

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Associates, Inc.

Respondent,

v.

Joseph T. Bishop

Appellant.

INITIAL REPLY BRIEF OF RESPONDENT

Ronald G. Bruce
Attorney for Respondent
P.O. Box 450
Greer, SC 29652
(864) 877-0207
rbruce@rbrucelaw.com

Other Counsel of Record:
Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
Attorney for Appellant

RECEIVED
AUG 26 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Associates, Inc.

Respondent,

v.

Joseph T. Bishop

Appellant.

INITIAL REPLY BRIEF OF RESPONDENT

In response to the Initial Brief of Appellant, the Respondent submits the following reply.

REPLY OF RESPONDENT

Respondent, a trucking company, entered into the transaction that included the right-of-way in question in order to obtain property suitable for containing its commercial trucks, which logically also included suitable ingress and egress for those vehicles. Commercial vehicles inherently have a wider turning radius requiring a larger space for ingress and egress, which Appellant recognized and acknowledged in the deed itself.¹ The purpose of the deed was to transfer ownership and use of the parcel to Respondent, which necessarily and explicitly included a reasonable means of reaching that parcel through the right-of-way. Although the deed and plat taken together may leave some room for ambiguity, the parties' intentions for the right-of-way do not. Their purpose was clear, and thus any ambiguities must be resolved in a manner that gives effect to that purpose. The South Carolina Supreme Court explained:

The purpose of all rules of construction is to ascertain the intention of the parties to the contract. The subject matter of the contract and the purpose of its exception are material to the ascertainment of the intention of the parties and the meaning of the terms they use. In construing the contract the Court will ascertain the intention of the parties, and to that end will, as far as possible, determine the situation of the parties, as well as the purpose had in view at the time the contract

¹ The relevant part of the deed reads "a right of way providing access to S.C. Highway 14 suitable for the use of commercial vehicles of all types (with rubber tires only) over the roadway shown on said plat as 'Katelin Way (Private Drive)'."

was made. All contracts should receive a sensible and reasonable construction, and not such a one as will lead to absurd consequences or unjust results.

Bruce v. Blalock, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962) (citations omitted). Any interpretation of the deed that limits the Respondent's right-of-way to the confines of Katelin Way would necessarily defeat the purpose the parties acknowledged and memorialized in the deed. Appellant accepted Respondent's open and notorious use of the broader right-of-way for approximately eighteen (18) years before raising any objection, and thus his extended silence should be construed as his endorsement that the broader right-of-way was what the parties intended when they executed the deed.

In addition to the plat and deed as evidence the parties' intention regarding the right-of-way, there is also a lease for the property that pre-dates the deed. In the lease, Respondent received a right-of-way "over Landlord's property providing access to Highway 14 suitable for the use by commercial vehicles of all types (with rubber tires only) for a period of twelve (12) months to commence on September 1, 1991, and ending on August 31, 1992." No mention is made of Katelin Way. The lease demonstrates that Respondents were using the broader right-of-way even before the deed was executed, and thus it is reasonable to conclude that using the same language in the deed without specifically limiting the scope to the confines of Katelin Way (beyond a mere reference thereto) shows that the parties intended for Respondent to continue using the broader right-of-way. Respondent's subsequent use of the broader right-of-way for eighteen (18) years further evidences the necessity and mutual understanding that its right-of-way extends beyond the confines of Katelin Way.

In addition the parties' understanding of the purpose of the right-of-way, the plain language of the deed evidences that the right-of-way must be sufficiently wide to allow Respondent's commercial vehicles to access the interior parcel. When evaluating competing constructions of an easement evidenced on a plat that is incorporated by a deed, the Supreme Court cautioned that although a court should generally choose the least restrictive construction, "[t]his rule of strict construction is subject to the provision that it is not applicable so as to defeat the plain and obvious purpose of the instrument. *Hamilton v. CCM, Inc.*, 274 S.C. 152, 158, 263 S.E.2d 378, 381 (1980) (citations omitted); see also *Taylor V. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998) ("It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument." (citations omitted)).

The deed at issue in this case explicitly states that the right-of-way is for the purpose of "providing access to S.C. Highway 14 suitable for the use of commercial vehicles of all types" The plain language shows that the right-of-way's purpose was to allow reasonable ingress and egress of commercial vehicles. Respondent's continuous use of the broader right-of-way demonstrates that its commercial vehicles require a broader scope than Katelin Way alone and that it was using the right-of-way in accordance with the plain purpose of the deed, a use that Appellant accepted without question for eighteen (18) years.

When a deed grants a right-of-way without clearly establishing its width, South Carolina courts will construe the right-of-way to be as wide as is reasonable, convenient, and necessary to effectuate the parties' intent. The South Carolina Court of Appeals explained:

It is a well-settled rule that where a deed grants a right of way but does not fix its width, a determination of the width of the easement becomes a matter of construction of the instrument with strong consideration being given to what is **reasonable, convenient and**

necessary to accomplish the purpose for which the right-of-way was created. *Patterson v. Duke Power Company*, 256 S.C. 479, 183 S.E.2d 122 (1971); 25 Am.Jur.2d Easements and Licenses Section 78 (1996); 28 C.J.S. Easements Section 77 (1941). In any event the intention of the parties must be the object of such inquiry. 25 Am.Jur.2d Easements and Licenses Section 78.

Moore v. Reynolds, 285 S.C. 574, 578, 330 S.E.2d 542, 545 (Ct. App. 1985) (emphasis added).

