

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County

Appellate Case No. 2025-001719

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

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

v.

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

INITIAL BRIEF OF RESPONDENT

[Signature Block to Follow]

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT PROPERLY APPLY THE STATUTE OF LIMITATIONS TO TIME BAR THE APPELANTS' CLAIMS?

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- III. DID THE LOWER COURT PROPERLY GRANT SUMMARY JUDGMENT AFTER FINDING THE ROAD WAS PROPERLY DEDICATED AND ACCEPTED?

STATEMENT OF THE CASE

This matter involves an appeal by Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons (hereinafter “Appellants”) challenging the Order granting summary judgment to the County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC (hereinafter “Respondents”). (Order of Judge Scarborough Grant Summ. J., July 7, 2025, at p. 1)

On February 23, 2023, Henry Bailem, IV, filed the original action alleging causes of action for declaratory judgement, adverse possession, and inverse condemnation against the County of Charleston (the “County”) and Town of Mount Pleasant (the “Town”). On June 6, 2024, an amended complaint was filed adding additional party plaintiffs Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons and defendants DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC (“DRB”), along with eleven other individuals and John and Jane Doe, and adding new causes of action for quiet title, trespass, and invasion of privacy. The County filed a motion to dismiss, which was granted in part, dismissing Appellants’ causes of action for adverse possession, inverse condemnation, and trespass. (Order of Judge Scarborough Grant Mot. Dismiss, February 3, 2025, at p. 2)¹ Respondents filed motions for summary judgment regarding the remaining causes of action for declaratory judgment and quiet title. A hearing on the motions came before the Honorable Judge Mikell R. Scarborough on June 2, 2025. On July 8, 2025, Judge Scarborough issued a final order granting summary judgment in favor of Respondents. In response, Appellants filed a motion to reconsider which was subsequently denied by Judge Scarborough on August 1,

¹ Appellants did not appeal the lower court’s dismissal of their claims for adverse possession, inverse condemnation, and trespass against Respondent County of Charleston.

2025. (Order of Judge Scarborough Den. Mot. Recons., August 1, 2025, at p. 1) On August 28, 2025, Appellants timely filed and served a notice of appeal to this Court, seeking review of decisions of the lower court.

STATEMENT OF THE FACTS

John Ballam Road is a fifty (50) foot public right of way located within the jurisdiction of the Town of Mount Pleasant. John Ballam Road has existed as a platted right of way dedicated to the public since 1986. In 1995, the Town annexed John Ballam Road along with several adjacent parcels into its municipal boundary. Following annexation, John Ballam Road was constructed by the County from an earthen path to a rock road. John Ballam Road was subsequently paved in 2002 becoming an asphalt road, maintained by the Town, which is the current state of John Ballam Road today. All of the construction and improvements to John Ballam Road were financed with the expenditure of public funds from the Charleston County Transportation Committee “C” Funds.

I. The 1986 Plat and Public Dedication of John Ballam Road.

On October 24, 1986, a subdivision plat (the “Plat”) showing the lands of John Ballam Estate was recorded with the Charleston County Register of Deeds in Plat Book BK, Page 135. (*See* Resp’t Mem. Supp. Ex. A; *see also*, Resp’t Mem. Supp. Ex. B)

Prior to its recordation, on October 7, 1986, the Plat was approved by Charleston County Council and the Charleston County Planning Board, stamped an “Approved Final Plat,” and signed by Charleston County’s Clerk of Council and Director of Planning. (*Id.*) The Plat was prepared, signed, and stamped by James G. Pennington, RLS. (*Id.*)

The Plat created five (5) lots from the lands of the John Ballam Estate, dedicated a twenty (20) foot drainage easement along the eastern-most boundary of lot 1 “to the use of the public forever,” and dedicated a fifty (50) foot right of way entitled John Ballam Road along the southern-

most boundary of the properties “for the use of the public forever.” (*Id.*) As required for recording, the owners of the property—Henry Ballam, Jr., Rebecca Jefferson, and Estelle Capers²—signed the Plat. (*Id.*) For nearly forty (40) years, the Plat has remained, undisturbed, as the only recorded plat for the Appellants’ properties and John Ballam Road.

