

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons,

PLAINTIFFS,

v.

County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC, Marie P. Howard, Lewis B. Howard, Jr., Lanelle P. Johnson, William Bailem, Sr., X Syvier Lynn Johnson, Sonia Maria Simmons, Kenneth Davis, Juanita Nelson, Titus Howard, Myeisha Howard, James Howard, and John Doe and Jane Doe, fictitious names used herein to designate the unknown heirs at law, distributes, and/or devisees of all persons claiming under or through the devisees, and any such persons who are minors or members of the Armed Forces of the United States of America, as contemplated by the Soldiers' and Sailors' Relief Act, 1940, as Amended, and all persons entitled to claim under and through any of them,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-10-00947

**ORDER GRANTING SUMMARY
JUDGMENT**

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SC Court of Appeals

THIS MATTER comes before me upon the Motions for Summary Judgment filed by: (i) Defendant County of Charleston ("County"); (ii) Defendant Town of Mount Pleasant ("Town"); and (iii) Defendant DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC ("DRB"). For the reasons set forth herein, Defendants County, Town and DRB's Motions for Summary Judgment are all **GRANTED**.

This action concerns whether a road commonly known as John Ballam Road (“Road”) located near the corner of Six Mile Road and Rifle Range Road in Mount Pleasant, South Carolina is a public or private road. For the reasons set forth herein, the Court finds that there is no genuine issue of material fact, and that John Ballam Road is a public road.

Pursuant to a Form 4 Order filed October 28, 2024, the Court granted DRB’s motion “to bifurcate the trial on the issue of the status of the road.” This Order was formalized by Order filed February 2, 2025, in which the Court ordered “DRB’s Motion to Bifurcate is granted. The issue of whether the Road is public or private is hereby bifurcated from the remaining issues in this case and shall be set for a merits hearing at a status conference....” Based on these Orders, the only matters addressed in this Order are issues related to whether the Road is public or private. Neither Plaintiffs’ nor DRB’s claims which are unrelated to whether the Road is public or private are addressed herein.

PROCEDURAL HISTORY

This case was initiated by Plaintiff Henry Bailem, IV’s (“H. Bailem”) filing of the Summons and Complaint on February 23, 2023. Notably, at that time the sole plaintiff was H. Bailem, and the sole defendants were the County and the Town. Through this Complaint, H. Bailem sought: (i) a Declaratory Judgment that the Road was private; (ii) a claim for adverse possession that he was the owner of the Road; and (iii) a claim against the County and the Town for inverse condemnation. The County and the Town timely submitted responsive pleadings.

Pursuant to Consent Order filed on January 26, 2024 (the “Consent Order”), this action was referred to the undersigned, as Master-In-Equity for Charleston County, with any appeal directly to the Court of Appeals. This same order granted Plaintiff leave to amend his Complaint.

On June 6, 2024, Plaintiffs H. Bailem, Joseph Bailem, Sheila Bailem (“S. Bailem”), Diane Jefferson (“D. Jefferson”), Michael Jefferson, Sr. (“M. Jefferson”), Rashica Coakley (“Coakley”), and Ann Bailem Simmons (“Simmons” and collectively with H. Bailem, Joseph Bailem, S. Bailem, D. Jefferson, M. Jefferson, and Coakley, “Plaintiffs”) filed their Amended Complaint. The Amended Complaint added Plaintiffs, as well as numerous Defendants, among them, for the first time, DRB. Relevant to this Order, Plaintiffs brought claims for (i) declaratory judgment that the Road is a private road and (ii) an action seeking to quiet title in the Road in Plaintiffs.¹

The Town answered the Amended Complaint and asserted a Counterclaim for adverse possession on June 27, 2024. The County filed a Motion to Dismiss on July 1, 2024, and after the Court partially granted this motion, the County filed its Answer and Counterclaims on November 7, 2024. Plaintiffs filed their Reply to the Town’s Counterclaim on July 15, 2024, and their Reply to the County’s Counterclaims on May 2, 2025.

DRB timely filed its Answer to the Amended Complaint and Counterclaims on August 7, 2024, to which Plaintiffs filed their Reply on November 6, 2024. Plaintiffs filed their Reply to DRB’s Counterclaims on November 6, 2024.²

DRB, the County and the Town all filed their Motions for Summary Judgment on May 27, 2025. Plaintiffs filed their Memorandum in Opposition to Defendants’ Motions for Summary Judgment on May 30, 2025. A hearing was held on all parties’ Motions for Summary Judgment on June 2, 2025.

¹ The remaining claims have been bifurcated and are not addressed herein.

² The counterclaims have been bifurcated and are not addressed herein.

FACTS³

In 1986, the Bailem family hired surveyor James G. Pennington (“Pennington”) to draft a plat to subdivide property which had been in the Bailem family for years located off Six Mile Road in Mount Pleasant, Charleston County, South Carolina. Pennington drafted a plat illustrating a subdivision of the John Ballam⁴ Estate entitled “Plat of Lands of John Ballam Estate Located Liberty Hill Area of Christ Church Parish Charleston County, South Carolina” and dated July 23, 1986 (the “’86 Plat”) which was ultimately presented to the County for approval.

