

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr., Special Referee

Case No. 2004-CP-07-2036
Court of Appeals Unpublished Opinion No. 2012-UP-217

Forest Beach Owner's Association, Inc.,
and Trevor Howard, ... Respondents,

vs.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, ... Petitioner.

APPENDIX - VOL 3 OF 3

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Attorneys for Petitioner, Carolyn S. Austin

Beaufort, South Carolina
August 13, 2013

THE STATE OF SOUTH CAROLINA

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APPENDIX - VOL 3 OF 3

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Attorneys for Petitioner, Carolyn S. Austin

Beaufort, South Carolina
August 13, 2013

BEAUFORT COUNTY TREASURER
TAX RECEIPT

RECEIPT ACCOUNT NUMBER
10126849 R551 015 00A 0538 0000 TAX YEAR:2004

STRICT: FOREST BEACH MID
TYPE PROPERTY CODE: 6005-45
ASSESSMENT RATIO: 6 PERCENT

BREAKDOWN OF TAXES		
ACCOUNT	MILLS	TAXES
SOL WASTE	4.50	.14
COUNTY	39.60	1.19
SCHOOL	94.20	2.83
MUNICIPAL	22.30	.67
INDG-CARE	1.50	.05
CONT EDUC	3.00	.09
TOTALS =	165.10	4.97

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000

TAXES PAID: 4.97
PENALTY PAID: 0.00
TOTAL PAID: 4.97 ON NOV 18, 2004

LOT AA HILTON HEAD BEACH S/D 1
PB81 P153 PB84 PG77

ACCOUNT DATA	
ITEM	AMOUNT
LAND VAL	500
USE VAL	
BLDG VAL	
INC VAL	
TAXABLE	500
ASSESSED	30
NO.ACRES	1.00

RETAIN THIS TAX RECEIPT FOR YOUR RECORDS

481

000256

R-644

002803

APPENDIX00721

REAL ESTATE TAXES - 2005

- 1) Parcel A PB 81/153 – tax parcel 537**
- 2) Parcel AA PB 81/153 – tax parcel 538**
- 3) Parcel C PB 10/89 – tax parcel 532**

BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT SC 29901-0487



ADDRESS SERVICE REQUESTED

MSA-1111

TAX BILL

HOMESTEAD EXEMPTION. Available to primary homeowners over age 65 or 100% disabled. Initial application to County Auditor is required to be filed between the dates of January 1st of the current year and January 15th of the following year. It is automatically renewed after the initial application. Contact County Auditor for details.

Special Assessment Ratio (4%) Available to homeowners who occupy their homes as their legal residence prior to filing an application for the current tax year. The owner must file an application with the County Assessor between January 1st of the current year through January 15th of the following year. Once the initial application is filed, it will automatically be renewed each year, unless there is a change in ownership or occupancy. You are required by law to notify the Assessor of any change of address or occupancy within six months of the change.

Escrow/Mortgage Accounts: The property owner is responsible for ensuring full payment of this obligation. If funds are held in escrow to pay for this notice, forward to the appropriate mortgage holder.

If your account has been adjusted or appealed, this does not eliminate your requirement to pay timely.

006515

.....

GrpNo:3686 Page: 1 of 18 (Seq# 2873)
FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-6442

TAX YEAR	KEY	PARCEL ID	DISTRICT NAME	TYPE	TYPE PCA	MORTGAGE CODE
2005	10126830	R550 015 00A 0537 0000	SOUTH ISLAND PSD	REAL PROPERTY	6005-45	

LOT A HILTON HEAD BEACH S/D 1 PB81 P153 PB84 PG77
SPLIT 3/02 14.29 AC 15A/538- 554/579/612

2004 TAXES 4.97

BREAKDOWN			ACCOUNT DATA		APPAISED VALUE	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT	LESS EXEMPTIONS	
SOL WASTE	4.50	0.14	LAND VAL	500	HOMESTEAD EXEMPTION	
COUNTY	40.60	1.22	TAXABLE	500	OTHER EXEMPTIONS	
SCHOOL	96.50	2.90	ASSESSED	30	TAXABLE VALUE	500
MUNICIPAL	19.00	0.57	# ACRES	1.00	ASSESS VALUE	30
INDG-CARE	1.50	0.05			TAX AMOUNT	4.97
CONT EDUC	3.00	0.09			SC TAX RELIEF	
TOTALS -	165.10	4.97			FEES ADDED	
					TOTAL DUE	4.97
					PAY AFTER	AMOUNT
					JAN 17, 2006	5.12
					FEB 01, 2006	5.47
					MAR 16, 2006	5.72
					MAR 31, 2006	80.72
					AUG 31, 2006	130.72

OUTSTANDING RECAP			
TAX YEAR	TAX DUE	PENALTY	TOTAL
2005	4.97		4.97
TOTAL	4.97		4.97

DETACH AT PERFORATION AND RETURN LOWER PORTION

000257

R-647

002804

BEAUFORT COUNTY TREASURER
TAX RECEIPT

RECEIPT ACCOUNT NUMBER
0126830 R550 015 00A 0537 0000 TAX YEAR:2005
TRICT: SOUTH ISLAND PSD
PE PROPERTY CODE: 6005-45
ASSESSMENT RATIO: 6 PERCENT

BREAKDOWN OF TAXES		
ACCOUNT	MILLS	TAXES
SOL WASTE	4.50	.14
COUNTY	40.60	1.22
SCHOOL	96.50	2.90
MUNICIPAL	19.00	.57
INDG-CARE	1.50	.05
CONT EDUC	3.00	.09
TOTALS =	165.10	4.97

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000

TAXES PAID: 4.97
PENALTY PAID: 0.00
TOTAL PAID: 4.97 ON JAN 11, 2006

ACCOUNT DATA	
ITEM	AMOUNT
LAND VAL	500
USE VAL	
BLDG VAL	
INC VAL	
TAXABLE	500
ASSESSED	30
NO ACRES	1.00

LOT A HILTON HEAD BEACH S/D 1
PB81 P153 PB84 PG77
SPLIT 3/02 14.29 AC 15A/538-
554/579/612

RETAIN THIS TAX RECEIPT FOR YOUR RECORDS

1291

000259

R-648

002806

BEAUFORT COUNTY TREASURER
TAX RECEIPT

RECEIPT ACCOUNT NUMBER
0126849 R550 015 00A 0538 0000 TAX YEAR:2005

DISTRICT: SOUTH ISLAND PSD
PROPERTY CODE: 6005-45
ASSESSMENT RATIO: 6 PERCENT

BREAKDOWN OF TAXES		
ACCOUNT	MILLS	TAXES
SOL WASTE	4.50	.14
COUNTY	40.60	1.22
SCHOOL	96.50	2.90
MUNICIPAL	19.00	.57
INDG-CARE	1.50	.05
CONT EDUC	3.00	.09
TOTALS =	165.10	4.97

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000

TAXES PAID: 4.97
PENALTY PAID: 0.00
TOTAL PAID: 4.97 ON JAN 11, 2006

LOT AA HILTON HEAD BEACH S/D 1
PB81 P153 PB84 PG77

ACCOUNT DATA	
ITEM	AMOUNT
LAND VAL	500
USE VAL	
BLDG VAL	
INC VAL	
TAXABLE	500
ASSESSED	30
NO.ACRES	1.00

RETAIN THIS TAX RECEIPT FOR YOUR RECORDS

1292

000260

R-650

002807

REAL ESTATE TAXES - 2006

- 1) Parcel A PB 81/153 – tax parcel 537**
- 2) Parcel AA PB 81/153 – tax parcel 538**
- 3) Parcel C PB 10/89 – tax parcel 532**



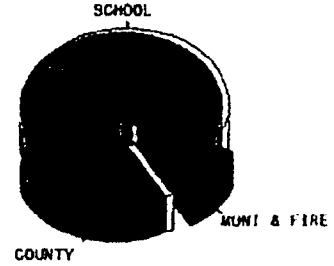
BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