Following the Plat’s recordation in October 1986, the Charleston County Assessor’s Office separated the publicly dedicated fifty (50) foot right of way from the created lots, assigned tax map numbers for the lots, but not the right of way, and no longer assessed *ad valorem* taxes on the right of way. (*See Resp’t Mem. Supp. Ex. C*) Because the Heirs of John Ballam dedicated John Ballam Road as a fifty (50) foot right of way “for the use of the public forever,” they no longer owed *ad valorem* taxes on the right of way. (*See id.*) This change was reflected in the County’s tax maps. (*See id.*)

In the two years following recordation of the Plat, the Heirs of John Ballam conveyed the five (5) lots they created to various Bailem family members and their spouses, most of whom are appellants in this action. (*See Resp’t Mem. Supp. Ex. D*)³ Importantly, the deeds from the Heirs of John Ballam reference and convey each lot through, and subject to, the Plat. (*See id.*) The deeds further describe each lot as “BUTTING AND BOUNDING” on John Ballam Road, so as not to include the publicly dedicated right of way. (*Id.*)

II. The County’s Acceptance and Construction of John Ballam Road.

On August 16, 1994, Charleston County Council (“County Council”) accepted John Ballam Road (the “Road”) into the County’s road system and approved the Road for construction

² Hereinafter, collectively referred to as the “Heirs of John Ballam.”

³ Henry Bailem, IV was conveyed lot 5 by deed on January 26, 1988. Joseph and Sheila Bailem were conveyed lot 4 by deed on January 26, 1988. Michael Jefferson, Sr. and Diane Jefferson were conveyed lot 3 by deed on January 26, 1988. Florence and Robert Coakley were conveyed lot 2 by deed on January 26, 1988. Abraham and Ann Bailem Simmons were conveyed lot 1 by deed on December 21, 1987.

(the “Council Action”). (See Resp’t Mem. Supp. Ex. E) On April 11, 1995, Mount Pleasant Town Council annexed the Road into the Town through Ordinance No. 95005. At this point, the County began surveying the Road in anticipation of coming improvements. (See Linker Dep. 35:6-16; see also Linker Dep. 45:13-17) On March 11, 1996, at a meeting of the Charleston County Transportation Committee (the “CTC”), “C” Funds were appropriated for construction of the Road. (See Resp’t Mem. Supp. Ex. H)

Upon acceptance and approval for its construction, the County began preliminary engineering design and construction planning for the Road. (See Linker Dep. 61:1-4) The engineering plans called for the Road to be constructed to County standard, which took the Road from its previous state as an earthen path to a rock road with necessary drainage improvements. Several issues arose during the preliminary planning and design work for the Road, to include the removal of an active well within the right of way and reconstruction of the adjoining roadside ditch. Appellants Henry Bailem, IV and Diane Jefferson were directly involved in the County’s efforts to address these issues. (See H. Bailem Dep. 75:1-15; see also D. Jefferson Dep. 79:17-23) Using “C” Funds, the County initially improved the Road with rock in 1998 and further improved the Road by asphalt paving in 2002. The Road remains an asphalt road within the jurisdiction and maintenance of the Town to this day. (See Linker Dep. 50:12-18)

STANDARD OF REVIEW

On appeal from a grant of summary judgment, this Court “applies the same standard as that required for the circuit court under rule 56(c), *SCRCP*.” *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), *SCRCP*; see also *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). The

party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Rule 56 mandates the entry of summary judgment after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. *See Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). A “genuine issue as to [a] material fact” is not satisfied by a “mere scintilla of evidence.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Instead, a genuine issue of fact provides “a meaningful factual basis on which a factfinder could” find for the nonmoving party. *Id.* at 464, 892 S.E.2d. at 302.

ARGUMENT⁴

I. BECAUSE THIS IS AN ACTION TO RECOVER REAL PROPERTY, THE LOWER COURT PROPERLY APPLIED THE STATUTE OF LIMITATIONS UNDER S.C. CODE ANN. § 15-3-340.

The lower court properly granted summary judgment because Appellants' action is barred by the ten-year statute of limitations under South Carolina Code Ann. § 15-3-340.

South Carolina Code Ann. § 15-3-340 states:

No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.

S.C. Code Ann. § 15-3-340. The “purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.” *Logan v. Cherokee*

⁴ Respondent would also incorporate by reference and adopt any arguments made by the Town of Mount Pleasant and DRB Group South Carolina, LLC in their respective briefs.

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

Here, Appellants filed their original complaint against the County on February 23, 2023; therefore, the latest date upon which they must have been “seized or possessed” of the Road was February 23, 2013. However, as correctly recognized by the lower court, neither Appellants, their predecessors in title, nor their ancestors have been seized or possessed of the Road long before February 23, 2013.

The Heirs of John Ballam dedicated the Road to the use of the public forever by way of the Plat. The Plat is dated July 23, 1986, and recorded October 24, 1986, in the Register of Deeds Office for Charleston County. (*See Resp’t Mem. Supp. Ex. A*) It has been twenty-nine years since Charleston County Council formally accepted the dedication of the Road on August 16, 1994 until the filing of this action. (*See Resp’t Mem. Supp. Ex. E*) It has been twenty-eight years since the Town annexed the Road in 1995. Those periods of time, any one of which could serve as a start to Appellants’ ten-year statute of limitations, passed without any claims by Appellants that the Road is not a public road.