D. Jefferson and M. Jefferson (collectively, the “Jeffersons”) submitted a Subdivision Application (the “Application”) to the County for approval of the ’86 Plat. The ’86 Plat states “This approval in no way obligates the County of Charleston to maintain this right-of-way until it has been constructed to County Standards.”

After being approved by County Council, the ’86 Plat was recorded on October 24, 1986, in Plat Book BK at Page 135 in the Office of the Register of Deeds for Charleston County. The ’86 Plat has been continuously available to the public since October 24, 1986, a period in excess of thirty-eight (38) years. The ’86 Plat unmistakably and unambiguously contains a dedication to the public of the Road, stating in express terms “WE HEREBY DEDICATE THIS 50’ ROAD RIGHT OF WAY FOR THE USE OF THE PUBLIC FOREVER.” The dedication to the public was contingent upon the road being brought up to the County’s standards. This was not done while the Road was in the County’s jurisdiction and control.

³ In accordance with the applicable standard of review, addressed below, the facts set forth herein are viewed in the light most favorable to the non-moving party, Plaintiffs. However, the parties are free to present additional evidence at any subsequent hearing or trial on issues which are not addressed herein.

⁴ The Bailem family formerly spelled their surname as “Ballam.”

The dedication is followed by signatures of Henry Ballam, Rebecca Jefferson and Estelle Capers. To support their claims of forgery or fraud, Plaintiffs contend that the signatures are forged; however, these allegations lack evidentiary support in the record. Plaintiffs contend that Estelle Capers, a signer of the '86 Plat, always signed her name as "Estelle Bailem Capers;" however, in the affidavit submitted as an exhibit to the Amended Complaint, Estelle Capers signed as "Estelle Capers." In that affidavit, Ms. Capers does not testify that she did not sign the '86 Plat and Ms. Capers has provided no other testimony in the record. Otherwise, none of the other signatories on the '86 Plat are alive to testify as to their signatures' authenticity.

Simmons testified that she was present when Henry Bailem, Rebecca Jefferson and Estelle Capers signed the '86 Plat. Moreover, Rebecca Jefferson's grandson, M. Jefferson, testified Rebecca Jefferson's signature was on the '86 Plat. All other Plaintiffs made clear they were not present when Henry Bailem, Rebecca Jefferson and Estelle Capers signed the '86 Plat. I find Plaintiffs have presented no admissible evidence to contradict the signatures on the '86 Plat.

In the thirty-eight (38) years since the '86 Plat was recorded, no plat has been recorded dedicating the Road to the property owners, as Plaintiffs now allege was the family's intent.

At a meeting held on August 16, 1994, County Council approved for construction and acceptance into the County's road system thirty-two (32) unimproved roads in the unincorporated area, including the Road. While Plaintiffs contend that the Road was never properly dedicated for any number of reasons, the County provided, at public expense, maintenance to the Road at the request of Plaintiffs and their predecessors.

On April 11, 1995, the Town passed Ordinance No. 95005 annexing twenty-nine (29) lots on the North and South Sides of Rifle Range Road East of the Intersection with Six Mile Road, including the Plaintiffs' properties and the Road. Abraham Simmons, the husband of Plaintiff

Simmons, co-tenant of Lot 1, Florence Coakley, owner of Lot 2, and Plaintiff Michael Jefferson all signed the Annexation petition. Beneath each name and address, there is a reference to the '86 Plat.

On March 11, 1996, the County Transportation Committee ("CTC") held a meeting in which it approved funding of the Road for FY 96.

A few years after being annexed into the Town and the approval of funding using CTC funds, the Road was paved in 2002. Viewing the evidence in the light most favorable to Plaintiffs, they never requested that the Road be paved; however, when the Road was paved, it would have become apparent to anyone along the Road that the Road had been accepted and prepared for public use. Significantly, neither Plaintiffs nor their predecessors ever paid to pave the Road. The Road was paved with public CTC funds, indicating acceptance by the public.

Plaintiffs have not paid taxes on the Road since 1986, and the Road appears on county tax maps as having been publicly dedicated since 1986.

Plaintiffs are the owners of Lots 1-5 on the '86 Plat. However, none of their legal descriptions, nor the '86 Plat, reflect that they own any portion of the Road. Since the first conveyance with reference to the '86 Plat in 1987-88 (depending on which lot), each deed in Plaintiffs' chains of title has conveyed the lots by reference to the '86 Plat in the legal description, has indicated that the Plaintiffs' individual lots are butting and bounding by the Road, and that the conveyance is subject to the easements shown on the '86 Plat. None of the legal descriptions convey the Road to Plaintiffs.

DRB is the owner of property directly south of the Road (the "Development"). DRB acquired the property which is now the Development by reference to a plat which depicts the Road as a public road. Within DRB's chain of title and the probate records submitted to the Court are

numerous documents which indicate that the portions of the Development had, as early as at least 2015, an address on John Ballam Road.

