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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The South Carolina Supreme Court

Appeal from Pickens County
In the Court of Common Pleas
Hon. Alex Kinlaw, Jr. and Hon. Perry H. Gravely

2025-000913

Click Properties, LLC and Hyper Formance, LLC……………………Respondents

Versus

Thomas SC Properties, LLC and All-Tech Tire and Auto Repair LLC..Petitioners.

PETITION FOR WRIT OF CERTIORARI

Scarlet B. Moore, #72534
Attorney for Petitioners
P.O. Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)

May 27, 2025.
Greenville, S.C.

CERTIFICATION OF COUNSEL

Undersigned counsel certifies that the Petitioners submitted a Petition for Rehearing to the S.C. Court of Appeals on March 27, 2025, which Petition was denied by the S.C. Court of Appeals on April 10, 2025.

QUESTIONS PRESENTED FOR REVIEW

1. **Did the trial court err in denying the Petitioners' motion to amend its answer to include a counterclaim for a declaratory judgment?**

2. **Did the trial court err in denying the Petitioners' Motion to Dismiss this matter?**

3. **Did the trial court err in denying the Petitioners' Motion for Summary Judgment?**

4. **Did the trial court err in denying the Petitioners' Motions for Directed Verdict?**

5. **Did the trial court err in denying the Petitioners' Post-Trial Motions and Motion to Reconsider?**

STATEMENT OF THE CASE

This matter is an appeal of a judgment entered against the Petitioners following a jury trial which took place in Pickens County Court of Common Pleas on May 23-26, 2022. (R. pp. 16-18) The Petitioners and Respondents in this matter are business entities that own adjacent parcels of commercial property in Pickens County, South Carolina. The Respondents own property at 3668 Calhoun Memorial Highway (the "Click" property), which was purchased by Brent Click on February 10, 2017 and later transferred to Click Properties, LLC. (R. p. 739, lines 16-19; R. p. 764, lines 11-14) Brent Click testified that he opened his shop in January, 2013, at the 3668 address, while the property was owned by Mark Smith. (R. p. 608, lines 11-23) The Petitioner Thomas SC Properties owns property located at 3670 Calhoun Memorial Highway (the "Thomas" property), which was purchased by Jonathan Thomas on May 23, 2018. (R. p. 1113, lines 5-8) Jonathan Thomas owns a one-hundred-percent (100%) interest in Thomas SC Properties. In 2013, the Thomas property was owned by Greg Grissenger. (R. p. 721, lines1-4) Between the two pieces of property lies a gravel driveway that allows both property owners to access the upper portion of both properties. (R. pp. 1375-1376) Pursuant to the evidence presented at trial, the majority of the gravel driveway is on the Click property, while the upper portion and a larger gravel area (the "turn around" area) is on the Thomas property. Prior to the inception of the litigation in this matter, both parties and their predecessors in ownership used both the driveway and turn-around areas, by "neighborly" permission. However, the Petitioners asserted during the litigation that pursuant to a

survey conducted in 1996 (the "Ramey" plat/survey) owners and lessors of both properties recognized the property lines as shown in the 1996 survey, which clearly showed that the disputed turnaround area that is at issue in this case is owned by the Thomas property. (R. pp. 1304-1310) Brent Click testified at trial that at closing when he purchased the Click property, he was provided with the "Ramey Plat" showing the property lines of the neighboring plats. (R. p. 740, lines 1-2.; R. p. 1323; R. p. 1374) Brent Click specifically testified that he questioned the closing attorney and Mark Smith regarding ownership of the turnaround area, which was on the Thomas property, but was assured by Smith that he had a "right to that" despite the clear boundaries in the plat. (R. p. 742, lines 1-7) The property lines as displayed in the 1996 survey clearly showed that the turn-around area was located on the Thomas property. Additionally, Brent Click testified pursuant to cross-examination that he agreed that he did not have any document stating that he owned the turnaround area, nor any documents stating that he had a right to use the turnaround area. (R. p. 849, lines 12-25) Shelly Click, Brent Click's wife, also testified that pursuant to the 1996 plat the turnaround area was not located on her property. (R. p. 931, lines 23-25; R. p. 932, lines 1-6) Click further testified that he did not have an inspection nor an appraisal done when he bought the Click property. (R. p. 851, lines 4-7) Click specifically testified at trial that the turnaround property is not his. (R. p. 852, lines 2-3)