2006 BEAUFORT COUNTY PROPERTY TAX BILL

*PAID
12-11-06
#1502*

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000



TAX YEAR	KEY #	PARCEL ID	DISTRICT NAME	TYPE	TYPE PCA	MORTGAGE CODE
2006	10126830	R550 015 00A 0537 0000	SOUTH ISLAND PSD	REAL PROPERTY	6605-45	
LOT A HILTON HEAD BEACH S/D 1PBB1 P153 PBB4 PG77 SPLIT 3/02 14.29 AC 15A/538- 554/578/612						2005 TAXES 4.87

BREAKDOWN			ACCOUNT DATA	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT
COUNTY	44.60	1.34	LAND VAL	500
SCHOOL	108.70	3.27	TAXABLE	500
MUNICIPAL	19.00	0.57	ASSESSED	30
INDG-CARE	1.50	0.05	# ACRES	1.00
CONT EDUC	3.00	0.09		
TOTALS -	176.80	5.32		

APPRAISED VALUE	
	500
LESS EXEMPTIONS	
HOMESTEAD EXEMPTION	
OTHER EXEMPTIONS	
TAXABLE VALUE	500
ASSESSED VALUE	30
TAX AMOUNT	5.32
SC TAX RELIEF	
FEES ADDED	
PRIOR YEAR TAXES	

TOTAL DUE 5.32

OUTSTANDING RECAP			
TAX YEAR	TAX DUE	PENALTY	TOTAL
2006	5.32		5.32
TOTAL	5.32		5.32

PAY AFTER	AMOUNT
IF RECEIVED AFTER JAN 15, 2007 (3%)	5.48
IF RECEIVED AFTER FEB 01, 2007 (10%)	5.85
IF RECEIVED AFTER MAR 16, 2007 (15%)	6.12
IF RECEIVED AFTER MAR 31, 2007 (\$75)	81.12
IF RECEIVED AFTER AUG 31, 2007 (\$50)	131.12

RETAIN TOP PORTION FOR YOUR RECORDS
Return this stub for change of address

ADDRESS CHANGE (please print)

Property Owner: FOREST BEACH OWNERS ASSOC INC
Account Key: 10126830
Account Number: R550 015 00A 0537 0000

New Address: _____

Signature

Date

R-652

000386

BEAUFORT COUNTY TREASURER
TAX RECEIPT

RECEIPT ACCOUNT NUMBER
10126830 R550 015 00A 0537 0000 TAX YEAR:2006

DISTRICT: SOUTH ISLAND PSD
TYPE PROPERTY CODE: 6605-45
ASSESSMENT RATIO: 6 PERCENT

BREAKDOWN OF TAXES		
ACCOUNT	MILLS	TAXES
COUNTY	44.60	1.34
SCHOOL	108.70	3.27
MUNICIPAL	19.00	.57
INDG-CARE	1.50	.05
CONT EDUC	3.00	.09
TOTALS =	176.80	5.32

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000

TAXES PAID: 5.32
PENALTY PAID: 0.00
TOTAL PAID: 5.32 ON DEC 13, 2006

LOT A HILTON HEAD BEACH S/D 1
PB81 P153 PB84 PG77
SPLIT 3/02 14.29 AC 15A/538-
554/579/612

ACCOUNT DATA	
ITEM	AMOUNT
LAND VAL	500
USE VAL	
BLDG VAL	
INC VAL	
TAXABLE	500
ASSESSED	30
NO.ACRES	1.00

RETAIN THIS TAX RECEIPT FOR YOUR RECORDS

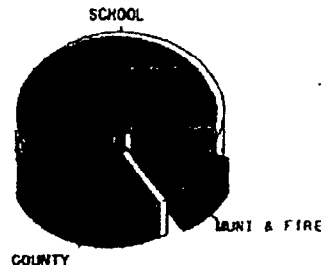
428

R-653

000953
APPENDIX00730

**BEAUFORT COUNTY TREASURER**PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

**2006 BEAUFORT COUNTY
PROPERTY TAX BILL***PAID
12-11-06
#1502*FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND SC 29938-0000

TAX YEAR	KEY #	PARCEL ID	DISTRICT NAME	TYPE	TYPE PCA	MORTGAGE CODE
2006	10126849	R550 015 00A 0538 0000	SOUTH ISLAND PSD	REAL PROPERTY	6605-45	
OT AA HILTON HEAD BEACH S/D 1PBB1 P153 P8B4 PG77						2005 TAXES 4.97

BREAKDOWN			ACCOUNT DATA	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT
COUNTY	44.60	1.34	LAND VAL	500
SCHOOL	108.70	3.27	TAXABLE	500
MUNICIPAL	19.00	0.57	ASSESSED	30
INDG-CARE	1.50	0.05	# ACRES	1.00
CONT EDUC	3.00	0.09		
TOTALS -	176.80	5.32		

APPRAISED VALUE	
	500
LESS EXEMPTIONS	
HOMESTEAD EXEMPTION	
OTHER EXEMPTIONS	
TAXABLE VALUE	500
ASSESSED VALUE	30
TAX AMOUNT	5.32
SC TAX RELIEF	
FEES ADDED	
PRIOR YEAR TAXES	

TOTAL DUE 5.32

OUTSTANDING RECAP			
TAX YEAR	TAX DUE	PENALTY	TOTAL
2006	5.32		5.32
TOTAL	5.32		5.32

PAY AFTER	AMOUNT
IF RECEIVED AFTER JAN 15, 2007 (3%)	5.48
IF RECEIVED AFTER FEB 01, 2007 (10%)	5.85
IF RECEIVED AFTER MAR 16, 2007 (15%)	6.12
IF RECEIVED AFTER MAR 31, 2007 (\$75)	81.12
IF RECEIVED AFTER AUG 31, 2007 (\$50)	131.12

RETAIN TOP PORTION FOR YOUR RECORDS
Return this stub for change of address**ADDRESS CHANGE (please print)**Property Owner: FOREST BEACH OWNERS ASSOC INC
Account Key: 10126849
Account Number: R550 015 00A 0538 0000New Address: _____

Signature

Date

R-654

000387

APPENDIX00731

RECEIPT	ACCOUNT NUMBER	
10126849	R550 015 00A 0538 0000	TAX YEAR: 2006

BREAKDOWN OF TAXES		
ACCOUNT	MILLS	TAXES
COUNTY	44.60	1.34
SCHOOL	108.70	3.27
MUNICIPAL	19.00	.57
INDG-CARE	1.50	.05
CONT EDUC	3.00	.09
TOTALS =	176.80	5.32

TAXES PAID: 5.32
PENALTY PAID: 0.00
TOTAL PAID: 5.32 ON DEC 13, 2006

ACCOUNT DATA	
ITEM	AMOUNT
LAND VAL	500
USE VAL	
BLDG VAL	
INC VAL	
TAXABLE	500
ASSESSED	30
NO. ACRES	1.00

427

REAL ESTATE TAXES – 2007-2008

- 1) Parcel A PB 81/153 – tax parcel 537**
- 2) Parcel AA PB 81/153 – tax parcel 538**
- 3) Parcel C PB 10/89 – tax parcel 532**



The Beaufort County Assessor's office makes every effort to produce the most accurate information possible.
No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

PID #: R550 015 00A 0537 0000

Key #: 10126830

Owner Info

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND, SC 29938

Legal Info

LOT A HILTON HEAD BEACH S/D 1 PB81 P153
PB84 PG77 SPLIT 3/02 14.29 AC 15A/538-
554/579/612

Land Data

Year: 2008
Neighborhood Code: L005
Acres: 1.00
Agriculture Use: 0
Income Value: 0
PCS: 45
PCA: 6605

Historic Info

Year	Land	Building	Features	Assessed	Taxes	Payment
2007	\$500	\$0	\$0	\$30	\$5.82	\$5.82
2006	\$500	\$0	\$0	\$30	\$5.32	\$5.32
2005	\$500	\$0	\$0	\$30	\$4.97	\$4.97
2004	\$500	\$0	\$0	\$30	\$4.97	\$4.97
2003	\$500	\$0	\$0	\$30	\$6.78	\$6.78
2002	\$500	\$0	\$0	\$30	\$6.61	\$6.61

Sales Info

Owner	Book	Page	Date	Inst.	Qualif	Vacant/lt
TOWN OF HILTON HEAD ISL (THE)	1450	733	20010523	QC	R	V
FOREST BEACH OWNERS ASSOC INC	1450	733	20010523	QC	R	V

