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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable M. Anderson Griffith, Master in Equity

App. Case No. 2024-000545

Melanie Hozey,

Appellant,

v.

Alan Rutherfurd and Susan Rutherfurd,

Respondents.

RECORD ON APPEAL VOLUME I

INDEX

Order of February 28, 2024 1
Plaintiff's Summons and Complaint 19
Defendants' Answer and Counterclaims 26
Plaintiff's Reply to Counterclaims 41
Transcript of Hearing, November 1, 2023 44
Transcript of Hearing, December 11, 2023 248
Plaintiff's Exhibit 2 499
Plaintiff's Exhibit 3 500
Plaintiff's Exhibit 4 501
Plaintiff's Exhibit 5 502
Plaintiff's Exhibit 6 503
Plaintiff's Exhibit 7 504
Plaintiff's Exhibit 8 505
Plaintiff's Exhibit 9 506
Plaintiff's Exhibit 10 507
Plaintiff's Exhibit 11 508
Plaintiff's Exhibit 12 509
Plaintiff's Exhibit 13 510
Defendants' Exhibit 1 511
Defendants' Exhibit 2 514
Defendants' Exhibit 3 515
Defendants' Exhibit 4 516
Defendants' Exhibit 5 517
Defendants' Exhibit 6 518
Defendants' Exhibit 7 519
Defendants' Exhibit 8 520
Defendants' Exhibit 9 521
Defendants' Exhibit 10 522
Defendants' Exhibit 11 523
Defendants' Exhibit 12 525
Defendants' Exhibit 13 528
Defendants' Exhibit 14 ..... USB
Defendants' Exhibit 15 531
Defendants' Exhibit 16 532
Defendants' Exhibit 17 533
Defendants' Exhibit 18 534
Defendants' Exhibit 19 535
Defendants' Exhibit 20 540
Defendants' Exhibit 21 543
Defendants' Exhibit 22 545
Defendants' Exhibit 23 550
Defendants' Exhibit 24 554
Defendants' Exhibit 25 555
Defendants' Written Closing Argument 556

Plaintiff’s Exhibit 1.....Hand-delivered

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Melanie P. Hozey

Docket No.: 2021-CP-02-00766

Plaintiff

ORDER

vs.

Alan L. Rutherfurd and Susan M. Rutherfurd

PROCEDURE

1. The Summons, Complaint, and Lis Pendens were filed on April 15, 2021. The first cause of action is a claim of adverse possession, the second cause of action is for quieting the title in the plaintiff's favor, and the third cause of action was for damages resulting from the Plaintiff being placed on a notice of criminal trespass.
2. The Defendant filed an Answer and Counterclaim on July 7, 2021 and the Plaintiff filed a Reply on August 6, 2021. The Answer and Counterclaim contained a general denial and eleven affirmative defenses concerning the adverse possession claim. The first counterclaim was for civil trespass, the second counterclaim was a declaratory judgment action requesting injunctive relief, and the third counterclaim was for Slander of Title.
3. This matter was referred to the Aiken County Master in Equity through an Order of Reference filed on February 20, 2023.
4. The hearing was held on November 1, 2023 and December 11, 2023. The parties submitted the written closing arguments on January 11, 2024.

STATEMENT OF FACTS

Melanie R. Hozey lives on Laurel Drive in the Aiken County, South Carolina. The Defendant also live on Laurel Drive and the lots are adjacent to each other. Plaintiff's Exhibit 1 is a large overview of the area. The disputed area is enclosed with a red border on the exhibit. The

dimensions of each side are noted in the area is approximately 0.16 acre. The Plaintiff believes she has a claim to the disputed area by adverse possession. The Defendants have a chain-link fence, with no gate between the properties, just outside of the disputed area. The Plaintiff is not claiming the disputed area is included in the legal description of her deed. There is no claim of adverse possession under the theory of color of title. The Plaintiff introduced numerous photographs showing different views of the area. In 2001, when the Plaintiff first moved on to the property, the disputed area was heavily wooded. In the photographs introduced, some of the white flags used to mark an underground fence for the Plaintiff's pets are seen but does do not mark a current boundary line. The Plaintiff testified these flags were used to mark the area in dispute.

In 2001 – 2003, the Plaintiff's father took her children on hikes in the area, built teepees or forts and the children played in that area. In 2003 she cleared an area on the disputed property and parked her camper on the property. She also began maintaining portions of the disputed property and her deeded property in 2003. In 2005, she installed the invisible fence. The white flags marking the location of the fence were maintained for a minimum of three months according to her testimony. She also planted azaleas and camellias along with an irrigation system on part of the disputed property. In 2008, the Plaintiff purchased a boat and stored it in front of the camper in the disputed area. The boat was chained to a tree. She purchased a second camper in 2011 and installed 2 – 3 inches crush and run for a parking pad in the disputed area for the camper and the boat. She also purchased the truck in 2011 and parked it in front of the camper. The Plaintiff has worked in the disputed area doing yard work and has cut down dead trees. She blows debris off of the parking pad. The Defendant's never told her to stop until no trespassing signs were posted in 2021. Before that, Mr. Rutherford saw her working in the area but did not say anything. Mrs. Hozey hired Cold Creek Nursery in 2012 to help clean up her yard and portions of the disputed area. In 2013, she purchased another truck and parked it on the parking pad.

In February, 2014, her property and the disputed area suffered tree damage due to an ice storm. A large tree on the disputed property was uprooted and damaged other trees down the slope. The portion of the disputed area near Laurel Drive appears to be the high point and the property slopes down towards the southern boundary. Trees were cut down or cut up and removed. The

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Plaintiff made an insurance claim for the damage including the trees on the disputed property. She testified that an adjuster inspected the area and the claim was paid. In 2016, the Defendant's contacted the Plaintiff about injuries to their dog. The parties met and resolved the issue. The Defendants did not question her use of the disputed property. In 2020, the Plaintiff hired Cold Creek Nursery on three different occasions to help clear up and maintain the area.

From 2001 – 2020, the Plaintiff never saw the Defendants or anyone else working in area. She testified that her home provides a view of the entire area. In January, 2021, the Defendant's posted no trespassing signs, sent her a letter and the police contacted her about a trespassing claim on the property. Plaintiff then filed the current lawsuit. Mrs. Hozey feels her use of the property since 2001 was treating the property as her own, in an open, continuous, exclusive, hostile possession for a period exceeding 10 years and she believes she is entitled to an Order requiring a survey to identify the boundary lines and to quiet the title in her name through the adverse possession claim.

On cross examination, Mrs. Hozey admitted the Defendant's never denied her permission to use the disputed property. She spoke with Mr. Rutherford before 2020 and he never denied her use of the property. The Plaintiff's children were four and eight years old when she moved into her home. The Defendant's do have a swimming pool inside the chain-link fence. The Plaintiff agreed the 2020 survey discussed was accurate. On Plaintiff's Exhibits five and six, she agreed the white flags show the deeded property line. The white flags no longer mark the invisible fence, but do mark where the plaintiff wants the court to award her of the property.

Kaitlan Hozey is the Plaintiff's daughter and she was 25 years old at the time of the hearing. She testified that she was three to four years old when the family moved to the home on 714 Laurel Drive SW, Aiken SC . She remembers working and playing in the yard, including the disputed area. They would build teepees and structures in the disputed area. After the ice storm in 2014, she helped clean the yard, including the wooded area now referred to as the disputed area in this action.

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

She remembers Camellias being planted in the disputed area. She does not remember any hostility between her mother and the Defendants.

Thomas Colby Hozey is the Plaintiff's son and was seven to eight years old when the family moved to the current home of his mother. He remembers working in the yard which included the disputed area. The Defendant's never told him not to play in the area. After the ice storm, he helped cut and remove dead trees on the deeded property and the disputed area. His interaction with the Defendants was pleasant and he was not aware that the disputed property was not his mother's property.

After the Plaintiff rested her case, the Plaintiff made a motion for a directed verdict concerning the adverse possession claim. The Defendants relied on the Plaintiff's failing to establish the claim by clear and convincing evidence, argued the use was not continuous, relied on work performed in the area by Mr. Rutherford among other arguments. The Plaintiff's motion was denied.

On the second day of testimony, which was December 11, 2023, the Defendants presented the testimony of Susan Rutherford. The Defendants have lived at 714 Laurel Dr. SW, in Aiken since 2001. The property is located on two lots and has a swimming pool on the property. A portion of the property is heavily wooded and serves as a buffer. On the overview photograph (Plaintiff Exhibit 1), the Defendant's lots are lots 23 and 24. The Plaintiff's lot is 25 and the plaintiff also moved into her home in 2001.

Mrs. Rutherford worked in real estate for approximately fifteen years. The disputed area serves as a privacy buffer and she believes it adds value to the property. She cannot see the disputed area from her home but can see the area near the street. The Defendants have considered downsizing but cannot sell the property while this litigation is pending.

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

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She described the relationship with Melanie Hozey to be friendly as neighbors. There was no hostility between the parties until 2020 when Mr. Rutherford encountered a contractor planning to construct a building in the disputed area.

The Defendant then reviewed various exhibits for work performed on their deeded property, including work in the disputed area. These included the exhibits for work done in 2001, 2002, a canceled check for a tree service in 2010 that Mrs. Rutherford testified included work in the disputed area, work performed by Bills Tree Service in 2013 (payment being made in 2014 which included work in the disputed area). A survey was completed in 2020 by Mr. Coleman to confirm the boundary lines. She testified the Defendants knew they owned property outside of the fence but did not know the exact line. The Defendants also introduced letters from their attorneys to the Plaintiff and a police report to place the Plaintiff on notice of trespass. Ms. Hozey remove the boat and truck after that but the camper remained in the disputed area. Prior to 2020 no signs were placed on the property. The Defendants did post no trespassing signs sometime during 2020. The signs had to be reposted as some were removed without their permission. A thumb drive was also introduced (Defendant's Exhibit 14) that reflects activity in March 2021. The clip was shown of the Plaintiff spraying the camper on the crush and run area. There were two videos of this activity and another clip showing Mr. Rutherford clipping some limbs.

Mrs. Rutherford believes any use before 2020 was with the Defendant's permission. There was never a 10-year period where the Defendants did not maintain the property in the disputed area. The Defendant's never abandoned the property and were never prevented from accessing the property. She also testified about a three-year period where no vehicles were parked in the area of the pad. If the Plaintiff is awarded the property in this action, the value of the Defendant's real estate will be diminished. Since the Plaintiff filed the lawsuit, Mrs. Rutherford has suffered from increased stress, sleeping issues and has noticed that her husband has lost weight due to stress.

Alan Rutherford testified he would remove debris, including branches, straw, and finds about every five years from the disputed property. He also agreed that businesses were paid to

work on the property including the disputed area outside of the fence. He has walked the property since the last survey was completed. He described the disputed area as a natural privacy barrier. Prior to the most recent survey, he had a general idea of his property line. The Plaintiff never attempted to exclude the Defendants or people they hired from entering and working in the disputed area.

On cross examination, Mr. Rutherford admitted that in his deposition, he only referenced one invoice from the 2014 ice storm. He saw a camper parked in the disputed area in 2005 but did not confront the Plaintiff. He stated he wanted a friendly relationship with his neighbor. He also admitted that in his deposition he testified that he was not sure of his property line and that he did not point out the property lines to any workers following the ice storm in 2014 because he was not sure of the location of the property lines.

Curtis Coleman, III, also known as Rhett, is a professional land surveyor, licensed in South Carolina and performs 200 – 300 surveys on an annual basis. He was admitted as an expert in the field of land surveying and provided testimony about Defendant's Exhibits 15 – 18. He was familiar with the 2001 survey prepared by Ben Christiansen which includes the disputed area shown as part of the Defendant's property. He also provided testimony about the Plaintiff survey prepared by Todd and Haas. Mr. Coleman visited the property three times and researched the recorded documents as he prepared the plat. He provided testimony about the series of deeds in the chain of title. He found no ambiguity between the property records and what is found on the physical site. The disputed area is part of the survey. The fence bordering the disputed area does not run the length of the property. He did not note any improvements in the disputed area but did note that the property drops off sharply the further you travel from the paved public road. The northern half of the area near the road is also more open. He observed the crush and run and a camper parked on that portion of the property. After the survey was completed, he walked the boundary lines with Mr. Rutherford. He also spoke with the Plaintiff about the survey process and she asked him about an easement between lots 24 and 25. Mr. Coleman advised her his research did not reveal any easements.

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

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On cross examination, Mr. Coleman agreed the Defendants told him to mark the lines so the Defendants would know where the property lines were actually located.

Ms. Hozey offered rebuttal testimony and stated that from her two-story home, she could see all of her property. She never saw the Defendants or any workers/contractors hired by the Defendant's in the disputed area. She admitted that she had produced no invoices at the trial for any work performed in that area.

At the conclusion of the trial, the Plaintiff made a motion for directed verdict and the court denied that motion after hearing the arguments. The parties also agreed the Defendant's third cause of action for Slander of Title was withdrawn.

PLAINTIFF'S EXHIBIT LIST

Plaintiff Exhibit 1: overview at both lots and the disputed area.

Plaintiff Exhibit 2: pictures of the Defendant's fence in the disputed area with a portion of a camper in the picture.

Plaintiff Exhibit 3: pictures of the gravel pad Ms. Hozey testified about on the disputed property. There appears to be a clear edge to the pad leaving some open area between the pad and the fence.

Plaintiff Exhibit 4: picture from the public road with "no trespassing" sign, camper in a debris container.

Plaintiff Exhibit 5: picture of fence with white flags running along the fence. (This does not mean the invisible fence is installed at that location)

Plaintiff Exhibit 6: pictures showing some white flags, the disputed property and the Defendant's fence.

Plaintiff Exhibit 7: picture showing slope of property in the disputed area and some of the white flags.

Plaintiff Exhibit 8: picture of the disputed property towards the public road.

Plaintiff Exhibit 9: pictures showing slope of the property in the disputed area and some of the white flags.

Plaintiff Exhibit 10: pictures showing slope of the property in the disputed area and some of the white flags.

Plaintiff Exhibit 11: picture of Defendant's fence in disputed area with a portion of a camper in the picture.

Plaintiff Exhibit 12: picture of no trespassing sign and white flags in the disputed area.

Plaintiff Exhibit 13: picture of fallen tree near the fence line (six pictures). Some of the pictures are out of focus.

DEFENDANT'S EXHIBIT LIST

Defendant Exhibit 1: job proposal dated November 19, 2001

Defendant Exhibit 2: Copy of a check to Chavous Tree Service dated January 2001 paid by the Rutherford defendants.

Defendant Exhibit 3: Copy of a check dated February 5, 2002 from the defendants to Cold Creek.

Defendant Exhibit 4: handwritten invoice for two checks from the Rutherford's to Garcia Tree Service. (June 23, 2010)

Defendant Exhibit 5: receipt to Bills Tree Service for check number 1089 dated February 21, 2013 for $7300.00.

Defendant Exhibit 7: invoice for land surveyor dated September 29, 2020. (Survey are was Curtis E. Coleman, III (Rhett).

Defendant Exhibit 8: Copy of a check to Coleman Land Surveying, LLC.

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

Defendant Exhibit 9: Copy of two checks from the defendants dated September 28, 2020 and October 5, 2022 Coleman Land Surveying.

Defendant Exhibit 10: Copy of letter from attorney Charles Rudnick on behalf of the Defendant's to the Plaintiff dated September 16, 2020.

Defendant Exhibit 11: Copy of letter from attorney Charles Rudnick on behalf of the Defendant's to the Plaintiff dated October 28 2020.

Defendant Exhibit 12: letter to the Plaintiff from Carroll Law Offices, P.A., to the Plaintiff, dated February 26, 2021

Defendant Exhibit 13: Incident/Investigation Report dated March 8, 2021 in reference to trespass notice being provided to the Plaintiff.

Defendant Exhibit 14: thumb drive introduced that has three short video clips

Defendant Exhibit 15: Plat prepared by Benjamin B. Christensen showing lots 23 and 24 with improvements.

Defendant Exhibit 16: Plat of the subdivision

Defendant Exhibit 17: blown up portion of the subdivision plat for lots 23, 24, and 25.

Defendant Exhibit 18: plat of lots owned by the Plaintiff (Lot 25).

Defendant Exhibit 19: deed into Alan L Rutherford and Susan M Rutherford for lots 23 and 24 in Maggie C. SUBDIVISION.

Defendant Exhibit 20: deed into Dr. James C. Blalock and JoAnne R. Blalock for lots 23 and 24 recorded on June 6, 1997.

Defendant Exhibit 21: deed whereby Farmers and Merchants Bank, as Trustee of Mattie C. Hall deeded lots 22, 23, and 24 to Willis B. Bible, Jr. and Janis G. Bible.

Defendant Exhibit 22: deed from Richard W. Kane to Melanie Poe Hozey for Lot 25 in in Maggie C. Hall subdivision.

Defendant Exhibit 23: copy of deed from Farmers and Merchants Bank, as Trustee of Mattie C. Hall Fred C. Smith for Lot 25, recorded on July 17, 1967.

Defendant Exhibit 24: surveyor's diagram of lots 22, 23, 24, and 25 showing a portion of the disputed area.

Defendant Exhibit 25: recorded plat of survey for Alan L Rutherford and Susan M Rutherford.

CONCLUSIONS OF LAW

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

ADVERSE POSSESSION/BURDEN OF PROOF

To meet the burden of proof, the party asserting the adverse possession claim must show by "clear and convincing" evidence he has met the requirements for adverse possession. *South Carolina Code Ann., § 15–67–210. Jones v. Leagan, 384 S.C.1 681 S.E.2d 6 (S.C. Ct. App. 2009).* In order to establish a claim of adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 229, 595 S.E.2d 253, 265 (Ct.App.2004)."*Clear and convincing evidence is that 'degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.'" *Satcher v. Satcher, 351 S.C. 477, 483, 570 S.E.2d 535, 538 (Ct. App. 2002) (quoting Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 374 n.2, 496 S.E.2d 17, 18 n.2 (1998)).* In South Carolina, the statutory period for adverse possession is ten years. *S.C. Code Ann. § 15-67-210 (2005); Jones, 384 S.C. at 10, 681 S.E.2d at 11.* The parties agreed the Plaintiff's claim was not under color of title.

OPEN AND NOTORIOUS

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

For possession to be open and notorious, "the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it." *Jones v. Leagan 384 S.C. 1, 681 S.E. 2d 6, 384 S.C. at 13–14, 681 S.E.2d at 13.* "[A]cts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy." Id. at 14, 681 S.E.2d at 13. "Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed." Id.

The disputed area is an open area and actual residency or creating permanent structures is not required. In the area of the parking pad, the Plaintiff's activities of parking vehicles, campers, and boats were sufficient to place the Defendants, by ordinary diligence, to have known of the use by the Plaintiff. The remaining portion of the disputed area is a sloping wooded area. Although the Plaintiff installed an invisible fence and a portion of the sprinkler system in the disputed area, these activities are not always visible. It is not the same as an enclosure or structure being built. The use of the white flags in the photographs introduced by the Plaintiff marks the area the Plaintiff wants the court to award her with the adverse possession claim. The Plaintiff and Mr. Rutherford both agree he saw her on the disputed property. Mr. Rutherford did not question her use of the property and said he believed he was being a good neighbor. The Plaintiff did not confront Mr. Rutherford about his appearance on the property.

CONTINUOUS

For possession to be continuous, a party "claiming adverse possession must have personally held the property for ten years." *Jones v. Leagan, S.C. 384 S.C. 1 681 S.E.2d 6 (S.C. Ct. App. 2009).* "Occasional and temporary use or occupation does not constitute adverse possession. However, the rule requiring continuity of possession does not mean the person in possession must be actually be on the land during the whole of the statutory period." Id. at 16, 681 S.E.2d at 14 (citation omitted)

Based on the Plaintiff's testimony, she began using portions of the disputed area in 2003 and continued the use until the Defendant's posted the property and made a report with the police.

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

Even after this change, the camper remained in the disputed area. Ms. Hozey also introduced photographs and provided testimony of work she performed in the disputed area and the commercial workers she hired to work in that area. Based on the nature of the disputed property, the Plaintiff's use was continuous for at least ten years.

HOSTILE

To show the possession was hostile, the adverse claimant is required to show only that his possession was actual, exclusive, open, notorious, and without the consent of the title owner. *Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996).* "To be successful, and adverse possession claimant's possession must be such as to indicate is exclusive ownership of the property. *Curtis v DesChamps , 290 S.C. 315, 350 S.E. 2d 201 (Ct App. 1986). "*Not only must his possession be without subserviency to or recognition of the title of the true owner, but it must be hostile to the owner and to the whole world." *Jones v. Leagan, 384 S.C. 1 681 S.E.2d 6 (S.C. Ct. App. 2009), Gregg v Moore, 226 S.C. 366, 85 S.E.2d 279 (1954), Mullis v Winchester, 237 S.C. 487, 118 S.E. 2d 61 (1961).* The Plaintiff did not offer any testimony of any direct conflict with the Defendants where she claimed ownership of the disputed property. She did not make any attempts to pay the annual property taxes for the disputed property. "A person in order to prove title by adverse possession does not have to show the payment of taxes on the land that he claims. However, the failure to pay taxes may be regarded as a circumstance that the weakens a claim of ownership, or as evidence that no claim was made." *Harrelson v Reaves, 219 S.C. 394, 65 S.E. 2d 478 (1951), Terwilliger v White, 222 S.C. 176, 72 SE 2d 169 (1952).* "The payment of taxes does not confer title, but it may be an important factor with reference to adverse possession, and also asked her by a cotenant, for it shows that the claimant from the beginning claimed title to the land in severability, having returned it in his own name, and having paid the taxes thereon." *Brevard v Fortune, 221 S.C. 117, 69 S.E. 2d 355 (S.C 1952).*

"To defeat a claim of adverse possession, acts of ownership by the holder of the legal title need only be exercised in a way consistent with the use to which the land may be put in which the situation of the property permits without actual residency or occupancy." *Butler v Lindsey, 293*

S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987). While the Plaintiff's actions may establish hostility, the Defendant's provided testimony and exhibits of their use of the disputed property during the same timeframe. Mr. Rutherford testified that he did walk on the disputed area and remove some debris. Mrs. Rutherford also supported this testimony. Finally, the Defendant's introduced invoices from 2001, 2002, 2010, 2013, 2020, and 2022, to show what work was done on their property, which included work done in the disputed area according to the testimony provided. Further, the Defendants testified that this was a buffer area that is wooded and this use seems to be consistent with the use for property considered a buffer area.

EXCLUSIVE USE

The Plaintiff provided detailed testimony of her use of portions of the disputed property and the maintenance work she performed in that area (2003-2020) including commercial business hired during this period. The Defendant's also provided testimony of their use of the disputed property as a buffer zone used for privacy on their lot. The Plaintiff, through photographs and testimony, and the Defendants, through copies of invoices and testimony, both described hiring commercial businesses to assist in the upkeep of their lots, including the disputed property. "where an owner of property and the occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other. The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner or with agents of the owner. *Butler v Lindsey, 293 S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987); Middleton v Depuis, II S.C.L. (2Nott & McC) 310 (1820); Farella v. Rumney, 649 P.2d 185 (Wyo.1982) I 3 Am. Jur.2d Adverse Possession Section 78 (1986)*

DEFENDANT'S COUNTERCLAIMS

The Defendants withdrew their third counterclaim for slander of title during the second day of the trial. The remaining counterclaims are for trespass and injunctive relief.

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Trespass is any interference with "ones right to the exclusive, peaceable possession of his property." Ravan V Greenville County, 315 S.C. 447, 434 S.E. 2d 296 (Ct. App. 1993); *Babb v Lee County Landfill SC, LLC,* 405 S.C. 129, 747 S.E. 2d 468 (2013). A cause of action for trespass requires proof of the following elements:

1. Legal possession by the owner of the property;

2. A voluntary entry on the property by the Defendant; and

3. Entry by the Defendant without the owner's permission. Ralph King Anderson, Jr., *South Carolina Requests to Charge, Civil,* 4 – 41 (2009).

The Defendant's argue the Plaintiff continued to enter their property after she received notice in 2020. Prior to that time, the Defendant's testified they believe the Plaintiff's use was with permission. The Defendants introduced two short video clips showing the activity of the Plaintiff and the camper was still on the Defendants property. If the adverse possession claim fails, Defendants own the property in the disputed area and the Plaintiff entered the property after 2020 without the Defendant's permission. At this time, the adverse possession litigation may have been pending and, as stated above, the Defendants do not dispute that the use of the property from 2003 permissive use until the trespass notice in 2020.

"If the plaintiff proved the defendant trespassed on his property, he is entitled to recover at least nominal damages, even if no proof of injury or damage to the property exist. Entry alone entitles the possessor to at least nominal damages. Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil,* 2009, 4 – 42. Nominal damages is defined as, "A trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated. *Black's Law Dictionary,* 490 (11th ed. 2019). "Nominal damages are awarded if the plaintiff establishes a breach of contract or a tort of the kind that is said to be 'actionable per se' but fails to establish a loss caused by the wrong." S.M Waddams, *The Law of Damages*, 477 – 78 (3d ed. 1997).

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

CONCLUSION

1. This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.
2. Plaintiff has the burden of proving all elements of adverse possession by clear and convincing evidence.
3. The Plaintiff used the disputed area continuously for over ten years.
4. While the use was open, including the use where the Defendant's knew or should have known of the use, the Plaintiff never prevented or attempted to prevent the use of the disputed area by the Defendant's or the businesses they hired for performing work in the area. Under the clear and convincing standard, the court finds the use was open, but not notorious.
5. For the reasons stated above, the Plaintiff's use was without consent of the Defendant's. Although Defendant's believed the use was permissive, there is no testimony or exhibits introduced that they conveyed that permission to the Plaintiff or that the Plaintiff sought any permission in similar fashion. The Plaintiff failed to confront Mr. Rutherford or any other parties to prevent them from entering or using the disputed area. She never paid or sought to pay any property taxes on the area. The Defendants used and maintained the property as would be expected for a buffer area Under the clear and convincing standard, the court does not find the Plaintiff's use was hostile when considering the entire area of the disputed area.
6. Based on the testimony, the exhibits, and the case law, the Plaintiff has failed to establish the exclusive use required for adverse possession by clear and convincing evidence. While the Plaintiff used the parking pad area and did maintenance on the rest of the area, the Defendant's worked in the same area and hired commercial parties to work in the disputed area along with the Plaintiff. Therefore, the legal owner prevails to the exclusion of the other.

7. In regards to the counterclaims filed by the Defendants, based on the facts presented and the case law, the court makes an award of $300.00 in regards to the claim of trespass. In addition, the Plaintiff is to remove all of her property from the Defendant's property within forty-five (45) days from the date of this Order. The Plaintiff has sixty (60) days, to remove or reach an agreement with the Defendant's concerning the invisible fence and the irrigation system that is on the Plaintiff's property and the Defendant's property.
8. Each party is responsible for their own cost and fees.

IT IS SO ORDERED

_____

M. Anderson Griffith/Master in Equity Aiken County

ELECTRONICALLY FILED - 2024 Feb 28 11:20 AM - AIKEN - COMMON PLEAS - CASE#2021CP020766

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FORM 4

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**
COUNTY OFAIKEN
IN THE COURT OF COMMON PLEAS **CASE NO. 2021-CP-02-00766**

Melanie P. Hozey **vs** **Alan L. Rutherford and Susan M. Rutherford**
PLAINTIFF(S) DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:xx ☐ See attached order (formal order to follow) ☐ Statement of Judgment by

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
SEE ORDER	SEE ORDER	$SEE ORDER
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Master in Equity/M. Anderson Griffith 3076 **Judge Code** **Date**

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Aiken Common Pleas

Case Caption: Melanie Hozey VS Alan Rutherfurd , defendant, et al

Case Number: 2021CP0200766

Type: Master/Order/Form 4

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

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State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
Melanie P. Hozey,	)	
	)	**SUMMONS**
Plaintiff,	)	(Jury Trial Requested)
	)	
vs.	)	
	)	
Alan L. Rutherfurd and Susan M. Rutherfurd,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and toserve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded inthe Complaint.

Respectfully submitted,

NANCE & McCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Clarke W. McCants, IV
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200, ext. 3
Mccants3rd@aol.com

Dated: April 15, 2021

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State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
Melanie P. Hozey,	)	**COMPLAINT**
	)	(Jury Trial Requested)
Plaintiff,	)	
	)	
vs.	)	
	)	
Alan L. Rutherfurd and Susan M. Rutherfurd,	)	
	)	
Defendants.	)	
	)	

COMES NOW THE PLAINTIFF, and respectfully alleges and shows unto to theCourt as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff is a citizen and resident of Aiken, South Carolina.

2. The Defendants are husband and wife and citizens and residents of Aiken County, South Carolina.

3. This matter, in part, involves real property located in Aiken County, South Carolina.

4. The acts set forth and complained of herein occurred in Aiken County, South Carolina.

5. This Court has jurisdiction over the subject matter of this civil action.

6. This Court has personal jurisdiction over the Defendants in this case.

7. Venue for this matter is proper in Aiken County, South Carolina.

8. In May of 2001 the Plaintiff purchased certain real property located at 804 Laurel Drive, S.W. in Aiken, South Carolina, and has resided there on a continuous basis since that time.

9. In June of 2001 the Defendants purchased certain real property located at

714 Laurel Drive, S.W. in Aiken, South Carolina, and which is described in particular as follows:

> ALL that certain piece, parcel or lot of land, with any improvements thereon, situate,lying and being in the southwestern portion of the City of Aiken, in Aiken County,South Carolina, being shown and designated as Lots No. 23 and 24, Mattie C. Hall Subdivision upon plat prepared for Alan L. and Susan M. Rutherford by Benjamin
> B. Christensen, PLS, dated June 12, 2001, and to be recorded herewith; reference being made to said plat for a more complete description thereof.
>
> Being the same property conveyed to Dr. James C. Blalock and Joanne R. Blalockby deed of Ronald D. Royal and Elizabeth D. Royal, dated June 6, 1977, and recorded June 6, 1977, in Title Book 562 at page 53, records of the RMC for AikenCounty, South Carolina; the said Dr. James C. Blalock having died leaving said property to Joanne R. Blalock, reference being made to file 2000ES-02-0735, recordsof the Probate Court for Aiken County, South Carolina.
>
> Tax Parcel No. 30-008-04-024.

10. The Plaintiff's real property adjoins the real property particularly described above.

11. Since at least 2003 the Plaintiff has continuously held, occupied and possessed a portion of the real property described above by, among other things, usually cultivating, maintaining and / or improving that portion of the real property.

12. Said use and possession of the portion of the real property described above bythe Plaintiff has been actual, open, notorious, hostile, continuous and exclusive for such requisitestatutory and / or other applicable period of time to constitute the Plaintiff's adverse possession ofsaid portion of the real property described above.

13. The area the Plaintiff has continuously held, occupied and possessed is not enclosed or protected by a fence; however, a fence is erected on the property described above, and is situated between the Defendants' physical residence and the area held, occupied and possessed continuously by the Plaintiff, as set forth above.

ELECTRONICALLY FILED - 2021 Apr 15 12:34 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

ELECTRONICALLY FILED - 2021 Apr 15 12:34 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

14. Recently, the Defendants have undertaken certain actions to stop and prevent thePlaintiff from having access to and using the area of the real property which she has continuouslyheld, occupied and possessed, including a request that the City of Aiken Department of Public Safetyissue and serve upon her a notice that she is criminally trespassing upon said real property.

15. As a result, the Plaintiff is informed and believes that rightful and legal ownership of that area of real property is disputed by the Defendants herein, and respectfully seeks by way of this civil action the Court's guidance with respect to the rights and responsibilities of the Parties in this case.

16. The Plaintiff is further informed and believes that she is entitled to an order andjudgment of this Court setting forth that she is the lawful, rightful and fee simple owner of a definedportion of the real property described above, of which she has held, occupied and possessed adversely, as set forth above, for the requisite statutory and / or applicable period of time.

FOR A SECOND CAUSE OF ACTION

17. The Plaintiff realleges those matter set forth above.

18. The Plaintiff is informed and believes that based upon the allegations set forthherein she is entitled to an order and judgment of this Court declaring and quieting title, in her favor, to a defined portion of the real property described above.

FOR A THIRD CAUSE OF ACTION

19. The Plaintiff realleges those matters set forth above.

20. By requesting that the City of Aiken Department of Public Safety issue and serve upon the Plaintiff a notice of criminal trespass the Plaintiff has been put out and / or disseized of her

land and / or tenement in a forcible manner.

21. Such actions of either or both of the Defendants are in violation of the common and statutory laws of the State of South Carolina.

22. The Plaintiff has suffered actual damages as a result of such actions of either or both of the Defendants.

23. The Plaintiff is informed and believes that she is entitled judgment against theDefendants, jointly and / or severally, for such actual damages.

24. Such damages should be trebled pursuant to the law of this State.

DEMAND FOR JURY TRIAL

25. The Plaintiff respectfully requests a Jury Trial as to the claims and causes ofaction presented in this matter.

WHEREFORE THE PLAINTIFF prays that the Court inquire into the facts and circumstances of this matter, and award that relief requested by the Plaintiff herein, as well as such further and just relief as the Court deems just and proper.

Respectfully submitted,

NANCE & McCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Clarke W. McCants, IV
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200, ext. 3
Mccants3rd@aol.com

Dated: April 15, 2021

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State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
Melanie P. Hozey,	)	
	)	**LIS PENDENS**
Plaintiff,	)	
	)	
vs.	)	
	)	
Alan L. Rutherfurd and Susan M. Rutherfurd,	)	
	)	
Defendants.	)	
_____	)	

NOTICE IS HEREBY GIVEN that a civil action has been instituted in the Court of Common Pleas for Aiken County, South Carolina by the Plaintiff named above against the Defendants also named above, the nature of which involves, in part, the Plaintiff's prayer that the Court inquire into the facts and circumstances presented by the civil action and quiet the title to a portion of the below-described real property:

> ALL that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being in the southwestern portion of the City of Aiken, in Aiken County, South Carolina, being shown and designated as Lots No. 23 and 24, Mattie C. Hall Subdivision upon plat prepared for Alan L. and Susan M. Rutherford by Benjamin B. Christensen, PLS, dated June 12, 2001, and to be recorded herewith; reference being made to said plat for a more complete description thereof.
>
> Being the same property conveyed to Dr. James C. Blalock and Joanne R. Blalock by deed of Ronald D. Royal and Elizabeth D. Royal, dated June 6, 1977, and recorded June 6, 1977, in Title Book 562 at page 53, records of the RMC for Aiken County, South Carolina; the said Dr. James C. Blalock having died leaving said property to Joanne R. Blalock, reference being made to file 2000ES-02-0735, records of the Probate Court for Aiken County, South Carolina.
>
> Tax Parcel No. 30-008-04-024.

NANCE & MCCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Clarke W. McCants, IV
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200, Extension 3
Counsel for Plaintiff

Dated: April 14, 2021

ELECTRONICALLY FILED - 2021 Apr 15 12:34 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

xSTATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Number: 2021-CP-02-00766
Melanie P. Hozey, Plaintiff, vs. Alan L. Rutherfurd and Susan M. Rutherfurd, Defendants.	)	ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS (Jury Trial)

COMES NOW Defendants, Alan L. Rutherfurd and Susan M. Rutherfurd, (hereinafter "Defendants" or "Rutherfurds"), by and through the undersigned counsel, and hereby answer the Complaint of Melanie P. Hozey, (hereinafter "Plaintiff" or "Hozey"); assert their Affirmative Defenses; and assert their Counterclaims (hereinafter collectively the "Answer"). Each and every allegation in the Plaintiff's Complaint, unless specifically admitted herein, is denied. Defendants answer or otherwise respond, and counterclaim as follows:

1. The allegations in Paragraph 1 are admitted.
2. The allegations in Paragraph 2 are admitted.
3. The allegations in Paragraph 3 are admitted.
4. The allegations in Paragraph 4 are admitted.
5. The allegations in Paragraph 5 are admitted.
6. The allegations in Paragraph 6 are admitted.
7. The allegations in Paragraph 7 are admitted.
8. As to Paragraph 8, it is admitted that Plaintiff purchased real property located at 804 Laurel Drive, S.W. in Aiken, South Carolina. Defendants are without information sufficient to

form a belief as to whether Hozey has resided at the aforementioned property on a continuous basis since May of 2001.

9. The allegations in Paragraph 9 are admitted.

10. The allegations in Paragraph 10 are admitted.

11. The allegations in Paragraph 11 are denied.

12. The allegations in Paragraph 12 are denied.

13. As to Paragraph 13, Defendants deny that Plaintiff has continuously held, occupied and possessed any portion of their real property. A fence is erected on Defendants' property that is set back and not on the property line. The paragraph is otherwise denied.

14. As to Paragraph 14, Defendants deny that Plaintiff has continuously held, occupied and possessed any portion of their real property. It is admitted that Plaintiff has been civilly and criminally trespassing on Defendants' land lately. And, Defendants have taken measures to stop Plaintiff from trespassing. The paragraph is otherwise denied.

15. As to the allegations in Paragraph 15, Defendants are without information sufficient to form a belief as to what Plaintiff thinks.

16. As to Paragraph 16, Defendants are without information sufficient to form a belief as to what Plaintiff thinks. The rest of the Paragraph is denied.

17. As to Paragraph 17, Defendants admit that Plaintiff realleges the matters set forth in Paragraphs 1-16. Defendants reallege and reaffirm their answers above as if fully set forth herein.

18. As to Paragraph 18, Defendants are without information sufficient to form a belief as to what Plaintiff thinks. Paragraph 18 is otherwise denied.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

19. As to Paragraph 19, Defendants admit that Plaintiff realleges the matters set forth in Paragraphs 1-18. Defendants reallege and reaffirm their answers above as if fully set forth herein.

20. As to Paragraph 20, Defendants admit that the City of Aiken Department of Public Safety served a notice of trespass. The rest of Paragraph 20 is denied.

21. The allegations in Paragraph 21 are denied.

22. The allegations in Paragraph 22 are denied.

23. As to the allegations in Paragraph 23, Defendants are without information sufficient to form a belief as to what Plaintiff believes. Defendants deny she is entitled to the relief requested, and the Paragraph is otherwise denied.

24. The allegations in Paragraph 24 are denied.

25. As to Paragraph 25, Defendants admit Plaintiff has requested a jury trial. The paragraph is otherwise denied.

WHEREFORE, Defendants deny Plaintiff is entitled to Judgement or relief against the Defendants of any kind. Instead, Defendants seek relief as set forth in the Counterclaims below.

It is Defendants' position that this Court should hear this matter without a jury and award Defendants' their damages, actual and punitive, attorney's fees and costs, along with any other relief that is just and proper.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

AFFIRMATIVE DEFENSES

First Affirmative Defense

MISREPRESENTATION

26. Plaintiff misrepresents the facts, and based on the true facts, Plaintiff is not entitled to relief.

Second Affirmative Defense

FAILURE TO STATE A CLAIM

27. Plaintiff fails to state a claim or cause of action upon which relief may be granted. She fails to fully plead adverse possession. She also fails to state facts supporting a claim that establishes adverse possession. She has failed to plead a right to quiet of title. And, she fails to plead facts demonstrating she has been put out/and/or disseized of her land and/or tenement in a forcible manner.

Third Affirmative Defense

FAILURE OF POSSESSION

28. Plaintiff does not have physical possession of the land. She is a neighbor who has intermittently trespassed on Defendants' land.

Fourth Affirmative Defense

FAILURE TO BE OPEN AND NOTORIOUS

29. Plaintiff behaves as a trespasser, not as an owner engaging in acts consistent with the property's purpose.

Fifth Affirmative Defense

NO EXCLUSIVE OCCUPATION

30. Plaintiff has not exclusively occupied the property for the required period. Defendants use the property. They have not been excluded from the property.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

Sixth Affirmative Defense

PLAINTIFF IS NOT HOSTILE AS THE TERM IS USED IN ADVERSE POSSESSION

31. Hostility involves a person showing intent to hold specific boundaries regardless of the official boundary line. Plaintiff has not done that. She is an intermittent trespasser, sometimes excluded, sometimes present at the sufferance of the Defendants, thus breaking the continuous and uninterrupted use requirement.

Seventh Affirmative Defense

NOT CONTINUOUS AND UNINTERRUPTED

32. Plaintiff cannot demonstrate she has possessed any portion of Defendants' property for a period of more than 10 years in a continuous and uninterrupted manner.

Eighth Affirmative Defense

NO COLOR OF TITLE

33. Plaintiff has no color of title and thus cannot claim adverse possession under color of title. Also, without "color of title" or written instrument of court decree (which Plaintiff does not have or claim to have) no claim is available except for a claim on an actual premises occupied, not for land cultivated, improved, fenced in, used for fuel or timber or animal husbandry or farmed. She does not actually occupy the land.

Ninth Affirmative Defense

PERMISSION

34. Plaintiff has entered the property, at times, at the sufferance of the Defendants and thus has not had continuous hostility for 10 years.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

Tenth Affirmative Defense

MISTAKE

35. Plaintiff is mistaken about adversely possessing the property for 10 years. Defendants have consistently used the property during that time, and there have been periods when Plaintiff did not.

Eleventh Affirmative Defense

GENERAL DENIAL

36. Defendants generally deny all the claims made by Plaintiff.

COUNTERCLAIMS

GENERAL ALLEGATIONS

In support of their counterclaims Defendants state as follows:

1. Defendants/Counter-Plaintiffs, Alan L. Rutherfurd and Susan M. Rutherfurd, are citizens and residents of Aiken County, South Carolina. They live on the property described in Paragraph 9 of Plaintiff/Counter-Defendant's Complaint.
2. That on information and belief, Plaintiff/Counter-Defendant Melanie P. Hozey is a citizen and resident of Aiken County, South Carolina.
3. That this Court has subject matter jurisdiction over this action pursuant to South Carolina's Declaratory Judgment Act, S.C. Code 15-53-10 et seq. and S.C. Const. art. V, § 11. Venue is proper pursuant to S.C. Code Ann. §§ 15-7-10 and 15-7-30.
4. Plaintiff/Counter-Defendant Hozey owns land which neighbors the Rutherfurds.
5. Hozey has been allowed, on occasion, to enter the Rutherfurd Property. Hozey has been excluded from entry on occasion.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

6. In recent times Hozey has, however, trespassed on the Rutherfurd's land on several occasions, when she did not have permission. She tries to park her things on it too.
7. "No Trespass" signs are posted on the Rutherfurd Property.
8. Counsel for Rutherfurds gave written notice to Hozey on or about February 26, 2021. Hozey had Notice of Trespass served on her. *See*, Attached Exhibit A. A criminal trespass notice was delivered to her around that time too.
9. Defendants/Counter-Plaintiffs, the Rutherfurds, seek to have the court award damages for trespass, including compensatory, punitive and exemplary damages; enforcement of and declaration of their rights; and an injunction against Plaintiff/Counter-Defendant Hozey from unlawfully entering their property and thus causing further harm.

FOR A FIRST CAUSE OF ACTION
(Trespass)

The Rutherfurds adopt and reincorporate by reference all preceding paragraphs as if fully set forth herein and further state:

10. The Rutherfurds have given Hozey notice in numerous ways that coming on their property would be trespass.
11. Even so, Hozey has intentionally and affirmatively invaded the Rutherfurds' property.
12. Hozey's invasions include conduct which is malicious, willful, wanton and reckless.
13. The Rutherfurds are entitled to exclusive possession of their property.
14. The Rutherfurds are irreparably harmed because Hozey is now altering their property and trying to intimidate and exclude them.
15. The Rutherfurds are entitled to damages.
16. Injunctive relief is appropriate as there is no adequate remedy at law.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

17. The Rutherfurds have asked Hozey to stop trespassing on their property. She has not done so.

WHEREFORE The Rutherfurds ask to have an order:

1) Awarding Damages, Costs and Attorney's fees associate with the bringing of this action, including compensatory, punitive and exemplary damages.
2) Declaring Hozey is not entitled to enter the Rutherfurd Property, as defined in Paragraph 9 at Hozey's Complaint, without permission from the Rutherfurds;
3) Declaring Hozey is not entitled to interfere with the Rutherfurds' use or enjoyment of their property;
4) Enjoining and restraining Hozey from entering the Rutherfurds' Property, as defined in Paragraph 9 of Hozey's Complaint, without permission from the Rutherfurds'.
5) Enjoining and restraining Hozey from interfering with the Rutherfurds' use or enjoyment of their property.
6) Awarding any and all other further relief this honorable court may deem just and proper.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment and Injunctive Relief)

The Rutherfurds adopt and reincorporate by reference all preceding paragraphs as if fully set forth herein.

18. The Rutherfurds are entitled to relief pursuant to South Carolina's Declaratory Judgment Act, S.C. Code 15-53-10 et seq.
19. The Rutherfurds have a concrete issue in that Hozey has invaded, by coming on to their property, parking thing there and starting to make alterations.

20. The Rutherfurds have made definite assertion of rights by posting "no trespass" signs, sending notice requiring Hozey to refrain from trespassing, and by otherwise interfering with her entry on their land.

21. However, Hozey, in various instances, evaded Rutherfurds' assertion of their rights thus avoiding and denying Hozey's duty not to trespass.

22. The Rutherfurds hold their property by deed, and the trespass laws affect and should protect the Rutherfurds from Hozey coming on to their property.

WHEREFORE the Rutherfurds asks to have judgment in their favor and an order:

1) Awarding Damages, Costs and Attorney's fees associate with the bringing of this action, including compensatory, punitive and exemplary damages.
2) Declaring Hozey is not entitled to enter the Rutherfurd Property, as defined in Paragraph 9 at Hozey's Complaint, without permission from the Rutherfurds;
3) Declaring Hozey is not entitled to interfere with the Rutherfurds' use or enjoyment of their property;
4) Enjoining and restraining Hozey from entering the Rutherfurds' Property, as defined in Paragraph 9 of Hozey's Complaint, without permission from the Rutherfurds.
5) Enjoining and restraining Hozey from interfering with the Rutherfurds' use or enjoyment of their property.
6) Awarding any and all other further relief this honorable court may deem just and proper.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

FOR A THIRD CAUSE OF ACTION

(Slander of Title)

The Rutherfurds adopt and reincorporate by reference all preceding paragraphs as if fully set forth herein.

23. Hozey filed this suit and filed a Lis Pendens.

24. She has thus disparaged the Rutherfurds' title.

25. Her assertion of ownership is untrue.

26. The Rutherfurds are damaged and have actual damages. For example, as a practical matter they are currently, therefore, unable to sell their home.

WHEREFORE the Rutherfurds ask to have judgment in their favor and an order:

1) Awarding Damages, Costs and Attorney's fees associate with the bringing of this action, including compensatory, punitive and exemplary damages.
2) Declaring Hozey is not entitled to enter the Rutherfurd Property, as defined in Paragraph 9 of Hozey's Complaint, without permission from the Rutherfurds;
3) Declaring Hozey is not entitled to interfere with the Rutherfurds' use or enjoyment of their property;
4) Enjoining and restraining Hozey from entering the Rutherfurds' Property, as defined in Paragraph 9 of Hozey's Complaint, without permission from the Rutherfurds'.
5) Enjoining and restraining Hozey from interfering with the Rutherfurds' use or enjoyment of their property.
6) Awarding any and all other further relief this honorable court may deem just and proper.

Respectfully submitted,

July 7, 2021

CARROLL LAW OFFICES, P.A.

/s/ Dionè C. Carroll
Counsel for Defendants/Counter-Plaintiffs
SC Bar No: 78185

Carroll Law Offices, P.A.
107 Pendleton Street N.W.
Aiken, SC 29801
Phone: (803) 514-2557
Fax: (866) 954-0184
Email: dione@carroll-law-offices.com

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

EXHIBIT A

CARROLL
LAW OFFICES, P.A.

ELECTRONICALLY FILED - 2021 Jul 07 10:11 PM - AIKEN - COMMON PLEAS - CASE#2021CP0200766

February 26, 2021

Ms. Melanie Poe Hozey
804 Laurel Drive S.W.
Aiken, South Carolina 29801

Re: Notice of Trespass/Trespass Violations

Dear Ms. Hozey:

I have been retained by Susan and Alan Rutherfurd to represent them with respect to your repeated trespass on their property. All future correspondence with respect to this matter should be directed to me.

Please be advised, notice is hereby given that you and anyone else acting at your direction may not go on to the Rutherfurd's property or otherwise interfere with their property rights at 714 Laurel Drive S.W., Aiken, South Carolina 29801, their home, without further notice in writing, except to immediately remove your property from the Rutherfurds' land.

On September 16, 2020, attorney Charles Rudnick sent you a letter on behalf of the Rutherfurds' giving you notice that you were trespassing on their property. Mr. Rudnick provided you with a land survey which demonstrated that you had cleared a large portion of land on the eastern portion of the Rutherfurds' land, all of which was done without the permission of the Rutherfurds, thus damaging their property and invading their property and property rights.

In the aforementioned letter, you were notified of your trespass and told to remove the stored trailer and red pick-up truck from the Rutherfurds' land. You were also notified to remove the portions of the invisible fence and sprinkler system that are unlawfully resting on the Rutherfurds' land. It is my understanding that Mr. Rudnick has not received a response from you regarding the foregoing, even though you have been contacted numerous times regarding this matter.

The Rutherfurds have indicated that you have now removed the truck from their property, but you have failed to remove your trailer and portions of your invisible fence and sprinkler system that are on their property. Your property needs to be removed from the Rutherfurds' land immediately, as you are breaking the law by continuing to trespass on their property after receiving notice of trespass. In response to your illegal behavior, the Rutherfurds are erecting a fence on their property as a means to interfere with further trespassing.

The purpose of this letter is to formally notify you that your actions permit civil and criminal action. Entering on to the above-described land owned by Susan and Alan Rutherfurd, for any purpose except to remove your property, would be a trespass, and this letter represents a warning that you may not do so. If you refuse to refrain from trespassing, Mr. and Ms. Rutherfurd will take all necessary and appropriate legal measures to enforce their rights on their land.

Dionè C. Carroll, Esq.
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www.carroll-law-offices.com
107 Pendleton St. NW
Aiken, SC 29801
T: 803-514-2557
F: 866-954-0184

Chapter 11 of the South Carolina code discusses offenses against property and the punishments for committing crimes listed under this chapter.

SECTION 16-11-520. Malicious injury to tree, house, outside fence, or fixture; trespass upon real property.

(A) It is unlawful for a person to willfully and maliciously cut, mutilate, deface, or otherwise injure a tree, house, outside fence, or fixture of another or commit any other trespass upon real property of another.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

SECTION 16-11-600. Entry on another's pasture or other lands after notice; posting notice.

Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days.

SECTION 16-11-620. Entering premises after warning or refusing to leave on request; jurisdiction and enforcement.

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

All municipal courts of this State as well as those of magistrates may try and determine criminal cases involving violations of this section occurring within the respective limits of such municipalities and magisterial districts. All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

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The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another.

If it has not been delivered already, law enforcement has been notified of your trespass and will be delivering to you a formal criminal trespass notice. Consider this letter notice that the Rutherfurds will also enforce the No Trespass Order in civil court if you do not remove your property from their land and continue to trespass on their property.

Please govern yourselves accordingly.

Sincerely,

Dionè Carroll

Dionè C. Carroll, Esq.

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State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
Melanie P. Hozey,	)	C/A No. 2021CP0200766
	)	
Plaintiff,	)	**REPLY TO COUNTERCLAIM**
	)	
vs.	)	
	)	
Alan L. Rutherfurd and Susan M. Rutherfurd,	)	
	)	
Defendants.	)	
	)	

COMES NOW THE PLAINTIFF, replying to the Defendants' Counterclaim and respectfully alleges and shows unto to the Court as follows:

FOR A FIRST DEFENSE

1. The Plaintiff denies each and every allegation set forth in the Defendants' Counterclaim which is not hereinafter specifically admitted or to which a response is not otherwise provided.

2. The Plaintiff admits the allegations set forth in Paragraphs 1, 2, 3, and 4 of the Defendants' Counterclaim.

3. The Plaintiff denies the allegations set forth in Paragraphs 5 and 6 of the Defendants' Counterclaim.

4. The Plaintiff admits the allegations set forth in Paragraphs 7 and 8 of the Defendants' Counterclaim.

5. With respect to the allegations set forth in Paragraph 9 of the Defendants' Counterclaim, the Plaintiff admits the Defendants seek certain equitable and / or legal relief as part of this matter but denies the Defendants are entitled to any such relief.

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6. The Plaintiff denies the allegations set forth in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, including its subparts, 18, 19, 20, 21, and 22, including its subparts, of the Defendants' Counterclaim.

7. The Plaintiff admits the allegations set forth in Paragraph 23 of the Defendants' Counterclaim.

8. The Plaintiff denies the allegations set forth in Paragraphs 24, 25, 26, including its subparts, of the Defendants' Counterclaim.

FOR A SECOND DEFENSE

9. The Defendants' Counterclaim fails to state facts sufficient to constitute any cause of action against the Defendant.

FOR A THIRD DEFENSE

10. Any and / or all of the Defendants' Counterclaims in this matter are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

11. Any and / or all of the Defendants' Counterclaims in this matter are barred by the Doctrine of Laches.

FOR A FIFTH DEFENSE

12. Any and / or all of the Defendants' Counterclaims in this matter are barred by the Doctrines of Estoppel.

FOR A SIXTH DEFENSE

13. Any and / or all of the Defendants' Counterclaims in this matter are barred by the Doctrine of Waiver.

FOR A SEVENTH DEFENSE

14. The Defendants have failed to mitigate their alleged damages in this matter.

DEMAND FOR A JURY TRIAL

15. The Defendant respectfully requests a jury trial as part of this matter.

WHEREFORE, having fully answered the Defendants' Counterclaim, the Plaintiff respectfully requests that the Court and / or jury inquire into the facts and circumstances of this matter and grant that relief requested by the Defendant herein and such other and further relief as the Court deems just and proper.

NANCE & McCANTS

s/ Clarke W. McCants, III
Clarke W. McCants, III
Post Office Box 2881
Aiken, South Carolina 29802-2881
S.C. Bar No. 003725
Mccants3rd@aol.com
Counsel for Plaintiff

Dated: August 6, 2021

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)
MELANIE P. HOZEY,)
)
Plaintiff,)
)
vs.) CASE NO. 2021-CP-02-00766
)
ALAN L. RUTHERFURD and)
SUSAN M. RUTHERFURD,)
)
Defendant.)

- - - - -

MASTER IN EQUITY HEARING
BEFORE THE HONORABLE ANDERSON J. GRIFFITH
before Lisa M. Adams, Certified Court Reporter
at Aiken County Judicial Center
109 Park Avenue, S.E., Aiken, South Carolina
on Wednesday, the 1st day of November 2023
commencing at 11:02 a.m.

- - - - -

APPEARANCES OF COUNSEL

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INDEX TO EXAMINATIONS

Page

MARILYN HOZEY

DIRECT EXAMINATION BY MR. MCCANTS, III 9

CROSS-EXAMINATION BY MS. CARROLL 91

REDIRECT BY MR. MCCANTS, III 133

RECROSS BY MS. CARROLL 136

CAITLYN HOZEY

DIRECT EXAMINATION BY MR. MCCANTS, III 136

CROSS-EXAMINATION BY MS. CARROLL 145

THOMAS COLBY POE HOZEY

DIRECT EXAMINATION BY MR. MCCANTS, III 149

CROSS EXAM-NATION BY MS. CARROLL 156

CERTIFICATE OF COURT REPORTER 180

- - - - -

EXHIBITS

PLAINTIFF'S

1	ENLARGED PHOTO	1
2	B/W PHOTO - DISPUTED AREA - TRAILER	22
3	B/W PHOTO - DISPUTED AREA	22
4	B/W PHOTO - DISPUTED AREA - STREET VIEW	22
5	B/W PHOTO - DISPUTED AREA - FLAGS	33
6	B/W PHOTO - DISPUTED AREA - FLAGS	33
7	B/W PHOTO - DISPUTED AREA	33
8	B/W PHOTO - DISPUTED AREA	33
9	B/W PHOTO - DISPUTED AREA	33
10	B/W PHOTO - DISPUTED AREA	33
11	B/W PHOTO - DISPUTED AREA - TRAILER	46
12	B/W PHOTO - DISPUTED AREA - NO TRESSPASSING	46
13	B/W PHOTO - DISPUTED AREA - FALLEN TREE	69

SIX PAGES

DEFENDANTS'

1	PAGE 37 - DEPO TESTIMONY OF M. HOZEY	132

MIE HEARING - HOZEY V RUTHERFURDS - 11/02/2023

-2-

ADAMS REPORTING & VIDEO

THE COURT: All right, we're here on Hozey versus Rutherfurd, case number 2021-CP-02-0766. I have met with the attorneys before the hearing today, but I'd ask, first, if the Plaintiff will place the attorney's name on the record, his client's name and possible witnesses, and then we'll move to the Defense.

MR. MCCANTS, III: Thank you, Your Honor. Again, good morning. I am Clarke McCants, III, for the Plaintiff, Melanie Hozey, who is with me here today. She will testify in this case, as well as her two children, Caitlyn Hozey and Cody Hozey.

MS. CARROLL: Good morning, Your Honor. I am Dionne Carroll here for the Defendants in this case, Allen L. Rutherfurd and Susan M. Rutherfurd. I anticipate that both of the Rutherfurds will testify, and we will also hear the testimony of the surveyor, Mr. Coleman. We called him Rhett, but it is Curtis Coleman, otherwise known as Rhett.

THE COURT: All right, thank you. Are there any preliminary matters that need to be brought before the Court before we start testimony or openings?

MR. MCCANTS, III: I don't think there are any preliminary matters. You mentioned openings, I'm

happy to give you a little more background. I know you're familiar with it because you've talked with us and everything. I think what we've discussed is, by virtue of the pleadings, Your Honor, there's no dispute in this case that the parties, per their deeds, own properties here in Aiken. We'll tell you about the neighborhood in that area and everything like that, and that the -- the meets and bounds in those deeds are correct. We're here to discuss whether or not my client has undertaken certain elements of law regarding adverse possession to acquire a legal title in what we will refer to as the disputed area, which is an area between the two properties, of course, in this case. I think we laid that out with respect to our pleadings and also the pretrial brief, if that helps you.

THE COURT: All right. From Defense?

MS. CARROLL: Your Honor, just I believe we are in agreement. I would say that I understand this to mean that this is not a case of adverse possession, where it is sought under color of title. I think you and Mr. McCants and I had that conversation and confirmed it there.

I believe that we also have an agreement

that -- well, I have requested the rule of sequestration be imposed, so we've agreed that there is no issue with that. And also, we went through all of our exhibits, together, prior to initiating this hearing and I believe we have both agreed to the authenticity; there's no objection based on authenticity to any of the exhibits that we have shown each other so far. Do I have that right, Mr. McCants?

MR. MCCANTS, III: Yes, ma'am.

MS. CARROLL: Other than that, I think that's it.

THE COURT: Okay.

MS. CARROLL: Thank you.

THE COURT: Now, on the sequestration of the witnesses, which I think y'all have kind of taken care of without the Court stepping in, in that regard. If you want me to have any -- and normally, what happens if I have witnesses in here, I will give some instructions in the beginning; they go out, of course. But when they come in to testify, if I -- since I'm not following the usual sequence -- if I forget to caution them against talking to other witnesses out there about their testimony, if one of the attorneys will remind me,

I will take no offense and I will appreciate it. And I will tell them that since that kind of destroys the whole issue about sequestering the witnesses if they go out and tell Tom just what he was asked and what he said about it. So while that might be self-explanatory to us, it's not always with witnesses, so just remind me of that if I fail to tell a witness who comes in from outside.

Other than that, if we don't have anything else then I'll be glad to start taking testimony. I assume those brief comments were the openings, or do we need to go into more detail?

MR. MCCANTS, III: I would offer whatever the Court may need to understand where we are, but I believe I laid out where we're headed in the case, Your Honor.

THE COURT: Okay. Well, how about for the Defense?

MS. CARROLL: I think I'd like to say a few more words --

THE COURT: Okay, that's fine.

MS. CARROLL: -- Your Honor, if that's okay.

THE COURT: [Inaudible] some confusion over my terms in that, so let's go ahead. I'll allow you that.

MS. CARROLL: Thank you, Your Honor. Well, I think what the evidence will show is that the disputed area -- and I'm going to agree with Mr. McCants to use that terminology -- it's not -- you know, Your Honor is very well-aware of the elements of adverse possession, and I'm sure Your Honor is also very well-aware that it is necessary that it be -- that all of the elements be continuously fulfilled, and if there's any break of all those elements then the timeframe starts over.

And I think the evidence will show that there are a number of breaks in a number of elements; particularly, and most focused, I would put to you that the exclusivity element of the adverse possession has never, ever, ever been fulfilled, so you're going to hear substantial testimony that my client -- my clients and/or their agents were on the property, using the property for their purposes for the entire duration that they have owned it. Without that element and without the -- and then we have arguments on a couple other of those elements, too, but that one is just so abundantly clear to me I don't why we are here. So absence exclusivity, they can never establish adverse possession. Thank you.

THE COURT: Okay. Thank you. All right, with that, then, Mr. McCants, you may call your first witness.
MR. MCCANTS, III: Thank you. I call Ms. Hozey to the stand. Melanie come around and sit next to the Judge, if you would.
THE COURT: Right here, ma'am.

- - - - -

DIRECT EXAMINATION OF MARILYN HOZEY

BY MR. MCCANTS, III:

Q. Would you state your full name for us, please?
A. Melanie Poe Hozey.
Q. And spell Poe for us.
A. Spell? Oh --
Q. I don't know if we've got your middle name in the pleading. I've got P, P is for P-O-E; is that correct?
A. P-O-E.
Q. How old are you, Melanie?
A. I am 63.
Q. Are you originally from Aiken?
A. I am.
Q. Are you married?
A. No.
Q. You've been married, and that marriage was

ended; is that correct?

A. Correct.

Q. You have two natural children?

A. I do.

Q. What are their names?

A. Thomas Colby Poe Hozey and Caitlyn Elizabeth Hozey.

Q. And how are you employed at the present time?

A. I am employed as a subcontractor at Savannah River Site, as a project controls manager.

Q. All right, tell Judge Griffith a little bit about -- more a little bit about project manager. What do you do, pretty much, on a daily basis?

A. So recently, this past year, I've been working on a proposal to the Department of Energy, right. I was responsible -- so the entire proposal is $8 billion. It's over eight years. My portion of that was 1.6 billion, so -- and it's estimate, development, scope, cost, schedule, all of that.

THE COURT: Okay.

Q. [Mr. McCants, III] So you're familiar working with numbers and things like that and doing estimates and checking things to make sure that you're correct before you present your proposals to your higher-ups, so to speak; is that correct?

A. Absolutely.
Q. All right. Now, you've lived in Aiken all your life. You attended Aiken High School; is that correct?
A. I did.
Q. All right. Now, where do you currently live? Where do you reside?
A. 804 Laurel Drive.
Q. And how long have you lived at that residence?
A. Since 2001, so 22 years.
Q. And from whom did you buy your home?
A. Richard King's estate.
Q. And you have lived at 804 Laurel Drive, here in Aiken, continuously since 2001; is that correct?
A. Yes.
Q. And you know the Rutherfurds?
A. I do.
Q. You're in Court today, you have brought this lawsuit, and they are your neighbors, aren't they?
A. They are my next-door neighbors.
Q. And what is their home address?
A. So I believe it's 714 or -15 Laurel Drive. The numbering gets a little weird.
Q. Do you know when they purchased their home next-door to yours?

A. Shortly after I did, in 2001. My --
Q. So both of y'all have lived in this area in Aiken since 2001; is that correct?
A. Yes.
MR. MCCANTS, III: Exhibit 1, please. And I'm going to have several, so.
[PLAINTIFF'S EXHIBIT 1 IS MARKED FOR IDENTIFICATION]
THE COURT: Your Honor, I'm going to mark what we're going to offer as Exhibit Number 1, and I'll put this exhibit stamp --
THE COURT: Any objections to this from Defense?
MS. CARROLL: No objection, Your Honor.
THE COURT: All right, so admitted as Plaintiff's Exhibit 1.
MR. MCCANTS, III: All right, now, Your Honor, I'm always never really sure the best place. I did pull this out. What do you think?
THE COURT: I'm okay with that. And Counsel, you can come up if you want to be able to look at it or you can turn it for your clients, or however you need to set it up for this.
MR. MCCANTS, III: Do you mind if I put it over here?
THE COURT: I'm okay with that.

MR. MCCANTS, III: Without causing too much risk to limb, as we walk through there.
THE COURT: It's always an issue when you've got folks sitting here and a witness here, so we'll move it around however we can do it.
MR. MCCANTS, III: Off the record.
[OFF THE RECORD]
Q. [Mr. McCants, III] Okay, I hope I'm not covering up anything. All right, Ms. Hozey; I may call you Melanie at some point. We've got this exhibit for the Court to kind of orient Judge Griffith as to what we're going to talk about in this case, okay? And you're familiar with this exhibit, Exhibit Number 1?
A. I am.
Q. In fact, you prepared the Exhibit; is that correct?
A. I did.
Q. You worked on that as part of this particular case. All right, and we've got labels on there, as you'll see. The name "Hozey," that's you, the disputed area, and the Rutherfurds; is that correct?
A. Yes.
Q. All right. With that being said, point to your home, where you sleep at night, if you would. And if you'd like to get up and walk around [inaudible], I'm

sure Judge Griffith --
THE COURT: That's fine.
Q. [Mr. McCants, III] -- will let you do that.
THE COURT: That's fine. You can get up out of your chair and stand there.
THE WITNESS: Okay.
THE COURT: Just try not to block it so they can see it at the Defense table.
THE WITNESS: Okay.
A. This is my house.
THE COURT: Okay.
Q. [Mr. McCants, III] Very good. And point out the boundaries of your property, as per your deed that you got in 2001.
A. Right here.
Q. All right.
MR. MCCANTS, III: And for the record, Your Honor, she has pointed out the white lines around Hozey, and that red line, also, to the left of Hozey.
Q. [Mr. McCants, III] Now -- and of course, where did you get this image, Melanie? Explain that to the Judge.
A. Off of the county website.
Q. Aiken County?

A. QPublicNet, something like that --
Q. All right. Are you familiar with the term "Beacon"?
A. Yes, yes.
Q. All right. Explain that to him. What is Beacon?
THE WITNESS: So Beacon is a mapping system that Aiken County uses, I guess, at the RMC office maybe, that has all of the -- you know, it's public information, so you can go on their website and look at different plats of property.
THE COURT: All right.
Q. [Mr. McCants, III] All right, with that background information -- and of course, we've labeled this on Exhibit 1, but point the Rutherfurd property, if you would.
A. This is their house and their pool.
Q. All right, and the pool is easily seen on that particular picture. Now, Ms. Hozey, you don't dispute -- Your Honor, I'm going to try not to get in your way -- that their boundaries, per the deed --
MS. CARROLL: Mr. McCants?
Q. [Mr. McCants, III] -- extend the white line around --
MS. CARROLL: Mr. McCants, I apologize. Do

you mind if I get a bit closer?
THE COURT: No. Yeah, you can come on up.
MS. CARROLL: It's hard to see from this far away.
THE COURT: Feel free to move around while they're referencing this.
MS. CARROLL: Thank you, Your Honor.
Q. [Mr. McCants, III] You don't dispute, Melanie, that their lines, per their deed, circle their property and come here, and that is their boundary line per the deed; is that correct?
A. That's correct.
Q. All right. Now, we've labeled here what we call the disputed area. Now, you actually managed, through the Beacon program, to put these red lines around the disputed area; is that correct?
A. Yes.
Q. All right. Now, as part of this case, are you asking the Court to determine that you have acquired, by adverse possession, this disputed area as it's outlined in that red?
A. I am.
Q. Okay. Now, I think you can go ahead and sit down at this particular point, once we've identified those areas.

A. [Witness complies.]
Q. Now, in particular, Ms. Hozey, there are numbers around the disputed area; is that correct?
A. Yes.
Q. Explain those numbers to Judge Griffith if you were -- if you would.
A. So that's actually calculated on the mapping system. What I did was, there's a feature in the mapping system that you can draw lines, right, and it will automatically calculate the footages, and then, of course, the acreage associated with it. So what I did to get the red line here is, this line right here was already on the map because that's the property line, according to the deed. This here is my camper.
Q. All right, pause a second. We're going to talk about that camper.
A. Okay.
Q. I've borrowed a Sharpie from the Court Reporter, understanding that we've got red lines, but I'm not sure another color will show up any better. What I'd like for you to do is take this Sharpie -- what else you got?
MADAM COURT REPORTER: I have these little arrows; I have an orange Sharpie, and a green Sharpie.

MR. MCCANTS, III: The green is not going to do very well.
MADAM COURT REPORTER: I have a red arrow.
MR. MCCANTS, III: Let's see how red works out.
Q. [Mr. McCants, III] Melanie, what I want you to do is, you're going to take that down and lay it here, but would you draw a circle around what you've just identified as your camper on this Exhibit?
A. [Witness complies.]
Q. All right, why don't we do this. Why don't we put an asterisk above --
THE COURT: Before you keep going, now, we're all in agreement with marking on the Exhibit? That the parties are going to be able to mark on that?
MS. CARROLL: Yes, Your Honor.
THE COURT: Okay, all right.
MR. MCCANTS, III: Thank you, Judge.
Q. [Mr. McCants, III] Right above and below 21.41, put an asterisk, given the fact that -- excellent. Thank you. You've got a good hand. That's a beautiful star this morning. All right, so you're making reference to your camper, okay. Now, keep going.
A. Okay. The camper is right next to their fence, here. Their fence also -- I don't want to get

[inaudible] --

Q. Well, let's do this, we're going to talk about the fence. Tell Judge Griffith, generally, where there is fencing on that Exhibit, and as it relates to what we're calling the "disputed area"; okay?

THE WITNESS: Their fence is this red line right here.

Q. [Mr. McCants, III] Well, when you say it's actually the red line, is it?

A. No, no. This is the approximation of their fence line.

Q. All right, pause a second. Then where is the fence in relation to their boundary line as defined by their deed?

A. This is the boundary line defined by the deed. This is their fence.

Q. So the fence is within their boundary line, towards their pool or their residence; correct?

A. Yes.

Q. All right, keep going down.

THE COURT: Wait a minute, let's clarify a little bit on the record here, since we're having a record made. The fence, as I understand your testimony, would be -- if I'm looking at what's been identified as Defendants' property -- the

outermost red line is their deeded boundary line; correct?
THE WITNESS: Yes.
THE COURT: The inner red line is what you've identified as a fence; is that correct?
THE WITNESS: Yes.
THE COURT: Counsel, look at that and make sure you agree with what I'm asking her.
MS. CARROLL: I understand the question, Your Honor.
THE COURT: Okay.
MS. CARROLL: Yes, and I agree with the boundary line as defined by the deeds as that red line on the right [inaudible] --
THE COURT: Right. And I'm really asking you just to agree that that's what her testimony is. I'm not --
MS. CARROLL: Yeah.
THE COURT: I'm not trying to fence you --
MS. CARROLL: Sure.
THE COURT: -- no pun intended, fence you in to anything about your presentation.
MS. CARROLL: And Your Honor, that was what I was going to say, that I might have some disputes about these locations --

THE COURT: I understand.
MS. CARROLL: -- of things and their permanence and [inaudible] --
THE COURT: Understood. And that's not the purpose of me placing that on the record. Okay.
MS. CARROLL: Thank you.
THE COURT: As long as we're in agreement on that part. All right.
THE WITNESS: Does the fence go all the way back like that as far as -- no --
MS. CARROLL: May we just walk up one second because these folks have been having to look from the back of the room [inaudible] --
THE COURT: Sure, yes. Let's give them a minute and let them take a look at it.
MS. CARROLL: Just one second to have a look --
THE COURT: That's fine.
MS. CARROLL: -- so they can answer a couple of questions. Thank you very much, Your Honor.
THE COURT: All right.
MS. CARROLL: This is the -- this is the first time we've gotten to see this exhibit, today --
THE COURT: That's fine.
MS. CARROLL: -- so it's new for us.

THE COURT: Mr. McCants, sorry to interrupt the flow for you, but I just wanted to clarify that so you can proceed.
MR. MCCANTS, III: Actually, Judge, I appreciate you interrupting us, and I think it's always helpful for the Court to guide and ask questions as we go.
Q. [Mr. McCants, III] What I'm going to do -- and I told you we would wait and see and see how the evidence plays out to decide how we and when we present evidence, but I'm going to show you some photographs now which I have shown to opposing counsel.
MR. MCCANTS, III: Exhibits 2, 3, and 4.
[PLAINTIFF'S EXHIBIT 2 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 3 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 4 IS MARKED FOR IDENTIFICATION]
Q. [Mr. McCants, III] Ms. Hozey, I'm going to hand you those exhibits, in light of the fact of the Judge's questions. We're going to go ahead and orient ourselves further, with photographs --
MS. CARROLL: I'm sorry to interrupt your flow, also, but may I see which two -- which Exhibits --
MR. MCCANTS, III: Absolutely.

MS. CARROLL: -- 2, 3, and 4 are? I can do a quick comparison. Okay. Thank you.

MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] I want you to look at those, Melanie, and what we're going to do is help Judge Griffith with the layout here by using these photographs to show the relationship between what you've identified as your camper and the fence that you just talked about, okay.

But before you do that, when you talk about the camper -- and I may talk about this later -- did you just leave a camper out there, or -- describe the circumstances over time, and we'll deal with dates, what you did to that area to park a camper.

A. So in 2003, I bought the first camper, and when I'm talking about a camper, it's a pop-up camper so it's basically a big box on an axle. And I didn't have any place to store it so for about a month, I stored it across the street at my neighbor's, across the street, driveway. They have a big driveway that was able to maintain it while my father and I worked on clearing an area to park it on that piece of property where it is now.

