THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge

C/A No. 2016-CP-41-00153
Appellate Case No. 2021-000659

CARR FARMS, INC. and TITAN FARMS, LLC.....Appellants,

v.

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JUNE WATSON.....Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE FACTS

It is agreed by Respondents that the facts are largely not in dispute in this matter. A brief recitation of the relevant facts are as follows:

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

(R. p. 149)

On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property.

Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond." (R. p. 153)

F. Broadus Smith died and left his property to his wife, Eliza S. Smith, for and during her natural life, and upon her death to [his children] Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson (R. p. 154)

On or about December 3, 2014, for valuable consideration, John F. Byrd, Jr., Special

Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly of F. Broadus Smith. (R. p. 159)

Susanna Smith Watson is the daughter and heir of F. Broadus Smith and is the current owner of the property formerly owned by F. Broadus Smith, same being more particularly described and shown on that certain plat prepared for Heirs of Broadus Smith dated December 3, 2013. (R. p. 156)

The remainder of the property owned by Mattie Lee Bonnette relative to this action was deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012. (R. p. 160)

The property transferred by Mr. Frick to Titan Farms, LLC is more particularly shown on that certain boundary survey prepared for Carey E. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. (R. p. 166).

The property (or a large portion thereof) formerly owned by D.C Abney was acquired by R.W. Dubose & Sons, Inc. who on or about November 1, 2001 changed its name to Carr Farms, Inc. The Abney property was deeded to Carr Farms, Inc. by Quit Claim Deed May 25, 2010, recorded in Book 913 at Page 276. (R. p. 193)

The property transferred to Carr Farms, Inc. is more particularly shown on that certain boundary survey prepared for Carr Farms, Inc. dated June 18, 2004 as recorded in the public records for Saluda County. (R. p. 176).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). That standard is that "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." *Folkens v. Hunt*, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when 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 be denied." *Nelson v. Charleston County Parks & Recreation Comm.*, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). If "the parties vehemently dispute the inferences and conclusions to be drawn from the undisputed facts, . . . that simply establishes that summary judgment is not appropriate[.]" *Montgomery v. CSX Transp. Inc.*, 656 S.E.2d 20, 29 (S.C. 2008).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues." *Englert. Inc. v. LeafGuard USA. Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008).

In 2009, the South Carolina Supreme Court clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802-03 (2009). In *Hancock*, the Court held that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Id. What is required to defeat a summary judgment motion in cases requiring heightened burdens of proof or applying federal law is simply more than a scintilla of evidence. Id.

ARGUMENT

I. THE LOWER COURT CORRECTLY HELD THAT THE EASEMENT AT ISSUE IS AN APPURENANT EASEMENT AND THAT RESPONDENT HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND PARTLY ON THE FORMER BONNETTE PROPERTY NOW OWNED BY APPELLANT TITAN.

The lower court did not misapprehend the law or the facts applicable to this matter. As such, the ruling of the lower court should be affirmed. Respondents incorporate, by reference thereto, all of the arguments and authority contained in their Motion for Summary Judgment, Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, and Amended Reply to the Motion to Reconsider as if fully set forth herein.

" 'An easement is a right which one person has to use the land of another for a specific purpose.' " *Frierson v. Watson*, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006) (quoting *Steele v. Williams*, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944)); accord *Forest Land Co. v. Black*, 216 S.C. 255, 261, 57 S.E.2d 420, 423 (1950); *Smith v. Commissioners of Public Works*, 312 S.C. at 465, 441 S.E.2d at 335. " 'A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the

easement by the grantee of the lands.' " *Frierson*, 371 S.C. at 67, 636 S.E.2d at 875 (quoting *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965)); accord *Douglas v. Medical Investors, Inc.*, 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971). "[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); accord *Lynch v. Lynch*, 236 S.C. 612, 623, 115 S.E.2d 301, 307 (1960); *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876. "Both deeds and easements are valid to subsequent purchasers without notice when they are recorded." *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876 (citing S.C. Code Ann. § 30-7-10 (Supp. 2005)). "The purpose of the recording statute is to protect a subsequent buyer without notice." *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876 (emphasis omitted) (citing *Burnett v. Holliday Bros.*, 279 S.C. 222, 225, 305 S.E.2d 238, 240 (1983)).