Nevertheless, most problematic to Appellants claims is the fact that they failed to bring any legal action to recover the real property or assert ownership of the Road following the expenditure of public “C” Funds for its improvement and paving from 1998 to 2002. Counsel for Appellants concedes that in 2002 “when [the County] paved the road, [Appellants] had a pretty good idea that there was a problem with the County.” (Mot. Hr’g Tr. 44:8–23) At the very latest, because Appellants knew in 2002 “that there was a problem with the County,” the ten-year statute of limitations would have run in 2012, eleven (11) years prior to the filing of this action.

Appellants argue that the lower court erred in applying the ten-year statute of limitations because their claims are not to recover real property, but rather to establish ownership. Appellants go on to suggest that they have never been, and are not currently, seized or possessed of the Road. However, “possession is presumed to follow the legal title to land.” *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987). Appellants were never seized and possessed of the Road by virtue of the deeds they received from the Heirs of John Ballam in 1987 and 1988, each of which confirm that the lots conveyed are “BUTTING AND BOUNDING,” not inclusive of, the Road. (*See* Resp’t Mem. Supp. Ex. D) A plain reading of the deeds shows that the Appellants do not in fact have title to the Road and never had title.

Even if this Court is inclined to believe Appellants have a claim to title to the Road, neither Appellants, their predecessors in title, nor their ancestors have been seized or possessed of the Road for a period well over ten years. At the earliest, the predecessors in title to Appellants were seized and possessed of the Road beginning in 1986 when Henry Bailem, Rebecca Jefferson, and Estelle Capers dedicated the Road to the public. At the latest, Appellants were seized and possessed of the Road in 2002 when Appellants self-admittedly knew “that there was a problem

with the County” following the paving of the Road with public “C” funds by the County. (Mot. Hr’g Tr. 44:8–23)

Therefore, the lower court properly granted summary judgment pursuant to the statute of limitations under S.C. Code Ann. § 15-3-340.⁵

II. BECAUSE APPELLANTS UNREASONABLY DELAYED ASSERTING RIGHTS IN THIS MATTER TO THE DETRIMENT OF RESPONDENT COUNTY OF CHARLESTON, THE LOWER COURT PROPERLY APPLIED THE DOCTRINE OF LACHES.

In addition to the statute of limitations *supra* § I, the lower court properly granted summary judgment pursuant to the doctrine of laches. This Court should concur with the rationale of the lower court, which mirrors the South Carolina Supreme Court’s decision upholding summary judgment in *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010), applying the doctrine of laches to dismiss this action.

“Laches is an equitable doctrine defined as neglect for an unreasonable and unexplained length of time, under the circumstances affording opportunity for diligence, to do what in law should have been done.” *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007).

“In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed in its assertion of a right, resulting in prejudice to the defendant.” *Id.* “Laches

⁵ In the alternative, Appellants are barred by the three (3) year statute of limitations for fraud pursuant to S.C. Code Ann. § 15-3-530. Appellants contend that the dedication was fraudulent and the Plat was erroneously recorded. *See* Am. Compl. ¶ 26; *see also*, Pls.[‘] Am. Compl. Ex. 1(C). To the extent Appellants allege fraud in the creation of the Plat, they have a heightened burden. The Supreme Court held that fraud is never presumed and the party asserting fraud has the very heavy burden of proof of such claim by clear, cogent and convincing evidence. *See Watson v. Wall*, 239 S.C. 109, 113, 121 S.E.2d 427, 429 (1961). When making this claim regarding plats and deeds, parties are nonetheless “charged with constructive notice of instruments recorded in their chain of title.” *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71 558 S.E.2d 902, 909 (Ct. App. 2001). As required by *Watson*, Appellants have the burden of proving fraud by clear, cogent and convincing evidence. Despite that, the evidence offered is not sufficient to create a genuine issue of fact, much less to establish fraud or error. Additionally, the statute of limitations for fraud is three (3) years, and as such, Appellants’ claims on the basis of fraud are time barred. *See* S.C. Code Ann. § 15-3-530; *see also*, *McKinnon v. Summers*, 224 S.C. 331, 79 S.E.2d 146 (1953). Therefore, aside from the ten-year statute of limitations under S.C. Code Ann. § 15-3-340, the lower court was also correct in granting summary judgment based upon the three-year statute of limitations under S.C. Code Ann. § 15-3-530.

