

**THE STATE OF SOUTH CAROLINA
In The SUPREME COURT**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Joseph M. Strickland, Master in Equity

Unpublished Opinion No. 2012-UP-060 (S.C.Ct.App. filed Feb 1., 2012)

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Petitioner

APPENDIX

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net
Attorney for Petitioner

Ronald R. Hall, Esquire
Hall & Hall Attorneys at Law
1055 Sunset Boulevard
West Columbia SC 29169
(803) 791-3196 (T)
(803) 791-8754 (F)
Attorney for Respondent

CONTENTS

Unpublished Opinion No. 2012-UP-060 (filed February 1, 2012)

Petition for Rehearing

Order Denying Petition for Rehearing

Brief of Appellant

Brief of Respondent

Reply Brief

Record on Appeal

Record on Appeal – Oversized Exhibits Filed Separately

**THE STATE OF SOUTH CAROLINA
In The SUPREME COURT**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Unpublished Opinion No. 2012-UP-060 (S.C.Ct.App. filed Feb 1., 2012)

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Petitioner

CERTIFICATE OF COUNSEL

The undersigned, as counsel for Petitioner, hereby certifies that this Appendix contains all of the documents required by Rule 242(e), SCACR.



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159(F)
boothlaw@bellsouth.net
Attorney for Petitioner

West Columbia, South Carolina
May 18, 2012

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John D. Austin,

Respondent,

v.

Jane Harden Stone,

Appellant.

Appeal From Richland County
Joseph M. Strickland, Circuit Court Judge

Unpublished Opinion No. 2012-UP-060
Heard December 7, 2011 – Filed February 1, 2012

AFFIRMED

William E. Booth, III, of West Columbia, for
Appellant.

Ronald R. Hall, of West Columbia, for Respondent.

PER CURIAM: Jane Harden Stone appeals the ruling of the Master in Equity granting a 20 foot wide easement to John D. Austin over, through and across Stone's property. We affirm.

1) As to Stone's argument that the master erred in establishing the width of the prescriptive easement at 20 feet, no evidence was presented that the width should be 12.5 feet and plats were presented that showed the easement was 20 feet.

2) As to Stone's argument that the master erred in finding Austin's use of the drive was not permissive, there was sufficient evidence for the master to find a prescriptive easement by claim of right for Austin. The totality of circumstances established his claim of right. See Hartley v. John Wesley United Methodist Church of John's Island, 355 S.C. 145, 151, 584 S.E.2d 386, 389 (Ct. App. 2003) (stating that for a party to earn a prescriptive easement under claim of right he must show that he had the right to use the road based on totality of the circumstances).

3) As to Stone's argument that the master erred in finding that Austin showed continuous and uninterrupted use of the entire driveway for 20 years, the master found that the requirement of 20 years continuous use had been met by Austin since he purchased the property in 1980. See Matthews v. Dennis, 365 S.C. 245, 249, 616 S.E.2d 437, 439 (Ct. App. 2005) (stating that the establishment of a prescriptive easement requires the continued and uninterrupted use of the right for 20 years). The determination of the existence of an easement is a question of fact in an action at law. See Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (stating the existence of an easement is determined by an action at law). The findings of the judge in a case at law will not be disturbed upon appeal without evidence to support the judge's finding. See Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (stating findings of fact by a judge are not disturbed on appeal unless found to be without evidence to support the findings).

4) As to Stone's argument that the terminus of the easement was owned by SCE&G, there was no finding by the master on this issue therefore it was not preserved for appeal. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23,

602 S.E.2d 772, 779-80 (2004) (stating that an issue must be raised and ruled on to be preserved for appeal).

5) The final argument by Stone was that the master erred in granting a prescriptive easement because the evidence showed that the easement did not have one of its termini in the dominant property. Stone did not ask the master to hold that if an easement did exist, it was in gross rather than appurtenant. Accordingly, the master did not need to consider whether the easement had one terminus on Austin's land. See Windham v. Riddle, 381 S.C. 192, 201-202, 672 S.E.2d 578, 583 (2009) (stating "an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof," and "[u]nless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross.").

AFFIRMED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Appellant

PETITION FOR REHEARING EN BANC

Unpublished Opinion No. 2012-UP-060
Heard December 7, 2011 – Filed February 1, 2012

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
Attorney for Appellant

RECEIVED

FEB 16 2012

SC Court of Appeals

Pursuant to Rule 221(a), SCACR, Appellant, Jane Harden Stone ("Stone"), submits this Petition for Rehearing *en banc* as to the points overlooked or misapprehended by this Court in its Unpublished Opinion No. 2012-UP-060 filed on February 1, 2012, as follows:

POINT 1: The Record contradicts the statements in the Opinion that there were plats showing the easement area being 20 feet in width, and that there was no evidence that the width should be 12.5 feet. The type of easement declared to exist by the master in equity was a prescriptive easement and not a grant of an easement based on a plat showing the easement area. The only plat in the record in which an easement area of 20 feet is shown was not intended or submitted into evidence as depicting the location of the roadway that had been used for the purpose of ingress and egress to the Austin parcel. The plat showing the 20 foot area was created after the filing of this lawsuit and was required by the County so that a second house could be built on the Stone parcel for her parents to live in. That plat says a "**Proposed** 20' Ingress/Egress Easement" (emphasis added) to access the newly subdivided parcel. The 20 feet is measured from the eastern boundary line of the Stone parcel to the western boundary of the existing roadway at one point along the driveway and this distance clearly changes at the northernmost corner of the Stone property. That plat does not show the existence of any kind of existing roadway within the full extent of the proposed easement area, and Austin never testified he had ever used all of this area for access but only the area where the roadway actually exists. The actual width of the roadway can be measured using the scale

provided on the plat and shows a width of approximately 12.5 feet. This plat also shows that the isthmus is owned by SCE&G and not Austin. The master in equity's finding that 20 feet was the appropriate width for the prescriptive easement was not supported by the preponderance of the evidence and clearly in error. This Court may make its own determination as to the proper width for the easement area needed for ingress and egress under Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Clearly, a width of 12.5 feet is sufficient for one lane of vehicular traffic. As the Supreme Court stated in Hill v. Carolina Power & Light Co., 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943), "[t]he right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. . . In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated."

POINT 2: As to the statement in the Opinion that there was sufficient evidence for the master in equity to find a prescriptive easement by "claim of right", the Opinion fails to refer to any of the evidence offered by Austin to support such a finding. Austin never testified and no other witness presented by Austin testified that the use of the roadway was by some right. Even though Austin testified that he had been using this roadway on an occasional basis, such use can only be considered permissive. Under established case law, he had the

burden to establish a claim of right but failed to present any evidence of a right to use the roadway.

POINT 3: As to the statement in the Opinion that the master in equity did find that the 20 year continuous use requirement had been met by Austin, there is no evidence in the Record to support this finding. Austin had the burden to prove continuous use but he failed to specify how often he used the roadway and the evidence shows that for the first seven years of his ownership, a portion of the roadway belonged to Jones who owned the adjacent parcel and deeded a small piece of her land to Stone's parents in 1987.

POINT 4: The Opinion incorrectly states that Stone never argued, or asked the master in equity to make a finding, that the roadway being used by Austin ended at property owned by SCE&G. Stone did make the argument that this parcel of land (the "isthmus") was owned by SCE&G.

The master did in fact make a finding as to the ownership of the isthmus.

I find the property of the Plaintiff is connected to the main body of land by an unbroken isthmus which connects to the Twenty-Foot (20') wide road/drive. The Defendant offered argument against there being a connection to the property of the Plaintiff over the Isthmus, but I find these arguments unpersuasive when compared to the findings/testimony of Lucius Cobb, a trained surveyor who did extensive field work and research into the matter. Mr. Cobb concluded the isthmus did connect Mr. Austin's property with the main body of land.

(R. p. 5).

Stone presented the only credible evidence as to the ownership of the isthmus and her expert confirmed ownership¹ as follows:

¹ Cobb was not offered as an expert on the legal ownership issue and he admitted he was not qualified to offer testimony on this issue as an expert.

Q. All right. And with respect to this area in here around there, who did Lexington Water transfer it to?

A. Well, they never did. Those areas have not been deeded by Lexington Water Power or South Carolina Electric and Gas. And it's confirmed to me by the tax maps also showing this gap in between the Stone Parcel and what is the island or currently the Austin property.

(R. p. 155, lines 12-18).

Stone also addressed this issue through her Motion to Alter or Amend (R. p. 31, ¶5 and ¶6), and during the motion hearing on the Motion to Alter or Amend, her counsel argued this contention.

Now, the ownership of the isthmus area was highly contested during the trial - - disputed, I guess is a better word - - and in my opinion the record shows that the isthmus area was not owned by Mr. Austin; it was owned by SCE&G. In fact, this survey itself says that. And this was surveyed - - it says SCE&G owned the adjacent property, which included the isthmus area.

(R. p. 265, lines 18-24).

The master ruled on this matter through his denial of the Motion thus preserving this issue for appeal. (R. p. 1).

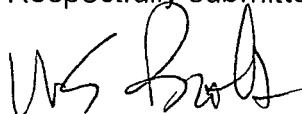
POINT 5: The Opinion incorrectly states that the issue of the easement being in gross or appurtenant was not raised by Stone before the master in equity. Stone does not make the claim that there is an easement in gross if there is not an appurtenant easement. Stone maintains that there is no easement, whether it be appurtenant or in gross. Austin only sought an appurtenant easement and an appurtenant easement requires a terminus. Stone put in sufficient evidence to show that an appurtenant easement could not be granted because of the terminus being on land of SCE&G. Austin has not requested that the court grant

an easement in gross lacking sufficient evidence of an appurtenant easement.

This was a burden placed on Austin and not on Stone.

For these reasons, Appellant asks the Court to rehear the case *en banc*.

Respectfully submitted,



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net

Attorney for Appellant

February 16, 2012

The South Carolina Court of Appeals

John D Austin,

Respondent,

v. Jane Harden Stone,

Appellant.

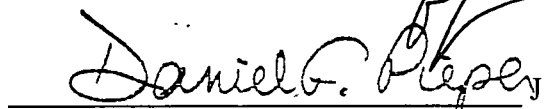
The Honorable Joseph M. Strickland
Richland County
Trial Court Case No. 2007-CP-40-00002

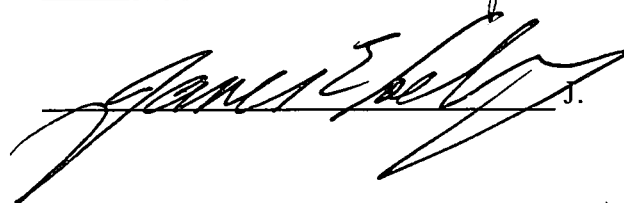
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

 J.

 J.

Columbia, South Carolina

cc: William E. Booth, III, Esquire
Ronald R. Hall, Esquire

FILED

April 20, 2012

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Appellant

FINAL BRIEF OF APPELLANT

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
STATEMENT OF THE FACTS	6
ARGUMENT	12
I. The Master erred in establishing the width of the prescriptive easement area for access to Austin's property as twenty feet in width.	12
II. The Master erred in finding that Austin had claimed a right to use the driveway in view of the fact that the only evidence indicates that the use of the driveway by Austin was permissive.....	16
III. The Master erred in finding that Austin had shown continuous and uninterrupted use of the entire length of the driveway for twenty years.	19
IV. The Master erred in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Austin.....	20
V. The Master erred in granting a prescriptive easement when the undisputed evidence shows that the easement did not have one of its termini in the dominant property.....	23
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<u>Babb v. Harrison</u> , 220 S.C. 20, 66 S.E.2d 457 (1951)	16
<u>Dickinson v. Pake</u> , 284 N.C. 576, 201 S.E.2d 897 (N.C. 1974)	17
<u>Johnson v. Stanley</u> , 96 N.C.App. 72, 384 S.E.2d 577 (N.C.App. 1989)	17, 18
<u>Moore v. Reynolds</u> , 285 S.C. 574, 330 S.E.2d 542, (Ct.App.1985)	12, 23
<u>Pitcock v. Fox</u> , 119 N.C.App. 307, 458 S.E.2d 264 (N.C.App. 1995)	17
<u>Pittman v. Lowther</u> , 363 S.C. 47, 610 S.E.2d 479 (2004)	19, 20
<u>Poole v. Edwards</u> , 197 S.C. 280, 15 S.E.2d 349 (1941)	16
<u>Potts v. Burnette</u> , 301 N.C. 663, 273 S.E.2d 285 (N.C. 1981)	17
<u>Sanitary & Aseptic Package Co. v. Shealy</u> , 205 S.C. 198, 31 S.E.2d 253 (1944)	16
<u>Townes Assocs., Ltd, v. City of Greenville</u> , 266 S.C. 81, 221 S.E.2d 773 (1976)	12
<u>Tupper v. Dorchester County</u> , 326 S.C. 318, 487 S.E.2d 187 (1997)	23, 24
<u>Williamson v. Abbott</u> , 107 S.C. 398, 93 S.E. 15 (1917)	17

Rules

Rule 52, <u>SCRCP</u>	5
Rule 59, <u>SCRCP</u>	5

STATEMENT OF ISSUES ON APPEAL

I. Did the Master err in establishing the width of the prescriptive easement area for access to Austin's property as twenty feet in width?

II. Did the Master err in finding that Austin had claimed a right to use the driveway in view of the fact that the only evidence indicates that the use of the driveway by Austin was permissive?

III. Did the Master err in finding that Plaintiff had shown continuous and uninterrupted use of the entire length of the driveway for twenty years?

IV. Did the Master err in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Stone?

V. Did the Master err in granting a prescriptive easement when the undisputed evidence shows that the easement did not have one of its termini in the dominant property?

STATEMENT OF THE CASE

This action arises from a dispute as to the use of a gravel driveway located on a small residential lot (0.64 acres) for access to a parcel of land (0.34 acres) on which a fishing cabin is located and is a peninsula surrounded by the waters of Lake Murray. The Master issued an Order finding that there was an easement by prescription over a twenty feet wide strip of land as shown on a plat over the residential lot from a public road (Elletts Road) to an "Isthmus" which connects to the peninsula. This distance is approximately 266 feet within the residential lot.

On January 2, 2007, the Plaintiff, John Austin (hereinafter referred to as "Austin"), commenced this action by the filing and service of a Summons and Complaint against Jane Harden Stone (hereinafter referred to as "Stone"). (Complaint filed January 2, 2007). The Complaint asks for a determination or creation of one the following types of easements: (1) easement by prescription, (2) easement by express grant, or (3) easement by necessity. By Answer and Counterclaim filed on January 30, 2007, Stone denied the material allegations of the Complaint, and she asserted counterclaims for a permanent injunction, property damage, and a declaratory judgment. (R. p. 24). The declaratory judgment claim sought a determination, in the event Austin prevailed on one of his easement theories, as to the extent of any easement right as to location, making improvements, width, and usage.

By Motion filed on June 27, 2007, Austin filed an order for a temporary injunction to restrain and prohibit Stone from obstructing, blocking, constructing

over, or otherwise impeding the free flow of traffic over, through, and across the alleged easement area. (R. p. 29). By Order of the Honorable G. Thomas Cooper, Jr., issued on November 6, 2007, the temporary injunction was granted for an area twelve feet in width over a driveway within Stone's property. (R. p. 11).

By Consent Order of Reference dated December 11, 2007, issued by the Honorable Alison Renee Lee, the trial of this action was referred to the Master in Equity for Richland County with any appeal to be made directly to the South Carolina Court of Appeals. (R. p. 9).

On April 21, 2008, the Master conducted a non-jury trial for all causes of action contained in the pleadings. During the trial, testimony was offered by both parties and there were ten exhibits introduced into evidence by the Plaintiff, and fourteen exhibits introduced by the Defendant. The Master issued an Order on November 6, 2009, granting Austin an easement by prescription over a twenty feet wide strip of land across the property of Stone "as shown and delineated upon the various Plats referenced [in the Order] with one Terminus on Elletts Road, a public road, and the other Terminus at the Isthmus connecting the property of [Austin] with the mainland." (R. p. 2). The Order did not address any of the issues raised in the declaratory action contained in the counterclaim.

Appellant filed Post-trial motions on November 19, 2009, pursuant to Rule 52, SCRCP, and Rule 59, SCRCP (R. p. 31), and a hearing on the Post-trial motions was held before the Master on March 26, 2010. (R. p. 259). By Form 4

Order issued on July 12, 2010, the Master denied the Post-trial motions. (R. p. 1).

Appellant filed and served a Notice of Intent to Appeal on August 6, 2010.

STATEMENT OF THE FACTS

Notwithstanding the references to various plats¹ in the Order issued by the Master as showing the twenty foot wide easement area, an examination of these plats does not reveal the location of a twenty foot wide gravel driveway. Although the plats show the existence of a "gravel driveway" that does extend from Elletts Road to the end of the residential lot owned by Stone at the so called "Isthmus²," the actual width of the gravel driveway can be measured by the scale shown on each of the plats and such measurement is NOT TWENTY FEET. Likewise, the ownership of the Isthmus is not specifically addressed in the Order, but the only logical interpretation of the Order is that the Master found that the connector or Isthmus is owned by Austin, not by South Carolina Electric and Gas Company (hereinafter referred to as "SCE&G").³ This finding of ownership is also not supported by the evidence presented by both parties.

¹ The plats referred to are: (i) Plat prepared for Betty M Harden and Jane Harden Stone; (ii) Plat prepared by Lucius Cobb, RLS; (iii) Plat prepared for Jim Stone. (R. p. 7).

² Appellant assumes that the Order is referring to Parcel B as shown on the Cobb Plat as the Isthmus containing approximately 0.01 acres even though Cobb did not characterize or place a name on Parcel B or refer to this parcel as the isthmus.

³ For example, on page 2, the Order states that "[t]he portion of [Austin] tract not submerged between the waters of Lake Murray is a small Lot containing 0.34 acres connected to the main body of land by a narrow isthmus." (R. p. 3).

Both the residential lot now owned by Stone and the peninsula tract of land now owned by Austin had their respective chains of title⁴ introduced into evidence going back to the owners of the large tracts of land that became part of Lake Murray.⁵ These chains of title are relevant to the issues in this case and are summarized by the following timelines:

AUSTIN TRACT

- A. In 1928, John Joseph Lowman (hereinafter referred to as "Lowman") granted Lexington Water Power Company⁶ the "easement, privilege, franchise and right to turn water on, backwater" Tracts "A" and "C" containing thirty acres. (Deed Book DB at Page 138).
- B. In 1948, Lowman conveyed to Mitsuo Tokunaga the thirty acres by deed dated July 30, 1948. (Deed Book 22 at Page 359).
- C. In 1961, due to the death of Mitsuo Tokunaga, the thirty acres were inherited by his children.
- D. In 1980, the children of Mitsuo Tokunaga conveyed to John D. Austin (the Plaintiff and Respondent herein) the thirty acres less a tract containing 1.22 acres previously conveyed.

STONE TRACT

⁴ A Chain of Title Report for both tracts was introduced into evidence as Defendant's Exhibit Numbers 1 and 2. An abstracting expert presented them during his testimony. (R. p. 178 and R. p. 204).

⁵ According to witness O'Connell, the actual flooding of land for Lake Murray occurred during the 1930's. (R. p. 152, lines 4-8).

⁶ SCE&G is the successor to Lexington Water Power Company.

- A. In 1928, J.W. Kleckley (hereinafter referred to as "Kleckley") conveyed acres to Lexington Water Power Company.
- B. In 1960, SCE&G conveyed to W.A. Boyd a tract of land containing 0.60 acres out of the Kleckley tract.
- C. W.A. Boyd died survived by his wife, Eula Lee Boyd.
- D. In 1973, Eula Lee Boyd conveyed to W. Frank Harden 0.60 acres. (Deed Book D-292 at Page 236).
- E. In 1973, Frank Harden conveyed to Betty M. Harden the 0.60 acres. (Deed Book D-292 at Page 238).
- F. In 1988, Lois C. Jones conveyed to W. Frank Harden and Betty M. Harden a triangular shaped parcel of land that was combined with their property acquired from Boyd. (Deed Book D-942 at Page 252).
- G. In 1990, W. Frank Harden conveyed to Betty M. Harden the tract acquired from Lois C. Jones. (Deed Book 1011 at Page 666).
- H. In October, 2004, Betty M. Harden conveyed the 0.60 acres and the triangular shaped parcel to Jane Harden Stone (the Defendant and the Appellant herein).

Now, the evidence dealing with the use of the residential lot by Betty and Jane Harden and their daughter (Defendant Stone), and the use of the peninsula tract of land will be reviewed.

During most of the time they owned the property, the Hardens used the lot and the house on the lot on weekends since their permanent residence was in

Columbia. (R. p. 124, lines 17-23). They are now elderly and moved into a new house on the lot sometime after this lawsuit was filed in early 2007. (R. p. 125, line 24-p. 126, line 6). Stone testified that she had created a subdivision of the lot for the purpose of constructing the house for her parents. She did this so that she could take care of her parents by having them live close to her house. (R. p. 141, lines 19-23). Their daughter (Jane, the Defendant) now lives in the original house with her husband and one child. She also visited the property with her parents starting when she was seventeen years of age. (R. p. 124, lines 13-16).

Stone testified that she had a lawyer write a letter on September 13, 2005, to Austin complaining about asphalt that he had dumped on her property. (R. p. 129, line 25-p. 130, line 15). She testified that the asphalt contained a chemical that causes her son to have breathing problems. (R. p. 130, lines 19-24). She further testified that she and her husband removed the asphalt and that they started to block the driveway with a vehicle. (R. p. 130, line 25-p. 131, line 16). She also testified that she hired a company to help remove the asphalt from the driveway. The cost of the removal was \$1,200. (R. p. 131, line 17-p. 132, line 1 and R. p. 258). She talked about her concern for the use of the driveway by Austin for safety concerns. The driveway is very close to the house she lives in on the lot. (R. p. 132, line 18-p. 133, line 18). She had never seen Austin or anyone else using the driveway when she accompanied her parents to the property. (R. p. 136, line 18-p. 137, line 4).

A fishing cabin was built on the peninsula tract of land by Mitsuo Tokunaga, and he also had a boat ramp installed. (R. p. 111, lines 6-8). His

son, Thomas D. Tokunaga, testified that his father had family gatherings at the cabin until his death. Austin paid \$32,000 for the 30 acres including the land area not submerged by the waters of Lake Murray. (R. p. 87, lines 10-15).. He purchased the property in 1980. (R. p. 73, line 25-p. 74, line 1).

Austin lives in the Columbia area and he had only used the cabin a few times but he had allowed some of the neighbors along Elletts Road to use the boat ramp on his property to launch their boats. (R. p. 78, lines 1-10). He testified that he was in the process of remodeling the small fishing cabin on his property and to fix the roof when the Stone started to block the driveway. (R. p. 79, lines 3-21). Austin testified that there is electricity supplied to the cabin on his property and that he uses a sewage holding tank. (R. p. 80, lines 11-16). Water is furnished by a well on his property. (R. p. 81, lines 13-16). He did testify that there was a marina on the opposite side of the lake that could be used to launch his boat for access to his parcel. (R. p. 81, line 21-p. 44, line 3).

It is undisputed that Austin was prevented from using the driveway from September of 2005, approximately 15 months before the filing of this action, until the granting of the temporary injunction. A letter from Stone's counsel was acknowledged as being received by Austin telling him to remove asphalt and other material placed on the property. (R. p. 171). The testimony of Austin was as follows:

Q. But, I mean, when this letter was received by you, they were permanently blocking the road?

A. Then they permanently blocked it.

Q. All right, so September of '05, or sometime before that?

A. Yeah, they put a chain over it and everything.

Q. Put a chain over it. All right, that letter talks about the dumping of asphalt onto the driveway, correct?

A. Yes.

(R. p. 88, lines 8-16).

When Austin was asked if he had any difficulty traveling over the driveway to reach his house, he testified as follows:

Q. As far as getting past that house, have you had any difficulty driving past that house to get to your property?

A. You can take a small car past there.

Q. A small car?

A. I was in a small truck when I went up there, a little Pathfinder.

(R. p. 100, line 21-p. 101, line 2).

ARGUMENT

- I. The Master erred in establishing the width of the prescriptive easement area for access to Austin's property as twenty feet in width.

While the determination of the existence of an easement is a question of fact in a law action and subject to the any evidence standard of review when tried by a judge without a jury, the determination of the extent of a grant of an easement is an action in equity. Moore v. Reynolds, 285 S.C. 574, 577, 330 S.E.2d 542, 544 (Ct.App.1985). Thus, this Court may take its own view of the evidence on the determination of the width of the prescriptive easement. Townes Assocs., Ltd, v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). Assuming the Master did not err in granting the prescriptive easement to Austin, the Master did err in making the width twenty feet instead of twelve feet or smaller. It is common knowledge that a "driveway" is normally the width for a single lane of vehicular traffic.

The Order of the Master states that the location and the width of the driveway are "clearly established" based on the referenced plats and other evidence. (R. p. 7). The Plaintiff presented the testimony of Lucius D. Cobb, Sr., a land surveyor, who prepared a plat in July of 2007 after the commencement of this action. (R. p. 170). The plat prepared by Cobb does show courses and distances for Parcel A, Parcel B, and the Stone lot, but not the width of the driveway.

Austin did not give the width of the existing driveway during his testimony, but testified only about the types of vehicles he had driven over the driveway.

His testimony was as follows:

Q. All right, now can you give me some ideas of how wide an easement?

A. I've had - - I've taken bigger boats down there, taken them up and down the boat ramp. Okay, we've got one boat that we took down there that you had to have a wide load permit; it was 10-foot wide. And, of course, we had a big truck that would take it, or a dooley that would take it down there. And it would - - we had taken it up there a few times. It was always wide enough to be able to get around.

The way it is now - - it was always wide enough to where - - Mr. and Mrs. Harden where they went into their garage, they had it graveled in the front part, and if you had taken a small car or something, you could cut right down the driveway. If you had a big truck with a trailer, you could always curve around just a little bit. And that's the way we always did it.

(R. p. 82, line 14 – p. 83, line 5).

The only plat referenced in the Order that shows a twenty foot wide easement area is the plat done by J. Don Rawls, Jr. of Cox and Dinkins, Inc. dated April 19, 2007, but this plat was done to obtain approval of Richland County to construct the new house for the Hardens⁷. (R. p. 164). This plat does not delineate or provide a calculation as to the width of the existing driveway and was produced after the filing of this action so it would have been impossible for Austin to claim he had been using a twenty foot wide driveway based on this plat. Moreover, the area shown on the Rawls plat for the "proposed twenty foot ingress/egress easement" only extends from Elletts Road to the southern

⁷ The plat states that the purpose "is to subdivide lot into two parcels (A and B) and add proposed easement at the request of the owner". (R. p. 164).

boundary of Parcel A. The proposed easement area does not extend into Parcel A and does not extend to any property of Austin or the Isthmus owned by SCE&G. Although the deed into Stone does reference easements that may appear of record or on the recorded plats, this plat did not exist at the time of that conveyance in October of 2004.

This court can use, and the Master could have used, the scale of one inch equals forty feet on Plaintiff's Exhibit No. 5 which is a plat prepared for Betty M. Harden dated March 6, 1992, showing the entire length of the existing driveway. (R. p. 167). The record contains an original of this plat and using the scale, the width of the gravel driveway can be determined. For the aid of this court, counsel for Appellant has done the measurements and the results are shown below:

PLF NO.	NO.
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100



Clearly, the width based on these measurements does not exceed 12.5 feet at any point. This Court should view this evidence as being sufficient to reverse the Master by finding a width of twelve feet is appropriate and reasonable in the event Austin is entitled to a prescriptive easement.

The Master did not address the counterclaim of Stone in which she asked the court to declare how the easement could be used in the event Austin prevailed on his claim. The only evidence is that the road was always a graded gravel road. In addition, there is no evidence that a graded gravel road had not provided Austin "convenient enjoyment" of the right of way over the driveway. Since the small portion of the property owned by Austin is above the water and useful, there is no foreseeable need for the road to be improved. Therefore, the court should have found that Austin cannot place asphalt to improve the road at any time in the future.

- II. The Master erred in finding that Austin had claimed a right to use the driveway in view of the fact that the only evidence indicates that the use of the driveway by Austin was permissive.

It has long been recognized in South Carolina case law that the requisites necessary to establish a right by prescription are: (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years, (2) the identity of the thing enjoyed, and (3) the use or enjoyment was adverse or under claim of right. Babb v. Harrison, 220 S.C. 20, 24-25, 66 S.E.2d 457, 458 (1951); Sanitary & Aseptic Package Co. v. Shealy, 205 S.C. 198, 203, 31 S.E.2d 253, 255 (1944); Poole v. Edwards, 197 S.C. 280, 283, 15 S.E.2d 349 (1941);

Williamson v. Abbott, 107 S.C. 398, 400, 93 S.E. 15, 16 (1917). In the instant case, the Master was incorrect in stating that Austin "claimed a right to use the road" to satisfy his burden of proof for the third requisite based on his testimony. (R. p. 7). Instead, the evidence only supports a finding of a neighborly act of permissive use.

The subject of permissive use between neighbors when dealing with a driveway is dealt with in several cases decided by appellate courts in North Carolina and appears to be consistent with the law of this State. The presumption followed in North Carolina courts is that one's use of another's land is by permission. Therefore, to establish a prescriptive easement in North Carolina, one must first overcome the presumption that the party is using the true owner's land with the owner's permission. Pitcock v. Fox, 119 N.C.App. 307, 309, 458 S.E.2d 264, 266 (N.C.App. 1995) citing Johnson v. Stanley, 96 N.C.App. 72, 74, 384 S.E.2d 577, 579 (N.C.App. 1989) (and Dickinson v. Pake, 284 N.C. 576, 580-81, 201 S.E.2d 897, 900 (N.C. 1974)). In order to overcome this presumption, "[t]here must be some evidence accompanying the use which tends to show that the use is hostile in character and tends to repel the inference that it is permissive and with the owner's consent." Dickinson at 284. A mere permissive use of a way over another's land, however long it may be continued, can never ripen into an easement by prescription. Potts v. Burnette, 301 N.C. 663, 273 S.E.2d 285 (N.C. 1981).

Clearly, the testimony of Austin shows that he never asked for permission to use the road. Evidence that permission was never requested or sought is

tantamount to an assertion that the person is merely using the road or path in silence. Courts have held that neither law nor logic can confer upon a silent use a greater probative value than that inherent in a mere use. Thus, under North Carolina law, one's use of a way over another's land in silence is presumed to be with permission. See Johnson v. Stanley, 96 N.C.App. 72, 384 S.E.2d 577 (N.C.App. 1989). The court in Johnson stated:

Entitlement to an easement by prescription is restricted because a landowner's " 'mere neighborly act' " of allowing someone to pass over his property may ultimately operate to deprive the owner of his land.

Id. at 579.

In the instant case, Austin does not claim that he had a "right" to use the driveway, only that he and members of the Tokunaga family had "used" the driveway since this is the only land access to the property. His testimony was as follows:

Q. Did you have any conversations or dealings with the people over whose land that drive went?

A. No, just that they always - - we just always used it and Mr. and Mrs. Harden always knew that we were using it, and they never said anything about it, they never - -

(R. p. 75, lines 9-15).

The testimony of Thomas D. Tokunaga does not provide any further support of any type of adverse claim or claim of right. His testimony simply talked about his family's use of the road and using the road for boating and recreational activities on the property. His testimony was as follows:

Q. All right, did any of them use the road, that you know of?

A. I reckon nobody ever, you know, said anything about the road. We used it, and I'm sure the neighbors did, you know.

Q. It was just kind of free use?

A. Oh, yes, yes, sir.

Q. Right. I mean, whoever wanted to use it could use it?

A. It was always open, yes.

(R. p. 113, lines 3-12).

III. The Master erred in finding that Plaintiff had shown continuous and uninterrupted use of the entire length of the driveway for twenty years.

The undisputed evidence is that a portion of the driveway was not acquired by Stone's parents until 1987⁸, and since Austin was blocked from using the driveway in September of 2005, he cannot prove continuous and uninterrupted use of the entire length of the driveway for twenty years. Cobb confirmed that a large portion of the area on which the gravel driveway is located was owned by Lois Jones until 1987.

In Pittman v. Lowther, 363 S.C. 47, 610 S.E.2d 479 (2004), the court adopted a rule about what constitutes an interruption in the context of establishing a prescriptive easement where the owner of the servient tenant erects barriers. The court stated:

We conclude actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as

⁸ Until 1987, any use of the driveway by Austin meant that almost half of the length of the driveway belonged to Jones, and Stone's mother and father did not acquire this part of the driveway until 1987. See, Plaintiff's Exhibit No. 2. (R. p. 163).

erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief. In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period.

Pittman at 47.

Thus, Stone effectively stopped the running of the twenty years at the time Austin attempted to place asphalt on the driveway causing her to become concerned about the health effect of this action for her son. She took action by placing vehicles and other barriers at the entrance to the driveway at Elletts Road, and such action meant Austin could no longer claim a prescriptive easement.

IV. The Master erred in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Austin.

There is a great deal of ambiguity in the Order concerning the ownership of the "Isthmus" and the word is mentioned approximately fourteen times throughout the Order. (R. p. 2). However, the transcript of the trial does not contain any reference or discussion about an Isthmus. For purposes of this appeal, Appellant will assume the Master found Austin as the owner of the Isthmus, but this finding is contrary to the only credible evidence presented and is inconsistent with the designation of the owner of this parcel on the plats relied

upon by the Master to show the location and width of the driveway or easement area.

The evidence shows that there is a tract of land separating the Austin property and the Stone property and that this tract of land is owned by South Carolina Electric and Gas Company. The shape of the SCE&G property is somewhat irregular in shape but stretches in the shape of a balloon going along several residential lots along Elletts Road. The tax map produced by the Assessor for Richland County also depicts the land of SCE&G as separating the residential lot of Stone and the non-submerged property of Austin. (R. p. 163).

Austin attempted to use the testimony of Cobb to show ownership but he disclaimed any ability to make such a determination. When asked about certifying or providing an opinion on the ownership of Parcel B, witness Cobb testified as follows:

A. I didn't say I could certify to it. I said that the deed referred to both those parcels as being conveyed to Mr. Austin.

(R. p. 58, lines 1-3).

When witness Cobb was asked about the legal description contained on page one of the Tokunaga deed, he testified as follows:

That's alright, I can see it now, ya, let me correct that statement. Parcel B -- Parcel A is included in the first page and looks like Parcel B is not.

(R. p. 59, line 25 – p. 60, line 3).

Witness Cobb also stated that the legal description set forth on page one of the Tokunaga deed is the same property shown on a recorded plat recorded in Plat Book M at Page 140. (R. p. 60, lines 4-10). The Jim Stone plat done in

2007 and referenced in the Order also shows the land owned by SCE&G at the end of the driveway.⁹ (R. p. 164). The Austin property is also shown.

The evidence presented does contain an expert providing title information for both tracts of land. This expert, Dan O'Connell, has been performing abstracting work for lawyers in Richland County for a number of years. (R. p. 143, line 19 – p. 144, line 3). He had performed title searches on both the Stone property and the Austin property and his two chain of title reports were introduced into evidence. (R. p. 178 and R. p. 204).

He testified that the parent tract for the Austin parcel was a parcel owned by J.J. Lowman. (R. p. 144, line 24-p. 145, line 4). The parent tract for the Stone parcel was a parcel owned by J.W. Kleckley. (R. p. 145, lines 5-11). He testified that none of the Stone property came out of the property owned by J.J. Lowman. (R. p. 145, lines 15-20). He testified about the Isthmus portion as follows:

Q. All right. And with respect to this area in here around there, who did Lexington Water transfer it to?

A. Well, they never did. Those areas have not been deeded by Lexington Water Power or South Carolina Electric and Gas. And it's confirmed to me by the tax maps also showing this gap in between the Stone parcel and what is the island or currently the Austin property. With no deed coming out of Lexington Water Power, we would have to go back to their original acquisition of the Kleckley parcel, which was again this 1928 deed where they received a 20 and a 17-acre parcel. Whose small areas that you're talking about would be a part of that.

(R. p. 155, lines 12-23).

⁹ The Jim Stone plat is also a full version with a scale of 1" = 30 feet.

V. The Master erred in granting a prescriptive easement when the undisputed evidence shows that the easement did not have one of its termini in the dominant property.

Stone presented evidence that the Isthmus was owned by SCE&G and not Austin based on the fact that Lowman's property did not include any of this land. Even the Master's Order recognizes this fact. The Order states that "there is no question that Plaintiff's title originated from JJ Lowman." (R. p. 6). The Order also finds that Stone's property was never owned by J.J. Lowman.¹⁰ (R. p. 6).

The fact that there is a gap between the Stone property and the Austin property belonging to SCE&G or even a third party defeats the creation of an appurtenant easement. In Moore v. Reynolds, 285 S.C. 574, 578, 330 S.E.2d 542 (Ct.App. 1985), the court stated that "an essential feature of an appurtenant easement is that it must have one of its termini in the dominant property." In Moore, he claimed that the old road over which an easement appurtenant was granted by the lower court crossed property of Brevard, while Moore presented evidence that when the easement for the old road was granted by a previous owner of the tract of land owned by Reynolds that the location did cross the property of Reynolds.

In Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), the court dealt with an action to remove an in ground swimming pool claimed to be

¹⁰ The discussion about Stone's property not originating with the property of J.J. Lowman was in regards to language in the deed from J.J. Lowman to Mitsuki Tokunaga in which there is a grant of easement.

located within an ingress and egress easement. The swimming pool had been installed by Suggs and he argued that the access easement was "in gross" rather than "appurtenant" such that it did not survive the transfer of ownership from the Tupperts to a corporation. The court found that the easement was not appurtenant since the easement did not have a terminus on the land of the party claiming it. The court stated the following about the requirements for an appurtenant easement:

The character of an express easement is determined by the nature of the right and the intention of the parties creating it. 25 Am.Jur.(2d) *Easements and Licenses* § 13 (1966). An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. (fn4) *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Id.*; *Smith v. Commissioners*, 312 S.C. 460, 441 S.E.2d 331 (Ct.App.1994); *Carolina Land Company, Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Sandy Island Corp. v. Ragsdale*, *supra*; 12 S.C. Juris. *Easements* § 3. It also passes with the dominant estate upon conveyance. *Carolina Land Co., Inc. v. Bland*, *supra*. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. 12 S.C. Juris. *Easements* § 3(c). Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.* 274 S.C. 152, 263 S.E.2d 378 (1980).

Id. at 325.

In the instant case, the Master did not specify the character of the easement as being in gross or appurtenant. The Master seems to conclude that the easement is appurtenant, but such a finding would be incorrect based on the fact that the driveway over the residential lot owned by Stone terminates at the property of SCE&G.

CONCLUSION

In conclusion, this Court should reverse the Master in that Austin failed to prove all of the requisites to establish the right to a prescriptive easement, or in the alternative, the Master should be reversed as to the extent of the easement so that the width is twelve feet and find that Austin should not be allowed to make improvements to the driveway.

Respectfully submitted,

December 6, 2010

A handwritten signature in black ink, appearing to read 'William E. Booth III', written over a horizontal line.

William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master In Equity

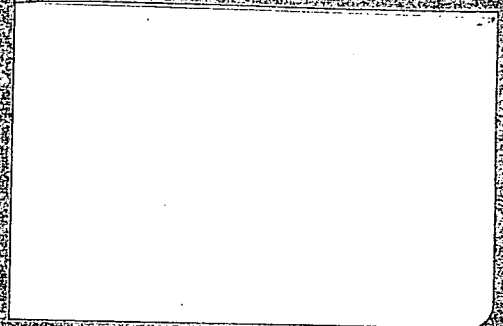
CASE NO. 2007-CP-40-0002

John D. Austin Respondent

v.

Jane Harden Stone Appellant

BRIEF OF RESPONDENT



Ronald R. Hall
1055 Sunset Blvd
West Columbia, SC 29169
Tel: 803-791-3196
Fax: 791-8754
Attorney for Respondent

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	2
STATEMENT OF CASE	3
ARGUMENTS	6
1. Did the Master err in establishing the width of the prescriptive easement area for access to Austin's property as twenty (20') feet in width	6
2. Did the Master err in finding that Austin claimed a right to use the driveway in view of the fact the only evidence indicates that the use of the driveway by Austin was permissive	7
3. Did the Master err in finding that Plaintiff had shown continuous and uninterrupted use of the entire length of the driveway for twenty (20) years	10
4. Did the Master err in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Stone	11
5. Did the Master err in granting a prescriptive easement when the undisputed evidence shows that the easement did not have one of it's termini in the dominant property	14
CONCLUSION	15

TABLE OF AUTHORITIES

	Page
<u>Hartley v John Wesley United Methodist Church of Johns Island</u> 355 SC 145, 584 S E 2d 386 (S C App 2003)	9
<u>Matthews v Dennis</u> 365 SC 245, 616 S E2d 437 (SC App 2005)	7, 11
<u>Mitchell v Allen</u> , 81 SC 340, 61 SE 1057 (SC, 1908)	6
<u>Morrow v Dyches</u> 328 SC 522, 492 SE 2d 420 (SC App 1997)	11
<u>Moore v Reynolds</u> 285 SC 574, 330 S E2d 542 (SC App 1985)	15
<u>Poole v Edwards</u> 197 SC 280, 15 S E 2d 349 (SC 1941)	7, 10
<u>Revis v Barrett</u> 321 SC 206, 467 S E 2d 460 (SC App 1996)	9
<u>Richland County v Carolina Chloride</u> 382 SC 634, 677 S E 2d 892 (SC App 2008)	7
<u>Timms v Timms</u> 286 SC 291, 333 S E 2d 74 (SC App 1985)	7
<u>Toyota of Florence, Inc v Lynch</u> , 314 SC 257, 442 S E2d 611 (S C 1994)	6
<u>Williams v Abbott</u> 107 SC 397, 93 S E 15 (S C 1917)	10

STATEMENT OF THE CASE

This case involves the claim of the Respondent to a Right-of-Way Easement over, through and across property of the Appellant. The Respondent owns a 30 Acre Tract of land in Richland County, of which 0.34 Acres (Parcel "A") and 0.01 Acres (Parcel "B") are all of the 30 acres above the waters of Lake Murray. The 0.01 Acre portion is an Isthmus which connects the 0.34 Acres with the main body of land, which is owned by the Appellant.

The terminus of the Isthmus is at the end of a twenty-foot (20') wide drive which goes over, through and across the property of the Appellant. The other end of the drive connects to Elletts Road.

The 30 Acres were conveyed to Mitsuo Tokunaga by J J Lowman by Deed dated July 28, 1948, recorded in the Public Records of Richland County July 30, 1948 in Deed Book 22 at Page 259.

In the Deed, there was an exception which stated, "This property is conveyed subject to the right to flood heretofore granted by J J Lowman to The Lexington Water Power Company dated March 3, 1928, recorded March 3, 1928 in Deed Book DB at Page 138, and to the Broad River Power Company Right # 2180, dated May 13, 1936, recorded May 23, 1936 in Deed Book EB at Page 357." As a result of this flooding right grant, only the 0.34 Acre and the 0.01 Acre portions remain.

Ingress/Egress to the 0.34 Acres, over the 0.01 Acre Isthmus, was used by the Tokunaga Family for a period of fifty (50) years or more through and across a drive located on the property of the Appellant. It is this drive which is the subject of this

action.(R, p. 110, line 1 - p. 111, line 5).

By Deed dated February 8, 1980, recorded in the Office of Deeds for Richland County in Deed Book D-534 at Page 345 , the Tokunaga's sold the 30 acre Tract, most of which was under water, which included the 0.34 Acre Parcel and the 0.01 Acre Isthmus, to the Respondent. From 1980 till 2006, the Respondent used the drive which went over, through and across the property of the Appellant for Ingress/Egress to his property from Ellett's Road. (R p. 36, line 74 - p. 75, line 19).

In 2006, Appellant blocked the drive which linked Respondent's property to Ellett's Road.

January 2, 2007, Respondent commenced an action seeking an Easement over, through and across the property of the Appellant down the drive linking his property with Ellett's Road. Respondent asked in his Complaint for an Easement by Prescription, Express Grant, or Necessity over, through, and across the drive located on the property of the Appellant. January 30, 2007, the Appellant filed an Answer and Counterclaim.

Because the Appellant refused to un-block the drive, June 27, 2007, Respondent filed a Motion to require Appellant to un-block the drive.

By Order of the Circuit Court for Richland County filed November 6, 2007, Appellant was ordered to un-block the drive and allow Respondent use of the drive for ingress/egress.

December 11, 2007, the matter was referred to the Master In Equity for Richland County. April 21, 2008, a merits hearing without Jury was held by the Master. Both parties appeared with counsel and presented testimony and evidence supporting their

respective positions.

November 6, 2009, the Master In Equity issued his Order granting Respondent a twenty-foot (20') wide prescriptive easement over, through and across the drive on the property of the Appellant from the Terminus of the 0.01 Acre Isthmus with Appellant's Property to Ellett's Road.

November 19, 2009, Appellant filed a Post-Trial Motion excepting to the November 6, 2009 Order. July 12, 2010, the Master filed an Order denying the Post-Trial Motion of the Appellant.

Appellant filed a Notice of Intent To Appeal August 6, 2010.

ARGUMENT

1. DID THE MASTER ERR IN ESTABLISHING THE WIDTH OF THE PRESCRIPTIVE EASEMENT AREA FOR ACCESS TO AUSTIN'S PROPERTY AS TWENTY (20') FEET IN WIDTH ?

There were several plats submitted into evidence at the hearing on the merits; but only two (2) which addressed the issue of the width of the drive. The one prepared for John D Austin by Lucius D Cobb, RLS dated July 3, 2007 (R p. 170) and the other prepared for Jim Stone by Cox and Dinkins dated April 19, 2007 (R p. 164) . Both of these show the width of the Easement to be twenty-feet (20'). Both Plats were admitted into evidence without objection, and therefore were competent evidence which the Master In Equity could use to reach his decision. Mitchell v Allen 81 SC 340, 61 SE 1057 (SC, 1908); Toyota of Florence, Inc v Lynch 314 SC 257, 442 SE 2d 611 (SC 1994).

There was no evidence, oral or otherwise, presented at the hearing that the drive had "changed" in width or length since it was first used by the Tokunaga family as an Ingress/Egress Easement beginning in 1948; and the continued use by the Respondent until 2006. Only after the hearing was over and the Order issued did the Appellant make a Motion to Amend the Judgement to change the width of the Easement.

Further, the Betty Harden Deed (R p. 172) and the Jane Harden Stone Deed (R p. 175) show the existence of the drive/easement. Both Deeds contain the language, "This conveyance is made subject to any restrictions, zoning ordinances, or **easements that may appear of record on the recorded Plats, or on the premises**".

The Appellant seeks to have the Court consider a drawing/plan (Page 15 of Appellant's Initial Brief) on which counsel for the Appellant admits he himself has done measurements and reached the conclusion the width of the easement is less than twenty-feet. This drawing was not admitted at trial, is not part of the record, and is making it's first appearance on appeal; and therefore should not be considered by the Court. Timms v Timms 286 SC 291, 333 SE2d 74 (S.C. App 1985), Richland County v Carolina Chloride 382 SC 634, 677 SE2d 892 (S C App 2008).

2. DID THE MASTER ERR IN FINDING THAT AUSTIN CLAIMED A RIGHT TO USE THE DRIVEWAY IN VIEW OF THE FACT THE ONLY EVIDENCE INDICATES THAT THE USE OF THE DRIVEWAY BY AUSTIN WAS PERMISSIVE ?

The ruling of the Master In Equity was that the Respondent was entitled to a Prescriptive Easement over, through and across the property of the Appellant.

Creation of a prescriptive easement requires (1) a continued and uninterrupted use or enjoyment of he right for a period of 20 years, (2) identity of the thing enjoyed must be proven, (3) the use must have been adverse or under a claim of right. Matthews v Dennis 365 S C 245, 616 S E 2d 437 (S.C. App 2005); Poole v Edwards 197 S C 280, 15 S.E. 2d 349 (S C 1941).

The Respondent testified at trial:

- Q. So when you purchased it in 1980, it was with the understanding that drive , that would be your access ?
- A. Right

- Q. Okay, and you continued to use that access until about when ?
- A. Until about two and a half years ago. I used it the whole time until this problem came up.
- Q. Sometime about 2006 ?
- A. Yes Sir.
- Q. Did you ever have any conversations or dealings with the people over whose land that drive went ?
- A. No, just that they always - - - we just always used it and Mr. and Mrs. Harden always knew that we were using it, and they never said anything about it, they never - - - I would take it and have new gravel put down and clean it up, fix it up real nice.
- Q. So you maintained it ?
- A. Yes Sir, I maintained it the whole time I had it.
- Q. Okay.
- A. I put a lot of gravel and a lot of crush and run down there.
- (R p. 74, line 25 - p. 75, line 21)

The Respondent claimed a right to use the drive. Otherwise, there would be no need for him to purchase the property whose only means of access lay across property of the Appellant. Further, he spent his money and time maintaining the drive with the understanding he had a right to use the same to access his property. He never sought permission from the Appellant nor her successors in title to use the drive nor to maintain the drive in a condition as would make it possible for his continued use. Revis v Barrett 321 S C 206, 467 S E2d 460; Hartley v John Wesley United Methodist Church of Johns Island, 355 SC 145, 584 S E2d 386 (S C App 2003).

The third requirement necessary to claim a prescriptive easement states (3) the use must have been adverse or under a claim of right. The Respondent used the drive/easement from 1980 till 2006. The Respondent's predecessor in title used the drive/easement for a period of over 50 years.

Mr. Tokunaga testified:

Q. And how did you get back and forth to the property ?

A. Well Mr. Lowman when he sold the property, he road was always - - - I mean, a right-of-way , or whatever was always there. So there was never any question on the road.

Q. Coming off Ellett's Road ?

A. Yes Sir.

Q. That's shown on this survey pinned to the board ?

A. Yes Sir.

Q. And over what period of time, or approximately how many years would you say that you did that ?

A. Gosh, over 50 years.

(R p. 109, line 25 - p. 110, line 12)

The testimony established use of the drive/easement for a period of at least 70 years. The use is presumed to have been adverse.

While it is true that when it appears that claimant has enjoyed an easement openly, notoriously, continuously and uninterruptedly in derogation of another's rights, for the full period of twenty years, the use will be presumed to have been adverse, so as to cast upon the owner of the servient estate the burden of rebutting the presumption. Williamson v Abbott, 107 S.C. 397, 93 S E 15 (S.C. 1917); Poole v Edwards, 197 S C 280, 15 S E2d 349 (S.C. 1941).

3. DID THE MASTER ERR IN FINDING THAT PLAINTIFF HAD SHOWN
CONTINUOUS AND UNINTERRUPTED USE OF THE ENTIRE LENGTH OF
THE DRIVEWAY FOR TWENTY YEARS ?

Mr. Tokunaga testified:

- Q. And how did you get back and forth to the property ?
- A. Well Mr. Lowman when he sold the property, the road was always - - - I mean, a right-of-way , or whatever was always there. So there was never any question on the road.
- Q. Coming off Ellett's Road ?
- A. Yes Sir.
- Q. That's shown on this survey pinned to the board ?
- A. Yes Sir.
- Q. And over what period of time, or approximately how many years would you say that you did that ?
- A. Gosh, over 50 years.