Building Characteristics

Number	Improvement Type	Year Built	Stories	Rooms	SQFT

Building Area

Number	Description	SQFT

Exemptions

Year	Amount
	\$0.00



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No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

PID #: R550 015 00A 0538 0000

Key #: 10126849

Owner Info

FOREST BEACH OWNERS ASSOC INC
PO BOX 6442
HILTON HEAD ISLAND, SC 29938

Legal Info

LOT AA HILTON HEAD BEACH S/D 1 PB81 P153
PB84 PG77

Land Data

Year: 2008
Neighborhood Code: L005
Acres: 1.00
Agriculture Use: 0
Income Value: 0
PCS: 45
PCA: 6605

Historic Info

Year	Land	Building	Features	Assessed	Taxes	Payment
2007	\$500	\$0	\$0	\$30	\$5.82	\$5.82
2006	\$500	\$0	\$0	\$30	\$5.32	\$5.32
2005	\$500	\$0	\$0	\$30	\$4.97	\$4.97
2004	\$500	\$0	\$0	\$30	\$4.97	\$4.97
2003	\$500	\$0	\$0	\$30	\$6.78	\$6.78
2002	\$500	\$0	\$0	\$30	\$6.61	\$6.61

Sales Info

Owner	Book	Page	Date	Inst.	Qualif	Vacant/1.
TOWN OF HILTON HEAD ISL (THE)	1450	733	20010523	QC	R	V
FOREST BEACH OWNERS ASSOC INC	1450	733	20010523	QC	R	V

Building Characteristics

Number	Improvement Type	Year Built	Stories	Rooms	SQFT

Building Area

Number	Description	SQFT

Exemptions

Year	Amount
	\$0.00

R-658



The Beaufort County Assessor's office makes every effort to produce the most accurate information possible.
No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

PID #: R550 015 00A 0532 0000

Key #: 9034118

Owner Info

FOREST BEACH ASSOCIATION
PO BOX 6442
HILTON HEAD ISLAND, SC 29938

Legal Info

PAR C PB10 P69

Land Data

Year: 2008
Neighborhood Code: L005
Acres: 1.00
Agriculture Use: 0
Income Value: 0
PCS: 48
PCA: 6605

Historic Info

Year	Land	Building	Features	Assessed	Taxes	Payment
2007	\$500	\$0	\$0	\$30	\$6.02	\$6.02
2006	\$500	\$0	\$0	\$30	\$5.52	\$5.52
2005	\$500	\$0	\$0	\$30	\$5.17	\$5.17
2004	\$500	\$0	\$0	\$30	\$9.00	\$9.00
2003	\$500	\$0	\$0	\$30	\$10.81	\$10.81
2002	\$500	\$0	\$0	\$30	\$10.64	\$10.64
2001	\$500	\$0	\$0	\$30	\$9.27	\$9.27
2000	\$500	\$0	\$0	\$30	\$6.48	\$6.48

Sales Info

Owner	Book	Page	Date	Inst.	Qualif	Vacant/Imp
FOREST BEACH ASSOCIATION	1247	837	19991214	GW	R	V

Building Characteristics

Number	Improvement Type	Year Built	Stories	Rooms	SQFT

Building Area

Number	Description	SQFT

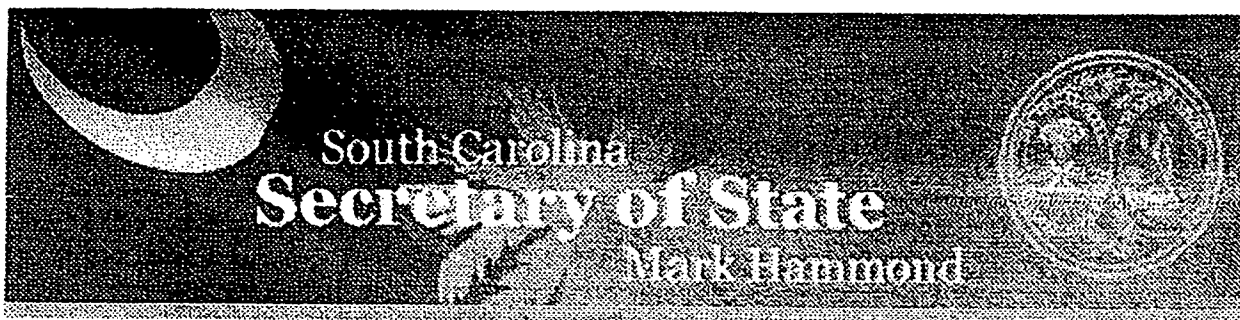
Exemptions

Year	Amount
	\$0.00

R-659

EXHIBIT 35(A)

Forest Beach Association Inc. Corporate Records



FOREST BEACH ASSOCIATION, INC.

*Note: This online database was last updated on 9/5/2008 6:03:27 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	FRANCIS J GUSCIO
ADDRESS:	18 POPE AVE EXEC PARK RD, STE 6
CITY:	HILTON HEAD
STATE:	SC
ZIP:	29928
SECOND ADDRESS:	
FILE DATE:	09/22/2000
EFFECTIVE DATE:	09/22/2000
DISOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Incorporation	09/22/2000	INCORPORATION	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

R-661

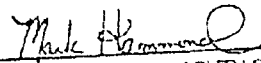
DEPARTMENT OF STATE
COLUMBIA, SOUTH CAROLINA

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

DECLARATION OF DISSOLUTION BY FORFEITURE

AUG 25 2008

Date of Dissolution SEP 20, 1999



SECRETARY OF STATE OF SOUTH CAROLINA
20138769-5

FOREST BEACH ASSOCIATION INC
PO BOX 6442
HILTON HEAD SC 29938 6442

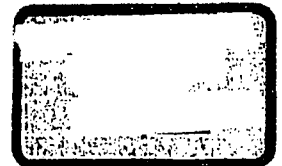
Whereas, Section 33-14-200, of the 1876 Code of Laws of S.C., as amended, provides for the dissolution of a corporation by forfeiture if the corporation has failed to:

- (1) File its annual report on or before the date on which such report is due, or
- (2) Pay its franchise tax or income tax on or before the date on which such tax is due and payable, or
- (3) Appoint and maintain a registered agent in this State, or
- (4) Notify the office of The Secretary of State of a change in its registered agent or registered office, or
- (5) The corporation's period of duration stated in its Articles of Incorporation expires.

AND WHEREAS, IT APPEARS FROM THE RECORDS IN THIS OFFICE, AFTER DUE NOTICE, THAT THE ABOVE NAMED CORPORATION HAS FAILED TO MEET REQUIREMENTS OF NOS. 1 AND/OR 2 ABOVE SET FORTH.

NOW THEREFORE, UNDER THE AUTHORITY OF SAID ACT, THE CHARTER IS HEREBY DECLARED FORFEITED AND DISSOLVED THIS DATE.

Inquiries concerning this administrative dissolution should be directed to the SC Department of Revenue, Corporate Section, Columbia, SC 29214-0100.



COPY

Jim Miles
Secretary of State

R.D. TXPCI016

SOS-2 (Rev. 6/98) 3119
802

99-035535CC

2045 / 1539
ITIC800

R-662

APPENDIX00739

South Carolina Secretary of State Corporation Details

Corporation Information

Corporation Name: FOREST BEACH ASSOCIATION, INC.

