax Sale of the Property, Lottie Taucer was the record owner of the Property and held good, fee simple title to the Property. Lottie Taucer died intestate on November 1, 1962 and an Estate was opened by her daughter, Amelie Batson, Case #97ES08-185, however, the Estate was administratively closed on March 5, 1999 for lack of compliance. Other than the named Defendants (exclusive of Yvonne C. Knight and Eleanor C. Brown), no other person or entity held any ownership interest of record or mortgage interest in the Property.

4. In strict accordance with all statutory requirements, the Tax Collector provided all required notices to all interested parties entitled to notice as to the Tax Sale held November 16, 2015, properly executed and levied upon the Property, and properly advertised and sold the Property to BCE 2015 LLC at the Tax Sale.

5. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice as to the Tax Sale held November 16, 2015, in strict compliance with S.C. Code Ann. § 12-51-120, the Tax Collector issued to Plaintiff a proper tax deed to the Property, dated March 9, 2017, and recorded on April 10, 2017 in the ROD in Deed Book 2435, Page 339.

6. Plaintiff timely and properly served the Pleadings upon the Defendants, as evidenced by the Affidavits of Service and Affidavit of Publication filed herein. Thereafter, the Defendants, exclusive of Yvonne C. Knight and Eleanor C. Brown, failed to answer and therefore defaulted to the Complaint, as evidenced by the Affidavit of Default and the Rule 55(a) Entry of Default filed herein.

7. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, "Alternative Procedure for Collection of Property Taxes," controlled the conduct of the Tax Sale. At the hearing, no issues were raised concerning the actions of the Tax Collector and

based upon the testimony of the Plaintiff's Managing Member, Jason Maxwell and Lourenza Greene, Berkeley County Tax Collector, as well as the other evidence received, I find that all requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property which occurred November 16, 2015 were properly followed and were in strict compliance therewith.

8. Because the Tax Sale of the Property on November 16, 2015 was conducted in strict compliance with the statutory requirements pertaining to tax sales, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, or upon the Property, including, but not limited to any claims whatsoever of the Defendants, were extinguished by the Tax Sale. Accordingly, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, or upon the Property, including, but not limited to those of the Defendants, including any and all heirs, devisees, successors, assigns and any other individuals or entities claiming, by, through or under them, irrespective of the nature of such claim, are hereby extinguished, and all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any persons or entity claiming under, by, against or through, the Defendants are hereby extinguished. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.

9. Because the November 16, 2015 Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, Estate of Lottie Taucer and/or her intestate heirs, or any other person occupying the Property, if at all, must vacate the Property and remove all items of personal property, if any, located upon the Property.

NOW, THEREFORE, based upon the foregoing, it is hereby ordered as follows:

1. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of the Defendants in, to, or upon the Property, including, but not limited to Estate of Lottie Taucer and/or her intestate heirs' ownership interests are hereby extinguished and forever barred.

2. All rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any persons or entity claiming under, by, against or through, the Defendants,

including any and all heirs, devisees, successors, assigns and any other individuals or entities claiming, by, through or under them, irrespective of the nature of such claim, are hereby extinguished and forever barred.

3. The Tax Sale conducted November 16, 2015 extinguished the rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, against, or upon the Property, and all claims to the Property adverse to Plaintiff are hereby extinguished and forever barred.

4. The Court hereby quiets and confirms marketable, fee simple title to the Property in Plaintiff, BCE 2015 LLC, and the marketable, fee simple title of Plaintiff, BCE 2015 LLC, to the Property is certain and free from all reasonable doubt.

5. In the event that Estate of Lottie Taucer and/or her intestate heirs or any other person is occupying the Property, Plaintiff may determine to provide a copy of this Final Order to the Berkeley County Sheriff, or his authorized deputies (collectively the "Sheriff"), and upon receipt of a copy of this Final Order, the Sheriff upon issuance of Writ of Assistance may be ordered to perform as follows:

a. The Sheriff, upon request from Plaintiff, is hereby ordered, directed, and authorized to post a copy of this Final Order and Writ of Assistance or to serve a copy of this Final Order and Writ of Assistance upon Estate of Lottie Taucer and/or her intestate heirs, or any other persons occupying the Property;

b. Not less than ten (10) days after said posting or service, the Sheriff shall be authorized to enter upon the Property, and to remove Estate of Lottie Taucer and/or her intestate heirs, or any other persons occupying the Property from the Property, together with all of their personal property and possessions, and to put Plaintiff in full, peaceful and quiet possession of the Property without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for Berkeley County, South Carolina, showing how this Final Order has been executed; and

c. The Sheriff shall have discretion to extend the date of seizure, but not more than thirty (30) days from the date of said service or posting, absent a further Order; and

6. A copy of this Order may be recorded in the Office of the Register of Mesne Conveyance

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for Berkeley County, South Carolina, and, if so, shall be properly indexed in the chain of title to the herein described real property under the name of Lottie Taucer as grantor and BCE 2015 LLC as grantee in the same manner as other deeds are recorded.

AND IT IS SO ORDERED!

DALE E. VAN SLAMBROOK
Master in Equity for Berkeley County

December 17, 2020.

Moncks Corner, S.C.



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Master/Order/Quiet Title and Form 4

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2020-12-17 15:02:13 page 10 of 10

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER, by and
through her Personal Representative,
Amelie Batson, and AMELIE BATSON,
CHARLES L. TAUCER, III, GARY WM.
TAUCER, KENT A. TAUCER, STANLEY A.
TAUCER, TERRY TAUCER SAMSON,
JANIS TAUCER SMITH, SHERYL L.
TAUCER, PATSY J. TAUCER, LORI
NICOLE TAUCER AND DEIDRE AMELIE
TAUCER, sole heirs of Lottie Taucer,
deceased, and if any of the said heirs be
deceased, then JOHN DOE, adults, and
RICHARD ROE, infants, insane persons,
incompetents, and persons in the Military of
The United States of America, being fictitious
names designating as a class any unknown
person or persons who may be an heir,
distributee, devisee, legatee, widower, widow,
assign, administrator, executor, creditor,
successor, personal representative, issue or
alienee of AMELIE BATSON, CHARLES L.
TAUCER, III, GARY WM. TAUCER,
KENT A. TAUCER, STANLEY A. TAUCER,
TERRY TAUCER SAMSON, JANIS
TAUCER SMITH, SHERYL L. TAUCER,
PATSY J. TAUCER, LORI NICOLE TAUCER
AND DEIDRE AMELIE TAUCER, if any of
them be deceased, LOTTIE TAUCER,
deceased, and any and all other persons or legal
entities, known and unknown, claiming any
right, title, interest or estate in or lien upon the
parcel of real estate described in the Lis
Pendens and Complaint herein filed, YVONNE
C. KNIGHT AND ELEANOR C. BROWN,

Defendants.

FINAL ORDER
(Action to Quiet Tax Title)
(Reference with Finality)

THIS MATTER comes before me pursuant to the Consent Order of Reference filed herein on February 3, 2020, for a merits hearing upon the first cause of action of Plaintiff, BCE 2015 LLC ("Plaintiff"), to quiet its tax title to real property granted by the Berkeley County Tax Collector (the "Tax Collector") and seeking an order of the Court confirming marketable, fee simple title in the name of Plaintiff. The Hearing occurred on December 15, 2020 and present was the attorney for Plaintiff, John J. Dodds, III, of Cisa & Dodds, LLP, the Plaintiff, BCE 2015 LLC, by and through Jason Maxwell, its Managing Member, the Guardian ad Litem, Walter R. Kaufmann, and Lourenza Greene, Berkeley County Tax Collector. Also appearing via WebEx were Defendants, Sheryl L. Taucer, Janis Taucer Smith, Patsy J. Taucer, Lori Nicole Taucer, Deidre Amelie Taucer and Kent A. Taucer, all appearing *Pro se*. After confirming that none of the Defendants were desirous of continuing the Hearing to secure legal counsel, that none of the Defendants had any objection to Plaintiff proceeding with its cause of action to quiet its tax title and that none of the Defendants had any objection to the Court accepting as evidence the sworn Record of Hearing prepared by Plaintiff's counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The real property that is the subject of this action is an approximate twenty-two (22) acre tract of land near Old Cherry Hill Road, 1st St. Johns Parish, Berkeley County, South Carolina, T.M.S. # 123-00-02-038 (the "Property"), as is more fully described in Plaintiff's Complaint and Lis Pendens.

The Tax Sale and Tax Deed

Plaintiff purchased the Property for \$50,000.00 at the Berkeley County tax sale conducted on November 16, 2015 (the "Tax Sale"). After the expiration of the statutory one-year redemption period following the Tax Sale, the Tax Collector issued a Tax Title to Plaintiff, which is dated March 9, 2017, and was recorded on April 10, 2017, in the Berkeley County Register of Deeds (the "ROD") in Deed Book 2435, Page 335. (A copy the tax deed to the Plaintiff is attached as **Exhibit 1** to the Record of Hearing).

Procedural History and Relevant Title History

On February 21, 2018, Plaintiff filed its Civil Action Cover Sheet, Certificate of Exemption, Summons, Notice, Complaint, and Lis Pendens (collectively the "Pleadings"). Plaintiff named as Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl I. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the said heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents, and persons in the Military of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, as parties to this action because Lottie Taucer, who died intestate on November 1, 1962, was the defaulting taxpayer and record title owner of the Property at the time of the Tax Sale. Plaintiff also named as Defendants Yvonne C. Knight and Eleanor C. Brown, however these Defendants have nothing to do with Plaintiff's first cause of action to quiet its tax title. Lottie Taucer acquired fee simple title to the Property by deed recorded September 24, 1956 in the ROD in Book A-103, Page 108.

Service of the Pleadings and Status of the Defendant

After filing the Pleadings, Plaintiff served the Pleadings upon Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis

Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the said heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents, and persons in the Military of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed via publication of the Summons, Lis Pendens, Notice, and Petition for Appointment of Guardian ad Litem once per week for three (3) consecutive weeks in *The Berkeley Independent* as per the Order of Publication filed herein on December 4, 2019. Although having been timely and properly served, the aforesaid Defendants (all Defendants except Yvonne L. Knight and Eleanor C. Brown), failed to file or serve a response to the Pleadings. As a result, Plaintiff's counsel filed an Affidavit of Default in regards to the said Defendants on January 28, 2020. The Honorable Leah Guerry Dupree, Clerk of Court, executed a Rule 55(a) Entry of Default on January 28, 2020 as to these Defendants. Thus, the said Defendants (all Defendants except Yvonne C. Knight and Eleanor C. Brown) are in default.

Despite their default status, Plaintiff served the Notice of the Hearing on November 4, 2019 on the said Defendants at the address provided to Plaintiff's counsel by the said Defendants following the Status Conference on October 1, 2020. Plaintiff also filed the Notice of Hearing on November 4, 2020. Only the Defendants, Sheryl L. Taucer, Janis Taucer Smith, Patsy J. Taucer, Lori Nicole Taucer, Deidre Amelie Taucer and Kent A. Taucer, appeared via WebEx at the Hearing.

Evidence Presented at the Hearing

The Court accepted five (5) exhibits offered into evidence by Plaintiff, which are attached to the Record of Hearing, consisting of the tax deed and the relevant portions of the Tax Collector's file for the Tax Sale of the Property. No parties appeared in objection to or opposed Plaintiff's action to quiet its tax title. No objection being made to Plaintiff's action to quiet its tax title, the Court accepted the allegations of the Complaint as set forth therein and reaffirmed at the hearing.

The Plaintiff, BCE 2015 LLC, by and through Jason Maxwell, its Managing Member, testified through the Record of Hearing, without objection from any party, that based upon his review of the Tax Collector's file regarding the Tax Sale of the Property, which Plaintiff's attorney secured pursuant to the South Carolina Freedom of Information Act, all notices of delinquent taxes, the execution, levy, advertisements, Tax Sale, and notice of redemption as to Tax Sale were duly sent to the interested parties entitled to notice in accordance with the usual procedures of the Berkeley County Tax Collector and were in strict conformity with all statutory requirements. Lourenza Greene, Berkeley County Tax Collector, also testified through the Record of Hearing, without objection from any party, that all notices of delinquent taxes, the execution levy, advertisements, Tax Sale, and notice of redemption as to Tax Sale were duly sent to the interested parties entitled to notice in accordance with the usual procedures of the Berkeley County Tax Collector and were in strict conformity with all statutory requirements. Walter R. Kaufmann, Esquire, the duly appointed Guardian ad Litem, testified that he had not been contacted by any person or entity claiming any interest in the Property.

CONCLUSIONS OF LAW

Based upon the pleadings filed and evidence presented, and the arguments of Plaintiff's counsel at the merits hearing, I make the following conclusions of law:

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.
2. This matter is properly before the Court. Notice of the Hearing was properly given to all parties, and the Court has personal jurisdiction over all parties. Further, this matter is within the subject

matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause, with any appeal to the Court of Appeals of South Carolina.

3. Prior to the November 16, 2015 Tax Sale of the Property, Lottie Taucer was the record owner of the Property and held good, fee simple title to the Property. Lottie Taucer died intestate on November 1, 1962 and an Estate was opened by her daughter, Amelie Batson, Case #97ES08-185, however, the Estate was administratively closed on March 5, 1999 for lack of compliance. Other than the named Defendants (exclusive of Yvonne C. Knight and Eleanor C. Brown), no other person or entity held any ownership interest of record or mortgage interest in the Property.

4. In strict accordance with all statutory requirements, the Tax Collector provided all required notices to all interested parties entitled to notice as to the Tax Sale held November 16, 2015, properly executed and levied upon the Property, and properly advertised and sold the Property to BCE 2015 LLC at the Tax Sale.

5. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice as to the Tax Sale held November 16, 2015, in strict compliance with S.C. Code Ann. § 12-51-120, the Tax Collector issued to Plaintiff a proper tax deed to the Property, dated March 9, 2017, and recorded on April 10, 2017 in the ROD in Deed Book 2435, Page 339.

6. Plaintiff timely and properly served the Pleadings upon the Defendants, as evidenced by the Affidavits of Service and Affidavit of Publication filed herein. Thereafter, the Defendants, exclusive of Yvonne C. Knight and Eleanor C. Brown, failed to answer and therefore defaulted to the Complaint, as evidenced by the Affidavit of Default and the Rule 55(a) Entry of Default filed herein.

7. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, "Alternative Procedure for Collection of Property Taxes," controlled the conduct of the Tax Sale. At the hearing, no issues were raised concerning the actions of the Tax Collector and

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based upon the testimony of the Plaintiff's Managing Member, Jason Maxwell and Lourenza Greene, Berkeley County Tax Collector, as well as the other evidence received, I find that all requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property which occurred November 16, 2015 were properly followed and were in strict compliance therewith.

8. Because the Tax Sale of the Property on November 16, 2015 was conducted in strict compliance with the statutory requirements pertaining to tax sales, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, or upon the Property, including, but not limited to any claims whatsoever of the Defendants, were extinguished by the Tax Sale. Accordingly, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, or upon the Property, including, but not limited to those of the Defendants, including any and all heirs, devisees, successors, assigns and any other individuals or entities claiming, by, through or under them, irrespective of the nature of such claim, are hereby extinguished, and all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any persons or entity claiming under, by, against or through, the Defendants are hereby extinguished. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.

9. Because the November 16, 2015 Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, Estate of Lottie Taucer and/or her intestate heirs, or any other person occupying the Property, if at all, must vacate the Property and remove all items of personal property, if any, located upon the Property.

NOW, THEREFORE, based upon the foregoing, it is hereby ordered as follows:

1. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of the Defendants in, to, or upon the Property, including, but not limited to Estate of Lottie Taucer and/or her intestate heirs' ownership interests are hereby extinguished and forever barred.

2. All rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any persons or entity claiming under, by, against or through, the Defendants,

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including any and all heirs, devisees, successors, assigns and any other individuals or entities claiming, by, through or under them, irrespective of the nature of such claim, are hereby extinguished and forever barred.

3. The Tax Sale conducted November 16, 2015 extinguished the rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims in, to, against, or upon the Property, and all claims to the Property adverse to Plaintiff are hereby extinguished and forever barred.

4. The Court hereby quiets and confirms marketable, fee simple title to the Property in Plaintiff, BCE 2015 LLC, and the marketable, fee simple title of Plaintiff, BCE 2015 LLC, to the Property is certain and free from all reasonable doubt.

5. In the event that Estate of Lottie Taucer and/or her intestate heirs or any other person is occupying the Property, Plaintiff may determine to provide a copy of this Final Order to the Berkeley County Sheriff, or his authorized deputies (collectively the "Sheriff"), and upon receipt of a copy of this Final Order, the Sheriff upon issuance of Writ of Assistance may be ordered to perform as follows:

a. The Sheriff, upon request from Plaintiff, is hereby ordered, directed, and authorized to post a copy of this Final Order and Writ of Assistance or to serve a copy of this Final Order and Writ of Assistance upon Estate of Lottie Taucer and/or her intestate heirs, or any other persons occupying the Property;

b. Not less than ten (10) days after said posting or service, the Sheriff shall be authorized to enter upon the Property, and to remove Estate of Lottie Taucer and/or her intestate heirs, or any other persons occupying the Property from the Property, together with all of their personal property and possessions, and to put Plaintiff in full, peaceful and quiet possession of the Property without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for Berkeley County, South Carolina, showing how this Final Order has been executed; and

c. The Sheriff shall have discretion to extend the date of seizure, but not more than thirty (30) days from the date of said service or posting, absent a further Order; and

6. A copy of this Order may be recorded in the Office of the Register of Mesne Conveyance

for Berkeley County, South Carolina, and, if so, shall be properly indexed in the chain of title to the herein described real property under the name of Lottie Taucer as grantor and BCE 2015 LLC as grantee in the same manner as other deeds are recorded.

AND IT IS SO ORDERED!

DALE E. VAN SLAMBROOK
Master in Equity for Berkeley County

December 17, 2020.

Moncks Corner, S.C.



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Master/Order/Quiet Title and Form 4

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2020-12-17 15:02:13 page 10 of 10

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

BCE 2015 LLC,)
)

Plaintiff,)
)

vs.)
)

ESTATE OF LOTTIE TAUCER, by and)
through her Personal Representative,)
Amelie Batson, and AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM.)
TAUCER, KENT A. TAUCER, STANLEY A.)
TAUCER, TERRY TAUCER SAMSON,)
JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI)
NICOLE TAUCER AND DEIDRE AMELIE)
TAUCER, sole heirs of Lottie Taucer,)
deceased, and if any of the said heirs be)
deceased, then JOHN DOE, adults, and)
RICHARD ROE, infants, insane persons,)
incompetents, and persons in the Military of)
The United States of America, being fictitious)
names designating as a class any unknown)
person or persons who may be an heir,)
distributee, devisee, legatee, widower, widow,)
assign, administrator, executor, creditor,)
successor, personal representative, issue or)
alienee of AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER,)
TERRY TAUCER SAMSON, JANIS)
TAUCER SMITH, SHERYL L. TAUCER,)
PATSY J. TAUCER, LORI NICOLE TAUCER)
AND DEIDRE AMELIE TAUCER, if any of)
them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons or legal)
entities, known and unknown, claiming any)
right, title, interest or estate in or lien upon the)
parcel of real estate described in the Lis)
Pendens and Complaint herein filed, YVONNE)
C. KNIGHT AND ELEANOR C. BROWN,)
)

Defendants.)
)

CONSENT ORDER OF REFERENCE

IT APPEARING that the within action is one to clear title, confirm a Tax Deed and establish an easement as to certain real property located in Berkeley County and is properly referred to the Master-In-Equity; and

IT FURTHER APPEARING that the Defendants, Estate of Lottie Taucer, by and thru her Personal Representative, Amelie Batson, and Amelie Batson, Charles Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, have all been adjudged in default, and

IT FURTHER APPEARING that all the parties are desirous of referring the action to the Master-In-Equity with finality.

NOW, THEREFORE, on motion of John J. Dodds, III, attorney for the Plaintiff, and by and with the consent of H. Ronald Stanley, Attorney for Defendants, Yvonne C. Knight and Eleanor C. Brown, and the Guardian ad Litem, Walter R. Kaufmann, as per his Acknowledgment of Service and Consent to Reference filed in the within action on January 27, 2020, it is hereby

ORDERED, ADJUDGED AND DECREED that the within action be referred to the Honorable Dale E. Van Slambrook, Master-In-Equity for Berkeley County, for the purpose of taking testimony, making findings of fact and conclusions of law, and to render a final decree with direct appeal to the South Carolina Court of Appeals in accordance with Section 14-11-085, Code of Laws of South Carolina, 1976, as amended.

Leah Guerry Dupree
Clerk of Court

Moncks Corner, South Carolina

_____, 2020.

I SO MOVE:

CISA & DODDS, LLP

BY: s/John J. Dodds, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
P: (843) 881-6530
F: (843) 881-5433
SC Bar # 1707
john@cisadodds.com
ATTORNEYS FOR PLAINTIFF

I SO CONSENT:

THE STANLEY LAW GROUP

s/H. Ronald Stanley
1418 Park Street
Columbia, SC 29201
P: (803) 799-4700
F: (803) 799-3036
SC Bar # 5304
hrstanley@stanleylawsc.com
ATTORNEY FOR DEFENDANTS
YVONNE C. KNIGHT and
ELEANOR C. BROWN

I SO CONSENT:

s/Walter R. Kaufmann
P. O. Box 459
Mt. Pleasant, SC 29465
P: (843) 881-5784
SC Bar #63011
walter@kaufmannassociates.org
GUARDIAN AD LITEM NISI



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Order/Referred to Master or Special Referee

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-02-03 10:11:29 page 4 of 4

051

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

BCE 2015 LLC,)

Plaintiff,)

vs.)

RULE 55(a) ENTRY OF DEFAULT

ESTATE OF LOTTIE TAUCER, by and)
through her Personal Representative,)
Amelie Batson, and AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM.)
TAUCER, KENT A. TAUCER, STANLEY A.)
TAUCER, TERRY TAUCER SAMSON,)
JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI)
NICOLE TAUCER AND DEIDRE AMELIE)
TAUCER, sole heirs of Lottie Taucer,)
deceased, and if any of the said heirs be)
deceased, then JOHN DOE, adults, and)
RICHARD ROE, infants, insane persons,)
incompetents, and persons in the Military of)
The United States of America, being fictitious)
names designating as a class any unknown)
person or persons who may be an heir,)
distributee, devisee, legatee, widower, widow,)
assign, administrator, executor, creditor,)
successor, personal representative, issue or)
alienee of AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER,)
TERRY TAUCER SAMSON, JANIS)
TAUCER SMITH, SHERYL L. TAUCER,)
PATSY J. TAUCER, LORI NICOLE TAUCER)
AND DEIDRE AMELIE TAUCER, if any of)
them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons or legal)
entities, known and unknown, claiming any)
right, title, interest or estate in or lien upon the)
parcel of real estate described in the Lis)
Pendens and Complaint herein filed, YVONNE)
C. KNIGHT AND ELEANOR C. BROWN,)

Defendants.)

It appearing from the Affidavit of John J. Dodds, III, one (1) of the attorneys for the Plaintiff, as well as the Affidavit of Publication filed herein, that the Defendants, Estate of Lottie Taucer, by and

through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the Military Service of The United States of America, being fictitious names designating any person or entity who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, and Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming to claim under them or through them, or claiming any right, title, interest or estate in or lien upon the real estate which is the subject of this action (described in the Complaint filed herein) were duly served with a certified copy of the Summons and Complaint more than thirty (30) days ago.

AND it further appearing that no Answer, Notice of Appearance or other pleadings have been served upon the attorneys for the Plaintiff, or filed in this case, by or on behalf of the said Defendants and that the said Defendants are now in default.

NOW, THEREFORE, default as to the Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, and Lottie Taucer, deceased, John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the military Service of the United States of America, being fictitious names designating any person or entity who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer, Deidre Amelie Taucer, if any of them be deceased, and

Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming to claim under him or through him, or claiming any right, title, interest or estate in or lien upon the real estate which is the subject of this action (described in the Complaint filed herein) is hereby entered in the calendar (file book) pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure.

Moncks Corner, South Carolina

Leah Guerry Dupree
Clerk of Court

January _____, 2020.

I SO MOVE:

/s/John J. Dodds, III
Attorney for Plaintiff



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Order/Entry of Default

AND IT IS SO ORDERED!

Special Circuit Court Judge s/Dale E. Van
Slambrook (3079)

Electronically signed on 2020-01-28 13:05:50 page 4 of 4

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER, by and
through her Personal Representative,
Amelie Batson, and AMELIE BATSON,
CHARLES L. TAUCER, III, GARY WM.
TAUCER, KENT A. TAUCER, STANLEY A.
TAUCER, TERRY TAUCER SAMSON,
JANIS TAUCER SMITH, SHERYL L.
TAUCER, PATSY J. TAUCER, LORI
NICOLE TAUCER AND DEIDRE AMELIE
TAUCER, sole heirs of Lottie Taucer,
deceased, and if any of the said heirs be
deceased, then JOHN DOE, adults, and
RICHARD ROE, infants, insane persons,
incompetents, and persons in the Military of
The United States of America, being fictitious
names designating as a class any unknown
person or persons who may be an heir,
distributee, devisee, legatee, widower, widow,
assign, administrator, executor, creditor,
successor, personal representative, issue or
alienee of AMELIE BATSON, CHARLES L.
TAUCER, III, GARY WM. TAUCER,
KENT A. TAUCER, STANLEY A. TAUCER,
TERRY TAUCER SAMSON, JANIS
TAUCER SMITH, SHERYL L. TAUCER,
PATSY J. TAUCER, LORI NICOLE TAUCER
AND DEIDRE AMELIE TAUCER, if any of
them be deceased, LOTTIE TAUCER,
deceased, and any and all other persons or legal
entities, known and unknown, claiming any
right, title, interest or estate in or lien upon the
parcel of real estate described in the Lis
Pendens and Complaint herein filed, YVONNE
C. KNIGHT AND ELEANOR C. BROWN,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

**CONSENT ORDER APPOINTING
GUARDIAN AD LITEM**

The Plaintiff, having prayed in its Petition that a Guardian ad Litem Nisi be appointed to represent John Doe, adults and Richard Roe, infants, insane persons, incompetents, and persons in the Military of the United States of America, being fictitious names designating as a class any unknown person or persons or legal entity of any kind, who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer, and Deidre Amelie Taucer, if any of them be deceased, and Lottie Taucer, deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, and it appearing that Walter R. Kaufmann, Esquire, is a fit and suitable person to represent all such persons and/or entities unless such persons and/or entities, or someone on their behalf, should apply to the Court for such an appointment in the within action.

NOW, THEREFORE, it is hereby

ORDERED that the said Walter R. Kaufmann, Esquire, be, and he hereby is, appointed Guardian ad Litem Nisi to represent all of the above-described persons and/or entities who have, or may claim to have some interest in or claim to the subject real property, and should so sere unless and until any of these persons or entities shall secure by appropriate proceedings the appointment of another to so act in this proceeding.

Leah Guerry Dupree,
Clerk of Court

Moncks Corner, South Carolina

_____, 2020.

I SO MOVE:

s/John J. Dodds, III
Attorney for Plaintiff

I CONSENT:

s/Walter R. Kaufmann
Attorney at Law

I CONSENT:

s/H. Ronald Stanley
Attorney for Defendants
Yvonne C. Knight and
Eleanor C. Brown



Berkeley Common Pleas

Case Caption: Bce 2015 Llc VS Lottie Taucer, Estate Of , defendant, et al
Case Number: 2018CP0800344
Type: Order/Appointment Of Guardian Ad Litem

AND IT IS SO ORDERED!

Special Circuit Court Judge s/Dale E. Van
Slambrook (3079)

Electronically signed on 2020-01-27 14:53:11 page 4 of 4

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER, by and
through her Personal Representative,
Amelie Batson, and AMELIE BATSON,
CHARLES L. TAUCER, III, GARY WM.
TAUCER, KENT A. TAUCER, STANLEY A.
TAUCER, TERRY TAUCER SAMSON,
JANIS TAUCER SMITH, SHERYL L.
TAUCER, PATSY J. TAUCER, LORI
NICOLE TAUCER AND DEIDRE AMELIE
TAUCER, sole heirs of Lottie Taucer,
deceased, and if any of the said heirs be
deceased, then JOHN DOE, adults, and
RICHARD ROE, infants, insane persons,
incompetents, and persons in the Military of
The United States of America, being fictitious
names designating as a class any unknown
person or persons who may be an heir,
distributee, devisee, legatee, widower, widow,
assign, administrator, executor, creditor,
successor, personal representative, issue or
alienee of AMELIE BATSON, CHARLES L.
TAUCER, III, GARY WM. TAUCER,
KENT A. TAUCER, STANLEY A. TAUCER,
TERRY TAUCER SAMSON, JANIS
TAUCER SMITH, SHERYL L. TAUCER,
PATSY J. TAUCER, LORI NICOLE TAUCER
AND DEIDRE AMELIE TAUCER, if any of
them be deceased, LOTTIE TAUCER,
deceased, and any and all other persons or legal
entities, known and unknown, claiming any
right, title, interest or estate in or lien upon the
parcel of real estate described in the Lis
Pendens and Complaint herein filed, YVONNE
C. KNIGHT AND ELEANOR C. BROWN,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08- 344

COMPLAINT

(Quiet Title and Confirm Tax Sale)
(Confirm and/or Establish
Ingress / Egress Easement)

2018 FEB 21 PM 3:39
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

The Plaintiff, above named, complaining of the Defendants, above named, herein alleges that:

FOR A FIRST CAUSE OF ACTION
(As to all Defendants except Yvonne C. Knight and Eleanor C. Brown)
(Quiet Title and Confirm Tax Deed)

1. The Plaintiff brings this action pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, Section 15-53-10, et seq., Code of Laws of South Carolina, 1976, as amended, for the purpose of obtaining a decree adjudging that the Plaintiff is seized in fee simple of a good and marketable title to the real estate herein below described and that none of the Defendants above named have any interest or estate in or lien upon, the said real estate.

2. That the property subject of this action is situate in the County of Berkeley, State of South Carolina, and is described as follows:

All that certain piece, parcel or lot of land together with any improvements thereon, situate, lying and being in the 1st St. Johns Parish, Berkeley County, South Carolina, bounded according to the tax map records of Berkeley County, generally as follows, to-wit: On the North by lands of Timothy H. and Lucille V. Dennis and Lottie and Charles Taucer; on the East by lands of Yvonne C. Knight and Eleanor C. Brown; on the South by lands of Yvonne C. Knight and Eleanor C. Brown and Marlon K. and Dedra J. Fox; and on the West by lands of Timothy H. and Lucille V. Dennis.

Total property being conveyed is 22 acres, more or less.

Being the same property conveyed to BCE 2015 LLC by Tax Deed, dated March 9, 2017, and recorded in the Office of the Register of Deeds for Berkeley County on April 10, 2017, in Book 2435, at Page 335.

T.M.S.# 123-00-02-038

The said real property together with improvements thereon, being referred to herein as the "Subject Property".

3. The Subject Property was sold to Plaintiff during the Berkeley County, South Carolina Delinquent Property Tax Sale on November 16, 2015.

4. Neither the defaulting taxpayer, which were the Heirs of Lottie Taucer, nor any other interested party redeemed the Subject Property from the tax sale within the statutory one year period.

5. The Subject Property came into the legal possession of the Plaintiff upon issuance of a Berkeley County Tax Deed on March 9, 2017, and such deed was duly recorded in the Register's Office for Berkeley County on April 10, 2017, in Book 2435, at Page 335.

6. Named as Defendants herein are Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the said heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents, and persons in the Military of The United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alicnee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, if any of them be deceased, and Lottie Taucer, deceased, and any or all other persons or legal entities known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed; upon information and belief, the interests of all the Defendants were extinguished by the tax sale described in paragraph three

(3) supra, the running of the redemption period described in paragraph four (4) supra, and the issuance of the tax deed described in paragraph five (5) supra.

7. That the Defendants, each in their own right, may claim to have some right in, title to, claim or demand against Subject Property. All such claims which any of the said Defendants may have had upon the Subject Property were wholly and effectually extinguished, cut off and barred by the tax sale above-conducted. The Plaintiff is seized and possessed of the Subject Property free of and wholly discharged from any and every such right, title, claim or demand.

8. That the Plaintiff is informed and believes that based upon the allegations contained in this Complaint, the Court should quiet title to the Subject Property and declare the Plaintiff to be the sole owner of a fee simple title forever barring any claim or right of the party Defendants who might claim any right, title, interest in or lien upon the real estate described in this Complaint.

FOR A SECOND CAUSE OF ACTION

(As to Defendants Yvonne C. Knight and Eleanor C. Brown)
(Confirm and/or Establish Easement Ingress/Egress)

9. Each and every allegation contained in Paragraphs 1 through 8 above is incorporated herein by express reference as though fully set forth herein.

10. The Plaintiff brings this action pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, Section 15-53-10, et seq., Code of Laws of South Carolina, 1976, as amended, for the purpose of obtaining a decree confirming and/or establishing a fifty (50') foot Ingress/Egress Easement to the subject property over and through certain real estate owned by Defendants, Yvonne C. Knight and Eleanor C. Brown, namely, T.M.S.# 123-00-02-001, specifically an unimproved dirt road running from Old Cherry Hill Road across T.M.S.# 123-00-02-038 to the Subject Property, as more particularly seen in the GIS online mapping attached as Exhibit "A" and incorporated

herein by express reference, or over and through such other location as determined by this honorable Court.

11. Plaintiff is informed and believes there is no access to the Subject Property except over and through the above described unimproved dirt road and, consequently, Plaintiff is entitled to a judicial declaration granting Plaintiff a fifty (50') foot Ingress/Egress Easement to the Subject Property over and through the said dirt road located on T.M.S.# 123-00-02-038, or over and through such other location as determined by this honorable Court.

WHEREFORE, the Plaintiff prays that the Court inquire into this matter and issue its judgment as follows:

As to Plaintiff's First Cause of Action

ONE: Determine that this Plaintiff is the sole holder of the fee simple title to the Subject Property;

TWO: That the Defendants be barred from any claims thereto and any cloud associated with the Defendants be forever removed therefrom; and

THREE: For such other relief is fair and proper.

As to Plaintiff's Second Cause of Action

ONE: Determine that Plaintiff has a fifty (50') foot Ingress/Egress Easement to the Subject Property over and across the unimproved dirt road locate on T.M.S.# 123-00-02-038 or such other location as determined by this honorable Court; and

TWO: For such other and further relief as is fair and proper.

[SIGNATURE PAGE FOLLOWS]

064

CISA & DODDS, LLP

By:


John J. Dodds, III

858 Lowcountry Blvd., Suite 101

Mt. Pleasant, SC 29464

Phone (843) 881-6530

Fax (843) 881-5433

SC Bar No.: 1707

john@cisadodds.com

ATTORNEYS FOR PLAINTIFF

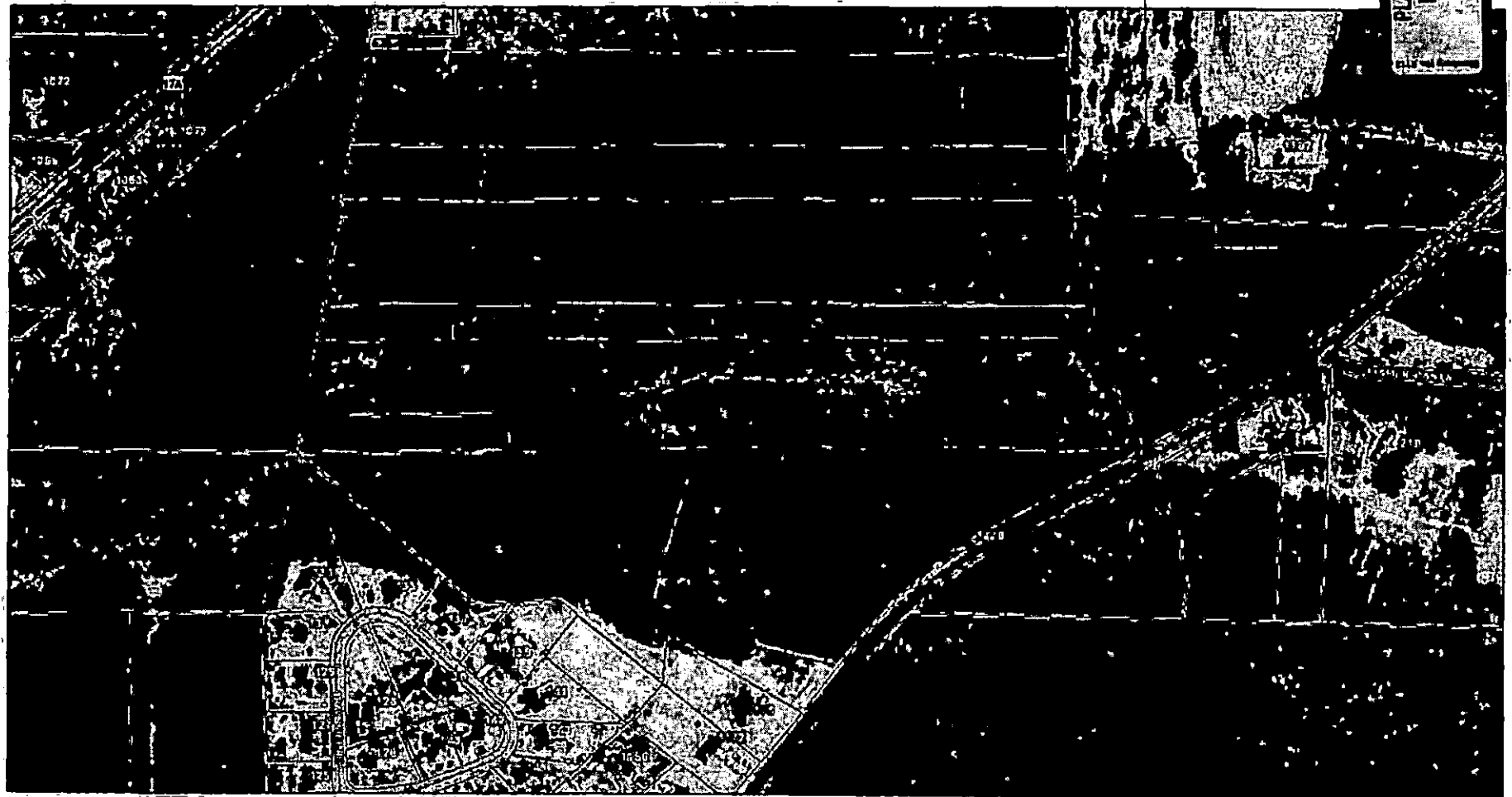
Mt. Pleasant, SC

February 14, 2018.

065

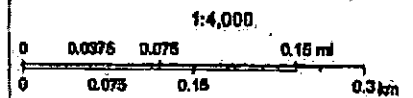
PLAINTIFF'S
EXHIBIT
A

069



- Address Points
- Streets (Short Names)
- Parks
- Interstates
- US Highways
- State Roads

Community Labels
Town Labels
City Labels
County Boundaries



Berkley County 019

The county of Berkeley and its GIS Department disclaims accountability for this product and makes no warranty express or implied concerning the accuracy thereof. Responsibility for interpretation and application of this product lies with the user. Berkeley County GIS 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER,

By and through her Personal Representative,

Amelie Batson, et. al.,

Defendants.

18 JUL 20 PM 2: 23

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2018-CP-08-344

AMENDED ANSWER OF

YVONNE C. KNIGHT

AND

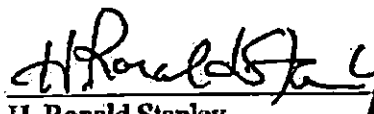
ELEANOR C. BROWN

The defendants, Yvonne C. Knight and Eleanor C. Brown, answering the complaint of the plaintiff, herein, would respectfully show:

1. That the defendants deny each and every allegation of the complaint not hereinafter admitted, qualified or explained.
2. That the defendants would respectfully show that no response is required to the allegations set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the complaint.
3. That the defendants deny the allegations set forth in Paragraphs 10 and 11 of the complaint.

WHEREFORE, the defendants having fully answered the complaint of the plaintiff herein pray that the complaint will be dismissed with prejudice and costs and for such other and further relief as this court may deem just and proper.