Q. You're talking about in the disputed area?

A. Yes.

Q. 2003?
A. In 2003, right.
Q. All right. And you talked about how the fence is that red line towards the Rutherfurds' pool and house --
A. Yes.
Q. -- and the camper is near the fence. Do those photographs that you have show that?
A. Yes, sir.
Q. Show Judge Griffith, and make sure Ms. Carroll is participating in this. Help him understand --
THE COURT: She's handed me what's Plaintiff's Number 2, Ms. Carroll.
MS. CARROLL: Thank you, Your Honor.
Q. [Mr. McCants, III] Point the fence out to Judge Griffith too, on Number 2.
THE WITNESS: So their chain-link fence is right here. This is my camper.
THE COURT: Okay.
Q. [Mr. McCants, III] And so you --
THE WITNESS: This one [inaudible] --
Q. [Mr. McCants, III] When you took these photographs, Melanie, you would have been facing the camper with the fence being on --
A. My --

Q. -- your right side?
A. My back to the street, correct.
Q. On what street, now?
A. Laurel Drive.
Q. Which is delineated on Exhibit Number 1, Laurel Drive, Southwest, here in Aiken; correct?
A. Yes.
Q. Just tell the Judge where you were when you took Exhibit Number 2, then.
A. Right here.
Q. All right, and while we're thinking about it, describe Laurel Drive to him. He may have ridden down it, describe Laurel Drive up in that area.
A. It's very curvy.
Q. It's up in the Kalmia Hill section?
A. Oh. Yes, yes.
Q. Very hilly? Kind of rolling?
A. Um-huh [yes].
Q. But the roadway there, is it for one or two cars? Is it a two-way road?
A. Yes, it is.
Q. It's kind of tight, isn't it?
A. It's very tight.
Q. All right. But it's meant for two-way traffic?

A. Yes.
Q. It's not one-way?
A. That's right.
Q. And you were standing in Laurel Drive when you took that picture?
A. Yes, I was.
Q. All right. Then look at the next picture, if you would. Try to find Number 3, if you would. I tried to put those in some --
A. Yep.
Q. All right, fair enough.
A. Oh, you want me to --
Q. You need to show him Number 3 and what it shows. Do you -- were you in the same spot when you took it, about?
THE WITNESS: May I?
A. So I am standing on my driveway, which you can't see in this picture, but my driveway is in the area that's within my deed boundaries.
Q. [Mr. McCants, III] All right, it's to the right of that one in -- on -- what you're pointing on --
A. Yes.
Q. -- Exhibit Number 1 --
A. It's --
Q. -- is that correct?

A. It runs right down the line and curves and ...
Q. Understood. Okay.
A. So I'm standing on my driveway, looking that way. I don't know -- I guess that's west.
Q. Well, let's talk in terms -- because we don't have a compass --
A. Right.
Q. -- orientation on Exhibit Number 1. Facing it, is it to the left or the right of the image? Does that make sense?
A. No.
Q. You were describing where you were and you were pointing a certain way, were you pointing to the left or to the right on this Exhibit?
A. Oh, to the -- to the left.
Q. There you go. All right.
A. I'm standing here, looking that way.
Q. All right, and then show him Number 3, and orient him, if you would with --
THE COURT: That might be 4, that was --
MR. MCCANTS, III: Excuse me, 4. Beg your pardon.
THE COURT: There you go.
THE WITNESS: Okay.
THE COURT: All right, so that's the remaining

one.
MS. CARROLL: Thank you, Your Honor.
MR. MCCANTS, III: Thank you.
Q. [Mr. McCants, III] And while we're talking about Number 4 -- did you bring your copies to the witness stand, Melanie?
A. I did.
Q. All right. While the Judge is looking at them, Number 4, again, would have been taken where?
A. Number 4 is the one he has in his hand -- which one? Okay.
MS. CARROLL: Mr. McCants, I don't believe you have given me Number 4. [Inaudible]. I have 2 and 3. Oh, wait, wait, wait. I'm sorry. Is that Number 4?
MR. MCCANTS, III: Yes, ma'am
MS. CARROLL: Okay. Thank you.
MR. MCCANTS, III: Very good.
Q. [Mr. McCants, III] All right, Number 4 -- give that back to the Judge -- you were standing where when you took that picture?
A. I was standing over across the street [inaudible] --
Q. All right, and you pointed to an area on Exhibit Number 1 above the D-R in Laurel Drive,

Southwest, S-259; is that correct?

A. Correct.

Q. All right. Now, while we've got that picture in front of the Judge, it shows a tree with a sign; correct?

A. Yes.

Q. What is on that sign?

A. "No trespassing".

Q. Okay, and we'll going to talk about that a little bit later, but that orients, I think, the Court with regard to where we're talking about.

And Ms. Hozey, let's talk about these numbers. You can go ahead and have a seat, if you want to. Do you feel comfortable using the Beacon program given your work, working with computers, to offer those numbers to the Court?

A. Somewhat. I, obviously, feel comfortable enough to be able to use this function.

Q. And you, in fact, verified those numbers yourself, didn't you?

A. I did.

Q. How did you do that?

A. I got my tape measurer out and went out there --

Q. Just went out --

A. -- and measured it.
Q. All right, so those are reliable numbers, in feet, for him to work with in this case; correct?
MS. CARROLL: Objection; leading, lack of foundation.
Q. [Mr. McCants, III] How would you --
THE COURT: Rephrase.
MR. MCCANTS, III: I'll rephrase.
Q. [Mr. McCants, III] How would you characterize the reliability of the numbers on Exhibit Number 1 with regard to the length of those lines?
A. I believe them to be very reliable.
Q. All right, and as part of this case, if the Court determines that you have acquired this disputed area by adverse possession, what are you asking him to do to confirm those numbers?
A. Oh, absolutely. I --
Q. What's Todd Haas?
A. Yeah, want a surveyor to come out.
Q. All right, to just make sure that the lines are, in fact, plotted and designated according to what you believe [inaudible] --
A. Yes.
Q. All right, Now, Melanie, you understand as part of this case that you don't have a deed which says

that you own this disputed area; is that correct?
A. That's right.
Q. You've got a deed that says you own your property?
A. Yes.
Q. And they've got a deed that says they own their property?
A. Yes.
Q. So we're talking about this disputed area, whether or not you've acquired it; okay?
A. Right.
Q. Then we're going to talk about what you've done over the years with respect to activities in the disputed area; okay?
A. All right.
Q. Now, 2001, going back in time, tell Judge Griffith what the condition of the disputed area was, what you observed.
A. The condition of that, of the disputed area, was very heavily wooded, thick underbrush, just thick woods.
Q. And you have some photographs that depict that. Let's look at your photographs that you have, okay. Have you been able to look at your photographs?
A. So I don't think any of them depict the

property before I cleared it.

Q. Well, I understand that. We're just looking at photographs of the disputed area, at this point.

A. Oh, okay.

Q. For example --

A. Yes. Yes, I do.

Q. And what you've -- jumping ahead, what you've done is you've cleared a lot of brush?

MS. CARROLL: Objection; leading.

MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] We'll talk about --

THE COURT: Sustained.

Q. [Mr. McCants, III] -- what you've done, okay, but let's mark some photographs showing that area that you took; okay?

A. Okay.

Q. All right, pick out some, if you would, and let's get them marked. Where are your photographs? Does that kind of help, showing a little bit of the characteristics of the area?

THE COURT: Counsel?

MS. CARROLL: I would just like to -- these aren't pre-marked, and so --

MR. MCCANTS, III: Yeah, we just --

MS. CARROLL: -- I'd like to be able to see

which exhibits he's handing Ms. Hozey so I can --
THE COURT: I'm assuming he's going to go through -- yeah, we're going to go through those before he asked to be marked. You can come up. I don't have a problem with you coming up and looking at them.
Q. [Mr. McCants, III] All right, will those photographs help you, Ms. Hozey, describe to the Court a little bit about this area?
A. It does.
Q. Okay.
MR. MCCANTS, III: Let's go ahead and mark these.
[PLAINTIFF'S EXHIBIT 5 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 6 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 7 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 8 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 9 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 10 IS MARKED FOR IDENTIFICATION]
THE COURT: All right, before you come back to her, let's just mark -- I don't believe we had any objections after reviewed them on Plaintiff's 2, 3, and 4, of the photographs; is that right, Counsel?
MS. CARROLL: That's correct, Your Honor.

THE COURT: All right, and I'll ask you on these other ones in just a minute.

Q. [Mr. McCants, III] All right, let's look at what we've now marked 5, 6, 7, 8, and 9, and I want you to use those photographs and kind of describe to the Judge what they depict.

THE COURT: Before she answers that, any -- you reviewed those as he was marking them, Counsel. Are there any objections to these photographs?

MS. CARROLL: May I voir-dire, briefly, Your Honor, these photographs with the witness?

THE COURT: Mr. McCants, any objection to that?

MR. MCCANTS, III: No.

THE COURT: All right. Go ahead, ma'am.

MS. CARROLL: I'd just like to know when they were taken. When did you take these? Did you take these photographs?

THE WITNESS: Yes, I did.

MS. CARROLL: And when were they taken?

THE WITNESS: I believe these are photographs from November 2022, the last November.

MS. CARROLL: No objection, Your Honor.

THE COURT: All right.

MS. CARROLL: Thank you.

THE COURT: So admitted, then, is Plaintiff's Exhibits 5, 6, 7, 8, and 9.

Q. [Mr. McCants, III] Show Judge Griffith what those photographs depict, what you observed.

A. Okay.

THE WITNESS: So --

Q. And make reference to the number, also, if you --

A. I will.

Q. -- [inaudible] do that.

THE WITNESS: Well there's one, in particular, that will help you gain an understanding of what the property was like before I started my activities. This is Exhibit 6.

THE COURT: Okay.

THE WITNESS: It is a picture of --

THE COURT: You can come forward.

MS. CARROLL: Yeah. Thank you.

THE COURT: Wait for Counsel to come up so she can look over and see what you're pointing at --

THE WITNESS: All right.

THE COURT: -- because, otherwise --

MS. CARROLL: Thank you, Your Honor.

THE COURT: -- it doesn't give her any reference. All right, go ahead.

THE WITNESS: All right, so this is a picture with my house behind me, me looking towards their house.
THE COURT: Okay.
THE WITNESS: All right, this is there chain-link fence. This is the disputed area, part of the disputed area. All of this back here is on their side of their fence.
THE COURT: Okay.
MR. MCCANTS, III: This is what the entire area, in red, used to look like. This is the initial condition of the land when I moved in.
THE COURT: Okay.
THE WITNESS: All right.
MS. CARROLL: Should I stay here, Mr. McCants?
MR. MCCANTS, III: You might as well --
MS. CARROLL: Okay.
THE COURT: -- she's going to roll through those other photographs, I believe.
THE WITNESS: Okay.
THE COURT: Okay, give me one second before you move to the next one. All right, what's our next number?
THE WITNESS: Number 5.
THE COURT: All right, Counsel -- make sure

she can see it as well.
THE WITNESS: All right.
THE COURT: All right, go ahead.
THE WITNESS: This is a picture with my back towards the street, looking down the long way of the disputed area.
THE COURT: Okay.
THE WITNESS: This is their fence, their chain-link fence, and that's what it shows.
THE COURT: All right.
THE WITNESS: It's just, you know, the difference between the two properties.
THE COURT: Okay. One second. All right, the next number.
THE WITNESS: Exhibit 7.
THE COURT: All right.
THE WITNESS: This is a picture with my back to the street, but I'm not on the street. This is about, I guess, half of the way down -- the -- about right here.
THE COURT: Counsel, do you see where she's pointing?
MS. CARROLL: Yes, Your Honor.
THE WITNESS: Oh.
THE COURT: Okay, all right.

THE WITNESS: I'm sorry.
THE COURT: That's okay.
THE WITNESS: Looking down.
THE COURT: Okay.
MS. CARROLL: So is this where you touched [inaudible] --
THE WITNESS: Yes.
THE COURT: All right.
THE WITNESS: This is my deeded property line. Their fence is over here. Take note here in this picture that this landmark --
THE COURT: Which is what?
MR. MCCANTS, III: Which is an uprooted tree.
THE COURT: Okay.
Q. [Mr. McCants, III] What side of the fence?
A. My side.
Q. All right.
THE WITNESS: Now, I have to say, the condition of the property in dispute, because I've been excluded from the property, I haven't been able to maintain it and nobody's done anything to the property, so it is starting to look pretty trashy. However, you can see that it looks, relatively, all the -- this is my deeded property over here.

THE COURT: Okay.
THE WITNESS: All right, so it's the same kind of upkeep, with the exception that I haven't been able to do a thing for -- for years, or however long this has [inaudible] --
Q. [Mr. McCants, III] It may help the Judge -- that's fine, not to interrupt you -- to understand the terrain, okay, and from --
A. Okay.
Q. -- the pad where the camper is, looking down --
A. Right.
Q. -- as you call it.
A. Right.
THE WITNESS: This is a hill going down. I don't know what degree to tell you, but it's about -- about like this, right --
THE COURT: It slants down from the street?
THE WITNESS: Yes. This starts about here-ish --
Q. [Mr. McCants, III] And for the record, you're pointing to Exhibit Number 1, and you're above the 195.9 numerals there?
A. Just above.
Q. All right.

A. Yes.
Q. And how does the terrain flow from there towards the bottom of that Exhibit?
A. It's downhill.
Q. All right. And so down here at the end, where that 51.14 is, describe it to the Judge; how wooded, slope, things like that.
THE WITNESS: I might be able to show -- okay, this shows it.
THE COURT: What exhibit are we using?
THE WITNESS: Exhibit 9.
THE COURT: Okay.
THE WITNESS: This is the bottom. If you see the flags going across here like -- this is my deeded property line.
THE COURT: Okay.
THE WITNESS: This is the disputed area, and I've marked, kind of, where the disputed ends here. You can barely see them, the flags.
THE COURT: I can see the marks on the photographs.
THE WITNESS: Yeah.
THE COURT: Counsel, do you see what she's talking about?
THE WITNESS: You see these flags?

THE COURT: See those, where those kind of turn on the bottom?
MS. CARROLL: Yes, Your Honor.
THE COURT: Okay.
Q. [Mr. McCants, III] Let me see what you're pointing at. Are those white flags?
A. Yes.
Q. All right, tell the Judge what the -- while we're talking about a photograph showing white flags, what are the white flags?
A. So the white flags, I put up there to denote the disputed area. Those were flags that I already had. I've got boocoodles of them. They're invisible fence flags, but they're white invisible fence flags.
Q. And when we talk about the invisible fence -- I'm trying to avoid jumping around too much --
A. Right.
Q. -- did you install an invisible fence, at some point?
A. Yes.
Q. When was that?
A. In 2005. 2005.
Q. And we'll go back over it, at some point, but those white flags, are some of them still left over from the invisible fence?

A. Oh, all of these are left over.
Q. All right. And while we're on these photographs and that fence, Ms. Hozey, describe in more detail this fence; for example, continuous, open -- that's a bad choice of words. Is there a gate on that fence?
A. On the invisible fence?
Q. No, no, no. The chain-link fence --
A. Oh.
Q. -- as you call it?
A. Oh, the Rutherfurds' chain-link fence?
Q. Yes.
A. Right. So there is no gate or access. This is a solid fence. This entire -- can you see?
MS. CARROLL: Yes.
Q. [Mr. McCants, III] And you're pointing from the 21.41 point down that red line; correct?
A. Yes.
Q. That's the fence that's shown by the photograph?
A. Right. The first -- okay, I'll have to get over here and look. Okay, you can see the opening right there. That's the only opening in their fence, is right there.
Q. And that's where on Exhibit 1? Give a

landmark for the record, and also Judge Griffith. The only opening that you observed with regard to the fence is where?

A. If you follow the path from the -- from the pool, it's right there.

Q. To Laurel Drive?

A. Yes. Yes [inaudible] --

Q. That's how they get in and out of the property, to the best of your knowledge --

A. I assume -- I assume so.

Q. All right, keep working with the photographs, then we're going to kind of shift gears; okay?

A. All right.

THE WITNESS: So the area, you know, it's rolling hills some way --

THE COURT: Okay. We're still looking at Number 9, okay.

THE WITNESS: Right. Number 10 is -- I don't have much to say about that one, I don't think.

THE COURT: All right, so no commentary on Number 10.

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: All right, Number 8 is a picture with my back towards the downhill, so I'm looking

up towards the street.
THE COURT: Towards Laurel?
THE WITNESS: This is my driveway --
THE COURT: Okay.
THE WITNESS: -- right here. This is the deeded property --
THE COURT: Keep it flat --
THE WITNESS: Oh.
THE COURT: -- where Counsel can see it beside you over here.
THE WITNESS: Oh, I'm sorry.
THE COURT: I can see it.
THE WITNESS: My arms aren't long enough.
THE COURT: That's okay.
THE WITNESS: This is the deeded property line here. My drive -- this -- I don't know how I -- a big box that the -- a roll-off pan, right, they brought in. I was doing some work in another part of my yard, right. It's sitting in my driveway.
THE COURT: Okay.
THE WITNESS: My asphalt driveway on my deeded property.
THE COURT: That's shown in another picture you referenced here, I think, on Plaintiff's Exhibit 4.

THE WITNESS: Yes, yes, yes.
THE COURT: Okay, all right.
THE WITNESS: Yep.
THE COURT: I'm with you.
THE WITNESS: So we're looking up towards the street. There's my camper. There's their fence, and there's my driveway and my deeded property line.
And then this is -- this Exhibit --
THE COURT: All right, hold on a minute.
THE WITNESS: Okay.
THE COURT: Okay.
THE WITNESS: Exhibit 7, I think we may have already done it. This is my deeded property line, looking down, with my back towards the street.
THE COURT: Okay.
THE WITNESS: This is the landmark that we're going to use later on. This is the uprooted tree.
THE COURT: Right, I think we did that one, already.
THE WITNESS: Yeah.
THE COURT: Okay.
MS. CARROLL: Okay.
THE COURT: She'll ask you questions later.
MR. MCCANTS, III: All right --

THE WITNESS: Do I put these back?
THE COURT: That's fine.
MR. MCCANTS, III: I do want to just -- Judge, if I can, for completeness, may I see the photographs that we initially put in? Is this --
THE COURT: The bottom three, the bottom of that stack will be those three I think you were asking about initially; the photographs.
MR. MCCANTS, III: Thank you.
THE WITNESS: Could I clarify something, Clarke?
MR. MCCANTS, III: Uh-uh [no]. You can ask questions [inaudible].
MADAM COURT REPORTER: How many do you need, Clarke?
MR. MCCANTS, III: Two more.
MADAM COURT REPORTER: So these will be 11 and 12.
MS. CARROLL: Which one's going to be 11 [inaudible] --
MR. MCCANTS, III: Let's make that one 11.
[PLAINTIFF'S EXHIBIT 11 IS MARKED FOR IDENTIFICATION]
[PLAINTIFF'S EXHIBIT 12 IS MARKED FOR IDENTIFICATION]
THE COURT: All right, for Defense Counsel, they're marking these photographs, he's shown them

to you. Is there any objection to these two?
MS. CARROLL: No, Your Honor.
MR. MCCANTS, III:
Q. [Mr. McCants, III] All right, finally, Melanie, with regard to these photographs -- and we're going to talk about what you've done in the area. Use these to further orient the Judge with regard to the layout here, and these are -- you have photographs that are --
A. Well, I think we've already done these.
Q. No, those are the other --
A. Okay.
Q. -- distances; okay?
THE COURT: Wait on Counsel to come up where she can see.
MS. CARROLL: Thank you, Your Honor.
THE WITNESS: All right, Exhibit 11.
THE COURT: Okay.
THE WITNESS: This is the camper. My back is towards the street. This is their chain-link fence. It's to the -- my camper is two- to two-and-a-half feet, three feet, from their chain-link fence.
Q. [Mr. McCants, III] Excellent. Okay, the next one.
A. My back towards the street. This is my deeded

property line. This is the disputed area, the "no trespassing" sign nailed to that beautiful tree.
THE COURT: All right, so Plaintiff's Exhibit 12, you've got the white flags to the left of that as I'm looking at the photograph, because we see the --
THE WITNESS: Um-huh [yes].
THE COURT: -- disposal unit over here --
THE WITNESS: Um-huh [yes].
THE COURT: -- that's your deeded property. To the right of that is the disputed property, and you pointed to a tree in the picture with a "no trespassing" sign on it, which would be on the disputed property side of the line; is that correct?
THE WITNESS: Yes.
THE COURT: Okay.
Q. [Mr. McCants, III] Excellent. All right, Melanie.
MR. MCCANTS, III: Judge, I'm doing pretty well with my ol' bum ankle and my back. Would you mind if I sit down a little bit during this next round of questioning?
THE COURT: I don't have any problem with that.

MR. MCCANTS, III: I don't mean to be casual leaning up against the wall, but it starts to hurt after a while.

Q. [Mr. McCants, III] All right, can you hear me okay?

A. I can.

Q. I want to talk about what you've done, and what we talked -- what we are calling the disputed area since you purchased your property in 2001.

A. All right.

Q. Tell the Court what you've done.

THE WITNESS: So when I purchased the property in 2001, my children were young, very young, and from about 2001 to 2003, my father, their grandfather, would come up and take them hiking and all of the various things that grandfathers do. And at one point, he and my daughter built a tee-pee over there in the disputed area. Remember, it was very thick underbrush, wooded area, at that point.

In 2003, I bought my first camper. My children were still young enough to be able to enjoy going camping, so I bought a camper. Didn't have a place for it. I stored it across the street at a neighbor's house, with their permission, in

their driveway for about a month while my father and I cleared the area up towards the street where the parking pad is now. That's the top section on the Exhibit here.

Q. [Mr. McCants, III] How have you delineated that or marked it on Exhibit 1, again? The camper?

A. Oh, with the asterisk.

Q. And a red circle?

A. Right.

Q. All right, keep going.

A. So I was at 2003. Also, about the same time, I had become concerned about the safety of my children because I had seen a gigantic rattlesnake climbing an actual pine -- actually climbing a pine tree on wisteria. We had wisteria vines about this thick around, right, and the -- and so I became very concerned with all of the vines and the underbrush and all of that, and that's when I began my -- what I call my war on vines in my yard, my -- you know, the entire property. That's when I began clearing the disputed area, as well as the rest of my deeded area.

THE COURT: And what year was that?

MS. CARROLL: That was 2003.

THE COURT: Okay.

A. And then, of course, after about a month after

I had the camper, I moved it back over to the area that my father and I had cleared out up toward -- where the current camper is now. I had moved it. I had stored it here. See how this is a big driveway over here? I had stored it here for about a month until we could get this area cleared out enough to move it over there, so that happened in 2003.

Oh, and then in 2005, I had it clear enough that -- I mean the entire disputed area -- clear enough that I could install an invisible fence. That was year 2005. The invisible fence that I had installed --

THE COURT: All right, hang on.

THE WITNESS: Okay.

THE COURT: Okay.

A. The invisible fence -- are you -- so I guess I should describe what an invisible fence is.

MS. CARROLL: Your Honor, I'm becoming concerned that this is so narrative a type of testimony that it's objectionable, and I think that Mr. McCants needs to participate in the questions.

MR. MCCANTS, III: I'll do that.

THE COURT: Yeah, I would agree. I was just having the same thought when she moved on with her deciding to describe the invisible fence. And Mr.

McCants [inaudible] --
MR. MCCANTS, III: I don't want to lead the witness, Your Honor, that's --
THE COURT: No, you don't want to lead but you know, there's a difference between leading and just letting her run on when the Counsel doesn't know what area we're in.
MR. MCCANTS, III: Fair enough.
MS. CARROLL: Thank you, Your Honor.
Q. [Mr. McCants, III] All right, you're in 2005, talking about the invisible fence. We're going to talk about that more in a second. I want to kind of back up and ask you what, if anything, was planted or cultivated, as it's sometimes called, in the disputed area up until that time, and by whom?
A. Oh, okay. So we can go back to the Exhibit --
MS. CARROLL: Objection; form. Could you please repeat that question or clarify that for me?
THE COURT: You'll re-ask it again,
Mr. McCants.
Q. [Mr. McCants, III] What was planted or cultivated in the area that we've been talking about, prior to the invisible fence?
MS. CARROLL: Lack of foundation.
MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] All right, Ms. Hozey, you've testified that when you purchased the property in 2001, you're familiar, when you began taking certain actions in the disputed area; is that correct?

A. Yes.

Q. And you've described to Judge Griffith what you've done to that date. Was anything else done, specifically, with respect to any planting or cultivating?

A. Yes.

Q. Tell Judge Griffith what was done, and by whom.

A. Okay.

THE WITNESS: So in 2003, a part of clearing the area with my father so the -- I would have a spot to store the camper, I planted several azaleas and, specifically, three camellia seedlings that are one-of-a-kind, actually. Camellias -- my father was a camellia grower, greenhouse and everything. And then the installation of irrigation system, my father and I worked on that. It was an expansion from the rest of my property's irrigation system.

Q. [Mr. McCants, III] And that was during the early time when you owned the property; correct?

A. Yes.
Q. Now, while we're on the subject of the camper that you put there in 2003, after purchasing and clearing that pad, tell the Judge what has remained in that area since that time. Have you used that area continuously, for example?
A. Oh, absolutely. I've had --
Q. If I drive out there today, what will I see in the parking pad area?
A. My second camper. I've --
Q. And we're going to talk about the second camper in a little bit, I just wanted to keep that flow going, okay. But on that particular area of the parking pad, you've used it, continuously; correct?
MS. CARROLL: Objection; form -- leading.
Excuse me.
THE COURT: Yeah, you can ask how long has she used it.
Q. [Mr. McCants, III] How long have you used it?
A. Since 2003.
Q. Through today?
A. Through today, continuously. I've stored two campers, two trucks, a John boat, various people have used it -- parking -- when they come to visit, et cetera.

Q. And we'll talk about the dates, in particular. And we'll talk about, also, that "no trespassing" sign. When was that put up, Melanie?

A. In 2020 -- 2021, March of 2021.

Q. All right, we'll talk about that in just a little bit. But even today, that "no trespassing" sign -- that camper stays there? Nobody has come and moved it, or anything; correct?

A. That's right.

Q. All right. What did y'all do with regard to irrigation in the disputed area back in the day, that 2003 timeframe?

A. So I extended my irrigation system in the rest of the property onto that property under --

Q. What property?

A. The disputed property.

Q. All right. Why did you do that? It may speak for itself but why?

A. Because I wanted to keep the azaleas and camellias and the other things that I plant there alive.

Q. All right, then let's bring ourselves forward again to the March 2005 timeframe, when you indicate an invisible fence was installed. Now, Judge Griffith may know all about invisible fences, but we need to make a record and lay out what it is. What's an invisible

fence?

A. Okay, an invisible fence is a barrier, a -- primarily for dogs, but cats can use them, too. But primarily for dogs to -- as -- to keep them in your yard. It's a buried electrical wire that puts off an electrical barrier. And in order to install one, they have -- they come in and they dig a trench and -- around where you want them to put it and bury a wire. And then there's about a three-month training period after the fence is installed, in order to make sure that your pets don't get out of it.

Q. Is the wire the fence, though?

A. The electrical field is the fence.

Q. All right, created by what?

A. The wire.

Q. Where's the wire?

A. Buried underground.

Q. That's the trenching?

A. Yes.

Q. And then you get to -- have to train an animal to deal with an invisible fence; correct?

A. Right.

Q. Describe that process.

A. Okay, so an invisible fence offers two -- two things to keep your pet in the fence. The first is a

visual cue, the second is a physical cue. Well, there's also a third; it's auditory, as well. When your pet approaches the fence they get -- it's like a buzzer that comes off of their collar so that -- that's the auditory portion. The visual portion is for, at minimum, three months. They want you to keep it -- your invisible fence flags up around the entire area that you've fenced, right, so your dog can see something, hear something, and then if they go further, that's when they'll receive a shock of varying degrees.

Q. Not too bad a shock?

A. It varies. You can adjust it to your pet's --

Q. Tolerance?

A. Tolerance. Thank you.

Q. Exhibit Number 1, show Judge Griffith where you installed the invisible fence back in 2005.

A. Okay, so it starts up here. So it's obviously -- the unit itself is inside the house, about right here, okay? So it runs here, it runs up here, and it runs all the way -- all the way around.

Q. All right. Now I'm going to take a stab at describing what you just did. What you did, in 2005, was to install, as you call it --

MS. CARROLL: Objection; that's really leading.

Q. [Mr. McCants, III] All right, well, do your best, Melanie, to -- using that diagram, Exhibit Number 1, tell the Court for the record where this fence was installed. Use landmarks on Exhibit 2 to show exactly where it was installed, okay? You can use numbers or letters, names, whatever.

A. Okay.

THE COURT: On Exhibit 1, we're talking about?

MR. MCCANTS, III: Excuse me, Exhibit 1.

THE COURT: Okay.

MR. MCCANTS, III: I apologize.

THE COURT: All right.

THE WITNESS: All right. On Exhibit 1, it begins -- well, the invisible fence is around the entirety of my property, just inside the boundary lines extending into the disputed area --

Q. [Mr. McCants, III] Now, you're pointing where on Exhibit Number 1?

A. Oh.

Q. I'm trying to interrupt you --

A. Just above -- just above -- I'm pointing just inside the red line, just above the 5 and 51.1 [inaudible] --

Q. There you go. Now, you're getting the hang of it.

A. Okay.
Q. All right, keep going.
A. And then all the way up. It's the entire [inaudible] --
Q. For example, where's the invisible fence with relation to the camper and the pad?
A. Oh, the invisible fence is right next to the camper on -- and I can point it out, on -- on Exhibit 11 -- you want to --
MS. CARROLL: That's fine.
A. The invisible fence runs right down --
THE COURT: I've got a series of white flags inside the chain-link fence, is that what you're referencing on Plaintiff's Exhibit 11.
THE WITNESS: Just inside --
THE COURT: Inside of those white flags, okay. All right.
Q. [Mr. McCants, III] All right, so what you've said, around the entire perimeter of your property as defined by your deed and also along what we're calling the disputed area; correct?
A. Yes.
Q. How long were those flags up?
A. Three months at least. Well, honestly, some of them are still there.

Q. How visible are they?
A. But not in the front yard.
Q. Fair enough. But for example, if you're standing in Laurel Drive, how visible are they with regard to the camper pad extending down that fence area?
A. Well, they're white flags. Very visible.
Q. Anyone can see them?
A. Yes.
MS. CARROLL: Objection.
THE COURT: Sustained.
MR. MCCANTS, III: I'll rephrase.
Q. [Mr. McCants, III] And they've been there since when?
A. Since I installed the invisible fence in 2005.
Q. What happened in 2008? What did you do then?
A. 2008 was -- so I bought a John boat for us to be able to go fishing. I was, you know, really into getting the kids outdoors. And I stored the John boat, also, up there in front of the camper, and when I say "in front of the camper," closer to the street than the camper is. And I had it -- because it was a John boat on an actual boat trailer, and because it was so close to the street, I had it chained to a dogwood tree up there so nobody would steal it because it was right on the street.

Q. 2011? Let's move forward a couple of years, two or three years. What did you purchase in 2011, in April?

A. So the -- I purchased the second camper.

Q. Is that the camper that you own today?

A. Yes, that's --

Q. Where is that camper today?

A. I'm pointing at Exhibit 1. It's the asterisked landmark on Exhibit 1.

Q. That's the one you can observe out there today?

A. Yes.

Q. All right. Then in August of 2011, Ms. Hozey, what happened then?

A. So right before I bought the second camper, I also installed a parking pad, a crusher run parking pad. I had someone come in and, actually, construct a crush-and-run parking pad that you can't even see because it's not been maintained in three years. That is about, maybe, three -- two-and-a-half, three-feet thick. That also levels out the parking area, somewhat, because I had had worries, I guess. I really hadn't had any problems, but I had had worries that the first camper would, somehow, get loose and go down the hill and I didn't want that to happen, so that -- so I had someone

come in and construct a parking pad there --
Q. What material was used, again?
A. Crusher run.
Q. Do you understand what that is?
A. That's rock that is -- it's rock about, I don't know, an inch in diameter.
Q. And the Judge may know all about crush-and-run or -- it's called some other things, but it is a particular product; correct?
A. It is.
Q. If you stand on Laurel Street, can you see it?
A. Normally, you would be able to. You can't see it now because it's so out of -- it hasn't been maintained. Nothing's been done over there.
Q. Fair enough. Crush-and-run was placed when?
A. In 2011.
Q. Do you remember what month, by chance?
A. I don't.
Q. Have you talked about the dark burgundy truck yet?
A. I have not.
Q. Talk about that, if you would.
A. So about that same time --
Q. Again, what time frame?
A. 2011. I began -- I bought a burgundy truck

and that was its parking spot, in front of the camper.

Q. Now, up until this point, and we're talking about the summer/fall of 2011, what activity did you do to maintain the disputed area?

A. Oh, I -- so ever since 2003, I would go over there and I would work and clear it out, make it look nice. I mean, I could see it from my house, and so -- and it, also, was a part of my -- of my property, and so whenever things started growing up, the underbrush started coming back. I would go over there and I'd cut it down. I actually cut down myself, with a chainsaw, cut down, you know, a couple of trees that had died and were rotting, standing up. I went out there myself and did that. That's -- you know, it's just maintenance of what --

Q. In that area that you've identified?

A. Yes.

Q. The disputed area?

A. Yes.

Q. That was pretty tough on you, wasn't it?

A. I kept it blown. I kept all of the leaves, pine straw, everything off the pad because the pad is a nice-looking pad, normally. Right now, it looks terrible because nothing, at all, has been done over there.

Q. All right, stop right there. That's a marker there, that timeframe, summer/fall 2011; correct?

A. Yes.

Q. Up until that point, Ms. Hozey, had anybody ever come to you, and said, "Don't work in that area, that disputed area. Get the heck out and move your camper" or "What are you doing putting a pad down" --

A. No. And as a matter of fact, Mr. Rutherfurd, I had talked to him several times when I was working over there and he never said a word, nothing.

Q. And I want to make sure -- you talked about to this, I want to make sure the Court understands why you were doing that work in this disputed area. Tell him, again, why you're doing it.

A. I'm doing it because that property had never had anything done to it the entire time that I was there and it was -- I wanted it to be like my other -- like my deeded property looked. I wanted the look of it to extend. And I like clean woods and that's why I cleared it and maintained it.

Q. And with respect -- for example, your family, why did you want to keep that area a certain way?

A. Oh, definitely because of that rattlesnake that I had seen. And my war on vines; they were great, big wisteria and grapevines. The grapevines were really

overgrown. I mean, they were probably a foot in diameter over there, and I cleared all of those out, in order to have it be a little safer for the kids because of the snakes.

Q. All right, so that's that fall of 2011 timeframe that we're talking about, up to that point; okay? You with me?

A. Right.

Q. All right. I won't speak for you --

A. That's from 2003 all the way to '11, so far.

Q. Yes, ma'am. Thank you. I won't speak for you, but I know that as we all grow old, we need help maintaining our property and whatnot. Did you have to, ultimately, turn to some service to help you?

A. I -- yes, about --

Q. Talk about that, and the date I've got is in June of 2012. Does that sound familiar?

A. Yeah, that's --

Q. What happened?

A. That's -- so I needed some help with -- in the spring, you know, just to get it -- to get it under control so I could maintain it from there, right, so I hired Cold Creek Nursery to come in and help me get everything under control from the prior -- you know, from the over the winter timeframe.

Q. Did you pay Cold Creek, in June of 2012, to do that work for you?
A. I did.
Q. Let's go to the first part of 2013. You purchased another vehicle. Tell the Court what you did.
THE WITNESS: So in -- all right, so I had the -- the burgundy truck got wrecked, and it was totaled, so I bought another truck. It was a bright red -- I believe it was a -- like a Dodge Dakota. It was bright red. In 2013 --
Q. [Mr. McCants, III] Where did you park it?
A. I began parking it in front of the camper.
Q. Can you see --
A. In the disputed area.
Q. All right. Can you see big, red truck from Laurel Drive?
A. Absolutely.
Q. The next thing I want to talk about is sometime in the summer of 2013, June in particular, did you hire somebody else to help you with maintaining that area that we're talking about in this case?
A. Well, I hired Cold Creek to come in and help me get caught up, again.
Q. Again?
A. Yes.

Q. Did you pay them for that work?
A. I did.
Q. February of 2014 was a significant event in Aiken, South Carolina. What happened?
A. That was the ice storm.
Q. Everybody remembers that.
A. I certainly do.
Q. Did you get hit pretty hard by it?
A. Yes.
Q. Tell the Court about it.
THE WITNESS: So during the ice storm because of the -- could I refer to an exhibit or not?
Q. [Mr. McCants, III] Are you looking for pictures in that regard?
A. Yes.
Q. Bear with me, all right. You keep talking while I look through these photographs?
MS. CARROLL: Objection, Your Honor.
MR. MCCANTS, III: Well --
MS. CARROLL: Do we have a question on the table?
THE COURT: Well, let's --
MR. MCCANTS, III: Yeah.
THE COURT: Yeah, since you've got a --
MS. CARROLL: "Keep talking" seems a little

[inaudible] --
THE COURT: Since you clarified that she was going to look at pictures, and you said, "Keep talking," while you look for some pictures there, go back and ask what you want her to talk about specifically so we can, kind of, know, rather than she --
Q. [Mr. McCants, III] Was there damage in the disputed area, Ms. Hozey?
A. Yes, sir. So what had happened during the ice storm is that -- obviously, this is a wooded area with large trees. The -- and then because there's an incline going down the property, this way, it's -- the street is higher than the bottom is.
THE COURT: All right, and Plaintiff is referencing Plaintiff's Exhibit 1. Go ahead.
A. A tree had uprooted and pancaked down and taken out several other oak trees, pine trees, all kinds of trees, along its way. I believe it was something -- I don't know, five or six trees; big trees, like mature trees that were taken out.
Q. [Mr. McCants, III] Did you take some pictures?
A. I did.
Q. Did they come out all right?
A. No, not really.

Q. All right, I'm going to hand to you what we've got.
MS. CARROLL: Are you marking these?
MR. MCCANTS, III: Yeah. They get worse and worse as we go.
MS. CARROLL: Um-huh [yes].
MR. MCCANTS, III: Can we mark these as a group? Would that be all right?
MADAM COURT REPORTER: That would be great.
THE COURT: Any objection from Defense in marking them as a group?
THE COURT: No, Your Honor.
MADAM COURT REPORTER: Sorry, I thought he was asking me, Judge.
THE COURT: Any objection to the photographs, Counsel?
MS. CARROLL: No objection to the photographs, Your Honor.
MADAM COURT REPORTER: Thirteen, that's 13.
MS. CARROLL: No objection -- how do we say to -- that they are, authentically, what they purport to be.
THE COURT: Okay.
MR. MCCANTS, III: All right, with that in mind, for the record I'm going to -- let's do...

[OFF THE RECORD]
MR. MCCANTS, III: So we will have one, two, three, four, five, six photos. Your Honor, for the record, I am going to collectively mark Exhibit Number 13, six photographs, without objection, I understand.
[PLAINTIFF'S EXHIBIT 13 IS MARKED FOR IDENTIFICATION]
THE COURT: Without objection from Defense Counsel?
MS. CARROLL: Without objection, Your Honor.
THE COURT: Okay.
MS. CARROLL: Mr. McCants, what is the number on the top one, please?
MR. MCCANTS, III: 13.
MS. CARROLL: 13, thank you.
THE COURT: Now, while I don't mind you marking them as one, when she references them, how are we going to keep that straight?
MADAM COURT REPORTER: We need to number them.
MR. MCCANTS, III: Ms. Adams just told me to number them.
THE COURT: I think that will be --
MR. MCCANTS, III: If we need to, we'll do that.
MS. CARROLL: Are we going to number them

sequentially, instead or just --
THE COURT: They won't be marked as exhibits, just so when she references one of the photographs out of Exhibit 6, you can say number one out of Exhibit 6.
MS. CARROLL: Thank you, Your Honor. So 13-1, 13-2?
MADAM COURT REPORTER: Right.
MS. CARROLL: All right.
Q. [Mr. McCants, III] I'm going to hand what we've marked as Exhibit 13, and there's several photographs made part of that one exhibit, Ms. Hozey. Show them to the Judge, and describe to him what they depict, keeping in mind, you've testified they're not the best images we've got. Is that fair?
MS. CARROLL: May I approach, Your Honor?
THE COURT: Yes. Let me see that top one.
THE WITNESS: It's from an old photo.
Q. [Mr. McCants, III] But point to where the photograph was taken and what it -- using the Exhibit Number 1.
THE COURT: And you've also got the numbers on there, so reference them -- they'll all be Exhibit 13, but reference the number that's shown on the photograph, as well.

THE WITNESS: 13 --
THE COURT: Like 1.
THE WITNESS: Oh.
THE COURT: All right.
THE WITNESS: 13, photograph one.
THE COURT: All right.
THE WITNESS: This is in -- about this area, right in the middle of the "O" in Aiken County on Exhibit 1. Looking towards the Rutherfurds' chain-link fence, you'll see right here -- you can see their chain-link fence here.
THE COURT: Okay.
THE WITNESS: These are downed trees and all, branches of trees.
THE COURT: All right.
THE WITNESS: Okay. Photo two, the same thing, you can see their fence clearer here, right? It's landed on their fence.
THE COURT: Okay.
MADAM COURT REPORTER: Can you keep your voice up while you're talking?
THE WITNESS: I'm sorry.
MADAM COURT REPORTER: I'm having a hard time hearing you over here. I've got the mic, but I still -- I can't hear you.

THE WITNESS: One of the branches landed on the fence, on the Rutherfurds' fence. Photograph three is a mess, just more destruction, more trees. Photograph four is with my back behind me, looking down the hill. This was the -- this was the uprooted tree that started the pancake down the hill and -- so photograph four is a picture of the root ball.

THE COURT: Okay.

THE WITNESS: Photograph five is looking at that root ball from the other direction, looking up the hill, so this -- this was the part of the trees that got -- that fell. Photograph six, you can see their fence, the Rutherfurds' fence here, it's just more downed trees. And you can't really see it in here, but the pile of trees was probably the height of this room by the time it got to the bottom because they were pancaking on -- down onto each other. It was a huge mess.

Q. [Mr. McCants, III] Was it cleared by you?

A. Yes.

Q. How?

A. I initiated a homeowners insurance claim. Allstate Insurance is my homeowner's insurance. Because the fence is covered in my homeowner's policy; my

invisible fence is a fence --

Q. Did they send an adjuster out?

A. Yes, they did, and he took pictures and did all of his thing and he just --

Q. Did he walk down in the disputed area?

A. Yes, he did.

Q. Did they pay?

A. Yes, they did.

Q. You understand that that disputed area is not in your deed; correct?

A. I do.

Q. But he came out and looked at it and you got a check; correct?

A. Yes.

Q. All right. Cleaned it up pretty good, for the most part?

A. Yes. So what I -- I just want to make clear, what's covered on my homeowner's insurance is the fence, right. In order to --

MS. CARROLL: Objection; this is not in response to any question.

THE COURT: Sustained.

THE WITNESS: Okay.

Q. [Mr. McCants, III] Yeah, let's move on; okay?

A. All right.

Q. Now -- because I want to move on with these dates. We've just got a little bit more to cover. I've got, in the summer of 2015, you hired Cold Creek again; is that correct?

A. Yes, to help me --

Q. Did you pay them for that work they did down in the disputed area?

A. Yes, to help me get caught up again.

Q. What happened in March of 2016?

A. Oh, I received a letter from Mrs. Rutherfurd regarding -- with a $2,000 vet bill attached to it, and what had happened was their dog had gotten attacked by an animal, and they had, at first, thought that my dog had attacked their dog. Apparently, my dog was found inside the -- inside their fence. And so she was asking me to -- it was, actually, a certified letter from her, and she was asking me to pay their vet bill for their dog. Their dog had been hurt quite badly.

Q. How much was the bill?

A. $2,000.

Q. By certified letter?

A. Yes.

Q. Now jump ahead a little bit. Did y'all resolve that issue, and how?

A. Yes, we did.

Q. How?

A. I walked over to their house, and said, you know, "Let's talk about this," and we ended up both deciding that it could not have been my dog that had caused the injuries. The injuries were pretty severe to their dog, and we had determined that it was most likely another animal, like a coyote or something, because we have coyotes in the area, had more than likely gotten in their fence and Buckshot, my dog, Buckshot, had more than likely jumped the fence to -- heard their dog's distress and jumped the fence to scare him off, or something.

Q. But at the end of the day, everybody pretty much concluded Buckshot, your dog, had not hurt their -- the Rutherfurd dog; is that correct?

A. That's right.

Q. And this is March of 2016. What, if anything, Melanie, did anybody say at the time they sent you a certified letter about anything you were doing in the disputed area?

A. Nothing.

Q. In fact, up until this date, had the Rutherfurds ever approached you, and said, "Get off the disputed area. Don't do any work there. That's our property."

A. No.
Q. Did they ever do that?
A. No, not until the "no trespassing" sign was posted --
Q. Which we're coming up on, but I want to go back, finally, and talk a little bit more about hiring people to help you. Tell Judge Griffith what, if anything, was done in the spring and the summer of 2020.
THE WITNESS: Oh, so at that point, I had hired Cold Creek to come and help me on three different instances in the May/June timeframe to, once again, get caught up for -- and you'll notice that all of these are in the springtime. That's when I need the most help because up until last year, I had done all of the yard maintenance on my entire property, myself; however, you know, I was finding where I needed some help to get caught up. And so I had Cold Creek come out and help me do that.
Q. [Mr. McCants, III] Did you pay them for doing that work?
A. Yes, I did.
Q. Up until this time period, spring/summer of 2020, between 2001 and that timeframe, 2020 --
MS. CARROLL: Objection; form, ambiguous,

vague, confusing.
MR. MCCANTS, III: Okay, let me try it again.
MS. CARROLL: It's a tough question.
Q. [Mr. McCants, III] Between 2001 and the summer/spring of 2020, did you observe anybody working that disputed area that you didn't hired to do the work?
A. No. I never once saw the Rutherfurds, or anybody else, over there.
Q. That area visible from your house, inside?
A. Yes, it absolutely is and [inaudible] --
Q. All right, tell the Judge a little bit about that, how your kitchen, for example, your den, whatever, how -- who looks out over that area?
THE WITNESS: So this side of -- all right, I'm on Exhibit 1. The square portion of my house here -- this is not the entire house, but the square portion, square roof, on the -- if this is north, south, west, and east, the --
Q. [Mr. McCants, III] Well, let's go top, bottom, right and left, okay, on Exhibit 1.
A. Okay, all right. The top-most room, there's one, two -- there's primarily four rooms and two bathrooms up here. Four bedrooms and two bathrooms on the top floor of this. My bedroom is here, which is in the top part of the square. My daughter's room is here,

which is the -- and this is a two-story structure, on this side it's two stories. I can see it from my bedroom window, my daughter can see it from her bedroom window, I can see it from -- this is a deck -- [inaudible]. This area right here is a deck and --

Q. What have you -- and you built something around that deck, haven't you?

A. Well, it's a second-story deck.

Q. All right.

A. This is. So basically, the entire back of my house has view -- has a view of from here all the way around, right, to here where the brush gets thick and -- I can't see the Rutherfurds' house from my house.

Q. Why not?

A. Because of the underbrush and [inaudible] --

Q. On what side of the fence?

A. On their side.

Q. All right. But you can see up to your side of the fence, so to speak?

A. Yes.

Q. All right, so it's visible?

A. Yes, yes.

Q. All right, okay. Fine.

MR. MCCANTS, III: And this isn't so much a question, but Judge, to give you a reference point,

if I may state, it's not disputed that the Rutherfurds obtained a survey by Mr. Coleman, who I understand is a witness. That's dated July 7 of 2020, just as a reference point for you.

Q. [Mr. McCants, III] What happened in January of 2021, Ms. Hozey?

A. So I had been having some issues with keeping the battery charged on the red truck that I had parked in front of the camper, so I went and bought a battery conditioner and hooked it up in my garage and had moved the red truck from in front of the camper down in front of the garage and hooked the battery conditioner up to it.

Q. What remained in the parking pad?

A. The camper.

MS. CARROLL: Objection; lack of foundation.

A. The camper remained in the parking pad.

THE COURT: I'll allow that question on there.

Q. [Mr. McCants, III] Getting close here. March of 2021, what happened?

A. One day I pulled into my driveway and noticed "no trespassing" signs tacked up to the trees --

Q. I take it --

A. -- damaging the trees, by the way.

Q. -- from your testimony, you -- all right.

Pull out a photograph that's been marked. I know there's one in there. Identify that sign tacked to the tree, which I presume you did not tack to the tree.

A. I did not. It's tacky.

Q. Well, it's tacked to the tree. We're not going to --

A. It does not look --

THE COURT: What's the exhibit number?

THE WITNESS: I'm sorry.

Q. [Mr. McCants, III] Just find the picture.

THE WITNESS: Exhibit 12.

THE COURT: Okay. I think you've seen it, Counsel. Do you want to come up and look at this one that she's referencing?

MS. CARROLL: No, Your Honor.

THE WITNESS: This --

MS. CARROLL: Thank you.

THE COURT: Okay.

MS. CARROLL: I'm fine.

THE COURT: All right.

Q. [Mr. McCants, III] All right, and about that time, you got a letter from Mr. Rudnick, Charles Rudnick, and Ms. Carroll, also, that are in the record for this case?

A. Yes.

Q. All right.
MS. CARROLL: Oh, for the record, it's not in the record.
MR. MCCANTS, III: It's attached to your Complaint and exhibits [inaudible] --
MS. CARROLL: Okay. I thought you were talking to the record of this hearing. All right.
MR. MCCANTS, III: [Inaudible] that's a Pleading. At any rate --
THE COURT: All right, her file is attached to the Pleading you're referencing in that regard.
MR. MCCANTS, III: They're exhibits to the Complaint.
THE COURT: Okay.
Q. [Mr. McCants, III] All right, at some point, the police came to see you?
A. Yes, they did.
Q. What happened?
A. They came and parked out in front of my driveway and came to the front door and gave me a "no trespass" warning.
Q. According to my calculations, that's 20 years after you bought your property.
A. Yes, sir.
Q. And after doing what you've testified you've

done in this disputed area; is that correct?
A. Yes.
Q. What did you do after you got that trespass notice, Ms. Hozey?
A. I came to see you.
Q. And what did we decide to do?
A. To file this lawsuit.
Q. Get in the Court and let a judge decide this; is that correct?
A. That's right.
Q. All right. And Ms. Hozey, you've testified to this, but you understand that that disputed area is not in your deed; correct?
A. Absolutely.
Q. You don't have a piece of paper that says you own that disputed area; correct?
A. No, I do not.
Q. What was your intent with regard to that disputed over this course of time that we've spent a lot of effort going through here today, what were you seeking to do?
A. I was seeking to make it my own.
Q. All right.
A. And I was maintaining it as my own.
Q. That was your present intent, knowing --

MS. CARROLL: Objection; leading.
MR. MCCANTS, III: Your Honor --
THE COURT: Rephrase it.
Q. [Mr. McCants, III] Again, you've characterized your intent, you think you've adequately said that, that you were doing what you just said you did?
A. Yes.
Q. All right, some people may say that's stealing. How do you feel about that?
A. I don't think that's an adequate depiction.
Q. All right. Do you believe that you were exercising your rights under the law?
A. I do.
Q. You think you did that on a continuous basis since you purchased your property?
A. Absolutely. No doubt about it.
Q. Were you trying to hide anything, Ms. Hozey?
A. Not at all.
Q. And you actually did these things that you've talked about today?
A. Yes, and I was very open with it. Even the Rutherfurds themselves.
Q. All right. And again, do you believe that you maintain exclusive dominion and control in maintenance over the disputed area?

A. Yes.
Q. What are you asking this Court to do for you today?
A. I'm asking this Court to find in my favor and make this property legally mine.
Q. And you're asking the court to quiet title in your name; is that correct?
A. I believe -- if.
Q. That's kind of legalistic, I know.
A. Okay. Yes.
Q. And in order to define this area exactly, what are you asking the Court to do for you?
A. Oh, to order a surveyor to go out and survey it to --
Q. All right.
MR. MCCANTS, III: Your Honor, may I have just a moment? I believe that is my exact direct examination --
THE COURT: Okay.
MR. MCCANTS, III: -- but I'd like to review my notes, if you don't mind.
THE COURT: All right.
[OFF THE RECORD]
MR. MCCANTS, III: Your Honor, I think that's all the questions I have of my client.

Q. [Mr. McCants, III] Thank you, Ms. Hozey.
THE COURT: All right, let me ask a question before we start cross. We started at about 11. It's about 10 to 1 now. Do y'all want to take about a five- or 10-minute break before you start your cross?
MS. CARROLL: Well, Your Honor, I was wondering -- I don't wish to abuse any of the parties or the court reporter. I'm always sensitive to court reporters, and I recall that Your Honor said that you had a 2 o'clock foreclosure --
THE COURT: Two o'clock, yeah, thank you for bringing that up. At 2 o'clock, we have two foreclosure hearings that we have scheduled. By my review of the files, no defendants have responded. The parties are in default. Generally, that means those will be short hearings; probably no more with two of them. Within a half hour we would be done. And I talked about us being out on lunch during part of that time and, maybe starting up -- are you talking about maybe starting cross after lunch?
MS. CARROLL: Yes, Your Honor, I was thinking that that -- you know, we're nearly at 1, and I do certainly need a brief break before I could proceed

further; so that would put us to about 1 o'clock, so that would be like a longish lunch, an hour and a half, or something. And I would suggest maybe it would be appropriate for me to start to cross after [inaudible] --

THE COURT: Yeah, I don't want to start and stop, that always causes some confusion or [inaudible] it seems like. Mr. McCants, what's your position?

MR. MCCANTS, III: I have no problem with that. I think Lisa is getting ready to freeze to death.

MS. CARROLL: Our court reporter is --

THE COURT: It's very comfortable in here.

MS. CARROLL: And Your Honor, I would -- I have only the most respect for Mr. McCants, but I would request that you instruct the witness regarding how to behave during the time in between her examination and the cross, please.

THE COURT: Yes, the witness -- ma'am, you're still on the stand, you'll still be under oath when we come back, so it's improper for you to discuss your testimony with anyone in regards to that, including you and Mr. McCants having any discussion about that; so don't think any ill-will if he

doesn't answer any questions about it or make suggestions because he's not supposed to when you're testifying, and that would still continue -- we're doing this out of convenience for you and all the other parties and the attorneys and the Judge, so.

THE WITNESS: Okay.

THE COURT: All right. Anything else from any of the parties before we take a break?

MR. MCCANTS, III: No, sir.

MS. CARROLL: No, Your Honor.

THE COURT: And that would extend, ma'am, to discussions with other witnesses who have been sequestered outside. Don't have any conversation. They may just, in general conversation, ask you how it's going or what did they ask you; you shouldn't have any discussion with them about that, either.

THE WITNESS: All right.

THE COURT: And I'm sure Mr. McCants will explain that to them, as well. Okay with, that then, we will be on break --

MR. MCCANTS, III: May I make one comment --

THE COURT: Yes, sir.

MR. MCCANTS, III: -- [Inaudible] I just want to make sure -- I don't think it's an issue, but

I'm moving all of my offered exhibits into evidence, Your Honor.
THE COURT: I think all of them have been without objection, so yes.
MS. CARROLL: [Indicates affirmatively.]
THE COURT: And I have the last ones, since we're still on the record here.
THE WITNESS: These are --
THE COURT: Exhibit Number 13 was the group of six photographs, and that was the last exhibit I have entered. The court reporter is indicating that is correct, so Plaintiff's 1 through 13, again, are marked in as exhibits. Correct on Defense?
MS. CARROLL: That's correct, Your Honor. Just to be absolutely clear, I have no objection to their admissibility. I do have some extreme objection to what weight they should be given, some of these [inaudible] --
THE COURT: Certainly, yes. And you've conveyed that and I agree that is proper to put on the record in that regard.
MR. MCCANTS, III: One more thing, Judge. I'm sorry, I don't mean to interrupt you. One thing, I misspoke, the exhibits that we referred to, the

letters from Mr. Rudnick and also Ms. Carroll, they're attached to your Pleading Counterclaim, not the Complaint. I may have said the Complaint --
THE COURT: Okay.
MR. MCCANTS, III: -- but it's the Answer [inaudible] --
THE COURT: To the Answer and Counterclaim the Defense filed, okay. All right, with that clarification then, I believe we'll be on break for lunch, and then as soon as those hearings are over at 2 o'clock, we will continue with the testimony.
MR. MCCANTS, III: Thank you, Your Honor.
THE COURT: All right. Thank you.
[OFF THE RECORD at 11:52 A.M.]
THE COURT: All right, I believe we are ready to begin. I appreciate your patience while we got the other two cases out of the way. The Plaintiff was on the stand testifying. Mr. McCants, I believe you had completed your direct-examination and Defense was about to start cross-examination. So ma'am, if you will come back up and take your seat here, and you are still under oath. All right, Defense may begin.
MS. CARROLL: Thank you, Your Honor.
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CROSS-EXAMINATION OF MELANIE HOZEY

BY MS. CARROLL:

Q. Ms. Hozey, we met before, but I will say for the record, I'm Dione Carroll, and I am the counsel for the Defendants in this case, your neighbors, the Rutherfurds. Thank you for being willing to answer my questions today. So Ms. Hozey, you never believed that your neighbors had denied your permission to be on what we're calling, the disputed property; is that correct?

A. Could you repeat?

Q. You never thought that the Hozeys were denying you permission to be on the property that we're, today, calling the disputed property?

A. The Rutherfurds?

Q. The Rutherfurds. I'm sorry. [Inaudible].

A. That they were denying me to be on the property --

Q. You never thought they -- they never said to you, "You don't have permission to go on;" right?

A. No.

Q. And you described, in your direct testimony, that you spoke on quite a few occasions with Mr. Rutherfurd; is that right?

A. Yes, over the years.

Q. And he never said to you -- until 2020, nobody

ever said to you, "You can't be on this property"?
A. That's right.
Q. Okay. Tell me again what year you moved in.
A. 2001.
Q. 2001. And I heard you say something about 2003. Did you purchase in 2001, and then move in later?
A. No.
Q. So it was 2001 when you moved in?
A. Yes.
Q. How old were your children when you moved in, in 2001?
A. So Caitlyn would have been four, Colby would have been eight, seven or eight.
Q. Caitlyn is your daughter and she was four --
A. Yes.
Q. -- is that right?
A. Um-huh [yes].
Q. And Colby, that's Thomas Colby Hozey --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. And he was eight when you moved in?
A. If my math is correct. Yeah, he was born in '93.
Q. Okay. In your earlier testimony, you said

that you were worried about snakes because you had young children; did I get that right?

A. Yes, once I saw the big rattlesnake going up my pine tree.

Q. Now, you would definitely be worried about a four-year-old being around a swimming pool, wouldn't you?

A. Alone, yes.

Q. Okay. And you're aware that the Rutherfurds have a swimming pool; is that right?

A. Yes.

Q. And are you aware that it's a law in Aiken that you have to have a fence around your swimming pool?

A. I am, yeah.

Q. And they have one of those fences; right?

A. Yes.

Q. And that's the fence --

A. My understanding --

Q. -- that you've been talking about; right? That's the fence that we've been discussing here, when you were talking about the fence?

A. I assume so.

Q. Okay.

A. I don't --

Q. You've lived there for more than 20 years.

That's the fence; right?

A. I don't know the purpose of that fence. It's their fence.

Q. It's quite close to the pool, isn't it?

A. I don't know.

Q. When you stand next to that fence by the pool, you can see the pool, can't you?

A. When you stand right by it, through the trees, yes.

Q. And it's close; right?

A. Okay.

Q. That's a yes?

A. That means I don't know what the purpose of the fence is for --

Q. No, no, I asked you is it close. Is it close?

A. I -- what's close?

MS. CARROLL: May I approach, Your Honor?

THE COURT: Yes.

MS. CARROLL: I'm going to borrow Ms. Hozey's exhibits for just one moment. Forgive me taking a moment, Your Honor. I did not see most of these photographs until today, so I'm recalling from --

THE COURT: It's all right. Take your time.

MS. CARROLL: -- earlier testimony what they look like. May I approach the witness, Your Honor?

THE COURT: Yes.
Q. [Ms. Carroll] Okay, and I'll get here.
MS. CARROLL: Mr. McCants, you're certainly welcome to join us, if you'd like to see those photographs while we talk about them.
Q. [Ms. Carroll] That's Exhibit 6; right?
A. Yes.
Q. And this fence here, that is the fence that you've spoken so much about; is that right?
A. Yes.
Q. This, this isn't actually the invisible fence line; right? These are white flags you put down to denote what you wanted to obtain through this proceeding; right?
A. This denotes where the deed property line is.
Q. The deed property line. So they say "invisible fence", but that's not --
A. That's right.
Q. -- that's not what they area, they're a mark where you have the deed property line?
A. Yes.
Q. Okay.
A. I used old invisible fence flags.
Q. So if His Honor or Mr. McCants or anyone else has a look at those photographs and they see is this

one, "invisible fence" written on that flag, that's not what you were using them for? You were using them for a difference purpose; right?

A. Correct.

Q. Okay. And so that is the deed property line between you and Rutherfurds, and this fence that I have my finger on here, that's a chain link fence. That is the fence that you've spoken about so much; right?

A. Yes, that's their chain-link fence.

Q. Okay. And I move my finger, for the record, up a little bit to another spot here that's blue. That's -- I'm Southern, I call that a haint blue; is that a haint blue, you think? Do you know what a haint blue is?

A. I've never heard it called quite like that, but that is blue, yes.

Q. It's a light blue?

A. Um-huh [yes].

Q. And is that a blue that was used in a pool area?

A. I've never been in their backyard. I don't know --

Q. When you walk up there you can see the pool from that fence, can't you?

A. I -- that -- all right, so that, to me, looks

like it's too tall to be the actual pool. The pool would be in the ground; right?

Q. Right. Okay, so -- are you Southern, Ms. Hozey?

A. I am.

Q. Okay. Blue is a ceiling paint they use in the South. Most Southerners know that word "haint" blue as being a ceiling paint, that's a ceiling paint for the back of their house; right?

A. Honest, I don't know.

Q. Okay. Is that part of --

A. I don't know what that is --

Q. Is that their house? Is that their house?

A. It's blue, their house --

Q. Is that --

A. -- is not blue --

Q. Can you see their -- can you see their house? Is there house right there?

A. I can't see their house in that picture.

Q. Can you see the house from that chain-link fence, at any point?

A. Let me think. I don't think so, honestly.

Q. So you don't think you can see the house from that picture?

A. Can you show me the house?

Q. I'm asking you.
A. Oh.
Q. If you look at this picture, can you see that house?
A. I can't see that house. No, I can't.
Q. All right.
A. I'm sorry.
MS. CARROLL: For the record, Your Honor, we were indicating the area right here, where I'm indicating with my finger, which appears to be a roofline.
Q. [Ms. Carroll] So you indicated to me earlier that your children were four and eight years of age and that you wouldn't want the four-year-old not supervised around the pool; probably not the eight-year-old either, right?
A. Right.
Q. Okay. And correct me if I'm wrong, but we agree you have title recorded -- let me - may I approach the easel, Your Honor?
THE COURT: Yes.
MS. CARROLL: Thank you.
Q. [Ms. Carroll] I am indicating the area enclosed by the red marks that you discussed during your direct testimony. We agree that you do not have a

recorded deed indicating title to any of the land in that area; is that right?

A. Yes.

Q. You have had the opportunity to review the survey performed by Curtis Coleman; is that correct?

A. The 2021 or --

Q. Yes, ma'am --

A. Yes.

Q. -- the July 7, 2021 survey.

A. I -- yes.

Q. And you were out there when he was performing that survey; is that correct?

A. I did see him out there.

Q. Did you talk to him?

A. I just asked him what was going on and just --

Q. Because you did talk to him?

A. Yeah.

Q. And you agree with me -- and now -- that that survey is an accurate survey of the Rutherfurds' property; is that right?

A. I have no way of knowing, but I am assuming it is. I --

Q. Do you remember me taking your deposition on August 11, 2022?

A. I do.

Q. Okay. Do you remember me asking you some questions about this survey? Do you remember that?

A. Okay. Yes.

Q. Yes?

A. Yes.

Q. Okay. And do you remember me asking you, "And do you understand that depiction," and I was discussing the 7/7/2020 survey, "And do you understand that depiction to be a survey of the Rutherfurds' property?" Do you remember answering, "Yes, I do"?

A. Yes, and I still believe that --

Q. Still do, okay.

A. -- but I'm not a surveyor so I can't, you know, speak to the accuracy.

Q. Right. I just want to make sure we're absolutely clear.

A. Okay.

Q. And I asked you then, "Do you believe that to be an accurate survey of the Rutherfurds' property?" Do you remember me asking that?

A. Um-huh [yes].

Q. And you said, "Yes, I do," didn't you?

A. I did.

Q. And you still believe it to be an accurate survey of the Rutherfurds' property?

A. I do. I have no reason not to.
MS. CARROLL: Your Honor, may I have liberty to move around the Courtroom --
THE COURT: Yes.
MS. CARROLL: -- rather than disturbing you every time --
THE COURT: We're a little more relaxed in here, so you don't have to ask each time.
MS. CARROLL: Thank you.
THE COURT: Go ahead.
MS. CARROLL: Different juris certainly --
THE COURT: Sure.
MS. CARROLL: -- have different views on that. I understand some judges enforce that stringently but in a small courtroom, I don't find that necessary.
MS. CARROLL: Thank you, Your Honor.
Q. [Ms. Carroll] Now, I'm returning to Exhibit 1 and again, on Exhibit 1, you have marked these red lines. Is it fair to say that that is the area of the property that you are seeking to take from the Rutherfurds?
A. Yes.
Q. And I'm going to also -- I'm going to use my finger again. Is it fair to say I'm moving my finger up

the line, closest to Ms. Hozey's property, and then I'm now moving my finger around the curve in front of the Rutherfurds' property, and then bringing my finger back to intersect with the original line -- the original pair of red lines. Now, do you understand that area to be the Rutherfurds' recorded title deeded property?

A. I do.

Q. And so the area that you are trying to take from them, it's about 20 percent of their property, isn't it?

A. I don't -- how big is their property?

Q. Well, you laid out the points for us. Do you not know?

A. So that piece of property I do know is .16 acres. I don't know the total.

Q. So the red part is on 1.6 acres?

A. Yes.

Q. Oh, so you would -- you're trying to take --

A. No, .16.

Q. Point one-six acres, okay. So you're trying to take --

A. [Inaudible].

Q. Gotcha, okay. You're trying to take .16 acres of the entire property?

A. Yes.

Q. That's a big portion; right?
A. [Witness gestures.]
Q. No? Okay. I am going to [inaudible] these photographs again. When were these photographs taken, again? I know you told me but I'm sorry, I don't remember.
A. So I believe they were taken in November, after, actually, the day of our mediation. After mediation.
Q. Do you know what year that was? Was that '20?
A. That was November, last November --
Q. 2022?
A. -- 2022.
Q. Okay. I'm going to approach again with Exhibit Number 3. The bottom part of this picture shows some asphalt; is that right? Is that asphalt?
A. This is actually crusher run?
Q. That's not -- okay, this is crusher run. That's your driveway, though; right? That's not on the --
A. No.
Q. -- Rutherfurds' property; right?
A. No, this is part of the Rutherfurds'.
Q. The whole thing? That's --
A. I believe so. I don't see asphalt there. My

driveway is asphalt.

Q. Okay. So show me, on this picture, where the pad is that you described.

A. So there's a better picture that shows the whole pad. This one only shows a portion of it.

MR. MCCANTS, III: Which one are you looking at?

Q. [Ms. Carroll] Let's try this one. Let's look at Exhibit 4. Okay, the bottom part of this one is definitely asphalt; right?

A. Yes. This is -- so the bottom third of Exhibit 4 is Laurel Drive.

Q. That's Laurel Drive, so that's the road in front of your house and it's right in road in front of the Rutherfurds' house; correct?

A. Yes.

Q. And where is your driveway with respect to this?

A. So my driveway is --

Q. Okay, show His Honor.

A. Oh. This is Laurel Drive, and then my driveway is barely visible in this Exhibit 4, right in front of the black -- are we calling that a roll-off pan, or something?

THE COURT: Let me ask you, the pan you keep

referring to, is that one of those that they put in your yard for disposing of things?
THE WITNESS: Yes, sir.
THE COURT: All right, why don't we just call that a disposal unit, which is on the far left, and you're saying, as I understand it, a little sliver of asphalt showing on the left-hand side in front of that disposal unit is your driveway?
THE WITNESS: Yes, the disposal unit is sitting on my driveway.
THE COURT: Okay. Counsel, you may proceed. I'm sorry.
MS. CARROLL: Oh, no. Thank you, Your Honor.
Q. [Ms. Carroll] And your driveway, that is not part of the Rutherfurds' property?
A. Correct.
Q. It's your deeded, titled property?
A. Correct.
Q. And so over here to the right, you have a trailer there right now, that's the one that's on top of the crush-and-run; is that correct?
A. That's on the pad, yes.
Q. Okay. And it is crush-and-run, which is -- is rocks; right?
A. Right.

Q. All right, thank you.
A. Well -- so to answer your question, the pad is -- begins over here on this part of my driveway. On Exhibit 4, right in front of where the disposal container is and comes around to -- goes around to the right side of the big azalea and goes back behind, probably, three feet behind where the back part of the camper is and all the way over to the Rutherfurds' chain-link fence, which is on the right side of the picture.
Q. Okay.
A. And comes back around here and comes in and ties in -- you can't access the -- well, I guess you could, but it's the crusher run pad ties back into, really, my driveway.
Q. Okay.
A. Not the street.
Q. Got it. So you're saying -- you're talking about the rocks that I see. So this area right here, and I am pointing to the right-hand part of this photograph, that was not always that clear, was it?
A. Always what? Right here?
Q. There used to be more plants there; right?
A. Yes, that's right.
Q. And there was quite a bit of plants there

until Mr. Rutherfurd came and cleared them out, isn't that true?

A. No, I wouldn't say quite a bit. I would say that there were some underbrush that I had left there, actually, on purpose because coming down Laurel Drive from the left to the right on this picture, you could, as you were looking into this section, you could actually see the blue tarp that they have up on their fence, right.

Q. Um-huh [yes].

A. And I found that to be unsightly. So about to this area, right here, about that much, had some underbrush associated with it.

Q. And so Mr. Rutherfurd came --

A. And in front of this --

A. Contrary to what you wanted, Mr. Rutherfurd came in and removed those; is that right?

A. Yes, actually after -- after the "no trespassing" sign went up, he did that.

Q. Thank you. I'll come between you and His Honor so we can both look.

MS. CARROLL: Mr. McCants, you are always welcome here with us.

MR. MCCANTS, III: Thank you.

MS. CARROLL: Thank you.

MR. MCCANTS, III: If you could just read off the exhibits number, I'm okay.
MS. CARROLL: I am looking at Plaintiffs' Exhibits 5 and 6.
MR. MCCANTS, III: Thank you.
Q. [Ms. Carroll] I believe you testified to me earlier, Ms. Hozey, that here on Exhibit 6, where the white flags are, that's your property line; is that right?
A. That's the deed property line, that's right. Um-huh [yes].
Q. And is it fair to say that these, Exhibits 5 and 6, they correspond pretty closely. The large tree in the middle here; that's the same as the large tree -- and I pointed at Exhibit 6 -- that's the same as the large tree in Exhibit 5; is that right?
A. I believe so, yeah. That looks right.
Q. The white flags that are right up next to the chain-link fence, and they also say invisible fence; right? You were recycling those, I guess.
A. I was.
Q. Okay. And so these recycled flags, the purpose of them is to show us what you want to take for yourself through adverse possession; is that right?
A. Correct.

Q. Okay, so you were trying to show us, with those, that is not the invisible fence line; that's just where you were using those white flags? I just want to make sure it's clear those are not invisible fence flags --

A. Yes.

Q. That was -- okay.

A. That was my homework from mediation --

Q. Okay.

A. -- was to --

Q. I'm not going to ask you about that --

A. Oh.

Q. -- because I know I'm not supposed to.

A. Oh. Okay.

Q. Communications during mediation are confidential, so we're not going to talk about that.

A. Okay.

Q. But I just want to make it clear that that is what you were -- that those flags are there for the purpose of demonstrating what you want; right? That's the edge of it; is that correct?

A. Yes.

Q. Okay. Do any white flags show where the invisible fence is now?

A. There are a few down in the lower section that

were original flags, right, that made it through the 20 years' worth of --

Q. So none of the ones showing in this picture; right?

A. I don't think so.

Q. And it --

A. I can't testify that any of these are the original placings --

Q. Okay, and when -- when you say "down below," you mean down in the back? And I'm --

A. Yes.

Q. -- pointing, sort of, to the middle --

A. In the back --

Q. -- of Exhibit 5. It drops off there; right?

A. Yes.

Q. You testified about that. It's rough back there still; right? I mean, it's hard to get around back there?

A. No, it's actually pretty -- very clear. It is a slope, right, it is a hill, so if you have difficulty on hills, then, yes, it would be hard, but --

Q. Okay.

A. -- but it is clear. It's just like the rest of the property.

Q. So let me show you Plaintiffs' Exhibit 7.

Also, these white flags are also not the invisible fence; right?

A. No, that's -- no, no.

Q. Right.

A. That's meant to denote -- this is, again, recycling the -- all the flags I had in my garage.

Q. All right, so you're just trying to show what you wanted to take from the Rutherfurds; right?

A. Well, yes.

Q. Okay. Okay, I'm going to look at Exhibit 8, also. And there are -- I just want to make sure we're not, accidentally, looking at some invisible fence white flags. These white flags on the right-hand side, that's your property line; is that right?