is an equitable doctrine which arises upon the failure to assert a known right.” *Id.* at 85, 650 S.E.2d at 670. “Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.” *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (2004). “The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice.” *Id.*

In *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010), the Supreme Court found the claims of petitioner Robinson were barred by laches and upheld the trial court’s grant of summary judgment on that basis. In that case, petitioner heirs brought a quiet title action claiming that deeds and a previous quiet title action were procured by fraud. *See id.* The deeds in question were from 1946, and the quiet title action resolved in 1966; however, in 2005, petitioner heirs challenged the validity of those deeds and the quiet title action for the first time. *See id.* The Court held that the petitioners’ claims were barred by the doctrine of laches, reasoning that the appellants waited thirty-nine years to challenge the prior quiet title action, and that while appellants claimed not to have knowledge of that action, their own affidavits discounted that claim. *Id.* at 657, 698 S.E.2d at 236. The Court further relied on the fact that the documents granting title to the defendants (deeds and the quiet title action) were “publicly-recorded and documented,” thus “it was an unreasonable length of time for Petitioners to delay in instituting” the action. *Id.* The Court went on to state that “Respondent would be undoubtedly prejudiced if Petitioner’s claim is not barred by laches given she purchased her lot for significant consideration and has been in possession of it since 2001.” *Id.*

Here, similar to the facts in *Robinson*, Appellants were unacceptably neglectful in asserting their claims, and the unreasonable delay in asserting any claims was prejudicial to Respondents.

Therefore, the lower court’s grant of summary judgment with respect to laches should be upheld. Much like appellants in *Robinson*, who waited several decades to challenge the quiet title action and alleged fraudulent deeds, Appellants here have waited nearly forty years to challenge the dedication on the Plat, similarly claiming fraud as the basis for invalidation. Appellants, aware of the Plat’s dedication language since at least the 1990s,⁶ brought no actions to challenge the Plat or its dedication until 2023. At the latest, by Appellants’ own admission, they knew “that there was a problem with the County” following the Road’s improvement first to rock, then to being fully paved in 2002, and yet still waited over 21 years to file this action. (Mot. Hr’g Tr. 44:8–23)

At the same time, Respondents face substantial prejudice in the amounts of time, money, and resources spent to construct, improve, and maintain the Road in reliance on the Plat’s dedication language and the County’s acceptance of the same. The County constructed the Road from an earthen path into a rock road and further improved the Road by paving it to an asphalt road, from 1998 to 2002. (*See Linker Dep. 20:10-23*) The Charleston County Assessor has relied on the public dedication and ceased levying *ad valorem* taxes on the Road since recordation of the Plat in 1986. (*See Resp’t Mem. Supp. Ex. C*) Despite Appellants’ recent assertions and belief, the public has relied on this public dedication ever since the Plat’s recording. In fact, an adjacent landowner and a public utility filed plats in the Register of Deeds Office that rely on the representation that the Road is a fifty foot publicly dedicated right of way. (*See Resp’t Mem. Supp. Ex. U*)⁷ This is to say nothing of the resources spent by Respondent DRB to develop adjacent parcels in reliance on the Plat, which is detailed more thoroughly in its own brief.

⁶ Appellants are also charged with “constructive notice of instruments recorded in their chain of title.” *Carolina Land Co., Inc. v. Bland*, 265 S.C. 92, 107, 217 S.E.2d 16, 20 (1975) Therefore, Appellants have been on notice of the public dedication on the Plat since its recording in 1986.

⁷ The McManus family, predecessor in title to the parcels currently owed by DRB, recorded a plat titled: “Plat of Three Tracts of Land Owned By McAstors MacManus & McAstors McManus, Jr. Located Christ Church Parish Charleston County, South Carolina,” dated June 13, 1988, and recorded April 7, 1989, in Plat Book BV, Page 082; the Mount Pleasant Waterworks and Sewer Commission recorded a plat titled: “Plat of Utility Easements of Various

Appellants attempt to shift the blame in their delay over bringing this action to the County and the Town of Mount Pleasant, claiming that they were led to believe that the Road was private, not public. However, as has been pointed out above, it is clear by Appellants' own admission that since at least 2002, when the Road was paved, Appellants were on notice that the Road was not private. (Mot. Hr'g Tr. 44:8–23) Appellants waiting 21 years after the Road was paved to bring this action is inexcusable and would stand to give them a substantial windfall—a paved private road that they have not paid taxes on since 1986 and which was constructed and maintained for decades at the expense of these Respondents.

