STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-07-02351

Christina Olson Gecy, Trustee of the Battery Retreat Revocable Trust Dated May 28, 2021, and any Amendments thereto,

Plaintiff,

vs.

Integra Wharf at Battery Creek, LLC; B. McNeal Partnership, L.P.; Gasque & Associates, Inc.; and Fifth Third Bank, National Association,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR A CONTINUANCE, GRANTING INTEGRA'S MOTION TO STRIKE, AND GRANTING INTEGRA PARTIAL SUMMARY JUDGMENT

This matter is before the Court on a Motion for Summary Judgment by Defendant Integra Wharf at Battery Creek, LLC ("Integra") and related motions to continue the hearing and to strike affidavits filed by Plaintiff Christina Olson Gecy, Trustee of the Battery Retreat Revocable Trust Dated May 28, 2021, and any Amendments thereto ("Plaintiff") in opposition to the Integra Motion for Summary Judgment. The Court heard these motions on May 20, 2025, via Webex. Demetri K. Koutrakos, Harry Dixon, Mary Caskey, and Ian Ford appeared on behalf of Integra. E.W. Bennett, Jr. appeared on behalf of Plaintiff. Arden Lowndes appeared on behalf of Defendant Gasque & Associates, Inc. Scott Scoville appeared on behalf of Defendant B. McNeal Partnership, L.P.

The Court carefully reviewed the briefs, the materials in the record, and the arguments presented by counsel during the hearing, which lasted over two hours. This matter is ripe for consideration. For the reasons set forth herein, the motion to continue the hearing on Integra's motion for summary judgment is denied, the motion to strike Plaintiff's affidavits in opposition to

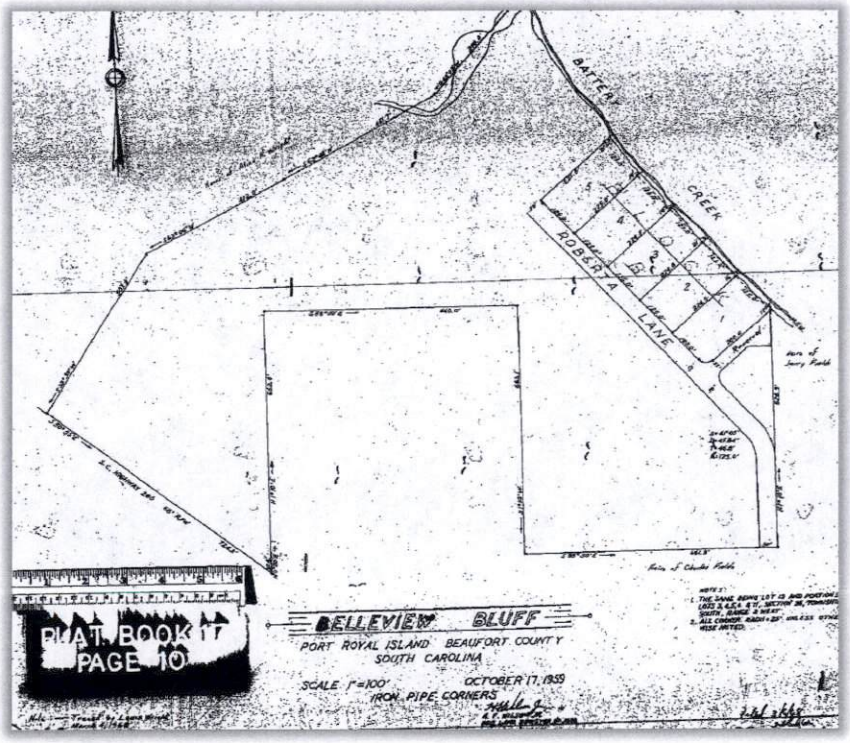
the motion for summary judgment is granted in part, and Integra's motion for summary judgment is granted in part.

I. FACTUAL BACKGROUND

The facts viewed in the light most favorable to Plaintiff are as follows:

A. Initial Development of Belleview Bluff

On October 17, 1959, the Wright family ("the Wrights") had a plat prepared for Belleview Bluff, a five-lot subdivision on Battery Creek in Beaufort. This plat was recorded in Plat Book 17 at Page 10 ("1959 Plat"), part of which is depicted below.



The Wrights owned the entire property shown on the 1959 Plat, including the five lots depicted. Over the years, they added two more lots to the subdivision east of Lot 5—Lots 6 and 7—and gradually sold all the lots.

Lot 4, now owned by Plaintiff, was first conveyed by the Wrights in March 1968 through a deed to Milton Reynolds and Geraldine Reynolds.

B. Access and the 1984 Easement

As the 1959 Plat shows, none of the lots had legal access to a public road. Roberta Lane is shown on the 1959 Plat, but there is no right of access from the lots to a public road.

Before 1984, the Wrights and homeowners in the Belleview Bluff Subdivision used a dirt road across the Wrights' property to access Roberta Lane, the Belleview Bluff subdivision, the larger tract, and the highway (then called "Highway 280," now the Parris Island Gateway).

In 1984, the owners of Lot 6 or their attorney, James G. Thomas, must have realized there was an access issue when they were closing a construction loan. On December 28, 1984, at 2:35 p.m., an easement from the Wrights ("1984 Easement") and a Construction Mortgage were recorded. Attorney Thomas witnessed both documents.