A. That's the deed property line.

Q. And these white flags that are on the left side of the photo, that's the other side of what you want to take from the Rutherfurds; right?

A. So, all right, so you keep --

Q. Yes or no?

A. Yes --

Q. Okay, thank you.

A. -- it's the disputed area.

Q. All right. I'm going to approach with Exhibit 12. Those are not -- those white flags that I'm

touching, those are not invisible fence white flags; right?

A. That denotes the deed property line.

Q. Okay. Okay, let's have a look at Exhibit 12. Plaintiff's Exhibit 12, I think we just looked at it, and you said to me that that is the property line, right, so that means your house is over here on the left; right?

A. Yes.

Q. And Laurel Drive is -- is it about where my finger is pointed, which is a little bit below the picture?

A. Oh, no. I would say it would be, I guess, back here. Because in the other picture, if you'll remember, this -- so my driveway is longer than just to right here.

Q. Um-huh [yes].

A. Right?

Q. Okay.

A. This is on my driveway, right?

Q. Yeah.

A. In the picture where we're standing on the road, this is further back, so that means that maybe back here.

Q. Okay, fair enough.

A. I mean ...
Q. Thank you. From time to time, you park your vehicles on your property; right? Did you ever park your vehicles on your own property?
A. Which vehicles?
Q. Any of them. Did you ever park any of your vehicles on your property?
A. Well, my Yukon, I always parked in the driveway.
Q. And sometimes you parked vehicles across the street at Wanda's? You testified about that; right?
A. One time for one month.
Q. And otherwise, is there just not a lot of room in the front of your house; is that right?
A. There's not a lot of room in the driveway.
Q. Okay.
A. And the -- oh.
Q. So during your direct examination -- oh, I know. I know what I wanted to ask you when we were looking at Exhibit 12 is, you talked about Laurel Street being pretty far back when we were looking into that photograph. There is no fence enclosing the area along Laurel Street; in other words, you could just walk straight to that property from the street; is that right?

A. Are you talking -- referring to the disputed area?

Q. I am referring to the disputed area. So I'll go back of Exhibit 12 again, right, and you -- I think you indicated to me that there's -- that --

A. [Inaudible].

Q. -- Laurel Street was back here; right?

A. Um-huh [yes].

Q. And I'm indicating, like, low, below the picture. There's not a fence here. There's not a fence here. There's not a fence here. There's not a fence anywhere enclosing that. All of that area is open; is that right?

A. That's right.

Q. All the way over to --

A. To their fence.

Q. -- to where their fence starts? In this paragraph here, I'm indicating the red lines again. These red lines are -- is that -- that I'm running my finger down, now, that's what we agreed was your property boundary per your deed; right?

A. Correct.

Q. And so that's not a fence, though; that's just a property line?

A. Correct.

Q. And I understand that -- correct me if you don't know this, but the Rutherfurd's property are indicated as parcels 23 and 24 on the deed -- on the plat of the neighborhood; is that right? Do you know that?

A. I don't know. I'm sorry.

Q. You don't know but okay. So let's just say I've got my hand on the Rutherfurd property, right, and your property is to -- next to it? I put my hand on your property.

A. [Indicates affirmatively.]

Q. So there is no fence along the backside of either of your properties enclosing any of that; right?

A. I don't believe so. I believe --

Q. And --

A. I'm sorry. Go ahead.

Q. And you've drawn a red line connecting here, but that's not a line showing a fence, there's not a fence on that red line; right?

A. No.

Q. So it's not enclosed here and it's not enclosed at the top either; right?

A. Right.

Q. And it's not enclosed along your fence line?

A. That's right.

Q. I mean -- "fence line", excuse me. Property line.

A. Yes.

Q. Not a fence, not enclosed; right?

A. Correct.

Q. Thank you. You discussed with me -- excuse me, with Mr. McCants during your direct examination, a period of time where you had some difficulties regarding a dog incident; is that right?

A. Yes.

Q. I think I heard that the Rutherfurds made a demand about some vet bills and you got together and talked about it and agreed that your dog didn't do the evil deed; is that right?

A. That's right.

Q. "The evil deed" being attacking their small dog and hurting it rather badly?

A. Correct.

Q. I think I heard you say there was -- it was probably a coyote or some other dog, is that fair to say?

A. Yes.

Q. To me, that sounded like a very neighborly way to resolve an issue. Is that the way you felt about it? Was that a pretty neighborly resolution?

A. Absolutely. That's why --
Q. Prior to 2020, was that pretty consistent with your -- you also had neighborly relations with the Rutherfurds; is that right?
A. We have all along, I thought.
Q. In 2020, you decided to build a permanent structure on the disputed area; isn't that right?
A. No.
Q. You had a contractor come out and measure to possibly do that; right?
A. To give me an estimate, yes.
Q. To give you an estimate to build a permanent structure there?
A. Yes.
Q. All right. It was after that, that the Rutherfurds had Mr. Rudnick write to you and indicate that it would be a trespass for you to be on their property; right?
A. It would, yes.
Q. And so before that, no one had sent you a trespass letter?
A. No.
Q. During your testimony, you described the ice storm. That storm occurred in 2014; is that correct?
A. I think so, yes. Yes.

Q. And in 2014, we have quite a few photographs and I'm going to -- I'm sorry, it may be a little bit rude way to say it, but the less clear, not very recognizable photos: those would have been the one taken around the ice storm; right?

A. Yes.

Q. Those were -- well, those were Plaintiffs' Exhibit 13, 1 through 6?

A. I believe so, yes.

Q. And to correct myself a little bit -- I'll stand with you -- 13-1 is not too bad; 13-2 is not too bad. After that, it gets pretty bad; right? 13-3, -4, -5, and -6; they are very, very unclear. Is that fair to say?

A. Yes.

Q. Okay.

A. Yeah.

Q. But they demonstrate that there was a lot of tree down and there was some damage; right?

A. Yes.

Q. And when that occurred, you made an insurance claim?

A. I did.

Q. And you made a claim with respect to damage on the disputed area; is that correct?

A. No.
Q. You didn't claim any damage in the disputed area?
A. I claimed damage to my fence.
Q. Your invisible fence?
A. Yes.
Q. Not a fence like a structure fence?
A. They deemed that a fence, as per my policy.
Q. But you claimed damage to the invisible fence with respect to damage on the disputed area?
A. Correct. Yes.
Q. Okay. And you didn't have a recorded title to that, at the time; right?
A. Correct.
Q. You don't have a recorded title to it now; right?
A. Correct.
Q. If that were not your property, that might be insurance fraud; right?
MR. MCCANTS, III: Your Honor, I'm going to object to the relevance and the suggestion that perhaps there's been some activity or behavior that's approaching a criminal nature, and the evidence is clear. She hasn't been charged with anything and to bring that up as part of this

examination would be improper.
MS. CARROLL: May I respond, Your Honor?
THE COURT: Go ahead and respond.
MS. CARROLL: The question goes to motive to go forward and seek the claim to legitimize ownership of that property because without it, she might have some kind of jeopardy.
THE COURT: I'm going to let you ask about it and the claim, but let's be careful about you saying whether it's insurance fraud or not. Asking about ownership and what the claim was in reference to it, I think all that's relevant and could be applicable to it, but be careful on the accusations of any kind of criminal action when there's no evidence of that.
MS. CARROLL: Yes, Your Honor.
THE COURT: Is that clear?
MS. CARROLL: Yes, Your Honor.
THE COURT: I understand what you're doing. I think it's a proper area for you to indulge in, as far as questions but you've got to -- I think you've got to be careful. I think Mr. McCants is correct on his argument as well, so I'll hear other objections, if necessary; but I'm going to let you fish in the water, but just be careful.

MS. CARROLL: Yes, Your Honor.
THE COURT: All right.
MS. CARROLL: Thank you.
THE COURT: Okay.
Q. [Ms. Carroll] So is it fair to say that you would have some concerns if you had made that claim and you were not legally entitled to do so?
A. No, I don't think so. The adjuster came out. My policy clearly states that fencing and other structures are covered under my homeowners insurance. They have a deed to my house, my property, and everything was kosher according to them, so that's how I see it.
Q. It wouldn't have covered damage to a fence across the street; is that right?
A. I don't -- I don't -- I am not an insurance expert, right, first off, I've got to say that, right? And all I can say is that an adjuster came out to look at it. An Allstate adjuster came from a different state to actually look at the damage, and assess the damage, and allow the claim to go forward.
Q. You don't realistically think that you could have made a claim to fence damage on Ms. Wanda's property across the street, do you?
A. I -- that situation has never occurred, so I

don't know.

Q. You discussed, in your direct examination, some plants that were planted on the disputed area; is that correct?

A. Yes.

Q. Let me -- and you told us that you planted several azaleas and three camellia seedlings; is that correct?

A. Yes.

Q. So those are the plants you put on the property?

A. Yes.

Q. You have not had the area, marked in red there, surveyed; is that correct?

A. That's right.

Q. So that is your personal attempt to try to depict the area that you consider to be the disputed area; is that right?

A. Yes.

Q. If we had that surveyed by a surveyor and it looked substantially different, would you defer to a licensed surveyor on that?

A. Yes.

Q. You're not a surveyor; right?

A. I am not.

Q. You don't have a license to survey?
A. No, ma'am.
Q. Is it fair to describe the disputed area as the -- well, we've done this. In 2003, you indicated that you bought a camper and you kept it for five years. Did I understand that correctly?
A. Yes.
Q. For about a month, you parked it across the street at Miss Wanda's house; is that right?
A. Yes.
Q. And so you sold that camper about 2008; is that right?
A. I believe so, yes.
Q. In 2011, you bought a second camper; is that right?
A. Yes.
Q. So between 2008 and 2011, there was no camper on the property at all?
A. That's correct. There was a John boat.
Q. You are alleging that the pad we talked about with His Honor earlier, where you showed us where the rocks were on your property -- that's the only pad that you're claiming is on the property, right? It's the only one?
A. A parking pad, yes. There's only one --

Q. Is there another kind of pad?
A. -- parking pad.
Q. There's no other kind of pad of any kind, right? Just that one pad?
A. Yes, yes.
Q. Okay. It's not asphalt; right?
A. No.
Q. It's not concrete?
A. No.
Q. It's not covered?
A. No.
Q. Doesn't have any walls?
A. No.
Q. There are no doors?
A. No.
Q. You didn't get a permit to build it?
A. I don't believe he did.
Q. It's not on the Coleman survey; right?
A. No. Not that I'm aware of.
Q. Um-huh [yes].
MS. CARROLL: Your Honor, I'm very close to the end. May I have a couple of moments --
THE COURT: Yes.
MS. CARROLL: -- to consult with my clients?
THE COURT: Yes.

[OFF THE RECORD]

Q. [Ms. Carroll] Did you ever have a conversation with Mr. Rutherfurd about potential utilities easements on the property?

A. Utilities missing?

Q. Utility easements on the property.

A. I don't recall that, no.

Q. Might you have had a conversation like that in 2007 with him?

A. 2007?

Q. Yes, ma'am.

A. No, I -- no. We've never had any conversations about the property itself. It's always been about his work and him.

Q. Mr. Coleman came out and surveyed the property and Mr. Rutherfurd came out there with him, isn't that right?

A. In 2020?

Q. Yes.

A. Yes -- oh, I -- no, I never saw Allen, Mr. Rutherfurd, out there with him.

Q. You didn't see him when the survey was going on?

A. No. I did not.

Q. You've testified quite a bit about

expenditures that you made on this property, but you haven't provided us on any backup invoices, have you?

A. I have.

Q. You have not provided us, in this hearing, any backup invoices, have you?

A. I'm not sure.

MR. MCCANTS, III: I --

Q. [Ms. Carroll] You answer.

A. I have provided backup invoices for all of it.

Q. You haven't provided any backup invoices in this hearing.

MR. MCCANTS, III: Your Honor, respectfully --

A. I don't know.

THE COURT: I'll note the objection.

THE WITNESS: Okay.

MR. MCCANTS, III: The record speaks for itself. The simple action was -- the answer was she's provided invoices. I haven't introduced any invoices. I had her testimony about what she did and what she paid for.

THE COURT: You got testimony, and her question was did she produce any invoices, and she just has to answer that question is the way I see it.

MS. CARROLL: In this hearing --

THE COURT: Correct, that was the question.
Q. [Ms. Carroll] Please answer the question, Ms. Hozey.
A. I'm not sure, so --
THE COURT: Ask the question one more time.
Q. [Ms. Carroll] Ms. Hozey, have you produced, in this hearing, any invoices substantiating your claims to have made expenditures on that property?
A. I have produced invoices in this case. I don't know what the Court has.
THE COURT: The question is -- the Court only has what's been introduced --
THE WITNESS: Oh --
THE COURT: -- the questions is at this hearing --
THE WITNESS: Okay.
THE COURT: -- have they been introduced?
THE WITNESS: Okay. I'm sorry.
THE COURT: And the answer to that would be?
THE WITNESS: No. Pictures are the only things that I've seen introduced.
THE COURT: All right.
Q. [Ms. Carroll] Ms. Hozey, you talked about your deposition that was on August 11, 2022. Do you remember that?

A. I do.
Q. And I asked -- do you remember me asking you a question at that deposition, "Do you have any way of saying how much of the expenditures was reflected on the area that you drew out on the survey?" Do you remember me asking you that?
A. So refresh my memory, please. Which expenses were you speaking of at that point?
Q. Well, any expenses that you made.
A. Oh, well, so if we can go through each one, I can tell you how ...
Q. When you testified then, you told me you didn't know, precisely?
A. For Cold Creek -- I remember that for the Cold Creek, because the Cold Creek invoices were for my entire property including the disputed areas.
Q. So the Cold Creek invoices covered work also on your property that was in the title; right?
A. Yes, because it's all my property.
Q. So it was -- but you don't know, overall, how much you spent because you don't have backup for all of it, do you?
A. I know how much I spent on the whole area, right, and --
Q. Including how much you spent on your property

where you have a deed?

A. Correct.

Q. All right. Most of it was spent there; right?

A. I would say 60 percent of it would be in the disputed area, honestly, because that's the area that's most problematic.

Q. When you made your insurance claim, you made claims for the invisible fence. Did you make a claim for anything else?

A. For the ice storm?

Q. Yes, ma'am.

Q. No. I don't believe so.

Q. When you made that claim, did you tell the insurance company that the invisible fence was on your property?

A. No, I -- he --

Q. Do you remember me taking your deposition on August 11 --

A. I do.

Q. -- 2022? Do you remember me asking you, "So when you made the claim, did you tell them that the invisible fence was on your property?" and answering yes.

A. I'm -- so I don't know what to say.

Q. You don't remember that?

A. I don't.
Q. Okay.
MS. CARROLL: Your Honor, I would submit that I would -- this would be an admission of a party opponent, and I would submit somehow, at some later point today, copies of the relevant pages where these admissions -- particularly where this admission is made.
THE COURT: Do you have the page and lines now or do you want [inaudible] --
MS. CARROLL: I do have it, Your Honor. I just thought you might prefer a -- instead of a --
THE COURT: Highlight --
MS. CARROLL: -- condensed copy --
THE COURT: Okay.
MS. CARROLL: -- with highlights on it, that you might prefer a clean one. I have my original right here. It has not been broken, or anything. I can hand that one up and it's -- I can indicate, for the record, that that particular question was on page 37.
THE COURT: All right, well, let me ask Mr. McCants, any preference you've got on it being introduced?
MR. MCCANTS, III: Well, it --

MS. CARROLL: Actually, I probably [inaudible] --
MR. MCCANTS, III: I'm not sure quite yet what the purpose of offering her deposition is for the impeachment or as evidence. If it's impeachment, I haven't heard anything yet -- announce that she's testified contrary to what she said in a deposition. If this she wants to submit excerpts of her deposition as evidence in the case, I think the rule requires that we be given notice before trial of her intention in that regard.
MS. CARROLL: I did give notice that excerpts of her transcript would be submitted. It's part of our pretrial disclosure and I was --
MR. MCCANTS, III: When was that?
MS. CARROLL: Yesterday.
MR. MCCANTS, III: I think it's a two-day requirement, though, Your Honor.
MS. CARROLL: I don't -- I'm not aware of that.
THE COURT: Well, it's -- well, we'd have to look that up. If you're sure of that, Mr. McCants, we can reference it, but do we need to take a minute to look at that? Let's go off the record for a minute. Counsel, let's move it into

chambers.
MS. CARROLL: Yes, sir.
[OFF THE RECORD]
THE COURT: All right, we went off the record. We had a brief conference in chambers. I believe we're in agreement on the admission, as far as withdrawing any objections; is that right, Mr. McCants?
MR. MCCANTS, III: Yes, sir.
THE COURT: All right, you may proceed.
MS. CARROLL: Thank you, Your Honor.
Q. [Ms. Carroll] So for the record, per our agreement, I am going to read into the record from the transcript of Melanie P. Hozey, conducted on August 11, 2022, from line 16 through 18, "So when you made the claim, did you tell them that the invisible fence was on your property?" Answer, "Yes," and I would have this marked as Defendant's Exhibit 1 and move that it be moved into evidence in this trial.
THE COURT: All right. As we've already discussed, that's without objection, Mr. McCants?
MR. MCCANTS, III: Yes, sir.
THE COURT: Okay.
[DEFENDANTS' EXHIBIT 1 IS MARKED FOR IDENTIFICATION]
Q. [Ms. Carroll] Now, earlier, Ms. Hozey, we

talked about that prior to 2020, you had a -- is it fair to say a neighborly relationship with the Rutherfurds?

A. I still consider it neighborly.

Q. And is it fair to say that several times when you were working on the disputed portion of the property that Mr. Rutherfurd would stop and talk to you while you did the work there?

A. Yes.

Q. How many times do you think that happened? Do you know?

A. Over the -- all of the years, you want me to guess?

Q. No, I want you to tell me what you know.

A. Several times.

MS. CARROLL: I have nothing further for this witness at this time, Your Honor.

THE COURT: All right. Anything on redirect?

MR. MCCANTS, III: Yes, sir.

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REDIRECT OF MELANIE HOZEY

BY MR. MCCANTS, III:

Q. Ms. Hozey, in these instances where you've testified Mr. Rutherfurd, Allen, your neighbor, would talk with you while you were working in this disputed area, what would y'all talk about?

A. Just various, miscellaneous things about him and his past gripes with contractors, and his bringing lawsuits against those contractors and things like that.

Q. Did he ever tell you to get off his property?

A. No.

Q. On the subject of your neighbors, including Ms. Rutherfurd, Susan, did she ever, at any point in time, prior to the "no trespassing" sign, tell you to get off her property?

A. No.

Q. You considered your relationship with her to also be cordial?

A. I do.

Q. Even today?

A. Yes.

Q. All right. Now, you heard Ms. Carroll read a portion of your deposition dealing with the invisible fence and the insurance claim and whatnot. Explain that, if you would, why you said yes in response to that question at the deposition.

A. So I'm, honestly, confused about the question.

Q. All right.

A. So I guess could -- can you repeat her question --

Q. Sure. I think the question is -- it's in the

record -- is did you tell the Allstate insurance adjuster or Allstate that the invisible fence was on your property. And my question to you; is a portion of your invisible fence on your property?

A. Yes, yes.

Q. The property for which you have a deed; correct?

A. Correct.

Q. A portion of the invisible fence is also located in the disputed area; correct?

A. Yes.

Q. That's where you installed it?

A. Yes.

Q. I can't remember the year. Test me. 2005?

A. 2005.

Q. That's pretty good, isn't it? I'm asking you if I --

A. Yes, sir.

Q. All right. That's all the questions I've got. Thank you.

MS. CARROLL: May I recross with just one question, Your Honor.

THE COURT: As long as it's in response to those, yes.

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RECROSS OF MARILYN HOZEY

BY MS. CARROLL:

Q. When you made your application to Allstate for that money it was for damage to the invisible fence on the disputed area; is that right?

A. The damage was in the disputed area.

Q. Thank you. That's all.

MS. CARROLL: Thank you, Your Honor.

THE COURT: All right. All right, ma'am, you can have a seat. Any of your paperwork, make sure it doesn't have any of the exhibits in there.

THE WITNESS: I don't think it does.

THE COURT: I don't think it does. I think the attorneys had it over there, okay. All right, Mr. McCants, you can call your next witness.

MR. MCCANTS, III: Caitlyn Hozey, Your Honor, Ms. Hozey's daughter.

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DIRECT EXAMINATION OF CAITLYN HOZEY

BY MR. MCCANTS, III:

Q. Please state your full name for us.

A. Caitlyn Elizabeth Hozey.

Q. Good afternoon, Caitlyn.

A. Good afternoon.

Q. Thank you for your patience.

A. Yes, sir.
Q. Have you ever done this before?
A. No, sir.
Q. Judge Griffith just wants to hear your testimony today; okay?
A. All right.
Q. And you're, of course, Melanie Hozey's daughter; is that correct?
A. Yes, sir.
Q. How old are you at the present time?
A. Presently, 25.
Q. And how old were you when y'all moved over on Laurel Drive, here in Aiken?
A. Gosh, about three, going on four. Three years old, I'd say.
Q. So you don't remember a lot moving that -- to that place, is that fair?
A. That's fair to say. No, sir. I do remember getting my bed. I don't know why that memory stuck with me, but that's it from the very beginning, moving in.
Q. Certain things in life you remember.
A. Yes, sir.
Q. Do you remember growing up, though, in the area and in the yard and everything like that?
A. Oh, definitely. It was my whole childhood.

Q. All right. Did your mother make you work in the yard, growing up, like my mother did?
A. Most definitely. Every week -- almost every weekend.
Q. You helped her work in the yard?
A. Yes, sir. But I didn't mind it, I loved being outside. Even after school during the weekdays, I would go out and just play in the yard. I was always outside as a kid, so.
Q. All right. And that tells me you're familiar with your property over on Laurel, and whatnot, and --
A. Yes, sir.
Q. -- you're familiar with the layout and everything?
A. Yes, sir.
Q. And you understand we're in Court, today, dealing with an area of property. We're calling it the disputed area, Caitlyn, but it's -- you know, to orient you, I will tell you that's the pad --
A. The parking pad?
Q. Right. We're looking down that area, does that help you?
A. Yes, sir.
Q. Did you play in that area growing up?
A. Oh, yeah, definitely.

Q. Did your mother make you go out there and help clean it up, periodically, also?

A. Yes, sir. Especially --

Q. And I was talking to your brother, who's going to testify in a little bit, and it kind of dawned me. I did this growing up; did y'all build things down in that area?

A. Forts, always so --

Q. Tell me what -- tell Judge Griffith what you did.

THE WITNESS: Well, gosh, we would go down and use clippers and just our bare hands and even a little handheld saw and just make little teepees or little A-structure forts, and whatnot. My grandpa, he would come down and help us. We would use some twine when he was there and he was the -- I'd say he was the one who first started getting us into being outside and playing, making forts and whatnot, definitely.

Q. [Mr. McCants, III] These forts y'all would build, did you do that with friends?

A. Yes, sir, friends came over as well. Oh, yeah, they loved it.

Q. How many best friends did you have growing up on Laurel Drive?

A. So, gosh, before fifth-grade, I had three that would consistently come over. And then after fifth-grade and middle school and high school, I had about four or five.

Q. And some of these were friends coming over and hang out at the house --

A. Most definitely, yes, sir.

Q. -- in the forts?

A. Yes, sir.

Q. Like young people do, making a lot of noise and ruckus.

A. Yes, sir, we -- well, we tried to keep it down, you know.

Q. All right, fair enough. But did they ever, Mr. and Mrs. Rutherfurd, come over across the fence and tell you kids to keep it down in the afternoon or --

A. No, I don't --

Q. -- take it easy?

A. I never heard from them, no, sir.

Q. So they never told you to get off any portion of any property?

A. No, sir, definitely not.

Q. And you were down in this area that's wooded, down in the bottom that's disputed in this case, is that fair?

A. Yes, sir. From the top all the way down to the bottom, we were back and forth through the whole --

Q. Those are good woods to play in, aren't they?

A. Yes, sir.

Q. I mean, I've been out there. Sure. You know, up at the top where the pad is --

A. Um-huh [yes].

Q. -- I heard tell of playing on dirt and throwing dirt clods like I used to do, and playing games.

A. Mainly, king of the hill. We would play -- my mom was doing some beautification; she was working on the driveway and whatnot. When we were getting the parking pad put in and whatnot, there would be mounds of dirt that was stored over there, as well. We would play king of the hill, you know, throwing around dirt and whatnot --

Q. Is king of the hill the game where someone goes to the top and someone has --

A. Yes, sir.

Q. -- get rid of the king and throw them off the top and then you come on top?

A. Yes, sir.

Q. Okay.

A. That's correct.

Q. Y'all did that?
A. Yes, sir.
Q. If you would, tell me how regularly you played in the yard, what would you tell -- Judge Griffith?
A. We played in the yard?
Q. Yeah.
A. Oh, every day [inaudible] --
Q. All right. Tell me about the ice storm. Do you remember the ice storm back in 2014?
A. Yes, sir.
Q. Did you have to help clean up that area down there, after that?
A. Yes, sir, there was a lot of destruction from that [inaudible] --
Q. Your mother wasn't afraid to make you work in the yard, was she?
A. No, she wasn't. But I genuinely liked it, so I wasn't too upset to, normally.
Q. And a little bit more about your grandfather, he -- tell Judge Griffith about him and his love of plants; okay?
THE WITNESS: Yeah, so I -- that's probably why I would say I didn't mind being outside or working in the yard. My grandparents, they were part of the Camellia Club, so I was raised around

flowers, and whatnot.

My mom would always be out there, especially in that area -- throughout the whole yard, really --

Q. [Mr. McCants, III] When you talk about "that area," what do you mean?

A. I'm sorry, yeah, the disputed area.

Q. All right, what we're calling that [inaudible].

A. Did beautification. She would plant azaleas, and especially camellias, being part of the Camellia Society. Papa, he, from his own seedlings -- whenever you create your own flower through the propagation process, if you win first place during the little clubs that they had for the Camellia Society -- if you won first place, your camellia would be put in the book. So you could choose a name for it, and it would become a proper actual camellia that you could propagate, and it would be in the full camellia book. So he won twice -- well, more than twice, but twice that -- for us, we like to say, because one was named after Melanie Ann, my mom, and then one was named after me, Caitlyn Elizabeth, which he actually let me pick the color that I liked most in camellias, in which he propagated and which I enjoyed but. But anyway, so it was -- we've always had

camellias but during that --

Q. Where are they planted on this property? That's what I want you to tell the Judge.

THE WITNESS: Yeah, so mainly in the -- the top part of the disputed area, so --

Q. [Mr. McCants, III] Where? Up in this area where the pad is and down in this area?

A. So a couple scattered along the front of the house --

THE COURT: You can stand up at the map --

THE WITNESS: I can?

THE COURT: -- instead of pointing from the chair.

A. So there, I'd say, a couple over here and a couple right here, and then along here from the top of the disputed area.

Q. [Mr. McCants, III] All right, and for the record --

MS. CARROLL: Mr. McCants, yes, could you make a record for that, please?

MR. MCCANTS, III: Sure.

Q. [Mr. McCants, III] Thank you, Caitlyn. What you've described to us, Caitlyn, are these prized camellias, named after you children by your grandfather --

A. Um-huh [yes]. Yes, sir.
Q. -- Mr. Poe?
A. Yes, sir.
Q. Who lived to how old? I'm testing you.
A. Oh, gosh, what? He was -- it was --
Q. 92 years old?
A. -- a year and a half ago he passed. So, yeah, 92.
Q. See how much I know [inaudible]. You described plantings up here in the right area at the top of your mother's deeded property, around this area, to the left of the car shown from the garage, and even in this area that's marked disputed area, but more towards the top; is that correct?
A. Yes, sir.
Q. And those are prize plants, aren't there?
A. For us, specifically, yes, sir. Well, I guess in the eyes of the camellia club as well, first place, yes, sir. But ...
Q. Thank you, Caitlyn. This is Ms. Carroll. She may have some questions for you; okay?
A. Yes, sir.

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CROSS-EXAMINATION OF CAITLYN HOZEY

BY MS. CARROLL:

Q. I'm Dione Carroll. I'm the attorney for the Defendants, the Rutherfurds.

A. Yes, ma'am.

Q. You were about four years old when your family moved into the house where Ms. Hozey, the Plaintiff in the case, lives now; is that correct?

A. Three to four, yes, ma'am.

Q. And you never had any bad words or bad relationship with the Rutherfurds; is that right?

A. No, ma'am.

Q. They never made any expression of an objection to you playing in or around their property; is that right?

A. No, ma'am, not at all.

Q. They didn't say bad things or act like there was any kind of hostility between you; is that right?

A. No, ma'am.

Q. Is it fair to characterize the relationship between your mother and the Rutherfurds as appearing to be good/neighborly for the time you lived there?

A. Neighborly, yes, ma'am.

Q. Do you live with your mother now?

A. I do, I just moved back. So, technically, yesterday was my first day back.

Q. Okay.

A. Yes, ma'am.
Q. So I know that you moved there in 2001 with your mother. When did you last live there, before you moved back just now?
A. Okay, so I moved out when I was 19, so. And then I moved back for about a couple of months; I guess that was 2021, I believe. It's 2023. The 2020 to 2021 area.
Q. That's when you moved back for a little while? I'm sorry, I got confused in that.
A. I'm sorry. What timeframe are you asking for?
Q. I'm just trying to figure out -- and you can say it --
A. No, you're fine.
Q. -- however you want to, just during what periods of time you lived in the house.
A. Okay, so from three all the way to, I believe, about 19 is when I moved out. And then from 19 -- let's see, for about 19 to 21, I was in Georgia, and then 21 to 22-ish range -- 21 to 23-ish range, somewhere around there, I moved back. And then moved to Williston, South Carolina, and then got a promotion back to Georgia and now I'm coming back, so.
Q. It's fair to say that in all the years that you lived there you never felt like you didn't have

permission to play in that area that we're calling the disputed area; is that right?

A. No, to my knowledge, it was our property. I didn't even know that it wasn't until recently, yeah.

Q. But you thought it was okay for you to play there?

A. Yeah. Yes, ma'am.

MS. CARROLL: I have nothing further for this witness. Thank you, Your Honor.

THE COURT: Anything on redirect?

MR. MCCANTS, III: That's all I have of this witness.

THE COURT: All right. All right, ma'am, you can be excused now. If you are going to -- are you going to stay in the courtroom or are you going to step back outside?

THE WITNESS: I'll just step back out. Do you need me for anything?

THE COURT: I do not. But, now, let me caution you. You are not to speak to anyone out there about your testimony or the questions you were asked. You are sequestered so we can get your testimony as opposed to somebody else's view --

THE WITNESS: Yes, sir.

THE COURT: -- and we want to get the rest of

them the same way; okay?
THE WITNESS: Okay.
THE COURT: Anything else from the Plaintiff on my cautionary instruction there.
MR. MCCANTS, III: No, sir.
THE COURT: Defense?
MS. CARROLL: No, Your Honor.
THE COURT: All right. And no reason she can't be released, then?
MS. CARROLL: No, Your Honor.
THE COURT: Okay. All right, you can go. Thank you.
THE WITNESS: Thank you.
MS. CARROLL: Thank you.

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DIRECT EXAMINATION OF THOMAS COLBY POE HOZEY

BY MR. MCCANTS, III:

Q. State your full name for our record, please, young fellow.
A. Thomas Colby Poe Hozey.
Q. And you are Melanie Hozey's son. Is that correct?
A. Yes, sir.
Q. Colby, how old are you?
A. Twenty-nine.

Q. Do you remember moving over to the property on Laurel Drive, with your mother?
A. Yes, sir.
Q. How old were you then?
A. First-grade, so seven/eight years old.
Q. Where did you go to first-grade?
A. Aiken Elementary.
Q. Excellent, excellent. You're a strong young man; did your mother ask you to work in the yard?
A. Yes, sir.
Q. Did you carry out her directive --
A. Yes, sir.
Q. -- did you do that on a regular basis?
A. Yes, sir, almost every weekend.
Q. You had other things to do, didn't you?
A. Well, I was a kid, so playing was my main thing to do.
Q. All right, so despite maybe some protests, you did comply with your mother's orders --
A. Yes, sir.
Q. -- is that correct?
A. Yes, sir.
Q. And you -- I would venture that you're very familiar with this property that you grew up at --
A. Yes, sir.

Q. -- is that correct? Had friends in the neighborhood.

A. Yes, sir.

Q. We were talking about a friend of yours, Will Mize, that kind of lived down the corner --

A. Three houses down.

Q. -- but unfortunately, he passed away.

A. Yes, sir.

Q. Fine young man. Did you play with Will and Will would come over and play with you at the house?

A. Yes, sir.

Q. What would y'all do playing at the house?

A. Our main go-to's were just to go out in the woods, and where there was a pine straw hill, we'd always get into, like, a plastic little tub and we'd go bobsledding down the pine straw hill.

Q. Now, do you recognize this document? I will tell you that we've marked it as Exhibit 1, and it's an aerial view. Do you recognize that?

A. Yes, sir.

Q. Where is the pine straw hill on here? Get up and -- you can get up and show Judge Griffith where it is.

A. So the view would be -- or the hill would be this side right here.

Q. All right.
A. And then also there was a hill that would come, kind of, like slanted through the marked-off red area.
Q. Pine straw hill?
A. Yes, sir.
Q. I think I know what you're talking about, but what would you do on a pine straw hill?
A. So it's basically like snow sledding except for we had a big plastic tub instead of just a normal metal sled, and we'd just get at the top of the hill and we would jump in it and just slide on down.
Q. Sounds dangerous. Did your mother know you were doing that?
A. I don't know. Probably not.
Q. But y'all had fun doing it?
A. Oh, yes, sir.
Q. Sounds like fun. But you would do that not only in this area where the house is, to the right of the house, but also in this area that we've denoted or labeled "disputed area;" is that correct?
A. Yes, sir.
Q. All right, and you know the Rutherfurds, who you live next-door to?
A. Yes, sir.

Q. Mr. and Mrs. Rutherfurd, did they ever come to you and say, "Don't do that"?
A. No, sir.
Q. "Don't play on the pine straw hill down in that area"?
A. No, sir. If I'm to be quaint, I've only spoken to them maybe twice in my whole life.
Q. All right. And your sister talked about playing King of the Hill. Did you play King of the Hill?
A. Yes, sir. She was probably referring to when mom had a bunch of truckloads of dirt dumped over there --
Q. Yes, sir.
A. -- and for a couple of months after that until the workers had used the dirt, we'd go out there and play King of the Hill.
Q. How about fort building? I used to do that. Would you built forts?
A. Yes, sir.
Q. Would you build forts down in that area that's labeled as the disputed area?
A. Yes, sir.
Q. All right. And occasionally, maybe mom had to come down and disassemble the forts. Did she do that?

A. Yes, sir, because the forts that we would build was with my grandpa and they weren't just like normal sticks-type fort.

Q. Ahh.

A. They were actually like I would, I guess, consider semipermanent structures made with, like, plywood and stuff like that sometimes, so --

Q. Interesting.

A. Yeah, so we had to take them down after a couple of years.

Q. All right, so they were up for a while?

A. Yes, sir.

Q. And your granddaddy would help you build these structures?

A. Yes, sir.

Q. Were they more than one story?

A. No, sir.

Q. Just kind of a ground-level?

A. Yes, sir, maybe six, eight feet, at the most.

Q. Six or eight feet?

A. At the most.

Q. And was there electricity to some of these --

A. No, sir.

Q. -- or anything like that?

A. No, sir.

Q. All right. Do you remember having to help clean up after the ice storm --

A. Yes, sir.

Q. -- in 2014?

A. Yes, sir. Me and two of my friends, my mom paid us to go down there with a chainsaw and chop -- cut up all the dead trees that had fallen from the ice storm and --

Q. What area of the property are we talking about, Colby?

A. Right around -- well, it's basically this whole area --

Q. All right.

A. -- so from, like, the disputed area all the way over to where -- this is where we had the zip line, and so from the disputed area all the way over to right about where the zip line was.

Q. So there was a good bit of damage?

A. Yes, sir. It took us almost a whole week --

Q. In all that area that you're pointing to, not only --

A. Yes, sir.

Q. -- what's labeled the disputed area; what's also below the house there. Is that correct?

A. Yes, sir. And it took us about a week to do

it.

Q. Did she pay you enough?

A. For what --

Q. Say yes.

A. For how old I was, yeah.

Q. This is Ms. Carroll. That's all I've got. She may have some questions for you; okay?

A. All right.

THE COURT: Cross-examine?

MS. CARROLL: Thank you, Your Honor.

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CROSS-EXAMINATION OF THOMAS COLBY POE HOZEY

BY MS. CARROLL:

Q. I'm Dione Carroll. I represent the Rutherfurds, the Defendants --

A. Yes, ma'am.

Q. -- in this case. You mentioned you only had a couple conversations with the Rutherfurds. What were those conversations like?

A. It was mainly just in passing. If I was walking by their house and they were out front, I'd say, "Hey, how's it going?" or -- other than that it wasn't really much to say. I didn't really know them like that. I knew they had a bunch of college girls over there at one point, and I'm assuming it was, like, their

daughter and her friends or whatever, so I was like -- as a little boy, I was like, "Oh, there's a bunch of hot girls over there." But I never -- never really talked to them, directly.

Q. Did you see them around the pool at all?

A. No, ma'am, that was all fenced-off.

Q. Where did you see these college girls?

A. Well, it was whenever they would come in from the front.

Q. And were your interactions with them always pleasant?

A. To my knowledge, yes, ma'am.

Q. Well, I mean, you were there.

A. Yeah.

Q. They were okay, weren't they?

A. Yeah.

Q. You didn't ever think that they were trying to exclude you from their property; right?

A. No, ma'am.

Q. You always felt comfortable being able to go over there like you had permission to do it; right?

A. Well, I didn't know that it wasn't -- I wasn't aware that it wasn't our property, so I didn't know that I needed permission, and so I never even asked them about it or even thought twice about it.

Q. But you didn't think you didn't have a permission?
A. Correct, I didn't think I did not have permission.
Q. You mentioned a zip line in your testimony. That was on your mom's property; right?
A. Correct.
Q. So we're not talking about anything in the disputed area when you discussed the zip line?
A. Well, the zip line is over in this area --
Q. Okay.
A. -- and what I was referring to was the ice storm damage, which covered from the disputed area all the way over to the zip line, so that part is included but the zip line itself is not in the disputed area.
Q. And you talked about -- you played in the disputed area with some of your friends. I'm assuming you played other places, too; right?
A. Yes, ma'am, the --
Q. I mean, you went your friends' houses and you played there, sometimes?
A. Yes, ma'am, local park and -- yes, ma'am.
Q. You didn't think that you owned that property just because you were able to go play on it in the park; right?

A. No.
Q. Okay.
MS. CARROLL: I have nothing further for this witness, Your Honor.
THE COURT: Anything on redirect?
MR. MCCANTS, III: No, sir.
THE COURT: All right, sir, like your sister, you'll be free to go. Please don't discuss your testimony with anybody out there. I'm not sure how many more witnesses we may have for the Plaintiff; but if we want to get everybody's individual testimony, that's the reason we have everybody outside until they come in, so if you will refrain from doing that --
THE WITNESS: Yes, sir.
THE COURT: -- the Court would appreciate it.
Mr. McCants, anything you want to add to that?
MR. MCCANTS, III: No, Your Honor.
THE COURT: Defense?
MS. CARROLL: No, Your Honor.
THE COURT: All right, you're free to go, sir.
THE WITNESS: All right. Thank you, sir.
MR. MCCANTS, III: Thank you, Colby.
MR. HOZEY: Yes, sir. Y'all have a good day.
MS. CARROLL: Thank you.

MR. MCCANTS, III: Your Honor, that's all the testimony that the Plaintiff has as part of this matter.
THE COURT: All right, do we have any motions?
MR. MCCANTS, III: And moving all my evidence in, that would be our case. And yes, we do have a motion and I'm happy to present it now, if you'd like to hear it.
THE COURT: I'll hear the Plaintiff's motion, first, then I'll see what Defense has. Plaintiff's motion?
MR. MCCANTS, III: Your Honor, we've alleged, of course, as part of this case that Ms. Hozey, as the titled owner of the property that's been identified in this case, has undertaken to meet, by clear and convincing evidence, what would constitute an adverse possession of what we have characterized as the disputed area in this case. I'm sure you're familiar with the elements. You've tried a number of these cases.
The evidence shows -- and this is why I spent some time with Ms. Hozey going through, I think in great detail, the various things she's done since 2001, and in particular, since 2003, as my complaint set forth, to exercise certain

control/dominion over this real property. I won't go through the entire list with you. I know that you take great notes and have done so in this case.

Clearly, such actions have been open, they've been actual, and I think the notorious component, as set forth in our law, is really part of the open and the actual elements of adverse possession. And notorious is kind of a harsh word to use, but notorious, in my mind, says she's not hiding anything. She's doing everything that she's done out in the open for the world to see.

The other element I want to talk about is the element of hostility, which is, I'm sure you know, a unique element in South Carolina being a minority view with some other states. But South Carolina has always required, if I understand the decisions and whatnot, that one intending to adversely possess property over which they do not have a legal title by virtue of a deed has to do it knowing that they don't own the property and that is owned by someone else and they are intending to exercise ownership and control over the property with a specific state of mind. The cases are pretty clear in that regard, and some of the cases actually cite the testimony. And I would submit to

the Court that Ms. Hozey's testimony in this case is about as direct as I've heard it.

She has testified before you today that it was her specific intent to gain an ownership interest in this property, and for the reasons she's discussed. She came to own this property at or about the same time that the Rutherfurds bought their property. She had young children. The property to this side of the fence -- and I get the idea about the fence and the pool and everything, and I appreciate we're not in front of a jury and not sure what you'll do with the motions, but I expect that they'll testify as part of this case. But that area was so unkempt, and so wooded and everything; with the children, she wanted to make sure it was a safe area. And in addition to that, Your Honor, she wanted a clean yard, a yard which was attractive, and whatnot. And by virtue of her actions, she undertook this control, this dominion over the property and did the things that were open and actual and notorious, and again, hostile for those reasons. So we believe, clearly, we've met those elements in this particular case, Your Honor.

The other element is exclusivity involved with her actions, and that's the reason I wanted to

spend so much time, Your Honor, going through these individual elements, to show how much she did on her own. Apparently, and it's uncontradicted in my mind, without objection from her neighbors, and so -- and there's no evidence, so far, through any cross-examination that there was a sharing of any responsibility in this case. The best testimony you've got in that regard is Ms. Hozey's own testimony that at no point did she, at least, observe any of the Defendants working in that disputed area or anybody on their behalf. So from my standpoint -- or our standpoint, based on the evidence, she has exercised exclusive dominion over this property that's involved in this case, in terms of maintaining it and trying to keep it up with the specific intent, as we've discussed, to acquire ownership interest in it.

Now, as part of our complaint, Your Honor, of course, we have set forth the dis-seizure cause of action, and whatnot. I realize that that probably would have to be decided at another point in time, but with regard to the adverse possession cause of action, I will submit to you, again, we have established that by clear and convincing evidence. But I appreciate your consideration of

our motion, Your Honor.
THE COURT: All right. Defense's response?
MS. CARROLL: Your Honor, unlike the majority of civil proceedings, these cases of this kind have to be proved not by the greater weight of the evidence but by clear and convincing evidence, and I would submit to you that they have failed, by far, to meet that standard.

As previously indicated, Mr. McCants has himself acknowledged the burden is on the party asserting adverse possession, and they must show continuous, hostile, open, actual, notorious and exclusive possession for a period of 10 years. There was substantial testimony that was -- that suggested that much of the use that they are claiming was not continuous; it was intermittent. Also, Ms. Hozey herself actually testified -- she's uncomfortable doing it, but she gave it up, ultimately, that Mr. Rutherfurd actually did do some of the maintenance on the property when he came and removed some of the shrubbery that was in a place in the front the caused blockage so that it would be hard to see in there what was happening.

Furthermore, they failed the hostility element to establish it, by clear and convincing

evidence, because the overwhelming testimony was that there was a gracious and neighborly -- I heard the word "neighborly" used a lot -- relation between the Rutherfurds. There was testimony that there was discussions over the fence, that Mr. Rutherfurd actually saw her over there working. Everything about this relationship suggests that the Rutherfurds were tacitly giving permission for Ms. Hozey to be on the property and do some basic maintenance. I mean, that -- there's -- that's what neighbors do. They look out for each other, they clean up around each other's property, they make what is nice between them nicer.

It was only at the point that she undertook to make a permanent structure, when she undertook to get a quote from a contractor to come and build something on the property, that then the Rutherfurds considered her to have exceeded her permission. If she had permission to be there, then there was no hostility. And there was no exclusivity, as Ms. Hozey herself admitted to on the stand.

Furthermore, clear and convincing evidence is quite a high standard, so there's no reason to believe that they should be able to

prevail on such a flimsy testimony/evidence brought to the Court. Other than that, I mean, I can -- I will submit that I would, also, move that you dismiss --

THE COURT: I'm getting to that.

MS. CARROLL: -- [inaudible].

THE COURT: Keep it separate on the record.

MS. CARROLL: Yes, sir, Your Honor. I understand. So it is our position that they failed to put on, by clear and convincing evidence, all of the elements. And that as I indicated to you at the beginning of these proceedings, all of those elements must be continuous for the entire statutory period, so if there was any break in that period of time at all, then the clock starts over.

So I would submit that the testimony they put forward didn't suggest that there was any 10-year period where there wasn't some break, or there wasn't some time where the Rutherfurds were on the property or the Rutherfurds had expressed, in their tolerance for Ms. Hozey and her children, that their permission, their license, allowing her to continue to be on their -- there certainly doesn't appear to be any hostility in the relationship between them, or hostility in the use, or hostility

at all between the neighbors until she wanted to put a permanent structure in there. She has testimony about a few plants that were put in there, and she cleaned up. Again, that's what neighbors do, so we would request that you deny Plaintiff's motion.

THE COURT: All right. All right, I agree with what the parties have submitted and the point that the law talks about is they claim a certain title by adverse possession to his or her occupancy is not under color of title, which is the situation we have here.

The claimant must show either fencing or other improvements covering most of the subject property or some other continuous use and exercise of dominion. Also, must prove by clear and convincing evidence that possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period.

For the purpose of the motion at this time, I'm considering the light most favorable also to the non-moving party, and I recognize the points Mr. McCants made and the Defense's response in regards to those and also the fact that we've only had the Plaintiff's testimony at this time. So I

am a little reluctant to make an award and make a decision on there when I have not heard from the opposing parties, who have filed answers and counterclaims in this matter.

And so I think, certainly, there's enough evidence in the testimony brought out through the cross-examination to deny the motion and we will continue, subject to -- of course, you could always renew the motion at the end of the testimony. If so, I will rule on that there, so as far as the Plaintiff's motion, I would deny that. So before I move forward, Mr. McCants, any other motions from you?

MR. MCCANTS, III: No, Your Honor.

THE COURT: All right now, from the Defense, for the record; any motion from the Defense?

MS. CARROLL: We would move to dismiss, Your Honor, and for non-suit in this case. They have failed to meet their burdens. For example, Your Honor very aptly set forth in the discussion of Mr. McCants' motion that in the case of a situation where there is no color of title as there is in this situation by agreement of the -- stipulation of the parties, that there has to be fencing around the entire property, which we demonstrated with

testimony from Ms. Hozey that there was not. It is not enclosed along her property boundary, it's not enclosed along the fence, it's not -- excuse me, street, and it is not enclosed on the backside.

We would submit that invisible fence is not fencing for purposes of the statute, and that that would not be consistent with -- and besides, it did not enclose the property and it did not contain anything on the property. It was, in fact, invisible fencing to contain her dog on her own property and just to prevent it from going too far.

Furthermore, you also recognized and acknowledged the need to exercise dominion over the entire property and she's failed to demonstrate that she exercised dominion over the property.

Ms. Hozey described maintenance activities, she described a few plants being put in, that is not an exercise of dominion, in our view. That is instead just good neighbors, both working on property around their homes in order to beautify them and make everyone better and there was no adversity. And therefore, without the adversity, without the hostility, without exclusive possession, because she admitted to Mr. Rutherfurd coming onto the property and doing work on the property, they

cannot have met all of their burdens with respect to this matter.

THE COURT: Thank you. Mr. McCants, your response?

MR. MCCANTS, III: Thank you, Your Honor. I'm not sure I'm tracking the fencing issue, as presented by Ms. Carroll. I made the point, I think, in my opening, and it's in my pleading, also, that the property involved here -- and I'm not arguing that the dog fence, an invisible fence, is fencing but I think the law talks more about trying to exert adverse possession by virtue of the placement of some type of structure or fencing that delineates a border. I raised the fence issue because the fencing, as we I think clearly brought out, is not the property line in this particular case. And

Ms. Hozey exercised a great -- I disagree strongly there's not evidence of being in this disputed area on a regular, continuous basis -- I'm going to talk about continuous in a second -- for a variety of purposes over the years. At a bare minimum, at a bare minimum, over a substantial portion of the property by the placement of that parking pad back in the 2003 area, which is about as open and

notorious and continuous because it hadn't moved since that period of time, clearly, for a requisite statutory period of time. And that in and of itself, I think, is evidence, clear evidence, clear and convincing evidence, of an adverse possession, but I'll have to read this case, Your Honor. But I did go home during lunch and pull my book to talk about this concept of continuous possession, and I'm going to read this blurb, and I'm reading out of the elements of causes of action that our bar puts out. And it talks about it is elementary that it is essential to the acquisition of title by adverse possession that the Claimant, Ms. Hozey, be in continuous and uninterrupted possession for the full statutory period. This does not require the presence of the Claimant, his agent or tenant on the property for the whole statutory period. And then they cite there -- and I'll have to -- again, I'll have to read this, but Cathcart versus Matthews case, a 1916 case, Your Honor. That's how far back these principles go, as you know. And then it -- then there's another comment, the nature and location of the property, and whether the use to which it has been put comports as the usual management of such property, should be considered

in determining whether continuity of possession is broken. And in that footnote, they cite a 2009 Court of Appeals case, Jones versus Levy.

So I think what the law is saying, we look at property in the context of what the property is and what it serves as. And again, I think the evidence clearly shows exclusive, continuous with a hostile intent; however hard that word is, overall, in the disputed area during the requisite 10-year period of time. And I want to remind the Court, we're talking about over 19, 20 years here. That's how long it's been.

So respectfully, with Ms. Carroll, I don't think that motion is appropriate in this case. Clearly, I fall back on my motion for a directed verdict as us having established the essential elements.

THE COURT: All right.

MR. MCCANTS, III: Thank you, Judge.

THE COURT: Okay. You want to respond --

MS. CARROLL: Brief respond --

THE COURT: Your response?

MS. CARROLL: Yes, Your Honor. There is every presumption when there's occupancy by an alleged adverse possessor that it is subordinate to the

legal title. Now, we had -- we heard again and again and again -- it's one of those things that I -- admittedly, it cuts both ways, you know.

Mr. McCants is saying, "Well, she was being hostile. She was openly doing it. She knew about it," but it also is an acknowledgment that they have good title; like, they had good title and there's a presumption that -- that it -- so unless he can overcome the presumption that they have good title, good title should prevail, and that's Knight v. Hilton.

And in order for an attempted adverse possessor to maintain an action for adverse possession, he or she must rebuttal landowner's presumption of possession. The general rule is that where an owner of property and occupier both are in possession, the possession of the legal owner prevails to the exclusion of the other. The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared by the owner or with the agents of the owner.

Plaintiffs and Defendants have always -- have gotten together, graciously, as neighbors and gotten along for a period of 20 years. It only

became adverse in 2020, when she tried to do something really permanent. The testimony about the pad -- they love the pad. Let's call it the pad. It's the pad. The pad is some rocks, rocks you can move with a shovel. They're rocks. There's not -- there's no -- there was no testimony, at all, that there was any permanent construction that was left there. A couple of forts went up and went down over the years. They're rocks, that's all.

It's only when she tried to do the kind of thing that Mr. McCants claims she actually did in his argument that -- it was only then that Rutherfurds felt that there was adversity and hostility, and that she had exceeded the license and permission that they were giving her to be there. It's only then that they take actions. When they did, then they posted "no trespass" signs, and as you know, we have a counterclaim for her trespass on the property and we were going through the necessary and appropriate steps in order to exclude her when she overstepped her bounds of neighborliness. Thank you.

THE COURT: All right, what we have reversed, of course, the footing here, and now I again

consider it in the lights most favorable to the non-moving party, which now would be Mr. McCants' client, the Plaintiff.

There was testimony, of course, about the use and the type of use she did, the pad and other things that were questioned in regards to the photographs, and Plaintiff's Exhibit Number 1. I want to clarify one thing, the case I was reading from, which is Frazier versus Small Seed cited -- states that the claimant asserts title by adverse possession and his or her occupancy is not under color of title. We've all agreed, I think, on that, prehearing. Nothing's been changed since then.

The claimant must show either -- so I want to make sure we've got that right, either fencing or other improvements covering most of the subject land or some other continuous use and exercise of domain. So the type of use, even with that language, can be somewhat open, and I want to make sure I didn't give the impression that I'm saying you had to have the fencing. And then, of course, we go back to the clear and convincing and the elements, which both of you have, certainly, properly argued in regards to the motions on both

sides.

However, given the amount of evidence that I've had, I don't believe it would be correct to grant the motion for nonsuit at this time based on that, and so I would deny the motion. We have all of the arguments in on the record, but I would deny the motion based on the evidence that's been submitted and we will continue to take testimony in regards to that, assuming there are no other motions by the Defendant.

MS. CARROLL: No, Your Honor.

THE COURT: All right. Now, let's take care of a little housecleaning here. We started back about 2:30. It's about 4:20. Our security will end and the courtroom will close at 5 o'clock.

So Counsel, on the Defense, how long do you think we've got? And I'm just asking for an estimate and you can only speak to what your questions may be. I'll talk to Mr. McCants about the other.

MS. CARROLL: Your Honor, I have always thought and asserted consistently that I think my case will take approximately a half of a day. I would suggest that Ms. Rutherfurd will be my first witness and I think that time with her would exceed

40 minutes substantially, and with your permission, I would prefer to just start once and end her --
THE COURT: Yeah.
MS. CARROLL: -- for the same reasons we discussed during the lunch hour.
THE COURT: Well, I certainly think because of the rescheduling, we'll be more than just a couple of hours for lunch [inaudible] find another day. I've indicated to you, both of you, when we talked about that and your estimate and Mr. McCants' estimate, and his estimate, I think, was pretty much on-line with what he thought it would take and yours, this morning, was at least a half a day for your part, so nothing has changed on that. And I agree, I don't like to start a witness and have 20, 30 minutes of testimony, and then depending on your schedules and what the Court can offer, have them come back, and then everybody is kind of grasping at what was there before and where are we at when we start back.

I think it's much cleaner, easier for the parties, attorneys, and witnesses if we began anew on that since we, I think, can all agree we're not going to be anywhere close to finished by 5 o'clock. I would suggest maybe if I could give

y'all some dates, some Fridays, while you're both here, and then maybe if you have access to a calendar and you could say which one would work. It looks like we're looking at about a half a day and any -- if there will be any kind of rebuttal to wrap up the testimony portion of it. We'll have the court reporter maintain the exhibits. Is that okay with you?

MADAM COURT REPORTER: [Indicates affirmatively].

THE COURT: She's indicating that it is. And so then she would be back on that day, so we'll need to check your schedule, I guess, and make sure as well. So why don't we do that? Why don't we go off the record, complete it for today, and then I'll come back or have my clerk come in with some dates and y'all take a look and see if we can work it from there. I assume both of you would like to move forward as soon as possible; correct?

MR. MCCANTS, III: [Indicates affirmatively].

MS. CARROLL: Yes, Your Honor.

THE COURT: Okay. All right, let me do that. We'll be off the record for right now.

[OFF THE RECORD]

THE COURT: It's my understanding we're going

to send the attorney and Ms. Adams some dates. Everybody doesn't have access to the calendar so we'll take a look at that as quickly as y'all can. Let us know, let my clerk know so she can put it on the calendar and we'll reserve that day and -- because I'll probably just block off the day when we do it, just in case we run over the half a day. Any other questions that I haven't addressed, from the Plaintiff?

MR. MCCANTS, III: No, sir.

THE COURT: Defense?

MS. CARROLL: No, Your Honor.

THE COURT: All right, we'll proceed in that fashion then. I look forward to getting it rescheduled and finishing.

MS. CARROLL: Thank you.

MR. MCCANTS, III: Thank you for your patience, Judge.

THE COURT: Thank you.

[HEARING ADJOURNED AT 4:27 P.M.]

C-E-R-T-I-F-I-C-A-T-E

S O U T H C A R O L I N A

AIKEN COUNTY

I hereby certify that the foregoing hearing was reported, as stated in the caption, by means of Stenomask and speech recognition, with backup, and the questions and answers thereto were reduced to written form by me or under my direction; that the foregoing pages 1 through 179 represent a true, correct, and complete transcript of the evidence given on Wednesday, the 1st day of November 2023, in the Court of the Master in Equity. I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

This, the 13th day of August, 2024.

Lisa M. Adam

LISA M. ADAMS, CVR-M

CERTIFIED COURT REPORTER

NVRA CERTIFIED



Exhibits

Hozey Hearing D1 12:5,7,9,15 13:13 15:15 25:5 26:23 27:8 28:25 30:10 39:22 42:25 50:6 57:15 58:2,3,8,9,13,18 61:8,9 68:16 71:20,21 72:9 78:15,20 101:18,19 132:18,24 151:18 175:7

Hozey Hearing P2 22:15 25:9 58:4

Hozey Hearing P3 22:16 103:15

Hozey Hearing P4 22:17 44:25 104:9,12,22 106:4

Hozey Hearing P5 33:14 108:16 110:14

Hozey Hearing P6 33:15 35:14 71:4,5 95:6 108:7,15

Hozey Hearing P7 33:16 37:15 45:13 110:25

Hozey Hearing P8 33:17 111:10

Hozey Hearing P9 33:18 40:11

Hozey Hearing P10 33:19

Hozey Hearing P11 46:22 47:17 59:8,14

Hozey Hearing P12 46:23 48:3,4 81:11 111:24,25 112:4,5 113:20 114:4

Hozey Hearing P13 70:4,5,7 71:11,23,24 89:9 118:8

$

$2,000 75:11,20

$8 10:16

-

-15 11:22

-4 118:12

-5 118:13

-6 118:13

1

1 12:5,7,9,15 13:13 15:15 25:5 26:23 27:8 28:25 30:10 39:22 42:25 50:6 57:15 58:3,8,9,13,18 61:8,9 68:16 71:21 72:2,9 78:15, 20 86:4,24 87:1 89:12 101:18,19 118:8 132:18,24 151:18 175:7

1.6 10:17 102:16

10 33:19 43:18,21 86:4 164:13

10- 166:17

10-minute 86:5

10-year 172:10

11 46:17,19,21,22 47:17 59:8,14 65:10 86:3 99:24 127:24 129:18 132:14

11:52 90:14

12 46:18,23 48:4 81:11 111:25 112:4,5 113:20 114:4

13 69:19 70:5,7,14,15 71:11,24 72:1,5 89:9,12 118:8

13-1 71:6 118:11

13-2 71:7 118:11

13-3 118:12

16 102:14,19,23 132:15

18 132:15

19 147:5,18,19 172:11

1916 171:20

195.9 39:22

2

2 22:14,15 23:1 24:13,16 25:9 28:13 33:23 58:4 86:11,14 90:11

20 82:22 93:25 102:9 103:10 110:1 172:11 173:25 177:15

2001 11:10,14 12:1,3 14:14 31:16 49:9,13,14 53:3 77:24 78:4 92:4,5,6,8,11 147:2 160:24

2003 23:15 24:1,2 49:14,21 50:11,23 51:7 53:14 54:3,20 55:12 63:5 65:10 92:6 123:4 160:24 170:25

2005 41:22 51:8,11 52:10 55:22 57:16,22 60:14 135:14,15

2007 125:9,10

2008 60:15,16 123:11,17

2009 172:2

2011 61:1,2,13 62:16,25 63:3 64:2 65:5 123:14,17

2012 65:17 66:1

2013 66:4,10,19

2014 67:3 117:24 118:1 142:9 155:4

2015 75:3

2016 75:9 76:17

2020 55:4 77:8,24 78:5 80:4 91:25 117:2,6 125:18 133:1 147:7 174:1

2021 55:4 80:6,20 99:6,9 147:7

2021-CP-02-0766 4:2

2022 34:22 99:24 103:12,13 127:24 129:20 132:15

2023 147:7

21 147:19,20

21.41 18:20 42:17

22 11:10

22-ish 147:20

23 115:3

23-ish 147:20

24 115:3

25 137:11

2:30 176:14

3

3 22:14,16 23:1 26:8,13 27:18 28:14 33:23 103:15

30 177:16

37 130:21

4

4 22:14,17 23:1 27:20,21 28:5,9,

10,13,15,19 33:23 44:25 104:9, 12,22 106:4

40 177:1

4:20 176:14

5

5 33:14 34:4 35:2 36:24 58:22 108:4,12,16 110:14 176:15 177:24

51.1 58:22

51.14 40:6

6

6 33:15 34:4 35:2,14 71:4,5 95:6 108:4,7,13,15 118:8

60 129:4

63 9:20

7

7 33:16 34:4 35:2 37:15 45:13 80:3 99:9 110:25

7/7/2020 100:8

714 11:22

8

8 33:17 34:4 35:2 43:24 111:10

804 11:8,13

9

9 33:18 34:4 35:2 40:11 43:17

92 145:6,8

93 92:24

A

A-STRUCTURE 139:14

A.M. 90:14

absence 8:24

absolutely 11:1 22:25 30:17 54:7 66:17 78:10 83:14 84:16 89:16 100:16 117:1

abundantly 8:23

abuse 86:8

access 42:13 106:13 178:2

accidentally 111:12

accuracy 100:14

accurate 99:19 100:19,24

accusations 120:13

acknowledged 164:10 169:13

acknowledgment 173:6

acquire 5:12 163:17 173:19

acquired 16:19 30:14 31:10

acquisition 171:12

acreage 17:11

acres 102:15,16,20,23

act 146:15

action 120:14 126:17 163:20,23 171:10 173:13

actions 53:4 161:4 162:19,25 174:17

activities 31:13 35:14 169:16

activity 63:3 119:22

actual 50:14 60:22 97:1 143:18 161:5,7 162:21 164:12 167:18

Adams 70:20

add 159:17

addition 162:16

address 11:21

adequate 84:10

adequately 84:5

adjust 57:12

adjuster 74:2 121:8,18,19 135:2

admissibility 89:17

admission 130:4,8 132:6

admissions 130:7

admitted 12:14 35:1 165:21 169:24

admittedly 173:3

adverse 5:11,21 8:6,15,25 16:20 30:15 108:24 160:17 161:7 163:22 164:11 167:10 170:12 171:5,13 172:25 173:12,13,20 174:1 175:10

adversely 161:18

adversity 169:21,22 174:14

aerial 151:19

affirmatively 89:5 115:11 178:10,20

afraid 142:15

afternoon 136:23,24 140:16

age 98:13

agent 171:16

agents 8:18 173:21

agree 8:3 20:8,12,16 51:23 89:21 98:19,25 99:18 167:7 177:15,23

agreed 6:2,6 114:20 116:13 175:12

agreement 5:20,25 18:14 21:7 132:6,13 168:23

ahead 7:24 16:23 22:20 29:13 32:7 33:12 34:15 35:25 37:3 68:16 75:23 101:10 115:16 120:3

Ahh 154:4

Aiken 5:6 9:21 11:2,3,14 12:3 14:25 15:8 25:6 67:4 72:8 93:12 137:13 150:7

alive 55:20

alleged 160:12 172:24

alleging 123:20

Allen 4:15 125:20 133:23

allowing 166:22

Allstate 73:24 121:19 135:1,2 136:3

ambiguous 77:25

amount 176:2

and-run 61:18

and/or 8:17

anew 177:22

animal 56:20 75:13 76:7

ankle 48:21

Ann 143:21

announce 131:6

answering 100:10 129:22

answers 34:7 168:3

anticipate 4:16

apologize 15:25 58:11

Apparently 75:14 163:3

Appeals 172:3

appearing 146:19

appears 98:10

applicable 120:13

application 136:3

approach 71:16 94:17,25 98:19 103:14 111:24

approached 76:23

approaches 57:3

approaching 119:23

approximately 176:23

approximation 19:10

April 61:3

aptly 168:20

area 5:7,13 8:3 12:2 13:21 16:14, 16,20 17:3 19:5 23:14,22,24 25:13 26:19 28:24 30:15 31:1,9, 14,17,19 32:3,14,20 33:9 36:6,7, 11 37:6 40:17 41:12 43:14 47:6 48:1 49:8,18,19 50:2,21 51:1,6,9 52:7,15,22 53:4,15 54:5,9,13 55:11 57:7 58:16 59:21 60:5 61:21 63:4,16,18 64:5,6,13,22 66:14,21 68:9,11 72:7 74:5,9 75:7 76:8,20,24 78:6,9,13 79:5 83:1,12,16 84:25 85:11 95:19 96:20 98:9,23 99:2 101:20 102:5, 8 106:19 107:12 111:23 113:22 114:2,3,12 117:7 118:25 119:3, 10 120:20 122:3,13,17,18 123:3 128:5,23 129:5 133:25 135:10 136:5,6 137:24 138:17,18,21,24 139:7 140:23 142:11 143:3,6,7 144:5,6,7,16 145:10,11,13 147:8 148:1,2 152:4,19,20,21 153:5,21, 22 155:9,12,14,16,20,23 158:9, 10,13,15,17 160:18 162:14,16 163:11 170:19,25 172:9

areas 16:25 128:16

argued 175:25

arguing 170:10

argument 120:23 174:13

arguments 8:21 176:6

arms 44:13

arrow 18:3

arrows 17:24

asphalt 44:21 103:16,25 104:1, 10 105:7 124:6

asserted 176:22

asserting 164:11

asserts 175:10

assess 121:20

assume 7:11 43:10 93:22 178:18

assuming 33:2 99:21 156:25 158:17 176:9

asterisk 18:12,20 50:7

asterisked 61:9

attached 75:11 82:4,10 90:2

attacked 75:12,14

attacking 116:16

attempt 122:16

attempted 173:12

attended 11:3

attorney 146:1

attorney's 4:5

attorneys 4:3 6:25 88:5 136:14 177:22

attractive 162:18

auditory 57:2,4

August 61:13 99:24 127:24 129:18 132:14

authentically 69:21

authenticity 6:6,7

automatically 17:10

avoid 41:16

award 168:1

aware 93:9,12 124:19 131:19 157:23

axle 23:17

azalea 106:6

azaleas 53:16 55:19 122:7 143:10

B

back 21:10,13 25:2 28:20 31:16 33:20 36:7 37:4,17 41:23 43:25 45:15 46:1 47:20,25 48:21 51:1 52:12,16 55:11 57:16 63:10 68:5 73:4 77:6 79:10 87:22 90:21 97:9 102:3 106:6,7,12,14 110:10,13, 16,18 112:14,23,24 113:21 114:4,7 141:2 142:9 146:23,24 147:4,6,9,21,22,23 148:16,17 170:24 171:21 172:15 175:23 176:13 177:18,20 178:12,16

background 5:1 15:14

backside 115:12 169:4

backup 126:2,5,9,10 128:21

backyard 96:21

bad 42:5 57:11 118:11,12 146:8, 15

badly 75:18 116:17

ball 73:8,11

bar 171:10

bare 139:12 170:22,23

barely 40:19 104:22

barrier 56:2,6

based 6:7 163:12 176:4,7

basic 165:9

basically 23:17 79:10 152:9 155:11

basis 10:13 84:14 150:13 170:20

bathrooms 78:23

battery 80:8,9,12
Beacon 15:3,6,7 16:15 29:14
Bear 67:16
beautification 141:12 143:10
beautiful 18:22 48:2
beautify 169:20
bed 137:19
bedroom 78:24 79:3
bedrooms 78:23
Beg 27:21
began 50:18,20 53:3 62:25 66:12 177:22
begin 90:16,23
beginning 6:20 137:20 166:12
begins 58:14 106:3
behalf 163:11
behave 87:18
behavior 119:22
believed 91:7
big 23:17,20 44:17 51:4 64:25 66:15 68:20 93:3 102:11 103:1 106:6 152:10
bill 75:11,17,19
billion 10:16,18
bills 116:12
bit 10:11,12 16:1 19:22 29:10 32:19 33:9 48:22 54:12 55:6 75:2,23 77:6 78:11 96:11 106:25 107:3 112:11 118:2,10 125:25 139:5 142:19 155:18
black 104:23
block 14:7
blockage 164:22
blown 63:21
blue 96:11,12,13,14,16,17,19 97:6,7,14,16 107:8
blurb 171:9
boat 54:23 60:16,18,21,22 123:19
bobsledding 151:16
boocoodles 41:13
book 143:16,19 171:7
border 170:14
born 92:23
borrow 94:19
borrowed 17:18
bottom 40:3,13 41:2 46:6 68:14 73:17 78:19 103:15 104:9,11 140:24 141:2
bought 23:15 49:21,23 60:16 61:15 62:25 66:8 80:9 82:23 123:5,14 162:7
boundaries 14:13 15:21 26:19
boundary 16:10 19:13,15,17 20:1,13 58:15 114:21 169:2
bounds 5:9 174:23
box 23:17 44:17
boy 157:2
branches 72:14 73:1
break 8:9 86:5,25 88:9,21 90:9 166:14,18
breaks 8:12
briefly 34:10
bright 66:9,10
bring 28:5 55:21 119:25
bringing 86:14 102:3 134:2
broken 130:18 172:2
brother 139:4
brought 4:21 11:18 44:18 166:1 168:6 170:15
brush 32:8 79:12
Buckshot 76:9,14
build 117:6,12 124:16 139:6,21 153:21 154:2,13 165:17
building 153:18
built 49:17 79:6 153:19
bum 48:21
bunch 153:12 156:24 157:2
burden 164:10
burdens 168:19 170:1
burgundy 62:19,25 66:7
buried 56:5,17
bury 56:8
buy 11:11
buzzer 57:3

C

Caitlyn 4:12 10:6 92:12,14 136:16,19,22,23 138:18 143:22 144:22,23 145:20,24
calculate 17:10
calculated 17:7
calculations 82:22
calendar 178:3
call 9:2,4 13:9 16:14 39:13 42:10 50:18 57:23 96:12 105:4 136:15 174:3
called 4:18 52:14 62:8 96:15
calling 19:5 49:8 59:20 91:9,13 104:23 138:17 143:8 148:1
camellia 53:17,19 122:7 142:25 143:11,15,16,18,19 145:18
camellias 53:18 55:20 143:11, 24 144:1,24
camper 17:14,16 18:9,23,24 23:8,11,12,14,15,16 24:7,18,24 39:10 45:6 47:19,21 49:21,23 50:6 51:1,3 53:16 54:2,10,12 55:7 59:6,8 60:5,19,20,21 61:4,5, 7,15,23 63:1 64:7 66:12 80:9,11, 15,17 106:8 123:5,11,14,17
campers 54:23
camping 49:23
car 145:12
care 6:17 176:12
careful 120:9,13,22,25
Carolina 67:4 147:22 161:14,16
Carroll 4:13,14 5:19 6:11,14 7:19,22 8:1 12:13 15:22,25 16:3, 7 18:16 20:9,12,18,20,23 21:2,6, 11,16,19,22,25 22:22 23:1 24:10, 13,14 28:2,12,17 30:4 32:9,22,25