Thus, Respondents met the elements of laches by showing 1) delay, 2) unreasonable delay, and 3) prejudice. At the latest, delay occurred when Appellants failed to bring any claim when the Road was dedicated and accepted, and also following the Road's improvement from 1998 through 2002. This delay was unreasonable because Appellants were unacceptably neglectful in waiting until 2023, 21 years after paving of the Road, despite admitting there was an issue, to assert their claims disputing ownership. As a result of Appellants' delay, Respondents County, Town and DRB have been prejudiced by the amounts of money, time, and resources spent to design, construct and improve the Road, as well as the adjacent parcels. Therefore, the lower court correctly applied the doctrine of laches in dismissing Appellants' claims.

Widths Situate on Undedicated Brentley Road, Undedicated McManus Road John Ballam Road Public 50' Right-Of-Way and David Green Road Public 50' Ingress-Egress Easement About to be Acquired by Mount Pleasant Waterworks and Sewer Commission," dated November 1, 1995, and recorded February 21, 1997, in Plat Book EB, Page 614, both Plats recorded in the Register of Deeds Office for Charleston County, South Carolina.

III. BECAUSE THE FACIALLY VALID AND UNAMBIGUOUS PLAT DEDICATED THE ROAD TO THE PUBLIC, AND BECAUSE THAT PUBLIC DEDICATION WAS ACCEPTED BY FORMAL ACTION OF CHARLESTON COUNTY COUNCIL ALONG WITH THE SPENDING OF PUBLIC MONIES TO IMPROVE THE ROAD, THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT REGARDING DEDICATION AND ACCEPTANCE.

As argued *supra* §§ I and II, the lower court correctly applied the doctrine of laches and the statute of limitations in dismissing Appellants' claims, and therefore, no additional grounds are necessary to affirm the lower court's grant of summary judgment. However, the lower court was also correct in granting summary judgment by finding that John Ballam Road was properly dedicated by the Heirs of John Ballam and accepted by the public as a public road.

The standard process of dedicating a road for public use requires "(1) dedicat[ing] the property to public use and (2) acceptance of that property by the public." *Vick v. S.C. DOT*, 347 S.C. 470, 477, 556 S.E.2d 693, 697 (Ct. App. 2001). As established below, this Court should affirm the lower court's grant of summary judgment because Respondents, as a matter of law, have established that the Road was publicly dedicated by the Heirs of John Ballam in October 1986 through the Plat, subsequently accepted by County Council vote in August 1994, reaffirmed by Town Council vote of annexation in April 1995 and further accepted through the expenditure of public "C" Funds to improve the Road.

A. Express Dedication

Public dedication must be strict, cogent, and convincing. *Van Blarcum v. City of N. Myrtle Beach*, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999). "Any act or declaration on the part of the dedicator which fully demonstrates his intention to appropriate [his] land to public use, or from which a reasonable inference of his intention to dedicate may be drawn, is sufficient." *Town of Kingstree v. Chapman*, 405 S.C. 282, 302, 747 S.E.2d 494, 505 (2013) (quoting *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988)). The Supreme Court held that the

dedication of property through a plat is not merely an offer to the public. *See Helsel v. N. Myrtle Beach*, 307 S.C. 24, 28, 413 S.E.2d 821, 824 (1992). Accordingly, when a landowner records a plat and devises property referencing that plat, absent any contrary evidence, the owner manifests the intent to dedicate any such common areas to the public. *See id.*; *see also Van Blarcum* at 450 523 S.E.2d at 488; *Town of Kingstree*, at 303 747 S.E.2d at 505. While intent of the property owner must be clear, it should be deduced from the plat itself because that plat serves as the best evidence. *Nelson v. Pac. County*, 36 Wn. App. 17, 20, 671 P.2d 785, 787-88 (Wash. Ct. App. 1983).⁸

Here, in October 1986, the Heirs of John Ballam recorded the Plat, subdividing their property and dedicating a fifty (50) foot right of way “FOR THE USE OF THE PUBLIC FOREVER.” (*See Resp’t Mem. Supp. Ex. A*) The Plat was prepared, stamped and signed by James Pennington, RLS, who was hired to do so on behalf of the Heirs of John Ballam. (*See id.*) The Plat was approved by County Council, stamped and signed by the Clerk of Council and the County’s Director of Planning. (*See id.*) Appellants, who are not the Heirs of John Ballam and were not the owners at time of dedication, admit that the Plat contains the public dedication statement and that the Plat was recorded in the Register of Deeds Office. (*See Resp’t Mem. Supp. Ex. L*) Subsequent to the Plat’s recordation, the Heirs of John Ballam conveyed each of the five (5) lots created thereunder, specifically describing each lot as “BUTTING AND BOUNDING” on the Road, again, further demonstrating the intent and understanding of the Heirs of John Ballam that Road was a publicly dedicated right of way and not to be conveyed to Appellants. (*See Resp’t Mem. Supp. Ex. D*) Therefore, as is clear from the unambiguous language of the Plat, there is strict,