On or about October, 2014 and prior to the 2017 purchase of the Click property by Brent Click, Mr. Click testified that he built a carport by pouring concrete next to the building he was renting. (R. p. 726, lines 1-6) On or about 2016, Brent

Click (while renting the subject Click property prior to the purchase by Click Properties) erected awnings extending onto the Thomas property. (R. p. 1156, lines 3-7; R. p. 1156, lines 20-21.) Following the erection of the awnings, the interactions between Click and Thomas deteriorated, although the cause and characteristics of such was disputed at trial. Brent Click testified regarding his interest in buying the Thomas property from the previous owner, however the property was sold by the previous owner to Thomas for a reduced amount than the offer allegedly given to Click to buy the property. (R. p. 754, lines 7-16) Jimmy Watkins, who testified at the trial of this matter, stated that he told Brent Click that if he did not get along with the lessor of the Thomas property (the lessor being Jonathan Thomas) that he would erect a fence along his property line, which included most of the turn-around area and which would prevent Mr. Click from accessing the turn-around area for his business interests. Subsequently, Brent Click enforced *his* property line and blocked Jonathan Thomas and associates from using the gravel driveway, which also prevented Thomas and associates from accessing the Thomas property in the turnaround area. In addition, in 2018, the Respondents erected a gate on the lower portion of the Click property that prevented Mr. Thomas and his associates from accessing the upper portion of the Thomas property. In August, 2018, Jonathan Thomas excavated a portion of his land to build a driveway and parking area, following the series of events and exchanges between Jonathan Thomas and Brent Click. Over a year and a half after the excavation work was completed, the Respondents filed the present lawsuit against the Petitioners seeking various points of relief which are discussed *infra*. (R. pp. 45-57) The Respondents' causes of action that survived pre-trial

motions and directed verdict at trial were nuisance *per se,* negligence, acquiescence, prescriptive easement, and injunctive relief which issue would be submitted to the trial court following the jury's verdict.

As stated, on February 27, 2020, the Respondents filed a Motion for Temporary Injunction and Memorandum in Support of Motion, and a Summons and Complaint seeking various points of relief, and alleging the following causes of action: nuisance per se; negligence; declaratory judgment – quiet title; declaratory judgment – acquiescence; declaratory judgment – prescriptive easement; declaratory judgment – easement by estoppel; declaratory judgment – easement by necessity; and injunction. (R. pp. 45-57; R. pp. 64-80) On March 30, 2020, the Petitioners filed a Motion to Dismiss alleging that the Respondents had not properly alleged the elements of a claim for nuisance and nuisance was not an appropriate cause of action. (R. pp. 81-82; R. pp. 100-108) On April 27, 2020 the Respondents filed the Respondents' Objection and Response to Petitioners' Motion to Dismiss, and the Petitioners filed a Memorandum in Opposition to Respondents' Motion for Temporary Restraining Order and/or Preliminary Injunction. (R. pp. 83-4; R. pp. 93-99) Both parties filed affidavits of their clients in support of their respective positions. (R. pp. 85-92; R. pp. 118-126) On April 29, 2020 the Respondents filed their Reply to the Petitioners' Response to Its Motion for Temporary Restraining Order and/or Preliminary Injunction. (R. pp. 127-131) On May 8, 2020, Honorable Judge Perry H. Gravely issued an order granting the Respondents' request for a temporary injunction and denied the Petitioners' motion to dismiss. (R. pp. 1-5) Subsequently, the Petitioners filed an Answer and Jury Demand, including multiple

affirmative defenses. (R. pp. 58-63) On December 7, 2020, the parties submitted the case to mediation, which ended in an impasse with no resolution of the issues before the Court. On February 23, 2022, the Petitioners filed a Motion to Amend Answer to Add Counterclaim, and a Motion to Remove Temporary Injunction with a supporting affidavit from Jonathan Thomas. (R. pp. 132-159) On March 25, 2022, the Respondents filed their Respondents' Response in Opposition to Petitioners' Motion to Remove Temporary Injunction with accompanying affidavits. (R. pp. 160-183) On April 27, 2022, Honorable Judge Alex Kinlaw issued an order denying the Petitioners' motion to remove the temporary injunction and denying the Petitioners' motion to amend Answer. (R. pp. 6-10) On April 14, 2022, the Petitioners filed a Motion for Reconsideration, which was denied by Judge Kinlaw. (R. pp. 11-15; R. pp. 187-191)