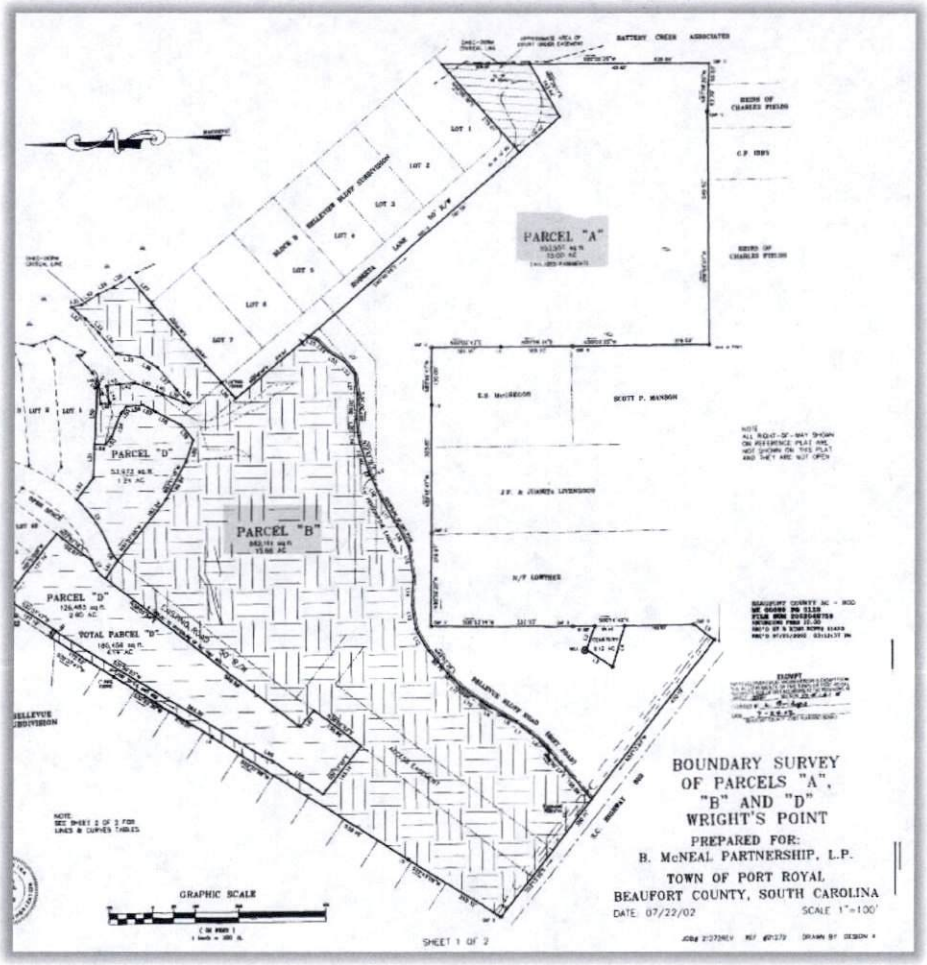
The 1984 Easement provides (emphasis added):

> 1. Seven (7) lots have been sold out of this property. There is no right of ingress and egress shown on said plat.
>
> 2. There is shown Roberta Lane as fifty (50) feet wide. We hereby bind ourselves that there will be an entrance from these lots from the Northern end of said Roberta Lane to SC Highway # 280 fifty (50) feet wide.
>
> 3. That the location of said ingress and egress at this point in time is not designated on said plat, and firmly designated because of natural barriers **and also in the future the location of this may change.**
>
> 4. That it is agreed and understood that this right of way shall be on the Northern and Western portions of said property and shall be from Roberta Lane to SC Highway # 280.
>
> 5. That there is a roadway being used by the owners of said lots at this time and this roadway **shall remain open until a substitute, usable, and well maintained roadway is relocated**. That this right of ingress and egress shall be for the benefit of the present and future owners of the lots designated and any future lots developed in this subdivision.
>
> THIS AGREEMENT is for the benefit not only for the owners of said lots in this subdivision, but for any person, corporation, association, or lending institution that give loans to any portion of this property.

The 1984 Easement references the Wrights' ownership of the property shown on the 1959 Plat. It provides the owners of the lots in Belleview Bluff with legal access to a public road, Highway 280, which was not contemplated when the 1959 Plat established Belleview Bluff.

C. <u>McNeal Partnership acquires the remaining Wrights Property.</u>

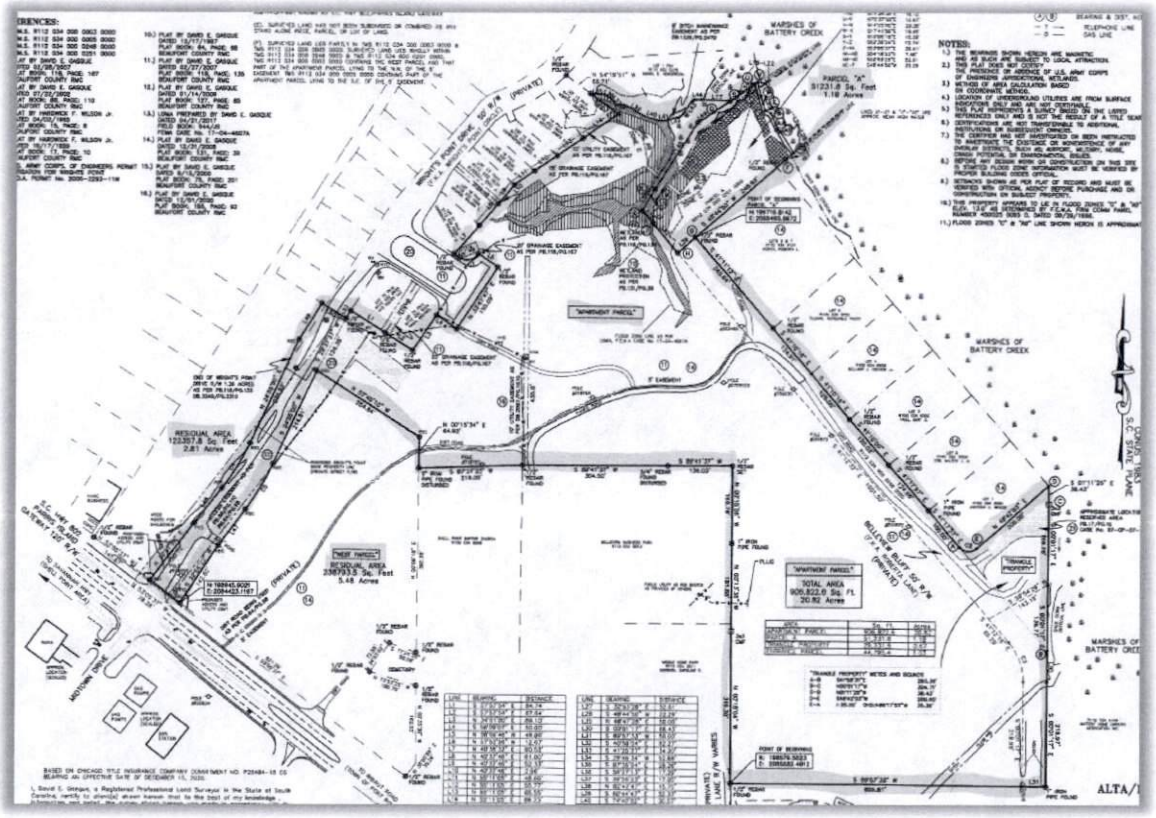
By 2003, through various deeds, Defendant B. McNeal Partnership, L.P. ("McNeal Partnership") became the owner of the property adjoining Belleview Bluff, including Parcels A and B as shown on a plat recorded in Plat Book 88 at Page 110, depicted in part below.