33:25 34:10,16,20,23,25 35:18, 23 36:15,17 37:23 38:5 41:3 42:15 45:23 46:19 47:2,16 50:23 51:18 52:9,17,24 54:15 57:24 59:10 60:9 67:18,20,25 69:3,6, 17,20 70:10,12,15,25 71:6,9,16 74:20 77:25 78:3 80:16 81:15,17, 19,23 82:2,6 84:1 86:7,23 87:13, 15 88:11 89:5,15 90:1,24 91:2,4 94:17,19,24 95:2,3,6 98:8,12,22, 23 101:2,5,9,11,13,17,18 104:8 105:13,14 107:22,25 108:3,6 120:2,4,16,18 121:1,3,5 124:21, 24 125:2 126:8,25 127:2,6,23 130:3,11,14,16 131:1,12,16,19 132:2,11,12,25 133:15 134:16 135:21 136:2,8 144:19 145:20,25 146:1 148:8 149:7,10,14 156:6, 10,13,14 159:3,20,25 164:3 166:6,8 168:17 170:7 172:13,21, 23 176:11,21 177:4 178:21

carry 150:11

cars 25:20

case 4:2,11,15 5:5,15,21 7:15 13:12,19 16:18 30:3,13,25 66:21 81:24 91:5 127:9 131:9 140:24 146:6 156:17 160:6,13,15,18 161:3 162:1,13,23 163:7,14 168:18,21 170:17 171:6,20 172:3,15 175:8 176:23

cases 90:17 160:20 161:23,24 164:4

casual 49:1

Cathcart 171:19

cats 56:3

caught 66:23 75:8 77:12,17

caused 76:5 164:22

causing 13:1

caution 6:23 148:20

cautionary 149:4

ceiling 97:6,8

certified 75:16,21 76:19

cetera 54:25

chain 96:7

chain- 36:5 72:9

chain-link 24:17 37:9 42:8,11 47:20,22 59:13 72:11 96:9 97:20 106:9 108:19

chained 60:23

chainsaw 63:11 155:6

chair 14:5 144:13

chambers 132:1,5

chance 62:17

changed 175:13 177:14

characteristics 32:20

characterize 30:9 146:18

characterized 84:4 160:18

charged 80:8 119:24

Charles 81:22

check 74:13 178:13

checking 10:23

childhood 137:25

children 4:12 10:3 49:13,22 50:12 92:10 93:2 98:13 144:24 162:8,15 166:21

choice 42:5

choose 143:17

chop 155:6

circle 16:9 18:8 50:8

circumstances 23:13

cite 161:25 171:18 172:2

cited 175:9

civil 164:4

claim 73:23 118:22,24 119:2 120:5,9,11 121:6,21,23 129:7,8, 13,21 132:16 134:18 167:9

claimant 167:13 171:13,16 175:10,15

claimed 119:4,9

claiming 123:23 164:16

claims 127:7 129:8 174:12

clarification 90:9

clarified 68:2

clarify 19:21 22:2 46:10 52:18 175:8

Clarke 4:9 46:11,15

clean 64:19 130:17 139:2 142:11 155:2 162:17 165:12

cleaned 74:15 167:4

cleaner 177:21

clear 8:23 51:8,9 63:6 74:17 89:16 100:16 106:21 109:4,18 110:19,23 118:3 119:24 120:17 160:16 161:24 163:24 164:6,25 165:23 166:10 167:16 171:4 175:23

cleared 32:1,8 50:2 51:2,6 64:19 65:2 73:20 107:1

clearer 72:17

clearing 23:21 50:20 53:14 54:4

clerk 178:16

client 5:10 8:17 85:25 175:3

client's 4:6

clients 8:17 12:21 124:24

climbing 50:13,14

clippers 139:12

clock 166:15

clods 141:9

close 60:22 80:19 94:4,10,15,16 124:21 176:15 177:24

closely 108:13

closer 16:1 60:20

closest 102:1

club 142:25 145:18

clubs 143:14

Cody 4:12

Colby 10:6 92:12,18 149:16,20, 24 155:10 156:12 159:23

Cold 65:23 66:1,22 75:3 77:10, 18 128:14,15,17

Coleman 4:18,19 80:2 99:5 124:18 125:15

collar 57:4

collectively 70:4

college 156:24 157:7

color 5:22 17:20 143:23 167:11 168:22 175:12

comfortable 29:14,17 87:14 157:20
comment 88:22 171:22
commentary 43:20
comments 7:11
Communications 109:15
company 129:14
comparison 23:2
compass 27:6
complaint 82:5,13 90:3 160:25 163:18
complete 178:15
completed 90:19
completeness 46:4
complies 17:1 18:10
comply 150:19
component 161:6
comports 171:24
computers 29:15
concept 171:8
concerned 50:12,16 51:19
concerns 121:6
concluded 76:14
concrete 124:8
condensed 130:14
condition 31:17,19 36:12 38:19
conditioner 80:10,12
conducted 132:14
conference 132:5
confidential 109:16
confirm 30:16
confirmed 5:24
confused 134:21 147:10
confusing 78:1
confusion 7:23 87:7
connecting 115:17
consideration 163:25
considered 134:11 165:18 171:25
consistent 117:2 169:7
consistently 140:2 176:22
constitute 160:17
construct 61:17 62:1
construction 174:8
consult 124:24
container 106:5
context 172:5
continue 88:3 90:11 166:23 168:8 176:8
continuity 172:1
continuous 42:4 84:14 164:12, 16 166:13 167:15,18 170:20,21 171:1,8,14 172:8 175:18
continuously 8:8 11:14 54:6, 14,22
contractor 117:9 165:16
contractors 134:2,3
contrary 107:16 131:7
control 65:22,24 84:24 161:22 162:19
control/dominion 161:1
controls 10:10
convenience 88:4
conversation 5:24 88:14,15 125:2,8
conversations 125:13 156:18, 19
conveyed 89:21
convincing 160:16 163:24 164:6,25 165:23 166:10 167:17 171:5 175:23
copies 28:5 130:6
copy 130:14
cordial 134:12
corner 151:5
correct 5:9 9:17 10:1,2,23,25 11:4,14 12:3 13:16,21 16:11,12, 16 17:3 19:18 20:2,5 25:2,6 26:25 29:1,2,5 30:3 31:1 33:25 42:17 48:15 53:4,25 54:14 55:8 56:21 59:21 62:9 64:2 74:10,13 75:4 76:15 83:1,9,13,16 85:7 89:12,13,15 91:9 92:20,23 96:4 98:18 99:5,12 104:15 105:16,18, 21 108:25 109:21 114:22,25 115:1 116:5,18 117:24 118:10,25 119:11,14,17 120:23 122:4,8,14 123:19 127:1 129:2 135:7,8,10 137:8 141:25 145:14 146:6 149:22 150:21 151:1 152:21 155:24 158:3,7 176:3 178:19
correctly 123:6
correspond 108:13
cost 10:19
counsel 12:19 20:7 22:13 32:21 33:24 34:8 35:19 36:25 37:21 40:23 44:9 46:24 47:14 52:6 69:16 70:9 81:13 91:4 105:11 131:25 176:16
counterclaim 90:2,7 174:19
counterclaims 168:4
county 14:24,25 15:8 72:8
couple 8:21 21:19 61:1 63:12 124:22 144:8,14,15 147:6 153:15 154:10 156:18 174:8 177:7
court 4:1,20,22 5:18 6:13,15,17 7:14,17,21,23 9:1,7 10:20 11:18 12:8,11,14,19,25 13:3,11 14:2,4, 7,11 15:12 16:2,5,19 17:18,23 18:3,13,17 19:21 20:4,7,11,15, 19,21 21:1,4,7,14,18,21,24 22:1, 6 24:12,19 27:20,23,25 29:10,16 30:7,14 32:12,21 33:2,8,20 34:1, 7,12,15,24 35:1,15,17,19,22,24 36:4,9,13,18,21,25 37:3,7,10,13, 16,21,25 38:2,4,8,12,14 39:1,18 40:10,12,16,20,23 41:1,4 43:16, 20,23 44:2,4,7,9,12,14,20,23 45:2,4,10,12,16,19,22,24 46:2,6, 14,17,24 47:14,18 48:3,8,10,17, 24 49:11 50:22,24 51:13,15,23 52:4,19 54:17 58:3,8,10,12 59:12,16 60:10 64:12 66:5 67:10, 22,24 68:2,15 69:9,10,12,13,15, 19,23 70:8,11,16,19,22 71:2,8, 17,22 72:2,4,6,12,15,19,20,23 73:9 74:22 80:18 81:8,12,18,20 82:10,14 83:8 84:3 85:2,4,6,12, 19,22 86:2,9,10,13 87:6,13,14,20

88:8,12,19,23 89:3,6,9,11,20 90:4,7,13,15 94:18,23 95:1 98:21 101:4,7,10,12 104:25 105:4,11 120:3,8,17,19 121:2,4 124:23,25 126:14,21 127:1,5,10,11,14,17, 19,22 130:9,13,15,22 131:21 132:4,10,20,23 133:17 135:23 136:9,13 138:16 144:10,12 148:10,13,19,25 149:3,6,8,11 156:9 159:5,7,16,19,21 160:4,9 162:1 164:2 166:2,5,7 167:7 168:15 170:3 172:3,11,18,20,22 174:24 176:12 177:3,6,17 178:7, 9,11,22,25

courtroom 101:3,15 148:15 176:15

cover 75:2

covered 73:25 74:18 121:10,14 124:10 128:17 158:13

covering 13:9 167:14 175:17

coyote 76:7 116:20

coyotes 76:8

create 143:13

created 56:14

Creek 65:23 66:1,22 75:3 77:10, 18 128:14,15,17

criminal 119:23 120:14

cross 86:3,6,22 87:4,19

cross-examination 90:20 91:1 145:24 156:12 163:6 168:7

Cross-examine 156:9

crush- 61:17

crush-and-run 62:7,15 105:21, 23

crusher 61:16 62:3 103:17,18 106:14

cue 57:1

cultivated 52:14,22

cultivating 53:9

current 51:3

Curtis 4:19 99:5

curve 102:2

curves 27:1

curvy 25:14

cut 63:10,11,12 155:6

cuts 173:3

D

D-R 28:25

daily 10:13

Dakota 66:10

damage 68:8 118:19,24 119:2,4, 9,10 121:14,20,23 136:4,6 155:18 158:13

damaging 80:24

dangerous 152:13

dark 62:19

date 53:7 65:16 76:22

dated 80:3

dates 23:13 55:1 75:2 178:1,17

daughter 49:17 79:3 92:14 136:17 137:8 157:1

daughter's 78:25

dawned 139:5

day 55:11 76:13 80:21 103:8 142:7 146:24 159:24 176:23 177:8,13 178:4,12

dead 155:7

deal 23:13 56:21

dealing 134:17 138:17

death 87:12

decide 22:10 83:6,8

decided 117:6 163:21

deciding 51:25 76:4

decision 168:2

decisions 161:17

deck 79:4,5,7,8

deed 14:13 15:21 16:9,11 17:14 19:14,15 26:19 30:25 31:3,6 59:20 74:10 83:13 95:15,16,20 96:5 99:1 108:10 111:15 112:3 114:21 115:3 116:14,16 121:11 129:1 135:6 161:19

deeded 20:1 38:9,24 40:15 44:6, 15,21 45:7,14 47:25 48:10 50:21 64:18 102:6 105:17 145:11

deeds 5:6,9 20:13

deemed 119:8

default 86:17

Defendant 176:10

Defendant's 132:18

defendants 4:14 86:16 91:5 146:2 156:15 163:10 173:23

Defendants' 19:25 132:24

Defense 4:7 5:18 7:18 12:12 14:8 46:24 69:10 70:8 89:14 90:8,20,23 149:6 159:19 160:10 168:15,16 176:16

Defense's 164:2 167:23

defer 122:21

define 85:11

defined 19:13,15 20:13 59:20

degree 39:16

degrees 57:10

delineated 25:5 50:5

delineates 170:14

demand 116:12

demonstrate 118:18 169:14

demonstrated 168:25

demonstrating 109:20

den 78:12

denied 91:8

denote 41:11 95:13 111:5

denoted 152:20

denotes 95:15 112:3

deny 167:5 168:7,11 176:5,7

denying 91:11,16

Department 10:15

depending 177:16

depict 31:22,25 34:6 35:4 71:14 122:17

depiction 84:10 100:7,9

deposition 99:23 127:24 128:3 129:17 131:4,8,9 134:17,20

describe 23:12 25:12,13 33:8 34:5 40:6 42:3 51:17,25 56:23 71:13 123:3

describing 27:12 57:22

designated 30:21

destroys 7:3

destruction 73:3 142:14

detail 7:12 42:4 160:23

determine 16:19

determined 76:6

determines 30:14

determining 172:1

development 10:18

diagram 58:2

diameter 62:6 65:2

died 63:12

difference 37:12 52:5 96:3

difficulties 116:8

difficulty 110:20

dig 56:7

Dione 91:4 146:1 156:14

Dionne 4:14

direct 9:9 85:17 91:21 98:25 113:18 116:7 122:2 136:19 149:16 162:2

direct-examination 90:19

directed 172:16

direction 73:11

directive 150:11

directly 157:4

dirt 141:8,9,15,16 153:12,16

dis-seizure 163:19

disagree 170:18

disassemble 153:25

disclosure 131:14

discuss 5:10 87:22 159:8

discussed 5:3 98:24 116:6 122:2 132:21 158:9 162:6 163:16 177:5

discussing 93:20 100:7

discussion 87:24 88:17 168:20

discussions 88:13 165:5

dismiss 166:4 168:17

disposal 48:8 105:5,8,9 106:4

disposing 105:2

dispute 5:5 15:20 16:8 38:19

disputed 5:13 8:3 13:20 16:14, 16,20 17:3 19:5 23:24 30:14 31:1,9,14,17,19 32:3 36:6,7 37:6 40:17,18 41:12 48:1,11,14 49:8, 18 50:20 51:9 52:14 53:4 55:11, 16 58:16 59:21 63:4,18 64:6,13 66:14 68:9 74:5,9 75:7 76:20,24 78:6 80:1 83:1,12,16,19 84:25 91:9,13 111:23 114:1,3 117:7 118:25 119:2,10 122:3,17 123:3 128:16 129:5 133:5,24 135:10 136:5,6 138:18 140:24 143:7 144:5,16 145:13 148:2 152:21 153:22 155:14,16,23 158:9,13, 15,17 160:18 163:11 170:19 172:9

disputes 20:24

distances 47:13

distress 76:11

disturbing 101:5

document 151:17

Dodge 66:9

dog 57:8 75:12,13,14,18 76:4,6, 9,14,15 116:9,13,17,20 169:10 170:10

dog's 76:10

dogs 56:3,4

dogwood 60:23

domain 175:19

dominion 84:24 162:19 163:13 167:16 169:13,15,18

door 82:20

doors 124:14

doubt 84:16

downed 72:13 73:15

downhill 40:4 43:25

draw 17:9 18:8

drawn 115:17

drew 128:5

drive 11:8,13,22 25:4,6,12,13 26:4 28:25 43:6 44:16 54:8 60:4 66:16 104:12,13,21 107:5 112:10 137:13 139:25 150:2

driveway 23:20 26:17,18 27:3 44:3,19,21 45:7 50:1 51:4 80:21 82:20 103:19 104:1,17,19,22 105:8,10,14 106:3,15 112:15,20 113:9,15 141:13

drops 110:14

dumped 153:12

duration 8:19

E

earlier 92:25 94:24 98:12 108:7 123:21 132:25

early 53:25

easel 98:20

easements 125:3,6

easier 177:21

easily 15:18

east 78:18

easy 140:18

edge 109:21

effort 83:20

eight-year-old 98:15

electrical 56:5,6,13

electricity 154:22

element 8:14,20 161:12,13,14 162:24 164:25

elementary 150:7 171:11

elements 5:11 8:5,8,10,13,22 160:19 161:7 162:23 163:2 166:11,13 171:10 172:17 175:24

Elizabeth 10:6 136:22 143:22
else's 148:23
employed 10:8,9
enclose 169:8
enclosed 98:24 115:21,22,24 116:4 169:2,3,4
enclosing 113:22 114:12 115:13
end 40:5 76:13 124:22 168:9 176:15 177:2
ended 10:1 76:3
ends 40:18
Energy 10:15
enforce 101:14
enjoy 49:23
enjoyed 143:25
entered 89:11
entire 8:19 10:16 36:10 42:14 50:19 51:9 57:7 59:3,19 64:16 77:16 78:16 79:10 102:24 128:16 161:2 166:13 168:25 169:14
entirety 58:15
entitled 121:7
essential 171:12 172:17
establish 8:24 164:25
established 163:24 172:16
estate 11:12
estimate 10:18 117:11,12 176:18 177:10,11
estimates 10:22
event 67:3
everybody's 159:11
evidence 8:2,11 22:10,11 89:2 119:24 120:15 131:5,9 132:19 160:5,16,21 163:5,13,25 164:6 165:1,24 166:10 167:17 168:6 170:19 171:4,5 172:7 176:2,7
evil 116:14,16
exact 85:17
examination 9:9 85:18 87:19 113:18 116:7 120:1 122:2 136:19 149:16
exceed 176:25
exceeded 165:18 174:15
excellent 18:21 47:23 48:18 150:8
exception 39:3
excerpts 131:8,12
exclude 157:18 174:22
excluded 38:20
exclusion 173:18
exclusive 84:24 163:13 164:13 167:19 169:23 172:7 173:19
exclusivity 8:14,24 162:24 165:21
excuse 27:21 54:16 58:9 116:1, 6 169:3
excused 148:14
exercise 160:25 161:22 167:15 169:13,18 175:19
exercised 163:13 169:15 170:18
exercising 84:12
exert 170:12
exhibit 12:5,7,9,10,15 13:10,13, 15 15:15 18:9,14 19:4 21:23 22:15,16,17 25:5,9 26:23 27:8,14 28:25 30:10 33:14,15,16,17,18, 19 35:14 37:15 39:22 40:3,10,11 42:25 44:25 45:9,13 46:22,23 47:17 48:3 50:4,6 52:16 57:15 58:2,4,8,9,13,18 59:8,14 61:8,9 67:12 68:16 70:4,7 71:4,5,11,12, 20,23 72:9 78:15,20 81:8,11 89:9,10 95:6 101:18,19 103:15 104:9,12,22 106:4 108:7,15,16 110:14,25 111:10,24 112:4,5 113:20 114:4 118:8 132:18,24 151:18 175:7
exhibits 6:4,7 22:14,19,24 33:1 35:2 71:2 82:5,12 89:1,13,25 94:20 108:2,4,12 136:11 178:7
expansion 53:22
expect 162:13
expenditures 126:1 127:8 128:4
expenses 128:7,9
expert 121:17
explain 14:22 15:5 17:5 88:20 134:18
expressed 166:20
expression 146:11
extend 15:23 64:19 88:12
extended 55:13
extending 58:16 60:5
extreme 89:17
eyes 145:18

F

facing 24:23 27:8
fact 13:15 18:20 22:19 29:19 30:21 64:8 76:22 167:24 169:9
fail 7:7
failed 164:7,24 166:9 168:19 169:14
fair 26:11 52:8 60:3 62:15 71:15 101:20,25 108:12 112:25 116:20 118:13 121:5 123:3 133:1,4 137:17,18 140:14,25 146:18 147:24
fall 65:5 172:15
fallen 155:7
familiar 5:2 10:21 13:13 15:2 53:3 65:17 138:10,13 150:24 160:19
family 64:21 146:4
father 23:21 49:14 50:1 51:2 53:15,19,21
favor 85:4
favorable 167:21 175:1
feature 17:8
February 67:3
feel 16:5 29:14,17 84:9
feet 30:3 47:22 106:7 154:19,20
fell 73:13
fellow 149:19

felt 116:24 147:25 157:20 174:14

fence 18:25 19:3,6,11,13,16,17, 23 20:5,19,21 21:9 23:8 24:3,7, 15,17,24 36:6,8 37:8,9 38:10,15 41:13,14,15,18,25 42:3,4,6,7,8, 11,14,19,23 43:2 45:6 47:21,22 51:10,11,16,17,25 52:11,23 55:23 56:1,2,10,12,13,21,24,25 57:3,7,16 58:3,14 59:5,7,11,13 60:5,14 72:10,11,17,18 73:2,14, 25 74:1,18 75:15 76:9,10,11 79:16,19 93:13,17,20,21 94:1,2, 3,6,14 95:8,11,17,23 96:1,6,7,8, 9,24 97:21 106:9 107:9 108:19 109:2,4,24 111:2,12 112:1 113:22 114:10,11,16,17,23 115:12,18,19,24 116:1,4 119:4,5, 7,8,9 121:14,23 129:8,14,22 132:16 134:18 135:2,4,9 136:4 140:15 162:9,10 165:5 169:3,5 170:10,14

fenced 57:8

fenced-off 157:6

fences 55:24 93:15

fencing 19:4 121:9 167:13 168:24 169:6,10 170:6,11,13,15 175:17,22

field 56:13

fifth- 140:2

fifth-grade 140:1

figure 147:12

file 82:10 83:7

filed 90:8 168:3

files 86:16

finally 47:4 77:6

find 26:8 81:10 85:4 101:15 177:8

finding 77:17

fine 7:21 14:2,4 21:18,24 39:7 46:2 59:10 79:23 81:19 147:14 151:9

finger 96:7,10 98:10 101:25 102:2,3 112:11 114:20

finished 177:24

first-grade 150:5,6

fish 120:25

fishing 60:17

five- 86:5

flag 96:1

flags 40:14,19,25 41:6,9,10,11, 12,14,24 48:4 57:7 59:12,16,23 60:6 95:12,23 108:8,18,22 109:3, 5,19,23 110:1 111:1,6,13,16,25 112:1

flat 44:7

flimsy 166:1

floor 78:24

flow 22:2,23 40:2 54:12

flower 143:13

flowers 143:1

focused 8:13

folks 13:4 21:12

follow 43:4

foot 65:1

footages 17:10

footing 174:25

footnote 172:2

foreclosure 86:12,15

forget 6:23

Forgive 94:20

form 52:17 54:15 77:25

fort 153:18 154:3

forts 139:8,14,18,20 140:8 153:19,21,25 154:1 174:9

forward 35:17 55:21 61:1 120:5 121:21 166:17 168:12 178:19

found 75:14 107:11

foundation 30:5 52:24 80:16

four-year-old 93:6 98:14

frame 62:24

fraud 119:19 120:10

Frazier 175:9

free 16:5 159:8,21

freeze 87:11

Fridays 178:1

friend 151:4

friends 139:21,22,24 140:5 151:1 155:5 157:1 158:17

friends' 158:20

front 29:4 60:2,19,20 63:1 66:12 80:9,11 82:19,20 102:2 104:14, 23 105:7 106:4 107:15 113:14 144:8 156:21 157:9 162:11 164:22

fulfilled 8:9,16

full 9:11 136:21 143:19 149:18 171:15

fun 152:16,18

function 29:18

G

gain 35:12 162:4

game 141:18

games 141:10

garage 80:10,12 111:6 145:12

gate 42:5,13

gave 82:20 164:18

gears 43:12

general 88:15 173:15

generally 19:3 86:17

genuinely 142:17

Georgia 147:19,22

gestures 103:2

gigantic 50:13

girls 156:24 157:3,7

give 5:1 6:20 21:14 28:19 35:24 36:21 42:25 79:25 117:11,12 131:12 175:21 177:25

giving 165:8 174:16

glad 7:10

go-to's 151:13

good 4:9,13 14:12 18:21 28:18 74:15 135:16 136:23,24 141:3 155:18 159:24 169:19 173:7,9,10

good/neighborly 146:20
gosh 137:14 139:11 140:1 145:5
Gotcha 102:23
gracious 165:2
graciously 173:24
grade 140:3
granddaddy 154:13
grandfather 49:15 142:19 144:24
grandfathers 49:16
grandpa 139:14 154:2
grandparents 142:24
grant 176:4
grapevines 64:25
grasping 177:18
great 64:24 69:9 160:23 161:3 170:18
greater 164:5
green 17:24 18:1
greenhouse 53:19
grew 150:24
Griffith 10:11 13:11 14:1 17:5 19:3 23:6 24:10,16 31:17 35:3 43:1 53:6,11 55:23 57:15 77:7 137:4 139:9 142:4,20 151:22
gripes 134:2
ground 97:2
ground-level 154:18
group 69:8,11 89:9
grow 65:12
grower 53:19
growing 63:9 137:23 138:2,24 139:6,24
guess 15:8 27:4 37:19 51:16 61:22 106:13 108:20 112:13 133:12 134:23 145:17 147:6 154:5 178:13
guide 22:6

H

Haas 30:18
haint 96:12,13 97:7
half 37:19 47:22 86:19 87:3 145:7 176:23 177:13 178:4
hand 18:21 22:19 28:10 69:1 71:10 115:8,9 130:19
handed 24:12
handheld 139:13
handing 33:1
hands 139:12
hang 51:13 58:24 140:6
happen 61:25
happened 51:7 60:15 61:14 65:19 67:4 68:10 75:9,12 80:5,20 82:18 133:9
happening 164:23
happy 5:1 160:7
hard 16:3 67:8 72:23 110:17,21 164:23 172:8
harsh 161:8
headed 7:15
hear 4:17 8:16 49:4 57:8 72:25 120:23 137:4 160:8,9
heard 76:10 92:5 96:15 116:11, 19 131:6 134:16 140:19 141:8 162:2 165:2 168:2 173:1
hearing 4:3 6:5 72:24 82:7 126:4,11,25 127:7,15
hearings 86:15,18 90:10
heavily 31:20
heck 64:6
height 73:16
helped 138:5
helpful 22:6
helps 5:17
here-ish 39:20
Hey 156:22
hide 84:17
hiding 161:10
high 11:3 140:3 165:24
higher 68:14
higher-ups 10:24
Highlight 130:13
highlights 130:16
hiking 49:15
hill 25:15 39:15 61:24 73:5,7,12 110:20 141:11,16,18 151:14,16, 21,24 152:2,5,8,11 153:4,9,10,17
hills 43:15 110:21
hilly 25:17
Hilton 173:11
hire 66:20
hired 65:23 66:22 75:3 77:10 78:6
hiring 77:6
hit 67:8
hold 45:10
home 11:11,21,24 13:24 171:7
homeowner's 73:24,25 74:18
homeowners 73:23 121:10
homes 169:20
homework 109:8
Honest 97:10
honestly 59:24 97:22 129:5 134:21
Honor 4:8,13 5:4,19 7:16,22 8:1, 5,6 12:8,13,16 14:18 15:20 16:7 18:16 20:10,23 21:20 24:14 28:2 33:25 34:11,23 35:23 37:23 41:3 47:2,16 51:18 52:3,9 67:18 69:12,18 70:3,10 71:6,16 81:15 84:2 85:16,24 86:7,11,23 87:15 88:11 89:2,15 90:12,24 94:17,21, 25 95:24 98:8,20 101:2,17 104:20 105:13 107:21 119:20 120:2,16,18 121:1 123:21 124:21 126:12 130:3,11 131:18 132:11 133:16 135:22 136:8,16 148:9 149:7,10 156:10 159:4,18,20 160:1,12 162:17,23 163:1,19 164:1,3 166:8 168:14,18,20 170:5 171:6,20 172:23 176:11,21

178:21

hooked 80:10,12

hope 13:8

hostile 162:21 164:12 167:18 172:8 173:5

hostility 146:16 161:13 164:24 165:20 166:24,25 169:23 174:15

hot 157:2

hour 86:19 87:2 177:5

hours 177:8

house 14:10 15:17 24:5 36:2,3 49:25 57:18 63:7 76:2 78:9,15,16 79:11,13 97:9,13,14,17,18,19,20, 23,25 98:4,5 104:14,15 112:7 113:14 121:11 123:9 140:6 144:9 146:5 147:16 151:10,12 152:19, 20 155:24 156:21

housecleaning 176:13

houses 151:6 158:20

how's 156:22

Hozey 4:1,10,12 9:5,9,12 10:6,7 13:9,20 14:19,20 15:19 17:2 22:18 29:12 33:1,8 42:3 53:1 61:13 64:4 68:9 71:12 80:6 83:4, 11 84:17 86:1 91:1,3,7 92:18 97:4 108:7 127:3,6,23 132:14,25 133:20,22 136:1,16,19,22 145:24 146:5 149:16,20 156:12 159:24 160:13,22 164:17 165:9,21 166:21 169:1,16 170:18 171:13

Hozey's 94:19 102:1 136:17 137:7 149:21 162:1 163:8

Hozeys 91:11

huge 73:19

hurt 49:2 75:18 76:14

hurting 116:17

I

ice 67:5,11 68:10 117:23 118:5 129:10 142:8,9 155:2,7 158:12

idea 162:10

IDENTIFICATION 12:7 22:15, 16,17 33:14,15,16,17,18,19 46:22,23 70:7 132:24

identified 16:24 18:9 19:25 20:5 23:7 63:16 160:15

Identify 81:2

Ill 4:8,9,24 6:10 7:13 9:4,10 10:21 12:5,16,23 13:1,6,8 14:3,12,17, 21 15:13,23 16:8 18:1,4,6,18,19 19:8 22:4,8,14,18,25 23:3,4 24:15,20,22 26:20 27:21 28:3,4, 16,18,19 30:6,8,9 32:10,11,13,24 33:7,12 34:3,14 35:3 36:10,16 38:13,15 39:6,21 41:5 42:16 45:25 46:3,9,12,16,21 47:3,4,23 48:18,20 49:1,4 50:5 51:22 52:2, 8,10,21,25 53:1,24 54:19 58:1,9, 11,17 59:18 60:11,12 66:11 67:13,19,23 68:8,22 69:4,7,24 70:2,14,20,23 71:10,19 73:20 74:24 77:20 78:2,4,19 79:24 80:5,19 81:10,21 82:4,8,12,15 84:2,4 85:16,20,24 86:1 87:10 88:10,22,24 89:23 90:5,12 104:6 107:24 108:1,5 119:20 126:7,12, 16 130:25 131:3,15,17 132:9,22 133:18,21 136:16,20 139:20 143:5 144:6,17,21,22 148:11 149:5,17 159:6,18,23 160:1,5,12 168:14 170:5 172:19 178:20

ill-will 87:25

image 14:22 27:9

images 71:15

impeachment 131:5

imposed 6:2

impression 175:21

improper 87:22 120:1

improvements 167:14 175:17

inaudible 7:23 13:25 19:1 20:14 21:3,13 24:21 28:13,23 30:22 35:10 38:6 39:5 43:7 46:13,20 52:1 58:23 59:4 68:1 78:10 79:5, 15 82:5,8 87:5,8 88:24 89:19 90:6 91:15 102:22 103:3 114:6 130:10 131:2 142:7,14 143:9 145:9 166:6 177:8

inch 62:6

incident 116:9

incline 68:12

included 158:14

including 87:24 128:16,25 134:6

indicating 89:11 98:9,10,23 99:1 114:9,18 178:11

individual 159:11 163:2

indulge 120:20

information 15:10,14

initial 36:12

initially 46:5,8

initiated 73:23

initiating 6:5

injuries 76:5

inside 57:18 58:15,22 59:13,15, 16 75:15 78:9

install 41:18 51:10 56:6 57:23

installation 53:20

installed 51:12 55:23 56:10 57:16 58:4,5 60:14 61:16 135:12

instances 77:11 133:22

instruct 87:17

instruction 149:4

instructions 6:20

insurance 73:23,24 74:18 118:21 119:19 120:10 121:10,16 129:7,14 134:18 135:1

intended 20:21

intending 161:17,21

intent 83:18,25 84:5 162:4 163:16 172:8

intention 131:11

interactions 157:10

interest 162:5 163:17

Interesting 154:8

intermittent 164:16

interrupt 22:1,22 39:7 58:20 89:24

interrupting 22:5

intersect 102:4

introduced 126:18 127:12,17, 21 130:24

invisible 41:13,14,15,18,25 42:7 51:10,11,16,17,25 52:11,23 55:23,24,25 56:2,21,24 57:6,16 58:14 59:5,7,11 60:14 74:1 95:11,17,23 96:1 108:19 109:2,4, 24 111:1,12 112:1 119:5,9 129:8, 14,22 132:16 134:17 135:2,4,9 136:4 169:5,10 170:10

invoices 126:2,5,9,10,18,19,22 127:7,9 128:15,17

involved 162:24 163:14 170:9

irrigation 53:21,23 55:11,13

issue 6:3 7:3 13:3 75:24 88:25 116:24 170:6,14

issues 80:7

J

January 80:5

jeopardy 120:7

John 54:23 60:16,18,21 123:19

join 95:4

Jones 172:3

judge 9:6 10:11 13:11 14:1,23 17:5 18:18 19:3 22:4 23:5 24:10, 16 25:8 28:8,20 29:4 31:16 34:6 35:3 39:6 40:6 41:8 43:1 46:3 47:7 48:20 53:6,11 54:4 55:23 57:15 62:7 69:14 71:13 77:7 78:11 79:25 83:8 88:5 89:23 137:4 139:9 142:4,20 144:3 151:22 172:19

Judge's 22:20

judges 101:14

July 80:3 99:9

jump 75:23 152:12

jumped 76:10,11

jumping 32:7 41:16

June 65:17 66:1,19

juris 101:11

jury 162:11

K

Kalmia 25:15

keeping 71:14 80:7

kid 138:9 150:16

kids 60:18 65:3 140:16

kind 6:16 7:2 13:11 25:17,22 32:19 34:5 39:2 40:18 41:1 43:12 52:12 68:6 85:9 120:7,14 124:1,3 139:5 146:16 151:5 152:3 154:18 161:8 164:4 174:11 177:18 178:5

kinds 68:18

king 141:11,16,18,21 153:9,17

King's 11:12

kitchen 78:12

knew 156:24 173:5

Knight 173:10

knowing 83:25 99:21 161:20

knowledge 43:9 148:3 157:12

kosher 121:12

L

labeled 15:14 16:13 152:21 153:22 155:23

labels 13:19

lack 30:4 52:24 80:16

laid 5:15 7:15 102:12

land 36:12 99:1 175:18

landed 72:18 73:1

landmark 38:11 43:1 45:17 61:9

landmarks 58:4

landowner's 173:14

language 175:20

large 68:12 108:13,14,16

Laurel 11:8,13,22 25:4,6,12,13 26:4 28:25 43:6 44:2 60:4 62:11 66:16 104:12,13,21 107:5 112:10 113:20,23 114:7 137:13 138:11 139:25 150:2

law 5:11 84:12 93:12 161:6 167:9 170:11 172:4

lawsuit 11:19 83:7

lawsuits 134:3

lay 18:7 55:25

layout 23:6 47:8 138:13

lead 52:2,4

leading 30:4 32:9 52:5 54:15 57:25 84:1

leaning 49:2

leave 23:12

leaves 63:21

left 14:19 27:9,14,15 41:24 42:1 48:4 78:20 105:5 107:4,6 111:16 112:8 145:12 174:8

left-hand 105:7

legal 5:12 161:19 173:1,17

legalistic 85:9

legally 85:5 121:7

legitimize 120:5

length 30:11

letter 75:10,16,21 76:19 81:22 117:21

letters 58:6 90:1

letting 52:6

levels 61:21

Levy 172:3

liberty 101:2

license 123:1 166:22 174:15

licensed 122:22

life 11:3 137:21 153:7

light 22:19 96:17 167:21

lights 175:1

limb 13:2

lines 14:18 16:9,15 17:9,19 30:11,20 58:16 101:20 102:5 114:18,19 130:9

link 36:6 72:10 96:7

Lisa 87:11

list 161:2

live 11:6 146:22 147:3 152:24

lived 11:2,9,13 12:2 93:25 145:4 146:20 147:16,25 151:5

lives 146:6

local 158:22

located 135:10

location 171:23

locations 20:25

long 11:9 21:7 37:5 39:5 44:13 54:17,19 59:23 135:23 172:12 176:16

longer 112:15

longish 87:2

looked 64:18 74:12 112:5 122:21

loose 61:24

lot 32:8 83:19 113:13,15 118:18 137:16 140:10 142:13 165:3

love 142:20 174:3

loved 138:6 139:23

low 114:9

lower 109:25

lunch 86:20,22 87:2 90:10 171:7 177:5,8

M

MADAM 17:23 18:3 46:14,17 69:9,13,19 70:19 71:8 72:20,23 178:9

made 19:23 71:12 110:1 116:11 118:21,24 121:6,23 126:1 127:8 128:9 129:7,13,21 130:8 132:15 136:3 146:11 154:6 167:23 170:7

main 150:16 151:13

maintain 23:21 38:21 63:4 65:22 84:24 173:13 178:7

maintained 61:19 62:14 64:20

maintaining 65:13 66:20 83:24 163:15

maintenance 63:14 77:15 84:24 164:20 165:10 169:16

majority 164:3

make 10:23 20:7 24:10 27:10 30:20 35:7 36:25 46:21 55:24 56:10 63:6 64:11,12 74:17 83:22 85:5 88:1,22,25 100:15 109:4,18 111:11 129:8 136:10 138:1 139:1,13 142:15 144:19 162:15 165:13,15 168:1 169:21 175:16, 21 178:13

making 18:23 139:18 140:10

man 150:9 151:9

managed 16:14

management 171:25

manager 10:10,12

map 17:13 144:10

mapping 15:7 17:7,9

March 55:4,22 75:9 76:17 80:19

MARILYN 9:9 136:1

mark 12:8 18:15 32:14 33:12,21 69:7 70:4 95:19

marked 12:7 22:15,16,17 32:18 33:4,14,15,16,17,18,19 34:4 40:18 46:22,23 50:6 70:7 71:2,11 81:1 89:13 101:19 122:13 132:18,24 145:13 151:18

marked-off 152:3

marker 64:1

marking 18:14 34:8 46:25 69:3, 11 70:17

marks 40:20 98:24

marriage 9:25

married 9:23,25

material 62:2

math 92:23

matter 64:8 160:3 168:4 170:2

matters 4:21,25

Matthews 171:20

mature 68:20

May/june 77:11

Mccants 4:8,9,24 5:23 6:9,10 7:13 8:4 9:2,4,10 10:21 12:5,16, 23 13:1,6,8 14:3,12,17,21 15:13, 22,23,25 16:8 18:1,4,6,18,19 19:8 22:1,4,8,14,18,25 23:3,4 24:15,20,22 26:20 27:21 28:3,4, 12,16,18,19 30:6,8,9 32:10,11, 13,24 33:7,12 34:3,12,14 35:3 36:10,15,16 38:13,15 39:6,21 41:5 42:16 45:25 46:3,9,12,16,21 47:3,4,23 48:18,20 49:1,4 50:5 51:21,22 52:1,2,8,10,20,21,25 53:1,24 54:19 58:1,9,11,17 59:18 60:11,12 66:11 67:13,19,23 68:8, 22 69:4,7,24 70:2,12,14,20,23 71:10,19 73:20 74:24 77:20 78:2, 4,19 79:24 80:5,19 81:10,21 82:4,8,12,15 84:2,4 85:16,20,24 86:1 87:8,10,16,24 88:10,19,22, 24 89:23 90:5,12,18 95:3,24 104:6 107:22,24 108:1,5 116:7 119:20 120:22 126:7,12,16 130:23,25 131:3,15,17,22 132:8, 9,21,22 133:18,21 136:15,16,20 139:20 143:5 144:6,17,19,21,22 148:11 149:5,17 159:6,17,18,23 160:1,5,12 164:9 167:23 168:12, 14 170:3,5 172:19 173:4 174:12 176:19 178:20

Mccants' 168:21 175:2 177:10

means 86:17 94:13 112:7,23

meant 25:24 111:5

measure 117:9

measured 30:1

measurer 29:23

mediation 103:8,9 109:8,15

meet 160:15 164:8 168:19

meets 5:8

Melanie 4:10 9:5,12,19 13:10 14:22 16:8 18:6 23:5 24:23 28:6 30:24 47:5 48:19 55:3 58:2 76:18 91:1 132:14 133:20 137:7 143:21 149:21

memory 128:7 137:19

mentioned 4:25 156:17 158:5

mess 73:3,19

met 4:3 91:3 162:22

met all 170:1

metal 152:11

mic 72:24

middle 9:15 72:8 108:14 110:12 140:3

mind 12:23 16:1 48:22 69:25 70:16 71:14 85:21 138:6 142:23

161:9,23 163:4

mine 85:5

minimum 57:5 170:22,23

minority 161:15

minute 19:21 21:15 34:2 45:10 131:24,25

minutes 177:1,16

miscellaneous 134:1

missing 125:5

misspoke 89:25

Mize 151:5

mom 141:12 143:2,21 153:12,24 155:5

mom's 158:6

moment 85:17 94:20,21

moments 124:22

money 136:4

month 23:18 50:1,25 51:5 62:17 113:12 123:8

months 57:6 59:24 147:6 153:15

morning 4:9,13 18:22 177:13

mother 138:1,2 139:1 142:15 146:19,22 147:3 150:2,9 152:13

mother's 145:11 150:19

motion 160:7,9,11 164:1 167:6, 20 168:7,9,11,16,21 172:14,15 176:4,5,7

motions 160:4 162:12 168:12 175:25 176:10

motive 120:4

mounds 141:14

move 4:7 13:5 16:5 36:22 51:6 61:1 64:6 74:24 75:1 92:6 96:10 101:3 131:25 132:18 166:3 168:12,17 174:5 178:19

moved 36:12 51:1,3,24 55:7 80:10 92:3,8,10,22 132:19 137:12 146:5,23 147:2,4,5,6,9, 18,21 171:1

moving 89:1 101:25 102:2 137:16,20 150:1 160:5

N

nailed 48:2

named 143:21,22 144:24

names 10:5 58:6

narrative 51:19

natural 10:3

nature 119:23 171:22

needed 65:20 77:17 157:24

neighbor 133:23

neighbor's 23:19 49:25

neighborhood 5:7 115:4 151:2

neighborliness 174:23

neighborly 116:23,25 117:3 133:2,3 146:21 165:2,3

neighbors 11:19,20 91:5,8 134:6 163:4 165:11 167:1,5 169:19 173:24

next-door 11:20,25 152:24

nice 63:7 165:13

nice-looking 63:23

nicer 165:13

night 13:24

nobody's 38:21

noise 140:10

non-moving 167:22 175:2

non-suit 168:18

nonsuit 176:4

normal 152:10 154:3

north 78:18

note 38:10 126:14

notes 85:21 161:3

Nothing's 62:14 175:13

notice 77:12 83:4 131:10,12

noticed 80:21

notorious 161:5,8,9 162:21 164:12 167:19 171:1

November 34:22 103:7,11

number 4:2 8:12 12:9 13:13 24:13,16 25:5,9 26:8,13,23 27:8, 18 28:5,9,10,13,15,19,25 30:10 35:7 36:23,24 37:14 39:22 43:17, 18,21,24 57:15 58:2,18 70:5,12, 19,21,25 71:4,21,24 81:8 89:9 103:15 108:2 160:20 175:7

numbering 11:23

numbers 10:22 17:3,5 29:13,16, 19 30:2,10,16 58:5 71:22

numerals 39:23

Nursery 65:23

O

oak 68:18

oath 87:21 90:22

object 119:21

objection 6:6 12:13 30:4 32:9 34:12,23 47:1 52:17 54:15 57:24 60:9 67:18 69:10,15,17,20 70:5, 8,10 74:20 77:25 80:16 84:1 89:4,16,18 126:14 132:21 146:11 163:4

objectionable 51:20

objections 12:11 33:22 34:9 120:24 132:7

observe 61:10 78:5 163:10

observed 31:18 35:4 43:2

obtain 95:13

obtained 80:2

occasionally 153:24

occasions 91:22

occupancy 167:10 172:24 173:20 175:11

occupier 173:16

occurred 117:24 118:21 121:25

offense 7:1

offer 7:13 12:9 29:15 177:17

offered 89:1

offering 131:4

offers 56:24

office 15:8
ol' 48:21
on-line 177:12
one's 46:19
one-of-a-kind 53:18
one-six 102:20
one-way 26:2
open 42:4 84:21 114:12 161:4,7, 11 162:20 164:12 167:18 170:25 175:20
opening 42:22,23 43:2 170:8
openings 4:23,25 7:12
openly 173:5
opponent 130:5
opportunity 99:4
opposed 148:23
opposing 22:12 168:3
orange 17:24
order 56:6,10 65:3 74:19 85:11, 13 169:20 173:12 174:22
orders 150:19
orient 13:11 22:20 27:19 47:7 138:18
orientation 27:8
orients 29:10
original 102:4 110:1,8 130:17
originally 9:21
other's 165:12
outdoors 60:18
outermost 20:1
outlined 16:20
overcome 173:9
overgrown 65:1
overstepped 174:22
overwhelming 165:1
owned 8:20 53:25 158:23 161:21
owner 160:14 173:16,18,21,22
ownership 120:6,11 161:22 162:4 163:17

P

P-O-E 9:16,18
pad 39:10 50:3 54:4,9,14 59:6 60:5 61:16,18 62:1 63:22,23 64:7 80:14,17 104:3,5 105:22 106:2, 14 123:20,22,25 124:1,2,3,4 138:19,20 141:6,14 144:7 170:24 174:3,4 175:5
pages 130:6
paid 126:20 155:6
paint 97:6,8
pair 102:4
pan 44:17 104:24,25
pancake 73:6
pancaked 68:17
pancaking 73:18
Papa 143:12
paper 83:15
paperwork 136:10
paragraph 114:18
parcels 115:3
pardon 27:22
park 23:14,22 66:11 113:2,3,6 158:22,24
parked 80:8 82:19 113:8,10 123:8
parking 50:3 54:9,13,24 61:16, 18,21 62:1 63:1 66:12 80:14,17 123:25 124:2 138:20 141:14 170:24
part 13:18 16:18 21:8 30:13,25 36:6 44:18 53:14 63:8 66:4 71:12 73:12 74:16 78:25 86:21 97:11 102:16 103:15,23 104:9 105:15 106:3,7,20 119:25 131:13 142:25 143:11 144:5 158:14 160:2,13 161:6 162:13 163:18 177:14
participate 51:21
participating 24:11
parties 5:5 18:15 86:9,17 88:5,9 167:8 168:3,24 177:22
party 130:4 164:10 167:22 175:2
passed 145:7 151:7
passing 156:20
past 10:14 134:2
path 43:4
patience 90:16 136:25
pause 17:15 19:12
pay 66:1 67:1 74:7 75:6,17 77:20 156:2
pee 49:18
people 54:23 77:7 84:8 140:10
percent 102:9 129:4
performed 99:5
performing 99:11
perimeter 59:19
period 56:9 77:23 116:8 164:13 166:14,15,18 167:19 171:2,3,15, 17 172:10 173:25
periodically 139:2
periods 147:16
permanence 21:3
permanent 117:6,12 165:15 167:2 174:2,7
permission 49:25 91:8,12,19 148:1 157:21,24 158:2,4 165:8, 19 166:22 174:16 177:1
permit 124:16
personal 122:16
pet 56:25 57:2
pet's 57:12
pets 56:10
photo 71:18 72:16 111:17
photograph 41:9 42:20 48:5 71:20,25 72:5 73:2,4,7,10,13 81:1 106:21 113:22
photographs 22:12,21 23:6 24:8,23 31:22,23,24 32:3,14,18 33:8,23 34:5,9,11,18,21 35:4 36:19 40:21 42:3 43:11 46:5,8,25

47:5,8 67:17 69:15,17 70:5 71:3, 12 89:10 94:22 95:5,25 103:4 118:1 175:7

photos 70:3 118:4

physical 57:1

pick 32:17 143:23

picture 15:19 26:5,7,18 28:21 29:3 35:16 36:1 37:4,17 38:11 43:24 44:23 48:12 73:7 81:10 97:19,24 98:3 103:15 104:2,4 106:10 107:6 110:3 112:12,14,22 114:10

pictures 67:14 68:3,4,22 74:3 127:20

piece 23:22 83:15 102:14

pile 73:16

pine 50:14 63:22 68:18 93:4 151:14,16,21 152:5,8 153:4

place 4:5 12:17 23:18 49:24 137:17 143:14,16 145:18 164:22

placement 170:13,24

places 158:18

placing 21:5

placings 110:8

Plaintiff 4:4,10 68:15 90:17 146:5 149:3 159:10 160:2 175:3

Plaintiff's 12:7,15 22:15,16,17 24:12 33:14,15,16,17,18,19,22 35:1 44:24 46:22,23 48:3 59:14 68:16 70:7 89:12 112:5 160:9,10 167:6,25 168:11 175:7

Plaintiffs 173:23

Plaintiffs' 108:3 110:25 118:7

plant 55:20 143:10

planted 52:13,21 53:16 122:3,6 144:2

planting 53:8

plantings 145:10

plants 106:23,25 122:3,10 142:21 145:16 167:3 169:17

plastic 151:15 152:10

plat 115:4

plats 15:11

play 138:8,24 141:3,11,15 148:1, 5 151:9,10 153:4,9,17 158:24

played 142:3,5 158:16,18,21

playing 139:18 141:8,9 146:12 150:16 151:12 153:9

plays 22:10

pleading 9:16 82:9,11 90:2 170:8

pleadings 5:4,16

pleasant 157:11

plotted 30:21

plywood 154:7

Poe 9:12,13 10:6 145:2 149:16, 20 156:12

point 13:10,23 14:12 15:15 16:24 24:15 32:3 41:19,23 42:17 49:17,20 59:8 63:2 64:4 65:6 71:19 77:9 79:25 80:4 82:15 97:21 102:20 128:8 130:6 134:7 156:25 163:9,21 165:14 167:8 170:7

pointed 14:18 28:24 48:12 108:15 112:11

pointing 26:21 27:13 35:20 37:22 39:22 41:6 42:16 58:17,21 61:8 106:20 110:12 144:12 155:20

points 102:12 167:22

police 82:16

policy 73:25 119:8 121:9

pool 15:17,18 19:18 24:4 43:5 93:6,10,13 94:4,6,7 96:19,23 97:1 98:15 157:5 162:10

pop-up 23:16

portion 10:17 57:5 78:15,17 103:1 104:5 133:5 134:17 135:3, 9 140:20 170:23 178:6

position 87:9 166:9

possess 161:18

possession 5:12,22 8:6,15,25 16:20 30:15 108:24 160:17 161:8 163:22 164:11,13 167:10,17 169:23 170:12 171:5,8,13,14 172:1 173:14,15,17,19,20 175:11

possessor 172:25 173:13

possibly 117:10

posted 77:4 174:18

potential 125:3

pre-marked 32:23

precisely 128:13

prefer 130:12,17 177:2

preference 130:23

prehearing 175:13

preliminary 4:21,25

prepared 13:15

presence 171:16

present 10:8,24 22:11 83:25 137:10 160:7

presentation 20:22

presented 170:7

Presently 137:11

presume 81:3

presumption 172:24 173:8,9,15

pretrial 5:16 131:14

pretty 10:13 38:22 48:20 63:20 67:8 74:15 76:5,13 108:13 110:19 113:21 116:25 117:2 118:12 135:16 161:24 177:11

prevail 166:1 173:10

prevails 173:18

prevent 169:11

previously 164:9

primarily 56:3,4 78:22

principles 171:21

prior 6:4 52:23 65:24 117:2 133:1 134:8

prize 145:16

prized 144:23

problem 33:5 48:24 87:10

problematic 129:6

problems 61:23

proceed 22:3 86:25 105:11 132:10

proceeding 95:14

proceedings 164:4 166:12

process 56:23 143:14

produce 126:22

produced 127:6,9

product 62:9

program 16:15 29:14

project 10:10,12

promotion 147:22

propagate 143:18

propagated 143:24

propagation 143:13

proper 89:21 120:20 143:18

properly 175:25

properties 5:6,14 37:12 115:13

property 8:18 14:13 15:11,15 16:9 17:13 19:25 23:22 31:4,7 32:1 35:13 38:9,19,20,22,24 40:15 43:9 44:6,15,22 45:7,14 48:1,10,11,14 49:9,12 50:20 53:2,25 55:14,15,16 58:15 59:19 63:8 64:15,18 65:13 68:13 76:25 77:16 82:23 84:15 85:5 91:9,12, 13,17 92:1 95:15,16,20 96:5 99:20 100:9,19,25 101:21 102:1, 3,6,9,11,14,24 103:22 105:15,17 108:8,10 110:24 111:14,15 112:3,6 113:3,4,7,24 114:21,24 115:2,8,9,10 116:1 117:18 119:18 120:6 121:11,24 122:11 123:18,22,23 125:4,6,13,15 126:1 127:8 128:16,18,19,25 129:15,22 132:17 133:5 134:4,9 135:3,4,6 138:11,17 140:21 144:2 145:11 146:12 148:3 150:1,24 155:9 157:18,23 158:6, 23 160:14 161:1,18,20,22 162:5, 6,8,9,20 163:14 164:20 165:9,12, 17 166:20 167:15,18 168:25 169:2,8,9,11,14,15,19,25 170:9, 16,24 171:17,23,25 172:5,6 173:16 174:20

property's 53:22

proposal 10:15,16

proposals 10:24

protests 150:18

prove 167:16

proved 164:5

provided 126:2,4,9,10,18

public 15:9

pull 12:18 81:1 171:7

pulled 80:21

pun 20:21

purchase 61:2 92:6

purchased 11:24 49:9,12 53:2 61:4 66:5 84:15

purchasing 54:3

purport 69:21

purpose 21:5 94:2,13 96:3 107:5 108:23 109:20 131:4 167:20

purposes 8:19 169:6 170:22

put 8:14 12:10,23 16:15 18:12,20 26:9 41:11 46:1,5 54:3 55:3 56:8 87:1 89:21 95:12 105:1 115:9 122:10 141:14 143:16 166:10,17 167:2,3 169:17 171:24

puts 56:5 171:11

putting 64:7

Q

QPUBLICNET 15:1

quaint 153:6

question 20:9 52:18 67:20 74:21 78:3 79:25 80:18 86:2 106:2 120:4 126:22,23 127:1,2,5, 11 128:3 130:20 134:20,21,24,25 135:3,22

questioned 175:6

questioning 48:23

questions 21:20 22:7,20 45:24 46:13 51:21 85:25 88:1 91:7 100:2 120:21 127:14 135:19 145:21 148:21 156:7 176:19

quick 23:2

quiet 85:6

quote 165:16

R

raised 142:25 170:14

range 147:20

rate 82:9

rattlesnake 50:13 64:23 93:3

re-ask 52:19

read 108:1 132:13 134:16 171:6, 9,19

reading 171:9 175:8

ready 87:11 90:15

real 161:1

realistically 121:22

realize 163:20

reason 101:1 149:8 159:12 162:25 165:25

reasons 162:5,22 177:4

rebuttal 173:14 178:5

recall 86:10 125:7

recalling 94:22

receive 57:10

received 75:10

recently 10:14 148:4

recognizable 118:4

recognize 151:17,19 167:22

recognized 169:12

record 4:5 13:6,7 14:17 19:22,23 21:5 39:21 43:1 55:25 58:3 69:25 70:1,4 81:23 82:2,3,7 85:23 89:7, 22 90:14 91:4 96:10 98:8 125:1 126:16 130:20 131:24 132:3,4, 12,13 135:1 144:18,20 149:18 166:7 168:16 176:6 178:15,23,24

recorded 98:19 99:1 102:6 119:12,15

recross 135:21 136:1

recycled 108:22

recycling 108:20 111:6

red 14:19 16:15,21 17:12,19 18:3,4 19:6,9 20:1,4,13 24:4 36:11 42:17 50:8 58:22 66:9,10, 15 80:8,11 98:24 101:19 102:5, 16 114:18,19 115:17,19 122:13 152:3

redirect 133:17,20 148:10 159:5

refer 5:13 67:12

reference 18:23 35:7,25 71:23, 24 79:25 80:4 120:11 131:23

referenced 44:24

references 70:17 71:3

referencing 16:6 59:14 68:16 81:14 82:11

referred 89:25

referring 105:1 114:1,3 153:11 158:12

reflected 128:4

refrain 159:13

refresh 128:7

regard 6:18 29:11 30:11 43:2 47:5,7 55:10 60:5 67:14 82:11 83:18 89:22 131:11 161:24 163:8,22

regular 150:13 170:20

regularly 142:3

relates 19:4

relation 19:13 59:6 165:3

relations 117:3

relationship 23:7 133:2 134:11 146:9,18 165:7 166:24

relaxed 101:7

released 149:9

relevance 119:21

relevant 120:12 130:6

reliability 30:10

reliable 30:2,12

reluctant 168:1

remained 54:4 80:14,17

remaining 27:25

remember 49:18 62:17 99:23 100:1,2,6,10,20 103:6 112:15 127:24 128:2,5,14 129:17,20,25 135:14 137:16,18,21,23 142:9 150:1 155:1

remembers 67:6

remind 6:25 7:7 172:11

removed 107:17 164:21

renew 168:9

repeat 52:18 91:10 134:23

rephrase 30:7,8 60:11 84:3

reporter 17:19,23 18:3 46:14,17 69:9,13,19 70:19 71:8 72:20,23 86:9 87:13 89:11 178:7,9

reporters 86:10

represent 156:14

request 87:17 167:5

requested 6:1

require 171:15

required 161:16

requirement 131:18

requires 131:10

requisite 171:2 172:10

rescheduling 177:7

reside 11:7

residence 11:9 19:18

resolution 116:25

resolve 75:24 116:24

respect 5:15 31:13 53:8 64:21 87:16 104:17 118:24 119:10 170:1

respectfully 126:12 172:13

respond 120:2,3 172:20,21

responded 86:16

response 74:21 134:19 135:23 164:2 167:23 170:4 172:22

responsibility 163:7

responsible 10:16

rest 50:21 53:22 55:13 110:23 148:25

returning 101:18

reversed 174:24

review 85:20 86:16 99:4

reviewed 33:22 34:8

Rhett 4:18,19

Richard 11:12

rid 141:21

ridden 25:12

right-hand 106:20 111:13

rights 84:12

risk 13:2

River 10:10

RMC 15:8

road 25:20 104:13,14 112:23

roadway 25:19

rock 62:5

rocks 105:24 106:19 123:22 174:4,5,10

roll 36:18

roll-off 44:17 104:23

rolling 25:17 43:15

roof 78:17

roofline 98:11

room 21:13 73:17 78:21,25 113:13,15

rooms 78:22

root 73:8,11

rotting 63:13

rough 110:16

round 48:23

ruckus 140:11

rude 118:3

Rudnick 81:22,23 90:1 117:16

rule 6:1 131:10 168:10 173:15

run 52:6 61:16 62:3 103:17,18 106:14

running 114:19

runs 27:1 57:19,20 59:11

Rutherfurd 4:2,15 15:15 64:8

75:10 76:15 91:23 107:1,14,16 115:8 125:3,16,21 133:6,23 134:7 140:15 153:1 164:19 165:6 169:24 176:24

Rutherfurd's 115:2

Rutherfurds 4:16 11:16 13:21 76:23 78:7 80:2 84:22 91:6,14,15 93:9 96:6 101:22 111:8,18 116:11 117:4,16 133:2 146:2,9, 19 152:23 156:15,18 162:7 165:4,8,18 166:19,20 174:14

Rutherfurds' 24:4 42:11 72:9 73:2,14 79:13 99:19 100:9,19,25 102:3,6 103:22,23 104:15 105:15 106:8

S

S-259 29:1

safe 162:16

safer 65:3

safety 50:12

satisfied 173:20

Savannah 10:9

scare 76:11

scattered 144:8

schedule 10:19 178:13

scheduled 86:15

schedules 177:17

school 11:3 138:7 140:3

scope 10:18

seat 29:13 90:22 136:10

second-story 79:8

section 25:15 50:3 107:7 109:25

security 176:14

Seed 175:9

seedlings 53:17 122:7 143:12

seek 120:5

seeking 83:21,22 101:21

self-explanatory 7:6

semipermanent 154:6

send 74:2

sense 27:10

sensitive 86:10

separate 166:7

sequence 6:23

sequentially 71:1

sequestered 88:14 148:22

sequestering 7:3

sequestration 6:2,15

series 59:12

serves 172:6

service 65:14

set 12:22 160:25 161:6 163:19 168:20

seven/eight 150:5

severe 76:5

shared 173:21

sharing 163:6

Sharpie 17:18,21,24,25

She'll 45:24

shift 43:12

shock 57:10,11

short 86:18

Shortly 12:1

shovel 174:5

show 8:2,11 17:20 22:11 23:7 24:8,10 26:13 27:18 35:3 40:8 57:15 58:4 71:13 97:25 104:2,20 108:23 109:1,23 110:25 111:7 151:22 163:2 164:11 167:13 175:15

showed 123:21

showing 32:14,19 41:9 105:7 110:3 115:18

shown 6:8 22:12 42:19 44:23 46:25 71:24 145:12

shows 26:14 29:4 37:9 40:9 103:15 104:4,5 160:21 172:7

shrubbery 164:21

side 25:1 36:8 38:15,16 48:14 78:14 79:2,16,17,18 105:7 106:6, 9 111:13,17 151:25 162:9

sides 176:1

sign 29:4,7 48:2,13 55:2,6 77:3 81:2 107:19 134:8

significant 67:3

signs 80:22 174:19

simple 126:17

sir 24:9 68:10 82:24 88:10,23 105:3 132:2,9,22 133:18 135:18 137:1,3,9,18,22 138:6,12,15,23 139:3,22 140:7,9,12,19,22 141:1, 4,20,23 142:2,10,13 145:1,3,15, 17,19,22 148:24 149:5,23 150:3, 10,12,14,20,22,25 151:3,8,11,20 152:6,17,22,25 153:3,6,11,14,20, 23 154:1,12,15,17,19,23,25 155:3,5,19,22,25 159:6,7,15,21, 22,24 166:8

sister 153:8 159:7

sit 9:5 16:23 48:22

Site 10:10

sitting 13:4 44:19 105:10

situation 121:25 167:11 168:21, 23

slanted 152:3

slants 39:18

sled 152:11

sledding 152:9

sleep 13:24

slide 152:12

sliver 105:6

slope 40:7 110:20

small 101:15 116:16 175:9

snakes 65:4 93:1

snow 152:9

Society 143:12,15

sold 123:11

solid 42:14

son 149:21

sort 110:12

sought 5:22

sound 65:17

sounded 116:23

Sounds 152:13,18

south 67:4 78:18 97:7 147:21 161:14,15

Southern 96:12 97:3

Southerners 97:7

Southwest 25:6 29:1

speak 10:25 55:17 65:9,11 79:19 100:14 148:20 176:18

speaking 128:8

speaks 126:16

specific 161:23 162:4 163:16

specifically 53:8,17 68:6 145:17

spell 9:13,14

spend 163:1

spent 83:19 128:21,23,25 129:3 160:22

spoke 91:22

spoken 95:9 96:8 153:7

spot 26:14 53:16 63:1 96:11

spring 65:21 77:8

spring/summer 77:23

springtime 77:13

square 78:15,17,25

stab 57:21

stack 46:7

stamp 12:10

stand 9:5 14:5 28:6 62:11 87:21 90:18 94:6,8 118:11 144:10 165:22

standard 164:8 165:24

standing 26:4,17 27:3,17 28:20, 22 60:4 63:13 112:22

standpoint 163:12

star 18:22

start 4:22 7:10 86:3,5 87:4,6 90:20 177:2,15,20

started 35:13 63:9,10 73:6 86:3 139:17 176:13

starting 38:22 86:21,22

starts 8:10 39:19 49:2 57:17 114:17 166:15

state 9:11 80:1 121:19 136:21 149:18 161:23

states 121:9 161:15 175:10

statute 169:6

statutory 166:14 167:19 171:3, 15,17

stay 36:15 148:15

stays 55:7

steal 60:24

stealing 84:9

step 148:16,17

stepping 6:17

steps 174:21

sticks-type 154:3

stipulation 168:23

stop 64:1 87:7 133:6

store 23:18 53:16

stored 23:18 49:24 51:3,5 54:22 60:18 141:15

stories 79:2

storm 67:5,11 68:11 117:24 118:5 129:10 142:8,9 155:2,7 158:13

story 154:16

straight 70:18 113:24

straw 63:22 151:14,16,21 152:5, 8 153:4

street 23:19 25:2,3 28:22 37:5, 18 39:18 44:1 45:6,15 47:20,25 49:24 50:2 60:20,23,25 62:11 68:13 106:17 113:11,20,23,24 114:7 121:15,24 123:9 169:4

stringently 101:14

strong 150:8

strongly 170:18

structure 79:1 117:7,13 119:7 165:15 167:2 170:13

structures 121:10 154:6,14

stuck 137:19

stuff 154:7

subcontractor 10:9

subject 54:2 134:6 167:14,17 168:8 175:18

submit 130:3,5 131:8 161:25 163:23 164:7 166:3,16 169:5

submitted 131:13 167:8 176:8

subordinate 172:25

substantial 8:16 164:14 170:23

substantially 122:21 177:1

substantiating 127:7

suggest 87:3 166:17 176:24 177:25

suggested 164:15

suggestion 119:21

suggestions 88:2

suggests 165:7

summer 66:19 75:3 77:8

summer/fall 63:3 64:2

summer/spring 78:5

supervised 98:14

supposed 88:2 109:13

survey 80:2 85:13 99:5,9,12,19 100:2,8,9,19,25 123:1 124:18 125:22 128:5

surveyed 122:14,20 125:15

surveyor 4:18 30:19 85:13 100:13 122:20,22,24

Susan 4:15 134:7

Sustained 32:12 60:10 74:22

swimming 93:6,10,13

system 15:7 17:8,9 53:21,23 55:13

T

table 14:8 67:21

tacitly 165:8

tack 81:3

tacked 80:22 81:2,5

tacky 81:4

taking 7:10 53:3 94:20 99:23 129:17

talk 13:12 17:16 19:2 23:10,11 27:5 29:9,12 31:12 32:11 41:15 47:6 49:7 52:11 54:11 55:1,2,5 62:22 65:16 66:18 68:5 76:3 77:6 95:5 99:14,16 109:16 133:6,24, 25 143:5 161:12 170:20 171:7 176:19

talked 5:2 23:8 24:3 49:8 62:19 64:9,11 84:20 86:20 113:20 116:13 123:20 127:23 133:1 153:8 157:3 158:16 177:9

talking 6:24 23:16,24 28:4 29:11 31:9 40:24 41:9 52:11,22 58:8 63:2 65:6 66:21 67:16,25 68:4 72:21 82:7 86:22 93:19,21 106:18 114:1 139:4 151:4 152:7 155:9 158:8 172:11

talks 167:9 170:11 171:11

tall 97:1

tape 29:23

tarp 107:8

technically 146:23

tee- 49:17

teepees 139:13

tells 138:10

tenant 171:16

term 15:2

terminology 8:4

terms 7:24 27:5 163:15

terrain 39:8 40:2

terrible 63:24

Test 135:14

testified 53:2 71:14 82:25 83:11 108:6 110:16 113:11 125:25 128:12 131:7 133:23 162:3 164:17

testify 4:11,17 6:22 110:7 139:5 162:13

testifying 88:3 90:18

testimony 4:17,22 6:25 7:11 8:17 19:24 20:16 51:20 80:25 87:23 90:11 91:21 92:25 94:24 98:25 117:23 126:19,21 137:5 148:21,23 158:5 159:9,12 160:2 161:25 162:1 163:7,9 164:14 165:1,4 166:16 167:3,25 168:6,9 169:1 174:2,7 175:4 176:8 177:16 178:6

testimony/evidence 166:1

testing 145:4

thick 31:20 49:19 50:15 61:20 79:12

thing 39:4 66:18 72:17 74:4 89:23,24 103:24 150:17 174:12 175:8

things 10:22,23 21:2 40:7 49:16 55:20 56:25 62:8 63:9 84:19 105:2 127:21 134:1,3 137:21 139:6 146:15 150:15 160:23 162:20 173:2 175:6

thinking 25:11 86:23

Thirteen 69:19

Thomas 10:6 92:18 149:16,20 156:12

thought 51:24 69:13 75:13 82:6 91:11,18 117:5 130:12 148:5 157:25 176:22 177:12

three-feet 61:20

three-month 56:9

throw 141:21

throwing 141:9,16

ties 106:13,14

tight 25:22,23

time 10:8 21:23 23:13 31:16 50:11 52:15 53:25 54:5 62:23,24 64:16 72:23 73:17 76:18 77:23 81:22 83:19 86:21 87:18 94:23 101:6,8 113:2,12 116:8 119:13 127:5 133:16 134:8 137:10 146:20 147:16 160:22 162:7 163:1,22 166:15,19 167:21,25 171:2,3 172:10 176:4,25

timeframe 8:10 55:12,22 64:2 65:6,25 77:11,24 147:11

times 64:9 133:4,9,14

title 5:12,23 85:6 98:19 99:1 102:6 119:12,15 128:18 161:19 167:10,11 168:22 171:12 173:1, 7,10,19 175:10,12

titled 105:17 160:14

today 4:4,11 11:18 21:23 54:8, 21,22 55:6 61:5,7,11 83:20 84:20 85:3 91:7,12 94:22 130:6 134:14 137:5 138:16 162:3 178:15

Todd 30:18

told 22:9 70:20 103:5 122:6 128:12 140:20

tolerance 57:13,14 166:21

Tom 7:4

top 50:3 70:13 71:17 78:19,24,25 105:20 115:22 141:1,6,19,22 144:5,15 145:10,14 152:11

top-most 78:21

total 102:15

totaled 66:8

touched 38:5

touching 112:1

tough 63:20 78:3

tracking 170:6

traffic 25:25

trailer 60:22 105:20

train 56:20

training 56:9

transcript 131:13 132:14

trashy 38:23

tree 29:4 38:13 45:18 48:2,12 50:14 60:23 68:17 73:6 81:3,5 93:4 108:13,14,16 118:19

trees 63:12 68:12,18,19,20,21 72:13,14 73:3,12,15,16 80:22,24 94:8 155:7

trench 56:7

trenching 56:18

trespass 82:21 83:3 117:17,21 174:18,20

trespassing 29:8 48:2,13 55:2,6 77:3 80:22 107:19 134:8
trial 131:11 132:19
truck 62:19,25 66:7,8,15 80:8,11
truckloads 153:12
trucks 54:23
true 107:2
tub 151:15 152:10
turn 12:21 41:2 65:14
Twenty-nine 149:25
twine 139:16
two- 47:21
two-and-a- 47:21
two-and-a-half 61:20
two-day 131:17
two-story 79:1
two-way 25:20,24
type 51:19 170:13 175:5,19

U

Uh-uh 46:12
ultimately 65:14 164:19
Um-huh 25:18 48:7,9 69:6 92:17 96:18 100:21 107:10 108:11 112:17 114:8 124:20 141:7 145:1
unclear 118:13
uncomfortable 164:18
uncontradicted 163:3
underbrush 31:20 49:19 50:17 63:9 79:15 107:4,13
underground 56:17
understand 5:20 7:14 19:23 20:9 21:1 24:11 30:24 32:2 39:7 62:4 70:6 74:9 80:3 83:12 100:7, 8 101:14 102:5 105:6 115:1 120:19 123:6 138:16 161:16 166:9
understanding 17:19 35:12 93:18 178:25
understands 64:12
Understood 21:4 27:2
undertaken 5:10 160:15
undertook 162:19 165:15,16
uninterrupted 171:14
unique 161:14
unit 48:8 57:18 105:5,8,9
unkempt 162:14
unlike 164:3
unsightly 107:11
upkeep 39:3
uprooted 38:13 45:18 68:17 73:6
upset 142:18
usual 6:22 171:24
utilities 125:3,5
Utility 125:6

V

vague 78:1
varies 57:12
variety 170:21
varying 57:10
vehicle 66:5
vehicles 113:3,4,5,7,10
venture 150:23
verdict 172:16
verified 29:19
versus 4:2 171:19 172:3 175:9
vet 75:11,17 116:12
view 79:11 148:23 151:19,24 161:15 169:18
views 101:13
vines 50:15,17,19 64:24
virtue 5:4 161:19 162:18 170:12
visible 60:1,4,6 78:9 79:21 104:22
visit 54:24
visual 57:1,5
voice 72:20
voir-dire 34:10

W

wait 19:21 22:9 28:14 35:19 47:14
walk 13:2,25 21:11 74:5 96:23 113:23
walked 76:2
walking 156:21
wall 49:2
walls 124:12
Wanda's 113:11 121:23 123:9
wanted 22:2 54:12 55:19 64:17, 18 95:13 107:16 111:8 113:19 162:15,17,25 167:1
war 50:18 64:24
warning 82:21
water 120:25
ways 173:3
website 14:24 15:10
week 138:3 155:19,25
weekdays 138:7
weekend 138:4 150:14
weight 89:18 164:5
weird 11:23
well-aware 8:5,7
west 27:4 78:18
whatnot 65:13 134:18 138:11 139:14,19 141:13,14,17 143:1 161:17 162:18 163:20
white 14:18 15:23 41:6,9,10,11, 14,24 48:4 59:12,16 60:6 95:12 108:8,18 109:3,23 111:1,12,13, 16,25 112:1
Williston 147:21
win 143:14
window 79:3,4
winter 65:25
wire 56:5,8,12,15,16

wisteria 50:15 64:25

withdrawing 132:7

witnesses 4:6 6:16,19,24 7:4,7 88:13 159:10 177:22

won 143:15,19

wondering 86:8

wooded 31:20 40:6 49:19 68:11 140:23 162:14

woods 31:21 64:19 141:3 151:14

word 64:10 97:7 161:8 165:3 172:9

words 7:20 42:5 113:23 146:8

work 29:15 30:3 44:18 63:6 64:5, 13 66:2 67:1 75:6 76:24 77:21 78:6 125:14 128:17 133:7 138:1, 5 142:15 150:9 169:25 178:3,17

worked 13:18 23:21 53:21

workers 153:16

working 10:14,21 29:15 43:11 64:9 78:5 133:5,24 141:12 142:24 163:10 165:6 169:19

works 18:4

world 161:11

worried 93:1,5

worries 61:22,23

worse 69:4,5

worth 110:2

wrap 178:6

wrecked 66:7

write 117:16

written 96:1

wrong 98:18

Y

y'all 6:16 12:2 55:10 75:23 86:4 133:25 137:12 139:6,20 142:1 151:12 152:16 159:24 178:1,17

yard 44:19 50:19 56:5 60:2 77:15 105:2 137:24 138:2,5,8 142:4,5, 16,24 143:4 150:9 162:17

year 10:14 50:22 51:11 77:15 92:3 103:10 135:14 145:7 166:18

years 10:17 11:10 31:13 39:4 61:1,2,19 82:22 91:24 93:25 98:13 123:5 133:11 137:14 145:6 146:4 147:24 150:5 154:10 164:13 170:22 172:12 173:25 174:9

years' 110:2

yesterday 131:16 146:24

young 49:13,22 93:1 140:10 149:19 150:8 151:9 162:8

Yukon 113:8

Z

zip 155:15,17 158:5,9,10,14,15

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)
MELANIE HOZEY,)
)
Plaintiff,)
)
vs.) CASE NO. 2021-CP-02-00766
)
ALAN L. RUTHERFURD and)
SUSAN M. RUTHERFURD,)
)
Defendants.)

- - - - -

MASTER IN EQUITY HEARING
BEFORE THE HONORABLE ANDERSON J. GRIFFITH
before Lisa M. Adams, Certified Court Reporter
at The Aiken County Judicial Center
109 Park Avenue, Aiken, South Carolina
on Monday, the 11th day of December 2023
commencing at 10:03 a.m.