The Stanley Law Group



H. Ronald Stanley
ATTORNEY FOR DEFENDANTS
1418 Park Street
Columbia, SC 29201
803-799-4700

Columbia, SC
Dated: July 17, 2018

HRS

067



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER, by and
through her Personal Representative,
Amelie Batson, and AMELIE BATSON,
CHARLES L. TAUCER, III, GARY WM.
TAUCER, KENT A. TAUCER, STANLEY A.
TAUCER, TERRY TAUCER SAMSON,
JANIS TAUCER SMITH, SHERYL L.
TAUCER, PATSY J. TAUCER, LORI
NICOLE TAUCER AND DEIDRE AMELIE
TAUCER, sole heirs of Lottie Taucer,
deceased, and if any of the said heirs be
deceased, then JOHN DOE, adults, and
RICHARD ROE, infants, insane persons,
incompetents, and persons in the Military of
The United States of America, being fictitious
names designating as a class any unknown
person or persons who may be an heir,
distributee, devisee, legatee, widower, widow,
assign, administrator, executor, creditor,
successor, personal representative, issue or
alienee of AMELIE BATSON, CHARLES L.
TAUCER, III, GARY WM. TAUCER,
KENT A. TAUCER, STANLEY A. TAUCER,
TERRY TAUCER SAMSON, JANIS
TAUCER SMITH, SHERYL L. TAUCER,
PATSY J. TAUCER, LORI NICOLE TAUCER
AND DEIDRE AMELIE TAUCER, if any of
them be deceased, LOTTIE TAUCER,
deceased, and any and all other persons or legal
entities, known and unknown, claiming any
right, title, interest or estate in or lien upon the
parcel of real estate described in the Lis
Pendens and Complaint herein filed, YVONNE
C. KNIGHT AND ELEANOR C. BROWN,

ANSWER OF GUARDIAN AD LITEM NISI

Defendants.

I, WALTER R. KAUFMANN, as Guardian ad Litem Nisi in the within action, answering
the Complaint herein, would allege unto this Honorable Court as follows:

1. That each and every allegation of the Complaint is admitted upon information and
belief.

WHEREFORE, I, Walter R. Kaufmann, as Guardian ad Litem Nisi, pray unto this Honorable
Court that the relief sought in the Complaint be granted.

[SIGNATURE PAGE FOLLOWS]


Page 1 of 1

s/Walter S. Kaufmann
Guardian ad Litem
P. O. Box 459
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Mount Pleasant, South Carolina

January 27, 2020.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015 LLC,

Plaintiff,

vs.

ESTATE OF LOTTIE TAUCER, by and
Through her Personal Representative,
Amelie Batson, and AMELIE BATSON,
CHARLES L. TAUCER, III, GARY WM.
TAUCER, KENT A. TAUCER,
STANLEY A. TAUCER, TERRY
TAUCER SAMSON, JANIS TAUCER
SMITH, SHERYL L. TAUCER, PATSY J.
TAUCER, LORI NICOLE TAUCER and
DEIDRE AMELIE TAUCER, sole heirs of
Lottie Taucer, deceased, and if any of
the said heirs be deceased, then JOHN
DOE, adults, and RICHARD ROE,
infants, insane persons, incompetents,
and persons in the Military of The United
States of America, being fictitious
names designating as a class any
unknown person or persons who may
be an heir, distributee, devisee, legatee,
widower, widow, assign, administrator,
executor, creditor, successor, personal
representative, issue or alienee of
AMELIE BATSON, CHARLES L.
TAUCER, III, GARY WM. TAUCER,
KENT A. TAUCER, STANLEY A.
TAUCER, TERRY TAUCER SAMSON,
JANIS TAUCER SMITH, SHERYL L.
TAUCER, PATSY J. TAUCER, LORI
NICOLE TAUCER and DEIDRE
AMELIE TAUCER, if any of them be
deceased, LOTTIE TAUCER, deceased,
and any and all other persons or legal
entities, known and unknown, claiming
any right, title, interest or estate in or
lien upon the parcel of real estate

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

**MOTION FOR
RECONSIDERATION and
MOTION TO ALTER AND/OR
AMEND THE JUDGMENT
And To AMEND THE COURT'S
FINDINGS Pursuant to
Rule 52(b), SCRCivP, and
Rule 59(e), SCRCivP.**

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described in the Lis Pendens and)
 Complaint herein filed, YVONNE C.)
 KNIGHT and ELEANOR C. BROWN,)
)
 Defendants.)
 _____)

TO: THE HONORABLE DALE E. VAN SLAMBROOK,
 Master-In-Equity for Berkeley County
 And
 H. RONALD STANLEY, ESQUIRE
 of The Stanley Law Group
Attorneys for the Defendants, Yvonne C. Knight and Eleanor C. Brown

COMES NOW the Plaintiff, BCE 2015, LLC ("BCE 215"), by and through the undersigned counsel and, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, respectfully moves this Court for an order reconsidering, altering and/or amending, of amending the findings of the Order issued by this Court on Monday, 31 October 2022.¹

These motions are based upon this Court's misinterpretations, misunderstandings, misconceptions, misconstructions, inaccuracies, and confusion regarding both the evidence presented and the applicable legal principles as set forth hereinafter:

1. This Court erred in describing, finding, and/or concluding that the Defendants' real property over which BCE 2015 sought a fifty foot (50") ingress/egress easement was an "unimproved tract", even though the demonstrative and/or testimonial evidence, especially through D. A. Scheffing ("Mr. Scheffing"),² an unchallenged and

¹ Counsel for BCE 2015 first received a written copy of this Court's Order on Monday, 31 October 2022. *See* Rule 52(b), SCRCivP; Standard Fed. Sav. & Loan Assn. v. Mungo, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct.App. 1981). *See also* Rule 59(e), SCRCivP; S.C. Dept. of Social Services v. Velasquez, 2021 WL 2947898, at *1 (Ct.App., filed 14 July 2021)).

² Mr. Scheffing, of Southlander, LLC, a Forestry Consulting Company, was qualified by this Court as an expert in the field of forestry consulting.

qualified expert witness, who testified, without objection,³ that the Defendants' real property parcel, *both* had been and continues to be, used for harvesting timber, and had been used before that time for agricultural purposes (*i.e.*; farming) dating back until the 1950s. Furthermore, the Defendants presently lease out both their real property parcel over which the unimproved dirt road runs, as well as another property parcel they own (located north of the property owned by BCE 2015) for hunting purposes and the hunters use the unimproved dirt road for ingress and egress into the hunting grounds, notwithstanding the Defendants' less than credible testimony that the hunters do not use the unimproved dirt road for ingress and egress, but traverse miles out of their way to cross a footbridge over a creek to access the hunting areas.

2. This Court erred by describing, finding, and/or concluding that BCE 2015 had simply "alleged" that "there was no access except over and through an unimproved dirt road running through the property owned by the Defendants", when the demonstrative and/or testimonial evidence showed the Defendants had stipulated that the property owned by BCE 2015 was and is "landlocked" and accessible only via the unimproved dirt road which runs across the Defendants' real property.
3. This Court erred by describing, finding, and/or concluding that BCE 2015 failed to "plead, allege[,] or assert in its [C]omplaint the legal basis, principle[,] or theory under which [BCE 2015 was] entitled to an easement over and through the Defendants' property." Notwithstanding this inaccurate conclusion, the demonstrative and/or testimonial evidence clearly showed that BCE 2015 alleged in its Complaint (See Complaint, paras. 1-11) that BCE 2015 sought an order and/or decree pursuant to the South Carolina Uniform Declaratory Judgment Act Judgment Act (as codified in S.C. Code Ann. §§ 15-53-10, *et seq.* (Thomson Reuters West 2017)), as confirming and/or establishing a fifty foot (50') ingress/egress easement to BCE 2015's real property over and through the existing unimproved dirt road running through the Defendants' real property as demonstrated on the GIS map attached as Exhibit A to the Complaint. Furthermore, the Defendants acquiesced in and/or declined and/or failed to require BCE 2015 to provide any further information and/or

³ See generally Greer v. Greenville County, 245 S.C. 442, 458, 141 S.E.2d 91, 99 (1965) (*quoting* 88 C.J.S., Trial, § 155 (West 1964)).

documentation as to a more definite and certain showing of the underlying legal basis for BCE 2015's legal justification for the requested ingress/egress easement, before, during, and/or after the trial herein. In any case, the demonstrative and/or testimonial evidence clearly showed that BCE 2015 sought a declaratory judgment and asserted varying and multiple legal justifications for the ingress/egress easement which BCE 2015 was seeking through this litigation.

4. This Court erred by describing, finding, and/or concluding that Jason Maxwell, the managing member of BCE 2015, claimed that BCE 2015 was entitled to "Implied easement by prior use, recorded document, and prescriptive easement", when the demonstrative and/or testimonial evidence showed that Jason Maxwell further testified that BCE 2015 was also entitled to an Easement by Necessity. Furthermore, Mr. Maxwell, admittedly not an attorney, was simply setting forth the common-sense and logical reasons why BCE 2015 believed that BCE 2015 had the legal and equitable right to an ingress/egress easement over the Defendants' real property, not outlining any legal theory and/or strategy for the case as this Court erroneously implied he was doing. Additionally, the documentary and/or testimonial evidence, including expert testimony from Mr. Scheffing and Mr. William "Bill" Chivers ("Mr. Chivers"),⁴ that the unimproved dirt road over the Defendants' real property was the only reasonable access to and from BCE 2015's property to a public roadway (Old Cherry Hill Road). Mr. Scheffing further opined that the existing unimproved dirt road over the Defendants' real property was the only reasonable ingress/egress to and from BCE 2015's property to Old Cherry Hill Road, which is why the unimproved dirt road had been in continuous use since a time before the existence of motorized vehicles and, more than likely, well before that time necessarily involving the use of horse-drawn wagons and/or other animal-powered methods of cartage. Mr. Scheffing's expert evidence, to which the Defendants neither objected to nor disputed,⁵ clearly demonstrated that BCE 2015 was legally and equitably entitled to an ingress/egress easement by necessity over and across the existing unimproved dirt road on the Defendants' real property.

⁴ Mr. Chivers, of Chivers Construction Co., was qualified by this Court as an expert in the field of constructing roads in the forest and in rural areas.

⁵ See generally Greer v. Greenville County, 245 S.C. 442, 458, 141 S.E.2d 91, 99.

5. This Court erred by finding and/or concluding that the Defendants inherited their real property from their great-great grandfather - Nero Smalls - when the demonstrative and testimonial evidence showed that was an inaccurate conclusion since multiple parties owned the Defendants' real property after Nero Smalls' ownership and well before the Defendants acquired ownership. The demonstrative and/or testimonial evidence showed that two separate parties - an unrelated party (S. Behrmann) bought the real property from Nero Smalls,⁶ and when Mr. Behrmann died, his heirs sold that same real property to the Defendants' grandfather, who, in turn, deeded the real property to the Defendants' father who then deeded the real property to the Defendants.
6. This Court erred by describing, finding, and/or concluding that BCE 2015 alleged that the properties owned by Nero Smalls and the Jupiter Tate tracts were same tracts as owned by the Defendants and BCE 2015. The demonstrative and/or testimonial evidence from BCE 2015⁷ (i.e.; the dual chain of title exhibits) showed clearly that the Defendants' real property was the same real property formerly owned by Nero Smalls and that the BCE 2015 property was part of a larger tract transferred to Lottie Taucer from her sister, Minnie Shay Stell, in 1956. In addition, Minnie Shay Stell also transferred a five acre tract to Lottie Taucer and her husband in 1954, together with the right to use:

a reasonable and convenient right-of-way for access, ingress, egress and regress to have the right to select two (2) such right-of-way, if desired, in order to have access to their land from the west or south across lands of Grantor, and Grantor herein reserves the right to use any rights-of-way established by the Grantees across their lands, concurrently with the usage by Grantees for ingress, egress, and regress across the lands above described.

⁶ The demonstrative and/or testimonial evidence showed that Nero Smalls transferred 30 acres to Mr. Behrmann on 19 January 1911.

⁷ This Court, without objection from the Defendants, permitted BCE 2015 to admit into evidence dual exhibits which showed two chains of title relative to BCE 2015's real property and the Defendants' real property.

7. This Court erred by describing, finding, and/or concluding that the property tract, which was subdivided by Paul Durant Meree ("Mr. Meree"), as having 300 acres when the demonstrative and/or testimonial evidence showed that the real property tract actually contained 408 acres at that time.
8. This Court erred by describing, finding, and/or concluding that there was neither evidence nor testimony to prove that the unimproved dirt road running though the Defendants' real property existed during the unity of title when the demonstrative and/or testimonial evidence clearly showed to the contrary. It is uncontroverted that the 1828 Holmes plat showed a dirt road in the same location as to one existing at present, going onto the Defendants' real property and BCE 2015's real property, as well as Mr. Sheffling's unobjected to and unchallenged⁸ expert testimony which showed the unimproved dirt road running across the Defendants' real property had been in continuous and uninterrupted use since some time before the invention of motorized vehicles and, most likely, well before that point in time.
9. This Court erred by describing, finding, and/or concluding that, even if an unimproved dirt road had been in existence, there "[wa]s no evidence or testimony . . . to show who, if anyone, was using the unimproved dirt road for ingress and egress to the property now owned by [BCE 2015]." Notwithstanding this inaccurate conclusion, the demonstrative and/or testimonial evidence, as represented by Mr. Scheffing's unobjected to and unchallenged⁹ expert testimony and the LIDAR imagery exhibits, clearly showed that the unimproved road is, was, and had been used for a considerable period of time, which in any case certainly exceeded 20 years.

⁸ See generally Greer v. Greenville County, 245 S.C. 442, 458, 141 S.E.2d 91, 99.

⁹ *Id.*

10. This Court erred in misinterpreting, ignoring, disregarding, and/or overlooking the demonstrative and/or testimonial evidence involving the LIDAR imagery which clearly showed a consistent physical depressional nature¹⁰ of the unimproved dirt road which ran across (a) the Defendants' real property, (b) BCE 2015's real property, and (c) property located north of the BCE 2015 real property.
11. This Court erred by describing, finding, and/or concluding that there was "no evidence or testimony being presented to show specifically who, if anyone, was using the dirt road on the Defendants' property to access the property at the time that the property was owned by a common owner." Contrary to this Court's improper and unsupported conclusion, the demonstrative and/or testimonial evidence showed that in 1882 when Mr. Meree sold the land to Nero Smalls, Mr. Meree set forth in the legal description the statement that the real property to the north was the lands of Jupiter Tate. This specific reference could only reasonably and logically mean that either 1) Mr. Tate lived on that real property at the time, or 2) Mr. Tate was farming that real property at the time. Even if Mr. Tate was not the owner of the real property, Mr. Meree concluded it was important and material to create a written record in the legal documents that, at a minimum, Mr. Tate was using the real property, thereby demonstrating that the unimproved dirt road over the Defendants' real property had been used for the ingress and egress purposes for more than 140 years.
12. This Court erred by ignoring, misinterpreting, overlooking, and/or disregarding the unobjected to and unchallenged, unobjected to and unchallenged¹¹ and/or stipulated demonstrative and/or testimonial evidence consisting of both the LIDAR imagery and Messrs. Scheffing's and Chivers' respective expert witness testimony, that, based on the depressional nature of the unimproved dirt road running over, among other locations, the Defendants' real property, that the unimproved dirt road had been in existence since "at least prior to the invention of motorized vehicles, and probably [for] centuries." Moreover, since the

¹⁰ The depressional physical nature shows that the unimproved dirt road has been consistently used by traffic for a very long time as the unimproved dirt road's depressional nature is cause through constant use, especially by heavy and/or large motor vehicles, tractors, wagons, etc.

¹¹ See generally Greer v. Greenville County, 245 S.C. 442, 458, 141 S.E.2d 91, 99.

unchallenged Aerial imagery demonstrative evidence clearly showed motor vehicles driving on the unimproved dirt road over the Defendants' real property, such demonstrative and testimonial evidence cannot reasonably and/or logically be deemed as simply "circumstantial".¹²

13. This Court erred by ignoring, misinterpreting, overlooking, and/or disregarding the unobjected to and unchallenged, unobjected to and unchallenged¹³ and/or stipulated demonstrative and/or testimonial evidence from BCE 2015's two expert witnesses which showed, that based upon (a) the topography of the Defendants' real property, (b) the existence of significant wetlands thereon, and (c) the two creeks running down the two sides of the Defendants' real property that the existing unimproved dirt road situated on the Defendants' real property was the only reasonable and logical means of ingress and access to and from BCE 2015's real property.
14. This Court erred by describing, finding, and/or concluding that there "[wa]s no evidence or testimony in the record showing that any of the prior owners accessed the property now owned by [BCE 2015] by way of the unimproved dirt road running through Defendants' property", even though the demonstrative and/or testimonial evidence clearly showed that Lottie Taucer filed a deed claiming a right to use the unimproved dirt road. Moreover, Plat H-50 show and H-117¹⁴ showed the existence of the (a) unimproved dirt road, (b) a field, and (c) an area specifically designated and labeled on the plats as "old fields". This Court clearly ignored, overlooked, disregarded, and/or misinterpreted this evidence since there is no other ingress and egress road access to the real property, the annual harvests emanating from the fields necessarily had to have been transported over the unimproved dirt road running across the Defendants' real property. Additionally, the demonstrative and/or testimonial evidence showed that the field located in Plat H50 was clearly visible and unchanged in aerial imagery at year 1954, year 1963,

¹² "Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 337, 534 S.E.2d 672, 680 (2000) (*quoting State v. Needs*, 333 S.C. 134, 156 n.13, 508 S.E.2d 857, 868 n.13 (1998)). In any case, "[t]he law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence." *Id.*

¹³ See generally Greer v. Greenville County, 245 S.C. 442, 458, 141 S.E.2d 91, 99.

¹⁴ BCE 2015 Exhibits Nos 143 and 144, respectively.

and at least thru year 1975. Consequently, for not less than 25 years, the property was continually farmed and the unimproved dirt road was used under claim of right for ingress and egress into and out of the property. This evidence in and of itself was sufficient to have met the legal standard for a prescriptive easement.¹⁵

15. This Court erred by describing, finding, and/or concluding that BCE 2015 presented only circumstantial evidence demonstrating the prior vehicle use of the unimproved dirt road when, in actuality BCE 2015 clearly presented both direct and circumstantial evidence showing prior use of the unimproved dirt road, including specifically (a) the deed to Lottie Taucer from her sister claiming a right of easement over the Defendants' real property and (b) the testimony of BCE 2015's two expert witnesses who indicated there had been multiple uses of the unimproved dirt road over a 72-year time period, including agriculture and timber. In addition, the expert testimony showed that, based on the study of the sediment and the geological features of the unimproved dirt road, it been maintained and periodically redefined throughout the same 72-year period. Furthermore, the evidence showed that the Defendants presently lease out both their real property parcel over which the unimproved dirt road runs, as well as another property parcel they own (located north of the property owned by BCE 2015) for hunting purposes and the hunters use the unimproved dirt road for ingress and egress into the hunting grounds, notwithstanding the Defendants' less than credible testimony that the hunters do not use the unimproved dirt road for ingress and egress, but traverse miles out of their way to cross a footbridge over a creek to access the hunting areas.
16. This Court erred by ignoring, misinterpreting, overlooking, and/or disregarding the demonstrative and/or testimonial evidence, namely the aerial imagery, the expert witness testimony, and the LIDAR imagery, which directly contradicted the Defendants' self-serving, jaundiced, and biased testimony.

¹⁵ See generally Pittman v. Lowther, 355 S.C. 536, 540, 586 S.E.2d 149, 151 (Ct.App. 2004) (quoting Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420, 423 (Ct.App. 1997) (citing Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993))).

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17. This Court erred by unreasonably and unsoundly crediting the Defendants' testimony that the only reason they had refused to recognize that BCE 2015 was entitled to an ingress/egress easement over the Defendants' real property to BCE 2015's real property was that the Defendants did not want the BCE 2015 real property developed. Unquestionably, this Court must reevaluate, reexamine, reassess, and reconsider the Defendants' testimony for its self-serving and self-interested context, as well the biased and unreliable nature of the testimony.
18. This Court erred by ignoring, misinterpreting, overlooking, and/or disregarding the proposition that Mr. Meree, who this Court concluded was the common grantor, was an attorney. In addition, Mr. Meree had a surveyor and engineer prepare a plat of the property which Mr. Meree specifically referenced in all of the subsequent deeds involving the relevant properties. This Court unreasonably and illogically concluded that even though Mr. Meree, who undisputedly later sold the properties over a succeeding 23 year time period, specifically intended that the real property tract now owned by BCE 2015 should not have any ingress/egress access, much less reasonable ingress and egress – a clearly illogical, unreasonable, and unsound proposition. The demonstrative and/or testimonial evidence demonstrated that Mr. Meree's initial conveyance to Nero Smalls would have rendered several of Mr. Meree's other parcels with no ingress/egress access, but for use of the unimproved dirt road.
19. This Court erred by ignoring the reality that the Defendants' testimony was contradictory, inconsistent, and appeared to be conveniently rehearsed, which was entirely and completely discredited by BCE 2015's objective evidence set forth in the aerial imagery.
20. This Court erred by ignoring the Defendants' testimony that the owners of the Taucer property had never lived in the area, even though the demonstrative and/or testimonial evidence clearly showed that Lottie Taucer, the daughter of Mr. J. W. Thornley, who purchased the BCE 2015 property from Jupiter Tate and the applicable chain of title showed that the BCE 2015 property was held in the same family for some 110 years. Additionally, given that Lottie Taucer grew up merely a mile or so down the road from the Defendants, this Court should not have given any credence or weight to the Defendants' less than credible testimony indicating, when they were younger, the Defendants did not know that, what is now the BCE 2015 property, was owned by a family who lived

just down the road from the Defendants. Mr. Thornley, a prominent and well-known citizen in the area, owned a local saw mill and his heirs still live not too far up the road from the location of the real property.

21. This Court erred by ignoring the Defendants' rehearsed and biased testimony that they declined to allow BCE 2015 access to BCE 2015's property because they (the Defendants) did not want the BCE 2015 property developed and, therefore, it is clear that the Defendants had every reason and motive to "tailor" their testimony in ways to minimize its accuracy and truthfulness.
22. This Court erred by ignoring the Defendants' rehearsed and biased testimony indicating that they ostensibly had "lived on their property for their whole lives" when it was easily determined that they both had lived various other places in South Carolina, as well as in other states for significant portions of their respective lives.

In conclusion, the Plaintiff, BCE 2015, LLC, respectfully requests, at a minimum, this Master-In-Equity Court to reverse its prior order, dated 31 October 2022, denying BCE 2015's request for an ingress/egress granting the Defendants. Moreover, BCE 2015, LLC respectfully requests this Master-In-Equity Court to grant it judgment on all of the claims BCE 2015 asserted in its Complaint.

Respectfully submitted:

CISA & DODDS, LLP

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BCE 2015, LLC*

***Signature Block For Additional Legal Counsel
May Be Found On The Following Page***

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Attorneys for the Plaintiff,
BCE 2015, LLC

Charleston, South Carolina
8 November 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-08-344

BCE 2015 LLC,)

Plaintiff,)

vs.)

ESTATE OF LOTTIE TAUCER, by and)
through her Personal Representative,)
Amelie Batson, and AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM.)
TAUCER, KENT A. TAUCER, STANLEY A.)
TAUCER, TERRY TAUCER SAMSON,)
JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI)
NICOLE TAUCER AND DEIDRE AMELIE)
TAUCER, sole heirs of Lottie Taucer,)
deceased, and if any of the said heirs be)
deceased, then JOHN DOE, adults, and)
RICHARD ROE, infants, insane persons,)
incompetents, and persons in the Military of)
The United States of America, being fictitious)
names designating as a class any unknown)
person or persons who may be an heir,)
distributee, devisee, legatee, widower, widow,)
assign, administrator, executor, creditor,)
successor, personal representative, issue or)
alienee of AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER,)
TERRY TAUCER SAMSON, JANIS)
TAUCER SMITH, SHERYL L. TAUCER,)
PATSY J. TAUCER, LORI NICOLE TAUCER)
AND DEIDRE AMELIE TAUCER, if any of)
them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons or legal)
entities, known and unknown, claiming any)
right, title, interest or estate in or lien upon the)
parcel of real estate described in the Lis)
Pendens and Complaint herein filed, YVONNE)
C. KNIGHT AND ELEANOR C. BROWN,)

Defendants.)

RECORD OF HEARING

Pursuant to the Consent Order of Reference filed in this matter on February 3, 2020, a hearing was held before the Honorable Dale E. Van Slambrook, Master in Equity for Berkeley County, on December 15, 2020, as to Plaintiff's First Cause of Action to Quiet Title and Confirm Tax Deed, attended by John J. Dodds, III, Esquire, of Cisa & Dodds, LLP, attorneys for the Plaintiff, Jason Maxwell, Managing Member of the Plaintiff, Lourenza Greene, Delinquent Tax Collector for Berkeley County, Walter Kaufmann, Esquire, Guardian ad Litem, and certain Defendants appearing via Webex meeting.

BY THE MASTER-IN-EQUITY: John J. Dodds, III, Esquire, one of the attorneys for the Plaintiff, calls attention to the purchase of the approximate twenty-two (22) acre tract of land near Old Cherry Hill Road, 1st St. Johns Parish, Berkeley County, South Carolina, T.M.S. #123-00-02-038 (the "Property"), by the Plaintiff at the Berkeley County tax sale conducted November 16, 2015 (the "Tax Sale").

Mr. Dodds calls attention to the filing of a Civil Action Cover Sheet, Certificate of Exemption, Summons, Lis Pendens, Notice and Complaint (collectively the "Pleadings") in the Office of the Clerk of Court of Berkeley County on February 21, 2018, and the assignment of case number 2018-CP-08-0344 to this action to quiet tax title.

The Pleadings were served upon the Defendants, Estate of Lottie Taucer, by and through her Personal Representative, Amelie Batson, and Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Taucer and Deidre Amelie Taucer, sole heirs of Lottie Taucer, deceased, and if any of the heirs be deceased, then John Doe, adults, and Richard Roe, infants, insane persons, incompetents and persons in the Military Service of the United States of America, being fictitious names designating as a class any unknown person or persons who may be an heir distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of Amelie Batson, Charles L. Taucer, III, Gary Wm. Taucer, Kent A. Taucer, Stanley A. Taucer, Terry Taucer Samson, Janis Taucer Smith, Sheryl L. Taucer, Patsy J. Taucer, Lori Nicole Turner and

Deidre Amelie Taucer, if any of them be deceased, Lottie Taucer, deceased, and any and all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed via publication of the Summons, Lis Pendens, Notice and Petition for Appointment of Guardian ad Litem once per week for three (3) consecutive weeks in *The Berkeley Independent* in accordance with the Order of Publication dated December 4, 2019, as evidenced by the Affidavit of Publication filed herein on December 30, 2019.

A Rule 55(a) Entry of Default as to all the Defendants was entered on January 28, 2020. A Consent Order of Reference was also filed on February 3, 2020, which referred this action to quiet tax title to the Honorable Dale E. Van Slambrook, Master in Equity for Berkeley County, for the purposes of taking the testimony arising under the Pleadings, making findings of fact and conclusions of law, with authority to dispose of any and all issues, and entering a final judgment in this case with any appeal directly to the South Carolina Court of Appeals.

The Defendants are not individuals entitled to protection under the Service Members Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

The Defendants were duly served with a copy of the Notice of the Reference Hearing (As To Quiet Title Action Only) in this matter at the respective addresses provided to Plaintiff's counsel and the Notice of Reference Hearing (As To Quiet Title Action Only) and Certificate of Mailing were filed on November 4, 2020.

WHEREIN, JOHN J. DODDS, III, ESQUIRE DOES HEREIN REPORT AS FOLLOWS:

My firm, Cisa & Dodds, LLP, represents the Plaintiff in this action to quiet tax title, and I report to the best of my knowledge, information, and belief as follows:

From the Pleadings, and from the examination of the records in the Office of the Register of Deeds for Berkeley County (the "ROD"), I find that the Plaintiff purchased the Property at the Tax Sale for \$50,000.00, and obtained tax title to the Property through the Tax Deed recorded on April 10, 2017,

in the ROD in Deed Book 2435, Page 335. I offer a copy of the Tax Deed into evidence.

Tax Deed identified, offered, and received in evidence as Plaintiff's Exhibit 1.

I also call to the Court's attention the Deed, dated June 15, 1955, and recorded in the ROD in Book A-103, Page 108 whereby Lottie Taucer obtained fee simple title to the Property. Plaintiff contends that the Tax Sale of the Property extinguished the ownership interest of Lottie Taucer and all the Defendants in the Property.

Lottie Taucer died intestate on or about 1997 while residing in Orleans Parish, Louisiana. Amelie Batson was appointed Personal Representative of the Estate of Lottie Taucer, Case No. 97ES08-186, on April 16, 1997, however the Case was stricken from the active records of Berkeley County Probate Court on March 5, 1999 due to lack of compliance. The Property was never transferred out of the Estate of Lottie Taucer.

Plaintiff offers testimony of the Jason Maxwell, Managing Member of the Plaintiff, BCE 2015 LLC.

WHEREIN JASON MAXWELL, Managing Member of the Plaintiff, BCE 2015 LLC DOES HEREBY REPORT AS FOLLOWS:

I am the Managing Member of BCE 2015 LLC. BCE 2015 LLC purchased the Property at the Tax Sale. Pursuant to the South Carolina Freedom of Information Act, my attorney secured a copy of the Berkeley County Delinquent Tax Collector's ("Tax Collector") file regarding the Tax Sale of the Property, and I have personal knowledge of and experience with the process for selling real property to satisfy delinquent taxes. The Tax Collector is responsible for seizing and selling real property in satisfaction of delinquent taxes and for issuing all delinquent notices in connection with the tax sale of a particular piece of real property.

The records contained in the Tax Collector's Office regarding the Tax Sale of the Property are made at or near the time the originals are sent to the delinquent taxpayer and other parties entitled to notice of the documents. The records are made by a person with knowledge of the correspondence, are

kept in the course of the regular business of the Tax Collector's Office, and it is the usual practice of the Tax Collector's Office to make and keep these records. Additionally, these records reflect the activity of the Tax Collector's Office in regards to the Tax Sale of the Property and reflect the Tax Collector's duties in conducting tax sales.

The first notice sent by the Tax Collector in conducting the Tax Sale of the Property was the notice of delinquent taxes described in S.C. Code Ann. § 12-51-40(a). The Tax Collector sent this notice to Heirs of Lottie Taucer c/o Charles L. Taucer, on April 10, 2015, via regular mail at 60185 Nina Drive, Lacombe, LA 70445 ("Owner's Address"), which is the address listed for Heirs of Lottie Taucer in the Berkeley County Treasurer's Office. This notice specified that if the taxes, penalties, assessments, and costs were not paid, the Property would be advertised and sold to satisfy the delinquency. Plaintiff offers this Notice into evidence.

Notice identified, offered and received in evidence as Plaintiff's Exhibit 2.

The next notice the Tax Collector's Office sent in conducting the Tax Sale of the Property was the notice of levy described in S.C. Code Ann. § 12-51-40(b). The Tax Collector's Office sent this notice to the Heirs of Lottie Taucer c/o Charles L. Taucer, on May 22, 2015 via certified, return receipt requested mail at the Owner's Address. It is the usual practice of the Tax Collector's Office to keep a copy of this tax sale notice. The records of the Tax Collector's Office reflect that this tax sale notice was returned after attempts to deliver the Notice were made on May 26, June 6 and June 16, 2015. Plaintiff offers this Notice into evidence.

At this time, the notice of levy and returned receipt are identified, offered, and received in evidence collectively as Plaintiff's Exhibit 3.

Because Heirs of Lottie Taucer did not receive the notice of levy, the Tax Collector's Office obtained exclusive possession of the Property in accordance with S.C. Code Ann. § 12-51-40(c) by posting notice of the approaching delinquent tax sale at a conspicuous place on the Property on June 23, 2015. Plaintiff offers posting of the approaching tax sale into evidence as Plaintiff's Exhibit 4.

Posting identified, offered and received in evidence as Plaintiff's Exhibit 4.

Thereafter, the Tax Collector's Office advertised the Property for sale at public auction by publication once per week for three (3) consecutive weeks prior to the Tax Sale in a newspaper of general circulation within Berkeley County, namely, October 29, 2015, November 5, 2015 and November 12, 2015.

At the Tax Sale, Plaintiff purchased the Property with a bid of \$50,000.00. After the Tax Sale, the Tax Collector's Office provided Heirs of Lottie Taucer c/o Charles L. Taucer at Owner's Address with notice of the approaching end of redemption period described in S.C. Code Ann. § 12-51-120 (the "Redemption Notice"). The Redemption Notice is dated October 21, 2016 and was not received by Heirs of Lottie Taucer, rather this Notice was returned "Attempted-Not Known".

At this time, the Redemption Notice to Heirs of Lottie Taucer and the returned receipt are identified, offered, and received in evidence collectively as Plaintiff's Exhibit 5.

As noted above, the Tax Deed was issued to Plaintiff and recorded in the Berkeley County Register of Deeds on April 10, 2017, in Book 2435, Page 339.

Based upon my experience in purchasing properties at tax sales and my familiarity with the statutory process to conduct tax sales, I believe the Tax Sale of the Property strictly complied with all statutory requirements pertaining to tax sales.

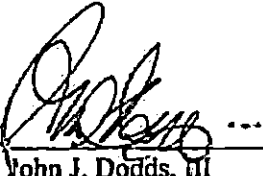
IN CONCLUSION, Plaintiff requests as follows:

1. That the Court afford the presumption of validity to the Tax Deed pursuant to S.C. Code Ann. § 12-51-160;
2. That the Court confirm marketable, fee-simple title to the Property in the Plaintiff, free and clear of all liens and interests the Defendants may have had;
3. That the Court find that Plaintiff is entitled to immediate possession of the Property, order any other person in possession of the Property, if any, to quit and vacate the premises immediately, and, if necessary, order the Berkeley County Sheriff to evict and remove any other person in possession

of the Property should he, she or they refuse to quit and vacate the premises within a reasonable time as determined by the Court; and

4. That the Court award Plaintiff all such other and further relief as Plaintiff requested in its Complaint.

HEARING ADJOURNED.



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SC Bar No.: 1707
john@cisadodds.com
ATTORNEYS FOR PLAINTIFF

BCE 2015 LLC



By: Jason Maxwell
Its: Managing Member

SWORN to and subscribed before me
this 15th day of December, 2020.



Notary Public South Carolina
My Commission Expires: 2-11-26

SWORN to and subscribed before me
this 15th day of December, 2020.



Notary Public for South Carolina
My Commission Expires: 6/20/22

I, Lourenza Greene, Delinquent Tax Collector for Berkeley County, hereby affirm that I have reviewed the within Record of Hearing and that the information contained herein regarding the actions of the Delinquent Tax Collector's Office for Berkeley County are true and correct.

Lourenza Greene
Delinquent Tax Collector
Berkeley County, SC

SWORN to and subscribed before me
this ____ day of _____, 2020.

Notary Public for South Carolina
My Commission Expires: _____



of the Property should he, she or they refuse to quit and vacate the premises within a reasonable time as determined by the Court; and

4. That the Court award Plaintiff all such other and further relief as Plaintiff requested in its Complaint.

HEARING ADJOURNED.

BCE 2015 LLC

John J. Dodds, III
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F: (843) 881-5433
SC Bar No.: 1707
john@cisadodds.com
ATTORNEYS FOR PLAINTIFF

By: Jason Maxwell
Its: Managing Member

SWORN to and subscribed before me
this _____ day of December, 2020.

SWORN to and subscribed before me
this _____ day of December, 2020.

Notary Public South Carolina
My Commission Expires: _____

Notary Public for South Carolina
My Commission Expires: _____

I, Lourenza Greene, Delinquent Tax Collector for Berkeley County, hereby affirm that I have reviewed the within Record of Hearing and that the information contained herein regarding the actions of the Delinquent Tax Collector's Office for Berkeley County are true and correct.

Lourenza Greene
Delinquent Tax Collector
Berkeley County, SC

SWORN to and subscribed before me
this 24th day of November, 2020.

Roger L. Hawkins
Notary Public for South Carolina
My Commission Expires: 08/20/2025

089

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2018-CP-08-00344

BCE 2015, LLC,

Plaintiff,

-vs-

ESTATE OF LOTTIE TAUCER, by and through)
her Personal Representative, Amelie)
Batson, and AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER, KENT A.)
TAUCER, STANLEY A. TAUCER, TERRY TAUCER)
SAMSON, JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI NICOLE)
TAUCER AND DEIDRE AMELIE TAUCER, sole)
heirs of Lottie Taucer, deceased, and)
if any of the said heirs be deceased,)
then JOHN DOE, adults, and RICHARD ROE,)
infants, insane persons, incompetents,)
and persons in the Military of The)
United States of America, being)
fictitious names designating as a class)
any unknown person or persons who may)
be an heir, distributee, devisee,)
legatee, widower, widow, assign,)
administrator, executor, creditor,)
successor, personal representative,)
issue or alienee, of AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER, TERRY)
TAUCER SAMSON, JANIS TAUCER SMITH, SHERYL)
L. TAUCER, PATSY J. TAUCER, LORI NICOLE)
TAUCER AND DEIDRE AMELIE TAUCER, if any)
of them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons)
or legal entities, known and unknown,)
claiming any right, title, interest or)
estate in or lien upon the parcel of)
real estate described in the Lis Pendens)
and Complaint herein filed, YVONNE C.)
KNIGHT AND ELEANOR C. BROWN,)

Defendants.

HEARING BEFORE THE
HONORABLE DALE EDWARD
VAN SLAMBROOK

SEPTEMBER 15, 2022

10:25 a.m.

McCarn Court Reporting, Inc.
P.O. Box 778
Folly Beach, SC 29439

090

A-P-P-E-A-R-A-N-C-E-S

For the Petitioner:

Cisa & Dodds, LLP
By: John Joseph Dodds, III, Esq.
858 W. Lowcountry Boulevard, Suite 101
Mount Pleasant, SC 29464

For the Defendants Yvonne C. Knight and Eleanor C. Brown:

The Stanley Law Group
By: H. Ronald Stanley, Esq.
1418 Park Street
Columbia, SC 29201

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Plaintiff's

Nos. 1-139 Slideshow presentation
(Exhibit No. 111 and Exhibit No. 112 not admitted.)

No. 140 Deed from Paul D. Marye to George Avinger [ph] for
97 acres

No. 141 Section 56-28 of the Code of Ordinances for Berkeley
County (Not admitted.)

No. 142 Deed from Nero Smalls
(specifically noted, previously admitted)

No. 143 Deed to Eddie Cooper
(specifically noted, previously admitted)

Defendants'

No. 1 GIS online mapping

(**Exhibits retained by the Court.)

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1 THE COURT: We're here on 2018-CP-08-00344
2 BCE 2015, LLC versus Lottie Taucer and others. And
3 this is the --

4 Excuse me, are y'all all right?

5 MR. DODDS: Yes, Your Honor. We're just
6 having some issues with technology. I'm just making
7 sure I understand where we are and how we're going to
8 do this, but, yes, we are.

9 THE COURT: All right. Good deal. And this
10 has been bifurcated. This is dealing solely with the
11 issue of the request for an easement; is that correct?

12 MR. DODDS: That's correct, Your Honor. The
13 previous clear title action has met with final order
14 and has not been appealed. So it's the law of the
15 case.

16 THE COURT: Okay.

17 MR. DODDS: You don't have any objections, do
18 you, Counsel.

19 MR. STANLEY: I don't have any objection to
20 you submitting them to the Judge. I may have an
21 objection as to whether or not they come into
22 evidence.

23 MR. DODDS: Okay. All right. I'll give you
24 these.

25 THE COURT: And what are these?

093

1 MR. DODDS: These are Exhibits 1 through 139,
2 Your Honor.

3 (Plaintiff's Exhibit Nos. 1 through 139
4 introduced.)

5 THE COURT: Okay.

6 MR. DODDS: At this point for identification.

7 THE COURT: Through 139?

8 MR. DODDS: That is correct.

9 THE COURT: And they are not being introduced
10 at this point?

11 MR. DODDS: At this point.

12 THE COURT: Just for identification; is that
13 correct?

14 MR. DODDS: Correct.

15 THE COURT: Okay. All right. I'll be happy
16 to hear from you, Mr. Dodds.

17 MR. DODDS: Thank you, Your Honor. We're
18 ready to get started. May I call the first witness?

19 THE COURT: Certainly.

20 MR. DODDS: Okay. I call Jason Maxwell to
21 the stand, Your Honor.

22 THE COURT: Come on up.

23 JASON MAXWELL,
24 having been duly sworn, testified as follows:

25 THE COURT: Thank you, sir. Have a seat.

094

1 Give your full name, spell your last name and your
2 address for the court reporter.

3 THE WITNESS: My name is Jason David Maxwell.
4 I live at 383 Ashley Avenue, Charleston, South
5 Carolina, 29403.

6 DIRECT EXAMINATION

7 BY MR. DODDS:

8 Q And what do you do for a living, sir?

9 A I am the managing partner of a couple of
10 different investment, real estate investment
11 companies. I'm also a licensed real estate broker.

