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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough,
Circuit Court Judge

Appellate Case No. 2025-001719

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

Appellants,

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 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,

of which County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC are the

Respondents.

INITIAL BRIEF OF APPELLANTS

W. Andrew Gowder, Jr.
AUSTEN & GOWDER, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-0060
andy@austengowder.com

Attorney for Appellants

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT WHEN GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE ALLEGED PUBLIC DEDICATION?

II. DID THE TRIAL COURT ERR IN FINDING THAT RESPONDENTS ESTABLISHED A VALID PUBLIC DEDICATION AS A MATTER OF LAW?

III. DID THE TRIAL COURT ERR IN APPLYING THE STATUTE OF LIMITATIONS TO BAR APPELLANTS' CLAIMS?

IV. DID THE TRIAL COURT ERR IN FINDING THAT THE DOCTRINE OF LACHES BARS APPELLANTS' CLAIMS?

V. DID THE TRIAL COURT ERR IN FINDING IMPLIED DEDICATION THROUGH DEED REFERENCES?

STATEMENT OF THE CASE

On February 23, 2023, Appellant Henry Bailem, IV filed a Summons and Complaint against Charleston County and the Town of Mount Pleasant seeking: (1) a declaratory judgment that John Ballam Road is private; (2) a claim for adverse possession; and (3) a claim for inverse condemnation. By Consent Order filed January 26, 2024, the action was referred to the Master-in-Equity for Charleston County, with any appeal directly to this Court. The Consent Order also granted the Plaintiff leave to amend the Complaint.

On June 6, 2024, the Appellants filed their Amended Complaint, adding more plaintiffs and defendants, including DRB Group South Carolina, LLC ("DRB"), a developer aiming to use John Ballam Road for access to a nearby development. (R. at ___). The Amended Complaint requested: (1) a declaratory judgment that the road is private; and (2) an action to quiet title in the road for the Appellants. (R. at ___).

The County, Town, and DRB each filed Answers and Counterclaims. By Orders filed October 28, 2024, and February 2, 2025, the trial court bifurcated the issue of whether the road is public or private from the remaining issues in the case.

On May 27, 2025, all three Respondents filed Motions for Summary Judgment on the bifurcated issue of whether the road is public or private. Appellants filed their Memorandum in Opposition on May 30, 2025. (R. at ___). A hearing was held on June 2, 2025.

On July 8, 2025, the trial court entered its Order Granting Summary Judgment, finding: (1) the statute of limitations barred Appellants' claims; (2) the doctrine of laches barred Appellants' claims; and (3) John Ballam Road was validly dedicated and accepted as a public road. (Order at 1-26).

On July 18, 2025, Appellants timely filed their Motion to Reconsider and Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP. (R. at ___). The Motion argued that: (1) genuine issues of material fact exist regarding signature authenticity and dedication validity; (2) Respondents failed to meet their burden of proving public dedication; (3) the trial court failed to adequately address contradictory evidence; and (4) the trial court applied the statute of limitations and laches without considering the County's contradictory conduct. (Motion to Reconsider at 1-27).

On August 1, 2025, the trial court entered its Order Denying the Motion to Reconsider, stating: "As the Court finds no issue overlooked, misunderstood, or not considered, the Court respectfully DENIES Plaintiff's Rule 59(e) Motion to Reconsider." (Order Denying Motion at 1).

The Appellants filed and served their notice of appeal on August 28, 2025.

STATEMENT OF FACTS

This case concerns a fundamental question of property rights: whether a surveyor's unauthorized insertion of dedication language on a subdivision plat can strip private landowners of their property without their knowledge or consent. The Bailem family has owned and exclusively used the land where John Ballam Road is located for over 100 years. In 1986, the three living heirs hired a surveyor to subdivide family land for distribution to their children. Without authorization, explanation, or the family's knowledge, the surveyor added language purporting to dedicate their private road to public use.

When reviewing a grant of summary judgment, this Court must view the evidence and all reasonable inferences in the light most favorable to Appellants as the non-moving parties. *Isaac v. Onions*, 445 S.C. 525, 533, 915 S.E.2d 492, 496 (2025). The following facts, viewed in that light, establish multiple genuine issues of material fact that preclude summary judgment.

A. The Bailem Family's Longstanding Ownership

The Bailem (formerly Ballam) family has owned the property encompassing John Ballam Road for generations, with the land being in the family since the 1800s. (Am. Compl. ¶ 14; R. at ___). This was family land, passed down through the years, without a formal road providing access to the family homesites. (Id.).

The land originally came into the family through Flora Ballam, a former slave of the Boone Hall Plantation, and John Ballam, also known as Sandy Ballam. (Am. Compl. ¶ 14; R. at ___). The Bailem family has taken great pride in owning this land for approximately 150 years. (Id.). In 1986, the heirs of John Ballam's estate—Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers—owned the property as tenants in common. Am. Compl. ¶¶ 1, 21-23; R. at ___).

All Appellants have resided on this land for decades: Henry Bailem IV has lived at 1420 Six Mile Road for 68 years; Joseph and Sheila Bailem have lived at 2236 John Ballam Road for 68 and 41 years, respectively; Michael and Diane Jefferson have lived at 2242 John Ballam Road for 64 and 39 years, respectively; Florence Coakley resided at 1425 Brentley Road for 85 years until her passing in 2021; and Ann Bailem Simmons has lived at 1430 Brentley Road for 75 years. (Am. Compl. ¶¶ 16-20; R. at ___).

B. The 1986 Subdivision Was Intended to Create Family Parcels Accessed by a Private Road

In 1986, the three living family owners decided to formally subdivide their property to create individual lots for other family members. This was not a commercial development or public

subdivision—it was simply a family dividing their land among themselves. (Am. Compl. ¶¶ 24-25; R. at ___; Ex. 1 to Am. Compl.—Affidavit of Henry Bailem, IV, ¶ 5; R. at ___).

The family hired James G. Pennington, a surveyor, to perform what they believed was a simple task of surveying the property and drawing lot lines. (Am. Compl. ¶ 24; R. at ___; Ex. 1 to Am. Compl.—Affidavit of Henry Bailem, IV, ¶ 5; R. at ___; Dep. of J. Pennington, p. 11:10-15; Dep. of D. Jefferson, pp. 9:25, 10:1-22) Originally, Pennington was hired to create a plat showing four lots and a private access road dedicated to the owners of those lots. (Dep. of D. Jefferson, p. 10:2-17; R. at ___).

On July 23, 1986, Pennington drafted a plat that included dedication language with the words "dedicate the... ingress-egress easement over my property to the use of the property owners..." above the signature lines. (Am. Compl. ¶ 25; R. at ___; Ex. 1(B) to Am. Compl.; R. at ___). This plat was the one presented to the owners for approval and signature. (Plaintiffs' Mem. Ex. A; R. at ___). The three owners of the lots signed that plat. (Deposition of Henry Bailem, p. 11:17-12:19; R. at ___).

The family's clear goal was to create private lots for family members with access through an existing unimproved private road. The Bailem family only aimed to subdivide the John Ballam Estate's land, ensuring the area where the road would later be built remained part of their private property. This intent was explicitly communicated to surveyor Pennington. (Am. Compl. ¶¶ 25-26; R. at ___; Ex. 1 to Am. Compl.—Affidavits of Henry Bailem, IV, Estelle Capers, Ann Simmons, et al.; R. at ___). Nothing in the family's discussions with Pennington indicated any intention to dedicate property for public use. (Dep. of D. Jefferson, pp. 10:5-17, 11:3-24; R. at ___; Dep. of J. Pennington, p. 54:5-16; R. at ___).