⁸ Once a plat is part of the official public records of the county, it must be given respect and cannot be lightly disregarded. *Wayne v. Webb*, 418 S.W.2d 748, 749 (Ky. Ct. App. 1967). “The dignity and majesty of public records increase with age, and the longer the period of time elapsing between their date and the time validity is questioned the greater the dignity, so that after the passage of a sufficient period of time such public records may become absolute and unassailable.” *Id.* at 750, (quoting *Moore v. Commonwealth, Ky.*, 407 S.W.2d 136, 137 (Ky. Ct. App. 1966)).

cogent, and convincing evidence that the Heirs of John Ballam made an unambiguous dedication of the Road to the use of the public forever, and the lower court did not err in finding a valid dedication was made.⁹

Appellants argue that the lower court erred in finding that Respondents met their burden to establish a valid dedication, pointing to a letter from the Clerk of Council following County Council's approval of the Plat in October 1986. (*See* Resp't Mem. Supp. Ex. T) The letter, dated October 10, 1986, served to notify Mr. Pennington that County Council approved the subdivision Plat, along with a variance. (*See id.*) The letter goes on to describe the Plat as: "a division of estate property, and a 50' right-of-way will be dedicated to the property owners." (*Id.*) Appellants attempt to use this language to discredit and invalidate the Plat's public dedication of the Road—the Court should decline any such invitation as the lower court did.

As an initial matter, as the lower court correctly pointed out, the clear and unambiguous language of the Plat is controlling, and Appellants' attempt to use extrinsic evidence to cast doubt on that clear and unambiguous language is improper. Additionally, the letter is not authoritative, but rather, an administrative notice sent to Mr. Pennington three (3) days following Council's October 7, 1986 action. (*See* Linker Dep. 59-60:10-3) The authoritative document is the Plat—albeit, inaccurately described by the Clerk of Council in her letter. The Plat was approved for recording by County Council, stamped and signed by the Clerk of Council and the Director of Planning on the same day, prepared, signed, and stamped by Mr. Pennington, signed by the Heirs of John Ballam, and recorded for nearly forty years with the Charleston County Register of Deeds. (*See id.*; *see also* Resp't Mem. Supp. Ex. A) Therefore, the lower court was correct in finding the

⁹ The lower court was also correct in applying South Carolina case law regarding deed interpretation to the dedication language of the Plat, holding that because the dedication language of the Plat was unambiguous, "extrinsic evidence to contradict the plain language" was improper. (Order Grant Summ. at p. 15 (citing *Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013))

unambiguous language of the Plat, dedicating the Road to the use of the public forever, was sufficient for Respondents to meet their burden in establishing a valid dedication.

Appellants also argue that the lower court erred in finding a valid dedication because they allege that the signatures on the Plat are invalid and unwitnessed. But Appellants' theories as to how and why the Plat was recorded with a public dedication amount to nothing more than rank speculation, unsupported by admissible evidence to create an issue of material fact. Here, all but one of the Appellants admit that they do not have personal knowledge of the Plat or how it came to be signed by the Heirs of John Ballam, and therefore, offer no admissible evidence to challenge its validity.¹⁰ Mrs. Ann Bailem Simmons is the only Appellant who testified to having personal knowledge regarding the signing of the Plat. During her deposition, when shown the Plat, Mrs. Simmons testified that she was present and witnessed the Heirs of John Ballam sign:

Q: Were you present when these signatures were affixed to [the Plat], Henry Bailem, Rebecca Jefferson and Estelle Capers?

A: Yes, I was there. Yes.

Q: You were there when those signatures when on [the Plat]?

A: Yes.

Q: Okay. You saw them sign [the Plat]?

A: [The Plat]? Well, I'll say it like this: When they signed, I don't know. I know that this plat was signed.

Q: Let me ask it a different way. I just want to make sure we're on the same page. Were you present when Henry Bailem, Rebecca Jefferson, and Estelle Capers signed [the Plat] that is shown on Exhibit 4?

¹⁰ Diane Jefferson Dep. at pp. 109-112.
Henry Bailem, IV Dep. at pp. 77-79, and 92.
Marilyn Bailem Dep. at pp. 24-25.
Michael Jefferson Dep. at pp. 7, and 10-11.
Rashica Coakley Dep. at pp. 5-6.
Sheila Bailem Dep. at pp. 6-7, and 13-14.

A: Right. Everything was signed for everyone –

Q: Okay.

A: --there. Yes.