When the McNeal Partnership acquired Parcels A and B, its attorney advised that under the 1984 Easement, it had the right to move the access road to Belleview Bluff. *See* McNeal Dep. pp. 102–03.

Through three deeds recorded on April 23, 2007, McNeal Partnership acquired title to Roberta Lane as shown on the 1959 Plat.

In 2020, McNeal Partnership contracted to sell parts of Parcels A and B. A condition of that contract was for an apartment project to be approved, which approval was handled by the buyer, The Reserve at Battery Creek, LLC ("RABC"). McNeal Dep. pp. 97, 107. Once the appropriate governmental approval was obtained, McNeal Partnership conveyed what is known as the Apartment Parcel to RABC by deed recorded December 15, 2020. McNeal Partnership retained parts of Parcels A and B that were not part of the Apartment Parcel, all as shown on the survey recorded in Plat Book 155 at Page 116:



D. Plaintiff Purchases Lot 4.

By deed recorded June 28, 2021, Plaintiff acquired Lot 4 of Belleview Bluff from James R. Bellamy, III.

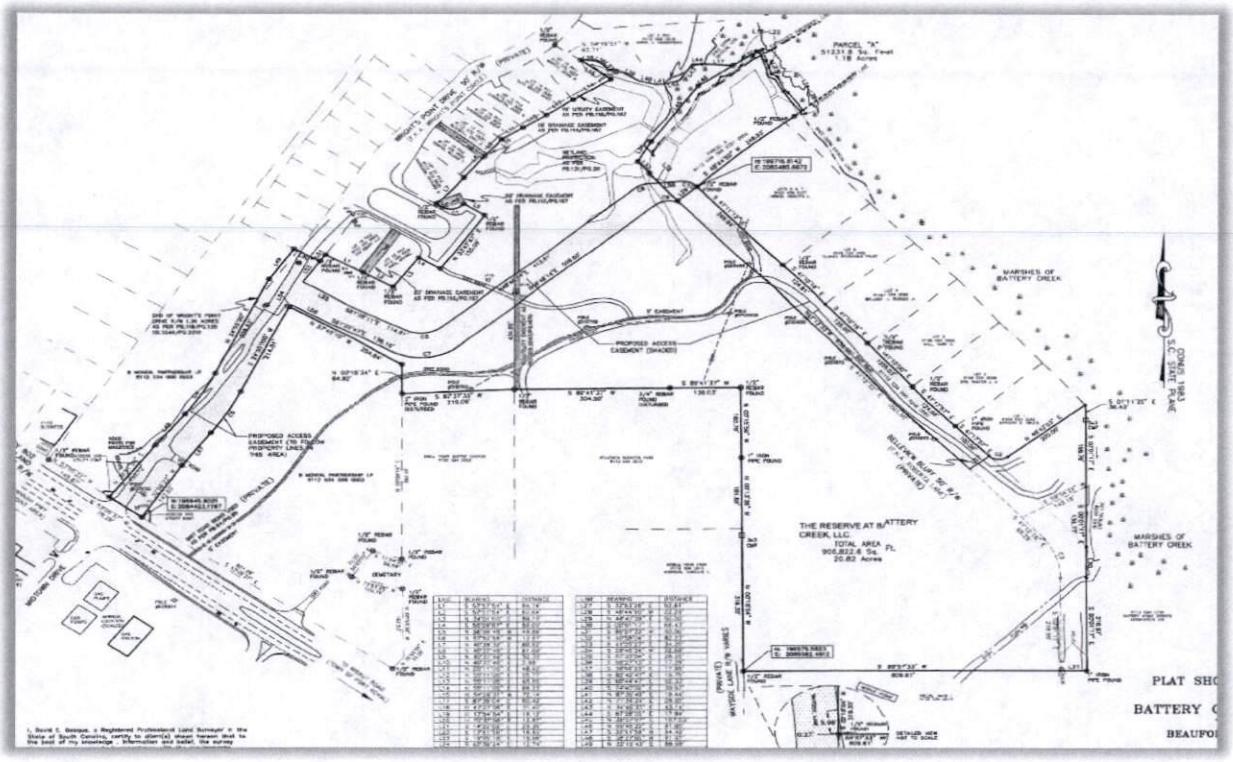
Besides hiring an attorney to conduct the closing, Plaintiff performed no due diligence before buying Lot 4. Neither Plaintiff nor her husband, Benjamin Gecy, checked the zoning of the adjoining property or the Apartment Parcel. Benjamin Gecy Dep. Vol 1, p. 53, lines 23–25; pp. 64–65; Christina Gecy Dep. p. 31. Mr. Gecy did not investigate whether apartments would be constructed next door to Lot 4, even though the development had been approved for over a year before he purchased Lot 4. Benjamin Gecy Dep. Vol I, p. 65. It did not matter to him. *Id.* P. 54, lines 1-4) ("I had no reason to look at that zoning over there . . . Didn't matter to me, no.") There were no discussions, concerns, or investigations related to legal access to Lot 4. Christina Gecy Dep. pp. 37–38. They did not have Lot 4 surveyed. *Id.* p. 30. They did not look at any plats before buying Lot 4. Benjamin Gecy Dep. Vol 1, pp. 129–30. They did not have the house appraised. *Id.* P. 50.

These facts related to Plaintiff's lack of due diligence are not disputed. Integra cited these facts in their memorandum and Plaintiff provided no evidence to contest these facts.

E. <u>Integra Purchases the Apartment Parcel.</u>

Integra purchased the Apartment Parcel and Parcel A from RABC by Deed recorded May 9, 2022.