Although no original signed copy of the earlier four-parcel plat with the appropriate private dedication can be located, a marked-up copy of that plat, provided by Pennington to Diane Jefferson,

shows a faint signature, indicating the owners' intention to grant access only to property owners. (Plaintiffs' Mem. Ex. A; R. at ___).

C. The Recorded Plat Contained Unauthorized Dedication Language and Questionable Signatures

Later, Diane Jefferson discussed with Pennington the addition of a fifth lot, which required creating another plat. (Deposition of Diane Jefferson, 10:2-11:24; R. at ___). Pennington apparently copied the four-lot plat signed by the owners, which included the private road dedication, to show the creation of the new lot. (Plaintiffs' Mem. Ex. A; R. at ___).

Pennington gave the marked-up copy to Diane Jefferson but did not show her the subsequent five-lot parcel before it was finalized and submitted for subdivision plat approval and filing. (Deposition of Diane Jefferson 12:2-11; R. at ___). For reasons unexplained in the record, Pennington or his draftsperson, without notice to or authorization from Diane Jefferson or any other family member, substituted public dedication language on the five-lot parcel. Pennington's testimony provides no clarity on this matter, as he does not recall performing this work and has stated that he did not draft the plats he signed; an undisclosed draftsperson created the plats. (Deposition of Pennington 11:23-25; R. at ___; 51:12-13; R. at ___).

Without the family's knowledge or consent, someone—presumably Pennington's unknown draftsperson—inserted dedication language on a different version of the plat stating: "We hereby dedicate this 50' road right-of-way for the use of the public forever." (Am. Compl. ¶ 27; R. at ___; Ex. 1(C), (D) to Am. Compl.; R. at ___). This plat, with the erroneous and unauthorized public dedication, was submitted with the August 11, 1986 subdivision application, contrary to the Bailem family's intent and without their knowledge. (Am. Compl. ¶ 27; R. at ___).

This dedication language: (1) was never discussed with the family (Dep. of D. Jefferson, pp. 16:21-25, 17:1-19; R. at ___); (2) was never authorized by the family (Dep. of H. Bailem, pp. 34:8-17, Ex. A to TOMP Mot.; R. at ___); and (3) was contrary to the family's intent to maintain private

property (Am. Compl. ¶¶ 26, 53; R. at ___). Compounding this error, the signatures on the recorded plat raise serious questions of authenticity. This is clearly demonstrated by comparing the signatures of the three individuals on the deeds that conveyed the parcels to Appellants with the signatures on the five-lot parcel. (Plaintiffs' Mem. Ex. B; R. at ___).

Most notably, Rebecca Bailem Jefferson was blind and did not sign her name, instead making a mark "X" to indicate her signature, as shown on the deeds. Surprisingly, she was able to sign her first and last name on the recorded five-lot plat, even though she only made an "X" on the deeds, which were supposedly signed at the same time. (Plaintiffs' Mem. Ex. B; R. at ___; Deposition of Henry Bailem, pp. 26:15-27:15; R. at ___). Additionally, Estelle Bailem Capers consistently included her middle name when signing official documents, as shown on the deeds, but not on the five-parcel plat. (Plaintiffs' Mem. Ex. B; R. at ___; Deposition of Henry Bailem, pp. 26:15-27:15; R. at ___). Finally, Henry Bailem IV testified that he recognized his father's signature, and the signature on the plat is not his father's. (Deposition of Henry Bailem, pp. 26:15-27:15; R. at ___).

Despite these serious irregularities, the five-lot parcel plat bearing an unauthorized and incorrect public dedication without proper signatures and without witnesses was submitted to the County for filing, and the plat was recorded on October 24, 1986, in the real property records of Charleston County. (R. at ___). Appellants were unaware of the filing of the erroneous plat until years later, when the ownership of the road was disputed. (Am. Compl. ¶¶ 41-42; R. at ___).

D. County Records Demonstrate the Family's Intent for Private Dedication

Critically, the Charleston County Planning Staff and Public Works recommended in their September 29, 1986, agenda that the application be approved "with the granting of a variance from Section III E-12 which will allow the creation of four lots that do not front on a state or county maintained road, and with the dedication of a 20' wide drainage easement as shown on the plat. This

plat represents a division of estate property and a 50' right-of-way will be dedicated to the property owners." (Am. Compl. ¶ 29; R. at ___; Ex. 1(C) to Am. Compl.; R. at ___) (emphasis added).

On October 10, 1986, the surveyor received a letter outlining the outcome of the Charleston County Council meeting held on October 7, 1986. This letter reaffirms the dedication of the 50' right-of-way to the property owners. (Am. Compl. ¶ 31; R. at ___; Ex. 1(C) to Am. Compl.; R. at ___).

Pennington's deposition testimony confirms this discrepancy:

> Q: What did County Council approve to be recorded as the dedication?
> A: Well, according to this letter, they approved the 20-foot-wide drain ditch shown on the plat.
> Q: What's the last sentence of the first paragraph say?
> A: "Will be dedicated to the property owners."
> Q: What will be?
> A: The right-of-way. The 50-foot right-of-way.
> Q: Okay. So where is that plat that represents that?
> A: It's this plat.
> Q: Which plat?
> A: Exhibit 7.
> Q: Is that what the dedication says?
> A: No.
> Q: So you recorded a plat that was not approved by County Council?
> A: Apparently so.

(Pennington Dep. 95:23-96:19; R. at ___).

Despite these official records indicating that the road was to be dedicated to property owners, the incorrect plat was mistakenly recorded on October 24, 1986. (Am. Compl. ¶ 32; R. at ___).

E. The County Subsequently Treated the Road as Private

Even after recording the plat in 1986, Charleston County still considered the access road, now called John Ballam Road, to be a private road.

In August 1993, the County explicitly rejected John Ballam Road from its maintenance system, confirming it did not "meet Charleston County standards for an earth road and cannot be accepted into the County maintenance system" and stating that if construction continued without meeting

requirements, "the County will consider this road to be a private road for the use of the property owners and their heirs." (Am. Compl. ¶ 35; R. at ___; Ex. 1(E) to Am. Compl.; R. at ___).

Later, the "Jurisdiction Information" document related to John Ballam Road showed that the maintenance jurisdiction was "Private" until it was crossed out and mistakenly replaced with "Public" after the road and surrounding property were annexed into Mt. Pleasant. (Ex. 1(F) to Am. Compl.; R. at ___).

The County's own 30(b)(6) witness, Wesley Linkler, testified that:

- "Prior to 1996... the maintenance responsibility was assumed to be private" (Linkler Dep. 36:1-3; R. at ___);

- The County would not maintain roads "until it's been constructed to a county standard" (Linkler Dep. 36:12-13; R. at ___);

- In 1993, the County told property owners: "the county will consider this road to be a private road for the use of the property owners and their heirs" (Linkler Dep. 39:14-16; R. at ___).

F. Appellants Maintained the Road as Private and Received Consistent Government Representations Confirming Private Status

Since the October 24, 1986, plat was recorded, the Appellants and their families have maintained John Ballam Road without any contribution from the Respondents, except for paving, which the Appellants testified they did not request and were unaware was happening until it was completed. (Am. Compl. ¶ 34; R. at ___; Exhibit 1, Henry Bailem Affidavit ¶ 14; R. at ___).