On April 27, 2022 the Petitioners filed a Motion for Summary Judgment with an accompanying Memorandum in Support of Motion for Summary Judgment. (R. pp. 192-265) On May 9, 2022, the Petitioners and Respondents filed respective Motions in Limine with accompanying Memorandums in Support of Motion. (R. pp. 266-336) On May 13, 2022, the Petitioners filed their Petitioners' Supplemental Memorandum in Support of Motion for Summary Judgment. (R. pp. 337=373) On May 17, 2022 the Respondents filed their Respondents' Response in Opposition to Petitioners' Motion for Summary Judgment with accompanying exhibits. (R. pp. 374-496)

This matter proceeded to a jury trial on May 23-26, 2022. At the conclusion of the Respondents' case-in-chief, the Petitioners moved for directed verdict. Judge

Gravely found that four (4) of the Respondents' causes of action remained viable, which were nuisance *per se,* negligence, acquiescence, and prescriptive easement. The jury initially returned a verdict in favor of the Respondents, however the jury did not enter an amount of damages in favor of the Respondents. (R. p. 1291, lines 1-21) Subsequently, Judge Gravely instructed the jurors to return to the jury room to assess damages consistent with their judgment for the Respondents. (R. p. 1291, lines 5-11) Subsequently, the jury returned a verdict in favor of the Respondents on the nuisance per se claim and awarded actual damages of twenty-eight-thousand-dollars ($28,000.00) and no punitive damages; returned a verdict in favor of the Respondents on the negligence claims and awarded actual damages of one-hundred-sixty-eight-thousand-dollars ($168,000.00) and no punitive damages; returned a verdict in favor of the Respondents on the acquiescence claim; and returned a verdict in favor of the Respondents on the prescriptive easement claim. (R. pp. 1821-1822) On June 3, 2022, following the jury's verdict in this case, the Petitioners filed Post-Trial Motions. (R. pp. 558-566) On the same date, Judge Gravely issued an order requiring the parties to file post-trial motions within ten (10) days of the verdict. (R. pp. 19-21) On June 6, 2022 – eleven (11) days after the jury's verdict was entered – Judge Gravely filed his order pursuant to the Petitioners' Motion for Summary Judgment, finding the following: that the Respondents would not go forward on their claims of declaratory judgment for easement by necessity nor the claim for adverse possession; and, that the Petitioners' motion was denied except for the action for declaratory judgment for easement by estoppel in which Judge Gravely found that there was no genuine issue of material fact and Petitioners were entitled to summary

judgment on this cause of action. (R. pp. 22-24) Also on June 6, 2022, the Respondents filed their Respondents' Motions and Memorandum for Declaratory Judgment Implementing Acquiescence and Prescriptive Easement and for Order Granting Temporary and Permanent Injunction with accompanying Exhibits. (R. pp. 567-577) On June 30, 2022, Judge Kinlaw denied the Petitioners' motion to reconsider the court's previous order of April 7, 2022 denying the Petitioners' motion to dismiss. (R. pp. 25-26) On July 19, 2022, the Respondents filed their Respondents' Memorandum in Opposition to Petitioners' Motion for Post-Trial Relief. (R. pp. 578-590). On September 21, 2022, Judge Gravely issued his order denying the Petitioners' Post-Trial Motions and granting the injunctive relief sought by the Respondents. (R. pp. 27-44) On October 21, 2022, the Petitioners filed a timely Notice of Appeal. On March 12, 2025, the S.C. Court of Appeals issued its Opinion No. 6105 affirming the orders below. The Petitioners filed a timely Petition for Rehearing on March 27, 2025, which Petition was denied by the S.C. Court of Appeals on April 10, 2025.