Once the property was acquired, DRB and its predecessor in title, Ballam Rd LLC, began the extensive process of developing the property. They acquired easements necessary for sewer and water, entered into agreements for electrical and gas supply, and undertook the process of subdividing the land into individual lots, all in reliance on the Road being a public road providing access to the Development. DRB and Ballam Rd LLC also undertook construction of other infrastructure within the Development. They acquired encroachment permits from the County and Town. One of these encroachment permits was specifically for the Road, with the description of work as “Installation of one new curb cut for a new County roadway serving a residential subdivision in Charleston County.”

STANDARD OF REVIEW

“A party against whom a claim... is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.” Rule 56(b), S.C. Rule Civ. Proc. “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), S.C. Rule Civ. Proc.

“In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party.” *Isaac v. Onions*, No. 2023-001462, 2025 WL 1174537, at *3 (S.C. Apr. 23, 2025). “To survive summary judgment, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.* (internal quotation omitted). “When opposing

a summary judgment motion, the nonmoving party must do more than simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013) (internal quotations omitted); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 291, 301 (2023) (eliminating the “mere scintilla” standard and holding the proper standard is the “genuine issue of material fact” standard set forth in Rule 56(c)). The non-moving party “may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue.” *Dunes W. Golf* at 293, 737 S.E.2d at 608 (emphasis added).

ANALYSIS

I. The Statute of Limitations Bars Plaintiffs’ Claims.

Plaintiffs failed to bring an action within the relevant statute of limitations, barring their claims.

The “purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.” *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) (internal quotations omitted). “Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.” *Id.* “Statutes of limitations are not simply technicalities.” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016). “On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Id.* (internal quotations and citations omitted). “Statutes of limitations are, indeed, fundamental to our judicial system.” *Id.*

“No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.” S.C. Code. Ann. § 15-3-340. “Possession is presumed to follow the legal title to land.” *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987). “Acts of ownership of open land need only be exercised in a way consistent with the use to which the land may be put and which the situation of the property permits without actual residency or occupancy.” *Id.* at 471. To satisfy the statute of limitations, the latest date on which Plaintiffs must have been seized or possessed of the Road was June 6, 2014 as to DRB (ten years prior to filing the Complaint against DRB) and February 23, 2023⁵ as to the County and Town under S.C. Code Ann. § 15-3-340.⁶

While Plaintiffs attempt to distance themselves from claiming forgery, the Court finds that the essence of Plaintiffs’ Complaint is the allegation, without admissible evidentiary support, that the signatures on the ’86 Plat are a result of fraud or forgery. Accordingly, the three-year statute of limitations contained in S.C. Code Ann. § 15-3-530(7) applies. *See, McKinnon v. Summers*, 224 S.C. 331, 336, 79 S.E.2d 146, 148 (1953) (holding that where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, the statute of limitations governing the action is the one for relief on the ground of fraud). “Any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were

⁵ Again, construing all facts and inferences in the light most favorable to Plaintiffs. However, the Court notes that only H. Bailem brought a Complaint against the County and Town on this date. The remaining Plaintiffs sat silent for over an additional year.

⁶ The Amended Complaint does not relate back to the original filing, as respects DRB under Rule 15(c) of the South Carolian Rules of Civil Procedure. There is no evidence that DRB received notice of the institution of the action or that there was any mistake in identity of a party to the original suit. Both the County and Town were original defendants and continue to be defendants now.

solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud” is three years. S.C. Code Ann. § 15-3-530(7). “According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Dean v. Ruscon Corp.* 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). “We have interpreted the exercise of reasonable diligence to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist.” *Id.* (emphasis in original). “Moreover the fact that the injured party may not comprehend the full extent of the damage is immaterial.” *Id.* “The date on which discovery should have been made is an objective, not subjective, question.” *McAlhany v. Carter*, 415 S.C. 54, 63, 781 S.E.2d 105, 110 (Ct. App. 2015).

As referenced below, neither Plaintiffs, their predecessors in title, nor their ancestors have been seized or possessed of the Road for a period of well over ten years. Henry Bailem, Rebecca Jefferson, and Estelle Capers dedicated the Road to the public in 1986. Viewing the evidence in the light most favorable to Plaintiffs, this dedication was contingent on the Road being brought to County standards. While Defendants contend that earlier dates apply, it is uncontroverted that the Road was paved in 2002, after being annexed into the Town. Viewing the evidence in the light most favorable to Plaintiffs, they never requested the Road be paved; however, when the Road was paved, it would have become apparent to anyone along the Road that the Road was now accepted and prepared for public use. Plaintiffs never paid to pave the Road and knew it was paved with public funds in 2002. Under S.C. Code Ann. § 15-3-340, Plaintiffs’ claims were barred, at the

latest, in 2012, over eleven (11) years prior to H. Bailem bringing any action against the County or Town, and over twelve (12) years prior to Plaintiffs bringing any action against DRB.