12 Q All right.

13 A And I'm broker-in-charge of a company.

14 Q All right. What is your educational
15 background?

16 A I have an undergraduate in business from
17 Texas Tech, I also an MBA. And I was a transcendental
18 aviator by the United States Navy. I also have a -- I
19 was also trained as a electronic warfare officer by
20 the Army.

21 Q Why don't you just speak up a little bit.

22 A Okay.

23 Q Yeah. All right. And what is your
24 relationship to one of the properties which is the
25 subject of this action, that being TMS Number

095

1 123-00-02-0338?

2 A The property is owned by BCE 2015. It was
3 purchased as part of a portfolio of a lot of other
4 stuff in a tax sale in 2015.

5 Q All right. And what's your relationship to
6 BCE 2015, LLC?

7 A I am the manager.

8 Q And do you also have an ownership interest in
9 the property having TMS Number 123-00-02-039?

10 A Yes.

11 Q All right.

12 A It's also owned by BCE, which I'm the owner
13 of, as well as the manager.

14 Q Okay. Tell the judge what your experience is
15 with respect to purchasing properties at tax sales.

16 A I would say in the Charleston/Berkeley/
17 Dorchester County/Beaufort County/Horry County, I'd
18 say that I've purchased over a thousand tax liens in
19 probably a 12-year period of time.

20 Q Okay.

21 A That I've actually bid on and won the bidding
22 on.

23 Q And what is your practice with respect to
24 those properties prior to submitting bids to purchase
25 at tax sales?

096

1 A Well, you know, tax sales are kind of a bulk
2 kind of thing. So you need to be able to do as much
3 research as possible in a short period of time in
4 order to look at 2 to 3,000 properties the last month
5 or so before a tax sale occurs.

6 So it's very research intensive. And it also
7 requires researching public records, using GIS, using
8 LiDAR, looking at wetlands, looking at environmental
9 hazards, because a lot of properties that go to tax
10 sale are worthless.

11 Q What is LiDAR?

12 A That's Laser range detection. Originally
13 developed by the military, and it's basically like
14 imagine a range finder that you use for, you know,
15 hunting or golfing or something like that. It shoots
16 out a laser and it measure how long it takes to come
17 back. It's commonly used in forestry, the military,
18 anywhere where you're interested in terrain and
19 elevation.

20 If you go on the Berkeley County GIS, you can
21 actually see a graphic depiction of the raw LiDAR data
22 in the 2-foot contour lines. If you scroll down to
23 the bottom of the layers on the GIS page, you can turn
24 on contour lines, and that's actually -- that's data
25 that's produced by LiDAR.

097

1 Q What information does that produce?

2 A Well, it tells you the topography, but it
3 also tells you or can tell you the types of soil, so
4 whether there's water there, whether there's hard
5 ground. Something really dense shows up much
6 differently, like a tank. I was a reconnaissance
7 pilot, that's what I did in the Navy. So I did a lot
8 of aerial imaging.

9 Q All right. Take a moment and explain to the
10 judge what your experience is both practical and
11 professional regarding researching of titles.

12 A Well, when I first started out or when I
13 first learned, I learned from my Uncle Ed, one of his
14 paralegals. He was an oil and gas attorney in Texas.
15 And I worked -- I worked a good deal for him from kind
16 of early high school age, part time on. He dealt a
17 lot with access issues, because in Texas, properties
18 were broken up originally in sections, which are kind
19 of 1-square mile by 1-square mile, 640 acres. And
20 then from there, they were broken up by northwest
21 corner, southeast corner into smaller parts.

22 And the oil and gas rights might have been
23 sold off for a whole area, but they may not have been
24 conveyed with access. They might span a number of
25 owners. A number of the properties might have heirs.

098

1 So there was a lot of kind of complicated research.
2 And I started kind of working and doing research for
3 him, just running to the courthouse and, you know,
4 pick up this page number. It was all hard, paper
5 records back then, microfilm. You know, that was more
6 than 30 years ago.

7 Q All right.

8 A Probably almost 35 years ago.

9 Q And when you retired -- I'm sorry, when you
10 concluded your service in the military, did you also
11 begin to search titles in anticipation of what your
12 business did?

13 A Well, other than flying an airplane, the only
14 other thing that I've really done is real estate.
15 I've been essentially doing it since I was a kid. And
16 when I got back out, the market had crashed. So I set
17 up an investment group and started buying distressed
18 properties.

19 Q When was that?

20 A 2008 when I got out of the military.

21 Q All right. And as part of that process, did
22 you have occasion to personally search titles, review
23 public records?

24 A Yeah.

25 Q To determine status of prospective

099

1 properties?

2 A Yeah, I mean, I was the managing partner. So
3 investment decisions were ultimately mine.

4 Q What would you do specifically?

5 A Well, it would depend. We did a lot of
6 different kinds of sales. We did IRS foreclosures.
7 We did a number of different tax sales. We did
8 foreclosure auctions.

9 In a foreclosure auction, what you're
10 primarily concerned about is are there any liens or
11 encumbrances that were not identified by the attorney
12 who filed the action. So if you're going to bid in a
13 foreclosure auction, you want to make sure you go
14 behind those things. You want to check for
15 environmental issues and wetlands issues, those are
16 kind of big ticket items, anything that's going to be
17 a major detraction from the long-term value of the
18 property.

19 Q All right. Now, have you had the opportunity
20 to review the public records of the property which you
21 acquired at the tax sale, that bearing 123-00-02-038?

22 A Yes, I've done an extensive amount of
23 research on the property.

24 Q And in anticipation of this hearing today,
25 did you put together a slide show?

100

1 A I did.

2 Q Okay. And are you able to pull the slideshow
3 up and to present that to us?

4 A I can, yeah. Your Honor, we originally
5 planned on having two monitors, but if you don't mind,
6 I can set my laptop up there where you can see it.
7 And click through it and you'll be able to see exactly
8 the same thing on the computer screen here.

9 THE COURT: That way I'll be able to see it,
10 yes.

11 MR. DODDS: You have the physical documents
12 as well, Your Honor.

13 THE COURT: Okay. Any objection, Mr.
14 Stanley?

15 MR. STANLEY: No objection.

16 THE COURT: Okay. That will be fine. Thank
17 you.

18 THE WITNESS: Okay. So to give you an idea
19 of the area we're talking about, this is a Berkeley
20 County GIS. This right here is the 038 property in
21 question, this is 039, and this is 001.

22 (Off the record briefly. Technical issues.)

23 THE WITNESS: Okay. So can you all see the
24 pointer here, the arrow on the screen?

25 MR. STANLEY: We can see the arrow, yes, sir.

101

1 THE WITNESS: Okay. So we have 001, we have
2 038 and 039. Those are the three properties that have
3 been mentioned so far.

4 BY MR. DODDS:

5 Q Who owns 001?

6 A The ladies do.

7 Q The Defendants in this case?

8 A Yes, sir.

9 Q Okay.

10 A So --

11 Q Go back a moment, I've got a question about
12 that slide. Are there roadways shown on Plaintiff's
13 Exhibit 1?

14 A Yes.

15 Q All right.

16 A There's a road that starts up here at Old
17 Cherry Hill Road, makes a 90-degree turn, continues
18 across my property.

19 Q You've got a -- okay.

20 A And continues on up here through the trees,
21 and then it actually meets up with Singleton Lane up
22 there.

23 Q All right. And would you identify by pointer
24 the dirt roadway that is the subject of this case this
25 morning?

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1 A Yes, it starts right here, and it goes
2 through, it makes a turn in the trees, comes out to
3 this point where the property line is. It actually
4 splits off and goes back to this property also,
5 continues on up, splits off right here, goes back to
6 this property, then it continues and winds through
7 here and meets up with an old road called Singleton
8 Lane up here at the top.

9 Q All right, sir.

10 A This is the same image but without a
11 topography. So the red lines are the 2-foot contour
12 lines based on the Berkeley County GIS information.
13 And if you notice here, the contour lines point in an
14 upward V, upslope along where that road that is, which
15 indicates a depression or a valley in the location of
16 where the road is. The blue area here is based on the
17 National Wetlands Inventory data, and the other blue
18 area is the FEMA flood plain.

19 So as I was researching this property, one of
20 the first things that I wanted to figure out was what
21 was the property around it. So I went back and I
22 pulled this plat, which is I-101. And this shows a
23 Section 1, a Section 2, it shows a portion of the
24 property which I purchased, it shows it to be
25 landlocked from the road, and it shows also the

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1 property behind mine, which is 036 on the initial
2 drawing, which is also owned by the Defendants of the
3 case.

4 So I started looking at the tax map number,
5 and based on -- or the tax map, and based on my
6 experience, when you have a really long tax lines
7 running through a lot of different properties, those
8 tend to be old boundaries. They tend to be indicative
9 of really big parcels that were cut up.

10 So I started out looking at these parcels
11 through this area to determine where that larger
12 parcel came from and what it looked like. In order to
13 do that, I went to the archives. And most of South
14 Carolina at one time or another was broken into
15 baronies. So I started looking at what barony did
16 this come out of. And since there was a historic
17 marker right at the street that says Wadboo Barony, I
18 figured that was a good place to start.

19 And sure enough, Wadboo Barony was given to
20 James Colleton. It was about 12,000 acres at the time
21 that it was given to him. He received four baronies.
22 This was one of them, but -- that was in 1683. But he
23 wasn't able to hang onto it, because during the
24 revolutionary war, he fled to Barbados and his
25 property was broken into 28 lots and sold off at

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1 auction.

2 But it gave me a starting point and some
3 names to start looking at. So I took this and I took
4 the map that was attached to it in the book and the
5 Broad Ax Creek is obvious going through here, which is
6 one of the identifying features of our property.
7 Biggin Church is obviously still located in the same
8 spot, and this highway is still really close to the
9 same location it was.

10 So I went through and I looked at -- this is
11 also one of the source documents that was referenced
12 in the book. I took the plat and zeroed it out
13 basically, which is I took out all the background and
14 I just turned it into a transparent black and white.
15 And I overlaid it on a GIS map. The white area in the
16 center is the boundary of my property. The black line
17 there, the dotted line indicates lot number 20 of the
18 Wadboo Barony, and the little squiggly line across
19 there indicates a stream, and this is the Broad Ax
20 that runs through the property.

21 BY MR. DODDS:

22 Q Are you using the pointer to show that?

23 A Yeah, you have the Broad Ax here. This
24 stream here that runs right along the section line,
25 and then you have these dotted lines that encompass

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1 section 20, and then section 19 over here.

2 So I knew what name I was looking for based
3 on the historic record. So I went to the historic
4 archives room in Charleston County, because prior to
5 1881, the records for this area were stored in
6 Charleston County, it was part of Charleston County.
7 And so I found that as a starting place to move
8 forward. And sure enough, according to the records,
9 Henry Holmes had sold William Marye both of those two
10 sections. And I went to that book, and in that book
11 and page, I found what confirms what the book says
12 that Henry Holmes conveyed William Marye lot 20 and
13 lot 19, together known as the Broad Axe Plantation.

14 It's important because all of the deeds that
15 were conveyed out of this one particular area
16 referenced that historic name. So I started looking
17 for plats, old plats around that area would show more
18 clearly what the property was, and I searched the
19 property south of there, it was sold to Charles de
20 Tollenare, and it's these three sections right here.
21 And I took that -- if you'll excuse me one second,
22 Your Honor, I have a blown up version of this I can
23 put on the pedestal, it's a little easier to see.

24 THE COURT: All right. Any problem with
25 that, gentlemen?

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1 MR. STANLEY: No problem, Your Honor.

2 THE COURT: And what number does that
3 correlate to on the documents that you shared up here?

4 THE WITNESS: Which exhibit is that?

5 MR. DODDS: 20.

6 THE COURT: 20?

7 MR. DODDS: I think it's 20.

8 THE WITNESS: So this is a plat of the
9 property to the south.

10 MR. DODDS: See if you can back up just a
11 little.

12 THE WITNESS: And it shows the old roads
13 going through this property.

14 MR. DODDS: Can you see that, Judge?

15 THE COURT: Turn it a little bit this way for
16 me.

17 THE WITNESS: And it also shows that Henry
18 Holmes owned 19 and 20 at that point in time. This
19 plat is from circa 1820. It's also the first time
20 that a road appears going north across this section
21 line in approximately the location where our road
22 was -- or is now, about 200 years ago.

23 BY MR. DODDS:

24 Q Point out specifically what you are referring
25 to.

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1 A This point right here.

2 Q Okay.

3 A This is the Broad Ax, this is the road, and
4 this is the outer boundary of the section line. And
5 about in the middle of them where the road is today,
6 there's a road.

7 All right. If we continue forward, William
8 Marye died owning this property, and he gave a life
9 estate to his son, and then the property to his
10 grandchildren. This is a copy of his will from the
11 archives. And in researching the area, I also wanted
12 to research what the outer boundaries of this were.
13 So I researched the Tiverton Lawn Plantation, because
14 it was referenced as being west of this boundary and
15 this is a plat of the Tiverton Lawn Plantation. This
16 is a larger view, and I have a larger view of this.

17 THE COURT: What number is that?

18 THE WITNESS: What number is that? It's the
19 next slide after that. Exhibit No. 24.

20 So this is a plat of Tiverton Lawn, which is
21 scaled to represent 1 inch equals 600 feet. And it
22 references here the lands of Marye being in this
23 section. It shows a road entering from east to west.
24 That road is actually in the same location as
25 Singleton Lane right now, which still exists. So it

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1 gives us a really good reference point.

2 And this road right here that crosses this
3 historic point is shown on the earlier plat here,
4 right there next to the corner as connecting with
5 this. So now we have a really good idea of exactly
6 where the outer boundaries of this property we're
7 discussing is.

8 This is Slide 25. So to further confirm what
9 I thought this area was, I platted this out using the
10 meets and bounds description on there, and based on
11 distance and the number of chains, a chain is 66 feet,
12 I mapped this on top of -- this is a CRS power tool.
13 And what I came up with is it actually is a really
14 good plat, like the boundary, the old tax map lines
15 match up really close with where it is. And right
16 about there, that white is where you see Singleton
17 Lane coming across where it still exists today,
18 although at this time, it was called Marye's Avenue.
19 If you zero the plat for a gray scale and make a
20 transparency out of it and just overlay the raw data,
21 you can see it matches up with the upper corner here
22 and down this boundary line. And Marye's Lane comes
23 in right in across where Singleton Lane is.

24 All right. So this is Slide 26, I believe.

25 All right. So this is a spreadsheet I made. Paul D.

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1 Marye was the grandson of William Marye. And while
2 there was no deed transferring to him, he was -- it
3 was named that his descendents were to get and split
4 up the property. What the records indicate is that he
5 got one third of the Broad Ax, which at that point was
6 three sections, not two, and he sold off 408 acres.

7 I pulled a copy of all of those deeds, as
8 well as every other conveyance that he did, and these
9 are the only deeds that reference the Broad Axe
10 Plantation as the property that it came out of. I
11 made an overlay of approximately where these deeds
12 lined up based on their legal descriptions, and what I
13 got was that during his lifetime, he conveyed these
14 twelve properties that were within this section that
15 we're talking about. He had a lot of other properties
16 other places, but this is what I found that he
17 conveyed.

18 And so I put those in order by date, one
19 through twelve. And what I found is he conveyed 001
20 first, and then he conveyed this one over here, number
21 two, number three and number four.

22 BY MR. DODDS:

23 Q Let me just ask a quick question briefly for
24 a second. 0001, that is the property that encompasses
25 the dirt road that's the subject of our hearing today?

110

1 A Yes, uh-huh. So between 1882 and 1905, he
2 conveyed these twelve properties in this order, with
3 this being one, two, three, four, five, six, seven,
4 eleven, and twelve.

5 And I know from a plat that he signed that
6 Paul D. Marye was an attorney, and I have a copy of
7 that if you'd like, need to enter that, Your Honor.

8 THE COURT: That's up to y'all.

9 BY MR. DODDS:

10 Q It's up to us. If you would, I need you to
11 identify the order in which they were sold, and I need
12 you to specifically identify the Defendants' property,
13 Ms. Knight and Ms. Brown's property.

14 A Okay. The Defendants' property is number
15 one, and my property was conveyed number seven.

16 Q The Defendants have some other property as
17 well in that area, correct?

18 A That's correct. They also own a portion of
19 number eleven and number twelve, as well as number two
20 over here. So the interesting thing about this order
21 is that when P.D. Marye broke up his other properties,
22 he included a plat. And when we go to look at the
23 chain of title, he references a plat for this area,
24 which I was never able to find, but it was referenced
25 as being surveyed -- this is the next one -- in 1881

111

1 by E.J. Dennis. I have another plat that E.J. Dennis
2 did about four months before that.

3 Q Has that been marked?

4 A No, it hasn't.

5 Q Do you have an extra copy?

6 A Yeah, I do. That was another property it
7 came out of the Umbria Plantation.

8 (Discussion held off the record.)

9 (Plaintiff's Exhibit No. 140 marked.)

10 THE WITNESS: Any objection.

11 MR. DODDS: Well, it's been marked for
12 identification as Plaintiff's Exhibit 140.

13 THE COURT: 140?

14 BY MR. DODDS:

15 Q Would you first of all explain what that is.

16 A It's a deed from Paul D. Marye to George
17 Avinger [ph], and it is for 97 acres of the Umbria
18 Plantation bordering on Sportsman's Retreat.

19 Q Which is property not the subject of this
20 litigation today?

21 A Right.

22 Q What's the significance of that exhibit?

23 A Well, it has two significances. One, it was
24 surveyed by exactly the same person that surveyed this
25 that we couldn't find the plat of, and it was only

112

1 surveyed six months later. He also signed it as
2 esquire, which confirms that he was an attorney at law
3 here in Moncks Corner. And the other thing is when he
4 broke up this property which was the Umbria, he
5 labeled roads and access on it.

6 Q Okay.

7 A He didn't just break up the property and sell
8 off pieces, he had a surveyor who actually turned out
9 to be a county engineer and he gave the properties
10 access based on the deed. But he didn't mention
11 anything in the deed about access, he had a road on
12 the plat.

13 Q And is the deed that's described in Exhibit
14 140 similar to the deed that was done by Mr. Marye
15 with respect to the division of the properties shown
16 on this exhibit currently on the screen?

17 A It's very similar, and it was six months
18 before.

19 Q Okay. All right. What was the significance
20 of Mr. Marye transferring out what is TMS number
21 123-00-02-001 first amongst the twelve properties
22 depicted on the screen?

23 A The significance is that if there were not a
24 road, he would have landlocked all the other
25 properties.

113

1 Q All right.

2 A Because this highway didn't exist here at
3 that point in time.

4 Q You're referring to Old Cherry Hill Road?

5 A No. I'm referring to Highway 17A.

6 Q I'm sorry.

7 A Didn't go through there.

8 Q Okay.

9 A The highway went through here at this point
10 down on Old Cherry Hill Road.

11 Q Right.

12 A And if you notice, this highway was here,
13 because these properties were cut off on that boundary
14 line. It's where the tax map cuts off. This highway
15 cuts through everything that was subdivided in that
16 period.

17 Q Okay.

18 A However, I believe that Singleton Lane tied
19 into an older road system, so there would have been
20 access from the west.

21 Q Access to what?

22 A Access probably to parcel number nine on the
23 slide.

24 Q Which TMS number is that?

25 A Give me one second. Well, I have the book

114

1 and page number here, but I don't have the TMS number
2 on this presentation. Do you have the parcel map?

3 Q Yes.

4 A Then -- well, do you want me to go back to
5 the first page or ...

6 Q Well, I just -- the question was whether or
7 not that was the Defendants' property or some other
8 property?

9 A It was some other property. It was the
10 property deeded to Singleton. I don't remember the
11 TMS number.

12 Q Okay. So north of the Defendants' property?

13 A Yeah.

14 Q Okay.

15 A Okay. So in looking at all of this, what I
16 determined was that all of this was part of one
17 parcel, and it was broken up. So then I went to
18 establish a clear chain of title from the time that
19 Paul D. Marye broke these properties up until now.

20 And in doing that, I simply pulled the deeds
21 both forward and backward to a midpoint to find all
22 the available records on the property. And Paul D.
23 Marye sold 001 to Nero Smalls and that's document
24 K-18-72. Nero Smalls then transferred the property to
25 S. Breman. S. Breman died, and his heir, Russell

115

1 Williams, then sold the property to Eddie Cooper who
2 was the Defendants' grandfather.

3 In that period of time, Henry Cooper deeded
4 to Eddie Cooper -- the same year, 1942 -- an addition
5 parcel of property which was south of the main parcel,
6 which became -- which was this triangular-shaped
7 parcel here, and that's Deed A-70. And it became part
8 of 001 when it was replated, based on this plat that
9 was -- originally, what was this Exhibit 4?

10 Q Is that I-101?

11 A Yeah.

12 Q 3, I believe.

13 A Exhibit 3? So you have a few parcels that
14 came in to make this larger thing. Parcel A-70 -- or
15 deed A-70, which came from here, has a separate chain
16 of title. And then this parcel, which was -- which
17 came from P.D. Marye through Nero Smalls and down
18 through that chain of title.

19 Q What was the relationship of Nero Smalls to
20 the Defendants?

21 A He was their great grandfather.

22 Q Okay.

23 A Okay. So I also researched my chain of title
24 and I found that Paul D. Marye transferred the
25 property for 038, along with the others three parcels

116

1 that it's been broken into subsequently to Jupiter
2 Tate.

3 Jupiter Tate died and his daughter, Hester
4 Bastion [ph] sold the property to J.W. Thornley. And
5 based on the census record, she is listed as his
6 daughter. There was no will, but the legal
7 description is exactly the same, and she references
8 that she got the property from P.D. Marye.

9 Then, J.W. Thornley dies, gives the property
10 to his son Andrew Thornley. Andrew Thornley turns
11 around and gives it to his sister five years later.
12 And then Minnie Shae, who was the sister of Lottie
13 Taucer, transfers it to Lottie Taucer in 1954, or part
14 of it, and then transfers part of it to her nephew,
15 and then gives the rest of it to her in 1958. And
16 until the point at which I had bought it at tax sale,
17 it did not change hands since 1958.

18 Q Okay.

19 A What's really interesting about her initial
20 deed that created 039 was it contained language
21 granting an easement either to the west or to the
22 south. Now, an easement to the south would line up
23 with where this existing road crosses and comes out.
24 An easement to the west is a little harder to figure
25 out, but the easement to the west that she was

117

1 probably talking about was Singleton Lane up here,
2 which comes out to the west and joins the highway.

3 So at the time, in 1954, she thought that
4 there was a road going all the way through here, based
5 on the deed when she broke up that property.

6 THE COURT: What exhibit is that deed?

7 THE WITNESS: John, do you have that, what
8 exhibit that those deeds are?

9 MR. DODDS: Just bear with me, Your Honor.

10 THE COURT: Sure.

11 THE WITNESS: I'm not sure we labeled our own
12 copy. Your Honor, if you hand me the packet, I can
13 show you which one it is up here.

14 THE COURT: Sure.

15 THE WITNESS: Thank you. That is in -- it's
16 in the 113 through 121 stack, and it's 116, Exhibit
17 116.

18 THE COURT: Thank you.

19 BY MR. DODDS:

20 Q It's Exhibit 116?

21 A Exhibit 116.

22 Q Okay. These aren't marked.

23 A Yeah, we didn't label our own stack. That
24 was my bad.

25 MR. DODDS: Let me do that.

11B

1 (Off the record briefly.)

2 BY MR. DODDS:

3 Q Can you read the language from Exhibit 116
4 that you're referring to.

5 A It specifies that the -- well, I need the --
6 I don't have a copy of the deed to read. Do you want
7 me to -- do you want to hand me a copy so I can read
8 it?

9 Q All right. Let me show you what is a copy of
10 Exhibit 116.

11 A Yes, sir.

12 Q And ask you, if you would, reference the
13 property being transferred by whom to who.

14 A So Minnie Shae Stell transferred to Lottie
15 Taucer and Charles Taucer 5 acres. And it says that
16 it abuts and abounds --

17 Q And is that 5 acres part of the property that
18 was owned by Paul Marye?

19 A Yes, and it became 039.

20 Q It became 039?

21 A Yes, and there's a clear chain of title to
22 that.

23 Q Okay. And 039 is where in relation to your
24 property 123-00-02-038?

25 A It's the sliver up to the north.

119

1 Q Okay. And where is the --

2 A So it's this property right here.

3 Q Where is the Defendants' property in relation
4 to 039 --

5 THE COURT: Hold on. One second, Mr. Dodds.

6 MR. DODDS: I'm sorry.

7 THE COURT: I can't see the cursor right now.

8 THE WITNESS: Oh, okay.

9 THE COURT: Which one are you pointing to?

10 THE WITNESS: So it's this sliver running
11 across right there. That's 039.

12 THE COURT: Okay. Thank you.

13 THE WITNESS: And this is the Defendants'
14 property, and this is the Defendants' property, and
15 that is also the Defendants' property.

16 THE COURT: All right.

17 BY MR. DODDS:

18 Q Would you read please the applicable language
19 with respect to the access.

20 A Sure. "Together with the right to grantee
21 herein, their heirs and assignees, to select the use
22 of a reasonable and convenient right-of-way for
23 access, ingress and egress, to have the right to
24 select two right-of-ways if desired in order to have
25 access to their lands from the west or the south of

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1 the grantor. And the grantor herein reserves the
2 right to use any right-of-way expressed by the
3 grantees herein that crosses their land concurrently
4 with the usage of the grantees herein for ingress,
5 egress, regress across lands above described."

6 Q And what -- based on your research, what
7 access, if any, was located west of this property?

8 A Well, the only thing that like made sense to
9 me historically was that there was a road going all
10 the way through, but it started up where Marye's
11 Avenue originally was, went down through all of these
12 parcels and exited on the south. That's the only
13 thing that really made any sense.

14 Q Marye what, I'm sorry?

15 A Marye's Avenue that was shown --

16 Q What is that referred to now?

17 A It's referred to as Singleton Lane now, and
18 it's on the map as Singleton Lane.

19 Q Right. And where was that in relationship to
20 the property being conveyed in Exhibit 116?

21 A North. Well, the property is north, but it
22 exits to the west.

23 Q Right.

24 A To the highway.

25 Q Okay. And so you've talked about access from

121

1 the west. What about access from the south to the
2 property being conveyed in Exhibit 116?

3 A The only way to exit out of the south is to
4 go across the Defendants' property on that road.

5 Q I understand, but specifically how?

6 A To go down and then make a turn and go to the
7 highway.

8 Q Through the use of the dirt road?

9 A Through the use of the dirt road.

10 Q Okay. Was there any other access that you
11 ran across in your research as it relates to 001?

12 A No, nothing that I could find that would
13 sustain road traffic or has.

14 Q All right.

15 A Your Honor, that's the end of that slide
16 show. We have one more presentation, and this is of
17 imagery of the area dating from 1954 through current.

18 THE COURT: And what are the exhibit numbers
19 on those?

20 THE WITNESS: These should be Exhibits 32
21 through 116; is that correct? Oh, 32 through 112.

22 THE COURT: Okay. And what is this telling
23 me?

24 THE WITNESS: It shows the history of what's
25 been done with the property, both agricultural and

122

1 timber use, and it shows not only the existence of the
2 road, but the repetitive use over a number of years.

3 BY MR. DODDS:

4 Q All right. Well, if you would go through and
5 identify by way of specific exhibit.

6 A Is that up? Can you guys see it?

7 Q Yes.

8 A So this is Exhibit 32. Which shows a
9 historical image from 1954. This came out of the
10 Berkeley County historical aerial photos, and it's
11 stored with the South Carolina Archives. The
12 reference is listed on Exhibit 112 on the last page.

13 What you can see here is in this northern,
14 northwest corner, the lake, you can see the channel
15 cut through here.. You can see an old rail bridge,
16 which is located right here. And then if you follow
17 the highway up, you can also see Old Cherry Hill Road
18 break off to the south. And you see a field here and
19 a field north of it. When the Defendants' property
20 was originally sold to Nero Smalls, in the deed, it
21 references that the property was known as Dingle Old
22 Field. And this field is located, based on the other
23 imagery as you move forward in exactly the spot that
24 you would expect that to be located. You come forward
25 another slide, it's much more obvious. The imagery in

123

1 '63 is much better.

2 Q What exhibit is that?

3 A What's that? This is Exhibit 33. So you
4 have a field south of another field with what appears
5 to be a road coming in from the west, coming down, and
6 exiting out. That's 1963.

7 Here's '75. The image is a little bit
8 cloudier, but it's very clear there's a white line
9 here that indicates a road coming into the south. And
10 then up here, you see the road coming in from the west
11 and a little bit maybe of it coming down. This
12 property right here looks to be used as pasture,
13 because there trees and clear ground. And this is
14 036. This is my parcel in '75, and this is 001.

15 This is Google Earth imagery from 1994. You
16 have a road coming through.

17 Q Which exhibit is that?

18 A This is 35, I believe, or 36.

19 Q I don't have a copy of these. It's 35.

20 A 35. Going forward to 36 shows Google Earth
21 1999. The imagery is much better. You can see at the
22 north corner here Singleton Lane coming in, curving
23 down, meeting up with this road, and coming all the
24 way through.

25 In 2003, Singleton Lane comes through. Very

124

1 obvious there's a road there. In addition, there's
2 managed timber here, timber in rows that was obviously
3 planted.

4 Q What property is that?

5 A That is 036.

6 Q That's the Defendants' property?

7 A Yeah, there's also managed timber, timber
8 that's been planted in rows here on this property, and
9 it appears to be on my property, also.

10 Q That property being 038?

11 A 038, yes. And here is a close-up of 036, the
12 Defendants' property north of mine, which has been
13 planted, and it appears to have been thinned. There's
14 two rows of trees growing next to each other with a
15 vacant row in between, which looks like the first row
16 of thinning.

17 2005, obviously, this is 001, looks like
18 there's been some timber work done. The road heads
19 up --

20 Q Exhibit 39?

21 A Yep. You see the road come up, and you see a
22 semblance of a road coming through here, but you also
23 see this road looping around and coming back here.
24 Again, joining up with the other road and coming all
25 the way back. It looks like in the bottom corner that

125

1 the apron where it comes into the highway that there's
2 been gravel or something added there, because it's
3 much wider than the surrounding ground. And so it
4 shows like fairly obvious evidence of road
5 maintenance.

6 Q All right. And to the east of that appears
7 to be a paved roadway. What roadway is that?

8 A That is Old Cherry Hill Lane.

9 Q All right. What exhibit is this, 40?

10 A This is 42, I believe -- or 41. October
11 2006, Google Earth.

12 Q That's 41, correct?

13 A 41, it should be 41.

14 Q All right. What does that show?

15 A Okay. It shows the same road coming through,
16 going all the way through my property, continuing
17 through 036, and then it shows it coming out in two
18 points, one, right here, and also looping around and
19 coming back.

20 MS. KNIGHT: I can't see where he's pointing
21 to.

22 THE WITNESS: See the pointer come across,
23 up, loop around. The road exits.

24 BY MR. DODDS:

25 Q Your pointer is not --

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1 A Oh, the pointer is not showing?

2 Q Right.

3 A Hold on. Now can you see the pointer?

4 Q Now it's better, but it's a smaller picture.

5 A Okay. This is what I'm talking about as a
6 road that is visible.

7 Q Okay.

8 A That comes up, loops around and comes back,
9 but it also has a break off that comes through the
10 trees here down.

11 Q Are you able to make the picture bigger with
12 the pointer?

13 A Well, let's see here. Is that better?

14 Q That's better on the picture. Where's the
15 pointer?

16 A Can you see it?

17 Q No.

18 A Okay. All right. Well, on Google Earth
19 2010, the road enters here, comes across and comes up.

20 Q I can't see the pointer. I think we'd rather
21 have a smaller picture with a pointer.

22 A It enters right here, comes up, comes across,
23 goes through and comes back around. And there's also
24 an old road cutting through here.

25 And here's a close-up of the road where the

127

1 road comes across. And this is the point at which it
2 intersects my property, comes across my property line.

3 Q Okay.

4 A And breaks off and goes to the other one.

5 Q That's Exhibit 43?

6 A Yes.

7 Q You've got to tell me the exhibit before you
8 start.

9 A Sorry. Okay. So Exhibit 43 is a close-up of
10 the last one of Exhibit 42, and you see the road
11 coming across here, coming up, and then the road
12 breaking off to go to 072.

13 Q Is that the same dirt road that we've been
14 discussing all morning?

15 A Yes.

16 Q Okay.

17 A You also on the close-up see a number of
18 ruts, and you see where white patches and gravel have
19 been added. The road's been maintained.

20 This is June '11.

21 Q Exhibit 44?

22 A Exhibit 44.

23 Q June of 2011?

24 A Yes. So on this exhibit, the road comes
25 across here and it cuts over to 072 and then cuts

128

1 through, and it's still evident. This road cutting
2 across here, and it's cutting across here, going over
3 to here and cutting across and coming through.

4 The next exhibit shows 038 --

5 Q Exhibit 45?

6 A This is Exhibit 45, it shows 038 and 039
7 being logged. And it's obvious from the picture that
8 the timber was taken out through this road, and this
9 road was improved and graded at that time.

10 Q And which road are we referring to?

11 A The road we've been discussing all morning.

12 Q All right. Is that the dirt road that runs
13 across 001?

14 A It is, yes.

15 Q You've walked this property?

16 A I have.

17 Q To include your property at 038?

18 A Yes, and 072, and 036, also.

19 Q Is there any other roadway that you observed
20 while you were walking the property which would
21 accommodate logging trucks?

22 A No.

23 Q Other than the dirt road we've discussed?

24 A No.

25 Q Okay.

129

1 A That was 45, right, or is it 46?

2 Q That was 45.

3 A Okay. So going to 46, and in this image, you
4 can see more closely --

5 Q That's all right. You don't have to do that.

6 A -- the repairs that were made to the road,
7 but you also see a truck here. And it's not clear
8 whether it's a logging truck or a dump truck, but it's
9 a truck of some type. And it's parked on the road
10 that goes back to 072.

11 Q The green area to the south of the slide,
12 that is 001?

13 A Yes, so this shows both my property and their
14 property. Mine was logged; theirs wasn't.

15 Q Your property being 038?

16 A Yes.

17 Q Okay. And what appears to be a dirt roadway,
18 is that the roadway we've been discussing this
19 morning?

20 A Yes.

21 (Discussion held off the record.)

22 MR. DODDS: I think Counsel is requesting a
23 break, Your Honor. It's okay with me if it's okay
24 with the Court.

25 THE COURT: Certainly.

130

1 (Short break.)

2 THE COURT: Mr. Dodds?

3 MR. DODDS: Thank you, Your Honor.

4 THE COURT: You're still under oath.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Go ahead, Mr. Dodds.

7 MR. DODDS: Thank you, Your Honor.

8 BY MR. DODDS:

9 Q Mr. Maxwell, I believe we were on slide
10 number 46.

11 A Exhibit No. 46?

12 Q Excuse me, Exhibit No. 46.

13 A Okay. Yes, that's correct.

14 Q All right.

15 A I'm sorry, I forgot my glasses, give me one
16 second.

17 Q That looks like 47. I'm sorry, Exhibit No.
18 47.

19 A No. 47.

20 Q Okay. What is that exhibit?

21 A This is Google Earth imagery from February of
22 2013, and what is obvious on here is still there's a
23 road going through here and --

24 Q Through where?

25 A Through the same spot it's gone through on

131

1 the other --

2 Q Through 001?

3 A Through 001 up to my parcel and continuing on
4 north through the other parcels. That's Exhibit No.
5 47; is that correct?

6 Q No. 47, correct.

7 A Okay. On No. 48 --

8 Q Go back to 47, if you would, for a moment.
9 There appears to be an area where the trees have been
10 timbered. What area is that?

11 A That is both 038 and 39.

12 Q Okay. All right.

13 A And this is an image of --

14 Q This is Exhibit 48?

15 A This is Exhibit 48. This is a close-up of
16 the same slide that shows what appears to be rocks and
17 gravel that have been dumped to fill a low spot. It's
18 kind of washed out or rutted out.

19 Q All right.

20 A And rocks continuing between the boundary
21 line of the two parcels.

22 Q That's the boundary line between what two
23 parcels?

24 A That's -- that area is shown -- this is
25 Exhibit 49, which is another take of the same slide.

132

1 And we're looking at this area right here where the
2 two parcels intersect. And the road breaks off here
3 to go to 172, this junction.

4 Q Okay.

5 A This is six months later, and this is Exhibit
6 49, December 2013, Google Earth imagery. We see that
7 same area from a slightly different aspect ratio,
8 because the satellite wasn't in the same spot, but
9 what's really interesting is there's a car driving on
10 the road in this. And satellites don't go over all
11 that often, to catch a car driving on the road would
12 be kind of rare if it never gets used.

13 Q What does this Exhibit 49 show, what
14 properties?

15 A It shows 001 and 038, 039, and going up, it
16 also shows 036 and the properties north of that.

17 Q Okay.

18 A The next slide is -- is this Exhibit 50?

19 Q Yes.

20 A Exhibit 50 is a close-up of Exhibit 49, which
21 shows the intersections of those roads that were
22 previously discussed, the one going to 0072, the point
23 at which this road crosses onto my property, and a
24 close-up of the vehicle in the picture just south of
25 the intersection of those roads.

133

1 This is Exhibit 51. March of 2014, so this
2 is three months later. And the image has changed from
3 the previous image in that there's significantly more
4 rutting. The road is more washed out than it was
5 before crossing my parcel. And also, the road is much
6 clearer and much more rutted up crossing from my
7 parcel onto 036.

8 Q Okay.

9 A The next image is the boundary line. The
10 next image is Exhibit 55; is that correct?

11 Q Exhibit 52.

12 A This is Google Earth March 2014, Exhibit 52?

13 Q 2.

14 A 52. Okay. So Exhibit 53, this is the
15 boundary line between 039 and 036. You can see where
16 it was logged to, and that matches up approximately
17 where the property line is. You can see the ruts
18 going both to the south and coming out to the north
19 and east, but also coming off to the west where they
20 break off to the other four parcels that were
21 originally broken up.

22 Q 072?

23 A Not 072, the other one.

24 Q 072 and 037?

25 A 037. This is the road junction with 037.

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1 Q Okay. I'm sorry, that's on what was the --

2 A 5-acre parcel.

3 Q Adjacent to 039?

4 A Yes.

5 Q Okay. All right.

6 A Okay. This is Exhibit 54, Google Earth,
7 March 2015, so one year later. And this parcel shows
8 again that there's a change in the road in that the
9 parcel -- the traffic has beat up the junction between
10 where the road crosses from 001 to 036 more. It's
11 more rutted out. And the next parcel is slide number
12 55.

13 Q Exhibit No. 54, excuse me, that's March of
14 '15?

15 A This is a close-up of March of '15. This is
16 55, I believe.

17 Q Okay. No, that is 54.

18 A Okay. This is 54. So this is a close-up
19 that shows where the property had been logged and the
20 tire tracks, vehicular tracks, not only going north
21 and south across the screen, but also breaking off to
22 the west to the road that feeds those --

23 Q Orientation with respect to the properties?
24 Which property is where.

25 A So --

135

1 Q You don't need to come down.

2 A Okay.

3 Q I want you to show it on the screen and
4 explain it to the judge.

5 A Okay.

6 Q Again, 54.

7 A This is -- let me exit out so I can... okay.
8 This 038.

9 Q Okay.

10 A This is 001. This road goes back to 072.

11 Q Okay.

12 A And this the junction. And you can tell
13 where, from the previous photograph, this has changed.
14 It's more rutted up and more washed out than it was
15 before.

16 Q All right. And as it heads west, that is to
17 the TMS having 037?

18 A No, this is to 072.

19 Q Okay. All right. So that's adjacent to 038?

20 A Yes.

21 Q Got you.

22 A And that was Exhibit No. 55.

23 Q Well, that was 54.

24 A That was 54?

25 Q Yeah, the enhanced.

136

1 A Okay.

2 Q Right.

3 A Right, okay. So this is 55.

4 Q Correct.

5 A October 2015.

6 Q Correct.

7 A Okay. The road's still visible. Road still
8 goes through. October 2016, the road still appears on
9 the satellite imagery. The road appears visible
10 again. This is 56.

11 Q What you have on the screen is 55.

12 A I'm sorry, we're moving to 56. Moving to 56,
13 this is March of 2017. If you look at this, there
14 appears to be a couple areas of road maintenance.
15 We're looking at the wider view, but on the narrower
16 view, when you zoom in, some of those spots that have
17 been washing out, someone has gone back and filled,
18 not only on 001, but on my property also as it goes
19 through.

