

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas
Fifteenth Judicial Circuit

The Honorable Daniel Coble,
Circuit Court Judge

APPELLATE CASE NO. 2023-000295

Gary L. Park and Cynthia Park..... Appellants,

vs.

Scott Barry Gutovitz and Caron Dawn Gutovitz..... Respondents,

RECORD ON APPEAL

George W. Redman, III, Esquire
Robert S. Shelton, Esquire
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellants

Gene M. Connell, Jr., Esquire
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Respondents

L. Morgan Martin, Esquire
1121 Third Avenue
Conway, SC 29526
(843) 248-3177
Attorney for Respondents

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is GRANTED provided the plaintiff posts cash or surety bond in the amount of \$400,000.00 with the Clerk of Court by 5:00 p.m. on Wednesday, December 18, 2019.

Attorney George W. Redman, III is to prepare a formal order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/16/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al

Case Number: 2019CP2602083

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-12-16 16:34:51 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602152

Scott Gutovitz et al
PLAINTIFF(S)

Gary L Park et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants' Motion/Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/16/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Scott Gutovitz , plaintiff, et al VS Gary L Park , defendant, et al
Case Number: 2019CP2602152
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CA # 2019-CP-26-02083

Gary L. Park and Cynthia C. Park,
Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

ORDER GRANTING
TEMPORARY INJUNCTION

THIS MATTER was before the Court on December 16, 2019, for a hearing upon the Motion for a Temporary Injunction which was filed on October 28, 2019, by Plaintiffs Gary and Cynthia Park. The Plaintiffs moved, pursuant to Rule 65(b) of the *South Carolina Rules of Civil Procedure*, for an Order enjoining and prohibiting Defendants, their contractors, and any others in active concert or participation with them from undertaking or continuing construction within a specific portion of a parcel of real property identified as the “Scenic Easement Parcel.” (hereinafter the “Easement Parcel”) At the hearing, the Plaintiffs were represented by George W. Redman, III, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., and the Defendants were represented by Gene M. Connell, Jr., Esquire, of Kelaher, Connell & Connor, P.C. The record before the Court included Plaintiffs’ Motion and Memorandum in Support, the Complaint with Exhibits as verified by the Affidavits of Cynthia Park with Exhibits, Defendants’ deposition testimony, as well as Defendants’ Responsive Memorandum in Opposition, Affidavits of Defendant Caron Gutovitz, their contractor Chad Webb, and their expert, Alan O. Campbell.

The Plaintiffs’ asserted grounds for the injunction are that the a Plat of record clearly depicts the Easement Parcel, and the construction of any structure within the Easement Parcel is subject to the restrictions of a publicly recorded easement as modified by the written agreement of

the parties to this Action. Plaintiffs further assert the Easement Parcel was unimproved and subservient to their easement rights when the Defendants bought it, that Defendants' construction has not been approved as required and unmistakably violates the Plaintiffs' easement rights, and the terms of the easement itself state that a temporary injunction is necessary and proper to preserve the Plaintiffs' property rights while this Action to enforce the easement is pending.

Upon careful consideration of the record and in the interests of equity, this Court finds and concludes Plaintiffs' Motion for a Temporary Injunction should be and hereby is **GRANTED**, for the reasons herein and below, and as is more specifically set forth below.

BRIEF FACTUAL BACKGROUND

The Plaintiffs' own a residence at 4902 North Ocean Boulevard in Myrtle Beach. The restricted Easement Parcel is located on the lot to the south of the Plaintiffs' residence. The restrictions on the Easement Parcel are found within the "Scenic Easement Agreement," which was filed on July 13, 2017, in Horry County Deed Book 4025, pages 2283 to 2289. (Aff. of C. Park, ¶2, *citing* Scenic Easement Agreement, attached as Complaint Exhibit B; hereinafter the "Easement Agreement"). The Easement Agreement states the Easement Parcel "shall be perpetually maintained and preserved as open space," and:

[T]here shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and written approval obtained from the Grantee. (*Id.* at ¶6).

The location and boundaries of the Easement Parcel are specifically identified by reference to and incorporation of the plat prepared by Norris & Ward Land Surveyors, P.A., recorded on May 4, 2017 in Horry County Plat Book 275, at Page 112. (Aff. of C. Park, Exhibit ¶5, *ref.* Plat attached as Complaint, Exh. C).

On August 30, 2017, the Gutovitzs purchased the lot on the south side of the Plaintiffs' residence, including the Easement Parcel subject to the Easement Agreement. In July 2018, Defendants wrote an email requesting permission from the Plaintiffs to build a "balcony" within the Easement Parcel, explaining that "the beach front ends of our houses line up [and] I think your balcony is 16 ft. wide, so [Plaintiffs' balcony] would actually extend beyond ours to the ocean." (See Aff. of C. Park, *citing* Deposition of C. Gutovitz. Exh. 2). In response to the Defendants' request, Plaintiffs' employed counsel to amend the Easement Agreement for the sole benefit of Defendants.

On or around September 19, 2019, the Parties signed the First Amendment to the Scenic Easement (hereinafter the "Easement Amendment"), which states "Park has agreed to allow Gutovitz to place a porch within the ... Easement Parcel, as defined in the Easement Agreement" as long as certain "conditions are met":

- a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans specifications set forth in Exhibit A shall require the prior written consent of Park.

(Aff. of C. Park, ¶ 8, *citing* Easement Amend., attached as Complaint Exh. D (*emphasis added*)). Plaintiff introduced the verbatim deposition testimony of both Defendants confirming that the Gutovitz plans changed from a single porch to include two decks and two porches within the Easement Parcel, and further confirming that at no point have the changed plans been submitted to and approved by Cynthia Park as required:¹

Q: The plat sent to Cindy for approval didn't show multiple decks.

¹ Deposition of Caron Gutovitz, p.87, ln.3 - p.88, ln.15; Deposition of Scott Gutovitz, p.45, ln.7 - p.46,ln.1 (Mr. Gutovitz's testimony differed only slightly, asserting the changed plans included one porch, one balcony, and two decks).

A: No.

Q: Did it? Were any of the porches or the decks changed after you sent the plat for approval to Cindy?

A: Yes.

Q: Did you sent Cindy a copy of the changes – of the change – the copy of the plat reflecting the changes?

A: No.

Dep. of Caron Gutovitz, p. 88.

Mr. Gutovitz confirmed his wife's admission of their violations of Plaintiffs' easement rights:

A: There was a couple changes.

Q: Were those changes submitted to Ms. Park or her attorneys?

A: No, they were not.

Dep. of Scott Gutovitz, p. 45-46.

Mrs. Cynthia Park's Supplemental Affidavit of November 25, 2019, asserted that construction in the Easement Parcel accelerated at a very rapid pace immediately after the Defendants' depositions, ~~and color photographs show a number of structures which are not anywhere within Exhibit A. Defendants do not deny they have changed their plans, nor do they deny that they have not submitted those revisions to Plaintiffs for review and approval.~~

During the hearing, Counsel for both Parties directed the Court to the survey which is referenced as "Exhibit A" in the Easement Amendment. The Affidavit of Mrs. Park as presented to the Court included the depiction in Exhibit A which the Plaintiffs assert shows just one uncovered porch, on one level, with one set of stairs. (Aff. of C. Park, ¶ 9, *attaching* "Exhibit A" as Complaint Exh. D). Mrs. Park's affidavit also cites paragraph 2(c) of the Easement Amendment

which was to confirm the Gutovitz's initial email assertion, that is, the Gutovitz porch² would be uncovered and would not be built any closer to the ocean than theirs:

- c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.

(Aff. of C. Park, ¶ 8, *citing* Easement Amend., attached as Complaint Exh. D). According to Mrs. Park, the first violation of the Easement Amendment was readily apparent as soon as the Gutovitz contractors installed pilings for their porch closer to the ocean. (Aff. of C. Park, ¶ 10, *attaching* Picture, Complaint Exhibit F (Color photo showing the location of the Gutovitz pilings in relation to the Park's porch)).

The affidavit of Mrs. Park further asserts that despite the repeated requests through counsel, the Gutovitz refuse to abate violations of the Plaintiffs' easement rights by limiting construction to the structures as shown on the previously permitted Exhibit A; and they likewise refuse to submit their revised plans to the Plaintiff for review and approval. (Aff. of C. Park, ¶ 19). As a result, the Plaintiffs assert they were required to bring this Action to enforce their easement rights.

APPLICABLE LAW

"A plaintiff's entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation." *FOC Lawshe v. International Paper*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002). A Plaintiff seeking a temporary injunction generally must demonstrate that it meets each of the three following

²~~The Defendants' deposition testimony confirmed that prior to the time the Easement Amendment was discussed, all Parties used the terms "balcony," "porch," and "deck" interchangeably and without attaching any distinctions.~~

criteria: (1) that the Plaintiff is likely to succeed on the merits of the action; (2) that absent the restraint, the Plaintiffs may possibly suffer irreparable harm; and (3) that the Plaintiff has an inadequate remedy at law. *Id.* The court must review each of these factors, and balance them against the interests of the party being restrained. *LeFurgy v. Long Cove Club Owners Assn., Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994). “The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964).

1. Likelihood of Success on the Merits

Plaintiff needs to make a *prima facie* showing of entitlement to injunctive relief based upon the allegations set forth in its Complaint to demonstrate a likelihood of success. *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) It is well settled that the merits of the case are only to be considered to the extent necessary for the Court to exercise its discretion wisely as to whether a *prima facie* case has been alleged. *Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904). Any temporary injunction granted will not decide anything as to the merits. *Alston v. Board of Health*, 93 S.C. 553, 77 S.E. 727 (1913).

In this Action, the Plaintiffs allege their property rights were expressly granted and are publicly recorded in the Easement Agreement, which specifically depicts the location of the Easement Parcel by reference and incorporation of a survey of the restricted property. An Easement Amendment further establishes the Plaintiffs’ right to review any proposed construction before it is built.

Plaintiffs further note the Easement Agreement and Easement Amendment state that a violation of Plaintiffs' easement would result in irreparable injury, loss, and damage, and as such the Parties to this Action expressly agreed that Plaintiffs' easement rights shall be enforceable through injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction. In determining whether the temporary injunction should issue it is proper to consider that the right sought to be enforced by plaintiff was granted by the express terms of the easement itself. *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 483, 167 S.E.2d 313, 316 (1969).

Pursuant to the facts set forth on the record in this matter, Plaintiff has set forth *prima facie* causes of action for relief against Defendants and has a likelihood of success on the merits.

2. Irreparable Harm and No Adequate Remedy at Law

The Easement Agreement provides that the Easement Parcel "shall be perpetually maintained and preserved as open space" and that enforcement of these covenants shall be by a "proceeding at law or in equity against the person or persons violating or attempting to violate [the] covenants and restrictions." (*See* Easement Agm.) The Easement Amendment, personally signed by both Defendants, expressly states "Gutovitz and all subsequent owners ... acknowledge that Park will be irreparably damages in the even that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through specific performance such as injunctive relief." (Easement Amend., ¶3).

Indeed, the Courts of this State have routinely held that a temporary injunction may properly issue to protect a plaintiff's property rights, including those acquired under an easement. *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 314-15 (1969) (Temporary injunction prohibited construction over an easement.)(citing *Darlington Oil Company*

v. Pee Dee Oil & Ice Company, 62 S.C. 196, 40 S.E. 169 (1901); *Alderman & Sons Co. v. Wilson*, *supra*, 69 S.C. 156, 48 S.E. 85 (1904); *Marion County Lumber Co. v. Tilghman Lumber Co.*, 75 S.C. 220, 55 S.E. 337 (1906)); *AJG Holdings, et al. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)(Injunction issued to preserve rights where the ability to call police or money damages would not protect easement rights); *Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime*, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Enjoining unilateral change to easement as depicted on publicly recorded plat).

Inasmuch as the Plaintiffs note the Easement Agreement and Easement Amendment state that a violation of Plaintiffs' easement would result in irreparable injury, loss, and damage - this language is evidence the Parties to this Action expressly agreed that a violation of Plaintiffs' easement rights would constitute irreparable harm which could only be remedied by the restriction of construction as well as the removal of any completed construction to date. In determining whether the temporary injunction should issue it is proper to consider that the right sought to be enforced by plaintiff was granted by the express terms of the easement itself. *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 483, 167 S.E.2d 313, 316 (1969). Further, the Defendants should not be allowed to alter the status quo to the extent that Plaintiffs would thereafter need ask this Court to Order and oversee the tear down a portion of Defendants' residence through a mandatory injunction. This should not be required as "[e]ach party hereto acknowledges that it has no adequate means to protect its rights under this Settlement Agreement other than by securing an injunction prohibiting the violation of this Settlement Agreement.

~~This issue was also addressed by our sister state of North Carolina's Supreme Court in *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 302 S.E.2d 754 (1983), where the contract at issue contained language which was "evidence of the inadequacy of money damages" and was thus sufficient to show "irreparable injury." *Id.* at 406-07, 302 S.E.2d at 762-63. The Court further~~

~~held that where the primary ultimate remedy sought is an injunction; where the denial of the preliminary injunction would render plaintiffs express rights moot; where no remedy other than the enforcement of plaintiffs' rights in equity would alter the violation; and where the decision to grant or deny a preliminary injunction in effect results in the alteration of the status quo with the construction of permanent structures, and as such, a tacit determination of the merits, plaintiff has made a showing that the issuance of a preliminary injunction is necessary for the protection of its rights during the course of litigation. *Id.* at 410, 302 S.E.2d at 764.~~

In this Action, as in ~~*A.E.P. Industries*~~, for the purposes of deciding this Motion only, the Parties agreed in the Easement Agreement and the Easement Amendment that a violation of Plaintiffs' easement rights would result in irreparable harm requiring injunctive relief. ~~*See N.C. Baptist Hosp. v. Novant Health, Inc.*, 195 N.C. App. 721, 725-26, 673 S.E.2d 794, 798 (2009).~~

Therefore, this Court finds and concludes that an injunction is proper to prevent irreparable harm to Plaintiff's business and property rights.

3. Security to be Deposited Pursuant to Rule 65(b)

Rule 65(c) of the *South Carolina Rules of Civil Procedure* provides in pertinent part that "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." In this regard, Defendants forward the affidavits of the General Contractor, Chad Webb, for the proposition that they will suffer up to \$150,000.00 in damages as a result of any injunction, and the property would be unsafe without a fence around the exterior of the property or railings on the porches in dispute. Defendants next proffer the Affidavit of Caron Gutovitz, testifying that the increased costs due to Mr. Guyton's agreement to postpone construction on the

porches, additional financing costs, and Mr. Webb's increased cost estimate would require a bond in the amount of \$300,000.00.

~~Plaintiffs first point out that Mr. Webb's affidavit is factually incorrect because it suggests the Plaintiffs have asked this Court to enjoin work within the residence itself. The parties agree Defendants' residence (exclusive of the exterior oceanfront porches), is not within the Easement Parcel. Plaintiffs also point out that Mr. Webb states the house will be harmed because it will be enjoined from having air conditioning, even though he concedes the conditioned portion of the residence is not in the Easement Parcel. (Aff. of Webb, ¶¶ 7, 8). Plaintiffs also assert Mr. Webb's affidavit improperly introduces and relies upon incorrect and inadmissible multi-level hearsay. Instead of relying on his personal knowledge, Mr. Webb states what he was "told" as to Plaintiffs' concerns. (Aff. of Webb, ¶¶ 9).~~

~~Finally, Plaintiffs' dispute that Defendants will incur ANY damages, because any negative financial harm caused by an injunction is the result of Defendants' (and their contractor's) blatant disregard and violation of the Easement Agreement and the Easement Amendment. According to Plaintiffs, this is true where it "is obvious that a defendant can suffer no damages from being enjoined from violating the rights of another." *Crawford v. Atl. Coast Lumber Corp.*, 89 S.C. 456, 460, 71 S.E. 1049, 1050 (1911).~~

After careful consideration, this Court finds that S.C.R.C.P., Rule 65(c) mandates the placement of security with the Clerk of Court to reimburse damages actually incurred and proven by Defendant should the trier of fact determine Defendants have not breached Plaintiffs' easement rights.

CONCLUSION

Upon careful consideration of Plaintiffs' Motion for a Temporary Injunction and the record before me including Memorandum in Support thereof, the affidavits with exhibits along with other

documents entered into the record by the Parties, and exhibits presented during the argument of Counsel at the Hearing on December 16, 2019, this Court finds and concludes that Plaintiffs' Motion for a Temporary Injunction should be and hereby is **GRANTED!**

THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** that pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, and in the interests of equity, Defendants, their contractors, and any others in active concert or participation with them are hereby enjoined and prohibited from undertaking or continuing construction within the subservient real property identified as the "Scenic Easement Parcel," except as would be reasonably necessary to make the property safe, for the duration of the pendency of this Action as noted below.

This Court further finds and concludes; in accordance with Rule 65(c) of the *South Carolina Rules of Civil Procedure*, Plaintiffs shall be required to place a security bond in the amount of \$400,000.00 by 5:00 P.M., Wednesday, December 18, 2019. Therefore, Defendants are enjoined as set forth herein from the date and time of the Hearing, until 5:00 P.M., Wednesday, December 18, 2019, by which time Plaintiffs shall have placed said security in the form of a cash or surety bond with the Clerk of Court. Upon placement of said security, Defendants shall be further enjoined as set forth herein, and this Temporary Injunction shall continue in full force and effect until this action is resolved by further Order of this Court. At their option, and without need to file a Motion, Plaintiffs may maintain the security bond on file with the Clerk of Court as a cash bond or surety bond.

It is further ORDERED that this Order Granting Temporary Injunction and the findings and conclusions set forth herein shall not have any precedential value at the trial of this case.

IT IS SO ORDERED!

[This document was prepared for an Electronic Signature]



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Temporary Injunction

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-02-06 12:40:18 page 12 of 12

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602152

Scott Gutovitz et al
PLAINTIFF(S)

Gary L Park et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to alter and/or amend complaint to include a cause of action for malicious prosecution is granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Scott Gutovitz , plaintiff, et al VS Gary L Park , defendant, et al
Case Number: 2019CP2602152
Type: Order/Electronic Form 4

So Ordered

s/Paul M. Burch, Judge #2048

Electronically signed on 2020-03-11 14:23:32 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion for Summary Judgment is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/26/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-01-26 14:51:52 page 3 of 3

ELECTRONICALLY FILED - 2021 Jan 26 3:20 PM - HORRY - COMMON PLEAS - CASE#2019CP2602083

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Dissolve Injunction is granted and the bond money is to be released. Gene Connell is to prepare a formal order within 10 days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/26/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-01-26 14:51:12 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02083

Gary L. Park and Cynthia C. Park,
Plaintiffs,
vs.
Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

ORDER DISSOLVING INJUNCTION

I. BACKGROUND FACTS.

This matter is before the Court based on Defendants Scott Barry Gutovitz and Caron Dawn Gutovitz's motion to dissolve an injunction. This Court issued a preliminary injunction on February 10, 2020. The case involves adjoining lot owners on the ocean front in Myrtle Beach, South Carolina. The Plaintiffs' residence is located at 4902 North Ocean Boulevard. The Defendant Gutovitzes' lot is immediately adjacent to it. A Scenic Easement Agreement is of record over Defendants' lot. The Scenic Easement Agreement was filed July 13, 2017 in Horry County Deed Book 4025, Page 2283. The Scenic Easement Agreement states the easement parcel "shall be perpetually maintained and preserved as open space" and:

[T]here shall be no new structures of any kind together with any reconstruction thereof, placed or erected upon the scenic easement parcel unless an application thereof, with plans and specifications of such structures, together with a statement of the purpose for which the structure will be used has been submitted to and written approval obtained from the Grantee.

On August 25, 2020, the Plaintiffs Gary L. Park and Cynthia C. Park sold the residence they owned at 4902 North Ocean Boulevard to Charles William Jackson and Hong Thi Nguyen. The Deed was filed on August 25, 2020 in Deed Book 4337, Page 1926 and is a matter of public record and a

copy was attached to the Defendants' memorandum in support of their motion to dissolve the injunction.

The Defendants assert that because the Plaintiffs have sold their interest in fee simple to their home and lot at 4902 North Ocean Boulevard, the Plaintiffs can no longer meet the requirements for a temporary injunction and that all of Plaintiffs' rights, title and enforcement actions under the Scenic Easement Agreement have been extinguished as a matter of law and the Order Granting Temporary Injunction in favor of the Parks must be dissolved by this Court.

II. APPLICABLE LAW.

A. Likelihood of success on merits.

In this case, the Court finds that because Plaintiffs have sold all their right, title and interest in the real property, which is the subject matter of the easement, the Plaintiffs have no likelihood of success on the merits. Plaintiffs can obviously not enforce a scenic easement when they are not owners of the property at 4902 North Ocean Boulevard because Plaintiffs no longer live there and no longer have the right to use the property. Further, Plaintiffs cannot preserve their rights because the scenic easement runs with the land as a matter of law. There can be no irreparable harm when the Plaintiffs have sold their interest.

B. Plaintiffs are no longer a real party in interest.

Rule 17(a), SCRCP entitled "Real Party in Interest" is applicable in this case. It states: "Every action shall be prosecuted in the name of the real party in interest." Our courts have repeatedly held that in real estate matters that person is the beneficial owner. See *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (S.C. App. 2013) (The plaintiff in a foreclosure suit shall be the real beneficiary owner of the mortgage debt.). In this case, the Plaintiffs no longer have a personal stake in the real estate and thus are not the real party in interest. The new owners, Jackson and Nguyen,

have such a stake, but not the Plaintiffs who have sold all of their interest in the real property. See *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (S.C. 1996).

C. The Doctrine of Merger.

It is also well settled in South Carolina that when the owner of real estate sells his/her property in fee simple, it gives up all title and right to that property. The doctrine has been described in the case of *Charleston & Western Carolina Railway Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957). The Doctrine of Merger requires that the party (in this case the Plaintiffs) denying merger has a burden of proving that merger did not occur between the deed and sales contract by clear and convincing evidence that merger was not intended. See *Hughes v. Greenville County Club*, 283, S.C. 448, 322 S.E.2d 827 (Ct. App. 1984).

Here, the deed from the Plaintiffs to the third parties, Jackson and Nguyen, makes no mention of the Plaintiffs attempting to hold and/or keep or enforce the Scenic Easement Agreement; nor has anything been filed as of record in the Horry County RMC Office. Accordingly, the Doctrine of Merger, also requires that the injunction be dissolved as a matter of law and fairness.

D. The scenic easement in this case runs with the land.

In this case, there is a scenic easement which is of record in the Horry County RMC Office on Defendants' property. It is not an easement in gross, but an easement which is inherent with the land and as a matter of law any right to enforce the scenic easement falls to Jackson and Nguyen who purchased the property in fee simple from the Plaintiffs. Further, the scenic easement agreement itself specifically states that the easement runs with the land.

E. Plaintiffs' claim for a preliminary injunction is moot.

It should also be noted that Plaintiffs' claim for a preliminary injunction became moot upon the sale of the real property as stated above.

F. The Security Bond.

Pursuant to Order of this Court, a bond was required consistent with Rule 65(c), SCRCF. In this case, the Plaintiffs placed a cash bond in the amount of Four Hundred Thousand and 00/100 (\$400,000.00) Dollars with the Horry County Clerk of Court. Because the injunction has been dissolved by this Court, the Four Hundred Thousand and 00/100 (\$400,000.00) Dollars must be returned to the Plaintiffs.

Accordingly,

IT IS ORDERED that the injunction issued by this Court filed February 10, 2020 is dissolved.

IT IS FURTHER ORDERED that the Clerk of Court shall return the Bond to the Parks within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED, that inasmuch as this Order only dissolves the Temporary Injunction entered in this Order and released the Bond, nothing herein in this Order shall be asserted as to any matter other than the Order granting the injunction; so there shall be no prejudice, alteration, or any other impact whatsoever upon any of the underlying claims in this Action.

AND IT IS SO ORDERED.

The Honorable William H. Seals



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-02-08 15:49:38 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration of the materials submitted by the parties, arguments of counsel and the applicable law, the Court finds that there is a genuine issue of material fact in this case. Accordingly, the Plaintiff's Motion for Summary Judgment is DENIED. The Defendant's Motion for Summary Judgment is DENIED.

The Court finds that a consolidation of the cases is proper. Accordingly, the Defendant's Motion to Consolidate is GRANTED. Counsel for the Plaintiff raises concerns about differing standards for the equity and law portions of the case. The mode and manner of how these issues shall be tried shall be left in the discretion of the trial judge.

Mr. Connell is directed to prepare a formal order within fourteen (14) days, complete with relevant findings of fact and applicable law, copying Mr. Redman with the draft prior to submission to the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/03/2022 .

Case Party Info Protected
Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-03-03 11:25:42 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Mandatory Date Certain Meeting: All Motions Pertaining To This Case Need To Be Filed Within 10 Days Of This Order. Judge Seals Assigns All Motions To Judge Coble To Be Heard.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/04/2022 .

Case Party Info Protected
Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2022-11-04 18:34:32 page 3 of 3

ELECTRONICALLY FILED - 2022 Nov 07 12:33 PM - HORRY - COMMON PLEAS - CASE#2019CP2602083

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602152

Scott Gutovitz et al
PLAINTIFF(S)

Gary L Park et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Mandatory Date Certain Meeting: All Motions Pertaining To This Case Need To Be Filed Within 10 Days Of This Order. Judge Seals Assigns All Motions To Judge Coble To Be Heard.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/04/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Scott Gutovitz , plaintiff, et al VS Gary L Park , defendant, et al
Case Number: 2019CP2602152
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2022-11-04 18:36:22 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602083

Gary L Park et al
PLAINTIFF(S)

Scott Barry Gutovitz et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's motion for summary judgment and to strike jury demand is denied.
Plaintiff's motion to exclude proposed expert is denied.
Motion for sanctions is continued.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/10/2023 .

Case Party Info Protected
Cynthia C Park
Gary L Park
Caron Gutovitz
Scott Gutovitz
Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-02-10 11:29:47 page 3 of 3

ELECTRONICALLY FILED - 2023 Feb 10 11:43 AM - HORRY - COMMON PLEAS - CASE#2019CP2602083

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602152

Scott Gutovitz et al
PLAINTIFF(S)

Gary L Park et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's motion for summary judgment and to strike jury demand is denied.
Plaintiff's motion to exclude proposed expert is denied.
Motion for sanctions is continued.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/24/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Scott Gutovitz , plaintiff, et al VS Gary L Park , defendant, et al

Case Number: 2019CP2602152

Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-02-24 10:27:14 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,
Plaintiffs,
vs.
Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

C/A NO. 2019-CP-26-02083

ORDER OF CONSOLIDATION
AND ORDER OF INSPECTION

Scott Gutovitz and Caron Gutovitz,
Plaintiffs,
vs.
Gary L. Park and Cynthia C. Park,
Defendants.

C/A NO. 2019-CP-26-02152

This matter is before the Court based on the Motion of Scott Barry Gutovitz and Caron Dawn Gutovitz to consolidate the captioned cases into one trial. Further, Plaintiffs Park have moved the Court for inspection of the scenic easement area of Defendants' property. The Plaintiffs Park and Defendants Gutovitz have filed actions against one and other arising out of the same transaction, i.e., the interpretation, construction of the Gutovitzes' house and the application of a Scenic Easement Agreement and First Amended Scenic Easement Agreement.

Gutovitz argues that SCRCP 42(a) is applicable. It states as follows:

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated

In this case, the Court finds that there are common questions of law and fact which apply to both cases and the same witnesses and same evidence would be presented in both cases. Further, the Court notes there are scarce judicial resources and that to have two separate trials regarding the same facts and legal issues would be expensive, counterproductive and could result in inconsistent results. See *Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 512 S.E.2d 510, 522 (Ct. App. 1998) (“Under Rule 42(a), SCRCF, a trial judge may order the consolidation of actions involving a common question of law or fact.”).

In this case, both Park and Gutovitz have filed separate lawsuits which have common questions of law and fact. Accordingly, it makes sense to the Court to consolidate these actions into one trial. However, in consolidating these cases into one trial, this Court leaves to the trial judge the mode and manner of how these issues shall be tried. Accordingly,

IT IS ORDERED that Civil Action No. 2019-CP-26-02083 (*Gary L. Park and Cynthia C. Park v. Scott Barry Gutovitz and Caron Dawn Gutovitz*) and Civil Action No. 2019-CP-26-02152 (*Scott Gutovitz and Caron Gutovitz v. Gary L. Park and Cynthia C. Park*) are hereby consolidated for trial. However, the mode and manner of how these issues shall be tried is left up to the discretion of the trial judge.

IT IS ALSO ORDERED the Plaintiffs shall be allowed entry on Defendants’ property to inspect the scenic easement area, provided that if the inspection of the third-floor deck cannot be made without entry into or through the children’s bedrooms, the inspection of the third-floor deck is **DENIED**.

AND IT IS SO ORDERED.

The Honorable R. Scott Sprouse
Presiding Judge
Fifteenth Judicial Circuit

March _____, 2022
_____, South Carolina



Horry Common Pleas

Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Case Number: 2019CP2602083
Type: Order/Consolidate

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2023-03-31 10:23:28 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,
Plaintiffs,

Case Number: 2018-LP-26-_____

vs.

NOTICE OF LIS PENDENS

Scott Barry Gutovitz and
Caron Dawn Gutovitz,

Defendants.

NOTICE IS HEREBY GIVEN that an Action affecting title to real property owned by the above-named parties will be commenced not more than twenty days after this notice pursuant to South Carolina Code § 15-11-10 in the Court of Common Pleas of Horry County, South Carolina, by the above listed Plaintiffs against the above listed Defendants. The Lis Pendens relates to a dispute related to an easement interest in that certain Real Property bearing Horry County Tax Map Number 174-10-02-001, such property more formally described as the real property and improvements thereon more formally described as follows:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

Which includes, that certain piece or portion of land described as the "Scenic Easement Parcel," lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of deed for Horry County, South Carolina.

This is the identical property conveyed to the Defendants herein by deed of PAANaples, LLC, a Florida limited liability company, dated August 30, 2017 and recorded August 31, 2017 in Deed Book 4039 at Page 1507 in the Office of the Register of Deeds for Horry County, South Carolina.

**PURSUANT TO S.C. CODE § 15-11-10,
NOTICE OF THE PENDENCY
OF THE ABOVE-REFERENCED ACTION
IS HEREBY GIVEN.**

Respectfully Submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P. O. Box 357
Myrtle Beach, SC 29578-0357
843.448.2400
Attorneys for Plaintiff

/s/ George W. Redman, III
SC Bar No. 72365

Myrtle Beach, South Carolina

March 15, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-_____

Gary L. Park and
Cynthia C. Park,
Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
Attorneys for Plaintiffs

/s/ George W. Redman, III
S.C. Bar No. 72365

Myrtle Beach, South Carolina

April 5, 2019

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-_____

Gary L. Park and
Cynthia C. Park,

Plaintiffs,

vs.

COMPLAINT

Scott Barry Gutovitz and
Caron Dawn Gutovitz,

Defendants.

Plaintiffs Gary L. Park and Cynthia C. Park, Complaining of Defendants Scott Barry Gutovitz and Caron Dawn Gutovitz, respectfully show and allege unto this honorable court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Gary L. Park and Cynthia C. Park (hereinafter "Plaintiffs" or "Parks") are residents of Horry County, South Carolina.
2. Defendants Scott Barry Gutovitz and Caron Dawn Gutovitz, (hereinafter "Defendants" or "Gutovitzs") are residents of Horry County, South Carolina.
3. This Action involves the Gutovitzs' defaults, violations, and unjustifiable breaches of an express easement upon, over, and of and concerning a residential parcel of oceanfront real property situate in Myrtle Beach, South Carolina.
4. Based upon the foregoing, venue is proper in Horry County, South Carolina and this Honorable Court has jurisdiction over the Parties and the subject matter set forth herein this Action.

STATEMENT OF FACTS

5. As of May 12, 2017, an entity named PAANaples, LLC (“PAANaples”) owned the property which is the subject of this Action (hereinafter the “Property” or the “Subservient Property”), bearing a street address of 4900 N. Ocean Blvd., Myrtle Beach, South Carolina, Horry County tax map number 174-10-02-001, with the following legal description:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Plat Book 5, Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

This is the identical property conveyed to the Grantor herein by deed of Howard L. Cohen dated February 17, 2017 and recorded February 21, 2017 in Deed Book 3989 at Page 778 in the Office of the Register of Deeds for Horry County, South Carolina.¹

6. As of May 12, 2017, the Parks owned the adjacent residential oceanfront lot (hereinafter the “Dominant Property”) with a street address of 4902 N. Ocean Boulevard, Myrtle Beach, South Carolina, same bearing Horry County tax map number 174-10-02-002, with the following legal description:

ALL AND SINGULAR that certain piece, parcel or lot of land, together with improvements located thereon, situate, lying and being at Myrtle Beach, South Carolina and being more particularly described as Lot Two (2) Block Number One Hundred Nineteen (119), as shown on a map of the Dunes Section of Myrtle Beach by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Plat Book 5 at Page 33, in the Office of the Register of Deeds for Horry County, South Carolina.

This is the identical property conveyed unto Gary L. Park, Cynthia C. Park and John T. Chambers by Deed of James W. Hill and Laura A. Hill, recorded on October 14, 2004, in Deed Book 2809 at Page 0838, records of the Office of the Registrar of Deeds for Horry County, South Carolina.

¹ The map prepared by N.C. Hughes, Jr., and Engineer, dated February 1939, and recorded in Horry County Plat Book 5, Page 33, is attached hereto and incorporated herein as “Complaint Exhibit A.”

This being the identical property conveyed unto Gary L. Park, Cynthia C. Park by Quit-Claim Deed of John T. Chambers recorded in Deed Book 3817 at Page 1534, records of the Office of the Register of Deeds for Horry County, South Carolina.

7. On May 12, 2017, PAANaples granted a perpetual easement over the Subservient Property in favor of the Parks and the Dominant Property, the terms of which are expressly set forth in the Scenic Easement ("Scenic Easement"), executed on May 12, 2017, and recorded on July 13, 2017, in the Horry County Registrar of Deeds in Deed Book 4025 at Page 2283 (Attached hereto and incorporated verbatim as "Complaint Exhibit B").
8. The Scenic Easement expressly and perpetually restricted construction on a portion of the Subservient Property referred to as the Scenic Easement Parcel, providing in pertinent part:

[T]here shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the **Scenic Easement Parcel** unless an application therefor, with plans and specification of such structures, together with a statement of purpose for which the structure will be used, has been submitted to written approval obtained from the Grantee. *(emphasis added)*
9. The Scenic Easement Parcel on the Subservient Property is specifically described by Exhibit C of the Scenic Easement with the following legal description:

ALL AND SINGULAR, that certain piece or portion of land described as the "**Scenic Easement Parcel**" lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A., dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of Deeds for Horry County, South Carolina.
10. The above-referenced Plat (the "Scenic Easement Parcel Plat"), recorded on May 4, 2017 in Plat Book 275, at Page 112, is attached hereto and incorporated herein this Complaint as "Complaint Exhibit C."
11. The language of the Scenic Easement specifically identifies the boundaries of the Scenic Easement Parcel and specifically restricts the Subservient Property to prevent construction,

including but not limited to that which would potentially block the oceanfront view of and from the Dominant Property.

12. The Scenic Easement provides the restriction runs with and burdens the Dominant and Subservient Property “and shall be binding upon Grantor, its successors, assigns and successors-in-title to the Subservient Parcel and shall inure to the benefit of the [Parks], the owner or owners of the Dominant Parcel, and their respective successors, heirs, personal representatives and successors-in-title.”
13. On August 30, 2017, PAANaples, LLC, conveyed the Subservient Property to the Gutovitzs by way of that certain Title to Real Estate, recorded on August 31, 2017, with the Horry County Registrar of Deeds in Deed Book 4039, Page 1507.
14. By operation of South Carolina law and the express language of the Gutovitzs’ Deed, the Subservient Property was conveyed subject to all covenants, conditions, restrictions and easements found in the public records for Horry County, specifically including the Scenic Easement Agreement.
15. After purchasing the Subservient Property, the Gutovitzs asked the Parks to amend the Scenic Easement so that an uncovered porch could be built within the Scenic Agreement Parcel in a position that would be in line with, but not extend any further toward the ocean than the existing porch on the Parks’ residence.
16. Despite having no legal obligation to amend the Scenic Easement Agreement, in an effort to be good and reasonable neighbors, the Parks agreed to the Gutovitzs’ request by entering into that certain First Amendment to Scenic Easement (hereinafter the “Amended Scenic Easement”), dated September 19, 2019, attached hereto as “Complaint Exhibit D.”
17. The Parks not only agreed to the Gutovitzs’ request, they employed the McNair Law Firm and paid the costs associated with the drafting and attempts to record the Amended Scenic Easement.

18. The Amended Scenic Easement provides as follows verbatim:

... Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:

- a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
- b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
- c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
- d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

19. The "plans" (hereinafter "Plans") referenced by the Amended Scenic Easement depicted the proposed structure with a single level uncovered porch on the oceanfront side of the building. Said Plans are attached hereto and incorporated herein as "Complaint Exhibit E."
20. Upon information and belief, due to an unknown and unanticipated issue with the Plans, the Amended Scenic Agreement could not be recorded with the Horry County Registrar of Deeds.
21. The Gutovitzs began construction which clearly and almost immediately violated the terms of the Scenic Easement Agreement, the Amended Scenic Easement, and the Plans attached to the Amended Scenic Easement (collectively referred to as the "Easement Agreements"), as a portion of the Gutovitzs' oceanfront porch had multiple levels and was obviously being positioned in front and exceeding the porch of the Parks' residence. Pictures taken in November of 2018 and as of the date of this Complaint depicting the Gutovitzs' violation is attached hereto and incorporated herein as "Complaint Exhibit F."

22. The Parks were forced to obtain and employ counsel to demand the Gutovitzs cease and desist their breaches of the Easement Agreements, first by way of letter from the McNair Law Firm, dated November 16, 2018, same being attached hereto and incorporated herein as "Complaint Exhibit G."
23. Thereafter and in response, counsel for the Gutovitzs wrote a series of emails confirming the Gutovitzs' breaches of the Easement Agreements, refusing to abate and/or cure the breaches, and challenging the validity of the Easement Agreements.
24. The Gutovitzs obtained two surveys which specifically depict the Gutovitzs' porch extending several feet further toward the ocean than the existing porch on the Parks' residence, both of which were forwarded to the Parks by their counsel via emails dated November 29 and 30, 2018, both being attached hereto and incorporated herein as "Complaint Exhibit H."
25. As a result, the Parks were forced to employ additional counsel who formally demanded the Gutovitzs cease and desist their breaches of the Easement Agreements, by way of letter from the Bellamy Law Firm, dated December 17, 2018. Same being attached hereto and incorporated herein as "Complaint Exhibit I."
26. The Gutovitzs have refused to comply with their obligations under the Easement Agreements as they have made numerous changes to their constructions plans, and at no time have they obtained the prior written consent of Parks as required by the Easement Agreements and South Carolina law.
27. The Parks have continually and repeatedly provided the Gutovitzs and their counsel with notice of their objection to the violations of the Easement Agreements, as well as their intention to enforce all of their rights under the Easement Agreements.
28. The undersigned counsel last contacted Counsel for Gutovitzs on April 4, 2019 in an effort to avoid the filing of this Action.

FIRST CAUSE OF ACTION

(Intentional and Reckless Breach of Express Easement Agreements)

29. Each and every allegation set forth in this Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.
30. Gutovitzs bought the Subservient Property subject to the Easement Agreements.
31. The Parks have acted in good faith and as a good neighbors as they attempted to accommodate the Gutovitzs' desire to move their residence in line with the Parks' residence, even going so far as to employ and pay for counsel at the McNair Law Firm to draft and attempt to record the Amended Scenic Easement.
32. Gutovitzs have intentionally, willfully, and recklessly breached and violated their obligations set forth within the Easement Agreements, as is more specifically set forth above, and said unjustifiable defaults, breaches, and violations specifically include, but not by way of limitation, the following:
 - a. Positioning and building structures and improvements closer to the oceanfront than those on the Parks' Dominant Property;
 - b. Failing and refusing to remove structures and improvements that were built closer to the oceanfront than those on the Parks Dominant Property;
 - c. Making unauthorized changes to the Plans referenced in the Amended Easement;
 - d. Failing and refusing to present plans to the Parks to obtain their consent;
 - e. Failing and refusing to present plans to the Parks which can be publicly recorded;
 - f. Continuing construction despite receiving notice of violations and repeated demands to cease and desist;

- g. Causing the Parks to incur significant attorney fees by and through their refusal to acknowledge and timely remedy their violations of the Easement Agreements;
 - h. Failing and refusing to reimburse the Parks for significant attorney fees incurred due to their violations of the Easement Agreements;
 - i. Having failed to obtain plans to which the Parks consent, failing to remove structures within the Scenic Easement Parcel;
 - j. Having failed to obtain plans to which the Parks consent, constructing a porch within the Scenic Easement Parcel;
 - k. Having failed to obtain plans to which the Parks consent, building a residence within the Scenic Easement Parcel; and,
 - l. Such other breaches and violations as may be revealed during the discovery of this Action.
33. The Parks did not give consent to any change and fully expected and relied upon the plans presented by Gutovitzs and attached to the Amended Scenic Easement.
34. The Amended Scenic Easement expressly includes the following default provision:
- Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damages in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) construct or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive to any other remedy available to Park including recovery or reasonable attorney's fees and costs.
35. As a result of Gutovitzs' defaults, unjustifiable breaches, and violations, the Parks have incurred damages, costs, and expenses which include, but not by way of limitation, the costs of this law suit and attorney's fees.

36. The Parks are entitled to an Order of this Court, both pendent lite and permanent, enjoining the Gutovitzs from continuing construction and demanding the removal of any and all structures within the Scenic Easement Parcel;
37. The Parks pray for an Order from this Court demanding the Gutovitzs comply with the First Scenic Easement and awarding to the Parks a judgment against Gutovitzs for all of the Parks' damages, including all of the costs incurred in bringing this Action together with its reasonable attorney fees.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction)

38. Each and every allegation set forth in the Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.
39. The Easement Agreements set forth certain property rights pertaining to the Parks and the Dominant Property.
40. The Gutovitzs, through their development activities, have taken actions to interfere with and encroach upon the Parks' easement rights. The Parks pray for and are entitled to an Order from this Honorable Court declaring the full extent of the Parks' rights under the Easement Agreements. The Parks assert Gutovitzs breached their obligations under the terms of the Scenic Easement and Amended Scenic Easement by constructing their uncovered porch to obstruct the Parks' view.
41. As a result, the Parks are entitled to an Order and Declaration from the court providing the Easement be declared valid and that it shall run with the land, perpetually, that the Amended Scenic Easement be publicly recorded in Horry County, South Carolina, and awarding the Parks all attorney fees related to bringing this Action.