(R p. 109, line 25 - p. 110, line 12)

The Respondent testified:

- Q. So when you purchased it in 1980, it was with the understanding that drive , that would be your access ?
- A. Right
- Q. Okay, and you continued to use that access until about when ?
- A. Until about two and a half years ago. I used it the whole time until this problem came up.
- Q. Sometime about 2006 ?

A. Yes Sir.

(R p. 75, lines 1-8)

The Appellant offered no testimony to rebut this evidence. Therefore this being the only evidence offered, it is a given that the period of time the Respondent “used” the drive/easement was in excess of the twenty years; and by “tacking” this period onto the period of use by Respondent’s predecessor in title, the total period of use exceeds the 20-year period necessary to establish a prescriptive easement. Matthews v Dennis, 365 S.C. 245, 616 S E2d 437 (S.C. App, 2005). Morrow v Dyches 328 S.C. 522, 492 S E2d 420 (S.C. App, 1997).

4. DID THE MASTER ERR IN FAILING TO CONSIDER THAT THE TERMINUS OF THE EASEMENT AREA WAS PROPERTY OF SOUTH CAROLINA ELECTRIC AND GAS COMPANY RATHER THAN THE PROPERTY OF STONE.

The Deed of conveyance from Tokunaga to Respondent contains the following limiting language, “This property is conveyed subject to the right to flood heretofore granted by J J Lowman to the Lexington Water Power Company dated March 3, 1928 and recorded March 3, 1928 in Deed Book DB at Page 138 and to the Broad River Power Company Right # 2180 dated May 13, 1936 and recorded May 23, 1936 in Deed Book EB at Page 357” (R p. 159). J J Lowman never sold any property to Lexington Water Power Company (later to become SCE&G).

The Plat prepared by Cobb and submitted into evidence (R p. 170) shows Parcel “A” containing (0.34) Acres and Parcel “B” containing (0.01) Acres. The Respondent

testified he owned Parcel "B" (R p. 85, line 17- 23). The Respondent further testified he was paying Richland County property taxes on both Parcel "A" and Parcel "B". (R p. 93, line 4-9).

When questioned about the property of the Respondent, Tommy Boozer of SCE&G testified:

Q. Okay. Now again emphasizing it says it was done for SCE&G. What does that mean to you as a land management person ?

A. Basically there was some interest that the company had in that piece of property, because it was all easement property. All we had was forage rights over the majority of that property.

Q. Okay. But isn't - - - see this Plat by Mr Cobb here, isn't it the easement property of J. J Lowman you're talking about ?

A. That's Correct; that's correct.

Q. Now what do you know about the piece of property that Mr. Lowman had an easement for ?

A. To SCE&G or to Lexington Power ?

Q. Yes sir, or Lexington Power ?

A. Lexington Power at that particular time. It's property that we never owned, we never purchased, but we did purchase easement rights which would allow SCE&G to back water over the property.

(R p. 117, line 6-25)

The Appellant quotes the testimony of Lucius Cobb, the Surveyor out of context.

Lucius Cobb testified:

Q. I think Mr. Hall asked you about that parcel and having a terminus on the Stoen property, correct ?

A. Correct.

Q. In your direct testimony you said Parcel B was owned by who ?

A. Mr. Austin.

Q. And what do you base that on sir ?

A. The Deed that says that Parcel A and Parcel B were conveyed to him.

(R p. 56, line 5-13)

Q Okay, I'm just asking , in that Deed you're holding, where is the property "herein described" described ? I'm just asking, where is it in that document ?

A. On the second page, second paragraph.

Q. So you're saying that Parcel B is included in the description on page 1, or it's in addition to the property on page 1.

A. A and B, I believe are - - - wait a minute, let's see.

Q. You can sit down to look at it.

A. That's alright, I can see it now. Yeah, let me correct that statement. Parcel B - - - Parcel A, is included in the first page; and it looks like Parcel B is not.

(R p. 59, line 15 - p. 60, line 3)

Q. I understand that; I understand that. I'm not disputing. I'm just asking you about ownership of that neck, Parcel B.

A. That doesn't imply ownership; a tax map like that what you're talking about, doesn't imply ownership.

Q. Okay, but you certified that the ownership was different from - - - -

A. I had a Deed - - - I had a Deed that said it , a recorded Deed that said it. What more do I want ?

Q. Okay. But who was that Deed between ? Was it between the Tokunaga Family and others over here to Mr. Austin ?

A. It was from "We, LeonTokunaga, James Tokunaga, et al to John D Austin."

In Moore, id, the Reynolds property was conveyed to his predecessor in title along with an express easement over, through and across the Moore property for ingress/egress. The sale of the property and the grant of the easement were part of the same transaction. The easement which was at issue was appurtenant to the Reynolds property, (ie., the easement was incident to the ownership of the Reynolds property). Such is not the circumstance in this case.

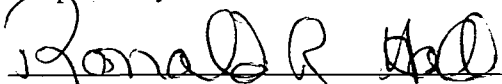
Neither Appellant, nor any predecessor in title to Appellant ever granted an easement to Respondent nor to any predecessor in title to Respondent.

Respondent is claiming, and the Court found he was entitled to, an easement by prescription over the property of the Appellant. To establish a prescriptive easement, one must show: (1) continued use for 20 years, (2) identity of the thing enjoyed, (3) use which is either adverse or under a claim of right. Morrow v Dyches, 328 S C 522, 492 S E 2d 420 (S C App 1997)

CONCLUSION

Respondent met or exceeded all the requirements of the law for the creation of a prescriptive easement over, through and across the property of the Appellant. The Court should confirm the Order of the Master In Equity.

Respectfully Submitted,



Ronald R. Hall

Attorney for Respondent

1055 Sunset Blvd

West Columbia, SC 29169

TEL: 803-791-3196

FAX: 803-791-8754

November 29, 2010

E-Mail: ronh311@ix.netcom.com

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Appellant

FINAL REPLY BRIEF

**William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net**

Attorney for Appellant

CONTENTS

TABLE OF AUTHORITIES	3
ARGUMENT	4
I. The Master erred in establishing the width of the prescriptive easement area for access to Austin's property as twenty feet in width.....	4
II. The Master erred in finding that Austin had claimed a right to use the driveway in view of the fact that the only evidence indicates that the use of the driveway by Austin was permissive.....	6
IV. The Master erred in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Austin.....	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

South Carolina Cases

<u>Hartley vs. John Wesley United Methodist Church of Johns Island</u> , 355 S.C. 145, 584 S.E.2d 386 (Ct.App. 2003)	6
<u>Revis v. Barrett</u> , 321 S.C. 206, 467 S.E.2d 460 (Ct.App. 1996)	6
<u>Richland County v. Carolina Chloride</u> , 382 S.C. 634, 677 S.E.2d 892 (Ct.App. 2008).....	4
<u>Timms v. Timms</u> , 286 S.C. 291, 333 S.E.2d 74 (Ct.App. 1985).....	4, 5

Other State Cases

<u>Chicago Title Ins. Co. v. Investguard, Ltd.</u> , 449 S.E.2d 681 (Ga.App. 1994)	5
<u>David v. Crane</u> , 242 S.E.2d 131 (Ga. 1978)	5

Rules

Rule 208(B)(2), <u>SCACR</u>	7

ARGUMENT

- I. The Master erred in establishing the width of the prescriptive easement area for access to Austin's property as twenty feet in width.

Respondent states that there are only two plats that "addressed the issue of width of the driveway". (Respondent Brief, p. 6).¹ Then, Respondent makes an unsupported claim that both of the plats "show the width of the Easement to be twenty-feet (20')". (Respondent Brief, p. 6). Last, Respondent states that this Court should not consider or use any plat introduced into evidence for the purpose of measuring the width of the driveway. Clearly, the process of showing the width of the driveway at three different locations based upon the scale placed on the plat as done on page 15 of Appellant's Brief is appropriate. And, none of the plats show the actual measurement of the width of the driveway.

Respondent argues that the use of the plat with the measurements placed on them by Appellant's counsel is the same thing as adding a document or other evidentiary matter into the record. However, the cases cited by Respondent do not involve using a ruler and a plat for the purpose of measuring the width of a driveway shown on the plat.

In Richland County v. Carolina Chloride, 382 S.C. 634, 677 S.E.2d 892 (Ct.App. 2008), Carolina Chloride attempted to reference depositions not presented at trial to show evidence of gross negligence. In Timms v. Timms, 286 S.C. 291, 333 S.E.2d 74 (Ct.App. 1985), the court was dealing with a question

¹ The plats referenced are: Plaintiff's Exhibit No. 7 and Plaintiff's Exhibit No. 3. (R. p. 170 and R. p. 164 – See Record on Appeal Supplement for Oversized Exhibits).

about verifying insurance coverage. The court stated that "there is no way this Court may verify insurance coverage without going outside the record in this case." Id. at 293.

In David v. Crane, 242 S.E.2d 131 (Ga. 1978), the Supreme Court of Georgia found no error in using a scale of one inch to 400 feet as shown "on the face of the plat" to allow enforcement of a verdict . Id. at 132. The jury in David was required to determine and draw a line to be used as the boundary line between the parcels owned by the parties.

In Chicago Title Ins. Co. v. Investguard, Ltd., 449 S.E.2d 681 (Ga.App. 1994), the court stated the following:

Further, the plat indicated that it was drawn to scale, with one inch equalling 50 feet, and designated which direction was north. Applying those keys to the plat, the exact dimensions and location of the easement could be determined. *Lawyers Title Ins. Corp. v. Nash*, 196 Ga.App. 543(1), 396 S.E.2d 284 (1990).

(Emphasis added).

Id. at 684

Thus, the use of a scale and a ruler by counsel to determine the width of the driveway as shown on a plat introduced into evidence do not constitute the adding into the record of a document or even a new legal argument.²

² The use of the same drawings with the measurements done by counsel was submitted to the Master during the hearing on the Motion to Alter or Amend. (R. p. 259).

- II. The Master erred in finding that Austin had claimed a right to use the driveway in view of the fact that the only evidence indicates that the use of the driveway by Austin was permissive.

Respondent does not state correct South Carolina law because there is not a presumption that use is considered adverse. (Respondent Brief, page 9). The right to use cannot originate from use alone. In Revis v. Barrett, 321 S.C. 206, 467 S.E.2d 460 (Ct.App. 1996), Revis believed she had a right to use the roadway because it was formerly a state road. She had also accompanied her mother to an attorney's office for the other landowner where there was a discussion about the old roadway being a "joint and common right of way". Id. at 208.

In Hartley vs. John Wesley United Methodist Church of Johns Island, 355 S.C. 145, 584 S.E.2d 386 (Ct.App. 2003), the roadway had been maintained by Charleston County for about twenty years and so the residents that had been using this road thought they had a right to use it. In addition, the church had over the years located structures with the purpose of not interfering with the use of the road.

- IV. The Master erred in failing to consider that the terminus of the easement area was property of South Carolina Electric and Gas Company rather than the property of Austin.

Respondent does not dispute the accuracy of the two title reports submitted by a qualified expert as showing the chains of title for the parcels of land owned by each party. In the Statement of the Case, Respondent concedes

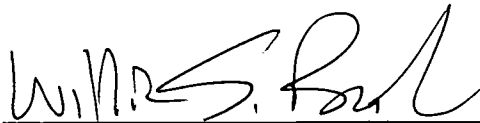
that the thirty acres were conveyed to Mitsuo Tokunaga by J.J. Lowman by deed dated July 28, 1948, and recorded in Deed Book 22 at Page 259. See Rule 208(B) (2), SCACR. The fact that the deed from the Tokunaga family to Austin adds a parcel in addition to the thirty acres does not indicate ownership of the isthmus area in Austin. The only credible evidence in the record is that the isthmus area is owned by SCE&G.

CONCLUSION

In conclusion, Respondent did not meet the burden of proof required for a prescriptive easement or for establishing a width of 20 feet.

Respectfully submitted,

December 6, 2010



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
boothlaw@bellsouth.net

Attorney for Appellant

18743

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Appellant

RECORD ON APPEAL

Ronald R. Hall, Esquire
Hall & Hall Attorneys at Law
1055 Sunset Boulevard
West Columbia, SC 29169
(803) 791-3196 (T)
(803) 791-8754 (F)
Attorney for Respondent

William E. Booth III, Esquire
Booth Law Firm, LLC
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
Attorney for Appellant

INDEX

Form 4 Order of Judge Joseph M. Strickland filed July 12, 2010	1
Order of Judge Joseph M. Strickland filed November 6, 2010	2
Consent Order of Reference filed December 14, 2007	9
Order of Judge G. Thomas Cooper filed November 8, 2007	11
Complaint filed January 2, 2007	13
Answer and Counterclaims filed January 30, 2007	24
Notice of Motion and Motion dated June 27, 2007	29
Motion of Defendant to Alter or Amend filed November 19, 2009	31
Plaintiff's Response to Defendant's Motion to Amend the Judgment dated March 25, 2010	35
Transcript of Trial on April 21, 2009	38
Lucius D. Cobb, Sr. – Direct Examination.....	49
Lucius D. Cobb, Sr. – Cross-Examination	54
Lucius D. Cobb, Sr. – Redirect Examination.....	70
John David Austin – Direct Examination.....	72
John David Austin – Cross-Examination.....	86
John David Austin – Redirect Examination.....	105
John David Austin – Recross Examination.....	106
Thomas D. Tokunaga – Direct Examination	109
Tommy Boozer – Direction Examination.....	115
Tommy Boozer – Cross-Examination	120
Jane Harden Stone – Direct Examination.....	123

Jane Harden Stone – Cross-Examination.....	134
Daniel O'Connell – Direct Examination.....	143
Daniel O'Connell – Cross-Examination	156
Plaintiff's Exhibit 1	159
Plaintiff's Exhibit 2	163
Plaintiff's Exhibit 3 (Oversized-Filed Separately)	164
Plaintiff's Exhibit 4	165
Plaintiff's Exhibit 5 (Oversized-Filed Separately)	167
Plaintiff's Exhibit 6	168
Plaintiff's Exhibit 7 (Oversized-Filed Separately)	170
Plaintiff's Exhibit 8	171
Plaintiff's Exhibit 9	172
Plaintiff's Exhibit 10	175
Defendant's Exhibit 1.....	178
Defendant's Exhibit 2.....	204
Defendant's Exhibit 3.....	240
Defendant's Exhibit 4.....	242
Defendant's Exhibit 5.....	243
Defendant's Exhibit 6.....	244
Defendant's Exhibit 7.....	245
Defendant's Exhibit 8.....	248
Defendant's Exhibit 9.....	249

Defendant's Exhibit 10.....	250
Defendant's Exhibit 11.....	252
Defendant's Exhibit 12.....	253
Defendant's Exhibit 13.....	257
Defendant's Exhibit 14.....	258
Transcript of Motion Hearing on March 26, 2010	259
Certificate of Counsel	271

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2007-CP-40-0002

John D. Austin,

Jane Harden Stone,

PLAINTIFF(S)

DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify; arbitration award; ☐ 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:

"Defendant Jane Harden Stone's Motion to Alter or Amend Judgment is Denied".

Dated at Columbia, South Carolina, this 12th day of July, 2010.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Ronald R. Hall, Esq.
ATTORNEY(S) FOR THE PLAINTIFF(S)

William E. Booth III, Esq.
ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN D AUSTIN,

PLAINTIFF,

v.

JANE HARDEN STONE

DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-40-0002

ORDER

THIS MATTER came before me for a hearing on the merits pursuant to a Summons and Complaint wherein the Plaintiff seeks an Easement over property of the Defendants for ingress/egress to his property. The Defendant duly answered, and the issues were joined.

The hearing was held April 21, 2008 at 9:30 AM.

Present for the hearing was the Plaintiff with his counsel, Ronald R Hall, Attorney at Law. The Defendant was present represented by her counsel, William E Booth, III, Attorney at Law.

Testimony was offered by each side, as well as documentary evidence. Based on the testimony and evidence offered, I find as follows:

FACTS

Mitsuo Tokunaga purchased a Thirty (30) Acre Tract of land on the waters of Lake Murray by Deed from J J Lowman dated July 28, 1948, recorded July 30, 1948 in the Office of Deeds for Richland County in Deed Book 22 at Page 359. After the death of Mitsuo Tokunaga, the Tract became Tokunaga family property, and was used by the Tokunaga family as

a recreational area. Ingress/Egress to the property during this time was over the Twenty-Foot (20') wide Drive which is the subject of this action.

John D Austin purchased the property from The Tokunaga Family, by Deed dated February 8, 1980. The Deed evidencing this transaction was recorded May 20, 1980 in the Office of Deeds for Richland County in Deed Book D-534 at Page 345. The major portion of this tract is submerged beneath the waters of Lake Murray. The portion of Mr Austin's Tract not submerged beneath the waters of Lake Murray is a small Lot containing (0.34) Acres connected to the main body of land by a narrow Isthmus. The Tokunaga Family and Mr Austin have always used the Twenty-Foot wide Drive going over, through and across property of the Defendant for ingress/egress to the property.

The Isthmus connecting Mr Austin's property to the mainland was formerly owned by SCE&G. The Isthmus connects to the twenty-foot wide drive which goes over the property of the Defendant. This Isthmus, plus the drive over the property of the Defendant connects Mr. Austin's property with Elletts Road, the only public road in the area, and is the only means of ingress/egress from Ellett's Road to the property of the Plaintiff. It is the use of the drive as an ingress/egress easement to Mr Austin's property which is the subject of this action.

The Defendant acquired her property from Betty M Hardin, her mother, by Deed dated October 14, 2004, recorded October 15, 2004 in the Office of Deeds for Richland County in Book R987 at Page 3605. The Plat of the Defendant's property shows the Twenty(20') Foot wide road/drive running the length of the Defendant's property from Ellett's Road to the end of the Isthmus which connects to the property of the Plaintiff.

Betty M Hardin acquired her property from Frank W Hardin by Deed dated August 30,

1973, recorded in the Office of Deeds for Richland County in Book 292 at Page 238. The Plat prepared for Betty M Hardin shows the same Twenty(20') Foot wide road/drive running the length of the property from Ellett's Road to the end of the Isthmus which connects to the property of the Plaintiff.

Both the Deed of the Defendant recorded in Book R987 at Page 3605 and the Deed of Betty Hardin recorded in Book 292 at page 238 contain the statement that, "this conveyance is made subject to any restrictions, reservations, zoning ordinances, or *easements that may appear of record on the recorded Plats or on the premises*.[emphasis added]

Extensive work done by Lucius Cobb Surveying, Inc established the connection between the Plaintiff's property, the Isthmus connecting Austin's property to the mainland, and the Twenty-Foot (20') wide road/drive going over the property of the Defendant.

FINDINGS

I find the Twenty-Foot (20') wide road/drive over the property of the Defendant is the sole means of ingress/egress between the property of the Plaintiff and Elletts Road, the nearest public road. The road/drive was first used by the Tokunaga Family beginning in 1948, then by their successor in interest, John D Austin; for a combined period of use of more than fifty (50) years. This was established by testimony from the Plaintiff as well as from Tommy Tokunaga, a relative of Mitsuo Tokunaga and one of the Tokunaga family who testified the Family had always used the road/drive as ingress/egress to the property.

I find John D Austin has used the road/drive going across the property of the Defendant for a period exceeding twenty (20) years with the expectation and understanding he had a right to the use of the road/drive as an easement to his property. This was evidenced by the fact that his

use had been continuous and uninterrupted until the commencement of this action; and that at one point Mr Austin had the road/drive paved to make it easier to drive on. Mr Austin never claimed any ownership to the road/drive; but did claim the right to use the road/drive..

I find the property of the Plaintiff is connected to the main body of land by an unbroken isthmus which connects to the Twenty-Foot (20') wide road/drive. The Defendant offered argument against there being a connection to the property of the Plaintiff over the Isthmus, but I find these arguments unpersuasive when compared to the findings/testimony of Lucius Cobb, a trained surveyor who did extensive field work and research into the matter. Mr Cobb concluded the isthmus did connect Mr Austin's property with the main body of land.

I find the Twenty-Foot (20') wide road/drive goes over the property of the Defendant and has been known to the Defendant and her successor, Betty M Hardin at least since 1973 when her mother obtained title to the property, and a survey was prepared for Betty M Hardin which showed the road/drive.

I find there is no other means of ingress/egress between the Plaintiff's property and Ellett's Road, the nearest public road, other than across the Twenty-Foot (20') wide road/drive on the property of the Defendant.

LAW AND ANALYSIS

The Plaintiff makes no claim of ownership of land in this action, but seeks an Easement over, through and across property of the Defendant.

An Easement is a right which one person has to use the land of another for a specific purpose. Steele v Williams, 204 SC 124, 28 SE2d 644 (1944). This right may arise in three ways: (1) from necessity, (2) by grant, and (3) by prescription. *Id* at 132, 28 SE 2d at 647-48.

In order to establish an Easement by Necessity, three requirements must be met: (1) unity of title, (2) severance of title, and (3) necessity. Brassington v Williams, 143 SC 223, 141 SE 375 (1920). In this case, it is questionable there ever was unity of title. There is no question that Plaintiff's title originated from J J Lowman. However, it was not established beyond a reasonable doubt the Defendant's title came through J J Lowman. Therefore, Plaintiff did not establish "unity of title" which is a requirement to establish an Easement by Necessity.

The Deed by which the Plaintiff's property was conveyed does recite the grant of an Easement. However, since the chain of title to the Defendant's Property does not include a conveyance from J J Lowman, the Easement recited in the Deed of the Plaintiff cannot be across the property of the Defendant. The Court notes from the various surveys and documents submitted into evidence, and the testimony from Lucius Cobb, RLS, that there now exists only the isthmus of land connecting property of the Plaintiff to the main body of land. Therefore, it must be that the Easement recited in the Deed from J J Lowman has been submerged by the waters of Lake Murray. Therefore, Plaintiff cannot claim an Easement across Defendant's property by way of a Grant. However, Plaintiff is entitled to an Easement by Prescription.

In order to establish an Easement by Prescription, a party must only show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty-years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Horry County v Lachur, 315 SC 364, 367, 434 SE2d 259, 261 (1993); Loftis v South Carolina Electric & Gas, 361 SC 434, 604 SE2d 714, 716 (Ct. App. 2004). To establish an Easement by Prescription, one need only establish either a justifiable claim of right or adverse and hostile use. Revis v Barrett, 321 SC 206, 209, 467 SE2d 460, 462. A party may "tack" the

period of use of prior owners in order to satisfy the 20-year requirement. 25 Am Jur. 2d

Easements and Licenses § 70 (1996). Morrow v Dyches, 328 SC 522, 492 SE2d 420 (1997).

Tommy Tokunaga testified his family had used the road/drive since Mitsuo Tokunaga purchased the property from J J Lowman in 1948. The Plaintiff testified he had used the road/drive since he purchased the property in 1980; had never used any other means of Ingress/Egress for access to his property; and believed he had a right to use the road. This action was begun in 2007. Even without "tacking" the period of use by the Tokunaga Family onto the period of use by the Plaintiff, Plaintiff has used the road/drive continuously and uninterrupted for a period in excess of the 20-year period required to establish an Easement by Prescription long before this action was commenced.

There is no dispute concerning the identity of the road/drive. This was clearly established through testimony and the following exhibits: (i) Plat prepared for Betty M Hardin and Jane Hardin Stone; (ii) Plat prepared by by Lucius Cobb, RLS; (iii) Plat prepared for Jim Stone. Further, Jane Hardin Stone testified regarding the road/drive and the use of the road/drive by Mr Austin since she was a child and her parents lived on the property. Further, the language in the Deed of conveyance to the Defendant by her mother, and in the Deed to her mother, Betty Hardin, both call attention to the Plat(s) which show the Twenty-Foot (20') Foot road/drive across the property.

Mr Austin claimed a right to use the road. He never claimed an ownership interest in the road/drive. Mr Austin was justified in his belief that he had a right to use the road./drive: (i) It is the only means of ingress/egress to the property; (ii) It is the ingress/egress used by the Tokunaga Family from whom he purchased the property; (iii) It is the only ingress/egress he has ever used

to access his property; (iv) It is the only access to the small isthmus which connects Mr Austin's property to the mainland.

For the reasons stated herein, I find Mr Austin is entitled to an Easement by Prescription over, through and across the property of the Defendant by way of the Twenty-Foot (20') road/drive with a southern terminus at Elletts Road, a public road, and the northern terminus at the Isthmus which connects property of Mr Austin with the mainland.

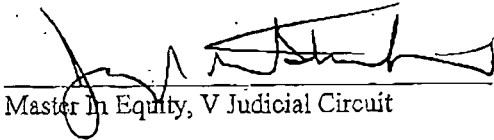
THEREFORE, IT IS ORDERED,

Plaintiff is granted an Easement by Prescription, Twenty-Feet (20') wide over, through and across property of the Defendant, as shown and delineated upon the various Plats referenced herein, with one Terminus on Elletts Road, a public road, and the other Terminus at the Isthmus connecting the property of Mr Austin with the mainland.

AND IT IS SO ORDERED.

Columbia, South Carolina

November 6, 2009


Master in Equity, V Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John D. Austin,

Plaintiff,

vs.

Jane Harden Stone,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 07-CP-40-0002

CONSENT ORDER OF REFERENCE

Upon motion of William E. Booth III, attorney for Defendant, with the consent of the attorney for Plaintiff, John D. Austin, and it also appearing that this is a proper matter to refer to the Richland County Master-in-Equity;

NOW, THEREFORE, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, it is ordered that the above-captioned case be and the same hereby is referred to the Master-in-Equity for Richland County, to take the testimony and other evidence offered and to direct entry of judgment in this action, without further order of this Court. Any appeal from the final judgment entered by the Master-in-Equity should be made directly to the South Carolina Court of Appeals.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 11, 2007

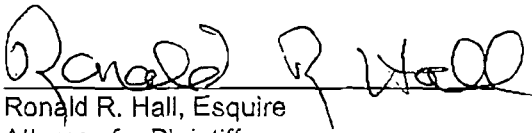

The Honorable Alison Renee Lee
Chief Administrative Judge
Fifth Judicial Circuit

I SO MOVE:

A handwritten signature in black ink, appearing to read "W. E. Booth III", written over a horizontal line.

William E. Booth III, Esquire
Attorney for Defendant

I CONSENT:

A handwritten signature in black ink, appearing to read "Ronald R. Hall", written over a horizontal line.

Ronald R. Hall, Esquire
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN D. AUSTEN

PLAINTIFF,

v.

JANE HARDEN STONE,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-40-0002

ORDER
(July 30, 2007 Hearing)

2007 JUL 30 PM 3:06
CLERK OF COURT
JANE HARDEN STONE

THIS MATTER came before me July 30, 2007 pursuant to a Notice of Motion and Motion wherein the Plaintiff seeks an Order granting him free and unencumbered access to his Lake Property over, through and across Property of the Defendant. The basis for the Motion was the claim of the Plaintiff of an Easement across the Property of the Defendant which the Plaintiff alleges is the sole access to his property, and has been blocked by the Defendant. The Defendant responded to the Motion denying Plaintiff was entitled to the relief requested, and denying Plaintiff had an Easement across her property.

Present before me for this hearing was Ronald R Hall, Attorney at Law representing the Plaintiff and William E Booth, II, Attorney at Law.

After reviewing the file and considering the able arguments of counsel, it is apparent a decision in this case is going to require a hearing on the merits with testimony and evidence from the parties and their witnesses. To determine the issue raised requires a more in-depth inquiry by the Court than can be made at a motion hearing.

From the file and arguments of counsel, I find the Plaintiff, prior to the commencement of this action, used a drive across the Property of the Defendant for ingress/egress to his property;

Page 1 of 2

and the Drive the Plaintiff used has been defined on a survey which both parties are aware of. I further find the use of this drive by the Plaintiff during the pendency of this action will create no hardship on the Defendant.

The Defendant requested the Plaintiff be required to post a bond for use of the drive. This request is denied.

Pending a merits hearing, I find the parties should remain in the same position they were in at the commencement of this action, to wit, the Plaintiff may continue to use the drive across the Property of the Defendant for ingress/egress to his property as it existed at the commencement of this action.

To avoid a further dispute between the parties before a merits hearing can be had, I find the width of the drive which the Plaintiff will be using should be specified. I find Twelve (12') Feet is reasonable width for the Temporary Easement.

THEREFORE, IT IS ORDERED,

Plaintiff is granted a Temporary Easement over, through and across the Property of the Defendant along the same drive as existed at the commencement of this action. This Temporary Easement shall be Twelve (12') Feet in width and shall extend from Elletts Road to the edge of the Plaintiff's Property.

The Defendant is restrained and prohibited from interfering or encumbering access to, and use of, this Easement by the Plaintiff.

The request of the Defendant that the Plaintiff be required to post a bond is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 6, 2007



Judge, CCP&GS, V Judicial Circuit

Page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JOHN D. AUSTIN.)

PLAINTIFF,)

v.)

JANE HARDEN STONE,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

COMPLAINT

(Non-Jury)

(Easement Across Real Estate)

2007 JAN - 2 AM 8:32
BARBARA A. SCOTT
C.C. & G.S.
RICHLAND COUNTY
FILED

THE PLAINTIFF, complaining of the Defendant, would show unto this Honorable

Court, that:

FIRST CAUSE OF ACTION

1. The Plaintiff and Defendant are both citizens and residents of the County of Richland, State of South Carolina, and have been for more than one (1) year prior to the commencement of this action.
2. The Property(s) referred to in this Complaint are located in the County of Richland, State of South Carolina.
3. This matter involves an easement over, through, and across Property of the Defendant to be used as ingress/egress to the Property of the Plaintiff.
4. Jurisdiction is proper in this Court.

SECOND CAUSE OF ACTION

5. Each and every allegation stated hereinbefore is realleged as fully as if set forth word for word.
6. On or about February 8, 1980, the Plaintiff purchased a Tract containing Thirty (30)

Acres from Leon Tokunaga located in the County of Richland, State of South Carolina, on the waters of Lake Murray (Richland County TMS Number 01406-02-08). The Deed of the Plaintiff is duly recorded in the public records of Richland County in Deed Book D-534 at Page 345 (Copy attached hereto and made a part of this Complaint).

7. In addition to the normal averments in the Deed, it is provided:

The Grantors grant to the Grantee herein as a part and parcel of this conveyance, the right to ingress and egress to the above Tract over the road leading from the above Tract over other lands now or formerly owned by J. J. Lowman into the St. Clair Road adjoining the lands now or formerly of J. J. Lowman which leads into Highway 76; said right of ingress and egress having been established in Deed of J. J. Lowman to Mitsuo Tokunaga dated July 30, 1948 and recorded in Deed Book 22 at Page 359 on July 30, 1968.

8. Since the purchase of his property in 1980, Plaintiff has been using this easement which goes over, through and across the Property of the Defendant.
9. Plaintiff is informed and believes he is entitled to an Order granting him the Easement over, through, and across the property of the Defendant which he has been using since 1980.

THIRD CAUSE OF ACTION

10. Each and every allegation stated hereinbefore is realleged as fully if repeated word for word.
11. On or about October 15, 2004, the Defendant purchased the Property from Betty M. Harden which is subject to the Easement referred to in the First Cause of Action. This Deed is recorded in the Office of Deeds for Richland County in Book 987 at Page 3605. (Copy attached hereto and made a part of this Complaint).

12/28

12. In addition to the normal averments in the Deed, it is stated:

This conveyance being made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded Plats *or on the premises* [emphasis added].

13. The Easement used for ingress/egress to the Property of the Plaintiff is and was shown upon the Richland County Tax Map.
14. The Easement used for ingress/egress to the Property of the Plaintiff was in existence at the time the Defendant received title to her property; and was evident by a cursory viewing of the property.
15. The Easement used for ingress/egress to the property of the Plaintiff was on the premises of the Property purchased by the Defendant before and after title was vested in the Defendant.
16. Because of the averment in the Deed stated herein, Plaintiff is informed and believes Defendant took title to her property subject to the Easement of the Plaintiff.
16. Plaintiff is informed and believes he is entitled to an Order granting him use of the Easement going over, through and across the Property of the Defendant as it existed at the time the Plaintiff purchased the property.

FOURTH CAUSE OF ACTION

17. Each and every allegation stated hereinbefore is realleged as fully as if repeated word for word.
18. The Plaintiff has owned his Property for more than twenty years; and has used the Easement over, through and across the Property of the Defendant for more than twenty years; before and after Defendant purchased her Property.

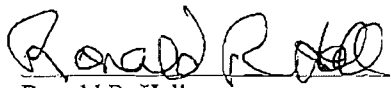
RA

19. Plaintiff is informed and believes he is entitled to an Order granting him the use and possession of the Easement over, through and across the Property of the Plaintiff in the same condition as it has been for the past twenty (20) years.
20. Plaintiff is informed and believes he is entitled to an Order of the Court declaring he, as well as his heirs, successors and assigns has an Easement by Prescription over, through and across the property of the Defendant in the same shape and condition as it has been prior to the Plaintiff blocking the Easement.
20. At the time Defendant purchased her property, she knew of the existence of the Easement used by the Plaintiff; and Defendant(s) successor knew of the Easement.

FIFTH CAUSE OF ACTION

21. Each and every allegation stated hereinbefore is realleged as fully as if repeated word for word.
22. Prior to the purchase of their respective properties, both the Property of the Plaintiff and the Property of the Defendant were owned by common Grantor.
23. At the time the common Grantor divided his Property, it was obvious the Property of the Plaintiff may become land-locked and an Easement would be required for the Property of the Plaintiff to have reasonable access to a public road; and from a public road to his property.
24. The Easement over, through and across the Property of the Defendant is necessary for the use and enjoyment of the Plaintiff's property.
25. Without the Easement over, through, and across the Property of the Defendant, Plaintiff has no ingress/egress to his property.

WHEREFORE, having fully set forth his complaint, Plaintiff prays this Honorable Court will inquire into the matters set forth herein, and issue Its Order granting Plaintiff an Easement over, through and across the Property of the Defendant on the basis of : (i) Open and continuous use for a period of twenty (20) years or more; (ii) Easement by Prescription; (iii) Easement by virtue of the statement/condition in the Deed of the Plaintiff; (iv) Easement by Necessity; for such other and further relief as the Court shall deem just and equitable.



Ronald R. Hall
Attorney for Plaintiff
Hall & Hall Attorney's at Law
1055 Sunset Blvd
West Columbia, SC 29169
TEL: 803-791-3196
FAX: 803-791-8754
E-Mail: ronh311@ix.netcom.com

December 28, 2006

Instrument: 2004035224

Book/Page: R987: 3605

Date/Time: 10/15/2004 3:36:45 PM

DEED PREPARATION ONLY
NO TITLE EXAMINATION PERFORMED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, Betty M. Harden, Grantor, in the State aforesaid, for and in consideration of Love and Affection for my Daughter, Jane Harden Stone, to me given by Jane Harden Stone, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Jane Harden Stone, Grantee, the following described property:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Elletts Road, also known as S.C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY-ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as Parcel "B," on a partial plat of lands of Mrs. J.W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, SC in Plat Book "16" at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 112.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S55°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less to the point of beginning.

DERIVATION: This being the identical premises heretofore granted to Betty M. Harden by deed of Frank W. Harden dated August 30, 1973 and recorded on September 6, 1973 in Deed Book 292 at Page 238 in the Richland County Register of Deeds.

PLUS:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, if any there be, situate, lying and being on the Northernly side of Elletts road (SC Highway No. S-40-1774), near White Rock, in the County

Richland County RCD

John G. Norris

Book 00967-3805
2004035224 10/15/2004 15:36:47
Fee: \$10.00 County Fee: \$0.00 State Fee: \$0.00
Deed
2004035224 John G. Norris
Richland County RCD

of Richland, and in the State of South Carolina, said lot being triangular in shape and is more fully shown on plat prepared for Lois C. Jones by Cox and Dinkins, Inc., Engineers-Surveyors, dated January 7, 1987, revised August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book 52 at page 6729 and is also shown on plat prepared for Mr. and Mrs. W. Frank Harden by Cox and Dinkins, Inc., Engineers-Surveyors, dated August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book _____ at page _____, which plat is incorporated herein by reference and made a part hereof, and according to the last above-mentioned plat, said triangular strip of land has the following boundaries and measurements: on the East by property of Lois C. Jones, whereon it measures one hundred fifty-one and 64/100 (151.64') feet, more or less; on the South by Elletts Road, whereon it fronts and measures twenty-two and 75/100 (22.75') feet, more or less; and on the West by property of Mr. and Mrs. W. Frank Harden, whereon it measures one hundred fifty-two and 84/100 (152.84') feet, more or less.

DERIVATION: Being the parcel conveyed to W. Frank Harden and Betty M. Harden by deed of Lois C. Jones, dated May 20, 1988 filed July 12, 1989 in the Richland County Register of Deeds, Book D0942 at Page 252; the individual half interest of W. Frank Harden having been conveyed to Betty M. Harden by deed dated December 21, 1990, filed December 21, 1990 in Richland County Register of Deed Book D1011 at page 0666.

TMS No. R01406-02-09

Grantees' Address: 1225 Elletts Road
Chapin, South Carolina 29036

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging to or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever.

And the Grantor does hereby bind her heirs and assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantees' heirs and assigns, against the Grantor and Grantors' heirs and assigns whomsoever lawfully shall claim, but as to none others.

WITNESS the Hand and Seal of the Grantor this ____ day of October, 2004.

Signed, sealed and delivered
in the presence of:

Helen Weatherly
Trin A. Cash

Betty M. Harden
Betty M. Harden

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath that s/he saw the within-named Betty M. Harden sign, seal and as her act and deed, deliver the within-written Title to Real Estate and that s/he with the second witness signing above witnessed the execution thereof.

Helen Weatherly
Witness

SWORN to before me this
14th day of October, 2004.

Trin A. Cash
Notary Public for South Carolina
My commission expires: 9/15/2011

Richland County ROD

John G. North

State of South Carolina,
COUNTY OF RICHLAND

MAR 20 10 07 AM '80

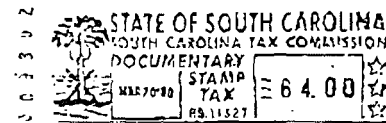
CLARENCE BARTLETT



Know All Men By These Presents, That we, Leon Tokunaga, James Tokunaga, Robert Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., Bettina Robin Tokunaga, Darrell Ross Lake and Sandra L. Collins

ATTEST:
A TRUE COPY.

Clarence J. Bartlett
R. M. C.



in the State aforesaid, for and in consideration of the sum of Thirty-two thousand and no/100 (\$32,000.00) Dollars to us paid by John D. Austin in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said JOEN D. AUSTIN, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or tract of land together with the improvements thereon, containing 30 acres, more or less, at Lake Murray, County of Richland, State of South Carolina, and being more particularly described in Deed of J.J. Lowman to Mitsuo Tokunaga dated July 28, 1948 and recorded in Deed Book-22 at page 359 on July 30, 1948 and having the following boundaries and measurements, as set forth in said deed, to wit: Commencing at a point on the Southwest corner of the division line between lands of L.L. Lowman and J.W. Kleckley and running in the following directions: S28°15'E for a distance of Four hundred forty (440') feet to monument; thence S13°00'W for a distance of Nine hundred forty (940') feet to monument where land corners with lands of Kleckley and Lowman; thence turning and running along lands of Lowman N80°45'W for a distance of Nine hundred fifty (950') feet to monument of Beard Creek; thence turning and running along Beard Creek in a Northernly direction to monument where land corners with Beard Creek and lands of J.B. Swygert; thence turning and running along lands of Swygert N67°30'E for a distance of Nine hundred thirty (930') feet to monument; thence turning in a Southeasternly direction to point of beginning.

This being the identical property heretofore inherited by the above named Grantors by Will of Mitsuo Tokunaga dated August 26, 1961 and recorded November 28, 1961 in Probate Box 1020, Package 20986 and by the Will of Richard L. Tokunaga dated April 12, 1977 and recorded

This property is conveyed subject to the right to flood heretofore granted by J.J. Lowman to the Lexington Water Power Company dated March 3, 1928 and recorded March 3, 1928 in Deed Book DB at page 138 and to the Broad River Power Company, Right #2180, dated May 13, 1936 and recorded May 23, 1936 in Deed Book EB at page 357.

The portion of the property herein conveyed not submerged by the waters of Lake Murray is shown as Parcel A containing .34 acres and Parcel B containing .01 acres upon a partial plat of lands of J.J. Lowman, Option #657, dated July 21, 1978 prepared for South Carolina Electric & Gas Company, drawing #516-51861.

Grantee's mailing address: 1628 Van Heise Drive
Columbia, SC 29204

The Grantors grant to the grantee herein as a part and parcel of this conveyance the right of ingress and egress to the above tract over the road leading from the above tract over other lands now or formerly owned by J. J. Lowman into the St. Claire road adjoining the lands now or formerly of J. J. Lowman which leads into Highway #76; said right of ingress and egress having been established in deed of J. J. Lowman to Mitsuo Tokunaga dated July 30, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

John D. Austin, his

Heirs and Assigns forever

And I do hereby bind Myself and My Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

John D. Austin, his

Heirs and Assigns, against Me and My Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our Hand and Seal this 8th day of February
in the year of our Lord one thousand nine hundred and eighty
and in the two hundred and fourth year of the Sovereignty
and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

George M. Lee
Customer promoted

Robert Tokunaga (SEAL) ✓

James Tokunaga, Divorced (SEAL) ✓

Robert Tokunaga, Widower (SEAL) ✓

Harry Tokunaga (SEAL) ✓

Thomas Tokunaga (SEAL) ✓

Thomas W. Tokunaga (SEAL) ✓

Betty W. Tokunaga

Richard L. Tokunaga, Jr. (SEAL) ✓

Richard L. Tokunaga, Jr. Unmarried

Retinna Robin Tokunaga

Retinna Robin Tokunaga

Darrell Ross Lake

Sandra Lake

FD 534 PAGE 346

FD 534 PAGE 346

FD 534 PAGE 347

STATE OF SOUTH CAROLINA,
RICHLAND County

Personally appeared before me George M. Lee, Jr.

and made oath that he saw the within named, Leon Tokunaga, James Tokunaga, Robert Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., et al sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein

mentioned, and that he, with Susan L. Chahanovich witnessed the execution thereof.

SWORN to before me this 8th day of February 1980
Gummett-phor... (L.S.)

Notary Public of S. C.
My commission expires: 3-9-86

STATE OF SOUTH CAROLINA,
RICHLAND County

RENUNCIATION OF DOWER

I, Susan L. Chahanovich, Notary Public for SC, do hereby certify

unto all whom it may concern, that Mrs. Sadie P. Tokunaga, Mary F. Tokunaga, Frances W. Tokunaga and Eden B. Lake the wife of the within named Leon Tokunaga, Harry Tokunaga, Thomas Tokunaga and each Darrell Ross Lake they do did this day appear before me, and each being privately and separately examined by me, did declare that they were freely, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named John D. Austin, his heirs

their and assigns, all her interest and estate, and also her rights and Claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 8th day of February Anno Domini 19 80.
Gummett-phor... (L.S.)

Notary Public of S. C.
My commission expires: 3-9-86

Robert Tokunaga, widower (SEAL)
Harry Tokunaga (SEAL)
Thomas Tokunaga (SEAL)
Betty W. Tokunaga (SEAL)
Richard L. Tokunaga, Jr. Unmarried (SEAL)
Betty L. Tokunaga (SEAL)
Darrell Ross Lake (SEAL)
Sandra L. Collins (SEAL)

Sadie P. Tokunaga
Mary F. Tokunaga
Frances W. Tokunaga
Eden B. Lake

FD 534 PAGE 347

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John D. Austin,

Plaintiff,

vs.

Jane Harden Stone,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 07-CP-40-0002

**ANSWER
AND COUNTERCLAIMS**

The Defendant, Jane Harden Stone herein, files her Answer to the Plaintiff's Complaint and her Counterclaims against the Plaintiff set forth below, and would respectfully show and request the following:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. Each and every allegation not herein after specifically admitted, qualified or explained, is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION

2. Answering the allegations of Paragraph 1: Defendant admits that she is a citizen and resident of the County of Richland, State of South Carolina, and that she has been a resident of said county and state for more than one year prior to the commencement of this action. Defendant is without sufficient information or belief as to the remaining allegations of Paragraph 1, and therefore, denies same.

3. The allegations of Paragraph 2 are admitted.

4. The allegations of Paragraph 3 are denied.

WSD
1/29/07

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION

5. The allegations of Paragraph 4 are procedural in nature and should not require a response; if the allegations require a response, the allegations are denied.

6. The allegations of Paragraph 5 deal with Paragraphs 1 through 4 of the Complaint, and do not require further response by Defendant.

7. The allegations of Paragraph 6 are admitted in so far as the public records of Richland County show a deed recorded in Deed Book D-534 at Page 345. The remaining allegations of Paragraph 6 are denied.

8. Answering Paragraph 7: Defendant admits that the deed recorded in the public records contains the quoted paragraph. Further answering Paragraph 7, Defendant would show and alleges that "St. Clair Road" is now known as "Captain Lowman Road," and that the property owned by Defendant has never been owned by J.J. Lowman.

9. The allegations of Paragraphs 8 and 9 are denied.

FOR A SECOND DEFENSE TO THE THIRD CAUSE OF ACTION

10. The allegations of Paragraph 10 deal with Paragraphs 1 through 9 of the Complaint, and no further response is required from Defendant.

11. Answering Paragraphs 11 and 12: The allegations of Paragraph 11 are admitted in so far as they allege that Defendant acquired property from Betty M. Harden and that the deed of transfer is recorded in the public records of Richland County in Record Book 987 at Page 3605. Further answering Paragraph 11, Defendant denies that said deed of conveyance refers to or makes the property subject to any easement right of the Plaintiff. The remaining allegations of Paragraphs 11 and 12 are denied.

WAB
1/29/07

12. The allegations of Paragraphs 13, 14, 15, 16, and 16 (Paragraph #16 is repeated twice) are denied.

FOR A SECOND DEFENSE TO THE FOURTH CAUSE OF ACTION

13. The allegations of Paragraph 17 deal with Paragraphs 1 through 16 of the Complaint and no further response is required from Defendant.

14. The allegations of Paragraphs 18, 19, 20, and 20 (Paragraph #20 is repeated twice) are denied.

FOR A SECOND DEFENSE TO THE FIFTH CAUSE OF ACTION

15. The allegations of Paragraph 21 deal with Paragraphs 1 through 20 of the Complaint and no further response is required from Defendant.

16. The allegations of Paragraphs 22, 23, 24, and 25 are denied.

FOR A THIRD DEFENSE TO THE FOURTH CAUSE OF ACTION

17. Due to actions of Defendant in constructing a barrier across the alleged right-of-way easement area for the past 18 months, there has not been continued and uninterrupted use or enjoyment of the alleged right for the full period of twenty years; consequently, Plaintiff cannot establish an easement by prescription.

FOR A FOURTH DEFENSE TO THE FOURTH CAUSE OF ACTION

18. The fourth cause of action in the Complaint should be dismissed under Rule 12(b) (6), SCRCP, in that Plaintiff has not alleged that the use of the alleged easement area was either adverse or under a claim of right; consequently, Plaintiff cannot establish an easement by prescription.

WFB
1/29/07

FOR A FIFTH DEFENSE TO THE FOURTH CAUSE OF ACTION

19. The alleged easement area for the right-of-way over property of Defendant does not have a terminus on the property of the Plaintiff; consequently, Plaintiff cannot establish an easement by prescription.

AS A DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM

20. Plaintiff has trespassed on Defendant's land on one or more occasions and has caused harm by such illegal invasion of the property owned by Defendant.

21. Defendant is informed and believed that she is entitled to a permanent injunction prohibiting Plaintiff from trespassing on her property.

AS A DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM

22. During 2005, Plaintiff caused considerable damage to Defendant's real property in one or more of the following particulars:

- (a) Placing loads of asphalt material on Defendant's property;
- (b) Damage to the wet weather drainage ditch running within Defendant's property due to grading activity;
- (c) Damage to the protective concrete covers on sewer system; and
- (d) Damage to the "letts" tank used for sewer service.

23. Defendant has incurred and will continue to incur expenses for repairing the damage and removing material from her property.

AS A DEFENSE AND BY WAY OF A THIRD COUNTERCLAIM

24. In the event Plaintiff obtains a judgment that he has an easement right of ingress and egress over property of Defendant, Defendant seeks a declaratory judgment as follows:

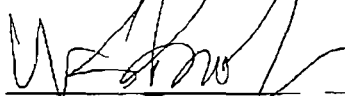
OK
1/11/07

- (a) The right-of-way easement area must be located along the boundary line of the property adjoining Defendant's right;
- (b) No improvements can be made within the right-of-way area other than maintaining a surface suitable for vehicular travel;
- (c) Use of the right-of-way easement area shall be restricted to the owners of the property of Plaintiff and no guests or invitees shall be allowed to use the right-of-way; and
- (d) The right-of-way easement area shall only be a sufficient width for one lane of traffic.

WHEREFORE, having answered the Plaintiff's Complaint, Defendant prays and requests as follows:

- A. Dismissal of the Complaint with prejudice.
- B. A permanent injunction against Plaintiff from using or trespassing on the property of Defendant.
- C. Judgment for damages against the Plaintiff.
- D. In the alternative, a Declaratory Judgment as requested herein.

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net

West Columbia, South Carolina

JAN. 29, 2007

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
JOHN D. AUSTIN	)	CASE NO: 2007-CP-40-0002
	)	
PLAINTIFF,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	
JANE HARDEN STONE,	)	
	)	
DEFENDANT.	)	
_____	)	

TO: JANE HARDEN STONE, DEFENDANT, OR HER ATTORNEY, WILLIAM E
BOOTH, III, ATTORNEY AT LAW

YOU WILL PLEASE TAKE NOTICE the Plaintiff will move before the Court of
Common Pleas for the V Judicial Circuit in the Richland County Judicial Center, 1700 Main
Street, Columbia, SC on the 10th Day after the date hereof, in the forenoon for an Order allowing
the Plaintiff to use the Easement which is the subject of this action, until such time as a hearing
on the merits of this action may be had. And to restrain and prohibit the Defendant, directly or
indirectly from obstructing, blocking, constructing over, or otherwise impeding the free flow of
traffic over, through, and across the Easement which is the subject of this action.

The basis for this motion is the Plaintiff lacks any other adequate remedy at law or
otherwise for the harm or damage the action(s) of the Defendant would cause unless the
Easement is kept free and clear until such time as a hearing on the merits of this action can be
had.

Plaintiff will suffer irreparable harm, damage and injury unless the acts and conduct of
the Defendant in attempting to permanently block the Easement are enjoined.

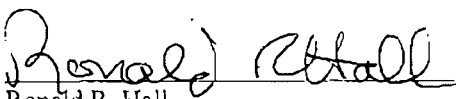
Plaintiff has used the Easement which is the subject of this action long before the

Defendant obtained the property over which the Easement goes.

Plaintiff and his predecessors in title have used the Easement for at least twenty(20) years or more; and were using the Easement when the parents of the Defendant owned the property.

Plaintiff has no other means for ingress/egress to his property.

This Motion is based on the statutes and laws of the State of South Carolina, the pleadings filed in this action, and such Affidavits as may be filed hereafter.