ARGUMENT IN SUPPORT OF PETITION

The Court of Appeals in its opinion No. 6105 of March 12, 2025, respectfully overlooked and/or misapprehended the issues and arguments submitted by the Petitioners in brief as to both Respondents, Click Properties, LLC and Hyper Formance, LLC, as discussed *infra*. The Petitioners respectfully request that this Honorable Court grant the Petitioners' Petition and reverse the Opinion of the S.C. Court of Appeals affirming the orders of Honorable Judges Alex Kinlaw, Jr. and Perry H. Gravely.

I. The Court of Appeals erred in affirming the trial court's denial of the Petitioners' motion to amend its answer to include a counterclaim for a declaratory judgment.

The Court of Appeals has erred in affirming the order of Honorable Judge Alex Kinlaw, Jr. denying the Petitioners' motion to file an amended answer to include a counterclaim. The Court of Appeals did not find reversible error but found that if there were an error made by the trial judge the error is harmless as the issue of the parties' use of the property was presented to the jury in the claims for acquiescence and prescriptive easement. However, these claims were only permitted to be furthered by the Respondents, rather than the Petitioners. Further, with the Appellate Court's opinion, it is clear that there would have been no prejudice to permit the amendment as the claims would be addressed and adjudicated in the Respondents' case-in-chief. It was clearly erroneous for the trial court to deny amendment to the Petitioners pursuant to the facts of this case. The Respondents in this matter could not have been prejudiced by the amendment, contrary to the findings of Judge Kinlaw,

due to the fact that the issues were already pending in their complaint. However, although Judge Kinlaw found that the issue was already pending in the Respondents' third cause of action requesting a declaratory judgment to quiet title as to the common property line of the parties, and that the proposed amendment would be futile to the Petitioners, the Respondents actually abandoned this cause of action at the outset of the trial in pre-trial matters before Judge Gravely – further bolstering the amendment motion by the Petitioners and exhibiting the need for the amendment. (R. pp. 22-24) Judge Kinlaw should have permitted the Petitioners to amend their answer to include a counterclaim as discussed, *supra,* and this Honorable Supreme Court should grant the Petitioners' Petition and reverse the order of Judge Kinlaw.

II. The trial court erred in denying the Petitioners' Motion to Dismiss this matter.

The Court of Appeals has erred in affirming the order of Honorable Judge Perry H. Gravely denying the Petitioners' Motion to Dismiss in summary fashion by merely finding that the Respondents' various causes of action have been properly plead without making specific factual findings to support the Opinion. In the case at bar, the Petitioners' trial counsel submitted a sound Memorandum in Support of the Petitioners' Motion to Dismiss. Specifically, after providing a recitation of the Facts, Petitioners' counsel asserted that the Respondents' claims for nuisance, negligence, acquiescence, and prescriptive easement (the causes of action that ultimately remained for the jury's verdict), all must fall. Of particular concern to the Petitioners is the nuisance claim of Respondents due to the fact that Judge Gravely entered an

order following the trial of this matter requiring the Petitioners to abate the nuisance – seemingly adding to the jury's verdict of award of damages for nuisance (which is discussed in more detail *infra*) – a point that this Honorable Appellate Court did not address and overlooked in its Opinion. As Petitioners' trial counsel asserted, a nuisance claim is wholly inapplicable to excavation that allegedly caused erosion and damage to structures on the Respondents' property. The claim of nuisance simply does not fit the allegations and facts of this case, and Judge Gravely erred in denying the Petitioners' Motion to Dismiss on nuisance.

The Court of Appeals and Judge Gravely further erred in denying the Petitioners' Motion to Dismiss regarding the claim of negligence. As Petitioners' counsel asserts in Memorandum In Support of Petitioners' Motion to Dismiss, the Respondents' negligence claim fails because the complaint does not allege a duty of care and does not meet South Carolina pleading standards. The only allegations of the Complaint in this matter are that Thomas owed a duty "not to harm others and not to unreasonably interfere with the rights of adjoining landowners," which is not an actionable duty of care under South Carolina law. Additionally, as trial counsel asserted, the Respondents alleged specific breaches of duty without identification of the legal duties that were breached. Respondents alleged that Thomas "failed to properly supervise the excavation of its premises," but failed to state a legal standard or basis on which a landowner owes a legal duty to supervise activities on the landowner's private premises. Further, Respondents failed to identify an actionable basis for protective, preventative or cautionary duties owed to the Respondents in Paragraph 32, subparagraphs (a), (c), (d) or (e) of the Complaint. The Respondents

further failed to identify the specific harm or articulate how the alleged actionable harm was foreseeable.

