

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-03027

RECEIVED  
 NOV 15 2013  
 COURT OF APPEALS

SHEETAL, LLC OF BEAUFORT

BEAUFORT JASPER WATER & SEWER AUTHORITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CARMEN T. MULLEN	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other

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

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The Court hereby respectfully denies Plaintiff's Motion to Reconsider, Alter or Amend Judgment without a hearing.

**ORDER INFORMATION**

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

RECEIVED  
 13 OCT 11 AM 11:08  
 CLERK  
 BEAUFORT COUNTY, S.C.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2142  
 Judge Code

9-27-12  
 Date



STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
) )  
) )  
SHEETAL, LLC OF BEAUFORT, )  
) )  
Plaintiff, )  
) )  
-versus- )  
) )  
BEAUFORT JASPER WATER AND )  
SEWER AUTHORITY, )  
) )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-07-03027

ORDER

13 SEP 13 AM 9:49  
JENNIFER ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT on September 3, 2013, by way of a Motion asking the Court to strike certain causes of action in Plaintiff's complaint; and to grant Defendant Beaufort Jasper Water and Sewer Authority Summary Judgment on the basis of Defendant Beaufort Jasper Water and Sewer Authority having a prescriptive easement.

Present at the hearing were Karl Twenge, Esquire, attorney for Plaintiff Sheetal, LLC, and Scott Graber, Esquire, attorney for Defendant Beaufort Jasper Water and Sewer Authority.

Defendant's Motion was supported by three affidavits; and Plaintiff submitted one affidavit in response to the Motion. Also, Defendant submitted a Memorandum of Authorities. Both counsel then argued the merits of the matter.

After reading the affidavits, reviewing the Memorandum of Authorities, and considering the arguments of counsel the Court reaches the following.

FINDINGS OF FACT

1. In 1986 the City of Beaufort installed a sewer pipe along the southern boundary of a parcel of land consisting of 1.4 acres located in the City of Beaufort. This parcel is also known as R120-026-000-0172.

2. Frank Emminger's affidavit convinces the Court that before installation of the pipe by the City there was a meeting with the property owners and a discussion about the location of the sewer pipe. As a consequence of this meeting the pipe was then moved five (5) feet north. Frank Emminger's affidavit dated April 22, 2013.

3. The City of Beaufort intended to condemn the property; but through administrative oversight it failed to do so.

4. The affidavits submitted by Defendant Beaufort Jasper convince the Court that the City of Beaufort began operating the sewerage collection pipe and did so until 1999 when this particular pipe (and others) were purchased by Defendant, Beaufort Jasper Water and Sewer Authority. Dean Moss' affidavit dated April 21, 2013.

5. Defendant Beaufort Jasper then operated the pipeline until the present.

6. The affidavits of Joseph Devito dated April 23, 2103 and Dean Moss dated April 21, 2013, persuade the Court that the City of Beaufort and BJWSA operated and maintained the sewerage pipeline for a period of twenty-six (26) years.

7. Plaintiff Sheetal submitted a plat to this Court (at the hearing) which is dated August 19, 2010, and which appears to show the location of the pipeline across the 1.4 acres.

8. Plaintiff Sheetal then bought the 1.4 acres (R120-02-000-0172) on August 25, 2010.

9. Plaintiff Sheetal thereafter filed suit against BJWSA alleging nuisance and trespass and asking for damages.

## CONCLUSIONS OF LAW

10. Beaufort Jasper Water and Sewer Authority is a subdivision of the State of South Carolina and as such it is entitled to the protections of the South Carolina Tort Claims Act (15-78-60(7) which says a “government entity is not liable for a loss resulting from: (7) a nuisance;”

11. Defendant Sheetal’s second cause of action (Paragraphs 14-18) alleges “nuisance”.

12. This cause of action should be and is therefore stricken from Plaintiff’s Complaint dated August 24, 2012.

13. The elements of trespass are (1) legal possession, (2) voluntary entry on the property by the defendant and (3) entry was without plaintiff’s permission. Elements of Civil Causes of Action, Michael G. Sullivan, SC Bar, 2000, Page 245.

14. In this case Plaintiff, Sheetal, was never in possession of the pipeline. There is no question that BJWSA is using, maintaining and currently in peaceable possession of the pipeline. In fact, one in possession, through lacking title, is entitled to remain in possession until ousted by the true owner. Gunter’s Island Hunting Club v. Hucks, 282 S.C. 124, 317 S.E.2nd 470 (Ct. App. 1984) and Watson v. Motley, 121 S.C. 482, 114 S.E. 412 (1922)

15. Plaintiff Sheetal has premised this action on two (2) theories – nuisance and trespass. Nuisance cannot be maintained against any South Carolina government; and the essential element of trespass, possession by plaintiff, is missing in this instance.

16. South Carolina case law defines prescription and has simplified the elements that are necessary to establish prescriptive easement. A party must only show; (1) continued and uninterrupted use or enjoyment of a right for a full period of twenty (20) years; (2) identity of the thing enjoyed; (3) and that the use of enjoyment was adverse or under claim of right. Horry

County v. Lachur, 315 S.C. 364, 367, 434 S. E. 2d 259, 261 (1993); Loftis v. South Carolina Electric and Gas, 361 S.C. 434, 604 S.E. 2d 714, 716 (2004).

17. The Court finds that the City of Beaufort went out and put the pipe in without buying or condemning the property--an action adverse to the rights of the original owner and the City's continuing use and its maintenance of this pipeline continued the adverse nature of its possession.

18. But even if we assume the City's use was not adverse enough, as argued by Defendant Sheetal, its continuing use was done under a "claim of right". Thusly, Plaintiff herein meets both of the required elements prescribed for prescription. The Court finds that there was both "adverse use" and a "claim of right".

19. In this instance the City of Beaufort believed it had acquired an easement but was mistaken. It might have been argued by Plaintiff that mistaken belief can never be the basis for the adversity required for prescription. However, in the case of Simmons v. Berkeley Electric Cooperative, et. al., Appellate Case # 2011-192409 (2013), the SC Court of Appeals held that;

**"St. Johns Water established the water main was established under a claim of right. Miley's Affidavit demonstrates his belief that the encroachment permits obtained from Charleston County covered the installation of the water main as illustrated on the map. The fact that the claim may have been based on a mistake does not negate the claim of right required to establish a prescriptive easement."**

20. In the instant case we have an initial mistake, but then we have use by the City, and by the Water Authority, for a total of twenty-six (26) years. Thusly, the City of Beaufort and

Beaufort Jasper Water and Sewer Authority held and operated the pipeline under a "claim of right" and under "adversity" for more than twenty (20) years.

21. The Motion to Strike the two (2) causes of action is granted and the Motion for Summary Judgment is also granted.

AND IT IS SO ORDERED.



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Carmen Mullen, Resident Judge for the 14<sup>th</sup>  
Judicial Circuit  
Beaufort, South Carolina

Dated 9-11-13