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INDEX TO EXAMINATIONS

Page

SUSAN RUTHERFURD

DIRECT EXAMINATION BY MS. CARROLL 8

CROSS-EXAMINATION BY MR. MCCANTS 55

REDIRECT BY MS. CARROLL 103

ALAN RUTHERFURD

DIRECT EXAMINATION BY MS. CARROLL 108

CROSS-EXAMINATION BY MR. MCCANTS 113

REDIRECT BY MS. CARROLL 148

RECROSS BY MR. MCCANTS 149

RETT COLEMAN

DIRECT EXAMINATION BY MS. CARROLL 151

CROSS-EXAMINATION BY MR. MCCANTS 186

REDIRECT BY MS. CARROLL 197

MELANIE HOZEY

DIRECT EXAMINATION BY MR. MCCANTS 203

CROSS-EXAMINATION BY MS. CARROLL 206

REDIRECT BY MR. MCCANTS 207

CERTIFICATE OF REPORTER 223

- - - - -

EXHIBITS

[EXHIBITS 1-14 MARKED BY DEFENSE COUNSEL PRIOR]

DEFENDANTS'		PAGE
1	COLD CREEK/CHAVIS TREE SERVICE ITEMIZATION	42
2	BANK OF AMERICA CHECK, $3,280	18
3	BANK OF AMERICA CHECK, $5,897.89	19
4	CHECKS 6895 AND CHECK 6907	20
5	CHECKS TO BILL'S TREE SERVICE, $7,300	21
6	EDWARD JONES SERIES OF CHECKS	22
7	RETT COLEMAN INVOICE	24
8	CHECK - A. RUTHERFURD, $450	28
9	CHECKS - A. RUTHERFURD, $125, $300	28
10	LETTER, RUDNICK TO HOZEY, 9/2020	29
11	LETTER, RUDNICK TO HOZEY, 10/2020	31
12	LETTER, CARROLL TO HOZEY, 2/2021	32
13	INCIDENT/INVESTIGATION REPORT	32
14	FLASH DRIVE WITH VIDEOS	39
15	SURVEY BY B. CHRISTIANSEN	151
16	ORIGINAL PLAT FOR MATTIE C. HALL	151
17	BLOWN UP VERSION OF D16	152
18	PLAT OF RUTHERFURD PROPERTY BY T. HASS	159
19	TITLE TO REAL ESTATE, 6/2001	162

EXHIBITS CONTINUED

DEFENDANTS'			PAGE
	20	DEED	162
	21	DEED	162
	22	TITLE TO REAL ESTATE, 5/2001	162
	23	DEED	162
	24	AYERCORP PLAT	163
	25	RETT COLEMAN PLAT	165

- - - - -

THE COURT: All right, we're here on December 11th, 2023, for the case of Hozey versus Rutherfurd. The case number is 2021-CP-02-00766.

We've already had a previous day of testimony. Today is the second day. I believe the Plaintiff rested on the first day, as I look through my notes on here. A motion was filed, which I think I ruled on the motion. If there are no other motions, I'm assuming, today, we're going to start on the defense.

The only thing we have today outside of this is at 3 o'clock, I have a Webex conference; the Master-In-Equity -- there's about five or six that are involved in on a rather complicated, I guess, foreclosure action that's going to involve some property here in Aiken County. That may take about, I'm hoping, no more than a half-hour so we may take a break at 3 o'clock for that. Other than that, let's put on the record for day two, starting with the Plaintiff, the Plaintiff's attorney, and who is with him today.

MR. MCCANTS, III: Thank you, Your Honor. Good morning. I'm Clarke McCants, III, here on behalf of my client, the Plaintiff, Melanie Hozey.

THE COURT: Okay. And on Defense?

MS. CARROLL: Yes, Your Honor, I am Dione Carroll and I'm here with my clients, Susan and Allen Rutherfurd, the Defendants, Counter-Plaintiffs.
THE COURT: All right.
MS. CARROLL: And by way of housekeeping, Your Honor, I propose -- I expect to have three witnesses today. I propose to put these two folks on this morning and I anticipate my third witness to be our surveyor, even though this is not a case under color of title. And I was proposing -- and I've indicated to him that he should be here at 1:30 because I'm -- my, I think, fairly educated guess is it will take us about two hours to handle these witnesses. Your Honor provided us about an hour and a half last time, so that was my prediction.
THE COURT: Okay.
MS. CARROLL: Should I inform him of something different or is that a good plan?
THE COURT: As long as we stay on that schedule you've got, I think that's a good plan.
MS. CARROLL: Okay, Your Honor. I will try.
THE COURT: All right. Any preliminary matters before we start testimony?

MR. MCCANTS, III: None from the Plaintiff.
THE COURT: None from the Defense?
MS. CARROLL: Nothing from the Defense.
THE COURT: All right. Defense, if everybody agrees, I suppose wherever we are at the trial, then, I'll be glad to hear the Defense's first witness.
MS. CARROLL: Thank you, Your Honor. We're calling Susan Rutherfurd to the stand.
THE COURT: Ms. Rutherfurd, please come forward.
MS. CARROLL: And Your Honor, I have provided pre-marked exhibits for Ms. Rutherfurd's testimony to our court reporter, so --
THE COURT: All right. Does pre-marked mean Mr. McCants already has them, too?
MS. CARROLL: I provided him a copy --
MR. MCCANTS, III: Yes.
MS. CARROLL: -- also.
THE COURT: Okay, all right.
MS. CARROLL: And Your Honor, those pre-marked exhibits are Exhibits 1 through 14.
THE COURT: All right. Have a seat, ma'am.
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DIRECT EXAMINATION OF SUSAN M. RUTHERFURD

BY MS. CARROLL:

Q. Good morning, Ms. Rutherfurd?

A. Good morning.

Q. Would you state and spell your name for the record for us?

A. Susan Rutherfurd, R-U-T-H-E-R-F-U-R-D.

Q. Where do you live, Ms. Rutherfurd?

A. In Aiken, at 714 Laurel Drive, Southwest.

Q. Is the property that is at issue in this case?

A. It is.

Q. How long have you lived there?

A. Since 2001.

Q. Is that when you bought the house?

A. It is.

Q. Is it your house?

A. It is.

Q. Describe the property a little bit for me.

A. It's two lots; it's the house and a pool. It's heavily-wooded around it as -- for privacy, a buffer.

Q. And when you -- let me draw your attention to an Exhibit here.

MS. CARROLL: May I approach, Your Honor?

THE COURT: Yes.
MS. CARROLL: And may I have liberty to move around during examination?
THE COURT: Yes, you may.
MS. CARROLL: Thank you.
Q. [Ms. Carroll] Okay, I'm drawing your attention to this blown-up satellite photo on the easel that is marked as Plaintiff's Exhibit 1 --
THE COURT: Before you ask the question, as we did last time, Mr. McCants, if you need to come up and reposition yourself to see if they're pointing to something, you can just do so whenever you feel that's necessary.
MR. MCCANTS, III: Yes, sir.
THE COURT: All right. You may proceed.
MS. CARROLL: Thank you, Your Honor.
Q. [Ms. Carroll] Does this fairly depict your property, the area in the center?
A. Yes, it does.
Q. And does that -- is this -- I'm pointing to what is marked as "Hozey." Does that look like Ms. Hozey's property?
A. It does.
Q. And down here at the bottom, there's an area another area defined by white lines. Is that another

neighbor's property?
A. It is.
Q. Which neighbor is that?
A. The Carlisles.
Q. The Carlisles. Is your -- to your understanding, is your lot designated by the numbers 23 and 24?
A. Yes.
Q. Is Ms. Hozey 25?
A. Yes.
Q. Is the Carlisles' 22?
A. Yes.
Q. Okay, so when I talk about lot 22, I'm talking about the Carlisles; when I talk about lot 23 and 24, or your property, then I'm talking about your property.
A. Yes.
Q. And lot 25 is Ms. Hozey's. When did Ms. Hozey move into the neighborhood?
A. Just before us, in 2001.
Q. Okay. At that time, did she start to use any portion of your property?
A. No.
Q. I'm going to come up here again and look at this Plaintiff's Exhibit 1. Do you see this area bounded by red on Plaintiff's Exhibit 1?

A. Yes.
Q. Can we agree to call that the disputed area?
A. Yes.
Q. That's part of your property; right?
A. Correct.
Q. Do you have a title that includes that?
A. We do.
Q. And what do you use that property for?
A. Privacy, a buffer.
Q. Does it add value to your property, in any way?
A. Absolutely. That was one of the reasons we bought the property, was the sense of privacy from -- we were in a neighborhood that had that advantage, but we -- we had a sense of privacy, visually.
Q. Are you retired now?
A. I am.
Q. Did you have a profession prior to your retirement?
A. I was in real estate.
Q. Okay. How long were you in real estate?
A. About 15 years.
Q. And during that time -- give me an approximation of how many houses you've listed during your time as a realtor.

A. 300.
Q. Um-huh [yes]. What year did you first begin acting as a real estate agent?
A. My daughter was in the first-grade, so I'm having trouble remembering that.
Q. Was it before you moved into the house or after?
A. It was before.
Q. Before?
A. Yes.
Q. Okay. So is it fair to say that you put your realtor's brain on it when you decided to buy that house?
A. Yes.
Q. Now, you can't easily see that disputed area when you're at the house; right?
A. No, only the very front part on the street.
Q. Okay. But can you see it from your property?
A. Not -- no, I can't see the disputed -- disputed area [inaudible] --
Q. When you drive by on the street, can you see it?
A. The front part of it.
Q. Um-huh [yes].
A. It slopes, so ...
Q. And when you work around the pool, do you see

it then?
A. I do because the pump is over by the fence, so I can see part of it.
Q. Is that the reason that you have the property?
A. Yes.
Q. The disputed area?
A. For privacy.
Q. Do you have the sense your house -- how many bedrooms does your house have?
A. Five.
Q. How many square feet is, approximately?
A. About 40 -- about 4,500.
Q. Are your children gone now?
A. Yes.
Q. So they've grown up and left; right?
A. Yes.
Q. How many bedrooms do you have?
A. Five.
Q. Five, you say? Yeah, do you need five bedrooms?
A. No, we don't.
Q. Have you considered downsizing?
A. Yes, we have. When the market was just so hot a couple of years ago, we seriously thought about it but then realized we couldn't do a thing because of this

pending case.

Q. So you -- are you saying that you -- or you -- you're not saying that you would've possibly downsized if this case had not come along?

A. Possibly, yes.

Q. Okay. If you had downsized, about what -- well, let me back up.

Q. How much do you think you could rent your house for, if you decided to rent it?

A. 3,500 a month.

Q. And if you had moved and downsized, what sort of level house were you considering; what price range?

A. About 2,000 a month would have been -- 2,000 square feet, too, just about that size.

Q. Okay. So the house -- so you would have gone from a house value of, approximately, 2,000 -- excuse me $3,500 a month to a $2,000 --

A. Right.

Q. -- approximately? Okay. What was your relationship like with the Plaintiff during the early years of you being neighbors?

A. Well, we were neighbors. We weren't -- we were friendly. We weren't friends. We weren't -- we were just, kind of, acquainted. You know, you wave on the street or ...

Q. Were you neighborly towards her?
A. Yes.
Q. Did you consider her to be neighborly towards you?
A. Yes.
Q. Did there ever come a point where you felt like a hostility developed?
A. Not until 2020 --
Q. What happened then?
A. That was when my husband ran into a contractor measuring to -- what he said, to put a building on our property on behalf of Ms. Hozey, and it just -- that was when everything got weird.
Q. Okay.
MS. CARROLL: May I approach, Your Honor?
THE COURT: Yes.
MS. CARROLL: As I mentioned earlier, I have pre-marked exhibits and provided them, both, to the court reporter and to Mr. McCants and I'm going to bring a copy up of the exhibits to discuss them with the witness.
Q. [Ms. Carroll] And I'm handing you what has been marked as Defendants' Exhibit 1, for identification purposes. Do you recognize this document?
A. I do.

Q. How do you recognize it?
A. It -- it's an estimate, on our behalf, from Cold Creek Nurseries, where they would sub out tree work for us.
Q. And what is the date of this?
A. November 19th, 2001.
Q. Is the work that they were going to have done by a subcontractor, is that depicted in this exhibit?
A. It is. It's itemized.
Q. Was that work actually done?
A. Yes.
Q. Your Honor -- and did you pay for it?
A. Yes.
MS. CARROLL: Your Honor, we would move this into Defendants' -- into evidence as Defendants' Exhibit 1.
THE COURT: Any objection?
MR. MCCANTS, III: No objection.
THE COURT: So admitted.
Q. [Ms. Carroll] Was any of the work done under this invoice done on the area that we have been calling "the disputed area"?
A. Yes, it was.
Q. Is there anything on here that would help me know which work that was?

A. Well, under -- about halfway down -- a little further -- you can see where they have removed trees, different kinds, and it says "outside the fence -- outside fence."

Q. And that's on here several times; is that correct?

A. Yes.

Q. And I think you indicated the date on this -- well, of the invoice, was 11/9 --

A. The estimate, yes.

Q. The estimate was 11/19/01 --

A. 19.

Q. Was the work done shortly thereafter?

A. Yes.

Q. Now, Ms. Rutherfurd, since I have been working for you, have we talked a lot about adverse possession?

A. Yes.

Q. And are you on guard to make sure that all the elements of adverse possession are not accomplished for any 10-year period?

A. Yes.

Q. So is it your understanding that that -- those people were your agents, that did that work on the property?

A. Absolutely.

Q. Okay, and so for the -- for the next 10 years, you would feel like that you had spent someone -- had someone on there doing work; is that right --

A. Yes.

Q. -- to like 2011?

MS. CARROLL: All right, I'm handing the witness what is marked as --

THE COURT: I'm sorry, what was the date on the estimate?

MS. CARROLL: Yes, Your Honor, it is 11/19/01.

THE COURT: '01, okay.

MS. CARROLL: Yes, sir.

THE COURT: Thank you.

MS. CARROLL: And I'm handing the witness what has been marked as Defendants' Exhibit 2, for identification purposes.

Q. [Ms. Carroll] What is that, Ms. Rutherfurd?

A. This is the copy of the canceled check showing that we paid for that on December 30th, '01 -- December 3rd, '01.

Q. Is that your signature on the check?

A. Yes, it is.

Q. That money come out of your account?

A. Our joint account, yes.

Q. And that went to Chavez Tree Services?

A. Chavous Tree Service, yes.
Q. [Inaudible]. Chavous Tree Services. And did that actually get paid to them from your account?
A. Yes.
MS. CARROLL: Your Honor, we would move Defendants' Exhibit 2 into evidence.
THE COURT: Any objections?
MR. MCCANTS, III: No objection.
THE COURT: So admitted.
Q. [Ms. Carroll] Now I'm handing Ms. Rutherfurd what's been marked as Defendants' Exhibit 3, for identification purposes. What is that, Ms. Rutherfurd?
A. This is a canceled check from our joint account, dated February 5th, 2002, to Cold Creek Nurseries.
Q. 2002, so that was some months later; is that correct?
A. Correct.
Q. And what was that for?
A. That was for cleanup and landscape work.
Q. Was any of that work done in the disputed area?
A. Yes.
Q. And so for 10 years -- so 10 years from that would be 2012; right? Okay, I'm handing the witness what

has been marked as Defendants' Exhibit 4. What is this document, Ms. Rutherfurd?

A. This is canceled checks to Garcia's Tree Service. One of them is dated July 3rd, 2010, and one of them is June 29th, 2010.

Q. And so what was this -- was any of this work -- was this for work done on your property?

A. Yes.

Q. Was any of it for worked done in the disputed area?

A. Yes.

Q. And did you -- did your husband sign those checks?

A. Yes, Allen signed both of them from our joint account.

Q. Did that money come out of your account?

A. Yes.

Q. And did it pay for the work that was done on your property and in the disputed area?

A. Yes.

MS. CARROLL: I move Defendants' Exhibit 4 into evidence.

THE COURT: Any objections?

MR. MCCANTS, III: No objection.

THE COURT: So admitted.

Q. [Ms. Carroll] So this was in 2010, two years before the 2012 10-year mark we talked about there a minute ago. Do you understand, then, that you've had work done in the next 10-year period, from 2010 to 2020?

A. Yes.

Q. All right.

MS. CARROLL: I'm handing the witness a document that's marked as Defendants' Exhibit 5.

Q. [Ms. Carroll] For identification purposes, what is that, Ms. Rutherfurd?

A. Well, this is showing the payment came out of our Edward Jones account, and it was paid to Bill's Tree Service on February 21st, 2013.

Q. Well, let me ask you about this.

A. Um-huh [yes].

Q. I'm looking up here and I see a date of 2014, so was that payment made on 2013 or was it made on 2014?

A. It was made on 2014. The 2013 is a sticky note that my husband erroneously wrote, but the statement from Edward Jones is 2014.

Q. And this is a redacted statement; right? So -- I mean-- you may not know what "redacted" means. This is a statement where it just shows the entry --

A. Right, we were --

Q. -- that we're referring to.

A. We blocked out the other -- the other items, line items.

Q. Okay. But this money, this $7,300, that went to work on your property; is that right?

A. Correct.

Q. And was any of that work done in the disputed area?

A. Yes.

MS. CARROLL: Your Honor, we move Defendants' Exhibit 5 into evidence.

MR. MCCANTS, III: No objection.

THE COURT: So admitted.

Q. [Ms. Carroll] I'm handing you what is marked as Defendants' Exhibit 6 -- oh, and that work was done in 2014, so if we are looking 10 years out, 2024 is 10 years later; is that right?

A. Correct, yes.

Q. So I'm handing you another document, marked as Defendants' Exhibit 6, and you might have guessed we're doing this in chronological order; right?

A. Yes.

Q. What is the date of this document?

A. This is from the checks -- or the withdrawals from the Edward Jones account were paid on May 2nd and May 4th of 2014 to Faith Farms.

Q. I don't mean to correct you, but is that really a two or is that a five?
A. Oh, I'm looking at the wrong thing. That was the service date, but 2014, May 5th and May 6th.
Q. That's when it was paid?
A. Right.
Q. But what you were telling me is that date you were giving me, that was when the services were performed, or is that --
A. I don't know if it was -- it could be the check date itself.
Q. Okay. But it's in May of 2014 [inaudible] --
A. Correct. Correct.
Q. And that's a few months later than the February 2014 invoice [inaudible] --
A. Right, yes.
Q. Did that money actually come out of your account?
A. Yes.
Q. So that's -- it's three different charges; one for 1,600, one for 1,000, and then a second one for 1,600 --
A. Yes.
Q. -- is that correct?
A. Yes.

Q. Okay. So approximately, what? $4,200 in charges; is that right?
A. Correct.
Q. Was that for work done on your property?
A. Yes.
Q. Did it include work that was done in the disputed area?
A. One of them, yes.
Q. Do you know which one?
A. I believe it was one of the 1,500s for -- it was a tree that they took out.
MS. CARROLL: Your Honor, we move Defendants' Exhibit 6 into evidence.
MR. MCCANTS, III: No objection.
THE COURT: So admitted.
MS. CARROLL: And I'm handing the witness what is marked Defendants' Exhibit 7.
Q. [Ms. Carroll] Can you tell me what that is?
A. It's -- it's an invoice from Curtis Coleman, otherwise known as Rhett, the surveyor, and dated 9/29/2020, and it's showing payments that we made to him for services rendered.
Q. Okay. And what were the services he rendered?
A. He surveyed our property, and actually ended up surveying the properties on either side of us, too, to

make sure that everything was right.
Q. Did that include surveying Ms. Hozey's property corners?
A. Checking the lines, yes.
Q. He actually did that work, did he?
A. Yes.
Q. And did you pay him for it?
A. Yes.
MS. CARROLL: Your Honor, we move Defendants' Exhibit 7 into evidence.
MR. MCCANTS, III: No objection.
THE COURT: So admitted.
Q. [Ms. Carroll] Okay, the date on this was 9/29/2020, and 10 years from that would be 2030; is that right?
A. Correct.
Q. Did you consider -- Mr. Coleman was acting as your agent there doing work; right?
A. Yes, he was over there four or five times.
Q. And when you say "over there," are you talking about the disputed area?
A. Yes.
Q. So he was over there four or five times at your direction --
A. Yes.

Q. -- sometime around September 29, 2020. Why did you have him survey it?

A. Because we really didn't know where our property lines were. We, finally, were able to get him -- our original survey that we had when we bought the house, the surveyor never marked it for us the way we'd asked him to, with flags, so we really never knew where the actual line was over on the side, and we -- we felt like at this point, after things went sideways, that we absolutely had to know where our line was before we had a confrontation.

Q. Now, when you say "when things went sideways," do you mean when the contractor came over and said there was going to be a quote --

A. Yeah --

Q. -- for -- to build a permanent structure --

A. For something permanent going on our property, on our property from someone else, yes.

Q. Were you surprised when you found out about that?

A. Oh, yes.

Q. Did you feel threatened?

A. Very much.

MS. CARROLL: And I'm going to move this into evidence, as Defendants' Exhibit 7, please,

Your Honor.
MR. MCCANTS, III: Which one is that?
MS. CARROLL: It's an invoice for --
MR. MCCANTS, III: Oh, yeah, sure. No objection.
MS. CARROLL: -- Curtis Coleman, a.k.a. Rhett.
THE COURT: So admitted is Defendants' Exhibit Number 7, then.
Q. [Ms. Carroll] And is Mr. Coleman going to testify this afternoon?
A. He is.
Q. The initial scope of work, was that to indicate the corners, as you just described for me?
A. From?
Q. From Rhett.
A. From Rhett. We wanted a line; we wanted it flagged. We wanted to know where the property lines were.
Q. Okay. Did you ever expand his scope of services to include surveying the entire property?
A. Yes.
Q. So [inaudible] update the survey?
A. Yes.
MS. CARROLL: I'm handing the witness what has been marked as Defendants' Exhibit 8, for

identification purposes.
Q. [Ms. Carroll] What is that?
A. This is a copy of one of the canceled checks towards those charges from Rhett showing that we paid for it.
Q. Um-huh [yes]. And did your husband sign that one?
A. He did.
Q. That money come out of your account?
A. Right out of our joint account.
Q. All right.
MS. CARROLL: Your Honor, we move Defendants' Exhibit 8 into evidence. Check to Mr. Coleman.
MR. MCCANTS, III: Oh. No objection.
THE COURT: So admitted.
MS. CARROLL: I'm handing to the witness Defendants' Exhibit 9.
Q. [Ms. Carroll] What is this?
A. These are the other two charges showing canceled checks, making payment to Rhett Coleman, the surveyor, for those itemized items that were on that original invoice.
MS. CARROLL: Move this into evidence.
MR. MCCANTS, III: No objection.
THE COURT: So admitted.

Q. [Ms. Carroll] Now, we just went through nine exhibits regarding work that you indicated was done, at least in part, on the disputed area. Is there other work that was done by agents that you sent out there, that you know of?

A. Yes, but we don't -- we couldn't find any other receipts, so we -- we were fortunate to find those.

Q. So these are the ones you were able to find?

A. Right.

Q. Okay. And does your husband ever do any work out there?

A. Yes, yes.

Q. Tell me about the -- your husband's work on the property since you purchased the property.

A. Well, it's -- it's a buffer area. And he walks the fence occasionally, and when there's something big, he'll -- he'll pull that out, but it's -- or have someone do it a couple of times a year.

Q. Um-huh [yes]. And did he clear -- in recent times, did he clear some vegetation out near the road there?

A. Oh, he did.

MS. CARROLL: I'm handing to the witness what's been marked as Defendants' Exhibit 10, for identification purposes.

Q. [Ms. Carroll] What is that, Ms. Rutherfurd?
A. It's a letter to Ms. Hozey, dated September 16th, 2020, from Charles Rudnick.
Q. Is Charles Rudnick your son-in-law?
A. He is.
Q. Is his father Morris Rudnick?
A. He is.
Q. So he is a -- he is a lawyer; is that right?
A. Yes.
Q. And why did you have Charles write this letter to Ms. Hozey?
A. We finally had the property lines and we knew that -- that she was definitely on our property, and that it wasn't just that. It was -- her invisible fence had started to come -- crept in. There was a small portion -- and there was even a sprinkler head that was on our property.
Q. And was the purpose of this letter to put her on notice that she needed to not encroach on you?
A. Exactly.
Q. And that she needed to not go on there and remove here -- any vehicles she had parked on there?
A. Right, it was asking her to remove everything that was hers on our property.
MS. CARROLL: We move Defendants' Exhibit 10

into evidence.
THE COURT: Any objections?
MR. MCCANTS, III: That's 11. No objection.
THE COURT: No objection.
MS. CARROLL: Yes. I'm handing to the witness what has been rather roughly marked as Defendants' Exhibit 11. I just clarified that with my pen a little bit.
A. Okay.
Q. [Ms. Carroll] What's the date on that document?
A. This is October 28th, 2020.
Q. And that prior letter was on September 16, 2020; is that right?
A. Right, right.
Q. Was that letter sent by Charles at your direction?
A. It was. This was six weeks later. We had had no response or action, so it was a little firmer. He actually quoted what the trespass laws were in South Carolina and asked her to move -- remove her things by November 1st.
MS. CARROLL: Your Honor, we move this into evidence as Defendants' Exhibit 11.
MR. MCCANTS, III: No objection.

THE COURT: All right.

Q. [Ms. Carroll] When you say "her," did you mean Ms. Hozey?

A. Ms. Hozey. Sorry.

Q. No, not at all. I just wanted to be clear. Did Ms. Hozey remove her things?

A. No.

Q. Did you receive any response to that letter?

A. No.

MS. CARROLL: I'm handing to the witness what has been marked as Defendants' Exhibit 12, for purposes of this deposition -- excuse me, for this trial.

Q. [Ms. Carroll] What is that?

A. This is a copy of the letter that we had you send on our behalf to Ms. Hozey, dated February 26th, 2021, and this was actually a notice of criminal trespass.

MS. CARROLL: And we move that into evidence, Your Honor.

THE COURT: No objections?

MR. MCCANTS, III: No objections.

MS. CARROLL: And I'm handing the witness Defendants' Exhibit 13.

Q. [Ms. Carroll] Is that the incident report --

THE COURT: I'm sorry, I didn't hear
Mr. McCants on the other one.
MS. CARROLL: He --
THE COURT: Any objection on the last Exhibit,
12?
MR. MCCANTS, III: No objection.
MS. CARROLL: And I'm handing the witness what
has been marked for identification purposes as
Defendant's Exhibit 13.
Q. [Ms. Carroll] Is that the incident report relating to the service of that notice of trespass?
A. It is.
MS. CARROLL: Move that into evidence, also, Your Honor.
THE COURT: Any objection to [inaudible] --
MR. MCCANTS, III: Well, hold on. Is that the incident report?
MS. CARROLL: Yes.
MR. MCCANTS, III: Yeah, no objection.
THE COURT: Okay, so admitted, Defendants' Exhibit 13.
Q. [Ms. Carroll] So did you receive any response to that letter?
A. She removed -- one of the other things was all of the sudden, within like a month or two, there was a

boat, a pop-up camper, and a truck parked there; so the boat and the truck disappeared, but the pop-up camper remained.

Q. Did she sue you shortly thereafter?

A. Yes, that was our response.

Q. Now, you were here for Ms. Hozey's testimony. Did you hear her talk about parking her vehicles on the property?

A. I did.

Q. And you told me earlier that she wasn't coming on the property in the beginning. Were there other times when she didn't have anything -- any vehicles parked on the property?

A. Yes.

Q. So is it fair to say that sometimes she was there and sometimes she wasn't?

A. Yes.

Q. It wasn't continuous?

A. No.

Q. And -- okay. You have a -- if I may approach again. You have a fence around your pool; right, Ms. Rutherfurd?

A. Right.

Q. Can you -- could you show me on here about where it is? You can stand up.

A. Okay.
Q. His Honor will be -- if you want to come, you're welcome, Mr. McCants.
A. We have -- let's see. Fencing goes -- well, I guess it comes down like that. I'm not sure what it does in the back.
Q. That's okay. Is that buffer, also?
A. Yes, but it comes around, up this side, and then along the street. It comes back over here.
Q. Okay, that's fine. You can sit back down. Why do you have a fence around your pool?
A. Well, it's a city ordinance, for one, and insurance requires it, and it's for protection of animals and people having an accident in the pool.
Q. Did you feel like that it was a good or a bad thing that you had a fence around that pool, considering the fact that Ms. Hozey had small children while she lived next to you?
A. Very, very advantageous, because we just moved into the neighborhood, too, and we didn't know what the habits of the people before us had been, you know, whether they had open house -- they had children and we didn't know who had swimming rights and might want to come back over.
Q. So you felt like you probably wanted to be the

gatekeeper, is that what you're saying or --

A. Yes, until we got to know people.

Q. Okay. We talked, very briefly, just a minute ago about that Mr. Rutherfurd had recently cleaned up some undergrowth in the front of the property. Did you hear Ms. Hozey talk about that in her testimony?

A. Yes.

Q. Did you hear her say that that happened?

A. Yes.

Q. And is that similar to or different from the other times that your husband would go on the property for -- you know, you mentioned he goes in a couple of times a year?

A. Similar.

Q. Did he ever report to you on what he did on the property?

A. Occasionally. He would be very proud if he brought out a large branch or something like that. But yes, pretty much, he told me what he'd done. He goes out almost every day into the yard somewhere.

Q. And what is his purpose, to your understanding, when he goes into the disputed area?

A. To check on it and just see what's going on, as far as --

Q. Does he work on maintaining it as a buffer?

A. Vines, yes, on the fence.
Q. So we talked a little bit about the different letters that you had sent, and we talked about how you had been -- had a neighborly, not hostile, relationship until 2020. Did you ever get to a position where you -- before 2020, had you ever posted "no trespass" signs in the disputed area?
A. No.
Q. After the situation you described, did you start posting "no trespass" signs?
A. We did.
Q. Who posted those?
A. Alan.
Q. Alan is your husband?
A. Yes.
Q. Did the "no trespass" signs get torn down?
A. Yes.
Q. Did you do it?
A. No.
Q. Did Alan do it?
A. No.
Q. How many times did they get torn down?
A. It was four or five times.
Q. And did Alan keep putting them back up?
A. He did.

Q. And did he put them up promptly?
A. Yes.
Q. Did Ms. Hozey continue to trespass on the property?
A. She did.
MR. MCCANTS, III: Objection, Your Honor; it's a legal conclusion.
THE COURT: Yeah, I'd phrase it other than the trespassing claim. I understand you've got a trespassing claim, but as far as criminal action, I don't think she's -- I assume she's talking about a civil trespass at this time, since we've got a dispute as to ownership. I'll allow the question with that understanding.
Q. [Ms. Carroll] With the Judge's understanding, did she continue to trespass on your property?
A. Yes.
Q. So you had given her notice that she was not authorized to be there and she came on anyway?
A. Yes.
Q. And with that, our final Exhibit 4, Ms. Rutherfurd is some video; that's the thumb drive I provided you a copy of.
MS. CARROLL: Mr. McCants, I have it on my laptop. Any objection to the video [inaudible] --

MR. MCCANTS, III: The three videos?
MS. CARROLL: Yes, sir.
MR. MCCANTS, III: Yeah, no objection.
MS. CARROLL: Okay, so we'll move these videos into evidence. I hope it works still. As Defendants' Exhibit 14.
THE COURT: And that is a thumb drive with three separate videos on it?
MS. CARROLL: Yes, sir.
THE COURT: Okay.
THE WITNESS: Now we know.
MS. CARROLL: Mr. McCants, if you want to come around, I have them on my laptop as well, and I was going to play them for us all. Okay, let's -- this is the first video.

Q. [Ms. Carroll] Is Ms. Hozey in the video?

A. It is.

Q. And do you believe her to be spraying what looks like herbicide onto the property?

A. Yes, and that was in March of 2021.

Q. March of 2021. Did this come from a game camera that you or your husband posted there?

A. It is.

Q. Did your husband post it there -- your husband and your daughter; right?

A. Right.
Q. Okay. And looking at this, it's sort of frozen at the end of the video. These are very brief videos. This is the camper that we're --
A. Right.
Q. -- talking about?
A. Right.
Q. I see some rocks there.
A. Right.
Q. This game camera, if I were the game camera, it would be like I had my back to your property; right?
A. Right. Your back to the pool. Here's the street right here. Here's the street.
Q. And that's Ms. Hozey's house, her --
A. And her driveway.
Q. And her driveway.
A. Right there.
Q. And the disputed area, here, that goes back this way; is that right?
A. Correct.
Q. Let's give His Honor a little perspective. Okay, and now I'm starting the second video of the three, and that's similar; is that right?
A. Yes.
Q. And these videos, these were taken after you

had given the notice in the letters; right?
A. And she'd been served, yes.
Q. All right. And there were also "no trespass" signs posted at this time?
A. Yes, it's right there.
Q. All right. So that tree is on your property?
A. Yes.
Q. Oh, is that your husband?
A. It is.
Q. What is he doing?
A. He has clippers.
Q. And he was using those; right?
A. Yes.
Q. Okay. It's fair to say you never said to Ms. Hozey, "Hey, Ms. Hozey, you have permission to go on the property and clean it up some and park there;" right?
A. No, it was a neighborly, get-along type of tacit understanding. It just --
Q. You never told her to get off --
A. No, no.
Q. You didn't have any objection to her being there --
A. And -- no
Q. She had your --
A. She wasn't

Q. -- permission?
A. She wasn't hurting anything.
Q. In 2020 when the contractor came there, did you come to believe that she was hurting something?
A. Well, I think she intended, at that point, to get very aggressive, and I couldn't believe that she would put a permanent building on our property.
Q. If Ms. Hozey is allowed to take the disputed area away from you, will that affect the value of your property?
MR. MCCANTS, III: Speculative, Your Honor. Plus, it's tending to ask for an expert opinion and valuation.
MS. CARROLL: Well --
THE COURT: All owners can give opinions as to value of property is my understanding of the law on that, so I am going to let her assign her value, for whatever weight the Court is going to give it as opposed to, maybe, someone who's an expert in the field. But I will allow the question since she's an owner.
MS. CARROLL: Your Honor, she's also a real estate agent for 15 years.
THE COURT: I understand, but she hasn't been qualified as any expert, so her testimony is -- my

opinion right now, unless you're going to ask some other questions, is as an owner, which I think the law in South Carolina does allow an owner to give a value.

MS. CARROLL: Thank you.

Q. [Ms. Carroll] Go ahead. Do you remember my question?

A. No, I don't.

Q. Let me ask that one again. In your belief, would the taking -- if Ms. Hozey was permitted to take away from you that disputed area and make it her own, do you think that would affect the value of your property?

A. Absolutely. I -- from my own reaction and why we bought the property was because of the sense of privacy and that would greatly diminish it.

Q. And you expressed some concerns about how aggressive Ms. Hozey had gotten. Have you given any thought to what it might be like if someone else were to purchase that property?

A. That's the other concern is if she were to sell, number one, what would she do with it. And number two, if she sold it, what would those people do --

MR. MCCANTS, III: Your Honor, again, there's many if's.

THE COURT: Yeah, I'm going to allow that

on -- I'll grant the objection on speculation, as to as far as what happened with other owners. I think she's saying she doesn't know, but I'll grant that we're probably out in the -- a little too much into speculation on that, so I'll grant the objection on that.

Q. [Ms. Carroll] Was there ever a period of any 10 years when you or your husband or your agents were not on that property using or maintaining it for your intended purposes?

A. No.

Q. Has this behavior by the Plaintiff had an effect on you and your husband's mental or physical health?

A. Yes.

MR. MCCANTS, III: Your Honor --

Q. [Ms. Carroll] Tell me about that.

MR. MCCANTS, III: -- again, that's -- I don't know if that's been pled, but I don't think that's an element of damage.

THE COURT: Well, what's the relevance based on your claims of that line of questioning?

MS. CARROLL: We are seeking punitive damages and the mens rea related to that requires a certain type of activity, and the results on these -- the

impacts on these folks may be determinative of whether or not punitive damages are appropriate: reckless, willful, wanton, et cetera.
THE COURT: All right. Mr. McCants, a response?
MR. MCCANTS, III: I still don't think it's relevant, Your Honor, on that component. I don't think it's been alleged, and in order for the punitive part being [inaudible] has to be tied to some actual damage and relate to that actual damage. And I'm just not convinced that the mental/emotional component here is an element of damage from an actual standpoint and, therefore, couldn't serve a basis for a punitive award, also.
THE COURT: And what are your base claims, again?
MS. CARROLL: Our counterclaim against her is one for trespass. We are arguing for compensatory damages and punitive damages because she willfully, wantonly, and recklessly continued to trespass after three notices. Signs up four times, torn down by whomever and, therefore, they should be entitled to exemplary damages, along with the compensatory damages.
THE COURT: And those claims then based on the

testimony would be since 2020, when she was advised?
MS. CARROLL: Correct, Your Honor.
THE COURT: Okay.
MS. CARROLL: September 16, 2020 is the operative date we are seeking from.
THE COURT: All right, with that background, I will allow the question and assign it my weight as I review all of the evidence, but you can go ahead and ask the question.
MR. MCCANTS, III: And may I just add, Your Honor, one thing?
THE COURT: Yes, sir.
MR. MCCANTS, III: I'm looking at the Complaint.
THE COURT: Okay.
MR. MCCANTS, III: I mean, just again, it hasn't been alleged.
MS. CARROLL: It has. It has been alleged in the Complaint.
THE COURT: Well, I can pull it up, unless y'all are going to pull it out. It's on the Counterclaims, and just read it into the record on there.
MS. CARROLL: If I may have a moment, Your

Honor.
THE COURT: Let's go off the record for a minute while we're looking for this. And just let me know when you have it, and then I'll go back on the record. I'm trying to pull it up on mine as well.
[OFF THE RECORD]
MS. CARROLL: Here we go. I have the document, Your Honor, give me just one moment.
THE COURT: All right, just give me one second so I'm looking at the same thing you are. What's the date of filing on the document you're looking at?
MS. CARROLL: The date of filing is July 7, 2021.
THE COURT: All right, I've got it.
MS. CARROLL: It's the answer affirmative defenses on counterclaims.
THE COURT: Okay.
MS. CARROLL: At page 3, the wherefore clause in the last paragraph, we indicate that it's the Defense's position that this Court should hear this matter without a jury award and Defendants -- and awards Defendants their damages, actual and punitive, attorney's fees, and costs, along with

any other release, which is really -- which is just and proper.
THE COURT: All right, and then you list 11 affirmative defenses, and then we have the counterclaim.
MS. CARROLL: Right. Correct, Your Honor. And then at pages six and seven, we have the allegations supporting our -- excuse me, six, seven and eight, supporting our trespass claim, and for declaratory and injunctive relief related to the behavior of trespassing on the property on eight and nine.
And in the -- page 10, where we -- excuse me. At page 9, in the wherefore clause, in paragraph 1, awarding damages, costs, and attorney fees associated with the bringing of this action, including compensatory, punitive, and exemplary damages, and again on page 10, at the request on the slander title claim; but I will submit that we are not pursuing the slander of title claim. I'm happy to abandon that, based on the evidence as it has developed.
THE COURT: Okay.
MR. MCCANTS, III: Your Honor, let me make clear, if I can -- I know you're reading.

THE COURT: Go ahead.
MR. MCCANTS, III: She's alleged actual and punitive damages very generally. I'd have to look it up, but I'm not sure a psychological component of damages is recoverable for a trespass cause of action. I don't think there's any other tort, intentional or otherwise, that's alleged. Even if it is, they have clearly not alleged that they have suffered any type of psychological, mental or emotional damage or condition, which would serve as a foundation for an award of damages of an actual nature and, therefore, no punitive damages.
THE COURT: All right, well, hold on a second. We got a little ahead of ourselves. I assume the court reporter --
MADAM COURT REPORTER: I went back on.
THE COURT: -- being on top of it, went back on the record, I just want to make sure of that since we're making these arguments.
All right, so Mr. McCants -- and I understand that you're saying we've got general allegations of, and I can read it here even from page 8 --
MR. MCCANTS, III: It's a personal injury [inaudible] --

THE COURT: -- of the wherefore clause awarding damages, costs, attorneys fees associated with the bringing of this action, including compensatory, punitive, and exemplary damages. No doubt that that language is in there under the various counterclaims. You're saying that the claims -- I'm looking at the trespass on page 7. Hozey has intentionally and affirmatively invaded the Rutherfurds' property; paragraph 12, Hozey's invasions include conduct which is malicious, willful, wanton, and reckless; and says at 14, irreparable harm for the Rutherfurds because Hozey is now altering their property and trying to intimidate and exclude them, and you're saying -- without the language, you're saying, specifically, in that claim that there's a mental component to it that they shouldn't be able to bootstrap that into the wherefore clause? Is that what I'm understanding?

MR. MCCANTS, III: Because it's a personal injury to the body, like in a car wreck.

THE COURT: Okay. All right, I'm going to allow it, but I'm going to note the objection on there for the trespass. Just give me one second here, and I'm going to review that about the

personal claims of mental claim/mental damage.
MS. CARROLL: And Your Honor, a trespass can definitely be the basis for a punitive damages claim, and I can provide authority for that if it's appropriate and assists Your Honor.
THE COURT: I don't know if I understand Mr. McCants' objection to be that you can't have a punitive damage aspect to a trespass claim. My understanding is he's objecting just to the emotional damage being claimed or indicated by the question; is that right, Mr. McCants?
MR. MCCANTS, III: Well --
THE COURT: Or am I misinterpreting that?
MR. MCCANTS, III: I couldn't exactly hear what you said about punitive. My point is, punitives rest on an actual award [inaudible] --
THE COURT: Well, here's what I'm saying. She says punitive damages can be proper in a trespass claim --
MR. MCCANTS, III: Don't disagree with that.
THE COURT: -- I said I don't disagree with that and I don't think you do. I understand your dispute to be the emotional damage claim on the trespass claim itself is improper, as in a recoverable element; is that correct?

MR. MCCANTS, III: Yes, because -- and the more I think about it, Judge, there's a tort for that. That's intentional infliction of emotional distress.

THE COURT: All right, and so I'm going to look at that but I'm going to allow, for the purposes -- since we're at trial right now for the question, and I'll -- that is a legal issue. I'll take it under advisement on that as far as any ruling, but as far as allowing the question so that we have that on the record, I'm going to allow the Defendant to go ahead and ask that question.

MS. CARROLL: Thank you, Your Honor.

THE COURT: All right.

Q. [Ms. Carroll] So Ms. Rutherfurd, do you remember my question?

A. No. No, I don't.

Q. I'll repeat it. Has there been any kind of -- strike that. What, if any, impact has this situation had on you and your husband's physical and mental health?

A. We feel like it's been tremendous. Sleepless nights, my husband's lost over 20 pounds in the last three years, three specialists/doctors, and they all agree it's anxiety --

MR. MCCANTS, III: Your Honor --

THE COURT: Objection sustained on what the doctors have told her.
THE WITNESS: Okay.
Q. [Ms. Carroll] Please finish answering your question, but don't tell us --
A. Okay.
Q. -- what the doctor said.
A. Okay. But that's -- it's just been very worrisome and very stressful and very expensive.
Q. How are you doing for all this?
A. We're glad we're at the end.
Q. Have you ever, ever at any time, abandoned the disputed area as your property?
A. No.
Q. Have you ever been fenced out of it?
A. No.
Q. Have you ever been prevented from going on it?
A. No.
Q. Did Ms. Hozey attempt to exclude you from the property?
A. No.
Q. You mentioned that you had Mr. Coleman to do an update of the survey. Had it been surveyed before?
A. Yes, when we bought the house.
Q. Did Haas-Hildebrand do that survey?

A. No, that was Ben Christiansen and it -- the survey was -- it was delivered at closing, and one of the things I had asked -- Ben is a friend, and I had asked him to please flag the lines for us so that we could see what we were -- because it was a wooded lot, so that we could see where our lines were. Well, it was delivered at closing so we didn't know that it wasn't flagged until we left the closing and went home. And I called him many times, he said he would do it and he delivered it as a gift at closing, too, so.

Q. You couldn't lean on him to make him mark it --

A. I couldn't lean on him quite as heavily as I would have, but I was persistent through years of begging him to come show us where our lines were.

Q. And did Mr. Coleman show you where those lines were?

A. He did --

Q. Did he --

A. -- he flagged them and, actually, walked the lines with Alan and -- I don't know if I can say, but he told us that he was -- he walked the line with us --

Q. Don't tell me what he told you.

A. Okay.

Q. But you know that he walked the line of your

property with your husband; is that right?
A. Yes, yes.
Q. Okay. Did he also mark the corners of the lot 22?
A. He checked -- yes, he --
Q. Checked those?
A. Yes.
Q. And did he check the corners of 25?
A. Yes.
Q. Which is Ms. Hozey's property?
A. Yes.
MS. CARROLL: I believe I have nothing further for this witness at this time, Your Honor.
THE COURT: All right. Cross-examination?
MR. MCCANTS, III: Thank you.

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CROSS-EXAMINATION OF SUSAN RUTHERFURD

BY MR. MCCANTS, III:
Q. Good morning, Ms. Rutherfurd.
A. Morning.
Q. You begged Ben Christiansen over many years to come out and put flags down upon your boundary lines at your home on Laurel Drive; is that correct?
A. That's correct.
Q. And Ben never did that?

A. No, he -- he had several heart attacks. Our initial concern was the neighbor in lot 22.
Q. Ms. Jackson?
A. Ms. Jackson, right.
Q. We'll talk about that in a second.
A. Right. And that was, primarily, what I was after him on -- well, that's what I was after him on at the beginning.
Q. Did Ben ever set foot on your property after he delivered a survey to you and your husband at closing?
A. Yes.
Q. When did he do that?
A. I'm trying to remember. It was when Ms. Jackson's property was marked.
Q. That's 2014?
A. 2014.
Q. Okay. Long after you moved to the property --
A. Right.
Q. -- is that correct?
A. Right.
Q. All right. The reason you wanted Ben to come out there and flag the lines is because you and your husband did not know where you boundaries were on Laurel Drive, is that fair?
A. That is right, and the reason I wanted Ben to

do it is because he, in conversation, had said something about Mrs. Jackson --

Q. Whoa --

A. -- had a fence.

MR. MCCANTS, III: I just object to any hearsay as nonresponsive, Your Honor for the record.

A. Oh.

THE COURT: So noted.

THE WITNESS: Oh, okay.

THE COURT: Objection granted.

THE WITNESS: Okay, okay.

Q. [Mr. McCants, III] I know you don't do this every day. I don't either, but --

MS. CARROLL: Objection, Your Honor.

Q. [Mr. McCants, III] -- in any event, Ms. Rutherfurd, we're going to just jump ahead and try this question very generally. Until Mr. Coleman came out there in 2020 and surveyed you and your husband's property on Laurel Drive, both of you did not know where your boundaries were exactly; is that correct?

A. Correct.

Q. All right, and I've got to walk through some examples of that for the benefit of the Judge, but that's a very general concept. You just didn't know where your

lines were?

A. We didn't, not exactly. Not enough for any kind of confrontation or -- yes.

Q. Well, then let's back up a little bit. You've got -- you're from Aiken. You folks were living on Oleander Drive over in my neighborhood, before you moved to Laurel --

A. Right.

Q. -- is that correct?

A. Yes.

Q. But you kept the house on Oleander; correct?

A. Yes.

Q. Do you still own that house?

A. No.

Q. All right, when was that house sold? Just a rough idea.

A. 2012.

Q. Well, I remember talking to your husband about that, and we had an ice storm, if you remember the bad storm in 2015 --

A. Oh, then it was after that. It was after that --

Q. All right, because some work was done, you indicated, on your property, but also on Oleander, also?

A. Correct.

Q. So that bill for services was kind of split --
A. Correct.
Q. -- for the work that was done.
A. Correct.
Q. All right, now, when you moved to Laurel Drive in 2001, Sally Brodie was your agent; is that correct?
A. Right. I was a green agent. I'd only been in less than a year.
Q. All right, but over time, you developed some expertise in real estate. We've talked about that.
A. Right.
Q. And you understand the importance for purposes, as a real estate agent, of knowing where the property boundaries are; correct?
A. Correct.
Q. In fact, you've counseled your customers over many years, "Make sure you get a survey and know where your boundaries are;" correct?
A. Well, I've counseled them to get a survey, yes.
Q. All right. Why would you get a survey?
A. To know where your lines are.
Q. Correct. And that's an important thing, obviously.
A. Yes.

Q. Because if you plan on doing work on a piece of property or in the piece of a neighborhood -- dirt, clearing land, and whatnot, you want to make sure it's yours to do that work on; correct?

A. Correct.

Q. Your testimony is, through various bills and whatnot, is that y'all spent money working in the disputed area, but you didn't know the disputed area even belonged to you. Is that a fair statement?

A. No, we knew enough of it was -- was ours, we just didn't know exactly how much and where the line was.

Q. Well, we'll talk about how you characterized it in your depositions. But for example, there's a fence that we talked about, and I had asked you about the fence and whatnot, and --

MS. CARROLL: Objection; foundation.

Q. [Mr. McCants, III] Well, let's put it this way. Again, from the very beginning, you just weren't sure where your lines were, fair?

A. Right, right.

Q. All right, now --

THE COURT: And I assume that was a rephrase of the question, so that's why I didn't rule on the objection.

MS. CARROLL: Yes, Your Honor. Thank you.

Q. [Mr. McCants, III] You folks didn't walk the lines before purchasing the home on Laurel; correct?
A. Correct.
Q. And I wrote here that you just testified that your husband walked the lines with Ben Christiansen.
A. With Rhett.
Q. I beg your pardon?
A. With Rhett.
Q. With Rhett?
A. Right. When Rhett did the survey, Alan walked the lines with him.
Q. I must have misunderstood your testimony. And that is in 2020?
A. Correct.
Q. So your husband never walked the lines with Ben Christiansen, at any point?
A. I don't -- I don't know. I don't think so, but I don't know.
Q. Well, I asked you at your deposition, "Do you remember if Alan walked the lines? Do you know?" and you responded, "I don't," and I said, "All right," then you said, "No." You're just not sure or can you tell Judge Griffith whether or not your husband walked the lines, at any point, with Christiansen, or anybody else, besides Mr. Coleman?

THE WITNESS: Besides Mister -- not to my knowledge.

Q. [Mr. McCants, III] All right. Now let's talk about the time period -- we've got a couple things we want to talk to you about. Ms. Jackson, okay?

A. Okay.

Q. Now, help Judge Griffith understand, if you would. Do the Carlisles live there now?

A. Yes, yes.

Q. All right, and we had talked about that and I got a little bit turned around. What did we call this property here --

MS. CARROLL: Permission, Your Honor.

THE COURT: Yes, come forward.

Q. [Mr. McCants, III] -- [inaudible] --

A. I think that's Lot 25 --

MS. CARROLL: That is --

Q. [Mr. McCants, III] Well, it's not marked on --

MS. CARROLL: That's Lot 22.

A. Oh, that's 22. That's 22. I'm sorry.

THE WITNESS: Yours is 25 --

MS. CARROLL: Yes.

A. Ms. Hozey's.

MS. CARROLL: With your permission,

Mr. McCants, this one's --

MR. MCCANTS, III: Okay.
MS. CARROLL: -- 22, that's 23 and 24 --
MR. MCCANTS, III: Well, I get that --
MS. CARROLL: -- and this is 25.
MR. MCCANTS, III: -- but there are no numbers on here to signify that; correct?
MS. CARROLL: I did describe it on the record, to indicate, but they're not written on there --
THE COURT: Right, and we're referencing 22 at this time; is that right?
THE WITNESS: Correct.
MS. CARROLL: I'm happy if you want to mark them on there. That's fine.
MR. MCCANTS, III: No need to do that.
Q. [Mr. McCants, III] So your lot has a label on it, "Rutherfurd." I want to ask you about this lot to the south of you.
A. Yes.
Q. I think we oriented ourselves, compass-wise, when we talked about this matter at your deposition. The lot south of you, 22?
A. Correct, yes.
Q. Is now owned by the Carlisles?
A. Yes.
Q. But it --

A. Yeah.
Q. -- at one point in time, was owned by a lady named Ms. Jackson; is that correct?
A. Yes.
Q. And Ms. Jackson was an elderly lady; is that correct?
A. Yes.
Q. And I'm not asking you to get into her mental state, but she was excitable, wasn't she?
A. She was.
Q. And you know that because of what she said to you and how she said it?
A. How she said things.
Q. She didn't -- she had a certain tone about her. Sometimes, she would, in fact, scream; is that correct?
A. Yes.
Q. All right, but in any event, back in 2012, you and your husband decided to improve your property by constructing a not-so-small fountain near your pool; is that correct?
A. In the backyard, yes.
Q. In the backyard, and had Adams Nursery do that; correct?
A. Correct.

Q. And when the workers came into that area, Ms. Jackson yelled and screamed about how she felt they were working on her property; is that correct?

A. That's correct.

Q. All right. And you tried, at that point, again, to get Ben to come out and tell you where your property line was between your property and Ms. Jackson; correct?

A. Correct.

Q. And Ben, because of any number of reasons, did not do that; is that correct?

A. Correct.

Q. Now, Rhett Coleman, though, I remember, came back during that -- or was there during that period of time. This was, again, 2012; correct? Didn't someone come out -- a survey -- and tell you where the --

A. Ben.

Q. -- southern line was?

A. Ben did.

Q. All right.

A. And I was confused, I will say. I was reading back, I -- because we didn't have anything to do with Rhett until 2020.

Q. All right.

A. So it was Ben.

Q. So was I correct then, and I'm not picking on you or anything, but was I correct that you had said that Curtis Coleman, Rhett Coleman, had come out?
A. I believe I had said that, but it --
Q. All right.
A. It was Ben who did.
Q. Well, one of the -- one of the main things is that whomever came out clearly established the southern line for you?
A. Correct.
Q. And in fact, as part of that process, y'all discovered that some of Ms. Jackson's fence was, in fact, on your property?
A. Right.
Q. Encroaching on your property?
A. All of her fence.
Q. All right, well, I thought it was a little bit.
A. Yeah.
Q. Your testimony today is all of her fence --
A. Her fence on that side of the property --
Q. Was on your property?
A. Correct.
Q. And you didn't do anything about that, did you?

A. No, we didn't.
Q. And in fact, that did a great deal to pacify Ms. Jackson, did it not?
A. Right.
Q. If you understand what I mean --
A. Oh --
Q. -- when she saw where her line was, she kind of toned things down?
A. Right.
Q. Only to rear her head one more time, and we'll talk about that later, okay, and I don't mean that in a bad way. She's just elderly --
A. She was just -- she was a widow and her husband had tried his best to have the house -- everything fixed and intact and updated before he died.
Q. All right. And again, despite the fact that Ms. Jackson was encroaching upon your property, you let it go?
A. Yes, it was -- it was six feet and what we -- we just kept tossing it back and forth, what we were going to do, and before we knew it, she had sold the property and the person who'd bought it obviously didn't have a survey done, and he turned around and sold it very quickly, but I happened to work with the agent that was representing the new people, the Carlisles --

Q. The current owners?
A. Who are the current owners, and I told them that there was a line dispute, so Alan I told them that if they paid for the survey that we would let them have that six feet.
Q. Which you did?
A. Which we did.
Q. All right. But up until that point, Ms. Jackson, the predecessor to the Carlisles, was adversely possessing your property, was she not?
A. [No response].
Q. Without your objection?
A. Without our objection.
Q. Is that fair?
A. We gave her permission to be there.
Q. Okay. Now then, I guess my ultimate point is, given that situation, that incident in 2012, you knew how to resolve an issue with a neighbor with regard to the location of the line. Is that true?
A. Well, with her.
Q. You did the right thing; you got a surveyor?
A. That was how we did with her, yes.
Q. You got a surveyor to come out there and tell you where the line -- and you worked with Ms. Jackson as part of this encroachment by her on your property?

A. Well, it was really the Carlisles we worked with.

Q. All right. Well, you didn't force Ms. Jackson to move her fence?

A. No. She had sold it before we even knew it was sold --

Q. All right.

A. -- so she was out of the picture at that point.

Q. So I guess my point then is you were, in 2012, bringing a surveyor out there to define a line. You became aware of issues with regard to how important lines are?

A. Yes.

Q. Is that fair?

A. Yes.

Q. And at least up until that point, nothing had been done on, what I'm going to call, the -- it would be your western edge to Melanie's property in the disputed area. You didn't do anything before 2020 with regard to her, did you?

A. No, because it didn't -- it -- I -- she was doing things, maintaining, and we were doing things, maintaining. It was just neighborly -- neighborly tacit agreement that we were --

Q. Well, how do you maintain property if you don't know where your property is?
A. Well, I -- again, we knew roughly the area, and Alan going down the fence line on the outside of the fence.
Q. You knew roughly where it was?
A. Right --
Q. But you --
A. -- but we didn't know exactly where, to be able to say, "This is our line. Get off of it."
Q. Which leaves it unclear, correct, as to where a line is in your mind?
A. In my mind, yes.
Q. All right. And then while I'm on the subject of this fence, we talked about the fence with Mrs. Rutherfurd before on this exhibit, my exhibit, Plaintiff's Number 1; that fence that you're talking about walking -- I think we've already talked about this, Judge -- is just to the left of the foremost western edge of the disputed area, is that fair? In other words, that fence runs right along that area?
A. Right, that's my -- I don't know what it does at the back, but that's what it -- it runs along that line.
Q. While you're on that subject, you don't know

what it does in the back because this is heavily wooded down here; correct?

A. Right.

Q. All right, but my point is, Ms. Rutherfurd, it's true that for a long time, you and your husband believed that that fence that runs along that western edge of the disputed area; you thought that was the property line, didn't you?

A. No.

Q. There's no gate along there, is there?

A. No, there's not.

Q. And you didn't know exactly where the lines were without question; correct?

A. But we knew it was outside of the fence.

Q. Well, why were you believing that the fence was not the line, then?

A. Because Ben -- well, I'm not allowed to say hearsay.

Q. Well, you can tell the Court, I think -- well, I'd ask you why? Well, I guess -- strike that. If you weren't sure, why didn't you get somebody out there early, early on to tell you exactly where the line was?

A. Well, I tried to say it earlier and it was ruled hearsay, what Ben had said, something to me.

He -- when we were going over the Jackson

thing, he had said her fence -- he had assumed it was on her property and he couldn't remember -- he may have used that in some of his marking, so he wasn't sure if the surveys were right. So I felt like for them to be -- they had to be redone and they had to be redone by him. I was --

Q. Well -- okay, are you --

A. And that was why I kept pursuing Ben and not going to someone else.

Q. You obviously felt like this was an important thing to do, Susan; correct?

A. Yes.

MS. CARROLL: Objection; asked and answered about six times.

MR. MCCANTS, III: Well, we're focusing now on what Ben's doing, Judge, in 2012, Mr. Christiansen. I'm sorry.

THE COURT: Well, and it's cross-examination. I will allow the question.

Q. [Mr. McCants, III] I'm trying to get the state of mind of you and your husband.

A. Um-huh [yes].

Q. You obviously perceived the true location of those boundary lines to be an important thing; correct?

A. Yes.

Q. Back in 2012?
A. Well, we -- yes, we wanted to know where our property was and couldn't get him to come out.
Q. Well, again --
A. He kept promising.
Q. -- he came out in 2012, because that's what was used to establish the lines for Ms. Jackson?
A. Right, he did that one.
Q. And if you were still not sure about where the disputed area boundary line was, you didn't ask Ben to clarify that in 2012, did you?
A. I did ask him. We asked him to do the entire property, once again, to mark it. Every time I talked to him, I asked him to give us flags of our property. And he would say, "I'll do it, I'll do it," and then he'd have a heart attack and things just -- the years went by.
Q. That's fair. Ben had some health questions/concerns. We've talked about that. But let's keep in mind the timeframe here. 2012 is over 10 years after you and your husband made the significant investment in this property; is that correct?
A. Right.
Q. And we had issue with Ms. Jackson in 2012. Let's jump to 2013, then, okay, because that's when I had the note that Ms. Jackson, again, raised her concerns

about work being done on either her, your or Melanie's property; correct?

A. Correct.

Q. And the reason Ms. Jackson came to you, again, is because Melanie Hozey was having some work done down at the bottom of that property; is that correct?

A. In the back, yes.

Q. And you did not know where the line was located in that area; is that correct?

A. Correct.

Q. That's 2012/2013, over 10 years after you purchased the property, and if I understand your testimony correctly, you were very concerned about this and kept trying and trying to get Ben to come out there; is that correct?

A. Yes.

Q. All right.

THE COURT: [Inaudible] --

MS. CARROLL: Objection, Your Honor. I understand that he can cross-examinate, but, literally, we've done this same set of questions four or five times now. I think Mr. McCants needs to move on.

MR. MCCANTS, III: Well, thank you.

MS. CARROLL: He's not allowed to -

objection; badgering.
THE COURT: All right, I'm not going to rule because of the -- as I hear -- the question as badgering. I will allow this question, and then we'll see where we go from there.
Q. [Mr. McCants, III] All right, that's 2013. Let's fast-forward another six or seven years to 2020, that timeframe, when what really, you've indicated, alerted you to this because Ms. Hozey was taking some steps to erect a permanent building there; correct?
A. Correct.
Q. So at some point during that seven or eight years leading up to 2020, Ms. Rutherfurd, you had to, in your mind, believe that Ben was not going to be able to help you because, ultimately, you got another surveyor to do it, that is Curtis Coleman; correct?
A. Right, I mean, because at that point we were in a -- it was --
Q. Time to do something?
A. Immediate because she was looking at something permanent. Up to that point, everything had been friendly and just landscape-type things that everybody had done, as far as maintenance and -- but --
Q. Well --
A. -- something permanent, that is hostile. That

was --

Q. Well, you saw the parking of the campers and the trucks up at the top of Laurel Drive, didn't you?

A. And that was -- that was all part of when we had -- it all happened in 2020.

Q. Well, you heard her testimony, Melanie's testimony, that she's been parking campers and vehicles down on that parking pad on Laurel Drive in the disputed area for years [inaudible] --

A. The camper -- the camper, and not particularly that camper, because there was a gap of three years when there was nothing there, but the truck and the boat appeared in 2020.

Q. Is your testimony, right now, that only on an isolated occasion, prior to 2020, Melanie parked a vehicle on that disputed area?

A. Yes.

Q. All right, I'm going to have to cover that back, but that's your testimony, and you heard her testimony that she differs with you on that --

A. I did. I did.

Q. All right. Did you tell me at your deposition, though, Ms. Rutherfurd, that one -- I think we were talking about the timeframe of 2012, with Ms. Jackson, but did you say that one conclusion of not

knowing where your property line is, is that you don't know if you owned it or not. Did you tell me that? Do you remember?

A. No, I don't remember that.

Q. Let me read this to you, if I can. All right, this was 2013.

A. Okay.

Q. Somebody's working down in the bottom area --

MS. CARROLL: May I --

Q. [Mr. McCants, III] Ms. Jackson, again, becomes concerned -- I'm just setting the time frame --

MS. CARROLL: May I see what you're --

MR. MCCANTS, III: Oh, sure. Page 76 and 77. It's on 77 I want to ask her about.

MS. CARROLL: [Inaudible].

THE COURT: All right, what's the date of the deposition, if you're going to ask her about it.

MR. MCCANTS, III: August 26th, 2022.

THE COURT: All right, and this is her deposition?

MR. MCCANTS, III: Yes, sir.

THE COURT: All right, page number and lines?

MR. MCCANTS, III: Start with 76, okay?

THE COURT: Okay.

MR. MCCANTS, III: And I'm going to read for

her, if that's all right, Your Honor, unless you'd prefer [inaudible] --
MS. CARROLL: Objection; that's improper impeachment.
MR. MCCANTS, III: Okay. Your Honor, I may --
MS. CARROLL: I don't need you to take out the original, I mean the method of impeachment is improper. I trust that that is actually the deposition.
MR. MCCANTS, III: Well, it is.
MS. CARROLL: I know, Mr. McCants. I'm objecting to your questions, not to the paper. I'm saying you don't have to pull out the original for me.
MR. MCCANTS, III: I'm going to read from the deposition --
MS. CARROLL: That's --
MR. MCCANTS, III: -- and ask her if she told me something at her deposition --
MS. CARROLL: That's --
MR. MCCANTS, III: -- that's she's denied, previously.
MS. CARROLL: Respectfully, that is not how you impeach.
MR. MCCANTS, III: Well, I'm going to try it,

anyway.
MS. CARROLL: You --
THE COURT: You want her to read her answers? Is that what you're saying?
MS. CARROLL: I'm saying -- I apologize, Your Honor -- that in order to impeach, you present to the witness the question, and then --
THE COURT: And she has said she can't remember --
MS. CARROLL: -- and then if they --
THE COURT: -- or she gives you a different answer.
MS. CARROLL: Correct, and she's not done that yet because he just -- he paraphrased some stuff. He did not read his question from the impeachment, so she hasn't had the opportunity.
THE COURT: I think that's fair enough,
Mr. McCants. Why don't you ask her question that you've got in the deposition, if that's what we're talking about, and see what her answer is, see if it differs.
MR. MCCANTS, III: Well, I led up to this by asking her this question, but I'll ask it again.
Q. [Mr. McCants, III] Did you tell me at your deposition that a consequence of not knowing your

property line is you don't know whether or not it's your property?
MS. CARROLL: And objection, Your Honor. I don't believe that's the question he asked in the deposition.
THE COURT: Well, that's the question I think he just asked a minute ago. You're saying you want him to ask the identical question, word-for-word?
MS. CARROLL: I don't -- in order to use her deposition against her, it needs to fairly represent what was asked there, and I don't think that fairly represents what he asked there. She needs to be given an opportunity to --
THE COURT: All right, let's go off the record --
MS. CARROLL: Right?
THE COURT: -- because I don't know what it says, so let's go off the record. Bring it in chambers. Let's take a look at it.

[OFF THE RECORD]

THE COURT: All right, we are back on the record. We met with counsel outside chambers, off the record. I asked for the information that the objections have been based on in regards to the deposition so that I could hear it, and then after

hearing that, I think the process we're going to do is, I'll allow Mr. McCants to ask some specific questions about an incident that he read from there. If the answers are different, then he's going to be allowed to place -- or cross-examine in regards to the responses in the deposition. So

Mr. McCants, you may proceed.

MR. MCCANTS, III: Thank you, Your Honor.

Q. [Mr. McCants, III] Ms. Rutherfurd, we got on this line of questioning because we were talking about the second incident with Ms. Jackson in 2013, and that's what my notes reflect. Do you agree that we had two incidences or incidents with Ms. Jackson?

A. We did.

Q. This is the latter one when she saw some work being done at the bottom of the property; correct?

A. Correct.

Q. And she came to both you and Alan and expressed concerns about it; correct?

A. Correct.

Q. And that was work that Melanie was doing at the bottom of the property?

A. Correct.

Q. As shown on this Exhibit Number 1; correct?

A. Correct.

Q. And I had asked you what you thought caused Ms. Jackson to react like that, and you told me you didn't know; correct? Do you remember that?

A. I don't remember that, but.

Q. Well, do you know today?

A. I don't know why she would be so dramatic.

Q. All right. And did you tell me at your deposition that you and your husband talked about that, and didn't do anything about it because you told me you didn't know where the lines are, and if you don't know where the lines are, you don't know if it's your property or not? Did you tell me that?

A. Yes.

Q. All right, so we're past that now. After all that, you agree you told me that you did not go to Ms. Jackson and express concerns because you weren't sure, one, where the lines were; correct?

A. Right.

Q. And two, who are you to say, if you don't know where the lines are, if it's our property or not? Did you tell me that?

A. Yes.

Q. All right, so that's a product of not knowing where your boundary line is because you don't know if you own the property, on one side or other what you think is

the boundary line; is that correct?
A. I don't know where the line is, correct.
Q. All right, let's keep flowing here. I'm sorry we got snagged on that. You also told me -- let's go back to this fence on the western side of your property. It's there for privacy, as you talked about; correct?
A. The western --
Q. And to protect the pool --
MS. CARROLL: Objection; foundation.
MR. MCCANTS, III: Let me back up. I've lost my train of thought --
MS. CARROLL: Her fence on the western side of the property.
THE COURT: Do you want to point out on there --
MR. MCCANTS, III: Sure.
MS. CARROLL: [Inaudible].
THE COURT: -- because I think there have been a couple references to fences today --
MR. MCCANTS, III: I'm trying to get my compass reading correctly today.
Q. [Mr. McCants, III] This Exhibit 1 is oriented this way. That's north; correct?
A. I don't know.
Q. How about for purposes of this discussion?

A. Okay.
THE COURT: It has previously been referenced that north would be the top of the --
THE WITNESS: That would be good.
THE COURT: -- diagram.
THE WITNESS: That's good.
THE COURT: I don't know if that's correct or not, but that's in the record [inaudible] --
Q. [Mr. McCants, III] But that makes it west this way; is that correct? Your property is west of Ms. Hozey's property; correct?
A. Yes.
Q. She's on the east, and we talked about how that fence is towards the eastern side of your property; correct?
A. Correct.
MS. CARROLL: Objection. Which fence?
MR. MCCANTS, III: Well, I'm pointing to it.
Q. [Mr. McCants, III] There is a fence, Ms. Rutherfurd, you agree, that runs from the top point of the disputed area down. It's not on the line of the disputed area, but it runs, basically, parallel to it, to the bottom where it connects with another fence; correct?
A. I believe so, but I don't know, at the back, what it does.

Q. All right, well, you know it's here, though?
A. I know it's up there by the street --
Q. At the top --
A. -- by the pool. Yes.
Q. And you know it extends south?
A. Correct.
Q. In virtually parallel fashion --
A. I've been told, yes.
Q. All right, here's my question then.
A. Um-huh [yes].
Q. When you bought the property, and even up until the time Curtis Coleman came out here and got you a good survey, you didn't know who owned the fence, did you?
A. Yes, we owned the fence.
Q. Well, let's check your deposition again, maybe I misread it. All right, Ms. Rutherfurd, at your deposition, page 80 -- I'm going to start at line 6, to make it clear for everybody.

Question, "Is there a fence in this area down there?" Answer, "There's a piece of a fence, but I don't know if it's on the line." Question, "That's my question." Answer, "Okay, there's a piece of a fence, but I don't know if it's on that line. It's, like, what? Two sections big." And I said, "All right," then you

said, "It's like -- " Then I said, "That's going to be my question." You said okay. Question -- here's where I'm getting at, "There's fencing, if I can say, along this eastern boundary. Do you agree with that?" Right, then you said, "But I don't -- I did not know whose fence it was -- "

A. I'm talking about the two-section piece of cyclone fence that's on, I believe, Ms. Hozey's property.

Q. Well, I talked --

A. It's about that big. It's like two sections. That's what I'm talking about in that discussion.

Q. Well, let me go back to my question --

A. It's just a piece of a fence.

Q. I said, "There's fencing, if I can say, along this eastern boundary. Do you agree with that?" and that's what we talked about a second ago.

A. That's what I'm talking about a second ago, but in that deposition, I was talking about that piece of fence that belongs to Ms. Hozey, I believe.

Q. Okay, and where does that fencing begin?

THE WITNESS: Can I get up?

THE COURT: Yeah, you can stand up.

THE WITNESS: Okay.

A. I believe it's, like, right in here.

MS. CARROLL: For the record, please show that

the witness was pointing to what we're treating as the easternmost boundary of their titled property.

THE COURT: Along the disputed area, eastern side; is that right?

MS. CARROLL: Yes, Your Honor.

THE COURT: I agree. Okay.

Q. [Mr. McCants, III] And it runs -- if you know -- if you're talking about fencing clearly not on your property, I asked you did you know if the fence was there when you purchased the property. Do you remember what you told me in response to that?

A. No, sir.

Q. You said, "I don't know."

A. That sounds right.

Q. I asked you some more questions about fencing, but you didn't know about that either.

Okay, let's talk about what you did to secure the services of Charles Rudnick, of course, is your son-in-law, as you've indicated. He wrote a letter for you, and in his letter, the first paragraph, it says, "I'm writing on behalf of Susan and Alan Rutherfurd. Several months ago, the Rutherfurds noticed that you cleared a large portion of land on the eastern portion of the Rutherfurds' lot." This is dated September 16, 2020. You're talking about several months ago, from September

16 of 2020; help the Judge understand what several months is.
MS. CARROLL: Objection; the document speaks for itself.
THE COURT: Rephrase your question if you're going to ask, not clarify to the Judge. The Judge knows what several months is, but you can ask her what her --
MR. MCCANTS, III: That's what I'm trying to do.
THE COURT: All right.
Q. [Mr. McCants, III] I'm going to trust that you provided information to Charles to write this letter, okay?
MS. CARROLL: Objection; that might call for attorney-client privilege. He's her son-in-law, but he was an attorney, acting in an attorney capacity, when he wrote that letter.
THE COURT: All right, and let me hear the question, as to how it's violating attorney-client privilege again.
MS. CARROLL: He asked for communication -- he was about to ask her about she told to Charles Rudnick, her lawyer, so that's a communication from a client to an attorney

[inaudible] --
THE COURT: I would agree, if he gets to that question. Not to cut you off, counselor --
MS. CARROLL: Yes, Your Honor.
THE COURT: -- if he gets to that question of what did they talk about in regards to their conference to send a letter, that could be attorney-client privilege, in regards to that --
MR. MCCANTS, III: I didn't ask that [inaudible] --
THE COURT: I didn't think he asked her that yet, so.
MS. CARROLL: He hadn't yet, but if I waited for him to ask, she might have answered.
THE COURT: I understand ringing of the bell, but I'm going to let him ask the question again, and we'll see if he gets to there.
MS. CARROLL: Yes, Your Honor.
Q. [Mr. McCants, III] Ms. Rutherfurd, I'm going to trust you provided to Charles information to assist him in understanding the situation; correct?
A. Correct.
Q. And in response to you providing him information, he wrote this letter, dated September 16, 2020; is that correct?

A. Correct.
Q. In this letter, he wrote "... several months ago the Rutherfurds noticed that you cleared a large portion of the land on the eastern portion of the Rutherfurds' lot." Did you provide that information to Mr. Rudnick?
A. I provided information to him about the clearing, but I -- I missed that, that he put several months ago.
Q. All right. Well, when did you -- first off, let's try to do this. Let's try to get your definition of several months because I do think some people disagree. You can say a month --
A. Oh.
Q. -- a couple of months, and then everything breaks loose with the world "several," okay --
A. Correct.
Q. So several is, what? Three, four, five, or what?
A. Several, to me, is two or three.
Q. All right. You agree with me it doesn't say several years ago you noticed [inaudible] down here in this --
A. Correct. Correct.
Q. It says -- and I'm going to ask you if that

suggests you only recently are saying you noticed work being done by Melanie?