Regarding the claims for acquiescence and prescriptive easement, these claims cannot co-exist as the claim for prescriptive easement requires "hostility" while a claim for acquiescence requires "mutual intent to agree to a particular property line." _Paine Gayle Properties, LLC v. CSX Transp., Inc._ 400 S.C. 568 (2012); _Croft v. Sanders_, 283 S.C. 507, 510 (S.C. App. 1984). The Appellate Court and the trial court both erred in denying the Petitioners' motion to dismiss, and this Honorable Court should grant the Petitioners' Petition and reverse the order of Judge Gravely.

III. **The Court of Appeals and the trial court erred in denying the Petitioners' Motions for Directed Verdict.**

This Court of Appeals has misapprehended the facts as applied to the legal principles presented in this case by affirming the denial of the Petitioners' Motions for Directed Verdict. Following the receipt of all evidence and testimony from the Respondents in this matter and subsequent to the Respondents resting, the Petitioners moved for directed verdict on the remaining causes of action that were pursued by the Respondents in their case-in-chief -- nuisance *per se*, negligence, prescriptive easement, acquiescence, and injunctive relief. (R. p. 1057, et seq.) In ruling on a motion for directed verdict, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. id. When the evidence yields only one inference, a directed verdict in favor of the moving party is proper."); _Wright v. Craft_, 372 S.C. at 19, 640 S.E.2d at 496 (Ct. App. 2006)

a. **There is no viable cause of action for nuisance *per se* as the Respondents did not present evidence that there exists a condition that is "dangerous at all times and under all**

circumstances."

The test for determining the existence of a nuisance *per se* in South Carolina is "whether the nuisance has become dangerous at all times and under all circumstances to life, health, or property." Suddeth v. Knight, 280 S.C. 5400, 545, 314 S.E.2d 11, 14 (Ct. App. 1984). In this case, Respondents assert that Petitioners' excavation work that was done in August 2018 is a nuisance *per se*. (R. pp. 45-57) However, there is no evidence that the excavation performed on the Thomas Property is dangerous "at all times and under all circumstances." Brent Click and his wife Shelly Click both testified that they have continued to use the gravel driveway adjacent to where the excavation work was completed on a regular basis to access the back building and the apartment inside it. (R. pp. 192-265). Over three years after the excavation work was done, Respondents had no evidence of danger under all circumstances from the grading. Respondents' own expert—David Hall—provided a report on April 22, 2022 that showed the slope that was graded at the back of the Thomas Property is safe and stable. While Mr. Hall alleged that the front slope is unsafe, the cross-section diagram he submitted shows that the potential area of slope failure is 40 feet away from Respondents' buildings and 10 feet away from the property line. (R. pp. 222-223) This certainly cannot demonstrate a nuisance that is "dangerous at all times and under all circumstances to life, health, or property." Suddeth, 280 S.C. at 545, 314 S.E.2d at 14.

Additionally, Mr. Hall could not testify that the slope was currently failing, only that it could fail in the future. (R. pp. 244-253) ("Now, impending failure doesn't mean it's going to fail in a week, two weeks, two years. We don't know.") South

Carolina nuisance law further elaborates that "mere fears of the plaintiff" are insufficient to support a cause of action for nuisance. *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885). There are no reported cases in South Carolina where a plaintiff has successfully made a showing of anticipatory nuisance. *See Welborn*, 247 S.C. 554, 148 S.E.2d 375 (denying injunctive relief against proposed automobile wrecking service); *Moss v. South Carolina State Highway Dep't*, 223 S.C. 282, 75 S.E.2d 462 (1953) (refusing to issue temporary restraining order against relocation of highway); *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885) (stating that "mere fears of the plaintiff" are insufficient basis for nuisance action); *Roach v. Combined Util. Comm'n*, 290 S.C. 437, 351 S.E.2d 168 (Ct. App. 1986) (denying injunctive relief against proposed sewage treatment plant); *Charleston Comm. for Safe Water v. Commissioners of Pub. Works*, 286 S.C. 10, 331 S.E.2d 371 (Ct. App. 1985) (holding that plaintiff failed to meet burden of showing that proposed fluoridation of city's water supply would constitute a nuisance). Thus, as a matter of law, Respondents' claim for nuisance *per se* cannot survive based on speculation of potential future failure of the front slope. Therefore, the Court of Appeals and Judge Gravely erred in denying the Petitioners' motion for directed verdict and the order should be reversed by the Supreme Court.

b. Respondents have no evidence of damages resulting from the excavation work on the Thomas Property, and the Respondents' claim for negligence against the Petitioner must fall.