"An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720 (1971) (citations omitted). "An easement is therefore not an estate in lands in the usual sense." Id. An easement may be created by reservation in a deed. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965).

In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Wayburn v. Smith*, 270 S.C. 38, 239 S.E.2d 890 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo*, 293 S.C. 23. 358 S.E.2d 390 (1987). "***The intention of the grantor must be found within the four corners of the deed.***" Id. (emphasis added).

The determination of the extent of a grant of an easement is an action in equity. *Tupper v. Dorchester County.*, 326 S.C. 318, 487 S.E.2d 187 (1997). In *Tupper*, the Court distinguished between the types of easements, stating:

> The character of an express easement is determined by the nature of the right and the intention of the parties creating it. 25 Am. Jur.2d Easements and Licenses §13 (1966). An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 143 S.E.2d 803 (1965). In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. Id.; Smith v. Commissioners, 312 S.C. 460, 441 S.E.2d 331 (Ct.App.1994); Carolina Land Company, Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975); Sandy Island Corp. v. Ragsdale, supra; 12 S.C. Juris. Easements §3. It also passes with the dominant estate upon conveyance. Carolina Land Co., Inc. v. Bland, supra. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. 12 S.C. Juris. Easements §3(c). Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980).

Property owners are charged with constructive notice of instruments recorded in their chain of title. *Carolina Land Co. v. Bland,* 265 S.C. 98,107,217 S.E.2d 16,20 (1975). In addition, a physical inspection of the premises in the instant case would have revealed the existence and location of the pond and its boundaries. The pond is not hidden and is readily visible and accessible by anyone walking the property.

A. THE EASEMENT GRANTED BY BONNETTE IS AN APPURTENANT EASEMENT AND RESPONDENT, AS HEIR AND ASSIGN OF THE ORIGINAL GRANTEE, HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND.

Addressing Appellants' assertion that the easement granted to F. Broadus Smith, his heirs and assigns, is an easement *in gross* rather than an *appurtenant* easement, Respondents direct the Court's attention to the language and construction of the deed from Mattie Lee Bonnette to F.

Broadus Smith, his heirs and assigns, dated October 1, 1960, to wit:

NOTE WHERE PARAGRAPH INDENTION BEGINS*

Know All Men by These Presents, That I, Mattie Lee Bonnette of the County of Saluda

In the State aforesaid, for and in consideration of the sum of Seventeen thousand, five hundred and 00/100 ($17,500.00) DOLLARS to me paid by F. Broadus Smith in the State aforesaid -- the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and bounded on the West by lands now or formerly owned by Charlie Abney.

On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.

The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (½) acre from Mrs. Hassie P. Cogburn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (½) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.

Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

(R. p. 149)

In the Bonnette to Smith deed, which is in Appellant Titan's chain of title (the Smith property being a part of the larger Bonnette Tract that Titan now owns), the granting language is **".....grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"** and thereby identifies the "grantee" as F. Broadus Smith, his heirs and assigns. After the colon (:), the entire conveyance is described by an indented paragraph which goes the

remainder of the page. The conveyance includes title to certain property and the **"....right, privilege and easement for F. Broadus Smith, to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same."**

The granting language contained in the deed does not break and separate out the grant of land from the grant of the easement, rather it continues and includes the words **Also, granted herein....."** Even assuming, arguendo, that Appellants' assertions are even partly valid (which is denied), while the grantor specifically names "F. Broadus Smith" when giving the right to construct a dam to impound water (which Mr. Smith in fact did), the grantor gives "grantee" the exclusive use and control of same (i.e., Mrs. Bonnette did not specifically name "F. Broadus Smith" to have exclusive use and control, but rather stated that "grantee" is to have same).