Plaintiffs argue that the discovery rule applies to S.C. Code Ann. § 15-3-340. However, Plaintiffs do not cite to any authority for this proposition, and there is no indication in the text of the statute that the discovery rule should apply. Moreover, “property owners are charged with constructive notice of instruments recorded in their chain of title.” *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975). Even if Plaintiffs were not charged with constructive notice, and even if the discovery rule did apply, which it does not, the paving of the road in 2002 would have put Plaintiffs on notice of a potential claim.

Plaintiffs’ claims are also barred by the three-year statute of limitations, even considering the discovery rule. Again, Defendants contend that earlier dates apply, but it is uncontroverted that Plaintiffs knew others claimed the Road was public at least by 2017. As D. Jefferson made clear to the owners of Lots 1-5 “our rights to ownership of John Ballam Rd is being challenged and we are requesting the service of an attorney to help protect our rights.” Still, no lawsuit was filed until February 23, 2023, over six years later, and DRB was not added as a defendant until June 6, 2024, over seven years later. Viewing the evidence in the light most favorable to Plaintiffs, the three-year statute of limitations contained in S.C. Code Ann. § 15-3-530(7) expired in early 2020, over three years before H. Bailem filed suit against anyone, and over four years before Plaintiffs filed suit against DRB. Plaintiffs presented no evidence to contradict this finding. However, even considering Plaintiffs’ admitted date of knowledge of the dedication language, “when developer DRB purchased adjacent property and sought to use” the Road, this occurred in 2019. Using this date, the three-year statute of limitations would have expired in 2022, prior to when Plaintiffs brought suit.

Accordingly, the Court finds that Plaintiffs' claims are barred by the statute of limitations.

II. Plaintiffs' Claims are Barred by the Doctrine of Laches.

"Laches is an equitable doctrine defined as neglect for an unreasonable and unexplained length of time, under the circumstances affording opportunity for diligence, to do what in law should have been done." *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007). "In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed in its assertion of a right, resulting in prejudice to the defendant." *Id.* "Laches is an equitable doctrine which arises upon the failure to assert a known right." *Id.* at 85, 650 S.E.2d at 670. "Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (2004). "The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice." *Id.*

The facts in *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010), are remarkably similar. In *Robinson*, certain heirs brought a quiet title action claiming that deeds and a previous quiet title action were procured by fraud. "In their Complaint, Petitioners sought to establish their legitimate relationship as lineal descendants and heirs of Simeon B. Pinckney." *Id.* at 650, 698 S.E.2d at 232. "In support of these claims, Petitioners alleged the 1946 deeds and 1966 action to quiet title were fraudulent and were undertaken without consideration for the rights or interest of Petitioners and other heirs." *Id.* The Court held that the Petitioners were barred by the doctrine of laches, reasoning that the Petitioners waited thirty-nine years to challenge the prior quiet title action, and that while Petitioners claimed not to have knowledge of that action, their own affidavits discounted that claim. *Id.* at 657, 698 S.E.2d at 236.

The Court further relied on the fact that the documents granting title to the defendants (deeds and the quiet title action) were “publicly-recorded and documented,” thus “it was an unreasonable length of time for Petitioners to delay in instituting” the action. *Id.* The Court went on to state that “Respondent would be undoubtedly prejudiced if Petitioner’s claim is not barred by laches given she purchased her lot for significant consideration and has been in possession of it since 2001.” *Id.*

The ’86 Plat was prepared, signed, approved and recorded nearly forty years ago in 1986. Plaintiffs were well aware of its existence since at least the 1990s, yet they did nothing. Moreover, property owners such as Plaintiffs “are charged with constructive notice of instruments recorded in their chain of title.” *See Carolina Land Co.* at 107, 217 S.E.2d at 20.

Plaintiffs also knew that others, including DRB and its predecessors, believed the Road was public and that the Development was being constructed in 2019, yet they did nothing. Matters of public record constitute constructive notice to the world and therefore title abstractors and real estate attorneys are entitled to rely on the public record. *Binkley v. Rabon Creek*, 348 S.C. 58, 558 S.E.2d 901 (Ct. App. 2001). Plaintiffs allowed DRB and its predecessors to expend large sums of money in reliance on the Road being public. Yet, Plaintiffs failed to file suit. DRB relied on the validity of the public records and was prejudiced by Plaintiffs’ unreasonable delay. DRB acquired the Development for in excess of \$3.5 million, continued construction and development, and built eighteen (18) homes which are ready, willing, and able to be sold but cannot be at this time due to this pending litigation which was brought (as against DRB) over four years after DRB acquired the Development.

As set forth above, Plaintiffs' unreasonable delay in asserting their rights greatly prejudiced DRB. Accordingly, the Court finds that there is no genuine issue of material fact, and that Plaintiffs' claims are barred by the doctrine of laches.

III. There is No Genuine Issue of Material Fact that the Road has been Validly Dedicated and Accepted and Is a Public Right-Of-Way.