Respondents assert that the excavation work on the Thomas Property in 2018 caused damages to the back building of the Click Property. To support this theory,

Respondents point to cracks in the floor of the back building and cracks in the cement block wall. However, Respondents cannot link these cracks to the excavation work performed on the Thomas Property. Greg Porter and Jessie Lingerfelt have both provided affidavits affirming that the cracks in the floor of the back building were there even before Click purchased the property. (R. pp. 254-259) Respondents have no contradictory evidence. Mr. Hall has no personal knowledge of when the cracks occurred. (R. p. 250) He relies solely on Mr. Click's testimony and a blurry photograph. (R. p. 250; R. p. 253) Shelly Click testified that damages were on the opposite side of the back building from where the excavation took place. (R. p. 242.) No inspection was conducted of the Click Property prior to Respondents' purchase of it which could show the condition of the slab prior to the excavation. (R. pp. 230-231) Additionally, it defies logic that the cracks in the back building were caused by the excavation work. Along the western side of the back building on the Click Property, Mr. Click had a concrete slab poured in October 2014. (R. p. 229) This slab is between the area of excavation and the back building. Civil engineer Paul Mills examined the outside slab and observed no cracking in it. (R. pp. 260-262) If the excavation work had caused damage to the inside floor of the back building, it also would have caused damage to the closer outside slab. Thus, Respondents have no evidence of damages that arose after the excavation work nor do Respondents have any evidence that would link the alleged damages to the excavation. Further, there is no credible evidence of the value of the alleged damages. In discovery, Respondents asked for an itemization of damages, the value of such damages, and an explanation as to how and by whom the amount was calculated. (R. pp. 263-265) Respondents

responded that Brent Click could testify as to the current value and diminution in value of the Click Property. Mr. Click is not an appraiser and has no real estate experience. Mr. Click cannot speculate as to the value of his property based on some other unknown and unidentified “industrial properties” that have come on the market at some point after 2017. Thus, there is no admissible evidence as to the value of the damages Respondents allege. As Respondents cannot make these evidentiary showings of damages and proximate cause, their nuisance *per se* and negligence claims fail as a matter of law. *See, e.g.* Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001) (damages and proximate cause are required elements of negligence claim); *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (2001) (nuisance requires a showing of interference with the use and enjoyment of plaintiff's property proximately caused by the defendant).

Additionally, the Petitioners presented evidence to the trial court in the form of a YouTube video and screen shots upon information and belief uploaded by agents of the Respondents which shows “abundantly clear” extensive and noticeable cracking in the floor/foundation inside of the upper building of Mr. Click's property prior to the Petitioners' excavation work, which began in 2018. (R. pp. 337-373) At trial, Brent Click testified that he made the video in 2013. (R. pp. 337-373; R. p. 802, lines 10-24.) The Appellate Court and Judge Gravely have erred in denying the Petitioners' directed verdict motion and the order must be reversed.

c. Respondents' claim of acquiescence fails because Respondents have provided no evidence that any owners of the Thomas or Click Properties ever agreed the true boundary line was such that the turn-around area was on the Click Property.