A few months before the purchase was consummated, RABC recorded a Plat on February 7, 2022, in Plat Book 158 at Page 100, showing a proposed access easement that would run across the Apartment Parcel and provide access to the lots in Belleview Bluff from Roberta Lane to the public road. This Plat is depicted in part below.



Integra purchased the Apartment Parcel after the Town of Port Royal had already approved the project. As a result, it was not involved with any plat filings or the approval process. The 1984 Easement, expressly providing for a relocatable easement, was the only recorded access agreement through the Apartment Parcel.

Construction on the apartment project began in June 2022 and is now complete. The project contains 216 units.

The new access route is paved, lighted, and curbed. There is no dispute that it provides clear and unimpeded access to the owners of homes in Belleview Bluff from and to Roberta Lane to a public road. It is also undisputed that no one, including Integra, is challenging Plaintiff's right to access Lot 4 over and across Integra's property as provided by the relocated access road.

F. <u>Plaintiff's Complaint.</u>

Plaintiff asserts numerous causes of action against Integra:

- **Declaratory Relief Regarding Easements**: Plaintiff seeks an order finding that she possesses an exclusive easement implied by law by the 1959 Plat, an exclusive easement as outlined in the 1984 Easement, and an exclusive easement by prescription. In addition, Plaintiff seeks an order declaring various recorded plats void *ab initio* and directing the Register of Deeds to remove such recorded plats from its records. Finally, Plaintiff requests an injunction enjoining Integra and McNeal from interfering with her alleged easement rights.

- **Adverse Possession of Border Property**: Plaintiff claims she has adversely possessed parts of Roberta Lane.

- **Permanent Injunction**: Plaintiff seeks a permanent injunction enjoining Integra from accessing and using the easements Plaintiff claims to possess without the permission of Plaintiff. In addition, Plaintiff seeks to enjoin Integra from accessing or damaging her property.

- **Intentional Interference with Easement Rights**: Plaintiff seeks damages for interference with her rights under the 1984 Easement.

- **Trespass and Violation of S.C. Code Ann. § 15-67-410**: Plaintiff seeks damages for alleged trespass on Plaintiff's property and forcible entry and detainer.

- **Nuisance**: Plaintiff seeks nuisance damages for alleged interference with Plaintiff's property rights.

- **Civil Conspiracy**: Plaintiff claims Integra and the surveyor engaged in a civil conspiracy to convert Plaintiff's easement rights.

- **Slander of Title**: Plaintiff alleges the recording of plats slandered Plaintiff's title.

II. PROCEDURAL POSTURE

On December 6, 2022, Plaintiff filed her Complaint.

On July 11, 2023, Plaintiff filed a motion for a temporary injunction. Numerous depositions took place at the end of 2023 and the beginning of 2024. In a December 6, 2023, deposition, Plaintiff's counsel indicated an intent to file an amended complaint naming the Town of Port Royal as an additional defendant.

On January 12, 2024, Plaintiff withdrew her motion for a temporary injunction.

On December 17, 2024, Integra filed its motion for summary judgment.

On April 23, 2025, the Clerk of Court notified all parties that the hearing on Integra's motion for summary judgment would take place on May 20, 2025.

On May 13, 2025—1 year, 5 months, 7 days after Plaintiff's counsel expressed an intent to file an amended complaint, 4 months, 26 days after Integra filed its motion for summary judgment, and one week before the scheduled hearing—Plaintiff filed a motion to amend her complaint. The motion contains no verification that counsel for Plaintiff complied with the meet and confer requirements of Rule 11, SCRCP.

On May 14, 2025, Integra filed its memorandum of law in support of its motion for summary judgment.

On May 15, 2025, Plaintiff filed her motion for a continuance seeking to continue the hearing on Integra's motion for summary judgment and on a motion for summary judgment filed by Defendant Gasque & Associates, Inc. The motion contains no verification that counsel for Plaintiff complied with the meet and confer requirements of Rule 11, SCRCP.

On May 16, 2025, Plaintiff filed the Affidavit of Benjamin C. Gecy, Plaintiff's husband, in opposition to the pending motions for summary judgment.

On Saturday, May 17, 2025, Plaintiff filed her memorandum of law in opposition to the pending motions for summary judgment.

On Monday, May 19, 2025, Integra filed a motion to strike various parts of Mr. Gecy's affidavit and a prior affidavit submitted by Plaintiff.

On May 20, 2025, the Court heard the pending motions via Webex.

On June 2, 2025, Integra, via email from Integra's counsel, informed the Court that "Integra has decided to withdraw that part of its motion for summary judgment related to Plaintiff's nuisance claim only as that nuisance claim pertains to matters outside the right to relocate the access road in question, which leads from the public highway to Roberta Lane."

III. PLAINTIFF'S MOTION FOR A CONTINUANCE

As the Court stated at the hearing, it denies Plaintiff's motion for a continuance.

This case has been pending since December 2022. Plaintiff expressed her intent to file an amended complaint in December 2023 but did not do so until nearly a year and a half later. Plaintiff seeks to add new parties in the amended complaint, but did not clarify how the issues in the amended complaint would differ as to any current defendant compared to those currently present. Additionally, Plaintiff failed to provide reasons for the delay in filing a motion to amend the Complaint or a motion for a continuance.

The grant or denial of a continuance rests with the sound discretion of the trial court, and such a ruling will not be reversed unless there is a clear showing of abuse of discretion. *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 474–75, 666 S.E.2d 262, 265 (Ct. App. 2008); *see also Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 524–25, 812 S.E.2d 750, 758 (Ct. App. 2018) The motions for summary judgment were heard nearly two years after the filing of Gecy's verified complaint. All parties had a full and fair opportunity to develop the record.

Plaintiff's argument for continuing these motions was that the hearing should be continued for the "obvious reasons" that the Court must rule on the motion to amend first. The Court disagrees, and accordingly, the Court denies Plaintiff's motion to continue the hearing summary judgement motions. Plaintiff's Motion to Amend their complaint remains on the docket but is not before the court.