While the subsequent conveyances from Bonnette to Holston up to Frick do not appear to make specific reference to the easement granted by Bonnette to Smith, the deed from Frick to Titan specifically states:

> **This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.**

(R. p. 160)

In addition, several of the plats recorded and referenced in the Titan Tract chain of title (after construction of the pond in 1970) do show the existence of the pond. (R. p. 156, R. p. 166, R. p. 176, R. p. 212. R. p. 244) Easements may be created by specific grant in a deed and may be

created by reference to the lands as shown on a plat. *Frierson*, 371 S.C. at 67, 636 S.E.2d at 875.

In the instant case, the easement conveyed by Bonnette (grantor) to ***F. Broadus Smith, his heirs and assigns*** (grantee) "to impound water on lands owned by the grantor and grantee herein and that **grantee** is to [sic] have exclusive use and control of the same" is an appurtenant easement that runs with the land. The Bonnette property, the lands upon which the water may be impounded, being the servient estate and the Smith property being the dominant estate.

When legal title to the dominant estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the servient estate) also passed to her. In accordance with the express language contained within the four corners of the deed granting the appurtenant easement, Watson (as heir, assignee, and successor in title of F. Broadus Smith) has the exclusive right to impound and to use the water from the pond partly located on the property formerly owned by Bonnette and now owned by Titan Farms, LLC. Accordingly, Titan has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

In *Gardner*, the Supreme Court made it clear that "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo*, 293 S.C. 23. 358 S.E.2d 390 (1987). "The intention of the grantor ***must be found within the four corners of the deed.***" Id. (emphasis added). That is, each deed or granting document must stand on its own with regard to determining the intention of the grantor. The clear and unambiguous language contained in the Bonnette deed grants to "grantee", F. Broadus Smith, his heirs and assigns, the exclusive right to impound and to use the water from the pond partly on the Bonnette property.

B. THE EASEMENT GRANTED BY BONNETTE TO IMPOUND AND TO USE THE WATER CONTAINS THE NECESSARY ELEMENTS FOR AN APPURTENANT EASEMENT.

With regard to the nature of the easement (i.e., whether it is appurtenant or in gross), in *Tupper*, the South Carolina Supreme Court set forth the elements necessary to establish an appurtenant easement as follows:

(1) the easement inheres in the land;
(2) the easement concerns the premises;
(3) the easement has one terminus on the land of the party claiming it; and
(4) the easement is essentially necessary to the enjoyment of the land.

By contrast, "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement...passes with the Dominant Estate upon conveyance." See *Tupper v. Dorchester County*, 326 S.C. 318 (1997)

1. **The Easement Inheres in the Land**

Appellants assert that the grant of the easement is a personal privilege to F. Broadus Smith and that it does not "inhere" or "exist as a permanent, inseparable, or essential attribute or quality of a thing." This is incorrect. The construction of a dam for the purpose of creating a pond to impound water to water crops or livestock cannot be said to have been something of a "temporary" nature. The cost, even in 1970, to construct a dam to create the pond was no small undertaking. The Appellants argue that at the time the easement was granted there was no impounded water to which Smith could have used exclusively. This argument is misdirected. While water was not yet being impounded at the time of the grant, the spring existed that produced water, and water was accessible and available on the property. This is how the parties knew that if a dam were constructed that water could be impounded. The right granted was first

to construct a dam "**partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein.**" and then to impound and to use the water resulting therefrom. (R. p. 149)

2. **The Easement Concerns the Premises**

Next, with regard to the easement, the Appellants assert that the easement is "nondescript" as to which premises would be encumbered at the time of conveyance. The Respondents disagree. The granting language states "...**to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor.**" Such description is sufficient to indicate that the grantor understood and agreed that the dam would be constructed on her "other lands" in the area of the proposed pond and that water would be impounded thereon. After the construction of the dam, there is no record that the grantor ever complained of any trespass or misuse of her property. The construction of the dam and impounding of water in the pond has existed for a period of not less than forty (40) years, and no owner has ever asserted any action for trespass against Smith, his heirs or assigns, with regard to the location of the dam or its impounded water.