WHEREFORE, the Parks, having complained of Gutovitzs, hereby pray for the following relief:

- a. An Order of this Honorable Court granting the relief under the Causes of Action set forth above as to the Parks' actual, incidental and consequential damages, all costs and fees, including but not limited to attorney's fees;
- b. An Order of this Honorable Court stating that the benefits and burdens of the Scenic Easement are valid and enforceable and runs with the land as to the Dominant and Subservient Property which is the subject of this Action;
- c. The Parks pray for immediate, pendent lite, and permanent injunctive relief to prevent Gutovitzs from obstruction of the Parks' rights under the Easement Agreements, including but not limited to removing any and all structures build within the Scenic Easement Parcel;
- d. An Order clearing declaring the full extent of the Parks' rights under the Easement Agreements; and,
- e. Any and all other relief which is deemed just and proper by this Honorable Court and the trier of fact.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P. O. Box 357
Myrtle Beach, SC 29578-0357
843.448.2400
Attorneys for Plaintiffs

/s/ George W. Redman, III
SC Bar No. 72365

Myrtle Beach, South Carolina

April 5, 2019.

THE DUNES
PROPERTY OF
MYRTLE BEACH FARMS COMPANY
MYRTLE BEACH, SOUTH CAROLINA

SCALE ONE INCH = 100 FEET

N. C. HUGHES, JR., ENGINEER

MYRTLE BEACH, S. C.

FEBRUARY, 1939

5 @ 33

copy of

letter

Attached

20 to

Block 120

124

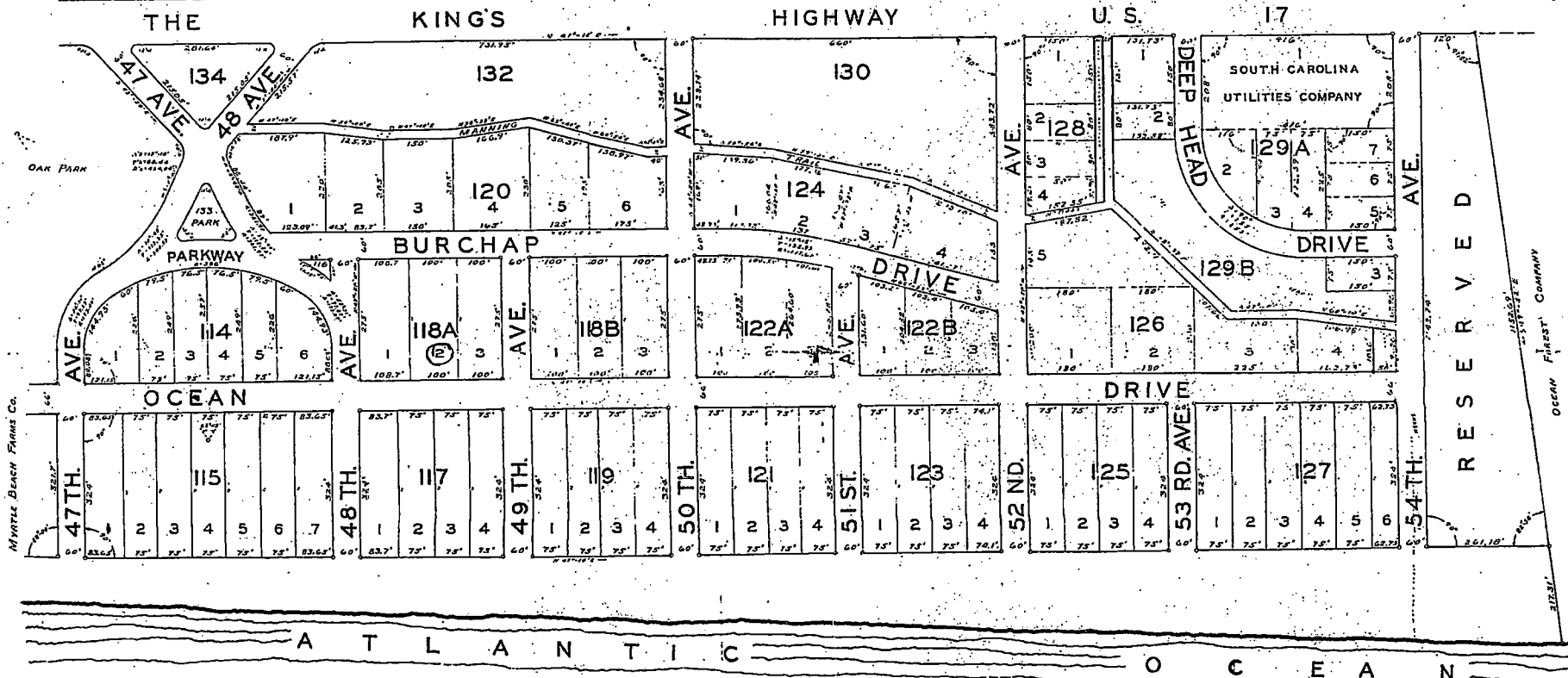
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ROYAL WHITE

OCEAN FIRST COMPANY



ROA 64

FILED - 2019 APR 05 2:09 PM - HOKRY - COMMON PLEAS - CASE#2019CP2602083

Complaint Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) SCENIC EASEMENT AGREEMENT

THIS SCENIC EASEMENT AGREEMENT ("Agreement") is made effective this 12 day of May, 2017, by and between Paanaples, LLC ("Grantor") and Gary L. Park and Cynthia C. Park ("Grantee").

RECITALS:

WHEREAS, Grantor is the owner of Lot 1 Block 119, Dunes Section, that certain real property located in Horry County, South Carolina, bearing a Tax Map Number of 174-10-02-001, and described on Exhibit "A" attached hereto ("Subservient Parcel") and made a part and parcel hereof; and

WHEREAS, Grantee is also the owner of Lot 2, Block 119, Dunes Section, that certain real property located in Horry County, bearing a Tax Map Number of 174-10-02-002, and described on Exhibit "B", attached hereto ("Dominant Parcel") and made a part and parcel hereof; and

WHEREAS, Grantor has determined that a portion of the Subservient Parcel described on Exhibit "C" attached hereto ("Scenic Easement Parcel") and made a part and parcel hereof, shall be perpetually maintained and preserved as open space for the benefit of Grantee and the owner or owners from time to time of the Dominant Parcel.

NOW, THEREFORE, Grantor declares that the Scenic Easement Parcel is and shall be held, transferred, sold, encumbered, conveyed and occupied subject to the covenants, restrictions and easements hereinafter set forth:

1. The restrictions hereby imposed upon the use of the Scenic Easement Parcel are and shall be as follows:

(a) Grantor agrees that there shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and written approval obtained from the Grantee.

2. Enforcement of the covenants and restrictions contained herein, and of any other provision hereof, shall be by any appropriate proceeding at law or in equity against the person or persons violating or attempting to violate these covenants and restrictions.

3. This Agreement shall be a covenant running with and burdening the Subservient Parcel and shall be binding upon Grantor, its successors, assigns and successors-in-title to the Subservient Parcel and shall inure to the benefit of the Grantee, the owner or owners of the Dominant Parcel, and their respective successors, heirs, personal representatives and successors-in-title.

4. The Scenic Easement Parcel for all other purposes, such as taxes, insurance and maintenance, shall remain the responsibility of the Grantor, its successors, assigns and successors-in-title to the Subservient Parcel.

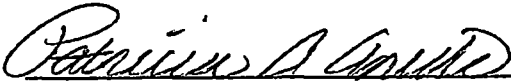
IN WITNESS WHEREOF, Grantor has caused this Scenic Easement Agreement to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR
PAANAPLES, LLC



Signature of First Witness



By: _____
Its: Member



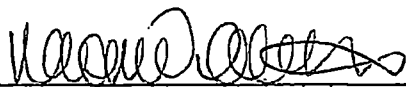
Signature of Second Witness/Notary Public

Florida
STATE OF ~~SOUTH CAROLINA~~)
COUNTY OF ~~HORRY~~ Collier)

ACKNOWLEDGEMENT

I, Naomi Alton, a Notary Public do hereby certify that Paanaples, LLC by Patricia Anido, its Member, the within named Grantor personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 12th day of May, 2017.

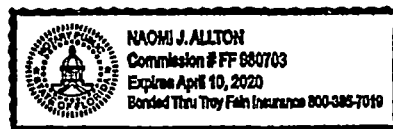
 (SEAL)

Print Name: Naomi Alton

Notary Public for ~~South Carolina~~ Florida

My Commission Expires: April 10, 2020

(AFFIX SEAL)



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

Mark C. Leay
Signature of First Witness

Gary L. Park
Gary L. Park

Valarie E. Causey
Signature of Second Witness/Notary Public

Cynthia C. Park
Cynthia C. Park

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

I, Valarie E. Causey, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 5th day of July, 2017.

Valarie E. Causey (SEAL)
Print Name: Valarie E. Causey
Notary Public for South Carolina
My Commission Expires: March 6, 2024

(AFFIX SEAL)

VALARIE E CAUSEY
Notary Public, State of South Carolina
My Commission Expires Mar. 6, 2024

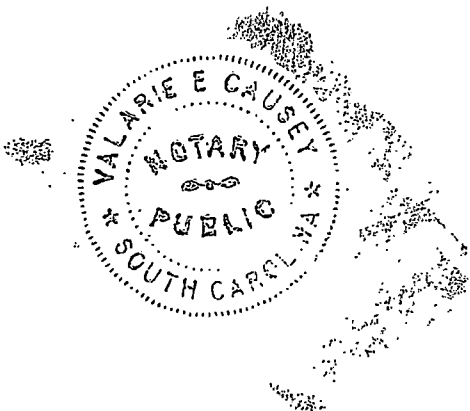


Exhibit "A"
Subservient Parcel

All and singular, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

This being the identical property conveyed to Paanaples, LLC by deed of Howard L. Cohen recorded February 21, 2017 in Deed Book 3989 at Page 778, Horry County Register of Deeds.

Exhibit "B"
Dominant Parcel

ALL AND SINGULAR, that certain piece, parcel or lot of land, with improvements thereon situate, lying and being in the City of Myrtle Beach, South Carolina and state aforesaid, and being more particularly described as Lot Two (2), Block One Hundred Nineteen (119) of the Dunes Section, as will be more fully shown on a plat prepared by N.C. Hughes, Jr., Engineer, dated February, 1939, and recorded in Plat Book 5, at Page 33, in the Office of the Register of Deed for Horry County, South Carolina.

This being the identical property conveyed to Gary L. Park, and Cynthia C. Park, by deed of John T. Chambers on April 30, 2015 and recorded May 1, 2015 in Deed Book 3817 at Page 1534, Horry County Register of Deeds.

Exhibit "C"
Scenic Easement Parcel

ALL AND SINGULAR, that certain piece or portion of land described as the "Scenic Easement Parcel", lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of Deed for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information
2. The property being transferred consists of certain easement rights, granted by Paanaples, LLC to Gary L. Park and Cynthia C. Park on property described as a portion of Lot 1, Block 119 of Dunes Section, bearing Horry County TMS # 174-10-02-001.
3. Check one of the following:
 - (a) ☐ subject to the recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ exempt from the recording fee because the value of the property being transferred is less than \$100.00. (If exempt, please skip items 4-7, and go to item 8 of this affidavit).
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is .
5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is .
6. The recording fee is computed as follows:
 - (a) ☐ Place the amount listed in item 4 above here: \$
 - (b) ☐ Place the amount listed in item 5 above here: (If no amount is listed, place zero here).
 - (c) ☐ Subtract line 6(b) from 6(a) and place here. \$
7. The recording fee is based on the amount listed on Line 6(c) above and the easement recording fee due is \$.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 13th
day of July, 2017

Notary Public for S.C.

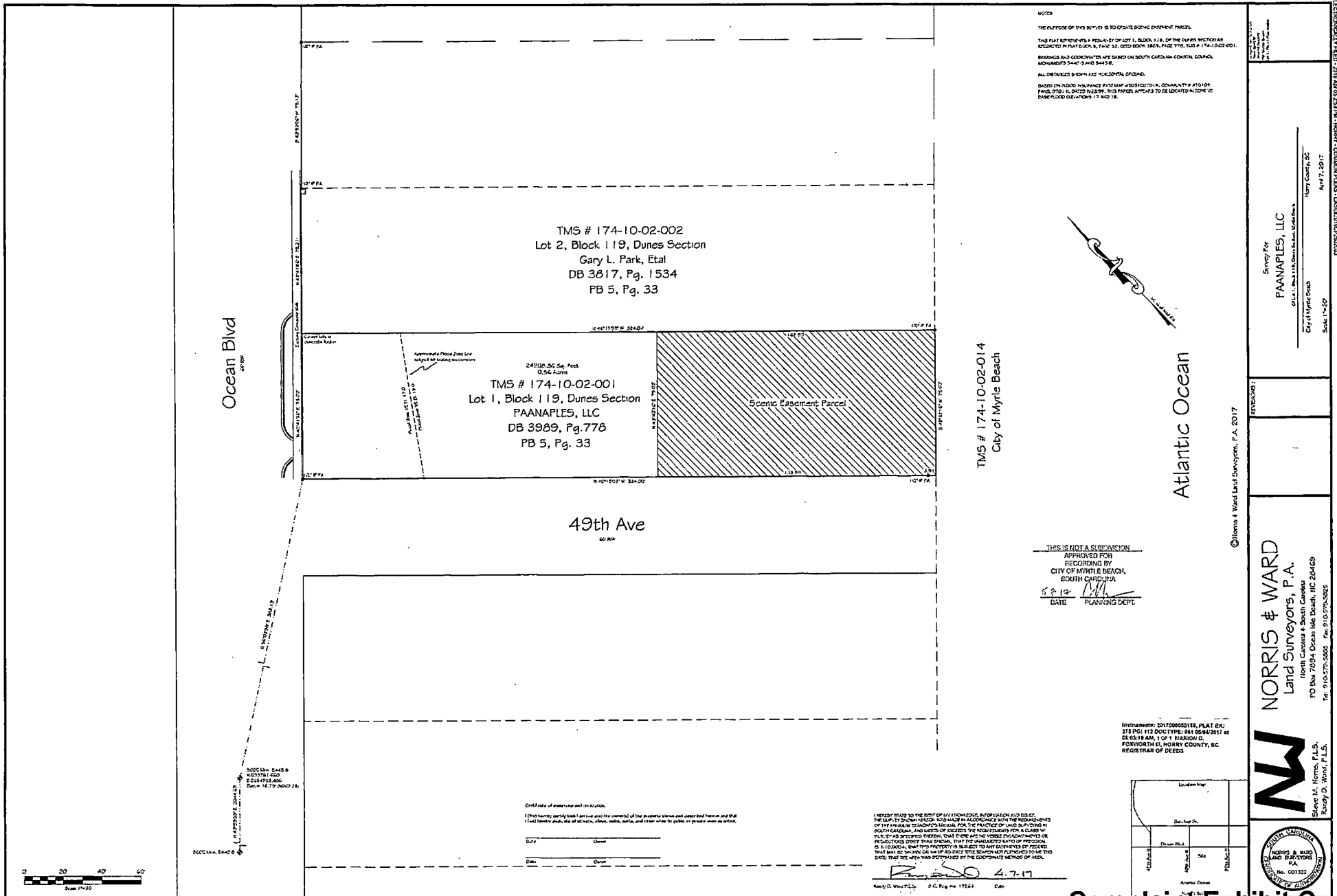
My commission expires: 7-5-26

JOANNE FITZSIMMONS

McNair Law Firm, PA

By: Bhumi Patel

Bhumi Patel



Complaint Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

**FIRST AMENDMENT TO
SCENIC EASEMENT AGREEMENT**

THIS FIRST AMENDMENT TO SCENIC EASEMENT AGREEMENT ("Amendment") is made effective this 19th day of September, 2018, by and between Scott Barry Gutovitz and Caron Dawn Gutovitz ("Gutovitz") and Gary L. Park and Cynthia C. Park ("Park").

RECITALS:

- A. Park obtained certain rights through that certain Scenic Easement Agreement dated May 12, 2017 and recorded on July 13, 2017 in **Book 4025 at Page 2283** in the Office of the Register of Deeds, Horry County, South Carolina (the “Easement Agreement”); and
- B. Gutovitz are the current owners of the Subservient Parcel as referenced in the Easement Agreement. The parties hereto mutually desire to amend the terms of the Easement Agreement as provided herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars in hand paid by Gutovitz to Park, the above recitals and the mutual terms, conditions, and provisions herein and in the Easement Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, Gutovitz and Park agree as follows:

1. The above Recitals are hereby incorporated into this Amendment. All capitalized words not otherwise defined herein shall have the meanings set forth in the Easement Agreement.
2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 - b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
 - d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

3. Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs.

4. Remaining Terms and Conditions. The parties hereto acknowledge and agree that no other term, provision, or condition of the Easement Agreement has been changed or modified by this Amendment except as specified above and that the Easement Agreement, as modified by this Amendment, remains in full force and effect.

5. Binding Agreement. The foregoing provisions shall bind and inure to the benefit of Gutovitz and Park and their respective successors and assigns.

[Signatures on Next Page]

IN WITNESS WHEREOF and intending to be legally bound, the parties have set their hands and seals hereunto and have caused this instrument to be executed and their seals to be affixed hereto by their respective, duly authorized officers as of the above Effective Date.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Signature of First Witness

[Signature]
Scott Barry Gutovitz

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Caron Dawn Gutovitz

STATE OF SC)
COUNTY OF Horry)

ACKNOWLEDGEMENT

I, Cara N. Airey, a Notary Public do hereby certify that the within named Scott Barry Gutovitz and Caron Dawn Gutovitz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 19th day of September, 2018.

[Signature] (SEAL)
Print Name Cara N. Airey
Notary Public for SC
My Commission Expires: 9/20/20

(AFFIX SEAL)

[Signatures Continue on Next Page]



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

[Signature]
Signature of First Witness

[Signature]
Gary L. Park

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Cynthia C. Park

STATE OF NC)
COUNTY OF Orange)

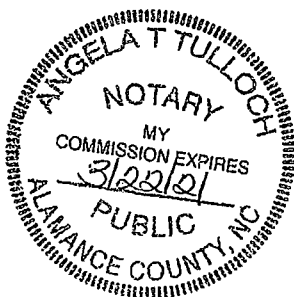
ACKNOWLEDGEMENT

I, Angela T Tulloch, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

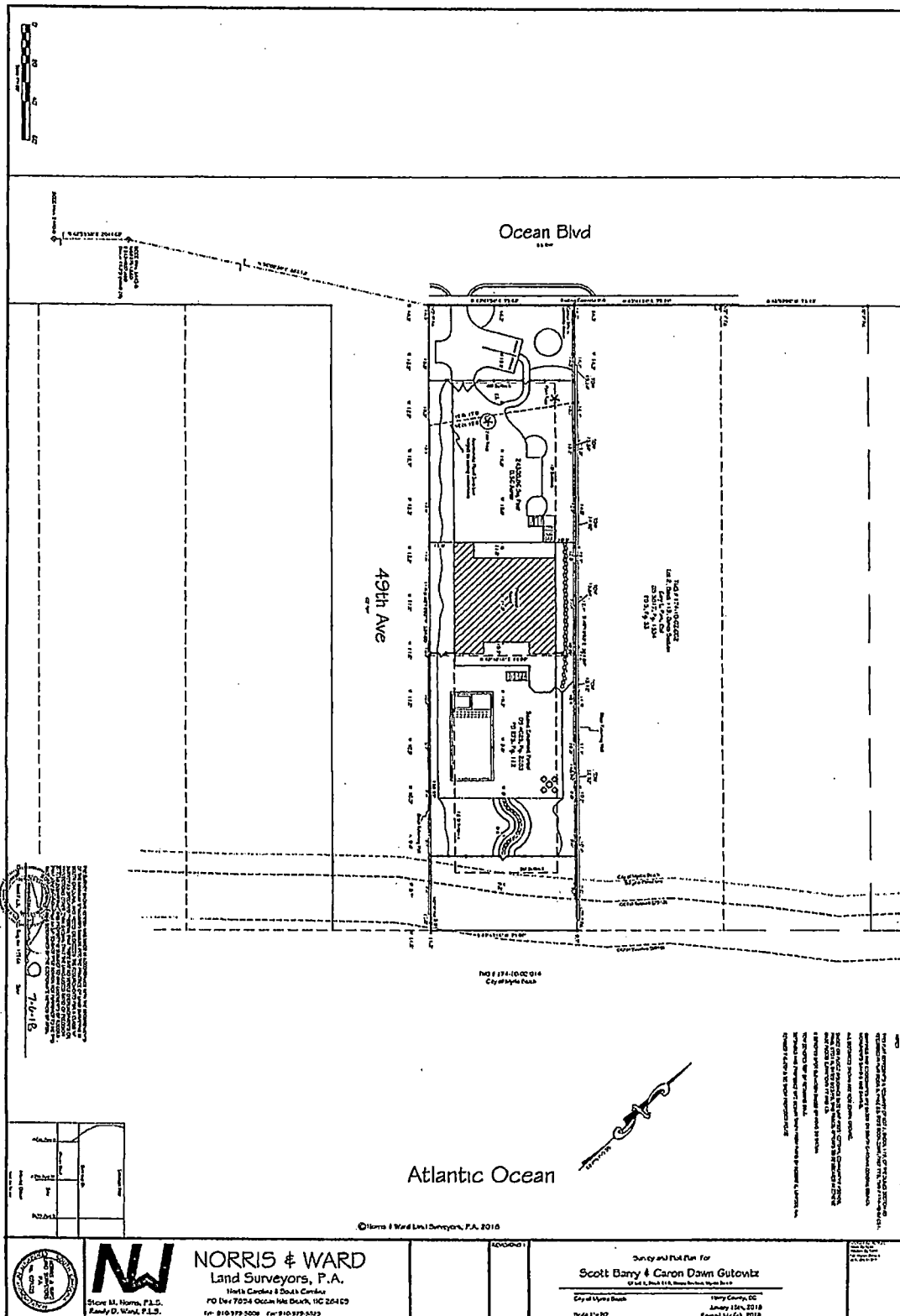
WITNESS my hand and official seal this 10 day of September, 2018.

(SEAL)
Print Name: Angela T Tulloch
Notary Public for Alamance, NC
My Commission Expires: 3/22/21

(AFFIX SEAL)

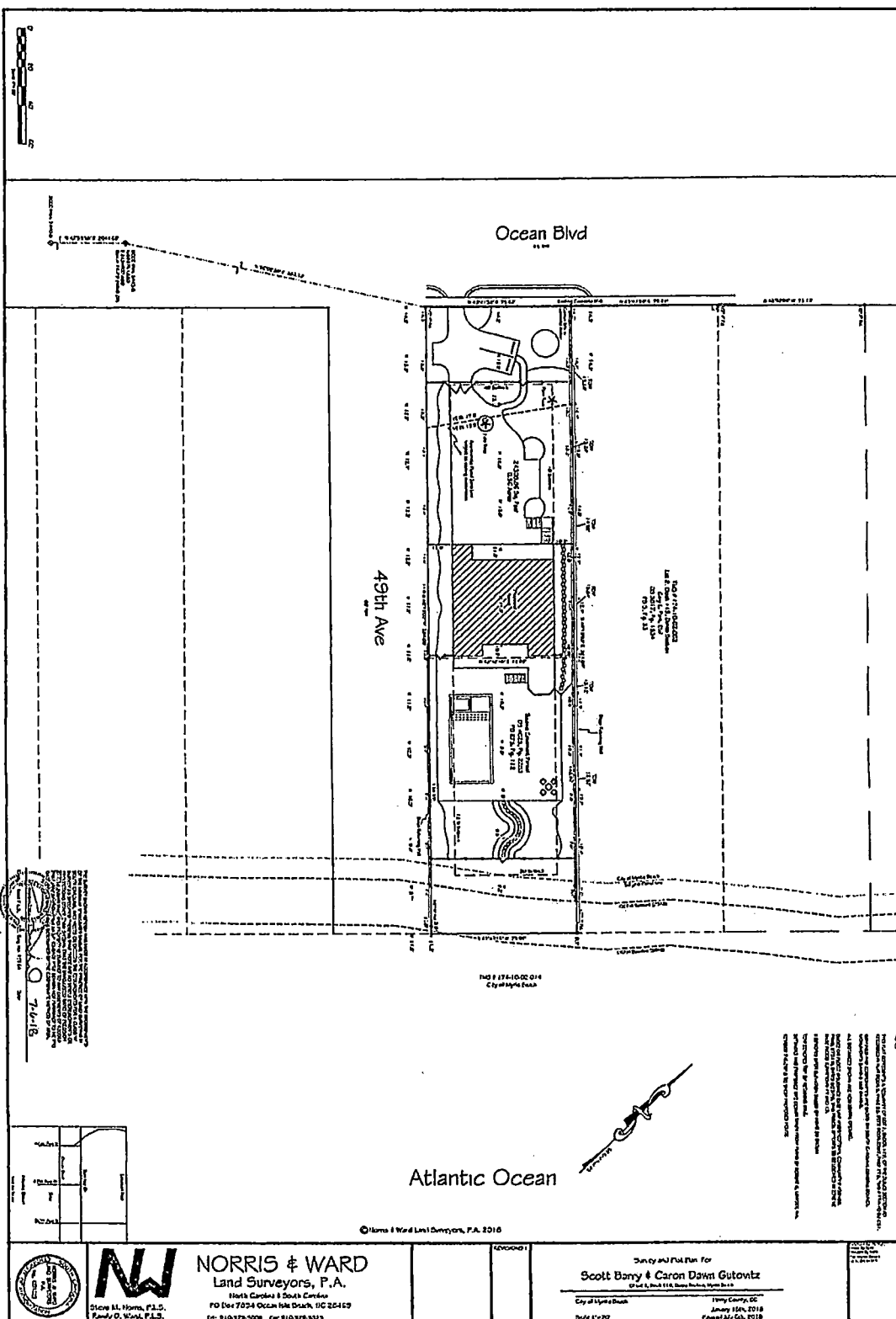


"Exhibit A"



Initials SG
J

"Exhibit A"



Initials SG
J



MCNAIR

ATTORNEYS

November 16, 2018

Amanda A. Bailey

abailey@mcnair.net
T 843.444.1107
F 843.444.4729

Via E-Mail

Scott Barry Gutovitz and Caron Dawn
Gutovitz
5710 Longleaf Drive
Myrtle Beach, SC 29577

Re: First Amendment to Scenic Easement Agreement

Dear Mr. and Mrs. Gutovitz:

As you are aware, the McNair Law Firm, P.A. assisted Gary L. Park and Cynthia C. Park in negotiating, drafting, and executing the First Amendment to Scenic Easement Agreement signed by you on September 19, 2018 ("Agreement"). A version of the final Agreement is attached hereto as "Exhibit A".

It has very recently come to Ms. Park's attention that the construction occurring on your property includes a porch that is greater in size and closer to the ocean than permitted under the terms of the Agreement, and not approved by Park as required. I am sure this was an oversight that neither you nor your contractor intended.

Ms. Park wishes to bring this matter to your attention so that it may be timely and amicably remedied. Please promptly confirm that the size and position of the porch currently under construction will be brought into compliance with the Agreement and that any areas constructed outside of the permitted area/position will be removed. Further, if there have been any changes to the plans and specifications to Exhibit "A" of the Agreement, please submit the same to Ms. Park for her review and consideration.

It is Mrs. Park's sincere desire to amicably resolve this matter, without resort to any equitable or legal remedies, before the end of business on Monday, November 20, 2018.

McNAIR LAW FIRM, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

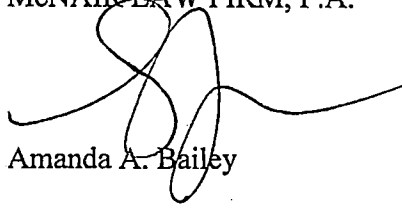
Scott Barry Gutovitz and Caron Dawn Gutovitz
November 16, 2018
Page 2

MCNAIR
ATTORNEYS

Thank you and I look forward to hearing from you.

Very truly yours,

McNAIR LAW FIRM, P.A.



Amanda A. Bailey

AB:cb
Enclosure

cc: McW Custom Homes, License 22896, via U.S. Mail

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - Horry - COMMON PLEAS - CASE#2019CP2602083

STATE OF SOUTH CAROLINA) FIRST AMENDMENT TO
) SCENIC EASEMENT AGREEMENT
COUNTY OF HORRY)

THIS FIRST AMENDMENT TO SCENIC EASEMENT AGREEMENT ("Amendment") is made effective this 19th day of September, 2018, by and between Scott Barry Gutovitz and Caron Dawn Gutovitz ("Gutovitz") and Gary L. Park and Cynthia C. Park ("Park").

RECITALS:

- A. Park obtained certain rights through that certain Scenic Easement Agreement dated May 12, 2017 and recorded on July 13, 2017 in **Book 4025 at Page 2283** in the Office of the Register of Deeds, Horry County, South Carolina (the “Easement Agreement”); and
- B. Gutovitz are the current owners of the Subservient Parcel as referenced in the Easement Agreement. The parties hereto mutually desire to amend the terms of the Easement Agreement as provided herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars in hand paid by Gutovitz to Park, the above recitals and the mutual terms, conditions, and provisions herein and in the Easement Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, Gutovitz and Park agree as follows:

1. The above Recitals are hereby incorporated into this Amendment. All capitalized words not otherwise defined herein shall have the meanings set forth in the Easement Agreement.
2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 - b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
 - d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

3. Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs.

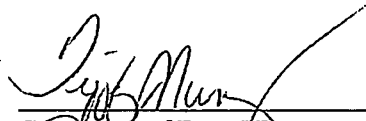
4. Remaining Terms and Conditions. The parties hereto acknowledge and agree that no other term, provision, or condition of the Easement Agreement has been changed or modified by this Amendment except as specified above and that the Easement Agreement, as modified by this Amendment, remains in full force and effect.

5. Binding Agreement. The foregoing provisions shall bind and inure to the benefit of Gutovitz and Park and their respective successors and assigns.

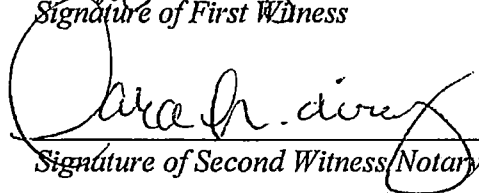
[Signatures on Next Page]

IN WITNESS WHEREOF and intending to be legally bound, the parties have set their hands and seals hereunto and have caused this instrument to be executed and their seals to be affixed hereto by their respective, duly authorized officers as of the above Effective Date.

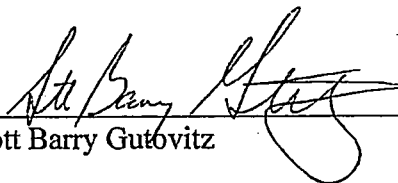
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



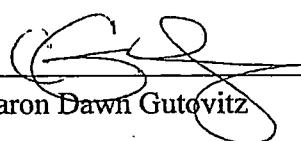
Signature of First Witness



Signature of Second Witness/Notary Public



Scott Barry Gutovitz



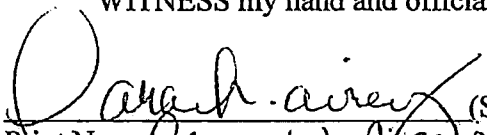
Caron Dawn Gutovitz

STATE OF SC)
COUNTY OF Horry)

ACKNOWLEDGEMENT

I, Cara N. Airey, a Notary Public do hereby certify that the within named Scott Barry Gutovitz and Caron Dawn Gutovitz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

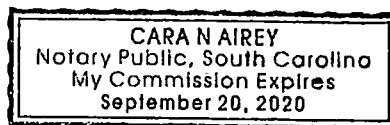
WITNESS my hand and official seal this 19th day of September, 2018.



Print Name Cara N. Airey (SEAL)
Notary Public for SC
My Commission Expires: 9/20/20

(AFFIX SEAL)

[Signatures Continue on Next Page]



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

[Signature]
Signature of First Witness

[Signature]
Gary L. Park

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Cynthia C. Park

STATE OF NC)
COUNTY OF Orange)

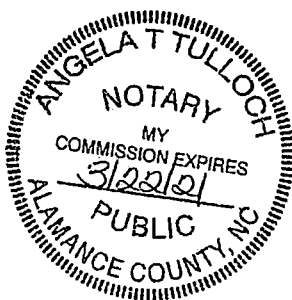
ACKNOWLEDGEMENT

I, Angela T Tulloch, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

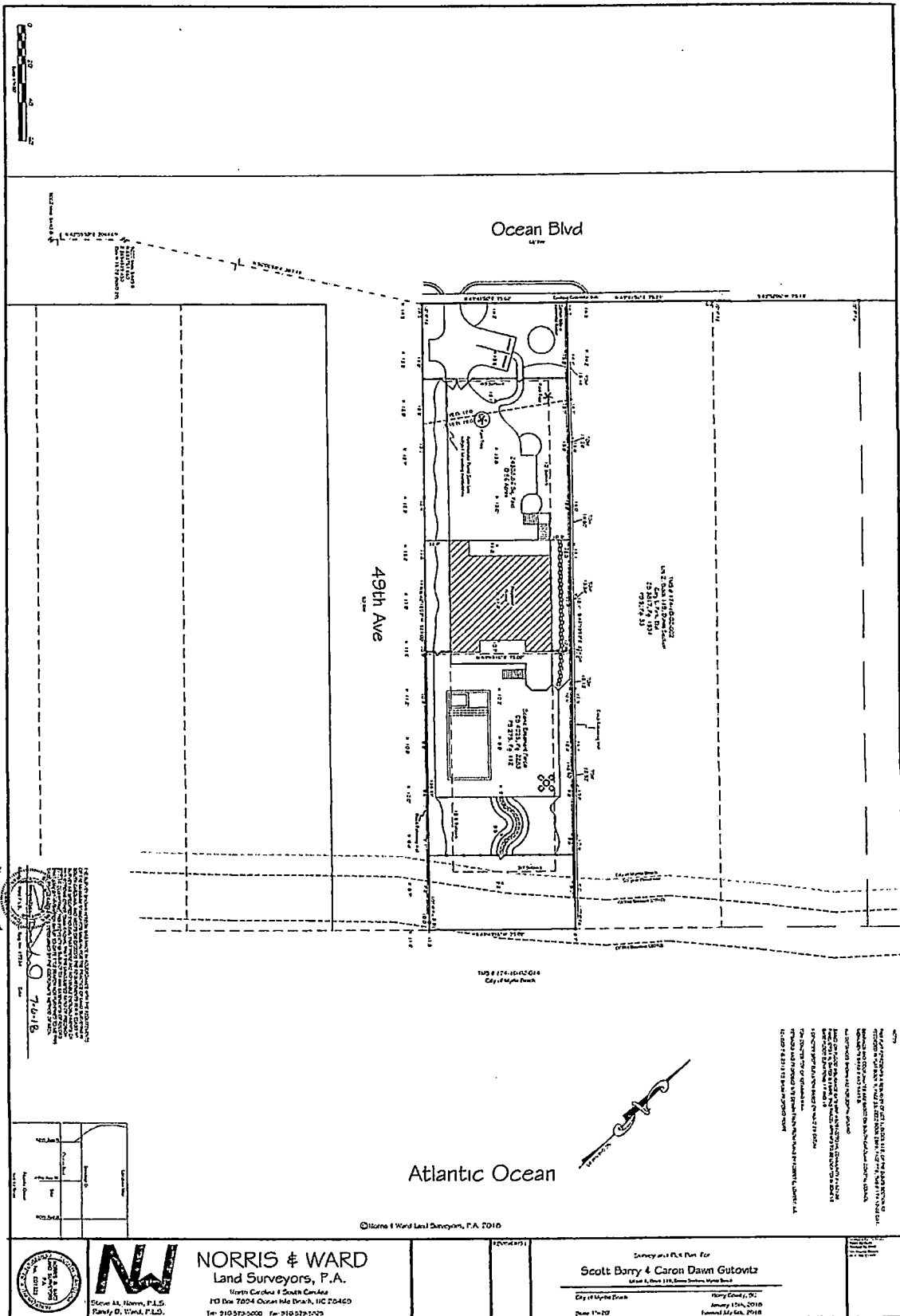
WITNESS my hand and official seal this 10 day of September, 2018.

(SEAL)
Print Name: Angela T Tulloch
Notary Public for Alamance, NC
My Commission Expires: 3/22/21

(AFFIX SEAL)



"Exhibit A"



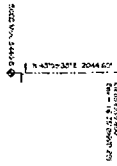
Initials SG
[Signature]

From: Robert Guyton <rsguyton@guytonlawfirm.com>
Sent: Thursday, November 29, 2018 9:04 AM
To: Bailey, Amanda
Subject: Gutovitz/Parks
Attachments: Lot 1, Blk 119 Foundation(A) Model (1).pdf; ATT00001.htm

Attached is the Norris & Ward drawing, I expect to have Robby Warner's drawing by this afternoon. Assuming Robby's drawing agrees with this one, it appears the decking in dispute is 3.5 feet. As a result of lowering the elevation of that deck section, and electing not to include a covered roof, it appears that additional 3.5 feet does not obstruct the view from the Park's deck, and is well short of the Park's enclosed shower structure, which extends beyond their deck.

What I would encourage the Park's to consider is the end result of the two options, which in my mind are: (i) the Parks seek to enforce the scenic easement amendment, which is ambiguous, but even if decided in their favor, would not prevent the Gutovitz from raising the elevation of that deck section, or electing to enclose that section, both of which would have greater impacts on the sight line; or (ii) further amend the proposed amendment to fix the elevation of the deck section in question, and agree that it may not be enclosed. I believe the second option provides more benefit to the Parks, and avoids a conflict that likely eliminates the possibility of a neighborly relationship going forward.

Once I receive the Robby Warner drawing, I will forward that to you also. Thanks.



Ocean Blvd
647.9

49th Ave

PRELIMINARY

TMS # 174-10-02-014
City of Myrtle Beach

Atlantic Ocean

©Norms & Ward Land Surveyors, P.A. 2018

REVISIONS :
7-06-2016
8-01-2018
11-19-2018

Foundation As-Built Survey For
Scott Barry & Caron Dawn Gutovitz
Cell 1, Block 113, Duane Street, Apt. 100

City of Myrtle Beach

Itom County, SC
November 19, 2013

[illegible]

NW
Steve M. Nomo, P.L.S.
Randy D. Ward, P.L.S.

NORRIS & WARD
Land Surveyors, P.A.

North Carolina & South Carolina
PO Box 7894 Ocean Isle Beach, NC 28469
Tel: 810-379-5808 Fax: 810-379-5825

From: Robert Guyton [<mailto:rsguyton@guytonlawfirm.com>]

Sent: Friday, November 30, 2018 11:51 AM

To: Bailey, Amanda <ABailey@mcnair.net>

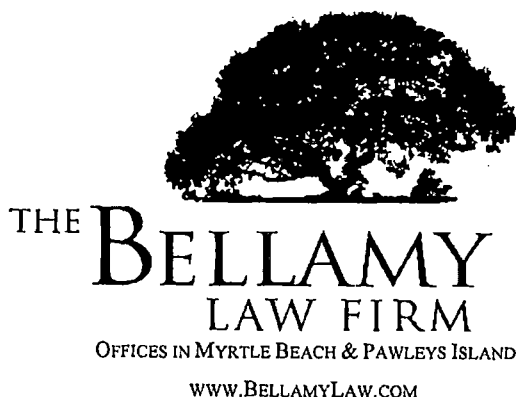
Subject:

Attached is the Robby Warner survey, slightly less but not significant. Just let me know if there is any need to talk through options.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This communication (including any attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, that may attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward or disseminate this communication. If you have received this communication in error, please notify the sender immediately by email and delete this communication and all copies.

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING* **
DAVID B. MILLER*
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
++ CERTIFIED ARBITRATOR



GEORGE W. REDMAN, III* ** **
BENJAMIN A. BAROODY* **
PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON* **
KARA J. KEITH**
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III*
ZACHARY J. CROWL

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7160
Email: GRedman@BellamyLaw.com

December 17, 2018

Mr. Robert S. Guyton
Robert S. Guyton, P.C.
4605-B Oleander Dr., Ste. 202
Myrtle Beach, SC 29577-5739

Re: **CEASE AND DESIST VIOLATION/ BREACH OF EASEMENT**
Breach of Scenic Easement Agreement (*d.* May 12, 2017; *rec.* July 13, 2017) &
First Amendment to Scenic Easement Agreement (*d.* Sept. 19, 2018)
Dominant Parcel: 4902 North Ocean Blvd., Myrtle Beach, S.C., 29577
Lot #2, Block 119, Dunes Section
TMS #174-10-02-002

Subservient Parcel: 4900 North Ocean Blvd., Myrtle Beach, S.C., 29577
Lot #1, Block 119, Dunes Section
TMS #174-10-02-001

Dear Mr. Guyton:

Please be advised that our office has been retained by Gary and Cynthia Park in connection with a matter involving the above-referenced Scenic Easement of May 12, 2017. As such, direct any and all future correspondence regarding this matter to my attention using the contact information set forth above. We have obtained a significant amount of documentation from our client's prior counsel, and we are in the process of carefully reviewing this information.

Mr. and Mrs. Park obtained specific rights through the Scenic Easement when agreed to and recorded, and those rights run with the land to clearly restrict construction upon a portion of Lot #1:

[T]here shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to written approval obtained from the Grantee.

Robert S. Guyton, Esquire
 December 17, 2018
 Page 2

In very specific terms, the Scenic Easement prevented any construction on Lot #1 which would block the oceanfront views of Lot #2.

On August 31, 2018, Scott and Caron Gutovitz purchased Lot #1 with record notice of the Scenic Easement Agreement. It is my understanding that you currently represent the interests of Scott Gutovitz and Caron Gutovitz. After their purchase, your clients asked Mr. and Mrs. Park to amend the Scenic Easement to provide that their new house and uncovered decking could be constructed even and in-line with the structure and decking of the Park residence. Acting in good faith, Mr. and Mrs. Park not only agreed to this request, they employed and paid for the McNair Law Firm to draft it.

The terms of the proposed modification were memorialized in the First Amendment to the Scenic Easement Agreement, which was signed by your clients on September 19, 2018 (the "Amendment"). As was contemplated by the parties, the Amendment contained explicit restrictions on the building lines for the new structure. Specifically, Sections 2(b) and 2(c) of the Amendment stated that "[t]he position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park," and "[t]he position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park. Furthermore, the Amendment incorporated "plans" which were attached to the Amendment as Exhibit A (the "Plans"). The Plans depict the proposed structure with a single-level uncovered deck on the oceanfront side of the building.