IV. INTEGRA'S MOTION TO STRIKE AFFIDAVITS

Integra filed a motion to strike various parts of the Amended Affidavit of Christina Olson Gecy filed December 6, 2023,[1] and the Affidavit of Benjamin C. Gecy filed May 16, 2025. Integra argues that these affidavits contain statements made without personal knowledge, hearsay, and conclusory legal assertions. The Court agrees with Integra and strikes the portions of the affidavits that are made without personal knowledge, include hearsay, and are conclusory facts or legal assertions.

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Rule 56(e), SCRCP. In submitting an affidavit opposing summary judgment, an affiant "must have personal knowledge . . . before his testimony is admissible, and the affidavit [must] demonstrate . . such personal knowledge." *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304, 433 S.E.2d 871, 874 (Ct. App. 1993).

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[1] At the hearing, counsel for Plaintiff indicated that the Plaintiff was not relying on the Amended Affidavit of Mrs. Gecy. However, this is inconsistent with Plaintiff's memorandum of law, which states, "Plaintiff based on the applicable South Carolina Case Law . . . and for the reasons as aforesaid as corroborated by the prior pleadings and affidavits heretofore filed herein including . . . the Amended Affidavit of Christina Olson Gecy and the Exhibits attached thereto as previously filed herein on 12/6/2023."

Additionally, facts presented in an affidavit must be admissible as evidence, and they cannot contain or rely on hearsay. *Hall v. Fedor*, 349 S.C. 169, 175–76, 561 S.E.2d 654, 657 (Ct. App. 2002) (stating "[o]ur appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence" and holding—in a case granting summary judgment—that the appellant's deposition testimony concerning what another individual told him constituted hearsay and was inadmissible to refute a motion for summary judgment); Rule 802, SCRE ("Hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute.").

"[U]ltimate or conclusory facts and conclusions of law, as well as statements made on ... 'information and belief,' cannot be utilized on a summary-judgment motion." *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003) (quoting 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil 3d* § 2738 (1998)); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990) ("The object of [Rule 56] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit."); *Papasan v. Allain*, 478 U.S. 265 (1986) (courts need not assume the truth of legal conclusions couched as factual allegations); 3 Am. Jur. 2d *Affidavits* § 13 (2025) ("Statements in affidavits as to opinion, belief, or conclusions of law are of no effect. When ultimate facts or conclusions of law appear in an affidavit which also contains the proper subject of affidavit testimony, facts within the personal knowledge of the affiant, the extraneous material should be disregarded and only the facts considered.").

Both affidavits include statements made without personal knowledge, hearsay, conclusory facts, conclusory allegations, and legal assertions.[2]

For the reasons stated in the motion, the Court grants Integra's motion to strike those parts of the affidavits that include these statements. Notwithstanding this ruling, it is important to note that the granting of summary judgement by the court in this matter is not reliant upon the striking of portions of the aforementioned affidavits. The court finds that regardless, there are no genuine issues of material fact as to the issues upon which summary judgement is granted, and that the defendants are entitled to summary judgement as a matter of law.

V. INTEGRA'S MOTION FOR SUMMARY JUDGMENT

A. LEGAL STANDARD

Summary judgment is appropriate where "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 a judgment as a matter of law." Rule 56(c), SCRCP. The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

A party opposing summary judgment must show a genuine dispute of fact—"the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (citing and overruling *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). Moreover, "'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Id.*

B. ANALYSIS

i. *Integra and its predecessors in title had a contractual right to move the access route to Belleview Bluff under the express terms of the 1984 Easement.*

The 1984 Easement, the same easement that Plaintiff seeks to enforce in her Complaint,[5] provides the express right to relocate the access route servicing Belleview Bluff. More specifically, the 1984 Easement provides:

> 3. That the location of said ingress and egress at this point in time is not designated on said plat, and firmly designated because of natural barriers **and also in the future the location of this may change.**
>
> 4. That it is agreed and understood that this right of way shall be on the Northern and Western portions of said property and shall be from Roberta Lane to SC Highway # 280.
>
> 5. That there is a roadway being used by the owners of said lots at this time and this roadway **shall remain open until a substitute, usable, and well maintained roadway is relocated**. That this right of ingress and egress shall be for the benefit of the present and future owners of the lots designated and any future lots developed in this subdivision.
>
> (emphasis added).

"When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according

[5] See paragraphs 30-33, 53-55, 57, 67b, 78, 79, and 80 of the Complaint.

to its plain, ordinary, and popular meaning." *ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). The grant of an easement is to be construed under the rules applied to deeds and other written instruments. *See K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009). "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. 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. The intention of the grantor must be found within the four corners of the deed." *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009) (internal citations omitted.).

Traditionally, once the location of an easement is selected or fixed, it cannot be changed by the owner of the servient estate without the express or implied consent of the owner of the dominant estate. *Goodwin v. Johnson*, 357 S.C. 49, 53, 591 S.E.2d 34, 36 (Ct. App. 2003). However, "[a]n express easement may include a provision authorizing one of the parties to relocate the easement." *The Law of Easements & Licenses in Land* § 7:14 (2024).

Here, the 1984 Easement clearly and unambiguously authorizes the owner of the servient estate to relocate the access route. It expressly mentions the road in use and further provides that "this roadway shall remain open until a substitute, usable, and well maintained roadway is relocated." This is exactly what happened. A winding dirt road was modified and improved into a usable, paved, lit, and curbed road with proper drainage.

Any claims by Plaintiff that relocating the access route was improper lack merit. Plaintiff wants the Court to focus on portions of the 1984 Easement that provide access while ignoring the explicit right to relocate the road. This the Court will not do.

Plaintiff argues that the 1984 Easement, or parts of it that the Plaintiff does not like, is invalid due to the way it was signed. Although this was not mentioned in the Complaint, it makes no difference, as the easement provides express written permission in the public records, which defeats any claim to a prescriptive easement, as discussed below.

ii. The 1984 Easement precludes any claim of a prescriptive easement.

1. The 1984 Easement precludes a finding of the required adversity element.

Even though Plaintiff alleges that she has an easement right through the 1984 Easement, she also claims to have a prescriptive easement.

To establish a prescriptive easement, "the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016). "[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Id.* (quoting *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917)). "[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015).