June 27, 2007

Ronald R. Hall
Attorney for Plaintiff
Hall & Hall Attorney's at Law
1055 Sunset Blvd
West Columbia, SC 29169
TEL: 803-791-3196
FAX: 803-791-8754
E-Mail: ronh311@ix.netcom.com

The undersigned herewith certifies he did on the 27 Day of June, 2007, deliver a copy of the foregoing NOTICE OF MOTION AND MOTION to the Defendant by depositing a copy of the same in the U.S. Mail, postage prepaid, return address clearly shown upon the outside of the envelope, addressed to counsel for the Defendant, to wit:

William E Booth, III
Attorney at Law
Consolidated Business Park
3231 Sunset Blvd, ste A
West Columbia, SC 29169



Ronald R Hall
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John D. Austin,

Plaintiff,

vs.

Jane Harden Stone,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 07-CP-40-0002

MOTION OF DEFENDANT
TO ALTER OR AMEND
PURSUANT TO RULES 52 AND 59
SCRCP

NOV 19 PM 4:21
ANETTE W. McBRIDE
C.C.P. & G.S.

COPIES

RICHLAND COUNTY

TO: PLAINTIFF JOHN D. AUSTIN
c/o Ronald R. Hall, Esquire
Hall & Hall Attorneys at Law
1055 Sunset Boulevard
West Columbia, SC 29169

PLEASE TAKE NOTICE that the Defendant named above, Jane Harden Stone, through her undersigned counsel moves before the Honorable Joseph M. Strickland, Master in Equity for Richland County, for an Order amending or altering the findings and conclusions made in that certain Order dated November 6, 2009, issued by this Court, pursuant to Rules 52 (b) and 59 (e), S.C.R.C.P., on the following grounds:

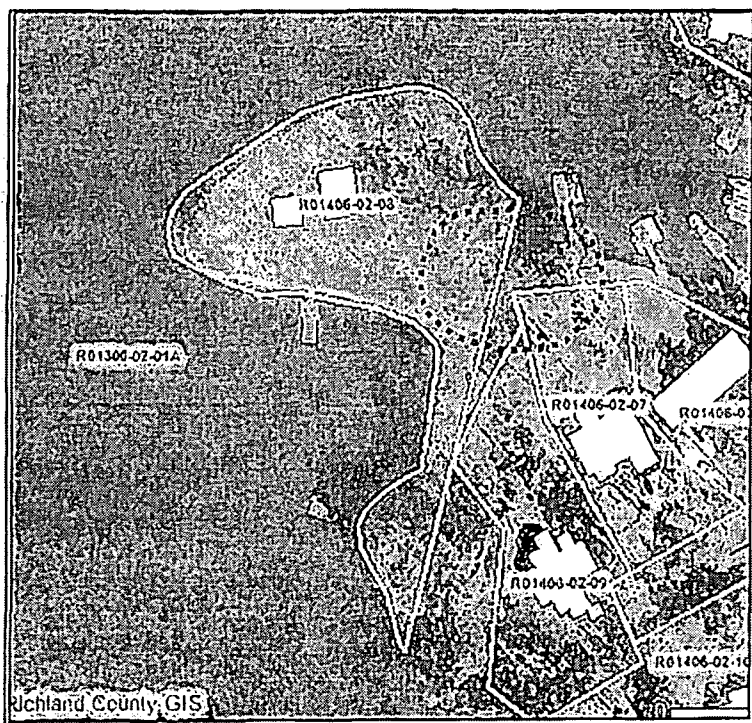
1. Pursuant to Rule 52 (b), S.C.R.C.P., upon motion, this Court may amend its findings or make additional findings and may amend the judgment accordingly.
2. Pursuant to Rule 59 (e), S.C.R.C.P., upon motion, this Court may alter or amend a judgment.
3. By Order issued on November 6, 2009, this Court granted (a) Plaintiff an easement by prescription, (b) a width of 20 feet wide for the easement, and (c) a terminus at Elletts Road and at the isthmus.

WSP
11/19/09

4. The Court erred in concluding that the width of the easement was twenty (20) feet in that there were no plats, testimony or otherwise indicating a width of twenty feet.

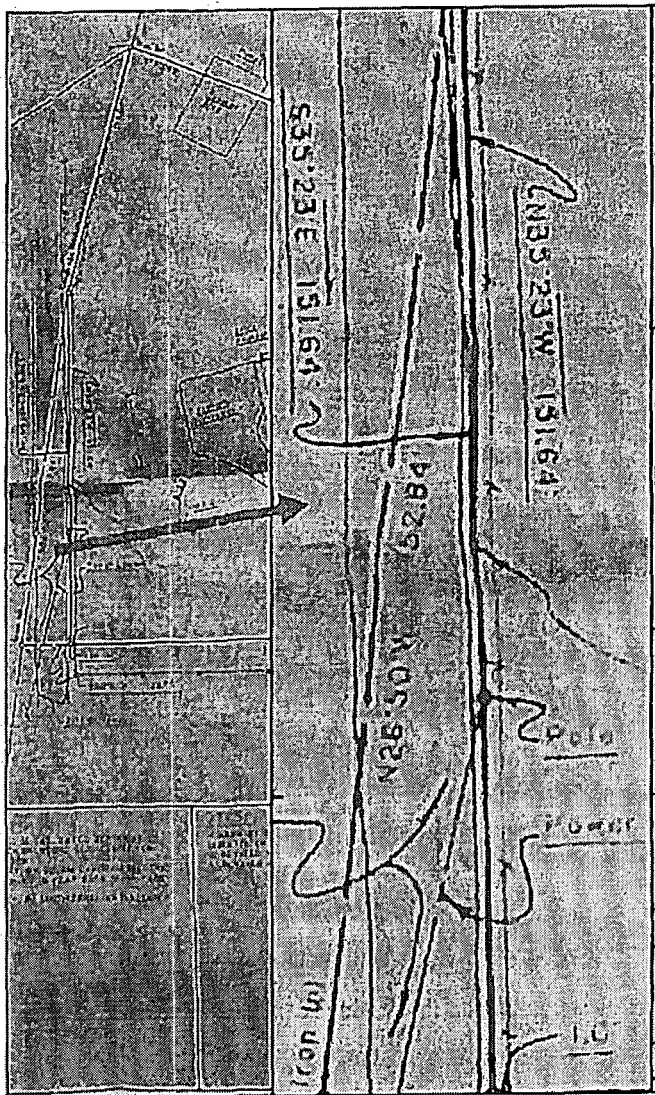
5. The Court erred in concluding that the survey work performed by Lucius Cobb established the ownership of the isthmus area in that he was not qualified as an expert as to title matters.

6. The Court erred in concluding that the owner of the isthmus area was the Plaintiff in that his chain of title did not include any lands of Mrs. J.W. Kleckley, but that his chain of title was through J.J. Lowman who never owned the isthmus area. The tax map also shows that the isthmus area has never been considered as part of the Plaintiff's property and taxed to him:



COPY

7. The Court erred in concluding that the Plaintiff had shown continuous and uninterrupted use of the entire length of the driveway in that a portion was not conveyed to the Plaintiff's predecessor in title until May 20, 1988. The following shows the area of the driveway obtained from Lois Jones:



UAR
11/19/21

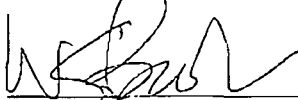
8. The Court erred in concluding that the Plaintiff had shown either an adverse or hostile use or a justifiable claim of right in that the only evidence indicates that the use of the driveway area by Plaintiff and previous users was nothing more than permissive, as evidence establishing the mere fact of use should not necessarily equate with evidence establishing the character of such use.

9. The Court erred in concluding that the Plaintiff had shown the continued and uninterrupted use or enjoyment for 20 years in that the Plaintiff had prevented the use since September of 2005.

10. The Court erred in not considering the counterclaim of the Defendant and in failing to determine the width, location, and scope of use that would result if the Plaintiff established an easement right.

11. Therefore, this Court should amend its Order and find and conclude that no prescriptive easement should be granted to the Plaintiff, or alternatively, if the Plaintiff is entitled to a prescriptive easement which the Defendant disputes, the width should be no more than twelve (12) feet.

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net

West Columbia, South Carolina
November 19, 2009

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
JOHN D. AUSTIN	)	CASE NO: 2007-CP-40-0002
	)	
PLAINTIFF,	)	
	)	
v.	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANT'S MOTION TO
JANE HARDEN STONE,	)	AMEND THE JUDGEMENT
	)	
DEFENDANT.	)	
	)	

THE PLAINTIFF responding to the Motion of the Defendant to amend the Judgement in this case, would show:

(Numbers refer to paragraphs in Defendant's Motion)

1. Paragraph requires no response.
2. Paragraph requires no response.
3. Paragraph requires no response.
4. All Plats of Defendant's property, including the Plat of Jim Stone recorded May 4, 2007 in the Office of Deeds for Richland County in Book 1310 at Page 254 show the Easement to be Twenty (20') Feet in width. Further, the Deed which conveyed title to the property to the Defendant states, "This conveyance is made subject to any restrictions, zoning ordinances or *easements that may appear of record on the recorded Plats, or on the premises.*" The easement appears on the premises as a Twenty(20') Foot easement, and, as pointed out above, also on all recorded Plats. Defendant produced no evidence that the Easement was any less than what was shown on the Plat(s). Further, Defendant admitted in their Request to Admit that this clause is contained in the Deed by which Defendant

acquired title to her property.

Further, it is a requirement of Richland County that roadways, including Easements be of sufficient width as to allow for the movement of emergency vehicles.

5. Prior to the hearing, Defendant took the Deposition of Lucius Cobb and did not raise the issue of his being or not being an Expert. At the hearing the Defendant did not seek to have Lucius Cobb disqualified as an Expert. At the hearing, Defendant produced no "Expert" or other witness to refute the testimony of Lucius Cobb.

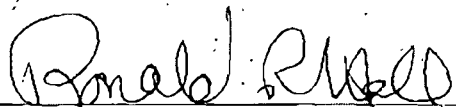
Further, the issue of "ownership" of the Isthmus was never an issue in this action. The only issue was the ingress/egress easement over property of the Defendant

The Testimony of Mr. Tokunaga established long and uninterrupted use of the isthmus to for ingress/egress to the property of Mr. Austin.

6. Again, there was never an issue of an Easement over the Isthmus connecting the property of Mr. Austin with the Easement going over the property of the Defendant. Nor did Defendant produce any witness or evidence from SCE&G to refute the testimony and evidence establishing use of the Isthmus as a means of ingress/egress to property of Mr. Austin.
7. The testimony of Plaintiff, combined with the testimony of Mr. Tokunaga established continuous and uninterrupted use of the easement going back to the 1940's. The Plaintiff never claimed he had title to the Easement.
8. The long and uninterrupted use of the Easement - - - - - twenty-four (24) years - - - - - across property of the Defendant, even with permission, was sufficient to establish a justifiable claim of right to use the easement. Plaintiff's use of the easement began in 1980, when he purchased his property.

9. When Defendant's predecessor in title conveyed title to the property to Defendant in 2004, Plaintiff had had a continuous and uninterrupted use of the Easement since 1980 - - - - a period of twenty-four (24) years. Prior to 1980, Plaintiff's successor in title, the Tokunaga family had use of the Easement since 1948; a period of thirty-two (32) years. Further, at a hearing for an injunction brought by the Defendant, this Court ruled the parties would remain in the same position and condition as they were when the action began; so the attempt by the Defendant to block the Easement was nullified by this Court.
10. The counterclaim of the Defendant concerned damages to their property caused by Plaintiff's use of the Easement. Since the Court found Plaintiff was entitled to an Easement across property of the Defendant, there was no issue of damages to Defendant's property.
- There was sufficient testimony and evidence presented for the Court to establish the width, location and scope of the Easement.
11. Plaintiff is informed and believes the Easement cannot be restricted to Twelve (12) Feet as that would not allow sufficient right-of-way for Emergency Vehicles.

Respectfully Submitted,



Ronald R Hall
Attorney for Plaintiff

March 25, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2007-CP-40-0002

John D. Austin,)
)
 Plaintiff,)
)
vs.)
)
Jane Harden Stone,)
)
 Defendant.)

TRANSCRIPT OF RECORD

April 21, 2008

B E F O R E:

THE HONORABLE JOSEPH M. STRICKLAND
Master In Equity for Richland County

A P P E A R A N C E S:

Ronald R. Hall, ESQUIRE
Attorney for the Plaintiff

William E. Booth, III, ESQUIRE
Attorney for the Defendant

PATRICIA J. HARMAN, CCR

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

I N D E X

	<u>PAGE</u>
Opening Statements:	
By Mr. Hall	3
By Mr. Booth	4
Witnesses:	
Lucius D. Cobb, Sr.	
Direct Examination – By Mr. Hall	11
Cross-Examination – By Mr. Booth	16
Redirect Examination – By Mr. Hall	32
John D. Austin	
Direct Examination – By Mr. Hall	34
Cross-Examination – By Mr. Booth	48
Redirect Examination – By Mr. Hall	67
Recross Examination – By Mr. Booth	68
Examination – by The Court	69
Thomas D. Tokunaga	
Direct Examination – By Mr. Hall	71
Tommy Boozer	
Direct Examination – By Mr. Booth	77
Cross-Examination – By Mr. Hall	82
Jane H. Stone	
Direct Examination – By Mr. Booth	85
Cross-Examination – By Mr. Hall	96
Daniel O'Connell	
Direct Examination – By Mr. Booth	104
Cross-Examination – By Mr. Hall	118
Exhibits Pre-marked.	

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

EXHIBITS

<u>PLAINTIFF'S</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVIDENCE</u>
No. 1	Deed to John D. Austin		
No. 2	Property Tax Map (Lake Murray)		
No. 3	Survey-Plat for Jim Stone 4-19-07		
No. 4	Reference Plats T.M.S. #1136		
No. 5	Survey - Plat for Betty M. Harden		
No. 6	Plaintiff's First Request to Admit To Defendant		
No. 7	Survey - Plat for John D. Austin 7-3-07		
No. 8	Photos (4)		67
No. 9	Deed (Betty M. Harden)		98
No. 10	Deed (Jane Harden Stone)		

DEFENDANT'S

No. 1	Chain of Title Report (John Austin)		
No. 2	Chain of Title Report (Jane Harden Stone)		
No. 3	Title to Real Estate (Mitsuo Tokunaga)		
No. 4	Plat prepared for Lois C. Jones (1-7-87)		
No. 5	Fringe land plat (2-12-1960)		
No. 6	Plat prepared for Mr. & Mrs. Frank Harden		
No. 7	Title to Real Estate (W. Frank Harden)		
No. 8	Ltr 9-13-05 to John Austin from William Booth		
No. 9	Photograph		
No. 10	Tax map		
No. 11	Plat of land of J.J. Lowman		
No. 12	Deed (W.A. Boyd) 7-27-60		
No. 13	Title Abstractor Information (Daniel O'Connell)		
No. 14	Invoice for Asphalt 10-17-05 (\$1200)		
No. 15	Plat of J.J. Lowman Opt. #657		59

RULING OF THE COURT 119

CERTIFICATE OF REPORTER 121

Official Court Reporter
Master in Equity, Richland County
 1701 Main Street - Post Office Box 192 (29202)
 Columbia, South Carolina 29201

1 THE COURT: This is civil action number 2007-CP-40-
2 0002. Now those numbers simply mean this case was filed
3 in 2007; the CP-40 is the county code. That means it is a
4 Richland County case, and this is the second case that was
5 filed that year.

6 I've talked with counsel in chambers. They have told
7 me that they don't think there is any chance the parties
8 are going to work this out amongst themselves, and we're
9 going to have to try this. It will probably take all day
10 to try it. We're going to break for lunch right at noon,
11 and we'll break for about an hour. And also if anybody
12 needs a break for any reason - - attorneys or parties or
13 anybody like that - - just let me know and we'll take a
14 break, for any reason whatsoever, if you think you need
15 one.

16 THE COURT: Mr. Hall, let's start with brief opening
17 statements. I say brief, two minutes or less. Who is
18 suing who for what in this case?

19 MR. HALL: Your Honor, if it please the court, I
20 represent the plaintiff, Mr. John D. Austin. Mr. Austin
21 owns some 30 plus or minus acres on the waters of Lake
22 Murray. Most of that acreage is under the water of Lake
23 Murray, so he only has use to and access to about a little
24 over half an acre. And for some number of years, as the
25 testimony will show, there has been an easement or a way

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

3

1 of ingress and egress to his property. Within the last few
2 years, the parties who own the property on which the
3 easement runs has contested that, and have blocked the
4 easement at various times, and done other things to
5 discourage Mr. Austin from using his property. As the
6 evidence will show, this little easement is the only way
7 he has to get to his property; without that easement, the
8 property cannot be used, cannot be accessed or anything.
9 And so our action here today is to - - and let me also
10 state that the easement has never really been established
11 by court order, or agreement among the parties, or
12 anything of that nature. It has just been an implied
13 easement and using it, and so we are here today in order
14 to clarify that easement and to establish that Mr. Austin
15 indeed does have egress - - the right to go through - - up
16 and down that ingress and egress.

17 THE COURT: All right.

18 THE COURT: Mr. Booth?

19 MR. BOOTH: May it please the court. Your Honor, we
20 are here today, obviously, to decide a very important
21 legal issue that will permanently affect the property
22 owners that are here today, as well as any future property
23 owners of the two tracts that are involved.

24 I represent Jane Harden Stone. She is the Defendant.
25 And this is an alleged easement case. And that's why

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

4

1 we're here, because the establishment of the easement is
2 an essential issue in it. You know, I think most people
3 who look at easement cases find that it's a difficult case
4 because the idea of using someone else's property has
5 inherent risks and concern to the property owner affected,
6 and that's why they're difficult.

7 So we are to decide today if John Austin, his
8 immediate family, his relatives, or guests can use at
9 anytime without any restrictions a driveway that would be
10 about 266 feet long, extending along the entire eastern
11 boundary of the property owned by Ms. Stone.

12 We are here also today to decide if Ms. Stone and her
13 family, and all future owners, must give a free ticket for
14 the use of the 266 foot long driveway, a free ticket. Mr.
15 Austin, on the other hand, can only access his property,
16 without using a boat, through this particular driveway
17 area. No dispute about that, except there are other land
18 nearby that could possibly be used for access. But
19 anyway, we'll get into that in just a minute. But
20 obviously there are important issues for both parties, and
21 I know the court will take it very seriously.

22 Now, why are we here today? Why are we here today?
23 Well, Ms. Stone is concerned, very concerned about what
24 has happened - - what she has seen since she moved into
25 the house in 2004, that was previously owned by her

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

5

1 | parents, Betty Harden and Frank Harden. They bought it
2 | many years ago and used it pretty much for a vacation
3 | house, but because of her aging parents' condition she
4 | decided to move back to Columbia, move into that house,
5 | and now is building a second home for her parents directly
6 | behind this home, so she can take care of her aging
7 | parents.

8 | So, in September of 2005, after consulting two real
9 | estate lawyers - - I was one of them - - she blocked the
10 | driveway that Mr. Austin is claiming he has an easement
11 | through.

12 | Now, looking back about twenty (20) years, we look at
13 | easement law, I found one common thread, one common
14 | thread, and that is that when a party like Mr. Austin
15 | seeks a declaration of an easement right, he must carry
16 | the burden; he must satisfy you that he has followed all
17 | the very rigid requirements necessary for the declaration
18 | of an easement, because an easement is permanent - -
19 | unless the parties agree otherwise, it is permanent
20 | forever. And that affects the landowner like Ms. Stone
21 | with possibly an unwanted intrusion on her property. So
22 | that's why the courts have looked for a solid foundation.

23 | What is a solid foundation? Do we have a written
24 | agreement? The absence of one doesn't necessarily mean
25 | the person doesn't have an easement, but it certainly

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

6

1 requires the court to look deeper into the facts to see if
2 there is something beyond a written easement that can be
3 used by the court as a solid foundation for the granting
4 of an easement.

5 Now, because as you've heard this is a case where a
6 previous use of this driveway was stopped by Ms. Stone, so
7 I looked at a couple of cases just to sort of talk about
8 that - - I'm not trying to argue, but just giving you the
9 information. I think the largest case that has come out
10 lately is the "Springob vs. Ferrar" case, Court of
11 Appeals, 1999. They are two lots in Spring Valley, side
12 by side. One lot had an irrigation well that supplied
13 water to the adjacent lot for irrigation purposes - -
14 lawn, and that sort of thing. And what is interesting
15 about this case is that when the Ferrars bought the lot
16 that had the well on it, the pipe, their closing attorney
17 said, "Mr. and Mrs. Ferrar, see the well on your lot. See
18 the lines going over to the other lot. See the language
19 in Deed 72" - - which is an argument Mr. Hall will make -
20 - but notwithstanding all of that, the Ferrars said, "We
21 don't think there is an easement right, and we are going
22 to discontinue use of that well". And they won. The
23 court said, "no easement", or that "Springob can use that
24 irrigation well", even though they knew the well was
25 there, and even though they knew the pipe was there.

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

7

1 | Because again, our courts say that to establish an
2 | easement you've got to follow the rules; we just don't do
3 | it because you have use.

4 | The other one is a very recent case, "Wendell vs.
5 | Riddle", a place in Orangeburg where the use by a farmer
6 | of an irrigation pond, as well as the system to help him
7 | farm was stopped by the person that owned the pond. Why
8 | did that person stop use? Well, in this case, Mr. Riddle
9 | started using too much water out of the pond, and so the
10 | other - - Mr. Wendell decided to seek court action, and
11 | won - - and he won it. And again, even in that case there
12 | was language in the deed, "subject to, subject to", but
13 | Mr. Wendell successfully proved that Mr. Riddle had no
14 | easement right.

15 | Just recently our Supreme Court issued the case of
16 | "Emma Farber Partnership vs. the South Carolina Department
17 | of Transportation". It's so recent, I went ahead and
18 | brought a copy for the court; it's just been decided in
19 | the last few weeks. And that case involved P.R.T., the
20 | department of P.R.T., and they were stopped from using a
21 | road system within a section of Garden City, a private
22 | road system, they were stopped from using it. And what
23 | was significant about that case - - and this is the very
24 | end of the peninsula sort of for Garden City, right near
25 | Murrells Inlet - - what was interesting is Justice Toal

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

8

1 | said, "P.R.T., you don't have a right to use that road
2 | system for residential purposes. You can use it to bring
3 | equipment down there to do dredging, but you can't use it
4 | for residential purposes". P.R.T. said, "Well, we would
5 | like to sell it, let it be developed for residential. It
6 | would probably be about three million for the land." The
7 | court said, "No, you don't have the easement right to use
8 | it for residential."

9 | But what was interesting about that case, the part
10 | that I showed you, Justice Toal said in a footnote, "Even
11 | though this was not a case about necessity, we do the law
12 | very clear that water access is equivalent to land access,
13 | absolutely the same. If you have water access, that's
14 | access". Of course in this case we will show that he has
15 | plenty of water access to his lot.

16 | Now, just let me end up, I think this case is going
17 | to talk about restricted easements. I've found about
18 | eight cases that have been decided since '89. You are
19 | familiar with some of them, I'm sure. But there are three
20 | rules; continued and uninterrupted use for twenty (20)
21 | years - - not ten (10) years like adverse - - but twenty
22 | (20) years restricted easement; the identity of the thing
23 | enjoyed; and the use or enjoyment was adverse under
24 | claimant right.

25 | So if you listen to this testimony, and look at the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

9

1 title information - - we have an abstractor here that will
2 give you the chain of title - - just because Mr. Austin,
3 and whoever else he puts up says, "that road has probably
4 been used for a long, long time", that alone does not give
5 the court, under the rigid rules, to find an easement;
6 they have to prove other things. And so just a lot of use
7 by itself doesn't win the case.

8 And I don't think it's going to be expressly the
9 case, but I think that's where the case is going to come
10 from.

11 So we will obviously listen while they present their
12 case, and then we are ready to present our case.

13 Thank you, judge.

14 THE COURT: Not jumping the gun here, but going with
15 the facts and what witnesses are called - - I think I
16 talked to the attorneys in chambers, and so we have the
17 pleadings---

18 THE COURT: Mr. Hall, is it your client's allegation
19 that a house is being built on the easement?

20 MR. HALL: Has been built, Your Honor.

21 THE COURT: And so it's there now; it's not in the
22 process of being constructed, not planned, its---

23 MR. HALL: It minimizes the easement, yes, sir.

24 THE COURT: Okay.

25 THE COURT: All right, Mr. Hall, please call your

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

10

1 first witness.

2 MR. HALL: Your Honor, if it please the court, we
3 have a surveyor here - - I would like to get him up and
4 down, and so I would like to call him out of order.

5 THE COURT: That's fine.

6 MR. HALL: I would call Mr. Lucius Cobb.

7 THE COURT: Please put your left hand on the Bible
8 and raise your right hand, sir.

9 (Lucius D. Cobb, being duly sworn, testified as
10 follows:)

11 DIRECT EXAMINATION

12 BY MR. HALL:

13 Q Good morning, Mr. Cobb.

14 A Good morning.

15 Q Would you state your name for the record, please.

16 A Lucius D. Cobb, Sr.

17 Q And where do you reside, Mr. Cobb?

18 A 110 Fire Tower Road, Irmo, South Carolina.

19 Q And what is your profession?

20 A Land surveyor, professional land surveyor.

21 Q How many years do you have in that?

22 A Thirty-nine and a half.

23 Q All right. And, Mr. Cobb, I want to show you what
24 has been marked Plaintiff's Exhibit No. 7, and ask if you
25 recognize this?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

11

1 A Yes, sir, I do. This is the last plat that I
2 prepared for Mr. Austin, dated July 3, 2007.
3 Q And, Mr. Cobb, would you refer to that plat,
4 Plaintiff's Exhibit No. 7 and tell me what that shows.
5 MR. BOOTH: Your Honor, let me just take care of a
6 little housekeeping. Certainly Mr. Cobb is a qualified
7 expert in surveying work, and I just felt like that he
8 needed to clarify for the record that he is here to talk
9 about the survey work, not talk about anything beyond
10 that, as far as an expert. So I have no problem with
11 that. He does need to be qualified; I believe the law
12 requires him to be qualified. And again I will just do
13 that and say as a surveyor that's fine with me.
14 THE COURT: Mr. Hall, anything to add to that?
15 MR. HALL: No, we are just asking that he be
16 qualified as a surveyor - - testify to anything else other
17 than a surveyor.
18 MR. BOOTH: That clarifies it. Thank you.
19 THE COURT: All right, please proceed, Mr. Hall.
20 BY MR. HALL:
21 Q All right, Mr. Cobb, now you testified that you
22 prepared that survey?
23 A Yes, sir.
24 Q And would you tell me what that survey shows?
25 A Well, it shows Parcel A. and Parcel B., to begin

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

12

1 with, which are parts of property belonging to Mr. Austin
2 that are above the 360 contour of Lake Murray. And we
3 also surveyed around the property of the Stones - -
4 portions - - not all of it, but about three-fourths of it.
5 We also located a gravel driveway on the east side of
6 their property, which goes from Parcel B. southward to
7 Elletts Road.

8 Q Parcel B. being the property of?

9 A Mr. Austin.

10 Q Now, can you tell me, Mr. Cobb, how you arrived at
11 the location and the terminus on one end and one on the
12 other of that little drive, gravel drive?

13 A All right, starting with Parcel B., which would be
14 the north side of the site, we had some plats that are
15 recorded - - and I think I made reference to - - no,
16 they're not recorded, but I made reference to in here - -
17 SCE&G plats. We found three or four of their corners - -
18 that's including Parcel A. Also - - and from that we were
19 able to ascertain the exact alignment - - you know, it's a
20 very irregular piece of property - - we were able to
21 orient it, relate it to where it's supposed to fit. And
22 it shows the northern part of the driveway where it ends
23 at Parcel B. And then the southern end of the driveway,
24 of course, ends at Elletts Road.

25 Q And the property that abuts or borders on Elletts

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

13

1 Road belongs to the Stones?

2 A Right, yes, sir.

3 Q All right, now referring again to Plaintiff's Exhibit

4 No. 7, you show in bold lines Parcel A., and you show it

5 going down with a neck, and you refer to that as a gravel

6 drive.

7 A Yes.

8 Q And how did you ascertain or come about to determine

9 the length, and distance, and shape of that gravel drive?

10 A Well, we were out there in the field. You can see

11 where it goes. We didn't locate every edge of it in that

12 portion, but we can see the way the gravel drive kind of

13 went down along that neck towards where the house is.

14 Q All right, now you've got some - - there are some

15 designations on this plat along what you call the gravel

16 drive, and they are referred to as C.P. What is that?

17 A Those are computed points. Those points are not

18 physically in the ground, they are just computed. In

19 fact, the SCE&G plats that were done, they only mark with

20 irons, which are corners, about every tenth and eleventh

21 corners - - in fact, I think the plat says that, the old

22 plat.

23 Q The old SCE&G plat?

24 A Yes, sir.

25 Q Okay.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

14

1 A And so those are the ones we found. And of course we
2 related the whole survey to that.
3 Q All right, now this area is dry - - I mean, it's not
4 under water?
5 A No, sir, it's dry.
6 Q Okay, the area that you designated a gravel driveway-
7 --
8 A Yes, sir.
9 Q ---and it has one terminus here on the driveway; I
10 guess it's on property now or formerly of Jim or Jane
11 Stone?
12 A Correct, yes.
13 Q And it goes all the way down and terminates on
14 Elletts Road?
15 A Yes, sir.
16 Q All right, Mr. Cobb, in your research for the
17 preparation and preparing this plat, and the drawing of
18 the plat, did you find anything that would raise a
19 suspicion in your mind that that part marked as "gravel
20 driveway" doesn't exist?
21 A No, I didn't.
22 Q All right, now you've got a dotted line drawn here.
23 What is that, the water's edge?
24 A This heavy---
25 Q Right.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

15

1 A That's supposedly the lines of the old plats that we
2 got from SCE&G back to the time they were purchasing land
3 around the lake. I think they call it P.B.L. lines, which
4 stand for project boundary lines. And we were showing how
5 that's related. This is also shown on the reference plat
6 that shows Parcel A. and Parcel B.

7 Q I notice you went all the way around Parcel A., which
8 is the property of John Austin, and I had mentioned a half
9 an acre, but you came up with 0.34 acres?

10 A Yes, sir.

11 Q And that includes---

12 A There's a hundredth here, so it would be .35.

13 Q Okay.

14 MR. HALL: That's all the questions I have.

15 THE COURT: Okay.

16 THE COURT: Mr. Booth?

17 MR. BOOTH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BOOTH:

20 Q Mr. Cobb, I show you some papers that I put together
21 and just double check to make sure. Are these all the
22 reference plats that you have, the references? Just look
23 through that very quickly and make sure.

24 MR. BOOTH: I listed everything and copied it. These
25 are his references on his plats, Judge.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

16

1 A Yes, sir, it is.

2 Q And when you listed those references on the plat that

3 you are looking at right now, where did they come from?

4 A The references?

5 Q Yes.

6 A Some were up in the courthouse; some I got from my

7 client, Mr. Austin; you sent me one, I believe. I got some

8 from the land office of the SCE&G company, went down there

9 to get those plats.

10 Q All right, and why did you have to look at those

11 references? How did that help you do your survey?

12 A Well, it's pretty much the practice of all land

13 surveyors. We try to get what we can to help us to back

14 up what we do, or help us define points to finish doing a

15 job.

16 Q And all the references that we're talking about are

17 right here on your plat, A, B, C, D, E, and F, and then

18 under F you've got a couple of extra ones, right?

19 A Yes, sir.

20 Q Let's talk about the work that you did. In

21 particular we're going to talk about what you've labeled

22 as Parcel B.

23 A All right.

24 Q Parcel B. And if you will look up on the screen here

25 I'm going to ask you a few questions about it. Is that

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

17

1 | your plat that you're looking at right there?
2 | A Yes, sir.
3 | Q And that's Parcel B. that you've shown there?
4 | A That's correct.
5 | Q I think Mr. Hall asked you about that parcel and
6 | having a terminus on the Stone property, correct?
7 | A Correct.
8 | Q In your direct testimony you said Parcel B. was owned
9 | by who?
10 | A Mr. Austin.
11 | Q And what do you base that on, sir?
12 | A The deed that says that Parcel A. and Parcel B. were
13 | conveyed to him.
14 | Q All right. So, what about the other reference,
15 | number B., as far as the parcel plat?
16 | A It referenced both of them; it referenced Parcel A.
17 | and Parcel B.
18 | Q All right. But, I mean, the reference that you
19 | looked at - - it's not a recorded plat, is it? B. is not-
20 | --
21 | A No, I don't think it is. A lot of the SCE&G plats
22 | are not recorded.
23 | Q Okay. Is this the plat?
24 | A No. That resembles it, but that's not the plat. I
25 | don't know where that plat came from. I've got a copy of

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

18

1 | it; in fact---

2 | Q I know, but is that the one you referenced?

3 | A No, I referenced the one by SCE&G.

4 | Q All right, well look at that a minute and compare it

5 | to what I have there and make sure it's not the same. And

6 | you have your references right here. Did you bring them

7 | yourself?

8 | A Yes, sir, I've got them.

9 | Q Okay, well pull out reference B. and see if it

10 | matches what I have on the screen.

11 | A There we go.

12 | Q All right. So the one up on the screen you did not

13 | see; you just saw the one here?

14 | A No, I saw that one; in fact you gave you me a copy of

15 | it.

16 | Q Okay.

17 | A But that's not the one I referred to. That right

18 | there seems to be a copy of this.

19 | Q All right. All right, the one you've got there is

20 | attached to what, a deed?

21 | A A deed refers to it.

22 | Q All right. And you're a hundred percent sure that

23 | you as a surveyor can certify that the title to that

24 | little neck is John Austin; you can certify to that today

25 | for the court, is that correct?

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

19

1 A I didn't say I could certify to it. I said that the
2 deed referred to both those parcels as being conveyed to
3 Mr. Austin.
4 Q All right.
5 A As far as certifying, no. I'm just saying I'm able
6 to read.
7 Q All right, you have the deed in to Mr. Austin that
8 you refer to?
9 A Right there.
10 Q Look at the computer - - or the projector. Is that
11 the language you're talking, that's on the second page, at
12 the very top?
13 A That's correct.
14 Q All right. And doesn't that refer to the description
15 on page 1 that I have reproduced here at the bottom?
16 A No, it's not the same piece. What's on the first
17 page is a large 30 plus or minus acres. This is---
18 Q All right, sir, read this part out of the page; just
19 read it out loud.
20 A On the second page?
21 Q Yes, sir, the part I've got here at the top.
22 A The paragraph I'm reading, "The portion of property
23 herein conveyed not submerged by the waters of Lake
24 Murray, is shown as Parcel A. contained in .34 acres, and
25 Parcel B., contained in the 0.01 acres, upon a partial

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

20

1 plat of lands of J.J. Lowman, Option 657, dated July 21,
2 1978, prepared for South Carolina Electric and Gas
3 Company, Drawing No. 516-51-861."
4 Q All right, sir, the words, "Property herein
5 conveyed", where is the description of the property herein
6 conveyed on that deed, Mr. Cox?
7 A Explain your question again.
8 Q Where is the property that's referred to as the
9 "property herein conveyed"; I'm must asking where is the
10 property?
11 A Where is it on the plat?
12 Q No, sir, where is it in the deed? I mean, doesn't
13 the word "conveys" mean a deed?
14 A Yes, sir.
15 Q Okay, I'm just asking, in that deed you're holding,
16 where is the property "herein conveyed" described? I'm
17 just asking, where is it in that document?
18 A On the second page, second paragraph.
19 Q So, you're saying that Parcel B. is included in the
20 description on page 1, or it's in addition to the property
21 on page 1?
22 A A. and B., I believe are - - wait a minute, let's
23 see.
24 Q You can sit down to look at it.
25 A That's all right, I can see it now. Yeah, let me

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

21

1 correct that statement. Parcel B. - - Parcel A. is
2 included in the first page; and it looks like Parcel B. is
3 not.
4 Q All right. Now let's look at the first page and the
5 legal description. You have the deed there. All right,
6 you know how to read descriptions, don't you?
7 A Yes, sir.
8 Q All right, does that description refer to that plat
9 there, that you have in your documents, M-140?
10 A Yes, sir.
11 Q All right. And the part that I've got lines around,
12 that's Parcel A., right?
13 A That's correct.
14 Q And that does not include Parcel B., correct?
15 A That's correct.
16 Q Have you asked anybody at SCE&G whether they own
17 Parcel B. or somebody else owns it?
18 A Have I asked someone?
19 Q Yes.
20 A No.
21 Q Okay. Don't you think that's something you ought to
22 check, as a surveyor?
23 A Well, I've got a deed here that says that it was
24 conveyed to them.
25 Q Okay. Now, if you will look at the legal description

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

22

1 on page 1 and see if it matches what I've typed here, see
2 if it matches, starting down where it says, "commencing at
3 a point" - - it's just typed a little bit easier to read.
4 A Yeah, it is.
5 Q Let's see if it matches.
6 A It leaves off one little corner down there, where it
7 says, "115 feet bottom as the southeastern point" down
8 there, where I see 112 written.
9 Q Okay, "Swaggert" - - is it after this part?
10 A After 940 feet, there should be another call there.
11 Q The 930 feet?
12 A No, after 940 feet.
13 Q All right.
14 A See right down there.
15 Q Okay. But does the legal description from the deed
16 match this recorded plat in -140?
17 A All except for that one call there.
18 Q Well I meant - - forget this a minute. Look at what
19 the deed has got. The deed has got the right calls in it,
20 right? You just said that.
21 A No. It's missing that one---
22 Q The deed is missing, but this is okay up here?
23 A No, that's missing it also.
24 Q All right. So you agree that that M-140, which is a
25 recorded plat that you have in your references, is the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street-- Post Office Box 192 (29202)
Columbia, South Carolina 29201

23

1 | property that is described on the first page of that deed
2 | to Mr. Austin, correct? You've already said that earlier;
3 | I'm just asking, okay?
4 | A Yes, sir.
5 | Q Now, I'm going to ask you about another reference in
6 | your references, and that is a plat done for Lois c.
7 | Jones. Could you pull that out for a second. I just have
8 | a couple of questions. I believe that's one of your
9 | references.
10 | A Yes. All right, I've got it.
11 | Q All right, and what is the date on that plat?
12 | A January 7, 1987.
13 | Q All right, and why is that plat in your references?
14 | A Why is it in my references?
15 | Q Yes, sir. How did it help you in doing the other
16 | plat, the big one on the board?
17 | A Well, I thought it was interesting that the date, you
18 | know, 1987, and it shows the dirt driveway pretty plainly
19 | through there.
20 | Q But look at the straight - - doesn't it represent the
21 | - - doesn't the corner right here, which has the driveway
22 | on it, isn't that a piece that Ms. Jones owned up until
23 | 1987, not Ms. Stone or Ms. Harden?
24 | A It appears to be that way, yes, sir.
25 | Q So in 1987 almost half the driveway - - up until 1987

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

24

1 almost half the driveway belonged to somebody else other
2 than either the Stones or the Hardens, correct?
3 A Well, it was on their land, yes.
4 Q On Ms. Jones' land?
5 A Yes.
6 Q So, anybody traveling over this road or driveway that
7 you've shown on this plat would have come over property
8 owned by not only Harden and Stone but also property of
9 Ms. Jones up until '87, correct?
10 A Could you repeat that again, please.
11 Q So anybody using this road to get to the big piece
12 would have to go over property owned by both Stone and
13 Harden, which is this part of it, and then the rest of it
14 to get to Elletts Road would be owned by Ms. Jones,
15 correct?
16 A That's the way it's drawn on here, yes.
17 Q And 1987 is when that triangle became part of the
18 property owned by Ms. Stone today, correct?
19 A I don't know about that now.
20 Q Well, look at your Stone plat; you've got a Stone
21 plat in your file.
22 A Yes.
23 Q Do you not see that triangle and now added to it?
24 A Yes. But I don't have the deed or anything. You
25 know, I can't say without a doubt when it got joined, and

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

25

1 all that.
2 Q All right. Now, you recognize this plat?
3 A Yes, sir.
4 Q And what is that a plat of?
5 A Parcel B.
6 Q And what is Parcel B., looking at your---
7 A The Stone's property.
8 Q But not all of it, is it?
9 A Well, no, not all of it.
10 Q All right. And you see a line down here formally
11 J.J. Lowman, correct?
12 A Yes.
13 Q Now, where is that line on yours? Just stand up and
14 point out to the court where that same line is on your
15 survey.
16 A Right here.
17 Q This line doesn't include Parcel B., correct?
18 A That's right.
19 Q So this side of the line came from Mr. J.J. Lowman,
20 according to that, correct?
21 A That's right.
22 Q So anything below that line did not come from J.J.
23 Lowman, correct?
24 A I guess not.
25 Q And you found that in getting the survey, right, that

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

26

1 line?
2 A What, this line? Physically, on the ground?
3 Q Yes, sir.
4 A No. They used the plats, the reference plats, to
5 establish the line.
6 Q But you're confident that it's the line that goes way
7 back to this plat, correct?
8 A Yes, sir.
9 Q. Okay. Now, I've superimposed the Stone plat and I've
10 matched it up to the plat we've just looked at. Do you
11 see that?
12 A Yes.
13 Q And do you see how the triangle was added?
14 A Yes.
15 Q Because originally this Stone property had a straight
16 line - - see the straight line?
17 A Yes.
18 Q So when they got the property from Jones, it angled a
19 little bit, correct?
20 A Yes.
21 Q Again, this is the Lowman line to the left. Now,
22 have you looked at the tax map for this property?
23 A Yes, sir.
24 Q. All right, isn't it true that the tax map doesn't
25 show Parcel B. is Mr. - - I guess it's all part of the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

27

1 neck - - it doesn't show that, does it?
2 A What are you talking about now again?
3 Q The tax map for Mr. Austin's property doesn't have
4 the little neck that you've got there that you say Mr.
5 Austin owns, correct?
6 A I didn't look at that tax map; I looked at the older
7 ones that show the dash lines of an access going back
8 there.
9 Q I know, sir, but I'm talking about Parcel B., not
10 that line.
11 A Yes. Well, you know, you can't always go by the tax
12 maps with everything.
13 Q Okay. But you agree that that tax map doesn't show
14 that little neck as part of Mr. Austin's mapping for
15 assessment purposes, does it?
16 A That one there?
17 Q Yes, sir.
18 A It doesn't appear to from here, no.
19 Q Okay. Do you have the one that you looked at that
20 you said---
21 A Yeah.
22 Q Okay. All right, does it look similar to that?
23 A To this one?
24 Q Yes, sir. Is it close enough or - - as far as---
25 A There's a little difference.

Official Court Reporter

28

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 Q All right, let's compare it. There's your plat with
2 the neck, okay? That's yours there, correct?
3 A Yes.
4 Q If I go over here I don't see that, do I? I don't
5 see that little area there on the tax map, do I? And you
6 don't see it on the one you have either, do you, sir?
7 A No, but I've got a dashed road going right up through
8 there all the way to where the residence is.
9 Q I understand that; I understand that. I'm not
10 disputing, I'm just asking you about ownership of that
11 neck, that Parcel B.
12 A That doesn't imply ownership; a tax map like that
13 what you're talking about, doesn't imply ownership.
14 Q Okay. But you certified that the ownership was
15 different from---
16 A I had a deed - - I had a deed that said it, a
17 recorded deed that said it. What more do I want?
18 Q Okay. But who was that deed between? Was it between
19 the Tokunaga family and others over here to Mr. Austin?
20 A It was from "We, Leon Tokunaga, James Tokunaga, et al
21 to John D. Austin."
22 Q But to make sure if the grantors owned that neck that
23 you say was conveyed by that deed - - isn't that what
24 you're saying, conveyed?
25 A Yes.

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

29

1 Q Would you not have to check to see what they bought?
2 A Who, me?
3 Q Yes, sir, as a surveyor? Yes, sir.
4 A I don't think surveyors check the title on everything
5 we survey, sir.
6 Q All right.
7 A That's what you guys are supposed to do.
8 Q All right, well I'm just asking. You're telling the
9 court as an expert that you know who owns that Parcel B.
10 You're saying as an expert you know who owns--
11 MR. HALL: Your Honor, if it please the court, we
12 haven't certified Mr. Cobb as an expert. In fact, Mr.
13 Booth objected to that. We just asked him to testify as
14 to his survey and what work he did.
15 THE COURT: Sustained.
16 THE COURT: To clarify the record, Mr. Booth, you're
17 concerned about him giving opinions, aren't you?
18 MR. BOOTH: Yes, sir, that's all.
19 THE COURT: But he can give opinions without being a
20 certified expert in this context, I believe.
21 THE COURT: You asked him for his opinion?
22 MR. BOOTH: Yes, sir. I know, I know, and he
23 objected to it. I asked him, and so I led myself into it.
24 THE COURT: Well, he objected to your saying he was
25 testifying as an expert, and Mr. Hall didn't offer him as

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

30

1 | an expert.

2 | MR. BOOTH: Okay. Well, let me back up. You're

3 | correct, Judge. One more time and then I'll be finished.

4 | BY MR. BOOTH:

5 | Q Your sole basis for thinking that this Parcel B. - -

6 | I use the word "thinking", which would probably be better

7 | than "certifying" - - thinking that this Parcel B. is not

8 | owned by SCE&G but by John Austin, is based upon that one

9 | deed that you looked at, correct?

10 | A Repeat that again, please.

11 | Q Your sole basis, sole reason for thinking that this

12 | Parcel B. is owned by John Austin is based upon the deed

13 | from the Tokunagas to John Austin, correct?

14 | A Well, the combination of that, and the SCE&G plat,

15 | and then the common sense the way the ground is out

16 | there, the way the properties are used, or was used

17 | previously, all those I took in making my consideration

18 | for that.

19 | Q Okay. But wasn't Mr. Tokunaga's deed based upon this

20 | plat in to - - J.J. Lowman in to Tokunaga, wasn't it based

21 | upon this plat here, M-140, which you already said did not

22 | include the neck?

23 | A Well, no. I mean, the second page of the deed also

24 | talked about what we have already discussed, Parcel A. and

25 | Parcel B., as shown on the plat and dated 1978 for SCE&G.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

31

1 Q So, if I execute a deed that says, "I hereby convey
2 property on Fire House Road to Eric Ennis over here, and I
3 recorded it---

4 MR. HALL: Your Honor, I'm going to object to the
5 question. He's not certified as an expert, and Mr. Booth
6 is asking him to give an expert opinion.

7 THE COURT: Mr. Booth?

8 MR. BOOTH: I would withdraw the question. And that
9 concludes my examination, Judge.

10 THE COURT: Any redirect, Mr. Hall?

11 MR. HALL: Can you leave that up a minute?

12 REDIRECT EXAMINATION

13 BY MR. HALL:

14 Q Mr. Cobb?

15 A Yes, sir?

16 Q How big is an acre, square?

17 A 208.7 times 208.7.

18 Q 208.7 times 208.7?

19 A Yes.

20 Q And you show Parcel B. on your survey as---

21 A One-hundredth of an acre.

22 Q .01 of an acre?

23 A Yes, sir.

24 Q Can you make out the dimensions of this Parcel B.
25 shown on this plat?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

32

1 A I've got a copy of it here in my file. Are you
2 talking about the one with J.J. Lowman up there?
3 Q Right.
4 A I think one thing that you need to understand here,
5 you can't confuse A. and B. on that old plat as being the
6 same as A. and B., you know, on the new one.
7 Q That's what I'm trying to clarify.
8 A Oh, okay, okay.
9 Q Is the Parcel B. shown on M-140 is not the same
10 property as your survey?
11 A That's right. All right, sir, I got it.
12 Q My question again is the Parcel B. shown on your
13 survey is not the same Parcel B. shown on your survey?
14 A No, sir, it is not.
15 MR. HALL: No further questions.
16 MR. BOOTH: Nothing further.
17 THE COURT: Thank you, sir, you may come down. Watch
18 your step coming down. If you have any marked exhibits,
19 leave them up there.
20 THE WITNESS: Okay.
21 MR. HALL: That big survey, I think that's the only
22 one.
23 THE COURT: All right, thank you, Mr. Cobb.
24 THE WITNESS: Do you all need any copies of plats?
25 THE COURT: Mr. Hall?

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street -- Post Office Box 192 (29202)
Columbia, South Carolina 29201*

33

1 MR. HALL: No, sir. I would ask that Mr. Cobb be
2 excused.
3 THE COURT: Mr. Booth?
4 MR. BOOTH: No objection.
5 THE COURT: Thank you, Mr. Cobb. You're free to go.
6 THE WITNESS: Thank you, sir.
7 THE COURT: Okay, Mr. Hall?
8 MR. HALL: I would call Mr. John D. Austin.
9 THE COURT: Put your left hand on the Bible and raise
10 your right hand.
11 (John D. Austin, being duly sworn, testified as
12 follows:)
13 DIRECT EXAMINATION
14 BY MR. HALL:
15 Q State your name for the record, please.
16 A John David Austin.
17 Q And where do you live, Mr. Austin?
18 A 2570 Hollingshed Road.
19 Q Okay. And what do you do for a living?
20 A I'm disabled.
21 Q Okay. And do you own any property other than this
22 Hollingshed Road property?
23 A No, sir - - no, sir, I don't even own it. The only
24 property I own is the lake house.
25 Q You own property on the lake?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

34

1 A That's it. My son owns that house.

2 Q I want to show you what has been marked as

3 Plaintiff's Exhibit No. 1, Mr. Austin, and ask if you can

4 identify that?

5 A Yes, sir, that was the deed when I first purchased

6 it.

7 Q All right, that's a deed to the property on the lake?

8 A Yes, sir.

9 Q All right. And that's the property you own now?

10 A Yes, sir.

11 Q And it looks like you purchased this property from

12 Leon Tokunaga and others from the Tokunaga family?

13 A Right.

14 Q How did you come to learn about this property, that

15 it was for sale, or whatever?

16 A They're just - - they're like family to me; I've

17 known them all my life. And this place up here, I spent

18 my whole childhood up there.

19 Q All right. When were you born, Mr. Austin?

20 A 1953.

21 Q All right, now this deed, Plaintiff's Exhibit No. 1,

22 it shows a recording date on the top of it, March 20,

23 1980.

24 A Right.

25 Q Is that when you purchased this property?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

35

1 A It was around '79 or '80, but it was right at '80.
2 Q And when you purchased it, were there any
3 improvements on the property?
4 A There was a cabin there, a summer cabin, and a screen
5 house.
6 Q Okay, any docks or anything?
7 A No, sir, I don't believe so. Wait a minute, there
8 was one dock up there, I think.
9 Q All right. How did you get access to the property?
10 A Going down Elletts road, I go down the driveway
11 straight down there to it, like we've done ever since I've
12 known.
13 Q Now, did you use that road before 1980?
14 A Yes, sir.
15 Q Starting approximately when?
16 A As far back as I can remember as a child.
17 Q Childhood?
18 A Childhood. My father used to go up there all the
19 time, and all the Tokunagas - - we would go up there for
20 weekends and sometimes even longer than that; we stayed up
21 there a lot. I was up there a whole lot when I was young.
22 Q And using that drive as ingress, egress to the
23 property?
24 A Yes, sir.
25 Q So when you purchased it in 1980, it was with the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

36

1 understanding that drive, that would be your access?
2 A Right.
3 Q Okay. And you continued to use that access until
4 about when?
5 A Until about two and a half years ago. I used it the
6 whole time until this problem came up.
7 Q Sometime about 2006?
8 A Yes, sir.
9 Q Did you ever have any conversations or dealings with
10 the people over whose land that drive went?
11 A No, just that they always - - we just always used it
12 and Mr. and Mr. Harden always knew that we were using it,
13 and they never said anything about it, they never - - I
14 would take it and have new gravel put down and clean it
15 up, fix it up real nice.
16 Q So you maintained it?
17 A Yes, sir, I maintained it the whole time that I had
18 it.
19 Q Okay.
20 A I put a lot of gravel and a lot of crush and run down
21 there.
22 Q And when you say Mrs. Harden, is this Betty Harden?
23 A Yes, Betty Harden and Frank Harden.
24 Q Frank Harden, her husband?
25 A Yes, sir. I'd see them up there sometimes on the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

37

1 weekends.