During the construction on Lot #1, Mr. and Mrs. Park were alarmed to see decking on the Gutovitz structure that had multiple levels being built in front of the decking on the Park residence, in direct contravention to the proposal set forth in the Plans. Mr. and Mrs. Park received no communication, written or otherwise, from Gutovitz regarding the intentional deviation from the Plans to include a multilevel deck instead of a single-level uncovered deck, nor did Mr. and Mrs. Park receive any communication, written or otherwise, that the multilevel deck would exceed the position of the uncovered porch of the house owned by Park.

First, these changes will impair the oceanfront views of Lot #2. Second, these changes are expressly prohibited under the Scenic Agreement (*as amended*).

There shall be *no change* to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A". Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park. (*emphasis added*).

Moreover, because Mr. and Mrs. Park realized that monetary damages would not be sufficient in the event that the Amendment was breached, the Amendment included a specific provision granting injunctive relief that included, among other things, the restriction of construction or removal of any completed construction. My review of your correspondence with Ms. Bailey of the McNair Law Firm revealed that your clients have obtained two surveys, both of which confirm

Robert S. Guyton, Esquire
December 17, 2018
Page 3

the violation of the Scenic Easement by building a multilevel deck in an area which violates the Scenic Easement (*as amended*).

The purpose of this correspondence is to instruct your clients to cease and desist all construction activities until such time my clients: (1) have reviewed new proposed construction plans; and, (2) provided our written consent of the plans which would cure these violations. The terms of the Scenic Easement expressly provide for enforcement against any person or persons violating or attempting to violate the covenants and restrictions. Thus, you should provide a copy of this letter to any contractors involved with this project.

While my clients are interested in resolving this matter amicably and without further delay, the assertions that they ought to accept the solutions set forth in your prior correspondence is insulting. Obviously, if there is to be a solution without litigation, the tone of the correspondence from this point forward will need to change. As we have discussed, upon a final review of the documentation forwarded to me, I shall contact you to outline the terms which may be acceptable to my clients.

Sincerely,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

GWR III

Digitally signed by GWR III
DN: cn=GWR III, o=The Bellamy Law Firm,
ou, email=GRedman@BellamyLaw.com,
c=US
Date: 2018.12.17 12:21:16 -05'00'

George W. Redman, III

GWR:kel
cc: Client

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - HORRY - COMMON PLEAS - CASE#2019CP2602083

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-

Scott Gutovitz and Caron Gutovitz,)
)
Plaintiffs,)
)
vs.)
)
Gary L. Park and Cynthia C. Park,)
)
Defendants.)

SUMMONS

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.
Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiff

April 8, 2019
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-

Scott Gutovitz and Caron Gutovitz,)
)
Plaintiffs,)
)
vs.)
)
Gary L. Park and Cynthia C. Park,)
)
Defendants.)
)

COMPLAINT
(Declaratory Judgment/
Slander of Title/
Breach of Contract)
JURY TRIAL

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are citizens and residents of Horry County, South Carolina.
2. The Defendants are citizens and residents of one of the States of the United States and, upon information and belief, own the house immediately adjacent to property owned by the Plaintiffs in Myrtle Beach, South Carolina.
3. That the Plaintiffs are currently constructing a house on their property located at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.
4. That the Plaintiffs and Defendants are subject and bound by a Scenic Easement Agreement and a First Amendment to Scenic Easement Agreement dated September 19, 2018.
5. That this case involves the interpretation of the First Amendment to Scenic Easement Agreement entered into by the parties.
6. The First Amendment to Scenic Easement Agreement dated September 19, 2018 allows the Plaintiffs pursuant to Section 2 to construct/build a deck within the scenic easement parcel as defined in the Scenic Easement Agreement.

7. Further, attached to the First Amendment to Scenic Easement Agreement is a survey prepared by Norris & Ward Land Surveyors wherein the parties agreed to the specific placement of the deck.

8. That after Plaintiffs began construction of the deck, Defendants through counsel advised the Plaintiffs that the deck could not be constructed and that the aforementioned deck was within the scenic easement.

9. That on March 15, 2019, Defendants and Defendants' counsel caused to be filed against Plaintiffs' property a Lis Pendens which impaired the Plaintiffs' property (see Exhibit 1).

10. That the Plaintiffs are informed and believe that the Notice of Lis Pendens has created a cloud on Plaintiffs' title. Further, Plaintiffs are informed and believe that the First Amendment to Scenic Easement Agreement was drafted and/or written by Defendants and that all ambiguity be construed against the Defendants under well-established contract construction.

11. That Plaintiffs seek a decision of this court regarding the construction and interpretation of the First Amendment to Scenic Easement Agreement dated September 19, 2018.

12. That Plaintiffs have no adequate remedy of law and seek a decision by a jury as to the construction of the deck at the house Plaintiffs are building at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.

13. That Plaintiffs further seek a declaration of this court that Plaintiffs have not violated the First Amendment to Scenic Easement Agreement and have fully complied with the terms of the Agreement.

14. That pursuant to the South Carolina Uniform Declaratory Judgment Act, Plaintiffs seek an immediate resolution by the court through trial by jury of the issues raised herein along with attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION

(Slander of Title)

15. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

16. That Defendants have caused to be filed in the records of the Horry County RMC a Lis Pendens on March 15, 2019 against Plaintiffs' property more particularly described as Lot 1 of Block 119 of The Dunes Section of Myrtle Beach with Tax Map No. 174-10-02-001.

17. That such Lis Pendens is a cloud on Plaintiffs' title and has slandered the Plaintiffs' title.

18. That Defendants wrongfully recorded an unfounded claim against the property of another and that as a result such is actionable as slander of title.

19. That further the Defendants filed a Lis Pendens with intent to publish a statement which resulted in harm to the interest of the Plaintiffs and of the Plaintiffs' title.

20. That the Defendants knew that the statements in the Lis Pendens were reckless and false.

21. That Plaintiffs are informed and believe that the Lis Pendens was a slander of Plaintiffs' title and was a false and malicious statement made in disparagement of the Plaintiffs' title to real property causing injury.

22. That further Plaintiffs are the owners of the property in question and are attempting to construct a house thereupon.

23. That the Defendants did so with malice and aforethought.

24. That the statements in the Lis Pendens are false.

25. That the statements in the Lis Pendens are derogatory to Plaintiffs' title.

26. That the Defendants' actions caused special damages and diminished the value of the Plaintiffs' property in the eyes of third parties.

27. That Plaintiffs bring this cause of action against the Defendants for slander of title in filing a Lis Pendens without a good faith belief.

28. That Plaintiffs' special damages are the pecuniary losses that result directly and immediately from the effect of the conduct of the Defendants including impairment of the vendibility of the Plaintiffs' real property.

29. That the Lis Pendens disparages Plaintiffs' real property in that Plaintiffs have taken measures to counteract the slander of title including attorney's fees and costs.

30. That, accordingly, Plaintiffs bring this action against the Defendants for slander of title and for actual damages, punitive damages and the cost of this action.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

31. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

32. That the Plaintiffs and Defendants entered into the First Amendment to Scenic Easement on September 18, 2018.

33. That pursuant to the Scenic Easement Agreement the Defendants agreed to allow the Plaintiffs to build a deck.

34. That paragraph 2(a) of the First Amendment to Scenic Easement Agreement states as follows: "There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as Exhibit A. Any proposed change of whatever kind, quality or nature to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park."

35. That pursuant to the terms of the easement, Plaintiffs obtained the prior written consent of Defendants and also provided a plat of the deck to be constructed on Plaintiffs' property.

36. That after Plaintiffs constructed the deck, the Defendants advised Plaintiffs that they did not agree with the construction of the deck and filed a Lis Pendens.

37. That Defendants have breached the First Amendment to Scenic Easement Agreement and failed to abide by its terms.

38. That Plaintiffs bring this cause of action for breach of contract in that Defendants have failed to abide by the First Amendment to Scenic Easement Agreement and that the breach has injured the Plaintiff and accordingly, Plaintiffs are entitled to actual damages, attorney's fees and costs.

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. On the First Cause of Action for actual damages.
- B. On the Second Cause of Action for actual damages and punitive damages.
- C. On the Third Cause of Action for actual damages and for an Order of this Court removing the Lis Pendens and declaring the contract and declaring the rights of the respective parties.

KELAHHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net

Attorneys for Plaintiff

April 8, 2019
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,
Plaintiffs,

Case Number: 2018-LP-26-_____

vs.

NOTICE OF LIS PENDENS

Scott Barry Gutovitz and
Caron Dawn Gutovitz,

Defendants.

NOTICE IS HEREBY GIVEN that an Action affecting title to real property owned by the above-named parties will be commenced not more than twenty days after this notice pursuant to South Carolina Code § 15-11-10 in the Court of Common Pleas of Horry County, South Carolina, by the above listed Plaintiffs against the above listed Defendants. The Lis Pendens relates to a dispute related to an easement interest in that certain Real Property bearing Horry County Tax Map Number 174-10-02-001, such property more formally described as the real property and improvements thereon more formally described as follows:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

Which includes, that certain piece or portion of land described as the "Scenic Easement Parcel," lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of deed for Horry County, South Carolina.

This is the identical property conveyed to the Defendants herein by deed of PAANaples, LLC, a Florida limited liability company, dated August 30, 2017 and recorded August 31, 2017 in Deed Book 4039 at Page 1507 in the Office of the Register of Deeds for Horry County, South Carolina.

**PURSUANT TO S.C. CODE § 15-11-10,
NOTICE OF THE PENDENCY
OF THE ABOVE-REFERENCED ACTION
IS HEREBY GIVEN.**

Respectfully Submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

843.448.2400

Attorneys for Plaintiff

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

March 15, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02083

Gary L. Park and Cynthia C. Park,
Plaintiffs,
vs.
Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

ANSWER

JURY TRIAL DEMANDED

The Defendants, Scott Barry Gutovitz and Caron Dawn Gutovitz, answering the Complaint of the Plaintiff, would respectfully show unto this honorable court as follows:

1. The Defendants deny each and every allegation not hereinafter specifically admitted and demands strict proof thereof.

FOR A FIRST DEFENSE

2. The Defendants deny the allegations of Paragraph 1 and understand that the Plaintiffs are citizens and residents of an area near Raleigh, North Carolina.

3. The Defendants admit the allegations of Paragraph 2 of the Plaintiff's Complaint.

4. The Defendants deny the allegations of Paragraph 3 and would further state that these Defendants have not defaulted or violated the express easement.

5. The Defendants admit the allegations of Paragraph 4 that venue is proper in Horry County.

6. The Defendants admit so much of Paragraph 5 which states that PAANaples, LLC owned the property which the Plaintiffs purchased and that PAANaples, LLC was owned by the Plaintiff's sister upon information and belief.

7. The Defendants admit the allegations of Paragraph 6 of the Plaintiffs' Complaint.

8. The Defendants admit so much of Paragraph 7 which states that PAANaples granted an easement to the property owned by the Parks for a scenic easement which was executed on May 12, 2017 and that such Scenic Easement is of record. The remaining allegations of Paragraph 7 are denied.

9. The Defendants deny the allegations of Paragraph 8 and further state that the easement is ambiguous and is to be construed against the drafter as a matter of law.

10. The Defendants admit the allegations of Paragraph 9 and that Exhibit C is filed in the records of Horry County.

11. The Defendants admit so much of Paragraph 10 which states that the Scenic Easement is attached to the Complaint. The remaining allegations of Paragraph 10 are denied.

12. The Defendants deny the allegations of Paragraph 11 and would further state that the Scenic Easement is ambiguous and that the Scenic Easement should be construed against Parks and in favor of free use of property.

13. The Defendants deny Paragraph 12 in that the Easement is ambiguous and does not burden Defendants' real property.

14. The Defendants admit so much of Paragraph 13 which states that these Defendants purchased the property from PAANaples, LLC. All other allegations are denied.

15. The Defendants admit so much of Paragraph 14 which states that easements are of record in Horry County; however, Defendants deny that language of the scenic easement is express that the scenic easement is ambiguous as a matter of law.

16. The Defendants admit so much of Paragraph 15 which states that Defendants asked Plaintiffs to amend the Scenic Easement. The remaining allegations of Paragraph 15 are denied.

17. The Defendants deny the allegations of Paragraph 16 and would further state that the Plaintiffs and Defendants agreed to the First Amendment to Scenic Easement and that these Defendants have not violated it.

18. The Defendants admit the allegations of Paragraph 17 that Plaintiffs hired an attorney with the McNair Law Firm. Defendants would further state that any ambiguity in the First Amendment to Scenic Easement Agreement should be construed against the Plaintiffs. All other allegations are denied.

19. The Defendants admit the allegations of Paragraph 18 and would further state that these Defendants have not built a porch within the scenic easement parcel and have not violated the amended scenic easement.

20. The Defendants deny the allegation of Paragraph 19 that a porch was built onto their property; however, the Defendants would state that the deck complies with the Amendment to Scenic Easement. Further, these Plaintiffs are complaining of a deck which is uncovered not a porch. All other allegations are denied.

21. The Defendants cannot admit or deny the allegations of Paragraph 20 and accordingly they are denied.

22. The Defendants deny the allegations of Paragraph 21 of Plaintiffs' Complaint.

23. The Defendants admit so much of Paragraph 22 which states they received a letter from McNair Law Firm. The remaining allegations of Paragraph 22 are denied.

24. The Defendants can neither admit or deny Paragraph 23 as the series of emails which are referred to in the Complaint are not attached thereto accordingly Paragraph 23 is denied.

25. The Defendants admit so much of Paragraph 24 which states that surveys were obtained. The remaining allegations of Paragraph 24 are denied and that Exhibit H containing an

email between the Defendants Gutovitz' s prior lawyer and the Parks' prior lawyer should be deleted and stricken from the record as settlement negotiations.

26. The Defendants do not have sufficient information and belief to answer Paragraph 25 other than to state the Defendants received a copy of Exhibit I. The remaining allegations are denied.

27. The Defendants deny the allegations of Paragraph 26 and further state that Defendants have attempted to work this matter out with the Plaintiffs but that all such requests have been rebuffed by the Plaintiffs. The remaining allegations of Paragraph 26 are denied.

28. The Defendants deny the allegations of Paragraph 27 of Plaintiffs' Complaint.

29. The Defendants admit so much of Paragraph 28 which indicates counsel had received contact from Plaintiffs' counsel. The remaining allegations of Paragraph 28 are denied.

30. The Defendants deny the allegations of Paragraph 29 of Plaintiffs' Complaint.

31. The Defendants admit so much of Paragraph 30 which states that they bought their property pursuant to an ambiguous easement. Defendants deny that the easements are clear and that they are ambiguous as a matter of law.

32. The Defendants admit so much of Paragraph 31 which states that the McNair Law Firm was employed in order to amend the scenic easement and prepared the document. The remaining allegations of Paragraph 31 are denied.

33. The Defendants deny the allegations of Paragraph 32 including subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l).

34. The Defendants deny the allegations of Paragraph 33 of Plaintiffs' Complaint.

35. The Defendants deny the allegations of Paragraph 34 and would further state that these Defendants had consent of the Plaintiffs to build a deck.

36. The Defendants deny the allegations of Paragraphs 35, 36 and 37 of Plaintiffs Complaint.

37. The Defendants deny the allegations of Paragraph 38 of Plaintiffs' Complaint.

38. The Defendants deny the allegations of Paragraph 39 as such is ambiguous.

39. The Defendants deny the allegations of Paragraph 40 of Plaintiffs' Complaint.

40. The Defendants admit so much of Paragraph 41 that the court declare the rights of the parties in regard to the Scenic Easement and the Amendment and that this issue be decided by a jury. The remaining allegations of Paragraph 41 are denied.

FOR A SECOND DEFENSE
(Ambiguity)

41. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

42. The Defendants plead the defense of ambiguity in that the Scenic Easement and the Amendment to Scenic Easement are confusing and ambiguous as a matter of law.

43. That the documents should be construed against the Plaintiff since their lawyers prepared it.

FOR A THIRD DEFENSE
(Consent)

44. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. The Defendants plead the defense of consent and that the Plaintiffs consented to the deck construction and that it complies with the Amendment to the Scenic Easement.

FOR A FOURTH DEFENSE
(Strict Construction)

46. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

47. The Defendants believe that South Carolina law favors the rule that restrictions by easement be construed strictly and in favor of allowing free use of property.

48. The Defendants are informed and believe that under South Carolina law the restrictions which Plaintiffs seek to enforce violate this rule.

FOR A FIFTH DEFENSE
(Estoppel)

49. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

50. The Defendants, prior to the construction of the deck in question, asked for and received permission to build such deck by the Plaintiffs.

51. The Defendants provided Plaintiffs a copy of a plat which showed the uncovered deck and its location.

52. The aforementioned plat is attached to Plaintiffs' Complaint as Exhibit D.

53. The Plaintiffs signed the First Amendment to Scenic Easement and reviewed the plat, a copy of which is attached as Exhibit D to Plaintiffs' Complaint.

54. The Plaintiffs are estopped from complaining about the deck or its location and that the survey was provided to Plaintiffs and such survey showed the location of the deck.

55. The Defendants assert the defense of estoppel and that these Plaintiffs are legally and equitably estopped based on their signatures to the first amendment to scenic easement.

FOR A SIXTH DEFENSE
(Waiver)

56. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

57. The Plaintiffs through an agreement signed and prepared by them entitled First Amendment to Scenic Easement (attached to the Complaint of the Plaintiffs as Exhibit D) did waive

any and all claims they might have for the construction of the uncovered deck and that said deck complies with the agreement between the parties and that a copy of the survey of the deck was provided to Plaintiffs prior to approval.

58. The Defendants are informed and believe that the actions of the Plaintiffs in signing the First Amendment to Scenic Easement is a waiver of their right to dispute the deck in question.

FOR A SEVENTH DEFENSE
(Other Collateral Action)

59. The Defendants reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

60. The Defendants have filed their own action on April 8, 2019 with Civil Action No. 2019-CP-26-02152 and that such action includes causes of action for declaratory judgment, slander of title and breach of contract.

61. The Defendants are informed and believe that Civil Action No. No. 2019-CP-26-02152 should be consolidated to and included with this lawsuit filed by the Plaintiffs.

62. The Defendants are informed and believe that the court should join the two actions as one, place them down on the jury trial roster and that the matter be heard as expeditiously as possible.

WHEREFORE, Defendants, having answered the Complaint of the Plaintiffs, respectfully request that the Plaintiffs' Complaint be dismissed, that no attorney's fees be granted to the Plaintiffs and that Defendants have their attorney's fees and costs.

KELAHHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Defendants

April 18, 2019
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Scott Gutovitz, and
Caron Gutovitz,

Plaintiffs,

vs.

Gary L. Park, and
Cynthia C. Park,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-02152

ANSWER

TO: GENE CONNELL, ATTORNEY FOR PLAINTIFFS, SCOTT GUTOVITZ AND CARON GUTOVITZ.

Defendants, Gary L. Park and Cynthia C. Park (hereinafter "Defendants"), responding to the Complaint of Plaintiffs, Scott Gutovitz and Caron Gutovitz (hereinafter "Plaintiffs"), hereby alleges unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Objections)

1. Each and every allegation in the Complaint which is not specifically admitted, modified, or explained herein is denied, and these Defendants demand strict proof thereof.
2. This Defendants affirmatively object to and deny any and all attempts to characterize, interpret, or delineate Plaintiffs' rights or obligations under any contract, and/or any other document involved in the transaction which is the subject of this action.
3. Defendants affirmatively and specifically state the terms and/or provisions of any and all documents referenced in Plaintiffs' Complaint speak for themselves, and hereby crave specific reference to said terms and/or provisions of said documents.

FOR A SECOND DEFENSE
(Specific Responses)

4. Each and every allegation, denial, objection, and defense asserted in this Answer is realleged as if repeated verbatim herein.
5. Upon information and belief, Defendants admit the allegations in Paragraph 1.
6. Defendants admit the allegations in Paragraphs 2 and 3 of Plaintiffs' Complaint.
7. As to Paragraphs 4 and 5 of Plaintiffs' Complaint, Defendants admit the Plaintiffs' Property is subject to and restricted by the referenced easement agreements, and that Plaintiffs' have violated the terms of both of said agreements.
8. Defendants deny the allegations in Paragraph 6 and 7 and demands strict proof thereof.
9. As to the allegations in Paragraph 8, Defendants are without information and knowledge sufficient to form a belief, and as such deny the same, and as such demand strict proof thereof.
10. As to the allegations in Paragraph 9, Defendants admit that a Lis Pendens was properly filed against the Property to secure Defendants' easement rights over and across the Plaintiffs' property.
11. Defendants deny the allegations in Paragraph 10, and demands strict proof thereof.
12. Paragraph 11 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied and strict proof is demanded thereof.
13. Defendants deny the allegations in Paragraphs 12 and 13, and demands strict proof thereof.
14. Paragraphs 14 and 15 are pleading paragraphs and do not require a response, however, to the extent any response may be required, said allegations are denied and strict proof is demanded thereof.
15. Defendants admit the allegations in Paragraph 16.

16. Defendants deny the allegations in Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 and as such demand strict proof thereof.
17. Paragraph 31 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied and strict proof is demand thereof.
18. Defendants deny Paragraphs 32 and 33 and demands strict proof thereof.
19. Defendants assert the documents referenced in Paragraph 34 speak for themselves and specifically deny any inconsistencies therewith and demand strict proof thereof.
20. Defendants deny Paragraphs 35, 36, 37, and 38 and demand strict proof thereof.
21. Defendants deny Plaintiffs are entitled to any relief prayed for in the Wherefore Paragraph of their Complaint.

FOR A THIRD DEFENSE
(Rule 12(b)(8), SCRPC)

22. Each and every allegation, denial, objection, and defense asserted in this Answer is realleged as if repeated verbatim herein.
23. This Action must be dismissed because another action is pending between the same parties for the same claims in violation of Rule 12(b)(8) of the *South Carolina Rules of Civil Procedure*.

FOR A FOURTH DEFENSE
(Rule 12(b)(6), SCRPC)

24. Each and every allegation, denial, objection, and defense asserted in this Answer is realleged as if repeated verbatim herein.

25. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action for slander of title, and therefore Plaintiffs' first cause of action must be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.
26. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and therefore Plaintiffs' Complaint must be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR A FIFTH DEFENSE
(Pending Action, CA #2019-CP-26-02083)

27. Each and every allegation, denial, objection, and defense asserted in this Answer is realleged as if repeated verbatim herein.
28. Defendants hereby incorporate verbatim by reference any and all of their claims in the Civil Action currently pending before this Court, filed before this Action, as affirmative defenses in this Action.

FOR A SIXTH DEFENSE
(Reservation and Non-Waiver)

29. Each and every allegation, denial, objection, and defense asserted in this Answer is realleged as if repeated verbatim herein.
30. Defendants reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants prays for the following relief:

- a. That Plaintiffs' Complaint be dismissed with prejudice;

- b. That Defendants in this Action recover all relief they are currently seeking in Civil Action number 2019-CP-26-02083 involving the same parties and same subject matter;
- c. That Defendants be awarded the cost and expenses associated with the defense of this action, including reasonable attorney fees;
- d. This Honorable Court award such other further relief to Defendants as it may deem just and proper.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

843.448.2400

Attorneys for the Park Defendants

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

May 13, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02152

Scott Gutovitz and Caron Gutovitz,

Plaintiffs,

vs.

Gary L. Park and Cynthia C. Park,

Defendants.

AMENDED SUMMONS

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)

The Courtyard, Suite 209

1500 U.S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

Attorneys for Plaintiff

March 16, 2020
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02152

Scott Gutovitz and Caron Gutovitz,)
)
Plaintiffs,)
)
vs.)
)
Gary L. Park and Cynthia C. Park,)
)
Defendants.)

AMENDED COMPLAINT
(Declaratory Judgment/
Slander of Title/Breach of Contract/
Malicious Prosecution)
JURY TRIAL

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are citizens and residents of Horry County, South Carolina.
2. The Defendants are citizens and residents of one of the States of the United States and, upon information and belief, own the house immediately adjacent to property owned by the Plaintiffs in Myrtle Beach, South Carolina.
3. That the Plaintiffs are currently constructing a house on their property located at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.
4. That the Plaintiffs and Defendants are subject and bound by a Scenic Easement Agreement and a First Amendment to Scenic Easement Agreement dated September 19, 2018.
5. That this case involves the interpretation of the First Amendment to Scenic Easement Agreement entered into by the parties.
6. The First Amendment to Scenic Easement Agreement dated September 19, 2018 allows the Plaintiffs pursuant to Section 2 to construct/build a deck within the scenic easement parcel as defined in the Scenic Easement Agreement.

7. Further, attached to the First Amendment to Scenic Easement Agreement is a survey prepared by Norris & Ward Land Surveyors wherein the parties agreed to the specific placement of the deck.

8. That after Plaintiffs began construction of the deck, Defendants through counsel advised the Plaintiffs that the deck could not be constructed and that the aforementioned deck was within the scenic easement.

9. That on March 15, 2019, Defendants and Defendants' counsel caused to be filed against Plaintiffs' property a Lis Pendens which impaired the Plaintiffs' property (see Exhibit 1).

10. That the Plaintiffs are informed and believe that the Notice of Lis Pendens has created a cloud on Plaintiffs' title. Further, Plaintiffs are informed and believe that the First Amendment to Scenic Easement Agreement was drafted and/or written by Defendants and that all ambiguity be construed against the Defendants under well-established contract construction.

11. That Plaintiffs seek a decision of this court regarding the construction and interpretation of the First Amendment to Scenic Easement Agreement dated September 19, 2018.

12. That Plaintiffs have no adequate remedy of law and seek a decision by a jury as to the construction of the deck at the house Plaintiffs are building at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.

13. That Plaintiffs further seek a declaration of this court that Plaintiffs have not violated the First Amendment to Scenic Easement Agreement and have fully complied with the terms of the Agreement.

14. That pursuant to the South Carolina Uniform Declaratory Judgment Act, Plaintiffs seek an immediate resolution by the court through trial by jury of the issues raised herein along with attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION

(Slander of Title)

15. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

16. That Defendants have caused to be filed in the records of the Horry County RMC a Lis Pendens on March 15, 2019 against Plaintiffs' property more particularly described as Lot 1 of Block 119 of The Dunes Section of Myrtle Beach with Tax Map No. 174-10-02-001.

17. That such Lis Pendens is a cloud on Plaintiffs' title and has slandered the Plaintiffs' title.

18. That Defendants wrongfully recorded an unfounded claim against the property of another and that as a result such is actionable as slander of title.

19. That further the Defendants filed a Lis Pendens with intent to publish a statement which resulted in harm to the interest of the Plaintiffs and of the Plaintiffs' title.

20. That the Defendants knew that the statements in the Lis Pendens were reckless and false.

21. That Plaintiffs are informed and believe that the Lis Pendens was a slander of Plaintiffs' title and was a false and malicious statement made in disparagement of the Plaintiffs' title to real property causing injury.

22. That further Plaintiffs are the owners of the property in question and are attempting to construct a house thereupon.

23. That the Defendants did so with malice and aforethought.

24. That the statements in the Lis Pendens are false.

25. That the statements in the Lis Pendens are derogatory to Plaintiffs' title.

26. That the Defendants' actions caused special damages and diminished the value of the Plaintiffs' property in the eyes of third parties.

27. That Plaintiffs bring this cause of action against the Defendants for slander of title in filing a Lis Pendens without a good faith belief.

28. That Plaintiffs' special damages are the pecuniary losses that result directly and immediately from the effect of the conduct of the Defendants including impairment of the vendibility of the Plaintiffs' real property.

29. That the Lis Pendens disparages Plaintiffs' real property in that Plaintiffs have taken measures to counteract the slander of title including attorney's fees and costs.

30. That, accordingly, Plaintiffs bring this action against the Defendants for slander of title and for actual damages, punitive damages and the cost of this action.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

31. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

32. That the Plaintiffs and Defendants entered into the First Amendment to Scenic Easement on September 18, 2018.

33. That pursuant to the Scenic Easement Agreement the Defendants agreed to allow the Plaintiffs to build a deck.

34. That paragraph 2(a) of the First Amendment to Scenic Easement Agreement states as follows: "There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as Exhibit A. Any proposed change of whatever kind, quality or nature to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park."

35. That pursuant to the terms of the easement, Plaintiffs obtained the prior written consent of Defendants and also provided a plat of the deck to be constructed on Plaintiffs' property.

36. That after Plaintiffs constructed the deck, the Defendants advised Plaintiffs that they did not agree with the construction of the deck and filed a Lis Pendens.

37. That Defendants have breached the First Amendment to Scenic Easement Agreement and failed to abide by its terms.

38. That Plaintiffs bring this cause of action for breach of contract in that Defendants have failed to abide by the First Amendment to Scenic Easement Agreement and that the breach has injured the Plaintiff and accordingly, Plaintiffs are entitled to actual damages, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

(Malicious Prosecution)

39. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

40. That the Defendants brought an action against the Plaintiffs in this Court and that such action is malicious and without probable cause.

41. That South Carolina, based on established case law has held that an improperly filed Lis Pendens gives rise to a cause of action for abuse of process and/or malicious prosecution.

42. That the Defendants in filing a Lis Pendens against the Plaintiffs' real property did so based on an ulterior purpose which is to stop construction on Plaintiffs' home.

43. That further Defendants' act in filing a Lis Pendens was an intentional and willful act and that the use of this process was not proper or in the regular conduct of the proceedings.

44. That Defendants in filing a Lis Pendens because of their attempt to enforce a scenic easement was solely for the purpose of harassment and to affect the construction of Plaintiffs' home.

45. That the use of a Lis Pendens on Plaintiffs' property continues to cause damage and will cause them future damage because Plaintiffs cannot sell their property or get permanent financing.

46. The Plaintiffs are informed and believe that the filing of the Lis Pendens for an ulterior purpose, i.e., to harm the Plaintiffs and stop their construction loan from becoming permanent, had no legitimate purpose.

47. That as a result of the filing of the Lis Pendens, Plaintiffs have received letters from realtors about their property being a distressed property and that such has damaged the Plaintiffs and left them with the inability to either sell the property or in the alternative will cost Plaintiffs additional monies in interest because their construction loan will not become permanent because of the filing of a Lis Pendens.

48. The Plaintiffs ask for judgment against Defendants for actual damages, punitive damages and the costs of this action.

FOR A FIFTH CAUSE OF ACTION

(Malicious Prosecution)

49. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

50. That the Defendants brought an action against the Plaintiffs including the filing of a Lis Pendens over a Scenic Easement Agreement and that such action was brought at the instance of Defendants Park.

51. That the proceedings will terminate in favor of the Plaintiffs.

52. That the Defendants were malicious in filing the action in that the Scenic Easement Agreement was at best ambiguous.

53. That the Scenic Easement Agreement further had an Exhibit A which is a plat which specifically referenced what the Plaintiffs were going to build on the property and that the Plaintiffs built consistent with Exhibit A.

54. That the Defendants had no cause, proper or otherwise, to bring such an action.

55. That injury resulted to the Plaintiffs including filing of a Lis Pendens, the inability to sell their home, the inability to refinance their construction loan to a permanent loan, the inability to move into their house and the inability to live in their house. Further, Plaintiffs had to rent a home during the course of these proceedings due to Defendants' actions.

56. That Plaintiffs bring this cause of action for malicious prosecution because of Defendants' civil action and Lis Pendens which affect Plaintiffs' home and their ability to obtain a certificate of occupancy and live in the home..

57. That Plaintiffs are informed and believe they are entitled to judgment against Defendants for actual damages, punitive damages and the costs of this action.

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. On the First Cause of Action for actual damages.
- B. On the Second Cause of Action for actual damages and punitive damages.
- C. On the Third Cause of Action for actual damages and for an Order of this Court removing the Lis Pendens and declaring that Plaintiffs acted appropriately.
- D. On the Fourth Cause of Action for actual damages and punitive damages.
- E. On the Fifth Cause of Action for actual damages and punitive damages.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiff

March 16, 2020
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,

Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,

Defendants.

Case Number: 2018-LP-26-_____

NOTICE OF LIS PENDENS

NOTICE IS HEREBY GIVEN that an Action affecting title to real property owned by the above-named parties will be commenced not more than twenty days after this notice pursuant to South Carolina Code § 15-11-10 in the Court of Common Pleas of Horry County, South Carolina, by the above listed Plaintiffs against the above listed Defendants. The Lis Pendens relates to a dispute related to an easement interest in that certain Real Property bearing Horry County Tax Map Number 174-10-02-001, such property more formally described as the real property and improvements thereon more formally described as follows:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

Which includes, that certain piece or portion of land described as the "Scenic Easement Parcel," lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of deed for Horry County, South Carolina.

This is the identical property conveyed to the Defendants herein by deed of PAANaples, LLC, a Florida limited liability company, dated August 30, 2017 and recorded August 31, 2017 in Deed Book 4039 at Page 1507 in the Office of the Register of Deeds for Horry County, South Carolina.

**PURSUANT TO S.C. CODE § 15-11-10,
NOTICE OF THE PENDENCY
OF THE ABOVE-REFERENCED ACTION
IS HEREBY GIVEN.**

Respectfully Submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P. O. Box 357
Myrtle Beach, SC 29578-0357
843.448.2400
Attorneys for Plaintiff

/s/ George W. Redman, III
SC Bar No. 72365

Myrtle Beach, South Carolina

March 15, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Scott Gutovitz, and
Caron Gutovitz,

Plaintiffs,

vs.

Gary L. Park, and
Cynthia C. Park,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-02152

AMENDED ANSWER
AND COUNTERCLAIMS

**TO: GENE CONNELL AND MORGAN MARTIN, ATTORNEY FOR PLAINTIFFS,
SCOTT GUTOVITZ AND CARON GUTOVITZ.**

Defendants, Gary L. Park and Cynthia C. Park (hereinafter "Defendants"), responding to the Amended Complaint of Plaintiffs, Scott Gutovitz and Caron Gutovitz (hereinafter "Plaintiffs"), hereby alleges unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Objections)

1. Each and every allegation in the Complaint, which is not specifically admitted, modified, or explained herein is denied, and these Defendants demand strict proof thereof.
2. This Defendants affirmatively object to and deny any and all attempts to characterize, interpret, or delineate the Plaintiffs' rights or obligations under any contract and/or any other document involved in the transaction, which is the subject of this Action.
3. Defendants affirmatively and specifically state the terms and/or provisions of any and all documents referenced in Plaintiffs' Complaint speak for themselves, and hereby crave specific reference to said terms and/or provisions of said documents.

FOR A SECOND DEFENSE
(Specific Responses)

4. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
5. Upon information and belief, Defendants admit the allegations in Paragraph 1.
6. Defendants admit the allegations in Paragraphs 2 and 3 of Plaintiffs' Complaint.
7. As to Paragraphs 4 and 5 of Plaintiffs' Complaint, Defendants admit the Plaintiffs' Property is subject to and restricted by the referenced easement agreements, and that Plaintiffs' have repeatedly violated the terms of both of said agreements.
8. Defendants deny the allegations in Paragraph 6 and 7 and demand strict proof thereof.
9. As to the allegations in Paragraph 8, Defendants are without information and knowledge sufficient to form a belief, and as such, deny the same, and as such, demand strict proof thereof.
10. As to the allegations in Paragraph 9, Defendants admit that a Lis Pendens was properly filed against the Property to secure Defendants' easement rights over and across the Plaintiffs' property.
11. Defendants deny the allegations in Paragraph 10 and demands strict proof thereof.
12. Paragraph 11 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied, and strict proof is demanded thereof.
13. Defendants deny the allegations in Paragraphs 12 and 13, and demands strict proof thereof.
14. Paragraphs 14 and 15 are pleading paragraphs and do not require a response, however, to the extent any response may be required, said allegations are denied, and strict proof is demanded thereof.
15. Defendants admit the allegations in Paragraph 16.

16. Defendants deny the allegations in Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 and, as such, demand strict proof thereof.
17. Paragraph 31 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied, and strict proof is demand thereof.
18. Defendants deny Paragraphs 32 and 33 and demand strict proof thereof.
19. Defendants assert the documents referenced in Paragraph 34 speak for themselves and specifically deny any inconsistencies therewith and demand strict proof thereof.
20. Defendants deny Paragraphs 35, 36, 37, and 38 and demand strict proof thereof.
21. Paragraph 39 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied, and strict proof is demanded thereof.
22. Defendants deny Paragraphs 40, 41, 42, 43, 44, 45, 46, and 47 and demand strict proof thereof.
23. Defendants deny Plaintiffs are entitled to the judgment prayed for in Paragraph 48 and demand strict proof thereof.
24. Paragraph 49 is a pleading paragraph and does not require a response, however, to the extent any response may be required, said allegations are denied, and strict proof is demanded thereof.
25. Defendants admit the allegation in Paragraph 50.
26. Defendants deny Paragraphs 51, 52, 53, 54, 55, 56, and 57 and demand strict proof thereof.
27. Defendants deny the Plaintiffs are entitled to any relief prayed for in the Wherefore Paragraph of their Complaint.

FOR A THIRD DEFENSE

(Rule 12(b)(8), SCRPC)

28. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
29. This Action must be dismissed because another Action is pending between the same parties for the same claims in violation of Rule 12(b)(8) of the *South Carolina Rules of Civil Procedure*.

FOR A FOURTH DEFENSE

(Rule 12(b)(6), SCRPC)

30. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
31. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action for slander of title, and the South Carolina Supreme Court has specifically held that the filing of a Lis Pendens cannot create a claim for Slander of Title, and therefore Plaintiffs' second cause of action must be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.
32. Plaintiffs' Complaint fails to allege facts sufficient to constitute a cause of action for Malicious Prosecution, and therefore Plaintiffs' Complaint must be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR A FIFTH DEFENSE

(Truth and Probable Cause)

33. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.

34. Plaintiff's claims for Slander of Title and Malicious Prosecution must be stricken because the Gutovitz Plaintiffs have in fact breached the easement agreements, and the statements in the Civil Action between the same parties based upon the same facts and claims in the Pending Civil Action which was filed before this Action, bearing civil action number 2019-CP-26-02083, are in fact true.
35. As the Park's claims are true, they cannot and are not slanderous, as a matter of law.
36. Plaintiff's claims for Slander of Title and Malicious Prosecution must be stricken because the Gutovitz Plaintiffs have in fact breached the easement agreements, and the statements in the Civil Action between the same parties based upon the same facts and claims in the Pending Civil Action which was filed before this Action, bearing civil action number 2019-CP-26-02083, are in fact based upon such provable facts well beyond probable cause.
37. The Gutovitz claims of malicious prosecution require them to prove the lack of probable cause, and as such, they must be stricken as a matter of law.
38. The Gutovitz claims of Slander of Title and Malicious Prosecution are not based upon any reasonable grounds or factual basis, and are frivolous and violate Rule 11 of the South Carolina Rules of Civil Procedure.

FOR THE SIXTH AND SEVENTH DEFENSES,
AND AS THE FIRST AND SECOND COUNTERCLAIMS
(Claims in Pending Action, CA #2019-CP-26-02083)

39. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaim is realleged as if repeated verbatim herein.
40. Defendants hereby incorporate verbatim and adopt by reference any and all of their statement of facts, causes of action, claims, and defenses in the Civil Action currently

pending before this Court, bearing civil action number 2019-CP-26-02083, as affirmative claims and defenses in this Action.

41. Pursuant to Rule 10(c), the Complaint in Civil Action #2019-CP-26-02083 with attachments is attached hereto this Answer and Counterclaims as Exhibit A.

FOR AN EIGHTH AFFIRMATIVE DEFENSE AND THIRD COUNTERCLAIM
(Frivolous Proceedings Act S.C. Code § 15-36-10)

42. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
43. The Gutovitz Plaintiffs have forwarded one (1) Slander of Title and two (2) Malicious Prosecution claims in this Action, and said claims are Frivolous and violate Rule 11 of the South Carolina Rules of Civil Procedure, on the grounds that:
 - a. These claims are not reasonably supported by the facts;
 - b. These claims are clearly not warranted under existing law, and a good faith or reasonable argument does not exist for the extension, modification, or reversal of existing law; and,
 - c. The procurement, initiation, and continuation of these claims is intended merely to harass or injure the other party.
44. Gutovitz have been provided with notice that these claims are frivolous by way of correspondence to opposing counsel same being attached hereto as Exhibit B.
45. Parks seek an Order from this Court sanctioning the Gutovitzs for their frivolous claims in this matter, including but not by way of limitation, an order to pay the Parks their costs and attorney's fees for all time and expense required to respond to said frivolous claims and proceedings, including for the initial motions hearings on said lis pendens claims, the motion to amend pleadings, and as to responding to the Gutovitzs' Amended Complaint.

FOR A NINTH AFFIRMATIVE DEFENSE AND FOURTH COUNTERCLAIM
(Doctrine of Mistake; Recession of Easement Amendment as Void Ab Initio,)

46. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
47. The initial Easement Agreement did not allow the construction of any structures within the Easement Parcel on the Gutovitz property unless the Parks' (or the owner of the Parks' property) had provided their advance written consent.
48. By way of email to Mrs. Park dated July 26, 2018, at 12:08 PM, the Gutovitzs asked the Parks to modify the Easement Agreement so as to allow construction of structures within the Easement Parcel.
49. Consistent with the Gutovitzs' email request, the Parks intended to enter into an agreement to be publicly recorded which would amend the Easement Agreement to allow limited construction within the Easement Parcel, including an uncovered (single level) porch, so long as that uncovered porch was not closer to the ocean than the Parks' existing porch.
50. The Gutovitzs provided a sketch of their proposed construction for the review and approval by the Parks which was later attached to the Easement Amendment as "Exhibit A."
51. The sketch labeled Exhibit A seemed consistent with the Gutovitzs' email requests, however, it does not show numerous structures which the Gutovitzs' intended to have built but which the Parks did not expressly approve.
52. During their depositions, the Gutovitzs acknowledged that they had an entire set of building plans available, which do clearly show numerous details not depicted on the Exhibit A sketch.
53. The Gutovitzs further testified that instead of presenting the accurate and detailed depictions of their plans, they carefully found and selected the one page of their plans which does not show various aspects of the structures the Gutovitzs attempted build in the

Easement Parcel, including but not limited to the fact that they were building four (4) multilevel porches, three (3) of which were to be covered, and one of which was situated closer to the ocean than the Parks' existing porch.

54. The Gutovitzs' Exhibit A sketch does not depict material information regarding the structures the Gutovitzs intended to build and did partially build, and therefore they have breached the Easement Amendment, and the Parks are entitled to damages and the rescission of the Easement Amendment, and the removal of said improvements.
55. In the alternative, should the trier of fact determine that any aspect of the Gutovitz structures that are not depicted on the Exhibit A sketch are not a breach of the Easement Agreement and the Easement Amendment, approval of those aspects was a unilateral mistake in which case the Easement Amendment must be rescinded,, and said improvements must be removed.
56. Rescission of the Easement Amendment must be allowed because there is evidence of misrepresentation and concealment.
57. In the alternative, should the trier of fact determine that multiple levels of decking, with any portion thereof, built closer to the ocean than the Parks' existing porch, was shown on the Exhibit A sketch (which they were not) and approved (which they were not), said approval would be a unilateral mistake that was accompanied and induced by fraud, deceit, misrepresentation, or concealment by the Gutovitzs, in which case the Easement Amendment must be rescinded and said improvements must be removed.
58. Although the Easement Amendment must be rescinded, the Easement Agreement remains valid and enforceable and restricts unapproved structures within the Easement Parcel.
59. The Parks acted without negligence in connection with the Easement Amendment and are entitled to rescission of the Easement Amendment.