20 Zoom in a little bit, and you can see the
21 washed out tire ruts and that stuff. This is 57,
22 March 2017?

23 Q That is 58.

24 A 58, sorry. Keep losing my place. All right.
25 So 59, March, 59, the road is still visible, you see

137

1 down in the bottom here, there are some white marks
2 where it looks like there's been a little bit of fill,
3 maybe some maintenance on the road.

4 Here's some close-ups of some areas that are
5 rutted up, obviously recent use.

6 Q All right. That's Exhibit 60. Orient the
7 judge in terms of what property we're looking at there
8 on 60.

9 A Right there --

10 Q On 60.

11 A On 60, you are looking at the center section
12 of my property, right here.

13 Q Can you pull up Exhibit 60.

14 A Exhibit 60 is here.

15 Q Exactly. Show, if you would, east, west,
16 north, south, what properties are we talking about on
17 60?

18 A So north, to the top of the slide would be
19 north.

20 Q I realize that but what property is it
21 showing.

22 A 039 would be north of this.

23 Q Okay.

24 A And then north of that would be 036, and
25 south would be 001.

132

1 Q Okay.

2 A West of this location would be 072 and 037.

3 Q Right.

4 A Okay. So Exhibit 61, September '18. Exhibit
5 62, August '19. Both 61 and 62, the road's visible,
6 hasn't grown over, and there are white spots very
7 visible on both slides that indicate that the road
8 hasn't grown over, it's been being used.

9 Exhibit 63 is a zoomed-in area where there's
10 kind of a white gravelly patch that's been beaten down
11 at this corner, on August of 2019.

12 Q What property is that white patch located on?

13 A That's on 001 at the corner.

14 Q Okay.

15 A Where it makes a bend. Again, this is 65?

16 Q 64.

17 A 64, and this is 65, it's a close-up. On 64,
18 you notice a couple of things, one that property --
19 the timber to the north and the south of my property
20 has been managed as in there's clean-cut rows through
21 there. Also, you notice that the trees are getting
22 healthy and mature to both the north and the south of
23 my property in August of 2019. And my property
24 appears to have been replanted and is growing back.

25 Q Okay.

139

1 A There's the close-up again, that's 65.
2 Moving on to 66. So May of -- 66, the road comes
3 through the property and somewhere between May --
4 between August 2019 and May of 2020, somewhere in that
5 period, there was a significant amount of logging
6 activity on 036 and on 001, and it appears that the
7 road was not only cleared, but graded and maintained
8 at that point.

9 Q 036 and 001 are owned by the Defendants?

10 A Yes.

11 Q Okay.

12 A And the road that connects those goes across
13 my property. For scale, I used the Google Earth ruler
14 to measure the width of the clearing on the road, and
15 it measures to be that it was cleared to 60 feet wide.

16 Q Okay.

17 A This shows a --

18 Q Which exhibit is that?

19 A The one from May of 2020 was Exhibit 66, and
20 the one from June of 2021 is Exhibit 67.

21 Q What's shown on the current exhibit, January
22 of 2021?

23 A Well, the road at that point, just eight
24 months later, it's shown in January, has -- it's
25 obviously been used again. And in the close-up,

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1 you'll see that, because the road hasn't grown over.
2 It's -- there's no weeds, no grass growing on it.
3 It's been beat down again after the logging trucks
4 graded it, and it's rutted back up, even though it had
5 been previously graded. And here's a picture of that.

6 Q What does that show? What slide does that
7 show?

8 A That shows -- that area focuses on this area.
9 It's a zoomed-in image of where the boundary line of
10 038 meets the boundary line of 001.

11 Q Okay. This is Exhibit 67.

12 A Exhibit 67. Okay. So we're moving back to
13 Berkeley County GIS, which is where we kind of
14 started, and this is historic photography that's
15 within the Berkeley County GIS system. It's not the
16 same dates as the Google Earth system, but it shows
17 over a period of time, from 1957 through current, not
18 only how the property was used but how over a period
19 of time this road has sunken into the ground, and it's
20 actually a depressed road. It's below the road based
21 on the topography around it.

22 Q Is that consistent with your observations as
23 you walked the property?

24 A It is, yeah, the road is below the ground
25 level around it. It's been beaten into the ground.

141

1 Q All right.

2 A So this is an image from 1957, and this was
3 Exhibit 67?

4 Q 67.

5 A So what we see here now is the TMS numbers
6 displayed over the imagery. So we have 036 up here
7 with this big open area of pastureland, 038 coming
8 through. We have 037 here on the end, 072, 038, and
9 001.

10 Q All right. And just to be clear: Your
11 property is 038?

12 A It is.

13 Q And 039?

14 A And 039, yes.

15 Q All right. And north of you is 036, which is
16 owned by the Defendants?

17 A Yes.

18 Q North of 036 is 035 owned by a third party?

19 A Yes.

20 Q And then, again, north of 035 is 034 that's
21 also owned by the Defendants?

22 A Yes, that's correct.

23 Q Okay. All right.

24 A So this is image number 68.

25 Q Correct.

142

1 A Or Exhibit No. 68. This is Berkeley County
2 GIS 1957 imagery. And this is turning on three
3 additional layers, the 2-foot contour lines, the
4 National Wetlands Inventory layer, and the flood
5 zones. Also visible in here are the tax map lines,
6 which were visible on the previous drawing.

7 What's interesting about this when you look
8 at it is if you were going to put a road in, the road
9 kind of goes where you would imagine. It starts here,
10 comes along next to the creek on 001, makes a turn
11 across the creek, and then it comes up. And the
12 lines, the contour lines here, match up with
13 approximately where the road is, and since they face
14 uphill, that means that they're denoting a depression.
15 Contour lines that face downhill note a ridge line.

16 Q Okay.

17 A All right. And that was Exhibit No.?

18 Q 68.

19 A 68. This is Exhibit No. 69. On Exhibit No.
20 69, we're using 1963 imagery. It's obviously a lot
21 clearly. Like it really looks more like what you
22 might think of as modern imagery. The imagery was
23 taken at that point, rather than one large-scale
24 digital image, in individual photos. And so you see a
25 checkerboard pattern. That checkerboard pattern

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1 denotes where the photos came together. That's why
2 there's color changes throughout this because those
3 microfiche slides were laid together and then that was
4 digitized. So there are lines running through the
5 drawing in a checkerboard pattern relating to that.

6 This is Berkeley County GIS image 1963
7 Exhibit No.?

8 Q 69.

9 A 69.

10 Q Does it show the road in question?

11 A It does show the road in question. It shows
12 it starting right down here. You see the cursor,
13 running straight across, turning up and going into
14 what is most likely the Dingle Old Field, based on the
15 original deed from 1882. It shows my parcel here, and
16 it shows a road crossing 039 and into 036. It also
17 shows some semblance of road coming across 034 and
18 continuing out, but in a different location than it's
19 currently located.

20 The next slide, this is image number 69?

21 Q 70.

22 A 70. Sorry. So what we're seeing on image 70
23 here is the Berkeley County GIS, same image, but with
24 the 2-foot contour lines, the wetlands boundaries, and
25 the flood map overlay. And if you look at the point

144

1 where that road is, the contour lines seem to match up
2 with where that road location is, at that point.

3 Moving on to 71, this is 1969 imagery. The
4 road is more visible now than it was before.

5 Moving on to 72, this is '69 imagery with the
6 contour lines, wetlands, and flood boundaries
7 overlaid.

8 This is 1977 imagery. Now, technology
9 obviously by 1977 had gotten a lot better. So we have
10 a lot clearer image, and it's no longer cut and pasted
11 together in the same way. The road on here appears
12 here and comes up and crosses right about there. If
13 we overlay contour boundaries on it, you see the
14 little white line laying right underneath where those
15 contour boundaries are?

16 Q What is that?

17 A That's a depression overlying where the image
18 of the road is.

19 Q Okay. Got you. That's the road?

20 A That's the road.

21 Q Okay. Exhibit 74?

22 A Yep, Exhibit 74, this is '89. This is
23 Exhibit 75, '89 with contour lines and flood and
24 wetlands.

25 Q I'm sorry, back up, please.

145

1 A I'm sorry. Exhibit 89 -- or, I'm sorry,
2 1989.

3 Q 75.

4 A Exhibit 75.

5 Q All right. Does Exhibit 75 show the roadway
6 coming from Old Cherry Hill Road across 001?

7 A It does.

8 Q Okay.

9 A This is 76. This is the 1989 imagery with
10 2-foot contour lines, wetlands, and flood zone
11 overlaid, and it appears that the road still lines up
12 with where that depressional boundary was moving
13 forward. It hasn't moved.

14 Exhibit 75 --

15 Q 77.

16 A 77, sorry. Exhibit 77, Berkeley County GIS,
17 1995. So the road is shown here in the bottom, comes
18 across, cuts along the edge of this field, turns, and
19 comes north and cuts across my property line right
20 here. There's evidence that the timber was being
21 managed in this area on my property in that period in
22 1995. It had been farmed previously. Trees had been
23 planted, but if you look at the way the trees are
24 growing, they appear to be growing in rows, like they
25 didn't just grow there.

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1 The road intersection on this, now that image
2 is becoming clearer in '95, is fairly evident going
3 from the existing road back to 072.

4 Q All right. Does the road in the 1995 imagery
5 shown on Exhibit 77, is that consistent with the road
6 as depicted in previous imagery and consistent with
7 your research?

8 A It is. And it appears to cross my property
9 in exactly the same spot and continue on to 036.

10 Q Has there been any change in location of
11 which you can tell, based on the records?

12 A Based on the records, the property might have
13 moved around a little bit, but it's never moved where
14 it crossed the creek. Where it crossed that stream,
15 it appeared consistent from 1957 on.

16 Q Okay.

17 A And that's the earliest point you can really
18 identify it.

19 Q All right.

20 A Okay. So here is the Berkeley County GIS,
21 1995 with the wetlands and flood zones.

22 Q That's Exhibit 78?

23 A Exhibit 78.

24 Q All right.

25 A This is Exhibit 79. This is Berkeley County

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1 GIS, 2004 imagery. So this is a really crisp, clear
2 image here. And a couple of things that stand out
3 from a use standpoint right off the bat are the timber
4 on 036 is obviously being managed, and it's being
5 managed very well. They're nice, clean rows of trees.
6 Somebody is taking care of the trees. Also, the road
7 appears in exactly the same spot and cuts over across
8 the bottom of that plantation of trees that was
9 planted.

10 Again, this is the Berkeley County GIS, 2004
11 image with 2-foot contour lines, wetlands, and flood
12 zones. This is Exhibit 80. And if we look at the
13 position of the road, the road lines up exactly with
14 where the depressional lines are on the contour map.

15 Q Consistent with previous imagery?

16 A Consistent with previous imagery.

17 Q All right.

18 A This portion of the road here has not moved.

19 All right. So this is Exhibit No. 81,
20 Berkeley County GIS satellite imagery from 2006. The
21 image of the road is still visible. It appears to be
22 identical to the previous location and identical to
23 the location that it is now. It makes a turn off of
24 Old Cherry Hill Road, and it seems like, looking at
25 the image, that the road has been recently maintained.

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1 There's a gravel apron extending about 40 or 50 feet
2 off of the highway at that point. The road makes a
3 nice turn, cuts across the creek and comes north
4 across my parcel to what I would consider a managed
5 timber section north of that.

6 Q Is that on 036?

7 A That's on 036, yes. This is Exhibit 82 now,
8 Berkeley County GIS with 2-foot contour lines,
9 wetlands, and flood zones applied. When we look at
10 this, we match up the contour lines again with the
11 imagery, and the same bumps of that depression match
12 up exactly with where the road crosses onto my
13 property. It hasn't moved.

14 This is Exhibit 83, Berkeley County GIS 2009
15 imagery. The imagery shows very clearly the road. It
16 shows that there's been a timber harvest between the
17 2006 image and the 2009 image. There were trees --

18 Q And where does that harvest occur?

19 A Both on 036 and 001.

20 Q Okay.

21 A There were trees and now there aren't trees.
22 It shows the road crossing my parcel, and it also
23 shows that the road is much whiter and much brighter.
24 It's been graded and maintained at that point,
25 probably in conjunction with the timber harvest.

149

1 Q All right, sir.

2 A Berkeley County GIS image 2009 with --

3 Q Exhibit 84?

4 A Yes, this is Exhibit No. 84. Sorry.

5 Q Consistent with previous imagery?

6 A It is. And since the trees have been
7 cleared, you can scroll across here and you can see
8 the peaks of those Vs that I'm talking about. The
9 depression part of the road lines up exactly with
10 where those peaks are. And since those are 2-foot
11 contour lines, it means that the road is depressed a
12 fair amount.

13 Q All right.

14 A All right. Berkeley County GIS, 2011
15 imagery, this is Exhibit No. 85.

16 THE WITNESS: Your Honor, may I get a drink
17 of water?

18 THE COURT: Certainly.

19 THE WITNESS: Thank you.

20 (Off the record briefly.)

21 THE COURT: Go right ahead, Mr. Dodds.

22 BY MR. DODDS:

23 Q All right. I believe your on slide number
24 85?

25 A Yes, sir, I am.

150

1 Q That's the slide you've just discussed,
2 Exhibit 85?

3 A Yes. I don't believe I've discussed 85 yet,
4 but Exhibit No. 85 shows Berkeley County GIS 2011
5 imagery with the tax map overlaid. And it also shows
6 the road in question pretty clearly, and the road that
7 breaks off of mine and goes to 072, that breaks off
8 south of my parcel, that breaks off south of 036 and
9 goes back to 072.

10 Q Does 072 have any independent access other
11 than across 001?

12 A No.

13 Q All right. What about 037?

14 A No.

15 Q Okay.

16 A Both parcels appear to be using this road
17 because I've walked this property and not only is it
18 visible on satellite imagery, there are cuts through
19 to both of those parcels.

20 Q All right.

21 A This is Exhibit No. 86, Berkeley County GIS,
22 2011 with 2-foot contour lines, wetlands, and flood
23 zones. If you compare the contour lines to the road
24 in question, you notice that the points of the Vs
25 match up again with the road going downhill to the

1 creek, at this point being depressional and coming up,
2 this way being depressional.

3 Q All right.

4 A This is Exhibit No. 87, Berkeley County GIS,
5 2014. So if we quickly look between Exhibit 86 and
6 Exhibit 87, we notice that 038 and 039 have been
7 logged. The trees are all gone, they're missing.

8 Q All right.

9 A In addition to that, there's ruts all over
10 the property consistent with --

11 Q That's on 038 and 039?

12 A Yes. Also, on 001, a close look at the road,
13 it appears that not only was the road used, it was
14 probably graded at that point when the property was
15 logged.

16 Q Okay.

17 A Okay. We're coming on to 88 now, Berkeley
18 County GIS, 2014 imagery with 2-foot contours,
19 wetlands, flood. So you notice again the road is in
20 the same location, matches up with the points of the
21 Vs as a reference point. So we know it hasn't moved.
22 It's not gone anywhere.

23 This is Berkeley County -- oh, I'm sorry,
24 this is 89, Berkeley County GIS, 2018. And we saw
25 this image before on the Google Earth slides, but it's

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1 evident here that on 001, in this area, there's been
2 some management of timber. The road appears nice and
3 white like it's been maintained. And also, when we
4 move on to Exhibit No. 90, we see that the road is in
5 exactly the same location with respect to being
6 depressional through that area.

7 Q Consistent with previous imagery?

8 A Consistent with previous imagery.

9 Q All right.

10 A And moving forward to Berkeley County GIS,
11 2020 imagery.

12 Q 91?

13 A 91. It appears the trees are growing back.

14 Q On which properties?

15 A On the 038 and 039.

16 Q Okay.

17 A The trees, we don't have a date, because this
18 imagery isn't dated like the Google Earth is, but we
19 just know this was taken in 2020. However, if we
20 scroll back to Exhibit No. 64, on Exhibit No. 64, the
21 property was logged prior to May of 2020 and after
22 August of 2019. And by the property, I mean 001 and
23 036.

24 Since we know that there weren't trees there
25 in May we know that our Berkeley County image, which

153

1 is Exhibit No. 91, we know that it was taken in 2020
2 but prior to May, but we don't have a specific date on
3 it.

4 Q Okay. The next exhibit?

5 A The next exhibit, Berkeley County GIS, image
6 2020.

7 Q Exhibit 92?

8 A Exhibit 92. Again shows the same image but
9 with 2-foot contour lines, wetlands, and flood zones.

10 Q Same contours as previous imagery?

11 A Uh-huh, and it is consistent with the
12 previous image.

13 Q Road located in the same place?

14 A Yes, it is. This is Exhibit No. 91.

15 Q No, this would be 93.

16 A 93, I'm sorry, Exhibit No. 93.

17 Q What does that show?

18 A It shows a picture of Dan Scheffing, he's a
19 forestry consultant, standing in the road. It shows
20 the front of my Toyota 4Runner.

21 Q What road is that?

22 A This is the road that we have been talking
23 about.

24 Q This is the road that crosses 001?

25 A Yes.

154

1 Q Okay.

2 A It shows some weeds growing up on the side,
3 but the actual standing timber has been cleared about
4 60 to 70 feet wide along the road from one side to the
5 other.

6 Q All right.

7 A This is another picture of the road and a
8 number of like recent tire tracks going through there.
9 The road is pretty big and pretty wide. It's grown
10 over with grass at the moment, but it's definite,
11 obvious cleared area.

12 Q All right. And this is the same road we've
13 been discussing across 001?

14 A Yes, these were taken one week ago.

15 Q Okay.

16 A This is Exhibit No. 95, another image. This
17 is Exhibit No. 96, this is looking back from the
18 boundary line of my property back to the corner of the
19 road that we've been discussing.

20 Q So this is from 038 looking south?

21 A South.

22 Q Towards 001?

23 A Yes, approximately at the property line.

24 Q Okay.

25 A This is looking west from the same location

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1 through the clearing to 072. There's approximately a
2 30-foot wide road cut that runs through there.

3 Q And that's to the approximate 2-acre parcel
4 that west of 038?

5 A Yes, and we walked that road back there and
6 it -- there's a definite -- the trees are much older
7 there as they appear in the satellite imagery. It was
8 never logged.

9 Q Okay.

10 A This is Old Cherry Hill Road looking south.

11 Q This is Exhibit 98, correct?

12 A Exhibit 98.

13 Q And you said that this is Old Cherry Hill
14 Road?

15 A It is, yes.

16 Q And in what direction are we looking?

17 A We're looking -- well, let me move back a
18 little bit for a second here. This is going to be
19 Exhibit 98, but in order to locate that, let's move
20 back to Exhibit 89.

21 So if you follow along with the cursor on
22 Exhibit 89, the road in question that we've been
23 discussing is right in here. There's a bridge located
24 right about here that goes across the Broad Ax Creek.
25 And the Broad Ax Creek is a pretty significant branch.

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1 It was widened to the point at one point in time and
2 straightened to be used as a channel. It was, at one
3 point in time, a navigable waterway that you could
4 float on.

5 Q All right. So your Exhibit 98 of Old Cherry
6 Hill Road is?

7 A There we go. The picture was taken
8 approximately right here, standing right here, and
9 looking towards the bridge, downhill.

10 Q Would that be adjacent to 001?

11 A Yes.

12 Q Okay. Looking south?

13 A Looking northeast.

14 Q I'm sorry. Looking northeast.

15 A Towards the bridge.

16 Q Now, would you go back to that picture.

17 A Yep.

18 Q Exhibit 98. All right.

19 A This is Exhibit 98. 98 and 99 are very
20 similar. One of them is a zoomed in image of the
21 other one. The two images were taken standing at the
22 same spot but one's zoomed in and the other one is
23 not.

24 Q Okay.

25 A This is 99, this is a wide view. This is 98,

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1 which is a closer view of the point of which the
2 bridge on Old Cherry Hill Road crosses the Broad Ax
3 Creek.

4 Again, this is a wider view. And this is
5 looking uphill. From that point to where the road --

6 Q This is Exhibit 100?

7 A Exhibit 100. Looking uphill around the curve
8 along the property boundary of 001 to the road
9 intersection, the road in question with Old Cherry
10 Hill lane.

11 Q All right. So this is looking in a southerly
12 direction?

13 A Yes. This is looking in a southerly
14 direction. In our discussions, we looked at whether
15 there were any possible alternatives to the road that
16 is currently being used and how feasible they might
17 be. That was one of the things we looked at. And we
18 looked at the possibility of whether or not there
19 would be any feasibility of putting a road through --
20 an alternate road through anywhere else.

21 And so we walked we walked -- not only walked
22 the stream that runs through this area, which is a
23 pretty significant stream and drainage like you can
24 tell from the contour lines here, that meets up with
25 the Broad Ax here, but not only did we walk that, but

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1 we also looked for any other semblance of any other
2 road cuts or, you know, roads that had been through
3 there. And the only thing we found was -- this is
4 Exhibit No. 94. This is a small pullout located on
5 the side of the road --

6 Q That's not 94?

7 A That's not 94?

8 Q No.

9 A Oh, 104, sorry, 104.

10 Q Okay.

11 A This is a small pullout located on the side
12 of the road. It appears to be about 15 feet wide
13 between two trees. It's fairly grown up. Looking at
14 it from the creek side and looking back at the road,
15 Dan Scheffing is about 6 feet tall and Old Cherry Hill
16 Road is visible with him standing not in the creek
17 just on the ground, and the road is above his head.
18 So it looked to be approximately 7 feet maybe below
19 road grade at that point.

20 This is a picture of the stream that flows
21 through that area.

22 Q Is that Exhibit 105.

23 A That is Exhibit 105. I have another picture
24 of that stream.

25 Q That's Exhibit 102?

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1 A That is Exhibit 102, yes, the stream. I'm
2 looking for some additional pictures. What we didn't
3 find from that road cut was any evidence that there'd
4 been a roadbed there. The soil is very hydrogenous,
5 it's black, you sink into it even with snake boots on.
6 And there's not culvert and no historical roadbed that
7 we could find cutting through there. It seemed to be
8 just a pullout.

9 Q Okay.

10 A And in order to confirm that, we went back
11 and looked at the 2017 LiDAR imagery for the coastal
12 counties region. So I went to ArcGIS's website. And
13 ArcGIS is what powers Berkeley County's GIS data, it's
14 like the driver software. So if you go to their
15 website, they have an open source website called Arc
16 viewer. And one of the fun things that you can do if
17 you want to play with it is you can turn off the
18 normal world overlay and see the LiDAR topography
19 underneath.

20 So this shows the world topography map turned
21 off and this shows the base topography. This is a
22 LiDAR image that the two-photo overlay was made from.
23 And in the actual physical image, what you see is a
24 creek running north to south, a small creek cutting
25 through here east to west, you see a gap in the road,

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1 that's where the bridge is, and you see an elevated
2 roadbed, the shading next to it.

3 But what you also see is the road in
4 question, cutting through the property there. And if
5 you go to a zoomed-in image of that, it's even
6 clearer. This is the road in question cutting into
7 the ground crossing this stream that cuts through
8 here. The stream that was originally visible on the
9 Wadboo Barony map from 1783, same stream. You see a
10 crossing, and you see the road being cut in and
11 depressional along this point. You don't see any
12 other depressional roads. You see a drainage ditch,
13 which is nice and straight and deep, but you don't see
14 any other roads.

15 Q Right.

16 A You take that same image and apply heat
17 mapping, which is basically turning a monochrome image
18 into a color image, this is a heat map of the area
19 with approximately a 10-foot to 40-foot or 45-foot
20 elevation scale, where the lighter colors indicate
21 lower elevation, the darker colors indicate higher
22 elevation in an approximate sketch of the property.

23 This shows the creek, but it also -- the road
24 becomes very evident through here that it's been beat
25 into the property for a very long time. It's sunk

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1 into the surrounding property. An example of this
2 might be -- this is slide or Exhibit 111. This is an
3 image of an old country road in the English
4 countryside that might have been there for a thousand
5 years and is now depressed 6 feet into the roadbed, or
6 the roadbed has sunk over time. And that's what's
7 happened to this road, which is consistent with a road
8 that's been there for decades or maybe even centuries.

9 The last exhibit, Exhibit 112 is a list of
10 sources for the other exhibits and where they came
11 from, and they were all open-source data.

12 Q All right. Let me ask you: Based on the
13 research that you've done, the records that you've
14 reviewed, how long has that road, that dirt road that
15 comes off of Old Cherry Hill Road across 001 onto 038
16 and into the properties owned by the Defendants, 036
17 and 034, been in existence?

18 A The road has been in existence going north
19 from the -- going north into 20, the road has been in
20 existence since 1820.

21 Q Okay.

22 A The road coming off of the highway onto
23 Singleton Lane is very clearly shown on the 1867 plat.
24 It's reasonable to assume those roads connected and
25 that when this property was subdivided that the

162

1 intention was that that road be used to access all of
2 the properties, that they not be landlocked.

3 Q Right. How many different properties does
4 that dirt road service?

5 A Well, coming all the way through, 14.

6 Q When you say coming all the way through, what
7 do you mean?

8 A Starting a Singleton Lane and coming back
9 down, the way the road was originally intended. What
10 I believe the road was originally intended to do was
11 to service all of those properties. It services 14
12 properties.

13 Q Okay. And what specifically are you asking
14 of the court in this case with respect to your request
15 for an easement?

16 A Well, we're asking the Court to give us an
17 easement so that a roadway that has essentially been
18 there for a couple hundred years can be a legal
19 maintained access, not only for our property, but for
20 the two properties behind us, which we would be
21 required to give access to, since there is
22 ingress/egress language in the deeds to those
23 properties.

24 Q All right. And what about with respect to
25 the size of the easement?

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1 A Well, the easement is currently 60 feet wide.
2 It would need to be at least 50 to be maintained. Not
3 only is there an ordinance requiring that a
4 right-of-way for maintenance purposes be 50 feet wide,
5 the property -- the road, at least to get to my
6 boundary of my property is over 1250 feet long. It's
7 going to require -- in order to keep from being washed
8 out and depressed more and more over time, it's going
9 to require bar ditches on both sides of it.

10 Q Bar ditches?

11 A Bar ditches.

12 Q Right.

13 A Drainage ditches, and an adequate maintenance
14 area and two 11 foot wide lanes with shoulders. And
15 that would be a property -- that would be a road that
16 would not only service my property but would service
17 036 north of it also and provide access to those six
18 properties and hopefully at some point could provide
19 access to the remaining properties which are also
20 landlocked.

21 Q 50 feet?

22 A 50 feet.

23 Q All right.

24 A And there's an exhibit, I believe that we
25 have that shows the county ordinance of 50 feet for

1604

1 maintenance purposes. But this is not a driveway
2 we're talking about. You can't have a 1200 foot long
3 driveway.

4 Q Yeah, if you'd show me that, please.

5 (Off the record briefly.)

6 (Plaintiff's Exhibit No. 141 marked.)

7 BY MR. DODDS:

8 Q Mr. Maxwell, let me show you what's been
9 marked for identification purposes as Plaintiff's
10 Exhibit 141. It appears to be Section 56-28 of the
11 Code of Ordinances for Berkeley County, South
12 Carolina. Are you familiar with that document?

13 A Yes, I am.

14 Q What does that ordinance provide?

15 A It provides that for maintenance purposes
16 that a roadway has to be 50 feet wide, and it lists
17 some standards also, minimum standards for a road.
18 And one of the minimum standards that the county
19 requires is adequate drainage, and it lists the slope
20 of that drainage and what would be necessary, whether
21 it's a 2-to-1 or 3-to-1 slope.

22 Typically, in my experience from not putting
23 in roads but from contracting other people to put in
24 roads, that in order to design a creek crossing, there
25 would probably -- it's probably going to require a

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1 civil engineer's opinion. So other than what the
2 ordinance is, I don't really have any opinion to offer
3 on it. That would be something I would hire someone
4 to do.

5 Q Right.

6 A By a general contractor and a civil engineer.

7 Q Based upon your review of that specific
8 exhibit, 141, what, in your mind, do you require with
9 respect to an easement to your property in terms of
10 footage?

11 A I believe we need a 50-foot easement.
12 Because in order to have two 11 foot wide gravel lanes
13 with shoulders on each side that uses up 22 feet, and
14 in order to have bar ditches and a maintenance area on
15 either side, you're at 50 feet for an easement.

16 Q All right.

17 A And the reason is the slope of the property.
18 It slopes down to the creek this way and it slopes
19 back this way. And the longer a drainage run is, the
20 wider the bar ditches have to get.

21 MR. DODDS: All right. Judge, I would seek
22 to introduce into evidence Exhibits 1 through 141,
23 exclusive of 111 and 112, which were the country road
24 and the sources of the various documents that he
25 testified to.

166

1 THE COURT: Mr. Stanley?

2 MR. STANLEY: What numbers again.

3 MR. DODDS: 1 through 141, which includes
4 this document, exclusive of the 111, which was the
5 country road in England, and the source document, 112,
6 which was a listing of the various sources that he
7 researched.

8 THE WITNESS: John, we haven't given him all
9 of those. We've only given 132 and that one. We
10 haven't given him -- some of those exhibits we haven't
11 presented yet. They're still in the stack.

12 MR. DODDS: I'm not talking about anything
13 beyond 142.

14 THE WITNESS: Well, some of these, like 141
15 and 140, like some of these have been --

16 MR. DODDS: Well, tell me the ones that
17 haven't been, because I obviously don't wish to --

18 THE WITNESS: Well, we admitted 132. So 1
19 through 132 is the slides -- 1 through 112 is the
20 slides. And then that which was 141 or 145.

21 (Off the record briefly.)

22 MR. DODDS: So Exhibits 1 through 140, Your
23 Honor, exclusive of Exhibits 111 and 112.

24 THE WITNESS: You're correct. My apology.

25 MR. DODDS: That's all right.

167

1 THE COURT: And 141, which you identified as
2 the county ordinance; is that right?

3 MR. DODDS: I'm sorry, I thought I did say
4 through 141, Your Honor. Exclusive of 111 and 112.

5 THE COURT: Mr. Stanley?

6 MR. STANLEY: Your Honor, no objection to
7 everything through 140. I object to 141. It doesn't
8 have any relevance to this case. 141 talks about
9 roadways acceptance for maintenance under this
10 article. That means that it would be a roadway that
11 is being accepted by Berkeley County. We are not
12 asking Berkeley County to accept any road for
13 maintenance here. So this has no relevance to this
14 case. Berkeley County is just saying what they would
15 require if we were asking or someone was asking them
16 to accept a road for maintenance. So it's not really
17 relevant to this case. Berkeley County is not saying
18 that an easement must be 50 feet, it's just saying
19 that if you are asking us to accept the road for
20 maintenance, it's got to be 50 feet.

21 THE WITNESS: There's another ordinance that
22 covers --

23 THE COURT: Hold on.

24 THE WITNESS: Sorry.

25 THE COURT: So without objection, I'll accept

162

1 through 140. There's no need to --

MR. DODDS: It's an ordinance. Your Honor
can look at that if you so desire.

THE COURT: -- accept into evidence a copy of
the ordinance. The determination as to the
applicability is certainly open to argument, and I can
look at any ordinance or statute.

MR. DODDS: That's correct. Thank you, Your
Honor. I don't have anything further for Mr. Maxwell.
Thank you, Judge.

THE COURT: Do you all want to take a break
for lunch before we do cross-examination?

MR. STANLEY: Yes, sir.

(Lunch break.)

THE COURT: We are back on the record. So
come on back up to the witness stand. Mr. Stanley,
are you ready for cross-examination?

MR. STANLEY: Yes, sir, I am.

THE COURT: Come on back up. Mr. Maxwell,
you're still under oath.

THE WITNESS: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. STANLEY:

Q Mr. Maxwell, I don't know if you said or not,
but where are you from originally?

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1 A Texas.

2 Q You grew up there?

3 A Yes.

4 Q And how long have you been in South Carolina?

5 A Eighteen years.

6 Q And in the 18 years that you have been in
7 South Carolina, where have you lived?

8 A Same house. Well, I lived on Folly for a few
9 months before I bought a house. Then I owned a house
10 downtown in Charleston. Although, I was gone for a
11 year, and I lived in Bagdad, and then I came back.
12 And then I taught at the Citadel for two years. And
13 then I came back, then my wife decided I didn't want
14 to be in the military any more and stay here.

15 Q So the length of the time that you've lived
16 here, you've basically lived in the Charleston area,
17 mostly?

18 A I lived in downtown Charleston the whole
19 time, except for being gone for military deployments.

20 Q Have you ever lived in Berkeley County?

21 A No, I have not.

22 Q Now the property that you now own here in
23 Berkeley County, I know one piece you bought at a tax
24 sale; is that right?

25 A That is correct.

170

1 Q And that tax sale occurred in 2015; does that
2 sound right?

3 A That is correct, it occurred in 2015.

4 Q And your bid on that property was \$50,000?

5 A That is correct.

6 Q All right. And that is the tract that has
7 been referred to as 38; is that right?

8 A That is correct.

9 Q All right. Now, you also own another piece
10 adjoining that piece?

11 A That is correct.

12 Q And that is the piece that we're referring to
13 as 39; is that correct?

14 A That's correct.

15 Q All right. Let me show you, I don't know if
16 you put a copy of this little simple map in or not. I
17 know there were a lot of maps that went in, but that
18 one is the most simplistic for me.

19 A Okay.

20 Q Does that look familiar to you?

21 A It does look familiar.

22 Q And all the property that we're dealing with
23 here today is shown on that tax map; is that correct?

24 A It is shown. However, the property
25 boundaries on the map itself are not correct.

171

1 Q Okay. All right. Let me just show you this.
2 I know you're familiar with it.

3 MR. STANLEY: Let's mark this, if we can.

4 (Defendants' Exhibit No. 1 marked.)

5 BY MR. STANLEY:

6 Q Okay. Now, just to orientate us, I just want
7 to show this to you again. And it Defendants' Exhibit
8 1 that's been marked, and we see Tax Map 001, and
9 that's at the bottom; isn't that correct?

10 A Yes, it's south of 38, and then 39 is north
11 of it, and then 36 is north of that.

12 Q And then adjoining 01 is Cherry -- is that
13 Cherry Hill Road?

14 A Old Cherry Hill Road.

15 Q Old Cherry Hill Road. Okay. 01 is the piece
16 that's owned by my clients; is that correct?

17 A That is correct?

18 Q And then the next piece on here is the 38
19 that adjoins it, and that's owned by your corporation?

20 A Yeah, it's a partnership, but, yeah.

21 Q Partnership.

22 A BCE 2015, LLC.

23 Q All right. And the 39 is owned by your LLC?

24 A That's correct.

25 Q And 36 is owned by my clients?

172

1 A That's correct.

2 Q Okay. Now, and I think you testified that
3 you purchased the first piece at a tax sale in 2015?

4 A That's correct.

5 Q You got the title in 2017; does that sound
6 right?

7 A Yes, that is correct.

8 Q Now, the --

9 A We have the deed, it's a matter of evidence.

10 Q Yes, let's put that in. Has that --

11 A It's already been submitted.

12 Q Is that in? Okay. 38 is the tax sale piece?

13 A Uh-huh.

14 Q And 39, when did you get that?

15 A I bought that this year.

16 Q All right. Now, prior to you getting the
17 first piece, 38, were you familiar with this property?

18 A I had researched it in a similar manner as to
19 how I would research other tax sale properties.

20 Q All right. I think you testified that you
21 have purchased some -- did you say three thousand?

22 A No, I'd say about a thousand.

23 Q About a thousand?

24 A In South Carolina, tax liens.

25 Q All right.

173

1 A The vast majority of them are redeemed
2 though. You know, you -- about maybe 3 percent
3 default, something like that. If you're really good
4 at it, you maybe get 5 percent. The vast majority of
5 them are redeemed. You get your money back and a
6 little interest.

7 Q Okay.

8 A On some of them -- and that's really what a
9 tax sale is. A tax sale is not buying property.
10 You're buying a lien for return on investment to get
11 interest. And what you're assessing property for is
12 not its intrinsic value, but as collateral for a lien.
13 So that if you don't get paid back, you end up with a
14 property. The vast majority of the time, you're
15 better off making the interest than getting the
16 property, with some exceptions, but really the
17 business is about making interest not about getting
18 property.

19 Q All right. Here's the question: On those
20 approximate one thousand properties that you have bid
21 on, basically what you're saying is you didn't get
22 title for all one thousand, because some of them were
23 redeemed?

24 A Right.

25 Q But you probably ended up with title to

174

1 several pieces. And on those one thousand that you
2 bid on, you do some research; is that correct?

3 A Yes.

4 Q On the piece here, 36, did you research it
5 before you bid on it?

6 A Yes, I research it before I bid on it.

7 Q I'm sorry, I said 36, but it's 38?

8 A Yes.

9 Q You researched it?

10 A Uh-huh.

11 Q Did you find it was landlocked?

12 A What's that?

13 Q Did you find that it was landlocked, as a
14 result of your research?

15 A Well, my initial assessment of it was that
16 actually the property went to the road, based on the
17 GIS map. However, it is landlocked. But when I
18 looked at it, there appeared to be a road accessing
19 the property that had been there for a long period of
20 time and provided access to the property and since it
21 had been recently timbered, I was under the assumption
22 that if I went back far enough in the chain of title
23 that I would find an easement overlying that road,
24 because the property had been farmed and timbered and
25 other things, and if you click back very quickly

175

1 through the historic slides, it looks like the
2 property had access. It didn't look like a landlocked
3 property to me.

4 Q Help me on this now, because I want to move
5 you through this cross-examination as quickly as I
6 can, and I'm trying to make a record here. So I want
7 to make sure I'm clear. Did you know from your
8 research that 38 was landlocked when you bid on it?

9 A I thought the property had access, and I
10 assumed the access was this road, but I didn't
11 research it far enough back to determine whether or
12 not there was a recorded easement for that road.

13 Q So is the answer to my question, no, you did
14 not know it was landlocked?

15 A I'm not sure I understand what you're asking,
16 because --

17 Q I'm asking a simple question: Did you know
18 from your research, when you bid on 38, did you know
19 38 was landlocked, yes or no.

20 A The answer is yes and no. I knew it was
21 surrounded by other properties, but I assumed it had
22 access. It seemed a reasonable assumption.

23 Q Okay. I'm going to leave that one. You
24 bought 39 when?

25 A This year?

176

1 Q Did you know it was landlocked?

2 A I believe when I purchased it, that I have a
3 reasonable right to access. And that's what we're
4 doing here.

5 Q Can you tell me why you would buy two pieces
6 of property that are landlocked, as a Realtor who is a
7 broker-in-charge at a real estate company? Why would
8 you buy property that's landlocked?

9 A I went ahead and bought 39, because I was
10 under the impression that I would be able to settle
11 with your clients by offering them an easement over my
12 property to their property, which is also landlocked,
13 which is 36. In buying 39, I felt like it cleared up
14 the whole matter, because I could offer them an
15 easement all the way through to their property, we
16 could have a mutually beneficial easement and a road
17 that would benefit everyone. And I thought that that
18 was a -- I thought that that was where this was going.
19 I thought we were going to settle it. I never thought
20 we were going to end up here.

21 Q All right. Now, and I think I asked you this
22 question, let me ask you again. Prior to bidding on
23 this property, do you have any familiarity in terms of
24 the use that was being made of 38?

25 A Just from geospatial data and from a quick

177

1 drive-by examination. The geospatial data seemed to
2 indicate that it had been used as agricultural land
3 and then later that it was used as timber.

4 Q Okay. You didn't know for a fact how the
5 owners of 38 were getting in and out of that property,
6 did you?

7 A It appeared, based on the geospatial data,
8 that they were using that road. That's what it looked
9 like to me.

10 Q You never saw anybody use it prior to you
11 purchasing it, did you?

12 A No.

13 Q You have no personal knowledge as to how 38
14 was being accessed?

15 A Well, I know how it can be accessed, and I
16 know that that's the only way to get there.

17 Q No, no, no. My question is not how you can.
18 My question is: Do you have any personal knowledge
19 how 38 was being accessed before you bought the
20 property at the tax sale?

21 A I don't remember if I did a drive-by on that
22 property or not, I really don't.

23 Q Now, is there a gate?

24 A Yes, there is. And I've been out there a
25 number of times. It's never been locked.

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1 Q Where is that gate?