A. No, no, I -- I think that's a misunderstanding.

Q. Whose misunderstanding?

A. Either mine to conveying to Charles or his understanding from me.

Q. Well, I'm going to trust if you'd known about this work Melanie was doing years ago, you would have done something about it; correct? Clearing --

A. Not necessarily.

Q. -- maintaining, cultivating?

A. If she's maintaining and making it nice, but we didn't know exactly where.

Q. Parking vehicles, campers, things like that, you're aware of that?

A. More recently, yes.

Q. But didn't do anything about it; correct?

A. Well, no, we -- in 2020 we did, that was when it got heavy, as far as how much she was using it.

Q. All right. And in fact -- let's talk about this. One of the reasons you may not be able to see what Melanie was doing, you were talking about privacy, you and your husband had blue tarping draped across that fence along the eastern border --

A. No, we don't.
Q. -- of your property?
A. No, we don't.
Q. Is there blue tarping on the fence, at all?
A. Some of it on the street.
Q. Why is it there?
A. From when we cut back the bushes for privacy.
Q. All right. But you can't see what's going on on Melanie's property because of that tarp on the fence; correct?
A. There's no tarp on -- on the eastern side. There is no tarp.
Q. Will you agree with me there's tarping up near the top at Laurel Drive, on that fencing that we've discussed? We've got pictures of that?
A. Can I --
Q. Sure.
THE COURT: He's referencing Plaintiff's
Exhibit 1, for the record.
A. Here. Here.
Q. [Mr. McCants, III] All right, well, I --
A. That has nothing to do with the disputed area.
Q. Well, this -- let's talk about this fencing again that's on this area.
A. Correct, there's no --

Q. All right, there's not blue tarping, at all, on that fence?
A. No, there's not.
Q. At all?
A. At all.
Q. From the top down to here?
A. Correct.
Q. All right, well, this -- we'll look at the photographs, at some point. See if you can find -- do we have the photographs we used, Your Honor.
MADAM COURT REPORTER: I do. I brought them.
THE COURT: Counsel, I assume we still have all those.
MS. CARROLL: Yes, she just gave them to me at the beginning of the trial, Your Honor.
THE COURT: All right, I just wanted to make sure you didn't start separating them --
MS. CARROLL: I sat them on the table.
THE COURT: -- and we needed to double-check on something.
MS. CARROLL: No, Your Honor, I didn't.
THE COURT: Okay.
MS. CARROLL: It would not be unusual for me to have done a terrible thing like that.
THE COURT: Well, I can understand how it

would happen if you didn't realize they were the originals; that's why I was asking but that's fine.

MS. CARROLL: No, I didn't. I just put them there, Your Honor.

THE COURT: Okay.

MR. MCCANTS, III: I'll move on, Judge. I don't see what I'm looking for in those photographs.

THE COURT: All right.

MS. CARROLL: I'm going to give these exhibits back to the court reporter.

THE COURT: Okay. You can continue Mr. McCants.

MR. MCCANTS, III: Thank you, Judge.

Q. [Mr. McCants, III] And again, I want to make sure this is a continuing point over these years that we're talking about here. Up until the time, again, Rhett Coleman was engaged for you guys, you did not know where your property lines were; is that fair?

A. Exactly. Correct.

Q. I mean that's true?

A. We didn't know where they were, exactly.

Q. And before 2020, you, yourself, never spoke to Melanie, "You're using our property;" is that correct?

A. Correct.

Q. And you told me that's -- you did not do that because you weren't sure where your property was; correct?
MS. CARROLL: Objection; asked and answered.
MR. MCCANTS, III: I'm going to try again.
THE COURT: I'll let him ask the question on cross.
Q. [Mr. McCants, III] Did you tell me at your deposition, Ms. Rutherfurd, that you never spoke with Melanie and said, "You're using our property," because you weren't sure?
A. That sounds -- that sounds reasonable. I don't recall, but that sounds reasonable, as far as what my head would -- what I might be thinking.
Q. Well, let's make it clear for our record, then. This is page 84, line 1. Question at line one, "Did you, yourself, not Alan; did you, yourself, during the course of your residency on Laurel Drive, and with respect to Melanie, ever go to her prior to 2020, and saying 'You're using our property?'" and your answer at line six was, "No, because I wasn't sure." That's pretty direct, you agree with that?
A. I agree.
Q. Did not confront Melanie or ask her what's going on, or anything like that, before 2020; correct?

A. Correct.
Q. But you -- and you've kind of told us today that you did see vehicles/campers parked up at the top of Laurel Drive in this disputed area; correct, before 2020?
A. In 2020, is when I noticed that there was a truck there, there was a boat there, and there was a pop-up camper.
Q. Prior to 2020, you'd never seen any vehicles or other --
A. I'd -- no, I had seen a truck there, occasionally.
Q. All right, and help us understand "occasionally" and when?
A. I mean, we drive that way to go to the grocery store, so every once in a while. I didn't know if it was a child spending the night for the weekend, or what.
Q. Well, did you see the construction of a parking pad there, at any point in time?
A. I never saw the construction of it.
Q. Did you see the parking pad after it was constructed?
A. Well, the crush-and-run, yes.
Q. All right. Well, you know what, you've used that phrase, and Melanie didn't really talk about it. Do you know what crush-and-run is?

A. It's pebble -- pebbleized --
Q. It's used to make roads and driveways; correct?
A. No, I don't think so.
Q. You don't know that?
A. No, I -- asphalt is what you use for roads and driveways.
Q. Well, there's some roads around that, I think, aren't necessarily asphalt but --
A. Okay.
Q. -- but be that as it may --
A. Okay, it's -- it's not permanent.
Q. Well, somebody had altered the landscape up there, do you agree with that? I mean, that crush-and-run just didn't show up on a -- out of the blue. Someone did it; correct?
A. Yeah, yeah.
Q. All right. You guys go down Laurel Drive to go to the grocery store?
A. Right.
Q. And I don't know if Your Honor is aware of this area, you would be leaving here to go to the grocery store. What, the Food Lion up at the --
A. Correct.
Q. -- plaza up there?

A. Correct.
Q. On US 1, okay. Now, while I'm on the subject [inaudible], this gate that you pointed to earlier runs at the top of your property along Laurel Drive. Where's the gate to that property, that fence?
A. About -- near your finger, about mid -- a little bit further down. No --
Q. This way or this way?
A. Right about there.
Q. All right.
A. Right about there.
Q. So there's no way to get out of this property on the north unless you go through the fence; correct?
A. That's the closest point. There are other ways to get out of the property, but that's closest point --
Q. All right, and you've already told us there's no gate in the fence --
A. Right.
Q. -- along the --
A. Right, there's no fence along that --
Q. -- the western side of property --
A. Along --
THE COURT: And for the record, he's pointing to the disputed area, saying there's no fence.

MR. MCCANTS, III: That's correct.
THE WITNESS: There's no --
THE COURT: Or no gate.
THE WITNESS: Correct.
Q. [Mr. McCants, III] So really -- and this is heavily wooded for the privacy that you've talked about; correct?
A. Correct.
Q. But you guys, regularly, drove down Laurel Drive, past Melanie's property so you can see what was going on to the south of Laurel Drive on her property. Is that fair?
A. Right there by the street we could, yes.
Q. All right. So if there were vehicles parked on that parking pad out there, you would have seen them driving down Laurel Drive; correct?
A. Right.
Q. All right. Ms. Rutherfurd, just very general questions; you agree that every property owner should know where their property lines are; correct?
A. I agree.
Q. You agree everybody should watch over their property and protect it; do you agree with that?
A. Well, yes.
Q. Nothing prevented you or your husband from

walking these lines, periodically, before 2020, or hiring a surveyor before 2020, to make sure your lines were where they were; is that correct?

A. No. I explained that I felt that Ben Christiansen needed to be the surveyor. If there was an error, I was -- as a friend, I was professionally trying to let him correct a mistake rather than --

Q. Well, my question was did anything prevent you, before 2020, prevent you from hiring a surveyor to come out there and tell you where your lines were, if you didn't know where they were?

A. Well, except for what I stated.

Q. That didn't really prevent you. Understandably, you're trying to be nice to Ben, okay, and you trusted him because he was a friend; correct?

A. Correct.

Q. But obviously, you've indicated through your testimony and the evidence, that you finally, in 2020, spent considerable money hiring Rhett Coleman?

A. Right. We didn't think that we -- there was no urgency before 2020, as far as from Ms. Hozey's side of the property. There was no sense of urgency until we saw her trying to put up a permanent structure. Everything was neighborly up to that point.

Q. All right, so it wasn't urgent, but what

you're telling Judge Griffith, though, you clearly saw activity being undertaken by Melanie in that disputed area, but you didn't do anything about it --

A. It -- it --

Q. -- because you didn't feel like it was urgent?

A. It was dual maintenance. We just -- that was just how we got along.

Q. All right. And finally, you've shown us three videos --

A. Yes.

Q. -- very short; two of which have Melanie in them, spraying something, and another is a visual image of your husband pruning; correct?

A. Correct.

Q. And again, that's up there right where that pad is where the trailer is parked; correct?

A. Right, right.

Q. Do you have any other photographs with visual depictions of you or your husband doing any work in this disputed area, other than that very short video?

A. No, we -- we didn't maintain the camera after that. We -- it established for us that she was disregarding what we had asked, and that seemed to be enough.

Q. Well, the trailer cam, I trust you put up upon

your attorney's advice; correct?
A. I'm sorry, what?
Q. Why did you put the trail cam up?
MS. CARROLL: Objection.
THE COURT: Sustained. You can ask her why she put a trail cam up; I'll allow that one. I won't allow the one about the attorney.
Q. [Mr. McCants, III] Why did you put a trail cam up?
A. Because we wanted to see what she was doing. The signs kept disappearing, the "no trespassing" signs.
Q. Well, did anything prevent you from putting up a trail cam before 2020 to see what she was doing?
A. No, we didn't feel a need.
Q. All right.
A. Everything was neighborly.
MR. MCCANTS, III: May I have just a moment, Your Honor. I'm want to talk with her briefly to make sure there are not any other questions [inaudible] --
THE COURT: You want to take five? Are you talking about you want to take a break?
MR. MCCANTS, III: Is that okay, Your Honor?
THE COURT: All right, we've got a five-minute break. Now, we're at the noon hour. We've got a

witness coming at 1:30, and I've got a meeting at 3 o'clock, so we're going to have to have the discussion when we finish here as to what our schedule is going to be, so I'm going to give a five-minute break. Everybody's been sitting here since we started, so.

MS. CARROLL: Yes, sir.

THE COURT: So everybody stretch your legs. The witnesses are not to talk about their testimony with anybody here in the room.

[OFF THE RECORD]

THE COURT: All right, we are back on the record. Mr. McCants?

MR. MCCANTS: I don't have any other questions of this witness, Your Honor. Thank you.

THE COURT: Anything on redirect?

MS. CARROLL: Briefly, Your Honor.

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REDIRECT OF SUSAN RUTHERFURD

BY MS. CARROLL:

Q. Ms. Rutherfurd, when you talked about the -- your neighbor on the south, is it fair to describe that as a disagreement about where the property line was, with respect to her fence, at some point?

A. Yes.

Q. Did you feel like you were being neighborly when you allowed them to have that bit of property?
A. Yes, yes.
Q. Was a survey done?
A. Yes.
Q. And did that resolve the issues?
A. Yes, it did.
Q. Okay, and so there was a happy resolution?
A. Yes.
Q. And have you tried to be neighborly with respect to Ms. Hozey over the course of your relations with her?
A. We feel like we have.
Q. Did you mind that she did some work on cleaning up the property?
A. No.
Q. Did you feel like your efforts were or were not complementary to the ones she did?
A. Yes. I mean, ours were different because we were simply looking out after a buffer.
Q. You mentioned in your testimony that -- Mr. McCants asked you about the gate, and then you said, I believe, "There are several other entrances to the property." Could you show us, on this Plaintiff's Exhibit 1, where the different entrances are onto the

property and describe them for us?

A. Okay. There's one here on the side and there's one over here on the side. There's one on either side of the house, into the backyard.

Q. Okay. And when you were talking in your deposition transcript -- you can stay up here with me. When you were talking in your deposition transcript about fencing, were you talking about the fence around the pool area, that you described as being for safety purposes?

A. Yes.

Q. When you talked about the two-block panel of fencing, where was that?

A. That is on Ms. Hozey's property, along this line right in here.

Q. Is that different?

A. Yes.

Q. Okay.

A. Oh, yes.

Q. Is it attached to anything, these two bounds --

A. No, it's not attached to anything. It's a piece of fence.

Q. Is it old?

A. It's chain-link.

Q. So just two --
A. Who knows how old.
Q. How long are we talking about?
A. About eight feet.
Q. About eight feet, so --
A. Maybe a little longer.
Q. So tell me if I've got my finger in the wrong spot. There's an eight-foot piece of chain-link fence, not attached to anything --
A. Right about here.
Q. Right here?
A. Yeah.
Q. Okay. Okay, thank you. You used the term "dual maintenance" in your testimony with Mr. McCants; what were you talking about, "dual maintenance"?
A. Well, she did things that she felt she wanted to do, obviously, on the property, and we did whatever we felt was necessary as far as a buffer.
Q. And then you mentioned --
A. And --
Q. I'm sorry.
A. You're all right. I'm talking over -- just coexistence.
Q. Okay. You're okay with that?
A. Yeah.

Q. And you said something about there being no urgency. Did there ever come a time when there was an urgency about your relationship with Ms. Hozey?
MR. MCCANTS, III: Objection; leading,
Your Honor.
Q. [Ms. Carroll] Was there or was there not ever a time when you felt urgent about your relationship with Ms. Hozey --
A. Yes, it went -- when we discovered she was considering putting in a permanent building.
Q. And when was that, approximately?
A. In 2020.
MS. CARROLL: I have nothing further for this witness, Your Honor.
THE COURT: Anything in response to those particular questions, Mr. McCants?
MR. MCCANTS, III: No, Your Honor.
MS. CARROLL: I believe you can leave now,
Ms. Rutherfurd. You can step down now.
THE COURT: Yeah, you can have a seat, ma'am.
MS. CARROLL: Your Honor, I, with much chagrin, say that I think that witness took a lot longer than I expected her to.
THE COURT: That's what I was going to get into. We go off the record for a minute. Let's

talk about scheduling.

[OFF THE RECORD]

THE COURT: All right, Defense may call its next witness.

MS. CARROLL: Yes, Your Honor. We call to the stand, Alan Rutherfurd.

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DIRECT EXAMINATION OF ALAN RUTHERFURD

BY MS. CARROLL:

Q. Mr. Rutherfurd, you're a little bit hard of hearing; right?

A. Yes.

Q. So I'm going to try to speak obnoxiously loud, and I would request that counsel for Plaintiff do the same thing.

MS. CARROLL: Mr. McCants, please?

MR. MCCANTS, III: All right.

Q. [Ms. Carroll] Please state your name for the record, and spell it.

A. Alan Lippincott Rutherfurd, spelled A-L-A-N; Lippincott, L-I-P-P-I-N-C-O-T-T; last name Rutherfurd, R-U-T-H-E-R-F-U-R-D.

Q. Mr. Rutherfurd, will you agree to let me know if you can't hear me or if you get confused about any of my questions?

A. Yes.
Q. You'll do that? Thank you.
MS. CARROLL: In fact, Your Honor, with your permission, I'm going to move a little closer.
THE COURT: That's fine.
Q. [Ms. Carroll] This will make it easier; right?
A. Yes, sir.
Q. Mr. Rutherfurd, were you here for your wife's testimony this morning?
A. Yes.
Q. Did you hear anything that she said that you disagreed with?
A. No.
Q. Tell me what kind of activities you had on -- or if you had any, on the disputed area, which is covered by this red line on the satellite image.
A. Yard maintenance, which includes trimming bushes, moving debris, moving limbs, moving pine straw from azaleas and roses.
Q. About how often did you do that?
A. About every five years.
Q. Did you have agents come in to do work on the property, as well?
A. Yes.
Q. Were there periods of time when you did more

or less than five years between activities?

Q. There were periods of time when I did more [inaudible] --

Q. Okay, tell me about what you --

A. -- five years. For instance, dead trees, limbs that were hanging on both sides of the fence. There is a vine called a smilax --

Q. Um-huh [yes].

A. -- which you can cut the vine, but if you don't remove the root the vine will come back the next year. So you have to dig up the root, which is called a smilax, in gardening terms.

Q. And is that something you did on the property?

A. Yes.

Q. Am I correct in saying that you have slowed down a little bit in the last few years?

A. Yes.

Q. Here, I'll move over there so we can talk, together. And now, is it getting progressively harder for you to do work over there?

A. Yes.

Q. All right. Have you still been over there, recently?

A. Yes.

Q. Have you walked the entire property?

A. Yes.
Q. Have you done it more than once?
A. Yes.
Q. Did you walk the entire property after Rett Coleman did his survey --
A. Yes.
Q. -- of the property? Yeah. What was the purpose of the property, for you? Why do you own [inaudible] --
A. The purpose for the property was to create a natural, private barrier between us and our neighbor.
Q. Okay. Have you had interactions with your neighbor over the years?
A. Yes.
Q. Did you mind that she went on and did some work on the property?
A. No.
Q. Were there times when you might have been on her property and doing work?
A. Not that I know of.
Q. Okay. Did you have a general idea of where your property line was?
A. Yes.
Q. Did you ever have any conversations with Ms. Hozey where she discussed, with you, a possible

easement on the property?

A. Yes.

Q. Tell me about that.

A. In 2007, I observed that she was there with a blower, and I came over to the -- in the disputed area, and told her that it was private property. She said that the City had an easement through there for flood control.

Q. Um-huh [yes]. So did you understand that she thought that she was allowed to be in there?

A. Yes.

MS. CARROLL: I have nothing further for this witness at this time, Your Honor.

THE COURT: Okay.

MS. CARROLL: May I ask one more question, as I walk away, Your Honor?

THE COURT: Yes, ma'am.

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DIRECT EXAMINATION OF ALAN RUTHERFURD RESUMED

BY MS. CARROLL:

Q. Did Ms. Hozey every try to exclude you from your property?

A. No.

Q. Okay. Thank you.

THE COURT: All right, Mr. McCants, you may

cross-examine.

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CROSS EXAMINATION OF ALAN RUTHERFURD

BY MR. MCCANTS, III:

Q. Good afternoon, Mr. Rutherfurd.

A. Good afternoon, Mr. McCants.

Q. I'm going to come up a little bit so you can hear, if that's all right.

A. Thank you.

Q. I appreciate that you indicated that you don't disagree with anything your wife said, but I am going to ask you a few specific questions about your involvement with the area of dispute, as it relates to your property and Melanie's property. But you don't disagree, obviously, that your wife correctly stated that for years and years, in fact, up until the time y'all engaged Rett Coleman, you didn't know where your property lines were? Is that fair?

A. That's correct.

Q. All right. And then you testified you knew, generally, you knew where they were. Tell me generally -- or tell Judge Griffith, generally, where you thought your boundary line was with respect to that disputed area and the fence that runs down the property on that side.

MS. CARROLL: Objection; foundation. There are two fences that have been referred to. Please identify which one you're talking about.
THE COURT: I think you said beside the disputed property, if you want to point that out to him, Mr. McCants, please.
MR. MCCANTS, III: Sure.
MS. CARROLL: Because --
THE COURT: I agree there's been testimony about another fence on the pool, so let's make sure we're talking about the right one.
Q. [Mr. McCants, III] Mr. Rutherfurd, you've heard testimony; we've talked about this. There is a fence which traverses this area going south on this Exhibit Number 1, and that fence actually comes down to the, now-Carlisle property, and comes across; is that correct?
MS. CARROLL: And for the record, can I say what you're pointing at? You can say what you're pointing at, if you want to.
MR. MCCANTS, III: I think he saw it.
MS. CARROLL: I want it on the record.
Q. [Mr. McCants, III] Mr. Rutherfurd, there is a fence, which is on your property, which traverses this line, parallel, south on this diagram; correct?

A. Yes.
Q. There's no gate on this fence, for example? Is that true?
A. That is correct.
Q. It's a cyclone fence, that's about yea high; is that correct?
A. Yes.
Q. It goes south, goes to the bottom, then it takes a turn and goes west, on Exhibit 1, along the now-Carlisle property; is that correct?
A. Yes.
Q. All right. And again, this fence that goes south, parallel to what is marked as a disputed area line, does not have a gate on it; correct?
A. Correct.
Q. So if you want to go into the disputed area from your property, you'd have to come up Laurel Drive and come straight down to get to it; is that correct?
A. Yes.
Q. All right. You can't -- for example, it's very difficult to walk in this area because it's wooded, and for Ms. Carroll's benefit, that would be the area down towards the Carlisle property; is that correct?
A. Yes.
Q. All right. In fact, you hired Rett Coleman to

come out there and tell you where the property lines are. Where did you think the property lines were along that disputed area? Tell Judge Griffith that, because that's what you've testified today.

THE COURT: You can stand up and point to the diagram, sir, or photo.

THE WITNESS: Okay. Okay, somewhere between there and going this way, is where I originally thought the property line was.

Q. [Mr. McCants, III] All right, well, let's make sure for the record. You've indicated with your finger and drawn a path on there. If you would, if I understand you correctly, you started up around this 21 at Laurel Drive on Exhibit 1; is that correct?

A. Yes -- no -- well it starts here -- there. I don't know whether that's 21 or not.

Q. Well, that's a four and that's a decimal.

A. Okay.

Q. Were you pointing at the decimal?

A. I'm talking about 21.4.

Q. All right, that's the top of what you thought was the boundary line; correct? Where the decimal is?

A. No, it's further right -- further in there, right in here.

Q. Do you want to say the four?

A. 21 -- yeah, about 21-4
Q. All right, then drag your finger down south, along what you thought was the property line.
A. [Witness complies].
Q. And what you've drawn, of course, Mr. Rutherfurd, is a path that basically ends -- does it end down at this corner here?
A. No, it --
Q. How about the green circle, then?
A. Yeah, about the green circle.
Q. All right, so is that a straight line from about the four --
A. Yes.
Q. -- on Exhibit 1, south to the green line?
A. Yes.
Q. Excuse me, the green circle. Is that correct?
A. Yes.
Q. All right.
MS. CARROLL: I object to Mr. McCants moving the line that the witness actually drew his finger --
THE COURT: The Court will take notice of the witness' movement of his hand as opposed to Mr. McCants'. I'll recognize that.
MS. CARROLL: Thank you, Your Honor.

Q. [Mr. McCants, III] All right. Just to make sure, you drew a straight line from about where that four is at the top on Exhibit 1, where Laurel Drive is, down to the bottom where there's a green circle; is that correct? A straight line?

A. No, it's not a straight line.

Q. All right. Well, again, you're going to have to tell Judge Griffith, because here's my point -- and I'll try to put this in the phrase of a question -- you've clearly indicated, both you and your wife, that you don't know where your boundary lines -- or did not know where they were until Mr. Coleman did a survey, then you testified in response to your lawyer's question that you thought you knew where they were. That's what I'm trying to get Judge Griffith to understand what you said --

MS. CARROLL: Okay. Objection, Your Honor, that's definitely not a question.

THE COURT: I think he's trying to get to the question to ask that, so if I'm right, Mr. McCants, let's go to the question.

Q. [Mr. McCants, III] We got back on this because you said it wasn't a straight line; is that correct??

A. Yes.

Q. All right. Can you, with your finger, again,

show how it navigates that path south?
THE COURT: Let me move around where I can see your hand.
Q. [Mr. McCants, III] Go to the top at Laurel Drive, about at the four. All right, so it's somewhat of a curve; is that correct?
A. Yes.
Q. It curves a little bit, all right.
THE COURT: All right, so let's get, as best we can, on the record here -- we've got Plaintiff's Exhibit 1, which is the overview map. His index finger appears to start at the bottom of the four in the 21.41, if I'm reading that right, and then it moved down towards the green circle, which is denoted between lots -- or what we refer to as 22, and then the Defendants' property, 23/24. Everybody agree that those are correct designations, as far as what the Defendant is pointing to?
MR. MCCANTS, III: I agree with it.
THE COURT: Counsel?
MS. CARROLL: Yes, Your Honor.
THE COURT: All right, we've got that on the record. Let's move forward, then.
MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] With that in mind, you're kind of like me, Mr. Rutherfurd. You like poking around with a metal detector sometimes. You did that; is that correct?

A. Yes.

Q. You went out there and tried to find the actual pieces of rebar, or other materials used for the boundary pins. You know what we're talking about there; is that correct?

A. Yes.

Q. All right. In 2019, you told -- you remember you and I sat down in a deposition and discussed this case. You indicated in 2019 you found a pin using a metal detector; correct?

A. A piece of rebar.

Q. Where was that piece of rebar, again, Mr. Rutherfurd? You can point to where it is.

THE COURT: Let me get to where I can see it.

A. Right about there.

Q. [Mr. McCants, III] All right, so you're pointing now to the top -- the northern part where the four is at Laurel Drive; correct?

A. Correct.

Q. And that's important to me because you found that pin, and that kind of takes you to why you pointed

to that four as an area where you thought your property line started; correct?

A. Yes.

Q. But even after you found that pin, back in 2019, you still weren't aware or didn't know the path of the traverse of the line; is that fair?

A. Yes.

Q. All right. Now, you indicated that about every five years or so you went out and did some work in what we call the disputed area; is that correct?

A. Yes.

Q. All right. Other than that, was there anything else you did in that area, over time, other than every five or so years go out and do some work, you, yourself?

A. Yes --

Q. What --

A. -- after the contractors, the agents that we had, such as Faith Farms and Garcia's Tree Service, I went out there more often than every five years.

Q. All right, and you bring up a good point. You've indicated -- and we've got some invoices that we're going to talk about in just a second, but you would even go out there after contractors, you indicate, would go out there and work and pick up some things --

A. After the contractors quit coming on a regular basis, I did work two or three times a year.

Q. All right, now, I'm going to trust if you hired any of these contractors you took them out to the property and showed them where to work; is that correct? Or how did they know where to work?

A. It was obvious. The limbs were down, the trees were down, branches were down.

Q. Where were the branches down? Show us on this diagram, if you would.

MS. CARROLL: Objection; time, place, foundation.

MR. MCCANTS, III: At the time he hired contractors.

MS. CARROLL: Okay, we have had testimony that -- of five or six different contractors, please give us a foundation for which one you're talking about.

THE COURT: That's fair enough if you're going to ask him to point out an area, Mr. McCants.

Q. [Mr. McCants, III] Well, let me start with this proposition, if I can, Mr. Rutherfurd. When we took your deposition, I had asked you if you had any invoices for work done in, what we're calling, the disputed area; correct?

A. Yes.
Q. Do you remember that? Do you remember what you told me?
A. Not exactly.
Q. You told me you had one invoice. Do you remember that?
A. No, I don't.
Q. Okay. For the record, Mr. Rutherfurd, you're -- can you hear me okay, Alan?
A. Yes.
Q. Your deposition was taken on August 26, 2022, and do you remember doing that?
A. Yes.
Q. All right. Do you remember before I started the deposition, I said, "Please have me repeat any questions that you don't understand to make sure we're confident we're on the same page;" correct?
A. Yes.
Q. All right. I asked the question, "And because you did all this work on your property, I'm going to trust you don't have any invoices or bills or statements from any landscaping services; is that correct?" and you said you had one. That was the answer at line 16, "We have one," and without getting all this in detail, that was not just landscaping, that was an invoice for the

work that was done following the ice storm in 2014; is that correct?

A. Yes.

Q. And what should jog your memory -- and the reason I asked about Oleander Drive, you did work on your property on Laurel Drive, and also on your property on Oleander, over in Whitehall; is that correct?

A. Yes.

Q. All right. And I misspoke earlier. I think the storm was 2014, it wasn't -- I may have said 2015.

THE COURT: What's your page and line you were just reading from again, so I [inaudible] --

MR. MCCANTS, III: So that was -- I'm sorry -- page 78, from line 12 to line 16.

THE COURT: Okay.

Q. [Mr. McCants, III] All right, now, with regard to the remainder of these invoices, because these are invoices that were produced, unquestionably; for example, Cold Creek in November of 2001 did work. That was shortly after y'all moved in, agreed?

A. Yes.

Q. Can you tell us where they did that work, Cold Creek?

A. Yeah, the work was done on both sides of this fence, in this area and all the way down this area.

Q. All right.
A. Inside and outside [Inaudible] --
THE COURT: Can you point that out one more time, sir? I'm sorry, I was trying to get around and look.
THE WITNESS: Work was done in here. If this is the fence line, the work was done outside the fence.
Q. [Mr. McCants, III] Work was done inside that western red line and also to the right of the red line; correct?
A. That's right, to the right of it.
Q. Because you understand that red line ain't necessarily the fence line? The fence is parallel to that, do you understand that?
A. Yes, I -- the work was done all the way through, in here --
Q. All right --
A. -- all the way down to the bottom.
Q. So that's 2001, okay, then we had Chavous come in, looks like January, in maybe 2001. Where did Chavous do work?
A. Again, he did work down here and along in here.
Q. All right, so at the bottom area that you

pointed to towards the boundary with the Carlisle property; is that correct?

A. Yes.

Q. And then Cold Creek, in February of 2002; where did they do work?

A. Again, they did work along here --

Q. All right, now, one second. You have pointed to work below Laurel Drive, as designated on Exhibit 1 as the yellow line; is that correct?

A. Yes, that's Laurel Drive.

Q. All right, they did that work along the top of your property along Laurel Drive, and where else?

A. Okay, again, they did some work along here, and then, again, along this line here, regardless of where the fence is.

Q. They did work beyond the fence, is that what you're telling Judge Griffith?

A. Yes, towards Melanie's property.

Q. How did they access that part of the property?

A. From Laurel Drive.

Q. All right, now, in 2010 there was some work done by Garcia. This is 2010. Where is that work?

A. That work was done -- okay, there's a thicket right here of trees.

Q. And that's a thicket to the right of the pool,

which is the blue rectangle on Exhibit 1 --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. All right.
A. And they had -- their stuff was thrown over the fence, so they had to come around and clean up this area to put it on the street.
Q. All right. Now, the two other work -- Garcia came out there also a couple of other times, in July and June. That looks like this time frame, if I understand this; July and June of 2010, is that that time being?
A. Yes.
Q. All right, then we've got another one, February 21 of 2013. That's to Bill's Tree, when was that -- I mean where was that work done?
A. Okay, on that one it -- I made a mistake on that. It should be -- yes, this one. I, inadvertently, put 2013, but the work wasn't actually done until 2014.
Q. All right.
THE COURT: And what exhibit are we looking at, Mr. McCants?
MR. MCCANTS, III: Defendant's Exhibit 5. Is that what you marked? Is this a copy you had marked?

MS. CARROLL: That's correct.
Q. [Mr. McCants, III] All right, so that Exhibit Number 5, there's a discrepancy in dates; correct?
A. Yes, I was --
Q. All right, now --
A. Yes.
Q. -- this helps me understand something, and if you want to sit down, Mr. Rutherfurd, that's fine. That helps me because you had this one invoice for work done on Oleander and Laurel Drive for the ice storm, but you went back and recreated, historically, what these other invoices were; is that fair?
MS. CARROLL: Objection; confusing, ambiguous.
Q. [Mr. McCants, III] Did you, after your deposition --
THE COURT: Define the "recreated" term.
MR. MCCANTS, III: I'll rephrase completely.
Q. [Mr. McCants, III] After your deposition, did you and your wife go search for more invoices?
A. Yes.
Q. Is that what y'all did?
A. Yes.
Q. And as part of that, you went and checked your statements; correct?
A. Yes, a joint account.

Q. That, on Exhibit Number 5, what appears to be a Post-It with handwritten information on, "Check to Bill's Tree Service, number 1089;" is that your handwriting?

A. Yes.

Q. All right, and the original of this document would be an original Post-It you pulled and wrote on that? I'm trying to understand this shadow here.

A. Yes, that's a sticky note.

Q. Sticky note, or a Post-It note?

A. Post-It note, yes.

Q. So what you did is, after the deposition, you went back and tried to find invoices or checks you'd written for work in what we're calling the disputed area; is that correct?

A. Yes.

Q. At the time I talked to you, you were aware of only one invoice; is that correct?

A. Yes.

Q. All right, and is it your testimony today after -- in 2022, when I asked you that question under oath at your deposition, you told me you only had one invoice. How are you able to reliably tell Judge Griffith that, for example, Number 5 is for work in the area that you're talking about? How can -- how is that

reliable? How do we know that for sure?
A. Because I wrote checks for work.
Q. I understand that, but how do you know that's where these individuals worked, after going back in so much time? You don't have any other historical records of it, for example?
A. Can you rephrase the question?
Q. I'll try again. How do you know that this check, February 21, 2013, for $7,300 that you pulled off your --
MS. CARROLL: Objection; we just had testimony indicating that that was not the date.
MR. MCCANTS: Well, that's what he wrote.
Q. [Mr. McCants, III] How do you know that your handwriting, a check --
THE COURT: I'll note the objection. I understand there's a discrepancy between a handwritten note and the other section that says 2014. I think the actual testimony is that's a 2014, as I understand it, invoice.
Q. [Mr. McCants, III] We'll call it a check from February 2014, check number 1089, to Bill's Tree Service, but it says here February 15. You see that, Mr. Rutherfurd? I'm having a hard time understanding the dates here. And I appreciate they're a year or two

apart, but you see there? Check number 1089 to Bill's Tree Service, on February 15, is that how I should understand that, interpret that?

A. It was written for the ice storm.

MS. CARROLL: Mr. McCants, may I have permission to explain to you what's on that paper --

MR. MCCANTS: Uh-uh [no]. No.

MS. CARROLL: All right.

Q. [Mr. McCants, III] Is this the ice storm check for both Oleander and Laurel?

A. Yes.

Q. All right. That answers that. And that was written on -- well, I may not have been wrong. When was the ice storm? Do you remember?

A. 2014.

Q. All right, and it was what time of the year? You know, I think it was --

A. [Inaudible] 2014.

Q. But that's a check written in February of 2015, do you agree?

A. Yes, but -- the reason I guess is because part of the work was done at Oleander and part of the work was done on Laurel Drive.

Q. All right, and what I'm trying --

A. And it wasn't done all simultaneously.
Q. Over a period of time?
A. Over a period of time.
Q. And you did not turn this in to your insurance, I think you've told me that, so we don't have any records of that; correct?
A. Correct.
Q. All right, so back to my question, after so much time, how can you refer to these invoices and tell Judge Griffith that these people did this work in this area on Exhibit 1?
A. Because that's where the damage was.
Q. Well, how do you remember that, though? How do you not remember that there was mostly damage in this area down behind the house and alongside the pool, as opposed to other areas?
A. Because in the original part of this, this part here, had all kinds of damage caused by the ice storm. It could be one foot in this direction, one foot in that. It's kind of like a thunderstorm, when it hits one house but it doesn't hit the other.
Q. All right, and you heard Melanie's testimony that she also had work done as a result of the ice storm; correct?
A. Yes.

Q. And you heard her testimony about how that was paid for; correct?
A. Yes.
Q. And you heard her testimony that it was in what we're calling the disputed area? Did you hear her say that?
A. Yes.
Q. All right, now, how much then was the cost of the work on Laurel Drive for the damage done in the ice storm, then, as opposed to how much was paid for the Oleander work? Can you tell us that today?
A. No, but I remember that the ice storm damage was about $1,500.
Q. All right. Not as much as Oleander?
A. Correct.
Q. And again, you hired Mr. Garcia. I can't remember if I went over this, but you can tell with some assurance that the work Mr. Garcia did in 2010 was on Laurel Drive for the area that we're talking about?
A. Yes.
Q. All right. Now -- okay. Let's talk about, if we can, the parking of trailers and campers or trucks, because if I understood Susan's testimony correctly, she didn't see any campers or truck parked up in the area on Laurel Drive until about the time that Rett Coleman was

called to do the survey; is that correct?

A. Repeat the question.

Q. Let me get up closer so you can hear me, okay. When, Mr. Rutherfurd, did you first see that campers/trailers/trucks were parked in this area of the disputed area in where that circle is?

A. 2005.

Q. All right. That was a good bit back from what your wife testified to; will you agree? Were you able to hear what she said?

MS. CARROLL: Objection; lack of form and foundation.

MR. MCCANTS: I'll rephrase.

THE COURT: Rephrase.

Q. [Mr. McCants, III] Were you able to hear what your wife, Susan, testified to today?

A. I believe so.

Q. Do you remember what she said about when she saw trailers, and whatnot, parked in that area that I pointed out?

A. I don't remember exactly.

Q. All right, but you -- there's no question that you first saw these trailers, and whatnot, as early as 2005; is that correct?

A. Yes.

Q. And it's true, also, that that did not -- once you saw those trailer and campers and other vehicles, or whatnot, parked in that area, you didn't go to Melanie about it, did you?

A. No.

Q. Why not?

A. Because we thought we were being good neighbors and wanted to keep it friendly.

Q. Anything else? Any other reason?

A. I think we wanted a friendly good-neighbor environment.

Q. All right. In your deposition, do you remember telling me something different?

A. No.

Q. All right, well, I'll read it to you.

MR. MCCANTS, III: I better go back to the start for completeness, Your Honor.

Q. [Mr. McCants, III] All right, at page 62 of your deposition, I asked the question, "Then in 2005 a trailer that was on her property from 2002/2003/2004 arrived. That -- " I have to beg your pardon, I was reading your answer.

MR. MCCANTS, III: I'll go back to line 16, Your Honor, on page 62.

Q. [Mr. McCants, III] What other -- and we were

talking, Mr. Rutherfurd, about conversations with Melanie. Remember, I asked you to make sure I [sic] understood everything she said. At line 16, "What other conversations did you have with Melanie or what words did you hear other than 'We talked about,'" and you answered, "Then in 2005, a trailer that was on her property from 2002/2003/2004 arrived. That camper trailer was on her property, well within her property line next to her garage." And I said okay. Next answer, "Then there was no further discussion -- " I interrupted you, and I said, "This is her house. Not to interrupt you, but what you're saying is when you first saw a trailer it was near a structure." And you said, "Yes." "Not parked in the area Susan has described?" you answered no. You said, "Within like 10 feet."

Now here it's getting to my point. At line 11, I said, "Fair enough. All right. What was the conversation about the trailer that you had with Melanie?" You said, "You talked to her or you saw something." "Help me out with that. I'm sorry, am I confusing you?" and you said yes.

MS. CARROLL: Objection. Your Honor, this is improper impeachment. He is just -- he hasn't contradicted what the man said. The man just said the first time he saw a trailer was almost 2005.

He read from the transcript that 2002, '03, and '04 it was not on his property and showed up in 2005. Now he's confusing me now, and it's certainly not proper impeachment. He needs to --

THE COURT: Well, I --

MR. MCCANTS: Judge, she's right. She's right.

THE COURT: Yeah, I'm going to note the objection. I agree that's what it says.

MR. MCCANTS, III: No, no, no, she's right. I'm confusing everybody because I had the wrong page.

THE COURT: Okay, all right.

MR. MCCANTS: I'm going to start over. Good objection.

MS. CARROLL: I just -- I think this is very unfair to the witness to not do this in an organized way, so my objection is that this is, essentially, badgering.

THE COURT: Well, what I'm going to say is I don't know about the badgering. I will say, though, if you've got the correct page number now, and line, put that on the record.

Now, remember, to impeach him, you've got to ask him the question and he's got a different

answer. Now, you've asked him about the 2005 date, and that's where you started and said you were going to go through his deposition, but if there's anything different or in addition to that, you need to ask him those things. Because I do agree it's unfair if you're just reading, and he just has to say, well, yeah that's what it says, when he's not even looking at it, by the way.

MR. MCCANTS, III: Well, I agree with you, Judge, and I've got the wrong paper -- piece of paper again. All right, I've got it.

Q. [Mr. McCants, III] All right, page 64. And I had asked you, you know, back when you saw a trailer or camper parked in this area did you go to talk to Melanie about, and you said no; correct?

A. Correct.

Q. And I asked you why not, and you said, "Well, I want to be a good neighbor;" correct?

A. Correct.

Q. I'm sorry, I'm paraphrasing that. All right, 63. All right, we'll start with your answer on 63. Answer, "All I'm doing is -- "

MS. CARROLL: Objection; we just started on 64 with a question, and now we're looking at an answer on page 63?

MR. MCCANTS: Yeah, I'm going to go back and start on 63, for context.
MS. CARROLL: So --
THE COURT: What line are you on, on page 63?
MR. MCCANTS, III: 63, line 25.
MS. CARROLL: That is an answer, and I think he has to present him with the question before. This is incredibly confusing for this gentleman --
MR. MCCANTS: All right, I'll go back.
MS. CARROLL: -- and I think that's horribly unfair --
MR. MCCANTS, III: There is nothing confusing --
THE COURT: I agree. Let's start with a question, and then see where we're at, and then go to it in the answer --
MR. MCCANTS: I know you don't like where we're headed but --
THE COURT: I agree with that --
MR. MCCANTS, III: -- but I'm going to get this out.
MS. CARROLL: I don't -- objection, Your Honor, that was very -- an unfair characterization. All right, rules of evidence exist for a reason; particularly, to protect witnesses from abuse, and

so I think Mr. McCants needs to do his job and present this in a way that is reasonable for a witness to have to answer.

THE COURT: I note the objection. It's not unreasonable. I agree with the objection that to clarify, you should start with a question. Again, if he disagrees or he's giving testimony contradictory to that, that's a proper use of it, but I just want to re-emphasize, you know, in response to the question.

MR. MCCANTS, III: May I proceed, Your Honor?

THE COURT: Yes, sir.

MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] Mr. Rutherfurd, I'm going to hand you copies of pages of your deposition. That's the page, and on that side are the line numbers. You with me?

THE COURT: We're on page 63; right?

MR. MCCANTS, III: We're on 63.

THE COURT: What line are we starting with?

MR. MCCANTS, III: Give me a second,

Your Honor. My page numbers on this one are kind of twisted around. We were talking about when you first noticed trailers, and whatnot.

Q. [Mr. McCants, III] All right, 63, line 17, I

asked what other conversations you brought up on the issue of a camper or trailer, "What was the next conversation?" What was your answer to 21, Mr. Rutherfurd?

THE COURT: He's looking at line 21 now, for your answer, Mr. Rutherfurd.

THE WITNESS: Okay.

THE COURT: If you see that, you can read that, please.

A. The conversation was what? I mean, the question is what conversations have I had with Melanie?

Q. [Mr. McCants, III] And the question was yes, sir, then what did you respond -- how did you respond?

A. "All I'm doing is stating the facts that in 2005, a trailer that was on her property moved to that fence line, this thing right here."

Q. And I said, "Gotcha, gotcha. 2005," and you answered yes.

A. Yes.

MS. CARROLL: I've still got to object. This is not proper impeachment. He's just reading the transcript.

MR. MCCANTS: Because I'm getting to the question.

MS. CARROLL: Well, the way that we impeach is

we present a question, and the witness then answers. If he disputes what he said or doesn't remember, then you get to impeach him. Ask the man the questions and let him answer.

THE COURT: He's asked a question, I think, that he said he's working towards, and we said, "We want you to start with the question in on the deposition and go from there so it's not confusing." Now he's provided him a copy.

I'm assuming we're getting to this which we just started talking about, the 2005 trailer, the answers to the question about the moving towards the fence line. I assume that he has a couple more questions and answers in regards to that.

I'm going to let that -- let' see if we're staying on the same subject with it and I'll -- you can renew your objection. I'll note the objection, but I'm going to let him ask it, thinking we're getting towards the end of it here; is that correct, Mr. McCants?

MR. MCCANTS: It is.

THE COURT: All right, continue on.

MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] Line four, "Gotcha, gotcha.

2005," and on line five, you said, "Yes;" is that correct?

A. Yes.

Q. You saw that happen, and what did you read -- how did you respond?

A. No, I did not see that happen. All I saw was the aftermath, which meant that the trailer was physically there.

Q. Question, "You didn't see it move, you just saw it there, at some point?" and what was your answer?

A. "Yes."

Q. All right, and here's where my question was, "All right, and then that resulted in a conversation with Melanie?" What was your answer?

A. "No."

Q. And I said, "Why not?" and what did you say?

A. "Because we -- again, we did not know where the property line was."

Q. And then I said, "All right, and you didn't go to her and tell her, 'Your camper's on my property,' is that what you're saying?" And what was your answer?

A. "Correct."

Q. All right, so in 2005, at least according to your testimony at the deposition I took, was that when you saw the trailer parked in that area, you didn't go

to Melanie to protest at all, and it was because you didn't know where your property line was. Is that true?
MS. CARROLL: Objection, that mischaracterizes the testimony. He did testify about the property line now, but several minutes ago he had a different answer.
MR. MCCANTS, III: Uh-uh [no].
THE COURT: I'll let the record speak for itself on there. I've got notes on the questions and then what he's responded to. You may continue. We'll note the objection.
MR. MCCANTS, III: Thank you, Your Honor.
Q. [Mr. McCants, III] Mr. Rutherfurd, the fact is, in 2005, you still didn't know where your property line was; correct?
A. Yes.
Q. All right. And I asked your wife this, is one reason that you didn't know where your property line was because while you had a survey done by Ben Christiansen, he didn't flag it?
A. That's correct.
Q. At the time you purchased the property; correct?
A. That's correct.
Q. And I appreciate very -- I can get that from

you now, Mr. Rutherfurd, if you'd like. And nothing stopped you folks from obtaining the services of another surveyor before you hired Rett Coleman to go out there and understand where your property lines were; correct?

A. Correct.

Q. Because it would appear, to me, you're the kind of gentleman that if you don't know where your property line is you don't want to run any risk of trespassing on another person's property. Is that fair?

A. Yes.

Q. Plus, if you're going to spend a lot of money to do work in a particular area, you want to make sure it is your property before you do it; correct?

A. Yes.

Q. For example, when the ice storm ended and we had all this damage and you hired somebody to come out there to do work at Laurel Drive, and also Oleander, did you go down in the thicket, at all, to try and help them understand where your lines were?

A. I went to the fence line to show them where the damage was.

Q. I'm talking about your property line. Did you go down there to show them where the property line was?

A. I went to the fence line to show them where -- in the disputed area where the damage was.

Q. Well, I agree you went down there, but did you tell them where the property line was?
A. No.
Q. And the reason you couldn't tell them that is because you didn't know where it was; correct?
A. Yes.
Q. And I'm going to trust you're not paying people to do work on property that you don't own; correct?
A. Yes.
Q. All right. Finally, Mr. Rutherfurd, we've watched the videos that were taken by a trail cam. You remember those?
A. Yes.
Q. And they showed two clips of Melanie spraying in an area, and also you pruning; is that correct?
A. Yes.
Q. All right, do you have any other photographs or visual evidence of you doing any pruning on any of these properties involved here?
A. No.
Q. Just by chance, someone taking a picture of you doing some work down on a Saturday, or something like that?
A. Well, I go on the property two or three times

a year.

Q. Well, I'm asking --

A. The entire property.

Q. Well, I understand that, but somebody took time to invest in a trail cam, one of those devices that you affix to a tree to take pictures; correct?

A. Yes.

Q. And someone invested their time putting it up there in 2020; is that correct?

A. Yes.

Q. That's because you wanted to get some evidence of a trespass; is that correct?

A. Yes.

Q. All right. My point is, you knew Melanie was doing other things in the disputed area over the years; why didn't you put up a trail cam earlier?

A. Because at this point, we were still trying to resolve the issue as a good neighbor and get her to remove the trailer and the invisible fence, and any other properties that she might have there that were on our property.

Q. Your property, and this is after Rett Coleman came out there; correct?

A. Yes.

Q. All right. Before then, you didn't really

have any idea where your property was, is that fair?
A. Yes.
Q. All right.
MR. MCCANTS: May I sit for a second, Your Honor?
THE COURT: Yes.
MR. MCCANTS: All right, Your Honor, that's all I have. Thank you, Mr. Rutherfurd.
THE COURT: Anything on redirect?
MS. CARROLL: Just a couple ones.

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REDIRECT OF ALAN RUTHERFURD

BY MS. CARROLL:
Q. Mr. Rutherfurd, do you remember that Mr. McCants asked for documents, like invoices, after your deposition, not before?
A. That's correct.
Q. Okay. And you testified about one invoice, but when you and your wife went and researched, did you find more invoices?
A. Yes.
Q. Okay. Are those invoices we submitted into evidence today?
A. Yes.
Q. Do you remember the kind of work that was done

on your property, because you were there to direct the workers?

A. Yes.

Q. And Mr. McCants was pretty forceful here today. Was he a little bit forceful in your deposition, also?

A. Yes.

Q. Did he sometimes get you a little bit confused?

A. Yes.

MR. MCCANTS, III: Your Honor, I'm going to object to leading and ...

THE COURT: I'll object to the last; I'll grant the objection on the last question.

MS. CARROLL: Yes, Your Honor.

Q. [Ms. Carroll] Were there or were there not times during your deposition that you got confused and may have answered in confusion?

A. Yes.

Q. Okay.

MS. CARROLL: I have nothing further for this witness, Your Honor.

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RECROSS EXAMINATION OF ALAN RUTHERFURD

BY MR. MCCANTS, III:

Q. Well, Mr. Rutherfurd, respectfully, I try to do anything I can not to confuse people, and I agree with you, that sometimes I'm not the clearest of souls, but I told you that before my deposition started. Do you remember that?

A. Yes.

Q. In fact, I think I said, "I don't ask the clearest of questions," okay?

A. Yes.

Q. Were you confused at your deposition?

A. Scared.

Q. Scared? [Inaudible] --

A. I've never had a deposition before.

Q. I understand. And you're in court today, which can't be any less stressful, is that true?

A. Repeat the question.

Q. Sure. Is it more or less stressful being here today than in the deposition?

A. Both of them are stressful.

Q. All right.

A. Very.

Q. So any confusion you may have had during your deposition could translate to confusion here today, respectfully? I'm not trying to pick on you or anything, but is that a fair way of looking at things,

that maybe you're confused today, also?
A. No.
Q. You're as clear as a bell today?
A. Clear.
Q. All right. Thank you.
THE COURT: All right, sir. You can have a seat. Thank you.
MS. CARROLL: Your Honor, I believe my witness should be right outside. Should I go ahead and call him in?
THE COURT: Yeah, go ahead.
MS. CARROLL: Thank you. Your Honor, we call to the stand Curtis Coleman, also sometimes known as Rett, so [inaudible] --
THE COURT: All right, Mr. Coleman, raise your right hand for me, please.

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MS. CARROLL: Your Honor, in the interest of efficiency, may I have one moment to number his exhibits?
THE COURT: Okay.
MS. CARROLL: Thank you.
[DEFENDANTS' EXHIBIT 15 IS MARKED FOR IDENTIFICATION]
[DEFENDANTS' EXHIBIT 16 IS MARKED FOR IDENTIFICATION]
[DEFENDANTS' EXHIBIT 17 IS MARKED FOR IDENTIFICATION]

DIRECT EXAMINATION OF RETT COLEMAN

BY MS. CARROLL:

Q. Good afternoon, Mr. Coleman.

A. Good afternoon.

Q. So just to be clear, your first name is Curtis; right?

A. That's correct.

Q. But people usually call you Rett; is that correct?

A. That's correct.

Q. So if people talked about Rett or Mr. Coleman or Rett Coleman, or Curtis Coleman, they were probably talking about you; right?

A. One and the same. Yes, ma'am.

Q. Okay. Thank you. Would you state your name and spell it, for the record.

A. It's Curtis Everett Coleman, III, C-U-R-T-I-S E-V-E-R-E-T-T C-O-L-E-M-A-N, III.

Q. What do you do for a living?

A. Professional land surveyor.

Q. How long have you been doing that?

A. I've been surveying since 2013, and been licensed since fall of '19, so about four years, licensed.

Q. About how many surveys have you been involved

with?

A. Personally, probably anywhere from 200 to 300 a year, depending on the size of the surveys for the boundary work.

Q. And I know that you have not testified in a trial before, but you have been present for testimony in trials before, have you not?

A. Yes, ma'am, I have.

Q. What kind of process did you go through in order to become licensed?

A. Well, the State of South Carolina requires a four-year bachelor degree in some sort of science. I graduated from the Citadel in 2006, with a BS in Business Administration, and then did some -- moved to Aiken in '06 after I graduated, and ran a wholesale company for a number of years until I decided to get into the surveying business, which eventually will lead to more school, and then I was, essentially, a journeyman or an apprentice -- apprenticeship under a licensed surveyor, in order to get the credits that I needed to sit for my national and state test.

Q. And did you sit for your national and state test?

A. I did, yes, ma'am.

Q. And you passed those?

A. Absolutely. Yes, ma'am.
Q. What was the additional education that you did?
A. The state just requires some additional survey classes, so those would be another year-and-a-half to two years of surveyor-related courses to take to get licensure.
Q. And who did you journeyman with?
A. Billy Todd, Southern Partners in Augusta, Georgia, was the engineering firm that I worked for before I went out on my own.
Q. Now that you're out on your own, what is your business?
A. Essentially, boundary surveys. I'll do some, you know, light -- light commercial but mainly residential boundary work.
Q. Okay.
MS. CARROLL: Your Honor, I move the -- I would proffer this witness as an expert in surveying.
MR. MCCANTS: No objection.
THE COURT: So admitted as an expert in the field of surveys. Would that be the correct classification, Mr. Coleman?
THE WITNESS: Yes, sir.

THE COURT: All right.
MS. CARROLL: If I may approach, I'm handing the witness three documents that have been marked for identification as Exhibits 15, 16, and 17.
Q. [Ms. Carroll] Can you tell me what Exhibit 15 is?
A. Exhibit 15 would be the original survey done for Alan and Susan Rutherfurd in 2001, by Benjamin Christensen.
Q. And we have here on the easel a picture, a satellite photo, and that's Plaintiff's Exhibit 1. Does that look like an accurate depiction of the properties, including the Rutherfurds' parcel and some surrounding parcels?
A. Yes, ma'am, that's it.
Q. Now, in the interest of being able to talk about these things, the bottom parcel that I'm referring to, the southernmost parcel, is -- assuming that's the south at the bottom of the --
A. Yes, ma'am. It is.
Q. It is the south, okay.
A. Yeah.
Q. Okay, you set it up for us. Thank you. That's Lot Number 22; is that correct?
A. That's correct.

Q. And then I've got my hand now on the Rutherfurds' property. That's Lots 23 and 24?
A. That's correct.
Q. And then to the right here, marked as Ms. Hozey's property, is that Lot 25?
A. Yes, ma'am, that's correct.
Q. Now, I'm going to run my finger around Lots 23 and 24 for you; is that area the area that you understand to be the Rutherfurds' property?
A. Yes, ma'am.
Q. Does it or does it not include what we have marked here as the disputed area?
A. It would not include that.
Q. That is not part of their --
A. Oh, that is part of their --
Q. -- surveyed area --
A. Yes, ma'am, that is a part of Lot 23 and 24.
Q. Okay. And so looking at Exhibit 16 -- well, let me go ahead and move -- is Exhibit 15 something that you considered when you were doing a survey?
A. Yes, ma'am, as a retracement surveyor, it's my job to go behind Mr. Christiansen and perform and update the survey, based on what he found.
Q. And when you performed an updated -- did you or did you not, find it to be accurate?

A. It was accurate, yes, ma'am.
MS. CARROLL: And Your Honor, we would move into evidence Exhibit 15.
THE COURT: Any objections?
MR. MCCANTS: No objection.
THE COURT: So admitted as Defendant's 15.
Q. [Ms. Carroll] Defendant's Exhibit 16 there, what is that?
A. This would be the original subdivision plat for Mattie C. Hall, which would include the Lots 23, 24, and 25.
Q. Was Mattie C. Hall the developer?
A. I am not certain. I know -- I believe she owned all of this at one point, and was eventually, kind of, the apparent owner of all the lots.
Q. Okay, so that's a -- those lots were in unified ownership, at some point time? Is that what you're saying?
A. Yes, ma'am, that's correct.
Q. Okay.
MS. CARROLL: I don't believe there's any objection, and I think this is a helpful exhibit. We'll move --
MR. MCCANTS: No objection.
MS. CARROLL: -- Exhibit 16 into evidence.

THE COURT: So admitted.

Q. [Ms. Carroll] Okay, and we have Defendant's Exhibit 17. Tell me what that is.

A. Seventeen is, simply, just a blown-up version of the piece of the overall plat for the Mattie C. Hall subdivision.

Q. So it's a zoom-in onto 16 --

A. Exactly, exactly.

Q. And could you show me where Lots 23, 24 -- excuse me, 22, 23, 24, and 25 are on this zoom-in?

A. Yes, so it'll be --

Q. I tell you what, why don't you put it over here so His Honor can look. Of course, Mr. McCants is [inaudible] --

A. Of course, they have them labeled with 22, 23, 24, and 25.

Q. So show His Honor which ones are the Rutherfurds' parcels.

A. 23 and 24.

Q. And which one is Ms. Hozey's?

A. Ms. Hozey is Lot 25.

THE COURT: All right.

Q. [Ms. Carroll] And that 22, is that the southern one?

A. Yes, ma'am, that's correct.

Q. All right, I'm going to leave these here in case we need to refer to them.

[DEFENDANT'S EXHIBIT 18 IS MARKED FOR IDENTIFICATION]

MS. CARROLL: And I'm handing the witness what has been marked as Exhibit 18, for identification purposes.

Q. [Ms. Carroll] Do you recognize this document?

A. Yes, ma'am, I do.

Q. What is that document?

A. This would be the plat that was done for Mrs. Hozey, by Todd Hass.

Q. And when you did your survey of the Rutherfurds' property did you have an opportunity to survey, in any way, Ms. Hozey's property?

A. Yes, ma'am.

Q. What did you do?

A. Being that the -- with our standards of practice, we're required to tie to the closest corner or intersection or something to help with the mapping department, too, with putting our plats into the tax maps, and the assessors as well; so generally a tie will help not only tie down the original subdivision plat, but it will also help establish either a neighbor's property or, like I said, help aid in the drawing of the tax maps.

Q. And did you have an opportunity to tie into Ms. Hozey's property?
A. Yes, ma'am.
Q. What is your position on the accuracy of the lines on the survey set forth there --
A. I found -- I found no disagreements as to where -- where the lines were or what the boundaries were, based on my retracement and Todd Hass' plat for Lot 25.
Q. Did you do the same thing with respect to Lot 22?
A. I did. I tied to the front corner on the right-of-way of Laurel Drive, and I tied to the shared corner in the back, which would be the shared corner for Lot 22 and 25, for Mrs. Hozey.
Q. Could you go through the process of surveying this property that you -- tell us what you did to survey and --
A. Okay, so --
Q. -- tie into those other properties?
A. So when somebody requests a boundary, initially, probably the most important thing is research. So going to the County building to pull the records, which would include the original subdivision plat, and then whatever else was on record for each lot,

back to the parent parcel, to make sure that there's no issues as far as any discrepancies in deeds or any kind of stuff like that; so that would be the first thing that needs to be done. So once you've collected and gathered all the records that are pertinent for the lots, then the next step would actually be to physically go to the property and begin locating what monuments are there and, essentially, retracing the records that you've gotten from the County building.

Q. And did you do all of that?

A. Yes, ma'am.

Q. How many trips do you think you did to get out to the Hozeys' property?

A. I think I went out there three times, if I'm not mistaken. The first time was to, essentially, get some of the corners tied down so I can take them back to the office and come back with a staking sheet to be able to have a good idea of where I should find the remaining corners.

And then the second trip would have been actually locating the corners that I had staked out in my CAD drawing at the office and physically locating on the ground.

The third trip would have been marking the property lines, so you could visually see from

point-to-point, so you could actually tell where the physical line was on the ground, along with walking everyone around to kind of show where the lines are and answer any questions, once you're done with the survey, or the fieldwork part of it. After that would be taking the information back to the house and drafting up, essentially, a field report of what you found out there and improvements and any kind of stuff like that that would eventually be approved for recording by the City, and then eventually recorded at the RMC's office.

[DEFENDANT'S EXHIBIT 18 IS MARKED FOR IDENTIFICATION]

MS. CARROLL: Your Honor, we move Defendants' Exhibit 18 into evidence.

THE COURT: Any objection, Mr. McCants?

MR. MCCANTS: None.

THE COURT: So admitted as Defendants' Number 18.

[DEFENDANT'S EXHIBIT 19 IS MARKED FOR IDENTIFICATION]

[DEFENDANT'S EXHIBIT 20 IS MARKED FOR IDENTIFICATION]

[DEFENDANT'S EXHIBIT 21 IS MARKED FOR IDENTIFICATION]

[DEFENDANT'S EXHIBIT 22 IS MARKED FOR IDENTIFICATION]

[DEFENDANT'S EXHIBIT 23 IS MARKED FOR IDENTIFICATION]

MS. CARROLL: I'm sorry, that took a minute.

I'm handing the witness what has been marked, for identification purposes, Defendants' Exhibits 19

through 23.

Q. If you would, just flip through those and -- do you have 19 through 23, Mr. Coleman? Is that correct?

MR. MCCANTS: That's all these deeds?

MS. CARROLL: Yeah. I'm just going to ask Mr. Coleman to confirm those are deeds in the chain of title for the Rutherfurds' and for Ms. Hozey's properties.

A. Yes, ma'am, this would be the chain of title.

Q. Okay.

MS. CARROLL: And Your Honor, we move those into evidence.

MR. MCCANTS: No objection.

THE COURT: So admitted, 19 through 23, a series of deeds.

[DEFENDANT'S EXHIBIT 24 IS MARKED FOR IDENTIFICATION]

MS. CARROLL: All right, I'm approaching, again, Your Honor, with Defendant's Exhibit 24.

Q. Do you recognize -- let me move some of these out of your way --

A. That's okay.

Q. -- and make your life a little bit better. I'll put them on the corners. Do you recognize this document?

A. Yes, ma'am.
Q. What is that?
A. This was something that I kind of put together to show that there is, essentially, no disagreement or ambiguity, as far as the adjoining lots for 23 and 24 as to what's on record versus what I actually found on the ground. So these would include the ties that I located while I was on the property; so that would be the ties to the right-of-way on Laurel Drive, for Lot 22.
Q. Okay.
A. Like I said, the tie for the shared corner for 25 and 22, along with the tie for the right-of-way for the northeast corner for Lot 25 on Laurel Drive, as well.
Q. And did you prepare these yourself?
A. Yes, ma'am
Q. Do they truly and fairly, correctly, depict the ties of Lots 22 through 25 as shown on Plaintiff's 1 there?
A. Yes, ma'am.
MS. CARROLL: Your Honor, we move that Exhibit into evidence as --
MR. MCCANTS: No objection.
THE COURT: So admitted.
MS. CARROLL: -- Defendants' Exhibit 24.

And my last exhibit, I hope.

[DEFENDANT'S EXHIBIT 25 IS MARKED FOR IDENTIFICATION]

Q. Do you recognize this document?

A. Yes, I do.

Q. What is that?

A. This would be the finished plat that was recorded for the Rutherfurds at the County's RMC office, along with the ties for the monuments that I found for the adjoining lots.

Q. Okay. Now, Mr. Coleman, actually, it would probably be better if you came up here, and I'd like you to -- I'm going to ask you some questions --

A. Okay.

Q. -- about this Plaintiff's Number 1. Let me get out of your way, and you'll be able to show us on there. Okay, that area which is marked by red lines; that's what we're calling the disputed area. Do you understand that is the area that Ms. Hozey is attempting to take from the Rutherfurds through this litigation?

A. Yes, ma'am.

Q. Was that part of your survey?

A. Yes, ma'am.

Q. Will you show me where the corners of the property are with -- on those red lines? If they're on the red lines?

A. So the corner of Lot 24 and 25 would be right here.

Q. Um-huh [yes].

A. The shared corner for 25, 24, 23, and 22 would be down here. And then the -- obviously, the rest of everything else would be along the right-of-way of Laurel.

Q. And do you recall if there's a piece -- two panels of fencing on the property? Do you remember that?

A. Two panels?

Q. Just a little bit of --

A. I don't. I don't recall two panels --

Q. Okay, do -- do you remember the fencing nearest the pool?

A. Yes, ma'am.

Q. Okay. Can you show me, approximately, where that is on Plaintiff's 1?

A. It would have been -- based on the fieldwork that I had out here, it was 29 feet, roughly, off of the property line, over to the west. So it would have run -- if this is 21 feet -- another eight feet down, running parallel to the actual property line.

Q. Does it come all the way to the southern end of the property, this fencing?

A. No, ma'am.
Q. Okay.
A. The fence runs down to where the -- the relief out here actually drops off fairly steep on this side, and then you're going to have a pretty flat area up here, and then it starts to slowly drop back off to the other -- to the corner down here in the back. But the fence ran, like I said, parallel to the property line, and at a certain point, jogged over, and then tied back into the Rutherfurds' house.
Q. So when you say it jogged back over, do you mean that it jogged --
A. Yes, ma'am.
Q. -- this way?
A. At about a 45, almost. So you have a line running down for the fence that would jog over here, and then, eventually, tie back into the house.
Q. Somewhere over this way?
A. Yes, ma'am.
Q. Is that maybe the fence right there, actually?
A. I believe so, yeah.
Q. Okay. So if Mr. McCants ran his finger all the way down this line depicting a fence there, he would not have been accurate; is that right?
MR. MCCANTS: Objection, Your Honor.

Q. [Ms. Carroll] Well, it would either have not have been accurate --

MR. MCCANTS, III: Now, hold on --

THE COURT: I'll note the objection. Rephrase it. Take Mr. McCants, what he did, out, and the witness has testified where he thought the fence would go. If you want to reemphasize that, I'll allow that question.

Q. [Ms. Carroll] Would it or would it not be accurate if someone ran their finger down the more western of the red lines and said -- would they be right if they said the fence went all the way down?

A. Oh, the fence did not go all the way down.

Q. Okay, so that's not -- what is the character of the lot in this area? I'm referring to the southernmost portion of the disputed area? What's it like in there?

A. It's -- it's kind of -- well, when I was there it was [room noise] really no improvements. A lot of sparkleberry bushes, and like I said, eventually, probably halfway down, this thing really drops off, you know, especially -- especially on this side coming down on the southern line. And then the eastern line, it really drops off when you start to get down towards the bottom of the [room noise] down here. But like I said,

sparkleberry bushes and some small shrubs.

Q. Would you agree or disagree if someone characterized that area as being essentially for buffer purposes?

MR. MCCANTS, III: For what?

MS. CARROLL: Buffer purposes.

MR. MCCANTS, III: Oh.

A. [Inaudible] I mean, it's -- it could definitely be a buffer.

Q. [Ms. Carroll] Could it be -- in its current state, is it useful for anything other than buffer or being woodland?

MR. MCCANTS: Objection; leading, Your Honor.

THE COURT: Sustained.

Q. [Ms. Carroll] What's it good for? What's that land good for, right now, without going in and clearing [inaudible] --

A. Well, I have not been to the property since 2020, but when I was there, it's not -- it wasn't really being used for anything other than a buffer, is what -- what I could assume.

Q. So --

A. No improvements, I would say.

Q. Well, I was talking to you about the -- approximately, the southern half. When I say it that

way does that change your answer, or anything?

A. No, ma'am.

Q. So now that we look -- let's talk about the northern half. Is that similar or different? Can you describe that half for me?

A. It's probably not as -- obviously, the slope is not as great, but as far as the vegetation and everything, it's about the same. I think it was a little more open up here on the top side, or closer to Laurel Drive, but [inaudible] --

Q. Now, could you take this -- maybe your finger or this pen or something, and show me, exactly, the part that you said was more open?

A. I would say, probably, once you got past, maybe, Ms. Hozey's driveway, somewhere down here. This part was a little more open than, say, the bottom part as soon as you started to kind of go down the hill.

MS. CARROLL: For the record, the witness has indicated, approximately, the top quarter - the northernmost quarter of the disputed area when he said that.

Q. [Ms. Carroll] Did you observe crush-and-run in that area?

A. Yes, ma'am.

Q. Tell me what you saw.

A. So the edge of pavement, which is located on Mrs. Hozey's plat from the top half --

Q. The edge of pavement for the [inaudible] --

A. For the drive -- for the existing driveway -- from Ms. Hozey's driveway.

Q. Okay, show me where that is, please.

A. It would have been right off of the corner over here, so a few feet over is where her driveway was.

Q. Um-huh [yes].

A. If you come down that driveway, there was some -- there was some pea gravel and a camper that was parked over on the side.

Q. Just a camper?

A. Yes, ma'am.

Q. Um-huh [yes].

A. I remembered seeing the camper and the pea gravel.

Q. And that answer is true -- is it or is it not true for all of your visits there?

A. That pea gravel and the camper was there the three times that I visited the site, yes, ma'am.

Q. And did you put that pea gravel area on your survey?

A. No, ma'am, I did not.

Q. Why not?

A. Generally, with improvements I will show something that's more permanent, say asphalt or concrete; but if it's something that -- generally, if it's something that can be moved or relocated, easily, I would not -- I would not show it on the plat.

Q. Did you consider that to be permanent?

A. Not for the -- not for the parking area, no, ma'am.

Q. What do you -- how do you decide if something's permanent?

A. Well, like I said, if it's something that can be moved with relative ease, I would say -- you know, obviously, moving concrete is a lot more difficult than moving crush-and-run or asphalt or any kind of -- pavers or something to that effect, but anything that would require -- well, I would say more effort to relocate or move or something would probably qualify more as a permanent structure versus a parking pad.

Q. So did you or did you not consider that a permanent structure?

A. No, ma'am, I did not, and that's why I didn't show it on the plat.

Q. Okay. When you completed your survey, did you or did you not walk around the property with Mr. Rutherfurd?

A. Yes, ma'am, that would have been the third -- the third visit.

Q. Okay, tell me about that. Tell me what you did.

A. So I met Alan and we kind of went over the plat, showed him, you know, basically what I'd found and showed him that everything was in agreement, as far as boundary lines. So from there we --

Q. You said "agreement," did you mean -- agreement with what? With [inaudible] --

A. With the historical records for -- for all four of these lots. So everything was in agreement as far as boundaries and monumentation.

So from there, what we would do is come out -- and I believe we started on Ms. Hozey's side, and we walked the boundary of the property; so the flags that were put there, the pink wire flags, and I put them on the property line. We walked down there. I showed Mr. Rutherfurd, essentially, from point-to-point, kind of, going down the hill because you can't -- clearly can't see from the top corners to the bottom because of the relief of the property itself. So intermediate points along the property line, we walked. I showed him where the monuments were, what they were and where they were located on the plat, and from there, we just walked

the property.

Q. And did that include walking the entire disputed area?

A. Yes, ma'am. Yes, ma'am.

Q. In your process of doing this survey, did you ever have an opportunity to communicate with Ms. Hozey?

A. Yes, ma'am. Yeah, I spoke to Ms. Hozey -- I think there was a -- there was a dog outside or something that kind of caught my attention, and I was -- I was out here working and I think Ms. Hozey, probably, I would assume, heard the dog barking and went to come see what was going on. So I went outside and kind of told her what I was doing and explained to her what I was -- what I was doing out there, and what my -- what I was tasked to do, essentially.

Q. Did she seem to have a clear understanding of where the property line was?

A. [Inaudible] at that point I was not -- I had no reason to suspect anything as far as where the location was, because at that point, I wasn't sure where the location was until I'd actually finished the survey. Like I said, I think this was the first encounter when I was out there kind of doing my reconnaissance-type work.

Q. First encounter? Did you have another encounter with her?

A. I don't believe so. I think the third time I came out, I believe Ms. Hozey had some -- somebody doing some landscaping, I think, on the backside of this retaining wall when I was out there; but I don't remember speaking to Ms. Hozey the third time. It was just the -- I think -- believe just the first time I was out there working.

Q. Okay. So when you were out there the first time -- I'm sorry, I kind of cut you off, but I got confused --

A. That's okay.

Q. -- because I didn't realize there was a second time.

A. Yes, ma'am.

Q. During that first time, tell me about what your communications were with her. What did she say to you?

A. I spoke to Ms. Hozey about obviously what I was tasked to do, where the corner was up front; I believe I'd found this corner, first, and then I started working back down here because, obviously, Alan and Susie had told me that this was, you know, essentially kind of the area that we needed to -- to really make sure it was flagged out correctly and, you know, easily visible to see where the line was.

When I was out the first time, like I said, with the dogs barking and everything, Ms. Hozey came out and I introduced myself and we just kind of talked briefly and I showed her, you know, a couple of the -- the plats that I was looking at and we were working off of, and her plat that Todd Hass had done, and well, she asked me a question about an easement or possible easement up here along this side line or the shared property line between 25 and 24. I told her that in my research, in my title search that I had done for the properties, that I had not seen a visible easement or there was nothing on the original subdivision plat or anything in the deeds that would suggest that there was an easement along that shared line.

Q. And did you ever determine there was any kind of easement that would allow her to be on that property?

A. No, ma'am. I never did find an easement, or there's nothing on record that would suggest that there is a dedicated easement along that shared line between the Rutherfurds and Ms. Hozey.

MS. CARROLL: I think I'm approximately done, Your Honor. May I have two minutes with my notes?

THE COURT: Yeah.