60. Any and all of the Gutovitz Plaintiffs' claims are barred by the Doctrine of Mistake and Rescission.

FOR A NINTH DEFENSE
(Reservation and Non-Waiver)

61. Each and every allegation, denial, objection, and defense asserted in this Answer and Counterclaims is realleged as if repeated verbatim herein.
62. Defendants reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray for the following relief:

- a. That Plaintiffs' Complaint be dismissed with prejudice;
- b. That Defendants in this Action recover all relief they are currently seeking in Civil Action number 2019-CP-26-02083, and by adoption in this Action involving the same parties and same subject matter;
- c. That Defendants be awarded the cost and expenses associated with the defense and prosecution of this Action, including reasonable attorney fees;
- d. This Honorable Court issue an Order enjoining further breaches of the Easement Agreement, expressly rescinding the Easement Amendment, and requiring removal of the Gutovitzs' structures within the Easement Parcel until such time as the Parks approve said structures; and,
- e. This Honorable Court award such other further relief to Defendants as it may deem just and proper.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

843.448.2400

Attorneys for the Park Defendants

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-_____

Gary L. Park and
Cynthia C. Park,
Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
Attorneys for Plaintiffs

/s/ George W. Redman, III
S.C. Bar No. 72365

Myrtle Beach, South Carolina

April 5, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-26-_____

Gary L. Park and)
Cynthia C. Park,)
Plaintiffs,)

vs.)

COMPLAINT

Scott Barry Gutovitz and)
Caron Dawn Gutovitz,)
Defendants.)

Plaintiffs Gary L. Park and Cynthia C. Park, Complaining of Defendants Scott Barry Gutovitz and Caron Dawn Gutovitz, respectfully show and allege unto this honorable court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Gary L. Park and Cynthia C. Park (hereinafter "Plaintiffs" or "Parks") are residents of Horry County, South Carolina.
2. Defendants Scott Barry Gutovitz and Caron Dawn Gutovitz, (hereinafter "Defendants" or "Gutovitzs") are residents of Horry County, South Carolina.
3. This Action involves the Gutovitzs' defaults, violations, and unjustifiable breaches of an express easement upon, over, and of and concerning a residential parcel of oceanfront real property situate in Myrtle Beach, South Carolina.
4. Based upon the foregoing, venue is proper in Horry County, South Carolina and this Honorable Court has jurisdiction over the Parties and the subject matter set forth herein this Action.

STATEMENT OF FACTS

5. As of May 12, 2017, an entity named PAANaples, LLC (“PAANaples”) owned the property which is the subject of this Action (hereinafter the “Property” or the “Subservient Property”), bearing a street address of 4900 N. Ocean Blvd., Myrtle Beach, South Carolina, Horry County tax map number 174-10-02-001, with the following legal description:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Plat Book 5, Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

This is the identical property conveyed to the Grantor herein by deed of Howard L. Cohen dated February 17, 2017 and recorded February 21, 2017 in Deed Book 3989 at Page 778 in the Office of the Register of Deeds for Horry County, South Carolina.¹

6. As of May 12, 2017, the Parks owned the adjacent residential oceanfront lot (hereinafter the “Dominant Property”) with a street address of 4902 N. Ocean Boulevard, Myrtle Beach, South Carolina, same bearing Horry County tax map number 174-10-02-002, with the following legal description:

ALL AND SINGULAR that certain piece, parcel or lot of land, together with improvements located thereon, situate, lying and being at Myrtle Beach, South Carolina and being more particularly described as Lot Two (2) Block Number One Hundred Nineteen (119), as shown on a map of the Dunes Section of Myrtle Beach by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Plat Book 5 at Page 33, in the Office of the Register of Deeds for Horry County, South Carolina.

This is the identical property conveyed unto Gary L. Park, Cynthia C. Park and John T. Chambers by Deed of James W. Hill and Laura A. Hill, recorded on October 14, 2004, in Deed Book 2809 at Page 0838, records of the Office of the Registrar of Deeds for Horry County, South Carolina.

¹ The map prepared by N.C. Hughes, Jr., and Engineer, dated February 1939, and recorded in Horry County Plat Book 5, Page 33, is attached hereto and incorporated herein as “Complaint Exhibit A.”

This being the identical property conveyed unto Gary L. Park, Cynthia C. Park by Quit-Claim Deed of John T. Chambers recorded in Deed Book 3817 at Page 1534, records of the Office of the Register of Deeds for Horry County, South Carolina.

7. On May 12, 2017, PAANaples granted a perpetual easement over the Subservient Property in favor of the Parks and the Dominant Property, the terms of which are expressly set forth in the Scenic Easement (“Scenic Easement”), executed on May 12, 2017, and recorded on July 13, 2017, in the Horry County Registrar of Deeds in Deed Book 4025 at Page 2283 (Attached hereto and incorporated verbatim as “Complaint Exhibit B”).
8. The Scenic Easement expressly and perpetually restricted construction on a portion of the Subservient Property referred to as the Scenic Easement Parcel, providing in pertinent part:

[T]here shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the **Scenic Easement Parcel** unless an application therefor, with plans and specification of such structures, together with a statement of purpose for which the structure will be used, has been submitted to written approval obtained from the Grantee. *(emphasis added)*
9. The Scenic Easement Parcel on the Subservient Property is specifically described by Exhibit C of the Scenic Easement with the following legal description:

ALL AND SINGULAR, that certain piece or portion of land described as the “**Scenic Easement Parcel**” lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A., dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of Deeds for Horry County, South Carolina.
10. The above-referenced Plat (the “Scenic Easement Parcel Plat”), recorded on May 4, 2017 in Plat Book 275, at Page 112, is attached hereto and incorporated herein this Complaint as “Complaint Exhibit C.”
11. The language of the Scenic Easement specifically identifies the boundaries of the Scenic Easement Parcel and specifically restricts the Subservient Property to prevent construction,

including but not limited to that which would potentially block the oceanfront view of and from the Dominant Property.

12. The Scenic Easement provides the restriction runs with and burdens the Dominant and Subservient Property “and shall be binding upon Grantor, its successors, assigns and successors-in-title to the Subservient Parcel and shall inure to the benefit of the [Parks], the owner or owners of the Dominant Parcel, and their respective successors, heirs, personal representatives and successors-in-title.”
13. On August 30, 2017, PAANaples, LLC, conveyed the Subservient Property to the Gutovitzs by way of that certain Title to Real Estate, recorded on August 31, 2017, with the Horry County Registrar of Deeds in Deed Book 4039, Page 1507.
14. By operation of South Carolina law and the express language of the Gutovitzs’ Deed, the Subservient Property was conveyed subject to all covenants, conditions, restrictions and easements found in the public records for Horry County, specifically including the Scenic Easement Agreement.
15. After purchasing the Subservient Property, the Gutovitzs asked the Parks to amend the Scenic Easement so that an uncovered porch could be built within the Scenic Agreement Parcel in a position that would be in line with, but not extend any further toward the ocean than the existing porch on the Parks’ residence.
16. Despite having no legal obligation to amend the Scenic Easement Agreement, in an effort to be good and reasonable neighbors, the Parks agreed to the Gutovitzs’ request by entering into that certain First Amendment to Scenic Easement (hereinafter the “Amended Scenic Easement”), dated September 19, 2019, attached hereto as “Complaint Exhibit D.”
17. The Parks not only agreed to the Gutovitzs’ request, they employed the McNair Law Firm and paid the costs associated with the drafting and attempts to record the Amended Scenic Easement.

18. The Amended Scenic Easement provides as follows verbatim:

... Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:

- a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind; quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
- b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
- c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
- d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

19. The "plans" (hereinafter "Plans") referenced by the Amended Scenic Easement depicted the proposed structure with a single level uncovered porch on the oceanfront side of the building. Said Plans are attached hereto and incorporated herein as "Complaint Exhibit E."

20. Upon information and belief, due to an unknown and unanticipated issue with the Plans, the Amended Scenic Agreement could not be recorded with the Horry County Registrar of Deeds.

21. The Gutovitzs began construction which clearly and almost immediately violated the terms of the Scenic Easement Agreement, the Amended Scenic Easement, and the Plans attached to the Amended Scenic Easement (collectively referred to as the "Easement Agreements"), as a portion of the Gutovitzs' oceanfront porch had multiple levels and was obviously being positioned in front and exceeding the porch of the Parks' residence. Pictures taken in November of 2018 and as of the date of this Complaint depicting the Gutovitzs' violation is attached hereto and incorporated herein as "Complaint Exhibit F."

22. The Parks were forced to obtain and employ counsel to demand the Gutovitzs cease and desist their breaches of the Easement Agreements, first by way of letter from the McNair Law Firm, dated November 16, 2018, same being attached hereto and incorporated herein as "Complaint Exhibit G."
23. Thereafter and in response, counsel for the Gutovitzs wrote a series of emails confirming the Gutovitzs' breaches of the Easement Agreements, refusing to abate and/or cure the breaches, and challenging the validity of the Easement Agreements.
24. The Gutovitzs obtained two surveys which specifically depict the Gutovitzs' porch extending several feet further toward the ocean than the existing porch on the Parks' residence, both of which were forwarded to the Parks by their counsel via emails dated November 29 and 30, 2018, both being attached hereto and incorporated herein as "Complaint Exhibit H."
25. As a result, the Parks were forced to employ additional counsel who formally demanded the Gutovitzs cease and desist their breaches of the Easement Agreements, by way of letter from the Bellamy Law Firm, dated December 17, 2018. Same being attached hereto and incorporated herein as "Complaint Exhibit I."
26. The Gutovitzs have refused to comply with their obligations under the Easement Agreements as they have made numerous changes to their constructions plans, and at no time have they obtained the prior written consent of Parks as required by the Easement Agreements and South Carolina law.
27. The Parks have continually and repeatedly provided the Gutovitzs and their counsel with notice of their objection to the violations of the Easement Agreements, as well as their intention to enforce all of their rights under the Easement Agreements.
28. The undersigned counsel last contacted Counsel for Gutovitzs on April 4, 2019 in an effort to avoid the filing of this Action.

FIRST CAUSE OF ACTION

(Intentional and Reckless Breach of Express Easement Agreements)

29. Each and every allegation set forth in this Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.
30. Gutovitzs bought the Subservient Property subject to the Easement Agreements.
31. The Parks have acted in good faith and as a good neighbors as they attempted to accommodate the Gutovitzs' desire to move their residence in line with the Parks' residence, even going so far as to employ and pay for counsel at the McNair Law Firm to draft and attempt to record the Amended Scenic Easement.
32. Gutovitzs have intentionally, willfully, and recklessly breached and violated their obligations set forth within the Easement Agreements, as is more specifically set forth above, and said unjustifiable defaults, breaches, and violations specifically include, but not by way of limitation, the following:
 - a. Positioning and building structures and improvements closer to the oceanfront than those on the Parks' Dominant Property;
 - b. Failing and refusing to remove structures and improvements that were built closer to the oceanfront than those on the Parks Dominant Property;
 - c. Making unauthorized changes to the Plans referenced in the Amended Easement;
 - d. Failing and refusing to present plans to the Parks to obtain their consent;
 - e. Failing and refusing to present plans to the Parks which can be publicly recorded;
 - f. Continuing construction despite receiving notice of violations and repeated demands to cease and desist;

- g. Causing the Parks to incur significant attorney fees by and through their refusal to acknowledge and timely remedy their violations of the Easement Agreements;
 - h. Failing and refusing to reimburse the Parks for significant attorney fees incurred due to their violations of the Easement Agreements;
 - i. Having failed to obtain plans to which the Parks consent, failing to remove structures within the Scenic Easement Parcel;
 - j. Having failed to obtain plans to which the Parks consent, constructing a porch within the Scenic Easement Parcel;
 - k. Having failed to obtain plans to which the Parks consent, building a residence within the Scenic Easement Parcel; and,
 - l. Such other breaches and violations as may be revealed during the discovery of this Action.
33. The Parks did not give consent to any change and fully expected and relied upon the plans presented by Gutovitzs and attached to the Amended Scenic Easement.
34. The Amended Scenic Easement expressly includes the following default provision:
- Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damages in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) construct or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive to any other remedy available to Park including recovery or reasonable attorney's fees and costs.
35. As a result of Gutovitzs' defaults, unjustifiable breaches, and violations, the Parks have incurred damages, costs, and expenses which include, but not by way of limitation, the costs of this law suit and attorney's fees.

36. The Parks are entitled to an Order of this Court, both pendent lite and permanent, enjoining the Gutovitzs from continuing construction and demanding the removal of any and all structures within the Scenic Easement Parcel;
37. The Parks pray for an Order from this Court demanding the Gutovitzs comply with the First Scenic Easement and awarding to the Parks a judgment against Gutovitzs for all of the Parks' damages, including all of the costs incurred in bringing this Action together with its reasonable attorney fees.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction)

38. Each and every allegation set forth in the Complaint, specifically including but not limited to each and every factual assertion set forth above, is realleged and incorporated into this cause of action as if it was repeated verbatim herein.
39. The Easement Agreements set forth certain property rights pertaining to the Parks and the Dominant Property.
40. The Gutovitzs, through their development activities, have taken actions to interfere with and encroach upon the Parks' easement rights. The Parks pray for and are entitled to an Order from this Honorable Court declaring the full extent of the Parks' rights under the Easement Agreements. The Parks assert Gutovitzs breached their obligations under the terms of the Scenic Easement and Amended Scenic Easement by constructing their uncovered porch to obstruct the Parks' view.
41. As a result, the Parks are entitled to an Order and Declaration from the court providing the Easement be declared valid and that it shall run with the land, perpetually, that the Amended Scenic Easement be publicly recorded in Horry County, South Carolina, and awarding the Parks all attorney fees related to bringing this Action.

WHEREFORE, the Parks, having complained of Gutovitzs, hereby pray for the following relief:

- a. An Order of this Honorable Court granting the relief under the Causes of Action set forth above as to the Parks' actual, incidental and consequential damages, all costs and fees, including but not limited to attorney's fees;
- b. An Order of this Honorable Court stating that the benefits and burdens of the Scenic Easement are valid and enforceable and runs with the land as to the Dominant and Subservient Property which is the subject of this Action;
- c. The Parks pray for immediate, pendent lite, and permanent injunctive relief to prevent Gutovitzs from obstruction of the Parks' rights under the Easement Agreements, including but not limited to removing any and all structures build within the Scenic Easement Parcel;
- d. An Order clearing declaring the full extent of the Parks' rights under the Easement Agreements; and,
- e. Any and all other relief which is deemed just and proper by this Honorable Court and the trier of fact.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P. O. Box 357
Myrtle Beach, SC 29578-0357
843.448.2400
Attorneys for Plaintiffs

/s/ George W. Redman, III
SC Bar No. 72365

Myrtle Beach, South Carolina

April 5, 2019.

THE DUNES
PROPERTY OF
MYRTLE BEACH FARMS COMPANY
MYRTLE BEACH, SOUTH CAROLINA

SCALE ONE INCH = 100 FEET

N. C. HUGHES, JR., ENGINEER

MYRTLE BEACH, S. C.

FEBRUARY 1939

5 @ 33

Copy of

Letter

Attached

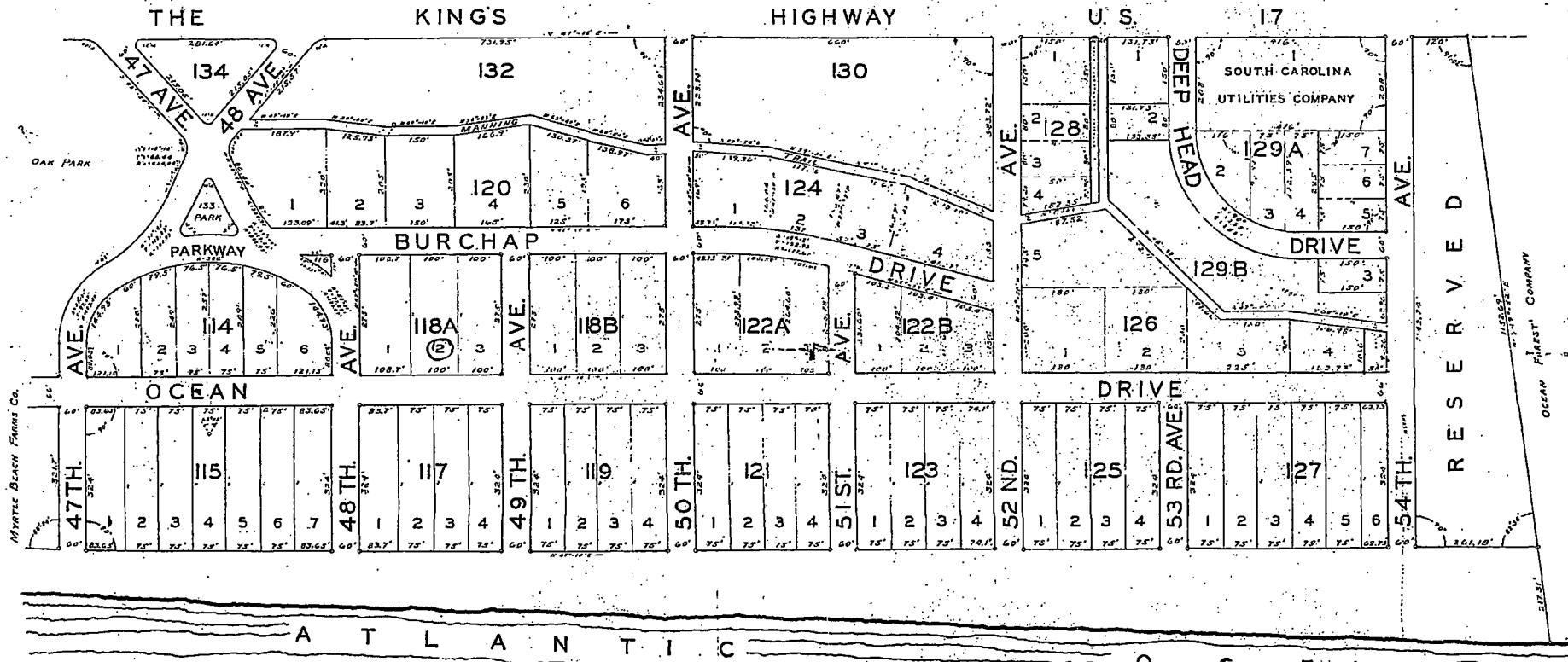
to be

Block 120
124
130
134

17

Realty - White

Ocean Forest Company



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Complaint Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

SCENIC EASEMENT AGREEMENT

THIS SCENIC EASEMENT AGREEMENT ("Agreement") is made effective this 12 day of May, 2017, by and between Paanaples, LLC ("Grantor") and Gary L. Park and Cynthia C. Park ("Grantee").

RECITALS:

WHEREAS, Grantor is the owner of Lot 1 Block 119, Dunes Section, that certain real property located in Horry County, South Carolina, bearing a Tax Map Number of 174-10-02-001, and described on Exhibit "A" attached hereto ("Subservient Parcel") and made a part and parcel hereof; and

WHEREAS, Grantee is also the owner of Lot 2, Block 119, Dunes Section, that certain real property located in Horry County, bearing a Tax Map Number of 174-10-02-002, and described on Exhibit "B", attached hereto ("Dominant Parcel") and made a part and parcel hereof; and

WHEREAS, Grantor has determined that a portion of the Subservient Parcel described on Exhibit "C" attached hereto ("Scenic Easement Parcel") and made a part and parcel hereof, shall be perpetually maintained and preserved as open space for the benefit of Grantee and the owner or owners from time to time of the Dominant Parcel.

NOW, THEREFORE, Grantor declares that the Scenic Easement Parcel is and shall be held, transferred, sold, encumbered, conveyed and occupied subject to the covenants, restrictions and easements hereinafter set forth:

1. The restrictions hereby imposed upon the use of the Scenic Easement Parcel are and shall be as follows:

(a) Grantor agrees that there shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and written approval obtained from the Grantee.

2. Enforcement of the covenants and restrictions contained herein, and of any other provision hereof, shall be by any appropriate proceeding at law or in equity against the person or persons violating or attempting to violate these covenants and restrictions.

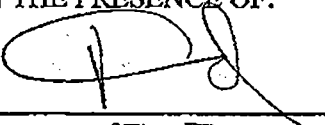
3. This Agreement shall be a covenant running with and burdening the Subservient Parcel and shall be binding upon Grantor, its successors, assigns and successors-in-title to the Subservient Parcel and shall inure to the benefit of the Grantee, the owner or owners of the Dominant Parcel, and their respective successors, heirs, personal representatives and successors-in-title.

4. The Scenic Easement Parcel for all other purposes, such as taxes, insurance and maintenance, shall remain the responsibility of the Grantor, its successors, assigns and successors-in-title to the Subservient Parcel.

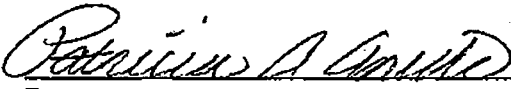
IN WITNESS WHEREOF, Grantor has caused this Scenic Easement Agreement to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR
PAANAPLES, LLC



Signature of First Witness



By: _____
Its: Member



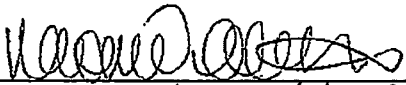
Signature of Second Witness/Notary Public

Florida
STATE OF ~~SOUTH CAROLINA~~)
COUNTY OF ~~Horry~~ Collier)

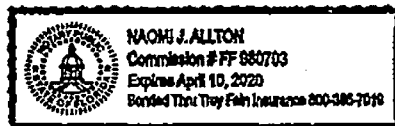
ACKNOWLEDGEMENT

I, Naomi Alton, a Notary Public do hereby certify that Paanaples, LLC by Patricia Anido, its Member, the within named Grantor personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 12th day of May, 2017.

 (SEAL)
Print Name: Naomi Alton
Notary Public for ~~South Carolina~~ Florida
My Commission Expires: April 10, 2020

(AFFIX SEAL)



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

Mark C. May
Signature of First Witness

Gary L. Park
Gary L. Park

Valarie E. Causey
Signature of Second Witness/Notary Public

Cynthia C. Park
Cynthia C. Park

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

I, Valarie E. Causey, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 5th day of July, 2017.

Valarie E. Causey (SEAL)
Print Name: Valarie E. Causey
Notary Public for South Carolina
My Commission Expires: March 6, 2024

(AFFIX SEAL)

VALARIE E CAUSEY
Notary Public, State of South Carolina
My Commission Expires Mar. 6, 2024

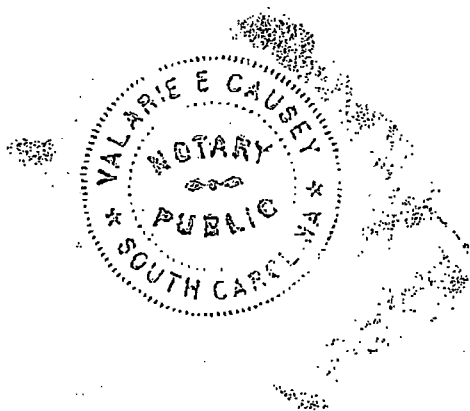


Exhibit "A"
Subservient Parcel

All and singular, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

This being the identical property conveyed to Paanaples, LLC by deed of Howard L. Cohen recorded February 21, 2017 in Deed Book 3989 at Page 778, Horry County Register of Deeds.

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - HORRY - COMMON PLEAS - CASE#2019CP2602083
ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - HORRY - COMMON PLEAS - CASE#2019CP2602152

Exhibit "B"
Dominant Parcel

ALL AND SINGULAR, that certain piece, parcel or lot of land, with improvements thereon situate, lying and being in the City of Myrtle Beach, South Carolina and state aforesaid, and being more particularly described as Lot Two (2), Block One Hundred Nineteen (119) of the Dunes Section, as will be more fully shown on a plat prepared by N.C. Hughes, Jr., Engineer, dated February, 1939, and recorded in Plat Book 5, at Page 33, in the Office of the Register of Deed for Horry County, South Carolina.

This being the identical property conveyed to Gary L. Park, and Cynthia C. Park, by deed of John T. Chambers on April 30, 2015 and recorded May 1, 2015 in Deed Book 3817 at Page 1534, Horry County Register of Deeds.

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ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - HORRY - COMMON PLEAS - CASE#2019CP2602152

Exhibit "C"
Scenic Easement Parcel

ALL AND SINGULAR, that certain piece or portion of land described as the "Scenic Easement Parcel", lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of Deed for Horry County, South Carolina.

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - HORRY - COMMON PLEAS - CASE#2019CP2602083
ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - HORRY - COMMON PLEAS - CASE#2019CP2602152

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information
2. The property being transferred consists of certain easement rights, granted by Paanaples, LLC to Gary L. Park and Cynthia C. Park on property described as a portion of Lot 1, Block 119 of Dunes Section, bearing Horry County TMS # 174-10-02-001.
3. Check one of the following:
 - (a) ☐ subject to the recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ exempt from the recording fee because the value of the property being transferred is less than \$100.00. (If exempt, please skip items 4-7, and go to item 8 of this affidavit).
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is .
5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is .
6. The recording fee is computed as follows:
 - (a) ☐ Place the amount listed in item 4 above here: \$
 - (b) ☐ Place the amount listed in item 5 above here:
(If no amount is listed, place zero here).
 - (c) ☐ Subtract line 6(b) from 6(a) and place here. \$
7. The recording fee is based on the amount listed on Line 6(c) above and the easement recording fee due is \$.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 13th
day of July, 2017

Notary Public for S.C.

My commission expires: 7-5-26

JOANNE Fitzsimmons

McNair Law Firm, PA

By: [Signature]

Bruni Patel

STATE OF SOUTH CAROLINA) FIRST AMENDMENT TO
) SCENIC EASEMENT AGREEMENT
COUNTY OF HORRY)

THIS FIRST AMENDMENT TO SCENIC EASEMENT AGREEMENT ("Amendment") is made effective this 19th day of September, 2018, by and between Scott Barry Gutovitz and Caron Dawn Gutovitz ("Gutovitz") and Gary L. Park and Cynthia C. Park ("Park").

RECITALS:

- A. Park obtained certain rights through that certain Scenic Easement Agreement dated May 12, 2017 and recorded on July 13, 2017 in **Book 4025 at Page 2283** in the Office of the Register of Deeds, Horry County, South Carolina (the “Easement Agreement”); and
- B. Gutovitz are the current owners of the Subservient Parcel as referenced in the Easement Agreement. The parties hereto mutually desire to amend the terms of the Easement Agreement as provided herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars in hand paid by Gutovitz to Park, the above recitals and the mutual terms, conditions, and provisions herein and in the Easement Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, Gutovitz and Park agree as follows:

1. The above Recitals are hereby incorporated into this Amendment. All capitalized words not otherwise defined herein shall have the meanings set forth in the Easement Agreement.
2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 - b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
 - d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

3. Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs.

4. Remaining Terms and Conditions. The parties hereto acknowledge and agree that no other term, provision, or condition of the Easement Agreement has been changed or modified by this Amendment except as specified above and that the Easement Agreement, as modified by this Amendment, remains in full force and effect.

5. Binding Agreement. The foregoing provisions shall bind and inure to the benefit of Gutovitz and Park and their respective successors and assigns.

[Signatures on Next Page]

IN WITNESS WHEREOF and intending to be legally bound, the parties have set their hands and seals hereunto and have caused this instrument to be executed and their seals to be affixed hereto by their respective, duly authorized officers as of the above Effective Date.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Signature of First Witness

[Signature]
Scott Barry Gutovitz

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Caron Dawn Gutovitz

STATE OF SC)
COUNTY OF Horry)

ACKNOWLEDGEMENT

I, Cara N. Airey, a Notary Public do hereby certify that the within named Scott Barry Gutovitz and Caron Dawn Gutovitz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 19th day of September, 2018.

[Signature] (SEAL)
Print Name Cara N. Airey
Notary Public for SC
My Commission Expires: 9/20/20

(AFFIX SEAL)

[Signatures Continue on Next Page]



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

[Signature]
Signature of First Witness

[Signature]
Gary L. Park

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Cynthia C. Park

STATE OF NC)
COUNTY OF Orange)

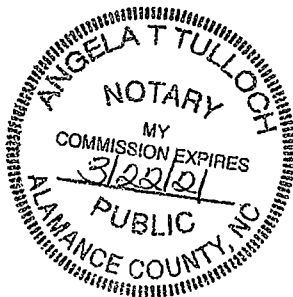
ACKNOWLEDGEMENT

I, Angela T Tulloch, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

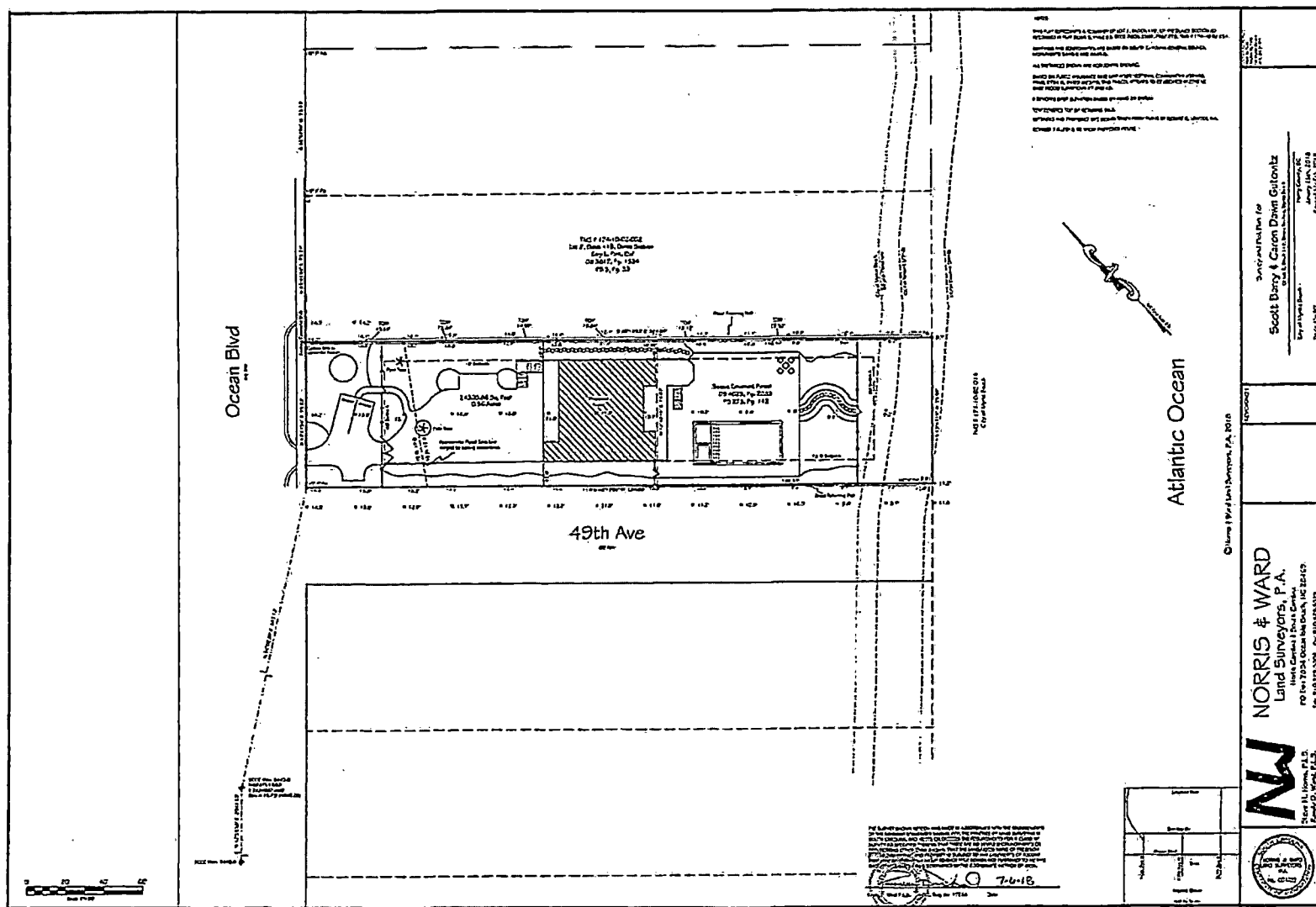
WITNESS my hand and official seal this 10 day of September, 2018.

(SEAL)
Print Name: Angela T Tulloch
Notary Public for Alamance, NC
My Commission Expires: 3/22/21

(AFFIX SEAL)

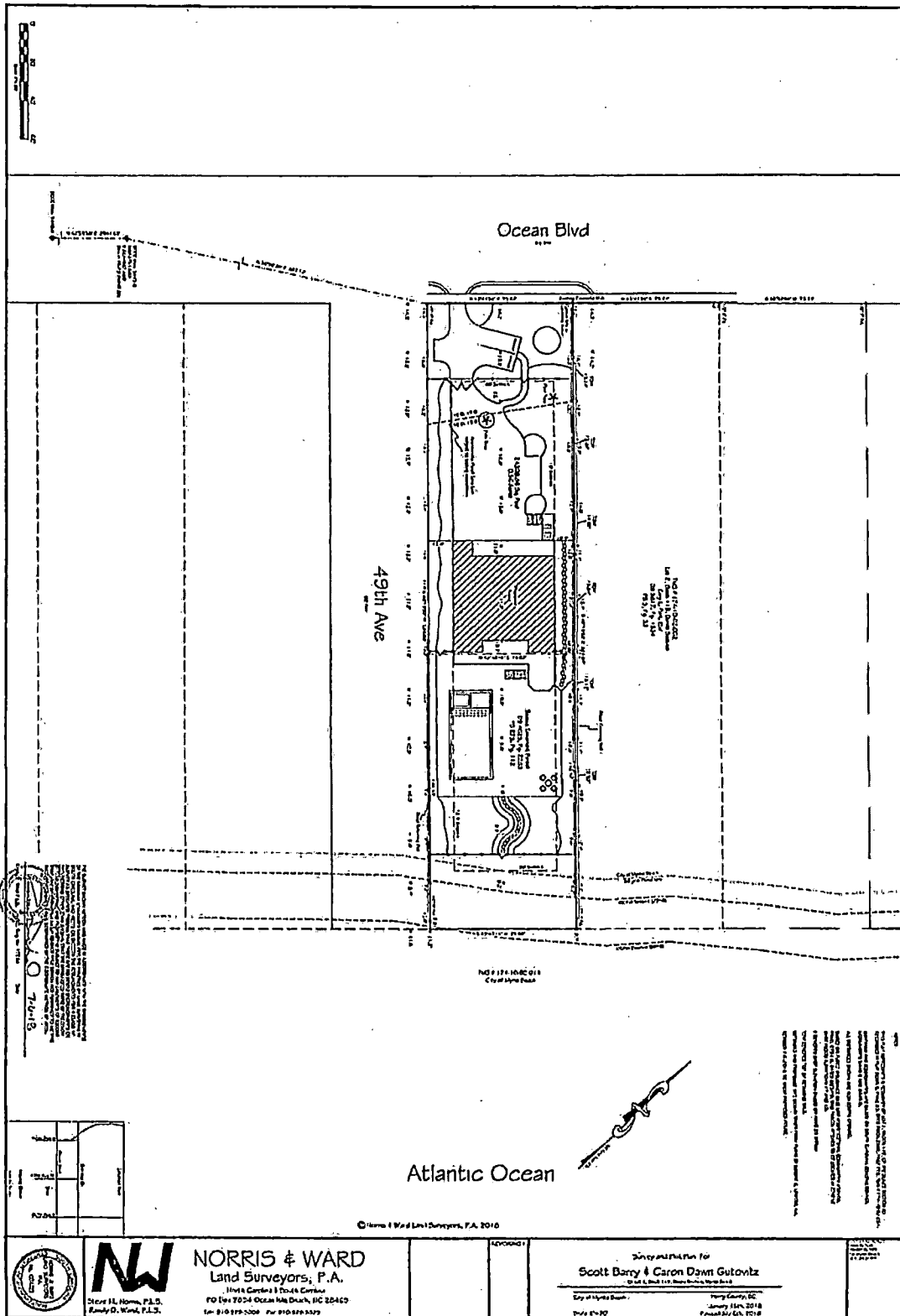


"Exhibit A"



5 Initials *SD* *CD*

"Exhibit A"



Initials SC
J



M C N A I R
ATTORNEYS

November 16, 2018

Amanda A. Bailey

abailey@mcnair.net
T 843.444.1107
F 843.444.4729

Via E-Mail

Scott Barry Gutovitz and Caron Dawn
Gutovitz
5710 Longleaf Drive
Myrtle Beach, SC 29577

Re: First Amendment to Scenic Easement Agreement

Dear Mr. and Mrs. Gutovitz:

As you are aware, the McNair Law Firm, P.A. assisted Gary L. Park and Cynthia C. Park in negotiating, drafting, and executing the First Amendment to Scenic Easement Agreement signed by you on September 19, 2018 ("Agreement"). A version of the final Agreement is attached hereto as "Exhibit A".

It has very recently come to Ms. Park's attention that the construction occurring on your property includes a porch that is greater in size and closer to the ocean than permitted under the terms of the Agreement, and not approved by Park as required. I am sure this was an oversight that neither you nor your contractor intended.

Ms. Park wishes to bring this matter to your attention so that it may be timely and amicably remedied. Please promptly confirm that the size and position of the porch currently under construction will be brought into compliance with the Agreement and that any areas constructed outside of the permitted area/position will be removed. Further, if there have been any changes to the plans and specifications to Exhibit "A" of the Agreement, please submit the same to Ms. Park for her review and consideration.

It is Mrs. Park's sincere desire to amicably resolve this matter, without resort to any equitable or legal remedies, before the end of business on Monday, November 20, 2018.

McNAIR LAW FIRM, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - Horry - COMMON PLEAS - CASE#2019CP2602083
ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - Horry - COMMON PLEAS - CASE#2019CP2602152

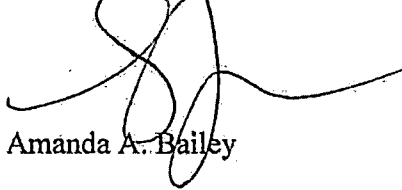
Scott Barry Gutovitz and Caron Dawn Gutovitz
November 16, 2018
Page 2

MCNAIR
ATTORNEYS

Thank you and I look forward to hearing from you.

Very truly yours,

McNAIR LAW FIRM, P.A.



Amanda A. Bailey

AB:cb
Enclosure

cc: McW Custom Homes, License 22896, via U.S. Mail

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - Horry - COMMON PLEAS - CASE#2019CP2602083
ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - Horry - COMMON PLEAS - CASE#2019CP2602152

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

FIRST AMENDMENT TO
SCENIC EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO SCENIC EASEMENT AGREEMENT ("Amendment") is made effective this 19th day of September, 2018, by and between Scott Barry Gutovitz and Caron Dawn Gutovitz ("Gutovitz") and Gary L. Park and Cynthia C. Park ("Park").

RECITALS:

- A. Park obtained certain rights through that certain Scenic Easement Agreement dated May 12, 2017 and recorded on July 13, 2017 in Book 4025 at Page 2283 in the Office of the Register of Deeds, Horry County, South Carolina (the "Easement Agreement"); and
- B. Gutovitz are the current owners of the Subservient Parcel as referenced in the Easement Agreement. The parties hereto mutually desire to amend the terms of the Easement Agreement as provided herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars in hand paid by Gutovitz to Park, the above recitals and the mutual terms, conditions, and provisions herein and in the Easement Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, Gutovitz and Park agree as follows:

1. The above Recitals are hereby incorporated into this Amendment. All capitalized words not otherwise defined herein shall have the meanings set forth in the Easement Agreement.
2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 - b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
 - d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

3. Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs.

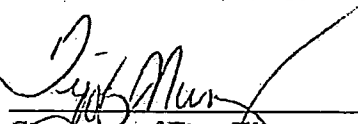
4. Remaining Terms and Conditions. The parties hereto acknowledge and agree that no other term, provision, or condition of the Easement Agreement has been changed or modified by this Amendment except as specified above and that the Easement Agreement, as modified by this Amendment, remains in full force and effect.

5. Binding Agreement. The foregoing provisions shall bind and inure to the benefit of Gutovitz and Park and their respective successors and assigns.

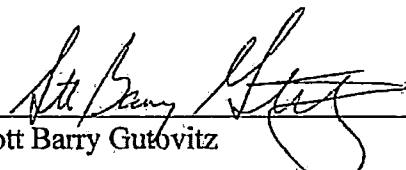
[Signatures on Next Page]

IN WITNESS WHEREOF and intending to be legally bound, the parties have set their hands and seals hereunto and have caused this instrument to be executed and their seals to be affixed hereto by their respective, duly authorized officers as of the above Effective Date.

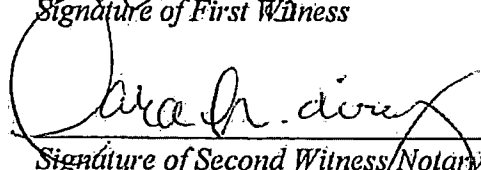
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



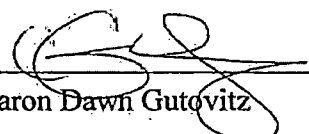
Signature of First Witness



Scott Barry Gutovitz



Signature of Second Witness/Notary Public



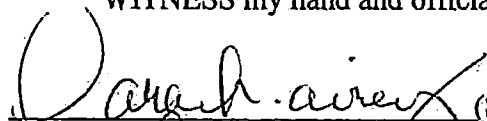
Caron Dawn Gutovitz

STATE OF SC)
COUNTY OF Horry)

ACKNOWLEDGEMENT

I, Cara N. Airey, a Notary Public do hereby certify that the within named Scott Barry Gutovitz and Caron Dawn Gutovitz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 19th day of September, 2018.