The broader right-of-way is reasonable and convenient to Respondent for the reasons discussed above. However, it is also necessary for the safe operation of Respondent's business. During Respondent's eighteen (18) year use of the broader right-of-way, its commercial vehicles encountered no significant traffic problems. Since Appellant added obstructions to limit the right-of-way to the bounds of Katelin Way, Respondent's trucks have been forced to encroach on the middle lane of Highway 14 to complete the turn onto Katelin Way and have caused at least four (4) documented wrecks as a result. Because there is no alternate means of entry to Respondent's interior parcel, there appears to be no safe way for the trucks to enter aside from a broader right-of-way.

It is reasonable to infer that the parties intended for the right-of-way to allow Respondent's trucks to use the entrance in a normal and safe manner to access its property, which inescapably requires a broader right-of-way than the confines of Katelin Way. Respondent's use of the wider right-of-way uninterrupted for more than eighteen (18) years, without objection from Appellant, and the traffic hazards that resulted from its limited right-of-way demonstrate the necessity of the wider scope required by the nature of Respondent's use of the interior parcel.

Appellant only objected to the scope and began interfering with Respondent's easement in the past two (2) years. For approximately eighteen (18) years prior, not including Respondent's use of the broader right-of-way under the lease, Appellant made no objections to Respondent's use. Even after Highway 14 was widened, Appellant did not object to Respondent's continued use of the broader right-of-way for more than four (4) years. Appellant's conduct presents a strong basis for imposing the doctrine of laches. The Court of Appeals explains that

Laches is the negligent failure to act for an unreasonable period of time. Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay suffers his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights [L]aches arises upon the failure to assert a known right under circumstances indicating that the lached party has abandoned or surrendered the right.

Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994) (internal citations omitted). Appellant occupies the servient parcel and undoubtedly knew of Respondent's use of the broader right-of-way since execution of the original lease and deed. During that time, Respondent's use of the broader right-of-way allowed it to establish a thriving business supported by the interior parcel, which would have likely been impossible without its use of the broader right-of-way. Appellant's failure to raise an objection to the use for eighteen (18) years is inexcusable and the doctrine of laches should bar him from raising it now.

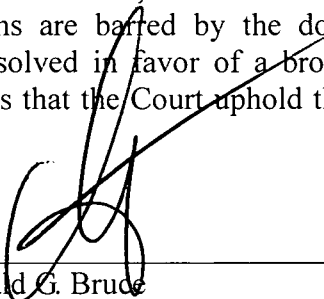
In *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008), the Court of Appeals resolved a case that was factually similar to this one. In that case, the grantor had obstructed a right-of-way she granted in a previous deed to Respondent's predecessor in interest more than thirteen years earlier and argued that, although Respondent's predecessors had used the right-of-way without her

protest, she did not intend for it to be wider than a driveway existing at the time the property was divided. The Court rejected grantor's arguments, holding:

The evidentiary record is imbued with intransigence and arrogance on the part of [grantor]. Her belated activity in emasculating the easement by placing encroachments in the right-of-way is both unappealing and unavailing To allow [grantor's] intent to override the original grant of a fifty foot easement would result in a travesty of justice. Her demonstrated intent to eliminate a reasonable easement belies common sense The dedication of the private easement was complete when [grantor] originally conveyed the lot. It would now be unfair to deny [Plaintiff] the right to the full use and enjoyment of the easement as indicated in the plat, regardless of what [grantor] now argues were her intentions at the time the plat was recorded.

Id., 378 S.C. at 235-36, 662 S.E.2d at 457. Although the present case involves ambiguity between the plat and the deed and *Murrells Inlet Corp.* did not, the Court's intolerance for a grantor's unreasonable delay in objecting to the scope and use of the easement is applicable. Appellant should not be allowed to sit silently for eighteen (18) years while Respondent used the broader right-of-way and then object to the scope at his leisure.

In summary, because the parties intended the right-of-way to be sufficiently broad to accommodate Respondent's commercial vehicles; the plain and obvious purpose of the right-of-way is to provide reasonable ingress and egress for Respondent's commercial vehicles; a right-of-way exceeding the bounds of Katelin Way is reasonable, convenient, and necessary to accomplish the purpose of the right-of-way; and Appellant's objections are barred by the doctrine of laches, the ambiguity between the deed and the plat should be resolved in favor of a broader right-of-way for Respondent. Therefore, Respondent respectfully requests that the Court uphold the Amended Order of the Court of Common Pleas.



Ronald G. Bruce
Attorney for Respondent
P.O. Box 450
Greer, SC 29652
(864) 877-0207
rbruce@rbrucelaw.com

August 21, 2013

Other Counsel of Record:
Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Associates, Inc.

Respondent,

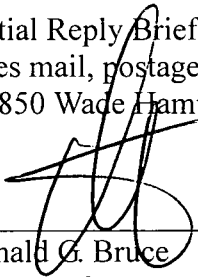
v.

Joseph T. Bishop

Appellant.


PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Respondent on Joseph T. Bishop by depositing a copy of it in the United States mail, postage prepaid, on July 9, 2013, addressed to his attorney of record, Randall S. Hiller, 850 Wade Hampton Blvd., Greenville, SC 29609.



Ronald G. Bruce
Attorney for Respondent
P.O. Box 450
Greer, SC 29652
(864) 877-0207
rbruce@rbrucelaw.com

Greer, South Carolina

August , 2013