Appellants and their families have never received postal delivery or school bus service on the road, with only one exception for a child suffering from sickle cell anemia. They only began receiving waste disposal services after annexation into Mount Pleasant on April 11, 1995. (Am. Compl. ¶ 39; R. at ___; Henry Bailem Affidavit ¶ 18; R. at ___).

Most critically, governmental officials repeatedly told Appellants the road was private:

Henry Bailem's testimony:

• In the 1990s, County officials told him "it's a private road" and "you don't have to worry about it. It's a private road. It's in the book as a private road." (Henry Bailem Dep. 35:2-36:13; R. at ___).

• As late as 2017, the Town of Mount Pleasant refused a developer access to John Ballam Road, telling him "he didn't have access to John Ballam Road" because it was "a private road." (Henry Bailem Dep. 42:24-43:24; R. at ___).

Diane Jefferson's testimony:

• County employee "John" initially argued the road was public, but after checking records with a colleague, "came back, and said, 'You're correct'" that John Ballam Road was private. (Diane Jefferson Dep.12:6-20; 14:15-21; 21: 23-22:9, R. at ___).

• She was told the road was "a private road dedicated to the property owners" and given official documents to that effect. (Id.).

• Multiple meetings with government officials where "County and Town of Mount Pleasant officials say the road is a private road. We made a mistake." (Id.).

For decades after 1986, the Bailem family continued to use John Ballam Road as their private access, maintaining exclusive control. Only when developer DRB purchased adjacent property and sought to use "their" road did the Appellants investigate and discover the unauthorized dedication language. (Am. Compl. ¶¶ 41-42; R. at ___).

STANDARD OF REVIEW

This Court reviews the grant of summary judgment de novo, applying the same standard as the trial court. *Isaac*, 445 S.C. at 532, 915 S.E.2d at 496. Summary judgment is appropriate only when "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), SCRCP.

"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,* 445 S.C. at 533, 915 S.E.2d at 496. "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.*

However, "[w]hen 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).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Middleborough Horizontal Prop. Regime Council of Co.-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995). "Summary judgment should be granted only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable. This is true even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusion to be drawn therefrom." *MacFarlane v. Manly*, 274 S.C. 392, 395, 264 S.E.2d 838, 840 (1980).

The Court's review of a Rule 59(e) motion is also conducted de novo. *Elam v. S.C. DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004). A Rule 59(e) motion offers "one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." Id. at 21-22, 602 S.E.2d at 778-79.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE ALLEGED PUBLIC DEDICATION.

A. The Summary Judgment Standard Requires Viewing All Evidence and Reasonable Inferences in the Light Most Favorable to Appellants.

The trial court's Order fundamentally fails to apply the correct summary judgment standard. When reviewing a motion for summary judgment, the court must view all evidence and all reasonable inferences in the light most favorable to the non-moving party—here, Appellants. *Isaacs,* 445 S.C. at 533, 915 S.E.2d at 496.

The trial court's order repeatedly fails to do so. Instead of viewing the evidence favorably to Appellants, the order:

• Dismisses testimony regarding signature irregularities without proper consideration;
• Ignores the County's contradictory contemporaneous records;
• Fails to acknowledge extensive testimony about the family's true intent;
• Incorrectly weighs credibility and resolves factual disputes in favor of Respondents;
• Ignores evidence of the County's decades-long claims that the road was private.

These failures require reversal. "Summary judgment should be granted only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable. This is true even when there is no dispute as to the evidentiary facts if there is a dispute as to the conclusion to be drawn therefrom." *MacFarlane v. Manly*, 274 S.C. at 395, 264 S.E.2d at 840 (1980). Here, even if certain evidentiary facts are undisputed, multiple genuine disputes exist as to the conclusions to be drawn—disputes that must be resolved by the factfinder at trial, not by the court on summary judgment.

B. Substantial Evidence Raises Genuine Issues Regarding the Authenticity of the Signatures on the 1986 Plat

Appellants presented specific, detailed testimony challenging the authenticity of all three signatures on the recorded 1986 plat. This evidence, which must be viewed in the light most favorable to Appellants, raises genuine issues of material fact that preclude summary judgment.

<u>1. Rebecca Jefferson Was Blind and Could Not Have Signed Her Name.</u>

The most compelling evidence of signature irregularities concerns Rebecca Jefferson. The undisputed deposition testimony establishes that Rebecca Jefferson was "permanently blind" before 1985 due to diabetes. (Henry Bailem Dep. 57: 3-21; R. at ___). Yet the 1986 plat purports to bear her full signature—"Rebecca Jefferson."

This is directly contradicted by Rebecca Jefferson's signature on deeds executed at or near the same time. When she executed a deed in 1988 (just two years after the plat), she properly signed with

an "X" accompanied by the notation "This is my mark." (Plaintiffs' Mem. Ex. B; R. at ___). This is the legally recognized method for a blind person to execute documents.

The trial court dismissed this evidence, stating that "it is blackletter law that blind individuals are capable of signing written instruments." (Order at 17). But this misses the point entirely. The issue is not whether blind people can sign documents—of course, they can. The issue is that Rebecca Jefferson consistently signed documents with an "X" because she was blind, yet the 1986 plat shows a full signature.

When viewed in the light most favorable to Appellants, this evidence creates a genuine issue regarding whether Rebecca Jefferson actually signed the 1986 plat. At minimum, it raises sufficient questions to require a fact-finder to determine what actually happened.

2. Estelle Capers' Signature Is Inconsistent with Her Established Signing Practice

Similar issues are present with Estelle Capers' signature. The testimony shows that Ms. Capers regularly signed official documents as "Estelle Bailem Capers," including her middle name "Bailem." (Deposition of Henry Bailem, pp. 26:15-27:15; R. at ___; Plaintiffs' Mem. Ex. B; R. at ___).
Yet the 1986 plat shows only "Estelle Capers"—without the middle name she routinely used.

The trial court dismissed this evidence by noting that Ms. Capers signed an affidavit in this case as "Estelle Capers" without her middle name. (Order at 17). However, this raises, rather than resolves, a factual dispute. Why would Ms. Capers sign the 1986 plat differently than she signed contemporaneous deeds? The fact that she signed an affidavit decades later in a different manner does not eliminate the factual question about what happened in 1986.

This is precisely the type of factual dispute that must be resolved by a fact-finder after a trial, not disposed of on summary judgment.

3. Henry Bailem Jr.'s Signature Does Not Match His Known Signature.

Henry Bailem IV testified that he knew his father's signature, and the signature on the 1986 plat "don't look like my daddy's signature." (Deposition of Henry Bailem, pp. 26:15-27:15; R. at ___). The trial court dismissed this evidence, stating "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." (Order at 17).

This finding is clearly erroneous. Henry Bailem IV is the son of Henry Bailem Jr. Sons are intimately familiar with their fathers' signatures, particularly in family property matters. Moreover, the trial court's requirement of "expert witnesses" for signature comparison improperly heightens the standard for surviving summary judgment. A son's testimony that his father's signature "don't look like" the signature on the plat easily meets the standard for review of factual disputes at the summary judgment stage. *Isaacs,* 445 S.C. at 533, 915 S.E.2d at 496.

4. <u>The Plat Lacks Witnesses Despite Being a Property Conveyance.</u>

Compounding these signature issues, the 1986 plat entirely lacks witnesses. The deeds executed by these same individuals at the same time all bear witness signatures, as required by law for property conveyances. (Plaintiffs' Mem. Ex. B; R. at ___). Yet the plat—which purports to effect a dedication of property—has no witnesses whatsoever.

