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**Oct 24 2024**

**SC Court of Appeals**

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

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**APPEAL FROM JASPER COUNTY  
COURT OF COMMON PLEAS  
CARMEN T. MULLEN, JUDGE  
BENTLEY D. PRICE, JUDGE**

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**CASE NO. 2022-CP-27-00115  
Court of Appeals Case No. 2023-001092**

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**Teresa Brink, Steven Brink and Frank Swartz.....Appellants**

**V.**

**T.C. Realty of the Lowcountry.....Respondent**

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**FINAL BRIEF OF RESPONDENT**

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s/ Russ Keep  
C. Russell Keep, III  
Keep Law Office  
SC Bar # 3321  
Post Office Box 5877  
Hilton Head Island, SC 29938  
(O) 843-842-6268  
(F) 843-785-8458  
thehhlaw@gmail.com  
COUNSEL FOR THE RESPONDENT

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**The learned trial judges were right in ruling that Plaintiff was entitled to an order of default judgment, an order establishing an easement and an order of permanent injunction.**

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## **TABLE OF AUTHORITIES**

### **CASES:**

1. Brown v. Gaskins 284 S.C. 30, 324 S.E. 2d 639 (Ct. of App. 1984)
2. Davis v. Epting 317 S.C. 315, 454 S.E.2d 325 (Ct. of App. 1994)

## STATEMENT OF THE ISSUES ON APPEAL

**The learned trial judges were right in ruling that Plaintiff is entitled to an order of default judgment, an order establishing an easement and an order of permanent injunction.**

## STATEMENT OF THE CASE

The Plaintiff filed a Summons and Second Amended Complaint on March 23, 2022 (ROA 1). All three (3) Defendants were served with the Summons and Second Amended Complaint via Jasper County Sheriff's Department on April 1, 2022. Affidavits of Service were filed with the Jasper County Clerk of Court. Plaintiff filed an Affidavit of Default against all three (3) Defendants on May 5, 2022 (ROA 2). An Order Establishing (Plaintiff's) Easement (not ending case), over the Defendants' land "Parcel C," was signed by Judge Bentley Price and filed with the court on July 19, 2022 (ROA 3). An Order of Default Judgment was signed by Judge Carmen T. Mullen and filed on May 23, 2023 (ROA 4). A hearing was held on June 8, 2023, Judge Carmen T. Mullen presiding. An Order for a Permanent Injunction was signed by Judge Carmen T. Mullen and filed on June 12, 2023, after the court took testimony and visited the easement and fully investigated the matter (ROA 6). Judge Mullen reviewed the entire file and found that notices for hearings had been sent to all Defendants and who actually attended all hearings (ROA 5 - P5, line 23 & P6 lines 3 and 4).

## STATEMENT OF FACTS

The Defendants are in default (ROA 4) so the allegations contained in the Second Amended Complaint (ROA 1) are deemed to be admitted and are;

1. The Plaintiff is a South Carolina Corporation incorporated with the South Carolina Secretary of State and licensed to do business in the state of South Carolina.
2. The Defendants are citizens and residents of Jasper County, South Carolina.
3. This court has jurisdiction over the subject matter of this case and the Parties hereto.
4. The Plaintiff owns land that it leases to tenants next door to the Defendants' land and the parties share a common easement.
5. In May of 2002, the Plaintiff, T.C. Realty of the Lowcountry, Inc. sold "Parcel A" with an easement over "Parcel C," TMS# 050-00-05-004 to the Westons.
6. On December 30, 2008, the Westons transferred an easement across "Parcel A" and "Parcel C," TMS#050-00-05-004 to access "Parcel B," to a loan company.
7. On 1/11/2011 the Jasper County Tax Collector gave Tom Johnson a Tax Deed to .14 acres, TMS# 050-00-05-021 "(f/k/a portion of TMS#050-00-05-004)" for \$300.00.
8. In 2019 Tom Johnson sold "Parcel C," TMS# 050-00-02-021 to the Defendants for \$1,900.00. The Defendants apparently believe that they can block the easement across "Parcel C" and harass anyone who attempts to travel over the easement on "Parcel C."
9. The Plaintiff's tenants are elderly and in poor health.
10. The Defendants have engaged in the following deliberate behavior towards the Plaintiff and the Plaintiff's tenants;
  - a. Set trash fires along the easement,
  - b. Blow smoke with a gas blower onto the Plaintiff's land,

- c. Torn our property markers,
- d. Cut TV cable to Plaintiff's land and tenants' home,
- e. Shot firearms over the Plaintiff's tenants' home,
- f. Drive 4 wheelers with no mufflers up and down the easement at all times of day and night,
- g. Blocked the easement with trucks and machinery,
- h. Screamed and yelled at the Plaintiff's tenants as they drive along their easement,
- i. Hung Voodoo dolls up in the trees along the easement,
- j. Put steel spikes in the road,
- k. Set fires at night.

11. The activities of the Defendants have damaged the Plaintiff's real property, depreciated the Plaintiff's land values and deprived the Plaintiff and the Plaintiff's tenants of their quiet enjoyment of the Plaintiff's land and constitute a nuisance per se.

### **ARGUMENT AND CITATION OF AUTHORITY**

1. None of the three (3) Orders in this case were appealed, nor were motions to reconsider filed (ROA 5 - P5, lines 5 and 6). While a damages hearing was begun on June 8, 2023, it was held in abeyance (ROA 6, page 100 line 24, page 101 line 3). There is nothing to appeal here.

2. "A servient estate may limit access across an easement if the limitation 1) does not unreasonably interfere with the right of passage of the dominant estate; 2) is necessary for the preservation of the servient estate; and 3) is necessary for the use of the servient estate." Davis v. Epting, 317 S.C. 315, 318, 454 S.E. 2d 325, 327 (Ct. App, 1994) (citing *Brown v. Gaskins*, 284 S.C. 30, 324 S.E.2d 639 (Ct. App. 1984)). In *Davis v. Epting*, the Court ordered *Epting* to remove barricades from the easement because the "obstructions eliminate [the] right to vehicular access,

and impede the right to access on foot.” 317 S.C. at 319, 454 S.E.2d at 327. In the present matter, the Court directly observed the conditions of the easement and witnessed the obstructions in the subject easement, including but not limited to, steel rebar stakes, wooden limbs, yard debris, cement blocks or brick, and fencing which clearly obstruct vehicular access and the right to access on foot through the easement. This is not only a concern for the private individuals who have a right to access the easement, but also for the emergency services vehicles who may need to access the easement to respond to emergency service calls. Further, there is no evidence that the steel rebar stakes, fencing, gates and other ground materials and figures are otherwise necessary despite the resulting unnecessary interference with the easement. See *Davis* at 319, 454 S.E.2d at 327-28.

**CONCLUSION**

Two (2) learned trial judges each have considered this matter and consistently ruled against Defendants. Defendants need to be good neighbors (ROA 5, P89, line 16, P90 line 10, P101, lines 1-2) and should obey the permanent injunction (ROA 6) and stop making life a misery for their neighbors, Plaintiff, EMS (ROA #5, P92, lines 23-24 ), the Clerk of Court for Jasper County (ROA 5 - P6, line 14) and the Jasper County Sheriff’s Department by maliciously blocking Plaintiff’s easement.

s/ Russ Keep

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C. Russell Keep, III  
Keep Law Office  
SC Bar # 3321  
Post Office Box 5877  
Hilton Head Island, SC 29938  
(O) 843-842-6268  
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