Print Name Cara N. Airey (SEAL)
Notary Public for SC
My Commission Expires: 9/20/20

(AFFIX SEAL)

[Signatures Continue on Next Page]



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

[Signature]
Signature of First Witness

[Signature]
Gary L. Park

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Cynthia C. Park

STATE OF NC)
COUNTY OF Orange)

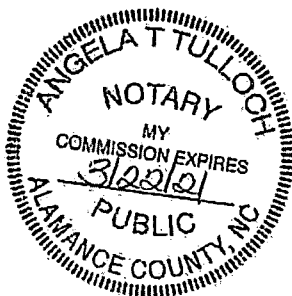
ACKNOWLEDGEMENT

I, Angela T Tulloch, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

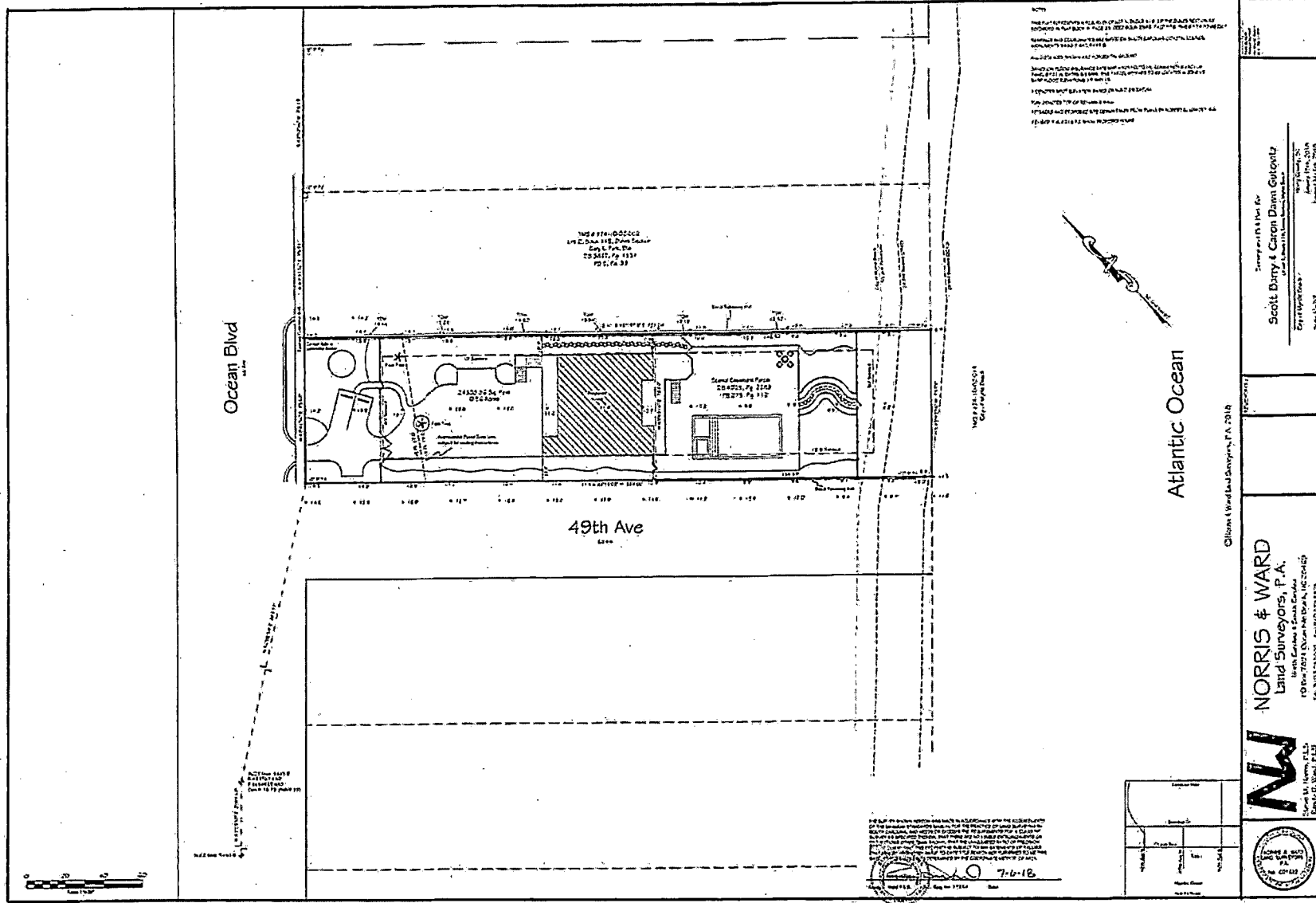
WITNESS my hand and official seal this 10 day of September, 2018.

(SEAL)
Print Name: Angela T Tulloch
Notary Public for Alamance, NC
My Commission Expires: 3/22/21

(AFFIX SEAL)



"Exhibit A"



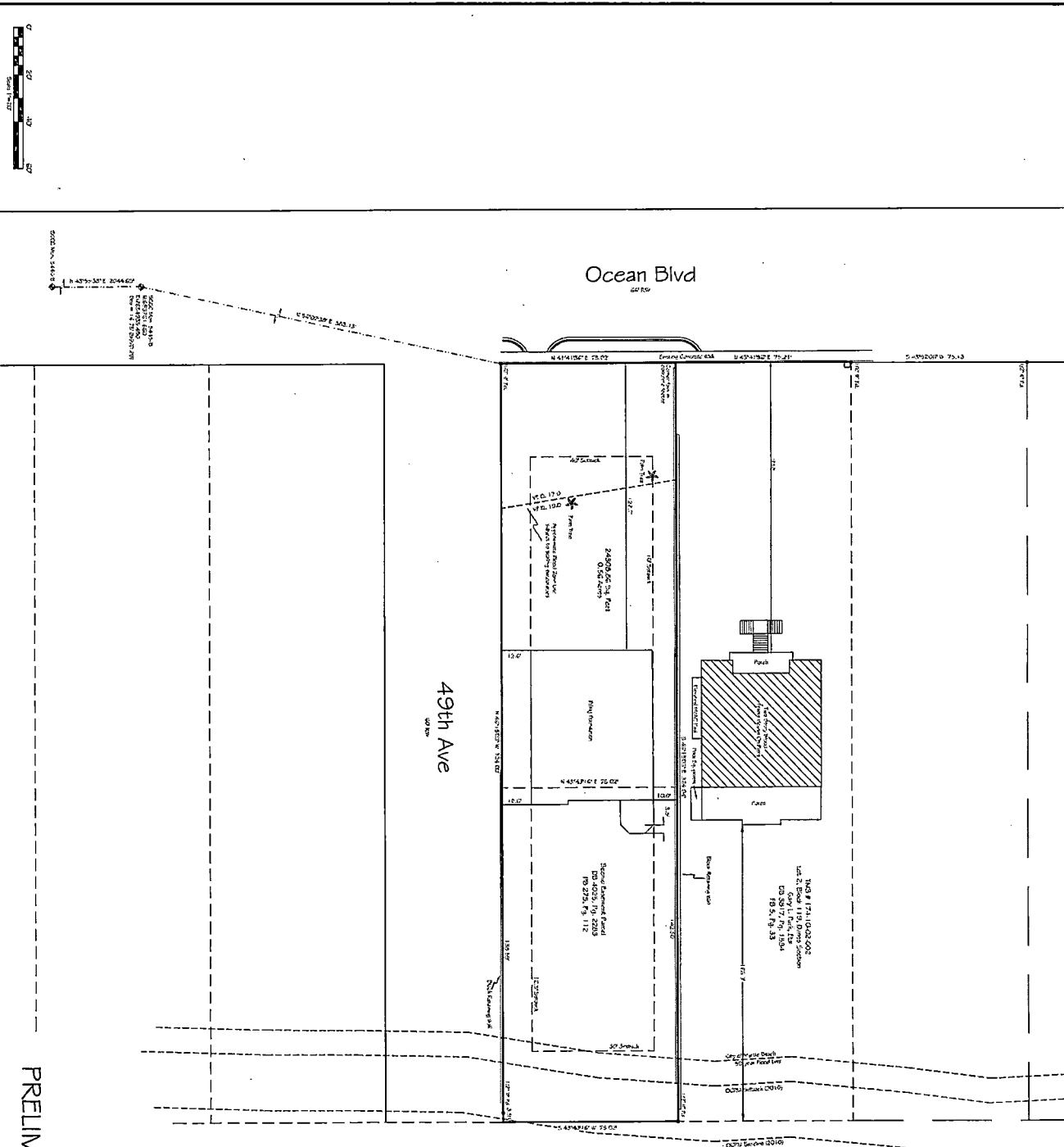
From: Robert Guyton <rsguyton@guytonlawfirm.com>
Sent: Thursday, November 29, 2018 9:04 AM
To: Bailey, Amanda
Subject: Gutovitz/Parks
Attachments: Lot 1, Blk 119 Foundation(A) Model (1).pdf; ATT00001.htm

Attached is the Norris & Ward drawing, I expect to have Robby Warner's drawing by this afternoon. Assuming Robby's drawing agrees with this one, it appears the decking in dispute is 3.5 feet. As a result of lowering the elevation of that deck section, and electing not to include a covered roof, it appears that additional 3.5 feet does not obstruct the view from the Park's deck, and is well short of the Park's enclosed shower structure, which extends beyond their deck.

What I would encourage the Park's to consider is the end result of the two options, which in my mind are: (i) the Parks seek to enforce the scenic easement amendment, which is ambiguous, but even if decided in their favor, would not prevent the Gutovitz from raising the elevation of that deck section, or electing to enclose that section, both of which would have greater impacts on the sight line; or (ii) further amend the proposed amendment to fix the elevation of the deck section in question, and agree that it may not be enclosed. I believe the second option provides more benefit to the Parks, and avoids a conflict that likely eliminates the possibility of a neighborly relationship going forward.

Once I receive the Robby Warner drawing, I will forward that to you also. Thanks.

RECORDED IN PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, BOOK 10, PAGE 10,201,2012



PRELIMINARY

TMS # 174-10-02-014
City of Myrtle Beach

Atlantic Ocean

NOTES:
1. THIS SURVEY IS A PRELIMINARY SURVEY FOR THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.
2. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE RECORDS OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED.
3. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE RECORDS OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED.
4. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE RECORDS OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED.
5. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY OR THE RECORDS OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED.

©Norris & Ward Land Surveyors, P.A. 2018

Surveyed	Area	Acres
1.00	1.00	1.00
2.00	2.00	2.00
3.00	3.00	3.00
4.00	4.00	4.00
5.00	5.00	5.00
6.00	6.00	6.00
7.00	7.00	7.00
8.00	8.00	8.00
9.00	9.00	9.00
10.00	10.00	10.00



NORRIS & WARD
Land Surveyors, P.A.
North Carolina & South Carolina
PO Box 7094 Ocean Isle Beach, NC 28469
Tel: 910-579-5505 Fax: 910-579-5625

REVISIONS
7-06-2016
8-01-2016
11-19-2016

Foundation As-Built Survey For
Scott Barry & Caron Dawn Gutovitz
Of Lot 1, Sub 1-10, Dunes Section, Myrtle Beach
City of Myrtle Beach, Myrtle Beach, SC
November 19, 2018

Scale: 1"=20'

Surveyed	Area	Acres
1.00	1.00	1.00
2.00	2.00	2.00
3.00	3.00	3.00
4.00	4.00	4.00
5.00	5.00	5.00
6.00	6.00	6.00
7.00	7.00	7.00
8.00	8.00	8.00
9.00	9.00	9.00
10.00	10.00	10.00

From: Robert Guyton [mailto:rsguyton@guytonlawfirm.com]

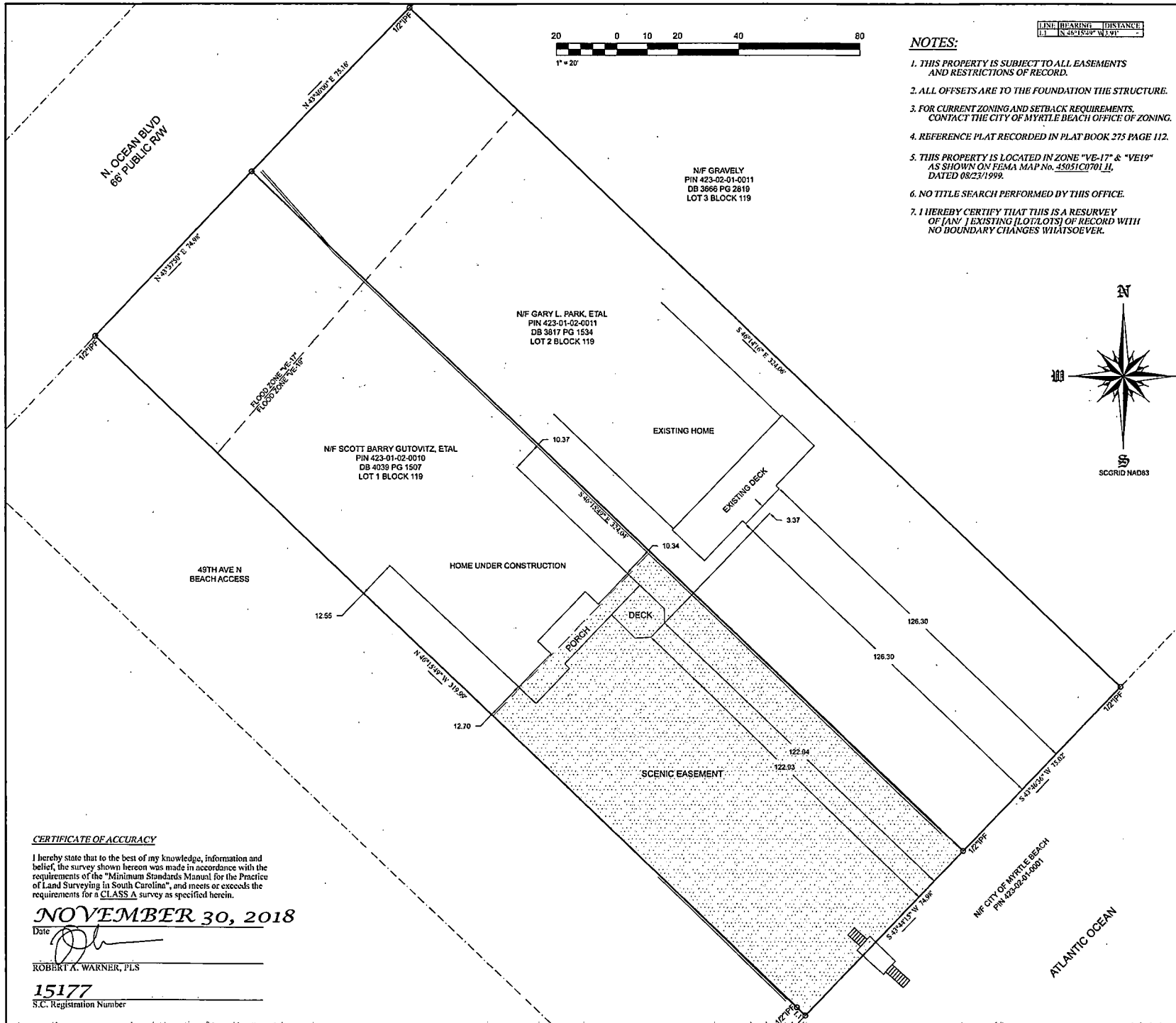
Sent: Friday, November 30, 2018 11:51 AM

To: Bailey, Amanda <ABailey@mcnair.net>

Subject:

Attached is the Robby Warner survey, slightly less but not significant. Just let me know if there is any need to talk through options.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This communication (including any attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, that may attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward or disseminate this communication. If you have received this communication in error, please notify the sender immediately by email and delete this communication and all copies.



- NOTES:**
1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
 2. ALL OFFSETS ARE TO THE FOUNDATION THE STRUCTURE.
 3. FOR CURRENT ZONING AND SETBACK REQUIREMENTS, CONTACT THE CITY OF MYRTLE BEACH OFFICE OF ZONING.
 4. REFERENCE PLAT RECORDED IN PLAT BOOK 275 PAGE 112.
 5. THIS PROPERTY IS LOCATED IN ZONE "VE-17" & "VE19" AS SHOWN ON FEMA MAP No. 45051C0701 II, DATED 08/23/1999.
 6. NO TITLE SEARCH PERFORMED BY THIS OFFICE.
 7. I HEREBY CERTIFY THAT THIS IS A RESURVEY OF [AN] EXISTING [LOT/LOTS] OF RECORD WITH NO BOUNDARY CHANGES WHATSOEVER.

LOCATION MAP

LEGEND

- EXISTING HOME
- EXISTING DECK
- HOME UNDER CONSTRUCTION
- SCENIC EASEMENT
- POURCH
- DECK

Robert A. Warner and Associates, Inc.
 Professional Land Surveying, Mapping and Planning
 Myrtle Beach, South Carolina 29577
 Phone: (843) 666-0024
 Fax: (843) 666-0774
 E-mail: RWARNER@WARNERANDASSOCIATES.COM

EXISTING CONDITIONS SURVEY FOR REAR PORTION OF LOT 1 & 2 BLOCK 119 DUNES SECTION - PREPARED FOR -																									
GUYTON LAW FIRM																									
STATE OF SOUTH CAROLINA																									
<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Name: HARRY</td> <td style="width: 50%;">Job No: 180585</td> </tr> <tr> <td>Date: 11/30/2018</td> <td>Drawn By: RAW</td> </tr> <tr> <td>Scale: 1"=40.00'</td> <td>Permit No: 180585</td> </tr> <tr> <td>Ref: DB 3889 PG 178</td> <td>Permit Date: 11/30/2018</td> </tr> <tr> <td>Ref: DB 3817 PG 134</td> <td>Permit No: 180585</td> </tr> <tr> <td>Ref: DB 3817 PG 134</td> <td>Permit Date: 11/30/2018</td> </tr> </table>	Name: HARRY	Job No: 180585	Date: 11/30/2018	Drawn By: RAW	Scale: 1"=40.00'	Permit No: 180585	Ref: DB 3889 PG 178	Permit Date: 11/30/2018	Ref: DB 3817 PG 134	Permit No: 180585	Ref: DB 3817 PG 134	Permit Date: 11/30/2018	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Name: HARRY</td> <td style="width: 50%;">Job No: 180585</td> </tr> <tr> <td>Date: 11/30/2018</td> <td>Drawn By: RAW</td> </tr> <tr> <td>Scale: 1"=40.00'</td> <td>Permit No: 180585</td> </tr> <tr> <td>Ref: DB 3889 PG 178</td> <td>Permit Date: 11/30/2018</td> </tr> <tr> <td>Ref: DB 3817 PG 134</td> <td>Permit No: 180585</td> </tr> <tr> <td>Ref: DB 3817 PG 134</td> <td>Permit Date: 11/30/2018</td> </tr> </table>	Name: HARRY	Job No: 180585	Date: 11/30/2018	Drawn By: RAW	Scale: 1"=40.00'	Permit No: 180585	Ref: DB 3889 PG 178	Permit Date: 11/30/2018	Ref: DB 3817 PG 134	Permit No: 180585	Ref: DB 3817 PG 134	Permit Date: 11/30/2018
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Ref: DB 3889 PG 178	Permit Date: 11/30/2018																								
Ref: DB 3817 PG 134	Permit No: 180585																								
Ref: DB 3817 PG 134	Permit Date: 11/30/2018																								

CERTIFICATE OF ACCURACY

I hereby state that to the best of my knowledge, information and belief, the survey shown hereon was made in accordance with the requirements of the "Minimum Standards Manual for the Practice of Land Surveying in South Carolina", and meets or exceeds the requirements for a **CLASS A** survey as specified herein.

NOVEMBER 30, 2018

Date:

ROBERT A. WARNER, PLS

15177

S.C. Registration Number

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING**
DAVID B. MILLER*
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON

* LLM TAXATION
** LICENSED IN SC & NC
* CERTIFIED MEDIATOR
** CERTIFIED ARBITRATOR



GEORGE W. REDMAN, III* **
BENJAMIN A. BAROODY* **
PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON* **
KARA J. KEITH**
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III*
ZACHARY J. CROWL

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7160
Email: GRedman@BellamyLaw.com

December 17, 2018

Mr. Robert S. Guyton
Robert S. Guyton, P.C.
4605-B Oleander Dr., Ste. 202
Myrtle Beach, SC 29577-5739

Re: **CEASE AND DESIST VIOLATION/ BREACH OF EASEMENT**
Breach of Scenic Easement Agreement (*d.* May 12, 2017; *rec.* July 13, 2017) &
First Amendment to Scenic Easement Agreement (*d.* Sept. 19, 2018)
Dominant Parcel: 4902 North Ocean Blvd., Myrtle Beach, S.C., 29577
Lot #2, Block 119, Dunes Section
TMS #174-10-02-002

Subservient Parcel: 4900 North Ocean Blvd., Myrtle Beach, S.C., 29577
Lot #1, Block 119, Dunes Section
TMS #174-10-02-001

Dear Mr. Guyton:

Please be advised that our office has been retained by Gary and Cynthia Park in connection with a matter involving the above-referenced Scenic Easement of May 12, 2017. As such, direct any and all future correspondence regarding this matter to my attention using the contact information set forth above. We have obtained a significant amount of documentation from our client's prior counsel, and we are in the process of carefully reviewing this information.

Mr. and Mrs. Park obtained specific rights through the Scenic Easement when agreed to and recorded, and those rights run with the land to clearly restrict construction upon a portion of Lot #1:

[T]here shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to written approval obtained from the Grantee.

Robert S. Guyton, Esquire
 December 17, 2018
 Page 2

In very specific terms, the Scenic Easement prevented any construction on Lot #1 which would block the oceanfront views of Lot #2.

On August 31, 2018, Scott and Caron Gutovitz purchased Lot #1 with record notice of the Scenic Easement Agreement. It is my understanding that you currently represent the interests of Scott Gutovitz and Caron Gutovitz. After their purchase, your clients asked Mr. and Mrs. Park to amend the Scenic Easement to provide that their new house and uncovered decking could be constructed even and in-line with the structure and decking of the Park residence. Acting in good faith, Mr. and Mrs. Park not only agreed to this request, they employed and paid for the McNair Law Firm to draft it.

The terms of the proposed modification were memorialized in the First Amendment to the Scenic Easement Agreement, which was signed by your clients on September 19, 2018 (the "Amendment"). As was contemplated by the parties, the Amendment contained explicit restrictions on the building lines for the new structure. Specifically, Sections 2(b) and 2(c) of the Amendment stated that "[t]he position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park," and "[t]he position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park. Furthermore, the Amendment incorporated "plans" which were attached to the Amendment as Exhibit A (the "Plans"). The Plans depict the proposed structure with a single-level uncovered deck on the oceanfront side of the building.

During the construction on Lot #1, Mr. and Mrs. Park were alarmed to see decking on the Gutovitz structure that had multiple levels being built in front of the decking on the Park residence, in direct contravention to the proposal set forth in the Plans. Mr. and Mrs. Park received no communication, written or otherwise, from Gutovitz regarding the intentional deviation from the Plans to include a multilevel deck instead of a single-level uncovered deck, nor did Mr. and Mrs. Park receive any communication, written or otherwise, that the multilevel deck would exceed the position of the uncovered porch of the house owned by Park.

First, these changes will impair the oceanfront views of Lot #2. Second, these changes are expressly prohibited under the Scenic Agreement (*as amended*).

There shall be *no change* to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A". Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park. (*emphasis added*).

Moreover, because Mr. and Mrs. Park realized that monetary damages would not be sufficient in the event that the Amendment was breached, the Amendment included a specific provision granting injunctive relief that included, among other things, the restriction of construction or removal of any completed construction. My review of your correspondence with Ms. Bailey of the McNair Law Firm revealed that your clients have obtained two surveys, both of which confirm

Robert S. Guyton, Esquire
December 17, 2018
Page 3

the violation of the Scenic Easement by building a multilevel deck in an area which violates the Scenic Easement (*as amended*).

The purpose of this correspondence is to instruct your clients to cease and desist all construction activities until such time my clients: (1) have reviewed new proposed construction plans; and, (2) provided our written consent of the plans which would cure these violations. The terms of the Scenic Easement expressly provide for enforcement against any person or persons violating or attempting to violate the covenants and restrictions. Thus, you should provide a copy of this letter to any contractors involved with this project.

While my clients are interested in resolving this matter amicably and without further delay, the assertions that they ought to accept the solutions set forth in your prior correspondence is insulting. Obviously, if there is to be a solution without litigation, the tone of the correspondence from this point forward will need to change. As we have discussed, upon a final review of the documentation forwarded to me, I shall contact you to outline the terms which may be acceptable to my clients.

Sincerely,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

GWR III

Digitally signed by GWR III
DN: cn=GWR III, o=The Bellamy Law Firm,
ou, email=GRedman@BellamyLaw.com,
c=US
Date: 2018.12.17 12:21:16 -05'00'

George W. Redman, III

GWR:kel
cc: Client

ELECTRONICALLY FILED - 2019 Apr 05 2:59 PM - Horry - COMMON PLEAS - CASE#2019CP2602083
ELECTRONICALLY FILED - 2020 Mar 26 5:34 PM - Horry - COMMON PLEAS - CASE#2019CP2602152

From: Redman, George W
Sent: Monday, February 17, 2020 11:23 AM
To: Morgan Martin <mmartin@lmorganmartin.com>
Cc: Gene Connell <gconnell@classactlaw.net>; Barbara Smith <BSmith@classactlaw.net>;
 ttrevathan@lmorganmartin.com; Lanoie, Kayla <KLanoie@bellamylaw.com>
Subject: Park v. Gutovitz CA: 2019-CP-26-02083/Gutovitz v. Park CA: 2019-CP-26-02152

Messrs. Connell and Martin:

Your expert may schedule a visit to the Parks' porch for pictures from this Wednesday at noon to through Friday at 3 PM.

As you know, the Easement Agreement prohibits any structures in the Easement Parcel unless your client provides an application with plans and specifications of the structures in advance of construction. First, it has come to our attention that your clients have again applied to the City of MB Community Appearance Board to build additional structures. We did not receive any advance notice of the changes, and the Parks have not approved them. Thus, this is yet another violation of the easement.

Second, as to your email requests for consent to build a permanent fence, despite your statement that you intend to commence construction immediately, we still have not received any plans and specifications of the proposed new structure. As such, we do not consent to ANY permanent improvements. As we wrote to you on December 17 and January 20, we would appreciate the immediate placement of a temporary fence to abate the attractive nuisance on your clients' property.

As to mediation, let us know if mediation can begin at 9:00 AM on Friday, February 28, 2020. If Mr. Connell's Friday morning motion prevents this, we can look to other days Mr. Hanna has available.

As to your motion to Amend your Complaint, this email will serve as notice that the proposed amendments are frivolous and violate the Frivolous Proceedings Act, S.C. Code § 15-36-10.

Let us know if your client will consent to have the bond put into an interest-bearing account.

Thank you,

George.



George W. Redman III
 Bellamy, Rutenberg, Copeland, Epps,
 Gravely & Bowers, P.A.
 1000 29th Avenue North
 Myrtle Beach, SC 29577
 Direct Dial: (843) 916-7160
 Fax: (843) 448-3022
www.BellamyLaw.com

The information in this email is confidential, may be legally privileged, and is solely for the intended recipient. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copy, distribution, or any action taken or omitted to be taken in reliance on it is prohibited and may be unlawful. This communication is from a debt collector, and any information obtained will be used to affect collection of the debt.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02152

Scott Gutovitz and Caron Gutovitz,)
)
Plaintiffs,)
)
vs.)
)
Gary L. Park and Cynthia C. Park,)
)
Defendants.)
_____)

REPLY TO COUNTERCLAIMS

The Plaintiffs, Scott Gutovitz and Caron Gutovitz, replying to the Amended Answer and Counterclaims of Defendants, Gary L. Park and Cynthia C. Park, would respectfully state as follows:

1. The Plaintiffs deny each and every allegation of Defendants' Amended Answer and First, Second, Third and Fourth Counterclaims not hereinafter specifically admitted and demand strict proof thereof

FOR A FIRST DEFENSE

2. The Plaintiffs are informed and believe that the Defendants served an Amended Answer and Counterclaims without a Summons as required by the South Carolina Rules of Civil Procedure and as a result there is no jurisdiction of this Court to hear the Counterclaims.

FOR A SECOND DEFENSE

(As to Defendants' Sixth and Seventh Defenses and First and Second Counterclaims)

3. The Plaintiffs deny the allegations of paragraphs 39, 40 and 41 and deny that a further reply is necessary and that the Defendants' claims relate to a separate civil action 2019-CP-26-02083.

FOR A THIRD DEFENSE

(As to Defendants' Eighth Affirmative Defense and Third Counterclaim)

4. The Plaintiffs deny the allegations of paragraph 42 and demand strict proof thereof.
5. The Plaintiffs deny the allegations of paragraphs 43 a, b and c.

6. That as to paragraph 44, the Plaintiffs deny the allegations of paragraph 44 and would further state and aver that Plaintiffs' claims are meritorious as a matter of law.

7. The Plaintiffs deny the allegations of paragraph 45 and would further state that the allegations listed by Defendants Park are neither frivolous nor improper as a matter of law.

FOR A FOURTH DEFENSE

(As to Defendants' Ninth Affirmative Defense and Fourth Counterclaim)

8. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

9. The Plaintiffs deny the allegations of paragraph 46.

10. The Plaintiffs deny the allegations of paragraph 47 and would further state that consent was obtained from the Defendants to construct their home and perform construction in the easement area. Further such consent was obtained in writing.

11. The Plaintiffs admit so much of paragraph 48 which states that the Gutovitzes contacted the Parks. The remaining allegations of paragraph 48 are denied.

12. The Plaintiffs deny the allegations of paragraph 49 and would further state that the Defendants gave Plaintiffs written approval to perform the construction of their home including decks.

13. The Plaintiffs admit so much of paragraph 50 which states that the parties agreed to Plaintiffs proposed construction of the home prior to Plaintiffs construction of the home.

14. The Plaintiffs deny that Exhibit A does not show structures which Plaintiffs intended to have built. The remaining allegations of paragraph 51 are also denied.

15. The Plaintiffs deny the allegations of paragraph 52.

16. The Plaintiffs deny the allegations of paragraph 53. Further, Plaintiffs would state that Defendants approved their project and that Defendants were also aware of the multilevel decks which would be placed on the property.

17. The Plaintiffs deny the allegations of paragraph 54 and would further state that Plaintiffs' Exhibit A provides enough material information without Plaintiffs' structure and/or other construction in the easement parcel area.

18. The Plaintiffs deny the allegations of paragraph 55 and would further state that such allegations are not proper pleadings. Further, Plaintiffs would state that all structures were approved by Defendants and thus no improvements need be removed.

19. The Plaintiffs deny the allegations of paragraph 56 in that Plaintiffs obtained approval for what they wanted to build in the subject area.

20. The Plaintiffs deny the allegations of paragraph 57 and would further deny that they have been ingulfed in any fraud, deceit or misrepresentation.

21. The Plaintiffs deny the allegations of paragraphs 58, 59 and 60.

22. The Plaintiffs deny the allegations of paragraphs 61 and 62.

WHEREFORE, having answered Defendants' Amended Answer and Counterclaims, Plaintiffs request that the Counterclaims be dismissed because of the lack of a Summons and that Plaintiffs have judgment on their causes of action to include attorney's fees and costs.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiff

April 3, 2020
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

The Honorable Daniel Coble,
Circuit Court Judge

CONSOLIDATED CASES:

2019-CP-26-02083 & 2019-CP-26-02152

Gary L. Park and Cynthia Park..... Appellants,

vs.

Scott Barry Gutovitz and Caron Dawn Gutovitz..... Respondents,

NOTICE OF APPEAL

Gary L. Park and Cynthia Park hereby appeal the Orders of the Honorable Daniel Coble dated February 10 & 24, 2023, denying their Motion to Strike Jury Demand & Summary Judgment. Appellants received written notice of the entry of these Orders on February 10 & 24, 2023.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellants

/s George W. Redman, III
George W. Redman, III, SCB # 72365
GRedman@BellamyLaw.com
Robert S. Shelton SCB#68543
RShelton@BellamyLaw.com

February 24, 2022

Other Counsel of Record:

Gene M. Connell, Jr.
S.C. Bar No. 1358
Kelaheer, Connell & Connor, P.C.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Surfside Beach, SC 29587
(843) 238-5648
gconnell@classactlaw.net
Attorney for Scott Barry Gutovitz and Caron Dawn Gutovitz

L. Morgan Martin
S.C. Bar No. 3667
Law Offices of L. Morgan Martin, P.A.
1121 Third Avenue
Conway, SC 29526
(843) 248-3177
mmartin@lmorganmartin.com
Attorney for Scott Barry Gutovitz and Caron Dawn Gutovitz

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD

3 -----X
4 GARY PARK,)
5 Plaintiff,)
6 vs.) Case No. 2020-CP-26-06420
7 SCOTT GUTOVITZ,) 2020-CP-26-02152
8 Defendant.) 2019-CP-26-02083
9 -----X

February 7, 2023

10 B E F O R E:

11 The Honorable Daniel Coble, Presiding Judge

12 A P P E A R A N C E S:

13
14 George W. Redman, III, Esq.
15 Attorney for the Plaintiff

16 Gene M. Connell, Esq.
17 L. Morgan Martin, Esq.
18 Attorney for the Defendant

19
20
21
22
23 Recorded by: Webex Recording

24 Transcribed by: Bobbi Fisher, RPR
25 SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings commenced as follows:)

THE COURT: All right. Next -- and I believe last for this morning -- is a -- quite a lengthy few motions we have. Gary Park versus the Gutovitzes -- the Parks versus the Gutovitzes. I apologize if I'm mispronouncing that. 2019-CP-26-02083. If you'll just bear me with make sure that is final -- I know it's a lot to it.

All right. What I have here is -- and I see we have a lot of counsel here today. We have several motions. The motion I'd like to start with first, we have a motion to exclude the expert, and I believe that is Plaintiffs' motion. Who is Plaintiffs' counsel? Mr. Redman?

MR. REDMAN: Yes, Your Honor. Good morning.

THE COURT: Good morning. And thank y'all for being here. Before you -- when it comes to the -- a lot of these things, is it my understanding that this trial is scheduled at the end of this February; is that correct?

MR. REDMAN: That is correct. And I'm prepared to -- I have a proposed suggestion as to how we might work through the motions this morning and to give you some background. This -- earlier in the year, Judge Seals, the administrative judge for our circuit, was gracious enough to have a courtroom full of attorneys and try to set date certains for many trials, and our -- we were in attendance

1 that day. And we are okay with having a date certain
2 scheduled, and that is the end of this month, but we
3 wanted to let Judge Seals know that we have one motion in
4 particular that is of critical importance to us, and that
5 relates to our motion for summary judgment and, more
6 particularly, a motion to strike a jury trial demand. And
7 the reason I bring that up at the outset is because I
8 didn't want Judge Seals to be mad at me if he schedules a
9 date certain and then, you know, comes to find out that we
10 have appealed any decision regarding the jury trial demand
11 or striking it to the Court of Appeals.

12 So I let him know that that motion was out there and
13 pending, along with several others, and that, you know, I
14 just didn't know how to schedule a date certain with that
15 hanging overhead. And his suggestion initially was to
16 schedule the motions, gave us ten days to file the
17 motions, which we did, and then Mr. Morgan and
18 Mr. Connell, representing the Gutovitzes, asked for a date
19 certain anyway, and Judge Seals was gracious enough to
20 schedule that at the end of February.

21 So if -- all of the motions this morning are the
22 plaintiffs' -- the plaintiffs, Cindy and Gary Park. And,
23 if possible, you would like to -- I understand that the
24 motion to exclude a witness, the Gutovitzes' expert
25 witness, was filed first.

1 I'd like to start by giving the Court some
2 background and going through our motion for summary
3 judgment and our motion to strike a jury trial demand,
4 which I think has good segue and leads into the motion
5 that Mr. Shelton will be presenting for us, which is the
6 motion to strike a jury trial -- I'm sorry -- strike the
7 expert witness testimony going forward, if that would be
8 all right.

9 THE COURT: That's fine. So I'll hear from you,
10 Mr. Redman. And I appreciate you giving me that
11 background. And so, what I will do is, after hearing all
12 these motions -- and, obviously, the decision I make on
13 these motions will obviously have an effect on any date
14 certain or anything like that. So I'll make sure to take
15 that into consideration.

16 But you can go ahead, Mr. Redman. We'll start with
17 whichever motion you'd like to start with first.

18 MR. REDMAN: Okay. Thank you very much, Your Honor.

19 Again, myself and Mr. Shelton represent the
20 plaintiffs, Cindy and Gary Park; and Mr. Connell and
21 Mr. Morgan Martin represent the defendants, Dr. Scott
22 Gutovitz and Dr. Karen Gutovitz, who are medical
23 physicians over at the hospital.

24 This case involves the enforcement of a restrictive
25 easement on real property. The Parks and the Gutovitzes,

1 at one time, were neighbors on an oceanfront lot -- lots
2 over here in Myrtle Beach. And since that time -- since
3 this action has started, my clients have sold that
4 residence and moved away, particularly because of this
5 litigation, and they -- let me back up.

6 So when they were both neighbors, the Parks owned
7 two lots on the oceanfront: 4800 and 4802 North Ocean
8 Boulevard. And the easement -- my clients tore down a
9 residence that was on their lot, and they went to build a
10 new lot or a new house for their family. The construction
11 over at -- in Myrtle Beach in that area, all of the houses
12 are about 50 years old, and it turns out the construction
13 that's 50 years on the ocean has taken a beating, and a
14 lot of those are being replaced out there.

15 And when they are replaced, the location on the
16 house on the lot becomes a very big deal because the
17 houses that are being replaced are being replaced with
18 very big houses. They have to be built 13 feet up, a
19 minimum, because of the flood legislation, and they can be
20 built closer to the ocean than the prior construction.

21 So you can imagine, if you have a house that's, you
22 know, one story or two stories and your neighbor moves in
23 and tears down and builds a new house, it can be very
24 large and very high. If he builds it closer to the ocean
25 than yours, it can have a drastic impact on, when you walk

1 out your back porch and what you see.

2 So -- and that happened right to the north of my
3 clients; that there was a homeowner right to the north and
4 that the lot neighboring them moved about 10 feet in front
5 of theirs with a very large house, and my client said, "We
6 don't want to do that. We're going to build our house
7 equal with our neighbors who are much smaller or
8 low-to-the ground house, not up on stilts."

9 And, further, the Parks owned the lot to the south,
10 and they put an easement on the lot to the south, and that
11 easement specifically said that there's a parcel -- the
12 portion of the lot that is closest to the ocean that you
13 won't build -- whoever buys that property -- will not
14 build in that scenic easement area -- they call it a
15 scenic easement parcel -- unless the Parks granted or
16 whoever owns the Parks' residence granted permission to
17 build in there.

18 So, Your Honor, I'm going to try to share my screen,
19 if I can, and go to a PDF document. And I don't know if
20 you can see the --

21 THE COURT: I can see it.

22 MR. REDMAN: Great. Exhibit B to our complaint is
23 the Scenic Easement Agreement. It specifically identifies
24 the property and states that the easement will be a
25 restriction on the property to the south, and it -- plain

1 and simple -- the first one is very simple because it
2 states that there shall be no new structures of any kind
3 or reconstruction unless the lot owner for the Parks
4 specifically grant written approval in advance. And it
5 states that this agreement shall be covenant running with
6 the land burdening the parcel. And it shall be binding
7 upon the grantee and their successor in title as a matter
8 of real property law.

9 So this was entered in May of 2017, Your Honor, and
10 it came a little bit later on that Gutovitzes became
11 interested in purchasing the lot to the south that was
12 burdened by the Scenic Easement Agreement.

13 And, you know, the scenic easement parcel
14 specifically would show -- it's shown in a plat of record,
15 but it's -- generally speaking, it's the area closest to
16 the ocean on the oceanfront lot.

17 And Exhibit D to our complaint was the first
18 amendment to the Scenic Easement Agreement, which was
19 specifically entered into between the Parks and the
20 Gutovitzes as they were -- had purchased the property and
21 they wanted to build -- some structures in the easement
22 parcel. My clients had no obligation to do so, but they
23 agreed to allow that, and the -- there's some discussion
24 and -- with Ms. Gutovitz called up Bhumi Patel, who was a
25 local attorney who worked at the McNair Law Firm at the

1 time -- Burr & Forman now -- and there's some discussion
2 as to, okay, what would be allowed in the scenic easement
3 parcel? And that is set out in our Exhibit D, first
4 amendment to the Scenic Easement Agreement. Paragraph 2,
5 I have highlighted it some. And you can see where, about
6 a year and a half later in the process, September of 2018,
7 it says the Parks has -- Park has agreed to allow the
8 Gutovitz to place a porch within the scenic easement
9 parcel. And that's important that it's singular; it's
10 one. And that the porch is shown as -- in an Exhibit A
11 that's attached to this Scenic Easement Agreement. And it
12 says there will be no changes to it unless there is,
13 again, a written agreement by the Parks. So any change
14 from Exhibit A was supposed to be submitted to and agreed
15 upon in writing in advance by the Parks.

16 It also stated in Paragraph B and C language which
17 stated "the house facing the ocean shall not be" -- "the
18 Gutovitzes' house shall not be built any closer to the
19 ocean than the Parks' house." And that -- that portion
20 was understood and wasn't violated.

21 Paragraph C, it says the porch is -- the uncovered
22 porches owned by the Gutovitz shall not exceed the portion
23 of the uncovered porch of the house by the Parks. That's
24 where the problem initially arose immediately as far as
25 the -- at the start of construction when the piers went

1 in.

2 I'd also point out that the porch -- paragraph 2(d)
3 says it shall remain open and not enclosed.

4 So the -- and, finally, it says that the original
5 easement -- any terms unchanged remain in full force and
6 effect.

7 And so here is the Exhibit A, which was attached,
8 Your Honor, and you can see, you know, it's -- here is the
9 ocean down here at this section of the plat, and here's
10 Ocean Boulevard right here, and this is the area that
11 we're generally talking about as a scenic easement parcel
12 in there. And you can see the porch -- the porch that was
13 shown in Exhibit A right there. It's got one set of
14 stairs. It looks to be on one level, and that's it. And
15 that was the Scenic Easement Amendment.

16 And after that was agreed to, construction
17 started -- and this is a picture shown, Exhibit F to our
18 complaint. The house doesn't look like this now. As a
19 matter of fact, the house is completed with a certificate
20 of occupancy. But when it first started out, my client
21 was a little bit shocked to see that the pilings are,
22 obviously, going closer to the ocean than the Parks'
23 residence, which is the residence that's already built
24 behind it. And she placed a call over to the attorneys
25 and said, "Hey, we have a misunderstanding here. Can we

1 please, you know, take a look at that before we move --
2 get too far involved in this litigation." And that was,
3 unfortunately, the start of a very long -- turned out to
4 be an ordeal.

5 And we had originally moved for summary judgment,
6 Your Honor, and the -- trying to see if I can unshare now.
7 The summary judgment that we previously filed said, okay,
8 if there was any confusion, the agreement, both the first
9 one and the second one, stated if there's any question as
10 far as construction -- any of that could be resolved by
11 taking that question to the Parks and getting an approval
12 to proceed. And if there was any change in the
13 construction, those changes were required to be approved
14 in writing. It's just black letter. It's clear as can
15 be.