This creates an additional factual question: How could these individuals have signed the plat at the same time they signed witnessed deeds, yet the plat somehow lacks any witnesses?

5. <u>Diane Jefferson's Testimony About "Signature Transfer."</u>

Diane Jefferson provided detailed testimony about conversations with surveyor Pennington regarding the transfer of signatures from one plat to another. When she asked Pennington about adding a fifth lot, "I asked him if he needed them to sign again. His response to me was he did not need to have them sign again. The signatures from before could go to this document." (Diane Jefferson Dep. pp. 47:23-48:2; R. at ___).

She further testified that Pennington said he could "transfer them" and that this was "common practice." (Diane Jefferson Dep. p. 48:3-20; R. at ___). The trial court dismissed this testimony as "inadmissible under numerous rules of evidence, including but not limited to hearsay and lack of personal knowledge." (Order at 17).

This finding is erroneous. First, at the summary judgment stage, the court must consider whether the evidence "will be" admissible at trial, not whether it is in admissible form in the summary judgment record. Second, even if some portions are hearsay, Mrs. Jefferson's personal knowledge that she asked about signatures and was told they would be "transferred" is not hearsay. Most importantly, this testimony—viewed in the light most favorable to Appellants—creates a genuine factual dispute about how the signatures came to appear on the plat.

6. <u>The County Lacks Any Evidence of Signature Authenticity.</u>

The County's own 30(b)(6) witness admitted the County has no evidence regarding how the signatures came to be on the plat:

> "I'm not aware of anybody in the county being present when it was signed by the property owners" (Linkler Dep. p: 22: 23-24; R. at ___);
>
> "No one from the county witnessed it." (Linkler Dep. pp. 24: 23- 25:1; R. at ___);
>
> "We would have to rely on the professional stamp of the surveyor." (Linkler Dep. 25:23-24; R. at ___).

This admission—that the County has no independent evidence of the signatures' authenticity and must simply "rely on" the surveyor—creates a genuine issue of fact when combined with Appellants' evidence challenging the signatures.

7. <u>The Trial Court Improperly Applied the Parol Evidence Rule.</u>

The trial court stated that "even considering Appellants' 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." (Order at 16).

This application of the parol evidence rule is erroneous. The parol evidence rule prevents parties from contradicting the terms of an integrated written agreement. But here, Appellants are not trying to "vary" the terms of the plat—they are challenging whether the plat was ever validly executed in the first place.

Evidence that a signature is forged or that a party never signed a document is not barred by the parol evidence rule. See, e.g., *Able v. Equitable Life Assurance Soc*, 186 S.C. 381, 391, 195 S.E. 652, 656 (1938) ("It involves the logical adjustment upon sound principle or principles of two distinct policies of the law. One is that no person should be permitted to found an enforceable right upon fraud; the other is that the public interests require that commercial transactions be safeguarded, negligence discouraged, and the opportunity for and temptation to perjury minimized, by attaching to a written contract a certain conclusive force or artificial sanctity as the memorial of the transaction it purports to evidence." The parol evidence rule assumes a validly executed document; it does not prevent a party from showing the document was never properly executed.

8. Summary Judgment Was Inappropriate Given These Factual Disputes.

Viewing all this evidence in the light most favorable to Appellants, genuine issues of material fact clearly exist regarding whether the property owners actually signed the 1986 plat. These issues include:

- Whether Rebecca Jefferson, who was blind and signed documents with an "X," actually signed her full name on the plat;
- Whether Estelle Bailem Capers, who consistently used her middle name on official documents, actually signed without it;
- Whether Henry Bailem Jr. truly signed the plat or if the signature belongs to someone else.
- Whether Pennington or his draftsperson "transferred" signatures from one plat to another;
- Whether the lack of witnesses suggests the signatures are not genuine.

These are quintessential questions of fact that must be resolved by the fact-finder after hearing testimony, observing witnesses, and weighing credibility. They cannot be resolved on summary

judgment by simply accepting the Respondents' position and dismissing Appellants' evidence as insufficient.

C. The County's Own Contemporaneous Records Create a Genuine Issue of Fact Regarding the Nature of Any Dedication

Even if the signatures were authentic—which Appellants dispute—the County's own contemporaneous records create a separate, independent genuine issue of fact regarding what type of dedication, if any, was intended or approved.

1. The County's October 10, 1986 Letter.

On October 10, 1986—just 14 days before the plat was recorded—the Charleston County Clerk of Council sent a letter to surveyor Pennington stating the results of the October 7, 1986 County Council meeting. This official letter explicitly states: "a 50' right-of-way will be dedicated to the property owners." (Am. Compl. ¶ 31; Ex. 1(C) to Am. Compl; R. at ___) (emphasis added).

This contemporaneous official correspondence directly contradicts the dedication language on the recorded plat, which states dedication "for the use of the public forever." The trial court acknowledged this contradiction but failed to give it proper weight. The court stated that "this is consistent with the notion that the acceptance of the Road was contingent upon the Road being brought to County standards." (Order at 22).

But this explanation doesn't make sense. The letter doesn't say the road will be dedicated to the public once standards are met. It says the road "will be dedicated to the property owners"—a fundamentally different type of dedication.

2. The September 29, 1986, Staff Recommendation.

Similarly, the County Planning Staff recommendation from September 29, 1986, states that "a 50' right-of-way will be dedicated to the property owners." (Am. Compl. ¶ 29; Ex. 1(C) to Am. Compl.)R. at ___) (emphasis added).

This was not some minor clerical error. This was the official staff recommendation to County Council regarding what type of dedication would occur. When County staff recommended approval of "dedication to the property owners," and County Council then approved the subdivision, what was actually approved?

3. <u>County Council's Actual Approval</u>

The County's own 30(b)(6) witness testified that County Council approved a subdivision "with a private dedication" to "the property owners." (Linkler Dep. 18:16-20; R. at ___). When asked whether there was any council action approving public dedication, he could identify none, admitting he had "not seen any other council minutes" approving it. (Linkler Dep. 18:25-19:4; R. at ___). Mr. Linkler also explicitly acknowledged: "There is a discrepancy between the letter and the plat recorded at BK 135…" (Linkler Dep. 19:11-13; R. at ___).

4. <u>Pennington's Admission</u>

Even the surveyor admitted the problem. When asked during his deposition:

Q: So you recorded a plat that was not approved by County Council?

A: Apparently so.

(Pennington Dep. 96:17-19; R. at ___).

5. <u>These Discrepancies Create Genuine Issues of Fact</u>

These contemporaneous County records create genuine issues of material fact that preclude summary judgment:

- What did County Council actually approve—dedication to the property owners or dedication to the public?
- If Council approved dedication to the property owners, how did dedication to the public end up on the recorded plat?
- Can there be valid public dedication when the governmental body approving the plat approved only private dedication?
- Does the County's official letter stating dedication "to the property owners" evidence the County's understanding of what was being dedicated?

The trial court's Order fails to adequately grapple with these questions. Instead of recognizing them as genuine issues requiring fact-finding, the court dismissed them with an explanation that doesn't address the fundamental contradiction. When the County's own contemporaneous official records state that dedication was "to the property owners," and the County's own witness admits a "discrepancy," genuine issues of fact exist that prevent entry of summary judgment.