Even if Appellants assertions are taken as true (i.e., that the owners in the Titan Tract chain of title were not on actual or constructive notice of the claimed rights to dam and to impound water on the Bonnette property, which is denied), then the use by F. Broadus Smith and his heirs from 1970 forward would have been "open" or "hostile" to the use of any other adjoining landowner, an essential element to establish adverse possession. There is no evidence in the record that from 1970 and for a period in excess of ten (10) years thereafter that *anyone* other than F. Broadus Smith and his heirs used the pond or the water from the pond.

There are, however, sufficient documents of record to place the public on notice of the rights claimed by the Respondent to construct a dam and to impound water thereon (as heirs of F. Broadus Smith), and the pond is readily visible and accessible by inspection of the property. The Appellants have submitted no evidence to the Court by way of affidavits (of former owners) or otherwise that anyone other than F. Broadus Smith or his heirs used the water from the pond. Respondents further assert that there was no need to fence the pond or to erect signs because the surrounding owners all knew that the pond was built by Mr. Smith, and that he had the exclusive right to use the pond and its water. Prior to Titan's ownership, none of the former owners planted a commercial peach grove on the Bonnette property such that they would have needed the extensive ability to irrigate that Titan now needs.

3. **The Easement has one Terminus on the Land**

Appellants' "terminus" arguments must fail. The terminus must be on the land of the party claiming the appurtenant easement. *Windham v. Riddle*, 370 S.C. 420, 635 S.E.2d 560. In the instant case, the party claiming the appurtenant easement are the Respondents. Terminus is defined as a "boundary; a limit, either of space or time." Black's Law Dictionary, p.1319 (5th Ed. 1979). The undisputed evidence as reflected on the recorded plats clearly show that a portion of the dam and the shoreline of the pond containing the impounded water exists on the Respondent's property. There is no evidence that the portion of the dam on Respondent's property has ever been removed, or that the water levels have ever dropped to a point where the pond is wholly on the lands owed by Appellant Titan. As such, there is a terminus on the Respondent's property.

4. **The Easement is Essentially Necessary to the Enjoyment of the Land**

Lastly, the Appellants argue that the pond did not exist at the time of the Smith transfer, and that because no pond existed at the time of the transfer, it is not "essentially necessary to the enjoyment thereof." This is false and not at all damning. In fact, the opposite is true. When Smith bargained with Bonnette to purchase his property, Smith obviously knew that the construction of a pond on his property was essential to his intended use of the property and his enjoyment thereof. We know this because Smith negotiated with Bonnette not only for the purchase of the acreage, but for the grant of an appurtenant easement to construct a pond and to impound water on other lands owned by Bonnette. The pond being so essential, that Smith did not agree to purchase only the Bonnette property without the inclusion of the grant of the easement for the impounding of water in the same deed. The use of the water impounded on the Bonnette property was and is, by the express terms of the grant, exclusive to Smith. The arguments by Appellants that others may have negotiated to use some of the water as a result of agreements reached with adjoining landowners does not destroy the exclusivity of the agreement with Bonnette or the use of water impounded on the Bonnette property.

The Respondents have previously conceded that Appellants correctly assert with regard to the Abney property and the Holston property, that the deed or granting documents (if any) must be independently evaluated to determine Smith's agreements with these other surrounding landowners regarding construction of the pond. However, no issues regarding same have been asserted herein on appeal.

C. APPELLANTS MISCHARACTERIZE THE LAW RELATIVE TO APPURTENANT EASEMENTS AND THE EXCLUSIVE USE OF THE IMPOUNDED WATER IN THE INSTANT CASE.

Lastly, citing *Wayburn v. Smith*, 270 S.C. 38, 239 S.E.2d 890 (1977), Appellants claim that "imputing upon an unsuspecting landowner the inability to use a portion of his land, or the water on his land, without anything in the chain of title evidencing such a restriction is contrary to the settled South Carolina law and public policy."