2 A It's up by Cherry Hill Road.

3 Q All right. It's on my clients' property; is
4 that right?

5 A Uh-huh.

6 Q Okay.

7 A And when I access my property, I open the
8 gate, I drive back there, and then I close it.

9 Q Have you asked them for permission to do it?

10 A No.

11 Q It's closed though; is that right?

12 A Yes.

13 Q Is it ever locked?

14 A Never seen a lock.

15 Q All right. Do you know what the use my
16 clients have been making of that property.

17 A Well, I would assume it's being -- they've
18 told me that they're using it for hunting and for
19 timber.

20 Q All right.

21 A So I don't have assume, they told me that.

22 Q The Taucers owned 38, before you bought it,
23 they were the defaulting taxpayers; is that right?

24 A That's correct.

25 Q Did you ever talk to them after you bought it

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1 as to what use they were making of the property?

2 A There were a lot of heirs. I know that
3 Lottie -- I don't remember, it's been a long time. I
4 know that Lottie Taucer herself died in New Orleans in
5 either the '80s or '90s. I think she died quite a
6 long time ago, but I don't remember when. It's been
7 years since we looked at that stuff. I do remember we
8 reached out and tried to contact them, but there were
9 a lot of heirs, and I don't remember ever speaking to
10 any.

11 Q Okay. So you never spoke to anyone to ask
12 them how they were accessing the property; is that
13 correct?

14 A Nope.

15 Q You never talked to them about what use they
16 were making of the property; is that correct?

17 A I don't believe so.

18 MR. STANLEY: Your Honor, before I forget,
19 I'd like to move to introduce Defendants' Exhibit No.
20 1.

21 MR. DODDS: No objection, Your Honor.

22 THE COURT: Admitted without objection.

23 BY MR. STANLEY:

24 Q The photographs that you put in, I think you
25 said it was Mr. Jeff somebody, Scheffer, is that the

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1 name?

2 A Dan.

3 Q Dan Scheffer?

4 A Dan Scheffling -- Scheffing, I'm sorry.

5 Q Where were those photographs taken?

6 A They were taken on three different tax map
7 parcels.

8 Q Okay. Were any of them taken on 01?

9 A Yes.

10 Q Any of them taken on 36?

11 A There's a picture looking through to 36, but
12 it was not physically taken on 36.

13 Q Okay. How did you gain access to 01, just
14 going on in?

15 A Yes, just opened the gate, drove on, and ...

16 Q Did you ask my clients for permission?

17 A No. They've never denied me access to the
18 road, nor have they told me that I couldn't use it.
19 They only denied to give me an easement of the road,
20 because they don't want it developed.

21 Q Okay. Now, when you filed your lawsuit
22 asking for this easement, did you say in your
23 pleadings what you felt the legal entitlement was for
24 you to get the easement?

25 A I have no idea.

181

1 Q All right.

2 A I don't know that I've read the lawsuit that
3 carefully, and if I did, it was, God, four or five
4 years ago. I don't have any idea what it says.

5 Q Can you tell me what your legal entitlement
6 is, what are you basing your legal entitlement on.

7 A An implied easement by use. And implied
8 easement by document, a prescriptive easement, and an
9 easement by necessity.

10 Q Okay. So all three of them, all of them.
11 You're claiming an easement by prescription. You're
12 claiming an easement by prior use?

13 A Actually, let me correct that. I'm not an
14 attorney, but I would assume that if there's a
15 prescriptive easement or an implied easement by use,
16 then there isn't an easement by necessity. So it
17 would only be those two. You can't have an
18 easement -- if there is an easement by use, then I
19 guess there can't be an easement by necessity, because
20 the easement by use would be the underlying thing.
21 I'm not really that clear on that. I don't know. I'm
22 not an attorney.

23 Q All right. So you don't know what legal
24 entitlement you're claiming here today?

25 A I understand that we're claiming an easement,

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1 an implied easement by use and an implied easement,
2 but we're also showing facts that -- of a prescriptive
3 easement, so both of those.

4 Q Okay. Here again now, I'm trying to make
5 sure my record is clear.

6 A Uh-huh.

7 Q So your claim is by prescriptive easement?

8 A Uh-huh.

9 Q And your claim is also implied easement by
10 prior use?

11 A And recorded documents.

12 Q And recorded documents.

13 A Can I ask my attorney a question real quick?

14 Q No, sir. He'll come back and redirect.

15 A I just wanted to make sure that the
16 information I was providing you was correct, that was
17 all.

18 Q Now, you understand, of course, because
19 you've done a lot of research in this case, you
20 understand that one of things that you have to show
21 unity of ownership; you understand that?

22 A Yes.

23 Q And so that the record is clear: What is the
24 unity of ownership? Who was the common owner that you
25 are claiming to have been the common owner when this

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1 property was severed?

2 A Paul Durrant Marye.

3 Q Paul Durrant Marye. Okay. So he's our
4 common owner.

5 A Esquire.

6 Q All right. Now, when did Paul Durrant Marye
7 come into ownership of the property?

8 A That is unclear, and it's unclear because
9 there's no deed recorded from his grandfather who died
10 and left a life estate to him. The only way that we
11 know that he came into ownership was that he deeded it
12 all out between 1882 and 1905.

13 Q Let's do that again that you just said. You
14 just said to me that there is no deed into Paul
15 Murrant --

16 A Durrant.

17 Q Durrant Marye?

18 A Uh-huh.

19 Q There's no deed into him? So you can't prove
20 ownership by deed into him; is that correct?

21 A I can prove he sold them.

22 Q Well, I know you can prove he sold or he
23 transferred, but can you prove he owned? And so you
24 have no deed into him; is that correct? I just want
25 to be sure.

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1 A There is no recorded instrument that I found.
2 It may be out there, but I didn't find it.

3 Q Now, you said that his father, who I assume
4 was William Marye, left a will and left Paul --

5 A That was his grandfather.

6 Q His grandfather? And you said that --

7 A William H. Marye was his grandfather.

8 Q And you mentioned that he left a life estate.
9 To who?

10 A To his son, William. I believe it was
11 William. I'd have to look back at the will.

12 Q Is this the will?

13 A Yeah. It's been a long time since I looked
14 at that, let me take a look.

15 All right. "Bequest to my two sons, William
16 and Thomas for their natural lives from and after the
17 death of said sons or either of them, I give and
18 devise and bequest a said portion of my estate to such
19 child or children as may be living at the time of
20 their death, share and share alike." And then it goes
21 on to a bunch of difference clauses, if you want me to
22 read the whole thing.

23 Q Paul Durrant Marye is not named in that will
24 though, is he?

25 A No. But I know from genealogical records and

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1 census records that he was son of William.

2 Q Is that in evidence?

3 A No, but we had a mountain of stuff and we
4 were trying to stay under like -- we already have 150
5 exhibits. So we didn't bring everything. I don't
6 know if we have a copy with us or not.

7 Q All right. Now what you're claiming here
8 though is that Paul Durrant Marye is our common owner?

9 A Uh-huh.

10 Q That Paul Durrant Marye, obtained title, no
11 deed, but obtained title from the estate of or through
12 the estate of William Marye, his grandfather; is that
13 correct?

14 A Yes.

15 Q All right. Paul is not named in the will.
16 You have no evidence here today that Paul was a
17 grandson; is that right?

18 A I do not have any evidence with us at the
19 moment.

20 Q Okay. Now, when do you say that the
21 severance of this common ownership property occurred
22 that resulted in the landlocking of a piece of
23 property, of your piece of property? When did the
24 severance occur?

25 A 1882.

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1 Q And what was the form of that severance?

2 A The initial severance that landlocked not
3 only my parcels but all the parcels behind it, was the
4 deed to Nero Smalls from P.D. Marye.

5 Q All right. So your deed to Nero Smalls is
6 evidence, and I have another copy here; is that right?

7 A Yes. Would you like your will back?

8 Q Thank you.

9 A You're welcome.

10 Q So what you're saying is that when the
11 conveyance to Nero Smalls took place, that was the
12 severance that we need in this case to continue going
13 down the road towards whether or not you're entitled
14 to an easement?

15 A I'm 150 percent certain.

16 Q Okay. Now, who did Nero Smalls obtain title
17 from?

18 A P.D. Marye, Paul Durrant Marye.

19 Q Let's look at it and see.

20 A It says right up there in the corner.

21 Q Well, let's look at what is executed. Who
22 signed it?

23 A Paul D. Marye.

24 Q Okay. So Paul D. Marye sold this property to
25 Nero Smalls?

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1 A That's correct.

2 Q Okay. And this occurred in 18?

3 A '82.

4 Q '82. So that's the severance. Let's give
5 the correct date of it, I want to see if you agree
6 with me. Is that --

7 A 16th.

8 Q It's the 6th or the 16th. It looks like the
9 6th.

10 A It's a terrible copy, I'm sorry, man. You
11 were right, it says the 6th of February, 1882.

12 Q All right. That's when the severance took
13 place?

14 A Yes.

15 Q All right. Deed signed by Paul D. Marye; is
16 that right?

17 A He did.

18 Q All right. Now, at that time, I would
19 assume -- and when I said, "at that time," I'm
20 referring to the date that Nero Smalls got title.

21 A Uh-huh.

22 Q Paul D. Marye, according to what you're
23 saying, was still the owner of the piece that you know
24 own; is that right?

25 A Correct.

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1 Q So he's still owns 38, is that right?

2 A Uh-huh.

3 Q And then, 38 was subsequently sold, I believe
4 you said, to Jupeter Tate; is that right?

5 A That is correct.

6 Q And there is a deed already in evidence?

7 A That's correct.

8 Q That you put in, in your direct testimony?

9 A Uh-huh.

10 Q Of the conveyance to Jupeter Tate?

11 A Uh-huh.

12 COURT REPORTER: Can you say "yes" instead of
13 uh-huh.

14 THE WITNESS: Oh, I'm sorry. I'd have to
15 look at the document.

16 BY MR. STANLEY:

17 Q Let me show you the deed. What's the date of
18 that deed?

19 A 29th of February, 1884.

20 Q All right. So two years later, after he sold
21 to Nero Smalls.

22 A That's correct.

23 Q Jupeter Tate got his property. Spell the
24 name of Jupeter for this court reporter so she'll have
25 that clear in the record.

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1 A J-U-P-E-T-E-R, T-A-T-E.

2 Q And that Nero spells?

3 A Nero?

4 Q Yes. N-E-R-O, is that right?

5 A N-E-R-O.

6 Q Yes, Nero Smalls. Now, who sold to Jupiter
7 Tate? Look at that deed and tell me.

8 A P.D. Marye.

9 Q P.D. Marye. Okay. So P.D. Marye sold to
10 Jupiter Tate, and Paul D. Marye sold to Nero; is that
11 correct?

12 A Uh-huh.

13 THE COURT: You've got to say yes.

14 THE WITNESS: Oh, I'm sorry. Yes, that is
15 correct.

16 BY MR. STANLEY:

17 Q Same owner?

18 A Yes.

19 Q How do you know that?

20 A Well, because throughout his lifetime, we
21 have a number of conveyances that he did. He went
22 back and forth between P.D. Marye -- and if you look
23 at the cross index which is a matter of record for
24 Berkeley County, he went back and forth throughout his
25 life of being Paul D. Marye and P.D. Marye. And

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1 there's no other in the cross index that sold
2 property.

3 Q So no question in your mind it's the same
4 people?

5 A Yes, no question.

6 Q Have you looked at the signatures on those
7 two deeds?

8 A Yeah.

9 Q Are they the same?

10 A I mean, it looks like the same handwriting to
11 me, yeah.

12 Q And I'm not going to go down this road much,
13 because I'm not a handwriting expert and you aren't
14 either, but look at the P on that one and look at the
15 P on that one. Is it the same?

16 A No, but the D is. The D is exactly the same.
17 The P is different, but if you see, he starts his D up
18 here and he starts down and he has this curlycue
19 through the top of it. I mean, the Ds are exactly the
20 same. The Ps are different.

21 Q All right. The judge has both deeds, he can
22 look at them. All right. Now, what are you seeking?
23 I want to be clear on what you are seeking here today.
24 You're seeking an easement across my folk's land, is
25 that correct? Are you seeking just to use the

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1 existing road that exists now?

2 A Yes, I think I'm entitled to use the existing
3 road that's there.

4 Q All right.

5 A I think I'm legally entitled to it.

6 Q Are you desirous of improving the road by
7 paving the road?

8 A Probably not paving, but my feeling is that
9 because this road crosses a number of parcels and
10 appears to have historically gone all the way through,
11 that if I improve this road and I put a -- like if I
12 put a 22 foot wide gravel road in there with two lanes
13 that 72 and 37 -- I've talked to those owners, they've
14 been using their property, they've been going out
15 there to hunt, both 72 and 37 have. They've owned
16 those properties for a long time. They want to use
17 the road if I put a road in it. And the problem of
18 maintenance comes up of who's going to maintain the
19 road after I put it in. Which is why I felt like it
20 was applicable to make a road that was sufficient for
21 the county to be able to continue to grade it and
22 maintain it after it was installed. And it would also
23 give them access, because 036 is landlocked. It's a
24 win-win for everybody. I really kind of thought that
25 this was kind of the best solution was to put in a

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1 road that would serve everyone.

2 Q Any farming going on out there on any of
3 those parcels?

4 A Not to my knowledge. I don't really know.

5 Q Anybody live on any of those parcels?

6 A Not as far as I know. Well, the parcels up
7 to the north, yeah. Of the 14 that we counted out,
8 the parcels up to the north, people live on.

9 Q How do they get in and out?

10 A Well, there's another access to the north
11 through Singleton Lane. It comes west off of the
12 highway and over and down.

13 Q All right. As we sit here today, there's
14 none of those property owners that are using the road
15 that you now seek an easement over; isn't that
16 correct?

17 A That's not true.

18 Q Who is?

19 A Well, we put a hundred and something slides
20 into evidence that people are using the roads. I
21 don't know who's using the road.

22 Q Yeah, people that she's leasing it to,
23 hunters.

24 A They've been going across my property then.

25 Q I don't know. You might need to put a gate

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1 to yours.

2 A But why is there a road that goes from that
3 road back to 072?

4 Q Well, we keep using the term road. It's
5 really a path, isn't it?

6 A No, it's a road.

7 Q All right. Well --

8 A We have a forestry expert sitting behind you
9 who can testify as to whether it's a road or not.

10 Q Okay. But my question is: You don't know of
11 anybody that using that road other than the people
12 that my clients are allowing to hunt. They're leasing
13 the property for hunters, and that's who's going in
14 and out of there, the hunters; isn't that right?

15 A No. There's been managed timber and logging
16 trucks going in and out, based on satellite imagery.
17 And coming in and out of my property, before I owned
18 it, was being used for agricultural and for timber.
19 And people have been going back to 072 and 037 on that
20 road.

21 Q How can you testify to that here today when
22 you told me you didn't know anything about the use of
23 the property before you bought it? You've never been
24 out there, how do you know that?

25 A I've been out there quite a lot. At least a

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1 dozen times now. You asked before I bought it.

2 Q Yes. And you just bought it in -- you just
3 got title to it in 2017.

4 A Yeah, I've probably --

5 Q I'm asking about over the years?

6 A I've probably been out there, since I got
7 title of the property, at least a dozen time, maybe 20
8 times. I've been out there quite a few times. With
9 other people.

10 Q What use do you plan to make of your
11 property?

12 A Honestly, I'm not entirely sure at the
13 moment.

14 Q Do you want to develop it into housing?

15 A I might. I'm not sure what I'm going to do
16 with it at the moment.

17 Q What are doing with it now, anything?

18 A Yeah, I'm trying to get a road in to it.

19 Q But other than that, what are you doing
20 there? Are you using it for anything?

21 A I mean --

22 Q It's a sincere question.

23 A Gone out there, walked around, checked on the
24 property, that's about it. I've flown my drown out
25 there, too, a number of times. I don't have the

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1 footage with me, but before and after it was logged, I
2 took videos of the property.

3 Q But you're not making any use of the property
4 are you?

5 A No.

6 Q I'm just about through, just for your
7 information, I don't have a lot more.

8 MR. STANLEY: Your Honor, if you'll indulge
9 me just one second, please.

10 BY MR. STANLEY:

11 Q Okay. Here's what you said in your
12 complaint, and I just want to go over this with you.
13 In paragraph 11, you said, "Plaintiff is informed and
14 believes that there is no access to the subject
15 property." Subject property, that's going to be your
16 property. "Except over and through the
17 above-described unimproved dirt road, and
18 consequently, Plaintiff is entitled to a judicial
19 declaration granting Plaintiff a 50-foot
20 ingress/egress easement to the subject property over
21 and through the said dirt road."

22 So what you're asking for in your complaint
23 is that you be given ingress and egress over the
24 unimproved dirt road. Is that still what you want?

25 A Well, my assumption is that that also, once I

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1 have an easement, gives me the right to improve it.

2 And I don't know the law, I'm not an attorney. Is

3 that true or not?

4 Q I don't know. The judge has to decide all
5 that. I'm just asking you what you were asking for?

6 A Yes, I want to be able to have an
7 ingress/egress easement and maintain the road.

8 Q All right.

9 A Obviously, maintenance is part of owning a
10 road -- or not owning a road, but, you know, having a
11 road. You have a road, you maintain it.

12 Q Now, my clients offered you ingress and
13 egress to that property at another location, right?

14 A That's correct.

15 Q But you said that that wouldn't work.

16 A To say that that's reasonable access would be
17 ludicrous.

18 Q Why do you say that?

19 A Well, there's the Army Corps of Engineers,
20 who control wetlands, and most of the 550 feet that
21 goes from that other road cut to my property would
22 cross wetlands. It's below the FEMA flood plain. The
23 stream that it crosses ties into the Broad Ax and I
24 actually have a letter with me from DHEC that DHEC is
25 interested in studying -- I'm sure you guys got one

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1 too -- the Broad Ax for freshwater mussels. It's on a
2 curve, so the DOT is going to oppose probably moving
3 that. DOT doesn't like any kind of change. So you've
4 got five different -- and probably the county --
5 different government bodies that are going to fight a
6 road going there. And on top of that, it's going to
7 be extremely expensive to try to move that road. And
8 historically, it doesn't seem to have ever been there.

9 Q There was never a road there?

10 A I haven't found, either from walking the
11 property or from the digital images, I haven't been
12 able to find where that road came in at that point and
13 crossed that stream.

14 Q Let me show you a plat that you all provided
15 to me in discovery. Now you see that, are you
16 familiar with that?

17 A Yeah, I drew this.

18 Q You drew this?

19 A It's a sketch, and the purpose of this sketch
20 is to delineate different properties that were deeded
21 by P.D. Marye and the surrounding things. I used this
22 as a key, because the legal descriptions, the way
23 they're written, tell you who the surrounding property
24 owners are. So I used this as a key to put the puzzle
25 together.

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1 Q Help me now, because I want to make sure I'm
2 not misconstruing this document. You said that you
3 drew that document, because I'm looking -- the reason
4 I asked you that is because I see down here it says
5 it's a plat of --

6 A Oh, I'm sorry. This is a plat that I drew on
7 top of, I sketched on top of and wrote names on top
8 of.

9 Q All right. But before you sketched on top of
10 it --

11 A Oh, this is a plat, and it's the same plat
12 that was introduced into evidence right there, the
13 bigger version.

14 Q This?

15 A That's the same plat as this.

16 Q Okay. All right. Now, the area that my
17 clients offered you, the ingress and egress was right
18 here going from Old Cherry Hill Road --

19 A That's a creek.

20 Q Up here?

21 A That's a creek.

22 Q Is that a creek?

23 A Yeah, that's the Broad Ax.

24 Q Okay.

25 A And it's 3 or 4 feet deep of water.

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1 Q But they offered it to you along here?

2 A Yeah.

3 Q Okay. But you want it down here? Where do
4 you want it, down here somewhere?

5 A Well, it currently comes in right here along
6 that old section line and turns up.

7 Q Okay.

8 A But it would be physically impossible to put
9 there. I mean, it could not go there.

10 Q Is that cost-wise, or just it can't go there?

11 A There, it could not go. You could not put a
12 road over the creek or on the bank of it.

13 Q My clients, they'll testify to that.
14 (Speaking to clients), you'll get a chance to testify
15 to that.

16 Let me see if I have anything else, Mr.
17 Maxwell. I may be done. Tell me again about this
18 deed that Minnie Stell when she conveyed and then gave
19 the right-of-ways. Where were those right-of-ways?

20 A Do you have a copy of that deed that I can
21 reference?

22 Q I will try to find it. I think I do. Here
23 you go.

24 THE COURT: What exhibit was that?

25 MR. DODDS: I believe that was Exhibit 116 is

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1 what my records indicate.

2 THE WITNESS: And do you have a copy of
3 Exhibit 1 also? So that I can show you on the map
4 where it is, what it's referring to?

5 MR. STANLEY: My Exhibit 1?

6 THE WITNESS: Your Exhibit 1. Oh, that's
7 Defendants' Exhibit 1. The Exhibit 1 that we
8 submitted.

9 MR. STANLEY: Oh, you want your 1?

10 THE WITNESS: Yeah. You're asking where the
11 two right-of-ways are, and this isn't a wide enough
12 image to show both of them. We need a wider view. If
13 you can show me No. 1 or let me grab 1 from the table.

14 MR. DODDS: Are you talking about Plaintiff's
15 Exhibit No. 1? Your Honor, do you have that?

16 THE COURT: I do.

17 THE WITNESS: Okay. So Plaintiff's Exhibit
18 No. 1 -- so I'll use this as a pointer. How am I
19 going to hold this so everybody can see it? Okay.

20 BY MR. STANLEY:

21 Q Make sure the judge sees it.

22 A Your Honor, so there's a road that comes in
23 here and comes up and comes across. And what this
24 deed is referring to is a right-of-way for ingress,
25 egress, and regress to select from two such

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1 right-of-ways if desired in order to access the land
2 from the west -- which is up and out this way -- or
3 from the south, which is out this way. So when she
4 broke up this property, she believed that there was a
5 road going through here and that the people that she
6 was deeding this to had the right to use it. And that
7 was in 1954, January 29, 1954.

8 Q All right. Now, is that deed that we're now
9 talking about, that's recorded at A-95 at Page 82 from
10 Minnie Shae Stell --

11 A Yeah, that was her sister.

12 Q -- to Lottie T. Taucer, T-A-U-C-E-R, and
13 Charles W. Taucer, is this deed a part of your
14 property now?

15 A That property is 039.

16 Q That is 39?

17 A That is 039.

18 Q Is it all of 39? And the reason ask you that
19 is 39 is, what, 20 --

20 A No. 039 is 5 acres.

21 Q Oh, it's 5 acres.

22 A And this specifies, how many acres, 5 acres.

23 Q Okay. I see.

24 A And it's not exact actually. The tax map
25 doesn't exactly match 5 acres, but it's about 5 acres.

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1 Q All right. But you have this property now as
2 a part of your ownership.

3 A I do.

4 Q And whatever right-of-way is granted by this
5 deed, you have it; is that right?

6 A I would assume so, yes.

7 Q All right. But it is of no use to you in
8 terms of getting in and out of your property?

9 A Well, it crosses, this right-of-way that's
10 intended here crosses 001, and the other way it
11 crosses all of these properties and comes out on
12 Singleton Lane. It's referring to the road that we're
13 talking about.

14 Q Well -- but it's referring to you being able
15 to get out north, right?

16 A West and south.

17 Q Have you explored that at all as to whether
18 or not that easement is of any use to you for ingress
19 and egress? Have you explored that?

20 A Well, either way, I'm crossing your clients'
21 properties. They're on both sides of me.

22 Q Okay. Would you be interested in an easement
23 going across 36.

24 A Yeah, I mean, I have no problem actually with
25 establishing the historic road all the way through so

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1 that everybody can share and benefit from it.

2 Q Yeah.

3 A And I would prefer, since it's 14 properties
4 or so, that the county be able to eventually maintain
5 that road so that you don't have to figure out who's
6 maintaining what.

7 Q You keep referring to all these properties
8 that you are here championing for. I guess that
9 you're speaking for, but nobody else has asked for an
10 easement but you, right?

11 A No. Actually the -- I have had discussions
12 with 072 and 037, and they do want an easement to
13 their property and they feel like they are owed one
14 from me based on recorded document, but I don't have
15 one to give them without this. So, yes, there are
16 other people that are interested in this.

17 Q All right. So but go back to my question:
18 You would be interested in an easement --

19 A I know 072 wants to build a house on his
20 property.

21 Q All right. Well, but they haven't sued.
22 They haven't sued you and they haven't sued my
23 clients, right?

24 A I don't think they have to sue me. There's
25 an easement recorded.

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1 Q Where do they live?

2 A 072. He's a chiropractor -- I might be
3 getting the two confused, I'll have to look at the
4 names. One's a chiropractor that lives about a half
5 mile or a mile away, and that's -- if you tell me the
6 names of the owners, I can probably remember. It's
7 been -- it's been a year and a half since I've talked
8 to him, probably. One guy lives in, I think West
9 Ashley, maybe, and he's a construction guy. And the
10 other guy's a chiropractor. And that's all I
11 remember. I'm sorry. I don't remember any more.

12 MR. STANLEY: Mr. Maxwell, I thank you for
13 answering my questions. I don't have anything
14 further, Your Honor.

15 MR. DODDS: Just a couple questions, Judge.

16 THE COURT: Sit down for a minute more.

17 THE WITNESS: Sorry.

18 THE COURT: That's okay.

19 MR. DODDS: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. DODDS:

22 Q Mr. Maxwell, based on the research that
23 you've done specifically with respect to the chain of
24 title for 001, to include the chain of title for your
25 properties, 038 and 039, and specifically with regard

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1 to the last will and testament of William Marye, are
2 you convinced that Paul D. Marye was the grandson of
3 William Marye?

4 A Yes, he had three children, and they all
5 deeded out parts of the Broad Ax. Moses Marye and
6 there was a -- what was the other son? There were
7 four children that grew up in that area, a daughter
8 and three sons. And roughly, the Broad Ax was broken
9 into three pieces, and he got a third of it, and the
10 daughter got a separate piece of land as her dowry.

11 Q All right.

12 A And they also split up the Umbria plantation
13 roughly in thirds.

14 Q And was the grandson, Paul D. Marye,
15 identified as a remainder person, not by name, but
16 with respect to any offspring of the children of
17 William Marye?

18 A Yes.

19 Q In terms of receiving any property?

20 A Yes, he was identified as an offspring.

21 Q And the conclusion that Paul D. Marye
22 inherited the property which we are in litigation over
23 today, is that conclusion supported by the public
24 records in Berkeley County as to this property
25 occurring after that date.

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1 A I think the most conclusive evidence to that
2 is the grantor's index. He conveyed so much property
3 throughout his lifetime that he had his own separate
4 page. He had his own page in the index, and it goes
5 back and forth between Paul and P.D. throughout the
6 entire index.

7 Q So is the answer to my question, yes?

8 A It's absolutely conclusive. The Paul D.
9 Marye page has both P.D. and Paul on it. It's one
10 page, and all of the conveyances go back and forth on
11 it.

12 Q All right. In looking at what I believe to
13 be Exhibit 116, which is the deed from Minnie Shae
14 Stell to Lottie Taucer of the approximate 5 acres
15 which references the right-of-way, "two such
16 right-of-ways if desired in order to have access to
17 the land from the west or the south across the lands
18 of the grantor," et cetera. If you were to exercise a
19 right of ingress/egress to the west as described in
20 Exhibit 116, would that require that you --

21 A It would require an easement across 036, 035,
22 034, 040.

23 Q Okay. So 035 is not owned by the Defendants,
24 right?

25 A No. But 034 is.

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1 Q And 040?

2 A No, they don't own 040.

3 Q Okay. So you'd have to get the permission of
4 two other property owners?

5 A At least three.

6 MR. DODDS: That's all I have, Judge.

7 THE WITNESS: Singleton Lane though appears
8 to be county-maintained up to a certain point, but I
9 don't know at what point that maintenance stops.

10 THE COURT: Any Recross?

11 MR. STANLEY: No, sir.

12 THE COURT: You can step down. I want to
13 make sure I'm following your position, Mr. Dodds.

14 MR. DODDS: Okay.

15 THE COURT: Regarding the deed that we're
16 talking about, the Minnie Shae Stell to Lottie Taucer
17 that contains the language regarding ingress/egress.
18 At the time of this transfer, was Minnie Shae Stell
19 the owner of the property that consisted of 01?

20 MR. DODDS: No, no, Your Honor. That
21 property would have been owned by in --

22 MR. MAXWELL: Eddie Cooper.

23 MR. DODDS: I'm sorry?

24 MR. MAXWELL: Eddie Cooper.

25 MR. DODDS: That would have been owned by

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1 Eddie Cooper, Your Honor.

2 THE COURT: Okay.

3 MR. DODDS: Who is the predecessor in title
4 to the Defendants.

5 THE COURT: Presumably, she was the owner at
6 least of 39 and 36 or one of those two, am I following
7 that correctly?

8 MR. DODDS: 38 and 39, Your Honor.

9 THE COURT: Okay.

10 MR. MAXWELL: And 72 and 37.

11 MR. DODDS: I'm sorry?

12 MR. MAXWELL: And 72 and 37.

13 MR. DODDS: Yeah, and 72 and 37, which are
14 very small parcels that are cut out of those two
15 properties, Judge. But 36 was owned by the Defendants
16 as was 34.

17 THE COURT: But 38 wasn't coming out of a
18 larger tract belonging to Minnie Stell?

19 MR. DODDS: That's correct.

20 MR. STANLEY: I'm sorry, what did you ask
21 Judge? You said 38 wasn't or was?

22 THE COURT: Was not.

23 MR. STANLEY: What was your answer?

24 MR. DODDS: Yes, 038 came out of a conveyance
25 of Minnie Stell to Lottie Taucer.

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1 THE COURT: But at that time, Stell did not
2 own 01?

3 MR. DODDS: That's correct.

4 THE COURT: Okay. All right. Thank you. I
5 just want to make sure, because I was having trouble
6 flipping back and forth. Any other witnesses, Mr.
7 Dodds?

8 MR. DODDS: Yes, sir, I would call Mr. Dan
9 Scheffing to the stand.

10 THE COURT: Come on up.

11 MR. MAXWELL: And, Your Honor, if I might,
12 I'll load my laptop back up for him. So he can use
13 the same exhibits.

14 THE COURT: All right.

15 (Off the record briefly.)

16 DANIEL SCHEFFING,
17 having been duly sworn, testified as follows:

18 THE COURT: Thank you, sir. Give your full
19 name and spell your last name and your address for the
20 court reporter.

21 THE WITNESS: Daniel A. Scheffing,
22 S-C-H-E-F-F-I-N-G. 112 South Rosemary, Andrews, South
23 Carolina, 29512.

24 THE COURT: Have a seat right there. Mr.
25 Dodds?

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1 MR. DODDS: Thank you, Your Honor, if it
2 please the Court.

3 DIRECT EXAMINATION

4 BY MR. DODDS:

5 Q Mr. Scheffing, will you take a moment and
6 explain to the judge your educational background.

7 A Yes, sir. I'm a graduate forester. Received
8 my Bachelor of Science in Forestry from the University
9 of Missouri in 1975. I have since worked after that
10 for Westvaco until 2008 in a variety of different
11 forestry disciplines with procurement, land
12 management, road building, real estate.

13 2008, I went to work for Sabine & Waters, a
14 consulting firm in Summerville as their -- in charge
15 of their forestry division. And then, I retired from
16 that in 2019. And overlapping that some, I became an
17 adjunct professor in forestry at Horry-Georgetown Tech
18 in Georgetown. And currently, I've retired from that,
19 and I have three clients, landowners, that I work with
20 now.

21 Q And what were your primary responsibilities
22 while working at Westvaco?

23 A I started off in wood procurement, and then
24 here, when I got transferred to South Carolina 32
25 years ago, I was a land management forester.

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1 Q What do you do as a procurement officer for a
2 company like Westvaco?

3 A Facilitate the purchase and deliver of wood
4 into their mills or their yards.

5 Q Does that require that you go to specific
6 properties and check them out to see availability of
7 timber, how logging trucks get in and out, et cetera,
8 et cetera, et cetera?

9 A Yes, sir. Typically, it means that we
10 purchase the timber from the landowner.

11 Q Okay.

12 A So the access and loggability of that timber
13 in addition to its merchantability is important.

14 Q What do you mean by loggability?

15 A Well, is the land suitable for the equipment
16 to operate on and be able to extract the wood fiber.

17 Q Does that require that you have some degree
18 of knowledge with regard to soil, wetlands, things of
19 that nature?

20 A That's right.

21 Q And how long have you been doing that sort of
22 work?

23 A Well, I did that from 1994 until 2005.

24 Q All right. How many properties would you say
25 you inspected and passed upon during that period of

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1 time.

2 A Oh, gosh, maybe 125, 130, somewhere in that
3 regard.

4 Q All right. And as I understand, you've also
5 taught forestry?

6 A Yes, sir.

7 Q And where did you do that at?

8 A Horry-Georgetown Tech.

9 Q And how long have you done that?

10 A Four years.

11 Q Four years?

12 A Yes, sir.

13 Q All right.

14 A Am I not speaking loud enough or are you not
15 hearing well enough.

16 MS. KNIGHT: Louder.

17 THE WITNESS: Thank you, ma'am.

18 BY MR. DODDS:

19 Q Now, did those positions in terms of your
20 employment, did they require you to go out and, in
21 addition to what you've testified to, and analyze the
22 nature of the use that was being made of properties?

23 A Yes, sir, they did.

24 Q And why was that important?

25 A When you look at a piece of property from a

213

1 standpoint of either management or the sale of timber,
2 you have to be aware of what the land will allow you
3 to do.

4 Q Okay. What do you mean by that?

5 A In other words, if on one extreme, you have
6 very, very wet ground, will that wet ground allow the
7 trees to grow appropriately? Or conversely, will it
8 allow logging equipment to extract those trees without
9 doing undue environmental damage?

10 Q Okay. Now, did it also require you to, in
11 certain cases, to provide the access for the loggers
12 in terms of developing a road into the area to be
13 timbered?

14 A Yes, sir. You can't log something unless you
15 can figure out how to get the wood to a public road.

16 Q Okay. Were there situations in your history
17 where there weren't access and access had to be
18 created?

19 A Yes, sir.

20 Q And did that involve the creation of a
21 roadway?

22 A Yes, sir.

23 Q And what sort of things did you have to
24 evaluate for purposes of determining the feasibility
25 of a roadway?

214

1 A Well, again, you look at the soils and you
2 look at the capability of those soils to support truck
3 traffic.

4 Q All right.

5 A Support vehicular or heavy equipment traffic.
6 If you look at the soils book -- now it's all online,
7 but at one time it was printed in a soils book, and it
8 would give equipment capability and those kinds of
9 things for the various soil types. So basically, what
10 it amounts to is you have to stay out of the very wet
11 areas.

12 Q And were you trained and educated with
13 respect to those various types of soils?

14 A Yes, sir.

15 Q Various types of wetlands?

16 A Yes, sir.

17 Q What soils and wetlands could sustain a
18 roadway and what soils and wetlands could not sustain
19 a roadway?

20 A Yes, sir.

21 MR. DODDS: Your Honor, I would seek to
22 qualify Mr. Scheffing as an expert in the field of
23 forestry.

24 THE COURT: Any objection?

25 MR. STANLEY: No objection, Your Honor.

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1 THE COURT: So qualified without objection.

2 MR. DODDS: Thank you, Your Honor.

3 BY MR. DODDS:

4 Q Now, Mr. Scheffing, did there come a time
5 where you were contacted by Jason Maxwell to go out
6 with him and observe certain properties here in
7 Berkeley County?

8 A Yes, sir.

9 Q Okay. And are you familiar with the
10 properties that you went to?

11 A Yes, sir.

12 Q And how long ago did that occur?

13 A Two weeks.

14 MR. DODDS: Judge, can I see that one exhibit
15 with the TMS numbers?

16 THE COURT: Defendants' 1?

17 MR. DODDS: Yes, sir. Thank you, Your Honor.

18 BY MR. DODDS:

19 Q Let me show you what's been received into
20 evidence, Mr. Scheffing, as Defendants' Exhibit 1,
21 which appears to be a GIS online mapping from
22 September of '21, and ask if you recognize those
23 various properties?

24 A Yes, sir, I do.

25 Q And would you take a moment and go through

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1 and tell Judge Van Slambrook which properties that you
2 have personally walked as depicted on Defendants'

3 Exhibit 1.

4 A 2038, 2039.

5 Q And are you familiar in terms of location of
6 001 and 036?

7 A Yes, sir, I am.

8 Q And are you also familiar with the location
9 of Old Cherry Hill Road?

10 A Yes, sir.

11 Q And did Mr. Maxwell have occasion to provide
12 you various and sundry imagery from Berkeley County
13 and from Google Earth as relates to these various
14 properties that you've described?

15 A Yes, sir, he did.

16 Q Okay. And have you seen the slide show, the
17 presentation, that was made to the Court this morning?

18 A Yes, sir.

19 Q All right. What opinion do you have, Mr.
20 Scheffing, with respect to the access from Old Cherry
21 Hill Road to and from TMS number 123-00-02-038, which
22 is the approximate 22 acre tract owned by BCE 2015,
23 LLC?

24 A The access that we used appeared to me to be
25 the only reasonable access in there.

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1 Q And what access was that?

2 A We turned off of Cherry Hill Road and went
3 along the edge of a field. I believe that access
4 crosses these folks here.

5 MR. DODDS: All right. Judge, may I see that
6 real quick, again. Thank you, Your Honor.

7 BY MR. DODDS:

8 Q So in showing you Defendants' Exhibit 1, can
9 you describe for the Court what access you are
10 referring to. And if you can just run along with your
11 finger from Old Cherry Hill Road onto the property
12 owned by BCE, 038.

13 A Yes, sir. We came in here and went through
14 here and up to here.

15 Q Okay.

16 A Was that clear, sir?

17 THE COURT: Yes.

18 BY MR. DODDS:

19 Q And approximately how wide is the cleared
20 area along that dirt road over and across 001 to 038?

21 A Well, there's brush next to the road, but the
22 road pathway itself is certainly wide enough for one
23 car. And then, both sides of the road that have been
24 mowed over the years or maintained over the years, not
25 recently, but you can see where they have in the past,

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1 is certainly wider than that. My estimate would be
2 like 40 feet.

3 Q Okay. And in terms of the clearing of trees,
4 approximately, what would the distance be of that
5 roadway?

6 A At least 50 feet wide.

7 Q Okay. Now, did you have occasion to observe
8 the road as it came onto 038 and then across 039 into
9 036?

10 A Yes, sir. We didn't go on 036, but we walked
11 across 039, and we were parked on 038. And so the
12 roadway was there, we were there after a rain, and we
13 were concerned about tearing up the road with his
14 truck. So we didn't go any farther than what we
15 could.

16 Q Right. So you personally walked the area
17 from Old Cherry Hill Road across 001 onto 038 and 039
18 looking onto 036?

19 A Yes, sir.

20 Q All right. Were you able to determine, based
21 on your education and your experience and training,
22 the continuity of use of the dirt road from Old Cherry
23 Hill Road across 001?

24 A Yes, sir, it seems like that's the
25 traditional access and egress to those properties.

219

1 Q Do you have an opinion as to how long over a
2 period of time that road has been used?

3 A It seems to me, judging from the slides that
4 were sent, that it's been used several decades
5 continuously.

6 Q Right. Now, there's been some discussion
7 about an alternate ingress/egress access from Old
8 Cherry Hill Road. Are you familiar with the alternate
9 proposed access?

10 A Yes, sir. Mr. Maxwell and I walked down Old
11 Cherry Hill Road and looked at this triangular piece
12 in the corner.

13 Q Okay. So you're looking at, I guess the
14 northeasterly portion of 001 as depicted on
15 Defendants' Exhibit 1?

16 A That is correct.

17 Q Take a moment, if you will, and describe for
18 Judge Van Slambrook what the topography is like and
19 what the soil conditions are like in that alternate
20 access area.

21 A The land lies approximately 6 feet below the
22 grade of the road in that area. It's composed of
23 hydric soils. It would be classified as a wetland and
24 would be very, very difficult if not impossible to
25 construct a road across.

220

1 Q All right. Are there any actual streams
2 running through that area you've described?

3 A Yes, we crossed one.

4 Q In your opinion as an expert in the field of
5 forestry, would it be possible to construct a roadway
6 providing access to 038 over and across the area that
7 you've described in the northeast corner of 001?

8 MR. STANLEY: Your Honor, I object to that.
9 He is qualified as a forestry expert, not as a road
10 builder, not as a bridge builder. So he's giving an
11 opinion or at least being solicited to give an opinion
12 regarding what's possible with respect to constructing
13 a roadway. He's not qualified on that.