The Bailem family expressly dedicated the Road to the public pursuant to the '86 Plat. "The determination of whether a roadway has been dedicated to the public is an action in equity." *Town of Kingstree v. Chapman*, 405 S.C. 282, 301, 747 S.E.2d 494, 504 (Ct. App. 2013).

Dedication requires two elements: (1) the property owner must positively and unmistakably express the intent to dedicate his property to public use and (2) there must be express or implied public acceptance of the property made within a reasonable time. *Id.* at 302, 747 S.E.2d at 504. The burden of proof rests with the party claiming it. *Id.* Dedication is a unilateral act by the grantor. Likewise, acceptance is a unilateral act by the grantee. The conveyance of land by dedication is a unique process which follows this procedure. *See Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 26-27, 413 S.E.2d 821, 823 (1922).

A. The Bailem Family Expressly Dedicated the Road to the Public.

The Bailem family dedicated the Road to the public through an express written and signed statement creating no genuine issue of material fact as to the Road's dedication. A party may expressly dedicate their land through an act or declaration that fully demonstrates his intention to give his land to the public. *Town of Kingstree*, at 282, 302, 747 S.E.2d at 504. Express dedication may be provided in writing or orally. *See Shia v. Pendergrass*, 222 S.C. 342, 347, 72 S.E.2d 699, 701 (1952). Where there is no express dedication, actions and conduct where the dedicator clearly and convincingly indicates his intention to create a public right to use the property in question are sufficient to create an implied dedication. *Town of Kingstree*, at 302, 747 S.E.2d at 504. A recorded

plat may be sufficient to disclose a landowner's intent to dedicate property to public use where the owner subdivides and plats land into lots and streets and conveys the lots with reference to the plat, absent any evidence of the contrary intent. *Van Blarcum v. City of N. Myrtle Beach*, 337 S.C. 446, 450-51, 523 S.E.2d 486, 488 (Ct. App. 1999).

The '86 Plat subdivided the Bailem family estate into five lots with "John Ballam Road 50' R/W" adjacent to the south side of each of the lots and contains an express dedication signed by Henry Bailem, Rebecca Jefferson, and Estelle Capers: "WE HEREBY DEDICATE THIS 50' ROAD RIGHT OF WAY FOR THE USE OF THE PUBLIC FOREVER."

While the '86 Plat is a plat and not a deed, it should be construed under similar circumstances. "The interpretation of a deed is an equitable matter." *Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013). "The construction of a clear and unambiguous deed is a question of law for the court." *Id.* "The language in a deed is ambiguous if it is reasonably susceptible to more than one interpretation." *Id.* The Court finds that the '86 Plat unambiguously indicates the signatories' intention to dedicate the Road to the public. There is absolutely no ambiguity in the '86 Plat. Accordingly, extrinsic evidence to contradict the plain language of the deed is improper. *Id.* at 205, 743 S.E.2d at 853. Any testimony or parol evidence, including that which Plaintiffs attempt to introduce, is inadmissible and creates no genuine issue of material fact for trial. Therefore, the Court concludes there is no genuine issue of material fact regarding the dedication of the Road to the public.

However, even if the Court were to consider parol evidence, Plaintiffs fare no better. Other than Estelle Capers, none of the signatories to the '86 Plat are alive to testify. Estelle Capers offered an affidavit in this case; however, nowhere in that affidavit does she testify that she did not sign the '86 Plat. She merely testified that the dedication may not have been the family's "intent."

However, signatures purporting to be fraudulent must be proved and cannot be presumed or implied. *Able v. Equitable Life Assur. Soc. of U.S.*, 186 S.C. 381, 195 S.E. 652, 655 (1938).

Moreover,

Public interest require that commercial transactions be safeguarded, negligence discouraged, and the opportunity for and temptation to perjury minimized by attaching to a written [document] a certain conclusive force or artificial sanctity as the memorial of the transaction it purports to evidence. As an outgrowth of [this] policy, we have the two familiar general rules: (1) That a written contract cannot be varied by parol or extrinsic evidence, and (2) that one cannot avoid a written contract into which he has entered on the ground that he did not attend to its terms, that he did not read the document which he signed, that he supposed it was different in its terms, or that it was a mere form. The latter rule obviously rests upon the basic premise that it is a duty owed by every contracting party to the other party and to the public to learn and know the contents of a written contract before he signs and delivers it.

Id. at 391, 195 S.E.2d at 656-7; *Regions Bank v. Schmauch*, 354 S.C.648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One who signs a written instrument has the duty to exercise reasonable care to protect himself.”) (internal citations omitted). Even Ms. Capers’ testimony regarding alleged intent is inadmissible under the parol evidence rule. Neither she nor any of the other signatories can avoid the effect of the dedication language on the ’86 Plat by claiming they did not read it or that it was not their “intent” or that they supposed it was different in its terms.