MS. CARROLL: I know you're going to want to --

THE COURT: Nope, you're all right. Go ahead.
Q. [Ms. Carroll] Were you acting as agents of the Rutherfurds when you did the survey?
A. Yes, ma'am.
Q. And did they pay you for your work?
A. Yes, ma'am.
Q. In your professional opinion, would it have been a good idea to have the red area surveyed prior to bringing litigation of this kind?
MR. MCCANTS: Objection, Your Honor. What's the relevance?
THE COURT: On relevance? Do you want to respond to that before I rule?
MS. CARROLL: Well, Your Honor, it's relevant to whether or not her lines of where she actually was are accurate, because a good surveyor would be a lot more likely to be able to -- I proffer that he will answer a surveyor would let you know exactly what the area was.
THE COURT: How does that effect on [sic] an adverse possession claim, I guess, is my question.
MS. CARROLL: You have to -- to have all of the adverse possession elements. You have to show that you had it in possession and you controlled it exclusively without the presence of anybody else,

and if you don't know exactly what it is you're asking for -- for instance, they were trying to say that the fence was going considerably further down than it actually goes. If they don't know what they're asking for, then they certainly can't prove that they're entitled to possess it. This is just my first question while we explored whether this is actually what she attempted to possess, which I submit she didn't do exclusively and she didn't do it hostilely.

THE COURT: I'll note the objection. I'm not clear that I'm strong on the relevance of it, either. But he can ask it, and then, Mr. McCants, if she continues along that line, you can make another objection.

Q. [Ms. Carroll] Could you tell us if, in your expert opinion, it would have been prudent to have a surveyor survey this area rather than just drawing a line done by a non-surveying professional?

MR. MCCANTS: Your Honor, I've -- and I've got to interject also with regard to that. That goes to the legal issues in this case. This gentleman, who is, no question, an expert in surveying. For him to be testifying as to the elements of adverse possession in this State and what should or should

not be shown; it's outside of his expertise, too.
MS. CARROLL: The legal relevance of the --
the legal elements for my argument for why his
testimony was relevant -- I didn't ask him anything
about adverse possession. I asked him if it was
prudent for him to -- it would have been prudent
for them to have a surveyor do this in order to be
accurate.
MR. MCCANTS, III: No, Your Honor --
THE COURT: I'm going to allow -- that
question, I'll allow, but I'm not going to take it
-- you added something when you went back with that
second one.
MR. MCCANTS: That's right.
THE COURT: Let's stick with the first
question, not the second one you asked him. I'll
grant the objection as far as the additional
language that was added. She asked a question that
she just stated, I'm going to allow that.
MS. CARROLL: Do you remember the question I
asked?
A. Yes, ma'am.
Q. Okay, go ahead and answer that.
A. In the past, I have seen -- if there is a
disputed area -- that a surveyor will come in and,

essentially, tack the disputed area onto the property that's trying to claim the disputed area. It would help with the open element of the adverse possession claim, in my opinion.

MR. MCCANTS: Motion to strike. That's non-responsive also, Your Honor.

THE COURT: Grant the objection on that. You can continue if you've got any other part of your answer, sir.

THE WITNESS: No, sir.

Q. [Ms. Carroll] Let me ask you, can you explain to me the character of the southernmost portion of this red section?

A. As far as?

Q. Well, what's it like down there?

A. Well, it's -- like I said, it's at the bottom of the hill. The low area beyond the -- in between Lots 25 and 22 is probably the bottom, so somewhere -- somewhere down in here would almost be the bottom of the hill. Like I said, everything slopes down and it's -- this is pretty -- pretty thick vegetation on the bottom side down here.

Q. From your experience with this parcel, would the transfer and taking of all of this affect the Rutherfurds' access and ability to use any other

portions of the property or not?
MR. MCCANTS, III: Objection, Your Honor, that's outside his expertise also, and that's --
MS. CARROLL: He's a surveyor.
MR. MCCANTS, III: And I think that any layperson could answer that question.
MS. CARROLL: And --
MR. MCCANTS, III: If it were relevant to anything.
MS. CARROLL: I'm sorry. And as I disclosed to Mr. McCants -- and as we know, this is not under color of title. There's really no question about the surveys being accurate. Mr. Coleman is here largely because he is a fact-witness, also, and he can tell us what it looks like down there [inaudible] --
THE COURT: Which he's done.
MS. CARROLL: Well, I was asking him a question about that and Mr. McCants has now objected to that.
THE COURT: You can ask him about his description of the property down there, I'll allow that, certainly.
Q. [Ms. Carroll] So I was -- you were talking about it, and I asked you, based on your factual

knowledge of having been down there and looked around, would the -- the shifting -- if the Rutherfurds no longer owned that red piece of -- that red encircled area; we're going to call it the disputed area.

A. Yes, ma'am.

Q. Would their inability to use that affect their ability to use any of the other property down here --

MR. MCCANTS, III: Same --

Q. [Ms. Carroll] -- like the triangle, for instance?

A. Oh, the triangle?

MR. MCCANTS: Same objection. In addition, as to leading. That's just not why he's here.

MS. CARROLL: It is why he's here. He's here --

THE COURT: I'll note on the objection on the disputed area and the question about the triangle down at the bottom. I'm going to let him answer that question.

A. The disputed area is -- geometrically, it would, kind of, render the triangle, left-over triangle piece, for the Rutherfurds pretty much useless once you put the setbacks that are required for the City, so I'm not real sure what they could or couldn't do with that property, but.

THE COURT: Well, let me ask a question to clarify.
THE WITNESS: Yes, sir.
THE COURT: You keep talking about a "triangular area," I assume you're talking about the area south of the red line --
THE WITNESS: Yes, sir.
THE COURT: -- that moves at a 45 degree --
THE WITNESS: That's [inaudible] --
THE COURT: It's got kind of a pie shape that would be in between the Defendants' property --
THE WITNESS: Yes, sir.
THE COURT: -- and Lot 22; is that correct?
THE WITNESS: Yes, sir, that's correct.
THE COURT: Okay.
MR. MCCANTS, III: Well, then we get into use, construction, county rules about setbacks and everything. That's just outside of his expertise because she's definitely looking for an opinion now.
MS. CARROLL: No, I am not.
MR. MCCANTS: Would the Rutherfurds still have the use of the property --
MS. CARROLL: I'm not asking for an expert opinion. I was asking [inaudible], based on what

it's like down there, would it limit their -- whatever I said. Would it change their ability to use any of that property? That's --
THE COURT: If the disputed property was lost, would they be still -- would it have any effect on the triangle portion, which is outside the disputed area, as far as the use down there.
MS. CARROLL: I'll take His Honor's question.
THE COURT: On his experience, I'll let him answer that. He's been on a lot of different pieces of property in there.
THE WITNESS: Yes, sir.
THE COURT: I'll give it whatever weight I'm going to give to it, Mr. McCants.
MR. MCCANTS: Thank you, Your Honor.
A. I would just say that it -- having an irregular shape in the bottom, what that -- that would, kind of, render it less useful than, say, if it were squared -- squared-off with the boundary lines almost run down all the way down to the southern line down here, but that would just be my ...
Q. [Ms. Carroll] You've worked on adverse possession related cases before?
A. Yes, ma'am.
Q. Have you seen very many of them be successful?

MR. MCCANTS: What --
THE COURT: What was that question again?
MS. CARROLL: Has he seen very many adverse possession claims be successful?
MR. MCCANTS, III: What --
MS. CARROLL: I'm not asking him for a legal opinion, I'm just asking him --
THE COURT: Yeah, well, you're asking him pretty close to a legal opinion on experience on the adverse possession and how he would know all that, or how he knows the elements of adverse possession and his experience in that. I'm going to say he's outside his realm of expertise on that. I'm going to grant the objection.
MS. CARROLL: Yes, Your Honor.
Q. [Ms. Carroll] As you sit here today, you have a survey before you?
A. Yes, ma'am.
Q. Do you still consider it to be a true and correct as of the time you did the survey?
A. Yes, ma'am.
Q. Do you think it fairly depicts the Rutherfurds' property, including all structures that would be appropriate under your professional standards and licensing?

A. Yes, ma'am.
MS. CARROLL: I have nothing further for this witness at this time, Your Honor.
THE COURT: Thank you. Mr. McCants, how long do you think your cross might take, if you've got any idea?
MR. MCCANTS, III: I may be pretty quick, Judge.
THE COURT: All right, I told them I might not be there right at 3, it may be a little later, so let's see if we can finish with the witness.
MR. MCCANTS: Thank you.

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CROSS EXAMINATION OF RETT COLEMAN

BY MR. MCCANTS, III:

Q. Afternoon, Mr. Coleman.
A. Yes, sir. Good afternoon.
Q. How much did you charge the Rutherfurds for your work in this case?
A. I am not sure. I think it was -- if I had to guess, probably around $1,000 for the new plat.
Q. All right, now --
A. Like I said, this was 2020, so I'm not -- not 100 percent sure.
Q. All right, and I've looked at, in particular

interest, at number 24 which you prepared --
A. Yes, sir.
Q. -- correct?
A. Yes, sir.
Q. All right, and what that is, of course, is an overlay of at least three surveys, and all you're doing is comparing the lines; is that correct?
A. Yes, sir. Yeah. Yes, sir.
MR. MCCANTS, III: May I borrow this a second?
THE COURT: [Inaudible].
Q. [Mr. McCants, III] That's yours?
A. Yes, sir, this is my plat.
Q. And you referred to Ben Christiansen's --
MS. CARROLL: That --
A. Yes, ma'am -- or yes, sir.
THE COURT: Is that an objection?
MS. CARROLL: No, Your Honor, just a little concerned that exhibits are all getting mixed up.
THE COURT: He's still got the same two in front of him.
MS. CARROLL: Okay.
THE COURT: Just reference the numbers, Mr. McCants.
MR. MCCANTS: I don't want to confuse anybody.
A. I think it should have been 17 or 16 --

Q. [Mr. McCants, III] Is that Ben's that you're talking about?
A. Fifteen, I'm sorry. Yes, sir.
Q. All right, so you looked at Mr. Christiansen's survey from 2001 when the Rutherfurds bought their property; correct?
A. Yes, sir.
THE COURT: Mr. McCants may have that one, sir, that you're looking for.
THE WITNESS: Yeah, I'm just not in this pile here.
Q. This is Mister --
A. That's Todd Hass' plat, yes, sir.
Q. That's Todd Hass'. I just don't see -- I don't need it in front of me, but what you're saying is that Mr. Christiansen's survey was accurate?
A. Yes, sir.
Q. Mr. Hass' survey was accurate?
A. Yes, sir.
Q. And of course yours is accurate?
A. Yes, sir.
Q. And you laid all of them on top of each other?
A. That's correct.
Q. And in 24, that memorializes that; correct?
A. Yes, sir.

Q. Why is there a 2018 survey listed at the top, "Ayercorp plat"? What is that?
A. This would be the plat that was done for Lot 22. It's recorded for that.
Q. Where is Ben Christiansen's plat on Exhibit 24 referenced?
A. It was -- Ben is not referenced on here.
Q. All right, and that really -- I just want to understand that but--
A. Yes, sir.
Q. Because you and I are on the same page --
A. Yes, sir.
Q. -- you agree with Todd Hass, Ben Christiansen, why was it necessary for you to prepare a survey, then, if all these two other surveys were accurate?
A. I think when I spoke to Alan and Susie that it had been 2001 since the last plat was recorded out there, and being that there was a dispute between neighbors, we decided that it would be prudent to go ahead and just update the survey since I was out there locating the corners, anyway, to go ahead and get it updated plat recorded down at the -- down at the County.
Q. They told Judge Griffith they hired you because they didn't know where the property lines were. Did they tell you that?

A. Yes, sir.
Q. They told -- both of them told you that they did not know where their property lines were out there on Laurel Road; right -- Drive?
A. I was told to mark the lines so they could see where the property lines were.
Q. All right, let's get back to the question.
A. Yes, sir.
Q. Because you testified a second ago that, correct, they hired you because they didn't know where the property lines were.
A. Yes, sir.
Q. Is your testimony, today, that Susan and Alan Rutherfurd hired you and paid money --
A. Yes, sir.
Q. -- that they'd already paid at least one survey, from Mr. Christiansen -- maybe it was a gift, I can't remember -- but they needed your assistance because they did not know where their property is; isn't that correct?
A. Yes, sir, that's what I was charged to do is find --
Q. Right.
A. Yes, sir, find the corners and mark the lines.
Q. Which, frankly, is not unusual, is it?

A. No, sir. No, sir.
Q. It's certainly not unusual for property owners who have never had a survey performed; correct?
A. Yes, sir, if they've never had a property surveyed then how would they know [inaudible] --
Q. Well, you're a young fellow --
A. Yes, sir.
Q. -- do you remember when they used to mark -- well, do you remember when you marked property with trees and boulders and --
A. Yes, sir.
Q. -- things like that?
A. Yes, sir.
Q. And the good part of what you do, with such exactness -- if that's a word, I think it is -- this a good thing, because, you know, you and I come and go from this earth, but that dirt's going to be there forever, isn't it?
A. Yes, sir.
Q. So we need to make sure we know where property is, who owns it, for purposes of transferring title --
A. Yes, sir.
Q. -- down the line; correct?
A. Yes, sir.
Q. So this was your undertaking to follow up on

two, maybe even three, other surveyors --

A. Yes, sir.

Q. -- to do nothing more than confirm the existence of true boundary lines; correct?

A. As a retracement surveyor, that is my job.

Q. Yeah.

A. Yes, sir.

Q. Yeah, individuals who just didn't know what property they had. Fair?

A. Yes, sir.

Q. All right. Now, I'm also curious -- and how am I doing timewise, Judge? I'm trying to move on with it.

THE COURT: We're still good.

MR. MCCANTS, III: All right.

Q. [Mr. McCants, III] Your overlay there, 20 -- what is that exhibit again, Rett?

A. 24. Yes, sir.

Q. 24?

A. Yes, sir.

Q. On 24, you memorialize a fence as a monument, don't you?

A. I put this on there just to aid Mr. Rutherfurd and Mrs. Rutherfurd to show where the fence was when I located it out the -- when I was out there for the first

time.

Q. But it's not on your survey?

A. No, sir.

Q. Why not?

A. I do not put fences, especially if it's not an encroaching fence. This is merely personal preference, but when you start adding more and more lines to these plats, they get more and more confusing --

Q. Get kind of busy, don't they?

A. Yes, sir. So unless there is an issue as far as an encroaching fence, I generally do not show them on the plat.

Q. And they asked you to put the fence on the overlay; correct?

A. I put the fence on the overlay to help -- help identify how far the fence was off the property line.

Q. Good deal. And whether or not you agree or disagree, that that fence line -- and on 24 we've got it clearly marked as -- what does X mean on there?

A. Existing chain-link fence.

Q. Excuse me. Thank you.

A. Yes, sir.

Q. Existing chain-link fence -- we can disagree with whether or not the line goes all the way down, but it was there to -- at least they wanted it there to

demonstrate where it is.

A. Yes, sir, yeah.

Q. Or you did? All right, now, you've had a lot of experience. Don't, typically, individuals build fences along borders or boundaries as kind of a marker as to where that boundary is?

A. There will, but it depends, really, on each individual homeowner. I mean, I've seen when people do not know where the line is, it could go over the line when they [inaudible] --

Q. [Inaudible].

A. Yes, sir, it does happen, so when -- they obviously knew -- or I would say they probably knew where this line was when they put this fence for it to be 20 -- almost 28.9 feet in the front --

Q. That's a lot, isn't it?

A. Yes, sir. So it ran almost parallel to the property line, so it would suggest, to me, that probably whoever put the fence up probably knew where the line was and they left that area in there for whatever personal reasons that they wanted.

Q. Whoever built the fence?

A. Yes, sir.

Q. Do you know whether or not the Rutherfurds built this fence?

A. I do not.
Q. All right. Well, their testimony about the fence is already in the record. But my question is, you see as many people build fences inside boundaries?
A. Yes, sir.
Q. As many as others who build it right at the boundary to maximize the fence space; correct?
A. Yes, sir. And generally, I would suggest that people come in a foot off the property line so they have the ability to maintain the fence without --
Q. We've always been told six inches, is that what the County requires, or something?
A. No, sir. You can put it on the line, if you want, but --
Q. All right.
A. -- it's really personal preference, but like I said, that one-foot is, kind of, what I tell people to allow maintenance and -- you know, without trespassing.
Q. And it wouldn't be unreasonable for new owners of this property to look out there and see that fence, and say, "Well, I guess that's the property line." Is that fair?
A. If there's no other monumentation out there, then I would say that but fences --
Q. [Inaudible] --

A. -- just because there's a fence out there, I would -- I would suggest that there's not -- that doesn't necessarily mean that it's the property line.

Q. Well, that's not -- that wasn't my question. You've talked about what experience you had with people, and whatnot, it is not unreasonable for somebody, a new owner of the Rutherfurd property, to look out there and see that fence, and say, I guess that's where the property line is"?

A. You could suggest that --

MS. CARROLL: Objection; relevance.

Q. [Mr. McCants, III] Absent a survey?

MS. CARROLL: Objection; relevance.

A. Yes, sir, he --

THE COURT: I'll grant it on the question on there, asking him to assume what the Rutherfurds are in that question in regards to the fence line, or people in general.

MR. MCCANTS, III: I'll move on, Judge.

THE COURT: Yeah, let's move on.

Q. [Mr. McCants, III] Let's talk about the easement issue real quick because --

A. Yes, sir.

Q. -- you made reference to an easement.

A. Yes, sir.

Q. You certainly understand an easement's just a right of an entity to come across --
A. Yes, sir.
Q. -- a piece of property, and maybe use it?
A. Yes, sir.
Q. That easement owner does not own the dirt; correct?
A. That's correct.
Q. All right. All right, I'll leave it at that, I wasn't going to get you to be an expert in adverse possession; okay?
A. Yes, sir.
MR. MCCANTS: Hold on a second, Judge.
THE COURT: All right.
Q. [Mr. McCants, III] And you actually walked the property with Melanie and explained what you were doing, and she asked questions, too?
A. Yes, sir, I walked their shared line, so the -- would be the shared line between 25 and 24.
Q. All right, that's all I have. Thank you, Mr. Coleman.
THE COURT: Any on redirect?
MS. CARROLL: Just a couple, Your Honor.

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REDIRECT OF RETT COLEMAN

BY MS. CARROLL:

Q. When you surveyed this property, the property line on the east side was not marked; right?

A. No, ma'am.

Q. So that means that Ms. Hozey's property also wasn't marked, to the west?

A. No, ma'am. I didn't see any -- any markers that were visible until I actually dug the corners [inaudible] --

MR. MCCANTS, III: [Inaudible] size.

Q. [Ms. Carroll] So --

A. Yes, ma'am, nothing was visible, that I could see without --

Q. Making it clear what her property lines were; right?

A. Yes, ma'am, that would be correct.

Q. And you looked -- you were talking about Exhibit 24. I'm going to try and hold this one up to this plaintiff -- if this fence here -- and you talked about it earlier, with the kickback?

A. Yes, ma'am.

Q. And I know this is not to scale but --

A. It is to scale.

Q. But it's not to the scale to this --

A. Oh, no, ma'am. No, ma'am.

Q. I'm sorry to this, to Plaintiff's 1. But the fence that you drew there, is that the one that we were talking about that went around the pool?

A. Yes, ma'am, the chain-link fence went around the back.

Q. So this point I'm pointing to here, that would be the same point that's the easternmost/southernmost corner --

A. Yes, ma'am.

Q. -- of the disputed area?

A. That's the shared property corner.

Q. And as I suggested, we don't have a scale but what we do have is proportion, right, so that the bit that -- with the kickback to the fence, that's about -- that's only about 35 or 40 percent of the way south --

A. Yes, ma'am.

Q. -- of the top part; right?

A. Yes, ma'am.

Q. So if I'm -- that kickback must be somewhere around here; right?

A. Yes, ma'am.

Q. Okay. It's not down at the --

A. No, no, --

Q. -- south --

A. No, ma'am.
Q. -- on --
A. It would have been closer to the top of the slope for the relief of the property.
MS. CARROLL: I have nothing further for this witness, Your Honor.
THE COURT: All right. Mr. McCants, anything in response to those questions?
MR. MCCANTS: Just one second, Your Honor. Nothing further, Your Honor.
THE COURT: All right. May the witness be excused or does he need to stay?
MS. CARROLL: No, Your Honor, he may be excused.
THE COURT: All right. Thank you, sir.
MS. CARROLL: Thank you, Mr. Coleman.
MR. COLEMAN: Thank you. Do I need to take this with me?
THE COURT: No, leave those there for --
MR. COLEMAN: Thank you.
THE COURT: I've got a couple up here that are marked --
MR. MCCANTS, III: Nice to see you.
MR. COLEMAN: Yes, sir. Yes, sir.
THE COURT: All right, anything else from the

defense as far as witnesses?
MS. CARROLL: Not as far as witnesses go, Your Honor.
THE COURT: Is the defense resting at this stage or --
MS. CARROLL: The defense is resting. We would like the opportunity to brief or give summation at the end of the presentation of evidence.
THE COURT: We're going to talk about that. Mr. McCants, anything on responsive testimony?
MR. MCCANTS, III: Can I renew my motions, first, at the end of her case --
THE COURT: Well --
MR. MCCANTS, III: -- and on the basis as previously presented --
THE COURT: Okay. Yeah, I usually like to know if you're going to put up any other evidence, but you can renew the motion, I suppose.
MR. MCCANTS, III: Well, that'd just be the end of her case. Can I talk to her for five seconds, outside, about reply or rebuttal?
THE COURT: Well, I don't think you're going to be getting back in the door in five seconds, but you can take a couple minutes to talk to her.

MR. MCCANTS, III: Oh, Judge. Judge, I do want to call Ms. Hozey, briefly, if I can.
THE COURT: All right. Well, when you say "briefly," Mr. McCants, it's 25 after. What are we talking about?
MR. MCCANTS, III: Oh, it's at 3?
THE COURT: Yeah.
MR. MCCANTS, III: I need 10 -- 5/10 minutes.
THE COURT: So we're probably close to the 20/30 minutes, by the time we get through, so why don't y'all take a break, step outside, and then I will do my conference call on the WebEx, and I'll get you when we finish.
MS. CARROLL: Okay.
MR. MCCANTS, III: All right, Judge.
Thank you.
[OFF THE RECORD]
THE COURT: I appreciate everybody's patience. Fortunately, I'd signed on at the end of the meeting, so I was able to get the summary and then get out of there, so it worked out well.
All right, so defense had rested.
Mr. McCants, you indicated you wanted to make a motion?
MR. MCCANTS, III: Just the motions --

THE COURT: Just renewing --

MR. MCCANTS, III: -- I made -- to renew the motions, Your Honor.

THE COURT: Okay. Same ruling then.

Certainly, after the defense and what's been presented on there, so far, I'm inclined to review the evidence in reaching a decision in regards to that.

MR. MCCANTS, III: All right, sir.

THE COURT: All right. And then you had a rebuttal witness; is that right?

MR. MCCANTS, III: Ms. Hozey.

THE COURT: All right.

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DIRECT EXAMINATION OF MELANIE HOZEY

BY MR. MCCANTS, III:

Q. Ms. Hozey, please tell Judge Griffith about your perspective; what you can see from your yard and your home, looking in any direction. Okay?

THE WITNESS: So because my house is on a slope, a hill, as Curtis Coleman said, it drops off pretty good there, and I've got a two-story house, I can see the entirety of my property from my house --

Q. [Mr. McCants, III] From inside the house?

A. From inside the house.
Q. And if I were to ask you, if you're standing in your backyard, can you see what's happening --
A. Absolutely.
Q. -- across your property?
A. Yes.
Q. All right. Now, you've heard your testimony from the Rutherfurds about work that was done in the disputed area over time, okay, did you ever observe Mrs. Rutherfurd in the disputed area doing anything?
A. Never.
Q. About Mr. Rutherfurd?
A. Never.
Q. All right, and then there's been talk of contractors, other people coming upon the disputed area doing work. Did you ever see what appeared to you to be workers or contractors doing any work in that area?
A. No. And specifically, the ice storm invoice that they referenced, so that's -- the actual tree work that I had done under an insurance claim that we talked about previously --
Q. We talked about that, all right.
A. Right? And no one else did any of the trees. I did them all.
Q. What you're saying is the contractor, from

their standpoint, about work done after the ice storm would have been duplicative of your work?
MS. CARROLL: Objection; leading.
MR. MCCANTS, III: I'll rephrase.
THE COURT: Rephrase.
MR. MCCANTS, III: All right.
Q. [Mr. McCants, III] Ms. Hozey, would there have been any reason for anybody to do any of the work but for through your vendors?
A. No.
MS. CARROLL: Objection; still leading.
MR. MCCANTS: All right.
THE COURT: I'll allow it.
MR. MCCANTS, III: Okay.
Q. [Mr. McCants, III] Let's get to the fence, describe what happened to the fence during the ice storm; that fence, you know, that traverses that western side of their property.
A. Yes. One of the trees fell on the fence.
Q. All right, caused damage to the fence?
A. Yes.
Q. And did your contractors remove the tree from the fence?
A. Yes, sir.
Q. Did you personally see that?

A. Absolutely did.
Q. Has the fence ever been repaired?
A. No.
Q. If Judge Griffith went out there today, he would see a damaged fence down in that area [inaudible] --
A. Yes, he would.
Q. All right. Thank you, Ms. Hozey, those are all the questions I have.
THE COURT: One second. All right, cross-examine.

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CROSS-EXAMINATION OF MELANIE HOZEY

BY MS. CARROLL:

Q. Ms. Hozey, you haven't had the disputed surveyed, have you?
A. No.
Q. All we have to go on is what you have marked here through your -- what was the process you went through to do that?
A. Through the website. That's right, and in Clarke's opening --
Q. And --
A. -- part, I think.
Q. Okay.

A. He --
Q. And your --
A. He referenced that we were going to ask that it be surveyed once we get a determination.
Q. Okay. And you didn't bring any invoices evidencing the work that you did, allegedly; right, to this hearing? You did not bring any invoices to this hearing --
A. It --
Q. -- demonstrating the work you claim was done?
A. No.
Q. Okay.
A. They were in the deposition.
MS. CARROLL: And I have nothing further for this witness, Your Honor. Thank you.
THE COURT: All right. Nothing else, Mr. McCants?

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REDIRECT OF MELANIE HOZEY

BY MR. MCCANTS, III:
Q. You paid for that work that was done, didn't you, Melanie?
A. Yes, sir.
Q. That you described in your direct testimony --
MS. CARROLL: Objection; leading.

A. I paid for all of the work that's been done on -- in the disputed area, every last bit of it.
Q. Thank you.
THE COURT: Any questions to follow-up on that question?
MS. CARROLL: No, Your Honor. Thank you.
THE COURT: All right. Have a seat, ma'am.
MS. HOZEY: Okay.
MR. MCCANTS, III: That's it for our reply.
THE COURT: All right. All right, so we've had the plaintiff rest, defendant rest, rebuttal witness, plaintiff has rested in regards to that. Any other motions?
MR. MCCANTS, III: I would renew the motions I've made, Your Honor, on the grounds previously set forth.
THE COURT: All right, and for the record, though, state exactly what those motions are, even if you want to just present the same --
MR. MCCANTS, III: Certainly.
THE COURT: -- [inaudible] arguments.
MR. MCCANTS, III: Certainly, Your Honor. We think we have shown, by clear and convincing evidence, that Ms. Hozey has met the requirements to establish an adverse possession of the property

that she described, I thought, in great detail, with regard to Exhibit Number 1 and how she calculated the area involved.

She's testified it's been continuous. She's testified it's been with the intent, knowing that she did not own -- title-own the property with the intent to acquire that particular disputed by the way of adverse possession. It's clearly been open, Judge. Any person riding down Laurel Drive, I think even -- even if the defendant said it on a periodic if not regular basis would see, at a minimum, her use of the top portion of that property as a parking area and whatnot. I think any reasonable person guarding and overseeing their property, Your Honor, would see the work that she's done down in that particular area.

It's actual in the sense that there's evidence as to what she was doing. It's notorious; I think notorious is a general concept that comes along with actual and open and hostile, to some degree.

And we think it's been exclusive, Your Honor, and in that particular point, where I think there's been more evidence than any, I fall clearly on the proposition that it's exclusive

because the defendants can't tell you what property they knew or did not know that they owned, especially along the edge that we're talking about. That's why I discussed the issue with Ms. Jackson back in the early 2000s, 2012-13, I believe, and to the sense they knew they had that responsibility, that obligation, and they recognized then that there was an issue about what dirt we own.

It's different up in the disputed area. It's very hard for -- I think for anyone to envision that a person has a right to attempt to share or use property when they know they don't -- in their mind that they don't own it, so I think we've established the exclusivity part, too.

Now, that being said -- and I'm just [inaudible] --

THE COURT: And this is a directed verdict motion; is that right --

MR. MCCANTS, III: Yeah, and I'm not --

THE COURT: That's kind of what I was speaking to.

MR. MCCANTS, III: I understand.

THE COURT: All right.

MR. MCCANTS, III: I understand.

THE COURT: Okay.

MR. MCCANTS, III: I'm trying to get away from an argument, and everything. But I think under South Carolina Law, we've established that. I think, if the Court is so inclined, once we dispense with motions and everything to give everybody an opportunity to debrief on an issue, that's one that might deserve some insight or guidance from some other jurisdictions, but that's -- that's the basis for my motion for directed verdict, that we've established our case as a matter of law.

THE COURT: And is the claim on the 10-year use, is that what --

MR. MCCANTS, III: Yes, sir.

THE COURT: -- where you're at?

MR. MCCANTS: Yes, sir.

THE COURT: I just wanted to make that clear. All right, response on the directed motion verdict from Defendant?

MS. CARROLL: Your Honor, directed verdict would be entirely inappropriate. In the case of adverse possession, under a claim of title not under written instrument or Court judgment or decree, it's necessary -- so what I understand that to be is when you're not going under color of

title, you're trying to say you're entitled to title because your adverse -- you had adversely possessed the property. It's deemed to have been possessed only in the following cases, only when you had both protected substantial enclosure and when it's been, usually, cultivated or improved. That's 15-67-250-SC Code annotated. There is no substantial enclosure, there was no fence enclosure, none of the above.

If you did not consider that to be the controlling section you would have to be looking at the adverse possession statute, which requires that Mr. McCants and his client have proved, by clear and convincing evidence, all of the elements of the claim, and he -- clear and convincing evidence is a high standard, so it's higher than -- you know, we have had substantial testimony rebutting each and every one of the elements, but several elements, especially, so directed verdict would be inappropriate.

We have -- it was -- we have to substantial testimony that it was not continuous; sometimes she did -- she had cars there, sometimes she didn't have cars there; sometimes she had her family there, sometimes she didn't, sometimes she

had nothing.

The -- most importantly, that it wasn't hostile. Hostile didn't happen until 2020, when she made it hostile and she started trying to build things on there. Before that, this was a buffer area between two neighbors, where both neighbors did things to have work on it.

We had substantial -- we had half a dozen invoices and testimony from my clients about the work, a lot of which was done in the buffer area, some of it was not. It also wasn't exclusive. It wasn't exclusive because they were out there. The surveyor said that he went out there with my client. My client said he -- Mr. Alan Rutherfurd, but he went out there several times, on his own. The point is that all of those five different -- or six -- continuous, hostile, open, actual, notorious and exclusive, they all have to be continuous for a period of 10 years. And we showed either my clients were out there or their agents were out there and they were on the property and they didn't consider there to be any hostility, and that was because they had gave her -- gave her tacit permission, and there's plenty of case law on tacit permission being sufficient to destroy the

hostility element.

So in any event, directed verdict is not appropriate because there was substantial, reliable testimony that Your Honor would have to weigh before making a decision about whether or not adverse possession had attached. And we would like an opportunity to go ahead brief the adverse possession issue, if Your Honor isn't interested in hearing it. That's sort of the whole closing argument on it.

THE COURT: Okay.

MS. CARROLL: And I would add to that, that it -- South Carolina -- I felt like this case was being argued -- that the law was differently than it actually is. South Carolina is a minority state in adverse possession, as Your Honor surely knows, and some confusion about where the line is, is not adequate to sustain a finding of adverse possession based on hostility.

THE COURT: All right. Mr. McCants, anything else before I rule?

MR. MCCANTS: I would just note one thing in particular about continuous; and I'm citing out of one of our volumes which discusses exclusively South Carolina law, which talks about, "It is

elementary, that is essential, to the acquisition of title by adverse possession that the claim it being continuous and uninterrupted possession of the full statutory period; however, this does not require the presence of the claimant, his agent, or tenant on the property for the whole statutory period."

So I don't think the law requires her to pitch a tent -- Ms. Hozey, to put a tent out there and live on the disputed area. What the law goes on to say is you have to look at it given the type and nature of property involved, Your Honor. I would just add to that.

THE COURT: All right.

MS. CARROLL: Your Honor, if I could add, but she would have had to have excluded my clients, and she failed to do that. She didn't try to exclude my clients, and so as long as -- it wasn't exclusive and they were out there, at any point in time, for each 10-year period, that breaks the chain of continuousness.

Continuous is not just continuously doing stuff on the property, it's continuously being hostile, it's continuously being open, actual, notorious, and exclusive. So every time my client

goes down there, every time his agents go on there, every time a survey goes on there, every time they walk around the property and do things and assert their use of the property, which was -- you know, you don't -- you get to choose how you use your property. If you want your property to be a buffer, it's a buffer, and they treated it like a buffer.

They went out there and they did the things that you would do in a buffer. Occasionally, they did a little maintenance, they checked on the status of things, they made sure the fences were okay. They don't have to go out there and make it a squash court, you know. They don't have to run road races up and down it. They don't have to do all that as long as they were involved in that property at some point in time, every 10 years, she wasn't exclusively controlling it and so the continuousness is broken.

THE COURT: All right. All right, as stated here in South Carolina, we have a statutory period of adverse possession. There are different levels, but the 10 years is pursuant, I believe, to South Carolina code 15-67-210, and that's what the testimony has been presented on.

Case law is in order to establish a claim of adverse possession. The claimant must prove, by clear and convincing evidence, as argued by the defense, its possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period. Now, I'm going cite a case -- I know 15-67 through 50, which I don't have in front of me, I'll say, but looking at a case called Frasier versus Small Seed, which is a Court of Appeals case from 2009, stated if a claimant asserts title by adverse possession and his or her occupancy is not under color of title, which everybody seems to agree to here, the claimant must show either fencing or other improvements covering most of the subject land. The case law here says or "some other continuous use or exercise of dominion."

Now, having said that -- and I'll look at 250 to see if it has that other kind of open-ended language or not, but for the purpose of the motion, I don't deem that necessary. Directed verdict, I consider the evidence in the light most favorable to the non-moving party, and it's stated, I believe by defense, there is evidence in here of invoices. I realize the plaintiff challenges whether that

work is done or not.

Nevertheless, there are invoices submitted here, and there is testimony as far as work done, and of times that they were on the property, mainly, I believe, by Mr. Rutherfurd or the agents that were hired for work to be done. So I'll have to evaluate that evidence, look at those exhibits, go back and look at the testimony. I don't find that it would be proper for the Court to rule given those guidelines on directed verdict, so I will deny the motion at this time and review the documents.

Are there any other motions from the Plaintiff?

MR. MCCANTS, III: No, sir.

THE COURT: From Defense?

MS. CARROLL: No, Your Honor. I think I know the circumstances where Your Honor is going to be ruling one way or the other, that rather than try and do it here pursuant to directed verdict, let's just go ahead and submit the case to you and, with your permission, brief it appropriately so that you can do it in your time --

THE COURT: Yeah, I'm going to get to that. Yeah. Certainly, I'm not -- and I appreciate y'all

giving me an honest assessment. We're at about 4:20 here, I don't think the long closing arguments -- if y'all give me 30 minutes, and y'all seem to be doubtful about that, I've got a feeling we might slide by that.

We have security here that leaves at five and we try to stick to that as much as we can. And I don't think, on a nonjury with the Court hearing at closing argument, which is not evidence, of course, it's absolutely necessary; however, I do believe that giving the attorneys a chance, it's important to hear what they have to say after the evidence has been submitted, so I would like to do that by a brief submitted by each party.

Now, on the Defense on the counterclaims, my understanding from the testimony or statements by Defense counsel; you'd have two counterclaims. The slander of title is withdrawn; is that correct?

MS. CARROLL: That is correct, Your Honor.

THE COURT: All right, so we'll note that. And I believe that's a third counterclaim, if I remember right.

MS. CARROLL: The other two counterclaims are versions of trespass; one is trespass for the damages and the second is the relief, declaratory

and injunctive relief --
THE COURT: Okay.
MS. CARROLL: -- allowing that, you know, a trespass has occurred --
THE COURT: Right.
MS. CARROLL: -- and that it should not be further allowed to occur, so they're same claims with different relief [inaudible] --
THE COURT: I understand. All right, and so the Court obviously will consider those, as well as the Plaintiff's claims, the affirmative defenses, and those two remaining counterclaims.
Let's talk guidelines on the briefs, as far as time. We've got the holiday season quickly upon us here and you both have, I'm sure, busy schedules, so how much time do y'all think is fair for each of you on that, in regards to those two things?
MR. MCCANTS: Would 30 days upset you, Judge?
THE COURT: It's not going to upset me this time of year because I will be -- nothing's really going to happen before the end of the year, I'm sure.
MR. MCCANTS, III: That why I would ask [inaudible] --

THE COURT: Defense Counsel?
MS. CARROLL: I think that's more than adequate.
THE COURT: Okay.
MS. CARROLL: I'm comfortable with it.
THE COURT: All right, so we are at, what? The 11th today? So January 11th, is that what we're looking?
MR. MCCANTS, III: Yes, sir.
THE COURT: All right. Now, just to make sure because we've got a lot of exhibits and my clerk's going to need to make a copy of a set of them, and then we'll give the originals to the Court Reporter, so I need each of you to review and make sure y'all are in agreement that all exhibits are up here and in order, please. And then I'll have my clerk -- once y'all have that agreement, we'll make those copies and move forward, and then I will look for closing briefs by January 11th, 2024.
Now, is there anything that the Court has not addressed at this stage, that either party feels is necessary? From the Plaintiff?
MR. MCCANTS, III: No, sir.
THE COURT: Defense?
MS. CARROLL: No, Your Honor.

THE COURT: All right, if y'all will do that, I appreciate y'all's patience, and all your work on this, and the presentation was very good by both sides so I look forward to looking at the briefs.

MR. MCCANTS, III: Thank you, Judge.

THE COURT: All right.

MS. CARROLL: Thank you, Your Honor.

[HEARING CONCLUDED AT 4:22 P.M.]

C-E-R-T-I-F-I-C-A-T-E

S O U T H C A R O L I N A

AIKEN COUNTY

I hereby certify that the foregoing deposition was reported, as stated in the caption, by means of Stenomask and speech recognition, with backup, and the questions and answers thereto were reduced to written form by me or under my direction; that the foregoing pages 1 through 222 represent a true, correct, and complete transcript of the evidence given on Monday, the 11th day of December 2023.

I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

This, the 22nd day of August 2024.

Lisa M. Adams

LISA M. ADAMS, CVR-M

CERTIFIED COURT REPORTER

NVRA CERTIFIED



Exhibits

Rutherfurd D1 9:8 10:24,25 15:23 16:16 81:24 83:22 92:19 104:25 114:15 115:9 116:14 117:14 118:3 119:11 126:8 127:1 132:11 155:11 209:2

Rutherfurd D2 18:15 19:6

Rutherfurd D3 19:11

Rutherfurd D4 20:1,21 38:21

Rutherfurd D5 21:8 22:10 127:23 128:2,3 129:1

Rutherfurd D6 22:14,19 24:13

Rutherfurd D7 24:17 25:10 26:25 27:7,8

Rutherfurd D8 27:25 28:13

Rutherfurd D9 28:17

Rutherfurd D10 29:24 30:25

Rutherfurd D11 31:7,24

Rutherfurd D12 32:11

Rutherfurd D14 39:6

Rutherfurd D15 151:23 155:5,7 156:19 157:3

Rutherfurd D16 151:24 156:18 157:7,25

Rutherfurd D17 151:25 158:3

Rutherfurd D18 159:3,5 162:11,13

Rutherfurd D19 162:18

Rutherfurd D20 162:19

Rutherfurd D21 162:20

Rutherfurd D22 162:21

Rutherfurd D23 162:22

Rutherfurd D24. 163:17,19 164:25 189:5 198:18

Rutherfurd D25 165:2

$

$1,000 186:21

$1,500 133:13

$2,000 14:17

$3,500 14:17

$4,200 24:1

$7,300 22:3 130:9

0

01 18:11,19,20

03 137:1

04 137:1

06 153:15

1

1 7:22 9:8 10:24,25 15:23 16:16 48:15 70:17 81:24 83:22 92:19 95:16 98:2 104:25 114:15 115:9 116:14 117:14 118:3 119:11 126:8 127:1 132:11 155:11 164:18 165:14 166:18 199:1 209:2

1,000 23:21

1,500s 24:10

1,600 23:21

10 18:1 19:24 22:15 25:14 29:24 30:25 44:8 48:13,18 73:19 74:11 136:15 202:8 213:19 216:17,23

10-year 17:20 21:2,4 211:12 215:20

100 186:24

1089 129:3 130:22 131:1

11 31:3,7,24 48:3 136:17

11/19/01 17:11 18:10

11/9 17:9

11th 5:2 221:7,19

12 32:11 33:5 50:9 124:14

13 32:24 33:9,21

14 7:22 39:6 50:11

15 11:22 42:23 130:23 131:2 151:23 155:4,5,7 156:19 157:3,6

15-67 217:7

15-67-210 216:24

15-67-250-SC 212:7

16 31:13 46:5 87:24 88:1 89:24 123:23 124:14 135:23 136:3 151:24 155:4 156:18 157:7,25 158:7 187:25

16th 30:3

17 140:25 151:25 155:4 158:3 187:25

18 159:3,5 162:11,13,17

19 17:12 152:23 162:18,25 163:3, 15

19th 16:6

1:30 6:13 103:1

1st 31:22

2

2 18:15 19:6

2,000 14:13,16

20 52:22 162:19 192:16 194:15

20/30 202:10

200 153:2

2000s 210:5

2001 8:14 10:19 16:6 59:6 124:19 125:20,21 155:8 188:5 189:17

2002 19:14,16 126:4 137:1

2002/2003/2004 135:20 136:7

2005 134:7,24 135:19 136:6,25 137:2 138:1 141:15,17 142:11 143:1,23 144:14

2006 153:13

2007 112:4

2009 217:10

2010 20:4,5 21:1,4 126:21,22 127:12 133:18

2011 18:5

2012 19:25 21:2 58:17 64:18 65:15 68:17 69:10 72:16 73:1,6, 11,19,23 76:24

2012-13 210:5

2012/2013 74:11

2013 21:13,17,18 73:24 75:6 77:6 81:11 127:15,19 130:9 152:22

2014 21:16,17,18,20 22:15,25 23:4,12,15 56:15,16 124:1,10 127:19 130:19,20,22 131:16,19

2015 58:20 124:10 131:21

2018 189:1

2019 120:11,13 121:5

2020 15:8 21:4 26:1 30:3 31:12, 14 37:5,6 42:3 46:1,5 57:19 61:13 65:23 69:20 75:7,13 76:5, 13,15 87:24 88:1 89:25 91:19 94:23 95:19,25 96:4,5,8 100:1,2, 9,18,21 102:13 107:12 147:9 169:19 186:23 213:3

2021 32:17 39:20,21 47:15

2021-CP-02-00766 5:3

2022 77:18 123:11 129:21

2023 5:2

2024 22:15 221:19

2030 25:14

21 116:13,16 117:1 127:15 130:9 141:3,5 162:20 166:22

21-4 117:1

21.4 116:20

21.41 119:13

21st 21:13

22 10:11,13 55:4 56:2 62:19,20 63:2,9,21 119:15 155:24 158:10, 15,23 160:11,15 162:21 164:9, 12,18 166:4 180:18 183:13 189:4

23 10:6,14 63:2 156:2,7,17 157:10 158:9,10,16,19 162:22 163:1,3,15 164:5 166:4

23/24 119:16

24 10:7,14 63:2 156:2,8,17 157:10 158:9,10,16,19 163:17,19 164:5,25 166:1,4 176:9 187:1 188:24 189:5 192:18,19,21 193:18 197:19 198:18

25 10:9,17 55:8 62:16,21 63:4 139:5 156:5 157:11 158:10,16,21 160:9,15 164:12,13,18 165:2 166:1,4 176:9 180:18 197:19 202:4

250 217:19

26 123:11

26th 32:16 77:18

28.9 194:15

28th 31:12

29 26:1 166:20

29th 20:5

2nd 22:24

3

3 5:12,18 19:11 47:20 103:1 186:10 202:6

3,500 14:10

30 219:3 220:19

300 12:1 153:2

30th 18:19

35 199:15

3rd 18:20 20:4

4

4 20:1,21 38:21

4,500 13:12

40 13:12 199:15

45 167:15 183:8

4:20 219:2

4:22 222:8

4th 22:25

5

5 21:8 22:10 127:23 128:3 129:1, 24

5/10 202:8

50 217:7

5th 19:14 23:4

6

6 22:14,19 24:13 85:18

62 135:18,24

63 138:21,25 139:2,4,5 140:18, 19,25

64 138:12,23

6th 23:4

7

7 24:17 25:10 26:25 27:8 47:14 50:7

714 8:10

76 77:13,23

77 77:13,14

78 124:14

8

8 27:25 28:13 49:23

80 85:18

84 95:16

9

9 28:17 48:14

9/29/2020 24:21 25:14

A

A-L-A-N 108:20

a.k.a. 27:6

abandon 48:21

abandoned 53:12

ability 180:25 182:7 184:2 195:10

about,' 136:5

Absent 196:12

absolutely 11:12 17:25 26:10 43:13 154:1 204:4 206:1 219:10

abuse 139:25

access 126:19 180:25

accident 35:14

accomplished 17:19

account 18:23,24 19:3,14 20:15, 16 21:12 22:24 23:18 28:9,10 128:25

accuracy 160:4

accurate 155:12 156:25 157:1 167:24 168:2,10 177:16 179:8 181:13 188:16,18,20 189:15

acquainted 14:24

acquire 209:7

acquisition 215:1

acting 12:3 25:17 88:17 177:2

action 5:15 31:19 38:10 48:16 49:6 50:3

activities 109:14 110:1

activity 44:25 101:2

actual 26:8 45:10,13 47:24 49:2, 11 51:16 120:7 130:19 166:23 204:19 209:17,20 213:17 215:24 217:5

Adams 64:23

add 11:10 46:11 214:12 215:13, 15

added 179:12,18

adding 193:7

addition 138:4 182:12

additional 154:2,4 179:17

addressed 221:21

adequate 214:18 221:3

adjoining 164:5 165:9

Administration 153:14

admitted 16:19 19:9 20:25 22:12 24:15 25:12 27:7 28:15,25 33:20 154:22 157:6 158:1 162:16 163:15 164:24

advantage 11:14

advantageous 35:19

adverse 17:16,19 177:21,23 178:24 179:5 180:3 184:22 185:3,10,11 197:10 208:25 209:8 211:22 212:2,12 214:6,7,16,18 215:2 216:22 217:2,11

adversely 68:10 212:2

advice 102:1

advised 46:2

advisement 52:9

affect 42:9 43:12 180:24 182:6

affirmative 47:17 48:4 220:11

affirmatively 50:8

affix 147:6

aftermath 143:7

afternoon 27:10 113:5,6 152:3,4 186:16,17

agent 12:3 25:18 42:23 59:6,7, 13 67:24 215:5

agents 17:23 29:4 44:8 109:22 121:18 177:2 213:20 216:1 218:6

aggressive 42:6 43:17

agree 11:2 52:24 81:12 82:15 84:20 86:4,15 87:6 89:2 90:21 92:13 95:22,23 97:14 99:19,21, 22,23 108:23 114:9 119:17,20 131:21 134:9 137:9 138:5,9 139:14,19 140:5 146:1 150:2 169:2 189:13 193:17 217:13

agreed 124:20

agreement 69:25 173:7,9,10,12 221:15,17

agrees 7:5

ahead 43:6 46:9 49:1,14 52:12 57:17 151:9,11 156:19 177:1 179:23 189:20,21 214:7 218:21

aid 159:24 192:23

Aiken 5:16 8:10 58:5 153:15

Alan 37:13,14,20,24 54:21 61:10,20 68:3 70:4 81:18 87:21 95:17 108:6,8,20 112:19 113:3 123:9 148:12 149:24 155:8 173:5 175:21 189:16 190:13 213:14

alerted 75:9

allegations 48:8 49:22

alleged 45:8 46:18,19 49:2,7,8

allegedly 207:6

Allen 6:3 20:14

allowed 42:8 71:17 74:25 81:5 104:2 112:10 220:7

allowing 52:10 220:3

alongside 132:15

altered 97:13

altering 50:13

ambiguity 164:5

ambiguous 128:13

animals 35:13

annotated 212:7

answering 53:4

answers 79:3 81:4 131:13 142:2,12,14

anticipate 6:9

anxiety 52:24

apologize 79:5

apparent 157:15

Appeals 217:10

appeared 76:13 204:16

appears 119:12 129:1

apprentice 153:19

apprenticeship 153:19

approach 8:25 15:15 34:20 155:2

approaching 163:18

appropriately 218:22

approved 162:9

approximately 13:11 14:16,19 24:1 107:11 166:17 169:25 170:19 176:21

approximation 11:24

area 9:18,24,25 10:24 11:2 12:14,19 13:6 16:21,22 19:22 20:10,19 22:7 24:7 25:21 29:3,15 36:22 37:7 40:18 42:9 43:11 53:13 60:8 65:1 69:20 70:3,20,21 71:7 73:10 74:9 76:9,16 77:8 84:21,22 85:20 87:3 92:22,24

96:4 97:22 98:25 101:3,20 105:9 109:15 112:5 113:13,24 114:14 115:13,16,21,22 116:3 121:1,10, 13 122:20,25 124:25 125:25 127:8 129:15,25 132:11,15 133:5,19,24 134:5,6,19 135:3 136:14 138:14 143:25 145:12,25 146:16 147:15 156:8,12,16 165:16,17,18 167:5 168:15,16 169:3 170:20,23 171:22 172:7 174:3 175:23 177:8,19 178:18 179:25 180:1,2,17 182:4,17,20 183:5,6 184:7 194:20 199:10 204:9,10,15,17 206:5 208:2 209:3,13,16 210:9 213:6,10 215:10

areas 132:16

argued 214:14 217:3

arguing 45:18

argument 179:3 211:2 214:10 219:9

arguments 49:19 208:21 219:2

arrived 135:21 136:7

aspect 51:8

asphalt 97:6,9 172:2,14

assert 216:3

asserts 217:11

assessment 219:1

assessors 159:21

assign 42:17 46:8

assist 89:20

assistance 190:18

assists 51:5

assume 38:11 49:14 60:22 93:12 142:13 169:21 174:11 183:5 196:16

assumed 72:1

assuming 5:9 142:10 155:18

assurance 133:18

attached 105:20,22 106:9 214:6

attack 73:16

attacks 56:1

attempt 53:19 210:11

attempted 178:8

attempting 165:18

attention 8:23 9:6 174:9

attorney 5:20 48:15 88:17,25 102:7

attorney's 47:25 102:1

attorney-client 88:16,20 89:8

attorneys 50:2 219:11

August 77:18 123:11

Augusta 154:9

authority 51:4

authorized 38:19

award 45:14 47:23 49:11 51:16

awarding 48:15 50:2

awards 47:24

aware 69:12 91:16 97:21 121:5 129:17

Ayercorp 189:2

azaleas 109:19

B

bachelor 153:12

back 14:7 35:6,9,10,24 37:24 40:11,12,18 47:4 49:16,17 58:4 64:18 65:14,22 67:20 70:23 71:1 73:1 74:7 76:19 80:21 83:5,10 84:24 86:12 92:7 94:11 103:12 110:10 118:22 121:4 128:11 129:13 130:4 132:8 134:8 135:16,23 138:13 139:1,9 160:14 161:1,16,17 162:6 167:6,7,9,11, 17 175:21 179:12 190:7 199:5 201:24 210:5 218:8

background 46:7

backside 175:3

backyard 64:22,23 105:4 204:3

bad 35:15 58:19 67:12

badgering 75:1,4 137:19,21

barking 174:11 176:2

barrier 111:11

base 45:15

based 44:21 45:25 48:21 80:24 156:23 160:8 166:19 181:25 183:25 214:19

basically 84:22 117:6 173:6

basis 45:14 51:3 122:2 201:15 209:11 211:9

bedrooms 13:9,17,20

beg 61:7 135:21

begged 55:21

begging 54:14

begin 12:2 86:20 161:7

beginning 34:11 56:8 60:18 93:15

behalf 5:24 15:12 16:2 32:16 87:21

behavior 44:12 48:11

belief 43:9

believed 71:6

believing 71:15

bell 89:16 151:3

belonged 60:9

belongs 86:19

Ben 54:1,3 55:21,25 56:9,21,25 61:5,16 65:6,10,17,19,25 66:6 71:17,24 72:8 73:10,17 74:14 75:14 100:4,14 144:19 187:13 189:5,7,13

Ben's 72:16 188:1

benefit 57:24 115:22

Benjamin 155:9

big 29:17 85:25 86:10

bill 59:1

Bill's 21:12 127:15 129:3 130:22 131:1

bills 60:6 123:21

Billy 154:9

bit 8:19 31:8 37:2 58:4 62:11 66:18 98:7 104:2 108:10 110:16 113:7 119:8 134:8 149:5,8 163:23 166:12 199:13 208:2

blocked 22:1

blower 112:5

blown-up 9:7 158:4

blue 91:24 92:4 93:1 97:15 127:1

boat 34:1,2 76:12 96:6

body 50:21

bootstrap 50:17

border 91:25

borders 194:5

borrow 187:9

bottom 9:24 74:6 77:8 81:16,22 84:23 115:8 118:4 119:12 125:19,25 155:17,19 168:25 170:16 173:21 180:16,18,19,21 182:18 184:17

bought 8:15 11:13 26:5 43:14 53:24 67:22 85:11 188:6

boulders 191:10

boundaries 56:23 57:21 59:14, 18 160:7 173:13 194:5 195:4

boundary 55:22 72:24 73:10 82:24 83:1 86:4,15 87:2 113:23 116:22 118:11 120:8 126:1 153:4 154:14,16 160:21 173:8,16 184:19 192:4 194:6 195:7

bounded 10:24

bounds 105:21

brain 12:12

branch 36:18

branches 122:8,9

break 5:18 102:22,25 103:5 202:11

breaks 90:16 215:20

briefly 36:3 102:18 103:17 176:4 202:2,4

briefs 220:13 221:19 222:4

bring 15:20 80:18 121:21 207:5, 7

bringing 48:16 50:3 69:11 177:9

Brodie 59:6

broken 216:19

brought 36:18 93:11 141:1

BS 153:13

buffer 8:22 11:9 29:15 35:7 36:25 104:20 106:18 169:3,6,9, 11,20 213:5,10 216:7,8,10

build 26:16 194:4 195:4,6 213:4

building 15:11 42:7 75:10 107:10 160:23 161:9

built 194:22,25

bushes 92:7 109:18 168:20 169:1

business 153:14,17 154:13

busy 193:9 220:15

but-- 189:9

buy 12:12

C

C-O-L-E-M-A-N 152:18

C-U-R-T-I-S 152:17

CAD 161:22

calculated 209:3

call 11:2 62:11 69:18 88:15 108:3,5 121:10 130:21 151:10,12 152:8 182:4 202:2,12

called 54:8 110:7,11 134:1 217:9

calling 7:9 16:21 122:24 129:14 133:5 165:17

cam 101:25 102:3,6,8,13 146:12 147:5,16

camera 39:22 40:10 101:21

camper 34:1,2 40:4 76:10,11 96:7 136:7 138:14 141:2 171:11, 13,16,20

camper's 143:20

campers 76:2,7 91:15 133:22,24 135:2

campers/trailers/trucks 134:5

canceled 18:18 19:13 20:3 28:3, 20

capacity 88:18

car 50:21

Carlisle 115:10,23 126:1

Carlisles 10:4,5,14 62:8 63:23 67:25 68:9 69:1

Carlisles' 10:11

Carolina 31:21 43:3 153:11 211:3 214:13,15,25 216:21,24

Carroll 6:1,2,6,19,23 7:3,8,12, 17,19,21 8:3,25 9:2,5,6,16,17 15:15,17,22 16:14,20 18:6,10,12, 14,17 19:5,10 20:21 21:1,7,9 22:9,13 24:12,16,18 25:9,13 26:24 27:3,6,9,24 28:2,12,16,18, 23 29:1,23 30:1,25 31:5,10,23 32:2,10,14,19,23,25 33:3,7,10, 13,18,22 38:15,24 39:2,4,9,12,16 42:14,22 43:5,6 44:7,17,23 45:17 46:3,5,19,25 47:8,14,17,20 48:6 51:2 52:13,15 53:4 55:12 57:15 60:16,25 62:13,17,19,22,24 63:2, 4,7,12 72:13 74:19,25 77:9,12,15 78:3,6,11,17,20,23 79:2,5,10,13 80:3,9,16 83:9,12,17 84:17 86:25 87:5 88:3,15,22 89:4,13,18 93:14,18,21,23 94:3,10 95:4 102:4 103:7,17,20 107:6,13,18, 21 108:5,9,16,18 109:3,6 112:12, 15,20 114:1,8,18,22 117:19,25 118:17 119:22 122:11,15 128:1, 13 130:11 131:5,9 134:11 136:22 137:16 138:23 139:3,6,10,22 141:20,25 144:3 148:10,13 149:15,16,21 151:8,12,18,22 152:2 154:18 155:2,5 157:2,7,21, 25 158:2,23 159:4,7 162:12,23 163:6,12,18 164:21,25 168:1,9 169:6,10,15 170:18,22 176:21,24 177:2,14,22 178:16 179:2,20 180:11 181:4,7,10,18,24 182:9, 14 183:21,24 184:8,22 185:3,6, 15,16 186:2 187:14,17,21 196:11,13 197:23 198:1,11 200:5,13,16 201:2,6 202:14 205:3,11 206:14 207:14,25 208:6 211:20 214:12 215:15 218:17 219:19,23 220:3,6 221:2,5,25 222:7

Carroll's 115:22

cars 212:23,24

case 5:2,3 6:10 8:11 14:1,4 120:13 159:2 178:22 186:19 201:13,21 211:10,21 213:24 214:13 217:1,7,9,10,16 218:21

cases 184:23 212:4

caught 174:9

caused 82:1 132:18 205:20

center 9:18

cetera 45:3

chagrin 107:22

chain 163:7,10 215:21

chain-link 105:25 106:8 193:20, 23 199:4

challenges 217:25

chambers 80:19,22

chance 146:22 219:11

change 170:1 184:2

character 168:14 180:12

characterization 139:23

characterized 60:12 169:3

charge 186:18

charged 190:21

charges 23:20 24:2 28:4,19

Charles 30:3,4,10 31:16 87:18 88:13,24 89:20 91:6

Chavez 18:25

Chavous 19:1,2 125:20,22

check 18:18,21 19:13 23:11 28:13 36:23 55:8 85:16 129:2 130:9,15,21,22 131:1,10,20

checked 55:5,6 128:23 216:12

Checking 25:4

checks 20:3,13 22:23 28:3,20 129:13 130:2

child 96:16

children 13:13 35:17,22

choose 216:5

Christensen 155:9

Christiansen 54:1 55:21 61:5, 16,24 72:16 100:5 144:19 156:22 189:13 190:17

Christiansen's 187:13 188:5, 16 189:5

chronological 22:20

circle 117:9,10,16 118:4 119:14 134:6

circumstances 218:18

Citadel 153:13

cite 217:7

citing 214:23

city 35:12 112:7 162:9 182:23

civil 38:12

claim 38:9,10 48:9,19,20 50:16 51:4,8,19,23,24 177:21 180:2,3 204:20 207:10 211:12,22 212:15 215:2 217:1

claim/mental 51:1

claimant 215:5 217:2,11,14

claimed 51:10

claims 44:22 45:15,25 50:7 51:1 185:4 220:7,11

clarified 31:7

clarify 73:11 88:6 140:6 183:2

Clarke 5:23

Clarke's 206:22

classes 154:5

classification 154:24

clause 47:20 48:14 50:1,18

clean 41:16 127:7

cleaned 36:4

cleaning 104:15

cleanup 19:20

clear 29:19,20 32:5 48:25 85:19 95:15 151:3,4 152:5 174:16 178:12 198:14 208:23 211:17 212:14,15 217:3

cleared 87:23 90:3

clearest 150:3,8

clearing 60:3 90:8 91:10 169:16

clerk 221:17

clerk's 221:11

client 5:24 88:25 212:13 213:14 215:25

clients 6:2 213:9,20 215:16,18

clippers 41:11

clips 146:15

close 185:9 202:9

closer 109:4 134:3 170:9 200:3

closest 98:14,15 159:18

closing 54:2,7,8,10 56:10 214:9 219:2,9 221:19

code 212:7 216:24

coexistence 106:23

Cold 16:3 19:14 124:19,22 126:4

Coleman 24:19 25:17 27:6,9 28:13,20 53:22 54:16 57:18 61:25 65:13 66:3 75:16 85:12 94:18 100:19 111:5 113:17 115:25 118:12 133:25 145:3 147:22 151:13,15 152:1,3,11,12, 17 154:24 163:3,7 165:10 181:13 186:14,16 197:21,25 200:16,17, 20,24 203:21

collected 161:4

color 6:11 181:12 211:25 217:12

comfortable 221:5

commercial 154:15

communicate 174:6

communication 88:22,25

communications 175:16

company 153:16

comparing 187:7

compass 83:21

compass-wise 63:19

compensatory 45:18,24 48:17 50:4

Complaint 46:15,20

complementary 104:18

completed 172:23

completely 128:17

completeness 135:17

complicated 5:14

complies 117:4

component 45:7,12 49:4 50:16

concept 57:25 209:19

concern 43:20 56:2

concerned 74:13 77:11 187:18

concerns 43:16 73:25 81:19 82:16

CONCLUDED 222:8

conclusion 38:7 76:25

concrete 172:3,13

condition 49:10

conduct 50:10

conference 5:12 89:7 202:12

confident 123:17

confirm 163:7 192:3

confront 95:24

confrontation 26:11 58:3

confuse 150:2 187:24

confused 65:21 108:24 149:9, 17 150:10 151:1 175:10

confusing 128:13 136:21 137:3, 11 139:8,13 142:9 193:8

confusion 149:18 150:22,23 214:17

connects 84:23

consequence 79:25

considerable 100:19

considerably 178:3

considered 13:22 156:20

constructed 96:21

constructing 64:20

construction 96:17,19 183:17

context 139:2

continue 38:3,16 94:12 142:23 144:10 180:8

continued 45:20

continues 178:14

continuing 94:16

continuous 34:18 209:4 212:22 213:17,18 214:23 215:3,22 217:5,16

continuously 215:22,23,24

continuousness 215:21 216:19

contractor 15:10 26:13 42:3 204:25

contractors 121:18,24 122:1,4, 14,16 204:15,17 205:22

contradicted 136:24

contradictory 140:8

control 112:8

controlled 177:24

controlling 212:11 216:18

conversation 57:1 136:18 141:3,10 143:13

conversations 111:24 136:1,4 141:1,11

conveying 91:6

convinced 45:11

convincing 208:23 212:14,16 217:3

copies 140:15 221:18

copy 7:17 15:20 18:18 28:3 32:15 38:23 127:24 142:9 221:12

corner 117:7 159:18 160:12,14 164:11,13 166:1,4 167:7 171:7 175:19,20 199:8,11

corners 25:3 27:13 55:3,8 161:16,19,21 163:24 165:23 173:21 189:21 190:24 198:8

correct 11:5 17:6 19:17,18 22:5, 17 23:1,13,24 24:3 25:16 40:20 46:3 48:6 51:25 55:23,24 56:19 57:21,22 58:9,11,25 59:2,4,6,14, 15,18,23 60:4,5 61:2,3,14 63:6, 11,22 64:3,6,16,21,24,25 65:3,4, 8,9,11,12,15 66:1,2,10,23 70:11 71:2,13 72:11,24 73:21 74:2,3,6, 9,10,15 75:10,11,16 79:13 81:16, 17,19,20,23,24,25 82:3,17 83:1, 2,6,23 84:7,10,11,15,16,23 85:6 89:21,22,25 90:1,17,24 91:10,18 92:10,25 93:7 94:20,24,25 95:3, 25 96:1,4 97:3,16,24 98:1,13 99:1,4,7,8,16,20 100:3,7,15,16 101:13,14,16 102:1 110:15 113:19 114:17,25 115:4,6,10,14, 15,18,23 116:14,22 117:16 118:5,23 119:6,17 120:4,9,14,22, 23 121:2,10 122:5,25 123:17,22 124:2,7 125:11 126:2,9 127:3 128:1,3,24 129:15,18 132:6,7,24 133:2,15 134:1,24 137:22 138:15,16,18,19 142:21 143:2,22 144:15,21,23,24 145:4,5,13 146:5,9,16 147:6,9,12,23 148:17 152:7,9,10 154:23 155:24,25 156:3,6 157:19 158:25 163:4 183:13,14 185:20 187:3,7 188:6, 23,24 190:10,20 191:3,23 192:4 193:14 195:7 197:7,8 198:16 219:18,19

correctly 74:13 83:21 113:15 116:13 133:23 164:17 175:24

cost 133:8

costs 47:25 48:15 50:2

counsel 80:22 93:12 108:14 119:21 219:17 221:1

counseled 59:16,19

counselor 89:3

Counter-plaintiffs 6:4

counterclaim 45:17 48:5 219:21

counterclaims 46:23 47:18 50:6 219:15,17,23 220:12

county 5:16 160:23 161:9 183:17 189:22 195:12

County's 165:7

couple 13:24 29:18 36:12 62:4 83:19 90:15 127:10 142:14 148:10 176:4 197:23 200:21 201:25

courses 154:6

court 5:1,25 6:5,18,21,24 7:2,4, 10,14,15,20,23 9:1,4,9,15 15:16, 19 16:17,19 18:8,11,13 19:7,9 20:23,25 22:12 24:15 25:12 27:7 28:15,25 31:2,4 32:1,21 33:1,4, 15,20 38:8 39:7,10 42:15,18,24 43:25 44:21 45:4,15,25 46:4,7, 13,16,21 47:2,10,16,19,22 48:3, 23 49:1,13,15,16,17 50:1,22 51:6,13,17,21 52:5,14 53:1 55:14 57:9,11 60:22 62:14 63:9 71:19 72:18 74:18 75:2 77:16,19,22,24 79:3,8,11,17 80:6,14,17,21 83:14,18 84:2,5,7 86:22 87:3,6

88:5,11,19 89:2,5,11,15 92:18 93:11,12,16,19,22,25 94:5,9,11, 12 95:6 98:24 99:3 102:5,21,24 103:8,12,16 107:15,20,24 108:3 109:5 112:14,17,25 114:4,9 116:5 117:22 118:19 119:2,9,21, 23 120:18 122:19 124:11,15 125:3 127:21 128:16 130:16 134:14 137:5,8,13,20 139:4,14, 19 140:4,12,18,20 141:5,8 142:5, 23 144:8 148:6,9 149:13 150:14 151:6,11,15,21 154:22 155:1 157:4,6 158:1,22 162:14,16 163:15 164:24 168:4 169:14 176:23 177:1,12,20 178:11 179:10,15 180:7 181:17,21 182:16 183:1,4,8,10,13,15 184:4, 9,13 185:2,8 186:4,9 187:10,16, 19,22 188:8 192:14 196:15,20 197:14,22 200:7,11,15,19,21,25 201:4,10,14,17,23 202:3,7,9,18 203:1,4,10,13 205:5,13 206:10 207:16 208:4,7,10,17,21 210:17, 20,23,25 211:4,12,15,17,23 214:11,20 215:14 216:14,20 217:10 218:9,16,24 219:8,20 220:2,5,9,10,20 221:1,4,6,10,13, 20,24 222:1,6

cover 76:18

covered 109:16

covering 217:15

create 111:10

credits 153:20

Creek 16:3 19:14 124:19,23 126:4

crept 30:15

criminal 32:17 38:10

cross 95:7 113:3 186:5,14

cross- 206:10

cross-examinate 74:20

cross-examination 55:14,17 72:18 206:13

cross-examine 81:5 113:1

crush-and- 97:14

crush-and-run 96:22,25 170:22 172:14

cultivated 212:6

cultivating 91:12

curious 192:11

current 68:1,2 169:10

Curtis 24:19 27:6 66:3 75:16 85:12 151:13 152:6,12,17 203:21

curve 119:6

curves 119:8

customers 59:16

cut 89:3 92:7 110:9 175:9

cyclone 86:8 115:5

D

damage 44:20 45:10,11,13 49:10 51:1,8,10,23 132:12,14,18 133:9,12 145:16,21,25 205:20

damaged 206:5

damages 44:23 45:2,19,23,24 47:24 48:15,18 49:3,5,11,12 50:2,4 51:3,18 219:25

date 16:5 17:8 18:8 21:16 22:22 23:4,7,11 25:13 31:10 46:6 47:12,14 77:16 130:12 138:1

dated 19:14 20:4 24:20 30:2 32:16 87:24 89:24

dates 128:3 130:25

daughter 12:4 39:25

day 5:4,5,6,19 36:20 57:14

days 220:19

dead 110:5

deal 67:2 193:17

debrief 211:6

debris 109:18

December 5:1 18:19

decide 172:9

decided 12:12 14:9 64:19 153:16 189:19

decimal 116:17,19,22

decision 203:7 214:5

declaratory 48:10 219:25

decree 211:24

dedicated 176:19

deeds 161:2 163:5,7,16 176:13

deem 217:21

deemed 212:3

defendant 52:12 119:18 208:11 209:10 211:19

Defendant's 33:9 127:23 157:6, 7 158:2 159:3 162:11,18,19,20, 21,22 163:17,19 165:2

defendants 6:3 47:23,24 210:1

Defendants' 15:23 16:15 18:15 19:6,11 20:1,21 21:8 22:9,14,19 24:12,17 25:9 26:25 27:7,25 28:12,17 29:24 30:25 31:6,24 32:11,24 33:20 39:6 119:16 151:23,24,25 162:12,16,25 164:25 183:11

defense 5:10,25 7:2,3,4 108:3 201:1,4,6 202:22 203:5 217:4,24 218:16 219:15,17 221:1,24