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." *Id.* at 310, 772 S.E.2d at 173; *see also Paine Gayle Props., L.L.C. v. CSX Transp., Inc.*, 400 S.C. 586, 735 S.E.2d 538 (Ct. App. 2012) (recognizing that a claimant's permissive use of landowner's property cannot begin to ripen into a prescriptive easement until the claimant makes a distinct and positive assertion of a right hostile to the landowner); *Horry County v. Laychur*, 315 S.C. 364, 367–68, 434 S.E.2d 259,

261 (1993) (holding evidence, which established that use of property was permissive, showed the use of property was not adverse); *Williamson*, 107 S.C. at 401, 93 S.E. at 16 (stating that permissive use of property "stamps the character of the use as not having been adverse, or under claim of right"). Put another way, when a claimant uses property with the owner's permission, "he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights." *Bundy*, 412 S.C. at 310, 772 S.E.2d at 173.

Permissive use may not always begin at the inception of the claimant's ownership, and "permissive use, which is granted during the claimed twenty-year period, will defeat the establishment of a prescriptive easement, i.e., once permission is granted by the landowner there is no longer adverse use or use under a claim of right." *Id.*

The 1984 Easement is quintessential evidence of permission. It is a document recorded in the public records that permits the owners of Belleview Bluff to access a public road by crossing the property. The 1984 Easement is indisputable written and recorded evidence of permission and precludes Plaintiff's claim to a prescriptive easement as a matter of law. *See id.*, 412 S.C. at 311, 772 S.E.2d at 173 (rejecting a prescriptive easement claim in part because the claimant utilized the subject property while a lease was in effect and the lessor permitted the public to hunt on the property); *see also The Law of Easements & Licenses in Land* § 5:9 ("Permission may take the form of an oral or written arrangement . . ."); 28A C.J.S. *Easements* § 45 ("Permission sufficient to preclude a claim for a prescriptive easement may be established by a written or oral license, or may be inferred from surrounding circumstances"); *Kralicek v. Chaffey*, 998 S.W.2d 765, 769 (Ark Ct. App. 1999) (written agreement and subsequent unspoken understanding established that use of the alley was permissive); *Brown v. Heidersbach*, 360 N.E.2d 614, 621 (Ind. Ct. App. 1977) (express easement of access to lake rendered use permissive); *Peters v. Hubbard*, 475 P.3d 730

(Mont. 2020) (use of roadway pursuant to a written ingress-and-egress easement was insufficient to establish a public prescriptive easement along the roadway); *Burcalow Family, LLC v. Corral Bar, Inc.*, 313 P.3d 182, 187 (Mont. 2013) (written license agreement rendered use of land permissive); *Asche v. Land and Bldg. Known as 64-29 232nd Street*, 784 N.Y.S.2d 577, 579 (2d Dep't 2004) (written license permitting the use of a strip of land rebutted the presumption of adverse use).

Furthermore, Mr. McNeal testified that he gave the residents of Belleview Bluff permission to use the access route. McNeal Dep. p. 72. He testified that the 1984 Easement Agreement permitted the residents to use the road, and he never did anything to remove that permission. *Id.* 103–04.

David Gasque is a surveyor who has visited and surveyed the property since 2007. Gasque Dep. p. 197. He surveyed the access road in question numerous times and was informed and understood that the residents of Belleview Bluff were permissively using the access road until a new development was built and a new road could be built. *Id.* P. 24–25; 32–34; 57; 218–29.

There are no genuine issues of material fact. Plaintiff cannot prove that the use of the access route by her and her predecessors in title was anything other than permissive.

2. Because any use of the access route after 1984 was permissive, Plaintiff cannot establish the required 20-year period for a prescriptive easement.

The adverse use must be established for a period of 20 years. Lot 4, currently owned by the Plaintiff, was first sold by the Wrights to Milton Reynolds and Geraldine Reynolds in March

1968. Less than 20 years later, the Wrights, through the 1984 Easement, granted the owners of lots within Belleview Bluff express permission to use the access route.[6]

To the extent evidence of prescriptive use of the access route before 1984 exists, it could not ripen into a prescriptive easement due to the express and documented permission memorialized by the 1984 Easement 16 years after the Wrights parted ownership of Lot 4. This permission, publicly given by the Wrights in 1984 to all owners of Belleview Bluff, was never revoked or disputed.

Plaintiff, therefore, cannot demonstrate the necessary 20-year period of adverse use.

iii. Plaintiff cannot meet the remaining elements of a prescriptive easement.

Plaintiff must show she has a prescriptive easement by clear and convincing evidence. As previously stated, she cannot prove continuous use for 20 years and cannot establish adversity as a matter of law.

Moreover, no evidence in the record supports the other necessary elements of a prescriptive easement. For example, Plaintiff first became the owner of Lot 4 in 2022. Plaintiff must provide clear and convincing evidence of use dating back to 2002. However, Plaintiff's predecessor in title died and is not available to testify. The son of Plaintiff's predecessor in title, Jamie Bellamy, only moved into the property in 2005 or 2006. Bellamy Dep. p. 15 ("Q. And how long did you live there? A. Up until he passed away, so that would be probably six years total. Q. And then so you moved into the house -- if he died in 2019, when would you have moved in? A. Let's see. So like 2005, 2006. Q. So you were in the house for 15 years? A. On and off, yeah.").

[6] Therefore, regardless of whether the 1984 Easement is valid or invalid, or if parts of it are valid or invalid, it provides express written permission to use the road, and this permission is recorded in the public records for everyone to see.

Plaintiff cannot and has not met her burden of meeting all the elements of a prescriptive easement by clear and convincing evidence.

iv. Any prescriptive easement would be subject to a common-law right to move the access route.

If Plaintiff were able to successfully establish a prescriptive easement, which she has not, it would nonetheless be subject to Integra's and/or its predecessors in title's common-law right to modify the access route. This right is provided by Section 4.8(3) of the *Restatement (Third) of Property (Servitudes)*, which our Courts have adopted. Under that section, unless expressly denied by the terms of an easement, which we do not have here, the owner of the servient estate, such as Integra, "is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner's expense, to permit normal use or development of the servient estate," but only if the changes do not

(a) significantly lessen the utility of the easement,

(b) increase the burdens on the owner of the easement in its use and enjoyment, or

(c) frustrate the purpose for which the easement was created.