D. Testimony Regarding Lack of Authorization and Intent Creates Genuine Issues for Trial

Beyond the signature and County records issues, extensive testimony establishes that the family never intended or authorized public dedication. This testimony creates additional genuine issues of fact.

1. Henry Bailem's Testimony

Henry Bailem IV testified that the road "was always to the family, not to public," and when he participated in instructing the subdivision, he specified the road should be "to the family, to the use of the family, the Bailem family forever, not the public." (Henry Bailem Dep. 17:10-19; R. at ___).

2. Diane Jefferson's Testimony

Diane Jefferson, who dealt directly with surveyor Pennington, provided extensive testimony that she gave explicit instructions that the property should be "subdivided and have it dedicated to the property owners." "Dedicated to the property owners... was the stipulation." She witnessed the property owners signing "a document that had a statement that says: 'I hereby dedicate to the property owners'." She never saw or approved the final plat with public dedication language. The property owners never consented to public dedication. When she requested adding a fifth lot, she specifically asked Pennington to maintain "the same setup" with dedication "to the property owners." (Diane Jefferson Dep. 10:25-11:6, 11:22-24, 12:2-11; R. at ___).

3. The Surveyor's Limited Authority.

Pennington was hired solely to create a private family subdivision, not to dedicate public roads. (Dep. of D. Jefferson, pp. 10:5-17; R. at ___). No family member authorized Pennington to include public dedication language. (Dep. of H. Bailem, pp. 34:8-17; R. at ___). The family's consistent understanding was that this would remain a private road for family use. (Am. Compl. ¶¶ 25, 53; R. at ___).

4. <u>Nothing in the Record Shows Authorization for Public Dedication</u>

Critically, nothing in the entire record shows that any family member ever authorized, requested, or intended public dedication. Respondents presented no evidence that anyone instructed Pennington to include public dedication language. No evidence shows that any client requested public dedication.

5. <u>These Intent Issues Must Be Resolved by the Fact-Finder</u>

Public dedication requires proof that the owner "clearly, convincingly, or unequivocally intended to dedicate the property for public use." *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). When property owners and their representatives testify that they never intended public dedication, never authorized it, and specifically instructed private dedication, a genuine issue of fact about intent exists.

This is not a case where the property owners are silent or where their intent is ambiguous. Multiple witnesses have testified under oath about the family's actual intent. Whether their testimony is credible, whether it outweighs the language on the recorded plat, and what the family actually intended are classic questions of fact for the factfinder.

The trial court erred in resolving these disputed facts on summary judgment rather than allowing them to be presented to the fact-finder at trial.

II. THE TRIAL COURT ERRED IN FINDING THAT RESPONDENTS ESTABLISHED A VALID PUBLIC DEDICATION AS A MATTER OF LAW

Even if no factual disputes existed—and many do—the trial court erred in finding that Respondents established valid public dedication as a matter of law. Public dedication in South Carolina requires meeting stringent standards that Respondents failed to meet.

A. Public Dedication Requires Strict, Cogent, and Convincing Proof of the Owner's Clear, Convincing, or Unequivocal Intent to Dedicate to Public Use

"[D]edication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing. The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate the property for public use." *Mack*, 320 S.C. at 239, 464 S.E.2d at 126.

This heightened standard exists because dedication effects a transfer of property rights without compensation. It is an "exceptional mode" of conveyance that courts must scrutinize carefully to ensure the property owner truly intended to relinquish property rights. "Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication… [T]he burden of proof to establish dedication is upon the party claiming it." *Town of Kingstree v. Chapman*, 405 S.C. 282, 302, 747 S.E.2d 494, 504 (Ct. App. 2013). Both elements must be proved by the party claiming dedication. *Id.*

"Dedications being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing, and the acts proved must not be consistent with any construction other than that of a dedication." *Shia v. Pendergrass*, 222 S.C. 342, 348-49, 72 S.E.2d 699, 702 (1952). "It is not a trivial thing to take another's land, and for this reason, the courts will not

lightly declare a dedication to public use." *Shia*, 222 S.C. at 348, 72 S.E.2d at 702, citing *City and County of San Francisco v. Grote,* 120 Cal. 59, 52 P. 127, 128, 41 L. R. A. 335, 65 Am. St. Rep. 155.

B. The County Failed to Meet Its Burden of Proving Valid Public Dedication

The County bore the burden of proving dedication by "strict, cogent, and convincing" evidence. Mack, 320 S.C. at 239, 464 S.E.2d at 126. It failed to meet this burden.

1. <u>The Evidence Does Not "Clearly, Convincingly, or Unequivocally" Show Intent to Dedicate to Public Use.</u>

The evidence, viewed in the light most favorable to Appellants, does not clearly, convincingly, or unequivocally show intent to dedicate to public use. The County's own October 10, 1986 letter states dedication "to the property owners"—not to the public. The County's own September 29, 1986 staff recommendation states dedication "to the property owners." The County's own 30(b)(6) witness testified that the County Council approved private dedication "to the property owners" and could identify no council action approving public dedication. Every family member who testified stated they never intended public dedication. Diane Jefferson specifically instructed private dedication "to the property owners." No evidence shows anyone authorized or requested public dedication. The surveyor admitted he recorded a plat "that was not approved by County Council." The surveyor has no memory of this work and testified that an unknown draftsperson created the plat. Serious questions exist regarding signature authenticity.

This evidence is not "consistent with [no] construction other than that of a dedication." *Mack*, 320 S.C. at 239, 464 S.E.2d at 126. To the contrary, it is entirely consistent with the Bailem family's position that they intended private dedication for family use only.

2. <u>The County's Own Contradictory Records Undermine Any Claim of Public Dedication</u>

When the County's official records state dedication "to the property owners," the County cannot now claim "strict, cogent, and convincing" proof of public dedication. The October 10, 1986, letter is not an informal memo or staff note; it is official correspondence from the County Clerk of

Council to the surveyor, stating the result of the County Council's action. If the County Council approved dedication "to the property owners," and this was communicated in official correspondence, how can the County now claim the family "clearly, convincingly, or unequivocally" intended public dedication?

The County's position requires this Court to accept that:

- County staff recommended private dedication;
- County Council approved private dedication;
- County Clerk wrote that private dedication was approved;
- But somehow the family actually intended public dedication.

This strains credulity and certainly does not meet the "strict, cogent, and convincing" standard.

3. The County's Post-1986 Treatment of the Road as Private Further Undermines Public Dedication

Even the County's own post-1986 conduct contradicts public dedication. The County's 30(b)(6) witness testified that prior to 1996, the maintenance responsibility was assumed to be private. (Linkler Dep. 36:4-24; R. at ___). In 1993, the County told property owners: "the county will consider this road to be a private road for the use of the property owners and their heirs" (Linkler Dep. 39:14-16; R. at ___). If the County itself treated the road as private for years after 1986, this further undermines any claim that the family "clearly, convincingly, or unequivocally" intended public dedication in 1986.

4. Respondents' Reliance on the Plat Alone Is Insufficient

Respondents essentially argue that the dedication language on the plat, standing alone, satisfies their burden. But this ignores the heightened standard for proving dedication and the extensive contradictory evidence. 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 a 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).

But here, there is abundant "evidence of a contrary intent."

- The family's testimony of contrary intent;
- The County's own records showing contrary intent;
- The surveyor's lack of authorization;
- Questions regarding signature authenticity.

This is not a case where the plat stands alone as the only evidence of intent. It is a case where the plat conflicts with substantial other evidence. When such conflict exists, the plat alone cannot satisfy the "strict, cogent, and convincing" standard.