Name Type: ELE Status: FOR Profit/Non-Profit: N Domestic/Foreign: D

Corp EMail:

Agent Name: HEADQUARTERS

Address1: HILTON HEAD ISLAND SC

Address2:

City:

Incorporated State: SC

State:

Agent EMail:

Original Filing 10/24/1974

Effective Date: 10/24/1974

Expiration Date:

Dissolved Date: 09/20/1999

Termination Date

LLP Renewal Date:

Tax Year End:

Corporation Comment:

Filing Information

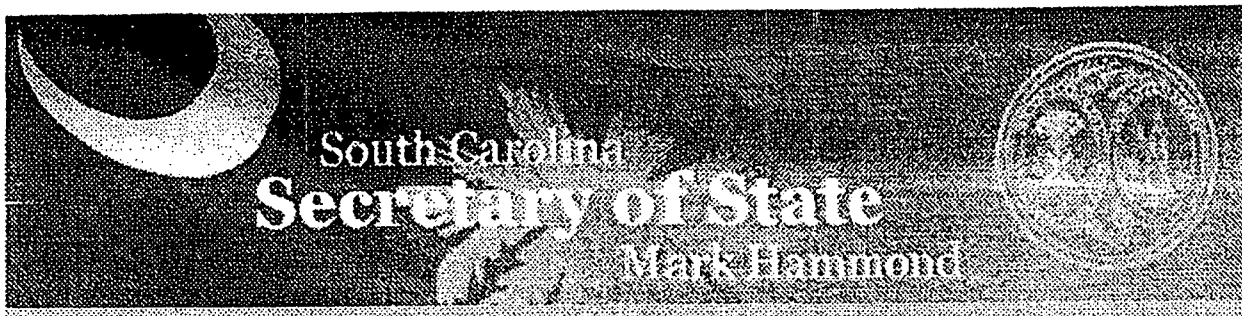
File ID	Filing Date	Filing Type	Description	Comment	Associated Name	Microfilm ID
04-10002099	10/24/1974			ELEE		11277
99-035535CC	09/20/1999			FORFEITURE #2		

Associated Names Information

Associated Name	Associated Type	Corporation Name	Name Type Status	Expiration Date
FOREST BEACH ASSOCIATION, INC.	INC	FOREST BEACH ASSOCIATION, INC.	ELE FOR	

Effective Date: 08/29/2008 09:48:58

2045 / 1539
ITIC801



FOREST BEACH ASSOCIATION, INC.

Note: This online database was last updated on 9/5/2008 6:03:27 PM.

See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	FRANCIS J GUSCIO
ADDRESS:	18 POPE AVE EXEC PARK RD, STE 6
CITY:	HILTON HEAD
STATE:	SC
ZIP:	29928
SECOND ADDRESS:	
FILE DATE:	09/22/2000
EFFECTIVE DATE:	09/22/2000
DISOLVED DATE:	//

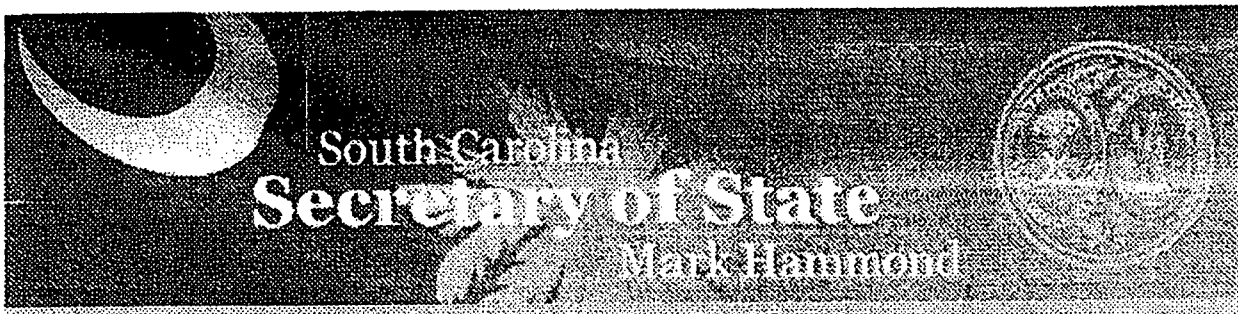
Corporation History Records

CODE	FILE DATE	COMMENT	Document
Incorporation	09/22/2000	INCORPORATION	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

EXHIBIT 35(B)

Forest Beach Owners Association Inc. Corporate
Records



FOREST BEACH OWNERS ASSOCIATION, INC.

*Note: This online database was last updated on 9/5/2008 6:03:27 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Non Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JOHN SNODGRASS
ADDRESS:	303 THE PROFESSIONAL BLDG
CITY:	HILTON HEAD ISLAND
STATE:	SC
ZIP:	29928
SECOND ADDRESS:	
FILE DATE:	10/06/2000
EFFECTIVE DATE:	10/06/2000
DISOLVED DATE:	//

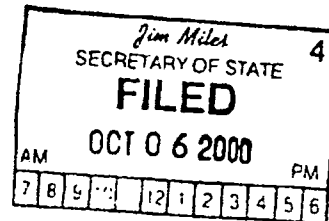
Corporation History Records

CODE	FILE DATE	COMMENT	Document
Eleemosynary Incorporation	10/06/2000	NONPROFIT INCORPORATION	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

OCT 4 2005

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION



Mark H. Miles
TYPE OR PRINT CLEARLY IN BLACK INK
SECRETARY OF STATE OF SOUTH CAROLINA

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is FOREST BEACH OWNERS ASSOCIATION, INC.
2. The initial registered office of the nonprofit corporation is 303 THE PROFESSIONAL BUILDING
HILTON HEAD ISLAND BEAUFORT SOUTH CAROLINA Street Address 29928
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is

JOHN SNODGRASS

Print Name

I hereby consent to the appointment as registered agent of the corporation.

[Signature]
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
 - a. ☐ The nonprofit corporation is a public benefit corporation.
 - b. ☐ The nonprofit corporation is a religious corporation.
 - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
 - a. ☒ This corporation will have members.
 - b. ☐ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is
303 THE PROFESSIONAL BUILDING HILTON HEAD ISLAND BEAUFORT, SC 29928
Street Address City County State Zip Code
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
 - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations,

as said court shall determine, which are organized and operated exclusively for such purposes.

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

9. The name and address of each incorporator is as follows (only one is required)

Name	Address	Zip Code
JOHN SNODGRASS	303 THE PROFESSIONAL BUILDING HHI, SC	29928

Name	Address	Zip Code

Name	Address	Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

JOHN SNODGRASS
Name (Only if named in articles)

Signature of director

Name (Only if named in articles)

Signature of director

Name (Only if named in articles)

Signature of director

11. Each incorporator must sign the articles.

Signature of incorporator

Signature of incorporator

11593

522p 1300

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

QUIT-CLAIM DEED

NOW, KNOW ALL MEN BY THESE PRESENTS, that on or about November 24, 1986, Gardner-Matthews Plantation Company (86-03801), Hilton Head Holdings Corporation (86-03802), Hilton Head Hotel Company (86-03803), Vacation Resorts Holding, Inc. (86-03804), Vacation Resorts, Inc. (86-03805), Sea Pines Company (86-03806), The Hilton Head Company, Inc. (86-03808), Hilton Head Holdings Corporation, f/k/a Ginn Holding Corporation (86-03868), Hilton Head Company, a Delaware corporation (86-03869), Sea Pines Plantation (86-03870), Hilton Head Holdings Corporation, formerly known as Ginn Holdings Corp. (86-03871), Hilton Head Company, a Delaware Corp. (86-03884), and Sea Pines Plantation Company (86-03885) filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. On November 24, 1986, United States District Court Judge Sol Blatt, Jr., withdrew the reference of the above-stated cases to the United States Bankruptcy Court and the cases were retained and reserved in the United States District Court pursuant to 28 U.S.C. Sections 157 and 1334;

WHEREAS, by Order of the District Court entered November 26, 1986, John F. Curry was appointed Interim Trustee for the above-named Debtors and by Order entered December 23, 1986, was appointed Trustee pursuant to 11 U.S.C. Section 1104, authorized to manage the affairs and operate the businesses of those Debtors pursuant to 11 U.S.C. Section 1108;

WHEREAS, by Order of the Bankruptcy Court for the District

BEAUFORT COUNTY TAX MAP REFERENCE				
Dist.	Map	Submap	Parcel	Block
no assignment				

R-669

1301

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of South Carolina, R. Geoffrey Levy was appointed Successor Trustee on March 15, 1988, for the above-named Debtors;

WHEREAS, the transfer of the remaining assets free and clear of all liens, claims and encumbrances owned by the Trustee was confirmed by Order of Judge Wm. Thurmond Bishop, in a hearing held on March 22, 1988, which Order became final on April 6, 1988, said hearing being duly noticed to all parties in interest; and

WHEREAS, an Order Approving Sale of Assets was filed on December 22, 1988 pursuant to a Notice of Intent to Sale Assets dated October 18, 1988 approving the transfer of the within property; and

WHEREAS, it is the intention of R. Geoffrey Levy, Trustee of HILTON HEAD LIQUIDATION CORP., formerly known as Sea Pines Plantation Company, HILTON HEAD HOLDINGS CORPORATION, and HHC LIQUIDATION CORP., formerly The Hilton Head Company, Inc., to transfer to Property Research Holdings, Inc., Hilton Head Island, South Carolina 29938, that certain real property described on the attached Exhibit "A".