Restatement (Third) of Property (Servitudes) § 4.8(3) (2000).

The Court of Appeals in *Goodwin v. Johnson* adopted and applied Section 4.8(3) in the case of an easement by necessity. 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003). However, the *Goodwin* court recognized that "it *should* be more difficult to relocate an express easement, as it is akin to a contract and is bargained for by the parties." *Id.* at 55, 591 S.E.2d at 37 (emphasis in original). A few years later, the Court of Appeals agreed and stated, "we find no indication by our appellate courts that South Carolina would adopt the Restatement with respect to easements acquired by express grant." *Sheppard v. Justin Enterprises*, 373 S.C. 518, 522, 646 S.E.2d 177, 179 (Ct. App. 2007).

The 1984 Easement is an express grant, but as mentioned above, it provides the right to relocate the access route. To the extent Plaintiff successfully establishes a prescriptive easement, it does not matter because it was proper to relocate the access route.[7]

There is no evidence that the relocated access route significantly reduces the utility of the easement, no evidence that it increases the burdens on Plaintiff in her use and enjoyment of the easement, and no evidence that the relocated access route frustrates the purpose for which the easement was created. The former access route provided access to a public road, just as the relocated access route does. The access route transitioned from a winding dirt road to a lit, paved, and curbed road with a straighter path. Integra paid for the construction of the relocated access route. Plaintiff is not being asked to cover any such costs, including future maintenance costs.

Plaintiff seems to argue that the newly relocated access route is more burdensome than the previous one because more people now use it. However, Plaintiff is confusing the legal concept of overburdening easements. Overburdening pertains to situations where the *dominant estate owner*—in this case Plaintiff—excessively uses the easement or engages in actions that create an undue burden on the servient landowner (here, Integra). *See Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973) ("[T]he owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden."); *Rhett v. Gray*, 401 S.C. 478, 494, 736 S.E.2d 873, 881 (Ct. App. 2012) ("As a general rule, an easement appurtenant to one parcel of land may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts, to which the easement is not appurtenant." (quoting *Brown v. Voss*, 715 P.2d 514, 517 (Wash. 1986)).

[7] Plaintiff has not claimed easement by necessity.

On the other hand, the servient owner, such as Integra, has "the right to the use and possession of the land covered by the right of way for any purpose not incompatible with the purposes for which the easement was granted or acquired." *S. Ry. V. Beaudrot*, 63 S.C. 266, 41 S.E. 299, 300 (1902); *see also* 3 *Tiffany Real Prop.* § 811 (3d ed.) ("The owner of the servient tenement may make any use thereof, which is consistent with or not calculated to interfere with the exercise of the easement, or with possible and proper prospective uses of the easement, or he may permit others to make such a use."); *The Law of Easements & Licenses in Land* § 8:20 (2023) ("The owner of the servient estate may utilize the easement area in any manner and for any purpose that does not unreasonably interfere with the rights of the easement holder."); 28A C.J.S. *Easements* § 222 ("Generally, the owner of the servient estate may herself use the way or permit others to do so.").

"Absent an express provision in a grant or a reservation, an easement is not an exclusive interest in the burdened land." *The Law of Easements & Licenses in Land* § 8:20. The servient owner, such as Integra, "retains all rights in the property, subject only to the easement" and "has the right to grant additional easements in the same strip of land, provided such action does not impair the interests of the first easement holder." *Id.*; *see also Sanders v. Roselawn Memorial Gardens, Inc.*, 159 S.E.2d 784, 797 (W. Va. 1968) ("We are of the opinion that the owner of a servient estate may grant successive easements for travel over the same road or way to various persons."); *Drees Co., Inc. v. Thompson*, 868 N.E.2d 32, 40 (Ind. Ct. App. 2007) ("As a general rule, a landowner who has granted an easement in his land may grant subsequent easements in the same land, so long as the subsequent easements do not interfere with the prior easement.").

Integra can, without question, grant others the right to use the access route even though Plaintiff may claim an easement over it. Integra has the unquestioned power to use the access route

and grant individuals renting apartments the right to use the access route. This does not overburden the easement as a matter of law.

Accordingly, even if Integra or its predecessors in title did not have a contractual right to move the access route under the 1984 Easement, and even if Plaintiff successfully established a prescriptive easement, which she has not, then Integra and/or its predecessors in title had the common-law right to move the access route.

v. Any easement rights in this case are nonexclusive, not exclusive.

At the hearing and in some of the Plaintiff's filings, it appears Plaintiff contends that all easement rights involved in this case are exclusive. That means that only the dominant estate, the Plaintiff, can use the easement path. That is simply incorrect.

Plaintiff admitted in its response to Integra's counterclaims that any reference to easement rights being exclusive was a typographical error. In paragraph 121 of Integra's amended answer and counterclaim, Integra alleged, "Furthermore, any such easement rights of Plaintiff in and to the so-called 'Highway 280 Private Road' are non-exclusive in nature." Plaintiff agreed by responding in its reply to the amended counterclaims in paragraph 5 as follows: "Plaintiff admits the allegations contained in paragraph 121 of the Answer and Amended Counterclaims and by way of further explanation would allege that the allegations to the contrary in Plaintiff's Complaint are the result of a scrivener's error."

As mentioned above, "Absent an express provision in a grant or a reservation, an easement is not an exclusive interest in the burdened land." *The Law of Easements & Licenses in Land* § 8:20. Plaintiff has pointed to no authority that would grant the Plaintiff the unusual right to have an exclusive easement, which would essentially constitute fee title.

Accordingly, the Court finds as a matter of law that any easement rights held by Plaintiff are nonexclusive.

vi. No authority exists for the revocation of recorded plats.

In her Complaint, Plaintiff alleges she is "entitled to a declaration that the 2020 Plat, 2022 Plat, and any other plats (e.g., Ex. I) that incorrectly depict [Plaintiff's] easement rights are void ab initio and an order directing the ROD to remove such plats from its records."

The entity that submitted the plats for recording, which was not Integra, presumably complied with the Recording Act. There is no evidence to suggest otherwise.