14 THE COURT: Mr. Dodds, is that outside his
15 scope?

16 MR. DODDS: You know, one of the questions I
17 asked him, Judge, was in his training and his
18 education and the services that he provided for
19 Westvaco, did it also include having to provide
20 roadways, i.e. access and ingress for logging trucks
21 to various properties that were being timbered. And
22 he indicated that, yes, that was part of his
23 responsibilities. So I think that he is qualified to
24 answer that question. You qualified him as an expert
25 in the field of forestry, which includes that

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1 particular service. I think that Mr. Stanley can
2 cross-examine him on that issue, but for purposes of
3 receiving it into evidence, Judge, I do think it's
4 proper.

5 THE COURT: I'll overrule the objection.
6 I'll allow the question.

7 THE WITNESS: Would you repeat the question.
8 BY MR. DODDS:

9 Q Yes, sir. We're talking about providing
10 alternate ingress/egress access from Old Cherry Hill
11 Road here in the northeastern corner of 001. So in
12 the area that you've described as being wetlands, I
13 think. And I don't want to put words in your mouth,
14 but that was my understanding. Would it be possible
15 to construct a road, a 50-foot road from Old Cherry
16 Hill Road across that area of 001 providing
17 ingress/egress, 50-foot ingress/egress access to 038?

18 A As Mr. Stanley pointed out, I am not an
19 engineer.

20 Q Okay.

21 A However, in my opinion and in my experience,
22 would it not only be impractical, it would be
23 environmentally irresponsible. Would it be
24 engineeringly possible? I'll leave that to the
25 engineers.

222

1 Q Okay. All right. What would it take in your
2 opinion to construct a 50-foot roadway from Old Cherry
3 Hill Road across that area to 008 [sic] in terms of
4 removal of soil things of that nature?

5 A A person would have to do the calculations to
6 take out the soil that is currently there, because
7 that's not a load-bearing soil, and fill that back
8 with load-bearing material. The roadway would have to
9 be built up above the flood level.

10 Q Right.

11 A At least 6 feet. If you build a road up 6
12 feet and you want it 20 feet wide at the top it's
13 going to have to be approximately 40 feet wide at the
14 base to support that. There would be numerous
15 culverts to allow the water to continue to go under it
16 as the water currently does. Not only is there a
17 stream through there, there's overland sheet flow that
18 has to be accounted for.

19 Q All right.

20 A And that would mean that you would have to --
21 because you're working in a wetland, you would have to
22 get permission from the Corps of Engineers. And
23 because it is a permanent road, it would require that
24 permit. Forestry has an exemption for forest roads,
25 but they do not have an exemption for permanent roads.

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1 Q As I recall, you indicated to do such a road
2 would be ecologically irresponsible?

3 A Yes, sir.

4 Q Why are you saying that?

5 A Because there's another way in there.

6 Q Which is where?

7 A The road that's currently used.

8 Q And based on your expertise and looking at
9 roads that have been used for purposes of timbering,
10 do you have an opinion as to whether the private road
11 that's over and across 001 was the road that's been
12 used to timber 001 and the property described as 036?

13 A Yes, sir, I believe that road has been in
14 continual use for a long time and has been used to
15 haul a lot of wood out of, as well as access for other
16 pursuits that may have been back there, whether
17 agricultural or recreational.

18 Q Okay. And you've seen the slides of Berkeley
19 County GIS over the years that showed the harvesting
20 of timber off of 036 and 034?

21 A Yes, sir.

22 Q Okay. And in your opinion, are there any
23 other -- or could there have been any way for a
24 logging company to remove timber from 034 or 036
25 except across the existing dirt road that runs over

224

1 and across 001.

2 A We did not explore any access out the other
3 way, but looking at the map, logging contractors and
4 wood buyers want to get to the paved surface as
5 quickly as they possibly can. All other things being
6 equal, the wood on the south side of that, came out
7 that road.

8 MR. DODDS: Okay. Thank you, Mr. Scheffing.
9 Please answer any questions that Mr. Stanley or the
10 Court may have.

11 THE COURT: Mr. Stanley, any
12 cross-examination?

13 MR. STANLEY: Yes, sir. Thank you, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. STANLEY:

17 Q Mr. Scheffing, I think you indicated your
18 were out there about two weeks ago, out on the
19 property?

20 A Yes, sir.

21 Q Tell me again why you were there?

22 A Mr. Maxwell asked me to come look.

23 Q Look at what?

24 A This property and the access.

25 Q Was Mr. Maxwell contemplating taking some

225

1 timber out of there?

2 A No, sir.

3 Q You're a timber man, is that right?

4 A Yes, sir.

5 Q So normally, you would go out there to assess
6 whether or not there's any marketable timber and how
7 you would get it out?

8 A No, sir. I deal in forest management. And
9 forest management deals with roads, as well as timber
10 and drainage and lots of other things.

11 Q Well, was Mr. Maxwell interested in any
12 forest management of his property?

13 A No, sir.

14 Q I'm still not clear on why you were out there
15 then?

16 A Because of my expertise in roads and
17 drainage.

18 Q Oh, okay. Did I understand you to say that
19 you traveled on the existing road out there from Old
20 Cherry Hill Road across 001 and across 038 and 039?

21 A That is correct.

22 Q How did you travel?

23 A We went my vehicle part of the way and by
24 foot the balance.

25 Q What way did -- where did you travel by

226

1 vehicle?

2 A Across 001 onto 0038.

3 Q And then what?

4 A And we got out and walked.

5 Q Okay. Why did you get out and walk on 038?

6 A Because it had rained recently and there were
7 ruts in the road.

8 Q And 038 is Mr. Maxwell's property; is that
9 right?

10 A Yes, sir.

11 Q So there ruts on the road on his property?

12 A Yes, sir.

13 Q But on 001, you drove across it?

14 A Yes, sir.

15 Q Was the road passable?

16 A Yes, sir.

17 Q No problem?

18 A No problem.

19 Q Dirt road?

20 A Yes, sir.

21 Q Gives you access?

22 A Yes, sir.

23 Q Gives you a way out of there?

24 A Yes, sir.

25 Q No problem.

227

1 A Well, not that day.

2 Q All right. Now, the road on the northeast
3 side that you said would be difficult, did I hear you
4 say y'all crossed a stream out there?

5 A Yes, sir.

6 Q How did you do that?

7 A By foot.

8 Q By foot? Okay. Did you cross --

9 A There's no road there, sir.

10 Q Did you cross it?

11 A Yes.

12 Q So the water is not that deep, you could walk
13 across it?

14 A You could jump across it.

15 Q Okay. Well, how wide is it?

16 A Four and a half, 5 feet, maybe.

17 MR. STANLEY: Okay. Thank you so much.

18 THE COURT: Mr. Dodds, any redirect?

19 MR. DODDS: Just a couple follow-ups.

20 REDIRECT EXAMINATION

21 BY MR. DODDS:

22 Q Did Mr. Maxwell inquire of you, in terms of
23 an opinion, regarding the continuity of use of the
24 dirt road that crosses 001?

25 A Yes, sir, he did.

228

1 Q Okay. And did you give him an opinion in
2 that regard?

3 A Yes, sir. My opinion is that road's been in
4 use for a long, long time.

5 Q Okay. Did you see any similar conditions
6 which would give you or would cause you to have the
7 same opinion with regard to any sort of ingress/egress
8 from the northwest, this Samantha Lane?

9 A No, sir, I did not. The road across 001 and
10 on to 0038 and continuing on to 039 had been in use
11 for a long time, based upon my notion that the roadbed
12 itself is lower than the surrounding territory, which
13 indicates to me that over the years the soil has been
14 compacted and folks have filled in on top of it, and
15 it's been compacted, because some of the stuff that's
16 on the top is not the same as some of the stuff that's
17 underneath it.

18 Q Got you.

19 A In terms of the soils.

20 Q So that's an indication of the road being
21 maintained?

22 A Yes, sir, it being used and maintained. And
23 those two kind go together.

24 Q Right.

25 A For generations.

229

1 Q I got you. So if I'm understanding your
2 testimony correctly, you look at the, I guess the
3 topography of the road versus the topography of the
4 surrounding property, and an indication of use would
5 be the impact -- the using of the road in such a way
6 as to drive the topography of that road downward?

7 A Yes, sir, that's correct.

8 Q Okay.

9 A Compaction will occur when weight is applied
10 to the surface of the road in a continuing fashion.

11 Q And did you see evidence of that?

12 A Yes, sir.

13 Q Okay. And was it -- would you consider it
14 considerable, or what's your opinion in that regard?

15 A I think it's consistent with long-term use.

16 Q Okay. And did Mr. Maxwell ask of you to
17 offer an opinion, based on your experience with regard
18 to roadways, as to the existing access over and across
19 001 versus the access in the area that you've
20 described in the northeast corner of 001?

21 A Yes, sir, he did.

22 Q Okay. And you gave him your opinion in that
23 regard?

24 A I did, sir.

25 Q Which was what?

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A That the only reasonable access to his property in my opinion is across 001 on the route that we took.

MR. DODDS: I understand. Thank you, Mr. Scheffing.

FURTHER CROSS-EXAMINATION

BY MR. STANLEY:

Q 001 you said is being maintained, the road is being maintained across 001?

A It has been in the past, sir.

Q Do you know who's maintaining it?

A I have no idea.

Q Do you know what use is being made of 001?

A Current use seems to be recreational.

Q How about timber management?

A Timber has come out of there, yes, sir.

Q Are they growing any timber on it?

A On 001?

Q Yes, sir.

A Didn't look at 001 from that perspective.

Q All right. What use is being made of 038?

A None currently other than just ownership.

Q Do you know the last time that any use has been made of 38?

A Timber was harvested out there some time in

231

1 the near-current past in terms of the life of a tree.
2 So, yeah, 15 years or so trees have been cut.

3 Q But the road is maintained on 001, but not on
4 38?

5 A No. I said the road has been maintained, to
6 whatever degree it's been maintained, all the way
7 through to where there's a large mud hole on 38.

8 Q All right. So it's not being maintained?

9 A Well, the road is basically the same off of
10 Cherry Hill Road all the way to that mud hole.

11 Q And then how big is the mud hole? Can you go
12 around the mud hole and continue on to 39?

13 A Oh, I suppose you could in 4-wheel drive,
14 yeah.

15 Q Okay. In other words, how does he get to 39
16 is what I'm asking?

17 A I suppose he parks and walks. Or maybe he
18 uses 4-wheel drive. We didn't use 4-wheel drive that
19 day, because frankly, I would rather walk a mile as to
20 push an inch.

21 Q How do you get to 36?

22 A Well, that road goes across 39, I assume that
23 that's the way they get there.

24 Q Is it usable?

25 A It appears to be.

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1 MR. STANLEY: Okay. Thank you, sir.

2 THE COURT: You can step down.

3 THE WITNESS: Do I leave this here or give it
4 back to you?

5 THE COURT: I'll take it. Thank you. All
6 right. Mr. Dodds?

7 MR. DODDS: Thank you, Your Honor. If it
8 please the Court, I would call Bill Chivers to the
9 stand. Thank you, Mr. Scheffing. May he be released?

10 MR. SCHEFFING: Yes?

11 THE COURT: You are free to go, if you wish.

12 MR. DODDS: Probably going to need that
13 exhibit back, Judge. Sorry. Thank you.

14 WILLIAM CHIVERS,
15 having been duly sworn, testified as follows:

16 THE COURT: Thank you, sir. And give your
17 full name, spell your last name and give your address
18 for the court reporter.

19 THE WITNESS: It's William Chivers. What was
20 it name and?

21 THE COURT: Spell your last name.

22 THE WITNESS: C-H-I, V as in Victor, E-R-S.

23 THE COURT: And your address?

24 THE WITNESS: 3078 Murraywood Road,
25 M-U-R-R-A-Y-W-O-O-D, Murraywood Road, Johns Island

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1 29455.

2 THE COURT: All right. Thank you, sir. Mr.
3 Dodds?

4 MR. DODDS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. DODDS:

7 Q Mr. Chivers, let me show you what's been
8 received into evidence as Defendants' Exhibit 1, which
9 is a Berkeley County GIS online mapping of various
10 properties in Berkeley County, to include 001 owned by
11 the Defendants in this case; 038 owned by Mr.
12 Maxwell's company, BCE 2015; 039 owned by Mr.
13 Maxwell's company; and 036 owned by the Defendants.
14 Are you familiar with these properties?

15 A Yes. I mean, to what extent? You know, I --

16 Q I want you to tell the judge what your
17 familiarity is with it.

18 A Well, I rode out there and met Mr. Maxwell
19 about a week ago, and we -- well, we actually went
20 down this --

21 Q Is that Old Cherry Hill Road?

22 A This is Old Cherry Hill Road. I'm showing
23 how'd we get to there. So an access off of Cherry
24 Hill that went through, I believe it was 001.

25 Q Okay. Let me slow you down just a bit,

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1 because I want to tell the judge -- I want you to tell
2 the judge a little bit about yourself. What's your
3 educational background?

4 A Went to the College of Charleston, graduated
5 in '86. Went into the Air Force, flew airplanes in
6 the Air Force for about 11 years. And then when I had
7 an accident, I got out of the Air Force and finished
8 law school in -- it would have been '97. And then
9 what's pertinent to this is that I've been in the
10 construction business clearing lands and building
11 roads since 1993.

12 Q What kind of planes did you fly for the Air
13 Force?

14 A Cargo planes, C-141s and C-17s.

15 Q All right. And as I understand, you started
16 a construction company sometime on or about 1993?

17 A With my brother, he and I started a
18 construction company in '93.

19 Q All right. And what's the name of that
20 company.

21 A Back then it was East Coast Management, LLC.

22 Q Okay.

23 A But it morphed into, when we split, Chivers
24 Construction.

25 Q All right. And what sort of licenses do you

235

1 hold?

2 A I hold water and sewer line contractor,
3 septic tank installer, and then a commercial general
4 contracting license.

5 Q What sort of work does your company currently
6 do or primarily do, I guess is the appropriate
7 question?

8 A We clear land and build farm roads and access
9 for those.

10 Q Is it primarily for rural properties for
11 farmland, hunting, things of that nature?

12 A Yes, sir.

13 Q All right. And you mentioned you also build
14 dirt roads?

15 A That's mostly what we do in the road
16 building, yes, sir.

17 Q And how does that process work? Somebody --
18 if I contact you and I say, Mr. Chivers, I want to
19 build a dirt road across this property, how do we get
20 started in that process?

21 A We'll go take a look.

22 Q Okay.

23 A We'll use information like this off the GIS
24 or satellite photos, as well. And sometimes it's
25 engineer driven; sometimes it's as casual as some guy

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1 needs 1,000-foot road in a field that he's going to
2 star plowing. If there's no issue, no wetlands issue,
3 we'll just do that with a land disturbance permit.

4 Q Okay. And have you done, over the years,
5 both types of roads, ones that are engineered and ones
6 that are not?

7 A Yes, sir.

8 Q Okay. And did you physically go out to the
9 area in the northeast corner of 001 with Mr. Maxwell,
10 to look into the feasibility of a road that would
11 provide him access from Old Cherry Hill Road to his
12 property at 038?

13 A Yes, sir, we did.

14 Q And what were the conditions of the area in
15 the northeast corner of 038?

16 A From the road, it falls off immediately down
17 to about 7 feet below the grade of the road, and it's
18 a wet boggy area.

19 Q Okay. Let me go back, and I apologize,
20 Judge. Over the years, Mr. Chivers, since about 1993,
21 approximately how many roads has your company been
22 involved in with respect to the actual construction of
23 the roadway to these various and sundry rural
24 properties?

25 A Hundreds.

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1 Q Hundreds?

2 A To a degree.

3 Q Okay.

4 A And the reason I stop, I'm trying to get
5 something comparable to this in my head, but we build
6 everything from a 200-foot long driveway to a
7 6,000-foot clearing easement, so.

8 Q Okay. And are these paved roads or gravel
9 roads?

10 A No, sir. They're dirt roads. Some of them
11 are gravel, you know, we're required to put gravel on
12 some. Sometimes the soils are good enough to just
13 clear and bank up or crown up.

14 MR. DODDS: All right. Your Honor, I'd seek
15 to introduce Mr. Chivers as an expert in the field of
16 the construction of dirt roads into rural properties.

17 THE COURT: Any objection?

18 MR. STANLEY: No objection, Your Honor.

19 THE COURT: So qualified without objection.

20 MR. DODDS: Thank you, Your Honor.

21 BY MR. DODDS:

22 Q Mr. Chivers, did Mr. Maxwell, ask you in your
23 capacity as an expert in the field of constructing
24 dirt roads/gravel roads into rural areas to look at
25 the feasibility of a 50-foot roadway from Old Cherry

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1 Hill Road in the northeast corner to his property at
2 038?

3 A Yes, he did.

4 Q And what was your opinion in that regard as
5 to the feasibility of a dirt roadway and/or a
6 gravel -- dirt roadway with gravel?

7 A It would -- I told him that it could probably
8 be done. I mean, you can put roads through anywhere
9 with some degree of effort, but that it would be
10 difficult and expensive.

11 Q And why is that?

12 A Well, two things, we don't know exactly what
13 and how far the boggy material goes down before we can
14 hit actual good soils to build on. So that's kind of
15 a question mark, but it appeared to go down at least
16 two feet, you know, from the little excavation that
17 Mr. Maxwell did, and then possibly more.

18 So that's a big question mark. But even
19 assuming that only 2 to 3 feet need to be excavated
20 out, it's a tremendous project, because there's no
21 other access. You'd have to much the dirt out and
22 build the road out as you go, otherwise you would have
23 to build a temporary roadbed on the side of the -- a
24 temporary road over top of the junk that's there in
25 order to build the real road and that would just be

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1 more money, more impact on the wetlands. And the
2 actual wetlands issue, too, is something that I'm not
3 sure he's even gotten into yet, but there's a pretty
4 big impact.

5 It goes in for about 250 feet off the paved
6 road to a stream. That stream would have to be dealt
7 with, with a 5- or 6-foot culvert pipe with riprap,
8 and it's a considerable project in itself, even though
9 it's a small stream, just because of the wetness
10 around it. And then, you know, about another 200, I
11 think it was 200, 250 feet back up to higher ground.
12 So the amount of dirt, the sheer amount of work and
13 dirt that it would take is -- it's expensive,
14 expensive and difficult.

15 Q All right. So we're talking about taking
16 dirt out, I think you referred to it as muck?

17 A Muck or spoils.

18 Q Spoils?

19 A Spoil dirt.

20 Q Right. And then having to bring in dirt that
21 is more --

22 A Compactible fill.

23 Q -- compactible and sturdy and would support a
24 roadway?

25 A Yes, sir.

240

1 Q How many cubic yards of dirt would it, in
2 your opinion, require to be removed?

3 A Well, it's -- I can't say with a great deal
4 of certainty, because, again, we don't know exactly
5 how far down we'd have to remove the unsuitable soil,
6 but if we just made an assumption that 2 feet was
7 going to be good enough, then -- yeah, I had to start
8 somewhere. So let's assume 2 feet. That we'd be
9 removing. If you removed only 50 feet by the length
10 of 500 and not the area next to the road, which
11 actually is -- the road would have to be tapered. I'm
12 not sure if an engineer would require the unsuitable
13 soils to be removed from the tapered area or not, but
14 if we just talk about the 50 foot wide road, the
15 roadway, 500 feet, that would be about 2,000 cubic
16 yards of dirt, which I did a little calculation on the
17 way up here just to put it in terms of dump trucks,
18 because it might make a little bit more sense.

19 Let's see. So at 2,000 cubic yards of spoil
20 dirt would be 125 dump trucks just to put it in terms
21 that we can all kind of visualize.

22 Q That's in terms of removing the muck?

23 A Right. So that's 125 trucks, and you've got
24 to get the -- the trick is you've got to get the muck
25 at the farthest point back to the paved road. So you

241

1 have to build the road as you go. And that fill dirt
2 would require 280 trucks, provided we have what we
3 call a 3-to-1 slope from the top of the road down to
4 the existing grade, the embankment or the slope.

5 Q Assuming that your forecasts are correct,
6 what would be the approximate cost?

7 A Of just the dirt or the entire project?

8 Q Well, let's talk about the dirt first.

9 A I actually got a quote on the dirt from a bid
10 that's fairly close, and the dirt would -- well, first
11 of all you've got to build the entrance. You know,
12 the entrance itself would be \$10,000.

13 Q Okay.

14 A A stone entrance to allow that amount of
15 activity back and forth onto the state road. And
16 then, to haul the spoil out, and you have to pay to
17 actually take it somewhere, is \$16,500, based on what
18 we talked about, a 2-foot excavation and 50 foot wide
19 and 500 feet long. And then, to bring the fill dirt
20 in would be \$140,160, and that's just material, that's
21 not your labor or machines to move it.

22 THE COURT: What was that number again?

23 THE WITNESS: Let me back up. The last
24 number is 140,160. 140,160.

25 THE COURT: Thank you.

242

1 THE WITNESS: \$140,000 basically.

2 BY MR. DODDS:

3 Q All right.

4 A And that includes the trucking. That's
5 trucking and material.

6 Q I understand.

7 A And we call it material haul.

8 Q Right.

9 A Okay. Now, when we get to the creek -- did
10 you want me just to go down?

11 Q Yes, sir.

12 A When we get to the creek, to get 80 feet of
13 60-inch culvert pipe, price delivered is 25,000, but
14 that's not installed, that's just delivered.

15 Then, we need \$15,000 of riprap, which is
16 your -- it's basically large granite, hunks of stone
17 on each end of the pipe that keep erosion from going
18 into the pipe.

19 Q Right.

20 A The dirt moving away from the pipe as the
21 water moves through it. No particular order here now
22 just -- \$15,000 in fuel that I've got. Operator
23 labor, labor price says, if I calculate it right, I
24 have 2,160 hours of man hours in it, that's \$64,800.

25 The dozer cost is 11,650. Compactor roller

243

1 is 9,000. Excavator cost is 22,750, that's based
2 on -- this is based on 60 days, a 60-day cycle.

3 Q Right.

4 A And then my company would charge \$75,000 to
5 oversee it.

6 Q So what's the total price to do that?

7 A 402,900. So basically 403,000.

8 Q All right. And in terms of any sort of
9 impact to the surrounding wetlands, what would happen?

10 A Oh, there's a tremendous amount of impact.
11 The footprint would be -- not just the 50 foot, that's
12 just getting started, if we went with a 3-to 1 or 4-to
13 1 slope, which is -- I'm not sure what would be
14 required.

15 Q Right.

16 A But we'd have between 25 and 28 feet on each
17 side of the 50-foot roadbed that would be accepting
18 our compactible soil.

19 Q So it would be approximately 100 feet on the
20 job.

21 A It would be, yes, sir, about 100 feet.

22 Q In doing what you do in roadways, do you have
23 any knowledge of what the cost of the wetland
24 remediation would be for that area?

25 A No, sir.

244

1 Q Okay.

2 A That's a huge, broad --

3 Q Right. In all your years doing this sort of
4 construction, with this scenario, have you ever had
5 anybody decide to put in a roadway similar to what's
6 being suggested at this location at the northeast
7 corner of 001 to access rural property?

8 A Yes, sir. Not quite to this extent. This
9 land falls off pretty rapidly to about 6 or 7 feet
10 from the road which is probably about where it needs
11 to come back up to in order to keep it from flooding
12 and keep it level with the other side. So I've not
13 done something quite this dramatic. Most of the time,
14 it's 2 or 3 feet.

15 Q I understand. So you're talking about
16 raising the topography of this roadway and
17 surrounding, the property on the side, the 25 feet on
18 each side some 6 feet or so?

19 A Yes, sir, 6 to 7. And the mechanics are all
20 the same, it's just -- you just add more numbers to
21 this because --

22 Q More by way of materials and labor, et
23 cetera, et cetera, et cetera?

24 A Right.

25 MR. DODDS: All right. Thank you very much,

245

1 Mr. Chivers.

2 THE COURT: All right. Mr. Stanley, any
3 cross-examination?

4 MR. STANLEY: No questions, Your Honor.

5 THE COURT: You can step down. Thank you,
6 sir. Mr. Dodds?

7 MR. DODDS: Thank you, Your Honor. If it
8 please the Court, I would call Ms. Yvonne Knight to
9 the stand.

10 YVONNE KNIGHT,
11 having been duly sworn, testified as follows:

12 THE COURT: Thank you. Give the court
13 reporter your full name, spell your last name and your
14 address.

15 THE WITNESS: Yvonne, Y-V-O-N-N-E, middle
16 initial C., last name Knight, K-N-I-G-H-T. 1349 Old
17 Cherry Hill Road, Moncks Corner, South Carolina,
18 29461.

19 THE COURT: Thank you, ma'am. Mr. Dodds?

20 MR. DODDS: Thank you, Your Honor. If it
21 please the Court.

22 DIRECT EXAMINATION

23 BY MR. DODDS:

24 Q Ms. Knight, I apologize. I'm going kind of
25 stand.

246

1 A Glasses, I'm sorry.

2 Q Let me help.

3 A If you're going to show me something, I have
4 to see it. Thank you.

5 Q I understand. I'm going to stand behind you,
6 if that's okay, because I'm going to look over your
7 shoulder a little bit and ask you a couple of question
8 about what's before you, which is Defendants' Exhibit
9 1 into evidence. I don't mean to do that. If I get
10 too close, please hush me away.

11 A Okay.

12 Q So as I understand, you and your sister,
13 Eleanor Brown, own the property described as
14 123-00-02-036 and 123-00-02-034?

15 A Correct.

16 Q As well as 123-00-02-001?

17 A Correct.

18 Q Okay. And that is unimproved property in
19 terms that there's no single-family residences or type
20 of dwellings on any of those properties?

21 A No dwellings.

22 Q Okay. And as I understand you acquired those
23 properties from your father, Eddie Cooper.

24 A Eddie Cooper, Jr.

25 Q Excuse me, Eddie Cooper, Jr., correct?

247

1 A Yes.

2 Q Okay. And then there is a roadway that
3 appears to run from Old Cherry Hill Road, you're
4 pointing to it, across 001 and up into 038, 039, and
5 036. You were pointing to it, would you mind doing so
6 to where the judge can see. Where does that road go?

7 A The road starts here and it goes up to 38.

8 Q Does it continue onto 39?

9 A Over the years it may have, yes.

10 Q How about into 35 and then again 34, your
11 property?

12 A We can access it from a different direction.

13 Q So you can also come -- is that Samantha --
14 is it Singleton Lane, I'm sorry, Singleton Lane that
15 we've been referring to?

16 A That's correct. If we were logging.

17 Q Okay.

18 A But we haven't used the property for anything
19 in years.

20 Q So there's an access to your property that's
21 described as 035 from Highway 17A onto Singleton Lane?

22 A We don't own 035. 034.

23 Q I'm sorry, I meant to say 034. I apologize.
24 034. Is there access from 17A through Singleton Lane
25 into 034?

248

1 A Across a horse pasture.

2 Q A horse pasture?

3 A Yes.

4 Q Okay. And is that the 040 that has been
5 referenced here today?

6 A I am not sure if that's 040.

7 Q But it's somebody else's property?

8 A It's someone else's property. Is that 040?

9 Q It's okay. It's not important.

10 A Yeah.

11 Q So how is it that you access your property
12 that's described as 036 here on the map here, it's
13 kind of at the top?

14 A Well, for the purpose of hunting, there's a
15 walk-across bridge and a 4-wheel -- like, you know,
16 those 4-wheelers that come across.

17 Q Okay.

18 A And prior to his ownership, I don't know what
19 the hunters' agreement was with the Taucers, but the
20 get permission to hunt the land. So they have gotten
21 permission from us. I don't know what they've done
22 with him.

23 Q I understand. So with respect to access to
24 036 from Old Cherry Hill Road, there's a foot bridge
25 that extends --

249

1 A It's from our other property on the other
2 side of the stream.

3 Q On 034?

4 A No.

5 Q Okay. Which property are you referring to?

6 A On 014.

7 Q 014.

8 A That's here. Because the stream runs
9 along --

10 Q Okay.

11 A -- both sides of the property. That piece of
12 property and the property --

13 Q Okay. I'm not sure. Can you tell me where
14 014 is?

15 A Right here.

16 Q Okay. All right. So I'm sorry, I apologize.

17 A No problem.

18 Q So there's a foot bridge from Old Cherry Hill
19 Road --

20 A Much farther up.

21 Q It's located somewhere on 014?

22 A 014 into 34.

23 Q Okay. Into 034. What about with respect to
24 36?

25 A You can walk.

250

1 Q From this point here, this northeastern
2 corner?

3 A No, not here. From the foot bridge that you
4 were talking about, you can walk to 36, right.

5 Q Okay. All right. What about 34, can it also
6 be accessed through this foot bridge?

7 A Yes.

8 Q Okay. Now, in the past, you and your sister
9 have logged this property, that being 034 and 036?

10 A We have not logged 34.

11 Q Okay.

12 A Maybe our father has.

13 Q Okay.

14 A But we have not.

15 Q I understand.

16 A 36, I'm not sure what the loggers did, but
17 they were but they were supposed to log 2001, and
18 they're supposed to get permission from whoever the
19 land owners are to cross if they need to get across.

20 Q Okay. But you're not suggesting that the
21 loggers would have used the foot bridge for access?

22 A No, they can't use the foot bridge.

23 Q Okay. So they would have used the dirt road
24 that goes from Old Cherry Hill Road across 001?

25 A Yes.

251

1 Q And they would have had to have crossed Mr.
2 Maxwell's property at 038?

3 A They would if they logged 36.

4 Q Right. What if they logged 34, what
5 would they have done?

6 A We have not done anything with that.

7 Q Okay. I'm sorry, you mentioned that, I
8 apologize. All right. Now, this road that's the dirt
9 road that comes from Old Cherry Hill Road across 001
10 and into 038 has been there a very long time, hasn't
11 it?

12 A I would say so.

13 Q More than 50 years?

14 A It's been there since I was little and I'm
15 74.

16 Q I'm not far behind. And that road originally
17 connected to the northwest access that's been referred
18 to as Singleton Lane from --

19 A I can't -- I can't speak to that.

20 Q But you do know that the road ran from Old
21 Cherry Hill Road to 001 all the way up to your
22 property at 034?

23 A No. I know that it run up to 38.

24 Q Okay.

25 A Is what I know.

252

1 Q What about 036?

2 A The hunters use this road.

3 Q Yes, ma'am.

4 A So they may have used the path across there.

5 Q So when you say this road --

6 A And like I said, you know, they get
7 permission from whoever the land owners are to hunt or
8 to cross there.

9 Q So when you say, "this road," you're
10 referring to the dirt road across 001 onto 038?

11 A Well, it's more of a path than it is a dirt
12 road. It's a dirt road up to 38.

13 Q Okay. Have you or your sister or your
14 brother prior to ever performed any maintenance on
15 this roadway?

16 A Yes, sir.

17 Q What did you do?

18 A One was we had a project with the university
19 group that came, because we're also involved with the
20 Center For Heirs Property.

21 Q Yes, ma'am.

22 A And there was a grant. So a group of people
23 came and maintained -- and did the roads from here
24 around this curve.

25 Q Okay.

253

1 A We brought in rocks, some dirt and a lot of
2 labor.

3 Q Okay. And you spread that on 001?

4 A 001 up to around where the culvert is here.

5 Q Okay.

6 A And then after the loggers left and left the
7 road pretty undone, we had to do some maintenance
8 behind the loggers.

9 Q All right.

10 A And that was this area.

11 Q Okay. And so the hunters that are using 036
12 and 034, your and your sister's two properties,
13 they're leaving Old Cherry Hill Road, they're driving
14 on this dirt road, they're crossing into 038 --

15 A Trucks, trucks can't go all the way across
16 here. Usually, they're stopping right up in this area
17 and where that path goes over to where he keeps
18 referring to 72 or 37 or whatever that is.

19 Q If there were fresh --

20 A It's a trail.

21 Q If there were fresh muck marks that Mr.
22 Maxwell has described on 038, would you offer any
23 explanation as to how that could have happened?

24 A It's said that the loggers went on their
25 4-wheelers.

254

1 Q The loggers?

2 A Not the loggers.

3 Q The hunters?

4 A The hunters on their 4-wheelers.

5 Q Would that surprise you to know that they may
6 have done that?

7 A I don't know, because I don't know what their
8 agreement was with whoever owned the land.

9 Q Okay. All right. Excuse me just a moment.
10 Now the roadway over and across 001, that services
11 more than just 001, correct?

12 A No.

13 Q In terms of providing access?

14 A I wouldn't say that.

15 Q Well, where is the access to 038, the road
16 access?

17 A Again, you can come around -- for 38, I don't
18 know where 38 access is.

19 Q 38 doesn't have any access, does it?

20 A Well, no.

21 Q Except from Old Cherry Hill Road along this
22 dirt road, right?

23 A They're landlocked.

24 Q Okay. Do you dispute that the owners of 038
25 have in the past used the dirt road from Old Cherry

255

1 Hill Road over and across 001 to 038?

2 A I can't tell you that because the Taucers, I
3 believe lived in Florida.

4 Q But do you dispute that, that that road was
5 used by the owners of 038 to get to their property?

6 A Well, if I'm going to be honest, I'm just
7 telling you that I don't know that.

8 Q I don't want to have you speculate.

9 A When 38 was logged, the loggers or the timber
10 company came to us to get permission for them to go to
11 38, but that was the only time permission was given to
12 do that.

13 Q Right. But -- and you told them to go seek
14 out who the owners were and to get permission from the
15 owners?

16 A Uh-huh, right. And --

17 Q You don't know whether or not they ever did
18 that?

19 A Well, they did -- well, they said that they
20 did.

21 Q Okay.

22 A And we allowed them to come across.

23 Q I understand. Now, adjacent to 036 is
24 another tract, we can't see it on Defendants' Exhibit
25 1, but north of this Defendants' Exhibit 1 is an

256

1 approximate 8.7 acre tract described as 035. Are you
2 familiar with that property?

3 A Yes.

4 Q You nor your sister own that property,
5 correct?

6 A (Shakes head.)

7 Q How does that property owner access his
8 property, do you know?

9 A I don't know. The timber on there is about
10 40 years old, so I would assume that nobody has been
11 there in about 40 years.

12 Q Is that property landlocked as well?

13 A It is.

14 Q Okay. What about TMS number 072, which is
15 located -- it's a small tract, approximately 2 acre
16 tract, located west of 038. You can see it here on
17 Defendants' Exhibit 1. Is that land also landlocked?

18 A Yes.

19 Q And then the property above that at 037,
20 which is in the northwest corner of 038, is that
21 property also landlocked?

22 A I would assume so, yes.

23 Q Yes?

24 A Yes.

25 Q Okay. And then 035 -- excuse me, 075, which

257

1 is in the --

2 A Where, the top?

3 Q 035, I'm sorry, to the northeast of 036?

4 A Right.

5 Q That's landlocked as well, isn't it?

6 A Yes.

7 MR. DODDS: Thank you very much, Ms. Knight.

8 THE COURT: Any examination, Mr. Stanley?

9 MR. STANLEY: Yes, sir. We were going to
10 call her back. I can just go ahead and do it now, if
11 that suits the Court.

12 THE COURT: Whatever you want to do.

13 MR. STANLEY: I'll do it right now.

14 THE COURT: Okay.

15 CROSS-EXAMINATION/DIRECT EXAMINATION

16 BY MR. STANLEY:

17 Q Okay. Ms. Knight, you live where?

18 A 1349 Old Cherry Hill Road.

19 Q How far is that from the property that we are
20 here about today, which essentially would be the 001
21 property that you all own?

22 A About a half mile, if that much.

23 Q You are, you said you're 74 years old?

24 A Yes, sir.

25 Q You grew up here in --

258

1 A Absolutely.

2 Q -- Berkeley County?

3 A On that property.

4 Q On that property?

5 A Yes.

6 Q That property now is owned by you and your
7 sister who is here with us today, Eleanor Brown?

8 A Correct.

9 Q How long have you all owned the property?

10 A 2008, after our father was deceased.

11 Q Now, your father was, you said Eddie Cooper,
12 Jr.?

13 A Jr.

14 Q And did he get it from Eddie Cooper, Sr.?

15 A Yes.

16 Q And you said Nero Smalls would be your great
17 grandfather, or great, great?

18 A Great, great grandfather.

19 Q So Nero Smalls really, in terms of your
20 family, would have been the original owner of 001?

21 A That's correct.

22 Q And got that property somewhere in the 1800s?

23 A Yes.

24 Q Now, and that's property that has remained in
25 your family from that point to today?

259

1 A Yes.

2 Q What use do you all currently make of the
3 property?

4 A We are tree farmers, certified tree farmers.
5 And we have a management plan that has tract out all
6 of our property. And those tracts are in our next
7 planning stage to replant. A part of that has been
8 replanted, about 14 acres, for carbon sequestration.
9 We are all about keeping forests forest land. We are
10 committed to that, and that's what we do, grow trees.
11 We hunt, we lease for hunting, and we lease for, well,
12 turkey hunting, too, so.

13 Q Now, does that plan, that forestry management
14 plan, does that -- do you all do that on all of your
15 property out there or just 001?

16 A All of it.

17 Q All of it?

18 A Yes. We've planted already on one tract 85
19 acres of trees.

20 Q How many acres do y'all got out there off Old
21 Cherry Hill Road?

22 A About 265, maybe.

23 Q 265 acres?

24 A Yes, maybe a little more.

25 Q All right.

260

1 A We also lease for farming, so.

2 Q How much property or how many acres is in
3 001?

4 A It's about 30, 35 acres.

5 Q And of course that 001 is where the road is
6 that is now in question here today?

7 A Yes.

8 Q Now, during your years, has anyone used that
9 road other than you all?

10 A No. Hunters.

11 Q So other than --

12 A Us when we were farming all of the land.
13 When we had cows, you know, the roads through there to
14 enter to feed the cows, and out again.

15 Q So other than you all then, no one uses that
16 property but the hunters that you all lease the
17 property to?

18 A Correct.

19 Q Do you all have written lease agreements?

20 A Yes.

21 Q Are these hunting clubs or are these
22 individuals?

23 A It's a hunting club.

24 Q Do you know the name of it?

25 A Bobcat.

261

1 Q Bobcat?

2 A Bobcat Hunting Club.

3 Q How long have they been leasing this property
4 from you all?

5 A Since before we inherited the land, which we
6 inherited in 2008, and they were hunting maybe eight
7 to ten years prior to that.

8 Q The road from Cherokee Road --

9 A Cherry Hill.

10 Q Cherry Hill Road -- I want to keep calling it
11 Cherokee. Cherry Hill Road across your property onto
12 38 is a passable road?

13 A One way, yes.

14 Q All right.

15 A It's a dirt road.

16 Q It's a dirt road?

17 A Uh-huh.

18 Q But you can travel it and drive it?

19 A Yes.

20 Q And that's what the hunters, they access your
21 property by using that road?

22 A Yes.

23 Q All right. Now, what do they hunt? You said
24 turkeys?

25 A Deer, turkey, wild hogs.

262

1 Q Now, other than the income that you make from
2 the hunters that you lease to, do you all make any
3 income from 001?

4 A The hunting.

5 Q The hunting?

6 A On 001.

7 Q Do you make any money from the timber or is
8 that something -- do y'all harvest the timber?

9 A We -- well, you can only harvest timber about
10 once every 15 to 20 years, 25 years. So we recently
11 harvested a portion of 2001, not all of it.

12 Q The Taucers, that name has come up as being
13 the people that owned 038?

14 A 38.

15 Q Prior to Mr. Maxwell's company?

16 A Yes.

17 Q Did you know them?

18 A No.

19 Q They did not live here?

20 A They did not live here.

21 Q All right. You ever met them?

22 A No.

23 Q They never used that road, as far as you
24 know?

25 A As far as I know, no.

263

1 Q Now, I believe you testified that at some
2 time the timber was harvested, did you say that, on
3 38?

4 A Yes.

5 Q All right. And the timber cutters, came
6 across 001 with your permission?

7 A With permission, yes.

8 Q Who asked for that permission?

9 A The timber buyer did.

10 Q And you granted it?

11 A We granted it, yes.

12 Q And they used it and got the timber out of
13 there off of 38.

14 A Yes.

15 Q Did they make any repairs or remediation to
16 the road once they finished?

17 A Yes, they're required to leave the roads as
18 they found them.

19 Q And they did they that?

20 A In the condition at least. Yes.

21 Q And they did that?

22 A Yes, they did.

23 Q I believe you all provided me with a list of
24 your future plans for the property or your interest in
25 the conservation of the property and so forth. I

264

1 don't have that list with me. Can you tell me what
2 you all -- what your desires are and plans are for
3 that property, 001.

4 A Well, conservation is our number one
5 priority. We've already done four 14 acres for carbon
6 sequestration. We also plan to replant that when
7 we're able to harvest the rest of the timber off of
8 2001. That was in our plan for the next two years or
9 so.