2 Q Okay. Did they perhaps use the drive to go over to
3 your place or anything?

4 A If they wanted to. I don't know if they ever went
5 down there or not. They came down and talked to me some.
6 I talked - - I went up there to their house and talked to
7 them. And they had a phone, and I didn't have a - - back
8 in the '80's I didn't have a phone down there, and I would
9 go up there and use their phone every once in a while when
10 they were there on the weekends.

11 Q Okay. So they used this primarily - - their house
12 primarily as a weekend house?

13 A Yes, sir. It was just a little small summer house
14 like what I had.

15 Q Okay. Did you ever have occasion to have this
16 property surveyed, your property? I mean, before Mr. Cox
17 did it?

18 A When I first bought - - they just put down - - I
19 think - - I had them go out there and just survey it one
20 time and just put down just property lines. And I think
21 they just ran one line.

22 Q All right, well tell me a bit more explicitly in
23 telling me how you maintained the drive.

24 A I would put crush and run down, put gravel down as it
25 would be used, and cleaned it, scraped it, cleaned it up.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

38

1 The guy right next door to them, he built a house - - a
2 man built a house right over there at the very end of - -
3 at the end---
4 MR. HALL: Elletts Drive?
5 A ---Elletts Drive. I think it belongs to Jesse and
6 Laurie now; they bought it. But Frank used to own it.
7 And when he brought a lot of equipment around to build his
8 house, he messed up the driveway some and he had it redone
9 because he messed it up.
10 Q He had it redone himself?
11 A Yes, he told me he said he'll take care of it---
12 MR. BOOTH: Objection. Hearsay. He's talking about
13 what Frank Harden said.
14 MR. HALL: Yeah, don't tell me what somebody else
15 said.
16 THE COURT: All right, sustained.
17 BY MR. HALL:
18 Q And when we're talking about the drive, we're talking
19 about the drive from Elletts Road to your property?
20 A Right.
21 Q All that whole distance?
22 A Right. It wasn't Frank - - it was the guy that built
23 the house is the guy that put it down.
24 Q Don't say what somebody else told you.
25 A Okay.

1 Q Who else used your property, used the drive and used
2 your property?
3 A A lot of my neighbors. I've got a boat ramp down
4 there, and a lot of my neighbors would go down there and
5 use the boat ramp.
6 Q When you say "neighbors" you mean neighbors to the
7 lake property?
8 A Yeah, there's some neighbors up there around there
9 that used - - they put their boats in the water over
10 there.
11 Q Who lived up and down Elletts Road?
12 A Yeah, who lived up and down Elletts Road.
13 Q And they used your boat dock to launch their boats,
14 or whatever?
15 A They are going to use my boat ramp.
16 Q Okay. And they, I guess, parked their cars and
17 trailers on your property?
18 A Sometimes they would, and sometimes they would just
19 run them back around to their house. They were my
20 neighbors; I didn't mind.
21 Q Okay. Do you know if they had any explicit
22 permission from Mr. Harden?
23 A No. They just asked me could they use the boat ramp.
24 Q All right. What other improvements - - other than
25 putting crush and run and the gravel down on the driveway,

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

40

1 what other improvements did you make to your property on
2 the lake?

3 A I put rip-rap all around it, because being a
4 peninsula out there it was being washed away real bad.
5 Over the years it just about disappeared. We put crush
6 and run or rip-rap all the way around it, and tried to
7 level it off. I was starting to remodel the house, fix
8 the house up, just - - had sheet - - had the roof fixed,
9 sealed the roof. We blew the ceilings in the house, put
10 new floors in. And I was in the process of fixing it up.
11 I also bought all new windows to go in the house. They
12 are all just sitting up there in the screen house and
13 sitting in the house. I've never had a chance to put it
14 up.

15 Q Because of what?

16 A Because the road got stopped to where I couldn't get
17 down there to work on it.

18 Q And do you know who blocked the road?

19 A Yes, sir.

20 Q Who blocked the road?

21 A Mr. and Mrs. Stone.

22 Q Have you ever had any dealings - - and I realize
23 we're talking about going back to 1980 - - have you ever
24 had any dealings, or conversations, or meetings, or talked
25 with SCE&G regarding this property?

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

41

1 A They've been out there a number of times when I put
2 up docks. They would come out there when I put up my boat
3 ramp. They would come out there and see what all I was
4 putting up, and give me a permit to do it.

5 Q Did they use that drive---

6 A Yes, they did.

7 Q ---to get down to your property?

8 A Yes, they did.

9 Q They didn't use the boat to get down there?

10 A No, sir, they drove down there.

11 Q Okay. Do you have power and utilities to your
12 property now?

13 A Yes, I've got water, I've got electricity, and we got
14 a holding tank, a sewage holding tank. It used to be an
15 old tank that was in operation a long time ago, but we
16 sealed it off, and it has to be pumped.

17 Q Did you get a permit or permission from Richland
18 County to do that?

19 A It was already there when I bought it.

20 Q Okay. And the utility lines, you say you've got
21 power?

22 A Yes, sir.

23 Q Where do the utility lines run?

24 A Down the driveway, all down the side, and it cuts off
25 and goes right straight to my house.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

- 42 -

1 Q Okay. Is your residence or your property the only
2 ones serviced from that pole?
3 A It was, but they've built a new house up there, and
4 now one part of it cuts off, but at the very end - - where
5 it terminates at the end, mine is the only house at the
6 end.
7 Q At the end?
8 A At the very end.
9 Q Okay. You got a meter on that?
10 A Yes, sir.
11 Q Does SCE&G read that meter?
12 A Yes, sir. And I pay the bill every month.
13 Q Okay. And you say you put in a well?
14 A The well has been there for years.
15 Q Okay. And the power goes to the well too?
16 A Yes, sir, it's got an electric well.
17 Q Do you have any other way to get to your property,
18 Mr. Austin?
19 A No, sir, unless you try to put your boat in the water
20 and try to go by water. But you can't always do that.
21 Q How far a trip - - do you know what the closest
22 landing is to your property?
23 A It would be a marina on the opposite side. Most of
24 the boats I got they're smaller boats. It would probably
25 take me an hour to try to drive all the way, because

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

43

1 | you've got to go all the way around the peninsula, all the
2 | way around, to get around there. And, of course, if the
3 | weather was bad, you couldn't make it anyway.
4 | Q Okay. But you could use the drive if the weather is
5 | bad?
6 | A Yes, you can always use the driveway.
7 | Q After you purchased the property in 1980, did the
8 | Tokunagas use the property?
9 | A Yes, they did.
10 | Q And you are asking the court today to grant you a
11 | permanent easement across the Stone's property so that you
12 | can gain access to your property?
13 | A Yes, the one I've always used.
14 | Q All right, now can you give me some ideas of how wide
15 | an easement?
16 | A I've had - - I've taken bigger boats down there,
17 | taken them up and down the boat ramp. Okay, we've got one
18 | boat that we took down there that you had to have a wide
19 | load permit; it was 10-foot wide. And, of course, we had
20 | a big truck that would take it, or a dooley that would
21 | take it down there. And it would - - we had taken it up
22 | there a few times. It was always wide enough to be able
23 | to get around.
24 | The way it is now - - it was always wide enough to
25 | where - - Mr. and Mrs. Harden where they went into their

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

44

1 garage, they had it graveled in the front part, and if you
2 had taken a small car or something, you could cut right
3 down the driveway. If you had a big truck with a trailer,
4 you could always curve around just a little bit. And
5 that's the way we always did it.

6 Q Okay.

7 A And even when the gravel got messed up in front of
8 their garage, when I fixed all of it, I did it all at one
9 time, and I did all that too.

10 Q Has the width of the driveway changed?

11 A Considerably.

12 Q How has it changed?

13 A There was a fence put up just about in the very
14 middle of the driveway. And then the driveway was moved
15 over and I tried to work around it, but it was just
16 impossible - - it was rather hard to do. But I still
17 tried to work with it, but it was real hard to do.

18 Q All right, what other structures?

19 A They've built a house up there - - I don't know how
20 far it is across. I know you can go down there but, you
21 know, with a smaller vehicle. I don't know how much room
22 is across to go down there. I haven't been up there since
23 the house has been built but one time.

24 Q Any other structures?

25 A I think they've got a storage building that's up

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

45

1 | there too; it's right on the edge of the driveway going
2 | down. And they did have the storage building in front of
3 | the driveway, but the fire marshal made them move it.
4 | Q And all these structures were on the Stone's
5 | property?
6 | A Yes, sir.
7 | Q Okay. Now, there was some discussion - - can you see
8 | that plat from where you're at?
9 | A Yes, sir.
10 | Q There was some discussion about Parcel A. and Parcel
11 | B.
12 | A Right.
13 | Q And if you would look at your deed there, look on the
14 | top of page 2. Do you see where it starts and says, "A
15 | portion of the property herein conveyed" - - the second
16 | paragraph?
17 | A Yes, sir.
18 | Q ---"not submerged by the waters of Lake Murray", et
19 | cetera, et cetera?
20 | A Yes, sir.
21 | Q Is that what you understood as being Parcel A. and
22 | Parcel B., is what is shown on this plat---
23 | A Yes, sir.
24 | Q ---marked as Plaintiff's Exhibit 7?
25 | A Yes, sir. I'm not a surveyor, so I didn't - - that's

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

46

1 | what I thought it was.

2 | Q All right. And so is that pretty much the shape of

3 | the property you purchased in 1980?

4 | A Yes, sir.

5 | Q Okay. So it hasn't grown any - - I mean, except when

6 | the waters go down?

7 | A Yeah, when the water goes down, I get more property.

8 | Q Okay. In other words, your 30 acres, most of it, 29

9 | point some odd acres, is underwater?

10 | A Yes, sir.

11 | Q Does that 29 and some odd acres circle your

12 | peninsula?

13 | A Yes, sir.

14 | Q Okay. It's not like all in the front or all on the

15 | sides?

16 | A All the way around it.

17 | Q All the way around it. Okay. And that little neck

18 | Parcel B., goes across part of your property, as you

19 | understand?

20 | A Yes, sir.

21 | Q And you have used it steady since 1980 as an owner?

22 | A As an owner, yes, I have, and before that as a child.

23 | Q Okay.

24 | MR. HALL: No further questions.

25 | THE COURT: Mr. Booth?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

47

CROSS-EXAMINATION

BY MR. BOOTH:

Q Let me just make sure I understand. When was the road blocked by the automobile that Mrs. Stone put in the middle of the driveway; what date was it blocked?

A I'm not sure exactly what day it was. I know it was - - I got a letter from you right after that. Somebody, they piled a bunch of bricks in the middle of the driveway.

A So the letter, you received it after the road had been blocked, is that correct?

A Right. But there was lots of times I'd try to go up there and they would have to move the cars, which that didn't bother me; I worked with them on that. I'd go down there and they'd - - I'd go in there and - - as soon as I'd drive up most of the time Mr. Stone would come out and he'd move the car over to the side, and I could go on down there.

Q Okay. And the letter that we've marked as Defendant's Exhibit A., that's the letter you are referring to, right?

A Yes.

Q Okay. Now, is this an accurate picture of your house on that property?

A It's been about three years since I've been up there.

Official Court Reporter

48

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 That's probably how it looks now for sure.

2 Q Okay. So, it looked better than that three years

3 ago?

4 A We were in the process of rebuilding the house. We

5 were doing - - we did the property, fixed the property up,

6 and then we were working on the house. I've got concrete

7 up underneath the house. I've got concrete blocks; I was

8 going to underpin it. I got brand new windows, new doors,

9 and everything up there ready to put up.

10 Q And how much did you pay for this property when you

11 bought it from the Tokunaga family?

12 A I don't remember.

13 Q Thirty-six thousand (\$36,000) dollars, I believe?

14 A I think it was thirty-two (\$32-).

15 Q Thirty-two thousand (\$32,000)?

16 A Yeah.

17 Q All right. And this is the letter that's Defendant's

18 Exhibit 8, correct? You've got it in front of you?

19 A Yeah, this one right here.

20 Q The full letter?

21 A Yes.

22 Q Okay, this is blocked off, but the letter says

23 September 13, 2005, correct, the actual letter you got?

24 A Yes.

25 Q So sometime before that is when the road was blocked

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

49

1 by the automobile?

2 A Ever since the Stones moved up there, they would park
3 their cars because they had no place to park their cars.
4 And they would park in the road, or park in the driveway,
5 you know, and their neighbors always worked with them.
6 I'd come up there, and they would come out there and move
7 the cars so I could get down there.

8 Q But, I mean, when this letter was received by you,
9 they were permanently blocking the road?

10 A Then they permanently blocked it.

11 Q All right, so September of '05, or sometime before
12 that?

13 A Yeah, they put a chain over it and everything.

14 Q Put a chain over it. All right, that letter talks
15 about the dumping of asphalt onto the driveway, correct?

16 A Yes.

17 Q And did you participate in having that asphalt dumped
18 on that driveway?

19 A When the road got moved over, all the gravel that was
20 there was covered up by the fence. They were redoing the
21 road up the street, and one of the guys up there said they
22 could bring me some gravel with a little bit of asphalt in
23 it. And he said I could put that down and try to get a
24 base down and then put gravel on top of it. And I was in
25 the process of doing that when all this started.

Official Court Reporter

50

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 Q Okay, but you agree with me that this letter is
2 telling you that they object to the placement of asphalt
3 on that property, correct?
4 A They helped me put it down there for a while. In
5 fact, they were out there helping me with a shovel
6 spreading it a little bit. But after this letter, that's
7 when - - that's the first time I knew they objected to it.
8 Q So how did they help you put it down?
9 A When they spreaded it down - - when we took tractors
10 and spreaded it down, Mrs. Stone came out there and helped
11 me with a shovel to try to straighten it out some so I
12 could pack it down just a little bit.
13 Q But didn't you bring two truckloads of asphalt on the
14 weekend when they were not there at home?
15 A No, all of it went - - I put it down at the end of
16 the street. I put it all down on my property and then I
17 would pick it up and I would try to spread it down some.
18 But I had already finished that before I had any more
19 brought down there.
20 Q This letter, you will agree with me, that for
21 whatever reason they are saying to remove the asphalt;
22 isn't that what that letter says, to remove it, to not put
23 any more down?
24 A Yeah, this is the first time I heard about it is when
25 this letter came up.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

51

1 Q Okay. And how did you react to that letter?
2 A I just - - you know, with what all they said, I
3 figured my best bet was to go ahead and talk to an
4 attorney. And that's when I went and talked to Mr. Hall.
5 Q Okay. So they asked you to remove it in two weeks,
6 but you did not remove it?
7 A No, Mr. Hall told me to just leave it alone.
8 Q Did they ever tell you that the asphalt was - - did
9 Mrs. Stone ever tell you that the asphalt caused her son
10 to get sick?
11 A I heard that, but I don't think she ever told me
12 that, no, she never did; that was just hearsay from other
13 people.
14 Q Okay. And do you recall her saying to you or others
15 that the asphalt was coming onto her patio area next to
16 her front door?
17 A No.
18 Q Okay. Let's talk about the plat that was done by Mr.
19 Cobb, this one right here.
20 A Okay.
21 Q Did you hire him to do that plat?
22 A Yes, I did.
23 Q And did you tell him to survey any particular areas,
24 besides not doing the entire 30 acres?
25 A He couldn't do the whole 30 acres, because it was all

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

52

1 underwater. The only thing he could do was the part that
2 was above the water.
3 Q All right. And this plat that we discussed before
4 does have an area on the other side of the Lowman line,
5 doesn't it, this Parcel B.?
6 A Yes, you can see it on there.
7 Q And I show you Exhibit 10, which is a tax map. Can
8 you locate your property on that tax map? Do you need
9 help?
10 A I see it.
11 Q Okay. And does that tax map also show the Parcel B.,
12 the smaller neck?
13 A This shows a little section going across, right there
14 at the end.
15 Q It does?
16 A Yeah, it just shows a little section going across
17 that end piece right there.
18 Q I know but---
19 A That looks like it's over on - - that part right
20 there looks like it's over on Ms. Jones' property that she
21 had before.
22 Q All right, well let's talk about Ms. Jones' property
23 that she had before. Isn't that a way that you could
24 travel to get to your property without going over this
25 driveway?

1 A Is there any other way?
2 Q I just said isn't that a way you could travel to your
3 property---
4 A Yes, is going down that driveway; it's the only way.
5 Q Sir, I'm asking you could you travel over - - you
6 call it Ms. Jones' property - - to get to your lot?
7 A She had a fence all the way down her property line,
8 and the road was on the left side of that fence.
9 Q But her property---
10 A I never surveyed her property; I don't know where her
11 property line actually was.
12 Q Okay, but you just testified, under oath, that the
13 only way to get to your property was over this driveway,
14 by land?
15 A By land, that's it.
16 Q And I'm just asking you, is that correct?
17 A Yes.
18 Q You cannot get to it by land going over Ms. Jones'
19 property that she formerly owned?
20 A The only thing I know is where the driveway was at.
21 Q I understand that; no problem with that.
22 A And that's what I just said.
23 Q I'm just asking you, if the fence wasn't there, and
24 Ms. Jones, or whoever owns that property, said it was okay
25 to travel over her property, you could get from Elletts

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

54

1 Road to your property, correct, without going over the
2 driveway?
3 A I can get to it by going down that driveway.
4 Q All right. Have you been paying taxes on that small
5 area in here - - I know it wouldn't be much - - have you
6 been paying taxes on this little area here, Parcel B.?
7 A According to the tax map, according to what they say
8 on there, it's Parcel A. and Parcel B.; and so I'm
9 probably paying that too.
10 Q Okay, now look up here on the screen. The tax map is
11 on the left, the plat that Mr.---
12 MR. HALL: If it please the court - - I hate to
13 interrupt counsel, but I would like it clarified that this
14 is not a tax map; this is an aerial photograph. If he
15 wants to present the tax map with the legends, the proper
16 legends on it, that's one thing; but this is not a tax
17 map. This is an aerial photograph.
18 MR. BOOTH: It's got it labeled but that is a tax
19 map.
20 MR. HALL: Well, has he got this with legends on it?
21 MR. BOOTH: Right up on the left, Richland County
22 G.I.S.
23 MR. HALL: That's right, G.I.S.; that means aerial
24 photograph. That's not a tax map.
25 MR. BOOTH: But the aerial photos---

1 MR. HALL: Here is a tax map with the legends on it.
2 MR. BOOTH: All right, we'll use that one then.
3 Thank you, sir.
4 BY MR. BOOTH:
5 Q This is, I believe, the same one as Exhibit No. 10;
6 it's just this one is blown up. But you take your time to
7 look at it.
8 A It just shows the driveway right there on it. And it
9 shows a little point right there.
10 Q But not owned by you?
11 A I may own that - - according to the deed, it says
12 that I own that piece.
13 Q But it's included in Ms. Jones' tax map, isn't it?
14 A I have no idea; I haven't got her tax map. But right
15 on the edge is on the edge of her property. I don't know
16 which side it's on.
17 Q Have you ever researched to find out what Mr.
18 Tokunaga - - sorry if I mispronounce it - - Mitsuo
19 Tokunaga, the one that bought the original property from
20 J.J. Lowman?
21 A When we first bought it, we had it surveyed. They
22 put down one line, and it was never - - I don't think they
23 ever registered it.
24 Q Okay, who surveyed it?
25 A I gave those papers to Lucius Cobb; he had that.

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

56

1 Q Okay. Is this the one that we're talking about, the
2 one from SCE&G by Mr. Murphy? Is that the one that you
3 gave him?
4 A I'm not sure, not with that one right there.
5 MR. BOOTH: Just a second. I will just take a
6 minute, Judge. I'm almost through.
7 THE COURT: Yes, sir.
8 BY MR. BOOTH:
9 Q Sir, I show you Defendant's Exhibit No. 3, and ask if
10 you can identify that deed? Who is the grantor and
11 grantee?
12 A That's where Mitsuo Tokunaga bought it.
13 Q Okay. And who did he buy it from?
14 A Let's see. It looks like J.J. Lowman.
15 Q All right, and is that the exact property you also
16 bought from the Tokunaga family after his death?
17 MR. HALL: Objection, Your Honor. He's asking for an
18 opinion, and there is no way that Mr. Austin can testify
19 as to property descriptions on deeds.
20 THE COURT: Objection overruled.
21 A I'm not an attorney; I don't know that.
22 MR. BOOTH: Judge, again I'm looking for one exhibit
23 that---
24 THE COURT: What is it?
25 MR. BOOTH: It's what I have right there, this one

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

57

1 right here. I'm sure I have a hard copy of it somewhere.
2 BY MR. BOOTH:
3 Q Mr. Austin, the one I have up there, this is a
4 printout of it; do you recognize that plat?
5 A No. I got one from SCG&G that I had.
6 Q Is that one the one?
7 A No.
8 Q Okay. Well, let's look at your deed, let's read your
9 deed. That's the paragraph that I had Mr. Cobb read.
10 Here is your deed right here. And read the part that Mr.
11 Cobb was referring to, and tell me if you think what
12 that's referring to is that particular plat?
13 A I have no idea. I'm not a surveyor, and I'm not an
14 attorney. I can't really relate to this.
15 Q I thought you said you owned Parcel B., the little
16 small neck.
17 A I said it says down here - - and it does say .01
18 acres upon a partial plat of land. Okay, that's - - and
19 it's dated - - it's got the plat number and everything,
20 and that's in 1978.
21 Q All right, sir, if you will let me read the deed and
22 you'll look at this plat. All I'm asking you is to
23 confirm, not tell me what it - - just confirm that what
24 I'm reading in your deed is the same thing on the bottom
25 on that plat. Ready?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

58

1 "On a partial plat of land of J.J. Lowman, option
2 657, dated July 21, 1978, prepared for South Carolina
3 Electric and Gas Company, Drawing No. 516-51861."
4 A That's what that says.
5 Q Okay.
6 MR. BOOTH: We would offer this in. I thought it was
7 already in, but I don't think it is. I would offer that
8 as a Defendant's Exhibit.
9 THE COURT: Mr. Hall?
10 MR. HALL: No objection.
11 THE COURT: All right, your motion is granted.
12 (Document marked into evidence as Defendant's Exhibit
13 No. 15)
14 BY MR. BOOTH:
15 Q Now, looking at Defendant's Exhibit 15, do you know
16 why that was prepared in 1978?
17 A No, I don't.
18 Q And that was prior to you buying the property,
19 correct?
20 A This was in '78? Yeah - - about the same time I
21 bought it, I think, or I was in the process of buying it.
22 Q Okay. But you didn't have anything to do with having
23 SCE&G, Mr. Murphy - - I think his name is Mr. Murphy - -
24 preparing that plat?
25 A No.

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

59

1 Q And you have not seen that before today?

2 A Yes. Well, I have seen - - I've got one from SCE&G

3 that I got from them. It's a lot smaller and it looks

4 different from this to me.

5 Q So you don't know why that was prepared?

6 A No.

7 Q Okay. But it is referred to in your deed?

8 A I imagine it is.

9 Q Okay, it looks like it. Again, I'm not trying to

10 call you an expert or anything.

11 A Yeah, as far as I can tell, it is.

12 Q Okay. Now, what kind of activities have you

13 conducted on that property since starting with 2004 up

14 until you were stopped?

15 A I was trying to fix the property up because I wanted

16 to remodel the house and move up there.

17 Q Did you ever have any large gatherings of people?

18 A Not that many.

19 Q Okay, but just tell me what gatherings did you have

20 up there prior to the - - again, we think September of '05

21 is when you were stopped from using the driveway.

22 A The largest gathering I had was all my neighbors were

23 down there. We were down there, had a fire bucket going,

24 and I was cooking food, and everybody came up to eat hot

25 dogs.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

60

1 Q But you feel like the easement addressed to Judge
2 Strickland declares that it gives you the right to let
3 anybody that you want to go over that road to get to your
4 property?
5 A But nobody would want to have any property that they
6 are restricted to be able to go to, or have their friends
7 or family to go to.
8 Q Okay, but as far as gatherings, whether it's church,
9 school, neighbors, you feel like you would have - - you
10 are asking the judge to give you that right to have .
11 gatherings on your property, beyond your---
12 A Anybody would want a gathering on their property at
13 one time. I'm not a hermit.
14 Q Okay, that's fine, but you mentioned that you invite
15 neighbors to come over there.
16 A Yeah, all my neighbors can go down there anytime they
17 want.
18 Q I think I asked, Mr. Austin, is that neighbors on
19 Elletts Road or is that neighbors over on Hollingshed?
20 A Neighbors on that road, they go down there. Some of
21 my friends. We go up there and have cookouts; that's what
22 they use lake houses for.
23 Q All right. But your use of that road from about 1980
24 until 2005, your use of that road was on a somewhat
25 occasional basis, correct?

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

61

1 A I started using it more and more, because I was
2 starting to fix the house up because I was going to move
3 there.
4 Q Okay. And about when did that take place, when you
5 wanted to start fixing it up?
6 A About three or four years before we had this problem.
7 Q Okay. But prior to that, how often did you use it,
8 from 1980 up until, roughly I think, you said '71 - -
9 excuse me, it should be '91, '90 - - 2001, 2002?
10 A I would go up there, my whole family - - my wife and
11 my two children, we would go up there sometime and stay a
12 month. We would go up there and - - during the summer,
13 every weekend. By the time - - we would go up there on
14 Friday, say Friday, Saturday, and Sunday.
15 Q Are you desiring the right to use that road at any
16 time of the day, day or night, twenty-four hours a day?
17 A Yes.
18 Q And you mentioned the house that was finished, where
19 the Hardens live now, I believe, right?
20 A Yes.
21 Q As far as getting past that house, have you had any
22 difficulty driving past that house to get to your
23 property?
24 A You can take a small car past there.
25 Q A small car?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

62

1 A I was in a small truck when I went up there, a little
2 Pathfinder.
3 Q So---
4 A I haven't been up there since. I went up there and
5 there was a conflict, and so I left and haven't been back
6 since.
7 Q So you are familiar with a Ford Explorer size SUV?
8 A Yeah, that's what most of the trucks I drive are
9 Dooleys - - they're wider than that. Do you know how wide
10 those are?
11 Q Yes, sir.
12 A Okay.
13 Q Would those have any difficulty going over that
14 driveway now?
15 A I don't know, I don't have one.
16 Q Oh, I'm sorry, I thought you were - - Well, if you
17 Had one, could you drive through there?
18 A I haven't driven one through there; I couldn't say.
19 I went up there one time with a small four runner; it was
20 a small compact car. I drove it up there. My daughter
21 went up there with me, and she was in a little small Dodge
22 pickup truck.
23 Q All right, if you would come down, I want to ask you
24 just a couple of questions and then I'll be through. All
25 right, sir, the area that I want to talk about is over

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

63

1 here on this boundary where there's a wooden fence. See
2 the wooden fence that's drawn by Mr. Cobb; that's that
3 little x. He's even got it labeled "wooden privacy
4 fence".
5 A Yes.
6 Q And that belongs to Ms. Carringer, right?
7 A Right.
8 Q Okay. Now, between the wooden fence and the house
9 that was built, how much distance do you think there is?
10 I'm not talking about where the driveway is; I'm talking
11 about the distance from the boundary line to the house?
12 A To the driveway? I tried to measure, and Mr. Stone
13 told me to leave. He called the police, and they told me
14 I was causing problems. And so I never measured it, so I
15 can't say.
16 Q But it is definitely almost half more land than the
17 driveway shown by your survey?
18 A No.
19 Q Okay, so your survey is showing it incorrectly?
20 A I think that the house is a little bit further over,
21 but I haven't measured it. Have you measured it? Do you
22 know how far it is across?
23 Q I get to ask only the questions today.
24 A I have no idea; I have not measured it.
25 Q I'm going to ask you two more questions, and then we

Official Court Reporter
Master in Equity, Richland County
1701 Main Street -- Post Office Box 192 (29202)
Columbia, South Carolina 29201

64

1 | will definitely be through. But, again, looking at where
2 | Mr. Cobb, your surveyor, depicts the boundaries of the
3 | gravel driveway - - you see those, right, the dotted dash
4 | line?
5 | A Right.
6 | Q Looking at this side of the driveway, which again
7 | here is our north area, and that would be the eastern side
8 | of the driveway---
9 | A Right.
10 | Q ---over to the property line of the wooden fence,
11 | there is a good bit of land in between there, correct?
12 | A Right. But there is also a telephone pole right here
13 | that's sticking way out.
14 | Q Okay. Wonder why your surveyor didn't show it.
15 | A I don't know, but it's not on there. There's a
16 | telephone pole, and also another telephone pole that I've
17 | heard has been put up to take care of the house that
18 | they've put out there.
19 | Q Well, let's---
20 | A And the way I can understand it is it's sticking way
21 | out. And there's also a big pine tree sitting there.
22 | Q Telephone poles can be moved, can't they?
23 | A Yes. And there's also a big pine tree sitting right
24 | over there.
25 | Q Okay. And pine trees can be moved?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

65

1 A Yes, they can be moved too.
2 Q All right.
3 A But it's not on my property, so I couldn't do that.
4 Q I understand that, sir. I'm just asking about the
5 distance that's between where the house is all the way
6 over to Ms. Garringer's property, there's more room than
7 what the driveway shows, correct, that your surveyor
8 shows?
9 A I don't know where the house is placed on there.
10 Q I thought you said you went out there?
11 A I went out there, but by that map I can't tell you
12 where it's measured at; I did not measure it.
13 Q But, I mean, the wooden fence was visible when you
14 went out there, wasn't it?
15 A Yes, the wooden fence was there.
16 Q And the wooden fence matches her property line,
17 correct?
18 A According to that, yes.
19 Q Assuming that. I realize, again, you are not a
20 surveyor, are you?
21 A Right.
22 Q Assuming that, when you went out and visited, when
23 the house was pretty much finished, there was a good bit
24 of room over towards the fence?
25 A My four runner would go through there.

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

66

1 Q All right.
2 A I think it is about four foot wide.
3 Q All right.
4 MR. BOOTH: That's all I have, Your Honor.
5 THE COURT: Okay.
6 THE COURT: Any redirect, Mr. Hall?
7 (Exhibit marked as Plaintiff's Exhibit No. 8)
8 REDIRECT EXAMINATION
9 BY MR. HALL:
10 Q Mr. Austin, just based on that last litany of
11 questions you were asked, I'm going to show you a sheet of
12 photographs, color photographs.
13 A Yes, sir.
14 Q What do those photographs represent?
15 A That's the house being built. It shows a telephone
16 pole, it shows a tree, a pine tree, it shows where the
17 eaves is at and how far it is, if you can measure it---
18 Q And the property generally next to the fence that Mr.
19 Booth was asking you about?
20 A Right. That shows about how wide it is, just kind of
21 maybe my guessing at it.
22 Q All right.
23 MR. HALL: No further questions.
24 THE COURT: Okay, any recross?
25 MR. BOOTH: Do you want to put that into evidence,

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

67

1 because I don't think - - could we - - oh, you've already
2 marked it. I didn't hear you mark it into evidence, but I
3 have no objection.

4 MR. BOOTH: Just a couple of things. Judge, here is
5 the same picture here.

6 RECROSS EXAMINATION

7 BY MR. BOOTH:

8 Q All right, looking at this Plaintiff's Exhibit 8,
9 this is the area you and I were just talking about, isn't
10 it?

11 A Yes.

12 Q Okay. And there is the fence?

13 A Right.

14 Q And there is part of the house?

15 A Right.

16 Q And the driveway is there?

17 A The driveway used to be over here.

18 Q I know, but it's there right now, from the picture?

19 A Part of it is there.

20 Q And where is the telephone pole? I didn't find that.

21 A There's the telephone pole right there; you'll see it
22 right up there.

23 Q Okay, but that's further down. That's not---

24 A That's a little bit further down. There's a big pine
25 tree right there.

Official Court Reporter

68

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 Q In fact, that's the telephone pole that's back down
2 here?
3 A It might be, because there is only, I think, - -
4 there might be two poles, but I think - - I know there is
5 one pole. Like I say, there may be two poles, but I think
6 it is just one pole.
7 Q At least on that picture there is no pole along here?
8 A That one is right here.
9 MR. BOOTH: Again, Judge, we're talking about the
10 distance is 113.58 feet south, 12 degrees, 70 seconds
11 east.
12 BY MR. BOOTH:
13 Q Correct? That's that line right there. There is no
14 telephone pole on the line, is there?
15 A I'm not sure. I don't think there is. It may not be
16 according to---
17 Q The picture doesn't show it?
18 A The picture doesn't show it. If you can tell by
19 where that is compared to this picture, then you can tell.
20 Q Okay.
21 MR. BOOTH: That's all I have.
22 THE COURT: Thank you.
23 EXAMINATION
24 BY THE COURT:
25 Q Sometimes in non-jury cases the judge will ask

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

69

1 questions. I want to make sure I understand what's going
2 on. When were these pictures taken?
3 A It had to be during the construction of the house.
4 Q If you don't remember, that's fine.
5 A Yeah. But I think - - the way I understand it, the
6 house is finished. That's the last time I was up there
7 when the house was in that condition.
8 MR. BOOTH: We'll stipulate July, 2007.
9 THE COURT: Okay. All right.
10 BY THE COURT:
11 Q But, Mr. Austin, you said you hadn't been up there in
12 three years, is that---
13 A I went up there in July of last year, one time.
14 Q Okay, and before that when were you there?
15 A Since I got that letter, I haven't been up there.
16 Q Since '05?
17 A Since '05 I've kept away from it. I just didn't want
18 to cause any problems or cause conflict.
19 Q All right, thank you, sir, you may come down. Watch
20 your step coming down.
21 THE COURT: All right, Mr. Hall?
22 MR. HALL: I would call Mr. Tokunaga.
23 THE COURT: Please put your left hand on the Bible
24 and raise your right hand, sir.
25 (Thomas D. Tokunaga, being duly sworn, testified as

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

70

1 follows:)

2 DIRECT EXAMINATION

3 BY MR. HALL:

4 Q State your name for the record, please.

5 A Sir?

6 Q State your name for the record, please.

7 A Oh, Tom Tokunaga.

8 Q And where do you live, Mr. Tokunaga?

9 A 1718 Carl Road in Columbia.

10 Q And what relationship are you to Mitsuo Tokunaga?

11 A That was my father.

12 Q All right. And you are familiar with the transaction

13 between Leon Tokunaga and John D. Austin back in 1980?

14 A I was part owner, but my brothers took care of all

15 that; I didn't handle all that back then.

16 Q But you were part owner of it?

17 A As far as the deed.

18 Q So you're familiar with the property we are talking

19 about?

20 A Oh, yeah, fully familiar.

21 Q What did you and your family, including your father,

22 do with this property?

23 A He used it mostly to go fishing. You know, we used

24 it for boating and recreation.

25 Q And how did you get back and forth to the property?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

71

1 A Well, Mr. Lowman when he sold the property, the road
2 was always - - I mean, a right-of-way, or whatever, was
3 always there. So there was never any question on the
4 road.
5 Q Coming off of Elletts Road?
6 A Yes, sir.
7 Q That's shown on this survey here pinned to the board?
8 A Yes, sir.
9 Q And over what period of time, or approximately how
10 many years would you say that you did that?
11 A Gosh, over fifty (50) years.
12 Q Over fifty (50) years?
13 A Yes, sir.
14 Q Okay. Prior to it being sold to Mr. Austin?
15 A Yes, sir.
16 Q How about after it was sold to Mr. Austin?
17 A But we had always been friends, so occasionally I
18 went up there.
19 Q What was the basis for your friendship with Mr.
20 Austin?
21 A His daddy and I were friends from about elementary
22 school up, so we had always been real close.
23 Q All right, so you have familiarity with this property
24 from the time Mitsuo Tokunaga bought it?
25 A Oh, yes, sir.

Official Court Reporter

72

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

1 Q Okay. And it's always been used, for fifty plus
2 years---
3 A As far as I know, or maybe more, you know.
4 Q Up until---
5 A I know fifty (50) years.
6 Q Do you know who built the fishing cabin on the
7 property?
8 A Yeah, my dad.
9 Q Your dad did?
10 A Yes, sir.
11 Q Okay. And was there ever, in your recalled memory,
12 was there ever any other ingress or egress to the
13 property?
14 A I never knew of any problems up until Johnny told me
15 about this.
16 Q But was there any other way to get to the property,
17 other than up and down that drive?
18 A That's the only way, except by boat.
19 Q When were you born, Mr. Tokunaga?
20 A In Columbia, South Carolina.
21 Q When?
22 A Oh, you want to know the year?
23 Q Yes, sir.
24 A Oh, '31.
25 Q 1931?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

73

1 A Yes.

2 Q And so sometime after 1931 the property was being
3 used?

4 A Well, now, they didn't buy that property. I must
5 have been around fourteen (14) years old when they bought
6 the property. And I had - - all my brothers - - I mean my
7 brothers and sisters took care of all the business, and so
8 I didn't know anything about that part of the transaction.

9 Q Okay. So that would have been around 1945?

10 A If you say so; I'm not real sure.

11 Q Okay. Do you know who owned the property that the
12 drive would have crossed?

13 A The property was bought from J.J. Lowman.

14 Q But do you know who owned the property the drive was
15 on back in 1945?

16 A No, it just always showed on the tax map, or the
17 deed, or whatever, that there was a right-of-way, or
18 whatever, you know. Because that was the only way to get
19 to that point, the three-point island, you know.

20 Q Right. Do you recall any names of anybody that owned
21 property around there?

22 A Well, yeah, I knew the neighbors, like Sam and Lois
23 Jones, and the Elliotts, and the Pices, people like that.

24 Q They lived down the road there?

25 A That lived on - - off Elletts Road, you know. And

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

74

1 Sam lived on the right side, and Mr. Boyd had a house
2 there on the left.
3 Q All right, did any of them use the road, that you
4 know of?
5 A I reckon nobody ever, you know, said anything about
6 the road. We used it, and I'm sure the neighbors did, you
7 know.
8 Q It was just kind of free use?
9 A Oh, yes, yes, sir.
10 Q Right. I mean, whoever wanted to use it could use
11 it?
12 A It was always open, yes.
13 Q How about the dock on that little point; did your
14 daddy build that too?
15 A I'm sure he - - they must have, yes. But it was just
16 like a floating dock.
17 MR. HALL: All right, I have no further questions,
18 Your Honor.
19 THE COURT: Okay.
20 MR. BOOTH: No questions for this witness, Your
21 Honor.
22 THE COURT: All right, thank you, sir, you may come
23 down. Watch your step coming down.
24 THE WITNESS: Thank you.
25 THE COURT: Mr. Hall?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

75

1 MR. HALL: Except for possible rebuttal witnesses,
2 Your Honor, that's our case.
3 MR. BOOTH: I have one witness that I can fit in
4 before twelve, Mr. Tom Boozer.
5 THE COURT: Okay, he says the plaintiff rests, I
6 think.
7 MR. HALL: Yes. I'm sorry.
8 THE COURT: The Plaintiff rests.
9 THE COURT: Do you have any motions?
10 MR. HALL: Do I have any motions?
11 THE COURT: Does Mr. Booth have any motions?
12 MR. BOOTH: No, Your Honor.
13 THE COURT: All right, no motions. Okay.
14 THE COURT: Mr. Booth, you may proceed. Do you want
15 to proceed with the Defendant's case?
16 MR. BOOTH: Yes.
17 THE COURT: Now, Mr. Booth, I'm going to ask you, is
18 this your whole case, including your counterclaim, when
19 you decide to go forth?
20 MR. BOOTH: Yes, sir.
21 THE COURT: All right, you may proceed.
22 MR. BOOTH: I would call Tommy Boozer to the witness
23 stand.
24 (Tommy Boozer, being duly sworn, testified as
25 follows:)

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

76

1 DIRECT EXAMINATION
2 BY MR. BOOTH:
3 Q Mr. Boozer, get up as close as you can to the
4 microphone.
5 A Okay.
6 Q I know you have a pretty strong voice, but it
7 certainly helps. All right, Mr. Boozer, identify
8 yourself, your full name and where you work.
9 A My name is Tommy Boozer. I work with South Carolina
10 Electric and Gas Company. I've been employed by SCE&G for
11 about thirty-two (32) years, in the lake management
12 department.
13 Q That's what I was going to ask you, what is your
14 primary duties right now?
15 A The management of Lake Murray.
16 Q And does that include keeping track of what property
17 the power company owns?
18 A That's correct, keeping track of SCE&G property and
19 the permitting, inspection, and compliance program.
20 Q I would like to - - are you familiar with the
21 property - - you were here a little bit - - you're
22 familiar with the property we're talking about?
23 A Yes, I am.
24 Q Let me show you - - one second - - I'm looking for
25 the - - all right, I would like you to look at Defendant's

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

77

1 Exhibit 15, and I've reproduced it up there on the screen.
2 And are you familiar with that exhibit, 15?
3 A Yes, that was a reference plat that was prepared in
4 1978 by Marshall Murphy, a surveyor for SCE&G.
5 Q All right, let me ask you, do you recall why - - were
6 you there when that was prepared, working with the
7 company?
8 A I was working with the company, but I was not
9 involved with lake management at that time.
10 Q All right, but do you know why that was prepared in
11 1978?
12 A No, I do not, not specifically. I'm assuming there
13 was some reason that the company was interested in the
14 property at that time.
15 Q Okay. Now, if you will look on the bottom on it you
16 will see that it's got some written-in information. And
17 it talks about reference plats, and gives a TMS number,
18 and it talks about partial platted lands of - - and I know
19 you can read it better than I can.
20 A Right.
21 Q And then there is the name of Marshall Murphy.
22 A Right.
23 Q And you know who he is?
24 A Right, yes.
25 Q And who is he, or was he back then, as far as the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

78

1 company is concerned?

2 A Mr. Murphy was a surveyor for SCE&G.

3 Q Okay. And the date on this is July 21, 1978,

4 correct?

5 A That's correct.

6 Q Okay. Now, again emphasizing it says it was done for

7 SCE&G, what does that mean to you as a land management

8 person?

9 A Basically there was some interest that the company

10 had in that piece of property. There is no property that

11 SCE&G owns around this property, because it was all

12 easement property. All we had was forage rights over the

13 majority of that property.

14 Q Okay. But isn't - - see this plat by Mr. Cobb here,

15 isn't it the easement property of J.J. Lowman you're

16 talking about?

17 A That's correct; that's correct.

18 Q Now, what do you know about the piece of property

19 that Mr. Lowman had an easement for?

20 A To SCE&G or to Lexington Power?

21 Q Yes, sir, or Lexington Power?

22 A Lexington Power, at that particular time. It's

23 property that we never owned, we never purchased, but we

24 did purchase easement rights which would allow SCE&G to

25 back water over the property.

1 Q Okay, are you familiar with the parcel that is shown
2 on here, now formally Jim and Jane Stone; are you familiar
3 with that piece there?
4 A Right.
5 Q And was that owned by Lexington Power, SCE&G at one
6 time?
7 A No, I don't think so. The option number 655 was the
8 Lowman tract.
9 Q Okay. I show you Defendant's Exhibit 12 and see if -
10 - have you had a chance to look at that deed?
11 A Right. In January 27, 1954. Okay. That was a piece
12 of property then we did sell back then.
13 Q Okay. You're talking about the Stone piece?
14 A That's correct.
15 Q I'm thinking that the plats had passed?
16 A Right.
17 Q You looked at it?
18 A That's right. No, it's not in there.
19 Q Just a second, I'll find it. And what was the
20 general understanding or the general rules in the power
21 company as far as what they could sell around Lake Murray?
22 A Basically - - first of all we had to get permission
23 from the Federal Energy Regulatory Commission, or at that
24 time the Federal Power Commission, in order to sell
25 property. But if the back property - - whoever owned

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

80

1 property behind SCE&G's fringe land were eligible to buy
2 the property between their property and the lake.
3 Q Okay, now I realize the easement property is in a
4 different category by itself, right?
5 A Right.
6 Q As far as the Stone property. So what did this
7 represent as far as the division between the lake and your
8 property?
9 A Well, it would have been property they could have
10 purchased from the P.B.L., which is the project boundary
11 line, all the way down to the 360 contour.
12 Q Now, let me show you Exhibit 5. Is this the type of
13 plat that was done when you did conveyances of the fringe
14 land?
15 A That's correct.
16 Q That's a fringe land plat, isn't it?
17 A That's correct.
18 Q Okay. Now, if you will bring those two plats and
19 come up here just a second, I want to ask you about this
20 area - - and this is the Lowman property line here - - ask
21 you about the area right in here. Are you familiar with
22 that area and how it was set up when you did that fringe
23 land plat?
24 A Well, it would have been - - the property that the
25 company would have owned would have been behind the - -

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

81

1 the project boundary line would have been back behind this
2 piece of property. There would have been an owner here,
3 and they would have been eligible to buy this property
4 with what we refer to as anything down to the 360 contour.

5 Q All right. And so on the other side of this 360
6 contour, what does that property represent?

7 A It's SCE&G property.

8 Q Okay. And so anything on this side of the Lowman
9 tract that's not within the Stone tract would be SCE&G?

10 A Right. This right through here would be SCE&G
11 property, based on the location of that line.

12 Q Including this area in here?

13 A If it didn't have any other deed restrictions on it.
14 I'm not sure if I probably would stop here or continue
15 over.

16 MR. BOOTH: That's all I have, Your Honor.

17 THE COURT: Okay.

18 THE COURT: Cross? Mr. Hall?

19 CROSS-EXAMINATION

20 BY MR. HALL:

21 Q Mr. Boozer, again referring you to the plat that is
22 up on the screen, you testified that when this was made in
23 1978 - - and of course that's a long time ago - - you said
24 you don't know why that plat was made like that, do you?

25 A Right - - no, sir.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

82

1 Q Okay. So the fact that a neck - - the fact that a
2 neck is shown here on this plat, and on that plat on the
3 board there too, will you render an opinion as - - there
4 must have been something; otherwise Mr. Murphy would have
5 distinguished that neck, wouldn't he? I mean, there must
6 have been something special about it?

7 A Well, you know, it had to be some issue for them to
8 do the survey, but I don't know what it would be, because
9 our rights beyond that point on the Lowman property were
10 limited and identified.

11 Q Right.

12 A Now, it just depends on where the 360 would have
13 showed up on that property, and it's identified here. But
14 I don't know of any other reason why we would have been
15 looking at that like, you know, to make a survey. But
16 generally we do a lot of surveys of different properties
17 around the lake.

18 Q Right. Right. Exactly. And at least as far back as
19 1978 Mr. Murphy, based on something, made a decision that
20 that little neck there was a separate and distinct parcel,
21 for some reason. In other words, he didn't just go ahead
22 and erase that, and carry the 360 line all over?

23 A No. But he also identified all the other property in
24 the area too so - - for whatever reason, I'm not sure.

25 Q Okay.

Official Court Reporter

83

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 MR. HALL: No further questions.
2 MR. BOOTH: No further questions. Can he be excused
3 also?
4 MR. HALL: Yes, sir.
5 THE COURT: All right, thank you, sir. Watch your
6 step coming down.
7 MR. BOOTH: I think we can do my abstractor before
8 lunch, but it's up to you.
9 THE COURT: Yeah, I would prefer to come back at one
10 o'clock; that will give us an hour and fifteen minutes for
11 lunch.
12 Now, as far as your files and everything, we can lock
13 the courtroom or we can keep it open, whatever you all
14 want to do. Do you want to lock it?
15 MR. HALL: Judge, I can't imagine anybody would want
16 to look through my files, so we can just leave it open.
17 MR. BOOTH: That's fine.
18 THE COURT: All right, we'll stand in recess until
19 one o'clock.
20 (Recess.)
21 THE COURT: Mr. Booth?
22 MR. BOOTH: Jane Harden Stone.
23 THE COURT: Please put your left hand on the Bible
24 and raise your right hand.
25 (Jane H. Stone, being duly sworn, Testified as

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

84

1 follows:)

2 DIRECT EXAMINATION

3 BY MR. BOOTH:

4 Q All right, if you will give us your full name again
5 and where you reside.

6 A Jane Harden Stone.

7 Q And just for helping out, you need to get closer to
8 the microphone.

9 A Okay.

10 Q And where do you live again?

11 A 1235 Elletts Road, Chapin, South Carolina.

12 Q All right, who else lives there?

13 A My husband and my son.

14 Q And is this your husband here, Jim?

15 A Yes, it is.

16 Q All right. Again, you will have to speak up and get
17 closer to the mike so it will amplify a little bit.

18 A Okay.

19 Q All right, what does Jim do for a living?

20 A He has his degree in chemistry from the University of
21 North Carolina, and he runs a small business out of our
22 home.

23 Q Okay, and do you have any business at the home?

24 A I have been helping out with his business; primarily
25 now I'm there taking care of my parents, which are next

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

85

1 door.

2 Q So is there another house on this property?

3 A There is a house next door to us.

4 Q And who lives in that house?

5 A That's my mom and dad, Betty and Frank Harden.

6 Q And did you grow up in the Columbia area?

7 A I did, in town, in the city of Columbia.

8 Q And so did your dad work in the Columbia area?

9 A He did. He was in broadcasting. He started out with

10 WIS. He did a lot of community and civic work and

11 fundraising. He was pretty prominent in Columbia, South

12 Carolina.

13 Q And, Mrs. Stone, how far back - - what age were you,

14 approximately, when you first remember your parents buying

15 the property we're talking about today?

16 A I was probably seventeen (17), somewhere thereabout.

17 Q Did they ever live there as their permanent residence

18 up until just recently when you built the second home?

19 A No, they did not.

20 Q So how was it used by them?

21 A They would come up on weekends predominantly, and

22 sometimes during the week they would come up for a couple

23 of days. It was, you know, just no set schedule.

24 Q All right, and did you sometimes come up with them

25 before you got married?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

86

1 A I did, and also just to visit for the day, and that
2 kind of thing, I would come up with my friend.
3 Q All right. And when did you marry Jim, what year?
4 A Let's see, when did we get married? We've been
5 married about twenty-nine (29) years.
6 Q And you mentioned you had one child living in the
7 house. Do you have any other children?
8 A I have a daughter; she's twenty-two (22).
9 Q And where is she?
10 A She's in Columbia; she's at the University of South
11 Carolina.
12 Q Okay. And why do you live there now? What happened
13 that caused you to move into that house as your permanent
14 residence?
15 A I came back to take care of Mom and Dad. I could see
16 that - - Dad had gotten out of surgery, and I just
17 couldn't commute, and so I moved down and moved into their
18 home; they gave me that so I could move closer. And I've
19 been taking care of them ever since I got here.
20 Q All right. And I think you had a situation this
21 morning that caused you to be late.
22 A Yes, my dad. I've been having to help him. He's
23 fallen and has some pretty serious handicaps right now.
24 Q Okay. Now, let me move on to this case a little bit.
25 Judge Strickland asked if you had, I guess, their home

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

87

1 built so that it blocked this driveway that we've been
2 talking about. Is that true? Did you block that driveway
3 with this structure?