(See Simmons Dep. 7-8:16-9; see also, Resp't Mem. Supp. Ex. A, marked as Ex. 4 to Simmons Dep.) Thus, even if extrinsic evidence could be offered to cast doubt on the Plat's unambiguous public dedication, Appellants offer no admissible evidence beyond speculative theories to contradict its validity. As for Appellants' contention that the signatures on the Plat were unwitnessed, there is no requirement under South Carolina law that requires a dedication of property by plat be witnessed. Therefore, the lack of witness signatures on the Plat is not fatal to any claim of express dedication.

Appellants do not offer evidence sufficient to create a genuine issue of fact as to the validity of the Plat. Instead, some Appellants rest on speculative theories, unsupported by evidence, to suggest that the Plat was forged, recorded in error or by other nefarious means. Indeed, one Appellant testified, without a shred of evidentiary support, that perhaps someone in a "back room" of the Register of Deeds Office placed the signatures of the Heirs of John Ballam on the Plat. (D. Jefferson Dep. 111:10-24) These unsubstantiated theories are not enough to create a genuine issue of fact for trial by upending the facially valid and unambiguous Plat, which has remained recorded and undisturbed for nearly four decades. *Kitchen Planners, LLC v. Friedman*, at 464, 892 S.E.2d at 302. (clarifying that a genuine issue of fact is created by "a meaningful factual basis on which a factfinder could" find for the nonmoving party)¹¹

¹¹ As argued supra § I, to the extent Appellants allege fraud in the creation or execution of the Plat, they have a heightened burden. The Supreme Court held that fraud is never presumed and the party asserting fraud has the very heavy burden of proof of such claim by clear, cogent and convincing evidence. See n.5; see also *Watson v. Wall*, 239 S.C. 109, 113, 121 S.E.2d 427, 429 (1961).

Therefore, because the County's proof of public dedication is strict, cogent, and convincing, and because Appellants offer no admissible factual basis to create a genuine issue of fact otherwise, the lower court correctly granted summary judgment in favor of Respondents on the issue of dedication.

B. Implied Dedication

As argued above, the lower court properly found there was express dedication of the Road by the unambiguous language of the Plat. But beyond the express dedication of the Plat, the lower court was also correct in finding an implied dedication of the Road.

To find an implied dedication:

No particular formality is necessary An intention to dedicate may be implied from the circumstances. Any act or declaration on the part of the dedicator which fully demonstrates his intention to appropriate his land to public use, or from which a reasonable inference of his intent to dedicate may be drawn, is sufficient. South Carolina law recognizes two types of implied dedication- one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises... from an abandonment to or acquiescence in public use.

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

Appellants took title to their respective lots by reference to the Plat, thus impliedly dedicating the Road to the public by the Heirs of John Ballam. "Where a deed describes land as is shown on a certain plat, such becomes a part of the deed. It is generally held that when the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public." *Carolina Land Co., Inc. v. Bland*, 265 S.C. 92, 105, 217 S.E.2d 16, 19 (1975) (emphasis added).

As between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not

accepted by the public authorities. *Id.* at 106. In *Helsel*, the court noted that the deed conveying the lot incorporated the applicable plat by reference. 307 S.C. at 28, 413 S.E.2d at 824. The Court held that “where a deed describes land as shown on a certain plat, the plat becomes part of the deed. The Helsels therefore are charged with knowledge that the street end had been offered for dedication to the public and could not be converted to private use. The Helsels also are charged with knowledge that they purchased nothing outside the boundaries of Lot 12.” *Id.*

In taking title to their respective lots, the Appellants took by reference to the Plat. Each and every deed for the five Bailem lots conveyed the land “shown on a plat by James G. Pennington... recorded in Book BK, Page 135, of the RMC Office for Charleston County... subject to the easements as shown on said plat.” The Plat describes the Road as “John Ballam Road 50' R/W.” It does not describe the Road as a fifty (50) foot private easement. The Plat became part of the deed to each of the Appellants and their predecessors in title. *Carolina Land*, at 105, 217 S.E.2d at 19. These deeds were executed in the late 1980s, almost 40 years ago. “Property owners are charged with constructive notice of instruments recorded in their chain of title.” *Id.* at 107, 217 S.E.2d at 20. The Road has therefore been dedicated to the public, even without the written dedication, since the first conveyance of one of the lots.