C. The Surveyor Lacked Authority to Dedicate the Road

Public dedication requires the property owner's intent to dedicate. The owner's agent—here, the surveyor—can only bind the owner to the extent the owner authorized.

The testimony before the court established that Pennington was hired to create a private family subdivision (Dep. of J. Pennington, p. 11:10-15; R. at ___; Dep. of D. Jefferson, pp. 10:5-10; R. at ___). No family member authorized Pennington to include public dedication language (Dep. of H. Bailem, pp. 34:8-17; R. at ___); Diane Jefferson specifically instructed Pennington to dedicate to "the property owners" (Diane Jefferson Dep.; R. at ___).

Nothing in the record shows anyone requested or authorized public dedication.

An agent acting beyond his authority cannot bind the principal. Here, if Pennington included public dedication language without authorization—as all the evidence suggests—that unauthorized act cannot effect a valid dedication.Respondents argue that Pennington testified he does what clients request. (Dep. of J. Pennington, p. 36:4-6; R. at ___). But this actually supports Appellants—if Pennington does what clients request, and no client requested public dedication, then public dedication was not authorized.

The trial court's Order does not adequately address this authority issue. It simply assumes that because Pennington put dedication language on the plat, the dedication was authorized. But this inverts the burden of proof. Respondents must prove the dedication was authorized, not simply assume it.

D. The Signatures on the 1986 Plat Are Invalid and Unwitnessed

As discussed in detail in Section I.B above, substantial evidence calls into question the authenticity of the signatures on the 1986 plat. This creates an independent ground for finding no valid dedication. Beyond the authenticity questions, the plat entirely lacks witnesses. Property conveyances in South Carolina require witnesses. The deeds executed by these same individuals at or near the same time all bear witness signatures. (Plaintiffs' Mem. Ex. B; R. at ___). Yet the plat has none.

The trial court did not address this issue. If the plat effects a dedication of property—a form of conveyance—how can it be valid without witnesses? The law requires certain formalities for property conveyances to ensure the solemnity of the transaction and prevent fraud. The complete absence of witnesses on the 1986 plat raises serious questions about its validity as a conveyance. Moreover, the trial court's reliance on the parol evidence rule and its statement that signatories cannot avoid documents by claiming they didn't read them misses the point. See *Able*, 186 S.C. at 391, 195 S.E. at 656.

These principles apply when a party has actually signed a document but claims ignorance of its contents. They do not apply when a party presents evidence that they never signed the document at all or that the signatures are not theirs. Evidence of forgery or signature invalidity is not barred by the parol evidence rule or by principles holding parties to documents they signed. Appellants are not arguing "we signed but didn't read it." They are asserting, "these are not our signatures" and "we never authorized this."

E. The County Failed to Properly Accept Any Alleged Public Dedication

Even if some form of dedication was validly offered—which Appellants dispute—the County failed to properly accept it. Acceptance is a separate, independent element of dedication that must be proved. *Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504. Express or implied acceptance of the dedication may be evidenced either by general public use or by acts of the public authorities *Giles v. Parker*, 304 S.C. 69, 73, 403 S.E.2d 130, 132 (Ct. App. 1991).

"The mere fact the County approved the plat does not constitute an acceptance of the proposed dedication. The nonassessment of taxes is a factor in the determination of dedication and acceptance. The payment of taxes on disputed property is evidence contrary to the intent to dedicate property to the public….It is the duty of the fact finder to determine whether or not the public dedication has been accepted." *Town of Kingstree*, 405 S.C. at 303, 747 S.E.2d at 504 (internal citations omitted).

1. <u>The County's 1994 "Acceptance" Was Defective</u>

The County claims it accepted the road in 1994 when the County Council approved adding the road to the County's maintenance system. But the County's own witnesses' testimony undermines this claim. He could not identify any evidence that property owners requested the County accept the road for maintenance (Linkler Dep. 41:6-23; R. at ___). He admitted the County could have put the road on the acceptance list itself without any request from property owners (Linkler Dep. 30:23-25; R. at ___). He testified that even after 1994, the maintenance responsibility was assumed to be private. (Linkler Dep. 36:1-3; R. at ___). The County would not actually maintain roads "until it's been constructed to a county standard" (Linkler Dep. 36:12-13; R. at ___).

This evidence shows the 1994 action was not a clear acceptance of public dedication. At most, it was conditional—contingent on the road meeting County standards, which it did not. When a governmental entity's own conduct after alleged "acceptance" is inconsistent with actual acceptance

(treating the road as private, not maintaining it, telling owners it's private), genuine questions exist about whether effective acceptance occurred.

2. The County Presented No Evidence of Property Owner Consent to Acceptance.

Critically, nothing in the record shows the property owners requested, consented to, or were even aware of the County's 1994 action. The County's witness admitted he had no evidence of any request from property owners. (Linkler Dep. 41:11, 41:14; R. at ___). This matters because the alleged dedication on the 1986 plat was conditioned on the road meeting County standards. The 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." (R. at ___). If the dedication was conditional, acceptance cannot occur unilaterally without the property owners' involvement. Yet the record contains no evidence the property owners were consulted, notified, or involved in any way with the 1994 acceptance.

3. The County's Treatment After 1994 Was Inconsistent with Public Ownership

Even after the alleged 1994 acceptance, the County's treatment was inconsistent with public ownership. The County told property owners in 1993 (just before the alleged acceptance): "the county will consider this road to be a private road for the use of the property owners and their heirs" (Linkler Dep. 39:14-16; R. at ___). The road was annexed to the Town, and Mr. Linkler testified that maintenance responsibility transferred to the Town, not the County (Linkler Dep. 50:17-18; R. at ___). Mr. Linkler testified that upon annexation, "the right-of-way became town right-of-way, not unincorporated county right-of-way" (Linkler Dep. 51:15-17; R. at ___). This evidence suggests the County's "acceptance" was temporary at best and never ripened into actual public ownership.

4. The Town Never Accepted the Road

The Town of Mount Pleasant did not exist as a party to this case until 2024. The road was annexed into the Town in 1995, yet the record contains no evidence the Town ever formally accepted

the road as public. The trial court's Order does not adequately address whether the Town properly accepted the road. It simply assumes that because the road was annexed, acceptance transferred. But annexation alone does not equal acceptance of public dedication.

III. THE TRIAL COURT ERRED IN APPLYING THE STATUTE OF LIMITATIONS TO BAR APPELLANTS' CLAIMS

The trial court found Appellants' claims barred by both the ten-year statute in S.C. Code Ann. § 15-3-340 and the three-year statute in S.C. Code Ann. § 15-3-530(7). Both findings are erroneous.

A. This Is Not an Action for Recovery of Real Property Under S.C. Code Ann. § 15-3-340

The trial court applied S.C. Code Ann. § 15-3-340, which provides: "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."

This statute, by its clear terms, applies to actions "for the recovery of real property" or "for the recovery of the possession of real property." This is not such an action. Appellants currently have possession of John Ballam Road. They have always possessed it. They maintain it. They use it. They have never lost possession. No one has taken it from them. This case involves a request for a declaratory judgment and to quiet title—to establish that the property Appellants already possess is legally theirs, free from adverse claims. It is not a case to "recover" property or "recover possession" of property they have lost.

The trial court confused ownership with possession. § 15-3-340 begins when the plaintiff "was seized or possessed of the premises." Appellants have always been in possession of the road. The ten-year period has not expired because they never lost possession.