NOW, THEREFORE, HILTON HEAD LIQUIDATION CORP., formerly known as Sea Pines Plantation Company, a South Carolina corporation, HILTON HEAD HOLDINGS CORPORATION, a Delaware corporation, and HHC LIQUIDATION CORP., formerly The Hilton Head Company, Inc., by R. Geoffrey Levy, Trustee (hereinafter referred to as the "Grantors"), in the State aforesaid, and in

R-670

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consideration of the sum of Ten and No/100 (\$10.00) Dollars to them in hand paid, at and before the sealing of these presents by Property Research Holdings, Inc. (hereinafter referred to as "Grantee"), in the State aforesaid, 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 Grantee, its successors and assigns, the real property described on attached Exhibit "A".

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging to or in any wise incident or appertaining thereto.

TO HAVE AND TO HOLD, all and singular the premises aforementioned unto the said Grantee, its successors and assigns forever, so that neither the said Grantors, their successors and assigns, nor any the person or persons claiming under it or them, at any time hereafter, by any way or means, have, claim or demand any right to title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS my hand and seal this 30th day of January, in the year of Our Lord One Thousand Nine Hundred Eighty-Nine.

WITNESSES:

HILTON HEAD LIQUIDATION CORP.,
formerly known as Sea Pines
Plantation Company

Georganne S. Necht

By:

R. Geoffrey Levy, its Trustee

Ryann Davis

WITNESSES:

HILTON HEAD HOLDINGS CORPORATION

Gertrude S. Wood

By:

R. Geoffrey Levy, its Trustee

Norman Davis

WITNESSES:

HHC LIQUIDATION CORP.,
formerly The Hilton Head Company,
Inc.

Gertrude S. Wood

By:

R. Geoffrey Levy, its Trustee

Norman Davis

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LDJ/tln

1/13/89

1304

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within-named HILTON HEAD LIQUIDATION CORP., formerly known as Sea Pines Plantation Company, by R. Geoffrey Levy, its Trustee, sign, seal and, as its act and deed, deliver the foregoing Quit-Claim Deeds and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Joanne S. Hecht
(Witness)

SWORN to and subscribed before me
this 30th day of January, 1989.

Ryan D. Davis (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-14-95

R-673

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LDJ/tln

1/13/89

1305

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within-named HILTON HEAD HOLDINGS CORPORATION, by R. Geoffrey Levy, its Trustee, sign, seal and, as its act and deed, deliver the foregoing Quit-Claim Deeds and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Jeanne S. Hucht
(Witness)

SWORN to and subscribed before me
this 5th day of January, 1989.

Ayma Davis (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-14-95

1306

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LDJ/tln

1/13/89

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within-named HHC LIQUIDATION CORP., formerly The Hilton Head Company, Inc., by R. Geoffrey Levy, its Trustee, sign, seal and, as its act and deed, deliver the foregoing Quit-Claim Deeds and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Georganne S. Wright
(Witness)

SWORN to and subscribed before me
this 13th day of January, 1989.

Hyman Davis Miller (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-14-95

EXHIBIT "A"

ALL those pieces, parcels, strips, easements, rights-of-way, open spaces, parks and any other lands and any and all improvements thereon, if any, located on Hilton Head Island, Beaufort County, South Carolina, lying and being in the general boundary described, to it:

BEGINNING at the point of intersection of the southern right of way of South Forest Beach Drive with the northeastern corner of Lot 18 Canvasback Road Subdivision, said intersection being in the approximate vicinity of the Ocean Gate of Sea Pines Plantation; thence along the Sea Pines Plantation private community boundary, (which boundary is more particularly described in the Declaration of Rights, etc. recorded in the office of the Clerk of Court of Beaufort County, South Carolina, in Deed Book 224, Page 1036), to the intersection of said boundary with the mean high water of Broad Creek; thence along the mean high water of Broad Creek in a northeasterly direction to its intersection with the western boundary of the Wexford Plantation private community; thence in a southerly direction along the western boundary of Wexford to the intersection of the extension of said boundary with the southern right-of-way of U.S. Highway 278; thence in a westerly direction along the southern right-of-way of U.S. Highway 278 to its intersection with the southeastern side of the 200 foot radius Sea Pines Circle; thence southerly along said 200 foot radius to the intersection of the eastern right-of-way of Pope Avenue; thence in a southerly direction along the eastern right-of-way of Pope Avenue to intersection with the northwestern corner of the 50 foot buffer zone of Pope Avenue Mall; thence easterly along said 50 foot buffer zone, also being the western boundary of Shipyard Plantation, to the southeastern corner of said buffer zone; thence southerly along the western boundary of the Shipyard private community crossing Cordillo Parkway at the northerly extension of the eastern right-of-way of Avocet Street; thence continuing in a southerly direction along the said Shipyard Plantation boundary to its southwest corner; thence easterly along the southern boundary of Shipyard Plantation and following said boundary to its intersection with the northern right-of-way of North Forest Beach Drive; thence easterly along the northern right-of-way of North Forest Beach Drive to its intersection with the northerly extension of the eastern boundary of Hilton Head Beach Subdivision No. 3; thence in a southerly direction along the eastern boundary of Hilton Head Beach Subdivision No. 3 to the intersection of its extension in a southerly direction with the mean high water of the Atlantic Ocean; thence in a westerly direction along said mean high water mark of the Atlantic Ocean to its intersection with the southerly extension of the eastern boundary of Canvasback Subdivision, thence in a northerly direction along the eastern boundary of Canvasback Subdivision to the point of beginning, all of which is shown on a map attached hereto and made a part hereof.

-1308

Subject to all those Declarations of Covenants, Conditions, Restrictions and easements of record in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina.

SAVE AND EXCEPT Parcels B-1, B-2 and E, Market Place Commercial, Palmetto Bay Road, Hilton Head Island, Beaufort County, South Carolina.

In accordance with Sections 48-39-270 through 48-39-360, Code of Laws of South Carolina 1976, as amended, the Property described in this Deed has been determined to be located in close proximity to the Atlantic Ocean and possibly seaward of the setback line as defined in said Sections. South Carolina law strictly regulates whether or not existing structures and other improvements in this area can be modified and/or reconstructed in the event of the loss by fire or other natural causes, whether any new structures or other improvements are allowed to be constructed in this area, and if allowable, the size and location of any such new structures or other improvements. The location of setback lines is determined by scientific methodology and extends landward from a predetermined baseline a distance equal to the product obtained by multiplying the average annual erosion rate by 40. Additionally, the elevation of any allowed classification of the Property under the Federal Emergency Act. It is recommended that the Grantee of this Property consult legal counsel prior to making or modifying any improvements on any Property seaward of setback lines within the State of South Carolina.

RECORDED THIS 21st DAY
OF February 1989
IN BOOK ✓ PAGE 98
FEES \$
Mary Ann Gray
AUDITOR, BEAUFORT COUNTY, S. C.

FILED AT	BEAUFORT COUNTY S.C.	RECORDED IN BOOK
4:30		522
P	FEB 6 1989	PAGE
		1300
Floyd S. Dalton REGISTER OF MESNE CONVEYANCE		

C:\Exhibits\seaexa

(XX)

COUNTY Beaufort County
BK 1450 PG 0733
FL. NUM 2001044937
RECORDING FEES 13.00
RECORDED BY L THOMAS RCPT# 14090
RECORDED 07/25/2001 01:14:04 PM

8/22/01

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NS&W/CCW/8094-29
8094-46
8094-49
8094-66

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, PROPERTY RESEARCH HOLDINGS, INC. (the "Grantor") SENDS GREETING:

NOW, KNOW ALL MEN BY THESE PRESENTS, that the Grantor, for and in consideration of the premises and that certain Property Exchange Agreement of July 2, 1996 by and among the Grantor, Forest Beach Association, Inc., and The Town of Hilton Head Island, South Carolina, in settlement of those certain actions styled *Town of Hilton Head Island, South Carolina v. Property Research Holdings, Inc.*, Case Number 99-CP-07-95 in the Court of Common Pleas for Beaufort County, South Carolina, and *Forest Beach Association, Inc. v. Property Research Holdings, Inc.*, Case No. 00-CP-07-1471 in the Court of Common Pleas for Beaufort County, South Carolina, and as a donation and gift to FOREST BEACH OWNERS ASSOCIATION, INC. (the "Grantee"), Post Office Box 6442, Hilton Head Island, SC 29938, has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the Grantee, its successors and assigns, the following described property, to-wit:

See Attached Exhibit A

R-678

000024

This being a portion of the property conveyed to the Grantor by deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 522 at Page 1300.