Even considering Plaintiffs’ other allegations, the proof of which would be inadmissible parol evidence at trial, the Court must reach the same ultimate conclusion that there is no genuine issue of material fact. Plaintiffs contend that Rebecca Jefferson “couldn’t have signed [the plat] because she was blind;” that Estelle Capers “always signed her name Estelle Bailem Capers;” and

that Henry Bailem's signature "don't look like my daddy's signature." However, these allegations lack evidentiary support in the record. First, it is blackletter law that blind individuals are capable of signing written instruments. Second, the allegation that Ms. Capers "always signed her name Estelle Bailem Capers" is directly contradicted by numerous other documents in the record, including Ms. Capers' affidavit attached to the Amended Complaint in which she signed simply "Estelle Capers." Finally, there is no evidence that any witness had sufficient knowledge of Henry Bailem's signature to contest its validity, and no expert witnesses were presented as to the signatures on the '86 Plat.

Plaintiffs also allege that the signatories on the '86 Plat signed a different plat, and that Pennington "transferred" the signatures from that plat to the '86 Plat. Plaintiffs also allege that County Register of Deeds employees may have signed the '86 Plat. However, other than Simmons, no Plaintiff claims to have been present when the '86 Plat was signed. Plaintiffs' reasons for why the signatures are not accurate do no more than rest on allegations and denials rather than create a genuine dispute of material fact, as they are unsupported by any additional evidence or first-hand, personal knowledge. D. Jefferson's testimony regarding Pennington allegedly transferring signatures and alleged signatures in the back room of the Register of Deeds is inadmissible under numerous rules of evidence, including but not limited to hearsay and lack of personal knowledge. Rules 602, 701, 801, S.C. Rule Evid. Her allegations are nothing more than inadmissible speculation and are not sufficient to create a genuine issue of material fact for trial. Neither Pennington nor any County employee had any incentive to sign the '86 Plat with the dedication. Moreover, the record shows Pennington has little if any recollection of the '86 Plat.

Instead, H. Bailem and D. Jefferson both admit that neither one of them was present at the time the '86 Plat was signed and that neither of them had any input or hand in the creation of the

'86 Plat. Plaintiffs failed to produce another plat with Henry Bailem, Rebecca Jefferson, and Estelle Capers' signatures that would have made this "signature transfer" feasible or to corroborate their contentions.

Plaintiffs seem to imply that the family's intent was to dedicate the Road to the property owners. However, only the then owners, Henry Bailem, Rebecca Jefferson and Estelle Capers' intent matters for purposes of dedication. This intent is unambiguously set forth on the '86 Plat. With the exception of one who confirmed the legitimacy of the signatures, Plaintiffs admit that they were not present when the '86 Plat was signed. Plaintiffs have failed to present non-speculative admissible evidence which, even if not barred by the parol evidence rule, could provide an issue of fact for trial. Plaintiffs can only dispute the issue of the signatures with speculation, conjecture, hearsay, and denials. Therefore, this Court concludes that there is no genuine issue of material fact as to whether the Road was dedicated to the public.

B. Alternatively, the Road has been Impliedly Dedicated.

Even if there were not an express dedication, the Road has been impliedly dedicated.

No particular formality is necessary to effect a common law dedication. An intention to dedicate may be implied from the circumstances. Any act or declaration on the part of the dedicator which fully demonstrates his intention to appropriate his land to public use, or from which a reasonable inference of his intent to dedicate may be drawn, is sufficient.

South Carolina law recognizes two types of implied dedication- one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises... from an abandonment to or acquiescence in public use.

Town of Kingstree at 302, 747 S.E.2d at 504.

Plaintiffs took title to their respective lots by reference to the '86 Plat, thus impliedly dedicating the Road to the public. "Where a deed describes land as is shown on a certain plat, such becomes a part of the deed. It is generally held that when the owner of land has it subdivided and

platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public.” *Carolina Land Co., Inc. v. Bland*, 265 S.C. 92, 105, 217 S.E.2d 16, 19 (1975) (emphasis added). “As between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities. *Id.* at 106.

In *Helsel*, the court noted that the deed conveying the lot incorporated the applicable plat by reference. 307 S.C. at 28, 413 S.E.2d at 824. The Court held that “Where a deed describes land as shown on a certain plat, the plat becomes part of the deed. The Helsels therefore are charged with knowledge that the street end had been offered for dedication to the public and could not be converted to private use. The Helsels also are charged with knowledge that they purchased nothing outside the boundaries of Lot 12.” *Id.*

In taking title to their respective lots, the Plaintiffs took by reference to the ’86 Plat. Each and every deed for the five Bailem lots conveyed the land “shown on a plat by James G. Pennington... recorded in Book BK, Page 135, of the RMC Office for Charleston County... subject to the easements as shown on said plat.” The Plat describes the Road as “John Ballam Road 50’ R/W.” It does not describe the Road as a 50’ private easement.

The ’86 Plat became part of the deed to each of the Plaintiffs and their predecessors in title. *Carolina Land*, at 105, 217 S.E.2d at 19. These deeds were executed in the late 1980s, almost 40 years ago. “Property owners are charged with constructive notice of instruments recorded in their chain of title.” *Id.* at 107, 217 S.E.2d at 20. The Road has therefore been dedicated to the public, even without the written dedication, since the first conveyance of one of the Lots.