Moreover, the trial court's application of § 15-3-340 would lead to absurd results. Under the court's reasoning, a property owner who is told by government officials for decades that property is

private, who maintains exclusive possession and use, and who only discovers an adverse claim when a developer seeks access, would be time-barred simply because a plat was recorded long ago—even if the property owner never knew about the plat or the adverse claim.

This cannot be the law. Statutes of limitations exist to prevent stale claims and encourage diligent assertion of rights. *Logan v. Cherokee Landscaping & Grading Co.,* 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010). But they do not bar claims before the plaintiff knows or should know a claim exists or before any such claim even begins to run.

B. The Discovery Rule Applies and Creates Issues of Fact Inappropriate for Summary Judgment

The trial court held that even if the three-year statute in § 15-3-530(7) applied, Appellants' claims would still be time-barred. In doing so, the court misapplied the discovery rule. S.C. Code Ann. § 15-3-530(7) provides a three-year statute of limitations for "any action for relief on the ground of fraud," with "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.

> 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. 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.

Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996)(internal citations omitted).

"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).

1. <u>The Trial Court Failed to Apply the Discovery Rule Correctly</u>

The trial court stated that "it is uncontroverted that Plaintiffs knew others claimed the Road was public at least by 2017," and therefore the three-year statute expired in 2020. (Order at 11).

This finding is mistaken for several reasons. First, even under the trial court's own finding, Appellants did not know of the adverse claim until 2017 at the earliest. H. Bailem filed suit in February 2023—less than six years later. The fact that the remaining Appellants were not added until June 2024 does not change the analysis, as the claims relate back and involve the same property and the same issues.

Second, and more importantly, the trial court's finding that Appellants "knew others claimed the Road was public" in 2017 is contradicted by the evidence. In 2017, the Town of Mount Pleasant told a developer he could not use John Ballam Road because it was a private road. (Henry Bailem Dep.; R. at ___). So in 2017, governmental officials were still telling people the road was private. This confirms Appellants' position; it does not put them on notice of an adverse claim.

Third, the trial court's Order fails to account for decades of affirmative misrepresentations by County officials that the road was private. This is not a case where Appellants simply failed to investigate. It is a case where they repeatedly asked, were repeatedly told the road was private, and reasonably relied on those official representations.

2. Whether Appellants Knew or Should Have Known of the Adverse Claim Is a Question of Fact

"The date on which discovery should have been made is an objective, not subjective, question." *McAlhany*, 415 S.C. at 63, 781 S.E.2d at 110 (Ct. App. 2015). But determining that date requires fact-finding regarding:

- What did Appellants know?
- What were Appellants told by government officials?
- What did government officials actually believe about the road's status?
- When did government officials first assert the road was public in a manner adverse to Appellants' rights?
- Did Appellants act with reasonable diligence given what they knew and were told?

These are classic questions of fact inappropriate for summary judgment. Different factfinders could reasonably reach different conclusions based on the evidence in this case. The trial court erred

in resolving these disputed factual issues on summary judgment rather than allowing them to be presented to the factfinder.

C. The County's Contradictory Conduct and Representations Prevented Discovery of Any Adverse Claim Until Recent Years

The critical fact the trial court's Order ignores is that the County's own conduct over decades prevented Appellants from discovering any adverse claim. Viewing this evidence in the light most favorable to Appellants, they reasonably relied on consistent government representations over decades that the road was private.

This is not a case of neglect or failure to investigate. Appellants repeatedly asked about the road's status. They repeatedly received official confirmation it was private. They acted on that information by continuing to maintain the road and treating it as their own.

The trial court's suggestion that Appellants should have known better when the road was paved in 2002 ignores the context. The paving occurred after County workers damaged the road. County officials told D. Jefferson they were repairing damage they caused, not asserting ownership. (Diane Jefferson Dep.; R. at ___). She specifically testified: "It was never no discussion about paving the road because the road was taken over or anything like that; it was to put back a road in the place of the road that was there." (Id.).

When governmental entities affirmatively misrepresent the status of property, property owners who rely on those representations act reasonably. The statute of limitations does not begin to run until the property owner knows or should know of the adverse claim—not when a government entity first makes a misrepresentation that conceals the adverse claim.

2. <u>At a Minimum, Fact Issues Exist</u>

Even if this Court believes the statute of limitations might bar some or all of Appellants' claims, that determination cannot be made on summary judgment. Too many factual disputes exist:

- When did Appellants know or should have known of the adverse claim?

- Did County officials' repeated representations that the road was private prevent earlier discovery?
- Should Appellants have investigated further despite consistent official representations?
- When did governmental entities first clearly assert public ownership in a manner adverse to Appellants' rights?

These questions require fact-finding and cannot be resolved on summary judgment.

IV. THE TRIAL COURT ERRED IN FINDING THAT THE DOCTRINE OF LACHES BARS APPELLANTS' CLAIMS

A. Laches Requires Unreasonable Delay Resulting in Prejudice

"Laches is an equitable doctrine defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant. *Kelley v. Kelley*, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App. 2006). *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007). "The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (2004) (emphasis added).

"Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches." *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988). The burden is on the party asserting laches to prove all three elements.

Here, Respondents failed to meet that burden.

B. Appellants' Delay Was Reasonable Given the County's Contradictory Representations

The trial court found that Appellants unreasonably delayed in asserting their rights. This finding is clearly erroneous and fails to consider the County's own conduct that caused and explained the delay.

1. The County's Contradictory Position Explains the Delay

Appellants' delay in challenging the road's status is entirely explained by the County's contradictory documentation and conduct over decades.

As detailed in Section III.C above, County officials repeatedly told Appellants the road was private. When governmental entities repeatedly confirm a road's private status over decades, property owners reasonably rely on those official representations. Appellants did not "neglect" to assert their rights—they reasonably believed, based on consistent official representations, that their rights were not being challenged.

The trial court's reliance on *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010), is misplaced. In *Robinson*, the plaintiffs knew about documents establishing the defendants' title but simply delayed in challenging them. Here, by contrast, Appellants were affirmatively misled by government officials into believing the road was private. The key distinction is that in *Robinson*, the plaintiffs' delay was unexplained. Here, the delay is entirely explained by the County's contradictory conduct.

2. Laches Does Not Apply When the Defendant's Own Conduct Caused the Delay

The equitable doctrine of laches cannot apply when the defendant's own conduct caused or contributed to the delay. The County cannot create a plat that contradicts what it previously approved, tell Appellants for decades that the road is private, refuse to maintain the road in a manner consistent with public ownership, affirmatively represent to third parties that the road is private, and then claim that Appellants unreasonably delayed in asserting their rights. This is especially true since laches is an equitable doctrine. Equity does not allow a party to benefit from its own misconduct. When the County's contradictory actions over the years caused Appellants' delay, equity prevents the County from now invoking laches.

3. "Delay Alone" Does Not Constitute Laches

Delay alone in asserting a right does not constitute laches." Hallums, 296 S.C. at 199, 371 S.E.2d at 527. The trial court's order mainly considers the time elapsed since 1986. However, delay by itself does not prove laches. The delay must be unreasonable and cause prejudice. Here, because the County repeatedly stated that the road was private, the delay was not unreasonable. Property owners who receive consistent official confirmation of their property rights over decades act reasonably in relying on those statements.

C. Respondents Cannot Establish Prejudice

Respondents must prove not just delay, but that the delay resulted in prejudice. *Emery*, 361 S.C. at 215, 603 S.E.2d at 602. They failed to meet this burden.