Defense's 7:6 47:22

defenses 47:18 48:4 220:11

define 69:11 128:16

defined 9:25

definition 90:11

degree 153:12 183:8 209:21

delivered 54:2,6,9 56:10

demonstrate 194:1

demonstrating 207:10

denied 78:21

denoted 119:15

deny 218:11

department 159:20

depending 153:3

depends 194:7

depict 9:17 164:17

depicted 16:8

depicting 167:23

depiction 155:12

depictions 101:19

depicts 185:22

deposition 32:12 61:19 63:20 76:23 77:17,20 78:9,16,19 79:19, 25 80:5,10,25 81:6 82:8 85:16,18 86:18 95:9 105:6,7 120:12 122:23 123:11,15 128:15,18 129:12,22 135:12,19 138:3 140:15 142:8 143:24 148:16 149:5,17 150:4,10,13,18,23 207:13

depositions 60:13

describe 8:19 63:7 103:22 105:1 170:5 205:16

description 181:22

deserve 211:7

designated 10:6 126:8

designations 119:18

destroy 213:25

detail 123:24 209:1

detector 120:3,14

determination 207:4

determinative 45:1

determine 176:15

developed 15:7 48:22 59:9

developer 157:12

devices 147:5

diagram 84:5 114:25 116:6 122:10

died 67:15

differently 214:14

differs 76:20 79:21

difficult 115:21 172:13

dig 110:11

diminish 43:15

Dione 6:2

direct 8:2 95:22 108:8 112:19 149:1 152:1 203:15 207:24

directed 210:17 211:9,18,20 212:20 214:2 217:21 218:10,20

direction 25:24 31:17 132:19 203:19

dirt 60:2 197:6 210:8

dirt's 191:17

disagree 51:20,21 90:13 113:11, 14 169:2 193:18,23

disagreed 109:12

disagreement 103:23 164:4

disagreements 160:6

disagrees 140:7

disappeared 34:2

disappearing 102:11

disclosed 181:10

discovered 66:12 107:9

discrepancies 161:2

discrepancy 128:3 130:17

discuss 15:20

discussed 92:15 111:25 120:12 210:4

discusses 214:24

discussion 83:25 86:11 103:3 136:10

dispense 211:5

dispute 38:13 51:23 68:3 113:13 189:18

disputed 11:2 12:14,18,19 13:6 16:22 19:21 20:9,19 22:6 24:7 25:21 29:3 36:22 37:7 40:18 42:8 43:11 53:13 60:8 69:19 70:20 71:7 73:10 76:8,16 84:21,22 87:3 92:22 96:4 98:25 101:2,20 109:15 112:5 113:23 114:5 115:13,16 116:3 121:10 122:25 129:14 133:5 134:6 145:25 147:15 156:12 165:17 168:16 170:20 174:3 179:25 180:1,2 182:4,17,20 184:4,6 199:10 204:9,10,15 206:15 208:2 209:7 210:9 215:10

disputes 142:2

disregarding 101:23

distress 52:4

doctor 53:7

doctors 53:2

document 15:24 20:2 21:8 22:18,22 31:11 47:9,12 88:3 129:6 159:7,9 163:25 165:3

documents 148:15 155:3 218:12

dog 174:8,11

dogs 176:2

dominion 217:17

door 201:24

double-check 93:19

doubt 50:5

doubtful 219:4

downsized 14:3,6,11

downsizing 13:22

dozen 213:8

drafting 162:6

drag 117:2

dramatic 82:6

draped 91:24

draw 8:23

drawing 9:6 159:24 161:22 178:18

drawn 116:12 117:5

drew 117:20 118:2 199:2

drive 8:10 12:20 38:22 39:7 55:23 56:24 57:20 58:6 59:5 76:3,8 92:14 95:18 96:4,14 97:18 98:4 99:10,11,16 115:17 116:14 118:3 119:5 120:22 124:5,6 126:8,10,12,20 128:10 131:24 133:9,19,25 145:17 160:13 164:9,13 170:10 171:4 190:4 209:9

driveway 40:15,16 170:15 171:4,5,8,10

driveways 97:2,7

driving 99:16

drop 167:6

drops 167:4 168:21,24 203:21

drove 99:9

dual 101:6 106:14,15

dug 198:8

duplicative 205:2

E

E-V-E-R-E-T-T 152:18

earlier 15:17 34:10 71:23 98:3 124:9 147:16 198:20

early 14:20 71:22 134:23 210:5

earth 191:17

ease 172:12

easel 9:7 155:10

easement 112:1,7 176:7,8,11, 14,16,17,19 196:22,24 197:6

easement's 197:1

easier 109:6

easily 12:14 172:4 175:24

east 84:13 198:3

eastern 84:14 86:4,15 87:3,23 90:4 91:25 92:11 168:23

easternmost 87:2

easternmost/southernmost 199:7

edge 69:19 70:19 71:7 171:1,3 210:3

educated 6:13

education 154:2

Edward 21:12,20 22:24

effect 44:13 172:15 177:20 184:5

efficiency 151:19

effort 172:16

efforts 104:17

eight-foot 106:8

elderly 64:5 67:12

element 44:20 45:12 51:25 180:3 214:1

elementary 215:1

elements 17:19 177:23 178:24 179:3 185:11 212:15,19

emotional 49:10 51:10,23 52:3

encircled 182:3

enclosure 212:5,8,9

encounter 174:22,24,25

encroach 30:19

encroaching 66:15 67:17 193:6,11

encroachment 68:25

end 40:3 53:11 117:7 142:20 166:24 201:8,13,21 202:19 220:22

ended 24:24 145:15

ends 117:6

engaged 94:18 113:17

engineering 154:10

entire 27:20 73:12 110:25 111:4 147:3 174:2

entirety 203:23

entitled 45:23 178:6 212:1

entity 197:2

entrances 104:23,25

entry 21:23

environment 135:11

envision 210:11

erect 75:10

erroneously 21:19

error 100:6

essential 215:1

essentially 137:19 153:18 154:14 161:8,15 162:7 164:4 169:3 173:19 174:15 175:22 180:1

establish 73:7 159:23 208:25 217:1

established 66:8 101:22 210:14 211:3,10

estate 11:20,21 12:3 42:23 59:10,13

estimate 16:2 17:10,11 18:9

evaluate 218:7

event 57:16 64:18 214:2

eventually 153:17 157:14 162:9,10 167:17 168:20

Everett 152:17

everybody's 103:5 202:18

evidence 16:15 19:6 20:22 22:10 24:13 25:10 26:25 28:13, 23 31:1,24 32:19 33:13 39:5 46:9 48:21 100:18 139:24 146:19 147:11 148:23 157:3,25 162:13 163:13 164:22 201:9,18 203:7 208:24 209:18,24 212:14,16 217:3,22,24 218:7 219:9,13

evidencing 207:6

exactness 191:15

examination 8:2 9:3 108:8 112:19 113:3 149:24 152:1 186:14 203:15

examine 206:11

examples 57:24

excitable 64:9

exclude 50:14 53:19 112:21 215:17

excluded 215:16

exclusive 209:22,25 213:11,12, 18 215:19,25 217:6

exclusively 177:25 178:9 214:24 216:18

exclusivity 210:14

excuse 14:16 32:12 48:8,13 117:16 158:10 193:21

excused 200:12,14

exemplary 45:23 48:17 50:4

exercise 217:17

exhibit 8:24 9:8 10:24,25 15:23 16:8,16 18:15 19:6,11 20:1,21 21:8 22:10,14,19 24:13,17 25:10 26:25 27:7,25 28:13,17 29:24 30:25 31:7,24 32:11,24 33:4,9,21 38:21 39:6 70:16 81:24 83:22 92:19 104:25 114:15 115:9 116:14 117:14 118:3 119:11 126:8 127:1,21,23 128:2 129:1 132:11 151:23,24,25 155:5,7,11 156:18,19 157:3,7,22,25 158:3 159:3,5 162:11,13,18,19,20,21,

22 163:17,19 164:21,25 165:1,2 189:5 192:17 198:18 209:2

exhibits 7:13,22 15:18,20 29:2 94:10 151:20 155:4 162:25 187:18 218:8 221:11,15

exist 139:24

existence 192:4

existing 171:4 193:20,23

expand 27:19

expect 6:7

expected 107:23

expensive 53:9

experience 180:23 184:9 185:9, 12 194:4 196:5

expert 42:12,19,25 154:19,22 178:17,23 183:24 197:10

expertise 59:10 179:1 181:3 183:18 185:13

explain 131:6 180:11

explained 100:4 174:13 197:16

explored 178:7

express 82:16

expressed 43:16 81:19

extends 85:5

F

fact 35:17 59:16 64:15 66:11,12 67:2,16 91:21 109:3 113:16 115:25 144:13 150:7

fact-witness 181:14

facts 141:14

factual 181:25

failed 215:17

fair 12:11 34:15 41:14 56:24 60:9,19 68:14 69:15 70:20 73:17 79:17 94:19 99:12 103:22 113:18 121:6 122:19 128:12 136:17 145:9 148:1 150:25 192:9 195:22 220:16

fairly 6:13 9:17 80:10,12 164:17 167:4 185:22

Faith 22:25 121:19

fall 152:23 209:24

family 212:25

Farms 22:25 121:19

fashion 85:7

fast-forward 75:7

father 30:6

favorable 217:22

February 19:14 21:13 23:15 32:16 126:4 127:15 130:9,22,23 131:2,20

feel 9:12 18:2 26:22 35:15 52:21 101:5 102:14 104:1,13,17

feeling 219:4

feels 221:22

fees 47:25 48:16 50:2

feet 13:11 14:14 67:19 68:5 106:4,5 136:15 166:20,22 171:8 194:15

fell 205:19

fellow 191:6

felt 15:6 26:8 35:25 65:2 72:4,10 100:4 106:16,18 107:7 214:13

fence 13:2 17:3,4 29:16 30:14 34:21 35:11,16 37:1 57:4 60:13, 14 66:12,16,20,21 69:4 70:4,5, 15,17,21 71:6,14,15 72:1 83:5,12 84:14,17,19,23 85:13,15,20,21, 23 86:5,8,13,19 87:9 91:25 92:4, 9 93:2 98:5,13,18,21,25 103:24 105:8,23 106:8 110:6 113:24 114:10,14,15,24 115:2,5,12 124:25 125:7,8,14 126:15,16 127:7 141:16 142:13 145:20,24 147:19 167:3,8,16,20,23 168:6, 12,13 178:3 192:21,24 193:6,11, 13,15,16,18,20,23 194:14,19,22, 25 195:3,7,10,20 196:1,8,17 198:19 199:2,4,14 205:15,16,17, 19,20,23 206:2,5 212:8

fenced 53:15

fences 83:19 114:2 193:5 194:5 195:4,24 216:13

fencing 35:4 86:3,14,20 87:8,15 92:14,23 105:8,13 166:9,14,25 217:14

field 42:20 154:23 162:7

fieldwork 162:5 166:19

Fifteen 188:3

filed 5:7

filing 47:12,14

final 38:21

finally 26:4 30:12 100:18 101:8 146:11

find 29:6,7,8 93:9 120:6 129:13 148:20 156:25 161:18 176:17 190:22,24 218:9

finding 214:18

fine 35:10 63:13 94:2 109:5 128:8

finger 98:6 106:7 116:11 117:2, 20 118:25 119:12 156:7 167:22 168:10 170:11

finish 53:4 103:3 186:11 202:13

finished 165:6 174:21

firm 154:10

firmer 31:19

first-grade 12:4

five-minute 102:24 103:5

fixed 67:15

flag 54:4 56:22 144:20

flagged 27:17 54:7,20 175:24

flags 26:7 55:22 73:14 173:16,17

flat 167:5

flip 163:2

flood 112:7

flowing 83:3

focusing 72:15

folks 6:8 45:1 58:5 61:1 145:2

follow 191:25

follow-up 208:4

Food 97:23

foot 56:9 132:19 195:9

force 69:3

forceful 149:4,5

foreclosure 5:15

foremost 70:19

forever 191:18

form 134:11

fortunate 29:7

Fortunately 202:19

forward 7:11 62:14 119:24 221:18 222:4

found 26:19 120:13,24 121:4 156:23 160:6 162:7 164:6 165:8 173:6 175:20

foundation 49:11 60:16 83:9 114:1 122:12,17 134:12

fountain 64:20

four-year 153:12

frame 77:11 127:11

frankly 190:25

Frasier 217:9

friend 54:3 100:6,15

friendly 14:23 75:22 135:8,10

friends 14:23

front 12:16,22 36:5 160:12 175:19 187:20 188:15 194:15 217:8

frozen 40:3

full 215:4

G

game 39:21 40:10

gap 76:11

garage 136:9

Garcia 126:22 127:9 133:16,18

Garcia's 20:3 121:19

gardening 110:12

gate 71:10 98:3,5,18 99:3 104:22 115:2,14

gatekeeper 36:1

gathered 161:5

gave 68:15 93:14 213:23

general 49:21 57:25 99:18 111:21 196:18 209:19

generally 49:3 57:18 113:21,22 159:21 172:1,3 193:11 195:8

gentleman 139:8 145:7 178:22

geometrically 182:20

Georgia 154:10

get-along 41:17

gift 54:10 190:17

give 11:23 40:21 42:15,18 43:3 47:9,10 50:24 73:14 94:10 103:4 122:17 140:21 184:13,14 201:7 211:5 219:3 221:13

giving 23:8 140:7 219:1,11

glad 7:6 53:11

good 5:23 6:20,22 8:4,5 35:15 55:19 84:4,6 85:13 113:5,6 121:21 134:8 135:7 137:14 138:18 147:18 152:3,4 161:18 169:15,16 177:8,16 186:17 191:14,16 192:14 193:17 203:22 222:3

good-neighbor 135:10

gotcha 141:17 142:25

graduated 153:13,15

grant 44:1,3,5 149:14 179:17 180:7 185:14 196:15

granted 57:11

gravel 171:11,17,20,22

great 67:2 170:7 209:1

greatly 43:15

green 59:7 117:9,10,14,16 118:4 119:14

Griffith 61:23 62:7 101:1 113:22 116:3 118:8,15 126:17 129:24 132:10 189:23 203:17 206:4

grocery 96:14 97:19,22

ground 161:23 162:2 164:7

grounds 208:15

grown 13:15

guard 17:18

guarding 209:14

guess 5:15 6:14 35:5 68:16 69:10 71:20 131:22 177:21 186:21 195:21 196:8

guessed 22:19

guidance 211:8

guidelines 218:10 220:13

guys 94:18 97:18 99:9

H

Haas-hildebrand 53:25

habits 35:21

half 6:16 169:25 170:4,5 171:2 213:8

half-hour 5:17

halfway 17:1 168:21

Hall 157:10,12 158:5

hand 117:23 119:3 140:15 151:16 156:1

handing 15:22 18:6,14 19:10,25 21:7 22:13,18 24:16 27:24 28:16 29:23 31:5 32:10,23 33:7 155:2 159:4 162:24

handle 6:14

handwriting 129:4 130:15

handwritten 129:2 130:18

hanging 110:6

happen 94:1 143:4,6 194:12 213:3 220:22

happened 15:9 36:8 44:2 67:24 76:5 205:16

happening 204:3

happy 48:21 63:12 104:8

hard 108:10 130:24 210:10

harder 110:19

harm 50:12

Hass 159:11 176:6 189:13

Hass' 160:8 188:13,14,18

he'll 29:17

head 30:16 67:10 95:14

headed 139:18

health 44:14 52:20 73:17

hear 7:6 33:1 34:7 36:6,8 47:22 51:14 75:3 80:25 88:19 108:24 109:11 113:8 123:9 133:5 134:3, 10,15 136:5 219:12

heard 76:6,19 114:13 132:22 133:1,4 174:11 204:7

hearing 81:1 108:11 207:7,8 214:9 219:8 222:8

hearsay 57:6 71:18,24

heart 56:1 73:16

heavily 54:13 71:1 99:6

heavily-wooded 8:21

heavy 91:20

helpful 157:22

helps 128:7,9

herbicide 39:19

Hey 41:15

high 115:5 212:16

higher 212:17

hill 170:17 173:20 180:17,20 203:21

hired 115:25 122:4,13 133:16 145:3,16 189:23 190:10,14 218:6

hiring 100:1,9,19

historical 130:5 173:11

historically 128:11

hit 132:21

hits 132:20

hold 33:16 49:13 168:3 197:13 198:18

holiday 220:14

home 54:8 55:23 61:2 203:19

homeowner 194:8

honest 219:1

Honor 5:22 6:1,7,15,23 7:8,12, 21 8:25 9:16 15:15 16:12,14 18:10 19:5 22:9 24:12 25:9 27:1 28:12 31:23 32:20 33:14 35:2 38:6 40:21 42:11,22 43:23 44:16 45:7 46:3,12 47:1,9 48:6,24 51:2, 5 52:13,25 55:13 57:6,15 60:25 62:13 74:19 78:1,5 79:6 80:3 81:8 87:5 89:4,18 93:10,15,21 94:4 97:21 102:18,23 103:15,17 107:5,14,17,21 108:5 109:3 112:13,16 117:25 118:17 119:22 135:17,24 136:22 139:23 140:11, 22 144:12 148:5,7 149:11,15,22 151:8,12,18 154:18 157:2 158:13,17 162:12 163:12,19 164:21 167:25 169:13 176:22 177:10,14 178:20 179:9 180:6 181:2 184:15 185:15 186:3 187:17 197:23 200:6,9,10,13 201:3 203:3 207:15 208:6,15,22 209:15,23 211:20 214:4,8,16 215:12,15 218:17,18 219:19 221:25 222:7

Honor's 184:8

hope 39:5 165:1

hoping 5:17

horribly 139:10

hostile 37:4 75:25 209:20 213:3, 4,17 215:24 217:5

hostilely 178:10

hostility 15:7 213:22 214:1,19

hot 13:23

hour 6:16 102:25

hours 6:14

house 8:15,17,20 12:6,12,15 13:8,9 14:9,12,15,16 26:6 35:22 40:14 53:24 58:11,13,15 67:14 105:4 132:15,21 136:11 162:6 167:10,17 203:20,22,23,25 204:1

housekeeping 6:6

houses 11:24

Hozey 5:2,24 9:21 10:9,17 15:12 30:2,11 32:3,4,6,16 35:17 36:6 38:3 39:16 41:15 42:8 43:10,17 50:8,12 53:19 74:5 75:9 86:19 104:11 107:3,8 111:25 112:21 158:21 159:11 160:15 165:18 174:6,7,10 175:2,5,18 176:2,20 202:2 203:12,15,17 205:7 206:8, 13,15 207:19 208:8,24 215:9

Hozey's 9:22 10:17 25:2 34:6 40:14 50:9 55:10 62:23 84:11 86:8 100:21 105:14 156:5 158:20 159:14 160:2 163:8 170:15 171:2,5 173:15 198:5

Hozeys' 161:13

hurting 42:2,4

husband 15:10 20:12 21:19 28:6 29:10 36:11 37:14 39:22,24 41:8 44:8 55:1 56:10,23 58:18 61:5,15,23 64:19 67:14 71:5 72:21 73:20 82:8 91:24 99:25 101:13,19

husband's 29:13 44:13 52:20, 22 57:19

I

ice 58:19 124:1 128:10 131:4,10, 15 132:18,23 133:9,12 145:15 204:18 205:1,16

idea 58:16 111:21 148:1 161:18 177:8 186:6

identical 80:8

identification 15:23 18:16 19:12 21:9 28:1 29:25 33:8 151:23,24,25 155:4 159:3,5 162:11,18,19,20,21,22,25 163:17 165:2

identify 114:3 193:16

if's 43:24

III 5:22,23 7:1,18 9:14 16:18 19:8 20:24 22:11 24:14 25:11 27:2,4 28:14,24 31:3,25 32:22 33:6,16, 19 38:6 39:1,3 42:11 43:23 44:16,18 45:6 46:11,14,17 48:24 49:2,24 50:20 51:12,14,20 52:1, 25 55:15,18 57:5,13,16 60:17 61:1 62:3,15,18 63:1,3,5,14,15 72:15,20 74:24 75:6 77:10,13,18, 21,23,25 78:5,10,15,18,21,25 79:22,24 81:8,9 83:10,16,20,22 84:9,18,19 87:7 88:9,12 89:9,19 92:21 94:6,14,15 95:5,8 99:1,5 102:8,17,23 107:4,17 108:17 113:4 114:7,12,21,23 116:10 118:1,22 119:4,20,25 120:1,20 122:13,21 124:13,16 125:9 127:23 128:2,14,17,18 130:14,21 131:10 134:15 135:16,18,23,25 137:10 138:9,12 139:5,12,20 140:11,13,14,19,21,25 141:12 142:24,25 144:7,12,13 149:11,25 152:17,18 168:3 169:5,7 179:9

181:2,5,8 182:8 183:16 185:5 186:7,15 187:9,11 188:1 192:15, 16 196:12,19,21 197:15 198:10 200:23 201:12,15,20 202:1,6,8, 15,25 203:2,9,12,16,25 205:4,6, 7,14,15 207:20 208:9,14,20,22 210:19,22,24 211:1,14 218:15 220:24 221:9,23 222:5

image 101:12 109:16

impact 52:19

impacts 45:1

impeach 78:24 79:6 137:24 141:25 142:3

impeachment 78:4,7 79:15 136:23 137:4 141:21

importance 59:12

important 59:23 69:12 72:10,24 120:24 160:22 219:12

importantly 213:2

improper 51:24 78:3,8 136:23

improve 64:19

improved 212:6

improvements 162:8 168:19 169:23 172:1 217:15

inability 182:6

inadvertently 127:18

inappropriate 211:21 212:20

inaudible 12:19 19:2 23:12,15 27:22 33:15 38:25 45:9 49:25 51:16 62:15 74:18 76:9 77:15 78:2 83:17 84:8 89:1,10 90:22 98:3 102:20 110:3 111:9 124:12 125:2 131:19 150:12 151:14 158:14 169:8,17 170:10 171:3 173:10 174:18 181:16 183:9,25 187:10 191:5 194:10,11 195:25 198:9,10 206:5 208:21 210:16 220:8,25

inches 195:11

incidences 81:13

incident 32:25 33:10,17 68:17 81:3,11

incidents 81:13

inclined 203:6 211:4

include 24:6 25:2 27:20 50:10 156:11,13 157:10 160:24 164:7 174:2

includes 11:6 109:17

including 48:17 50:3 155:13 185:23

incredibly 139:8

index 119:11

indicating 130:12

individual 194:8

individuals 130:4 192:8 194:4

infliction 52:3

inform 6:19

information 80:23 88:13 89:20, 24 90:5,7 129:2 162:6

initial 27:12 56:2

initially 160:22

injunctive 48:10 220:1

injury 49:24 50:21

inside 125:2,9 195:4 203:25 204:1

insight 211:7

instance 110:5 178:2 182:10

instrument 211:23

insurance 35:13 132:5 204:20

intact 67:15

intended 42:5 44:10

intent 209:5,7

intentional 49:7 52:3

intentionally 50:8

interactions 111:12

interest 151:18 155:16 187:1

interested 214:8

interject 178:21

intermediate 173:22

interpret 131:3

interrupt 136:12

interrupted 136:11

intersection 159:19

intimidate 50:14

introduced 176:3

invaded 50:8

invasions 50:10

invest 147:5

invested 147:8

investment 73:21

invisible 30:14 147:19

invoice 16:21 17:9 23:15 24:19 27:3 28:22 123:5,25 128:9 129:18,23 130:20 148:18 204:18

invoices 121:22 122:24 123:21 124:17,18 128:12,19 129:13 132:9 148:15,20,22 207:5,7 213:9 217:24 218:2

involve 5:15

involved 5:14 146:20 152:25 209:3 215:12 216:16

involvement 113:12

irregular 184:17

irreparable 50:12

isolated 76:15

issue 8:11 52:8 68:18 73:23 141:2 147:18 193:10 196:22 210:4,8 211:6 214:8

issues 69:12 104:6 161:2 178:22

itemized 16:9 28:21

items 22:1,2 28:21

J

Jackson 56:3,4 57:2 62:5 64:3,5 65:2,7 67:3,17 68:9,24 69:3 71:25 73:7,23,25 74:4 76:25 77:10 81:11,13 82:2,16 210:4

Jackson's 56:14 66:12

January 125:21 221:7,19

job 140:1 156:22 192:5

jog 124:4 167:16

jogged 167:9,11,12

joint 18:24 19:13 20:14 28:10 128:25

Jones 21:12,20 22:24

journeyman 153:19 154:8

Judge 52:2 57:24 61:22 62:7 70:19 72:16 88:1,6 94:6,14 101:1 113:22 116:3 118:8,15 126:17 129:23 132:10 137:6 138:10 186:8 189:23 192:12 196:19 197:13 202:1,15 203:17 206:4 209:9 220:19 222:5

Judge's 38:15

judgment 211:23

July 20:4 47:14 127:10,12

jump 57:17 73:24

June 20:5 127:11,12

jurisdictions 211:8

jury 47:23

K

kickback 198:20 199:14,20

kind 14:24 52:18 58:3 59:1 67:7 96:2 109:14 120:2,25 132:20 140:22 145:7 148:25 153:9 157:14 161:2 162:3,8 164:3 168:18 170:17 172:14 173:5,19 174:9,12,23 175:9,23 176:3,15 177:9 182:21 183:10 184:18 193:9 194:5 195:17 210:20 217:19

kinds 17:3 132:18

knew 26:7 30:12 60:10 67:21 68:17 69:5 70:3,6 71:14 113:20, 21 118:14 147:14 194:13,19 210:2,6

knowing 59:13 77:1 79:25 82:23 209:5

knowledge 62:2 182:1

L

L-I-P-P-I-N-C-O-T-T 108:21

label 63:15

labeled 158:15

lack 134:11

lady 64:2,5

laid 188:22

land 60:3 87:23 90:4 152:20 169:16 217:15

landscape 19:20 97:13

landscape-type 75:22

landscaping 123:22,25 175:3

language 50:5,15 179:18 217:20

laptop 38:25 39:13

large 36:18 87:23 90:3

largely 181:14

Laurel 8:10 55:23 56:23 57:20 58:7 59:5 61:2 76:3,8 92:14 95:18 96:4 97:18 98:4 99:9,11,16 115:17 116:14 118:3 119:4 120:22 124:6 126:8,10,12,20 128:10 131:11,24 133:9,19,25 145:17 160:13 164:9,13 166:7 170:10 190:4 209:9

law 42:16 43:3 211:3,11 213:24 214:14,25 215:8,10 217:1,16

laws 31:20

lawyer 30:8 88:24

lawyer's 118:13

layperson 181:6

lead 153:17

leading 75:13 107:4 149:12 169:13 182:13 205:3,11 207:25

lean 54:11,13

leave 107:18 159:1 197:9 200:19

leaves 70:11 219:6

leaving 97:22

led 79:22

left 13:15 54:8 70:19 194:20

left-over 182:21

legal 38:7 52:8 178:22 179:2,3 185:6,9

legs 103:8

let' 142:16

letter 30:2,10,18 31:13,16 32:8, 15 33:23 87:19,20 88:13,18 89:7, 24 90:2

letters 37:3 41:1

level 14:12

levels 216:22

liberty 9:2

licensed 152:23,24 153:10,20

licensing 185:25

licensure 154:7

life 163:23

light 154:15 217:22

limbs 109:18 110:6 122:7

limit 184:1

lines 9:25 25:4 26:4 27:17 30:12 54:4,6,15,16,21 55:22 56:22 58:1 59:22 60:19 61:2,5,11,15,20,23 69:12 71:12 72:24 73:7 77:22 82:10,11,17,20 94:19 99:20 100:1,2,10 113:18 116:1,2 118:11 145:4,19 160:5,7 161:25 162:3 165:16,24,25 168:11 173:8 177:15 184:19 187:7 189:24 190:3,5,6,11,24 192:4 193:7 198:14

Lion 97:23

Lippincott 108:20,21

list 48:3

listed 11:24 189:1

literally 74:21

litigation 165:19 177:9

live 8:9 62:8 215:10

lived 8:13 35:18

living 58:5 152:19

located 74:9 164:7 171:1 173:25 192:25

locating 161:7,21,22 189:21

location 68:19 72:23 174:20,21

long 6:21 8:13 11:21 56:17 71:5 106:3 152:21 186:4 215:18 216:16 219:2

longer 106:6 107:23 182:3

looked 182:1 186:25 188:4 198:17

loose 90:16

lost 52:22 83:10 184:4

lot 10:6,13,14,17 17:16 54:5 55:3 56:2 62:16,19 63:15,16,21 87:24 90:5 107:22 145:11 155:24 156:5,17 158:21 160:9,10,15,25 164:9,13 166:1 168:15,19 172:13 177:17 183:13 184:10 189:3 194:3,16 213:10 221:11

lots 8:20 119:15 156:2,7 157:10, 15,16 158:9 161:6 164:5,18 165:9 173:12 180:17

loud 108:13

low 180:17

M

MADAM 49:16 93:11

made 21:17,18 24:21 73:20 127:17 196:24 203:2 208:15 213:4 216:12

main 66:7

maintain 70:1 101:21 195:10

maintaining 36:25 44:9 69:23, 24 91:12,13

maintenance 75:23 101:6 106:14,15 109:17 195:18 216:11

make 17:18 25:1 43:11 48:24 49:18 54:11 59:17 60:3 85:19 93:17 94:15 95:15 97:2 100:2 102:19 109:6 114:10 116:10 118:1 123:16 136:2 145:12 161:1 163:23 175:23 178:14 191:20 202:23 211:17 216:14 221:10,12, 14,18

makes 84:9

making 28:20 49:19 91:13 198:14 214:5

malicious 50:10

man 136:24 142:3

map 119:11

mapping 159:19

maps 159:21,25

March 39:20,21

mark 21:2 54:11 55:3 63:12 73:13 190:5,24 191:8

marked 9:8,21 15:23 18:7,15 19:11 20:1 21:8 22:13,18 24:17 26:6 27:25 29:24 31:6 32:11 33:8 56:14 62:18 115:13 127:24,25 151:23,24,25 155:3 156:4,12 159:3,5 162:11,18,19,20,21,22, 24 163:17 165:2,16 191:9 193:19 198:3,6 200:22 206:18

marker 194:5

markers 198:7

market 13:23

marking 72:3 161:24

Master-in-equity 5:13

materials 120:7

matter 47:23 63:20 211:11

matters 6:25

Mattie 157:10,12 158:5

maximize 195:7

Mccants 5:22,23 7:1,16,18 9:10, 14 15:19 16:18 19:8 20:24 22:11 24:14 25:11 27:2,4 28:14,24 31:3,25 32:22 33:2,6,16,19 35:3 38:6,24 39:1,3,12 42:11 43:23 44:16,18 45:4,6 46:11,14,17 48:24 49:2,20,24 50:20 51:11,12, 14,20 52:1,25 55:15,18 57:5,13, 16 60:17 61:1 62:3,15,18,25 63:1,3,5,14,15 72:15,20 74:22,24 75:6 77:10,13,18,21,23,25 78:5, 10,11,15,18,21,25 79:18,22,24 81:2,7,8,9 83:10,16,20,22 84:9, 18,19 87:7 88:9,12 89:9,19 92:21 94:6,13,14,15 95:5,8 99:1,5 102:8,17,23 103:13,14 104:22 106:14 107:4,16,17 108:16,17 112:25 113:4,6 114:6,7,12,21,23 116:10 117:19 118:1,20,22 119:4,20,25 120:1,20 122:13,20, 21 124:13,16 125:9 127:22,23 128:2,14,17,18 130:13,14,21 131:5,8,10 134:13,15 135:16,18, 23,25 137:6,10,14 138:9,12 139:1,5,9,12,17,20 140:1,11,13, 14,19,21,25 141:12,23 142:21, 22,24,25 144:7,12,13 148:4,7,15 149:4,11,25 154:21 157:5,24 158:13 162:14,15 163:5,14 164:23 167:22,25 168:3,5 169:5, 7,13 177:10 178:13,20 179:9,14 180:5 181:2,5,8,11,19 182:8,12 183:16,22 184:14,15 185:1,5 186:4,7,12,15 187:9,11,23,24 188:1,8 192:15,16 196:12,19,21 197:13,15 198:10 200:7,9,23 201:11,12,15,20 202:1,4,6,8,15, 23,25 203:2,9,12,16,25 205:4,6, 7,12,14,15 207:17,20 208:9,14, 20,22 210:19,22,24 211:1,14,16 212:13 214:20,22 218:15 220:19, 24 221:9,23 222:5

Mccants' 51:7 117:24

mean-- 21:22

means 21:22 198:5

meant 143:7

measuring 15:11

meeting 103:1 202:20

Melanie 5:24 74:5 76:15 81:21 91:2,9,23 94:24 95:10,19,24 96:24 101:2,11 135:3 136:2,4,19 138:14 141:11 143:14 144:1 146:15 147:14 197:16 203:15 206:13 207:19,22

Melanie's 69:19 74:1 76:6 92:9 99:10 113:14 126:18 132:22

memorialize 192:21

memorializes 188:24

memory 124:4

mens 44:24

mental 44:13 49:9 50:16 51:1 52:20 64:8

mental/emotional 45:12

mentioned 15:17 36:12 53:22 104:21 106:19

met 80:22 173:5 208:24

metal 120:3,14

method 78:7

mid 98:6

mind 70:12,13 72:21 73:19 75:14 104:14 111:15 120:1 210:13

mine 47:5 91:6

minimum 209:12

minority 214:15

minute 21:3 36:3 47:3 80:7 107:25 162:23

minutes 144:5 176:22 201:25 202:8,10 219:3

mischaracterizes 144:3

misinterpreting 51:13

misread 85:17

missed 90:8

misspoke 124:9

mistake 100:7 127:17

mistaken 161:15

Mister 62:1 188:12

misunderstanding 91:4,5

misunderstood 61:12

mixed 187:18

moment 46:25 47:9 102:17 151:19

money 18:23 20:16 22:3 23:17 28:9 60:7 100:19 145:11 190:14

month 14:10,13,17 33:25 90:13

months 19:16 23:14 87:22,25 88:1,7 90:2,9,12,15

monument 192:21

monumentation 173:13 195:23

monuments 161:7 165:8 173:24

morning 5:23 6:9 8:4,5 55:19,20 109:9

Morris 30:6

motion 5:7,8 180:5 201:19 202:24 210:18 211:9,18 217:20 218:11

motions 5:9 201:12 202:25 203:3 208:13,14,18 211:5 218:13

move 9:2 10:18 16:14 19:5 20:21 22:9 24:12 25:9 26:24 28:12,23 30:25 31:21,23 32:19 33:13 39:4 69:4 74:23 94:6 109:4 110:18 119:2,24 143:9 154:18 156:19 157:2,23 162:12 163:12,20 164:21 172:17 192:12 196:19,20 221:18

moved 12:6 14:11 35:19 56:17 58:6 59:5 119:14 124:20 141:15 153:14 172:4,12

movement 117:23

moves 183:8

moving 109:18 117:19 142:12 172:13,14

N

named 64:3

national 153:21,22

natural 111:11

nature 49:12 215:12

navigates 119:1

nearest 166:15

necessarily 91:11 97:9 125:14 196:3

needed 30:19,21 93:19 100:5 153:21 175:23 190:18

neighbor 10:3 56:2 68:18 103:22 111:11,13 138:18 147:18

neighbor's 10:1 159:23

neighborhood 10:18 11:14 35:20 58:6 60:2

neighborly 15:1,3 37:4 41:17 69:24 100:24 102:16 104:1,10

neighbors 14:21,22 135:8 189:19 213:6

nice 91:13 100:14 200:23

night 96:16

nights 52:22

noise 168:19,25

non- 180:5

non-moving 217:23

non-surveying 178:19

nonjury 219:8

nonresponsive 57:6

noon 102:25

north 83:23 84:3 98:13

northeast 164:13

northern 120:21 170:4

northernmost 170:20

not-so-small 64:20

note 21:19 50:23 73:25 129:9,10,11 130:16,18 137:8 140:4 142:18 144:11 168:4 178:11 182:16 214:22 219:20

noted 57:9

notes 5:7 81:12 144:9 176:22

nothing's 220:21

notice 30:19 32:17 33:11 38:18 41:1 117:22

noticed 87:22 90:3,22 91:1 96:5 140:24

notices 45:21

notorious 209:18,19 213:17 215:25 217:5

November 16:6 31:22 124:19

now- 115:9

now-carlisle 114:16

number 5:3 27:8 43:21 65:10 70:17 77:22 81:24 114:15 128:3 129:1,3,24 130:22 131:1 137:22 151:19 153:16 155:24 162:16 165:14 187:1 209:2

numbers 10:6 63:5 140:16,22 187:22

Nurseries 16:3 19:15

Nursery 64:23

O

oath 129:22

object 57:5 117:19 141:20 149:12,13

objected 181:20

objecting 51:9 78:12

objection 16:17,18 19:8 20:24 22:11 24:14 25:11 27:5 28:14,24 31:3,4,25 33:4,6,15,19 38:6,25 39:3 41:21 44:1,6 50:23 51:7

53:1 57:11,15 60:16,24 68:12,13 72:13 74:19 75:1 78:3 80:3 83:9 84:17 88:3,15 95:4 102:4 107:4 114:1 118:17 122:11 128:13 130:11,16 134:11 136:22 137:9, 15,18 138:23 139:22 140:4,5 142:18,19 144:3,11 149:14 154:21 157:5,22,24 162:14 163:14 164:23 167:25 168:4 169:13 177:10 178:11,15 179:17 180:7 181:2 182:12,16 185:14 187:16 196:11,13 205:3,11 207:25

objections 19:7 20:23 31:2 32:21,22 80:24 157:4

obligation 210:7

obnoxiously 108:13

observe 170:22 204:9

observed 112:4

obtaining 145:2

obvious 122:7

occasion 76:15

occasionally 29:16 36:17 96:11,13 216:11

occupancy 217:12

occur 220:7

occurred 220:4

October 31:12

office 161:17,22 162:10 165:7

Oleander 58:6,11,24 124:5,7 128:10 131:11,23 133:11,14 145:17

one's 62:25

one-foot 195:17

open 35:22 170:9,13,16 180:3 209:9,20 213:17 215:24 217:5

open-ended 217:19

opening 206:22

operative 46:6

opinion 42:12 43:1 177:7 178:17 180:4 183:19,25 185:7,9

opinions 42:15

opportunity 79:16 80:13 159:13 160:1 174:6 201:7 211:6 214:7

opposed 42:19 117:23 132:16 133:10

order 22:20 45:8 79:6 80:9 153:10,20 179:7 217:1 221:16

ordinance 35:12

organized 137:18

oriented 63:19 83:22

original 26:5 28:22 78:7,13 129:6,7 132:17 155:7 157:9 159:22 160:24 176:12

originally 116:8

originals 94:2 221:13

overlay 187:6 192:16 193:14,15

overseeing 209:14

overview 119:11

owned 63:23 64:2 77:2 85:13,15 157:14 182:3 210:2

owner 42:21 43:2,3 99:19 157:15 196:7 197:6

owners 42:15 44:2 68:1,2 191:2 195:19

ownership 38:13 157:17

owns 191:21

P

P.M. 222:8

pacify 67:2

pad 76:8 96:18,20 99:15 101:16 172:18

pages 48:7 140:15

paid 18:19 19:3 21:12 22:24 23:5 28:4 68:4 133:2,10 190:14,16 207:21 208:1

panel 105:12

panels 166:9,11,13

paper 78:12 131:6 138:10,11

paragraph 47:21 48:15 50:9 87:20

parallel 84:22 85:7 114:25 115:13 125:14 166:23 167:8 194:17

paraphrased 79:14

paraphrasing 138:20

parcel 155:13,17,18 161:1 180:23

parcels 155:14 158:18

pardon 61:7 135:21

parent 161:1

park 41:16

parked 30:22 34:1,12 76:15 96:3 99:14 101:16 133:24 134:5,19 135:3 136:14 138:14 143:25 171:12

parking 34:7 76:2,7,8 91:15 96:18,20 99:15 133:22 172:7,18 209:13

part 11:4 12:16,22 13:3 29:3 45:9 66:11 68:25 76:4 120:21 126:19 128:23 131:22,23 132:17, 18 156:14,15,17 162:5 165:21 170:12,16 180:8 191:14 199:18 206:24 210:14

Partners 154:9

party 217:23 219:14 221:21

passed 153:25

past 82:14 99:10 170:14 179:24

path 116:12 117:6 119:1 121:5

patience 202:18 222:2

pavement 171:1,3

pavers 172:14

pay 16:12 20:18 25:7 177:5

paying 146:7

payment 21:11,17 28:20

payments 24:21

pea 171:11,16,20,22

pebble 97:1

pebbleized 97:1

pen 31:7 170:12

pending 14:1

people 17:23 35:14,21 36:2 43:22 67:25 90:12 132:10 146:8

150:2 152:8,11 194:8 195:4,9,17 196:5,18 204:15

perceived 72:23

percent 186:24 199:15

perform 156:22

performed 23:9 156:24 191:3

period 17:20 21:4 44:7 62:4 65:14 132:2,3 213:19 215:4,7,20 216:21 217:6

periodic 209:11

periodically 100:1

periods 109:25 110:2

permanent 26:16,17 42:7 75:10, 21,25 97:12 100:23 107:10 172:2,6,10,18,20

permission 41:15 42:1 62:13,24 68:15 109:4 131:6 213:24,25 218:22

permitted 43:10

persistent 54:14

person 67:22 209:9,14 210:11

person's 145:9

personal 49:24 50:20 51:1 193:6 194:21 195:16

personally 153:2 205:25

perspective 40:21 203:18

pertinent 161:5

photo 9:7 116:6 155:11

photographs 93:9,10 94:8 101:18 146:18

phrase 38:8 96:24 118:9

physical 44:13 52:20 162:2

physically 143:8 161:6,22

pick 121:25 150:24

picking 66:1

picture 69:8 146:22 155:10

pictures 92:15 147:6

pie 183:10

piece 60:1,2 85:21,23 86:7,13,18 105:23 106:8 120:15,16 138:10 158:5 166:8 182:3,22 197:4

pieces 120:7 184:11

pile 188:10

pin 120:13,25 121:4

pine 109:18

pink 173:17

pins 120:8

pitch 215:9

place 81:5 122:11

plaintiff 5:6,20,24 7:1 14:20 44:12 108:14 198:19 208:11,12 217:25 218:14 221:22

Plaintiff's 5:20 9:8 10:24,25 70:17 92:18 104:24 119:10 155:11 164:18 165:14 166:18 199:1 220:11

plan 6:20,22 60:1

plat 157:9 158:5 159:10,22 160:8,25 165:6 171:2 172:5,22 173:6,25 176:6,12 186:21 187:12 188:13 189:2,3,5,17,22 193:12

plats 159:20 176:5 193:8

play 39:14

plaza 97:25

pled 44:19

plenty 213:24

point 15:6 26:9 42:5 51:15 61:16,24 64:2 65:5 68:8,16 69:9, 10,17 71:4 75:12,17,21 83:14 84:20 93:9 94:16 96:18 98:14,15 100:24 103:24 114:5 116:5 118:8 120:17 121:21 122:20 125:3 136:16 143:10 147:14,17 157:14, 17 167:9 174:18,20 199:6,7 209:23 213:16 215:19 216:17

point-to-point 162:1 173:19

pointed 98:3 120:25 126:1,7 134:20

pointing 9:11,20 84:18 87:1 98:24 114:19,20 116:19 119:19 120:21 199:6

points 173:23

poking 120:2

pool 8:20 12:25 34:21 35:11,14, 16 40:12 64:20 83:8 85:4 105:9 114:10 126:25 132:15 166:15 199:3

pop- 96:6

pop-up 34:1,2

portion 10:21 30:15 87:23 90:4 168:16 180:12 184:6 209:12

portions 181:1

position 37:5 47:22 160:4

possess 178:6,8

possessed 212:3,4

possessing 68:10

possession 17:16,19 177:21, 23,24 178:25 179:5 180:3 184:23 185:4,10,12 197:11 208:25 209:8 211:22 212:12 214:6,8,16,18 215:2,3 216:22 217:2,4,11

possibly 14:3,5

post 39:24

Post-it 129:2,7,10,11

posted 37:6,12 39:22 41:4

posting 37:10

pounds 52:22

practice 159:18

pre-marked 7:13,15,21 15:18

predecessor 68:9

prediction 6:17

prefer 78:2

preference 193:6 195:16

preliminary 6:24

prepare 164:15 189:14

prepared 187:1

presence 177:25 215:5

present 79:6 139:7 140:2 142:1 153:6 208:19

presentation 201:8 222:3

presented 201:16 203:6 216:25

pretty 36:19 95:21 149:4 167:5 180:21 182:22 185:9 186:7 203:22

prevent 100:8,9,13 102:12

prevented 53:17 99:25

previous 5:4

previously 78:22 84:2 201:16 204:21 208:15

price 14:12

primarily 56:6

prior 11:18 31:13 76:15 95:19 96:8 177:8

privacy 8:21 11:9,13,15 13:7 43:15 83:6 91:23 92:7 99:6

private 111:11 112:6

privilege 88:16,21 89:8

proceed 9:15 81:7 140:11

process 66:11 81:1 153:9 160:16 174:5 206:19

produced 124:18

product 82:23

profession 11:18

professional 152:20 177:7 178:19 185:24

professionally 100:6

proffer 154:19 177:17

progressively 110:19

promising 73:5

promptly 38:1

proper 48:2 51:18 137:4 140:8 141:21 218:9

properties 24:25 146:20 147:20 155:12 160:20 163:9 176:11

property 5:16 8:11,19 9:18,22 10:1,15,21 11:4,8,10,13 12:17 13:4 15:12 17:24 20:7,19 22:4 24:4,24 25:3 26:4,17,18 27:17,20 29:14 30:12,13,17,24 34:8,11,13 36:5,11,16 38:4,16 39:19 40:11 41:6,16 42:7,10,16 43:12,14,19 44:9 48:11 50:9,13 53:13,20 55:1,10 56:9,14,17 57:20 58:24 59:14 60:2 62:12 64:19 65:3,7 66:13,15,21,22 67:17,22 68:10, 25 69:19 70:1,2 71:8 72:2 73:3, 13,14,21 74:2,6,12 77:1 80:1,2 81:16,22 82:11,20,25 83:5,13 84:10,11,14 85:11 86:8 87:2,9,10 92:2,9 94:19,24 95:2,10 98:4,5, 12,15,22 99:10,11,19,20,23 100:22 103:23 104:2,15,24 105:1,14 106:17 109:23 110:13, 25 111:4,7,8,10,16,19,22 112:1, 6,22 113:13,14,18,24 114:5,16, 24 115:10,17,23 116:1,2,9 117:3 119:16 121:1 122:5 123:20 124:6 126:2,12,18,19 135:20 136:7,8 137:2 141:15 143:18,20 144:2,4, 14,18,22 145:4,8,9,13,22,23 146:2,8,25 147:3,21,22 148:1 149:1 156:2,5,9 159:13,14,24 160:2,17 161:7,13,25 164:8 165:24 166:9,21,23,25 167:8 169:18 172:24 173:16,18,22,23 174:1,17 176:9,16 180:1 181:1, 22 182:7,25 183:11,23 184:3,4, 11 185:23 188:6 189:24 190:3,6, 11,19 191:2,4,9,20 192:9 193:16 194:18 195:9,20,21 196:3,7,9 197:4,16 198:2,5,14 199:11 200:4 203:23 204:5 205:18 208:25 209:6,13,15 210:1,12 212:3 213:21 215:6,12,23 216:3, 4,6,17 217:4 218:5

property?' 95:20

proportion 199:13

propose 6:7,8

proposing 6:11

proposition 122:22 209:25

protect 83:8 99:23 139:25

protected 212:5

protection 35:13

protest 144:1

proud 36:17

prove 178:5 217:2

proved 212:14

provide 51:4 90:5

provided 6:15 7:12,17 15:18 38:23 88:13 89:20 90:7 142:9

providing 89:23

prudent 178:17 179:6 189:19

pruning 101:13 146:16,19

psychological 49:4,9

pull 29:17 46:21,22 47:5 78:13 160:23

pulled 129:7 130:9

pump 13:2

punitive 44:23 45:2,9,14,19 47:25 48:17 49:3,12 50:4 51:3,8, 15,18

punitives 51:16

purchase 43:19

purchased 29:14 74:12 87:10 144:22

purchasing 61:2

purpose 30:18 36:21 111:8,10 217:20

purposes 15:24 18:16 19:12 21:9 28:1 29:25 32:12 33:8 44:10 52:7 59:13 83:25 105:10 159:6 162:25 169:4,6 191:21

pursuant 216:23 218:20

pursuing 48:20 72:8

put 5:19 6:8 12:11 15:11 30:18 38:1 42:7 55:22 60:17 90:8 94:3 100:23 101:25 102:3,6,8 118:9 127:8,19 137:23 147:16 158:12 163:24 164:3 171:22 173:17 182:23 192:23 193:5,13,15 194:14,19 195:13 201:18 215:9

putting 37:24 102:12 107:10 147:8 159:20

Q

qualified 42:25

qualify 172:17

quarter 170:19,20

question 9:9 38:13 42:20 43:7 46:8,10 51:11 52:8,10,12,16 53:5 57:18 60:23 71:13 72:19 75:3,4 79:7,15,18,23 80:4,6,8 85:9,20, 22,23 86:2,12 88:5,20 89:3,5,16 95:6,16 100:8 112:15 118:9,13, 18,20,21 123:19 129:21 130:7 132:8 134:2,22 135:19 137:25 138:24 139:7,15 140:6,10 141:11,12,24 142:1,5,7,12 143:9, 12 149:14 150:16 168:8 176:7 177:21 178:7,23 179:11,16,18,20 181:6,12,19 182:17,19 183:1

184:8 185:2 190:7 195:3 196:4, 15,17 208:5

questioning 44:22 81:10

questions 43:2 74:21 78:12 81:3 87:15 99:19 102:19 103:14 107:16 108:25 113:12 123:16 142:4,14 144:9 150:8 162:4 165:12 197:17 200:8 206:9 208:4

questions/concerns 73:18

quick 186:7 196:22

quickly 67:24 220:14

quit 122:1

quote 26:14

quoted 31:20

R

R-U-T-H-E-R-F-U-R-D 8:8 108:22

races 216:15

raise 151:15

raised 73:25

ran 15:10 153:15 167:8,22 168:10 194:17

range 14:12

re-emphasize 140:9

rea 44:24

reaching 203:7

react 82:2

reaction 43:13

read 46:23 49:22 77:5,25 78:15 79:3,15 81:3 135:15 137:1 141:8 143:4

reading 48:25 65:21 83:21 119:13 124:12 135:22 138:6 141:21

real 11:20,21 12:3 42:22 59:10, 13 182:24 196:22

realize 94:1 175:12 217:25

realized 13:25

realm 185:13

realtor 11:25

realtor's 12:12

rear 67:10

reason 13:4 56:21,25 74:4 124:5 131:22 135:9 139:24 144:18 146:4 174:19 205:8

reasonable 95:12,13 140:2 209:14

reasons 11:12 65:10 91:22 194:21

rebar 120:7,15,16

rebuttal 201:22 203:11 208:11

rebutting 212:18

recall 95:13 166:8,13

receipts 29:7

receive 32:8 33:22

recent 29:19

recently 36:4 91:1,17 110:23

reckless 45:3 50:11

recklessly 45:20

recognize 15:24 16:1 117:24 159:7 163:20,24 165:3

recognized 210:7

reconnaissance-type 174:23

record 5:19 8:7 46:23 47:2,5,7 49:18 52:11 57:7 63:7 80:15,18, 20,22,23 84:8 86:25 92:19 95:15 98:24 103:11,13 107:25 108:2,19 114:18,22 116:11 119:10,24 123:8 137:23 144:8 152:16 160:25 164:6 170:18 176:18 195:3 202:17 208:17

recorded 162:10 165:7 189:4, 17,22

recording 162:9

records 130:5 132:6 160:24 161:5,8 173:11

recoverable 49:5 51:25

recreated 128:11,16

RECROSS 149:24

rectangle 127:1

red 10:25 109:16 125:10,13 165:16,24,25 168:11 177:8 180:13 182:3 183:6

redacted 21:21,22

redirect 103:16,19 148:9,12 197:22,25 207:19

redone 72:5

reemphasize 168:7

refer 119:15 132:9 159:2

reference 187:22 196:24

referenced 84:2 189:6,7 204:19 207:3

references 83:19

referencing 63:9 92:18

referred 114:2 187:13

referring 21:25 155:17 168:15

reflect 81:12

regard 68:18 69:12,20 124:16 178:21 209:2

regular 122:1 209:11

regularly 99:9

relate 45:10

related 44:24 48:10 184:23

relates 113:13

relating 33:11

relations 104:11

relationship 14:20 37:4 107:3,7

relative 172:12

release 48:1

relevance 44:21 177:11,12 178:12 179:2 196:11,13

relevant 45:7 177:14 179:4 181:8

reliable 130:1 214:3

reliably 129:23

relief 48:10 167:3 173:22 200:4 219:25 220:1,8

relocate 172:16

relocated 172:4

remainder 124:17

remained 34:3

remaining 161:18 220:12

remember 43:6 52:16 56:13 58:18,19 61:20 65:13 72:2 77:3,4 79:9 82:3,4 87:10 120:11 123:2, 6,12,14 131:15 132:13,14 133:12,17 134:18,21 135:13 136:2 137:24 142:3 146:13 148:14,25 150:5 166:9,14 175:5 179:20 190:18 191:8,9 219:22

remembered 171:16

remembering 12:5

remove 30:22,23 31:21 32:6 110:10 147:19 205:22

removed 17:2 33:24

render 182:21 184:18

rendered 24:22,23

renew 142:18 201:12,19 203:2 208:14

renewing 203:1

rent 14:8,9

repaired 206:2

repeat 52:18 123:15 134:2 150:16

rephrase 60:22 88:5 128:17 130:7 134:13,14 168:4 205:4,5

reply 201:22 208:9

report 32:25 33:10,17 36:15 162:7

reporter 7:14 15:19 49:15,16 93:11 94:11 221:14

reposition 9:11

represent 80:11

representing 67:25

represents 80:12

request 48:18 108:14

requests 160:21

require 172:16 215:5

required 159:18 182:23

requirements 208:24

requires 35:13 44:24 153:11 154:4 195:12 212:13 215:8

research 160:23 176:10

researched 148:19

residency 95:18

residential 154:16

resolution 104:8

resolve 68:18 104:6 147:18

respect 95:19 103:24 104:11 113:23 160:10

respectfully 78:23 150:1,24

respond 141:13 143:5 177:13

responded 61:21 144:10

response 31:19 32:8 33:22 34:5 45:5 68:11 87:11 89:23 107:15 118:13 140:10 200:8 211:18

responses 81:6

responsibility 210:6

responsive 180:6 201:11

rest 51:16 166:5 208:11

rested 5:6 202:22 208:12

resting 201:4,6

result 132:23

resulted 143:13

results 44:25

RESUMED 112:19

retaining 175:4

retired 11:16

retirement 11:19

retracement 156:21 160:8 192:5

retracing 161:8

Rett 111:4 113:17 115:25 133:25 145:3 147:22 151:14 152:1,8,11, 12 186:14 192:17 197:25

review 46:9 50:25 203:6 218:11 221:14

Rhett 24:20 27:6,15,16 28:4,20 61:6,8,9,10 65:13,23 66:3 94:18 100:19

riding 209:9

right-of-way 160:13 164:9,12 166:6

rights 35:23

ringing 89:15

risk 145:8

RMC 165:7

RMC's 162:10

road 29:20 190:4 216:15

roads 97:2,6,8

rocks 40:8

room 103:10 168:19,25

root 110:10,11

roses 109:19

rough 58:16

roughly 31:6 70:3,6 166:20

Rudnick 30:3,4,6 87:18 88:24 90:6

rule 60:23 75:2 177:13 214:21 218:10

ruled 5:8 71:24

rules 139:24 183:17

ruling 52:10 203:4 218:19

run 97:15 145:8 156:7 166:21 184:20 216:15

running 166:23 167:16

runs 70:21,23 71:6 84:20,22 87:7 98:3 113:24 167:3

Rutherfurd 5:3 6:3 7:9,10 8:2,4, 8,9 17:15 18:17 19:10,12 20:2 21:10 30:1 34:22 36:4 38:22 52:15 55:17,19 57:17 63:16 70:16 71:4 75:13 76:23 81:9 84:20 85:17 87:21 89:19 95:9 99:18 103:19,21 107:19 108:6,8, 10,20,21,23 109:8 112:19 113:3, 5 114:12,23 117:6 120:2,17 122:22 123:8 128:8 130:24 134:4 136:1 140:14 141:4,6 144:13 145:1 146:11 148:8,12,14 149:24 150:1 155:8 172:25 173:19 190:14 192:23,24 196:7 204:10, 12 213:14 218:5

Rutherfurd's 7:13

Rutherfurds 50:12 87:22 90:3

165:7,19 176:20 177:3 182:2,22 183:22 186:18 188:5 194:24 196:16 204:8

Rutherfurds' 50:9 87:24 90:5 155:13 156:2,9 158:18 159:13 163:8 167:10 180:25 185:23

S

safety 105:9

Sally 59:6

sat 93:18 120:12

satellite 9:7 109:16 155:11

Saturday 146:23

scale 198:22,23,24 199:12

Scared 150:11,12

schedule 6:22 103:4

schedules 220:16

scheduling 108:1

school 153:18

science 153:12

scope 27:12,19

scream 64:15

screamed 65:2

search 128:19 176:10

season 220:14

seat 7:23 107:20 151:7 208:7

seconds 201:22,24

section 130:18 180:13 212:11

sections 85:25 86:10

secure 87:18

security 219:6

Seed 217:9

seeking 44:23 46:6

sell 43:21

send 32:16 89:7

sense 11:13,15 13:8 43:14 100:22 209:17 210:6

separate 39:8

separating 93:17

September 26:1 30:2 31:13 46:5 87:24,25 89:24

series 163:16

serve 45:14 49:10

served 41:2

service 19:1 20:4 21:13 23:4 33:11 121:19 129:3 130:23 131:2

services 18:25 19:2 23:8 24:22, 23 27:20 59:1 87:18 123:22 145:2

set 56:9 74:21 155:23 160:5 208:16 221:12

setbacks 182:23 183:17

setting 77:11

Seventeen 158:4

shadow 129:8

shape 183:10 184:17

share 210:12

shared 160:13,14 164:11 166:4 176:9,14,19 197:18,19 199:11

she'd 41:2

sheet 161:17

shifting 182:2

short 101:11,20

shortly 17:13 34:4 124:20

show 34:24 54:15,16 86:25 97:15 104:24 119:1 122:9 145:20,23,24 158:9,17 162:3 164:4 165:15,23 166:17 170:12 171:6 172:1,5,22 177:23 192:24 193:11 217:14

showed 122:5 137:2 146:15 173:6,7,18,23 176:4 213:19

showing 18:18 21:11 24:21 28:4,19

shown 81:24 101:8 164:18 179:1 208:23

shows 21:23

shrubs 169:1

sic 136:2 177:20

side 24:25 26:8 35:8 66:21 82:25 83:5,12 84:14 87:4 92:11 98:22 100:21 105:2,3,4 113:25 140:16 167:4 168:22 170:9 171:12 173:15 176:8 180:22 198:3 205:18

sides 110:6 124:24 222:4

sideways 26:9,12

sign 20:12 28:6

signature 18:21

signed 20:14 202:19

significant 73:20

signify 63:6

signs 37:6,10,16 41:4 45:21 102:11

similar 36:10,14 40:23 170:4

simply 104:20 158:4

simultaneously 132:1

sir 9:14 18:12 39:2,9 46:13 77:21 87:12 103:7 109:7 116:6 125:4 140:12 141:13 151:6 154:25 180:9,10 183:3,7,12,14 184:12 186:17 187:2,4,8,12,15 188:3,7, 9,13,17,19,21,25 189:10,12 190:1,8,12,15,21,24 191:1,4,7, 11,13,19,22,24 192:2,7,10,18,20 193:3,10,22 194:2,12,17,23 195:5,8,13 196:14,23,25 197:3,5, 12,18 200:15,24 203:9 205:24 207:23 211:14,16 218:15 221:9, 23

sit 35:10 128:8 148:4 153:21,22 185:16

site 171:21

sitting 103:5

situation 37:9 52:19 68:17 89:21

size 14:14 153:3 198:10

slander 48:19,20 219:18

Sleepless 52:21

slide 219:5

slope 170:6 200:4 203:21

slopes 12:24 180:20

slowed 110:15

slowly 167:6

small 30:15 35:17 169:1 217:9

smilax 110:7,12

snagged 83:4

sold 43:22 58:15 67:21,23 69:5,6

Somebody's 77:8

something's 172:10

son-in-law 30:4 87:19 88:16

sort 14:11 40:2 153:12 214:9

souls 150:3

sounds 87:14 95:12,13

south 31:20 43:3 63:17,21 85:5 99:11 103:22 114:14,25 115:8,13 117:2,14 119:1 153:11 155:19,21 183:6 199:16,25 211:3 214:13, 15,25 216:21,23

southern 65:18 66:8 154:9 158:24 166:24 168:23 169:25 184:20

southernmost 155:18 168:16 180:12

Southwest 8:10

space 195:7

sparkleberry 168:20 169:1

speak 108:13 144:8

speaking 175:5 210:20

speaks 88:3

specialists/doctors 52:23

specific 81:2 113:12

specifically 50:15 204:18

speculation 44:1,5

Speculative 42:11

spell 8:6 108:19 152:16

spelled 108:20

spend 145:11

spending 96:16

spent 18:2 60:7 100:19

split 59:1

spoke 94:23 95:9 174:7 175:18 189:16

spot 106:8

spraying 39:18 101:12 146:15

sprinkler 30:16

square 13:11 14:14

squared 184:19

squared-off 184:19

squash 216:14

stage 201:5 221:21

staked 161:21

staking 161:17

stand 7:9 34:25 86:22 108:6 116:5 151:13

standard 212:16

standards 159:17 185:24

standing 204:2

standpoint 45:13 205:1

start 5:10 6:25 10:20 37:10 77:23 85:18 93:17 119:12 122:21 135:17 137:14 138:21 139:2,14 140:6 142:7 168:24 193:7

started 30:15 103:6 116:13 121:2 123:14 138:2,23 142:11 150:4 170:17 173:15 175:20 213:4

starting 5:19 40:22 140:20

starts 116:15 167:6

state 8:6 64:9 72:20 108:18 152:15 153:11,21,22 154:4 169:11 178:25 208:18 214:15

stated 100:12 113:15 179:19 216:20 217:10,23

statement 21:19,21,23 60:9

statements 123:21 128:24 219:16

stating 141:14

status 216:12

statute 212:12

statutory 215:4,6 216:21 217:6

stay 6:21 105:6 200:12

staying 142:17

steep 167:4

step 107:19 161:6 202:11

steps 75:10

stick 179:15 219:7

sticky 21:18 129:9,10

stopped 145:2

store 96:15 97:19,23

storm 58:19,20 124:1,10 128:10 131:4,10,15 132:19,24 133:10,12 145:15 204:18 205:1,17

straight 115:18 117:11 118:2,5, 6,23

straw 109:18

street 12:16,20 14:25 35:9 40:13 85:2 92:5 99:13 127:8

stressful 53:9 150:15,17,19

stretch 103:8

strike 52:19 71:20 180:5

strong 178:12

structure 26:16 100:23 136:13 172:18,20

structures 185:23

stuff 79:14 127:6 161:3 162:8 215:23

subcontractor 16:8

subdivision 157:9 158:6 159:22 160:24 176:12

subject 70:14,25 98:2 142:17 217:4,15

submit 48:19 178:9 218:21

submitted 148:22 218:3 219:13, 14

substantial 212:5,8,17,22 213:8 214:3

successful 184:25 185:4

sudden 33:25

sue 34:4

suffered 49:9

sufficient 213:25

suggest 176:13,18 194:18 195:8 196:2,10

suggested 199:12

suggests 91:1

summary 202:20

summation 201:8

supporting 48:8,9

suppose 7:5 201:19

surely 214:16

surprised 26:19

surrounding 155:13

survey 26:2,5 27:22 53:23,25 54:2 56:10 59:17,19,21 61:10 65:16 67:23 68:4 85:13 104:4 111:5 118:12 134:1 144:19 154:4 155:7 156:20,23 159:12,14 160:5,17 162:4 165:21 171:23 172:23 174:5,21 177:3 178:18 185:17,20 188:5,16,18 189:1,14, 20 190:17 191:3 193:2 196:12 216:2

surveyed 24:24 53:23 57:19 156:16 177:8 191:5 198:2 206:16 207:4

surveying 24:25 25:2 27:20 152:22 153:17 154:20 160:16 178:23

surveyor 6:10 24:20 26:6 28:21 68:21,23 69:11 75:15 100:2,5,9 145:3 152:20 153:20 156:21 177:16,18 178:18 179:7,25 181:4 192:5 213:13

surveyor-related 154:6

surveyors 192:1

surveys 72:4 152:25 153:3 154:14,23 181:13 187:6 189:15

Susan 6:3 7:9 8:2,8 55:17 72:11 87:21 103:19 134:16 136:14 155:8 190:13

Susan's 133:23

Susie 175:22 189:16

suspect 174:19

sustain 214:18

sustained 53:1 102:5 169:14

swimming 35:23

T

table 93:18

tacit 41:18 69:24 213:23,24

tack 180:1

takes 115:9 120:25

taking 43:10 75:9 146:22 162:5 180:24

talk 10:13,14 34:7 36:6 56:5 60:12 62:3,5 67:11 87:17 89:6 91:21 92:23 96:24 102:18 103:9 108:1 110:18 121:23 133:21 138:14 155:16 170:3 196:21 201:10,21,25 204:14 220:13

talked 17:16 21:2 36:3 37:2,3 59:10 60:14 62:10 63:20 70:15, 18 73:13,18 82:8 83:6 84:13 86:9,16 99:6 103:21 105:12 114:13 129:17 136:5,19 152:11 176:4 196:5 198:19 204:20,22

talking 10:13,15 25:20 38:11 40:6 58:18 70:17 76:24 79:20 81:10 86:7,11,17,18 87:8,25 91:23 94:17 102:22 105:5,7,8 106:3,15,22 114:3,11 116:20 120:8 122:17 129:25 133:19 136:1 140:23 142:11 145:22 152:13 169:24 181:24 183:4,5 188:2 198:17 199:3 202:5 210:3

talks 214:25

tarp 92:9,11,12

tarping 91:24 92:4,13 93:1

tasked 174:15 175:19

tax 159:20,25

telling 23:7 101:1 126:17 135:13

tenant 215:6

tending 42:12

tent 215:9

term 106:13 128:16

terms 110:12

terrible 93:24

test 153:21,23

testified 61:4 113:20 116:4 118:13 134:9,16 148:18 153:5 168:6 190:9 209:4,5

testify 27:10 144:4

testifying 178:24

testimony 5:5 6:25 7:13 34:6 36:6 42:25 46:1 60:6 61:12 66:20 74:13 76:6,7,14,19,20 100:18 103:9 104:21 106:14 109:9 114:9,13 122:15 129:20 130:11, 19 132:22 133:1,4,23 140:7 143:24 144:4 153:6 179:4 190:13 195:2 201:11 204:7 207:24 212:18,22 213:9 214:4 216:25 218:3,8 219:16

that'd 201:20

thick 180:21

thicket 126:23,25 145:18

thing 5:11 13:25 23:3 35:16 46:12 47:11 59:23 68:21 72:1,11, 24 93:24 108:15 141:16 160:10, 22 161:3 168:21 191:16 214:22

things 26:9,12 31:21 32:6 33:24 54:3 62:4 64:13 66:7 67:8 69:23 73:16 75:22 91:15 106:16 121:25 138:5 147:15 150:25 155:17 191:12 213:5,7 216:3,10,12 220:18

thinking 95:14 142:20

thought 13:24 43:18 66:17 71:7 82:1 83:11 112:10 113:22 116:9, 21 117:3 118:14 121:1 135:7 168:6 209:1

threatened 26:22

thrown 127:6

thumb 38:22 39:7

thunderstorm 132:20

tie 159:18,21,22 160:1,20 164:11,12 167:17

tied 45:9 160:12,13 161:16 167:9

ties 164:7,8,18 165:8

time 6:16 9:10 10:20 11:23,25 38:12 41:4 53:12 55:13 59:9 62:4 63:10 64:2 65:15 67:10 71:5 73:13 75:19 77:11 85:12 94:17 96:18 107:2,7 109:25 110:2 112:13 113:16 121:13 122:11,13

125:4 127:11,12 129:17 130:5,24 131:17 132:2,3,9 133:25 136:25 144:22 147:5,8 157:17 161:15 175:1,5,6,9,13,15 176:1 185:20 186:3 193:1 202:10 204:9 215:20,25 216:1,2,17 218:11,23 220:14,16,21

timeframe 73:19 75:8 76:24

times 17:5 25:19,23 29:18,20 34:11 36:11,13 37:22,23 45:21 54:9 72:14 74:22 111:18 122:2 127:10 146:25 149:17 161:14 171:21 213:15 218:4

timewise 192:12

title 6:11 11:6 48:19,20 163:8,10 176:10 181:12 191:21 211:22 212:1,2 215:2 217:11,12 219:18

title-own 209:6

titled 87:2

today 5:5,9,11,21 6:8 66:20 82:5 83:19,21 96:2 116:4 129:20 133:11 134:16 148:23 149:5 150:14,18,23 151:1,3 185:16 190:13 206:4 221:7

Todd 154:9 159:11 160:8 176:6 188:13,14 189:13

told 34:10 36:19 41:19 53:2 54:22,23 68:2,3 78:18 82:2,9,15 83:4 85:8 87:11 88:23 95:1 96:2 98:17 112:6 120:11 123:3,5 129:22 132:5 150:4 174:13 175:22 176:9 186:9 189:23 190:2,5 195:11

tone 64:14

toned 67:8

top 49:17 76:3 84:3,20 85:3 92:14 93:6 96:3 98:4 116:21 118:3 119:4 120:21 126:11 170:9,19 171:2 173:21 188:22 189:1 199:18 200:3 209:12

torn 37:16,22 45:21

tort 49:6 52:2

tossing 67:20

trail 102:3,6,8,13 146:12 147:5, 16

trailer 101:16,25 135:2,20 136:6, 8,13,18,25 138:13 141:2,15 142:11 143:7,25 147:19

trailers 133:22 134:19,23 140:24

train 83:11

transcript 105:6,7 137:1 141:22

transfer 180:24

transferring 191:21

translate 150:23

traverse 121:6

traverses 114:14,24 205:17

treated 216:7

treating 87:1

tree 16:3 18:25 19:1,2 20:3 21:12 24:11 41:6 121:19 127:15 129:3 130:22 131:2 147:6 204:19 205:22

trees 17:2 110:5 122:8 126:24 191:10 204:23 205:19

tremendous 52:21

trespass 31:20 32:18 33:11 37:6,10,16 38:3,12,16 41:3 45:18,20 48:9 49:5 50:7,24 51:2, 8,18,24 147:12 219:24 220:4

trespassing 38:9,10 48:11 102:11 145:9 195:18

trial 7:5 32:13 52:7 93:15 153:6

trials 153:7

triangle 182:9,11,17,21 184:6

triangular 183:5

trimming 109:17

trip 161:20,24

trips 161:12

trouble 12:5

truck 34:1,2 76:12 96:6,10 133:24

trucks 76:3 133:22

true 68:19 71:5 72:23 94:21 115:3 135:1 144:2 150:15 171:18,19 185:19 192:4

trust 78:8 88:12 89:20 91:8 101:25 122:3 123:21 146:7

trusted 100:15

turn 115:9 132:4

turned 62:11 67:23

twisted 140:23

two-block 105:12

two-section 86:7

two-story 203:22

type 41:17 44:25 49:9 215:11

typically 194:4

U

Uh-uh 131:8 144:7

ultimate 68:16

ultimately 75:15

Um-huh 12:2,23 21:15 28:6 29:19 72:22 85:10 110:8 112:9 166:3 171:9,15

unclear 70:11

undergrowth 36:5

understand 21:3 38:9 42:24 49:21 51:6,22 59:12 62:7 67:5 74:12,20 88:1 89:15 93:25 96:12 112:9 116:13 118:15 123:16 125:13,15 127:11 128:7 129:8 130:3,17,20 131:3 145:4,19 147:4 150:14 156:9 165:18 189:9 197:1 210:22,24 211:24 220:9

Understandably 100:14

understanding 10:6 17:22 36:22 38:14,15 41:18 42:16 50:19 51:9 89:21 91:7 130:24 174:16 219:16

understood 133:23 136:3

undertaken 101:2

undertaking 191:25

unfair 137:17 138:6 139:11,23

unified 157:17

uninterrupted 215:3

unquestionably 124:18

unreasonable 140:5 195:19 196:6

unusual 93:23 190:25 191:2

update 27:22 53:23 156:22 189:20

updated 67:15 156:24 189:22

upset 220:19,20

urgency 100:21,22 107:2,3

urgent 100:25 101:5 107:7

useless 182:22

V

valuation 42:13

vegetation 29:20 170:7 180:21

vehicle 76:16

vehicles 30:22 34:7,12 76:7 91:15 96:8 99:14 135:2

vehicles/campers 96:3

vendors 205:9

verdict 210:17 211:10,18,20 212:20 214:2 217:21 218:10,20

version 158:4

versions 219:24

versus 5:2 164:6 172:18 217:9

video 38:22,25 39:15,16 40:3,22 101:20

videos 39:1,4,8 40:4,25 101:9 146:12

vine 110:7,9,10

Vines 37:1

violating 88:20

virtually 85:7

visible 175:25 176:11 198:8,12

visit 173:2

visited 171:21

visits 171:19

visual 101:12,18 146:19

visually 11:15 161:25

volumes 214:24

W

waited 89:13

walk 57:23 61:1 111:4 112:16 115:21 172:24 216:3

walked 54:20,22,25 61:5,10,15, 20,23 110:25 173:16,18,23,25 197:15,18

walking 70:18 100:1 162:2 174:2

walks 29:16

wall 175:4

wanted 27:16,17 32:5 35:25 56:21,25 73:2 93:16 102:10 106:16 135:8,10 147:11 193:25 194:21 202:23 211:17

wanton 45:3 50:11

wantonly 45:20

watch 99:22

watched 146:12

wave 14:24

ways 98:15

Webex 5:12 202:12

website 206:21

weekend 96:16

weeks 31:18

weigh 214:4

weight 42:18 46:8 184:13

weird 15:13

west 84:9,10 115:9 166:21 198:6

western 69:19 70:19 71:6 83:5, 7,12 98:22 125:10 168:11 205:17

whatnot 60:3,7,15 134:19,23 135:3 140:24 196:6 209:13

wherefore 47:20 48:14 50:1,18

white 9:25

Whitehall 124:7

who'd 67:22

Whoa 57:3

wholesale 153:15

whomever 45:22 66:8

widow 67:13

wife 113:11,15 118:10 128:19 134:9,16 144:17 148:19

wife's 109:8

willful 45:3 50:11

willfully 45:19

wire 173:17

withdrawals 22:23

withdrawn 219:18

witness' 117:23

witnesses 6:8,15 103:9 139:25 201:1,2

wooded 54:5 71:1 99:6 115:21

woodland 169:12

word 191:15

word-for-word 80:8

words 70:20 136:4

work 12:25 16:3,7,10,20,25 17:13,23 18:3 19:20,21 20:6,7,18 21:4 22:4,6,14 24:4,6 25:5,18 27:12 29:2,3,10,13 36:25 58:23 59:3 60:1,4 67:24 74:1,5 81:15, 21 91:1,9 101:19 104:14 109:22 110:20 111:16,19 121:9,14,25 122:2,5,6,24 123:20 124:1,5,19, 22,24 125:6,7,9,16,22,23 126:5, 6,8,11,13,16,21,22,23 127:9,16, 19 128:9 129:14,24 130:2 131:23 132:10,23 133:9,11,18 145:12,17 146:8,23 148:25 153:4 154:16 174:23 177:5 186:19 204:8,16, 17,19 205:1,2,8 207:6,10,21 208:1 209:15 213:7,10 218:1,4,6 222:2

worked 20:9 68:24 69:1 130:4 154:10 184:22 202:21

workers 65:1 149:2 204:17

working 17:15 60:7 65:3 77:8 142:6 174:10 175:7,21 176:6

works 39:5

world 90:16

worrisome 53:9

would've 14:3

wreck 50:21

write 30:10 88:13

writing 87:21

written 63:8 129:14 131:4,14,20 211:23

wrong 23:3 106:7 131:14 137:11 138:10

wrote 21:19 61:4 87:19 88:18 89:24 90:2 129:7 130:2,13

Y

y'all 46:22 60:7 66:11 113:16 124:20 128:21 202:11 218:25 219:3 220:16 221:15,17 222:1

y'all's 222:2

yard 36:20 109:17 203:18

yea 115:5

year 12:2 29:18 36:13 59:8 110:11 122:2 130:25 131:17 147:1 153:3 220:21,22

year-and-a-half 154:5

years 11:22 13:24 14:21 18:1 19:24 21:1 22:15 25:14 42:23 44:8 52:23 54:14 55:21 59:17 73:16,19 74:11 75:7,13 76:9,11 90:22 91:9 94:16 109:21 110:1,5, 16 111:13 113:16 121:9,14,20 147:15 152:23 153:16 154:6 213:19 216:18,23

yelled 65:2

yellow 126:9

young 191:6

Z

zoom-in 158:7,10