First, Appellants' claims that they are "unsuspecting landowners" is inconsistent with the evidence in this case. Not only are there sufficient documents of record to place the public on notice of the rights to construct a dam and to impound water claimed by the Respondents (as heirs of F. Broadus Smith), and the pond is readily visible and accessible by inspection of the property, but the Appellants have provided no evidence to the Court by way of affidavits (of former owners) or otherwise that anyone other than F. Broadus Smith or his heirs used the water from the pond. There was no need to fence the pond or to erect signs because the surrounding owners all knew that the pond was built by Mr. Smith, and that he had the rights to use the pond and its water. In fact, prior to Titan's ownership, none of the former owners planted a commercial peach grove on the Bonnette property that required the kind of irrigation that Titan now needs.

Second, if the law were as suggested by Appellants, same would essentially void all appurtenant easements where "exclusive" use is granted. Smith did not need any easement from himself to himself to use the water impounded on his own property. However, without the easement from Bonnette to impound the water and to use same a) impounding water on the Bonnette property after construction of the dam would constitute a trespass, and b) without the exclusivity provision, Bonnette would have likewise had the right to use any of the impounded

water that covered her property. It is the grant of exclusive easement from Bonnette that creates the sole right in Smith, his heirs and assigns, to impound water on and to use the water over the Bonnette Property.

Appellants' argue that the privilege to exclusively use the water over the Bonnette property, if appurtenant, essentially divests the owner of the servient estate the ability to us their land...and effectively renders the easement a conveyance of the property. While it is true that an easement does divest the owner of the servient estate from use of the property so long as the easement exists, it does not constitute a conveyance of title to the property. "An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720 (1971). If the law were as suggested by Appellants, same would essentially void all appurtenant easements where "exclusive" use is granted. For example, if the SC Department of Transportation acquires an easement to construct a highway, while the servient estate would maintain ownership of its land subject to the easement, the use by the SC Department of Transportation to construct and maintain a highway would deprive the owner of the servient estate of the ability to use same. Smith did not need any easement from himself to himself to use the water impounded on his own property. However, without the easement from Bonnette to impound the water and to use same a) impounding water on the Bonnette property after construction of the dam would constitute a trespass, and b) without the exclusivity provision, Bonnette would have likewise had the right to use any of the impounded water that covered her property. It is the grant of exclusive easement from Bonnette that creates the sole right in Smith, his heirs and assigns, to impound water on and to use the water over the Bonnette Property.

South Carolina law clearly allows owners of real property to grant easements, both appurtenant and in gross. Appellants essentially argue that all easements that are appurtenant and that run with the land, which necessarily deprive the servient estate owner of some right of use of his/her property, should be void as a matter of law or public policy. To the contrary, both South Carolina law and public policy dictate that owners of real property are free to make voluntary agreements concerning the use of their property so long as that use does not violate the law or public policy of this State. In the instant case, it cannot be said that granting an appurtenant easement to an adjoining owner, after giving him the ability to construct a dam partially on the property of the grantor, the exclusive right to impound and to use the water is illegal or that such would violate public policy.

CONCLUSION

Accordingly, when viewing the documents of public record, the undisputed facts in this matter in a light most favorable to the Appellants, and when evaluating the applicable law (which the parties essentially agree upon) to the grant of easement in this case, the Respondents respectfully asserts that the lower court correctly concluded that there are no genuine issues as to any material facts with regard to Respondents' first and fourth causes of action, that Respondents are entitled to judgment as a matter of law on those causes of action, and that the ruling of the lower court should be affirmed.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SALUDA COUNTY
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The Honorable Allison Renee Lee, Circuit Court Judge

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CERTIFICATE OF COUNSEL

I hereby certify, pursuant to SCACR Rule 211(b), that the Final Brief of Respondents is identical to the brief previously served under SCACR Rule 208 except for revisions to indicate where materials appear in the Record on Appeal and the correction of typographical errors and misspellings.

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