This deed was prepared in the law offices of Novit, Scarminach & Williams, P. A., Post Office Drawer 14, Hilton Head Island, South Carolina 29938 by Chester C. Williams, Esquire, without benefit of title examination.

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 the said premises before mentioned unto the Grantee, its successors and assigns, forever, so that neither the Grantor, nor its successors, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever, except as otherwise provided in Exhibit A.

Witness the hand and seal of the Grantor this 23 day of May, 2001.

Signed, Sealed and Delivered
in the presence of

PROPERTY RESEARCH HOLDINGS, INC.

By: Francis J. Guscio, Jr.
Francis J. Guscio, Jr., President

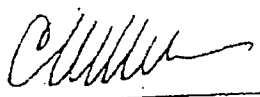
Attest: George D. Womble
George D. Womble, Secretary

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)
ACKNOWLEDGEMENT

I, Cristal C. Williams the undersigned Notary Public, do hereby
certify that Francis J. Guscio, Jr., President of Property Research Holdings, Inc., and George D.
Womble, Secretary of Property Research Holdings, Inc., personally appeared before me this day
and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23
day of May, 2001.



Notary Public for South Carolina
My Commission Expires: 9-24-2006

I:\DOCS\CCW\DOCS\INREGFILES\PROPERTY RESEARCH\08094-029\EXHIBIT A\FBA2.REVISED.DOC

NS&W\CCW\0094-29
8094-46
8094-49
8094-66

Exhibit A

All those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing a total of 1.160 acres, more or less, shown and designated as Lot Nos. "A", "AA", "B", "BA", "C", "CA", "D", "DA", "E", "EA", "F", "FA", "G", "GA", "H", "HA", "I", and "IA" on that certain plat entitled "Hilton Head Beach No. 1 Subdivision Extension" prepared by Sea Island Engineering, Inc., M. A. Dunham, SCRLS 11590, dated September 21, 1998 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 81 at Page 153.

Said property is conveyed subject to all applicable covenants, conditions, restrictions and easements of record in said Register's Office, and to such matters as would be revealed by an accurate survey and inspection of said property.

Said property is further conveyed subject to an appurtenant easement on, over and across said parcels in favor of The Town of Hilton Head Island, South Carolina for access to that certain tract of land containing 13.127 acres, more or less, shown and designated as "BEACH LOT" on said plat entitled "Hilton Head Beach No. 1 Subdivision Extension" recorded in said Register's Office in Plat Book 81 at Page 153, for the benefit of said "BEACH LOT", as more fully set forth in that certain deed of May 23, 2001 from the Grantor herein to The Town of Hilton Head Island, South Carolina recorded in said Register's Office in ORB 1450 at Page 744.

Said property is further conveyed subject to appurtenant easements on, over and across said parcels in favor of all owners of lots within Hilton Head Beach Subdivision No. 1, as shown and described on that certain plat entitled "Hilton Head Beach Subdivision No. 1" prepared by Fred C. Hack, RSL, dated April - June, 1952 and recorded in said Register's Office in Plat Book 9 at Page 4, their respective heirs,

successors and assigns, for the benefit of their respective lots within Hilton Head Beach Subdivision No. 1, for access to the beaches of the Atlantic Ocean lying generally south and southeast of said parcels.

Said property is further conveyed subject to appurtenant easements on, over and across said parcels in favor of all owners of lots within Hilton Head Beach Subdivision No. 1-A, as shown and described on that certain plat entitled "Hilton Head Beach Subdivision No. 1-A" prepared by Fred C. Hack, RSL, recorded in said Register's Office in Plat Book 9 at Page 69, their respective heirs, successors and assigns, for the benefit of their respective lots within Hilton Head Beach Subdivision No. 1-A, for access to the beaches of the Atlantic Ocean lying generally south and southeast of said parcels.

Said property is further conveyed subject to appurtenant easements in favor of adjacent property owners, their respective heirs, successors and assigns, for the benefit of their respective properties, on, over and across said parcels for the continued existence, use and maintenance of any improvements currently existing thereon, and for the continued encroachment of any such improvements currently existing thereon; *provided, however*, that such appurtenant easements shall not extend to any improvements on or encroachments into said property which unreasonably restrict or inhibit the use of said property by the owners of lots within the said Hilton Head Beach Subdivision No. 1 and the said Hilton Head Beach Subdivision No. 1A, or their respective guest, licensees or tenants, for access to the beaches of the Atlantic Ocean lying generally south and southeast of said property; *and, further provided, however*, that if any improvements on or encroachment into said property shall be destroyed or removed, either voluntarily or involuntarily, then any such appurtenant easement relating to such destroyed or removed improvements or encroachments shall immediately terminate and cease, without the necessity of any action or notice by or on behalf of the Grantee; *and, further provided, however*, that such appurtenant easements shall not include any right, license or privilege in favor of any such adjacent property owners, or their respective guest, licensees or tenants, for vehicular parking on said property.

Said property is further conveyed subject to the undertaking and covenant on the part of the Grantee herein that it, for itself, its

000028

shareholders, directors, officers, employees, agents, successors and assigns, affirmatively waives any claim that The Town of Hilton Head Island, South Carolina has any obligation or responsibility for the upkeep, maintenance and repair of the rock revetment which lies within that certain tract of land shown and designated as "BEACH LOT" on said plat recorded in said Register's Office in Plat Book 81 at Page 153.

Said property is further conveyed subject to the undertakings and covenants on the part of the Grantee herein (1) that it, for itself, and for its shareholders, directors, officers, employees, agents, successors and assigns, affirmatively waives, and hereby releases and discharges the Grantor and its shareholders, directors, officers, successors and assigns from any and all claims, demands, actions, or causes of action, now or hereafter existing, which it or any of its past, present or future shareholders, directors, officers, employees, agents, successors or assigns may have against the Grantor or any one or more of its shareholders, directors or officers arising out of, in any way connected or associated with, or based in whole or in part upon this conveyance, that certain Property Exchange Agreement of July 2, 1996 by and among the Grantor, the Grantee, and The Town of Hilton Head Island, South Carolina, or any covenants, conditions, restrictions or easements applicable to said property, to said Hilton Head Beach Subdivision No. 1 in general, or to any property in what is commonly known as the North and South Forest Beach areas of Hilton Head Island, South Carolina; and (2) that it, for itself, and for its shareholders, directors, officers, employees, agents, successors and assigns, agrees that neither it nor any one or more of its shareholders, directors, officers, employees, agents, successors or assigns shall at any time, or by any means, directly or indirectly, aid, abet, assist or encourage any person or entity to threaten, institute, file or prosecute any claim, demand, action, cause of action, lawsuit or other legal proceeding against the Grantor or any one or more of its shareholders, directors or officers based in whole or in part upon (a) the within conveyance, (b) that certain Property Exchange Agreement of July 2, 1996 by and among the Grantor, the Grantee, and The Town of Hilton Head Island, South Carolina, or (c) any alleged violation which occurred prior to the date of the within conveyance of any covenants, conditions, restrictions or easements applicable (i) to said property, (ii) to said Hilton Head Beach Subdivision No. 1 in general, or (iii) to

any property in what is commonly known as the North and South Forest Beach areas of Hilton Head Island, South Carolina, including, without limitation, the strand blocks located adjacent thereto and in the vicinity thereof. By accepting this conveyance, the Grantee agrees to indemnify and hold harmless the Grantor and its shareholders, directors and officers from and against any and all claims, demands, actions, or causes of action asserted or alleged by, on behalf of, or for the benefit of the Grantee, or any of its shareholders, directors, officers, employees, agents, successors or assigns, against the Grantor or any of its shareholders, directors and officers, or by any other person or entity who is or was aided, abetted, assisted or encouraged by the Grantee or any one or more of its shareholders, directors, officers, employees, agents, successors or assigns to threaten, institute, file or prosecute any claim, demand, action, cause of action, lawsuit or other legal proceeding against the Grantor or any one or more of its shareholders, directors or officers, including, without limitation, any and all costs, fees and expenses (including, without limitation, attorney's fees and court costs through and including any appellate proceedings) incurred by the Grantor or any one or more of its shareholders, directors and officers in the defense of any such claim, demand, action, cause of action, lawsuit or other legal proceeding.