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

Furthermore, evidence of the intent to dedicate the Road is found in the legal description of each lot, all of which states that it is “BUTTING AND BOUNDED” by John Ballam Road. (*See* Resp’t Mem. Supp. Ex. D) Appellants simply do not own the Road by the express terms of the deeds. Despite this change in belief in an apparent attempt to prevent Respondents from using the public road and stop Respondent DRB for developing its adjacent parcel that abuts the Road, Appellants have not acted as if the Road is theirs. On numerous occasions, Appellants have admitted to the public status of the Road and acquiesced in the public authorities’ use, including through a work order which states, “Resident would like ditch cleaned out since it is now a Town Road.” (H. Bailem Dep. Ex. 14) Mrs. Diane Jefferson admitted during her deposition that she made these requests to have ditch maintained on a regular basis. (D. Jefferson Dep. 24:19) Mrs. Marilyn Bailem conceded that she believes the Town had a duty to clean out the ditches within the Road right of way. (M. Bailem Dep. 27:7) To further undermine Appellants claim, when directly asked about ownership of the Road Mr. Henry Bailem admitted, “Well, it’s their road. What would we have to do?” (H. Bailem Dep. 39:16) Mr. Bailem also admitted that he has done nothing to maintain the Road. *Id.* It is clear Appellants want the public authorities to provide services with taxpayer money which are only available on public roads yet claim, albeit incorrectly, that they own the Road as their private property.

Accordingly, even if the Court were to find that the dedication on the Plat was somehow ineffective, the Heirs of John Ballam incorporated the Plat into the deeds to Appellants, or their predecessors in title. Thus, Appellants were charged with knowledge of the dedication and cannot now complain. The fact that the dedication is on the Plat, which was then incorporated into the Appellants’ deeds, only amplifies the inevitable conclusion that the Road has been dedicated. Here, Appellants’ and their predecessors in title have acquiesced to public uses of the Road. Therefore,

even without the written, signed dedication on the Plat, the lower court correctly held an implied dedication exists.

C. Acceptance

The second step in perfecting a dedication is public acceptance which may be formal or implied. *See Town of Kingstree*, at 302, 747 S.E.2d at 504. Implied acceptance may be found if there has been public maintenance of the road, any portion of property has been excluded from tax assessment, or the property deed delineates a public road. *See id.* at 303, 747 S.E.2d at 504. In *Helsel*, the Supreme Court affirmed the decision of the circuit court finding that defendant city perfected dedication through both formal acceptance and implied acceptance. *See Helsel v. N. Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (1992). The Supreme Court held that formal acceptance occurred with the two resolutions adopted by the city, but also found that implied acceptance had already occurred prior to that through the public use and maintenance of the road by public authorities. *See id.*

Appellants' case, like the *Helsel* case, demonstrates both formal and implied acceptance of the dedication. The Council Action of August 1994 was the formal acceptance of the Road by the County, much like the city's resolutions in *Helsel*. (*See Resp't Mem. Supp. Ex. E*) Much like the City action in *Helsel*, County Council's formal acceptance of the road in its 1994 Council Action is sufficient to demonstrate acceptance. Appellants argue that the County's formal acceptance of the Road was defective because there was not a formal demand by Appellants requesting the dedication be accepted. However, acceptance of a public dedication is purely in the discretion of the local government on behalf of the public and requires no further act or petition from the grantee, in this case the Heirs of John Ballam.

Appellants argue that any acceptance was ambiguous or conditional. To further this claim, Appellants misconstrue the testimony of the County's Rule 30(b)(6) designee, arguing that because of language on the Plat and subsequent communications, acceptance could only come after some further action on the part of Appellants to improve the Road to County standard. But this argument ignores the fact that once the public dedication was made on the Plat, no further dedication action was needed in order for the County to accept the Road. That the County did not accept the Road when the Plat was originally recorded in 1986 is of no consequence to the reality that later, in 1994, County Council did expressly accept the Road. And later, the County further demonstrated its acceptance of the Road by constructing it to County standard, first by rocking in 1994, and later paving in 2002. It defies logic that a public entity would cease *ad valorem* taxation and expend tens of thousands of public dollars to improve a private drive; the lower court was correct to reject Appellants' unsupported allegations to the contrary.

As shown above, there is no genuine issue as to material facts regarding dedication and acceptance of John Ballam Road, and the lower court did not err in granting summary judgment on those grounds. The Plat, containing the dedication statement, was approved by County Council and recorded in 1986. The Road was accepted and approved for construction by County Council action in 1994, later improved with "C" Funds beginning with rocking in 1998, and paving in 2002. In the interim, the Road was annexed into the jurisdiction of the Town where it remains an improved paved road under the Town's maintenance responsibility to this day. Therefore, the lower court correctly found the Road was properly dedicated and accepted by the County thus becoming a proper public right of way.

CONCLUSION

Wherefore, for the foregoing reasons, and for any additional or supplemental grounds argued by co-respondents Town and DRB, Respondent County of Charleston respectfully requests that the Order of the lower court be affirmed.

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