10 Q What's carbon sequestration, what is that?

11 A We're all trying to wrap our minds around it,
12 but growing trees to hold carbon and somehow they
13 measure it, and we are -- it's a program that we're
14 in, a conservation stewardship program where we're
15 paid to grow those trees for a certain amount of time
16 to hold that carbon.

17 Q Now, you all offered, I believe, and you tell
18 me if I'm wrong, you all offered Mr. Maxwell other
19 access to his property to his property across your
20 property; is that right?

21 A Yes, we offered -- let's see. We offered
22 first the one that has been discussed. And of course,
23 we used that road and there's a pipe there already.
24 So that was the first offer.

25 Q Which road are you talking about?

265

1 A Off of Cherry Hill Road.

2 Q Is that the road that currently exists or is
3 that the one that --

4 A No, that's the one that just has the pipe
5 that -- what's the gentleman? That the contractor was
6 talking about that's near the stream, near the stream.

7 Q You offered that?

8 A We offered that. He -- we offered that.

9 Q All right.

10 A Then we offered a second option, which was at
11 the top portion of 2001 that would give him direct
12 access his property and down alongside the first part
13 of the road. You need me show you on here.

14 THE COURT: Point it out for me.

15 THE WITNESS: This is 2001 here. We offered
16 certain acreage off on this end that would give him
17 direct access to 038 and would come down this way, but
18 not through here. And it also connects to the
19 development that's right behind it.

20 BY MR. STANLEY:

21 Q The road that is there that Mr. Maxwell wants
22 to use, what is your objection to that?

23 A We would like for it to be the dirt road that
24 it is maintaining whatever we have and not to have
25 commercial or residential traffic going through there,

26

1 which means two-way traffic, to me.

2 Q Why do you object to it being commercial
3 traffic and two-way traffic?

4 A Because we want to leave the land as it is
5 except to grow trees.

6 Q Do you have any concerns about your hunters
7 going in there?

8 A Well, yes, if something else is back there
9 and there's in and out traffic at all times, that's a
10 liability with the hunters hunting on the weekends and
11 sometimes during the week.

12 Q Has Mr. Maxwell expressed to you any of his
13 plans for that property?

14 A Well, the first time I asked the question, it
15 was to build a cabin. Then we heard to grow
16 vegetables to supply restaurants in Charleston. Then
17 the third thing was to pave the highway so that there
18 is residential traffic. And if I may, we really don't
19 want residents back there in the middle of our trees
20 back there. If he were growing, you know, produce or
21 farming, you know, that might be a different story,
22 but we don't wish to put a paved -- have a paved road
23 going into there.

24 Q Has any of the other owners of property to
25 the north of you requested any permission to cross

267

1 your property?

2 A No. We have an agreement with 40. You know,
3 they pass through, but they come onto our property,
4 that was for scouting, using the property for boy
5 scouts.

6 Q Is that 40?

7 A 40. So there's a way that he can come over
8 from there and we have the same agreement vice versa.

9 Q And no one else has asked for any permission
10 to cross your property?

11 A No.

12 Q No one else uses the property?

13 A No.

14 Q Now, you all have a gate out there, don't
15 you?

16 A Yes.

17 Q And where's the gate?

18 A At the beginning of the road, of Cherry Hill
19 Road, Old Cherry Hill Road entering that road.

20 Q So as you turn off Old Cherry Hill Road,
21 there's a gate?

22 A There's a gate.

23 Q And you got a lock on it?

24 A Not now. But there's been a lock on it for
25 years.

268

1 Q Why is there not a lock on it now?

2 A Someone broke the lock or lost the lock was
3 more accurate, and we just haven't replaced it.

4 Q But when you had a lock on it how did your
5 hunters access?

6 A The hunters have a key and we have a key.

7 Q So they could go onto the property?

8 A They have -- yes, because there are other
9 properties that have gates as well, so they have keys
10 to get in through those gates, three to be exact.

11 Q Nobody lives out there on any of these
12 properties?

13 A Nope, nobody lives out there.

14 Q Anybody farm out there on any of these
15 properties?

16 A On 014 or 013, we have -- we lease to a
17 farmer to operate on 013, which is up above 014 and
18 across from 34 and 36. You can see if they have the
19 map, they can see the area that's being used for
20 agriculture.

21 Q Because it's kind of been kind of given
22 today, I thought, that that's a road that serves all
23 those properties up in there and that there's traffic
24 in and out of there?

25 A No.

269

1 Q So the only traffic in and out of there is
2 you all and your hunters?

3 A Correct.

4 Q Thank you so much.

5 A That's the only traffic that's supposed to be
6 back there.

7 MR. STANLEY: All right. Answer any
8 questions that counsel may have for you or the Court.

9 THE COURT: Mr. Dodds?

10 MR. DODDS: Just a couple of things. Madame
11 clerk, can I get you to mark these.

12 (Plaintiff's Exhibit 142 and 143 marked.)

13 FURTHER EXAMINATION

14 BY MR. DODDS:

15 Q Did I understand you correctly, Ms. Knight,
16 to say that the transfer of 001 was from Nero Smalls
17 your great, great grandfather to another relative, as
18 to 001?

19 A Our grandfather.

20 Q To your grandfather?

21 A If I have the -- have it correct.

22 Q Let me show you, and I'm not trying to trick
23 you, I just want to make clear on this. So this is a
24 deed from a Nero Smalls to a S. Berman that's marked
25 as Exhibit 142, which appears to be a portion of 001,

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1 30 acres that was conveyed to Mr. Berman back in 1911.

2 I ask if you recognize that?

3 A No, I don't recognize it.

4 Q Okay.

5 A But if you say that's -- we saw the lineage
6 of it.

7 Q Got you. I realize that your brother did
8 acquire --

9 A Not brother.

10 Q Excuse me, father.

11 A Grandfather before.

12 Q Grandfather then father?

13 A Yes.

14 Q And then to you?

15 A Yes.

16 Q And your sister. Okay. And so your
17 grandfather was Eddie Cooper, right?

18 A Yes.

19 Q And so looking at Plaintiff's Exhibit 143, it
20 appears that he acquired a 30-acre tract which is now
21 a portion of 001 from a Russell Williams by deed
22 recorded back in 1943 in Book C-38-158.

23 A Okay.

24 Q Is that your great grandfather, right?

25 A No. Eddie Cooper is our grandfather.

271

1 Q Okay. I apologize. Your grandfather. Okay.
2 So there was a gap between the ownership of the land
3 or at least 30 acres of the land which is 001 between
4 Nero Smalls and Eddie Cooper.

5 A Some portion of it. If you say it's 30
6 acres, I'll agree with you that it's 30 acres.

7 MR. DODDS: Okay. Your Honor, I seek to
8 introduce these into evidence.

9 THE COURT: Are those part of the exhibits
10 already?

11 MR. DODDS: They are, Your Honor.

12 THE COURT: Yeah, just reference them, make
13 sure we've got the right number, you said it was 142
14 and 143; is that right?

15 MR. DODDS: That's correct, Your Honor, 142
16 and 143.

17 THE COURT: No need to duplicate it.

18 MR. DODDS: Okay. That's fine.

19 BY MR. DODDS:

20 Q Ms. Knight, would you please show me on
21 Defendants' Exhibit 1, you had indicated that you had
22 offered an alternate means of access --

23 A Up here.

24 Q -- to Mr. Maxwell's company, BCE 2015. Would
25 you show me from Old Cherry Hill Road where that

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1 access is?

2 A Here, going straight up and the portion up
3 here.

4 Q Are you talking about Old Cherry Hill Road
5 onto 001?

6 A No. Right here where the existing road is.

7 Q Right.

8 A But instead of making that turn, he would go
9 up here and then over to his.

10 Q Okay. You're willing to provide him a
11 50-foot ingress/egress --

12 A I wouldn't say 50-foot, because our
13 discussion was always 25 feet.

14 Q So you've offered him 25 feet but not 50
15 feet?

16 A Right.

17 Q You don't want to offer him 50 feet, because
18 you don't want him to develop his property as a
19 residential development?

20 A I'll say that.

21 Q So yes?

22 A Yes.

23 Q It's okay to say that if it's true.

24 A Yes.

25 MR. DODDS: Okay. I don't have any further

273

1 questions. Thank you very much, ma'am.

2 THE WITNESS: You're welcome.

3 THE COURT: Mr. Stanley?

4 MR. STANLEY: Nothing further from me with
5 this witness, Your Honor.

6 THE COURT: You can step down, ma'am. Thank
7 you.

8 THE WITNESS: Is this coming back to you?

9 THE COURT: Yes, ma'am. Thank you.

10 MR. DODDS: That's all we have, Your Honor.
11 Plaintiff would rest.

12 THE COURT: All right. Mr. Stanley?

13 MR. STANLEY: Your Honor, we are ready. If I
14 may go to the restroom while she's taking the stand.

15 (Short recess.)

16 ELEANOR BROWN,
17 having been duly sworn, testified as follows:

18 THE COURT: Go ahead and give that name,
19 spell the name and give the address for the court
20 reporter.

21 THE WITNESS: Eleanor, E-L-E-A-N-O-R, Cooper
22 Brown.

23 THE COURT: And your address for me?

24 THE WITNESS: Sir?

25 THE COURT: Your address?

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1 THE WITNESS: 1326 Old Cherry Hill Road,
2 Moncks Corner, South Carolina, 29461.

3 THE COURT: Thank you, ma'am. You can have a
4 seat right there.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Stanley?

7 DIRECT EXAMINATION

8 BY MR. STANLEY:

9 Q Ms. Brown, I'll try to speak up as loud as a
10 can. Ms. Brown has a little bit of hearing
11 difficulty, but I'll try to speak as loud as I can.
12 If I don't, you tell me, okay?

13 A Okay.

14 Q State your name for the record again, please
15 Ms. Brown.

16 A Eleanor Cooper Brown.

17 Q And Ms. Brown, where do you live?

18 A 1326 Old Cherry Hill Road, Moncks Corner,
19 South Carolina.

20 Q This property that we're here about today,
21 your property that has been referred to as TMS 001,
22 how far do you live from that property?

23 A Just a little less than a half of a mile.

24 Q And you grew up here in Moncks Corner?

25 A I did.

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1 Q And you grew up, I would assume near this
2 property, you didn't grow up on this property; is that
3 right?

4 A Exactly. The property is in the community of
5 Cherry Hill, hence the name of the road, Old Cherry
6 Hill Road. And grew up in that area, in the
7 community, and the property in question today was
8 farming property, which I grew up around.

9 Q All right. Now, I'm not going to ask you how
10 old you are, but I'm just going to ask you this: Are
11 you older than your sister or younger?

12 A Younger.

13 Q Now, so you've been familiar with this
14 property over your lifetime?

15 A Yes.

16 Q And you heard your sister testify about most
17 of the ownership of that property is absent ownership?

18 A Yes.

19 Q Nobody lives on the property; is that right?

20 A No.

21 Q Have you --

22 A And you're speaking of the property of 001?

23 Q 001 and all of the property that kind of
24 surround it?

25 A All of that properties surrounding it.

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1 Q Yes.

2 A That's correct.

3 Q No one lives there?

4 A No.

5 Q What use are you aware of that's being made
6 of any of the property in that vicinity? All the
7 property that we've been talking about today on
8 Defendants' Exhibit 1 and all the surrounding
9 property, what use is being made?

10 A My knowledge is just as was described earlier
11 was the use for timber, and as it was noted in the
12 other presentation, the cutting of timber, and for us,
13 the replanting of timber. And for hunting.

14 Q So are you in agreement with your sister in
15 terms of what you all's future use and plans for this
16 property is?

17 A Yes, I am in agreement.

18 Q I think she said it's for conservation, I
19 believe she said?

20 A Yeah.

21 Q And timber and recreational use for hunters
22 and so forth?

23 A Yeah, recreation, timber, conservation
24 practices, and also ecological practices as related to
25 animal habitats and maintaining an animal habitat.

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1 Q There's a gate to the property that is
2 located right at the entrance from Old Cherry Hill
3 Road; is that right?

4 A That's correct.

5 Q How long has that gate been there?

6 A The present gate probably has been there
7 since about 1995, but prior to that time, there was a
8 wooden gate which was used to enter that property for
9 two purposes which was a cow pasture and a hog pasture
10 and also for agricultural use on the south side of the
11 road.

12 Q How long was that gate there, that wooden
13 gate?

14 A I would say at least from 1950 something up
15 until 1995 when it was replaced with the iron gate.

16 Q So there's been a gate there, I'm going by my
17 age now, I was born in 1950, so there's been a gate
18 there for about 72 years?

19 A Yes.

20 Q So you all have controlled the in and out of
21 that property for 70 some years, as far as you recall?

22 A As far as our family is concerned, from my
23 grandfather down to my father down to us.

24 Q You all have never given anybody an easement
25 to use the road?

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1 A Not that I'm aware of.

2 Q Has anybody other than Mr. Maxwell ever asked
3 for an easement?

4 A Not that I'm aware of.

5 Q There's been testimony regarding the other
6 area that you offered Mr. Maxwell, and it's been
7 testified about expense, of course, of getting a road
8 built on the northeast part of this property?

9 A Uh-huh.

10 Q Are you familiar with that northeast part?

11 A Yes.

12 Q Is there a road there, any sort of road?

13 A There was a road there. That road was in
14 existence in the '60s when that Old Cherry Hill Road
15 was paved. The piping is still there, but we do know,
16 because of ecological changes, and I say that based on
17 hurricanes and et cetera, some erosion has taken
18 place, but the piping for the road is still there.

19 Q Y'all used to use that road, didn't you?

20 A It was used for wagon traffic.

21 MR. STANLEY: All right. That's all I need
22 from you. I just wanted you to get on the stand and
23 say hello to the judge and say hello to all of us, and
24 that's all I need.

25 THE WITNESS: Thank you.

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1 MR. STANLEY: But answer any questions
2 counsel may have for you or the Court may have for
3 you.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Dodds?

6 MR. DODDS: Thank you, yes, sir.

7 CROSS-EXAMINATION

8 BY MR. DODDS:

9 Q I'll get you to look at this, Ms. Brown.

10 A Okay.

11 Q There you are.

12 A Thank you.

13 Q That is the exhibit? I'm sorry it's not. I
14 apologize, I thought it was the exhibit that had been
15 received.

16 A I gave it back to the judge.

17 THE COURT: This one?

18 MR. DODDS: Yes, Your Honor, thank you.

19 BY MR. DODDS:

20 Q All right. I'll give you this and I'll ask
21 you a couple of questions about that.

22 A Thank you.

23 Q So the road that you described that you said
24 that wagons used to pass, that's not passable now by
25 any stretch of the imagination, is it.

200

1 A On 2001, it's not passable at this point.
2 It's grown up and --

3 Q It's not usable?

4 A Yes.

5 Q Okay. And you mentioned something about a
6 cow pasture. The research that we've done indicates
7 that there was a cow pasture on 036, not 001?

8 A It was before it was sold for the development
9 that's there.

10 Q It was at?

11 A It was a cow pasture.

12 Q And was that on 036?

13 A No, it was on 001.

14 Q 01? Okay. And when did that go away?

15 A About 1980.

16 Q Okay. Thank you, ma'am.

17 A '85.

18 Q Now, as I understand it, and your sister
19 straightened me out a bunch of times, and it's been a
20 long day for me, so I apologize.

21 A That's okay.

22 Q You all logged 036 at one point or another,
23 correct?

24 A Please repeat your question.

25 Q In terms of logging, in terms of harvesting

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1 timber, that was something that was done by you and
2 your sister as relates to the property that's
3 described as 036?

4 A We have not done a full-scale logging of that
5 property since we have become the managers of the
6 timber.

7 Q Yes, ma'am.

8 A We did logging on 2001.

9 Q Okay.

10 A And it seems like there might have been just
11 a small amount of exploration on 36, but we're not
12 aware that that full tract has been --

13 Q And the folks that did the logging on 036,
14 they used this dirt road from Old Cherry Hill Road
15 that runs across 038 to 036 to do that little bit of
16 harvesting that you've described, right?

17 A I would imagine they did. I can't be
18 certain.

19 Q Would you agree with your sister that that
20 road from Old Cherry Hill Road across 001 and up into
21 038 has been there for more than 50 years?

22 A I would agree with her on that.

23 Q And would you agree also, Ms. Brown, that
24 that road from Old Cherry Hill Road across 001
25 services more than just 001 and 038?

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1 A What do you mean by "services?"

2 Q Well, it provides access to other parcels
3 other than 001 and 038?

4 A In terms of the use of hunters?

5 Q In terms of getting in it to -- getting
6 access to and access away from that property, those
7 properties.

8 A There is a natural path that goes through
9 there.

10 Q Yeah, I'm talking about vehicular traffic?

11 A If people trust to drive their 4-wheel drives
12 back there, yeah.

13 Q Right. They'd use that old dirt road, right?

14 A Yeah.

15 Q Okay. And as I understand in talking and
16 hearing your sister's testimony, that the objection
17 that you have to providing Mr. Maxwell's company with
18 a 50-foot easement over and across the dirt road from
19 Old Cherry Hill Road onto 038 is that you do not wish
20 to see any residential development?

21 A That's correct.

22 Q Even residential development which is
23 consistent with the zoning ordinances for Berkeley
24 County?

25 A That's correct.

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1 Q Still don't want it?

2 A Pardon?

3 Q Still don't want any residential development,
4 even if it's consistent with all of the laws and
5 ordinances for Berkeley County?

6 A I would say that our property is timber
7 property, and so -- and for conservation practices,
8 residential development would not be desired because
9 it would degradate the things that we're doing and
10 currently the practices that we have in place.

11 Q So am I hearing you correct that you're
12 saying that you don't want to allow a 50-foot
13 easement, ingress/egress easement to Mr. Maxwell's
14 company, over and across 001 because you don't want
15 any residential development on his property at 038,
16 that you think that that would somehow degradate what
17 you're doing on 001?

18 A Yeah, because we own that road right now.

19 Q Right. But you're not doing anything with
20 it, it's conservation, right, 001?

21 A I'm sorry?

22 Q I said in terms of the use that's being made
23 of 001, you're using it currently for conservation
24 purposes, as I understand?

25 A That's correct.

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1 Q And perhaps occasional timbering?

2 A We have a management plan.

3 Q Right. And to the extent that somebody needs
4 to get onto the property, they're going to use that
5 dirt road, right?

6 A That's correct.

7 MR. DODDS: Okay. Thank you very much, Ms.
8 Brown.

9 THE WITNESS: You're welcome.

10 MR. STANLEY: Nothing further, Your Honor.

11 THE COURT: Okay. You can step down.

12 THE WITNESS: Thank you.

13 MR. STANLEY: That's all we have, Your Honor.

14 THE COURT: That's all you have?

15 MR. STANLEY: Yes, sir.

16 THE COURT: Anything in reply?

17 MR. DODDS: No, Your Honor.

18 THE COURT: All right. All right, gentlemen,
19 do you want to share your thoughts on this in brief by
20 way of closing remarks?

21 MR. DODDS: Judge, I'm happy to do so. You
22 know the evidence has been received, and I know that
23 the Court will take an opportunity to review that
24 evidence.

25 This dirt road has been in existence and been

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1 used, based on expert testimony, for a long, long,
2 long time, certainly longer than the 20 year period
3 which is necessary to establish a prescriptive
4 easement.

5 Judge, the cases that I've found I think that
6 are helpful with regard to the issue of prescriptive
7 easement is Kelley v. Snyder. It's a 2012 decision of
8 the South Carolina Court of Appeals that talks about
9 establishing a prescriptive easement and says, "the
10 party asserting the right must show: (1) continued and
11 uninterrupted use of the right for twenty years; (2)
12 the identity of the thing enjoyed; and (3) use which
13 is either adverse or under a claim of right."

14 There was a case that came out of the South
15 Carolina Supreme Court later in 2015 that talked about
16 what is adverse under claim of right and it
17 essentially said -- I think provided some explanation.
18 It talked about -- let me find the language.

19 THE COURT: You're talking about Simmons
20 versus Berkeley Electric?

21 MR. DODDS: Yes, Your Honor. And it
22 basically said that a claim of right is adverse, but
23 if you're asserting a claim of right to a property,
24 that is tantamount to being adverse.

25 But the Kelley v. Snyder also said, Judge,

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1 "There's no requirement of exclusivity with respect to
2 the establishment of a prescriptive easement."

3 "The use must only be a reasonable frequency
4 as determined by the nature and needs of the
5 claimant."

6 And "[a] party may 'tack' the period of use
7 of prior owners in order to satisfy the 20-year
8 requirement," for a prescriptive easement.

9 "[T]he time of possession may be tacked not
10 only by ancestors and heirs, but also between parties
11 in privity in order to establish the 20-year period."

12 And then the other -- the basis I believe
13 that Mr. Maxwell referenced, Your Honor, in his
14 testimony is with respect to a private easement by
15 implication. And the case that I found supportive in
16 that regard is Gooldy, G-O-O-L-D-Y, versus Storage
17 Center. It's a 2018 decision in South Carolina Court
18 of Appeals, it essentially say, Your Honor, "Absent
19 evidence of the seller's intent to the contrary, a
20 conveyance of land that references a map depicting
21 streets conveys to the purchaser, as a matter of law,
22 a private easement by implication with respect to
23 those streets, whether or not there is a dedication to
24 public use."

25 "Whatever easements are created by

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1 implication must be determined as of the time of the
2 severance of the ownership."

3 So we've got plats, Judge, going back to the
4 late 1880s that showed this road, and we've
5 established, I think clearly and convincingly and
6 without any evidence to the contrary, that there was
7 ownership of all of these properties by the same
8 owner, Judge, and that when he severed those
9 properties, Mr. Maxwell talked of the TMS number that
10 showed eleven separate conveyances out, the first
11 being 001.

12 So we've got an attorney, Paul Marye, who
13 owns all of the property, and over the course of some
14 twenty-something years, transferred twelve different
15 properties. And the first property that he conveyed,
16 Your Honor, was 001, which effectively denied
17 access -- made all of the other parcels without any
18 means of access.

19 So there was a common owner and a severance,
20 Your Honor, which created the need for these various
21 properties, including 038, to have access over and
22 across 001. And that roadway has been used, by the
23 admission of the Defendants for over 50 years, and as
24 indicated by Mr. Scheffing, he confirmed that
25 continuous use. He thought even for a long period of

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1 time, and that that was the only reasonable access.

2 And so we had them address the issue about
3 the proposed alternate site in the northeastern corner
4 of 001, Judge and with the topography the way it is,
5 with the wetlands the way it is, you heard from Mr.
6 Chivers, that is not a reasonable alternative proposal
7 to have a property owner spend in the half millions of
8 dollars to provide access to his property.

9 Judge, this road has been used for an
10 extremely long period of time, we can date it back to
11 the late 1880s. And as much as I respect these
12 ladies -- and I do, they are wonderful people, Judge.
13 I've got to know them a little bit, and I think the
14 world of them -- I don't believe they should be
15 allowed to deprive Mr. Maxwell's company of the
16 opportunity to lawfully develop his property. And
17 what he's lacking now in order to be able to do that
18 is access. And so all he's asking for, Judge, is the
19 right to have a 50-foot ingress/egress access over and
20 across the existing roadway, which has been in a place
21 over and across 001 for many, many, many, many years.
22 Thank you.

23 THE COURT: Thank you, Mr. Dodds. Mr.
24 Stanley?

25 MR. STANLEY: Thank you, Your Honor. May it

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1 please the Court.

2 Your Honor, let me start by saying this: It
3 is clear that Mr. Maxwell's company has only owned
4 this property since 2017. Now, why is that important?
5 Well, Mr. Maxwell made it very clear to me in his
6 testimony that they are claiming a legal right to an
7 easement on two grounds, prescriptive use and implied
8 easement by prior use.

9 Three, three things that are important here.
10 One, the pleadings are sour on the legal grounds that
11 they are entitled to an easement. It's not pled. So
12 that's why I asked him the question, because I wanted
13 it -- I know you didn't plead it, and I think that's a
14 good argument for me, because I think you've got to --
15 when you're asking for specific relief like that,
16 you've got an affirmative duty to plead what you're
17 entitled to. You didn't do that.

18 But secondly, not only did he not do that,
19 then the two grounds that he gave for the legal
20 entitlement are his worse grounds. The best ground
21 he's not going on it. The two grounds that he gave is
22 almost a slam dunk for me, because one, prescriptive
23 use, and Counsel certainly gave the elements of
24 prescriptive use. To establish a prescriptive
25 easement, the Plaintiff must show, one, continued use

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1 for twenty years.

2 Well, he has not used it for twenty years,
3 and there is not one scintilla of testimony in this
4 court as to anyone who has used it for 20 years. The
5 Taucers, I asked them about them. They were not here
6 today to testify that, yeah, we used it. There is no
7 evidence that anyone has used it other than my
8 clients. Yeah, they've used it because it's on their
9 property. But that's not what he's got to show. He's
10 got to show that either he used it or some predecessor
11 owner prior to him used it continuously for 20 years.
12 There is no testimony or evidence of any prior owner
13 in this chain that has used this property for 20
14 years.

15 What he had to do, if you're going to go onto
16 prescriptive use, you've got to go get somebody to
17 come and testify. You can't go out there and say,
18 well, it's evident that the road has been there a long
19 time. Well, yeah, it has been, but there's no
20 evidence that anybody has used it outside of my
21 people. So that's number one. He can't show the
22 first element of it.

23 Number two, The identify of the thing --
24 let's see, the second thing, the identity of it that
25 they enjoyed. And three, use which is either adverse

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1 or under a claim of right. Well, he can't show that
2 anybody has used it for 20 years and he certainly
3 can't show that anybody has used it adverse to my
4 clients, without their permission. You know, they
5 testified that whenever people did use it, they gave
6 permission. That's not adverse use.

7 And the other part of that, "under a claim of
8 right," he can't show anybody who testified or who can
9 say that they used it for twenty years under a claim
10 of right. We don't have that testimony.

11 Now, what they want us to do is assume that
12 it's been used all these years because it's been out
13 there a long time, but we can't make that assumption
14 here. When you're talking about crossing somebody
15 else's right -- crossing somebody else's property and
16 kind of to a certain degree limit their use, because
17 they've got it there for hunting and conservation and
18 so forth. And if we're going to come in and at least
19 interfere with that, he has got to prove every one of
20 these three elements for prescriptive use. He can't
21 prove them.

22 Secondly, he said I'm also going on implied
23 easement by prior use. The law is clear under Boyd
24 versus BellSouth that there are seven elements. It's
25 even worse under this, because the seven elements are:

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1 You've got to show unity of title; you've got to show
2 severance of title; you've got to show that the prior
3 use was in existence at the time of the unity of
4 title. You can't show anybody who was using it at the
5 time of unity of title. We can assume that somebody
6 might have been, but the law doesn't say that you can
7 assume it, you've got to show it.

8 Fourth, the prior use was not temporary or
9 casual. Five, the prior use was apparent and known or
10 known to the parties. The prior use was apparent or
11 known to the parties. Six, the prior use was
12 necessary in that there could be no other reasonable
13 mode of enjoying the dominant tenement without the
14 prior use. And seven, the common grantor indicated an
15 intent to continue the prior use after the severance
16 of the title. He can't show all those elements, Your
17 Honor.

18 So I think that the burden here certainly is
19 on the Plaintiff to show every element of the legal
20 entitlement or legal theory that he's proceeding
21 under. And he just told us the two theories that he's
22 proceeding under, he can't show the three elements for
23 prescriptive easement. He can't show the seven
24 elements for implied easement by prior use. Thank
25 you, Your Honor. That's all I have.

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1 THE COURT: Mr. Stanley?

2 MR. STANLEY: Yes, sir.

3 THE COURT: The easement by necessity?

4 MR. STANLEY: Yes, sir.

5 THE COURT: That's just an abbreviated
6 version of a prior use, is that what you're saying?

7 MR. STANLEY: Yes, sir. It's different
8 because there's only three elements for that one. And
9 I think he'd have been better off if that was the way
10 he was going, then that might be an easier road for
11 him, but the two ways that they're going here today --
12 and like I said, they didn't plead any. So I was at a
13 loss until we got here today as to what were they
14 claiming. So I had to look at everything.

15 And I looked at all of the ways that they
16 could claim an easement and then I specifically asked
17 which way are you claiming it? And then when they
18 told me, there's not such easement as documents. I
19 mean, I know he said I'm going by the documents.
20 Well, there's no such -- South Carolina doesn't
21 recognize that. I haven't seen that in any law that
22 I've seen. It might be within one of these other,
23 like prescriptive use, if you're saying you're
24 going -- you're pursuing it under some claim of right,
25 maybe the documents would have been a claim of right,

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1 but.

2 THE COURT: I took that to mean an express
3 easement.

4 MR. STANLEY: Okay.

5 THE COURT: All right, gentleman.

6 MR. DODDS: Judge, just briefly in response,
7 I would just briefly refer the Court to the testimony
8 of Mr. Scheffing. I don't think we have to bring in
9 prior owners and have those prior owners testify. We
10 established through expert testimony the existence and
11 the continuous use of this roadway for longer than the
12 statutory period.

13 THE COURT: Thank you, Mr. Dodds. Thank you,
14 Mr. Stanley.

15 MR. STANLEY: Thank, Your Honor. All right.
16 I think I've got all of the exhibits. I will hold on
17 to them in this situation, because I want to review
18 those. I appreciate that.

19 What I'll probably do is review everything
20 that I have, review my notes, and then reach out to
21 one or both of y'all to prepare an order. I may get
22 it to both because that sometimes helps me, helps
23 crystalize the arguments and positions from both sides
24 if I'm still unsure as to exactly how I'm going to
25 rule. I know it's somewhat of a burden on y'all, and

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1 I apologize if I do it that way. I will reach out to
2 you here within the next week with the suggestion as
3 to either one or both preparing a proposed order on
4 that. And then I'll just tell you in the note just
5 submit it to me by e-mail with a copy to the other
6 attorney and any notes or suggestion as to an order is
7 not the order. The order is not the order until I
8 sign the documents, just in that regard. Okay?

9 (The hearing concluded at 4:20 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

I, Kendra Kay Johnson, Professional Court Reporter and Notary Public for the State of South Carolina, certify that the foregoing hearing was held at 300-B California Avenue, Moncks Corner, South Carolina; that the foregoing pages constitute a true and accurate transcript of the proceeding.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 21st day of November, 2022.

Kendra Kay Johnson
Notary Public for South Carolina
My Commission Expires:
September 21, 2028

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

BCE 2015, LLC,

Plaintiff,

-vs-

ESTATE OF LOTTIE TAUCER, by and through)
her Personal Representative, Amelie)
Batson, and AMELIE BATSON, CHARLES L.)
TAUCER, III, GARY WM. TAUCER, KENT A.)
TAUCER, STANLEY A. TAUCER, TERRY TAUCER)
SAMSON, JANIS TAUCER SMITH, SHERYL L.)
TAUCER, PATSY J. TAUCER, LORI NICOLE)
TAUCER AND DEIDRE AMELIE TAUCER, sole)
heirs of Lottie Taucer, deceased, and)
if any of the said heirs be deceased,)
then JOHN DOE, adults, and RICHARD ROE,)
infants, insane persons, incompetents,)
and persons in the Military of The)
United States of America, being)
fictitious names designating as a class)
any unknown person or persons who may)
be an heir, distributee, devisee,)
legatee, widower, widow, assign,)
administrator, executor, creditor,)
successor, personal representative,)
issue or alienee, of AMELIE BATSON,)
CHARLES L. TAUCER, III, GARY WM. TAUCER,)
KENT A. TAUCER, STANLEY A. TAUCER, TERRY)
TAUCER SAMSON, JANIS TAUCER SMITH, SHERYL)
L. TAUCER, PATSY J. TAUCER, LORI NICOLE)
TAUCER AND DEIDRE AMELIE TAUCER, if any)
of them be deceased, LOTTIE TAUCER,)
deceased, and any and all other persons)
or legal entities, known and unknown,)
claiming any right, title, interest or)
estate in or lien upon the parcel of)
real estate described in the Lis Pendens)
and Complaint herein filed, YVONNE C.)
KNIGHT AND ELEANOR C. BROWN,)

Defendants.)

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO: 2018-CP-08-00344

HEARING BEFORE THE
HONORABLE DALE EDWARD
VAN SLAMBROOK

February 7, 2023

2:04 p.m.

McCarn Court Reporting, Inc.
P.O. Box 778
Folly Beach, SC 29439

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A-P-P-E-A-R-A-N-C-E-S

For the Petitioner:

Cisa & Dodds, LLP
By: John Joseph Dodds, III, Esq.
858 W. Lowcountry Boulevard, Suite 101
Mount Pleasant, SC 29464

Butler Snow LLP
By: Stephen P. Groves, Esq.
25 Calhoun Street, Suite 250
Charleston, SC 29401

For the Defendants Yvonne C. Knight and Eleanor C. Brown:

The Stanley Law Group
By: H. Ronald Stanley, Esq.
1418 Park Street
Columbia, SC 29201

. INDEX TO EXAMINATIONS

Page

Reporter's Certificate

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INDEX TO EXHIBITS

Plaintiff's

No. 1 Fifteen Color Photographs labeled A through O
Plus Photo Keys 1 and 2 (Identification only)

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1 THE COURT: Gentlemen, we are here on
2 2018-CP-08-344, BCE 2015, LLC, Plaintiff, versus the
3 Estate of Lottie Taucer and others. And present, we
4 have Mr. Dodds on behalf of the Plaintiff and Mr.
5 Groves --

6 MR. GROVES: Yes, Your Honor.

7 THE COURT: -- on behalf of the Plaintiff.
8 And Mr. Stanley on behalf of the Defendant. Is that
9 all correct?

10 MR. STANLEY: That's correct, Your Honor.

11 THE COURT: Anybody else we're expecting?
12 Any other attorneys, anybody else?

13 MR. DODDS: No, Your Honor.

14 THE COURT: And you have Mr. Maxwell here
15 with you.

16 MR. MAXWELL: Yes, Your Honor.

17 THE COURT: Yes, sir. And Mr. Stanley, you
18 don't have anybody here?

19 MR. STANLEY: No, I do not, Your Honor.

20 THE COURT: You're not expecting them?

21 MR. STANLEY: No, sir.

22 THE COURT: Yeah, I just didn't want to start
23 without them. Okay. And so Mr. Dodds, Mr. Groves,
24 this is y'all's motion to reconsider my previous
25 order. I'll be happy to hear from you.

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1 MR. DODDS: Thank you, Your Honor. Your
2 Honor, would you mind if I remain seated? I've got a
3 couple of different documents to look to.

4 THE COURT: That is fine by me. Thank you
5 for asking.

6 MR. DODDS: Thank you, Your Honor, I
7 appreciate that.

8 Judge, if it please the court, John Dodds and
9 Steve Groves on behalf of the Plaintiff, BCE 2015,
10 LLC. The matter before you today, Your Honor, is the
11 motion for reconsideration and motion to alter and/or
12 amend the judgment of the Court filed October 31,
13 2022, pursuant to South Carolina Rules of Civil
14 Procedure 52(b) and 59(e).

15 And I would just ask, Your Honor, that these
16 arguments as set forth in the motion be part of the
17 record for the Court in terms of the argument. I'm
18 going to go through those, if I may, Your Honor,
19 briefly.

20 Item Number 1, that the Court erred in
21 finding and/or concluding that the Defendants'
22 property, Judge, which is TMS No. 123-00-02-001, which
23 I may occasionally refer to as 001, was an unimproved
24 tract, Your Honor, given the testimony of the expert
25 witness D.A. Scheffing, who you qualified as an expert

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1 in the field of forestry, Your Honor.

2 As to the fact that the Defendants' property
3 had been and continues to be used for harvesting
4 timber and had been used in the past for agricultural
5 purposes, to include farming dating back to the 1950s,
6 as well as the fact that Defendants readily admitted,
7 Your Honor, that they have leased and continue to
8 lease out their property to include other properties
9 north of 001 for purposes of hunting, and that the
10 hunters continue to use the road that is from Old
11 Cherry Hill Road, Your Honor, onto 001, that then
12 proceeds onto the Plaintiff's property, 038, 039, on
13 to the Defendants' property at 036, a third party at
14 035, and then onto Defendants' other property having
15 TMS No. 123-00-02-034.

16 The second request, Your Honor, is that the
17 Court erred in finding and/or concluding that BCE 2015
18 had simply alleged that there was no access to his
19 property except over and through the unimproved dirt
20 road or the dirt road located on the Defendants'
21 property described as 001.

22 And the reason I say that, Your Honor, is
23 that the testimony presented at the trial of the case
24 was uncontradicted that Plaintiffs' property having
25 the last three digits of the TMS No. 038 was in fact a

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1 landlocked property that had no other access to it
2 except off Old Cherry Hill Road onto the dirt road
3 located on 001. Specifically, I would point to the
4 testimony of Yvonne Knight, Your Honor, in the
5 transcript, Page 166, line 15, where she acknowledged
6 that there was no access to 038 except over and across
7 her property at 001.

8 Third item, Your Honor, is that the Court erred
9 in finding and/or concluding that BCE 2015 failed to
10 plead, allege, or assert in its Complaint entitlement
11 to the relief sought, which was a 50-foot easement
12 over and across the existing dirt road over
13 Defendants' property having 001 as its last three
14 digits, under various and sundry theories, Your
15 Honor.

16 Specifically, the Plaintiff alleged an action
17 pursuant to the South Carolina Uniform Declaratory
18 Judgment Act to establish or confirm a 50-foot
19 ingress/egress easement to its property having 038
20 over and through the existing dirt road running
21 through the Defendants' property having 001 as its
22 last three digits.

23 Judge, there was no motion made by the
24 Defendants to make the Complaint more definite and
25 certain. There was no objection to the admission of

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1 evidence from the Plaintiff's witnesses, including the
2 Plaintiff and including the Defendants' [sic] two
3 experts, Bill Chivers and Dan Scheffing, Your Honor,
4 who both testified uncontrovertedly that the only
5 reasonable access to Plaintiff's property was the dirt
6 road across 001.

7 So the Defendants can't come back now, Judge,
8 and assert that we didn't present a clear request
9 specifically as to what we wanted. If you look at the
10 provisions of the Complaint, Your Honor, we
11 specifically ask for a 50-foot ingress/egress easement
12 over and across the existing dirt road running through
13 the Defendants' real property. In fact, we attached a
14 GIS map as Exhibit A to the Complaint showing
15 specifically where the proposed easement would be
16 located.

17 Item four, Your Honor, we respectfully assert
18 that the Court erred in finding and/or concluding that
19 BCE 2015 acting through its managing member, Mr.
20 Maxwell, claimed that BCE 2015 was entitled to
21 "Implied easement by prior use, recorded document, and
22 prescriptive easement," when the testimony presented
23 not only by Mr. Maxwell but by Mr. Scheffing and Mr.
24 Chivers specifically referenced a request for Easement
25 by Necessity, Your Honor.

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1 Again, there was no -- if you look to the
2 testimony of Mr. Maxwell, Your Honor, that's on Page
3 93 at line 5, he basically said that he was claiming
4 an easement by -- implied easement by use, implied
5 easement by document, and he was referring to the 1881
6 plat of E.J. Dennis, which Mr. Paul Marye had had done
7 relative to his property.

8 He also requested prescriptive easement and
9 easement by necessity. And when questioned by Mr.
10 Stanley he corrected himself to some extent, he said,
11 well, number one, I'm not an attorney. Number two,
12 that if -- I suppose that if I have an implied
13 easement by use, an implied easement by document, or a
14 prescriptive easement, then, by definition, you
15 wouldn't have an easement by necessity, because you've
16 had an easement through these other theories of the
17 law, so.

18 And again, the evidence that was presented by
19 Mr. Maxwell as more importantly, even by the experts,
20 Scheffing and Mr. Chivers was extensive with respect
21 to the alternate access, if you will, that was
22 suggested by the Defendants in the northeast corner of
23 their property through --

24 THE COURT: Are you saying that the easement
25 by necessity wasn't addressed as a part of the order?

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1 MR. DODDS: Yes.

2 THE COURT: Is that the complaint?

3 MR. DODDS: Yes, Your Honor.

4 THE COURT: Not the complaint, but is that
5 the issue that you're raising?

6 MR. DODDS: Yes, Your Honor.

7 THE COURT: That it wasn't specifically
8 ruled?

9 MR. DODDS: Yeah, in other words, it appeared
10 that the Court limited it's application of the facts
11 to various theories of an easement, but did not
12 include easement by necessity as a theory under which
13 Plaintiff could recover and in fact secure an
14 easement.