16 And in the testimony, which we had previously
17 presented in regard to the summary judgment, was that
18 of -- you know, saying you don't have to believe the
19 plaintiffs, and what we're saying, you can speak to
20 Ms. Gutovitz -- or, I'm sorry, we took the depositions of
21 Drs. -- I think Mr. and Mrs.; I don't mean to be
22 disrespectful, but they're both doctors so I have to draw
23 a distinction. Ms. Gutovitz, Dr. Karen Gutovitz, she --
24 her testimony was clear in her affidavit that, on
25 September 16th, she testified she understood, on page 61,

1 that anything we build in the scenic easement had to be
2 approved by the neighbor.

3 And later on page 86 of her deposition, she stated,
4 not only do they have one porch, they have more than one
5 porch. [As read] "We have two porches: A porch off the
6 main living area, uncovered porch above that off the
7 upstairs bedrooms. From the main level, we have a
8 step-down -- two step-downs to a cooking deck, and then we
9 have several steps down to a lower deck."

10 So, Your Honor, they built more than one porch, and
11 the plans, obviously, varied, according to their own
12 testimony.

13 87, she said -- she acknowledged: [as read] "Did
14 Cindy," Ms. Park, my client, "need to approve these two
15 porches within the scenic easement?"

16 "Cindy needed to approve building anything in the
17 scenic easement, yes."

18 I said, "So the two porches need to be approved.
19 Did the two decks that you spoke about also need to be
20 approved?"

21 "Yes."

22 And then -- [as read] "So the plat you sent over for
23 approval didn't show multilevels of porches?"

24 "No."

25

1 "The plat sent to Cindy for approval didn't show
2 multiple decks?"

3 "No."

4 "Were any of the porches or decks changed after you
5 sent the plat for approval to Cindy?"

6 "Yes."

7 "Did you send Cindy a copy of the changes -- of the
8 change -- the copy of the plat reflecting the changes?"

9 "No."

10 So that changes -- not only did they -- were
11 building a deck different than was shown, they made
12 changes to that, and their own testimony says, "We never
13 got that approved."

14 And then if we move to the deposition of
15 Mr. Gutovitz, Dr. Gutovitz -- Mr. Dr. Gutovitz; again, I
16 don't mean any disrespect. His testimony was likewise;
17 that -- his deposition was taken later that same day, and
18 he said that, yes, "there were a couple of changes."

19 "Were those changes submitted to Ms. Park or her
20 attorneys?"

21 "No, they were not."

22 And then seeking to clarify, it said, "Your
23 suggestion is that there's one porch, one balcony, and two
24 decks. Do I have that correct?"

25 "Yes."

1 So, again, that was a prior motion for summary
2 judgment, and we thought it was really clear that there's
3 a breach, and if there's any question as to what was
4 required, then, you know, all that had to be done was
5 submit for approval, and that could have resolved any
6 question they had, any ambiguities that they felt that
7 there was -- that they were having.

8 And the response to that, Your Honor, that the
9 property that was shown in Exhibit A was built right where
10 Exhibit A shows that it's supposed to be built. So the
11 position that they took after litigation started was that
12 Exhibit A shows the property -- it's a survey, it's a
13 topographical survey, so it only shows heights.

14 They said, well, that shows where the property --
15 where it's going to be built, and y'all knew that and
16 y'all agreed it. The language of the easement doesn't
17 matter; the picture is what controls.

18 And in response to that, we spoke to the surveyor
19 who drew that picture, and that was -- that plat; I
20 shouldn't say picture. That also does a little bit of
21 disrespect to that.

22 So we talked to Mr. Randy Warden, and he said very
23 clearly that, in his affidavit, [as read] "There is no way
24 anyone could possibly use Exhibit B by itself at any time
25 to determine what, if any, portion of the structure,

1 inclusive of the deck, porch, or balcony, is closer to the
2 ocean than the deck, porch, and/or balcony of the
3 neighboring property owned by Mr. and Mrs. Park."

4 And Exhibit B to that, Your Honor, is showing the
5 exact same document with the Gutovitzes' initials down
6 there at the bottom. What he said in his first affidavit
7 is that you absolutely cannot use this picture by itself
8 to determine where the porch is on this property in regard
9 to the Parks' property because it seems pretty obvious
10 that the Parks' property isn't shown at all on this plat.

11 And he goes further in his second affidavit, Your
12 Honor, which I have on the screen, he confirms what he
13 previously said in his first affidavit, and he goes on to
14 say the survey does not label any deck, porch, or balcony,
15 and the Exhibit A -- from the area on the ocean side of
16 the property was a deck, porch, or balcony, the survey
17 does not show more than one deck, porch, or balcony. It
18 doesn't show more than one level for any deck, porch, or
19 balcony, and it certainly doesn't show any covering or
20 roofing over any deck, porch, or balcony.

21 So pursuant to the person who drafted the Exhibit A,
22 which they rely on to say, "Oh, no, no, there's been no
23 breach of this restrictive easement," that -- that,
24 according to the surveyor himself, cannot be the case.
25 And it's not only, according to what it shows, which is

1 obvious -- it just shows the outline of one porch -- but
2 also it doesn't show the Parks' property, so you can't
3 judge and look and see where it is.

4 And, Your Honor, in this motion, we're going further
5 because everybody agrees to the same, including -- all the
6 people we spoke to, including the defendants themselves,
7 all of their contractors agree with the same thing --
8 agree to the same thing. The affidavit of the attorney
9 who drafted the easement itself, Ms. Bhumi Patel, she
10 has -- the defendants didn't take her deposition, but she
11 was willing to send us an affidavit to explain. And in
12 her affidavit, she states that the language in the amended
13 easement is clear and unambiguous, stating that the
14 Gutovitzes shall have one porch and same shall be
15 uncovered and unenclosed.

16 Paragraph 20, "The easement agreement and the
17 amended agreement clearly state that if there were any
18 changes, the requestor was required to obtain the written
19 approval from the Parks for such change."

20 Next is the deposition of the Parks' general
21 contractor, Mr. Chad Webb. Mr. Webb testified on
22 August 26, 2021, and he stated, if there was a conflict --
23 and I was asking him about the survey -- that -- how would
24 you -- how would you get this conflict resolved. I asked
25 him, "Chad, would you go resolve it for them?"

1 "No. Well, no."

2 "Would you direct them," the Gutovitzes, "to the
3 surveyor or the architect or the easement owner?"

4 "Yeah. "

5 "Are you familiar with the surveyor on this case?"

6 "I know of them."

7 "Can you recall his name?"

8 "Randy Ward."

9 That was whose affidavit we just read.

10 "Would you defer to Randy as to any of his surveys
11 and what they can be used for?"

12 "Yes."

13 So further in his -- on page 52 of his deposition,
14 he states, "I mean, I read the addendum. They provided me
15 with that. I believe no part of the existing house -- of
16 the new house could surpass the house to the left."

17 "By 'surpass' it couldn't be any closer to the
18 ocean?"

19 "Correct. Well, past the line of the back of the
20 neighbor's house, the Parks' house."

21 "What part of the Parks' house?"

22 "I guess the rear deck -- the rear-most portion of
23 the house."

24 And then in page 186 of his deposition -- got to go
25 here the hard way. 86 of his deposition -- I'm sorry, I

1 need 186.

2 "Mr. Webb, when you talked about Exhibit A attached
3 to the easement agreement, it was your testimony that the
4 Exhibit A attached to the easement amendment -- many
5 details were not shown on that; correct?"

6 "Right."

7 [As read] "You also testified that numerous changes
8 were made to the house after the date of the plot plan; is
9 that correct?"

10 "The changes --"

11 "There were revisions to the house after Exhibit A
12 plot plan was drafted?"

13 "Yes."

14 "There were changes to the deck specifically too;
15 right? The rear deck?"

16 "Yes. When you say 'rear deck,' what rear deck are
17 you talking about?"

18 "Any of them."

19 "Yes."

20 "In Exhibit A, it doesn't show how many decks there
21 were."

22 "Because somebody forgot to draw a line in. That's
23 really what it boils down to."

24 "But you can go by the language of the easement that
25 says the Gutovitzes aren't supposed to be any closer than

1 the Parks, whether it's the house or the deck? You can
2 rely on that language, can't you, in the easement
3 agreement?"

4 "Correct."

5 "And if there's any question, there is a
6 process. We talked about this. All they had to do was
7 submit what they're doing with more detail to the Parks
8 and they could approve it; correct?"

9 "Correct."

10 "Problem solved; correct?"

11 "Correct."

12 The architect is the next person involved. We took
13 his deposition as well. His name was Mr. Robert C.
14 Lowrey. And Mr. Lowrey testified largely the same.

15 "But if something was unclear or unusual to you,
16 would that be something you could get resolved by
17 submitting it to the Parks' for written consent as to your
18 understanding?"

19 "Based on what you just read, the drawing would be
20 submitted and approved or not approved, I guess. They had
21 that right."

22 "And that could resolve any discrepancies or
23 questions; right?"

24 "Yes, sir."

25 Go to page 83 of his deposition. In his answer,

1 "I'm saying -- there's two things I'm saying. First of
2 all, the previous document that we were reading talked
3 about that process [verbatim] that were uncovered could
4 not be seaward of the Parks' porch, and so if there's no
5 reference to the Parks' porch on that lot, how would you
6 ever know where it is? That's the first thing."

7 And he's obviously talking about Exhibit A, Your
8 Honor. The Parks' house doesn't show up on it.

9 "The second thing about this document, since it's
10 unclear, it's not -- I should say it's illegible. I just
11 have to make assumptions as to where the scenic [verbatim]
12 is in relation to where the house is from this document
13 alone."

14 "Thank you. And my question was, Can you use this
15 document, Exhibit A, by itself or can anyone use it to
16 assure that what is shown is not closer to the ocean than
17 the structure on the Parks' residence?"

18 "No, because the Parks' residence is not on here."

19 And Mr. -- the next -- the pool contractor built a
20 pool in the backyard, and his statement simply is he
21 obviously didn't talk about Exhibit A but he simply did
22 point out that if there was an easement or any reason that
23 construction might be stopped or in dispute, he should
24 have been told about it before he started the pool at all,
25 and he wasn't.

1 The final person we spoke to -- and this was the --
2 I'm sorry, the defendant Gutovitzes' expert witness who
3 Mr. Shelton will speak about in a minute, Mr. Alan
4 Campbell, in his deposition, April 21st, 2022 -- I would
5 just point out for the purposes of this motion that his --
6 that he said, "Were you ever asked to take a look at the
7 restrictive Scenic Easement Agreement?"

8 "I scanned through it, but I have no opinions
9 whatsoever. That would be a legal issue, and that's not
10 my role here."

11 So, basically, he didn't read it. And he's got no
12 testimony -- relevant testimony about what it says.

13 The conclusion that we're seeking with all of this,
14 Your Honor, is that -- and the reason we go through this
15 background -- and thank you very much for your attention
16 and following along with that; I know it's a lot but it's
17 relatively simple too. This document says, you know,
18 whatever you put there, don't put it closer to the ocean
19 than ours, and if there's anything you intend to build,
20 let us know, and we can approve it or not in advance.

21 The conclusion is that these easement agreements --
22 these restrictive covenants were breached, and the --
23 there was an injunction on the property for a year and a
24 half after they moved that there was a hearing where bond
25 was released and the injunction was lifted and the house

1 is now complete.

2 Since that time, my clients have filed an offer of
3 judgment saying, you know, we would have resolved this for
4 zero dollars, but that was ignored and, therefore,
5 rejected. So they want to have a trial on this, Your
6 Honor. And it's our position that all the witnesses,
7 including our own, but I didn't want to put our -- we
8 don't have to talk about what we would say at all here.
9 The defense witnesses all will testify to the same thing:
10 That the easement provided that they weren't supposed to
11 be any closer to the ocean than the Parks. If there was
12 any changes, they had to be approved. There was only
13 supposed to be one porch; it wasn't supposed to be covered
14 or enclosed and they are.

15 So we're first seeking that -- a determination that
16 the easement itself has been breached as a matter of law.
17 We don't need a trier of the facts on that or the law on
18 that because it's just clear as a matter of law.

19 And the second part -- and going back to why we
20 wanted this motion scheduled and to let Judge Seals know
21 that -- depending on how the ruling goes on this, that
22 might impact a date certain. The defendants have
23 requested a jury trial, and it's our position that, in
24 this case, it's an equitable case, just like the case
25 before, Your Honor, foreclosures, supplemental

1 proceedings, the case law is exceedingly clear that an
2 action to enforce a restrictive covenant by injunction is
3 an action in equity. And I cite to, in my brief, Holling
4 v. Margiotta, 213 [verbatim] S.C. 676; Gibbs v. Kimbrell,
5 311 S.C. 261. And what I didn't cite but I'd like to
6 discuss with Your Honor is Buffington v. T.O.E.
7 Enterprises because it goes to --

8 THE COURT: What's the citation to *Buffington*?

9 MR. REDMAN: It is 383 S.C. 388. It's a 2009 case.
10 And it specifically says, similar to all the other
11 restrictive easement cases, an action to enforce
12 restrictive covenants by injunction is an action in
13 equity.

14 And in the *Buffington* case, it was about whether
15 commercial use was allowed in residential neighborhood,
16 and the question the Court confronted was, if there's a
17 breach of an injunction -- I'm sorry, if there is a breach
18 of an easement or restrictive covenant, does that mandate
19 that the Court issue an injunction? And the Court said
20 no, that the courts in these cases should consider first
21 whether the use of the land violated the restrictive
22 covenants, but then they should go on -- and the
23 *Buffington* Court is citing to Circle Square vs. Atlantic
24 Development, the Court should go on and determine other
25 equitable defenses such as "latches" or "la-shays" waiver

1 or estoppel. And that is going on in this case that the
2 defendants are saying, "Well, there are some defenses as
3 to why this -- what we have done is not a breach of the
4 restrictive easement." And that does not change the
5 character of this action to an action at law.

6 And the -- there quite simply is zero -- zero
7 questions of law -- questions of fact. This is purely an
8 action in equity, and we have moved for -- we ask for an
9 injunction, a declaratory judgment action, and we state it
10 as a breach of easements.

11 In response, I think my action was filed on Friday,
12 and Mr. Connell's was filed the following week with the
13 Gutovitzes as plaintiffs and us as defendants, and they
14 allege the exact same thing. The difference was that, in
15 their -- they also filed a claim saying that the lis
16 pendens that we filed constituted a slander of the title.

17 And in regard to that claim, Your Honor, I direct
18 your Court's -- the Court's attention to a case, Pond
19 Place v. Poole. And I wanted to really share the writing
20 of this case from -- I guess it was Lexis back in the
21 time, but the conclusion of the case, the Court -- Supreme
22 Court reversed a lower court's finding that a lis pendens
23 was a basis for slander of title cause of action. The
24 Court says, "We find the filing of a lis pendens is
25 absolutely," all bold -- or "absolutely "is bold and all

1 caps in the original; I added the highlighting, but...

2 "Filing of a lis pendens is absolutely privileged in
3 South Carolina. The filing of a lis pendens enjoys the
4 absolute privilege according to judicial proceedings."

5 The last part of that paragraph: "The filing of a
6 lis pendens cannot" -- black and white, there's no
7 question here, and I think that's why the Supreme Court
8 put it in all caps and bold -- cannot form the basis for a
9 slander of title cause of action.

10 And in response to that, the defendants --
11 plaintiffs in that case didn't withdraw their slander of
12 title cause of action. Instead, they supplemented it with
13 a malicious prosecution cause of action.

14 But, Your Honor, malicious prosecution is founded on
15 some other statement of facts. For malicious prosecution
16 to succeed, there would have to be no probable cause,
17 which is normally a criminal term used, but it can be in a
18 civil case -- when there is no probable cause. And in
19 this case, there's no allegation of frivolous proceeding
20 or anything like that. There is a written easement of
21 record, which has been acknowledged, and there's a
22 disagreement as to -- we say it's not a genuine
23 disagreement, but a disagreement as to what it says.

24 So at a -- there's no question that there is no
25 malicious prosecution cause of action. And in the *Pond*

1 Place case, the Supreme Court noted, right before the
2 holding where it says lis pendens could absolutely not be
3 a slander of title, the Supreme Court noted that there's
4 been no reported decision as upheld an award of damages
5 for malicious prosecution or recording a notice of a lis
6 pendens.

7 So the -- what we're seeking there as to those
8 claims is summary judgment as well as on the lis pendens
9 and the malicious prosecution because there's no question
10 of law that those claims must fail due to the Supreme
11 Court jurisprudence.

12 And finally, Your Honor, when we get back to the
13 *Hollings, Gibbs, and Buffington's* case, this is an
14 action -- enforcement of a restrictive covenant by
15 injunction is an action in equity. And we feel -- we are
16 ready to schedule a trial if a judge hears this, like a
17 judge should hear this, if summary judgment can't be
18 granted, and we need a trial as to whether this easement
19 has been breached. It is our strong conviction that this
20 is a matter for a judge and not a jury to hear, and I
21 think that the reason why would become obvious when you
22 seek -- when the Court takes a look at the testimony of an
23 expert, what they are trying to throw in the mix as to
24 what's relevant in construing this easement -- this
25 written easement.

1 So that is our motion for summary judgment on the
2 breach of the easement, slander of title, and malicious
3 prosecution cause of action, and our related motion to
4 strike the jury trial demand of the defendants.

5 Obviously, the jury trial, whether that is -- whether they
6 are entitled to that or we are entitled to a trial by a
7 judge, that is going to -- that decision will deprive a
8 party of a mode of trial to which it is entitled as a
9 matter of right, and such order is immediately appealable.

10 So the issue of summary judgment, the issue of
11 striking the jury trial demand is absolutely ripe and
12 necessary for us to get this matter resolved. We pray
13 that you -- the Court will strike the jury trial demand
14 and schedule this for a non-jury term of court, and we are
15 ready to go. We believe summary judgment should be
16 granted on the cause of action, and then we would be left
17 with a hearing for damages, which would essentially be
18 attorney's fees in enforcing this restrictive easement is
19 all that should be left, Your Honor.

20 And that's our motion as far as those go, and I
21 don't know if Mr. Shelton's motion would be next after
22 that.

23 THE COURT: We'll hear from -- I know Mr. Shelton
24 will be an in-depth motion as well, so I would like to get
25 a response from the defendants/plaintiffs, the other side

1 to everything.

2 But before that, Mr. Redman, let me just,
3 procedurally -- I understand the motion for summary
4 judgment, but to strike a right to a jury trial, since
5 these cases have been consolidated, I understand, in your
6 case, you would want a bench trial. If they're
7 consolidated, what about the causes of action even if I
8 were to get rid of the slander of title, malicious
9 prosecution? Haven't they filed a breach of contract and
10 declaratory judgment that they would have a right to a
11 jury trial as well, or are you saying that they don't have
12 a right to a jury trial in their cases either?

13 MR. REDMAN: They don't have a right to it either
14 because if you put aside the slander to title, malicious
15 prosecution, their claims are the exact same as ours.

16 THE COURT: I see. So the argument you were making
17 about why you have -- I see. Okay. I was just trying to
18 follow along. All right. Thank you, Mr. Redman.

19 MR. REDMAN: Thank you, Your Honor.

20 THE COURT: And before we hear from the --
21 Mr. Shelton, let's go ahead and hear a response from
22 Mr. Connell and Mr. Morgan, I believe.

23 MR. MARTIN: Thank you, Judge. Morgan Martin here
24 representing, along with Gene, the Gutovitzes. And let me
25 just say in a word, we couldn't disagree with our

1 respective colleague, Mr. Redman, any more than we do.

2 First of all, Judge, this same motion for summary
3 judgment has been denied once in this case. They're
4 bringing a repetitive motion. It was denied on
5 October 22nd, 2019.

6 Secondly -- and we believe most importantly --
7 certainly as far as their action to enforce this
8 restrictive covenant, they're not entitled to a summary
9 judgment. Frankly, they're not entitled to a judgment at
10 a trial because the Parks have sold the property. They
11 sold the property for 3 point -- over 3 and a half million
12 dollars, approximately that amount.

13 But, Judge, the action to enforce an easement, which
14 a summary judgment has already denied that motion, they
15 lost when they sold that property. This is an easement
16 that is attached to the property. It travels with the
17 property. It's appertinent to the property.

18 So we think it's clear -- and based on that idea,
19 Judge Seals dissolved this injunction, which they got,
20 which have cost our clients mightily in terms of money
21 from delayed construction, completion of the home, and
22 great mental and emotional stress to them.

23 Finally got that injunction dissolved. We didn't
24 move for summary judgment because of strategic reasons,
25 frankly; because they keep threatening to appeal things.

1 But they have no standing. They have no standing to
2 enforce that restrictive easement.

3 When they sold the property, any rights to that
4 easement went to the new owners, and they don't have a leg
5 to stand on in this motion for summary judgment as to that
6 or when they get to the courtroom. I don't think they
7 have got a leg to stand on.

8 So there's another reason that it would be
9 disingenuous and patently unfair for them to ask you to
10 grant them summary judgment on enforcing an easement for
11 property they no longer own.

12 And, again, you know, Mr. Redman is a good lawyer,
13 but even it took him 30 or 40 minutes to try to explain to
14 you why there's no factual issues in dispute here. And in
15 and of itself, that shows you there are factual issues at
16 dispute -- in dispute, excuse me, that would prevent this
17 matter from being one that was ripe for any sort of
18 summary judgment.

19 Again, Judge, this is a little complicated,
20 especially for you and you're just hearing it. And let me
21 say this: They filed motions, and we filed responses to
22 those motions yesterday, I believe, it was, and I would
23 ask you, if there's any question about my arguments, to
24 please refer back to those because they're, I think, well
25 thought-out and informative to the Court on why our

1 position is correct.

2 But, you know, if you go back and look, these folks
3 did have a Scenic Easement Agreement. When our clients
4 went to build a house, they got a first amended -- an
5 amended scenic agreement signed for them to build the
6 house as they could, and as Mr. Redman showed you, that
7 agreement had a survey attached to it. It was agreed upon
8 that they could build this house per the survey -- and
9 that's what they set out to do. And they thought all was
10 good and that we were in for clear sailing.

11 But as happens with people from time to time, issues
12 arose. Is it a foot too close? Is it two foot too close?
13 Doesn't matter if it doesn't block the view. That's not
14 what we said. And so, then, all of a sudden, we do have
15 some disputes. And as Mr. Redman said himself in part of
16 his argument -- I made a note on it -- that there is
17 disagreement as to the Scenic Easement Agreement and the
18 language therein and particularly as to the first amended
19 Scenic Easement Agreement drafted by the Parks' lawyer.
20 There is, without question, ambiguity in it.

21 Scenic Easement Agreement is not defined; that's a
22 one reason we need the expert. Secondly, porch/deck is
23 apparently used interchangeably. They are not defined.
24 So I would say to you that it's fair to say that there are
25 certainly difference of opinion and factual consideration

1 as to the language in this agreement when we start talking
2 about a deck, balcony, and porch, covered porch, things of
3 that sort.

4 It is a shame that this lawsuit has got this far,
5 but it has. And we filed -- at that time, it was
6 Mr. Connell -- filed a lawsuit for our clients, which have
7 been joined -- which have been joined by the Court -- for
8 slander of title, malicious prosecution -- and I forgot
9 what the other cause of action that we have got. But
10 those actions clearly -- clearly are not ripe for summary
11 judgment. The question of whether or not the elements of
12 malicious prosecution, slander of title --

13 What's the other action?

14 MR. CONNELL: Breach of easement, breach of
15 contract.

16 MR. MARTIN: Yeah, breach of easement, breach of
17 contract, whether or not those -- there are factual
18 disputes. Clearly, they are. Those are not the type of
19 cases, frankly, that are ripe for summary judgment, and
20 the case law on that -- once again, the judge in this case
21 specifically stated prior -- prior motion for summary
22 judgment, that this was not a case that was ripe for
23 summary judgment, and those facts, particularly as to
24 those causes of action, have not changed.

25 Motion for summary judgment is a drastic remedy by

1 the Court, which would deprive parties of their, what we
2 believe, sacrosanct right to a trial by jury on these
3 issues.

4 And then, in addressing that -- as to right to a
5 trial by jury, certainly as to our causes of action for
6 malicious prosecution and slander of title and enforcement
7 of a contract, we're entitled to a jury trial. And we set
8 forth chapter and verse in our response to their motion to
9 that fact; that those issues are triable by a jury, and
10 frankly, to the extent that their claim for enforcing that
11 restrictive covenant still exists -- and we argue that it
12 doesn't -- when it was joined with our arguments, though
13 that may have -- while they may have an argument that that
14 could be in equity, it doesn't mean it can't be tried by a
15 jury. And when it's joined with what are still our viable
16 actions for summary judgment -- strike that -- as our
17 viable claims related to slander of title and malicious
18 prosecution and enforcement of the contract, we're
19 definitely entitled to a jury trial. And we believe --
20 and once again -- I have said it several times, so that
21 probably means I should stop saying it -- is that -- when
22 they sold that property -- when they sold that property,
23 made that profit they made, then their right to enforce
24 this Scenic Easement Agreement went with it. It went with
25 it.

1 And so we believe, Judge, that, clearly here, that
2 Exhibit A and what it shows and what it stands for is in
3 dispute; that the language in the agreements are ambiguous
4 and in dispute; and that all of that brings you back to
5 the same point that the previous judge sitting where you
6 are heard this motion was and that is that they're not
7 entitled to summary judgment on any of these issues, and
8 we're definitely entitled to a jury trial with regards to
9 our claims. And if they go -- theirs does manage to go
10 forward in some way, it would be joined with ours.

11 Thank you.

12 THE COURT: All right. Thank you, sir.

13 Mr. Redman, I'll let you briefly respond to that.

14 MR. REDMAN: Yes. Very briefly, Your Honor. Thank
15 you.

16 The prior hearing on motion for summary judgment
17 only had the testimony of Drs. Gutovitzes. We have --
18 this one talks about everybody who will testify at trial.

19 When my client sold the property, there was an
20 agreement between the buyer and the seller that the right
21 to enforce the easement would remain with the Parks, and
22 that was a written easement -- a written agreement between
23 the buyer and the seller that states the assignment of
24 right to continue to enforce the Scenic Easement
25 Agreement. That was signed by the buyer and the seller.

1 But, Your Honor, you don't even need to go there.
2 So the right to enforce it still remains with the Parks,
3 but the Parks aren't asking the Court to have the porches
4 that -- you know, three extra porches removed. The Parks
5 aren't saying that it can only be one level as shown. The
6 Parks are saying -- while they lived there, the Parks had
7 a right to enforce that easement, and they incurred
8 damages while they did live there. The neighbors that
9 they lived next to turned out to be unbearable, so they
10 sold the property.

11 But the right to enforce still belongs to them, but
12 even if it didn't, the Parks incurred damages and
13 attorney's fees in enforcing the easement while we were
14 there. And I'll note that not one case was presented to
15 Your Honor which says enforcing a restrictive easement on
16 real property is not equitable. It's clearly an
17 equitable -- an action in equity, which should be tried by
18 a judge, and all of the defenses -- the reasons why they
19 say, "Oh, it was unclear," or there are other defenses,
20 those are all equitable defenses which the *Buffington* case
21 said the Court should consider those in its action -- in
22 the equity action.

23 And I'll point out, Your Honor, there's some
24 allegation that the easement is ambiguous. Even if that
25 is true -- it's not, but even if it was, that changes the

1 type of evidence that the Court would consider. If
2 there's a finding of ambiguity, it would allow in
3 extrinsic evidence such as something outside the four
4 corners of the document. But that doesn't change the mode
5 of trial or the nature or character of the action. It's
6 an equitable action to enforce a restrictive easement of
7 real property, and they didn't produce one case which even
8 challenges that.

9 Now, slander of title on a lis pendens isn't even
10 possible. *Pond Place* makes that absolutely clear. And if
11 even Your Honor was to consider malicious prosecution,
12 even if that was even close to being possible, which it is
13 not because probable cause is as clear as day, and there's
14 a reason the injunction was granted way back when; it
15 couldn't have been without it.

16 But when you join a counterclaim -- same as a
17 foreclosure action; I mentioned this for clarifying the
18 record and including it on the record -- is that if there
19 is some other claim in a foreclosure action or a
20 supplemental proceedings action, which is not equitable,
21 and a defendant includes it in that same action, the
22 Supreme Court jurisprudence is absolutely clear that that
23 would be a permissive counterclaim, and they will have
24 waived their right to request a jury trial. And that's in
25 the case of *Carolina First Bank v. BADD*; B-A-D-D, that's

1 all capitalized. That's at 414 S.C. 289. And that --
2 there's just no question, Your Honor. This is a matter
3 that needs to be decided by a judge without a jury.
4 Otherwise -- and the reasons for doing so will become even
5 more apparent when the next motion is considered.

6 That's what we have got, Your Honor. Thank you.

7 THE COURT: I apologize; I was on mute.

8 I'll let Mr. Shelton go ahead with the next motion
9 regarding the expert of Campbell.

10 MR. SHELTON: Thank you, Your Honor. Rob Shelton.
11 I'm George Redman's partner, and we represent the Parks,
12 that I guess you had figured out by this point in the
13 explanation of the background.

14 This involves a gentleman named Alan Campbell who
15 the defendants named as an expert or proposed expert
16 witness in this matter in discovery, indicating that he
17 would offer testimony about the building codes in the City
18 of Myrtle Beach and which ones would apply and wouldn't
19 apply. And then he would offer testimony about the
20 distinction between the word "deck" and the word "porch"
21 and that they're not interchangeable.

22 So we deposed him -- I should say first, in addition
23 to naming him, he offered two affidavits: One in 2019 and
24 one in 2021. They're both in the motion exhibits Your
25 Honor has before you.

1 The first one essentially talked about him looking
2 at the scenic view of the properties relative to one
3 another, and the second one did also, but then
4 disturbingly also said, in paragraph (indiscernible),
5 Scott and Karen Gutovitz have not violated the restrictive
6 easement by blocking the view of the ocean.

7 So they're offering Mr. Campbell as an expert
8 witness, and he's supposed to talk about porches and decks
9 and ordinances, and here, he's saying that they're not
10 violating the easement, so that gave us cause for concern.

11 We took his deposition, and when asked about the
12 ordinances, he said and I quote at page 47 and 8 of his
13 deposition, "I scrolled through it and looked, but there
14 really wasn't a lot to go with." And that was the extent
15 of his investigation into the building ordinances or his
16 anticipated testimony as to the building ordinances.

17 So I then asked him about the deck and the porch,
18 and quite frankly thought that was going to be a large
19 portion of his deposition before I got his response, and
20 he said, you know, it's commonly interchanged now. He
21 said, "I'm sure if we go to Webster's to look up the term
22 'porch,' it will be synonymous with 'deck.' I have no
23 problem with whatever term." Completely contrary to what
24 we were told as to his area of expertise.

25 So I get into trying to understand what he intends

1 to discuss, and he explains to me what this human factors
2 field is from an engineering standpoint and how he was
3 first an engineer and then he became an expert witness in
4 so many personal injury cases that it became advantageous
5 to him to get his own psychology degree with a focus in
6 human factors so that he could, you know, kind of have a
7 niche on that market as an expert witness going forward.

8 And so he's explaining to me, essentially every
9 chance, he gets the view from the Parks' porch looking
10 toward the Gutovitz home. Everything is about field of
11 view and the vision and the visibility and what you can
12 see from the porch standing, what you can see from the
13 porch sitting, etc., etc., etc. But he makes clear
14 throughout his deposition that he will not be rendering
15 any legal opinion about what the -- whether the easement
16 was violated or not, even though he clearly said it in his
17 affidavit.

18 So I get into what I expect to be a scientific
19 approach of this easement, and it's very clear to me, he's
20 there to talk about things that aren't mentioned in the
21 easement at all. This easement, as Mr. Redman has
22 explained in great detail, is very clear about what you
23 can and cannot do. Essentially, the original easement is
24 you can't. Period. Ask, we'll agree to something, and
25 then that's what you can. The second easement is what you

1 can. And whether or not there's any violation is
2 determinable by looking at the measurements and the
3 documents themselves. It's pretty straightforward.

4 The phrase "scenic easement" is merely a title. The
5 easement -- neither the easement nor the amended easement
6 deals with any field of vision measurement or
7 prescription. It's not even discussed.

8 The entire idea is what you can construct or
9 reconstruct and what you cannot and where you can and
10 where you cannot. It doesn't discuss what the Parks can
11 see sitting on their rear porch or out at their pool or in
12 their living room or any of those things. These are all
13 areas where this witness, whether it is intentional or
14 not, would be presented specifically -- his impact would
15 specifically be confusing the issues for the jury. He
16 would offer nothing substantive about what the documents
17 themselves say. He was abundantly clear throughout his
18 deposition. He is going to discuss the parameters of the
19 easement not one bit. That's a legal opinion. He made it
20 clear to the attorneys involved that that's for them to
21 do. He is not doing that.

22 He's going to talk about what you can see, what you
23 can't see. If you look to the right, you see the Gutovitz
24 house, but if we start to back up and you're standing on
25 the porch of the Parks' house, you see it less and less.

1 This is incredibly common sense stuff that the jury
2 doesn't need his assistance to explain if there is a jury,
3 and the trial judge certainly doesn't need any assistance
4 to explain.

5 Both porches and both properties have been
6 video-taped ad nauseam. They have been photographed ad
7 nauseam. They have had drones flown around them to get
8 them from all angles. The jury -- if there is a jury --
9 or the judge, if there isn't, can go and visit the
10 properties and see for themselves. All of those things,
11 to the extent they may ever become relevant are easily
12 discernible by a trier of the fact or law. That is not
13 necessary -- it's not necessary in this instance to bring
14 in any expert.

15 So we have got a situation where there's certainly
16 no need for an expert to tell people what you can see
17 standing in a particular place, looking a particular
18 direction. There's no need for a definition of what the
19 word "scenic" means, because if you read the easements,
20 it's not an element of any of the numbered paragraphs.
21 There's no whereas, therefore, here's what "scenic" means,
22 here's how you violate it. That's not in there at all.

23 This is an easement and an amended easement that
24 deal with what you can build, where you can build it, and
25 what you must do to get the right to do that. That's it.

1 It has nothing to do with -- it doesn't discuss one bit
2 about what you can see from any point of either of these
3 two properties that were lot 1 and lot 2 in this block
4 originally. It doesn't discuss that one bit. It's not an
5 issue in the documents.

6 So to bring it into issue is just to confuse the
7 issues. It will mislead the jury. It will waste the
8 Court's time. It's cumulative. But, most importantly,
9 under 403, which is the first half of our motion, Your
10 Honor, it is highly prejudicial, and it seeks to --
11 whether that's the intent of the defendants or their
12 counsel or not doesn't matter. The impact would be that
13 it would negatively prejudice the Parks. It trivializes
14 their lawsuit by saying, essentially, "Well, who cares
15 what the document says. You can still see the beach. You
16 know, unless you're looking directly at the Gutovitzes,
17 you can still see this, you can still see that." That's
18 not what the easement is for.

19 As Mr. Redman explained, the Parks -- their home is
20 directly south of a home that's not involved in any
21 litigation, that belongs to some folks that have owned
22 that home for a long time. And the house on the other
23 side of them blocked them -- not just their view from a
24 particular direction but the size of it, the girth of it,
25 the spacing of it on their lot made their life in their

1 home less enjoyable for an abundance of reasons. So when
2 the Parks built their house to the south of that family,
3 they set theirs back and intentionally did not do that to
4 them on the other side of their house.

5 So when the Parks owned the lot to the south of them
6 that the Gutovitzes eventually bought, they set a very
7 simple easement. They said, "Just don't build anything on
8 that scenic easement area. Period. Nothing. Unless you
9 come to us with specific plans and get our written
10 permission." It's that simple.

11 It doesn't say, "You're blocking our breeze." It
12 doesn't say, "You're blocking the sound of the birds" or
13 anything of the sort. There's no consideration for all
14 the potential areas that Mr. Campbell might testify about.

15 The one area that he is very clear he's not going to
16 testify about is the only thing before the Court, and that
17 is the language of the Scenic Easement and the Amended
18 Scenic Easement. Mr. Campbell has been abundantly clear
19 that he is not going to give any opinion as to what these
20 documents require. He says, at pages 69 through 72 of his
21 deposition, he doesn't know what you'd have to do to
22 violate these documents, and he's not going to render an
23 opinion, even though he had already signed an affidavit.
24 He's not going to render an opinion as to what you would
25 have to do to violate those easements.

1 Interestingly, yesterday, the defendants filed a
2 series of documents in response to our motions, and in one
3 of them, in response to the motion Mr. Redman just argued
4 on summary judgment, the defendants' counsel filed a
5 document in response and argued in that document that the
6 attorney who drafted the easement doesn't know the
7 particulars of the agreement between the Gutovitz and the
8 Park and can't testify as to the easement in that regard
9 because she isn't privy to those particulars, the attorney
10 would be inappropriate.

11 Now, here, "The Parks' named attorney who drafted
12 the easement as a witness is no consequence. It is not,
13 nor can it be, the province of the attorney who prepared
14 it to say what violations seem clear and obvious," talking
15 about the easement -- the agreement that would exist
16 between the Parks and the Gutovitzes.

17 That attorney has legal knowledge and isn't,
18 according to the defendants, qualified to be an expert to
19 talk about what is and isn't violative of the easement,
20 which is in a document that attorney drafted.

21 But Mr. Campbell, who is an engineer with a second
22 degree in human factors and has been an expert witness in
23 many, many, many, many, many cases and has known
24 plaintiffs' -- I mean, defendants' counsel for over 30
25 years in that regard, he's somehow qualified, and he had

1 rendered an affidavit saying that the Gutovitzes didn't
2 violate the easement; that he will not, under oath in his
3 deposition, even explain how you could violate it, but his
4 affidavit says they haven't.

5 We don't need to get into a litany of discussion in
6 front of a judge or a jury about what the word "scenic"
7 means. It's a title to the document. It is not an
8 element of the document. The document is abundantly
9 clear. Document 1, build nothing unless you ask
10 permission, which must be reduced to writing; thus, came
11 Document 2.

12 Everything from that point can be determined whether
13 it violated or not according to survey markers on the
14 ground and the testimony of architects who -- I mean
15 surveyors and architects, like Mr. Redman was explaining,
16 who have investigated it. None of it has to do with any
17 human factor of whether you can see a particular field of
18 vision from the Parks' or Gutovitzes' porches. That's not
19 addressed in any of these documents. It's wholly
20 irrelevant, but to the extent that the Court might be
21 interested in at all, it's still highly prejudicial and
22 trivializes the Parks' position. It takes away the very
23 protective document that they filed to begin with, which
24 was the genesis of all this dispute. They didn't want
25 anything built there. And when they finally relented and

1 agreed for something to be built there, that's not what
2 was built there. That's the argument.

3 There's no debate about -- or should there be --
4 about what we can see or can't see from where on either
5 property. That's a waste of time for the jury. It's
6 cumulative. It's misleading. It confuses the issues.
7 And most importantly, it is highly prejudicial to the
8 Parks. They did what they should have done as a matter of
9 law, and when they agreed to sell that lot next to them,
10 filed the appropriate documents, and then reached a
11 written agreement with the appropriate people on the
12 appropriate documents, they shouldn't be trivialized and
13 made to seem petty or less sincere in their claims simply
14 because the word "scenic" was put on a document.

15 The measurements on the document haven't changed.
16 The terms of the document are "porches" and "decks." You
17 hear what their witness says about it. None of that --
18 none of that has changed, but the fact that their expert,
19 Mr. Campbell, that they want to bring in and put on the
20 witness stand isn't going to testify about anything except
21 for what you can see from different places on the Parks'
22 property when looking in the general vicinity of the
23 Gutovitzes' property without any definition of what
24 "scenic" is, and now Mr. Connell in his response says that
25 Campbell is going to talk -- help the jury understand what

1 "scenic" is. The jury doesn't need to understand what
2 scenic is. Jury knows what scenic is. And it's not
3 defined in here. It's an objective standard, no debate
4 about it.

5 But these easements don't require it to be defined.
6 These easements have everything in them they need, and if
7 they were followed, we wouldn't be in this litigation all
8 these years later.

9 Anyway, so we would move that Mr. Campbell be
10 excluded as a witness and that his affidavits be stricken.
11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Shelton.

13 Mr. Connell, I'll hear from you now.

14 I believe Mr. Connell is muted, so let's get him...
15 there we go. We can hear you now.

16 MR. MARTIN: You can hear me now, Judge?

17 THE COURT: Yes, sir.

18 MR. MARTIN: Okay. Judge, this motion to exclude
19 the expert is premature. Whether or not an expert or a
20 witness ought to be excluded is best left to the
21 discretion of a trial judge and is certainly not necessary
22 to be brought here.

23 It seems ironic to say that the action that began
24 here to enforce a Scenic Easement Agreement has nothing to
25 do with scenic. And I would note for the Court that not

1 only the factual testimony before a jury or a judge is
2 relevant but the inferences that can be drawn from a fact
3 that is introduced into evidence, such as in dispute as a
4 Scenic Easement Agreement or from Mr. Campbell's testimony
5 as to his view of the properties, that those inferences
6 are and could be relevant and do not tend to trivialize or
7 to confuse the issue. That's the issue that we're dealing
8 with here.

9 But, again, and if you're calling a witness an
10 expert, like Mr. Campbell in this case, when you get to
11 court, opinions may change. Testimony may change.
12 Opinions may expand, they may constrict. Those all go to
13 the idea, Judge, that this is an issue for a trial judge,
14 something that you don't need to rule on today as you sit
15 in Columbia. It's better left that way just, Judge,
16 frankly, going back is the issue of whether or not to
17 strike our right to a trial by jury. Those were all
18 issues better left to a trial judge dealing with the case
19 on the day that it comes to court.

20 So we would ask that you deny their motion at this
21 time to exclude Mr. Campbell as a witness, and allow that
22 determination to be made as it properly and, in many ways,
23 only could be at a trial by a trial judge.

24 THE COURT: Thank you, sir.

25 Mr. Shelton, if you'd like, you may briefly respond.

1 MR. SHELTON: I would only respond to the extent
2 that Your Honor has heard the motion for summary judgment.
3 There is no need for -- so when we're looking at our
4 motion, I still believe it's highly prejudicial, but
5 there's also -- and maybe more importantly, there's
6 absolutely no need for, under 702, the jury doesn't need
7 any and the judge doesn't need any assistance from this
8 proposed expert witness and ought to be excluded.

9 THE COURT: All right. Thank you, Mr. Shelton.

10 And, Mr. Redman, I believe we have one more motion
11 for sanctions and spoliation; is that correct?

12 MR. REDMAN: That is correct, Your Honor. If I can
13 go back to the beginning, when Judge Seals was struggling
14 with whether to schedule a date certain or not, this was
15 one of the motions that we had in the hopper and pending.