A portion of ZSS1/Map 15-A / PAR 526

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff,)
vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CF-7- 1721

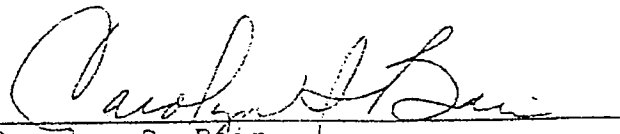
CLERK OF COURT
BEAUFORT, S.C.

SUMMONS

TO DEFENDANT PROPERTY RESEARCH HOLDINGS, INC.:

YOU ARE HEREBY SUMMONED and required to answer the allegations of the attached complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer upon the plaintiff Carolyn S. Bair, P. O. Box 5550, Hilton Head Island SC 29938, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint within the time aforesaid, the above-named plaintiff will apply to the Court for the relief demanded in the complaint.

November 20, 1998.


Carolyn S. Bair
P. O. Box 5550
Hilton Head Island SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff

R-685

2945/1539
JTC0047
000234

APPENDIX00762

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff,)
vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7- 1721

BEAUFORT S.C.

COMPLAINT

Plaintiff, Carolyn S. Bair, sues defendants, Property Research Holdings, Inc. and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein (collectively "defendants"), and alleges:

1. This is an action to quiet and confirm title of plaintiff in and to that certain real estate located in Beaufort County, South Carolina, described more particularly in attached Exhibit "A" and referred to therein as "Addition to Lot 5 containing 0.101 acres" and "Addition to Lot 5 containing 0.141 acres" ("the real estate").

2. Plaintiff claims title to and owns the real estate through adverse possession by virtue of actual, notorious, hostile, continuous, and exclusive possession of the real estate for over ten years before the filing of this complaint.

Carolyn S. Bair vs. Property
Research Holdings, Inc., et al.,
Complaint

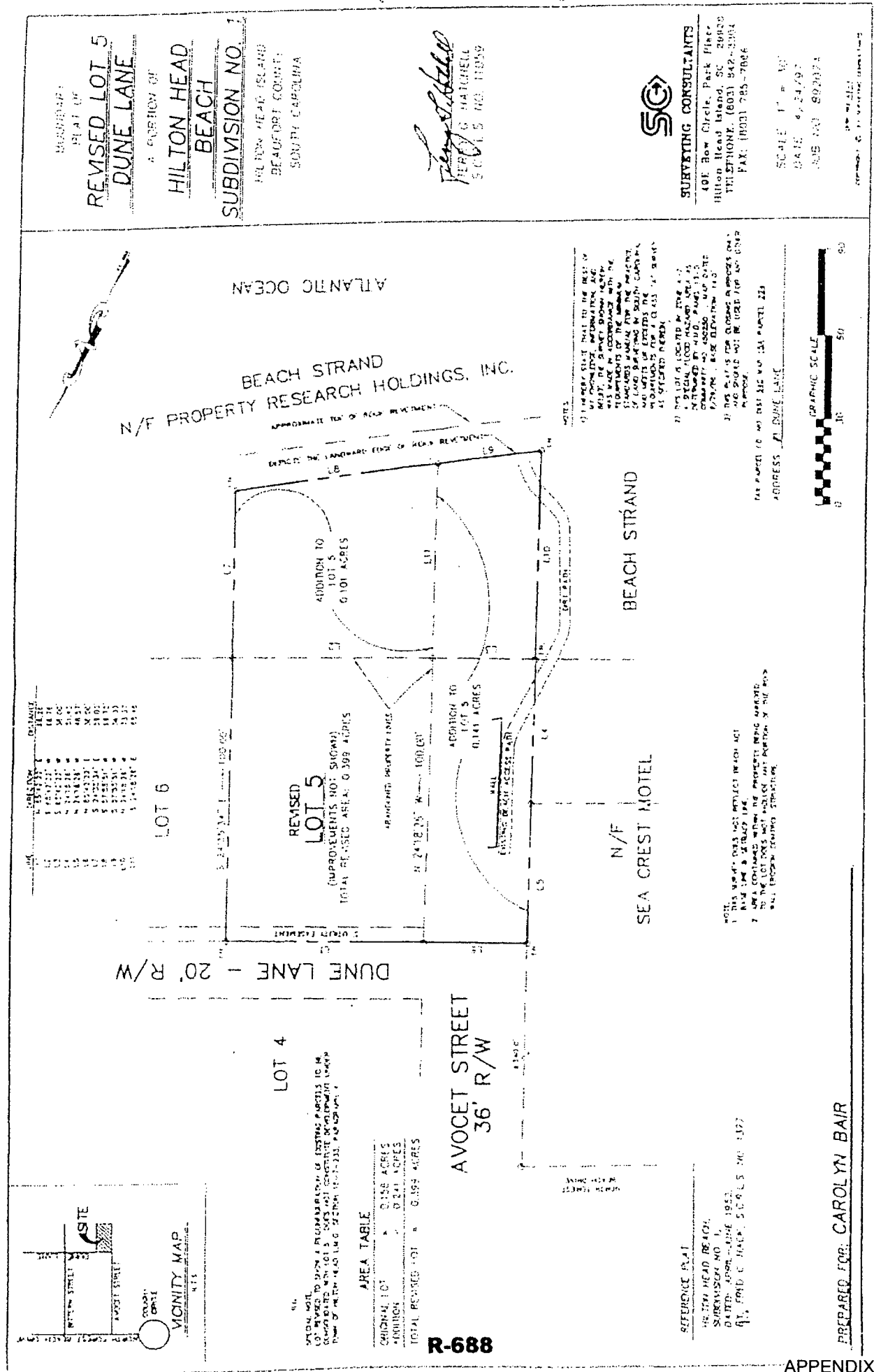
3. Defendant Property Research Holdings, Inc. claims or may claim some interest in the real estate through an instrument allegedly executed by the trustee in bankruptcy of the Hilton Head Company.

4. Plaintiff's claim is superior to that of any defendant known or unknown.

5. All conditions precedent have been performed or have occurred.

WHEREFORE, plaintiff demands judgment against defendants quieting and confirming title to the real estate in her.

Carolyn S. Bair
P. O. Box 5550
Hilton Head Island SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff



STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7- 1724

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

NOTICE OF LIS PENDENS

TO DEFENDANT PROPERTY RESEARCH HOLDINGS, INC., ALSO ALL
OTHER PERSONS, UNKNOWN, CLAIMING ANY RIGHT, TITLE, ESTATE,
INTEREST IN OR LIEN UPON THE REAL ESTATE DESCRIBED IN THE
COMPLAINT HEREIN, AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the institution of this action by the
plaintiff against you seeking to quiet the title to that certain
real estate in Beaufort County, South Carolina described more
particularly in attached Exhibit "A" and referred to therein as
"Addition to Lot 5 containing 0.101 acres" and "Addition to Lot 5
containing 0.141 acres."

DATED on November 20, 1998.



Carolyn S. Bair
P. O. Box 5550
Hilton Head Island SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff

STATE OF SOUTH CAROLINA)
)
 CAROLYN S. BAIR,)
)
 Plaintiff,)
 vs.)
)
 PROPERTY RESEARCH)
 HOLDINGS, INC.; ALSO ALL)
 OTHER PERSONS, UNKNOWN,)
 CLAIMING ANY RIGHT,)
 TITLE, ESTATE, INTEREST)
 IN OR LIEN UPON THE REAL)
 ESTATE DESCRIBED IN THE)
 COMPLAINT HEREIN.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 98-CP-7-1721



CLERK OF COURT
 BEAUFORT, S.C.