4 A No, no. I mean, legally we couldn't have. They had
5 to get into their carport, and so no, it's placed on the
6 property, on our property.

7 Q All right. I will show you a picture on the
8 projection screen of the area that's next to your parents'
9 house now. Is that what that is?

10 A That's the edge of their carport, and that's their
11 car that I turned around so they could get out of the
12 driveway.

13 Q All right. So to the left of that car there is a
14 fence, correct?

15 A Correct.

16 Q And who does that fence belong to?

17 A The neighbors, the Garringers; I guess they still own
18 that.

19 Q Okay. And the structure again that is shown there,
20 that's the structure that was just completed?

21 A Correct.

22 Q Has there been any time that you had anything within
23 that area that we're looking at that would block somebody
24 from driving down that gravel driveway?

25 A Not a permanent - - while the house was being

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

88

1 constructed, you know, there were trucks in and out, but
2 not fixed.

3 Q Okay. And again, you had to be so many feet from the
4 boundary line, is that correct?

5 A Correct, right, all the way around. The house got
6 placed in the only place the house could be placed, with
7 all the setbacks.

8 Q Okay. Let's go back to your house. Look at the
9 photograph there; is that an aerial photo of the area that
10 you live, the end of Elletts Road?

11 A Yes.

12 Q Come up there, if you don't mind, and sort of point
13 out where your house is, and where Mr. Austin's house is,
14 just so that the Judge - - I don't think he's had a chance
15 to - - here you go, this little thing here, across the
16 top. And kind of describe to the judge how everything is
17 placed on that aerial photo, if you don't mind.

18 A This is the end of Elletts. This looks to be our
19 house now that we're in. And my parents' house is
20 directly next door to us at this point in time.

21 Q And where is the piece of property that Mr. Austin
22 has his---

23 A He's down here.

24 Q All right. Now, looking at that photo, is that an
25 accurate photo of the area?

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

89

1 A Yes, relatively, as much as I can tell you exactly.
2 Q Now, is there any other - - in looking at that photo,
3 can you see any other means of dry land access to Mr.
4 Austin's property off of the driveway that you have?
5 A Off of the drive - - Do you mean any other way?
6 MR. HALL: Your Honor, object on the grounds it calls
7 for speculation from the witness. There are no dimensions
8 or boundary lines shown on here.
9 THE COURT: Objection overruled.
10 BY MR. BOOTH:
11 Q Mrs. Stone, go ahead and---
12 A I know though you can get there from anybody's yard
13 that is directly next door to ours. It kind of curves
14 down and around to his property. That's probably the
15 Garringers' and that's probably Frank - - but, all that,
16 you know, their backyards run into that very piece of
17 property.
18 Q You can return to your seat. Now let me ask you a
19 little bit about the property that your dad bought. Do
20 you remember who he bought it from originally?
21 A The Boyds---
22 Q The Boyds, okay.
23 A ---Mr. and Mrs. Boyd.
24 Q And, again, you were about seventeen (17) years of
25 age?

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

90

1 A About, yes, I think.

2 Q And I know you're not a lawyer or abstractor - - and

3 this property that your dad bought from the Boyds, do you

4 remember about how long ago that was? You said you were

5 seventeen (17), so that would put it about what year, if

6 you don't mind?

7 A '73, something like that.

8 Q All right. And then later I believe your parents got

9 some additional land from next door, is that correct?

10 A Yes, at the corner of their property up by the

11 carport.

12 Q And that was back in 1987, I believe, correct?

13 A I think you're right.

14 Q And that came from the next door neighbor?

15 A Yes.

16 Q Did you know her at the time that that took place?

17 Did you know who she was?

18 A I did, yes. I mean, we didn't see each other much,

19 but, yes, I knew the Joneses. I would see them.

20 Q Lois Jones, I believe it was?

21 A Yes.

22 Q And they are connected, I think, with Hampton

23 Pontiac, is that correct?

24 A Correct.

25 Q Now, let me go into this next slide. Do you

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

91

1 recognize that letter - - that's been introduced into
2 evidence - - do you recognize that letter?
3 A Yes.
4 Q All right. And that letter doesn't show who it is
5 signed by, but the letter is in evidence. That was signed
6 by me, I believe, correct?
7 A Yes.
8 Q Do you recall asking me to send that letter?
9 A Yes, I do.
10 Q All right. And that letter we've established is
11 dated September 13, 2005; we've established that. What
12 happened that made you want me to write that letter to Mr.
13 Austin? What happened prior to that letter being sent?
14 A This asphalt was dumped on our property, all down the
15 side of our property.
16 Q Now, Mr. Austin testified this morning that you
17 helped him spread out that asphalt; is that a true
18 statement?
19 A That's not true; that's a lie. We never spread out -
20 - asphalt is chemicals, and my son has breathing problems.
21 I never - - I have gardens, I have organic gardens - - I
22 would never have asked to put a chemical on my property.
23 And it drains down into my water. And so I would not have
24 ever said that that was okay.
25 Q Okay. And did you then remove the asphalt that he

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

92

1 | had laid down, as much as you could?
2 | A As best we could, yes.
3 | Q All right, did you block the driveway at that time?
4 | A I did. I put my truck in the driveway until I could
5 | consult an attorney, which I had consulted two attorneys
6 | and I was told that he had no---
7 | Q That's all right, you don't need to say what they
8 | said.
9 | A Okay.
10 | Q But you did consult two attorneys?
11 | A Yes.
12 | Q And you continued to put the car there?
13 | A Yes.
14 | Q And how did you - - I kind of jumped ahead - - how
15 | did you block the driveway?
16 | A Usually with an automobile, or something, or truck.
17 | Q Now, did you have to hire Mr. Daniel Powers to help
18 | you remove the asphalt from the driveway? Is that the
19 | invoice?
20 | A Yes, that is.
21 | Q All right, and what did Mr. Powers do?
22 | A He had to scrape it - - I don't know what the
23 | mechanism, but he had to scrape it, lift it up, and he
24 | carried it back down to Mr. Austin's property.
25 | Q And did you pay - - how much is that invoice for?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

93

1 A That's twelve hundred (\$1200).
2 Q Did you pay that, or did you and your husband pay
3 that to him?
4 A Yes, we did.
5 Q That's already been introduced; that's Exhibit 14.
6 THE COURT: Mr. Hall, have you seen this.
7 MR. HALL: Yes, sir. No objection.
8 MR. BOOTH: Yes, we have exchanged.
9 THE COURT: Okay, thank you.
10 BY MR. BOOTH:
11 Q Mrs. Stone, besides hiring Mr. Powers, what other
12 work did you and your husband do to remove that asphalt?
13 A Well, what was left is still a continuous thing of
14 trying to get it off of our property, and off the road. I
15 mean, there was still stuff left. You can't get it out.
16 It's been scraped. You just can't get asphalt; it was
17 everywhere.
18 Q Now, Mrs. Stone, do you have any concern about, based
19 upon what you've seen or observed, about Mr. Austin's use
20 of that driveway?
21 A I have very much concern.
22 Q Tell the court what concerns you have.
23 A Well, I have animals and my parents and children - -
24 and it was wide open to just about anybody that wanted to
25 come down. And so they're driving down my property many a

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

94

1 | time without - - I mean, John wasn't around most of those
2 | times - - anytime day and night. I would have to run out
3 | and see who it was, what they were doing. Sometimes they
4 | would go down and turn and come back; sometimes they would
5 | get out and hang out on the dock. They drove - - a lot of
6 | the people that came down drove really fast, and we would
7 | even go down and ask them please not to drive like that.
8 | And some people respected that; some people didn't care,
9 | and they tore back out down the road. They did throw
10 | stuff - - not the Austins, but the people that would come
11 | down, they would throw their trash out on my property - -
12 | you know, bottles, just little bits and pieces. But I had
13 | to pick stuff up like that.

14 | So, yeah, it concerns me greatly to have people
15 | coming up and down my property. It's a small piece of
16 | property. My house is right on this particular drive that
17 | we're talking about. It's part of my life; I have things
18 | out there.

19 | Q And you pay real estate taxes on that area too, don't
20 | you?

21 | A Yes, I do.

22 | Q Okay. Real estate taxes on the lake are expensive,
23 | aren't they?

24 | A Very much so.

25 | Q So, Mr. Austin has asked the judge to give him a free

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

95

1 ticket to use that driveway. So what is your answer to
2 that?
3 A It would ruin my property.
4 MR. BOOTH: That's all I have on direct.
5 THE COURT: All right.
6 THE COURT: Mr. Hall?
7 CROSS-EXAMINATION
8 BY MR. HALL:
9 Q Ms. Stone, Mr. Austin just testified that he was
10 using the drive until 2005. What changed? You said that
11 your parents purchased the property when you were
12 seventeen (17); the drive has been used continuously since
13 then, yet only in the last couple of years have you
14 decided to block it. What changed?
15 A I consulted an attorney.
16 A Yeah, but why didn't you consult an attorney before?
17 Why didn't you consult an attorney when your mother
18 transferred title to you?
19 A Just hadn't gotten around to it. There was a lot in
20 the move. There was a lot taking care of my mom and dad.
21 My dad had had surgery. I just had a lot on my plate. I
22 had to be taking care of them at the time.
23 Q You said Jim Stone does some kind of business out of
24 your house; what kind of business does he do out of your
25 house?

1 A Environmental consulting.
2 Q With who?
3 A His business; his company.
4 Q What is his company?
5 A C.T. and E.E.
6 Q And that is a person - - that is a privately owned
7 company, his company?
8 A Yes, he and another fellow.
9 Q He and another fellow?
10 A Uh-huh (affirmative response).
11 Q Who is Betty Harden?
12 A Betty Harden is my mother.
13 Q And this is a deed from who, Frank Harden? Who is
14 Frank Harden?
15 A Frank Harden is my father.
16 Q Okay, and so this is the deed from your father to
17 your mother of that property?
18 A Okay.
19 Q Right? I mean, you can identify it?
20 A Well, yeah, I identify their names. I haven't seen
21 this to, you know, know, but okay, that is their name.
22 Q All right. Would you read me this paragraph right
23 here on the first page down at the bottom?
24 A "This conveyance being made subject to any existing
25 easements, conditions, and restrictions of record,

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

97

1 including those shown upon any recorded plats affecting
2 the premises hereinabove described and conveyed."
3 Q Okay. And then this is the - - is this not the deed
4 whereby Betty Harden conveyed the property to you?
5 A Yes.
6 Q And is that same paragraph not on that deed, on the
7 second page?
8 A Yes.
9 Q So, all through the chain the property is being
10 conveyed subject to any conditions, restrictions, or
11 easements of any instrument recorded or on any plat. Is
12 that right?
13 A That's what that paragraph says.
14 Q Okay.
15 MR. HALL: Mark this as Plaintiff's.
16 (Document marked as Plaintiff's Exhibit No.9)
17 BY MR. HALL:
18 Q Now, Mrs. Stone, you said that you were about
19 seventeen (17) when Frank Harden purchased this property.
20 So you had been out to the house when you were seventeen
21 (17)?
22 A Yes.
23 Q And did you not notice that John Austin was using the
24 drive at that time?
25 A I never saw him go down - - I never saw any activity

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

98

1 | when I was there.

2 | Q From the time you were seventeen (17) until when?

3 | A Let's see - - I don't think I ever saw anybody using

4 | that when I was up there with my parents visiting.

5 | Q Did you and your parents usually went up on weekends?

6 | A My parents did. I wasn't always with my parents at

7 | that point in time, on weekends.

8 | Q And so as far as you knew, there wasn't anything down

9 | there at the end of that road, that drive?

10 | A Well, I could see the structure, but I didn't see any

11 | Activity at the time that I was there.

12 | Q Well, testimony has been offered that your parents

13 | went down there and joined in the festivities and the

14 | cooking and eating---

15 | A Not to my knowledge.

16 | Q Okay, to your knowledge they never had any contact

17 | with John Austin?

18 | A I didn't say they didn't have any contact with him.

19 | I just said not to my knowledge did they go down to his

20 | house, and that kind of thing. I would - - not to my

21 | knowledge.

22 | Q Not to your knowledge?

23 | A Correct.

24 | Q How about your husband, Jim Stone, does he go down

25 | there?

Official Court Reporter

99

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

1 A No, he doesn't.
2 Q He doesn't go down on the property at all?
3 A No.
4 Q He hasn't taken up Mr. Austin's rip-rap and moved it
5 back to his property?
6 A No. That's ridiculous.
7 Q Even if I show you the photographs?
8 A I have plenty of rip-rap; why would I need to take
9 somebody else's? I mean, my parents have it all around
10 their property. And by what means? Rip-rap is pretty
11 heavy, so...
12 Q Have you seen the plats, the surveys of that lot and
13 your lot?
14 A Yes, I have.
15 Q Have you noticed the drive down the right side of the
16 lot?
17 A Uh-huh (Affirmative response).
18 Q Have you noticed it goes all the way down from
19 Elletts Road to the back of your property?
20 A Well, I've seen the drawings, okay, relative to what
21 it is in person. I mean, it doesn't - - it's not a drive
22 drive; I mean, it just opens up and sort of drops off at
23 the end of their property.
24 Q Now, you said you've been going there since you were
25 seventeen (17) years of age, and you never knew that was a

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

100

1 | drive being used?

2 | A I never - - no, I never saw Mr. Austin, not while I

3 | was there, prior to the house becoming mine, at that

4 | point; but prior to that when I would be there to see my

5 | parents, and that kind of thing, I did not.

6 | Q You don't ever recall seeing Mr. Austin come to your

7 | parents---

8 | A Not while - - not while it was my parents'.

9 | Q And you didn't know anything about him using that - -

10 | Mr. Austin using that as an easement in and out of his

11 | property?

12 | A I did know - - I never saw, but I did know that

13 | someone was using it, because my mom tried to block, put

14 | sticks and logs and stuff down at the very end of the

15 | drive, because it was being used to turn around and park

16 | on our property. And I saw her - - I even helped her when

17 | I would clean up her yard. She had this big berm she was

18 | building down the side because it was being used to turn

19 | around and to park on.

20 | Q Down the side?

21 | A On her property.

22 | Q Down the side of her property?

23 | A Correct.

24 | Q And not on the drive itself?

25 | A On her property.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

101

1 Q On the drive?
2 A On my mother's property.
3 Q But I say, on the drive?
4 A I don't know, the property; the whole thing is their
5 property. The drive and beside it, and everything, that's
6 all the same piece of property, right?
7 Q Okay. But since you were seventeen (17) years of age
8 until a couple of years ago you were just totally
9 oblivious to that drive they used as an easement?
10 A I never saw it being used.
11 Q But you knew it was being used?
12 A I knew it had been, because she was trying to
13 restrict it; I did know that.
14 Q Who was trying to restrict it?
15 A My mother was trying to restrict the use of her
16 property being used as a turn-around area and a parking
17 area.
18 Q Even though it had been used for that for the past
19 sixty (60) years?
20 A I don't think that she was aware that anybody was
21 parking on her property, or that she was buying a piece of
22 property that other people had the right to park on.
23 Q So you are saying - - your testimony is people are
24 not only using the drive, they were parking in the drive?
25 A On her property.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

102

1 Q Well, in the drive?
2 A I - - on the edge of the drive, in the drive - - on
3 her property.
4 Q People that were not her?
5 A Not her; not hers.
6 Q And isn't it true, Mrs. Stone, that your husband put
7 up a storage building on the drive and Richland County
8 made him move that?
9 A No.
10 Q It's not?
11 A He did not put it up there. It was my mother's frame
12 shop. She is an artist; she had frames. In the process
13 of building the house it got moved over. It wasn't
14 blocking it, but it did get moved over because the people
15 were digging the foundation. It was not permanently left
16 there. And, no, it wasn't going to be left there. It had
17 to be within setbacks, just like the house and everything
18 else. It was just in the process of building the house.
19 Q And you actually split that lot in two, did you not?
20 A Yes, we did.
21 Q And why was that?
22 A I wanted to get my parents up there so I could take
23 care of them, because they were---
24 Q Is it Richland County where you cut that lot in two?
25 A It was a choice that we made of how to handle the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

103

1 | property, and the housing, and all that, to provide them
2 | their own space.
3 | Q And did the deed you give them - - did you give them
4 | a deed?
5 | A No.
6 | Q You didn't deed them the property?
7 | A No, I didn't, no.
8 | Q So it's still all the same property?
9 | A No, it's two separate pieces of property, but it's
10 | not - - I didn't deed it to them.
11 | Q Well, I won't bore you with the legal ramifications
12 | of that.
13 | MR. HALL: No further questions.
14 | THE COURT: Any redirect?
15 | MR. BOOTH: No, sir.
16 | MR. BOOTH: Our last witness is Daniel O'Connell.
17 | THE COURT: Please put your left hand on the Bible
18 | and raise your right hand.
19 | (Daniel O'Connell, being duly sworn, testified as
20 | follows:)
21 | MR. BOOTH: Your Honor, I'm going to identify him and
22 | then I'm going to offer him as an expert in abstracting.
23 | And I'll get to that in just a minute, but let me just
24 | give you some background.
25 | DIRECT EXAMINATION

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

104

1 BY MR. BOOTH:
2 Q Mr. O'Connell, give us your full name and where you
3 work.
4 A My name is Daniel O'Connell, and I work at Absolute
5 Title here in Columbia.
6 Q And what sort of work do you do with Absolute Title?
7 A I do title abstracts for them primarily here in
8 Richland County. I do abstracts from one-owner updates
9 for, let's say, a mortgage re-fi to a full commercial
10 search of a complex downtown building that may take me
11 back into the 1800's. And so I'll do everything from
12 what's very simple, from document retrieval, to fairly
13 complicated and involved searches with multiple interests.
14 Q So I'll simplify. You spend your life down on the
15 first floor of the deed office, right?
16 A Yeah, my professional life, I do.
17 Q All right. Just very quickly, your previous
18 experience before Absolute, is it also in abstracting?
19 A Yes, I've been an abstractor for fifteen (15) years.
20 I started with another Columbia company known as
21 Professional Title, and worked for them for about four (4)
22 years, and got what I think is good training.
23 I also worked for a foreclosure firm here in town,
24 Rogers, Townsend, and Thomas, for about six (6) years,
25 traveling the whole state doing title searches in all

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

105

1 forty-six (46) counties. And it's only been in the past
2 five or six years that I've pretty much come local and I'm
3 only working here in Richland County.

4 Q And give us your age and what your educational
5 background is.

6 A I'm thirty-nine (39) years old, and I have a high
7 school diploma from Mt. Zert Island High School in Mt.
8 Zert, Maine.

9 Q But you live in Columbia now?

10 A But I live in Columbia, and I have for the past
11 sixteen (16) years.

12 MR. BOOTH: Your Honor, we would offer Mr. O'Connell
13 as an expert in examination and abstracting of records
14 recorded in the Register of Deeds Office for Richland
15 County, to testify about the research he did with respect
16 to these two parcels.

17 THE COURT: Mr. Hall?

18 MR. HALL: No objection.

19 THE COURT: All right, your motion is granted.

20 BY MR. BOOTH:

21 Q Now, Mr. O'Connell, did you prepare two different
22 chains of title reports?

23 A Yes, sir, I did.

24 Q Looking at Defendant's 1, what chain of title report
25 is that pertaining to?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

106

1 A This shows a chain of title for the property that is
2 currently enjoyed by John Austin, and it takes it back to
3 approximately 1928, when it was originally deeded to a
4 J.J. Lowman.

5 Q All right. And Exhibit No. 2, what is that with
6 respect to Jane Harden Stone's property?

7 A Again, this is another chain of title for the Stone
8 property. And I can trace this one back to 1928 with a
9 deed from Mattie Kleckley in to Lexington Water and Power
10 Company. Both of these chains I did at your request last
11 year.

12 Q All right. And you updated them recently, I believe,
13 correct?

14 A Yes.

15 Q Now, Mr. O'Connell, does either parcel have any
16 common grantors as far as you went back?

17 A As far as I went back, there was no common grantor.
18 Basically that means that both of these parcels sit on
19 parent tracts that were also separate for at least the
20 last eighty (80) years.

21 Q All right. And this property we're talking about, it
22 went through becoming - - part of it became Lake Murray,
23 correct?

24 A Absolutely; absolutely.

25 Q All right. I know the judge knows most of this, but

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

107

1 just sort of tell me how Lexington Power Company acquired
2 property to make the lake?

3 A Well, in large part - - of course, the lake affects
4 more than just Richland County; it affects Saluda,
5 Newberry, and Lexington County. And at the time that they
6 were constructing the lake, Lexington Water Power at the
7 time did surveys to the area to determine approximately
8 where the high water mark or the 360 contour would be, and
9 then they went ahead and made offers to many of the
10 landowners at that time to purchase their property for the
11 purpose of constructing Lake Murray.

12 A majority of these landowners at that time would
13 sell their property outright in fee simple to Lexington
14 Water and Power Company, but there were a few exceptions.
15 Mr. J.J. Lowman, who was the parent tract for the John
16 Austin parcel was one of these people who did not sell
17 their property to SCE&G, but merely leased it to SCE&G.
18 And so they retained some ownership of it, although had to
19 forego whatever flowage and footage was going to happen.

20 Q So basically in the case of Lowman, for example, he
21 gave them permission to flood his land, or most of it?

22 A That's correct.

23 Q Okay. Now, later would SCE&G, or at least Lexington
24 Power Company, acquire property and did they sometimes
25 have to acquire more than they needed for the lake?

Official Court Reporter

108

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 A I'm sure they did, because as everything else is
2 imperfect, sometimes water might rise a little higher in
3 one area, and on the other side there may be areas that
4 were never flooded that Lexington Water Power may not want
5 to hold and they may get rid of.

6 Q What about a situation where a landowner had maybe
7 half their property that needed to be the lake, but the
8 other half they didn't. Did the landowner sometimes sell
9 all acreage to Lexington Power?

10 A Often they would, and they would often retain an
11 option, and those options would be numbered for those
12 landowners who had entered into an original agreement with
13 Lexington Water Power back in the '20's, and that would
14 give them the option to buy back those what we call
15 "fringe lands" that would be of no use to the enjoyment
16 and maintenance of the lake.

17 Q And I know everybody knows that here, but just to
18 make sure it's on the record, Lexington Water - -
19 Lexington Water Power, what was it called---

20 A Lexington Water Power Company later became South
21 Carolina Electric and Gas Company.

22 Q All right, so whenever we speak of SCE&G, that's the
23 same thing as Lexington Water Power?

24 A It's a successor-in-interest, yes.

25 Q All right, now I'm going to ask you a few questions

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

109

1 about the insides of your report.

2 A Sure.

3 Q Let me start out with the Harden Stone tract. And up
4 on the screen, and also on the small chart I've got a plat
5 here. Are you familiar with this plat?

6 A I am.

7 Q Okay, it's Defendant's Exhibit 4, and I believe this
8 was in your materials, right?

9 A Yes.

10 Q All right. Tell me about why that triangular shape
11 was surveyed and what transactions took place as far as
12 the deed records are concerned.

13 A Well, this is just a small area that really does not
14 border the lake itself but borders Elletts Road, as you
15 can see on these exhibits. And again in my job as an
16 abstractor I can only really look and see what is of the
17 record. And for me to try to surmise why certain
18 documents were executed, or how they came to be is really
19 beyond my scope. All I can say that as far as this small
20 piece came, It was purchased by both Frank and Betty Harden
21 back in 1988-89 from the neighbor, who at that time was
22 Lois Jones. And they had a plat recorded that
23 specifically shows that triangle, which was basically just
24 being kicked from one neighbor to the other.

25 Q So I blew up the triangular portion. Does that

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

110

1 | represent what the plat shows?
2 | A Yes.
3 | Q And so after that transaction took place, what
4 | happened to the Harden Stone tract of land?
5 | A The Harden Stone would have increased in size by
6 | whatever degree that triangle represents, and so it got a
7 | little bit wider at the base of Elletts Road.
8 | Q All right. Now, I show you something else that's in
9 | your materials, and I'll call it a fringe land plat; is
10 | that something you understand?
11 | A Yeah, yeah. And you can see it's clearly identified
12 | in the lower right-hand corner as a South Carolina
13 | Electric and Gas Company drawing, and it even shows the
14 | Option No. 4 that predecessor in title Kleckley, the
15 | Option No. 592. And that Parcel B. represents an area of
16 | land that would not have been overcome by the waters of
17 | Lake Murray and would be outstanding and above that level.
18 | Q Okay, I believe you have the transaction from SCE&E
19 | in to Mr. Boyd, I believe it is.
20 | A Yes, that's correct; that's correct.
21 | Q Tell us when that happened; what was the date of that
22 | transaction?
23 | A Let's see, in July of 1960 there is a deed recorded
24 | downstairs in Deed Book 283 at page 278, where South
25 | Carolina Electric and Gas Company deeds to a W.A. Boyd the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

111

1 Parcel B., also known as .6 acres as shown on a plat that
2 is recorded downstairs in Plat Book 16, at page 284; a
3 portion of that is shown right here.
4 Q All right.
5 A So basically that Parcel B. that is shown is the
6 majority of the Stone lot.
7 Q All right, and the only extra part was the triangle
8 that was acquired later, correct?
9 A That's correct.
10 Q Okay. And it mentions somebody's name down here,
11 J.W. Kleckley - - or Mrs. J.W. Kleckley.
12 A That's correct.
13 Q Why is that significant?
14 A Well, that's significant basically in tracing my
15 chain of title back, I want to come to a point where there
16 is a larger piece of acreage, and Mattie Kleckley and her
17 family members, back in 1928 conveyed two parcels to
18 Lexington Water Power Company, a 20-acre and a 17-acre
19 parcel, of which there are no plats recorded, but this is
20 one of those tracts that I spoke about earlier where
21 Lexington Water Power was collecting lands to construct
22 Lake Murray, and Mrs. Kleckley had given these parcels for
23 that purpose.
24 Q All right.
25 A And that Mrs. J.W. Kleckley is the same as who had

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

112

1 done the granting in 1928 to Lexington Water power.
2 Q Right. So, again, you can actually go back to the
3 deed in to Lexington Water---
4 A Absolutely.
5 Q ---that included other land, and this is part of it?
6 A Absolutely.
7 Q Now let's move on to the other tract, which is the
8 Austin tract. Look at your title report. I believe this
9 is a recorded plat, M-140, is that correct?
10 A That's correct.
11 Q And the part that I've circled with red dots, or
12 lines, what does your title search indicate as far as
13 Lexington Water Company acquiring that tract of land?
14 A Basically what I found was that J.J. Lowman never
15 gave a deed to Lexington Water Power, but they had only
16 given an easement for the flooding rights over those
17 parcels. So in a sense Mr. Lowman could retain title to
18 this land, with the understanding that it was going to
19 become a major portion of Lake Murray in this area.
20 Q All right. And you will notice down here it's got
21 the name J.W. Kleckley.
22 A That's correct.
23 Q But this tract here and this tract are J.J. Lowman's
24 tracts?
25 A That's correct.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

113

1 Q And, again, the date of this plat, I believe is 1927
2 or '28, right?

3 A True also.

4 Q And I'll look up some history. I think the lake
5 actually was formed in the early '30's, I believe. Do you
6 know that?

7 A I'm not sure of the exact date that we got to a full
8 pool, but I believe it was the early '30's, yes.

9 Q Okay. So again, Lexington Water had to do a lot of
10 survey work before they---

11 A Absolutely, a lot of engineering goes into building a
12 lake of this size.

13 Q Okay. Now, let's move on to the deed in your chain,
14 the deed from the Tokunaga family and others - - I think
15 there were a couple of others - - in to John Austin. Do
16 you have that deed?

17 A Absolutely. That's recorded - - let's see here - -
18 it's recorded in March of 1980. It's found in Deed Book
19 534, at page 345, and it's Leon Tokunaga, James Tokunaga,
20 Robert Tokunaga, Harry Tokunaga---

21 Q That's enough; that's enough.

22 A ---the Tokunaga family and their descendants, for the
23 most part, together deeding to John D. Austin a tract of
24 thirty (30) acres as previously described in a deed from
25 J.J. Lowman to their father, Mitsuo Tokunaga.

Official Court Reporter

114

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 basically had parcels sitting right next to each other.
2 Q All right, again I know the judge knows this, but if
3 you read this legal here and follow all the lines around
4 it, except for that little one, it will close up, except
5 for that little area there, correct?
6 A Yep.
7 Q Now, I have now the fringe land plat that we just
8 looked at, and I have plats of the Harden tract that's in
9 your material that include the triangle. I'll put these
10 side by side. Is that a fair representation?
11 A Yes, yes, they marry each other pretty well.
12 Q Now, on the fringe land plat, which I have now got
13 blown up, there is a line there and this line is there.
14 Does that represent the Lowman tract?
15 A That would more or less show the line between the
16 Lowman tract and the Kleckley tract.
17 Q All right, let me concentrate on this area right up
18 in here.
19 A Okay.
20 Q That's to the right of the Lowman line and real near
21 the northernmost corner of their property, this area right
22 in here?
23 A Sure.
24 Q Did you have a chance to do a chain of title report
25 for that area?

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

116

1 Q All right. And looking at this up here, does the
2 part in the right-hand corner represent the part of the
3 deed that you would consider the legal description part?
4 A Yes.
5 Q And above that typed out - - I think you've reviewed
6 it - - is the typed out legal description, is that
7 correct?
8 A Yes. But as was brought up with the surveyor earlier
9 this morning, there is one small rung that is missing out
10 of this description.
11 Q I believe it's this little small---
12 A It is. It's that very southeastern most rung has
13 been left out of this legal, but all other parts are the
14 same.
15 Q Okay. But you are confident that the legal includes
16 this entire Parcel A.?
17 A Yes, I am.
18 Q Now, did the Stone property come out of any of this
19 land here?
20 A No. The parent tract for the Stone parcel is what
21 would be just to the right, or just to the east, and that
22 would be the Kleckley land.
23 Q Sort of along one of these boundaries here, is that
24 correct?
25 A Exactly. Exactly. The Kleckleys and the Lowmans

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

115

1 A Well, I'm not sure that it would be a chain of title
2 report as much as it would have already been covered in
3 the Betty Stone chain of title. As I pointed out earlier
4 - - sorry, here - - the Hardens, of course, purchased from
5 the Boyds, who had purchased from SCE&G, who had gotten
6 their interest in these lands from the Kleckleys. So the
7 Stones basically sit very near the edge of the Kleckley
8 parcel, and on the other side the Austins similarly sit
9 very close to the edge of the Lowman parcel. But we've
10 got our two smaller pieces within two larger pieces that
11 also sit right next to each other.

12 Q All right. And with respect to this area in here
13 around there, who did Lexington Water transfer it to?

14 A Well, they never did. Those areas have not been
15 deeded by Lexington Water Power or South Carolina Electric
16 and Gas. And it's confirmed to me by the tax maps also
17 showing this gap in between the Stone parcel and what is
18 the island or currently the Austin property. With no deed
19 coming out of Lexington Water Power, we would have to go
20 back to their original acquisition of the Kleckley parcel,
21 which was again this 1928 deed where they received a 20
22 and a 17-acre parcel. Whose small areas that you're
23 talking about would be a part of that.

24 Q Yes, down here and also up there---

25 A That's correct.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

117

1 MR. BOOTH: That completes my direct examination.

2 THE COURT: Okay.

3 THE COURT: Mr. Hall?

4 MR. HALL: Yes, sir, just very briefly.

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q You testified that in 1980 - - and you can refer to
8 your notes there - - to 1985, the Stones obtained some
9 little triangular piece of property?

10 A That's correct.

11 Q Who did they obtain that from?

12 A They obtained it from at that time Lois Jones, who
13 was their neighbor immediately to the northeast on Elletts
14 Road.

15 Q And Lois Jones obtained her property from J.J.
16 Lowman, I guess?

17 A I'm not sure about that. I did not really look into
18 Lois Jones' title, as it really wasn't a large issue in
19 this case. But for that small six-tenths of an acre
20 portion of their property, I have Lois Jones - - and this
21 is all part of the chain for the James - - I have Lois
22 Jones receiving from W.J. Morgan, Hampton Pontiac, Inc.
23 formerly known as Hampton Motors, in 1987, this small
24 portion of land. Morgan and Hampton Motors received it
25 from South Carolina Electric and Gas. The deed was

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

118

1 recorded in '87, but executed in 1955. Lexington Water
2 Power lists as a derivation for this Mattie Kleckley.
3 Q I'm sorry, I thought you said that that little
4 triangle was earlier a part of J.J. Lowman.
5 A Well, if I did, I definitely misspoke. Because in
6 looking at the Stones' properties and the two parcels that
7 they enjoy, the larger one that we're calling Parcel B.
8 and this smaller triangle, I did take both of those chains
9 back, and they both go to the same family. It goes to
10 Mattie Kleckley, a deed from her to Lexington Water Power
11 in 1928 - - and I've got copies right here.
12 Q Okay.
13 MR. HALL: No further questions.
14 THE COURT: Okay.
15 THE COURT: Any redirect?
16 MR. BOOTH: Nothing further.
17 THE COURT: All right, thank you. You may come down.
18 MR. BOOTH: The Defendants rest. We put in our
19 Counterclaim information through Mrs. Stone's direct, and
20 so we've covered that, Your Honor.
21 THE COURT: Okay.
22 THE COURT: Any motions? Anything further today?
23 MR. HALL: Nothing further from the plaintiff, Your
24 Honor.
25 THE COURT: If counsel will bear with me, I'm going

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

119

1 to take this matter under advisement. I'm going to try to
2 draft an order myself. If I need assistance, depending on
3 how well - - I'll contact counsel for proposed order. But
4 I'm going to try to draft this one myself. It may take a
5 while, maybe thirty (30) days. Is that a problem?
6 MR. HALL: Oh, no, sir.
7 MR. BOOTH: We still have the TRO in effect in case
8 there is any emergency.
9 THE COURT: Mr. Hall, is that understood?
10 MR. HALL: What's that?
11 THE COURT: Mr. Booth said that the restraining order
12 is still in effect, in case of emergency.
13 MR. HALL: Sure.
14 MR. BOOTH: With you taking thirty (30) days, that if
15 Mr. Austin has an emergency to get to the property, he'll
16 have the TRO to help until you make the decision. That's
17 all I was trying to say.
18 THE COURT: All right, thank you. We stand
19 adjourned.
20 MR. HALL: Thank you, Judge.
21 MR. BOOTH: Thank you, Judge.
22 (Thereupon, the proceedings in this matter were
23 concluded.)
24
25

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

120

41020
35

534 PAGE 345

TITLE TO REAL ESTATE - FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S.C.

State of South Carolina,
COUNTY OF RICHLAND

MAR 20 10 07 AM '80



NOTARY PUBLIC
LEON TOKUNAGA
CLARK, S.C.

Know All Men By These Presents, That We, Leon Tokunaga, James Tokunaga, Robert Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., Bettina Robin Tokunaga, Darrell Ross Lake and Sandra L. Collins

ATTEST:
A TRUE COPY
Claudia L. Bartlett
R. M. C.

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY TAX
MAR 20 1980
\$64.00
PB 11327

SOUTH CAROLINA COUNTY DOCUMENTARY TAX
MAR 20 1980
\$35.20

In the State aforesaid, for and in consideration of the sum of Thirty-two thousand and no/100 (\$32,000.00) Dollars to us paid by John D. Austin in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said JOHN D. AUSTIN, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or tract of land together with the improvements thereon, containing 30 acres, more or less, at Lake Murray, County of Richland, State of South Carolina, and being more particularly described in Deed of J.J. Lowman to Mitsuo Tokunaga dated July 28, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948 and having the following boundaries and measurements, as set forth in said deed, to wit: Commencing at a point on the Southwest corner of the division line between lands of L.L. Lowman and J.W. Kleckley and running in the following directions: S28°15'E for a distance of Four hundred forty (440') feet to monument; thence S13°00'W for a distance of Nine hundred forty (940') feet to monument where land corners with lands of Kleckley and Lowman; thence turning and running along lands of Lowman N80°45'W for a distance of Nine hundred fifty (950') feet to monument of Beard Creek; thence turning and running along Beard Creek in a Northerly direction to monument where land corners with Beard Creek and lands of J.B. Swygert; thence turning and running along lands of Swygert N67°30'E for a distance of Nine hundred thirty (930') feet to monument; thence turning in a Southeastern direction to point of beginning.

This being the identical property heretofore inherited by the above named Grantors by Will of Mitsuo Tokunaga dated August 26, 1961 and recorded November 28, 1961 in Probate Box 1020, Package 20986 and by the Will of Richard L. Tokunaga dated April 12, 1977 and recorded

534 PAGE 345

June 1, 1978 in Probate Box 1161, Package 33809.

This conveyance excludes 1.22 acres previously conveyed in Deed Book 388 at page 250.

This property is conveyed subject to the right to flood heretofore granted by J.J. Lowman to the Lexington Water Power Company dated March 3, 1928 and recorded March 3, 1928 in Deed Book DB at page 138 and to the Broad River Power Company, Right #2180, dated May 13, 1936 and recorded May 23, 1936 in Deed Book EB at page 357.

The portion of the property herein conveyed not submerged by the waters of Lake Murray is shown as Parcel A containing .34 acres and Parcel B containing .01 acres upon a partial plat of lands of J.J. Lowman, Option #657, dated July 21, 1978 prepared for South Carolina Electric & Gas Company, drawing #516-51861.

Grantee's mailing address: 1628 Van Heise Drive
Columbia, SC 29204

The Grantors grant to the grantee herein as a part and parcel of this conveyance the right of ingress and egress to the above tract over the road leading from the above tract over other lands now or formerly owned by J. J. Lowman into the St. Claire road adjoining the lands now or formerly of J. J. Lowman which leads into Highway #76; said right of ingress and egress having been established in deed of J. J. Lowman to Mitsuo Tokunaga dated July 30, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

John D. Austin, his

Heirs and Assigns forever

And I do hereby bind Myself and My Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

John D. Austin, his

Heirs and Assigns, against Me and My Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS Our Hands and Seal this 8th day of February

In the year of our Lord one thousand nine hundred and eighty

and in the two hundred and fourth year of the Sovereignty

and Independence of the United States of America.

Signed, Sealed and Delivered
In the presence of

George M. Lee
Sumner

Don Tokunaga (SEAL)

James Tokunaga (SEAL)

Robert Tokunaga (SEAL)

Harry Tokunaga (SEAL)

Thomas Tokunaga (SEAL)

Betty W. Tokunaga (SEAL)

Richard L. Tokunaga, Jr. (SEAL)

Richard L. Tokunaga, Jr. Unmarried

Patricia Robin Tokunaga

FD 534 PAGE 346

This conveyance excludes 1.24 acres previously conveyed in Deed Book 388 at page 250.

18 534-17 2344

This property is conveyed subject to the right to flood heretofore granted by J. J. Lowman to the Lexington Water Power Company dated March 3, 1928 and recorded March 3, 1928 in Deed Book DB at page 138 and to the Broad River Power Company, Right #2180, dated May 13, 1936 and recorded May 23, 1936 in Deed Book EB at page 357.

The portion of the property herein conveyed not submerged by the waters of Lake Murray is shown as Parcel A containing .34 acres and Parcel B containing .01 acres upon a partial plat of lands of J. J. Lowman, Option #657, dated July 21, 1978 prepared for South Carolina Electric & Gas Company, drawing #516-51861.

Grantee's mailing address: 1628 Van Heise Drive
Columbia, SC 29204

The Grantors grant to the grantee herein as a part and parcel of this conveyance the right of ingress and egress to the above tract over the road leading from the above tract over other lands now or formerly owned by J. J. Lowman into the St. Claire road adjoining the lands now or formerly of J. J. Lowman which leads into Highway #76; said right of ingress and egress having been established in deed of J. J. Lowman to Mitsuo Tokunaga dated July 30, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

John D. Austin, his

Heirs and Assigns forever

And I do hereby bind Myself and My Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

John D. Austin, his

Heirs and Assigns, against Me and My Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our Hand and Seal this 8th day of February
in the year of our Lord one thousand nine hundred and eighty
and in the two hundred and fourth year of the Sovereignty
and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

George M. Lee
Guaranteed

Dean Tokunaga (SEAL)

James Tokunaga, Divorced (SEAL) ✓

Robert Tokunaga, widower (SEAL) ✓

Harry Tokunaga (SEAL) ✓

Thomas Tokunaga (SEAL) ✓

Betty W. Tokunaga (SEAL) ✓

Richard L. Tokunaga, Jr. Unmarried (SEAL) ✓

Richard L. Tokunaga, Jr. Unmarried ✓

Bettina Robin Tokunaga

Barrell Hous Lake

FD 534 PAGE 346

FD 534 PAGE 346

Robert Tokunaga, Widower (SEAL)
 Harry Tokunaga (SEAL)
 Thomas Tokunaga (SEAL)
 Betty W. Tokunaga
 Richard L. Tokunaga, Jr. (SEAL)
 Richard L. Tokunaga, Jr., Unmarried
 Bettina Robin Tokunaga (SEAL)
 Darrell Ross Lake (SEAL)
 Sandra L. Collins (SEAL)

FD 534 PAGE 347

STATE OF SOUTH CAROLINA,

RICHLAND County

Personally appeared before me George M. Lee, Jr.

and made oath that he saw the within named Leon Tokunaga, James Tokunaga, Robert Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., et al. sign, seal and ex their act and deed, deliver the within written Deed for the uses and purposes therein

mentioned, and that he, with Susan L. Chahanovich

witnessed the

execution thereof.

SWORN to before me this 8th

day of February 1980

My commission expires: 3-9-86

STATE OF SOUTH CAROLINA,

RICHLAND County

RENUNCIATION OF DOWER

I, Susan L. Chahanovich, Notary Public for SC

do hereby certify

unto all whom it may concern, that Mrs. Sadie P. Tokunaga, Mary P. Tokunaga, Frances W. Tokunaga and Eden B. Lake

the wife of the within named Leon Tokunaga, Harry Tokunaga, Thomas Tokunaga and each Darrell Ross Lake they do

did this day appear before me, and each being privately and separately examined by me, did declare that they do

freely, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release

and forever relinquish unto the within named John D. Austin, his

heirs,

and assigns, all her interest and estate, and also her rights and Claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 8th

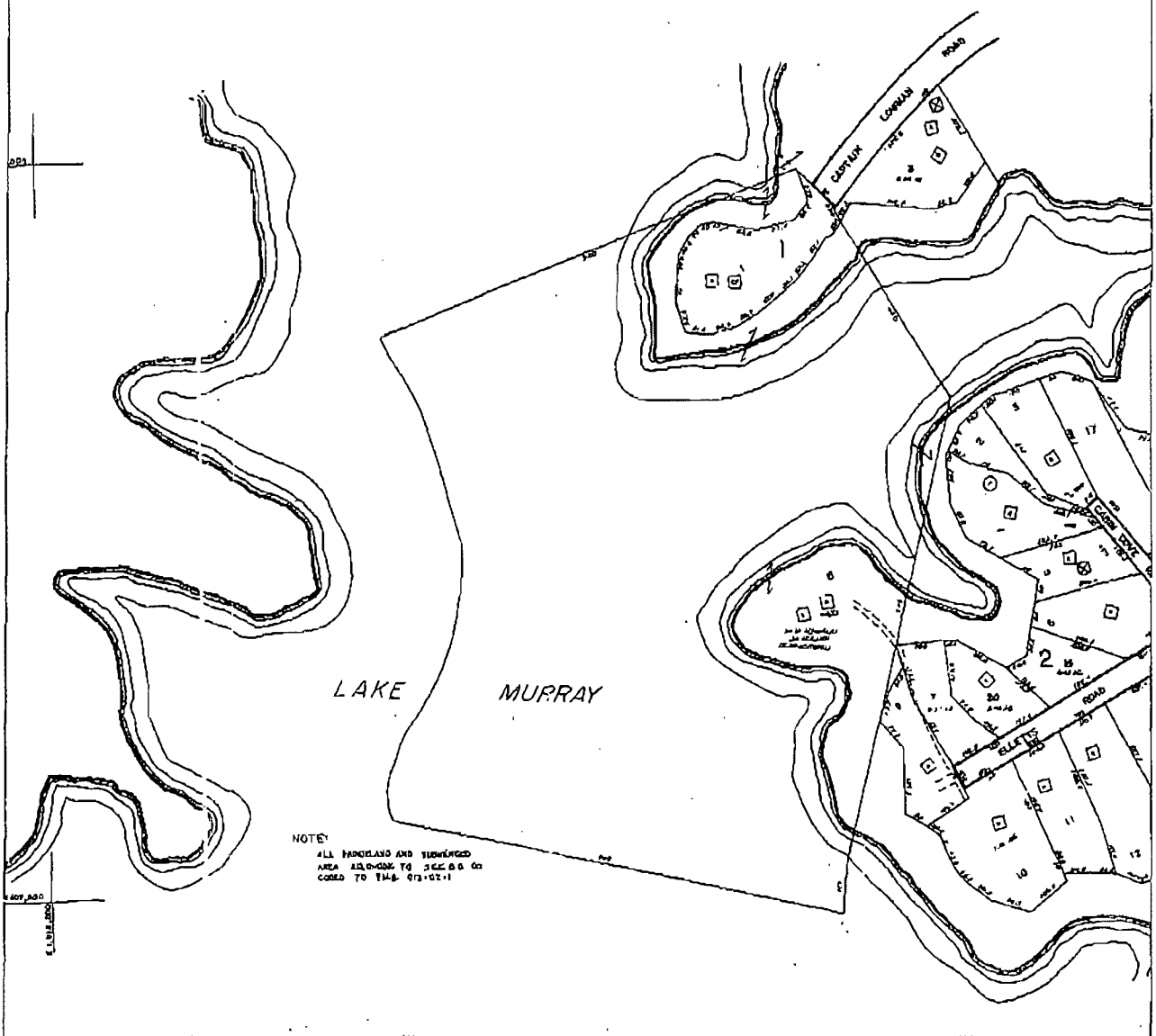
day of February

Anno Domini 1980.

My commission expires: 3-9-86

Sadie P. Tokunaga
 Sadie P. Tokunaga
 Mary P. Tokunaga
 Mary P. Tokunaga
 Frances W. Tokunaga
 Eden B. Lake
 Eden B. Lake

FD 534 PAGE 347



INS

DATE	DESCRIPTION
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07
12/27/07	12/27/07

LEGEND

[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER

LEGEND

[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER

LEGEND

[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER
[Symbol]	WATER

PROPERTY TAX MAP
RICHLAND COUNTY
SOUTH CAROLINA
SANDY SNEAD

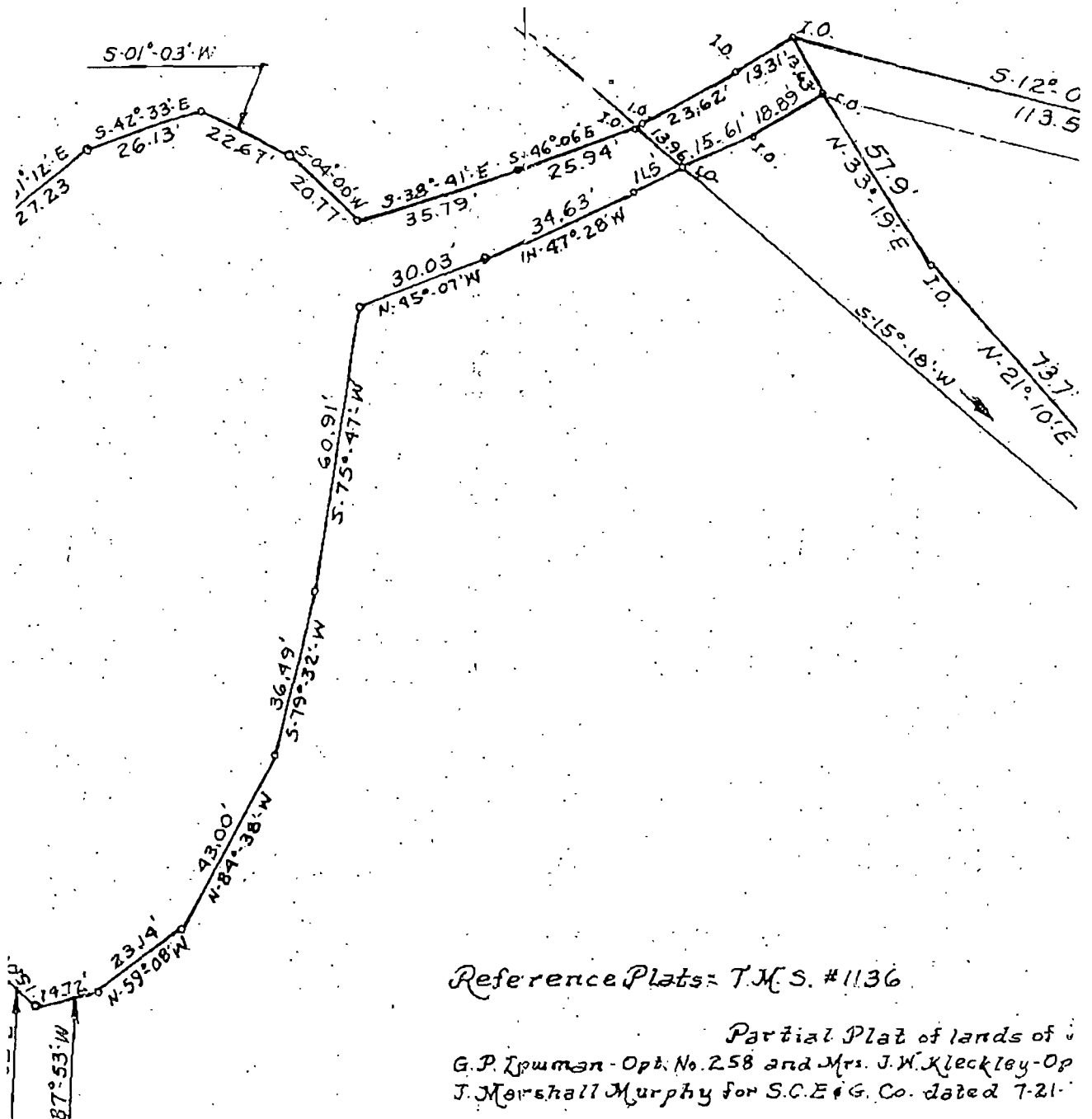
PROPERTY TAX MAP
RICHLAND COUNTY
SOUTH CAROLINA
SANDY SNEAD

PROPERTY TAX MAP
RICHLAND COUNTY
SOUTH CAROLINA
SANDY SNEAD

PROPERTY TAX MAP
RICHLAND COUNTY
SOUTH CAROLINA
SANDY SNEAD

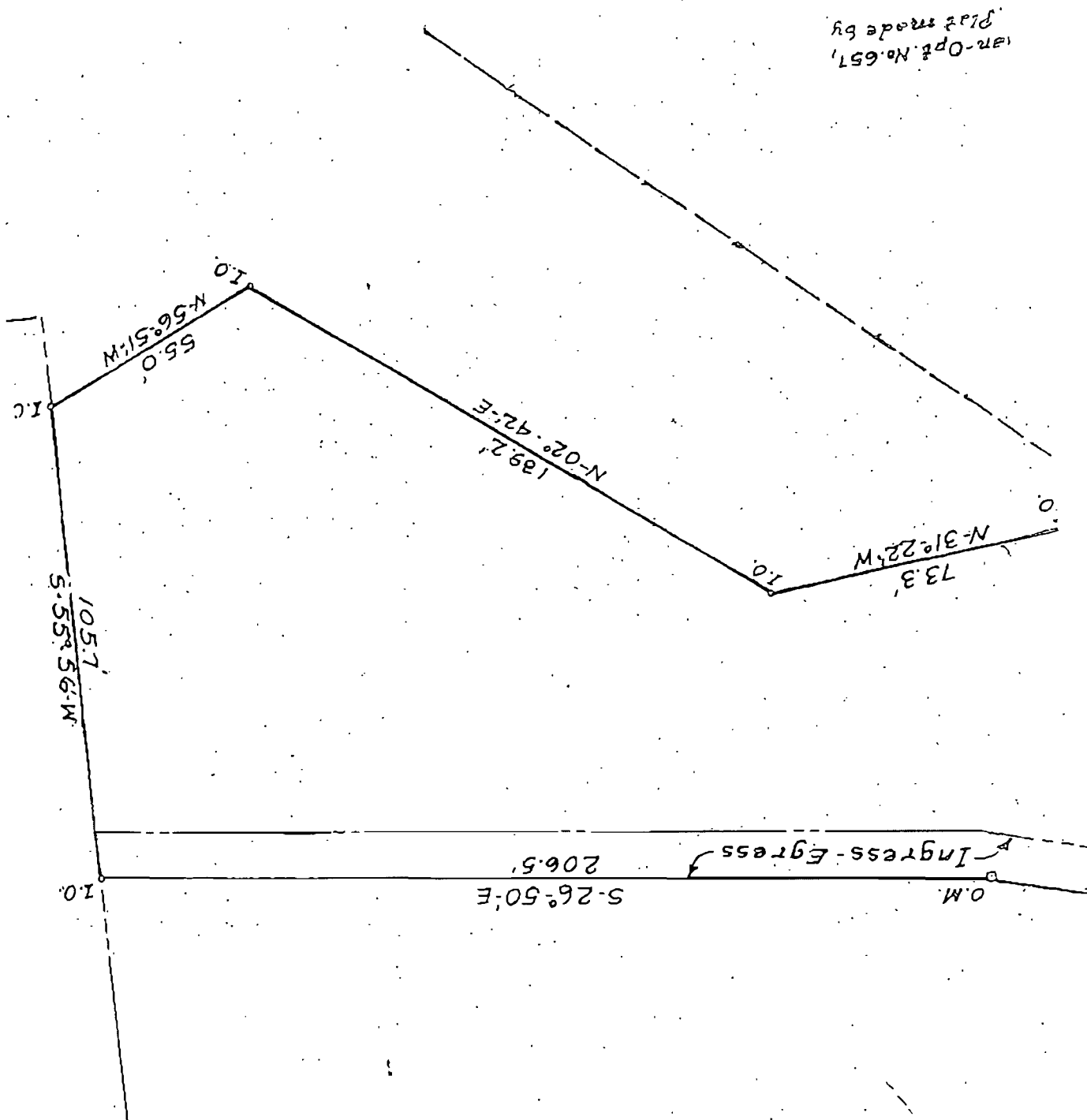
PROPERTY TAX MAP
RICHLAND COUNTY
SOUTH CAROLINA
SANDY SNEAD

Plaintiff's Exhibit Number 3 is oversized and was filed separately.