This conveyance of the lots by reference to the '86 Plat reaffirmed the signatories' intent to dedicate the Road to the public. Plaintiffs do not challenge the validity of the signatories to their deeds, who are the same individuals who signed the '86 Plat. Those signatories referenced the '86 Plat in the deeds to the lots, incorporating the entire plat (including the dedication) into those deeds. Plaintiffs are charged with knowledge that the Road had been offered for dedication to the public and could not be converted to private use. *Helsel*, at 28, 413 S.E.2d at 824.

Furthermore, evidence of the intent to dedicate the Road is found in the legal description of each lot, all of which states that it is butted and bounded by John Ballam Road. The Plaintiffs simply do not own the Road by the express terms of the deeds.

Even Plaintiffs have not acted as if the Road is theirs. They have acquiesced in the public authorities' use, including through a work order which states, "Resident would like ditch cleaned out since it is now a Town Road." D. Jefferson admitted in deposition that she made the request. M. Bailem concedes that she believes the Town had a duty to clean out the ditches within the Road right-of-way. Plaintiffs want the public authorities to provide services which are only available on public roads yet claim (incorrectly) they own the Road. H. Bailem admitted, "Well, it's their road. What would we have to do?" He also admitted that he has done nothing to maintain the road.

Accordingly, even if the Court were to find that the dedication on the '86 Plat were somehow ineffective, Henry Bailem, Rebecca Jefferson and Estelle Capers incorporated the '86 Plat into the deeds to Plaintiffs, or their predecessors in title. Thus Plaintiffs were charged with knowledge of the dedication and cannot now complain. The fact that the dedication is on the '86 Plat, which was then incorporated into the Plaintiffs' deeds, only amplifies the inevitable conclusion that the Road has been dedicated. Here, Plaintiffs and their predecessors in title have

acquiesced to public uses of the Road. Thus, even without the written, signed dedication on the '86 Plat, the Road has been dedicated to the public.

C. The County Accepted the Bailem Family's Dedication of the Road, Which Was Annexed into the Town, and Improved and Paved the Road using Public Funds.

The public and public authorities accepted the Bailem family's dedication of the Road both expressly, and through their use, maintenance, and working of the road. Acceptance may be evidenced by either general public use or by act of the public authority made within a reasonable time. *Giles v. Parker*, 304 S.C. 69, 73, 403 S.E.2d 130, 132 (Ct. App. 1991); *Town of Kingstree*, at 302, 747 S.E.2d at 504. What constitutes a reasonable time is determined by looking at the surrounding circumstances of a case, including the size of a town and its growth, and where it may be expanding. *Chafee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800, 800 (1900). While mere approval of a plat is not by itself a sufficient form of acceptance, the use, repair, and working of streets by such public authorities are adequate acceptance. *Town of Kingstree*, at 303, 747 S.E.2d at 504; *Tupper v. Dorchester County*, 326 S.C. 318, 327, 487 S.E.2d 187, 192 (1997). Whether any portion of the property was excluded from tax assessment is also a relevant inquiry into the acceptance of dedicated land. *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 126–27 (Ct. App. 1995); *Anderson v. Town of Hemingway*, 269 S.C. 351, 237 S.E.2d 489 (1977).

The County expressly accepted the dedication of the Road in 1994. There is no evidence in the record otherwise. While this express acceptance should be enough, both the County and Town maintained, used, and worked the road. There is an over twenty (20) year history of public design, improvement, and work from County and Town officials on the Road that provides sufficient means of accepting a dedication, including, but not limited to, the following:

1. County tax maps were changed in 1986 to reflect that the Road was publicly dedicated, and Plaintiffs have paid no taxes on the Road since that time.

2. In 1994, Charleston County approved the Road for construction and accepted it into the County's road maintenance system.
3. In 1995, the Road was annexed into the Town of Mount Pleasant.
4. The Road received public garbage pickup from the time of its annexation.
5. From the time the Road was accepted into the County's road maintenance system in 1994 until the present, Town and County workers have maintained the drainage ditches on both sides of John Ballam Road.
6. The County paved the Road in 2002.
7. Upon attempts by members of the Bailem family to block the Road, Town police removed blockades and gates.

The public's use, maintenance, and working of the Road were consistent throughout the past four decades and show both the County and Town took ownership and control over the Road, creating no genuine issue of material fact as to the public's acceptance of the Road for public use.

D. Plaintiffs' Contentions Lack Merit or Evidence in the Record.

Plaintiffs contend that certain correspondence from the County indicates that the plat was intended to dedicate the Road to the property owners. However, this is consistent with the notion that the acceptance of the Road was contingent upon the Road being brought to County standards. Plaintiffs have presented no evidence to the contrary. Plaintiffs also allege that Wes Linker, the County 30(b)(6) representative, admitted that the Road was private. However, reviewing the deposition testimony in totality, it is clear no such admission was made. Linker was asked what was contained in a document and testified truthfully that the document said the word "private," but at no point did he make an admission that the Road was private.