15 THE COURT: All right. Okay.

16 MR. DODDS: So I would just refer you to that
17 testimony by Mr. Maxwell, Your Honor. I think it's
18 pretty clear. And then, there again, if you look to
19 the testimony of Mr. Scheffing, at one point, Judge,
20 he talked about -- number one, he specifically stated
21 that that was the only reasonable access to
22 Plaintiff's property was over and across the dirt road
23 on the Defendants' property and he further indicated
24 that it would be environmentally --

25 MR. GROVES: Irresponsible.

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1 MR. DODDS: Irresponsible to suggest an
2 alternate in the northeast corner of the Defendants'
3 property through an area that he described as
4 extremely boggy, wetlands, and substantially lower
5 than the surrounding topography some 6 to 7 feet.

6 And then the extensive testimony, Your Honor,
7 of Bill Chivers, who you qualified as an expert in the
8 construction of roads into rural properties to the
9 effect that there would be an expense associated with
10 putting in a road in that area of over \$403,000, I
11 believe his amount was. And further, that he would
12 have to -- I believe the number was 125 dump trucks
13 that they would have to excavate this mucky soil. And
14 then, I think he indicated further, once they did
15 that, they would have to bring in some 280 truckloads
16 of dirt just to fill that area.

17 So I think the -- really, frankly, the
18 overwhelming evidence, Your Honor, was that the only
19 access to Plaintiff's property and the only reasonable
20 access Plaintiff's property was over and across the
21 Defendants' property having 001 as its last three
22 digits.

23 Item five, Your Honor, the Plaintiffs would
24 respectfully request or conclude that the Court erred
25 in finding and/or concluding that the Defendants

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1 inherited the real property from their great
2 grandfather, Nero Smalls, when the evidence, Your
3 Honor, presented at trial, specifically the testimony
4 of Mr. Maxwell, Your Honor, at Page 26, line 20, was
5 that Nero Smalls acquired this property -- excuse me,
6 Your Honor, I lost my place. I'm sorry, Nero
7 Smalls -- multiple parties owned the property after
8 Nero Smalls acquired ownership from Paul Marye, Your
9 Honor, back in the mid 1800s.

10 In fact, the property was sold by an S.
11 Behrmann, Your Honor, to the Defendants' grandfather,
12 Eddie Cooper, who then in turn deeded the property to
13 the Plaintiff's[sic] father Eddie Cooper and the
14 Plaintiff[sic] acquired the subject property 001 by
15 devise from their late father.

16 So the Defendants did not acquire the
17 property from Nero Smalls, Judge. There were several
18 transfers prior to the time that the Defendants
19 acquired the property as a result of the death of
20 their father.

21 THE COURT: Assuming that is correct.

22 MR. DODDS: Yep.

23 THE COURT: What effect would it have on the
24 ruling?

25 MR. DODDS: Well, we just wanted to make the

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1 record clear, Judge. I don't know that it had any
2 particular effect on your analysis, but --

3 THE COURT: Okay. I just want to make sure I
4 understood the significance of it.

5 MR. DODDS: Yeah.

6 THE COURT: Okay. Thank you.

7 MR. DODDS: Thank you, sir. Item six, Your
8 Honor, we respectfully assert that the Court erred in
9 finding and/or concluding that BCE 2015 alleged that
10 the properties owned by Nero Smalls and Jupiter Tate
11 tracts were the same tracts as owned by the Defendants
12 and BCE 2015. The evidence showed that the
13 Defendants' real property was the same property
14 formerly owned by Nero Smalls and that Plaintiff's
15 property was part of a larger tract that was
16 transferred to Lottie Taucer from her sister, Minnie
17 Shae Stell, back in 1956.

18 And again, Your Honor, I don't know that this
19 had an impact on your ruling, but just to set the
20 record straight. But what is important, Your Honor,
21 specifically with respect to the transfer from Minnie
22 Shae Stell to her sister Lottie Taucer, which is the
23 property that is the Defendants' [sic] property at 038,
24 is language that was contained in that 1954 deed, Your
25 Honor, again, from Minnie Shae Stell to her sister

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1 Lottie Taucer.

2 And that deed specifically provided the right
3 to use: "A reasonable and convenient right-of-way for
4 access, ingress, egress and regress to have the right
5 to select two (2) such right-of-way, if desired, in
6 order to have access to their land from the west or
7 south across lands of the Grantor, and Grantor hereby
8 reserves the right to use any rights-of-way
9 established by the Grantees across their lands,
10 concurrently with the usage by Grantees for ingress,
11 egress, and regress across the lands above described."

12 Now, one of the questions you had during the
13 trial, Judge, was whether we -- whether Minnie Shae
14 Stell owned 001 at the time. She didn't. But, Judge,
15 what she was doing, she owned property north of that
16 and she's referring to access from the west, which you
17 may remember, Judge, was a lane off of -- a small
18 roadway off of Highway 17A called Singleton Lane,
19 which was in the northwest corner of the -- not only
20 the Plaintiff's property, but the Defendants' property
21 way north.

22 But what is important, Your Honor, is that
23 deed from Minnie Stell to Lottie Taucer, which
24 included the Plaintiff's property, is clear evidence
25 of a claim of right that Plaintiff's predecessor in

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1 title was asserting in and to the use of the road
2 across the Defendants' property, that being the road
3 that she described as access from the south. And that
4 testimony, Your Honor, is highlighted on Page 128 at
5 line 19 as part of the testimony during the trial of
6 the case.

7 Item seven, Your Honor, that the Court erred
8 in finding and/or concluding that the property that
9 was subdivided by Paul Durrant Marye as being 300
10 acres, Your Honor, that property was unequivocally
11 shown to be 408 acres. And again, I'm not sure that
12 that had any impact on your ruling, Your Honor, but
13 just to make the record clear and correct. And that
14 was consistent with the Plaintiff's testimony, Your
15 Honor, at Page 20, line 24.

16 Item number eight, Your Honor, the Court erred
17 by finding and/or concluding that there was neither
18 evidence nor testimony to prove that the unimproved
19 dirt road running across Defendants' real property
20 existed during the unity of title, when the evidence
21 presented, Your Honor, was uncontroverted that the
22 1828 Holmes plat in fact showed a dirt road in the
23 same location as the one existing at present, going
24 onto the Defendants' real property and then farther
25 north onto the Plaintiff's real property, as well as

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1 the expert testimony, Your Honor, of Mr. Scheffing,
2 whose testimony was not challenged or controverted,
3 which showed that the unimproved dirt road running
4 across the Defendants' property had been in
5 continuous and uninterrupted use for several, several
6 years. He said for a very long, long time, and when
7 asked by me more specifically, Page 140, line 9, he
8 talked about, quote, "generations."

9 The other thing that Mr. Scheffing talked
10 about, Your Honor, was the compaction of the road,
11 that being the topography of the road across
12 Defendants' property being substantially lower than
13 the surrounding topography, which was an indication of
14 long-term use. And he indicated that on several
15 different occasions, having first acknowledged, Your
16 Honor, that Mr. Maxwell, had gone through the LiDAR
17 imagery exhibits with him prior to court, and that he
18 was also present in the courtroom at the time the
19 presentation was made by Mr. Maxwell that included
20 various and sundry imagery, GIS, and LiDAR, to the
21 Court.

22 Item number ten, Your Honor, that the Court
23 erred in either not considering or overlooking the
24 demonstrative and testimony evidence regarding the
25 LiDAR imagery, which clearly showed a consistent

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1 physical depression of and across the dirt road which
2 ran across the Defendants' property onto the
3 Plaintiff's property and then onto other property
4 acquired by the Plaintiff.

5 THE COURT: Did you touch number nine, that
6 even if the road was in existence, there wasn't any
7 testimony?

8 MR. DODDS: I'm sorry, Your Honor.

9 THE COURT: As to who, if anyone, was using
10 the unimproved dirt road?

11 MR. DODDS: You want me to touch on that?

12 THE COURT: Yeah.

13 MR. DODDS: Okay.

14 THE COURT: Yeah, go ahead. I think you may
15 have missed that one.

16 MR. DODDS: Well, I don't know that we need
17 to -- well, number one, if you look at the testimony
18 of the Defendants, they talked about various and
19 sundry hunters using the property. They said
20 approximately eight years prior to 2008.

21 The Defendants acknowledged, Judge, that with
22 respect to these properties, that they were all
23 landlocked and had no access to a public road, that
24 being Old Cherry Hill Road, except over and across the
25 dirt road located on Plaintiff's[sic] property at

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1 123-00-02-001.

2 THE COURT: Doesn't that beg the question of
3 who? If there wasn't any testimony as to who was
4 doing it or why the existence of a roadway --

5 MR. DODDS: Well, there was testimony by Mr.
6 Scheffing that the road which went across Defendants'
7 property onto Plaintiff's property and then farther
8 north had been used consistently for a long, long
9 time.

10 He talked about loggers that logged various
11 properties, to include 036, which is owned by the
12 Defendants, having used that road to access that
13 property, 036, which crossed Plaintiff's property to
14 not only access it, to remove the timber -- to secure
15 the timber but then to come back across that same dirt
16 road to remove the timber that they had harvested from
17 the Defendants' property.

18 THE COURT: Okay.

19 MR. DODDS: So we've got parcel number
20 123-00-02-072, which I believe was Freddie Parker?

21 MR. MAXWELL: Uh-huh.

22 MR. DODDS: Freddie Parker, Your Honor, which
23 was the nephew of Minnie Stell and Lottie Taucer, who
24 acquired that approximate 2-acre tract to the west of
25 Plaintiff's property. That's that TMS No.

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1 123-00-02-072, that is a landlocked property, and
2 that's acknowledged by the Defendant, Yvonne Knight.
3 I can give you the specific reference to the
4 transcript, Your Honor.

5 123-00-02-038 is also landlocked, Your Honor.
6 123-00-02-037, a 2-acre tract to the west of
7 Plaintiff's property 123-00-02-039 also landlocked,
8 and then the Defendants' property 123-00-02-036,
9 landlocked. And finally, a third party owning a track
10 north of 036, 123-00-02-035, also landlocked. And
11 then finally, a 2-acre tract to the west of that,
12 123-00-02-075, all landlocked, Your Honor, all having
13 as a sole means of access the dirt road from Old
14 Cherry Hill Road across Plaintiff's[sic] property,
15 that was their sole means of access and that is not
16 disputed in the record.

17 Item number 11, Your Honor, that the Court
18 erred in finding and/or concluding that there was no
19 evidence or testimony to show specifically who, if
20 anyone, was using the dirt road on the Defendants'
21 property. As mentioned moments ago, Judge, there were
22 at least one, two, three, four, five, six, seven,
23 eight different properties that had no access to their
24 property except over and across the dirt road owned by
25 the Defendants having 123-00-02-001 as the sole means

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1 of access.

2 And the testimony, Judge, of Mr. Scheffing
3 with respect to the compaction of the road versus the
4 surrounding topography of the road who indicated that
5 the compaction of the road indicated long-term use for
6 a very, very long period of time.

7 The other thing, Judge, just I will mention ,
8 that in the deed where Mr. Paul Marye transferred the
9 Defendants' property having 001 or at least a portion
10 of that property to Nero Smalls in the legal
11 description, Mr. Marye, who was an attorney at the
12 time, Your Honor, specifically included in the legal
13 description a statement that the real property to the
14 north of the property being transferred to Nero Smalls
15 was the, quote, unquote, "land of Jupeter Tate."

16 I think making reference to that, Your Honor,
17 so as that either Mr. Tate was living on the property
18 at the time or that he was farming the property at the
19 time. The conclusion being that the purpose of
20 including that was to make clear the Mr. Tate not only
21 owned that property but was either farming that
22 property or using that property in some other
23 capacity, that his access to that property north of
24 the property being conveyed to Nero Smalls was being
25 used by Jupeter Tate to access his property, and that

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1 was some 140 years ago.

2 Item number 12, Your Honor, that the Court erred
3 in failing to consider the LiDAR imagery, to include
4 the testimony of Mr. Scheffing and Mr. Chivers both
5 of whom were qualified as expert witnesses, Your
6 Honor, Mr. Scheffing in the field of forestry and Mr.
7 Chivers in the field of construction of roadways on
8 rural areas, that based on the depressional nature of
9 the unimproved dirt road running over and across
10 Defendants' property, that the unimproved dirt road
11 had been in existence for many -- well, what he
12 specifically said was a very, very long time, and
13 then when questioned further at Page 140, line 20, he
14 said "generations."

15 In fact, it was one imagery, Your Honor, that
16 we -- actually two. There was one that was enlarged
17 reference Page 44, line 5 of the transcript of record
18 that showed a motor vehicle driving on the unimproved
19 dirt road over Defendants' property. So that was
20 direct evidence of that specific roadway being used at
21 that time.

22 And then, the second portion of that, Your
23 Honor, item number 13, is that the Court erred in
24 disregarding the unchallenged testimony from two of
25 the witnesses with respect to the topography, the

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1 existence of significant wetlands on the alleged
2 alternate site that the Defendants sought to show was
3 available to the Plaintiff when Mr. Scheffing
4 indicated, Your Honor, that it would be
5 environmentally irresponsible to try to build a road
6 in that area of the Defendants' property.

7 And Mr. Chivers testified that it would cost
8 in the neighborhood of \$403,000 to build a road there.
9 They would have to secure permits from the Army Corps
10 of Engineers, and that considerable muck, if you will,
11 soil, would have to be removed and then brought back
12 in, Your Honor, in order to establish a roadbed over
13 which a road could be constructed.

14 Item number 14, Your Honor, that the Court erred
15 in finding and/or concluding that there was no
16 evidence or testimony in the record showing any of
17 the prior owners accessed the property now owned by
18 BCE, that being 038 and then of course 039.
19 Specifically, we'd point to the plats that are in
20 evidence at H-50, and H-117 that showed the existence
21 of the unimproved dirt road, Your Honor, showed the
22 field and specifically designated and labeled on the
23 plats as, quote, unquote, "old fields."

24 Again, Your Honor, I would refer you to the
25 testimony of Mr. Scheffing describing the compacting

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1 or compaction of the roadway as being an indication of
2 continuous and long-term use. And in his specific
3 testimony at Page 135, line 8 of the transcript, Your
4 Honor, the continual use for a long time used to
5 remove timber for agricultural purposes such as
6 farming and up to present for hunting.

7 And specifically, Your Honor, I would also
8 refer you to the testimony of Yvonne Knight, one of
9 the Defendants, Page 167, line 4, where she admitted
10 she didn't know whether the owners of Plaintiff's
11 property, that being 038, used the dirt road to access
12 their property or not. In fact, she was pretty clear
13 she didn't know.

14 And just again, the testimony of Mr.
15 Scheffing, Your Honor, that the property had been
16 continuously used for various and sundry purposes to
17 include farming, to include hunting for a very, very
18 long period of time, certainly beyond the 25 years
19 necessary to establish any sort of easement by
20 prescription.

21 Item number 15, Your Honor, that the Court
22 erred in failing to conclude or find that BCE
23 presented both direct and circumstantial evidence
24 showing the prior use of the dirt road located upon
25 the Defendants' property. You had the deed of Lottie

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1 Taucer that I'd mentioned earlier, Your Honor, deed to
2 her from Minnie Stell where Minnie Stell was claiming
3 and easement over and across the properties she was
4 conveying to her sister, as well as a claim of right
5 to the access that she had to the property from both
6 the north and from the south, the south being the dirt
7 road over and across Plaintiff's[sic] property, Your
8 Honor, having 001 as it's last three digits, and then
9 again, the expert testimony of Mr. Scheffing with
10 respect to the compaction of the dirt road indicating
11 continuous and long term use, and then the testimony
12 of Defendants that the property continues to be used
13 and has been used for hunting since on or about 1998.

14 Item number 16, Your Honor, that the Court
15 erred in failing to consider and adopt as its findings
16 the demonstrative and testimonial evidence to include
17 the LiDAR imagery which was not contradicted, Your
18 Honor, which was confirmed by the testimony Mr.
19 Scheffing, who indicated continuous and long-term use.

20 Item number 18, Your Honor, that the Court
21 erred in failing to consider the evidence that was
22 presented with respect to Paul Marye, an attorney in
23 South Carolina, Your Honor, who acquired 408 acres
24 from his father, who then had a surveyor and engineer
25 prepare a plat with respect to his transfer of

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1 subsequent deeds of the property, Your Honor.

2 Even though Mr. Marye was an attorney who
3 sold off 12 properties the first property he sold,
4 Your Honor, was to Nero Smalls, which was the property
5 that is the subject of the lawsuit, that being the
6 Defendants' property having TMS No. 123-00-02-001.

7 So the impact of that, Your Honor, would be
8 Mr. Marye, an attorney subdividing 408 acres into 12
9 different parcels selling as the first parcel the
10 Defendants' property having 001, and thereby leaving
11 the other 11 parcels without any access, except, Your
12 Honor, over and across 001. And it seems incredulous
13 that you would have an attorney that would subdivide
14 his property --

15 THE COURT: We don't know what other access
16 they had?

17 MR. DODDS: Pardon?

18 THE COURT: We don't know what other access
19 they may have had?

20 MR. DODDS: Well, they didn't have any other
21 access.

22 THE COURT: From any other direction? We
23 don't know that, do we?

24 MR. DODDS: You've seen imagery that shows
25 that.

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1 THE COURT: At the time of the transfers?

2 MR. DODDS: Yeah, I mean, wasn't there a plat
3 that showed that?

4 THE COURT: What's that?

5 MR. MAXWELL: It's a plat of the Tiverton
6 Lawn. There's a river on this side and on the other
7 two sides, there was a large plantation. There was
8 nothing else contiguous.

9 THE COURT: All right. Go ahead. I
10 interrupted.

11 MR. DODDS: That's all right. So again, just
12 the conveyance to Nero Smalls, Judge, which was the
13 first conveyance of the twelve by Mr. Marye would have
14 rendered the access to the remaining 11 parcels as
15 being completely unavailable.

16 Item number 19, Your Honor, that the Court
17 erred in failing to determine that the LiDAR imagery,
18 Your Honor, was somehow contradictory and did not
19 indicate the continuous and long-term use of the road
20 located over and above the Plaintiff's property.

21 The Defendants acknowledged, Your Honor, that
22 the dirt road was used by them to log 036, which is
23 north of Plaintiff's property. So they used the dirt
24 road coming from Old Cherry Hill Road across 001,
25 across Plaintiff's property at 038, across Plaintiff's

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1 property at 039, to access 036, from which they cut
2 timber and then removed timber using that same exact
3 dirt road over and across 001.

4 Item number 20, Judge, that the Court erred
5 by failing to recognize the testimony that was
6 presented with respect to the Taucer property. The
7 Defendants, or at least Ms. Yvonne Knight, Your Honor,
8 acknowledged that she didn't know how the Taucers got
9 to and from 038. She suggested they never lived in
10 the area, but she offered -- her testimony was she
11 didn't know how and from their property, but that it
12 was in fact landlocked.

13 Additionally, Judge, we would respectfully
14 show that the Defendants' credibility with respect to
15 that issue was limited because during
16 cross-examination, she acknowledged that she didn't
17 know how the owners of -- how the Taucers got to and
18 from their property. That was specific, Judge, and
19 I'll reference in the transcript --

20 THE COURT: How does that affect the
21 conclusions?

22 MR. DODDS: Well, she's not in a position to
23 offer any testimony about how the Taucers got into
24 their property, because she doesn't know, and she
25 acknowledged she didn't know. The Taucers owned 038,

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1 Your Honor, and it was completely --

2 THE COURT: She testified that she didn't
3 know. Where in the order or where is that testimony
4 being relied on for a conclusion that then becomes
5 adverse to your claims?

6 MR. DODDS: Well, Judge, it just goes to show
7 that with respect to 038, which is the Plaintiff's
8 property, the only way to get to and from the property
9 from a public roadway, Old Cherry Hill Road, was over
10 and across the dirt road located on the Defendants'
11 property. So we're talking about a piece of property
12 that was landlocked and the only way to get there was
13 the dirt road on the Defendants' property.

14 I'm not sure if I answered your question, or
15 if I understood your question, but, Your Honor, if
16 you'd address it, I'll --

17 THE COURT: No, I think that's covered.
18 Okay. Anything further, Mr. Dodds?

19 MR. DODDS: Let's see, Judge. Let me
20 just ... I think Mr. Groves may wish to address the
21 Court, Your Honor, just specifically on a couple of
22 items.

23 THE COURT: Mr. Groves?

24 MR. GROVES: Your Honor, while I know it's
25 somewhat unusual, it is permitted under our rules to

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1 submit new evidence to the Court in a motion such as
2 ours, evidence that was not available at the trial,
3 but has subsequently become available. It didn't
4 exist at the time of the trial but now exists. And I
5 intend to submit a series of photographs that were
6 taken this past Friday showing improvement to the
7 road, both on my client's property and on the
8 Defendants' property, even though they keep saying
9 that no one uses the road.

10 THE COURT: First off, any objection to this
11 testimony or information?

12 MR. STANLEY: Yes, sir, I do object, Your
13 Honor.

14 THE COURT: So, well, hang on. How is this
15 relevant to the previous order.

16 MR. GROVES: Well, Your Honor, it's relevant
17 only because they continue to say that the road is not
18 being used for logging or for -- and they've indicated
19 that the hunters do not access the property through
20 the road, they access it through a bridge, which if
21 you look at one of the submitted plats shows that the
22 bridge wasn't even on their property. And we have
23 photographs of the bridge indicating its dilapidated
24 condition, which would not permit access either before
25 the bridge or after the bridge. And it goes to the

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1 point that this particular road, Your Honor, which is
2 in existence for 100 or so years, is the only
3 reasonable and credible access to these properties
4 from 001 north. Contrary to what the Defendants have
5 testified, this road is continuously being improved to
6 show that it is being used on a regular basis.

7 THE COURT: Well --

8 MR. GROVES: Including -- I'm sorry.

9 THE COURT: The suggested testimony, the
10 photographs, are photographs of the Defendants'
11 property?

12 MR. GROVES: Correct, Your Honor. And onto
13 my client's property where it has been improved.

14 THE COURT: You're saying the Plaintiff's
15 property has been improved?

16 MR. GROVES: Yes, sir. The Plaintiff's
17 property, the road that crosses the Plaintiff's
18 property that they have denied access to has been
19 improved since the trial, both the Defendants'
20 property, the road on that property, and on my
21 client's property has been improved by someone. We
22 don't know who but someone, some company, somebody has
23 brought in extra gravel to fill in low places to
24 improve the access.

25 THE COURT: I don't know that I can draw any

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1 relevance to that after the fact. I mean, that
2 obviously is an issue that these folks are going to
3 have to deal with in some fashion.

4 I'm not sure that I can take the photographs
5 and draw the conclusions that you want me to without
6 hearing further testimony from the Defendants. And I
7 don't think for the purposes of this motion, which
8 we're looking at contended legal errors that are set
9 out in the order, that that would have any relevance
10 to the motion.

11 Thank you for offering that, I will --

12 MR. GROVES: I would offer it to be put into
13 the record as identification.

14 THE COURT: Absolutely. I will put it in
15 there and proffered testimony on that. And did you
16 share a copy of that?

17 MR. GROVES: Yes, sir.

18 THE COURT: With Mr. Stanley?

19 MR. GROVES: Yes, sir.

20 THE COURT: And how many pages do we have in
21 there?

22 MR. GROVES: Sixteen, I believe, Your Honor.
23 And on the back of them, they are marked A through O.

24 (Plaintiff's Exhibit No. 1 marked for
25 identification only.)

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1 THE COURT: A though O. All right. Make
2 sure with the Court Reporter that y'all properly
3 identify these. Make sure we've got all the numbers
4 on them.

5 MR. GROVES: Yes, sir.

6 THE COURT: Just in case you all have to look
7 at them down the road, y'all can do that. I want to
8 make sure that that's properly preserved. Madam Court
9 Reporter, I'll give those back to you, and let you
10 keep those.

11 COURT REPORTER: Thank you.

12 MR. GROVES: Thank you, Your Honor.

13 THE COURT: Thank you. All right. Mr.
14 Stanley, I'll be happy to hear from you.

15 MR. STANLEY: Thank you, Your Honor. Your
16 Honor, if it please the Court. Your Honor, it seems
17 like there is a prevailing attitude on the part of the
18 Plaintiffs that if Plaintiff is landlocked, then he is
19 automatically entitled to cross someone else's
20 property to get to his property.

21 Now, the Plaintiff of course bought this
22 property through a tax sale, got it, I think titled in
23 2017. Prior to that time, had absolutely no
24 familiarity with this property. And he says that he
25 buys property on a regular basis through tax sales. I

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1 think the testimony of the managing member of the LLC
2 was that he had purchased over 1,000 here in South
3 Carolina, I believe it was. And he does, he says, a
4 significant amount of research. So he would have
5 known that he had no access to this property, but the
6 prevailing thought of the Plaintiff is, I have no
7 access but I'm entitled to access because I have no
8 access, and there's no such thing in our law as that.
9 What our law says is that there's got to be some basis
10 for your claim of an easement and there is no express
11 easement.

12 And of course, here, I would think it's
13 stipulated that there's no express easement, because
14 if there was express easement, they would have
15 presented it. They did not present it. And so then,
16 the question becomes, what is your entitlement?

17 It's not my intent to go through each of
18 these alleged errors of law that the Plaintiff has
19 raised here today, but as the Court can see, a number
20 of them have no relevance to this case. For instance,
21 the first one deals with whether or not the
22 Defendants' property is unimproved.

23 I think it's clear that it is unimproved
24 property. Now, why they come in here today and raise
25 the fact that the order is incorrect by stating it's

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1 unimproved property, I don't know where that comes
2 from. The testimony in this case was that there's
3 nothing on this property. It is wooded property.
4 When I say "this property," I'm talking about the
5 Defendants' property. It is wooded property with
6 timber that they lease out to hunters to hunt.

7 So there are no improvements there. In fact,
8 I think the testimony is to that there are no
9 improvements on any of the property out in this
10 particular area. So to point out to us today that the
11 order is incorrect by stating it's unimproved
12 property, I don't know where that comes from.

13 Number 2, they say that the order says that
14 there was no specific allegations in the Complaint
15 setting forth what is the right of the Plaintiffs to
16 an easement. Well, if you look at the Complaint,
17 there is no specific allegations in the Complaint.
18 The Complaint says that they want an easement pursuant
19 to declaratory judgment statute, but what this order
20 talks about is whether or not -- what is the legal
21 basis of it, what is the legal theory behind it, what
22 is the principle of law that you're relying upon? The
23 Complaint does not state it. So the order is
24 certainly correct. That there is no specific
25 reference or allegation set forth in the Complaint as

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1 to what the entitlement is.

2 What happened of course in this case is that
3 since there was not specific allegation in the
4 Complaint, I asked the managing member in
5 cross-examination, what is your legal basis for coming
6 here today asserting that you're entitled to an
7 easement to cross the Defendants' property?

8 And he gave it, and it's clear in the record
9 that he said that he was relying upon easement by
10 prior use, and prescriptive use. Now, he did mention
11 from the outset the word "necessity," but when I kept
12 asking him to specifically state so that this record
13 would be clear, he said, oh, I'm relying on the two,
14 the two of them, which is prescriptive use, and the
15 easement --

16 MR. MAXWELL: That's not what I said.

17 MR. STANLEY: Now, I'm going to find that
18 testimony for Your Honor, so that we'll be clear on it
19 here today.

20 MR. DODDS: Page 93, Your Honor.

21 MR. STANLEY: Well, I'm referring to Page 94.
22 And so Page 94, line 7, "So you're claim is by
23 prescriptive easement?

24 Uh-huh.

25 And your claim is also implied easement by

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1 prior use?"

2 Line 11, "And recorded documents," he said.

3 And then he asked could he consult with his
4 attorney, and I told him, no, his attorney of course
5 could come back and straighten it out on redirect.
6 But he made it very clear in his testimony that these
7 are the two bases, prescriptive use and easement by
8 prior use.

9 Now, the order specifically dealt with the
10 six elements that the Plaintiff must prove in order to
11 establish an easement by prior use. The order also
12 dealt with the elements that the Plaintiff must prove
13 to establish an easement by prescriptive use.

14 Now, the order did not deal with necessity,
15 because his complaint did not specifically allege
16 necessity, nor did his testimony specifically say that
17 he was relying on necessity. So the order didn't deal
18 with that, but the order dealt with what he said he
19 was relying upon.

20 Now, I would expect that the Plaintiffs would
21 come here today to show the Court where the Court was
22 in error with respect to the Court's application of
23 the six elements that the Plaintiff must prove in
24 order to establish an easement by prior use. I didn't
25 see a lot today. And by the way, Your Honor, it's my

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1 understanding that all six elements must be proven,
2 not three of them, not four of them, but all six. And
3 I didn't see the Defendants go through any scenario
4 today to show the Court one by one where the Court was
5 wrong in saying that element number three, four, five,
6 and six were not proven.

7 The order basically said that elements number
8 one, unity of title, and element two, severance of
9 title, were proven, but the remaining four were not
10 proven. And there's no argument today to -- in my
11 mind to show the Court that the Court made an error in
12 its application of those four remaining required
13 elements that they must show through the facts of this
14 case.

15 Also, there's no argument today to show the
16 Court that the Court was wrong when the Court said
17 that the Plaintiff had not proven a prescriptive
18 easement. This property was severed according to the
19 Plaintiff's allegations here back in 1882. February
20 6, 1882, is when P.D. Marye conveyed to Nero Smalls.
21 And they take the position that that is where the
22 severance occurred.

23 Now, there's no testimony presented by any
24 witnesses showing that the road or path that runs
25 across the Defendants' property was used by anyone

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1 other than speculation on their part. I mean, they're
2 saying the road is used, but, yeah, it's used. The
3 Defendants acknowledge it's used. It's used by the
4 hunters that they allow to hunt on the property. So
5 yeah, those hunters use the road.

6 It's used by the Defendants themselves. It
7 was used by Defendants' family over the years when
8 they -- they said they had, I think the testimony was
9 cows out there, but they also said that there was a
10 gate at the entrance to their property that existed at
11 least for 72 years.

12 So the Taucers, how they got in there, I
13 don't know, but they weren't coming across the
14 Defendants' property. If they were, then I would
15 think that the Plaintiff's would have brought someone
16 in from that family to testify that, yes, that's the
17 way we accessed TMS 38 for years. We used that road,
18 and that's how we got there. There's no testimony to
19 that.

20 The testimony is from Mr. Scheffing who
21 testified that he went out there two weeks before the
22 date of the trial with the managing member of this
23 LLC, and he's a forester, and he went out there, and
24 he said the road had been used. Well, we acknowledge
25 that the road has been used, but he has no testimony

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1 as to who was using it. He has no testimony -- gave
2 no testimony as to why it was being used, other than
3 possibly logging. He had never been involved in a
4 logging operation. He has never seen that road used
5 himself. He only went out there two weeks before. So
6 he has no personal knowledge. It's all speculation as
7 to who was using it, how it was being used and why it
8 was being used.

9 The same thing with the other gentlemen who
10 was their expert that said that he was a dirt road
11 builder, he has certainly no testimony to provide.
12 It's my understanding the only reason he was there
13 testifying -- and I didn't ask him any questions,
14 because the only reason he was testifying was to say
15 that to build a dirt road in the area on the northern
16 part of my clients' property -- well, I guess on the
17 western part of my clients' property would be too
18 expensive. I think he said it would be 400 and some
19 thousand dollars. I think that was the only purpose
20 of his testimony. But he had no testimony about the
21 prior use of the road that does exist now on my
22 clients' property in terms of who was using it, why
23 they were using it. He had no testimony regarding how
24 38, the Plaintiff's property, was being accessed.

25 So, Your Honor, we think that the order

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1 issued by this Court is clear. It deals with the
2 elements that our court of appeals and supreme court
3 has said you must establish in order to have
4 entitlement to an easement, and we think that your
5 order should stand. And we believe that there's a
6 failure on the part of the Plaintiffs here today to
7 show the Court any reason why that order should be
8 reversed or whether or not that order should be
9 amended or changed in any fashion. Thank you so much.

10 THE COURT: All right. Thank you, Mr.
11 Stanley.

12 MR. DODDS: Just very briefly, Your Honor.
13 Judge, I would just specifically refer you to the
14 transcript with respect to Mr. Maxwell's testimony
15 it's Page 93, line 5, Judge, and this is Mr. Stanley.

16 "Can you tell me what your legal entitlement
17 is, what are you basing your legal entitlement on?"

18 Answer, "An implied easement by use, an
19 implied easement by document, a prescriptive easement,
20 and an easement by necessity."

21 Mr. Stanley, "Okay. So all three of them,
22 all of them. You're claiming an easement by
23 prescription. You're claiming an easement by prior
24 use?"

25 Answer, "Actually, let me correct that. I'm

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1 not an attorney, but I would assume that if there's a
2 prescriptive easement or an implied easement by use,
3 then there isn't an easement by necessity. So it
4 would only be those two. You can't have an
5 easement -- if there is an easement by use, then I
6 guess there can't be an easement by necessity, because
7 the easement by use would be the underlying thing.
8 I'm not really that clear on that. I don't know. I'm
9 not an attorney."

10 What he's saying, Judge, is if the Court were
11 to grant an easement by prescription or an easement
12 implied by necessity, there wouldn't be a need for an
13 easement by necessity.

14 And I may have misspoke, a prescriptive
15 easement or an implied easement by use, then there is
16 no easement by necessity, because you have an easement
17 by two other theories under the law, but if you don't
18 have those theories, if the Court determines there is
19 no prescriptive easement or there is no implied
20 easement by use, he's not saying that I'm giving up
21 the right to pursue an easement by necessity. That's
22 not what he said.

23 And the other thing is: All this evidence
24 came in about easement by necessity, Judge. We had
25 Mr. Scheffing offer an opinion about it. We had Mr.

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1 Chivers offer an opinion, and at no time did he object
2 to any of that. So if his theory was that we're not
3 entitled to an easement by necessity, why didn't he
4 question our witnesses about it? Why didn't he object
5 to it? He didn't. He didn't ask the Court ahead of
6 the trial to make more definite and certain the
7 allegations of the Complaint.

8 We were asking for a 50-foot easement in and
9 out of our property, pursuant to the declaratory
10 judgment act. If he would have thought that we needed
11 to be specific and identify specific theories under
12 which we were entitled to that, he could have asked
13 the Court to make the Complaint more definite and
14 certain, and he didn't. I think it's unfair for him
15 now to come into court and to argue that we're not
16 entitled to easement by necessity. I think the
17 evidence clearly shows that we're entitled to an
18 easement by necessity. I think it also shows that
19 we're entitled to an easement by prior use by
20 prescription and by the plat that the Mr. Dennis had
21 done way back in 1821.

22 THE COURT: Basically, you're asking that the
23 order be revised or amended in such a fashion to
24 address the easement by necessity?

25 MR. DODDS: Yes, sir. Among other things,

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1 yes.

2 THE COURT: From y'all's perspective of
3 course to then grant the easement?

4 MR. DODDS: Yes, sir.

5 THE COURT: All right.

6 MR. DODDS: And Judge, I would just, in that
7 regard, if you look to the testimony of the
8 Defendants, they acknowledge that the land was
9 landlocked and had no access except over and across
10 001. I can give you the specific testimony. Of
11 course, the Defendants' testimony wasn't that long.

12 So we don't have any access to our property
13 except over and across that road. And then we had
14 Scheffing and Chivers both say that the only
15 reasonable access to this property and one of the
16 reasons it's been used for such a very, very long time
17 is that it's the logical and reasonable access. It
18 goes over dry land for the most part, although there
19 are wetlands on there, and runs all the way up from
20 Old Cherry Hill Road all the way up past eight or nine
21 different properties where it runs into Singleton
22 Lane, which connects to Highway 17A. That's what he's
23 saying, you know, if you look at the compaction and
24 the topography of the road compared to the surrounding
25 topography, it's substantially depressed and compacted

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1 because it's been used for such a long, long time. He
2 even used the word, "generations."

3 And the fact that we purchased the property
4 at a tax sale, Judge, I don't think has anything to do
5 with anything. We don't have our supreme court
6 saying, well, if you buy property at a tax sale,
7 you're not entitled to an easement by these various
8 theories. The question is, do you have access to your
9 property?

10 THE COURT: And I didn't read it that way or
11 understand the argument that way just that there was
12 no history of involvement or familiarity with it
13 because of the nature of the purchase was the way I
14 interpreted that.

15 All right. So Mr. Stanley, any response to
16 that?

17 MR. STANLEY: Your Honor, they've still got a
18 problem with necessity. I mean, here again, just
19 because you can't get to your property, that doesn't
20 create the necessity. What the law says is the
21 necessity -- they must show that the necessity existed
22 at the time of severance. So they've got to show that
23 the necessity existed as of February 6, 1884. They
24 can't show it.

25 They're trying to show it by claiming that,

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1 well, the road is compacted so somebody has been
2 traveling it. Well, yeah, somebody has been traveling
3 it, but they can't show that in 1884 when the -- and I
4 want to be sure I'm giving you the right date on that.

5 When Nero Smalls got title to that property,
6 that's when the severance occurred. They must show
7 that the severance occurred -- it occurred on February
8 6, 1882, okay, so that the record will be clear. And
9 what our law says, I'm going to read from it. "The
10 necessity element of easement by necessity must exist
11 at the time of the severance." So if they're going to
12 now say, well, we're entitled to one by necessity,
13 then where is their testimony that the necessity
14 existed at the time of severance. There is none.

15 THE COURT: Thank you, Mr. Stanley. All
16 right. Thank y'all very much. Is there anything else
17 that y'all want to share.

18 MR. DODDS: I would just ask the Court to
19 take a look at Exhibit 23, Your Honor, which is the
20 Tiverton plat. It's going to show that once that
21 severance occurred with Mr. Marye having transferred
22 out the Nero Smalls property, that the remaining
23 properties had no access to a public roadway or any
24 other roadway. They became landlocked.

25 THE COURT: And that's the basis for the

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1 necessity at the time of the severance, and that
2 coincides with the time?

3 MR. DODDS: It does, Your Honor.

4 THE COURT: 1882?

5 MR. DODDS: Yes, sir.

6 THE COURT: Okay. All right. And which
7 exhibit was that?

8 MR. DODDS: I believe that -- we had two
9 exhibits of the Tiverton plat, I believe it was 22 and
10 23. One was an enlarged version.

11 THE COURT: Okay. I want to make sure that I
12 go directly to the right one.

13 MR. DODDS: Yep.

14 THE COURT: Okay. All right. Well, thank
15 you, gentlemen. I will review everything that you
16 have submitted, everything that you have argued. I
17 will go back and look at the exhibits that were
18 referenced today and let y'all know. I will likely
19 reach out to one of you to prepare an order to that
20 effect and then go from there.

21 MR. DODDS: Thank you, Judge.

22 MR. STANLEY: Thank you, Your Honor.

23 THE COURT: Thank you all.

24 (The hearing concluded at 3:17 p.m.)

25 * * *

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C-E-R-T-I-F-I-C-A-T-E

I, Kendra Kay Johnson, Professional Court Reporter and Notary Public for the State of South Carolina, certify that the foregoing hearing was held at 300-B California Avenue, Moncks Corner, South Carolina; that the foregoing pages constitute a true and accurate transcript of the proceeding.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 12th day of March, 2023.

Kendra Kay Johnson
Notary Public for South Carolina
My Commission Expires:
September 21, 2028

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**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Berkeley County
Honorable Dale E. Van Slambrook, Master-In-Equity
Civil Action No.: 2018-CP-08-344
Appellate Case No. 2023-000405

BCE 2015, LLC,

Appellant,

v.

YVONNE C. KNIGHT and ELEANOR C. BROWN,

Respondents.

**Rule 210(g), SCACR, Certificate of Counsel
(Volume I)**

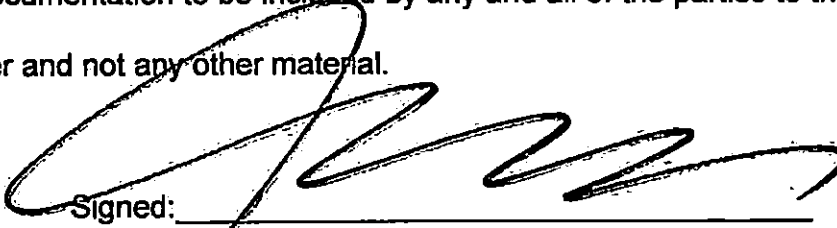
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Attorneys for the Appellant, BCE 2015, LLC

341A

I, Stephen P. Groves, Sr., Esquire hereby certify, pursuant to Rule 210(g), SCACR, that the **Record on Appeal (Volume I)** contains all of the material and documentation to be included by any and all of the parties to this appellate matter and not any other material.


Signed: _____
Stephen P. Groves, Sr. Esquire

Charleston, South Carolina

17 November 2023

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