16 The -- first off, as to striking -- you know,
17 whether the issue is premature is what I'd like to talk
18 about as to the three motions, which ones need to be
19 decided now and which ones might be better left to the
20 trial judge.

21 As to whether a jury trial demand is stricken or
22 not, that is hugely impactful as trying to even get the
23 trial scheduled. I had a non-jury matter that was
24 converted to -- I'm sorry, a jury converted to non-jury.
25 We ended up being transferred from non-jury to the same

1 week of the -- to the same week but to the non-jury
2 roster, and of course the jury takes precedence because
3 there's such a huge amount of time and energy in pulling a
4 jury. And then after that, scheduling a jury and
5 non-jury.

6 So it's critical that we get the -- we really need a
7 ruling as to the jury trial demand, whether it can be
8 stricken or not, because that goes to our -- whether we
9 will need to appeal it immediately, and it also impacts
10 heavily scheduling -- even getting in front of a judge,
11 scheduled for a date certain, whether non-jury or jury.

12 As far as our motion for sanctions, that motion for
13 sanctions is based upon discovery, but it also asks for
14 particular claims to be dismissed, a finding of spoliation
15 of evidence. And I think, Your Honor, I would like to
16 reserve the motion for sanctions and the -- our request
17 for monetary damages and the striking of the defendants'
18 particular claims. That would actually be better for the
19 trial judge to hear that motion.

20 The other two motions can be heard today. The
21 motion as to an expert witness is -- it creates a huge
22 amount of -- it's ripe now. It creates a huge amount of
23 responsive work to get our own expert to testify in
24 addition to, you know, their expert has it wrong with what
25 our view of an expert, should one be required as to what

1 you can see or not, would testify as to what our version
2 of the truth is or what the truth is.

3 But I think the third motion, motion for sanctions,
4 and to strike particular claims and issue a spoliation
5 finding would be better heard by the trial court, because
6 he'll have an intimate feeling for all the testimony and
7 how that -- whether it should just be a monetary striking
8 claims or the option of issuing a charge of spoliation.
9 All of that would be very difficult to do one month out
10 particularly because you are not the scheduled trial
11 judge, Your Honor.

12 So we respectfully would think that a motion for
13 sanctions would be better heard at the time of trial by
14 the trial court.

15 THE COURT: All right. And thank you, Mr. Redman.

16 I believe -- so with the three separate motions, I'm
17 going to take those under advisement. As to the summary
18 judgment, the trial -- right to a bench trial, there's a
19 lot of case law I need to look to -- to read, which I have
20 it all from your motions, and the other ones y'all
21 continue to give me.

22 And I appreciate both of the motions and the
23 responsive motions. They have been very helpful. I have
24 read them mostly already, but I'm going to read those
25 again. If there's anything I need to, I'll go back to

1 those, refer to those.

2 And I will make an expedited ruling on this because
3 of the issues that's scheduled relatively soon, so I don't
4 want to delay this in any way. So I'm going to hopefully
5 have a decision by at least the end of this week, if not
6 earlier. I think I have all the material I need. I
7 appreciate y'all's arguments today back and forth, and so
8 it's been very helpful.

9 So I'm going to take this under advisement, and I
10 will give a ruling to you as soon as possible.

11 Anything further before we finish this morning?
12 Mr. Redman?

13 MR. REDMAN: Not at this time, Your Honor. Thank
14 you.

15 THE COURT: Mr. Connell?

16 MR. MARTIN: No, sir.

17 THE COURT: Mr. Shelton, I believe you have got --
18 good to go?

19 MR. SHELTON: Yes, sir.

20 MR. CONNELL: Your Honor, is it my understanding
21 that you're not going to rule on the sanctions motion? Is
22 that what I heard you say?

23 THE COURT: Correct. I'm going to hold that one
24 off. We will have it counted for the trial judge to make
25 that determination for the sanction/spoliation of

1 evidence.

2 MR. CONNELL: All right. Thank you, Your Honor.

3 THE COURT: All right. Thank y'all very much for
4 being here. I really do appreciate it.

5 MR. REDMAN: Thank you.

6 THE COURT: Thank you.

7 (The hearing concluded.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Gary Park v. Scott Gutovitz

3 2020-CP-26-06420

4 DATE OF HEARING: 1/7/2023

5 COURT REPORTER/MONITOR: Webex Recording

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related
12 to, nor employed by any of the parties to this case, and I
13 have no interest, financial or otherwise, in its outcome.
14

15 16 /s/ Bobbi Fisher

17 Bobbi Fisher, Certified Transcriber

18 Date Prepared: May 12, 2023

19
20
21
22 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
23 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
24 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."
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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action Number: 2019-CP-26-02083

Gary L. Park and Cynthia C. Park,
Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,
Defendants.

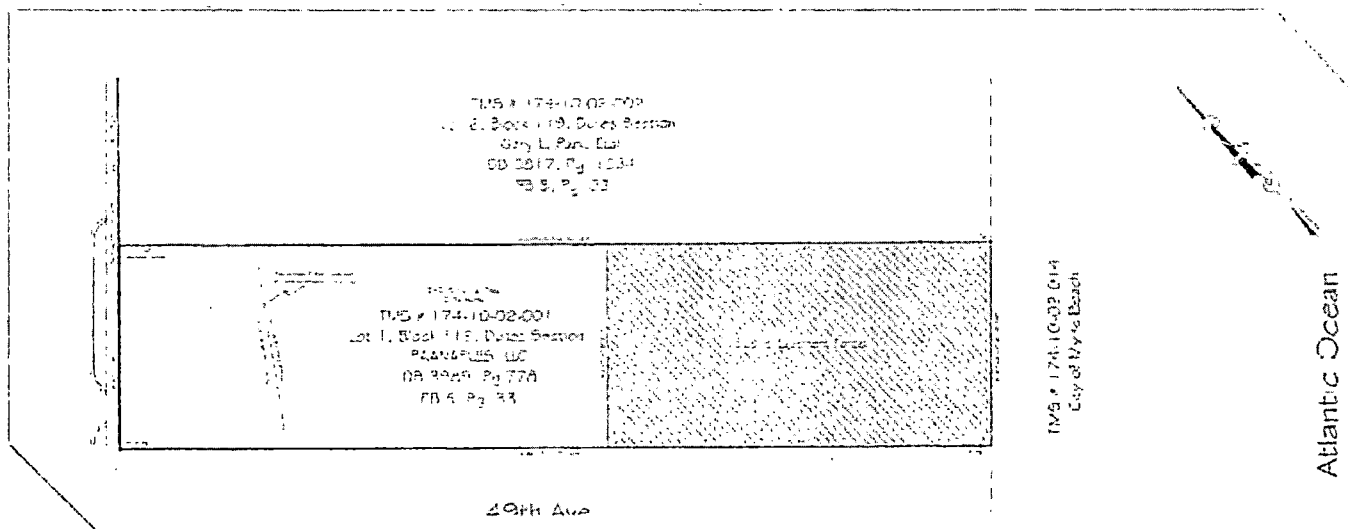
MOTION FOR INJUNCTION
& VERIFIED MEMORANDUM
FOR AND IN SUPPORT OF
TEMPORARY INJUNCTION

TO: GENE M. CONNELL, JR., AS ATTORNEY FOR THE ABOVE-NAMED DEFENDANTS SCOTT BARRY GUTOVITZ AND CARON DAWN GUTOVITZ

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gary L. Park and Cynthia C. Park, by and through their undersigned attorneys, move this Honorable Court, pursuant to Rule 65 of the *South Carolina Rules of Civil Procedure*, for an Order immediately and during the pendency of this Action, enjoining and prohibiting Defendants, and any and individuals, entities, contractors, and/or others acting in concert with Defendants, from *inter alia*, commencing or continuing any construction on real property restricted by an express easement of record. The grounds for this Motion, as set forth in Plaintiffs complaint and the Affidavit of Cynthia Park, are that Defendants bought real property subject to an express easement agreement of record and they have constructed improvements in violation of the easement. While Defendants acknowledge they are subject to the easement, and they also argue the easement does not burden their property. As a result, Plaintiffs now move to enjoin Defendants from changing the status quo during the pendency of this Action.

BRIEF FACTUAL BACKGROUND

The recorded easement which is the subject of this Action is that certain Scenic Easement Agreement dated May 12, 2017, and recorded on July 13, 2017, in Deed Book 4025 Page 2283 of this County's Register of Deeds (the "Easement" is attached to Plaintiffs' Complaint as Exhibit B). The Oceanfront portion of Defendants' property restricted by the Easement is clearly depicted and labeled as the Scenic Easement Parcel on the plat dated April 7, 2017, recorded May 4, 2017 (attached to and incorporated in Plaintiffs' Complaint as Exhibit C).



The Easement provides:

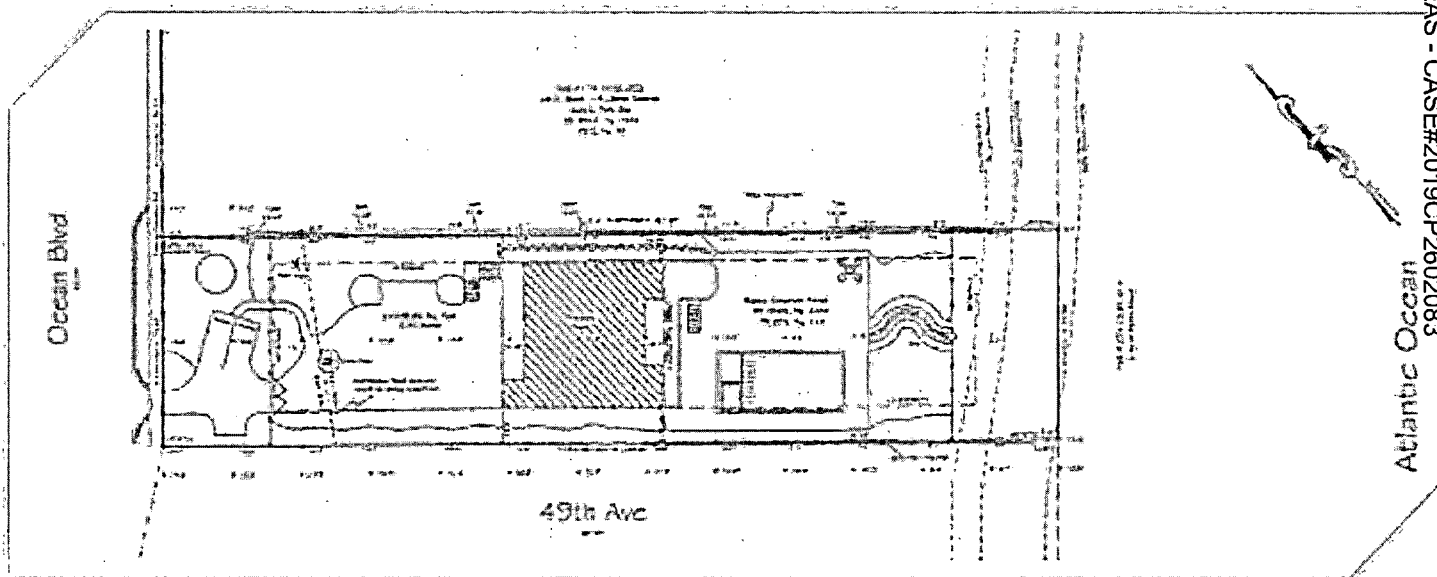
Grantor agrees there shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and written approval obtained from the Grantee.

On July 26, 2018, Defendants emailed Plaintiffs requesting permission to build a "balcony" in the Scenic Easement Parcel that would not be closer to the Ocean than Plaintiffs' porch: "I think your balcony is 16 ft wide, so would actually extend beyond ours toward the ocean. We are not sure if the balcony counts as a 'structure,' so just in the spirit of good neighborliness, can you please look

at our schematic plans?" (See Aff. of Park, ¶ ____). Plaintiffs hired the McNair Law Firm to draft an amendment to the Easement so Defendants could build a porch in the Scenic Easement Parcel (the "Amendment" is the attached to Plaintiffs' Complaint as Exhibit D) and provides:

2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel ... so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 -
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.

(Amendment, ¶ 2). A picture of the porch Defendants' were requesting (shown below, highlighted in pink) was attached to the Amendment as Exhibit A:



As soon as construction began, it was readily apparent Defendants were building a multi-level porch positioned closer to the ocean than Plaintiffs' porch. (See Complaint Exhibit F) After

asking Defendants to comply with the Easement and Amendment (*See* Complaint Exhibits G & I), Plaintiffs were forced to initiate this Action to compel compliance.

Plaintiffs did not move for injunctive relief at that time because Counsel for Defendants, Shep Guyton, wrote an email dated November 21, 2018, wherein he asserted construction would stop in the Scenic Easement Parcel. During their depositions taken on September 16, 2019, Defendants testified: (1) their proposed porch is being built positioned closer to the ocean than the porch on the Parks residence; (2) so that at least two porches and two decks are being built; and (3) numerous unapproved changes have been made to their plans. In the days after their depositions, Defendants initiated a significant amount of construction within the Scenic Easement Parcel which is inconsistent with the November 21, 2018 email from Shep Guyton.

As to injunctive relief, the Easement provides: “Enforcement of the covenants and restrictions contained herein, and of any other provision hereof, shall be by any appropriate proceeding at law or in equity against the person or persons violating or attempting to violate these covenants and restrictions.” The Amendment further provides in pertinent part:

Gutovitz ... acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs. (*emphasis added*)

The language of the Easement and the Amendment confirm that an injunction is the appropriate remedy in this case, and this acknowledgment meets the burden of setting for the prima facie case evidencing a likelihood of success. *See Rogers v. Comprehensive Rehabilitation Assocs., Inc.*, 808 F. Supp. 493, 498 (D.S.C. 1992). Indeed, the purpose of a temporary injunction is to avoid a change to the status quo and an irreparable injury to a plaintiff pending final adjudication of a case.

Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The South Carolina Supreme Court has expressly held that temporary injunctions are proper when protecting rights acquired under an easement. *Transcontinental*, 252 S.C. 478, 481 (1969); *See also D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904) (holding that where a plaintiff had an established right of way to real property, a temporary injunction, during the pendency of litigation, was proper to preserve the plaintiff's rights).

Based upon the foregoing, Plaintiffs will show and allege unto this Honorable Court, by and through the facts set forth in its Complaint, this Verified Motion and Memorandum, the Affidavit of Plaintiff, and other submissions to the Court as may be made, that Defendants have violated and breached the Easement and Amendment, as well as their agreement as stated by Attorney Shep Guyton concerning construction pendente lite. Pursuant to the Easement and Amendment, Plaintiffs have and will continue to suffer irreparable damage as a matter of law while Defendants impermissibly continue construction and change the status quo within the Scenic Easement Parcel.

WHEREFORE, Plaintiffs, respectfully pray this Honorable Court will stop Defendants and anyone acting in active concert, from violating the Scenic Easement and the First Amendment to Scenic Easement Agreement while this lawsuit is pending by Ordering Defendants shall not:

- a. Fail to provide the most current plans, inclusive of any and all changes of any type whatsoever, involving any construction or improvement of any type within the Scenic Easement Parcel;
- b. Undertake or authorize any construction or the placement of any improvements of any type within the Scenic Easement Parcel unless and until they are provided with written confirmation that said construction has been authorized by Plaintiffs;

- c. Unless approved in writing by Plaintiffs, remove within 30 days, any and all construction or improvements of any type whatsoever that have been built or placed within the Scenic Easement Parcel without express written consent of Plaintiffs; and,
- d. Deposit the sum of \$100,000.00 into Court for the purpose of providing and securing any determination of damages, inclusive of attorney's fees and costs, to enforce the easements which are subject of this Action.

In accordance with Rule 65(c) of the *South Carolina Rules of Civil Procedure*, Plaintiff is prepared to post bond in the amount of \$250 with the Clerk of Court, or as the Court shall direct upon reasonable notice.

Respectfully Submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357
Myrtle Beach, SC 29578-0357
843.448.2400
Attorneys for Plaintiffs

/s/ George W. Redman, III
SC Bar No. 72365

Myrtle Beach, South Carolina

October 28, 2019.

FILED FROM PUBLICLY FILED - 20170904 PM 12:55 PM - Horry County - CCOWW/IDN/FILED - CASE# 20170904 PM 12:55 PM

STATE OF SOUTH CAROLINA)
) SCENIC EASEMENT AGREEMENT
COUNTY OF HORRY)

THIS SCENIC EASEMENT AGREEMENT ("Agreement") is made effective this 12 day of May, 2017, by and between Paanaples, LLC ("Grantor") and Gary L. Park and Cynthia C. Park ("Grantee").

RECITALS:

WHEREAS, Grantor is the owner of Lot 1 Block 119, Dunes Section, that certain real property located in Horry County, South Carolina, bearing a Tax Map Number of 174-10-02-001, and described on Exhibit "A" attached hereto ("Subservient Parcel") and made a part and parcel hereof; and

WHEREAS, Grantee is also the owner of Lot 2, Block 119, Dunes Section, that certain real property located in Horry County, bearing a Tax Map Number of 174-10-02-002, and described on Exhibit "B", attached hereto ("Dominant Parcel") and made a part and parcel hereof; and

WHEREAS, Grantor has determined that a portion of the Subservient Parcel described on Exhibit "C" attached hereto ("Scenic Easement Parcel") and made a part and parcel hereof, shall be perpetually maintained and preserved as open space for the benefit of Grantee and the owner or owners from time to time of the Dominant Parcel.

NOW, THEREFORE, Grantor declares that the Scenic Easement Parcel is and shall be held, transferred, sold, encumbered, conveyed and occupied subject to the covenants, restrictions and easements hereinafter set forth:

1. The restrictions hereby imposed upon the use of the Scenic Easement Parcel are and shall be as follows:

(a) Grantor agrees that there shall be no new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel unless an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and written approval obtained from the Grantee.

2. Enforcement of the covenants and restrictions contained herein, and of any other provision hereof, shall be by any appropriate proceeding at law or in equity against the person or persons violating or attempting to violate these covenants and restrictions.

3. This Agreement shall be a covenant running with and burdening the Subservient Parcel and shall be binding upon Grantor, its successors, assigns and successors-in-title to the Subservient Parcel and shall inure to the benefit of the Grantee, the owner or owners of the Dominant Parcel, and their respective successors, heirs, personal representatives and successors-in-title.

4. The Scenic Easement Parcel for all other purposes, such as taxes, insurance and maintenance, shall remain the responsibility of the Grantor, its successors, assigns and successors-in-title to the Subservient Parcel.

IN WITNESS WHEREOF, Grantor has caused this Scenic Easement Agreement to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR
PAANAPLES, LLC



Signature of First Witness



By: _____
Its: Member



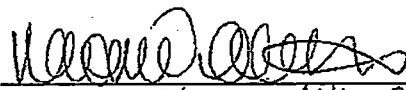
Signature of Second Witness/Notary Public

Florida
STATE OF ~~SOUTH CAROLINA~~)
COUNTY OF ~~HORRY~~ Collier)

ACKNOWLEDGEMENT

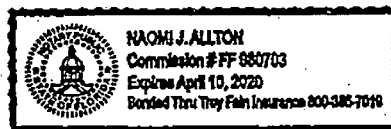
I, Naomi Alton, a Notary Public do hereby certify that Paanaples, LLC by Patricia Anido, its Member, the within named Grantor personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 12th day of May, 2017.



(SEAL)
Print Name: Naomi Alton
Notary Public for South Carolina - Florida
My Commission Expires: April 10, 2020

(AFFIX SEAL)



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

Maria C. Leary
Signature of First Witness

Valerie E. Cas...
Signature of Second Witness/Notary Public


Gary L. Park

Cynthia C. Park
Cynthia C. Park

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

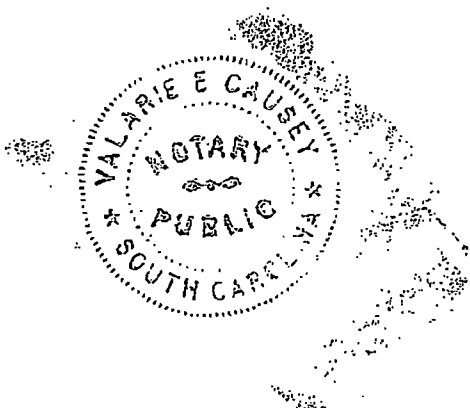
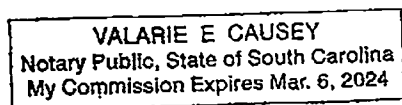
ACKNOWLEDGEMENT

I, Valarie E. Causey, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 5TH day of July, 2017.

Valarie E. Causey (SEAL)
Print Name: Valarie E. Causey
Notary Public for South Carolina
My Commission Expires: March 6, 2024

(AFFIX SEAL)



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Exhibit "A"
Subservient Parcel

All and singular, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Dogwood Neck Township, County of Horry and State of South Carolina, and more particularly described as Lot 1 of Block 119 of the Dunes Section of Myrtle Beach, as shown on a map prepared by N.C. Hughes, Jr., Engineer, dated February 1939, and recorded in Book 5 at Page 33, records of Horry County, South Carolina, which map by reference thereto is incorporated as a part of the description herein.

This being the identical property conveyed to Paanaples, LLC by deed of Howard L. Cohen recorded February 21, 2017 in Deed Book 3989 at Page 778, Horry County Register of Deeds.

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Exhibit "B"
Dominant Parcel

ALL AND SINGULAR, that certain piece, parcel or lot of land, with improvements thereon situate, lying and being in the City of Myrtle Beach, South Carolina and state aforesaid, and being more particularly described as Lot Two (2), Block One Hundred Nineteen (119) of the Dunes Section, as will be more fully shown on a plat prepared by N.C. Hughes, Jr., Engineer, dated February, 1939, and recorded in Plat Book 5, at Page 33, in the Office of the Register of Deed for Horry County, South Carolina.

This being the identical property conveyed to Gary L. Park, and Cynthia C. Park, by deed of John T. Chambers on April 30, 2015 and recorded May 1, 2015 in Deed Book 3817 at Page 1534, Horry County Register of Deeds.

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Exhibit "C"
Scenic Easement Parcel

ALL AND SINGULAR, that certain piece or portion of land described as the "Scenic Easement Parcel", lying and being in the City of Myrtle Beach, South Carolina and state aforesaid on plat of Lot One (1), Block One Hundred Nineteen (119) of the Dunes Section, as is more fully shown on a plat prepared by Norris & Ward Land Surveyors, P.A. dated April 7, 2017, and recorded on May 4, 2017 in Plat Book 275, at Page 112, in the Office of the Register of Deed for Horry County, South Carolina.

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information
2. The property being transferred consists of certain easement rights, granted by Paanaples, LLC to Gary L. Park and Cynthia C. Park on property described as a portion of Lot 1, Block 119 of Dunes Section, bearing Horry County TMS # 174-10-02-001.
3. Check one of the following:
 - (a) ☐ subject to the recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ exempt from the recording fee because the value of the property being transferred is less than \$100.00. (If exempt, please skip items 4-7, and go to item 8 of this affidavit).
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is .
5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is .
6. The recording fee is computed as follows:
 - (a) ☐ Place the amount listed in item 4 above here: \$
 - (b) ☐ Place the amount listed in item 5 above here: (If no amount is listed, place zero here).
 - (c) ☐ Subtract line 6(b) from 6(a) and place here: \$
7. The recording fee is based on the amount listed on Line 6(c) above and the easement recording fee due is \$.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 13th
day of July, 2017

Notary Public for S.C.

My commission expires: 7-5-26

JOANNE FITZSIMMONS

McNair Law Firm, PA

By: Bhumi Patel

Bhumi Patel

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

FIRST AMENDMENT TO

SCENIC EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO SCENIC EASEMENT AGREEMENT ("Amendment") is made effective this 19th day of September, 2018, by and between Scott Barry Gutovitz and Caron Dawn Gutovitz ("Gutovitz") and Gary L. Park and Cynthia C. Park ("Park").

RECITALS:

- A. Park obtained certain rights through that certain Scenic Easement Agreement dated May 12, 2017 and recorded on July 13, 2017 in **Book 4025 at Page 2283** in the Office of the Register of Deeds, Horry County, South Carolina (the "Easement Agreement"); and
- B. Gutovitz are the current owners of the Subservient Parcel as referenced in the Easement Agreement. The parties hereto mutually desire to amend the terms of the Easement Agreement as provided herein.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars in hand paid by Gutovitz to Park, the above recitals and the mutual terms, conditions, and provisions herein and in the Easement Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, Gutovitz and Park agree as follows:

1. The above Recitals are hereby incorporated into this Amendment. All capitalized words not otherwise defined herein shall have the meanings set forth in the Easement Agreement.
2. Park has agreed to allow Gutovitz to place a porch within the Scenic Easement Parcel, as defined in the Easement Agreement, so long as the following conditions are met:
 - a. There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.
 - b. The position of the enclosed structure of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the enclosed structure of the house owned by Park.
 - c. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.
 - d. The porch shall remain open (not enclosed) now and in the future by any subsequent owners to Gutovitz.

3. Default. Gutovitz and all subsequent owners to Gutovitz acknowledge that Park will be irreparably damaged in the event that any covenant or condition contained in this Amendment is not met or breached, and therefore agrees that this Amendment shall be enforceable through (a) specific performance such as injunctive relief, including, without limitation, the restriction of construction or removal of any completed construction; or (b) any other equitable or legal remedies, which shall be cumulative with and not exclusive of any other remedy available to Park, including recovery of reasonable attorney's fees and costs.

4. Remaining Terms and Conditions. The parties hereto acknowledge and agree that no other term, provision, or condition of the Easement Agreement has been changed or modified by this Amendment except as specified above and that the Easement Agreement, as modified by this Amendment, remains in full force and effect.

5. Binding Agreement. The foregoing provisions shall bind and inure to the benefit of Gutovitz and Park and their respective successors and assigns.

[Signatures on Next Page]

HEIC/IRON(CALLY HEI/ED-2109 Oct 25 12 56 PM - HOTOKEY - CONWON/HEI/EAS - CASE#21090023011833

Signature of First Witness



Scott Barry Gutovitz

Kira H. Davis
Signature of Second Witness/Notary Public


Caron Dawn Gutovitz

STATE OF SC
COUNTY OF Horry

I, Cara N. Airey, a Notary Public do hereby certify that the within named Scott Barry Gutovitz and Caron Dawn Gutovitz personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 19th day of September, 2018.

WITNESS my hand and official seal this _____ day of _____, 20____.

Paran N. Avery (SEAL)
Print Name Paran N. Avery
Notary Public for SC
My Commission Expires: 9/20/20

[Signatures Continue on Next Page]



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE

[Signature]
Signature of First Witness

[Signature]
Gary L. Park

[Signature]
Signature of Second Witness/Notary Public

[Signature]
Cynthia C. Park

STATE OF NC)
COUNTY OF Orange)

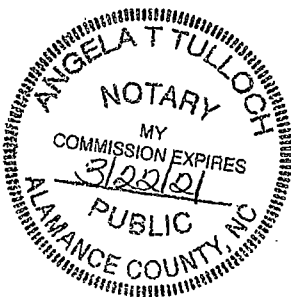
ACKNOWLEDGEMENT

I, Angela T Tulloch, a Notary Public do hereby certify that Gary L. Park and Cynthia C. Park, the within named Grantee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

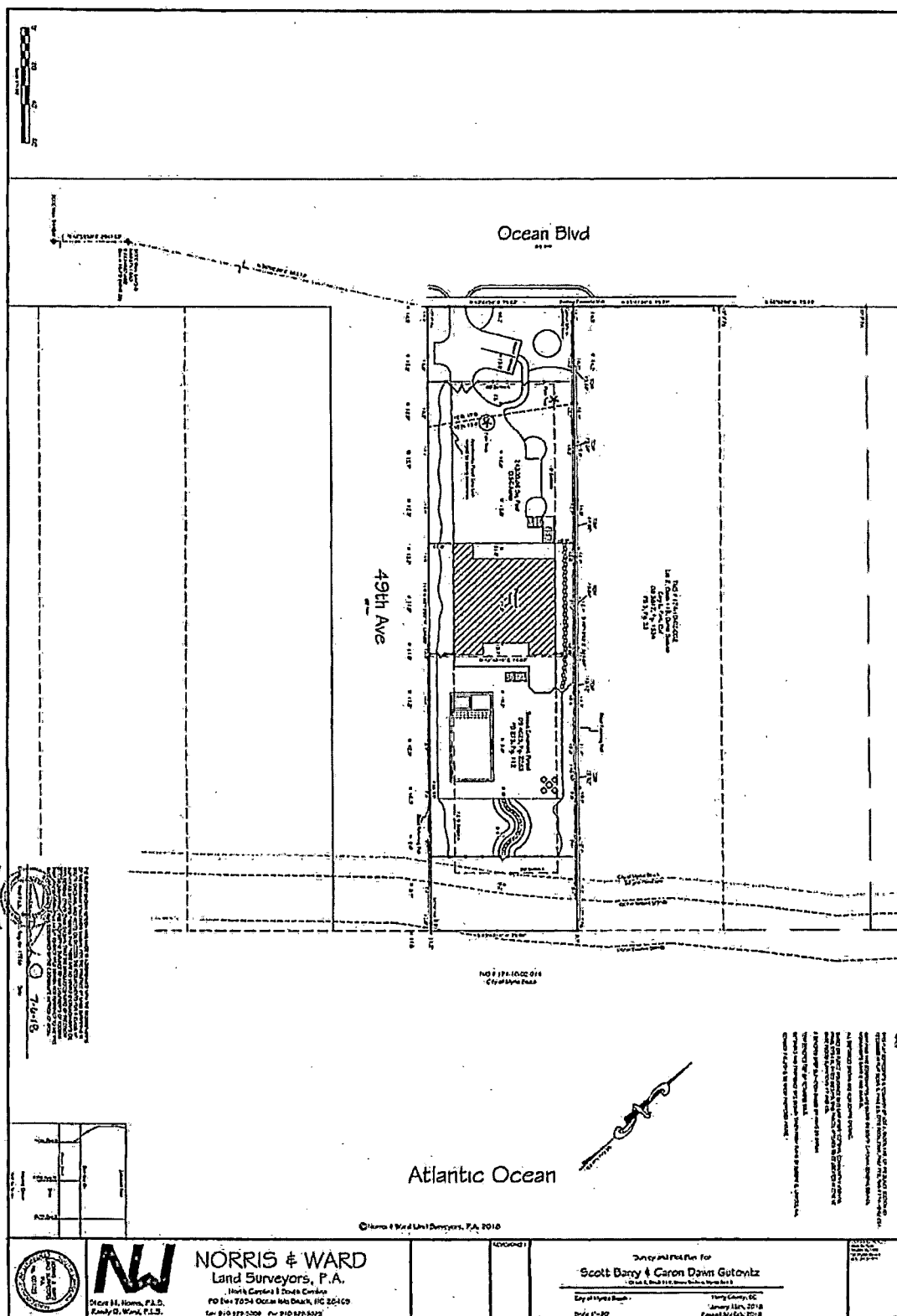
WITNESS my hand and official seal this 10 day of September, 2018.

(SEAL)
Print Name: Angela T Tulloch
Notary Public for Alamance, NC
My Commission Expires: 3/22/21

(AFFIX SEAL)



"Exhibit A"



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02152

Scott Gutovitz and Caron Gutovitz,
Plaintiffs,
vs.
Gary L. Park and Cynthia C. Park,
Defendants.

NOTICE OF MOTION AND
MOTION TO AMEND

TO: GEORGE W. REDMAN, III, ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiffs, will, ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge for the Court of Common Pleas for the Fifteenth Judicial Circuit, in the Horry County Courthouse, for an Order permitting the Plaintiffs to amend their Complaint to include a cause of action for malicious prosecution.

This Motion is made pursuant to Rule 15 of the South Carolina Rules of Civil Procedure on the grounds of furtherance of justice and that leave to amend be granted freely. A copy of said amended pleadings is attached hereto.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.
Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

January 24, 2020
Surfside Beach, South Carolina

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- ___ A. He has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- X B. Such consultation would serve no useful purpose, or could not be timely held; or
- ___ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- ___ a. To Dismiss
- ___ b. For Summary Judgment
- ___ c. For New Trial
- ___ d. For Judgment NOV

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
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gconnell@classactlaw.net
Attorney for Plaintiffs

January 24, 2020
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02152

Scott Gutovitz and Caron Gutovitz,

Plaintiffs,

vs.

Gary L. Park and Cynthia C. Park,

Defendants.

AMENDED COMPLAINT
(Declaratory Judgment/
Slander of Title/Breach of Contract/
Malicious Prosecution)
JURY TRIAL

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are citizens and residents of Horry County, South Carolina.
2. The Defendants are citizens and residents of one of the States of the United States and, upon information and belief, own the house immediately adjacent to property owned by the Plaintiffs in Myrtle Beach, South Carolina.
3. That the Plaintiffs are currently constructing a house on their property located at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.
4. That the Plaintiffs and Defendants are subject and bound by a Scenic Easement Agreement and a First Amendment to Scenic Easement Agreement dated September 19, 2018.
5. That this case involves the interpretation of the First Amendment to Scenic Easement Agreement entered into by the parties.
6. The First Amendment to Scenic Easement Agreement dated September 19, 2018 allows the Plaintiffs pursuant to Section 2 to construct/build a deck within the scenic easement parcel as defined in the Scenic Easement Agreement.

7. Further, attached to the First Amendment to Scenic Easement Agreement is a survey prepared by Norris & Ward Land Surveyors wherein the parties agreed to the specific placement of the deck.

8. That after Plaintiffs began construction of the deck, Defendants through counsel advised the Plaintiffs that the deck could not be constructed and that the aforementioned deck was within the scenic easement.

9. That on March 15, 2019, Defendants and Defendants' counsel caused to be filed against Plaintiffs' property a Lis Pendens which impaired the Plaintiffs' property (see Exhibit 1).

10. That the Plaintiffs are informed and believe that the Notice of Lis Pendens has created a cloud on Plaintiffs' title. Further, Plaintiffs are informed and believe that the First Amendment to Scenic Easement Agreement was drafted and/or written by Defendants and that all ambiguity be construed against the Defendants under well-established contract construction.

11. That Plaintiffs seek a decision of this court regarding the construction and interpretation of the First Amendment to Scenic Easement Agreement dated September 19, 2018.

12. That Plaintiffs have no adequate remedy of law and seek a decision by a jury as to the construction of the deck at the house Plaintiffs are building at 4900 North Ocean Boulevard, Myrtle Beach, South Carolina.

13. That Plaintiffs further seek a declaration of this court that Plaintiffs have not violated the First Amendment to Scenic Easement Agreement and have fully complied with the terms of the Agreement.

14. That pursuant to the South Carolina Uniform Declaratory Judgment Act, Plaintiffs seek an immediate resolution by the court through trial by jury of the issues raised herein along with attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION

(Slander of Title)

15. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

16. That Defendants have caused to be filed in the records of the Horry County RMC a Lis Pendens on March 15, 2019 against Plaintiffs' property more particularly described as Lot 1 of Block 119 of The Dunes Section of Myrtle Beach with Tax Map No. 174-10-02-001.

17. That such Lis Pendens is a cloud on Plaintiffs' title and has slandered the Plaintiffs' title.

18. That Defendants wrongfully recorded an unfounded claim against the property of another and that as a result such is actionable as slander of title.

19. That further the Defendants filed a Lis Pendens with intent to publish a statement which resulted in harm to the interest of the Plaintiffs and of the Plaintiffs' title.

20. That the Defendants knew that the statements in the Lis Pendens were reckless and false.

21. That Plaintiffs are informed and believe that the Lis Pendens was a slander of Plaintiffs' title and was a false and malicious statement made in disparagement of the Plaintiffs' title to real property causing injury.

22. That further Plaintiffs are the owners of the property in question and are attempting to construct a house thereupon.

23. That the Defendants did so with malice and aforethought.

24. That the statements in the Lis Pendens are false.

25. That the statements in the Lis Pendens are derogatory to Plaintiffs' title.

26. That the Defendants' actions caused special damages and diminished the value of the Plaintiffs' property in the eyes of third parties.

27. That Plaintiffs bring this cause of action against the Defendants for slander of title in filing a Lis Pendens without a good faith belief.

28. That Plaintiffs' special damages are the pecuniary losses that result directly and immediately from the effect of the conduct of the Defendants including impairment of the vendibility of the Plaintiffs' real property.

29. That the Lis Pendens disparages Plaintiffs' real property in that Plaintiffs have taken measures to counteract the slander of title including attorney's fees and costs.

30. That, accordingly, Plaintiffs bring this action against the Defendants for slander of title and for actual damages, punitive damages and the cost of this action.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

31. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

32. That the Plaintiffs and Defendants entered into the First Amendment to Scenic Easement on September 18, 2018.

33. That pursuant to the Scenic Easement Agreement the Defendants agreed to allow the Plaintiffs to build a deck.

34. That paragraph 2(a) of the First Amendment to Scenic Easement Agreement states as follows: "There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as Exhibit A. Any proposed change of whatever kind, quality or nature to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park."

35. That pursuant to the terms of the easement, Plaintiffs obtained the prior written consent of Defendants and also provided a plat of the deck to be constructed on Plaintiffs' property.

36. That after Plaintiffs constructed the deck, the Defendants advised Plaintiffs that they did not agree with the construction of the deck and filed a Lis Pendens.

37. That Defendants have breached the First Amendment to Scenic Easement Agreement and failed to abide by its terms.

38. That Plaintiffs bring this cause of action for breach of contract in that Defendants have failed to abide by the First Amendment to Scenic Easement Agreement and that the breach has injured the Plaintiff and accordingly, Plaintiffs are entitled to actual damages, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

(Malicious Prosecution)

39. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

40. That the Defendants brought an action against the Plaintiffs in this Court and that such action is malicious and without probable cause.

41. That South Carolina, based on established case law has held that an improperly filed Lis Pendens gives rise to a cause of action for abuse of process and/or malicious prosecution.

42. That the Defendants in filing a Lis Pendens against the Plaintiffs' real property did so based on an ulterior purpose which is to stop construction on Plaintiffs' home.

43. That further Defendants' act in filing a Lis Pendens was an intentional and willful act and that the use of this process was not proper or in the regular conduct of the proceedings.

44. That Defendants in filing a Lis Pendens because of their attempt to enforce a scenic easement was solely for the purpose of harassment and to affect the construction of Plaintiffs' home.

45. That the use of a Lis Pendens on Plaintiffs' property continues to cause damage and will cause them future damage because Plaintiffs cannot sell their property or get permanent financing.

46. The Plaintiffs are informed and believe that the filing of the Lis Pendens for an ulterior purpose, i.e., to harm the Plaintiffs and stop their construction loan from becoming permanent, had no legitimate purpose.

47. That as a result of the filing of the Lis Pendens, Plaintiffs have received letters from realtors about their property being a distressed property and that such has damaged the Plaintiffs and left them with the inability to either sell the property or in the alternative will cost Plaintiffs additional monies in interest because their construction loan will not become permanent because of the filing of a Lis Pendens.

48. The Plaintiffs ask for judgment against Defendants for actual damages, punitive damages and the costs of this action.

FOR A FIFTH CAUSE OF ACTION

(Malicious Prosecution)

49. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

50. That the Defendants brought an action against the Plaintiffs including the filing of a Lis Pendens over a Scenic Easement Agreement and that such action was brought at the instance of Defendants Park.

51. That the proceedings will terminate in favor of the Plaintiffs.

52. That the Defendants were malicious in filing the action in that the Scenic Easement Agreement was at best ambiguous.

53. That the Scenic Easement Agreement further had an Exhibit A which is a plat which specifically referenced what the Plaintiffs were going to build on the property and that the Plaintiffs built consistent with Exhibit A.

54. That the Defendants had no cause, proper or otherwise, to bring such an action.

55. That injury resulted to the Plaintiffs including filing of a Lis Pendens, the inability to sell their home, the inability to refinance their construction loan to a permanent loan, the inability to move into their house and the inability to live in their house. Further, Plaintiffs had to rent a home during the course of these proceedings due to Defendants' actions.

56. That Plaintiffs bring this cause of action for malicious prosecution because of Defendants' civil action and Lis Pendens which affect Plaintiffs' home and their ability to obtain a certificate of occupancy and live in the home..

57. That Plaintiffs are informed and believe they are entitled to judgment against Defendants for actual damages, punitive damages and the costs of this action.

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. On the First Cause of Action for actual damages.
- B. On the Second Cause of Action for actual damages and punitive damages.
- C. On the Third Cause of Action for actual damages and for an Order of this Court removing the Lis Pendens and declaring that Plaintiffs acted appropriately.
- D. On the Fourth Cause of Action for actual damages and punitive damages.
- E. On the Fifth Cause of Action for actual damages and punitive damages.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiff

January 24, 2020
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-02083

Gary L. Park and Cynthia C. Park,)
)
Plaintiffs,)
)
vs.)
)
Scott Barry Gutovitz and)
Caron Dawn Gutovitz,)
)
Defendants.)
_____)

DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISSOLVE INJUNCTION AND
STRIKE LIS PENDENS

YOU WILL PLEASE TAKE NOTICE, the undersigned, as attorney for Defendants, Scott and Caron Gutovitz, will, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, move this Court for an Order dissolving the injunction. The basis of this motion is the Deed to Real Estate showing that the Plaintiffs Gary L. Park and Cynthia C. Park did sell this property to Charles William Jackson and Hong Thi Nguyen on August 25, 2020. See Deed to Real Estate filed 08/25/2020 in Deed Book 4337, Page 1926 which is a matter of public record.

Further, Plaintiffs no longer have standing to assert injunctive relief for a scenic easement since Plaintiffs do not own the real property. Also, Plaintiffs cannot assert a Lis Pendens because they are not owners of the real property.

Defendants would further assert that the deed indicates the property was sold to Charles William Jackson and Hong Thi Nguyen in fee simple together with all and singular the rights, members, hereditaments and appurtenance to said premises belonging or anywise incident or appertaining.

WHEREFORE, Defendants request that this matter be dismissed or that the injunctive relief sought by the Plaintiffs by order of this court be dissolved as a matter of law.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Defendants

October 8, 2020
Surfside Beach, South Carolina

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- ___ A. He has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- X B. Such consultation would serve no useful purpose, or could not be timely held; or
- ___ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- ___ a. To Dismiss
- ___ b. For Summary Judgment
- ___ c. For New Trial
- ___ d. For Judgment NOV

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Defendants

October 8, 2020
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gary L. Park and Cynthia C. Park,

Plaintiffs,

vs.