Reference Plots: T.M.S. #1136

Partial Plat of lands of
G. P. Looman - Opt. No. 258 and Mrs. J. W. Kleckley - Op
J. Marshall Murphy for S. C. E. & G. Co. dated 7-21-



Plaintiff's Exhibit Number 5 is oversized and was filed separately.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

JOHN D. AUSTIN)

PLAINTIFF,)

v.)

JANE HARDEN STONE,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-40-0002

PLAINTIFF'S FIRST
REQUEST TO ADMIT TO DEFENDANT

TO: JANE HARDEN STONE, DEFENDANT AND/OR HER ATTORNEY, WILLIAM E.
BOOTH, III

You are herewith requested to admit or deny the truth of the following statements within thirty (30) days of the receipt of this document pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. Where the statements refer to a particular document, a copy of the document referred to is attached hereto.

Your admissions or denials should be delivered to the Law Office of Hall & Hall,
Attorneys at Law, 1055 Sunset Blvd., West Columbia, SC 29169.

AD 1. A Plat was prepared for Betty Jane Harden by Cox & Dinkins, Inc. dated March 6, 1992 showing the boundaries and measurements of Lot No. 1225; and this Plat was recorded in the public records of Richland County.

DENY 2. Betty M Harden obtained title to the property shown and described upon the Plat referred to in # 1 above by Deed from W Frank Harden dated August 30, 1973, recorded in the Office of Deeds for Richland County in Deed Book D-292 at Page 238.

DENY 3. The Deed referred to in # 2 above, on the first page, contains the following provision: "This conveyance being made subject to any existing easements, conditions and restrictions of record, including those shown upon any recorded Plats, affecting the premises hereinabove described and conveyed"

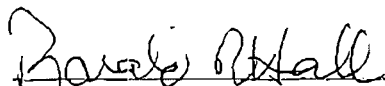
DENY 4. Betty M Harden conveyed the same parcel of land described in the Deed recorded in Deed Book D-292 at Page 238 to Jane Harden Stone by Deed dated October 14, 2004, recorded October 15, 2004 in the Office of Deeds for Richland County in Book R-987 Page 3605.

5. The Deed described in # 4 above contained the following provision: "This conveyance is



made subject to restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises."

6. The drive shown and described on the Plat(s) referred to in # 1 above has been used as a drive by John Austin since 1980 as ingress/egress to his property.



November 14, 2007

Ronald R. Hall
Attorney for Plaintiff
Hall & Hall Attorney's at Law
1055 Sunset Blvd
West Columbia, SC 29169
TEL: 803-791-3196
FAX: 803-791-8754
E-Mail: ronh311@ix.netcom.com

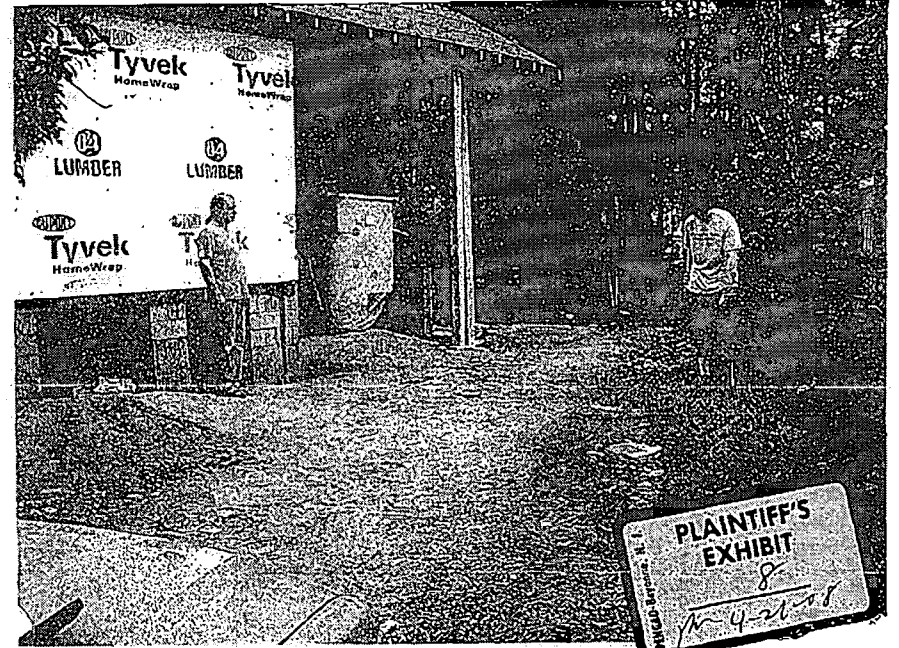
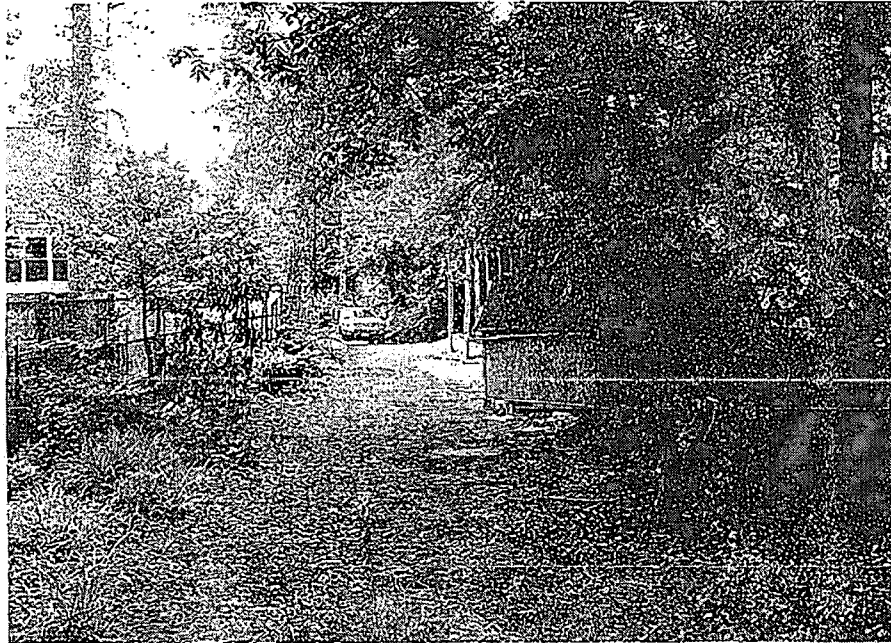
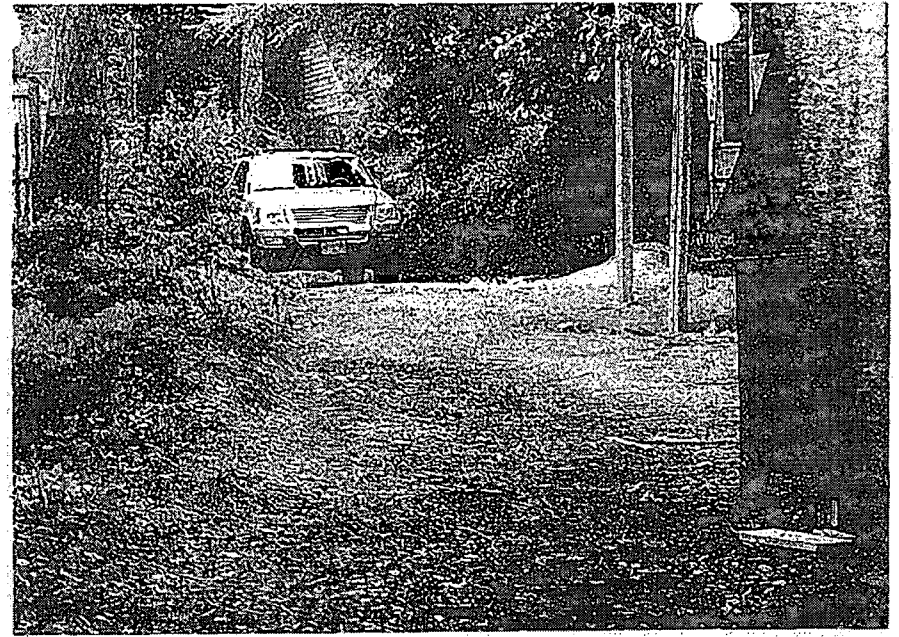
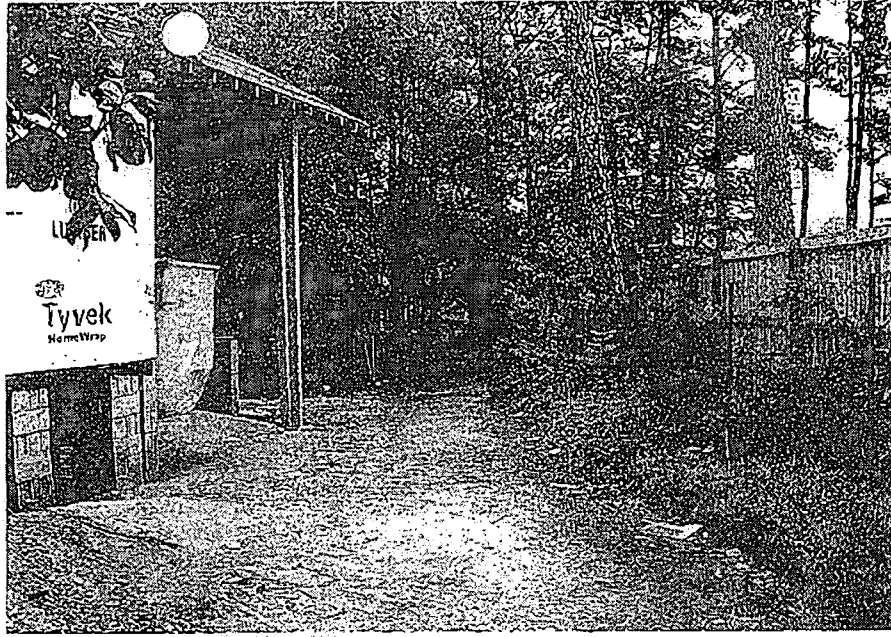
The undersigned herewith certifies he did on the 14 Day of November, 2007, deliver a copy of the foregoing Plaintiff's First Request To Admit to Defendant to the Defendant by depositing a copy of the same in the U S Mail, postage prepaid, return address clearly shown upon the outside of the envelope addressed to counsel for the Defendant, to wit:

William E Booth, III
Attorney at Law
Consolidated Business Park
3231 Sunset Blvd, ste A
West Columbia, SC 29169



Ronald R Hall
Attorney at Law

Plaintiff's Exhibit Number 7 is oversized and was filed separately.



D 292 MAR 238

C 6046

TITLE TO IDEAL ESTATE

The H. L. Hyman Company, Columbia, S. C.

State of South Carolina

SEP 6 2 56 PM '77

COUNTY OF RICHLAND, JOHN MAJOR
C. C. & G. S.

Know All Men by These Presents, That I, W. FRANK HARDEN, of the
COUNTY of RICHLAND,

in the State aforesaid,

-----for and-----

In consideration of the

sum of Love and Affection for My wife, Betty M. Harden,

to me paid by Betty M. Harden,

in the State aforesaid

(the receipt whereof is hereby acknowledged)

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

BETTY M. HARDEN,
her heirs and assigns:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Ellets Road, also known as S. C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SEVENTY ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as PARCEL "B", on a partial plat of lands of Mrs. J. W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, S. C. in Plat Book "16", at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less, to the point of beginning; this being the identical premises heretofore devised unto Eula Lee Boyd by the Last Will and Testament of William A. Boyd by will dated February 22, 1961, and preserved of record in the Judge of Probate Court for Richland County in Box 1073, in Package 26-573, AND Deeded to GRANTER hereid at Book 242, page 235.

This conveyance being made subject to any existing easements, conditions and restrictions of record, including those shown upon any recorded plats, affecting the premises hereinabove described and conveyed.

The Grantee's mailing address is: 4423 Winthrop Avenue, Columbia, S. C. 29206.

D 292 MAR 292

D 292 PAGE 239

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said BETTY M. HARDEN, her

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises to the said BETTY M. HARDEN, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30th day of August
in the year of our Lord one thousand nine hundred and seventy-three
and in the one hundred and ninety-eighth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

John J. Finley
John J. Finley

W. Frank Harden
W. FRANK HARDEN (SEAL)
(SEAL)

D 292 PAGE 239

D. 292 PAGE 240

STATE OF SOUTH CAROLINA.

RICHLAND COUNTY.

PERSONALLY appeared before me J. B. Baxter, Jr.

and made oath that he/she saw the within-named W. Frank Harden
 sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein men-
 tioned and that he, with Alice J. Finley witnessed the
 execution thereof.

SWORN to before me this 30th
 day of August, 1973.

Alice J. Finley (L.S.)
 Notary Public of S. C.

My commission expires on: 8-16-81.

STATE OF SOUTH CAROLINA,

COUNTY.

NO RENUNCIATION OF DOWER
HUSBAND and WIFE

I, _____, do hereby certify
 unto all whom it may concern, that Mrs.
 the wife of the within-named
 did this day appear before me, and upon being privately and separately examined by me declare that she does freely,
 voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and for-
 ever relinquish unto the within-named

_____ heirs
 and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises
 within-mentioned and released:

Given under my Hand and Seal, this

day of

Annō Domini 19

 (L.S.)
 Notary Public of S. C.

D. 292 PAGE 240

DEED PREPARATION ONLY
NO TITLE EXAMINATION PERFORMED

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, Betty M. Harden, Grantor, in the State aforesaid, for and in consideration of Love and Affection for my Daughter, Jane Harden Stone, to me given by Jane Harden Stone, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Jane Harden Stone, Grantee, the following described property:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Elletts Road, also known as S.C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as Parcel "B," on a partial plat of lands of Mrs. J.W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, SC in Plat Book "16" at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°13'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less to the point of beginning.

DERIVATION: This being the identical premises heretofore granted to Betty M. Harden by deed of Frank W. Harden dated August 30, 1973 and recorded on September 6, 1973 in Deed Book 292 at Page 238 in the Richland County Register of Deeds.

PLUS:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, if any there be, situate, lying and being on the Northerly side of Elletts road (SC Highway No. S-40-1774), near White Rock, in the County

Book 00987-3605
2004085224
Fee: \$10.00 County Fee: \$0.00 State Fee: \$0.00
2004085224 John G. Harris
Richland County SCD

of Richland, and in the State of South Carolina, said lot being triangular in shape and is more fully shown on plat prepared for Lois C. Jones by Cox and Dinkins, Inc., Engineers-Surveyors, dated January 7, 1987, revised August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book 52 at page 6729 and is also shown on plat prepared for Mr. and Mrs. W. Frank Harden by Cox and Dinkins, Inc., Engineers-Surveyors, dated August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book _____ at page _____, which plat is incorporated herein by reference and made a part hereof, and according to the last above-mentioned plat, said triangular strip of land has the following boundaries and measurements: on the East by property of Lois C. Jones, whereon it measures one hundred fifty-one and 64/100 (151.64') feet, more or less; on the South by Elletts Road, whereon it fronts and measures twenty-two and 75/100 (22.75') feet, more or less; and on the West by property of Mr. and Mrs. W. Frank Harden, whereon it measures one hundred fifty-two and 84/100 (152.84') feet, more or less.

DERIVATION: Being the parcel conveyed to W. Frank Harden and Betty M. Harden by deed of Lois C. Jones, dated May 20, 1988 filed July 12, 1989 in the Richland County Register of Deeds, Book D0942 at Page 252; the individual half interest of W. Frank Harden having been conveyed to Betty M. Harden by deed dated December 21, 1990, filed December 21, 1990 in Richland County Register of Deed Book D1011 at page 0666.

TMS No. R01406-02-09

Grantees' Address: 1225 Elletts Road
Chapin, South Carolina 29036

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging to or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever.

And the Grantor does hereby bind her heirs and assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantees' heirs and assigns, against the Grantor and Grantors' heirs and assigns whomsoever lawfully shall claim, but as to none others.

This Document is not to scale

WITNESS the Hand and Seal of the Grantor this ____ day of October, 2004.

Signed, sealed and delivered
in the presence of:

Helen Weddersky
Trin A. Cash

Betty M. Harden
Betty M. Harden

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath that s/he saw the within-named Betty M. Harden sign, seal and as her act and deed, deliver the within-written Title to Real Estate and that s/he with the second witness signing above witnessed the execution thereof.

Helen Weddersky
Witness

SWORN to before me this
14th day of October, 2004.

Trin A. Cash
Notary Public for South Carolina
My commission expires: 8/25/2011

This Document is not to scale

CHAIN OF TITLE REPORT

LAND BELONGING TO:

JOHN AUSTIN

Prepared by:

**Dan O'Connell
Absolute Title, LLC**

CHAIN OF TITLE

Block: _____ Lot: _____

REPORT NO. _____

Acreage: _____

Subdivision: _____

Completed: _____

Street Address: _____

Tax Map No. _____ Block _____ Lot _____

County: _____

Taxes Paid Through: _____

(Note: Names must appear below exactly as shown on document.)

DEED BOOK	GRANTOR	GRANTEE	DATE	PLAT	ACREAGE
D534/345	LEON TOKUNAGA JAMES TOKUNAGA ROBERT TOKUNAGA HARRY TOKUNAGA THOMAS TOKUNAGA BETTY W. TOKUNAGA	JOHN D. AUSTIN	2-8-80 3-20-80	22/359	±30ac
—	—	—	—	—	—
—	RICHARD L. TOKUNAGA, JR. BETTYA FROBIN TOKUNAGA DARRELL FROB LAKE	—	—	—	—
—	SANDRA L. COLLINS	—	—	—	—
D558/246	RICHARD L. TOKUNAGA — STATE —	BETTY W. WILSON (TOKUNAGA) RICHARD L. TOKUNAGA, JR. SANDRA COLLINS	8-5-15-78 11-12-80	4	4
—	—	BETTYA FROBIN TOKUNAGA DARRELL LAKE	—	—	—
PROSTATE FILE 1020/20,986	MITSUO TOKUNAGA — STATE —	THOMAS TOKUNAGA LEON TOKUNAGA JAMES TOKUNAGA	1-10-12-61	4	4
—	—	RICHARD TOKUNAGA ROBERT TOKUNAGA HARRY TOKUNAGA	—	—	—
22/359	J.T. LOWMAN	MITSUO TOKUNAGA	7-30-48 7-30-48	4	4
DC/193	KATE BICKLER	—	2-8-28 3-10-28	φ	±30ac
—	—	—	—	—	—
—	—	—	—	—	—
—	—	—	—	—	—

RESTRICTIONS & EASEMENTS

CURRENT MORTGAGES

PUBLIC ROAD? _____ Yes _____ No _____

SOURCE: _____

DISCREPANCIES

- Ex. MITSUO TOKUNAGA 1020/20,986. ✓ 161
 - Ex. RICHARD TOKUNAGA 1161/33809. ✓ 78
 - D558/246

State of South Carolina,
COUNTY OF RICHLAND

MAR 20 10 07 AM '88

CLARK: BARTFITT

Know All Men By Their Wreaths

Know All Men By These Friends, That We, Leon Tokunaga, James Tokunaga, Robert Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., Bettina Robin Tokunaga, Darrell, Ross Lake and Sandra L. Collins

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY
STAMP
TAX
MAR 79 '79
\$64.00
92-11327

SOUTH COUNTY DOCUMENTARY TAX

★
P.G.
15315

MAR20'83

35.20

in the State aforesaid; for and

in consideration of the

sum of Thirty-two thousand and no/100 (\$32,000.00) Dollars

to us paid by John D. Austin

in the State aforesaid,

the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release

unto the said JOHN D. AUSTIN, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel or tract of land together with the improvements thereon, containing 30 acres, more or less, at Lake Murray, County of Richland, State of South Carolina, and being more particularly described in Deed of J.J. Lowman to Mitsuo Tokunaga dated July 28, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948 and having the following boundaries and measurements, as set forth in said deed, to wit: Commencing at a point on the Southwest corner of the division line between lands of L.L. Lowman and J.W. Kleckley and running in the following directions: S28°15'E for a distance of Four hundred forty (440') feet to monument; thence S13°00'W for a distance of Nine hundred forty (940') feet to monument where land corners with lands of Kleckley and Lowman; thence turning and running along lands of Lowman N80°45'W for a distance of Nine hundred fifty (950') feet to monument of Beard Creek; thence turning and running along Beard Creek in a Northerly direction to monument where land corners with Beard Creek and lands of J.B. Swygert; thence turning and running along lands of Swygert N67°30'E for a distance of Nine hundred thirty (930') feet to monument; thence turning in a Southeastern direction to point of beginning.

This being the identical property heretofore inherited by the above named Grantors by Will of Mitsuo Tokunaga dated August 26, 1961 and recorded November 28, 1961 in Probate Box 1020, Package 20986 and by the Will of Richard G. Tokunaga dated April 12, 1977 and recorded

June 1, 1978 in Probate Box 1167, Package 11409.

This conveyance excludes 1.22 acres previously conveyed in Deed Book 388 at page 250.

This property is conveyed subject to the right to flood heretofore granted by J. J. Lowman to the Lexington Water Power Company dated March 3, 1928 and recorded March 3, 1928 in Deed Book DB at page 138 and to the Broad River Power Company, Right #2180, dated May 13, 1936 and recorded May 23, 1936 in Deed Book EB at page 357.

The portion of the property herein conveyed not submerged by the waters of Lake Murray is shown as Parcel A containing .34 acres and Parcel B containing .01 acres upon a partial plat of lands of J. J. Lowman, Option #657, dated July 21, 1978 prepared for South Carolina Electric & Gas Company, drawing #516-51861.

Grantee's mailing address: 1628 Van Heise Drive
Columbia, SC 29204

The Grantors grant to the grantee herein as a part and parcel of this conveyance the right of ingress and egress to the above tract over the road leading from the above tract over other lands now or formerly owned by J. J. Lowman into the St. Claire road adjoining the lands now or formerly of J. J. Lowman which leads into Highway #76; said right of ingress and egress having been established in deed of J. J. Lowman to Mitsuo Tokunaga dated July 30, 1948 and recorded in Deed Book 22 at page 359 on July 30, 1948.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

John D. Austin, his

Heirs and Assigns forever

And I do hereby bind Myself and My Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

John D. Austin, his

Heirs and Assigns, against Me and My Heirs and against every person who may lawfully claim, or to claim, the same or any part thereof.

WITNESS our Hands and Seals this 8th day of February

in the year of our Lord one thousand nine hundred and eighty and in the two hundred and fourth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of

James M. [Signature]
William [Signature]

Robert Tokunaga (SEAL)

James Tokunaga, divorced (SEAL)

Robert Tokunaga, widower (SEAL)

Harry Tokunaga (SEAL)

Thomas Tokunaga (SEAL)

William [Signature] (SEAL)

534 PAGE 348

FD 534 PAGE 347

STATE OF SOUTH CAROLINA,
RICHLAND County

Personally appeared before me George M. Lee, Jr.

and made oath that he saw the within named Leon Tokunaga, James Tokunaga, Robe...
Tokunaga, Harry Tokunaga, Thomas Tokunaga, Betty W. Tokunaga, Richard L. Tokunaga, Jr., et al
sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein

mentioned, and that he, with Susan L. Chabanovich

witnessed the

execution thereof.

SWORN to before me this 8th

day of February 1980.

[Signature] (L.S.)

My commission expires: 3-9-86

STATE OF SOUTH CAROLINA,

RICHLAND County

RENUNCIATION OF DOWER

I, Susan L. Chabanovich, Notary Public for SC

, do hereby certify

that all heirs, family, concern, that Mrs. Sadie P. Tokunaga, Mary F. Tokunaga, Frances
W. Tokunaga and Eden B. Lake
the within named Leon Tokunaga, Harry Tokunaga, Thomas Tokunaga, et al
each Darrell Ross Lake

on this day appeared before me, and upon being privately and separately examined by me, did declare that

they, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce

and forever relinquish unto the within named John D. Austin, his

their their
and assigns, all ~~his~~ interest and estate, and also ~~his~~ rights and Claim of Dower of, in or to all and singular the
premises within mentioned and released.

Given under my Hand and Seal, this 8th
day of February
A.D. 1980.

[Signature] (L.S.)
Notary Public of S.C.
My commission expires: 3-9-86

[Signature]
Sadie P. Tokunaga
[Signature]
Mary F. Tokunaga
[Signature]
Frances W. Tokunaga
[Signature]
Eden B. Lake

FD 534 PAGE 347

FD 558-246

DESCRIPTION OF REAL ESTATE

OWNED BY

Richard L. Tokunaga

Page

DECEASED

FILED BY

Willie Mae T. Brown

Executrix

Acres or Lots	Devised to or Inherited by	Interest devised to or Inherited by (list each)	Mailing address
	Betty W. Wilson	1/30	Route 3, Box 253 Elgin, S.C. 29045
	Richard L. Tokunaga, Jr.	1/30	P.O. Box 5325 1921 Mill Street Columbia, S.C. 29250
	Sandra Collins	1/30	Route 3, Box 253 Elgin, S.C. 29045
	Bettina Robin Tokunaga	1/30	Route 3, Box 253 Elgin, S.C. 29045
	Darrell Lake	1/30	P.O. Box 12309 Oklahoma City, OKLA

DESCRIPTION, GIVING BOUNDARIES, MEASUREMENTS AND DERIVATION

(One-Sixth Interest In)

All of that piece, parcel and tract of land, situate, lying and being in Old School District 29, in the County of Richland, and State of South Carolina, containing about 30 acres more or less and being the Southwestern portion of a parcel "A" on a plat of land of J. J. Lowman made by Murray & Flood, Engineers, on December 22, 1927, which plat is to be recorded and to be more particularly described as follows: Commencing at a point on the Southwestern corner of the division line between lands of the Grantor and J. W. Klockley as shown on said plat and running in the following directions: South 28° 15' East, 440 feet to monument; thence South 30° 00' East 940 feet to monument where said land corners with lands of J. W. Klockley and U. P. Lowman; thence turning and running along the land of U. P. Lowman in 80° 45' East 930 feet to monument on Beard Creek; thence turning and running along Beard Creek in a Northerly direction to monument where said land corners with Beard Creek and the lands of J. B. Swygert; thence turning and running along the lands of J. B. Swygert North 67° 30' East 930 feet to monument; thence turning and running in a Southeasterly direction to point beginning as shown on said plat.

This being the additional property conveyed to Mitsuo Tokunaga by deed of J. J. Lowman dated July 30, 1948 and recorded in the office of the Clerk of Court for Richland County in deed for 22 page 359.

The above property description is the same as that describing said property in the description of Real Estate which can be found in the Richland County Probate Court package of Mitsuo Tokunaga, deceased, at Box 1020 Package 20986.

FD 558-246

D558/246

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Last Will and Testament

OF

RICHARD L. TOKUNAGA

I, RICHARD L. TOKUNAGA, a resident of Richland County, State of South Carolina, being of sound and disposing mind, memory and understanding, do make, publish and declare this instrument of writing as and for my Last Will and Testament, and do hereby revoke any and all former wills and testaments and codicils thereto at any time heretofore made by me.

FIRST, I hereby nominate, constitute and appoint my sister, Willie Mae Tokunaga Brown, Executrix of this, my Last Will and Testament. I further will and direct that my Executrix hereunder shall not be required to give bond or other security in any jurisdiction for the faithful performance of her duties.

SECOND, I direct that all my just debts and funeral expenses be paid as soon after my death as possible.

THIRD, I give, devise and bequeath to Sandra L. Collins, the daughter of my said wife, the sum of One Thousand (\$1,000.00) Dollars.

FOURTH, I give, devise and bequeath absolutely and in fee simple all my undivided interest in property on Lake Murray, in Richland County, inherited from my father, Mitsuo Tokunaga (believed to be a one-sixth interest), to my wife, Betty W. Tokunaga, to my son, Richard L. Tokunaga, Jr., to my daughter, Bettina Robin Tokunaga, to the son of my said wife, Darrell Ross Lake, and to the daughter of my said wife, Sandra L. Collins, share and share alike, it being my intention that each of them shall take one-fifth (1/5) of my said undivided interest. It is my wish and desire that those beneficiaries so named comply with the wishes of the other tenants in common of said property with respect to the sale or other disposition of said property, except that nothing contained in this direction shall be construed as

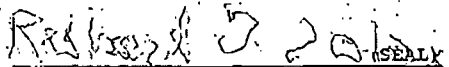
PROBATE
1161/33,809

depriving them or any of them of any beneficial interest in the proceeds of sale or other disposition, my wish being only that they accede in the wishes of the other tenants in common as to the time, price and manner of sale or disposition of said Lake Murray property.

FIFTH, I hereby give, devise and bequeath absolutely and in fee simple all the rest, residue and remainder of my property and estate of real, personal or mixed, wheresoever situated; whether now owned by me or hereafter acquired by me; or over which I may now or hereafter have a power of appointment, to my wife, Betty W. Tokunaga, to my son, Richard L. Tokunaga, Jr., to my daughter, Bettina Robin Tokunaga, and to the son of my said wife, Darrell Ross Lake, share and share alike, it being my intention that each of them shall each take one-quarter of my estate described in this item.

SIXTH, without limitation of the powers conferred upon her by statute or general rules of law, I hereby give my said Executrix full power and authority to sell (at public or private sale, for cash or for credit), and to mortgage, lease and convey, any part of my estate, both real, personal and mixed, at such time and upon such terms and conditions as she may deem best, all without court order. It is the purpose of this provision to confer upon my said Executrix all powers in the management of my estate which any individual could exercise in the management of similar property owned in his own right, and all of those powers are hereby granted and conferred.

IN WITNESS WHEREOF, I, the said RICHARD L. TOKUNAGA, have hereunto set my hand and seal to this, my Last Will and Testament, consisting of three typewritten pages, at Columbia, South Carolina, this 12th day of April, 1977.


Richard L. Tokunaga

SIGNED, SEALED, PUBLISHED AND DECLARED by the above-named testator, RICHARD L. TOKUNAGA, as and for his Last Will and

Testament in the presence of us, who, at his request, in his presence, and in the presence of one another, have hereunto subscribed our names as attesting witnesses thereto on the day, month and year last above written.

Christy G. B. B.

811 Albion Road, Columbia, SC.

Jessie B. B.

2814 Spruce St. Columbia, SC

W. J. E. T. B. B.

2814 S. Pine St. Columbia, SC

acquired by me from J. J. Lowman by his deed dated in 1948 recorded in Book of Deeds 22 at page 359 in the office of the Clerk of Court for Richland County.

TWELFTH, I give one-third of my stock in Shandon Greenhouses to my daughter Willie Mae T. Brown, one-third to my son James Tokunaga, and one-third to my son Leon Tokunaga.

THIRTEENTH, all the rest, residue and remainder of my property, real, personal and mixed, I give to my beloved wife, Myrtle Tokunaga, if she shall survive me, or if she shall not survive me, to my issue, in equal shares, per stirpes and not per capita.

FOURTEENTH, without limitation of the powers conferred upon them by statute or general rules of law, my Executors and my Trustee are specifically authorized and empowered:

1. To retain any property owned by me at the time of my death;
2. To invest any funds of my estate or any trust hereunder in any stocks, bonds, notes and other securities of property, real or personal, notwithstanding that such investments may not be of the character allowed to executors or trustees by statutes or general rules of law, it being my intention to give the broadest investment powers and discretion to my Executors and Trustees;
3. To sell or otherwise dispose of any property, real or personal, at any time forming a part of my estate or any trust hereunder, for cash or upon credit, in such manner and on such terms and conditions as they may deem best, and no person dealing with them shall be bound to see to the application of any moneys paid;
4. To manage, operate, repair, improve, mortgage and lease for any term any real estate at any time held by them;
5. To enforce, or to abstain from the enforcement of, any right, obligation or claim at any time forming part of my estate or any trust hereunder;
6. To distribute in cash or in kind upon any division of my estate or the termination of any trust hereunder; and
7. In general, to exercise all powers in the management of my estate and any trust hereunder which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as to them may seem best, and to execute and deliver any and all instruments and to do all acts which they may deem necessary or proper to carry out the purposes of this, my Last Will and Testament.

The powers hereby conferred upon my Executors and my Trustee shall be applicable to any successor Executor or Trustee appointed hereunder.

FIFTEENTH, if any person entitled to take under this, my Last Will and Testament, shall be a minor at the time such person becomes entitled to take such interest, then I direct that such interest be paid or distributed in cash or in kind to the father of such minor, if he be living, or to the mother, if the father be not living, as guardian, and the receipt of such father or mother shall be a good and sufficient acquittance to my Executors or Trustee.

SIXTEENTH, I will and direct that neither my Executors nor my Trustee hereunder shall be required to give bond or other security in any jurisdiction for the faithful performance of his or her duties as Executor or Trustee.

SEVENTEENTH, the provisions made in this, my Last Will and Testament, for my wife, Myrtle Tokunaga, shall be in lieu of and in bar of dower.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26 day of August, 1961.

Mitsuo Tokunaga
Mitsuo Tokunaga

Signed, sealed, published and declared by the above-named testator, Mitsuo Tokunaga; as and for his Last Will and Testament in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto on the day, month and year last above written.

Clair Hayward Bleser 811 Albion Road, Columbia, S.C.

Irvin T. Bleser, Jr. 5433 Sylvan Dr., Columbia, S.C.

Louise Strickland 306-309 Bannister Bldg
Columbia, S.C.

STATE OF SOUTH CAROLINA,
County of Richland

Ex Parte Willie Mae T. Brown and

Richard Tokunaga,

Petitioner, S.

In Re Estate of:

Mituno Tokunaga

Decedent.

IN THE PROBATE COURT
PETITION TO PROVE WILL IN COMMON
FORM OF LAW AND FOR LETTERS

To Hon. A. Ray Hinnant, Judge of Probate for said county:

The petition of the undersigned respectfully represents:

1. That Mituno Tokunaga Age 71 who last dwelt in Columbia
in the County and State aforesaid, died testate on the 22nd day of October
in the year of our Lord one thousand nine hundred and sixty-one possessed of goods and estate to be administered.
2. That said decedent left a will, bearing date 26th day of August 1961
and no codicil, bearing date _____ day of _____ 19____
herewith presented. Your petitioner hereby applies for letters of administration for the reason that your
petitioners are named as Executors in said Will.

3. That under and by virtue of the terms of the will of the said testator/testatrix the following are the beneficiaries therein named as legatees or devisees:

(Show all legatees and devisees by divisions into family groups.)

Name	Age*	Residence	Relationship to Decedent
<u>Myrtle E. Tokunaga</u>	<u>66</u>	<u>Columbia, S.C.</u>	<u>wife</u>
<u>Willie Mae T. Brown</u>	<u>42</u>	<u>Columbia, S.C.</u>	<u>daughter</u>
<u>Richard Tokunaga</u>	<u>40</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>Robert Tokunaga</u>	<u>38</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>Berry Tokunaga</u>	<u>34</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>Leon Tokunaga</u>	<u>32</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>Thomas Tokunaga</u>	<u>30</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>James Tokunaga</u>	<u>28</u>	<u>Columbia, S.C.</u>	<u>son</u>
<u>Trustee for children of Robert Tokunaga (Robert W. Tokunaga, Jr., age 13, and Sheryl D. Tokunaga, age 10)</u>		<u>Columbia, S.C.</u>	
<u>Shandon Greenhousess, a S. C. corporation</u>		<u>Columbia, S.C.</u>	
<u>Shandon Wholesale Florist, Inc., a S.C. corporation</u>		<u>Columbia, S.C.</u>	

*Enter the exact age at date of decedent's death if then living; if not then living, enter in the age column the word "dead."

4. That this testator/testatrix died seized and possessed of a personal estate of about the value of Six Thousand Nine Hundred (\$6,900.00) dollars, consisting of the following property, goods and chattels:

(a) Cash on hand and in banks	<u>1,900.00 (about)</u>
(b) Moneys due testator/testatrix on account of bonds, mortgages and other securities	<u>0 -</u>
(c) Corporate and governmental bonds and stocks	<u>5,000.00</u>
(d) Open accounts due testator/testatrix	<u>0 -</u>
(e) Goods, wares, merchandise, furniture, machinery and equipment used in profession, trade or business	<u>0 -</u>
(f) Household goods	<u>0 -</u>
(g) Farming implements, machinery and equipment	<u>0 -</u>
(h) Farm products	<u>0 -</u>
(i) Mules, horses, cattle, hogs, sheep, etc.	<u>0 -</u>
(j) Automobiles, auto trucks, motorcycles, etc.	<u>0 -</u>
(k) Jewelry, silver plate, watches and other personal effects	<u>0 -</u>
(l) Life or other insurance made payable to the estate	<u>0 -</u>
(m) Value of all other personal property not listed above	<u>0 -</u>

5. That the testator/testatrix died seized and possessed of real estate of about the value of Eighty Three Thousand Four Hundred (\$83,400.00) Dollars, as follows:

(over)

This form revised by the South Carolina Tax Commission June 15, 1959.

MICROFILM

DESCRIPTION OF REAL ESTATE AND APPROXIMATE VALUES
(Enter each tract and lot on a separate line.)

No. of acres or lots (State whether acres or lots.)	No. of buildings	Total value of each lot and tract (including buildings)	Decedent's interest	Exact location (Show County, Town- ship and School District)
1 lots	1	40,000	whole	Millwood & Butler St., Columbia, S. C.
3 lots	2	10,000	whole	209 S. Saluda, Columbia, S. C.
2 lots	none	5,000	whole	adjacent 210 S. Orange St., Columbia, S. C.
2 acres	1	5,000	whole	Bluff Rd. near S. 111 Hwy 51, Richland County
55 acres	2	5,500	whole	Near Bluff Road, Richland County
18 acres	none	400	half	Near Eastover, South Carolina
1 lot	2	7,500	whole	Butler St., (1000 block), Columbia, S. C.
1 lot	none	2,500	whole	House St., Columbia, S. C.
8 acres	1	7,500	whole	Richland County, S. C., near White Oak

8. That the testator/testatrix made transfers and gifts within three (3) years prior to date of death as follows: (If None-So State)
(Include all gifts within three years prior to death and all other transfers of real and personal, either where the consideration may appear to have been the result of where the transfer was to a relative or personal friend, to any person, firm, association, or corporation in which the decedent was interested, regardless of consideration. Describe the transfer in full; state the approximate value of the property transferred and the exact date of the consideration stated or claimed, if any.)

Parcel A, House Street property, to Annie Jones by deed dated August 25, 1961.
Approximate value - \$2,750.00. Consideration included past services and
\$2,000.00 paid in cash.

NOTE:

Item 7 below refers to "joint tenancy" with right-of-survivorship. Property held as "tenants-in-common" must be reported under Items 4 & 5 of this return.

7. That the testator/testatrix died seized and possessed of personal property standing in joint names of two or more persons and payable to either or the survivor as follows (See 65-463, S. C. Code of Laws 1952, as amended)

(IF NONE-SO STATE)

	Fair Market Value at Date of Death
A. U. S. Bonds owned jointly with right of survivorship or "payable on death"	none
B. Joint Bank Accounts with right of survivorship	none
C. Joint Accounts in Depositories or other Institutions with right of survivorship	none
D. Joint Stocks and Bonds with right of survivorship	none
E. Miscellaneous property with right of survivorship	none

8. TRANSFERS INTENDED TO TAKE EFFECT AT DEATH (See 65-461 of S. C. Code of Laws 1952, as amended). That the testator/testatrix made the following lifetime transfers of property, BOTH REAL AND PERSONAL, reserving unto transferor's self a life estate, income for life or other incidents of ownership that would preclude a fee simple title vesting in the beneficiary until the death of the transferor as follows:

(IF NONE-SO STATE)

	Fair Market Value at Date of Death
A. Real Estate transferred retaining life estate	none
B. Trust created retaining unto self income for life, power to revoke or other incidents of ownership	none
C. Other transfers intended to take effect at death	none

9. POWERS OF APPOINTMENT (See 65-462 of S. C. Code of Laws 1952, as amended). That the testator/testatrix died seized and possessed of a power of appointment over property, both real and personal, whether testamentary or otherwise, with an estimated fair market value of: none

(IF NONE-SO STATE)

WHEREFORE, your petitioner, Willie Mae T. Brown and Richard Tokunaga, pray that said will, as shown, may be proved and allowed, in common form, and Letters of Administration issued to Willie Mae T. Brown and Richard Tokunaga, November 28, 1961.

(The postoffice address of each Fiduciary must be shown.)

Postoffice Address: 2013 Millwood Ave., Columbia, S. C.

Willie Mae T. Brown
Richard Tokunaga

Postoffice Address: 201 S. Saluda, Columbia, S. C.

Petitioner.

STATE OF SOUTH CAROLINA,
County of Richland

Personally appeared Willie Mae T. Brown and Richard Tokunaga, who being duly sworn says that to the best of their knowledge, information and belief, the statements contained in the foregoing petition are true and complete.

Sworn to and subscribed before me this 28th day of November, 1961

Clifford Raymond B. Babin
Notary Public for South Carolina

PROOF OF WILL

STATE OF SOUTH CAROLINA,
County of Richland

IN THE COURT OF PROBATE

By Hon. A. Ray Hinnant, Judge of Probate for said County.

Personally appears Gloria Strickland

who, being duly sworn, says that she saw Mitsuo Tekunaga
sign, seal, publish and declare the annexed instrument of writing, bearing date the 26 day of
August A.D. 1961 to be
and contain his Last Will and Testament; that the said Mitsuo Tekunaga
was then of sound and disposing mind, memory and understanding, according
to the best of deponent's knowledge and belief; and that the said Gloria Strickland
together with Clinch Heyward Bolser and Irvine F. Bolser, Jr. at the request
of the testator in his presence, and in the presence of each other, witnessed the due execution thereof.

Sworn to before me, this 28th day of
November Anno Domini 1961.

A. Ray Hinnant } Gloria Strickland
Judge of Probate, Richland County, S. C. Gloria Strickland

ORDER ADMITTING WILL TO PROBATE IN COMMON FORM

On hearing the above petition of Willie Mae T. Brown and Richard Tekunaga
it is hereby ordered, adjudged and decreed; That the petition be granted and the said Last Will and Testament, ~~whereof~~
of Mitsuo Tekunaga deceased, be entered of Probate in
Common Form.

Given under my hand and the seal of the Court of Probate, this 28 day of November, 19 61.

A. Ray Hinnant
Judge of Probate, Richland County, S. C.

QUALIFICATION OF FIDUCIARY

THE STATE OF SOUTH CAROLINA,
County of Richland

We do solemnly swear, that this writing contains the true Last Will of the within named
Mitsuo Tekunaga deceased, so far as we know or believe;
and that we will well and truly execute the same, by paying first the debts, and then legacies contained in the
said Will, as far as his goods and chattels will thereunto extend and the law charge us; and that
we will make a true and perfect inventory of all such goods and chattels; So
help us God.

Sworn to before me, this 28 day of November Anno Domini 1961.
A. Ray Hinnant } Willie Mae T. Brown
Judge of Probate, Richland County, S. C. Richard L. Schumacher
Richard Tekunaga, 201 S. Saluda, Columbia, S. C.
(The Postoffice Address of each Fiduciary must be shown)

Attorney's Name and Address: Bolser & Bolser
306-309 Barringer Building
Columbia, South Carolina

MICROFILM

DESCRIPTION OF REAL ESTATE

Page _____

OWNED BY Mitsuo Tokunaga

Located in Richland County

DECEASED

FILED BY Willie Mae T. Brown and Richard Tokunaga

Acres or Lots

Township

Devised to or Inherited by

30 Acres

Thomas Tokunaga, Leon Tokunaga,
James Tokunaga, Richard Tokunaga,
Robert Tokunaga, Harry Tokunaga
as per paragraph 11 of Will

DESCRIPTION, GIVING BOUNDARIES, MEASUREMENTS AND DERIVATION

All of that piece, parcel and tract of land, situate, lying and being in School District 29, in the County of Richland, and State of South Carolina, containing about thirty acres more or less and being the Southwestern portion of parcel "A" on a plat of lands of J. J. Lowman made by Murray & Flood, Engineers, on December 22, 1927, which plat is to be recorded, and being more particularly described as follows: commencing at a point on the southwestern corner of the division line between lands of the grantor and J. W. Kleckley as shown on said plat and running in the following directions: S 23° 15' E 440' to monument; thence S 13° 00' W 940' to monument where said land corners with lands of J. W. Kleckley and G. P. Lowman; thence turning and running along lands of G. P. Lowman N 80° 45' W 950' to monument on Beard Creek; thence turning and running along Beard Creek in a northerly direction to monument where said land corners with Beard Creek and lands of J. B. Swygert; thence turning and running along lands of J. B. Swygert N 67° 30' E 930' to monument; thence turning and running in a southeasterly direction to point of beginning as shown on said plat.

This being the identical property conveyed to Mitsuo Tokunaga by deed of J. J. Lowman dated July 30, 1948, and recorded in the office of the Clerk of Court for Richland County in Deed Book 22 at page 359.

MICROFILM

Probate Judge Fee Paid
JAN 3 1963
Tom Elliott, Co. Treas.

Box 1020

Package 20 986

The State of South Carolina
COUNTY OF RICHLAND

IN THE PROBATE COURT

In Re Estate of:

Mitsuo Tokunaga,

Deceased.

Filed by Willie Mae T. Brown and

Richard Tokunaga,

Executors

This 2nd day of January 19 63

W. H. H. H. H.
Probate Judge, Richland Co., S. C.

Filed in Auditor's Office for Richland County,

S. C., this 2nd

day of January 19 63

W. H. H. H. H.
Auditor, Richland Co., S. C.

Filed in the Office of C. C. C. P. & G. S. for

Richland Co., S. C., this 2nd

day of January 19 63

Deed Book _____ Page _____

M. O. J. Kripal
C. C. C. P. & G. S. for
Richland County, S. C.

I, A. Ray Hinnant, Probate Judge for Richland County, South Carolina, do hereby certify that the foregoing is a true copy of the description of the real estate owned by the within named deceased, as filed by the fiduciary herein named.

Columbia, S. C.

Probate Judge, Richland County, South Carolina

THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT

By Catherine H. Kennedy, Judge of Probate for the County of Richland in the State aforesaid.

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, at the Term of 19 88 of the Court of Probate for Richland County on the
31 day of May in the year of our Lord one thousand nine
hundred and 88 the petition of
Willie Mae T. Brown

on the estate of Mitsuo Tokunaga

of Richland County

in this State, was presented, setting forth that the duties of said

Willie Mae T. Brown

had been fully discharged; and praying to be released from the same.

AND WHEREAS, the said Willie Mae T. Brown

has complied with the Act of the
General Assembly enacted on January 5th, 1975, and published in conformity to law for at least one
month, a Citation calling upon all persons concerned to show cause on or before the 5
day of July why said application should not be granted. And

whereas, said Citation has been published in Star Reporter, a public Gazette
of this State, for the space of one month, and no cause being shown against said application, and it
appearing from an examination of the situation of the affairs of the said estate that the petitioner
has faithfully and honestly discharged the trust and confidence reposed in herself

NOW KNOW ALL MEN BY THESE PRESENTS, That Willie Mae T. Brown

is from henceforth and forever discharged and dismissed from all liability as Executrix
as aforesaid.

WITNESS, CATHERINE H. KENNEDY, Judge of Probate for Richland County, the 25
day of July in the year of our Lord one thousand nine hundred and 88.

CATHERINE H. KENNEDY

Judge of Probate

By: Jessie H. Pender

MICROFILM

113-1243

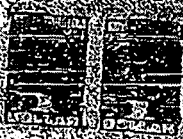
Vol 22 p 359

one to this grant
On 11. Nov 04, 1904, 1904, 1904, 1904

State of South Carolina,



RECEIVED
NOV 11 1904



Know All Men by These Presents, That I, J. J. Lorman, of the County of Richland,

for and in consideration of the sum of One thousand (\$1000.00) Dollars paid by Mitsuo Tokunaga to the State aforesaid the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

KITSUO TOKUNAGA

All of that piece, parcel and tract of land, situate, lying and being in School District 29, in the County of Richland; and State of South Carolina, containing about thirty acres more or less and being the South-eastern portion of parcel "A" on a plat of lands of J. J. Lorman made by Murray & Flood, Engineers, on December 22, 1927, which plat is to be recorded and being more particularly described as follows: commencing at a point on the southwestern corner of the division line between lands of the grantor and J. W. Kleckley as shown on said plat and running in the following directions: S 28° 15' E 440' to monument; thence S 17° 00' W 940' to monument where said land corners with lands of J. W. Kleckley and S. P. Lorman; thence turning and running along lands of S. P. Lorman N 80° 45' W 950' to monument on Beard Creek; thence turning and running along Beard Creek in a northerly direction to monument where said land corners with Beard Creek and lands of J. B. Soybert; thence turning and running along lands of J. B. Soybert S 67° 30' E 930' to monument, thence turning and running in a southeasterly direction to point of beginning as shown on said plat, and being the same land heretofore conveyed to the grantor herein by Kate Bickley by her deed dated February 8, 1928 and recorded in the Office of the Clerk of Court for Richland County in Deed Book 80 at page 193.