The Appellate Court and the trial court both have misapprehended the facts of this case as applied to the law of acquiescence. Acquiescence is a very particular claim and requires a mutual intent to agree to a particular property line. "Absent recognition by both [parties] that a particular line constituted the true property line, a new boundary [can] not be established by acquiescence." *Croft v. Sanders*, 283 S.C. 507, 510 (S.C. Ct. App. 1984) Acquiescence by one party is not sufficient. *Pittman v. Lowther*, 363 S.C. 47 (S.C. 2005) In this case, the Respondents have provided absolutely no evidence that any owners of the Thomas or Click Properties—including Brent Click himself—ever agreed that the boundary line was anywhere other than that shown on the 1996 Plat. (R. p. 1374) Mr. Click testified that he was given the 1996 Plat after he closed on the property and that Mark Smith, the prior owner, affirmed the property lines conveyed in the Plat. (R. p. 232) Further, Mr. Click had surveyors come out to his property after he purchased it and locate the property pins, which were as shown on the 1996 Plat. (R. p. 234) Mr. Click then informed Mr. Thomas of where the property lines were, in accordance with the 1996 Plat. (R. pp. 236-237) Finally, Mr. Click testified that Jimmy Watkins, prior owner of the Thomas Property, specifically acknowledged the location of the property line, which was consistent with the placement shown on the 1996 Plat. (R. p. 235) Respondents have no basis to assert that there was acquiescence by the parties to a different property line, and without that specific evidence, Respondents' claim for acquiescence cannot stand.

d. Because the Respondents' use of any portion of the Thomas property was permissive, Respondents' claim for prescriptive easement fails as a matter of law.

The Court of Appeals and the trial court have misapprehended the facts as applied to the law of prescriptive easement in this case – particularly in the face of the jury's inconsistent parallel finding of acquiescence. The Court of Appeals seems to acknowledge in its Opinion that the legal theories of prescriptive easement and acquiescence are inconsistent in holding that the court "agrees with the circuit court that the jury found Respondents were entitled to use of the disputed property and 'whether prescriptive easement or acquiescence are inconsistent or not the practical effect is the same.'" *These inconsistent findings by the jury illustrate a fundamental misunderstanding by the jury of the legal concepts presented by this case* – which findings both must fall and have now been affirmed by this Appellate Court in a published opinion. (emphasis added) South Carolina law is "well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse or under a claim of right." *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015). *See also Paine Gayle Properties, LLC v. CSX Transp., Inc.,* 400 S.C. 568, 586, 735 S.E.2d 528, 538 (Ct. App. 2012); *Horry Cnty. v. Laychur,* 315 S.C. 364, 434 S.E.2d 259 (1993; *Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) Prior owners of the Thomas Property allowed owners and renters of the Click Property to use the turn-around area. (R. pp. 254-259) Because the use of the area was permissive, there can be no claim of adversity or hostility. Thus, Respondents' claims for adverse possession and prescriptive easement fail as a matter of law and the Petitioners' petition should be granted.

e. Because all Respondents' other claims fail as a matter of

law, there is no basis for injunctive relief.

Respondents do not have evidence sufficient to make a claim to Thomas SC Properties, LLC's private property. Therefore, there is no basis for this Court to enter an order for injunction restricting Petitioners' use of the Thomas Property – a point wholly overlooked by the Appellate Court in its Opinion.

IV. The trial court erred in denying the Petitioners' Post-Trial Motions and Motion to Reconsider.

The Appellate Court has affirmed the post-trial motions of the trial court in summary fashion, overlooking and misapprehending the facts as applied to the legal principles presented in this case as described, *supra.* All arguments are fully incorporated into this petition as if wholly reproduced herein. Following the presentation of all evidence in this case, and following the entry of the jury's verdict in this matter, the Petitioners filed Petitioners' Post-Trial Motions on June 3, 2022, which were a judgment notwithstanding the verdict (JNOV) on all claims or, in the alternative, for a new trial. (R. pp. 558-566) Additionally, in the trial court's order the court found that the Petitioners argued the doctrine of "Thirteenth Juror" during the hearing and ruled on the motion. (R. pp. 27-44) In ruling on a JNOV motion, the trial court is required to view the evidence and inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012.) The Post-Trial Motions included legal argument as applied to the facts, which have been addressed by Petitioners in brief as well as in Section III, *supra*, and all

arguments are fully incorporated by reference herein. The Appellate Court has erred in affirming the order of Judge Gravely and the Petitioners' Petition for Writ of Certiorari should be granted.

CONCLUSION

WHEREFORE, the Petitioners respectfully pray that this Honorable Court would grant this Petition for Writ of Certiorari, review this matter, and reverse the ruling of the S.C. Court of Appeals affirming the orders of the trial courts.

Respectfully Submitted,

s/Scarlet B. Moore

Scarlet B. Moore, #72534
Attorney for Petitioners
P.O. Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)

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