Scott Barry Gutovitz and

Caron Dawn Gutovitz,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action Number: 2019-CP-26-02083

**PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

**TO: GENE M. CONNELL, JR. AND MORGAN MARTIN, AS ATTORNEYS FOR THE
ABOVE-NAMED DEFENDANTS SCOTT BARRY GUTOVITZ AND CARON
DAWN GUTOVITZ**

PLEASE TAKE NOTICE pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* Plaintiffs, Gary L. Park and Cynthia C. Park (the Parks), by and through their undersigned attorneys, hereby moves this Court for an Order granting Summary Judgment to Plaintiffs in the above-captioned Action on the ground that the easement agreements which are the subject of this Action are clear and unambiguous; any plans or changes to the plans to build any structure in the easement parcel needed to be approved by the Plaintiffs in writing, and Defendants admit that changes were made without the knowledge or consent of Plaintiffs. As a result, there is no question of law or fact and summary judgment must be granted as a matter of law.

This Action involves an easement, the Scenic Easement Agreement, dated May 12, 2017, recorded on July 13, 2017, in Deed Book 4025 Page 2283 of this County's Register of Deeds (said "Easement" is attached to Plaintiffs' Complaint as Exhibit B). The oceanfront portion of Defendants property is restricted by the Easement and is clearly labeled as the Scenic Easement Parcel on the plat dated April 7, 2017, recorded May 4, 2017 (attached to Plaintiffs' Complaint as Exhibit C). The Easement provides:

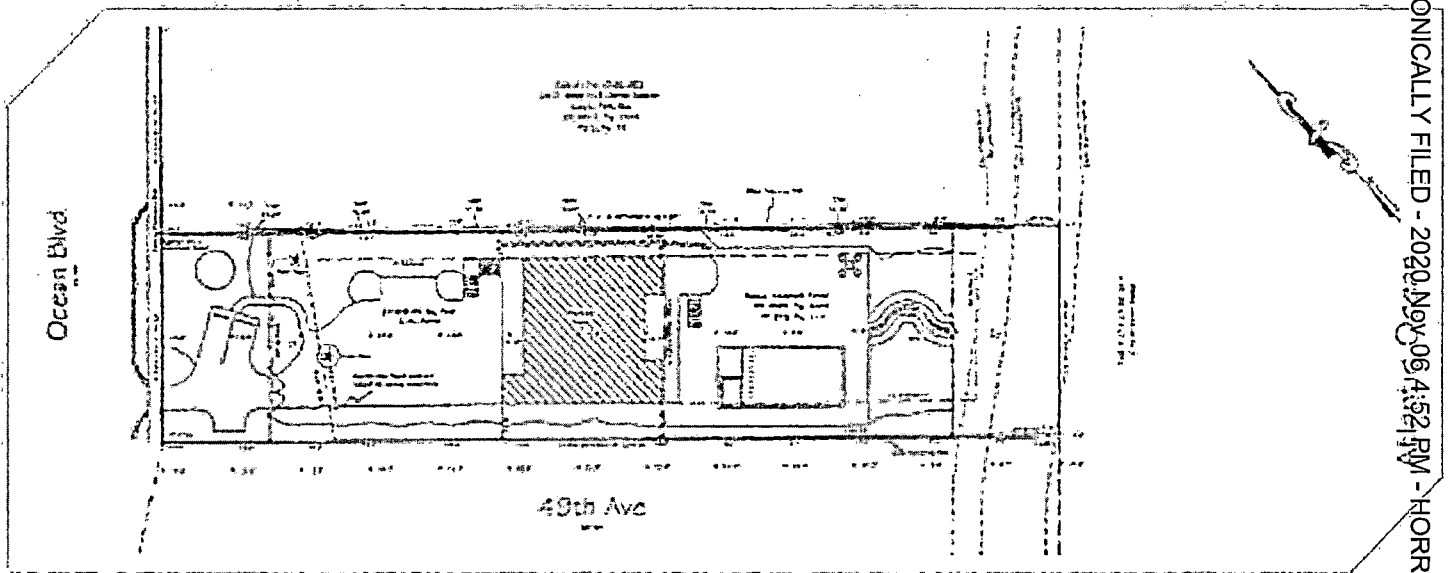
Grantor agrees there shall be **no** new structures of any kind, together with any reconstruction thereof, placed or erected upon the Scenic Easement Parcel **unless** an application therefor, with plans and specification of such structures, together with a statement of the purpose for which the structure will be used, has been submitted to and **written approval** obtained from the Grantee. (*emphasis added*).

Defendants purchased the property subject to the Easement on August 30, 2017.

On July 26, 2018, Defendants emailed Plaintiffs requesting permission to build a “balcony” in the Scenic Easement Parcel that would not be closer to the Ocean than Plaintiffs’ porch. Defendants email stated: “I think your balcony is 16 ft wide, so yours would actually extend beyond ours toward the ocean. We are not sure if the balcony counts as a ‘structure,’ so just in the spirit of good neighborliness, can you please look at our schematic plans?” Although they had no obligation to do so, Plaintiffs hired counsel at the McNair Law Firm to draft a document authorizing Defendants to build a porch in the Scenic Easement Parcel, and said document is entitled the First Amendment to Scenic Easement Agreement (said “Amendment” is attached to Plaintiffs’ Complaint as Exhibit D) and expressly provides:

2. Park has agreed to allow Gutovitz to place a **porch** within the Scenic Easement Parcel ... so long as the following conditions are met:
 - a. **There shall be no change to the plans and specifications as submitted by Gutovitz to Park and attached hereto and made a part and parcel hereof as "Exhibit A." Any proposed change, of whatever kind, quality or nature, to the plans and specifications set forth in Exhibit A shall require the prior written consent of Park.**
 -
 - b. The position of the uncovered porch of the house (facing the ocean) owned by Gutovitz shall not exceed the position of the uncovered porch of the house owned by Park.

(Amendment, ¶ 2, *emphasis added*). As noted, the Amendment attached and incorporated an 8.5” x 11” depiction of the Defendants’ proposed porch as Exhibit A:



As soon as construction began, the initial placement of large pilings made it obvious that Defendants were building a multi-level porch positioned closer to the ocean than Plaintiffs' porch. (See picture attached to Plaintiffs' Complaint as Exhibit F). Despite Plaintiffs' written notice, Defendants refused to comply with the Easement and Amendment (See Complaint Exhibits G & I), Plaintiffs were forced to initiate this Action to compel Defendants' compliance with the Easement and Amendment, reserving the right to move for injunctive relief and the removal of any improvements subsequently constructed. After Defendants began a rush to finalize construction in the Easement Parcel, Plaintiffs moved this court for a Temporary Injunction on October 28, 2019, which was granted on December 17, 2020, requiring Plaintiffs to post a \$400,000.00 bond.

During their depositions taken on September 16, 2019, Defendants testified as to multiple breaches of the Easement: (1) their proposed porch is positioned closer to the ocean than the porch on the Parks residence; (2) Defendants are not building a porch, they are building at least two porches and two balconies; and more specifically and as the primary subject of this Motion

(3) Defendants have made numerous unapproved changes to their plans. Verbatim deposition testimony of both Defendants confirms that the Gutovitz plans changed from a single porch to include two decks and two porches within the Easement Parcel, and that at no point have the new plans been submitted to and approved by the Parks as required:¹

Q: The plat sent to Cindy for approval didn't show multiple decks.

A: No.

Q: Did it? Were any of the porches or the decks changed after you sent the plat for approval to Cindy?

A: Yes.

Q: Did you sent Cindy a copy of the changes – of the change – the copy of the plat reflecting the changes?

A: No.

Dep. of Caron Gutovitz, p. 88.

Mr. Gutovitz confirmed his wife's admission of their violations of Plaintiffs' easement rights:

A: There was a couple changes.

Q: Were those changes submitted to Ms. Park or her attorneys?

A: No, they were not.

Dep. of Scott Gutovitz, p. 45-46.

Furthermore, on December 17, 2018, the undersigned Counsel for the Plaintiffs wrote a letter to the Gutovitzs' prior lawyer, Shep Guyton, to demand that construction cease until Defendants submitted their revised plans to the Parks for review. Instead, the very next day, on December 18, 2018, the Gutovitzs' submitted an application to the Community Appearance Board

¹ Deposition of Caron Gutovitz, p.87, ln.3 - p.88, ln.15; Deposition of Scott Gutovitz, p.45, ln.7 - p.46,ln.1 (Mr. Gutovitz's testimony differed only slightly, asserting the changed plans included one porch, one balcony, and two decks).

for the City of Myrtle Beach seeking approval of “Revisions to the construction of a New Single Family Residence.” The application listed some of the revisions including “Extension of Rear Deck on 1st and 2nd level” and “Relocation of Stairs off Lower Deck” The Defendants have never submitted an application for approval of the revisions to the Plaintiffs. This first application for revisions to the city proves Defendants breached the Easement Agreement, and as such Summary Judgment should be granted.

Randy Ward, principle owner and employee of Norris & Ward Land Surveyors, P.A., submitted an Affidavit, attached hereto as “Summary Judgment Exhibit A,” drew the survey titled “Survey and Plot Plan for Scott Barry & Caron Dawn Gutovitz,” signed on July 6, 2018, which was attached to the Scenic Easement Amendment as Exhibit A. Mr. Ward stated that there is no way anyone could possible use the Survey, by itself at any time, to determine what if any portion of the structure, inclusive decking, porch, and/or balcony is closer to the ocean than the decking, porch, and/or balcony on the neighboring property owned by Mr. and Mrs. Park. Additionally, he stated that the survey does NOT show more than one deck, porch, or balcony, more than one level of any decking, porch, or balcony, or any covering/roofing over any deck, porch or balcony.

Both the Easement and its Amendment both specifically state that any change to the plans must be submitted to Plaintiffs, and Defendants must obtain approval in writing to any changes to the plans attached to the Amendment. Defendants stated on record that the plans have changed on numerous occasions, they failed to notify Plaintiffs, and they failed to obtain written permission. Plaintiffs move for Summary Judgment as a matter of law because the express language in the Easement and its Amendment is clear and unambiguous, any plans or changes of plans must be submitted to the Parks for their written consent prior to any construction. Defendants have failed on multiple occasions to present the Parks any plan revisions. Based upon the foregoing, Plaintiffs will show and allege unto this Honorable Court, by and through the facts set forth in its Complaint,

this Motion, Affidavits, and other submissions to the Court that Defendants have violated and breached the Easement and Amendment. Plaintiffs respectfully pray this Honorable Court will grant Plaintiffs Summary Judgement ending this Action, and finding in favor of the Plaintiffs

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

Attorneys for the Parks

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

November 6, 2020.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case Number: 2019-CP-26-02083
	)	
Gary L. Park and Cynthia C. Park,	)	
	)	
Plaintiffs,	)	
	)	SECOND AFFIDAVIT
vs.	)	OF RANDY WARD, P.L.S.
	)	
Scott Barry Gutovitz and	)	
Caron Dawn Gutovitz,	)	
	)	
Defendants.	)	

Personally appeared before me, Randy Ward, who, upon being duly sworn, deposes and states as follows:

1. My name is Randy Ward, P.L.S., and I have worked in the State of South Carolina as a licensed Professional Surveyor for approximately twenty-five (25) years, and I am a principle owner and employee of Norris & Ward Land Surveyors, P.A.
2. This affidavit will serve to confirm and supplement my affidavit of May 22, 2019, which discussed several surveys and plats that I personally created for the owners of the oceanfront property at 4900 N. Ocean Boulevard in Myrtle Beach (the "Property"), and as such I have personal knowledge of all matters set forth herein.
3. I performed the survey titled "Survey and Plot Plan for Scott Barry & Caron Dawn Gutovitz," and signed on July 6, 2018 (hereinafter the "Survey"). This Survey was attached to my May 22, 2019 affidavit and labeled "Ward Affidavit B," and the same is reattached to this affidavit, also labeled as "Ward Affidavit Exhibit B."
4. As I stated in my prior affidavit, there is no way anyone could possibly use the Survey, by itself at any time, to determine what if any, portion of the structure, inclusive of decking,

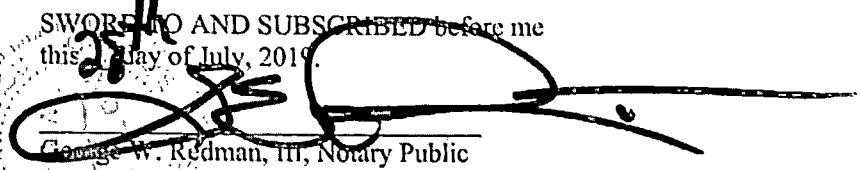
Summary Judgment Exhibit A

- porch, and/or balcony, is closer to the ocean than the decking, porch, and/or balcony on the neighboring property owned by Mr. and Mrs. Park.
5. The Survey does not label any deck, porch, or balcony on the ocean side of the Property.
 6. If the area on the ocean side of the Property was a deck, porch, or balcony, the Survey does NOT show:
 - a. More than one (1) deck, porch, or balcony;
 - b. More than one (1) level of any decking, porch, or balcony;
 - c. Any covering or roofing over any deck, porch, or balcony.
 7. The Survey only shows one set of steps on the ocean side of the Property, however, the Survey depicts multiple levels of stairs on the street side of the Property.
 8. I was not informed of, nor did I authorize, the use of the Survey as an attachment to any written agreement or to depict the Gutovitz's plans for a porch on the ocean side of the building.
 9. Measurements on the Survey include spot elevations measuring the height of the land above sea level at numerous locations so that city officials can the evaluate storm water drainage.
 10. The Survey only depicts the outline of the proposed building in relationship to the lot so city officials can verify the building is within the City's setback requirements. The outline of the building was provided to me by Robert Lowery, the architect.
 11. The original survey was drawn as a full-size plat. If the Survey was reduced to fit on 8x11" paper, the notes would be difficult to read and any attempt to measure distances on the property would be unreliable.

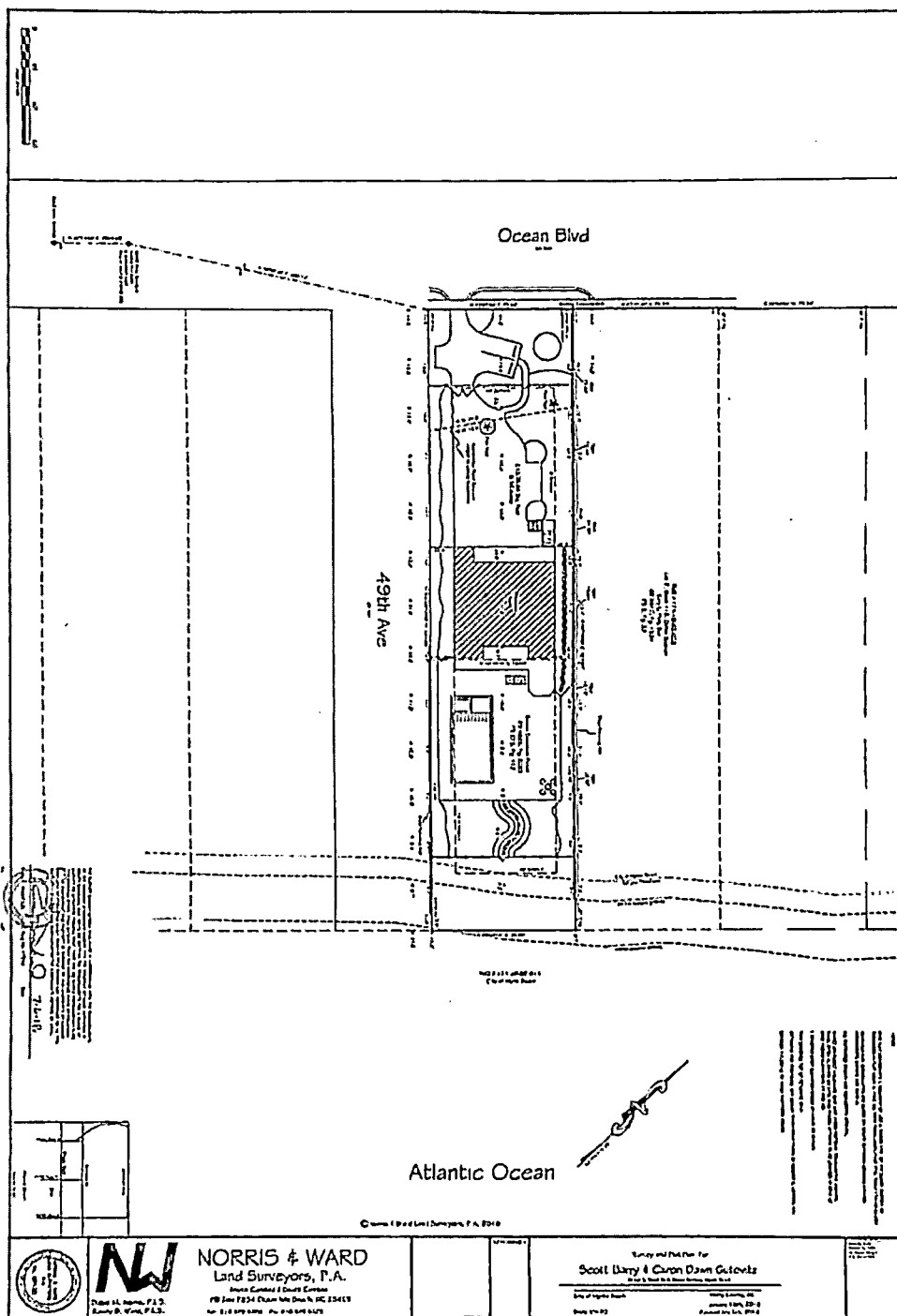
- 12. There are no labels on the Survey as to any pool patio, brick planters, or any fire pit, and as such the Survey was not designed to depict any of these items.
- 13. After an issue had arisen between these neighbors, I performed a different survey which confirmed the porch on the Gutovitz Property was being built closer to the ocean than the porch on the neighboring Park property. After receiving this information, Mr. Gutovitz contacted me and asked me to draw another plat that depicted the location of the Park's outdoor shower area. To my knowledge, the outdoor shower area on the neighboring Park property is not a deck, porch, or a balcony.

FURTHER AFFIANT SAYETH NOT.


Randy Ward, P.L.S.

284
SWORN TO AND SUBSCRIBED before me
this 28th day of July, 2019.

George W. Redman, III, Notary Public
My Commission Expires January 13, 2025

"Exhibit A"



Initials SG
J

Ward Affidavit Exhibit B
Summary Judgment Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gary L. Park and Cynthia C. Park,)

Plaintiffs,)

vs.)

Scott Barry Gutovitz and)
Caron Dawn Gutovitz,)Defendants.)
_____)IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action Number: 2019-CP-26-02083PLAINTIFFS' MEMO OPPOSING
DEFENDANTS' MOTION
TO DISSOLVE INJUNCTION AND
STRIKE LIS PENDENS

**TO: GENE M. CONNELL, JR., AND L. MORGAN MARTIN, AS ATTORNEYS FOR
THE ABOVE-NAMED DEFENDANTS SCOTT BARRY GUTOVITZ AND
CARON DAWN GUTOVITZ**

This Honorable Court should deny Defendants' October 8, 2020, Motion to Dissolve the temporary injunction issued by the Honorable Judge Culbertson on December 17, 2020, and to Strike the Lis Pendens filed by Plaintiffs' on March 15, 2019. Defendants did not consult with Counsel for Plaintiffs prior to filing this Motion.

Plaintiffs' transferred the property to 4902 North Ocean Blvd., Myrtle Beach, S.C. 29577 to Charles R. Jackson and Hong Nguyen on August 25, 2020, by way of Deed recorded in Deed Book 4337 at Page 1926. Charles R. Jackson and Hong Nguyen (*not parties to this Action*) executed the attached Purchase and Sale Parties' Acknowledgment as part of that sales transaction. (*See Exhibit A, attached hereto and incorporated herein verbatim*). Contrary to Defendants' assertions, Plaintiffs' have standing to enforce the Scenic Easement Agreement demanding the removal of the unapproved decks, and to recover damages caused by having to file this Action to enforce the Scenic Easement while Plaintiffs owned the property, as well as the damages incurred upon the sale of their home. Therefore, Defendants' Motion should be denied.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

Attorneys for Plaintiffs

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

November 9, 2020.

PURCHASE AND SALE PARTIES' ACKNOWLEDGMENT

Settlement Agent: The Bellamy Law Firm - Myrtle Beach

Purchasers: Charles R. Jackson and Hong Nguyen

Sellers: Gary Park and Cynthia Park

Property: 4902 North Ocean Boulevard, Myrtle Beach, SC 29577
TMS#: 174-10-02-002

Easement: Scenic Easement Agreement, d. July 13, 2017, rec. Deed Book 4025, pp. 2283-89; over Neighboring (and subservient) Lot to the South;
First Amendment to Scenic Easement Agreement, d. Sept. 19, 2018 (not yet recorded)
Pending Actions to Enforce easement Rights over Subservient Property located at 4900 North Ocean Boulevard
(Said Rights Assigned Herein Below to Sellers):
a. Civil Action 2019-CP-26-2083
b. Civil Action 2019-CP-26-2152

We the undersigned SELLER(S) and PURCHASER(S)/MORTGAGOR(S) do hereby acknowledge, affirm, and/or certify the following with regard to the closing of the sale and purchase of that certain property (the "Property") referenced above:

- 1. ASSIGNMENT OF RIGHT TO CONTINUE TO ENFORCE THE SCENIC EASEMENT AGREEMENT:** Notwithstanding any other document or provision to the contrary, Sellers and Buyers hereby represent that certain lawsuits were properly disclosed during the sale of the Property, and that as to the Easement and the Pending Actions to enforce the Easement, to the fullest extent necessary or required, the Buyers Hereby Assign to Seller any and all Right(s) and Authority, but not necessarily the obligation, to Continue to fully prosecute and enforce all aspects of the Easement, along with any and all amendments between the Sellers and the owners of the subservient property located to the south of the Property being purchased herein.
- 2.** This Assignment of Enforcement Rights shall survive the closing of this transaction and the recording of the Deed conveying the Property to the Buyers, and shall perpetually inure to the benefit of both Sellers and Buyers.
- 3.** Buyers have reviewed the lawsuits of public record and acknowledge and agree the Easement is binding upon the subservient property, and is enforceable by Sellers until such time as the pending lawsuits are resolved by subsequent agreement or trial (and any appeals), all of which may be enforced and shall be controlled exclusively by the Sellers in their sole discretion.
- 4.** Buyers further agree to and acknowledge the Sellers' continuing right to enforce the Easement, that the subservient property has violated the Easement as set forth therein, that Buyers will cooperate as to Sellers's right to enforce the Easement and to recover all damages fees and costs, and the propriety of requesting all relief and damages as set forth in the lawsuits of record, to include but not by way of limitation the filing of motions by Sellers to the court for damages, sanctions, and contempt of the Court, the removal from the subservient property of any previously or subsequently unapproved improvements or structures planned for and/or placed

Buyers' Initials:
CW & NG

Page 1 of 4
ROA 281

Sellers' Initials:
_____ & _____

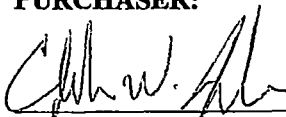
Exhibit A

upon the subservient property at any time (including the removal of the second floor deck, any covering or screens on the first floor decks and/or balconies, the removal of the multi-level decks, the removal of the fire pit structure, the removal of planters, as well as the recovery of all of Sellers' costs, attorney fees, bond deposited with the Clerk of Court, and any other amounts expended or may expend in any way connected with the continued enforcement of the Easement, and the subsequent recording of any subsequent amendment to the Easement agreement as may result from the conclusion of the lawsuits.

5. Buyers and Sellers agree this provision shall supersede any document, contract, or representation to the contrary. Sellers shall not interfere with Buyers' ownership and possession of the Property, shall further provide Buyer any information as Buyers may reasonably request from time to time, and shall use good faith in all of their efforts to protect the perpetual Easement rights benefitting the Property.
6. Sellers acknowledge that with the signing of this document and with the recording of the Deed for the Property, they have assigned rights, but not the obligation, to enforce the Easement for the Sellers to continue the pending lawsuits as they may decide in their sole and unlimited discretion, and that all relief requested in connection with the enforcement of the Easement is necessary, proper, and fully authorized.
7. The Parties mutually agree that any decision to settle by Sellers or a finally adjudicated decision at trial (and any subsequent appeal) shall be binding upon the Buyers and Sellers, and that Seller shall have no liability to Buyer for any matter or claim in any amount for the discontinuance of litigation or the final and/or ultimate result of the pending lawsuits.
8. Sellers understand and agree this document and the authority conveyed herein may need to be disclosed in connection with the enforcement of the Easement.

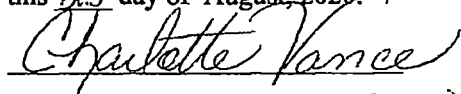
IN WITNESS WHEREOF, we have set our hands and seal, effective on this 24th Day of August, 2020.

PURCHASER:



Charles W. Jackson, Buyer

Sworn to me and subscribed before me
this 25 day of August, 2020.



Notary Public for South Carolina

My Commission Expires: 6-9-2021

Buyers' Initials:

CGJ & NG

Page 2 of 4

ROA 282

Sellers' Initials:

____ & ____

Exhibit A

PURCHASER:

My T M
Hong Thi Nguyen, Buyer

Sworn to me and subscribed before me
this 25 day of August, 2020.

Charlotte Vance

Notary Public for South Carolina

My Commission Expires: 6-9-2021

Buyers' Initials:
CW & NG

Sellers' Initials:
____ & ____
Exhibit A

SELLER:

Gary Park
Gary Park

Sworn to me and subscribed before me

this 25 day of August, 2020.

[Signature]
Notary Public for South Carolina
My Commission Expires: 1-13-2025

SELLER:

Cynthia Park
Cynthia Park

Sworn to me and subscribed before me

this 25 day of August, 2020.

[Signature]
Notary Public for South Carolina
My Commission Expires: 1-13-2025

Buyers' Initials:
CP & MC

Page 4 of 4

Sellers' Initials:
GP & CP

Exhibit A

ROA 284

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,

Plaintiffs,

vs.

Scott Barry Gutovitz and
Caron Dawn Gutovitz,

Defendants.

C/A NO. 2019-CP-26-02083

MOTION TO CONSOLIDATE

Scott Gutovitz and Caron Gutovitz,

Plaintiffs,

vs.

Gary L. Park and Cynthia C. Park,

Defendants.

C/A NO. 2019-CP-26-02152

MOTION TO CONSOLIDATE

YOU WILL PLEASE TAKE NOTICE, the undersigned, as attorney for Scott Barry Gutovitz and Caron Dawn Gutovitz moves the Court for an Order consolidating for trial the above-captioned cases, C/A No. 2019-CP-26-02083 and C/A No. 2019-CP-26-02152.

The basis of this motion is that these two suits were filed almost simultaneously and under SCRCP 42, a joint trial is necessary because the matters involved are almost identical between the parties in the two actions.

WHEREFORE, the Gutovitzes move the Court to consolidate these cases and for such other and further relief as the Court may deem just, necessary and proper.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Scott and Caron Gutovitz

December 17, 2021
Surfside Beach, South Carolina

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- ☐ A. He has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- ☒ B. Such consultation would serve no useful purpose, or could not be timely held; or
- ☐ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- ☐ a. To Dismiss
- ☐ b. For Summary Judgment
- ☐ c. For New Trial
- ☐ d. For Judgment NOV

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Scott and Caron Gutovitz

December 17, 2021
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gary L. Park and Cynthia C. Park,)

Plaintiffs,)

vs.)

Scott Barry Gutovitz, and,)

Caron Dawn Gutovitz,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CA# 2019-CP-26-02083

CA# 2019-CP-26-02152

Scott Barry Gutovitz, and,)

Caron Dawn Gutovitz,)

Plaintiffs,)

vs.)

Gary L. Park and Cynthia C. Park,)

Defendants.)

**PARKS' MOTION
TO STRIKE JURY DEMAND
& SUMMARY JUDGMENT**

**TO: GENE M. CONNELL, JR. AND MORGAN MARTIN, AS ATTORNEYS FOR
SCOTT BARRY GUTOVITZ AND CARON DAWN GUTOVITZ**

PLEASE TAKE NOTICE pursuant to South Carolina Common Law and Rule 56 of the *South Carolina Rules of Civil Procedure*, Gary L. Park and Cynthia C. Park (the Parks), by and through their undersigned attorneys, hereby moves this Court for an Order granting Summary Judgment to Plaintiffs in the above-captioned Action on the ground that the easement agreements which are the subject of this Action are clear and unambiguous; any plans or changes to the plans to build any structure in the easement parcel needed to be approved by the Plaintiffs in writing, and Defendants testified under oath that the scope of construction and changes made without Plaintiffs' consent both violates the express language of the easement restrictions which are the subject of this Action.

The Parks' Motion is also based upon the Affidavit of Bhumi Patel, the attorney who drafted the easement, who stated the Gutovitzs' "violation seemed very clear and obvious," as well as the surveyor who confirmed that the Gutovitz reliance is erroneous as their scope of construction was well beyond anything shown to or authorized by the Parks.

The Parks' Motion is further based upon the sworn deposition testimony of the Gutovitzs' general contractor and witnesses in this Action, who confirm the violations of the easement restrictions in that the Gutovitzs could rely upon the language in the easement amendment that says no part of the house or deck was to be seaward of the Parks house or deck, and that if there was any question all they have to do was ask the Parks and they could approve it. The Parks' Motion will also be based upon the Deposition testimony of the Gutovitzs pool contractor, William Blackmon, and their architect, Robert C. Lowery, all of whom confirm the Parks' claims in this Action.

The Gutovitzs' claims of Slander of Title must fail as a matter of law because the filing of a lis pendens is absolutely privileged in South Carolina. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002). The Gutovitzs' claims of Malicious Prosecution must likewise fail as they rely upon the complete failure of Parks' claims, as well as a determination that their claims lacked even the indicia of probable cause, both erroneous due to the acknowledge existence of the written easements, the sufficiency of which was established for the institution of the injunction already issued in this Action, and well as the testimony of the Gutovitzs' contractors to be presented to this Honorable Court.

As a result of the testimony of the Gutovitz as well as that of their own Contractors, there is no question of law or fact, and the Parks are entitled to summary judgment as a matter of law. The Parties to this Action are respectfully entitled to the Court's determination of these matters set forth herein prior to trial, and in the event trial should be necessary, this Court must strike the

Gutovitz jury trial demand, an action to enforce restrictive covenants by injunction is an action in equity. Even if there were a determination that the claims are arbitrary, this would only alter the availability of extrinsic evidence for the Court, and not a jury, to consider. The determination of any breach in this Action, as well as all matters related to the enforcement of a restrictive easement are equitable. There is no question of fact for a jury. *See e.g. Holling v. Margiotta*, 231 S.C. 676, 100 S.E.2d 397 (1957); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct.App.1993).

Based upon the foregoing, there is no question of fact or law in this matter, and the Parks are entitled to Summary Judgment as a Matter of Law. In the alternative, the Jury Trial demand in this Action must be stricken and this matter tried by the Court without a Jury.

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P. O. Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

Attorneys for the Mr. & Mrs. Park

/s/ George W. Redman, III

SC Bar No. 72365

Myrtle Beach, South Carolina

November 18, 2022.



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP2602083

Official File Stamp: 11-18-2022 05:59:11 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Gary L Park , plaintiff, et al VS Scott Barry Gutovitz , defendant, et al
Document(s) Submitted: Motion/Summary Judgment
Filed by or on behalf of: George W. Redman, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Gene McCain Connell, Jr. for Scott Barry Gutovitz et al
Robert S. Shelton for Gary L Park et al
George W. Redman, III for Gary L Park et al
L. Morgan Martin for Scott Barry Gutovitz et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Case Party Info Protected
Case Party Info Protected

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gary L. Park and Cynthia C. Park,	)	C/A NO. 2019-CP-26-02083
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Scott Barry Gutovitz and	)	
Caron Dawn Gutovitz,	)	
	)	
Defendants.	)	

Scott Gutovitz and Caron Gutovitz,	)	C/A NO. 2019-CP-26-02152
	)	
Plaintiffs,	)	
	)	
vs.	)	RESPONSE BY PLAINTIFFS
	)	GUTOVITZ TO DEFENDANTS PARK'S
	)	MOTION FOR SUMMARY JUDGMENT
Gary L. Park and Cynthia C. Park,	)	IN C/A NO. 2019-CP-26-02152
	)	
Defendants.	)	

The Plaintiffs, Scott and Caron Gutovitz (Plaintiffs Gutovitz), offer the following response to Defendants Gary L. and Cynthia C. Park's (Defendants Park) Motion for Summary Judgment.

I. BACKGROUND FACTS.

This matter is before the Court based on Park's renewed Motion for Summary Judgment in Case No. 2019-CP-26-02152. In that case (which is consolidated for trial with Case No. 2019-CP-26-02083), the Parks are Defendants and have moved for summary judgment against the Gutovitzes claiming that the First Amendment to Scenic Easement Agreement is clear and unambiguous and that there is no issue and that summary judgment should be granted. The two cases were consolidated for trial because the Gutovitzes, almost simultaneously with the Parks filing their lawsuit, filed a lawsuit against the Parks arguing that they had consented to build the deck pursuant to the First Amendment

to Scenic Easement Agreement and that the Parks had given them express permission and had been shown a copy of the home plans prior to construction. Plaintiffs Gutovitz's causes of action are for declaratory judgment, slander of title, breach of contract and malicious prosecution. This is the second time that the Parks have moved for partial summary judgment. Parks moved for partial summary judgment on October 22, 2019 asking for the same relief they are asking for here which is a dismissal of Gutovitz's slander of title cause of action. This court denied the Parks' prior motion for summary judgment by a Form Order on December 17, 2019 (attached as Exhibit 1).

Parks' renewed motion for summary judgment filed November 18, 2022 asks for summary judgment based on the language of the easement agreement and on the slander of title and malicious prosecution claims. For the reasons set forth below the Parks' motion should be denied.

II. STANDARD FOR SUMMARY JUDGMENT.

Summary judgment is an extreme remedy which should be cautiously invoked so that no person will be improperly deprived of a trial upon disputed factual issues. *Holloman v. McAllister*, 289 S.C. 183, 345 S.E.2d 728 (1986); *Baughman v. American Telephone and Telegraph Company*, 410 S.E.2d 537 (1991); *Watson v. Southern Ry. Co.*, 420 F.Supp. 483 (D.S.C. 1975).

To obtain summary judgment, the moving party must show that no genuine issue exists as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRPC. It is the duty of the court, on motion for summary judgment, not to try issues of fact but only to determine whether there are genuine issues to be tried. Once having found that triable issues exist, the court must leave those issues for determination at trial. *Eagle Construction Co., v. Richland Construction Company, Inc.*, 264 S.C. 71, 212 S.E.2d 580 (1975); *Title Insurance Company of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976). In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the

light most favorable to the party opposing the summary judgment motion. *Hamilton v. Miller*, 389 S.E.2d 652 (S.C.1990); *Manning, et al., v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988); *Tom Jenkins Realty, Inc., v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983); *Cafe Associates, Ltd., v. Gerngross*, 406 S.E.2d 162 (1991). Even where there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. *Gardner v. Campbell*, 257 S.C. 209, 184 S.E.2d 700; *Jamison v. Howard*, 271 S.C. 385, 247 S.E.2d 450 (1978); *Hamilton v. Miller*, 389 S.E.2d 652 (S.C.1990). All ambiguities, conclusions and inferences arising in and from the evidence must be construed most strongly against the party moving for summary judgment. *Tom Jenkins Realty, Inc., v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983); *William v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976). Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits show that there is no genuine issue of material fact. *United States v. Diebold*, 369 U.S. 654, 655 (1962). The party opposing summary judgment need not come forward in any way if the moving party has not supported his motion to the point of showing that the issue is a sham. *Title Insurance Company of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976); *Yarborough v. Rogers*, 411 S.E.2d 424 (1991)

III. THE SLANDER OF TITLE CAUSE OF ACTION.

Defendants Park have yet again moved for summary judgment on the slander of title cause of action. This court previously denied Defendants' request for summary judgment on that cause of action. Slander of title is a well-recognized cause of action in South Carolina. In this case, the evidence and testimony of the Gutovitzes is the First Amendment to Scenic Easement Agreement was agreed to by the parties and that the Gutovitzes have built and constructed the deck in conformity with the First Amendment to Scenic Easement Agreement along with the plat attached to it. The

Defendants Park have without cause filed a Lis pendens causing Plaintiffs to receive phone calls and letters from individuals offering to buy their property as a distressed property. Besides the fact that the court has denied this same motion before by a Form Order, the case is controlled by *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (2002). In that case, the court held that an individual could maintain an action for slander of title in South Carolina if the following elements were met: (1) the publication; (2) with malice; (3) of a false statement; (4) that is derogatory to plaintiff's title and (5) causes special damages; (6) as a result of diminished value of the property in the eyes of third parties.

In this case, Park filed a Lis pendens in the public record with malice since the parties had already agreed that the Gutovitzes' house could be built consistent with the plat attached to the First Amendment to Scenic Easement Agreement. This action was derogatory to Plaintiffs' title and caused Plaintiffs to receive phone calls and letters from speculators believing that the property was in foreclosure or that the Plaintiffs were having financial difficulties. This also caused the Plaintiffs to be unable to get a favorable interest rate and also be unable to complete their pool which was damaged because of the length of time it took to get the Lis pendens removed.

All of this is a jury issue which must be decided based on the testimony of the Parks and Gutovitzes and their attendant witnesses. In *Huff v. Jennings*, 459 S.E.2d 886 (1999), the court found that when there are facts which show a lien may have been invalid it would be up to a jury to conclude whether or not a slander of title claim had been met and that the trial court should not grant summary judgment under those circumstances. This is such a case here as can be seen from the above facts. Accordingly, this court should again deny Defendant Park's motion for summary judgment as to the slander of title cause of action.

IV. MALICIOUS PROSECUTION.

Defendants Park in their brief on motion for summary judgment also claim that summary judgment should be granted on the Gutovitzes claim for malicious prosecution. South Carolina has defined malicious prosecution as the institution or continuation of judicial (civil or criminal) proceedings by or at the insistence of the defendant, with malice, a lack of probable cause and resulting injury.

In this case, all of the elements of malicious prosecution are met. The parties entered into a First Amendment to Scenic Easement Agreement and attached to it a copy of a plat showing what the construction of the Gutovitzes' house would look like. The house was built in conformity with that plat and Defendants filed this action to stop the Plaintiffs' construction of their home. Further and more damning is Defendants Park sold the house and continues to try to prosecute a scene easement when Defendants Park have no legal right to do so because they sold the house for \$3,087,000.00. South Carolina courts have ruled that malice and malicious prosecution cases do not necessarily mean a defendant acted out of spite, revenge or a malicious disposition although such an attitude certainly may indicate malice. In an action for malicious prosecution malice may be inferred for the lack of probable cause to institute the prosecution. *See Eaves v. Broad River Electric Coop.*, 277 S.C. 475, 289 S.E.2d 414 (1982). In the instant case, there is certainly evidence to infer that after the parties agreed to the First Amendment to Scenic Easement Agreement that the Defendants' refusal to allow the house to be constructed was malicious and certainly caused the Plaintiffs damage. There is evidence to show that the Parks continue to maliciously prosecute the case after they sold the home for \$3,087,000.00. Further, they even opposed the motion to lift the injunction.

In sum, malicious prosecution is a jury issue in most cases and certainly in this case. Here there are multiple factual issues all of which require the court to deny the motion for summary judgment.

V. DECLARATORY JUDGMENT AND TRIAL BY JURY.

The Defendants Park have also moved for summary judgment on the declaratory judgment action. Of course it is well settled in South Carolina that it is up to a jury or the court to decide the factual issues in a declaratory judgment case. Here, the Parks have named their attorney who drafted the easement as a witness is of no consequence. It is a factual matter especially in light of the Gutovitzes' testimony that all parties entered into the First Amendment to Scenic Easement Agreement and the Parks approved the house plans. (See First Amendment to Scenic Easement Agreement.) Mrs. Gutovitz also testified that Mrs. Park approved of the plat attached to the First Amendment to Scenic Easement Agreement.

South Carolina Code § 15-53-90 entitled "Determination of Facts; jury trial" provides in pertinent part:

When a proceeding under this chapter involves a determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to jury trial are hereby preserved.

In this case the factual issues regarding the First Amendment to Scenic Easement Agreement are whether the Parks gave consent to the construction by the Gutovitzes which will require the jury to assess the testimony of each of the witnesses. It is not, nor can it be, the province of an attorney who prepared the First Amendment to Scenic Easement Agreement to say the violation seems very clear and obvious. Attorney Patel (the Parks' attorney) is not aware of agreements which took place between the Parks and the Gutovitzes or Mrs. Gutovitz's testimony that the Parks authorized construction of her house.

In sum, all of this evidence makes it necessary for a jury to decide the case and not a drastic remedy such as summary judgment. Under this situation, Plaintiffs request the court deny the motion for summary judgment as there are disputed issues of material fact which need to be decided by a jury.

Respectfully submitted,

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net

L. Morgan Martin (S.C. Bar No. 3667)
Law Offices of L. Morgan Martin, P.A.
1121 Third Avenue
Conway, SC 29526
(843) 248-3177
mmartin@lmorganmartin.com

February 6, 2023

Attorneys for Scott and Caron Gutovitz

EXHIBIT 1

Order Denying Summary Judgment December 17, 2019

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2602152

Scott Gutovitz et al
PLAINTIFF(S)

Gary L Park et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants' Motion/Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/16/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

ELECTRONICALLY FILED - 2018 Dec 15 9:48 AM - HOPKINSON - COMMON PLEAS - CASE#2019CP2602183



Horry Common Pleas

Case Caption: Scott Gutovitz , plaintiff, et al VS Gary L Park , defendant, et al
Case Number: 2019CP2602152
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-12-16 16:38:37 page 3 of 3

RELECTRONICALLY FILED - 2019 Dec 16 9:46 AM - HORRY - COMMON PLEAS - CASE#2019CP2602152

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas
Fifteenth Judicial Circuit

The Honorable Daniel Coble,
Circuit Court Judge

RECEIVED
DEC 15 2023
SC Court of Appeals

APPELLATE CASE NO. 2023-000295

Gary L. Park and Cynthia Park Appellants,

vs.

Scott Barry Gutovitz and Caron Dawn Gutovitz Respondents,

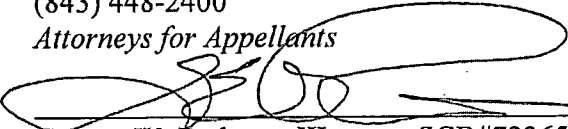
APPELLANTS' RULE 210(G) CERTIFICATION

The undersigned, attorney for Appellants Gary L. Park and Cynthia Park, certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellants and Respondents and not any other material.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400

Attorneys for Appellants


George W. Redman, III SCB#72365
GRedman@BellamyLaw.com
Robert S. Shelton SCB#68543
RShelton@BellamyLaw.com

December 13, 2023