The grantor grants to the grantee herein as a part and parcel of this conveyance the right of ingress and egress to the above tract over the road leading from the above tract over other lands of the grantor into the S. C. Clair Road adjoining the lands of the grantor which leads into Highway #76.

22/359

Vol. 22-360

Testaments with all and singular, the rights, tenements, hereditaments and appurtenances thereto in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Mitsuo Tokunaga, his

Heirs and Assigns forever.

And I do hereby bind myself, and my heirs and administrators, to warrant and forever defend all and singular the said premises unto the said

Mitsuo Tokunaga, his

Heirs and Assigns, against us and by persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30 day of July

in the year of our Lord one thousand nine hundred and forty-eight and in the one hundred and eighty-second year of the Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Richard L. Tokunaga
Isadore J. Bernstein

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

Personally appeared before me Richard L. Tokunaga
and made oath that he saw the within named J. J. Lowman
sign, seal and, as he saw and heard, deliver the within written Deed for the uses and purposes therein
mentioned, and that he, with Isadore J. Bernstein, witnessed the
execution thereof.

SWORN to before me this 30

day of July, 1918
Isadore J. Bernstein, Notary Public of S. C.

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

RENUNCIATION OF DOWER

I, Richard Tokunaga, do hereby certify
unto all whom it may concern, that Mrs. Ellen S. Lowman,
the wife of the within named J. J. Lowman
and this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce
voluntarily and forever relinquish unto the within named

Mitsuo Tokunaga, his

and assigns, all her interest and claim, and also all her right and claim of Dower of, in or to all and singular the
premises within mentioned and released.

Given under my Hand and Seal, this 28

day of July

Isadore J. Bernstein, Notary Public of S. C.

Ellen S. Lowman

CHAIN OF TITLE REPORT

LAND BELONGING TO:

JANE HARDEN STONE

Prepared by:

**Dan O'Connell
Absolute Title, LLC**

CHAIN OF TITLE

Block: _____ Lot: _____

REPORT NO. _____

Acres: _____

Subdivision: _____

Completed: _____

Street Address: _____

Tax Map No. _____ Block _____ Lot _____

County: _____

Taxes Paid Through: _____

(Note: Names must appear below exactly as shown on document.)

DEED BOOK	GRANTOR	GRANTEE	DATE	PLAT	ACREAGE
✓ P 924/3603	BETTY M. HARTEN	JANE HARTEN STONE	10-15-04	16/284 φ	-0.60 AC -LOT
D1011/666	W. FRANK HARTEN (E)		12-21-90 12-21-90	52/6429	-LOT
D 942/252	W. C. JONES	W. FRANK HARTEN BETTY M. HARTEN	5-20-88 7-12-89	"	"
D 243/640	W.T. MORGAN HAMPSON PONTIAC, INC., aka HAMPSON MOTORS, INC.		4-1-87 6-2-87	6-20-83 JULIUS φ	0.62 AC
✓ D 243/639	SOUTH CAROLINA ELECTRIC & GAS COMPANY	W.T. MORGAN HAMPSON MOTORS INC	7-29-88 6-2-87	PLAT NOT + SUCCESSION	0.62 AC
✓ C2/420	MATTIE E. KUCKULSHORN	LOUISIANA WHITE PAVER COMPANY	1-14-28 2-1-28	φ	20 AC + 13 AC
D 292/238	W. FRANK HARTEN	BETTY M. HARTEN	8-30-73 9-6-73	16/284	.60 AC
D 292/235	ELVA LEE BORD		8-30-73 9-6-73	"	"
D190/223	WILLIAM A. BORD -ORANGE-		d. 10-29-60	φ	"
283/246	SOUTH CAROLINA ELECTRIC & GAS COMPANY	W.A. BORD	7-29-60 9-14-60	2-16-60 JULIUS 14/284	"
C2/460	(SEE ABOVE)				

RESTRICTIONS & EASEMENTS

D 243/639 - RIGHTS RESERVED -
C2/420 - EASE IN 2000 -
283/246 - RIGHTS RESERVED -

CURRENT MORTGAGES

PUBLIC ROAD? Yes _____ No _____

SOURCE:

DISCREPANCIES

✓ P 924/3603 - JANE H. STONE

✓ D 524/345 - J.D. AUSTIN

D-193 22/359

11/40-14C

11/2-1.35 AC

NEW #
145-02-09

(OM # 1156-01-02)

J.T. LOUNTER

12-22-24 (45)

11/40

OM # 1156-01-02
B 4/22/41 40/42 14/284 14/284 14/284 14/284 14/284

DEED PREPARATION ONLY
NO TITLE EXAMINATION PERFORMED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, Betty M. Harden, Grantor, in the State aforesaid, for and in consideration of Love and Affection for my Daughter, Jane Harden Stone, to me given by Jane Harden Stone, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Jane Harden Stone, Grantee, the following described property:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Elletts Road, also known as S.C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as Parcel "B," on a partial plat of lands of Mrs. J.W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, SC in Plat Book "16" at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less to the point of beginning.

DERIVATION: This being the identical premises heretofore granted to Betty M. Harden by deed of Frank W. Harden dated August 30, 1973 and recorded on September 6, 1973 in Deed Book 292 at Page 238 in the Richland County Register of Deeds.

PLUS:

All that certain piece, parcel, lot or tract of land, together with the improvements thereon, if any there be, situate, lying and being on the Northerly side of Elletts road (SC Highway No. S-40-1774), near White Rock, in the County

This Document is not to scale

of Richland, and in the State of South Carolina, said lot being triangular in shape and is more fully shown on plat prepared for Lois C. Jones by Cox and Dinkins, Inc., Engineers-Surveyors, dated January 7, 1987, revised August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book 52 at page 6729 and is also shown on plat prepared for Mr. and Mrs. W. Frank Harden by Cox and Dinkins, Inc., Engineers-Surveyors, dated August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book _____ at page _____, which plat is incorporated herein by reference and made a part hereof, and according to the last above-mentioned plat, said triangular strip of land has the following boundaries and measurements: on the East by property of Lois C. Jones, whereon it measures one hundred fifty-one and 64/100 (151.64') feet, more or less; on the South by Elletts Road, whereon it fronts and measures twenty-two and 75/100 (22.75') feet, more or less; and on the West by property of Mr. and Mrs. W. Frank Harden, whereon it measures one hundred fifty-two and 84/100 (152.84') feet, more or less.

DERIVATION: Being the parcel conveyed to W. Frank Harden and Betty M. Harden by deed of Lois C. Jones, dated May 20, 1988 filed July 12, 1989 in the Richland County Register of Deeds, Book D0942 at Page 252; the individual half interest of W. Frank Harden having been conveyed to Betty M. Harden by deed dated December 21, 1990, filed December 21, 1990 in Richland County Register of Deed Book D1011 at page 0666.

TMS No. R01406-02-09

Grantees' Address: 1225 Elletts Road
Chapin, South Carolina 29036

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging to or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever.

And the Grantor does hereby bind her heirs and assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantees' heirs and assigns, against the Grantor and Grantors' heirs and assigns whomsoever lawfully shall claim, but as to none others.

This Document is not to scale

WITNESS the Hand and Seal of the Grantor this ____ day of October, 2004.

Signed, sealed and delivered
in the presence of:

Helen Weddersky
Trin A. Cook

Betty M. Harden
Betty M. Harden

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath that s/he saw the within-named Betty M. Harden sign, seal and as her act and deed, deliver the within-written Title to Real Estate and that s/he with the second witness signing above witnessed the execution thereof.

Helen Weddersky
Witness

SWORN to before me this
14th day of October, 2004.

Trin A. Cook
Notary Public for South Carolina
My commission expires: 8/25/2011

This Document is not to scale

D BK. 1011 PAGE 0666

TITLE TO REAL ESTATE - FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.State of South Carolina,
COUNTY OF RICHLAND

Dec 21 3 47 PM '90

FILED
MRS. CONVEYANCE
CLARAL PARTLET

Know All Men By These Presents.

That I, W. FRANK HARDEN,

in the State aforesaid for and in consideration of the
 xxxxxxxx the love and affection that I bear for my wife, BETTY M. HARDEN,
 xxxxxxxxxxxxxxxxxxxxxxxx
 in the State aforesaid, the receipt whereof is hereby
 acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release
 unto the said BETTY M. HARDEN, HER HEIRS AND ASSIGNS FOREVER:

An undivided one-half interest in and to all that certain piece, parcel, lot or tract of land, together with the improvements thereon, if any there be, situate, lying and being on the Northerly side of Elletts Road (S.C. Highway No. 5-40-1774), near White Rock, in the County of Richland, and in the State of South Carolina, said lot being triangular in shape and is more fully shown on plat prepared for Lois C. Jones by Cox and Dinkins, Inc., Engineers-Surveyors, dated January 7, 1987, revised August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book "52" at page 6729, and is also shown on plat prepared for Mr. and Mrs. W. Frank Harden by Cox and Dinkins, Inc., Engineers-Surveyors, dated August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book _____, at page _____, which plat is incorporated herein by reference and made a part hereof, and according to the last above-mentioned plat, said triangular strip of land has the following boundaries and measurements: on the East by property of Lois C. Jones, whereon it measures one hundred fifty-one and 64/100 (151.64') feet, more or less; on the South by Elletts Road, whereon it fronts and measures twenty-two and 75/100 (22.75') feet, more or less; and on the West by property of Mr. and Mrs. W. Frank Harden, whereon it measures one hundred fifty-two and 84/100 (152.84') feet, more or less.

D BK. 1011 PAGE 0666

D.B. 1011 PAGE 0667

Being the identical property heretofore conveyed unto W. Frank Harden and Betty M. Harden by deed of Lois C. Jones dated June 6, 1989, recorded in the Office of the Registrar of Deeds Conveyances for Richmond County in Deed Book "B-962", page 252.

TAB 1486-2-3 (Portion of) 1990

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

BETTY M. HARDEN, her

Heirs and Assigns forever

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

BETTY M. HARDEN, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 21st day of December in the year of our Lord one thousand nine hundred and ninety (1990) and in the two hundred and fifteenth (215th) year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of

W. Frank Harden
Betty M. Harden

W. Frank Harden
W. FRANK HARDEN

D.B. 1011 PAGE 0667

D.BK. 1011 PAGE 0668

STATE OF SOUTH CAROLINA

COUNTY OF _____

JANUARY 1999

FRANK HARDEN

I, _____, do hereby certify that the within written deed for the use and purpose therein

expressed, and that the same is a true and correct copy of the original as the same appears in the

public records of this

COUNTY OF _____

2/1st

JANUARY 1999

PK 98

(L.S.)

Notary Public for S.C.

My Commission expires:

NOV 12, 1999

D.BK. 1011 PAGE 0668

THE STATE OF SOUTH CAROLINA

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office.

WHEREAS, I, LOIS C. JONES,

SEND GREETING.



NOW, KNOW ALL MEN BY THESE PRESENTS, That I the said

LOIS C. JONES

In consideration of the premises and also in consideration of the ~~DEED~~ love and affection that ~~DEED~~

~~in consideration of the premises and also in consideration of the love and affection that~~ I bear for

W. FRANK HARDEN and BETTY H. HARDEN

(the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents

do remise, release and forever quit-claim unto the said W. FRANK HARDEN and BETTY M. HARDEN

ALL that certain piece, parcel, lot or tract of land, together with the improvements thereon, if any there be, situate, lying and being on the Northerly side of Elletts Road (S.C. Highway No. S-40-1774), near White Rock, in the County of Richland, and in the State of South Carolina, said lot being triangular in shape and is more fully shown on plat prepared for Lois C. Jones by Cox and Dinkins, Inc., Engineers-Surveyors, dated January 7, 1987, revised August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book 52 at page 619 and is also shown on plat prepared for Mr. and Mrs. W. Frank Harden by Cox and Dinkins, Inc., Engineers-Surveyors, dated August 17, 1987, and recorded in the RMC Office for Richland County in Plat Book at page , which plat is incorporated herein by reference and made a part hereof, and according to the last above-mentioned plat, said triangular strip of land has the following boundaries and measurements: on the East by property of Lois C. Jones, whereon it measures one hundred fifty-one and 64/100 (151.64') feet, more or less; on the South by Elletts Road, whereon it fronts and measures twenty-two and 75/100 (22.75') feet, more or less; and on the West by property of Mr. and Mrs. W. Frank Harden, whereon it measures on hundred fifty-two and 84/100 (152.84') feet, more or less.

The above-described property is conveyed as an "AS IS" condition. This conveyance is made subject to all conditions, covenants, reservations, restrictions and easements existing against the subject property.

DO942PAGE252

Grantee's Address: 4423 Winthrop Avenue, Columbia, SC 29206

Next to TMS 1406-02-09

D942/252
R: 1-12-89

TO HAVE AND TO HOLD the rights, interests, benefits and advantages therein and the profits and emoluments thereof unto the said heirs and assigns forever.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and date first above written.

WITNESSES: PEENE WARDEN, Sheriff of the County of ...

And assigns, forever, to the said heirs and assigns forever.

nor any heirs, nor any other persons or persons claiming under them, shall at any time hereafter, in any way or means, have claim or demand any right or title to the above said premises or any part or parcel thereof, forever.

Witness my hand and seal this 20th day of MAY

in the year of our Lord one thousand nine hundred and eight y-e-eight (1988) and in the 100th hundred and twelfth (1912) year of the sovereignty and independence of the United States of

America

Signed, Sealed and Delivered
in the presence of

LOIS C. JONES

(L.S.)

(L.S.)

STATE OF SOUTH CAROLINA

RICHLAND

County

PERSON: J. J. appeared before me

and made oath that he

was the within-named

J. J. JONES

sign, seal, and do

as and do do define the within-written

Deed and that he with him

witnessed the execution thereof.

SWORN to before me this 6th

day of June A.D. 1989

(SEAL) Denise M. Flanck
 Notary Public for S.C.
 Commission Expires 12/31/92
 620 8, 1999

THE STATE OF SOUTH CAROLINA

County.

NO RENUNCIATION OF DOWER

I,

do hereby certify unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

Heirs and Assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this

day of , Anno Domini, 19

(SEAL) _____

D0842 PAGE 254

D081384670

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

AFFIDAVIT 1987 JUN -2 PM 4:27

DEED

Grantee's Address:
Post Office P-
Columbia, S.C. 29202

KNOW ALL MEN BY THESE PRESENTS, that W. J. Morgan and Hampton Pontiac, Inc. (formerly Hampton Motors, Inc.), a South Carolina corporation, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other valuable consideration to them paid by Lois C. Jones, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

LOIS C. JONES

All that certain piece, parcel, or tract of land situate, lying and being in the County and State aforesaid, and being bounded on the North, East and West by lands of South Carolina Electric & Gas Company and on the South by lands of Morgan, and being more particularly described as follows:

Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company and running N 20° 15' W for a distance of 113.5 feet, more or less, where the line intersects the 360 foot contour, thence along said contour N 79° 58' E for a distance of 118.8 feet, more or less, thence S 69° 00' E for a distance of 126.3 feet, more or less, thence N 58° 57' E for a distance of 41.2 feet, more or less, thence leaving the 360 foot contour and running S 32° 57' E for a distance of 97.8 feet, more or less, where the line intersects the PBL of South Carolina Electric & Gas Company thence along said PBL S 85° 45' W for a distance of 284.9 feet, more or less, to the point of beginning.

Containing 0.63 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Kleckley under deed dated February 1, 1928, Option #392 and being further delineated as Parcel "A" on Partial Plat of Lands of Mrs. J. W. Kleckley, Drawing 516-51 dated June 20, 1955, hereto annexed and made a part hereof as Exhibit "A".

This being the same the property heretofore conveyed to the Grantors herein by Deed of South Carolina Electric & Gas Company, dated July 29, 1955, and recorded in the RMC Office for Richland County on June 1, 1987.

Joyce H. Morgan, spouse of W. J. Morgan, joins in this instrument only for the purpose of conveying any vested special equity and ownership right in the premises which may be created under South Carolina Code Section 20-7-471 et seq. The aforesaid

D081384670

D843/670
2-6-2-87

D0843PAGE71

spouse does not assume any other obligations under the terms of this instrument,

This conveyance is made subject to the following:

(a) the property is conveyed in a "as is" condition, without warranty, expressed or implied;

(b) to any state of facts which an accurate survey or physical inspection of the premises will show;

(c) licenses, rights-of-way, and easements, if any, for public utilities; and

(d) covenants, easements, restrictions, conditions, encumbrances, liens, and zoning laws, ordinances, and regulations, existing against the property, if any, now in force.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said Lois C. Jones, her Heirs and Assigns forever.

And the undersigned do bind themselves, their Heirs, Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Lois C. Jones, her Heirs and Assigns against them and their Heirs, Successors and Assigns lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the execution hereof this 1st day of April, 1987, in the year of our Lord one thousand nine hundred and eight-seven (1987) and in the two hundred and eleventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Michael H. Jones
Caroline L. Jones
Michael H. Jones
Robert H. Jones

W. J. Morgan
W. J. MORGAN
Joyce H. Morgan
JOYCE H. MORGAN

HAMPTON PONTIAC, INC.
(formerly Hampton Motors, Inc.)

By Sam W. Jones, Jr.
Sam W. Jones, Jr.,
Its President

Stephen D. Abbott Jr.
Nancy W. Abbott

D0843PAGE672

STATE OF SOUTH CAROLINA)
)
 COURT OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me Michael H. Quinn and
 made oath that s/he saw the within-named W. J. Morgan, sign, seal
 and as his act and deed, deliver the within written Deed and that
 s/he with Catherine Y. Tarr witnessed the execution thereof.

SWORN TO BEFORE ME THIS)
)
1st day of April, 1987.)
Dorise M. Handwick (LS)
 Notary Public for S.C.)
 My Commission Expires: 4-26-89)

Michael H. Quinn

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me Michael H. Quinn and
 made oath that s/he saw the within-named Joyce H. Morgan, sign,
 seal and as her act and deed, deliver the within written Deed and
 that s/he with Robert H. Hodges, Jr. witnessed the execution
 thereof.

SWORN TO BEFORE ME THIS)
)
1st day of April, 1987.)
Dorise M. Handwick (LS)
 Notary Public for S.C.)
 My Commission Expires: 4-26-89)

Michael H. Quinn

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me Theodore D. Willard, Jr. and
 made oath that s/he saw the within-named Hampton Pontiac, Inc.
 (formerly Hampton Motors, Inc.), by Sam W. Jones, Jr., its
President, sign, seal and as its act and deed, deliver
 the within written Deed and that s/he with Nancy W. Abbott
 witnessed the execution thereof.

SWORN TO BEFORE ME THIS)
)
27 day of May, 1987.)
Nancy W. Abbott (LS)
 Notary Public for S.C.)
 My Commission Expires: 11-21-93)

Theodore D. Willard, Jr.

D0843PAGE672

D0843PAGE 638

FILED
OFFICE OF RECORDS & CONVEYANCES
CLARK L. BARNETT

1987 JUN -2 PM 3:48



00

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND

PLAT ATTACHED

AFFIDAVIT

which deed

WHEREAS, the South Carolina Electric & Gas Company owns hydro electric project designated in the files of the Federal Power Commission as Project No. 516, and certain lands adjacent thereto, and has received permission from the Federal Power Commission to deed certain of these lands, including the tract hereunder more fully described and delineated, free and clear of all project purposes except flowage rights, said permission being contained in a letter dated January 27, 1954, copy of which is hereto annexed as Exhibit "B".

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That the SOUTH CAROLINA ELECTRIC & GAS COMPANY, in the State aforesaid, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid at and before the sealing of these presents, by W. J. MORGAN and HAMPTON MOTORS, INC. in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said W. J. MORGAN AND HAMPTON MOTORS, INC. subject to the right of the Grantor, its successors and assigns, through its servants or agents, to have the right of ingress, egress and access in, to, over, across and out of the property herein conveyed for malaria control and other corporate purposes, and subject also to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height and size and necessary spillways on the Saluda River at or near Dreher's Shoals, whether such damage is caused by the flooding of the lands or injury to the drainage thereof, or by storage of water, or for any

- 1 -

D0843PAGE 639

D0843PAGE640

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

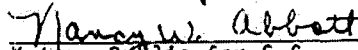
AFFIDAVIT

PERSONALLY appeared before me Sam W. Jones, Jr., who, being duly sworn, deposes and says, that:

- (1) He is the President of Hampton Pontiac, Inc., formerly known as Hampton Motors, Inc.;
- (2) By Deed dated July 29, 1955, South Carolina Electric & Gas Company conveyed that certain parcel of land described in the Deed attached hereto, to W. J. Morgan and Hampton Motors, Inc.;
- (3) The Deed has never been recorded in the RMC Office for Richland County; and
- (4) Neither Affiant nor W. J. Morgan can recall the purchase price paid to South Carolina Electric & Gas Company for the property described in the attached Deed;


Sam W. Jones, Jr.

SWORN TO BEFORE ME THIS 27
day of May, 1987.


Nancy W. Abbott
Notary Public for S.C.
My Commission Expires: 11-22-95

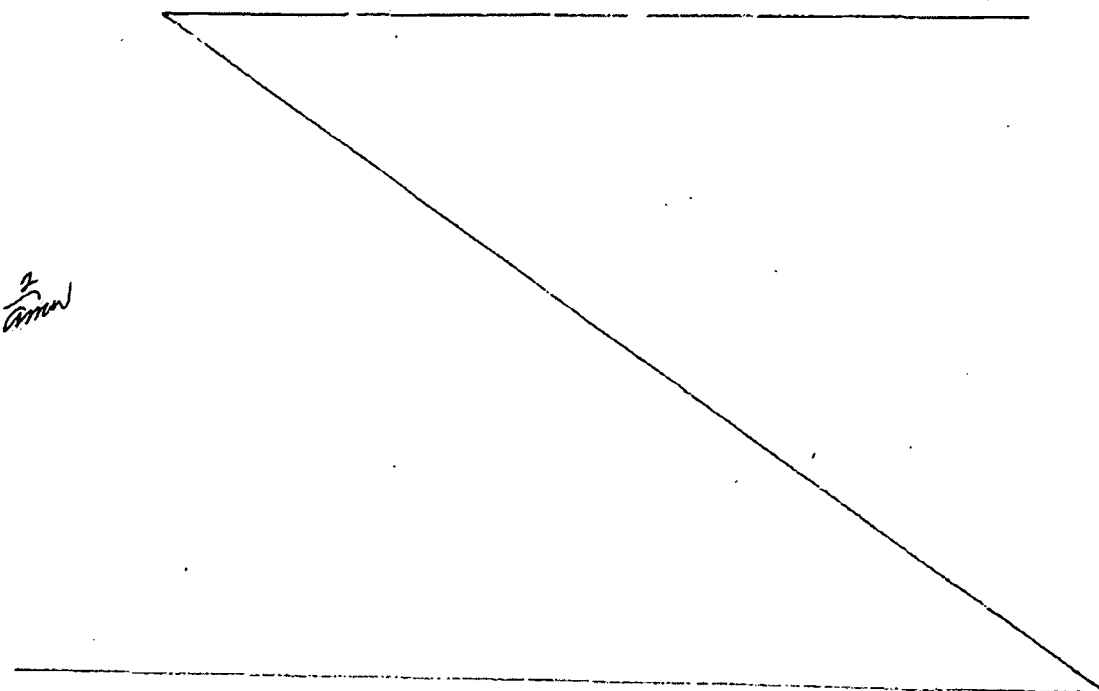
D0843PAGE640

other reason whatsoever, and the Grantee herein, for himself and for his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said parcel or tract of land as aforesaid,

All that certain piece, parcel or tract of land situate, lying and being in the County and State aforesaid, and being bounded on the north, east and west by lands of South Carolina Electric & Gas Company and on the south by lands of Morgan, and being more particularly described as follows:

Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company and running N 20° 15' W for a distance of 113.5 feet, more or less, where the line intersects the 360 foot contour, thence along said contour N 79° 58' E for a distance of 118.8 feet, more or less, thence S 69° 00' E for a distance of 126.3 feet, more or less, thence N 58° 57' E for a distance of 41.2 feet, more or less, thence leaving the 360 foot contour and running S 32° 57' E for a distance of 97.8 feet, more or less, where the line intersects the PBL of South Carolina Electric & Gas Company, thence along said PBL S 85° 45' W for a distance of 284.9 feet, more or less, to point of beginning.

Containing 0.63 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Kleckley under deed dated February 1, 1928, Option #592 and being further delineated as Parcel "A" on Partial Plat of Lands of Mrs. J. W. Kleckley, Drawing 516-51 dated June 20, 1955, hereto annexed and made a part hereof as Exhibit "A".



TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said W. J. MORGAN and HAMPTON MOTORS, INC., their respective Heirs or Successors, as the case may be ~~Heirs~~ and Assigns forever, subject to the rights above reserved to the Grantor, its successors and assigns.

And the said SOUTH CAROLINA ELECTRIC & GAS COMPANY does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said W. J. MORGAN and HAMPTON MOTORS, INC., their respective Heirs or Successors, as the case may be ~~Heirs~~ and Assigns, against itself and its successors lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF the SOUTH CAROLINA ELECTRIC & GAS COMPANY has caused these presents to be executed in its name by F. R. McMeekin, its Vice President, and by L. F. Pearce, its Secretary and its corporate seal to be hereto affixed this 29th day of July in the year of our Lord, one thousand nine hundred and fifty-five, and in the one hundred and eightieth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and
Delivered in Presence of

Wm B. [Signature]
Witness

Shelton J. [Signature]
Witness

SOUTH CAROLINA ELECTRIC & GAS COMPANY

By F. R. McMeekin
Vice President

L. F. Pearce
Secretary

STATE OF SOUTH CAROLINA }

COUNTY OF RICHLAND }

D0843PAGE 643

PERSONALLY appeared before me Selena J. Dent
who, on oath, says that she saw the within-named SOUTH CAROLINA
ELECTRIC & GAS COMPANY by F. R. McMeekin, its Vice President and
L. F. Pearce, its Secretary sign the within Deed, and the said
Corporation, by said officers, seal said Deed, and, as its act and
deed, deliver the same, and that she with Mary B. Kenlock
witnessed the execution thereof.

Selena J. Dent
Witness

SWORN to before me, this 29th day of July A.D. 19 35.

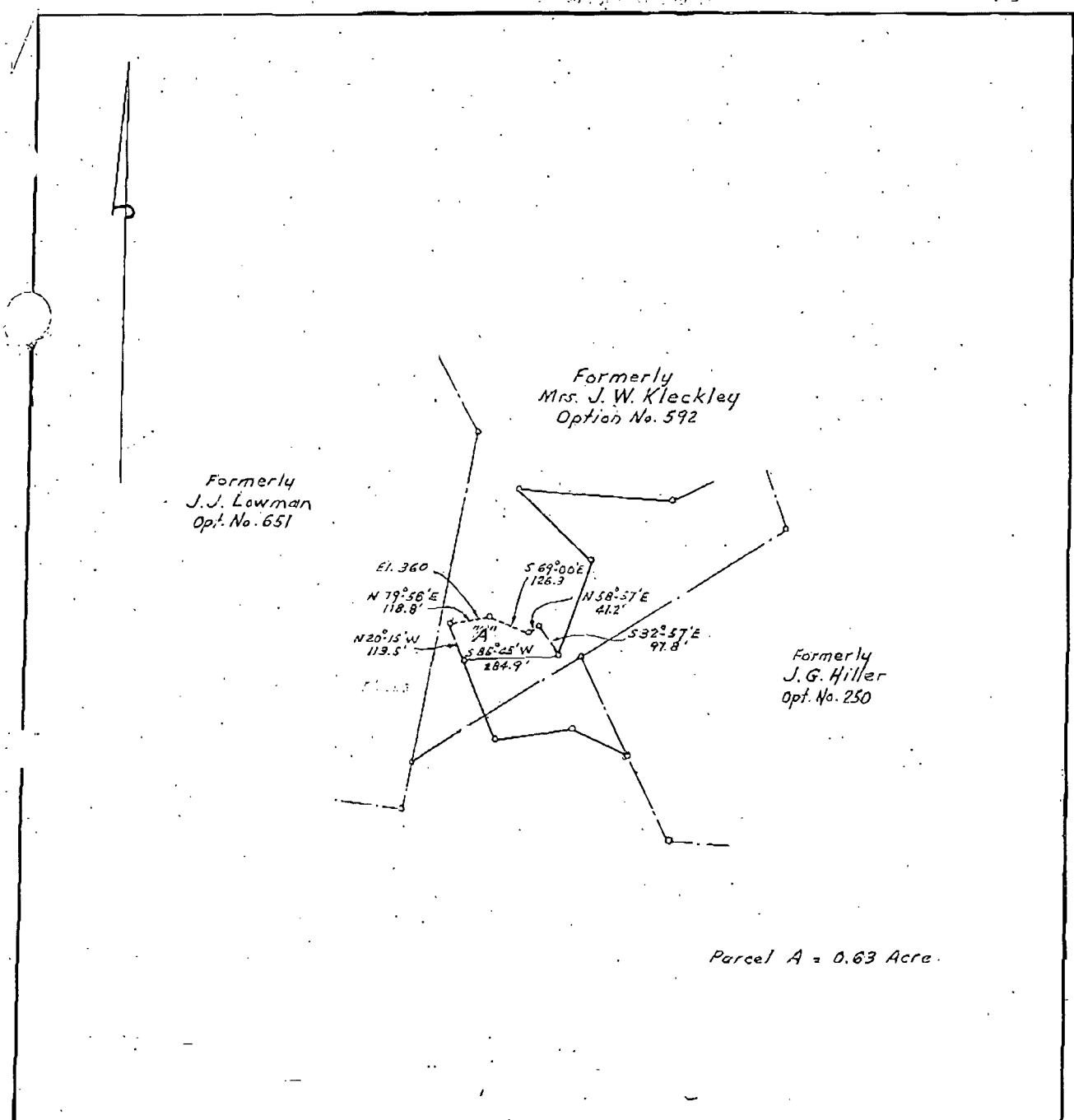
Margie C. Bell
Notary Public for South Carolina

My commission expires at the
pleasure of the Governor.

4
mms

- 4 -

D0843PAGE 643



Parcel A = 0.63 Acre.

EXHIBIT "A"

THIS MAP IS A PART OF THE APPLICATION FOR AN
AMENDMENT OF PLANS FOR PROJECT NO. 516
MADE BY THE UNDERSIGNED THIS _____ DAY OF
_____ 1955

SOUTH CAROLINA ELECTRIC & GAS CO.

BY _____
VICE PRESIDENT

SOUTH CAROLINA ELECTRIC & GAS CO.
COLUMBIA, S. C.

Partial Plat of Lands of
Mrs. J. W. Kleckley
Option No. 592

6-20-1955

SCALE: 1"=400'

OPT. NO. 592

FEDERAL POWER COMMISSION
Washington 25

EXHIBIT "B"

Project No. 516
South Carolina Electric & Gas Company

Jan. 27, 1954

South Carolina Electric & Gas Company
Post Office Box 390
Columbia, South Carolina

Attention: Mr. F. R. McMeekin
Vice-President

Gentlemen:

This refers to your December 14, and December 16, 1953 applications for permission to sell lands within the project area of Project No. 516.

You are advised that the Commission has no objection to the sale of lands within the project area lying between the 360-foot contour and the project boundary, exclusive of those lands designated and shown on Exhibit K, Sheets 1, 2, and "A" (FPC Nos. 516-35, -36, and -31), subject to the specific reservation set forth in your December 14, and December 16, 1953 application, and the deeds should so provide.

Upon consummation of the sale of the lands for which permission is given, a copy of the deed should be filed with the Commission, together with a plat of the lands and authorization for the Commission staff to make the proper notation on Exhibit K of the change in land ownership and the bounds of the lands sold.

By direction of the Commission

(S-) Leon M. Fuquay

Leon M. Fuquay
Secretary

D0843PAGE645

D0843PAGE645

TITLE TO REAL ESTATE
The H. L. Bryan Company, Columbia, S. C.



State of South Carolina

SEP 6 2 56 PM '73

COUNTY OF RICHLAND, JOHN MAJOR
C. C. & G. S.

Know All Men by These Presents, That I, W. FRANK HARDEN, of the
COUNTY of RICHLAND,

in the State aforesaid, ----- for and ----- in consideration of the
sum of Love and Affection for My wife, Betty M. Harden,
to me paid by Betty M. Harden,
in the State aforesaid (the receipt whereof is hereby acknowledged)
have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

BETTY M. HARDEN,
her heirs and assigns:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Ellets Road, also known as S. C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY ONE HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as PARCEL "B", on a partial plat of lands of Mrs. J. W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, S. C. in Plat Book "16", at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less, to the point of beginning; this being the identical premises heretofore devised unto Lula Lee Boyd by the Last Will and Testament of William A. Boyd by will dated February 22, 1961, and preserved of record in the Judge of Probate Court for Richland County in Box 1073, in Package 26-573, AND Deeded to GRAYSON HEARD at Book 522 page 235.

This conveyance being made subject to any existing easements, conditions and restrictions of record, including those shown upon any recorded plats, affecting the premises hereinabove described and conveyed.

The Grantee's mailing address is: 4423 Winthrop Avenue, Columbia, S. C. 29206.

U 292 PAGE 238

D 292 PAGE 239

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said BETTY M. HARDEN, her

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises to the said BETTY M. HARDEN, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30th day of August
in the year of our Lord one thousand nine hundred and seventy-three
and in the one hundred and ninety-eighth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Alvin J. Finley

W. Frank Harden

W. FRANK HARDEN

(SEAL)

(SEAL)

D 292 PAGE 239

D. 292 PAGE 240

STATE OF SOUTH CAROLINA,
 RICHLAND COUNTY.

PERSONALLY appeared before me J. B. Baxter, Jr.
 and made oath that he/she saw the within-named W. Frank Harden
 sign, seal and, as his act and deed, deliver the within-written Deed for the uses and purposes therein men-
 tioned and that he, with Alice J. Finley witnessed the
 execution thereof.

SWORN to before me this 30th
 day of August, 1973.

Alice J. Finley (L.S.)
 Notary Public of S. C.

My commission expires on: 8-16-81.

STATE OF SOUTH CAROLINA,
 COUNTY.

NO RENUNCIATION OF DOWER
 HUSBAND and WIFE

I, _____, do hereby certify
 unto all whom it may concern, that Mrs.
 the wife of the within-named
 did this day appear before me, and upon being privately and separately examined by me declare that she does freely,
 voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and for-
 ever relinquish unto the within-named

_____ holds
 and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises
 within-mentioned and released:

Given under my Hand and Seal, this

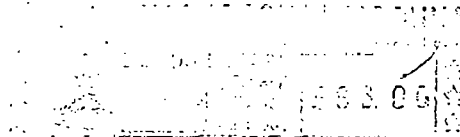
day of

Anno Domini 19

 Notary Public of S. C. (L.S.)

D. 292 PAGE 240

Know All Men by These Presents, That I, EULA LEE BOYD,



in the State aforesaid, -----for and----- in consideration of the
sum of Five and no/100 (\$5.00) Dollars and Other Valuable Consideration-----
to me paid by W. FRANK HARDEN,
in the State aforesaid (the receipt whereof is hereby acknowledged)
have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

W. FRANK HARDEN,
his heirs and assigns:

All that certain piece, parcel or lot of land, together with the Improvements thereon, situate, lying and being on the Northern side of Ellets Road, also known as S. C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as PARCEL "B", on a partial plat of lands of Mrs. J. W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, S. C. in Plat Book "16", at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less, to the point of beginning; this being the identical premises heretofore devised unto Eula Lee Boyd by the Last Will and Testament of William A. Boyd by will dated February 22, 1961, and preserved of record in the Judge of Probate Court for Richland County in Box 1073, in Package 26-573.

This conveyance being made subject to any existing easements, conditions and restrictions of record, including those shown upon any recorded plats, affecting the premises hereinabove described and conveyed.

The Grantee's mailing address is: 4423 Winthrop Avenue, Columbia, S. C. 29206

D 292 PAGE 235

Return to A. E. Fulmer, Atty. PC 2-1548

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said W. FRANK HARDEN, his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said W. FRANK HARDEN, his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30th day of August in the year of our Lord one thousand nine hundred and seventy-three and in the one hundred and ninety-eighth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Allice J. Finley

Eula Lee Boyd
EULA LEE BOYD

(SEAL)

(SEAL)

STATE OF SOUTH CAROLINA. }

RICHLAND County. }

Personally appeared before me J. B. Baxter, Jr.

and made oath that he/she saw the within-named Eula Lee Boyd

sign, seal and, as her act and deed, delivers the within-written Deed for the uses and purposes therein mentioned and that he, with Alice J. Finley witnessed execution thereof.

SWORN to before me this 30th

day of August, 1973.

Alice J. Finley (L. S.)
Notary Public of S. C.

My commission expires on 8-16-81.

STATE OF SOUTH CAROLINA, }

COUNTY. }

NO RENUNCIATION OF DOWRY
GRANTOR A WOMAN.

I,

, do hereby cert

unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely and voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

heir

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this

day of

Anno Domini 19

(L. S.)

Notary Public of S. C.

D 292 PAGE 237

D-190/823 D-190/823

DESCRIPTION OF REAL ESTATE

Page 1

OWNED BY W. A. BOYD also known as WILLIAM ARTHUR BOYD. DECEASED
Located in Richland County

FILED BY EMIL LEE BOYD, EXECUTOR.

Acres or Lots	Devised to or Inherited by	Interest devised to or Inherited by (list each)	Mailing address
1 lot	Emil Lee Boyd	1/2	716 Huntington Ave. Columbia, SC
1 lot	Emil Lee Boyd	Total	716 Huntington Ave., Columbia, SC

DESCRIPTION, GIVING BOUNDARIES, MEASUREMENTS AND DERIVATION

ALL that certain piece, parcel or lot of land together with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina on the East side of Huntington Avenue and fronting thereon. Said lot being designated as Lot No. 4 of Block "F" as shown on a plat of the lands of Mrs. Lou H. Morris, made by W. H. Miller, C. E. dated October 4, 1918 and recorded in the OCC for Richland County in Plat Book H, at page 134, and being bounded as shown on said plat as follows: On the North by Lot No. 3 as shown on said plat whereon it measures for a distance of One Hundred and Fifty feet (150'); on the East by Lots Nos. 10 and 11 as shown on said plat whereon it measures for a distance of Fifty (50') feet; on the South by Lot No. 5 as shown on said plat whereon it measures for a distance of One Hundred and Fifty (150') feet; and on the West by Huntington Avenue whereon it fronts for a distance of Fifty (50') feet; Being the same premises conveyed to Mr. and Mrs. William Arthur Boyd by deed of Clifton Hydrick dated November 5, 1953 and recorded in the OCC for Richland County in Deed Book 122 at page 193.

ALSO

ALL THAT certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, bounded on the North, South and West by lands of South Carolina Electric & Gas Company, and on the East by lands now or formerly of Morgan and being more particularly described as follows: Beginning at a concrete monument on the P&L of S. C. Electric & Gas Company, wherethe P&L intersects the property of line of lands now or formerly of Morgan, thence leaving the P&L and running along said property line N 20 deg. 15 Min. W for a distance of 113.5 feet, more or less to an iron pipe on the 360 foot contour, thence following the contour S 23 deg. 11 min W for a distance of 57.9 feet, more or less, thence S 13 deg. 02 Min W for a distance of 73.7 feet, more or less, thence S 39 deg. 30 Min. E for a distance of 73.3 feet, more or less, thence S 02 deg. 42 Min. W for a distance of 139.2 feet, more or less, thence S 34 deg. 51 Min. E for a distance of 55.0 feet, more or less; to an iron pipe thence leaving the 360 foot contour and running N 55 deg. 46 Min. E for a distance of 103.7 feet, more or less to an iron pipe on the P&L of South Carolina Electric & Gas Company, thence following the P&L N 26 deg. 30 Min. W for a distance of 206.5 feet, more or less to point of beginning.

Containing 0.60 acres, more or less and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Melickley under deed dated January 14, 1920, Option 392 and being further delineated as Parcel B on Parcel Plat of lands of Mrs. J. W. Melickley, Drawing #516-51 dated February 12, 1940. And being the same property conveyed to W. A. Boyd by deed of the South Carolina Electric & Gas Company dated July 27, 1960 and recorded in the OCC for Richland County in Deed Book 283 at page 270.

283 278

Clerk of the Court of South Carolina

\$1.00

SEP 13 1950

Joe E. Boyd, Co. Treas.

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

AFFIDAVIT

WHEREAS, the South Carolina Electric & Gas Company owns a hydro electric project designated in the files of the Federal Power Commission as Project No. 516, and certain lands adjacent thereto, and has received permission from the Federal Power Commission to deed certain of these lands, including the tract hereunder more fully described and delineated, free and clear of all project purposes except flowage rights, said permission being contained in a letter dated January 27, 1954, copy of which is hereto annexed as Exhibit "B".

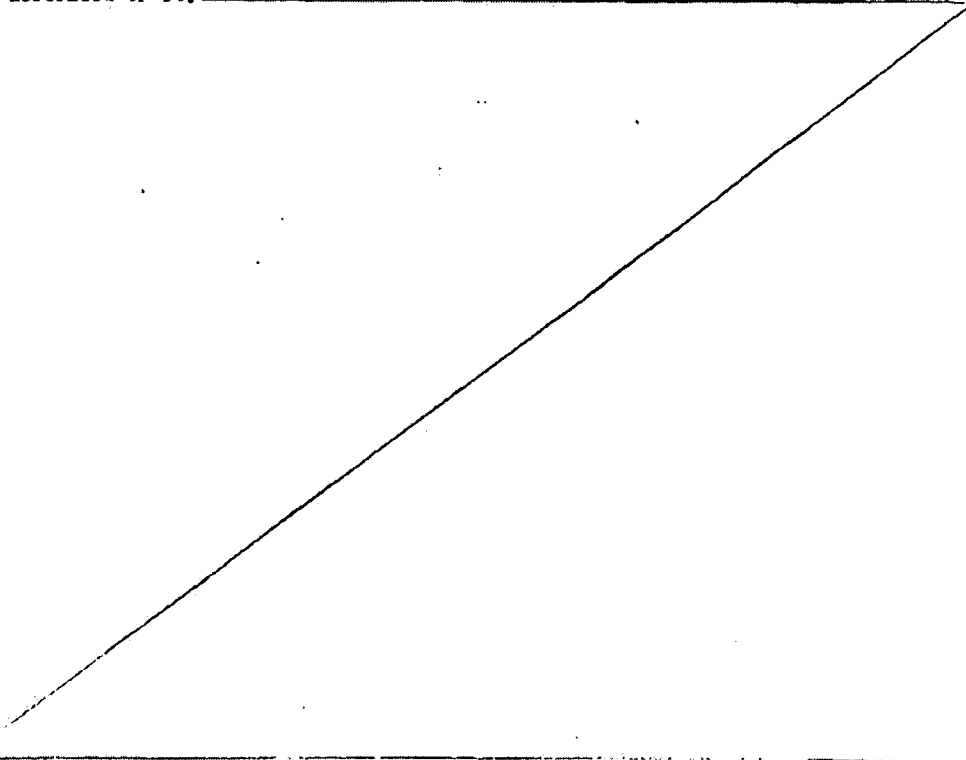
NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That the SOUTH CAROLINA ELECTRIC & GAS COMPANY, in the State aforesaid, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid at and before the sealing of these presents, by W. A. Boyd in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said W. A. Boyd subject to the right of the Grantor, its successors and assigns, through its servants or agents, to have the right of ingress, egress and access in, to, over, across and out of the property herein conveyed for malaria control and other corporate purposes, and subject also to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height and size and necessary spillways on the Saluda River at or near Droher's Shoals, whether such damage is caused by the flooding of the lands or injury to the drainage thereof, or by storage of water, or for any

other reason whatsoever, and the Grantee herein, for himself and for his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns from any and all liability for any and all damages that may be caused to said parcel or tract of land as aforesaid.

All that certain piece, parcel, or tract of land situate, lying and being in the County of Richland, State of South Carolina, bounded on the north, south, and west by lands of South Carolina Electric & Gas Company, and on the east by lands now or formerly of Morgan, and being more particularly described as follows:

Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N 20° 15' W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S 25° 11' W for a distance of 57.9 feet, more or less, thence S 13° 02' W for a distance of 73.7 feet, more or less, thence S 39° 30' E for a distance of 73.3 feet, more or less, thence S 02° 42' W for a distance of 139.2 feet, more or less, thence S 56° 51' E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N 55° 56' E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N 26° 50' W for a distance of 206.5 feet, more or less, to point of beginning.

Containing 0.60 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Kleckley under deed dated January 14, 1928, Option #592, and being further delineated as Parcel B on Partial Plat of Lands of Mrs. J. W. Kleckley, Drawing #516-51 dated February 12, 1960, hereto annexed and made a part hereof as Exhibit A. Reserving, however, an easement for a 10 foot road running along the eastern boundary of the afore described tract.



TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said W. A. Boyd, his Heirs and Assigns forever, subject to the rights above reserved to the Grantor, its successors and assigns.

And the said SOUTH CAROLINA ELECTRIC & GAS COMPANY does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said W. A. Boyd, his Heirs and Assigns, against itself and its successors lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF the SOUTH CAROLINA ELECTRIC & GAS COMPANY has caused these presents to be executed in its name by F. R. McMeekin, its Vice President, and by E. M. Simpson, its Secretary and its corporate seal to be hereto affixed this 27TH day of JULY in the year of our Lord, one thousand nine hundred and sixty and in the one hundred and eighty fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and
Delivered in Presence of:

SOUTH CAROLINA ELECTRIC & GAS
COMPANY

Wm B. L. L.
Witness

By F. R. McMeekin
Vice President

E. M. Simpson
Witness

E. M. Simpson
Secretary

CORPORATE SEAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

PERSONALLY appeared before me H. M. DRYANT
who, on oath, says that he saw the within-named SOUTH CAROLINA
ELECTRIC & GAS COMPANY by F. R. McNeekin, its Vice President,
and E. M. Simpson, its Secretary, sign the within Deed, and
the said Corporation, by said officers, seal said Deed, and,
as its act and deed, deliver the same, and that he with
MARY B. KINLOCH witnessed the execution thereof.

H. M. DRYANT
Witness

Sworn to before me, this 27TH
day of JULY A.D., 1960.

Richard L. W. W. W.
Notary Public for South Carolina

My commission expires at the
pleasure of the Governor.

NOTARIAL SEAL

पञ्चमः अङ्कः

Nathan B. Kieckhefer, John L. Kieckhefer, Otto L. Kieckhefer,
 Charles E. Kieckhefer, Annie Louise Kieckhefer, Eric Otto Kieckhefer
 Lexington Water Power Company

KNOW ALL MEN BY THESE PRESENTS, That *Wm. Nathan B. Knolly, John L. Knolly, Peter L. Knolly, George E. Knolly, George L. Knolly & Eric E. Knolly*

in the State aforesaid *for and* in consideration of the sum of *Eight Hundred Dollars, (\$825.00)*
to us, paid by *Lexington Water Power Company, a corporation of the State of South Carolina* in the State aforesaid;
have granted, bargained, and released, and by these presents do grant, bargain,

sell and release unto the said Luxington WaterPower Company its successors and assigns

All those two certain piece, parcel or tract of land situate, lying and being in Township, in the County of Richland State aforesaid containing thirty seven and one half acres, more or less and bounded as follows: Tract No. 1: All that certain piece, parcel or tract of land situate, lying and being in the County of Richland (formerly) the county of Lexington) in the State of South Carolina, containing twenty (20) acres, more or less, and being bounded on the north by lands now or formerly of F.E. Lowman; formerly of John T. Lowman; East by lands now or formerly of Marcella Kleckley; south by lands now or formerly of J.B. Shealy and G.P. Lowman; west by lands now or formerly of M.S. Bidkey; together with a right of way ten (10) feet in width along the line between lands now or formerly of George P. Lowman and M.S. Bidkey to Klecklys Snyggart Plantation being the same tract of land conveyed to John W. Kleckley (deceased) by George P. Lowman, by deed dated December 3, 1904, and recorded in the office of the Clerk of Court for Lexington County in Deed Book "XX" at page 81, the above grantors being the sole heirs at law and distributees of the said John W. Kleckley deceased. Tract No. 2: All that certain piece, parcel or tract of land situate lying and being in the County of Richland in the State of South Carolina, containing seventeen and one half (17 1/2) acres, more or less, being bounded on the north and west by lands now or formerly of W.F. McArthur; east by lands now or formerly of the Lowman Hop; south by lands now or formerly of John Green Miller, being the same tract of land conveyed to John W. Kleckley (deceased) by J.B. Shealy, by deed dated December 3, 1904, and recorded in the office of the Clerk of Court for Lexington County in Deed Book "XX" at page 82, the above grantors being the sole heirs at law and distributees of the said John Kleckley deceased. The grantors shall have the right to repurchase within one year after completion of dam at or near Duhers Shoals, or above it any of said land, at the same price sold for that may not be desired or necessary for the purposes of said grantees, its successors and assigns, but in case any of said land is repurchased and thereafter becomes flooded in any manner whatsoever, then in such case, the grantors herein, their heirs and assigns, hereby release Lexington Water Power Company, its successors and assigns, from any and all damage that may accrue by reason of such flooding. The grantors shall have the right to use and occupy said land free of rent until the completion of dam as aforesaid, provided such use and occupancy be for the purpose of the construction of the dam as aforesaid.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said Lexington Water Power Company, its successors
grantee, its successors and assigns, and without liability on the part of the grantor, its successors
and assigns for damage of any sort.

And we do hereby bind ourselves and our heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Lexington Water Power Company, its successors heirs and assigns forever - - -

here written satisfaction of the uses and purposes therein mentioned, and that
 to with Mr. William W. Wadell attorney for the execution thereof
 month or before on this 23rd
 day of January A. D. 1928
Wm. W. Wadell Attorney
 Notary Public for C. C.