1. The County Cannot Claim Prejudice

The County cannot claim prejudice from maintenance expenditures when those expenditures were made with knowledge of the ambiguous nature of the dedication (the County's own 1986 records stated dedication "to the property owners"), the County's own conduct created the ambiguity and delay and the expenditures were largely to repair damage the County itself caused (both Bailem and Jefferson testified the County "tore the road up" when cleaning ditches).

Diane Jefferson specifically testified that County engineer Hasell told her: "Mrs. Jefferson, we came in here, and those trees were there, and we had to get those trees out, and we destroyed your road. We have to put your road back in at least the condition it was in or in better condition." (Diane Jefferson Dep. 21:8-22; R. at ___). When a governmental entity's expenditures are to repair its own damage, it cannot claim prejudice from those expenditures.

Moreover, the County continued to treat the road as private even after making expenditures. The 1993 letter came after the County's initial work. If the County believed its expenditures established public ownership, why did it tell property owners in 1993 that the road would be considered private?

2. DRB's Claimed Prejudice Is Self-Inflicted

DRB claims prejudice from expenditures made in developing adjacent property. But DRB's prejudice is entirely self-inflicted. DRB chose to acquire property and develop it relying solely on the recorded plat, without contacting the Bailem family about road access, investigating the actual status and use of the road, obtaining express permission from the Bailem family, or insuring clear title to road access before spending money on development. A sophisticated commercial developer who fails to conduct adequate due diligence before spending money cannot claim prejudice when title issues later arise.

Furthermore, DRB was aware of or should have been aware of the Bailem family's claims before making significant expenditures. When DRB made its major development expenditures, the Bailem family had already objected to the use of their road. A party who moves forward with development despite known title disputes assumes the risk and cannot later claim harm.

3. At a Minimum, Prejudice Presents a Fact Question

Even if some prejudice exists, whether it is sufficient to support laches presents a question of fact:

- What expenditures were actually made?
- When were they made?
- Were they made with knowledge of the title dispute?
- Could they have been avoided through adequate due diligence?
- Were some expenditures made to repair the County's own damage?

These questions require fact-finding and cannot be resolved on summary judgment.

D. Whether Laches Applies Presents a Question of Fact Inappropriate for Summary Judgment

The trial court's application of laches on summary judgment was particularly inappropriate because "whether a claim is barred by laches is to be determined in light of facts of each case." *Hallums*, 296 S.C. at 198-100, 371 S.E.2d at 527. When multiple factual disputes exist about why the Appellants delayed, whether the delay was reasonable given government representations, whether Respondents

were prejudiced, and whether Respondents' own conduct caused the delay and prejudice, these disputes must be resolved by the factfinder, not by the court on summary judgment. The trial court erred in finding laches as a matter of law when genuine factual disputes exist regarding all three elements.

V. THE TRIAL COURT ERRED IN FINDING IMPLIED DEDICATION THROUGH DEED REFERENCES

The trial court found that even without express dedication, the road was impliedly dedicated when lots were conveyed by reference to the plat. This finding is erroneous.

A. An Invalid Express Dedication Cannot Create a Valid Implied Dedication

The trial court's implied dedication finding suffers from a fundamental logical flaw: it attempts to bootstrap an invalid express dedication into validity through subsequent deed references. If the express dedication on the 1986 plat is invalid—due to lack of authority, invalid signatures, lack of actual intent, or other defects—then that invalid dedication cannot become valid simply because later deeds reference the plat.

An invalid conveyance does not become valid through repetition or reference. If the original dedication was unauthorized and void, as Appellants contend, then all subsequent acts based on that void dedication are also void. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975), which the trial court relied upon, assumes a valid underlying plat. The case holds that when an owner subdivides land and conveys lots by reference to a plat, the streets shown on the plat are dedicated. But this principle applies only when the plat itself is valid.

Here, where the validity of the plat is disputed, Bland does not support implied dedication. The plat's defects—unauthorized dedication language, questionable signatures, lack of witnesses, contradiction with County records—infect all subsequent references to it.

B. The Deed References Were Not Dedicatory

Even assuming the 1986 plat was valid, the subsequent deed references do not establish implied dedication. The deeds state that the conveyed lots are "subject to easements" shown on the plat. They also describe the lots as bounded by "John Ballam Road." Neither of these references is necessarily dedicatory of public rights:

1. "Subject to Easements": An easement is a property interest, but not all easements are public. The statement that property is "subject to easements shown on the plat" does not specify whether those easements are public or private. Given the County's own contemporaneous records stating dedication "to the property owners," any easement could be a private easement benefiting only the property owners.

2. "Bounded by John Ballam Road": Describing property as bounded by a road simply identifies the property's location. It does not indicate whether the road is public or private. Properties can be—and often are—bounded by private roads. The trial court's reliance on "butting and bounding" language is misplaced. Property descriptions regularly use roads and streets as boundary references without implying anything about ownership of those roads.

3. The Family's Continuous Treatment Negates Dedicatory Intent: Even if deed references could create implied dedication, that principle applies only when consistent with the grantor's intent. Here, the Bailem family's continuous treatment of the road as private negates any implied dedicatory intent.

The family maintained exclusive control and use of the road, never allowed public access, maintained the road themselves, consistently claimed private ownership, and received repeated confirmation from government officials that the road was private. This behavior is completely inconsistent with the intention to dedicate it for public use. When actions clearly indicate the opposite intent, implied dedication cannot be inferred from mere deed references.

C. Intrafamily Conveyances Cannot Create Public Rights

The trial court's implied dedication theory suffers from another fundamental flaw: the deeds were intrafamily transfers, not conveyances to the public. The lots were conveyed from family members (Henry Bailem Jr., Rebecca Jefferson, and Estelle Capers) to their children and grandchildren (the current Appellants). These were gratuitous family transfers to keep the land in the family.

Implied dedication theory is based on the idea that when a developer subdivides land and sells lots to the public, the streets and common areas are presumed to be dedicated to those buyers and the public. However, this principle does not apply to intrafamily transfers of family land. No consideration was given to the public for any alleged dedication. Family members cannot dedicate each other's property through circular conveyances among themselves. The original owners' intent—to keep the land within the family with private access—remains the controlling factor. When a family subdivides land to distribute among its members and maintains exclusive family control over access roads, no public dedication occurs simply because the conveyances reference a plat.

CONCLUSION

This case involves fundamental questions about property rights, governmental authority, and the protection of longstanding family ownership. The Bailem family has owned and used this land for over 100 years—land that came into the family through Flora Ballam, a former slave who worked at Boone Hall Plantation. In 1986, seeking only to keep the land in the family by subdividing it among their children, three family members hired a surveyor to draw lot lines. What happened next remains hotly disputed: an unauthorized surveyor's act, questionable signatures, a plat that contradicted what County Council approved, and decades of government officials confirming the road was private. These are not minor technical disputes. They go to the heart of whether these property owners ever intended or authorized dedication of their family road to public use. They involve genuine questions of fact that cannot be resolved on summary judgment.

These property rights merit protection. These factual disputes warrant resolution by the fact-finder after a full trial. Summary judgment was inappropriate.

For these reasons, this Court should reverse the Orders granting summary judgment and denying reconsideration, and remand for trial on the merits.

Respectfully submitted,

s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
AUSTEN & GOWDER, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
(843) 727-0060
andy@austengowder.com

Attorney for Appellants

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