Plaintiffs also allege that the property owners signed only one time; however, this testimony is speculative and lacks personal knowledge. It is impossible for any Plaintiff to know

whether the then property owners signed the '86 Plat, and this contention is directly at odds with Simmons' testimony regarding the execution of the '86 Plat and the remaining Plaintiffs' admissions that they were not present when the '86 Plat was signed.

None of Plaintiffs' contentions and arguments are supported by admissible record evidence. Therefore, they do not create a genuine issue of material fact, and Defendants are entitled to judgment as a matter of law.

IV. The Town Is Entitled to Summary Judgment on Plaintiffs' Inverse Condemnation and Adverse Possession Claims.

Inverse condemnation is a cause of action against a governmental entity to recover the value of private property which has been taken in fact by the governmental entity without the entity exercising its powers of eminent domain. *See Graham v. Town of Latta*, 417 S.C. 164, 191, 789 S.E.2d 71, 85 (Ct. App. 2016). In *Carolina Chloride, Inc. v. SCDOT*, our Supreme Court reiterated that an action for inverse condemnation requires: "(1) affirmative conduct of a governmental entity; (2) the conduct effects a taking; and (3) the taking is for a public use." 391 S.C. 429, 435, 706 S.E.2d 501, 504 (2011). The Court finds that the Plaintiffs have presented no genuine issue of material fact that the Town was involved in the creation or drafting of the '86 Plat dedicating the Road to the use of the public forever. Accordingly, the Court finds that summary judgment in favor of the Town is warranted.

Furthermore, it is blackletter law in South Carolina that adverse possession does not run against the state or its duly constituted political subdivisions. *Hilton Head Plantation Prop. Owners' Ass'n v. Donald*, 375 S.C. 220, 225, 651 S.E.2d 614, 617 (Ct. App. 2007). It is undisputed that the Town is a duly constituted political subdivision of the State of South Carolina. As such, Plaintiffs cannot assert a claim of adverse possession against the Town with regards to the Road.

CONCLUSION

Viewing the evidence in the light most favorable to Plaintiffs, as this Court must do, there is no genuine issue of material fact for trial.

The uncontradicted evidence in the record establishes that John Ballam Road was duly and validly dedicated to the public and accepted by the applicable governmental entities. The Court therefore concludes as a matter of law that John Ballam Road is a public road, accessible by members of the public. Plaintiffs have no “private” rights in or to John Ballam Road. Their properties are bounded by John Ballam Road, as indicated on the ’86 Plat.

The evidence in the record further establishes that Plaintiffs’ claims are barred by the statute of limitations and the doctrine of laches. There are no genuine issues of material fact for trial.

Finally, Plaintiffs have failed to satisfy the elements of inverse condemnation, and adverse possession does not run against the Town. Accordingly, the Town is entitled to summary judgment on Plaintiffs’ claims for inverse condemnation and adverse possession.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED as follows:

1. John Ballam Road, located near the corner of Six Mile Road and Rifle Range Road in Mount Pleasant, South Carolina is a public road, accessible by members of the public which has been validly dedicated and accepted by the County and Town, as more fully set forth herein.
2. Plaintiffs have no “private” right in or to John Ballam Road. Their properties are bounded by John Ballam Road, as indicated on the ’86 Plat.

3. In addition, Plaintiffs' claim that John Ballam Road is "private" is barred by the statutes of limitations contained in S.C. Code Ann. § 15-3-340 and § 15-3-530(7), thus necessitating a finding that John Ballam Road is a public road, accessible by members of the public.
4. Plaintiffs' claims are also barred by the equitable doctrine of laches because Plaintiffs unreasonably delayed asserting their rights, to the great prejudice of DRB Group South Carolina, LLC, who acquired property adjacent to John Ballam Road and proceeded to develop it in reliance on the public records which indicated the road to be public. As an additional ground, the Plaintiffs claims are barred by the equitable doctrine of laches, and the Court finds that John Ballam Road is a public road, accessible by members of the public.
5. Plaintiffs have failed to satisfy the elements of inverse condemnation, and adverse possession does not run against the Town. Accordingly, the Court grants summary judgment to Town on Plaintiffs' claims for inverse condemnation and adverse possession.
6. Given this Court's ruling that the Road is public, Plaintiffs' cause of action for trespass is hereby dismissed as moot. *See e.g. Hawkins v. City of Greenville*, 358 S.C. 280, 296-7, 594 S.E.2d 557, 565-6 ("Trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property...The gist of trespass is injury to possession, and generally either actual or constructive possessions is sufficient to maintain an action for trespass."). Given that Plaintiffs do not have exclusive, actual or constructive possession of the Road, the Court finds their trespass action must be dismissed as moot.

[Electronic Signature to Follow]



Charleston Common Pleas

Case Caption: Henry Bailem IV , plaintiff, et al VS Charleston County Of ,
defendant, et al
Case Number: 2023CP1000947
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062