1. Wm. H. Harrison - 1840 - 1841 - 1842 - 1843 - 1844 - 1845 - 1846 - 1847 - 1848 - 1849 - 1850 - 1851 - 1852 - 1853 - 1854 - 1855 - 1856 - 1857 - 1858 - 1859 - 1860 - 1861 - 1862 - 1863 - 1864 - 1865 - 1866 - 1867 - 1868 - 1869 - 1870 - 1871 - 1872 - 1873 - 1874 - 1875 - 1876 - 1877 - 1878 - 1879 - 1880 - 1881 - 1882 - 1883 - 1884 - 1885 - 1886 - 1887 - 1888 - 1889 - 1890 - 1891 - 1892 - 1893 - 1894 - 1895 - 1896 - 1897 - 1898 - 1899 - 1900 - 1901 - 1902 - 1903 - 1904 - 1905 - 1906 - 1907 - 1908 - 1909 - 1910 - 1911 - 1912 - 1913 - 1914 - 1915 - 1916 - 1917 - 1918 - 1919 - 1920 - 1921 - 1922 - 1923 - 1924 - 1925 - 1926 - 1927 - 1928 - 1929 - 1930 - 1931 - 1932 - 1933 - 1934 - 1935 - 1936 - 1937 - 1938 - 1939 - 1940 - 1941 - 1942 - 1943 - 1944 - 1945 - 1946 - 1947 - 1948 - 1949 - 1950 - 1951 - 1952 - 1953 - 1954 - 1955 - 1956 - 1957 - 1958 - 1959 - 1960 - 1961 - 1962 - 1963 - 1964 - 1965 - 1966 - 1967 - 1968 - 1969 - 1970 - 1971 - 1972 - 1973 - 1974 - 1975 - 1976 - 1977 - 1978 - 1979 - 1980 - 1981 - 1982 - 1983 - 1984 - 1985 - 1986 - 1987 - 1988 - 1989 - 1990 - 1991 - 1992 - 1993 - 1994 - 1995 - 1996 - 1997 - 1998 - 1999 - 2000 - 2001 - 2002 - 2003 - 2004 - 2005 - 2006 - 2007 - 2008 - 2009 - 2010 - 2011 - 2012 - 2013 - 2014 - 2015 - 2016 - 2017 - 2018 - 2019 - 2020 - 2021 - 2022 - 2023 - 2024 - 2025 - 2026 - 2027 - 2028 - 2029 - 2030 - 2031 - 2032 - 2033 - 2034 - 2035 - 2036 - 2037 - 2038 - 2039 - 2040 - 2041 - 2042 - 2043 - 2044 - 2045 - 2046 - 2047 - 2048 - 2049 - 2050 - 2051 - 2052 - 2053 - 2054 - 2055 - 2056 - 2057 - 2058 - 2059 - 2060 - 2061 - 2062 - 2063 - 2064 - 2065 - 2066 - 2067 - 2068 - 2069 - 2070 - 2071 - 2072 - 2073 - 2074 - 2075 - 2076 - 2077 - 2078 - 2079 - 2080 - 2081 - 2082 - 2083 - 2084 - 2085 - 2086 - 2087 - 2088 - 2089 - 2090 - 2091 - 2092 - 2093 - 2094 - 2095 - 2096 - 2097 - 2098 - 2099 - 2100 - 2101 - 2102 - 2103 - 2104 - 2105 - 2106 - 2107 - 2108 - 2109 - 2110 - 2111 - 2112 - 2113 - 2114 - 2115 - 2116 - 2117 - 2118 - 2119 - 2120 - 2121 - 2122 - 2123 - 2124 - 2125 - 2126 - 2127 - 2128 - 2129 - 2130 - 2131 - 2132 - 2133 - 2134 - 2135 - 2136 - 2137 - 2138 - 2139 - 2140 - 2141 - 2142 - 2143 - 2144 - 2145 - 2146 - 2147 - 2148 - 2149 - 2150 - 2151 - 2152 - 2153 - 2154 - 2155 - 2156 - 2157 - 2158 - 2159 - 2160 - 2161 - 2162 - 2163 - 2164 - 2165 - 2166 - 2167 - 2168 - 2169 - 2170 - 2171 - 2172 - 2173 - 2174 - 2175 - 2176 - 2177 - 2178 - 2179 - 2180 - 2181 - 2182 - 2183 - 2184 - 2185 - 2186 - 2187 - 2188 - 2189 - 2190 - 2191 - 2192 - 2193 - 2194 - 2195 - 2196 - 2197 - 2198 - 2199 - 2200 - 2201 - 2202 - 2203 - 2204 - 2205 - 2206 - 2207 - 2208 - 2209 - 221

...the Centre
...and does deliver of a
...in mentioned, and does
...the executive thereof.
W. J. J. J. J.

NA

Levi
 'resaid,
 again.

236

And, we do hereby bind ourselves and our heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Lexington Water Power Company, its successors heirs and assigns against ourselves and our heirs and against every person who may lawfully claiming, or to claim, the same or any part thereof.

WITNESS our hand and seal this 14th day of Jan in the year of our Lord one thousand nine hundred and twenty eight and in the one hundred and fifty second year

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

L.S.

Cassella

Jos. L. Knapley
Claud E. Knapley
Ellis L. Knapley
A. Emma Knapley
Mrs. Eric M. Carter
Mrs. Mattie B. Knapley

(S)

State of South Carolina,
 County of Richland
 and made oath that I saw the within named John L. Kieckerley
 act and deed, deliver the within written Deed for the uses and purposes therein mentioned; and that he, with C. L. Budger
 witnessed the execution thereof and subscribed their names as witnesses therefor.

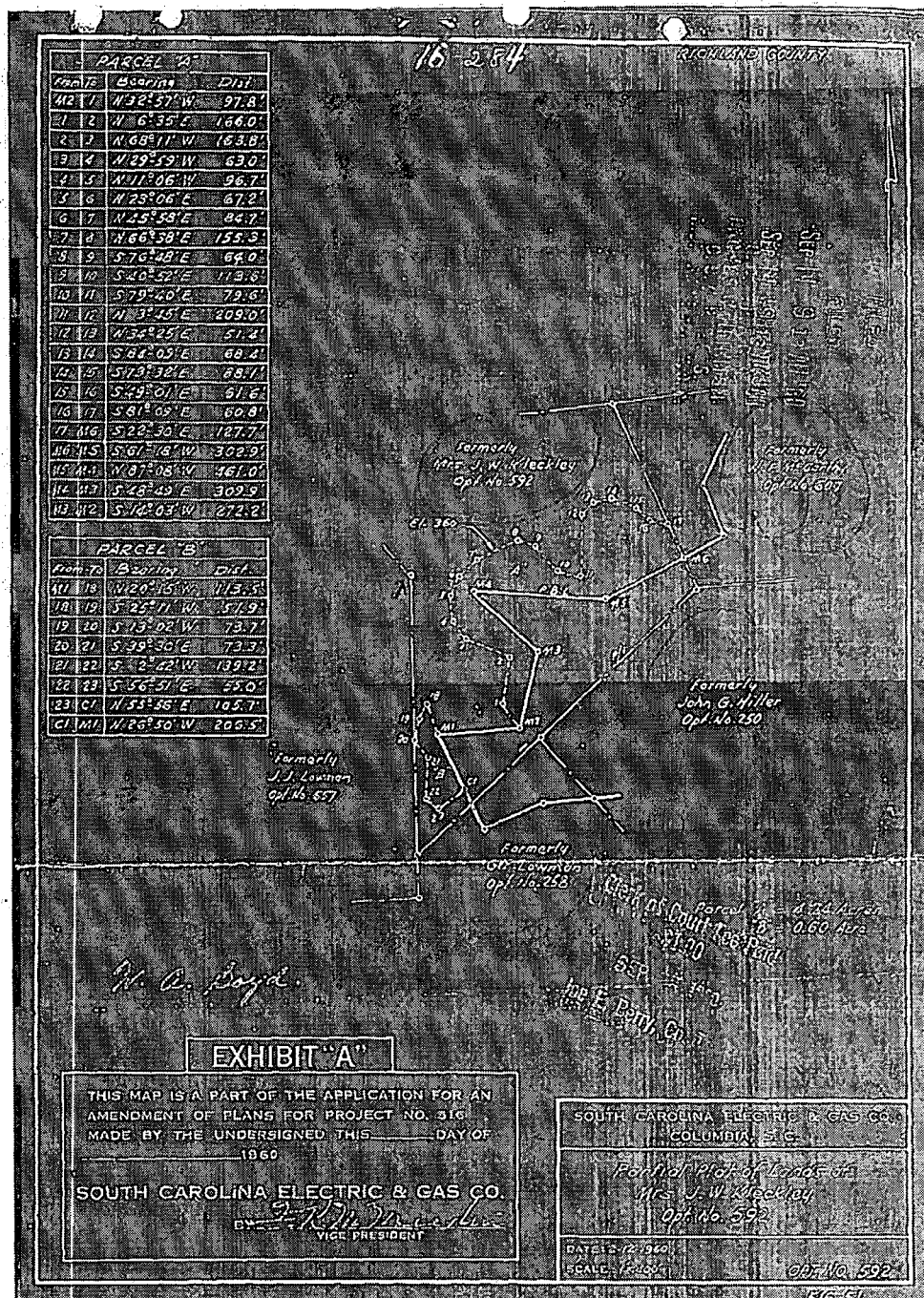
SWORN TO AND SUBSCRIBED BEFORE ME, this 14th day of January, 1928

W. M. Reed
Notary Public of South Carolina, *Washington Co.*
Chas. Dep. Dec. 19, 1927

P. W. Cook

STATE OF ~~SOUTH~~ CAROLINA. }
County of *Mecklenburg*
I, *E. M. Sturges*,
Notary Public for South Carolina, do hereby certify unto all whom it may concern, that
the wife of the within named *Jos. L. Chalkley* did this day
appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any
person or persons whomsoever, renounce, release and forever relinquish unto the within named *Lexington Water Power Company, its successors*
rights and assigns all her interest and estate, and also all her right and claim of dower of, in or to all and singular
premises within mentioned and released.

Given under my hand and seal this 14th day of January 1928 Anno Domini 1928
 Notary Public for North Carolina.
 E. M. Standing
 Comm. Exp. Mar. 23 1928
 Seal
 Wm. J. L. Klockley
 1928 at 10⁵⁵ AM & date
 Filed for record this 1 day of Feb
 C. C. C. P. & G. S.



State of South Carolina,



JUL 11 1940



Know All Men by These Presents, That I, J. J. Lowman, of the County of Richland,

In the State aforesaid, For and In consideration of the sum of One thousand (\$1000.00) Dollars to me paid by Mitsuo Tokunaga in the State aforesaid the receipt whereof is hereby acknowledged have granted, conveyed, sold and released, and by these presents do grant, bargain, sell and release unto the said

MITSUO TOKUNAGA

ALL of that piece, parcel and tract of land, situate, lying and being in School District 20, in the County of Richland, and State of South Carolina, containing about thirty acres more or less and being the Southwestern portion of parcel "A" on a plat of lands of J. J. Lowman made by Murray & Flood, Engineers, on December 22, 1927, which plat is to be recorded, and being more particularly described as follows: commencing at a point on the southeastern corner of the division line between lands of the grantor and J. W. Kieckley as shown on said plat and running in the following directions: S 28° 15' E 440' to monument; thence S 13° 00' W 940' to monument where said land corners with lands of J. W. Kieckley and G. P. Lowman; thence turning and running along lands of G. P. Lowman N 30° 45' W 960' to monument on Beard Creek; thence turning and running along Beard Creek in a northerly direction to monument where said land corners with Beard Creek and lands of J. B. Swygert; thence turning and running along lands of J. B. Swygert N 07° 30' E 930' to monument; thence turning and running in a southeasterly direction to point of beginning as shown on said plat, and being the same land heretofore conveyed to the grantor herein by Kate Bickley by her deed dated February 8, 1923 and recorded in the Office of the Clerk of Court for Richland County in Deed Book DC at page 193.

The grantor grants to the grantee herein as a part and parcel of which conveys the right of ingress and egress to the above tract over the road leading from the above tract over other lands of the grantor into the St. Clair Road adjoining the lands of the grantor which leads into highway 276.

To have with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or to anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

Mitsuo Tokunaga, his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Mitsuo Tokunaga, his

Heirs and Assigns, against his and my Heirs and against every person who may lawfully claim, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 20 day of July in the year of our Lord one thousand nine hundred and forty-eight and in the one hundred and seventy-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Richard L. Johnson
Isaac S. Bernstein

J. J. Lowman [Seal]
[Seal]

STATE OF SOUTH CAROLINA
RICHLAND County.

Personally appeared before me Richard L. Johnson and made oath that he saw the within named J. J. Lowman sign, seal and as his act and deed deliver the within written Deed for the uses and purposes therein mentioned, and that he, with Isaac S. Bernstein witnessed the execution thereof.

SUBORN to before me this 20

day of July 1948
Isaac S. Bernstein, S.
Notary Public of S. C.

Richard L. Johnson

STATE OF SOUTH CAROLINA
RICHLAND County.

RENUNCIATION OF DOWER

I, Richard Tokunaga, do hereby certify unto all whom it may concern, that Mrs. Ellen S. Lowman, the wife of the within named J. J. Lowman did this day appear before me, and upon being duly and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, threat, or fear of any person or persons, whatsoever, renounce, release and forever relinquish unto the within named

Mitsuo Tokunaga, his

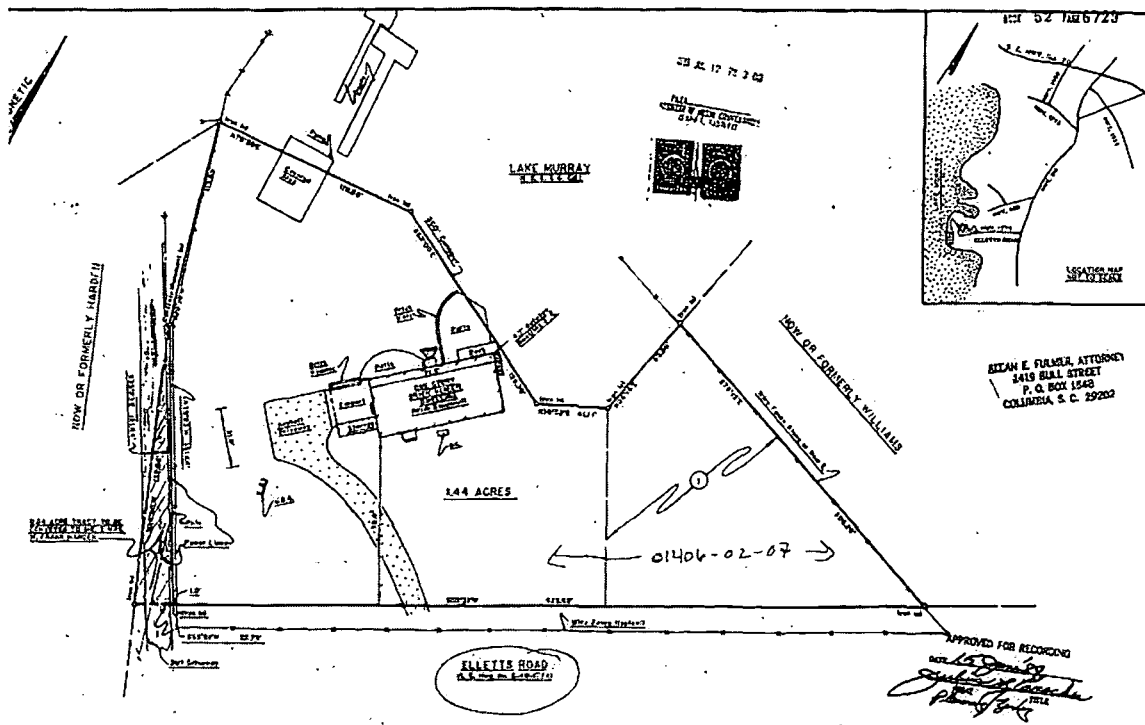
heirs and assigns, all her interest and claim, and also her right and claim of dower of, in or to all and singular the premises within mentioned and recited.

Given under my Hand and Seal, this 20

day of July
Anno Domini 1948

Richard L. Johnson
Notary Public of S. C.

Ellen S. Lowman



AS A. C. HOLCOMB, BY RICHARD H. LEE, DATED SEPTEMBER 21, 1987, IN THE OFFICE OF RECORDER OF DEEDS, CONVEYANCE FOR THE FULL TRACT, BEING LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

NOTES:

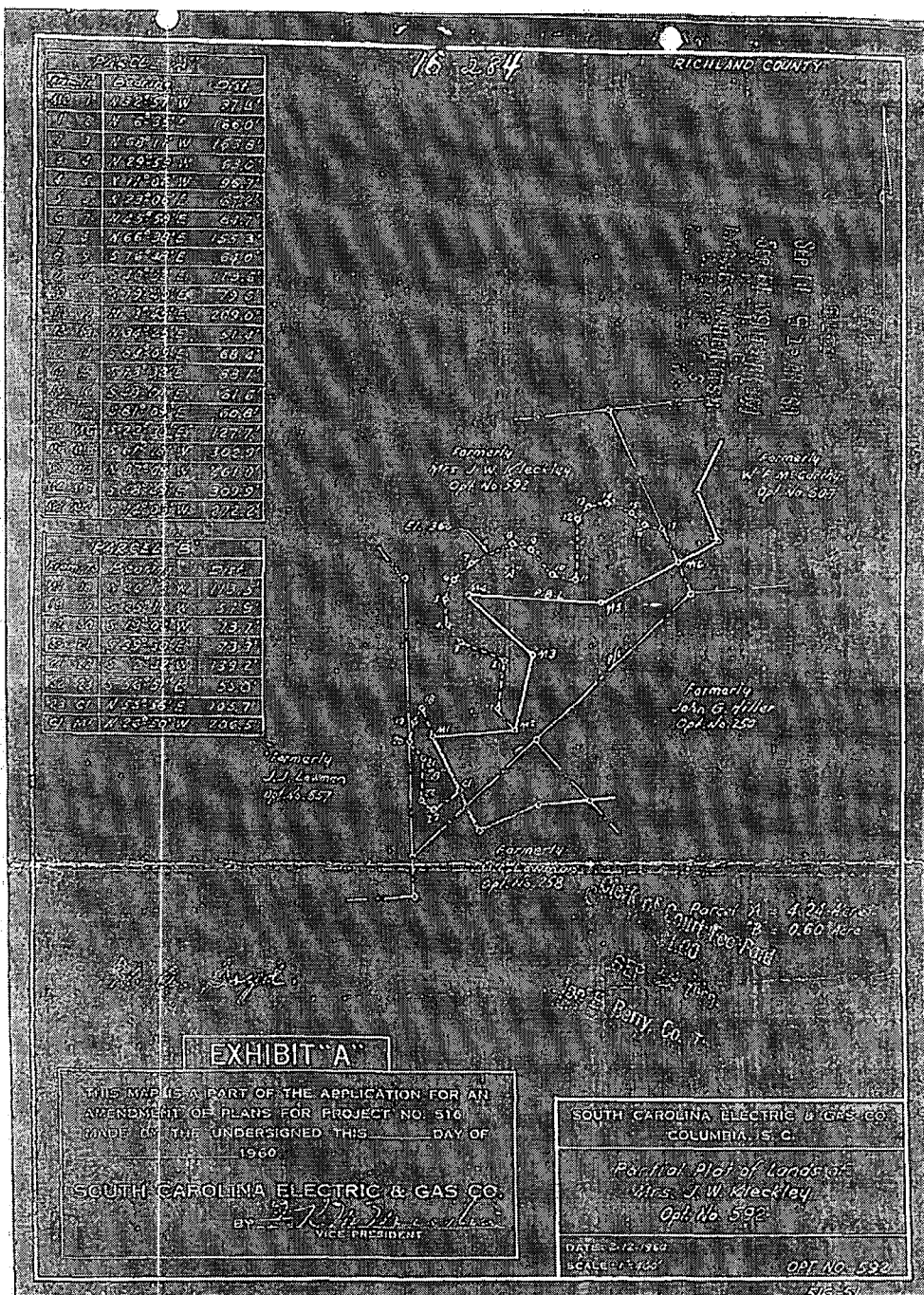
1. AREA OF CIRCULARITY METHOD IN NATURE OF EXERCISES/ADJACENT IS REVISED MARCH 16, 1987, IS ADVISED AUGUST 17, 1987.

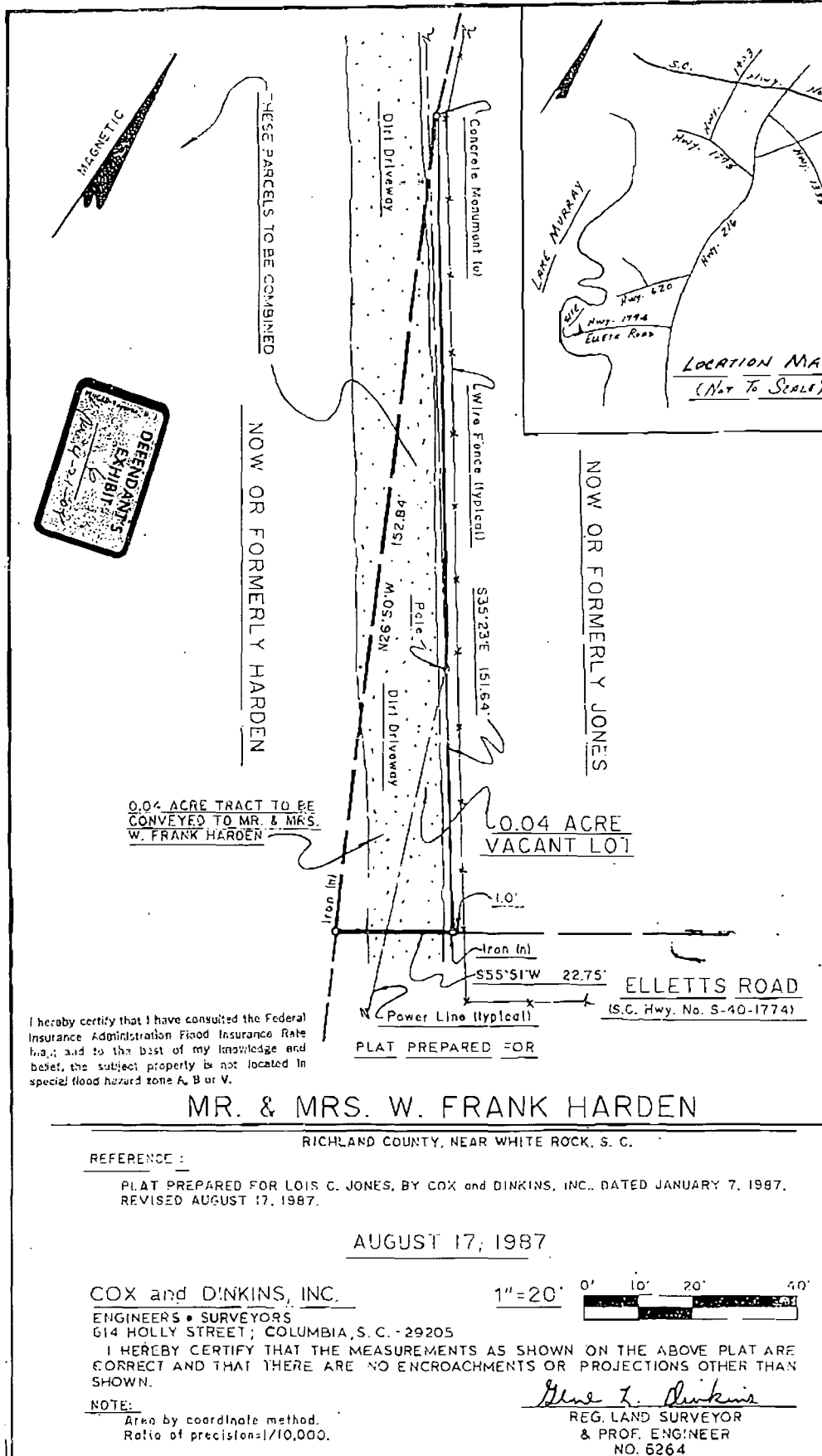
LOIS C. JONES RICHMOND COUNTY, MISSISSIPPI DATE: JANUARY 7, 1987 SCALE: 1" = 30'	
COX and DINKINS, INC. ENGINEERS - SURVEYORS 614 MOBY STREET, COLUMBIA, SOUTH CAROLINA - 29205 (803) 254-0518	
PROJECT NO.	SHEET NO. 11

52 1486723

A NOBILY CERTIFY THAT THE SURVEYING AS SHOWN ON THE ABOVE PLAT IS CORRECT AND THAT THE LINES AND DIMENSIONS ON PLAT CORRESPOND TO THE FIELD DATA.

Lois C. Jones
 MISSISSIPPI LAND SURVEYOR
 NO. 34793





TITLE TO REAL ESTATE

Form 14

The H. L. Bryan Company, Columbia, S. C.

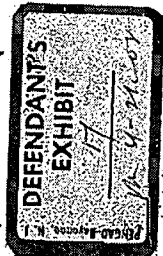
State of South Carolina,
COUNTY OF RICHLAND,

SEP 6 2 55 PM '72

JOHN
C. C. MAJOR
P. & G. S.

AFFIDAVIT

Know All Men by These Presents, That I, EULA LEE BOYD,



in the State aforesaid, -----for and----- in consideration of the
sum of Five and no/100 (\$5.00) Dollars and Other Valuable Consideration-----
to me paid by W. FRANK HARDEN,
in the State aforesaid (the receipt whereof is hereby acknowledged)
have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

W. FRANK HARDEN,
his heirs and assigns:

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the Northern side of Ellets Road, also known as S. C. Highway No. 1774 on the Waters of Lake Murray, County of Richland, State of South Carolina, being more fully shown and delineated as SIXTY ONE-HUNDREDTHS (.60) ACRE, MORE OR LESS, as shown and delineated as PARCEL "B", on a partial plat of lands of Mrs. J. W. Kleckley, Drawing #516-51, dated February 12, 1960, and recorded in the Clerk's Office for Richland County, S.C. in Plat Book "16", at page 284, and having the following boundaries and measurements as shown upon said plat, to-wit: Beginning at a concrete monument on the PBL of South Carolina Electric & Gas Company, where the PBL intersects the property line of lands now or formerly of Morgan, thence leaving the PBL and running along said property line N20°15'W for a distance of 113.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S25°11'W for a distance of 57.9 feet, more or less, thence S13°02'W for a distance of 73.7 feet, more or less; thence S39°30'E for a distance of 73.3 feet, more or less, thence S02°42'W for a distance of 139.2 feet, more or less, thence S56°51'E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N55°56'E for a distance of 105.7 feet, more or less, to an iron pipe on the PBL of South Carolina Electric & Gas Company, thence following the PBL N26°50'W for a distance of 206.5 feet, more or less, to the point of beginning; this being the identical premises heretofore devised unto Eula Lee Boyd by the Last Will and Testament of William A. Boyd by will dated February 22, 1961, and preserved of record in the Judge of Probate Court for Richland County in Box 1073, in Package 26-573.

→ This conveyance being made subject to any existing easements, conditions and restrictions of record. Including those shown -----

D 292 PAGE 236

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said W. FRANK HARDEN, his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said W. FRANK HARDEN, his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 30th day of August
in the year of our Lord one thousand nine hundred and seventy-three
and in the one hundred and ninety-eighth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

William J. Finley

Eula Lee Boyd
EULA LEE BOYD

(SEAL)

(SEAL)

D 292 PAGE 236

D 292 PAGE 237

STATE OF SOUTH CAROLINA,
 RICHLAND COUNTY.

PERSONALLY appeared before me J. B. Baxter, Jr.
 and made oath that he/she saw the within-named Bula Lee Boyd
 sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein
 tioned and that he, with Alice J. Finley witness
 execution thereof.

SWORN to before me this 30th

day of August, 1973.

Alice J. Finley (L. S.)
 Notary Public of S. C.

My commission expires on: 8-16-81
 STATE OF SOUTH CAROLINA,
 COUNTY.

NO RENUNCIATION OF DOW
 GRANTOR A WOMAN.

I, _____ do hereby cer
 unto all whom it may concern, that Mrs.
 the wife of the within-named
 did this day appear before me, and upon being privately and separately examined by me, did declare that she does free
 voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and fi
 ever relinquish unto the within-named

heir
 and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premise
 within mentioned and released.

Given under my Hand and Seal, this

day of

Anno Domini 19

_____(L. S.)
 Notary Public of S. C.

BOOTH

LAW FIRM, LLC

WILLIAM E. BOOTH III
BOOTH.LAW@BELLSOUTH.NET

CONSOLIDATED BUSINESS PARK
3231 SUNSET BOULEVARD, SUITE A
WEST COLUMBIA, SC 29169

P: 803.791.9211
F: 803.791.3159

September 15, 2005

John D. Austin
P.O. Box 502
Irmo, SC 29063

Re: Property of Jim and Jane Stone – 1225 Elletts Road, Chapin, SC 29036
(Our File No. 4273.0522)

Dear Mr. Austin:

I represent Mr. and Mrs. Stone and they instructed me to provide you with notice and demand for removal of the asphalt and other materials placed on their property by you. These materials were placed at a location along the eastern side of their property. As you may recall, they protested the placement of these materials as well as the attempt to compact these materials with a heavy duty roller.

If these materials are not removed within two (2) weeks after receipt of this letter, they will engage the services of a company to remove the materials and make a demand that you reimburse them for the costs incurred.

You are also instructed not to place any more materials on their property. If you have any questions or need to discuss this further with me, please let me know. Otherwise, I will examine the property on or after October 1, 2005, to determine if you have removed these materials.

Very truly yours,

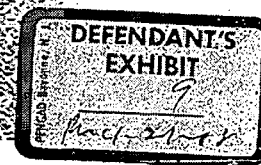


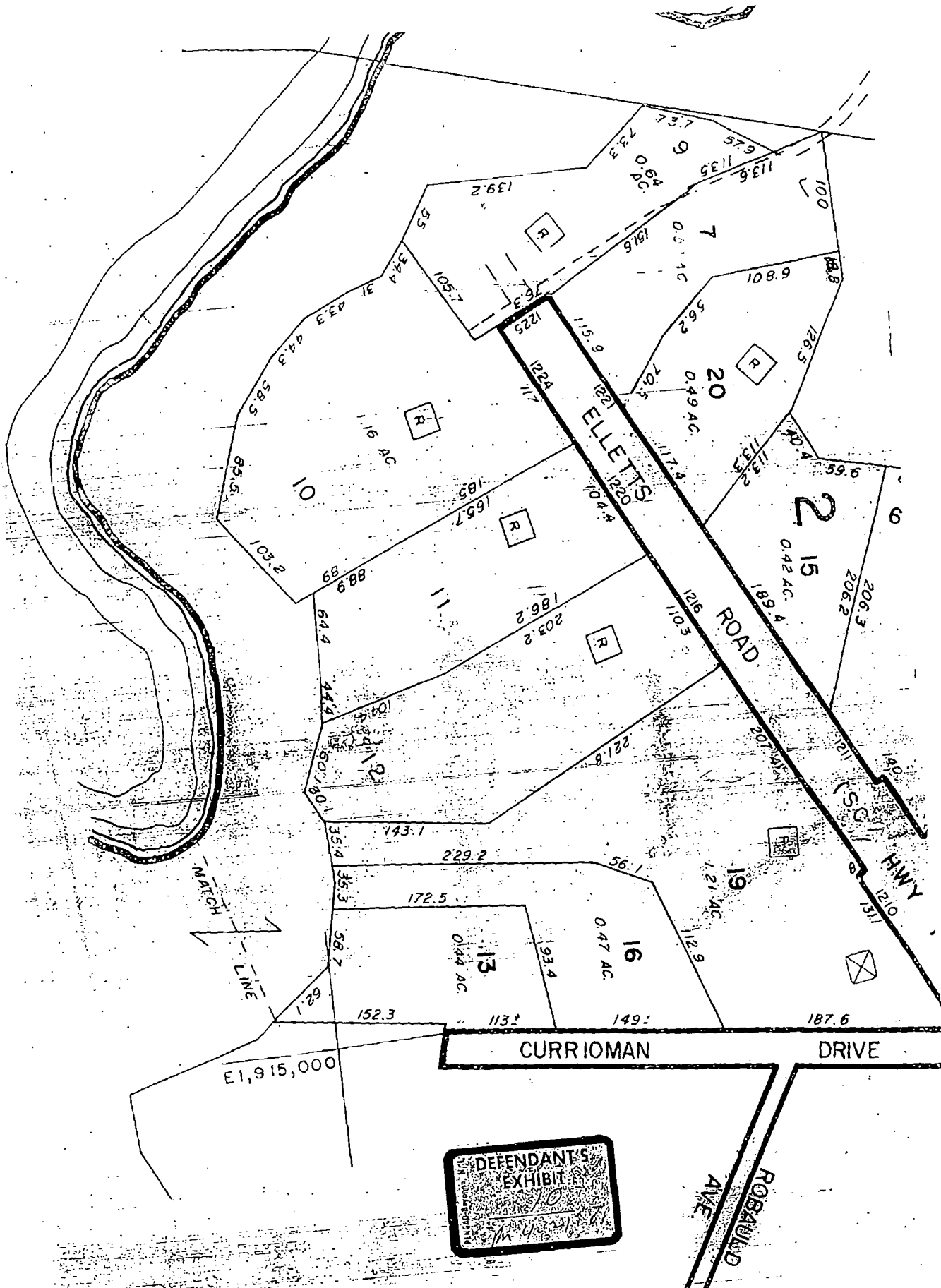
William E. Booth III

WEBIII/eje

Enclosure

C: Mr. and Mrs. Jim Stone





STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

AFFIDAVIT

ORIGINAL

WHEREAS, the South Carolina Electric & Gas Company owns a hydro electric project designated in the files of the Federal Power Commission as Project No. 516, and certain lands adjacent thereto, and has received permission from the Federal Power Commission to deed certain of these lands, including the tract hereunder, a fully described and delineated, free and clear of all private purposes except flowage rights, said permission being contained in a letter dated January 27, 1954, copy of which is hereto annexed as Exhibit "B".

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That the SOUTH CAROLINA ELECTRIC & GAS COMPANY, in the State aforesaid, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid at and before the sealing of these presents, by W. A. Boyd in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said W. A. Boyd subject to the right of the Grantor, its successors and assigns, through its servants or agents, to have the right of ingress, egress and access in, to, over, across and out of the property herein conveyed for water control and other corporate purposes, and subject also to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height and size and necessary spillways on the Saluda River at or near Dreher's Shoals, whether such damage is caused by the flooding of the lands or injury to the drainage thereof, or by storage of water, or for any

other reason whatsoever, and the Grantee herein, for himself and for his heirs and assigns, hereby expressly released the Grantor, its successors and assigns from any and all liability for any and all damages that may be caused to said parcel or tract of land as aforesaid.

All that certain piece, parcel, or tract of land situate, lying and being in the County of Richland, State of South Carolina, bounded on the north, south, and west by lands of South Carolina Electric & Gas Company, and on the east by lands now or formerly of Morgan, and being more particularly described as follows:

Beginning at a concrete monument on the PHL of South Carolina Electric & Gas Company, where the PHL intersects the property line of lands now or formerly of Morgan, thence leaving the PHL and running along said property line S 20° 15' W for a distance of 133.5 feet, more or less, to an iron pipe on the 360 foot contour, thence following the contour S 25° 11' W for a distance of 57.9 feet, more or less, thence S 15° 02' W for a distance of 73.7 feet, more or less, thence S 39° 30' E for a distance of 73.3 feet, more or less, thence S 02° 42' W for a distance of 139.2 feet, more or less, thence S 56° 51' E for a distance of 55.0 feet, more or less, to an iron pipe, thence leaving the 360 foot contour and running N 53° 54' E for a distance of 105.7 feet, more or less, to an iron pipe on the PHL of South Carolina Electric & Gas Company, thence following the PHL N 26° 50' W for a distance of 206.5 feet, more or less, to point of beginning.

Containing 0.60 acres, more or less, and being a portion of a tract of land conveyed to Lexington Water Power Company by Mrs. J. W. Klockley under deed dated January 14, 1928, Option #598, and being further delineated as Parcel B on Partial Plat of Lands of Mrs. J. W. Klockley, Drawing #516-51 dated February 12, 1960, hereto annexed and made a part hereof as Exhibit A. Reserving, however, an easement for a 10 foot road running along the eastern boundary of the aforesaid described tract.

283-280

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said W. A. Boyd, his Heirs and Assigns forever, subject to the rights above reserved to the Grantor, its successors and assigns.

And the said SOUTH CAROLINA ELECTRIC & GAS COMPANY do hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said W. A. Boyd, his Heirs and Assigns, against itself and its successors lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF the SOUTH CAROLINA ELECTRIC & GAS COMPANY has caused these presents to be executed in its name by F. R. McHeekin, its Vice President, and by E. M. Simpson, its Secretary and its corporate seal to be hereto affixed this 29TH day of JULY in the year of our Lord, one thousand nine hundred and sixty and in the one hundred and eighty fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and
Delivered in Presence of;

SOUTH CAROLINA ELECTRIC & GAS
COMPANY

Wm. B. Kline
Witness

By F. R. McHeekin
Vice President

E. M. Simpson
Witness

E. M. Simpson
Secretary

CORPORATE SEAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PERSONALLY appeared before me H. M. BRYANT
who, on oath, says that he saw the within-named SOUTH CAROLINA
ELECTRIC & GAS COMPANY by T. B. McHoehip, its Vice President,
and E. M. Simpson, its Secretary, sign the within Deed, and
the said Corporation, by said officers, seal said Deed, and,
as its act and deed, deliver the same, and that he with
MARY B. KINLOCH witnessed the execution thereof.

H. M. Bryant
Witness

Sworn to before me, this 17TH
day of JULY A.D., 1964

Charles L. Walden
Notary Public for South Carolina

My commission expires at the
pleasure of the Governor.

NOTARIAL SEAL

DANIEL O'CONNELL

Title Abstractor

723 Darlington Street

Columbia, SC 29201

- Research performed in all 46 counties in South Carolina with a concentration in Richland County since 2002
- Full residential and commercial searches
- Right of way projects
- Training of abstractors
- Foreclosure work
- Asset and lien exams

PROFESSIONAL EXPERIENCE

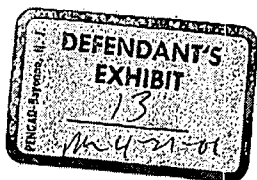
Absolute Title, LLC
Columbia, SC
April 2005 – Present

Indigo Title Corp.
Columbia, South Carolina
March 2004 – March 2005

Absolute Title, LLC
Columbia, SC
April 2002 – February 2004

Rogers, Townsend & Thomas, P.C.
Columbia, SC
July 1996 – March 2002

Professional Title Services
Columbia, SC
October 1992 – March 1996



Daniel Powers
(803) 513-5327

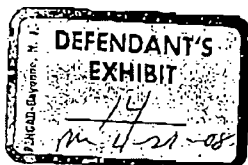
Invoice

Date	Invoice No.
October 17, 2005	1019

Bill to: Jim Stone P.O. Box 356 Ballentine, S.C. 29002

		Job Title
		Ellett Road Ballentine, S.C.
Description	Terms	Amount
Removing existing asphalt from driveway	Net 30	\$1200.00
Paid in Full 10-14-05 CHECK #4127 & #4128		
A Finance Charge of 1.5% per month (annual rate of 18%) will be added to all accounts unpaid.		TOTAL \$1200.00

Please remit payment to the above address. Thank you.



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2007-CP-40-0002

John D. Austin,)
)
)
 Plaintiff,)
)
vs.)
)
Jane Harden Stone,)
)
)
 Defendant.)

TRANSCRIPT OF RECORD

March 26, 2010

B E F O R E:

THE HONORABLE JOSEPH M. STRICKLAND
Master In Equity for Richland County

A P P E A R A N C E S:

Ronald R. Hall, Esquire
Attorney for the Plaintiff

William E. Booth, III, Esquire
Attorney for the Defendant

PATRICIA J. HARMAN, CCR

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

1

INDEX

PAGE

Motion

By Mr. Booth

4, 11

By Mr. Hall

10

No witnesses presented

No exhibits introduced into evidence

RULING OF THE COURT

12

CERTIFICATE OF REPORTER

13

Official Court Reporter
Master in Equity, Richland County
1701 Main Street · Post Office Box 192 (29202)
Columbia, South Carolina 29201

2

1 THE COURT: This is Civil Action No. 2007-CP-40-0002,
2 "John Austin vs. Jane Stone". I believe Mr. Booth's
3 Motion - - and it's obvious I can't rule from the bench
4 today - - but I was going to ask, Mr. Hall, did you submit
5 something in writing or---
6 MR. HALL: Yes, sir.
7 (Document handed up.)
8 THE COURT: Thank you, sir.
9 MR. HALL: I used the same numbering system that Mr.
10 Booth used on his Motion.
11 THE COURT: All right.
12 MR. BOOTH: Except for the first three where he said
13 it required no response, I think because those were just
14 statements of the status of the case.
15 MR. HALL: Jurisdiction.
16 MR. BOOTH: Yes.
17 THE COURT: Mr. Hall, your last paragraph you talked
18 about the fact that this easement could not be restricted
19 to 12 feet, as that would not allow sufficient right of
20 way for emergency vehicles.
21 MR. HALL: Yes, sir.
22 THE COURT: Is there some kind of ordinance, or code,
23 or zoning requirement that requires it to be more than 12
24 feet wide?
25 MR. HALL: That's what the fire people have told my

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

3

1 client, so I would think that any ruling on that would
2 have to say, okay, the easement has to comply with
3 whatever the width is that the fire and emergency vehicles
4 say it has to be.

5 THE COURT: Yes, sir?

6 MR. BOOTH: Your Honor, I have just a few minutes of
7 argument.

8 THE COURT: That's fine. I mean, is this all---

9 MR. BOOTH: And I'll talk about that too. Your
10 Honor, thank you for hearing me today on this Motion, and
11 Mr. Hall has now given us his response, and so I will just
12 go ahead and say a few words about my Motion. And the
13 information shows - - the record shows we had our trial
14 April 21, 2008; we had your Order issued on November 6,
15 2009.

16 And, Your Honor, in addition to the grounds that I
17 put in my Motion, and I would like to highlight a couple
18 of those grounds, and that has to do with the ownership of
19 the isthmus area - - if I pronounce that right - - and
20 also the width of the easement. You had mentioned that,
21 and I believe asked a question about that. So let me go
22 to the width question - - and looking at Mr. Hall's
23 response, he mentions in No. 4, again he pretty much
24 recites what's in the Order that the plat recorded May 4th
25 of 2007. And, again, I don't know if that's - - is that

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

4

1 one of our exhibits? I've got a different plat, one that
2 - - okay, I don't think this was introduced into evidence.
3 If Eric can come and look through the exhibits real quick.

4 But let me go ahead and address what was introduced
5 into evidence as Exhibit No. 5, introduced by Mr. Hall's
6 client. And what I did, Your Honor, is I took that plat
7 and went ahead and looked at the scale that was on the
8 plat, and determined that the maximum width of the entire
9 road as shown is 12.5. And I tried my best to highlight
10 that. And also I took the scale from here and
11 superimposed it to show that a 20-foot width started from
12 the exact edge of the boundary, judging probably which
13 would put it past the actual road itself, and in this case
14 would, I think, encumber the property a lot more than the
15 12 and a half foot.

16 So if we just follow the actual road itself it's
17 interesting, that the uniform 12 and a half all the way
18 from Elliott Drive here - - Elliott Road, excuse me - -
19 all the way up to this area here. And so we would submit
20 that the only evidence in the record is the 12 and a half.

21 Now, let me look at this other plat---

22 MR. HALL: That's Ms. Stone's plat.

23 MR. BOOTH: I understand. Yes, No. 3, Plaintiff's,
24 right? This was Plaintiff's No. 3.

25 MR. HALL: Yes.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

5

1 MR. BOOTH: I'll let Mr. Hall expand upon that, but I
2 don't see where it differs from what we have here. And
3 this also was not submitted - - or was not recorded in the
4 chain of title like Mr. Hall mentioned. This was actually
5 something that was done back when Mr. Stone and his wife
6 desired to subdivide their property so that the back piece
7 they had a separate tax map number. And, again, we're
8 talking about their property, not Mr. Austin's property.
9 They wanted to subdivide it, and so they did this. But
10 this was not in the chain of title. Again, this was done
11 in 2007, which I believe the lawsuit had already been
12 filed by then. But I don't know how this would be
13 relevant to showing what the width was. I believe the
14 case itself was filed - - so we submit that the plat that
15 was referred to in the record - - and again I did have the
16 record transcribed - - is just this plat, and it's 12 and
17 a half feet.

18 Now, of course, we don't believe that the evidence
19 demonstrated that Mr. Austin was entitled to a
20 prescriptive easement, but even if he was, the width of
21 that easement was definitely one of the issues before you
22 and I believe should only be 12, 12 and a half at the most
23 following that road.

24 Now as far as emergency vehicles, I don't remember
25 any discussion about an ordinance or emergency vehicle

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

6

1 information in the record, as I recall from reading it, so
2 I'm not sure where that's in the record.

3 So I really ask the Judge, ask you to modify your
4 Order to have a 12 or 12 and a half, because again that is
5 what is shown on this. And because it's a prescriptive
6 easement - - a prescription means that you have to show
7 actual use - - again that's the road, so the actual use
8 would be within the bounds of the road; so it kind of
9 matches up for a prescriptive use - - if you don't have a
10 declared easement with a width mentioned. So I believe it
11 should be reduced to 12 feet.

12 Now, I do have a couple of other issues, and I'll run
13 over those. The isthmus area that I talked about earlier
14 basically starts at the very end of the road - - and this
15 is the North area here, so it is pretty much at the North
16 end of the road - - the North area is blocked, but I can
17 see the tip of it right there.

18 Now, the ownership of the isthmus area was highly
19 contested during the trial - - disputed, I guess is a
20 better word - - and in my opinion the record shows that
21 the isthmus area was not owned by Mr. Austin; it was owned
22 by SCE&G. In fact, this survey itself says that. And
23 this was surveyed - - it says SCE&G owned the adjacent
24 property, which included the isthmus area.

25 Now that is important because the terminus of the

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

7

1 | easement - - prescriptive easement that was found in your
2 | Order, the question is does it terminate or have a
3 | terminus on Mr. Austin's property. You know, certainly
4 | you can have an easement that doesn't terminate, but that
5 | would fall under the classification of a gross easement
6 | rather than an appurtenant easement.

7 | And there is plenty of case law on that. I just
8 | picked out a couple of cases - - I think the "Tupper" case
9 | is the best one, because it did offer a prescriptive
10 | easement. And I will just mention that it's "Tupper vs.
11 | Dorchester County", cited by the Supreme Court. And it's
12 | at 326 South Carolina, 318. And that defines the need to
13 | have a terminus in order for it to be an appurtenant
14 | easement.

15 | So, it's my argument that the only evidence in the
16 | record was that that terminus or that isthmus area was
17 | owned by SCE&G. And I know that in the Order it refers to
18 | Mr. Cobb's testimony and Mr. Cobb's plat. But Mr. Cobb
19 | said unequivocally, "I do not render opinions about title
20 | and ownership". That was in the record.

21 | I, on the other hand, put in an expert, Mr.
22 | O'Connell, who had read all the deeds and records, and
23 | because of the way this thing was - - I guess, acquired by
24 | SCE&G's predecessor to make the lake, a guy named J.J.
25 | Lowman is the change of title for Mr. Austin's property.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

8

1 Mr. Lowman's property did not come that far; it did not
2 adjoin this property that is now owned by Jane Harden - -
3 Jane Harden Stone. So in this area, which is critical in
4 this case, we believe the record shows that it was owned
5 at the time probably by SCE&G, and therefore the only
6 easement that could have been granted, or found to be
7 existing would be a gross deed.

8 Now, the Order itself doesn't mention the type of
9 easement. I don't see the words "inheritance", "assess"
10 or "assign", within your Order that you issued, but I
11 would like to have the Order clarified that because of the
12 lack of terminus that it would only be a gross easement by
13 prescription - - again, all by prescription.

14 The argument that Mr. Hall made in his Complaint that
15 there was a granted easement, that there was an easement
16 by necessity, those were found not to exist in your Order.
17 So we come down to just the prescriptive easement. And
18 that has certain requirements - - 20 years of use, et
19 cetera, et cetera. And, therefore, again the use was over
20 this road, that had to go over SCE&G's property to get to
21 Mr. Austin's property.

22 And so we believe that the Order should be modified
23 to show that it is a gross easement, to be consistent with
24 the "Tupper" case. But, again, we argue also on the
25 Motion that there really wasn't enough evidence to have a

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

9

1 finding of a prescriptive easement - - lack of 20 years,
2 lack of hostile or open notorious use. So we still stand
3 by that, Judge, and that's all I have right now. Thank
4 you.

5 THE COURT: Thank you.

6 THE COURT: Mr. Hall, any response?

7 MR. HALL: Well, we take exception to going backwards
8 on this thing. Mr. Austin obtained his property in 1980.
9 He used this road continuously from 1980 until the time
10 Mr. Stone tried to put a berm across the road in 2005, so
11 that's a continuous use for 25 years. A prescriptive
12 easement is 20 years.

13 Also, his predecessor, Mr. Tokunaga, as the court
14 remembers, they bought the property in 1948 and they used
15 the same road, whatever.

16 As far as the width of it, I think it's going to have
17 to be whatever the Richland County emergency vehicle
18 ordinance is, in order for emergency vehicles to get up
19 and down the road.

20 And, of course, when the Defendant, Jane Harden
21 Stone, got her property from Betty Harden, her mother,
22 there was a clause in her Deed that said, "This conveyance
23 is made subject to any restrictions, zoning ordinance, or
24 easements that may appear of record on recorded plats or
25 on the premises." This is Ms. Betty Harden's plat, and of

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

10

1 course the Court will see the easement is there. And so
2 it's there, it's been there, it's been used for over a
3 period of 20 years, and we respectfully submit the order
4 should stand as it's written.

5 THE COURT: Yes, sir.

6 MR. BOOTH: Just one final comment, Judge.

7 THE COURT: Yes, sir?

8 MR. BOOTH: Again, I don't recall any evidence about
9 the ordinance, this final exhibit. I don't recall
10 anything about it.

11 Just to show you what 20 feet is, and the
12 encumbrance on the property - - I brought my measurement -
13 - clearly 20 feet is - - that's 20 feet. And that's twice
14 as much room as you need for a car, in my opinion. And
15 again, it's not consistent with this plat that was put
16 into evidence so---

17 THE COURT: Show me 12.5.

18 MR. BOOTH: Yes, sir. 12.5 is 150 inches, so it
19 would be right here (indicating). I went almost to your--

20 THE COURT: No, I understand. I note the
21 demonstration.

22 MR. BOOTH: Yes, sir. So we believe the 12 and a
23 half or 12 would be sufficient for ingress and egress
24 purposes for getting to this small piece of land that Mr.
25 Austin owns.

Official Court Reporter

Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

1 Thank you, Your Honor. That's all I have in
2 argument.
3 THE COURT: Thank you. I'll take the matter under
4 advisement.
5 MR. HALL: Thank you, sir.
6 THE COURT: You're welcome.
7 (Thereupon, the proceedings in this matter were
8 concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

-12-

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

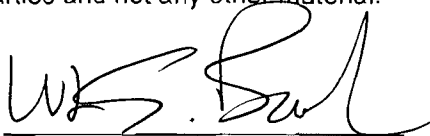
v.

Jane Harden Stone, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 15, 2010



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
Attorney for Appellant

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Joseph M. Strickland, Master in Equity

Case No. 07-CP-40-0002

John D. Austin, ... Respondent

v.

Jane Harden Stone, ... Appellant

**RECORD ON APPEAL
OVERSIZED EXHIBITS FILED SEPARATELY**

Ronald R. Hall, Esquire
Hall & Hall Attorneys at Law
1055 Sunset Boulevard
West Columbia, SC 29169
(803) 791-3196 (T)
(803) 791-8754 (F)

William E. Booth III, Esquire
Booth Law Firm, LLC
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(803) 791-9211 (T)
(803) 791-3159 (F)
Attorney for Appellant