First, the relocation of the access road depicted in these plats was valid and appropriate. Second, no legal precedent or statutory authority permits this Court to vacate a properly recorded plat. Some states have laws that enable courts to vacate plats under specific circumstances, such as Alabama Code § 35-2-58, which grants the Alabama Circuit Court jurisdiction to vacate and annul plats; Wisconsin Statutes § 236.43, which outlines the authority and procedures for courts to vacate or alter areas within a subdivision that have been dedicated to the public; and Kentucky Statutes § 100.285, which provides for the revocation of a subdivision plat under certain conditions. South Carolina has no statute or case law that permits the voiding of already recorded plats. While this Court can interpret a plat, it does not have the authority to order its removal from the public records.

Therefore, since this Court lacks the authority to revoke and remove a recorded plat from the public records, Integra is entitled to summary judgment on this issue.

vii. Because Plaintiff has no viable claim for a prescriptive easement or adverse possession, and because she cannot show any irreparable harm or a lack of adequate remedy at law, Integra's claim for a permanent injunction fails as a matter of law.

Plaintiff seeks a permanent injunction enjoining Integra from accessing and using the easements. Plaintiff's injunction rests on the success of her claim for an easement or adverse possession. In addition, Plaintiff seeks to enjoin Integra from accessing or damaging her property. "To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

As explained above, Plaintiff cannot prove any theory to support a claim for an easement or adverse possession, or that Integra did not have the right to modify the easement as it did. Further, Plaintiff is fully able to access her property. In fact, access to her property has improved now that the easement is a paved road that leads directly to her property. Plaintiff has also not put forth any proof that her property was damaged by improving the access or the construction.

Simply put, Plaintiff has not identified any legitimate harm, much less an irreparable harm, entitling her to an injunction. Accordingly, Integra is entitled to summary judgment on the claim for a permanent injunction.

viii. Plaintiff's claim for civil conspiracy fails because Integra did not commit any unlawful acts in exercising its property rights.

Plaintiff alleges that Integra and Gasque & Associates are liable for civil conspiracy for creating and recording plats related to the various easements discussed above. (Complt. ¶ 89.) The crux of Plaintiff's claim is that the plats are false and Integra wrongfully altered her access, which is wholly unsupported as explained in detail above. "[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

There is no genuine issue of material fact that the creation and recording of the relevant plats, and Integra's use of the subject property was lawful, as set forth above. Plaintiff has not produced evidence of any actionable conduct. Without any wrongful conduct, Plaintiff cannot prove a claim for conspiracy, and summary judgment is appropriate.

ix. Plaintiff's claim for slander of title fails because Integra did not file false plats.

In her eighth cause of action, Plaintiff alleges that Integra is liable for slander of title by filing false plats. (Complt. ¶ 94.).

"To maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and 5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." *Solley v. Navy Federal Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012) (quoting *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995)). "Malice [] means a lack of legal justification and is to be presumed if the disparagement is false, if it caused damaged, and if it is not privileged." *Id.* (international citations removed).

First, Integra was not involved with any plat filings or the approval process at all, so it cannot possibly be liable for slandering Plaintiff's title. The 1984 Easement was the only recorded access agreement through the property, and was filed before Integra ever purchased the property.

Second, all of the plats identified by Plaintiff are valid plats documenting Integra's property rights. The record is replete with evidence that the plats recorded were not false and accurately reflect Integra's property rights.

Third, even if the plats were somehow incorrect or false, Plaintiff has no evidence that Integra had any knowledge of any inaccuracy in any of the plats, or that Integra filed the plats with any intentional malice or in reckless disregard of Plaintiff's rights. Plaintiff similarly has no

evidence of any special damages arising from the recording of the plats, just as she has no damages proximately caused by any of Integra's actions.

As a result, Integra is entitled to summary judgment on Plaintiff's slander of title claim.

VI. CONCLUSION

For the reasons outlined above, the Court denies Plaintiff's motion for continuance and grants in part the motion to strike Plaintiff's affidavits. Additionally, the Court grants Integra's motion for summary judgment in part because there are no genuine issues of material fact regarding Plaintiff's claims discussed above. The Court notes that Integra, following the hearing, withdrew part of its argument for summary judgment on Plaintiff's nuisance claim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

A. Plaintiff's motion to continue the hearing is denied for the reasons stated at the hearing and as set forth above;

B. Integra's motion to strike affidavits is granted in part for the reasons stated above;

C. As to Plaintiff's cause of action seeking declaratory relief regarding easements, the Court finds there are no genuine issues of material fact and Integra is entitled to judgment as a matter of law that:

i. Integra and its predecessors in title had a contractual right to relocate the access route from Highway 280 (the Parris Island Gateway) to Belleview Bluff (Roberta Lane) under the express terms of the 1984 Easement;

ii. Even if the 1984 Easement is invalid, it provides written and public permission which was never revoked, making any use of the access route permissive, defeating Plaintiff's claim for a prescriptive easement;

iii. Plaintiff has not provided evidence to meet all the elements of a prescriptive easement; and

iv. Even if Plaintiff had a prescriptive easement, Integra and its predecessors had a right to relocate the access route.

D. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law that Plaintiff possesses no prescriptive easement over the Apartment Parcel;

E. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law that the access route from Highway 280 (the Parris Island Gateway) to Belleview Bluff (Roberta Lane) was properly relocated as allowed under the 1984 Easement;

F. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law that any claim by Plaintiff related to interference with easement rights fails as a matter of law insofar as the access road from Highway 280 (the Parris Island Gateway) to Belleview Bluff (Roberta Lane) was properly relocated;

G. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law that any easement rights claimed by Plaintiff in this case are nonexclusive;

H. Plaintiff's claim to revoke the recorded plats fails as a matter of law;

I. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law on Plaintiff's claim for injunctive relief based on the conclusions related to the easements herein;

J. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law on Plaintiff's civil conspiracy claim for the reasons discussed above;

K. There are no genuine issues of material fact and Integra is entitled to judgment as a matter of law on Plaintiff's slander of title claims for the reasons discussed above.

AND IT IS SO ORDERED.

[judge's electronic signature appears below]

Beaufort Common Pleas

Case Caption: Christina Olson Gecy , plaintiff, et al VS Integra Wharf At Battery Creek Llc , defendant, et al

Case Number: 2022CP0702351

Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771