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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge
Civil Action No. 2016-CP-41-00153

Opinion No. 2024-UP-086 (S.C. Ct. App., Filed March 20, 2024)

Appellate Case No. 2024-000836

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

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Petitioners in this matter are peach farmers who, without the consent or permission of the Respondent, are pumping significant amounts of water from Respondent Watson's Pond and using same to irrigate their peach orchard. The dam creating the pond was constructed by Respondent Watson's father who, at the time of the purchase of his property, sought and received an appurtenant easement from the grantor for the construction of the pond, for the right to impound water, and for the exclusive right to use the water impounded.

The Trial Court and the Court of Appeals, respectfully, correctly concluded that the subject easement meets the necessary elements for an appurtenant easement and that Respondent Watson has the exclusive right to use the water to the exclusion of Petitioner Titan Farms. *Carr Farms, Inc. and Titan Farms, LLC v. Watson.,* Op. No. 2024-UP-086 (S.C. Ct. App. Filed March 20, 2024).

Respondent, Susanna Smith Watson, by and through her undersigned attorney, hereby files her Return to Petitioners' Petition for Writ of Certiorari in the above-captioned matter. The instant Petition raises no issues of first impression, no conflicts of law between the circuit court order and federal law or this Court's precedents, nor any question of legal significance. In short, the Petition fails to identify any reason why this Court should exercise its discretionary power to review the decision below.

For these reasons, the Petition should be denied.

COUNTER STATEMENT OF THE FACTS OF THE CASE

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)

ARGUMENTS

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE EASEMENT AT ISSUE IS AN APPURENANT EASEMENT AND THAT RESPONDENT WATSON HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND.

The Court of Appeals did not misapprehend the law or the facts applicable to this matter. " '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 WATSON, AS HEIR AND ASSIGN OF THE ORIGINAL GRANTEE, HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND.

Addressing Petitioners' 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. Hessie 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 Petitioner 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 Petitioners ' 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**

Petitioners 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 Petitioners 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 Petitioners 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 Petitioners 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 Petitioners 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**

Petitioners' "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 owned by Petitioner 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 Petitioners 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 Petitioners 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 Petitioners 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. PETITIONERS 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), Petitioners 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, Petitioners' 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 Petitioners 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 right 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 Petitioners, 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.

Petitioners 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 Petitioners, 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. Petitioners 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.

D. THE COURT OF APPEALS CORRECTLY HELD THAT TITAN HAD NOTICE OF THE EASEMENT.

Respondent asserts that the Smith deed is not completely "absent from their chain of title" as asserted by Petitioners. The title history of the Titan tract is within the title history of the greater Bonnette tract that includes: a) that Mattie Lee Bonette owned the greater tract of land; b) that Mrs. Bonette, at various times, sold off parts of her property including, but not limited to, on October 1, 1960 the property soled to F. Broadus Smith, his heirs and assigns. It is also from this greater tract that:

> **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).**

Petitioners' argument appears to be that when a greater tract of property is subdivided, the title history of the greater tract of land, and particularly other tracts subdivided therefrom, are not within the chain of title for each of the other portions divided therefrom. This is not entirely the case. When the Smith property was subdivided from the greater Bonnette property, there is record notice of this subdivision and such subdivision is part of the chain of title to the Bonnette property. Any subsequent purchaser of the remainder of the Bonnette property searching the title history would (or should) have discovered the portion subdivided and sold to Smith and should have taken note of the granting of the easement contained in the Bonnette to Smith deed.

While the title history of each of the subdivided tracts may not be directly within the title chain of each separate tract, it is clearly within the overall title history of the greater piece of property. This is why it is necessary when searching the title to look for deeds issued by a common grantor. As stated by the Court, to do so would otherwise undermine the broad constructive notice afforded recorded conveyances under the recording statute.

Further, and more importantly to the analysis here, in the instant case a simple visual inspection of the property clearly put Titan on notice that there was water being impounded on a portion of the property it was purchasing. It was then incumbent on Titan, prior to closing, to ascertain who had the legal rights to the impounded water. Petitioners would have the Court find that reliance on ONLY a title search is appropriate for determining "notice" of the existence of an easement. Such egal position is contrary to the law of easements by necessity, easements by prior use, and other types of easements that exist, not because of an express grant, but based on a number of other factors.

E. THE COURT OF APPEALS HOLDING IN THIS MATTER COMPORTS WITHTHE LAWS OF THIS STATE.

Petitioners 's assertion that by permitting exclusive use the nature of the conveyance must necessarily be a fee simple devise is misplaced. Again, as set forth above, Petitioners mischaracterize the exclusive use granted. While it is solely the right of Respondent to use that portion of Petitioners 's property subject to the easement to construct and maintain a dam and to impound water, Petitioners still owns the property. If Respondent, her successors or assigns, ever abandons or terminates the easement, Petitioners would then have the right to full use of that portion of its property. This is consistent with the law of easements in this State and generally throughout the country.

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).

II. PETITIONER HAS NOT IDENTIFIED ANY ISSUE WARRANTING REVIEW.

Supreme Court review "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. SCACR 242(b). Such review is limited to instances where:

1. Where there are novel questions of law.
2. Where there is a dissent in the decision of the Court of Appeals.
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
4. Where substantial constitutional issues are directly involved.
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

The instant matter does not implicate any of the above. The Petition does truly not ask the Court to reconsider any of the precedent that underly the circuit court's finding that the easement granted in this matter is appurtenant; nor does it identify a novel issue of law or any conflicts. For that reason alone, this Court should deny the Petition.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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