20 JAN 25 AM 11:35

PROOF AND RETURN OF SERVICE OF PROCESS

I certify on November 22, 1998, at approximately 11:00 am, served the summons issued herein, with a copy of the complaint attached thereto, together with a copy of the notice of lis pendens filed herein, on defendant Property Research Holdings, Inc. at 18 Pope Avenue, Executive Park Road, Suite 6, Hilton Head Island, South Carolina, by delivering those documents to its president, Francis J. Guscio, Jr.

Robert E. Austin, Jr.
 Robert E. Austin, Jr.

STATE OF FLORIDA)
 COUNTY OF LAKE)

Sworn to and Subscribed
 Before me this 21st
 day of January 1999.

Tina L. Kirby
 Notary Public
 State of Florida
 My Commission expires:
10/16/00



STATE OF SOUTH CAROLINA)
)
CAROLYN S. BAIF,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

APPEARANCE OF L. HUNTER LIMBAUGH AS ATTORNEY FOR PLAINTIFF

The undersigned appears herein as attorney for plaintiff and directs that all future pleadings and notices should be served upon him as prescribed by the South Carolina Rules of Civil Procedure.

January 25, 1999.

15/
L. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff.)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

MOTION FOR DEFAULT

Plaintiff moves for entry of a default by the clerk against defendant Property Research Holdings, Inc. for failure to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure.

January 25, 1999.

/s/
Carolyn S. Bair
P. O. Box 5550
Hilton Head Island SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff

/s/
L. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358
Attorney for Plaintiff

108046

STATE OF SOUTH CAROLINA)
)
CAROLYN S. BAIR,)
)
Plaintiff,)
vs.)
)
PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)
)
Defendants.)
/

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

99 JAN 25 AM 11:36
CLERK OF COURT
BEAUFORT, S.C.

DEFAULT

A default is entered in this action against defendant Property Research Holdings, Inc. for failure to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure.

January 25, 1999.

W. HENRY JACKSON,
Clerk of the Court

By Melissa B. Johnson
As Deputy Clerk MB

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff.)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT AFTER
DEFAULT AGAINST DEFENDANT PROPERTY RESEARCH HOLDINGS, INC.
UNDER SCRCP 54(b)

Plaintiff, Carolyn S. Bair, moves the Court for entry of final judgment against defendant Property Research Holdings, Inc. ("Property Research"), pursuant to Rule 55, SCRCP as provided under Rule 54(b), for the relief demanded in the complaint, stating:

1. This is an action seeking to quiet the title to real estate in Beaufort County more particularly described in the complaint.
2. Property Research was served with process as prescribed by SCRCP.
3. Property Research failed to plead or otherwise defend as required by SCRCP.
4. The clerk has entered a default against Property Research pursuant to Rule 55, SCRCP.

Bank v. Property Research
Motion for Final Judgment
Bank v. Property Research

8. Notwithstanding that Plaintiff has not shown a claim of
interest in the subject real estate, there is no just reason for
delay in entry of final judgment against Property Research.

/s/

H. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358
Attorney for Plaintiff

6521

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

20 JUN 25 PM 10:06
CLERK OF COURT
BEAUFORT, SC

FINAL JUDGMENT AGAINST DEFENDANT
PROPERTY RESEARCH HOLDINGS, INC.

This action came before the Court on plaintiff's motion for entry of final judgment after default against defendant Property Research Holdings, Inc. ("Property Research") pursuant to Rule 54(b), SCRPC.

The Court finds that default was properly entered against defendant Property Research and that, while unknown parties might claim an interest in the real estate involved herein, there is no just reason for delay in entering final judgment as to defendant Property Research while plaintiff's claims against these unknown parties remain for adjudication. Accordingly,

IT IS ORDERED AND ADJUDGED:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning.

being the real estate described in Exhibit "A" attached to the

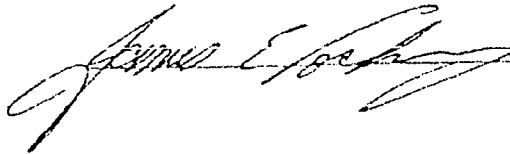
R551-15A-224-0

Bair v. Property Research,
Final Judgment against
Property Research Holdings, Inc.

complaint, is a good title against any and all claims of
defendant Property Research Holdings, Inc. and of all persons
claiming by, through, or under defendant Property Research
Holdings, Inc. since the filing of the notice of lis pendens.

2. Those claims or purported claims are canceled; and the
title to the real estate is forever quieted in plaintiff Carolyn
S. Bair against all of such claims.

Dated at Beaufort, South Carolina, this 25 day of
January, 1999.



Carolyn S. Bain
FILED
JOHN A. SULLIVAN - RMC
FEB 8 1999
99 FEB -8 PM 3:57
BK 1135 PG 518
FOLDER#

520

R-699

000193

2045/1539

ITIC0006

APPENDIX00776

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT, SOUTH CAROLINA
FILED FOR RECORDED

CAP. 15-1-101, 102, 103

Plaintiff,

vs.

PROPERTY RESEARCH
HOLDINGS, INC., ALSO ALL
OTHER PERSONS, UNKNOWN,
CLAIMING ANY RIGHT,
TITLE, ESTATE, INTEREST
IN OR LIEN UPON THE REAL
ESTATE DESCRIBED IN THE
COMPLAINT HEREIN.

Defendants.

AMENDED NOTICE OF LIS PENDENS

TO DEFENDANT PROPERTY RESEARCH HOLDINGS, INC., ALSO ALL
OTHER PERSONS, UNKNOWN, CLAIMING ANY RIGHT, TITLE, ESTATE,
INTEREST IN OR LIEN UPON THE REAL ESTATE DESCRIBED IN THE
COMPLAINT HEREIN, AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the institution of this action on
November 20, 1998, by the plaintiff against you seeking to quiet
the title to that certain real estate in Beaufort County, South
Carolina, described more particularly:

From the northwestern corner of Lot 6, Hilton Head
Beach Subdivision No. 1, run South 24°35'34" East for
100 feet to the point of beginning, thence run South
24°35'34" East for 59.03 feet, thence run South
57°55'51" West for 106.03 feet, thence run North
24°18'26" West for 173.37 feet, thence run North
65°42'22" East for 36 feet, thence run South 24°18'26"
East for 100 feet, thence run northerly to the point of
beginning.

DATED on January 25, 1999.

/s/
D. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC-29223
803-599-6358
Attorney for Plaintiff.

R-700

000216

2045/1539
ITIC0029

APPENDIX00777

STATE OF SOUTH CAROLINA

CAPITOL BUILDING

IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF BEAUFORT
JANUARY 25, 1999

BEFORE THE COURT

VS.

EMERSON, VERDARIN
WILLIAM, JR. AND ALL
OTHER PERSONS, KNOWN OR
CLAIMING ANY RIGHT,
TITLE, ESTATE, INTEREST
IN OR LIEN UPON THE REAL
ESTATE DESCRIBED IN THE
COMPLAINT HEREIN.

Defendants.

SUMMONS

TO ALL PERSONS UNKNOWN, CLAIMING ANY RIGHT, TITLE, ESTATE,
INTEREST IN OR LIEN UPON THE REAL ESTATE DESCRIBED IN THE
COMPLAINT HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the
allegations of the complaint filed in this action on November 20,
1998, at the Beaufort County Courthouse, Beaufort, South
Carolina, and to serve a copy of your answer upon the plaintiff's
attorney, L. Hunter Limbaugh, 111 Clark Ridge Road, Columbia,
South Carolina 29223, within thirty (30) days after service
hereof, exclusive of the day of such service. If you fail to
answer the complaint within the time aforesaid, the above-named
plaintiff will apply to the Court for the relief demanded in the
complaint.

January 25, 1999.

151
L. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358
Attorney for Plaintiff

R-701

2045/1539

000215 TIC0028

APPENDIX00778

108046

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
CAROLYN S. BAIR,	)	CIVIL ACTION NO. 98-CP-7-1721
	)	
Plaintiff,	)	
vs.	)	
	)	
PROPERTY RESEARCH	)	
HOLDINGS, INC.; ALSO ALL	)	
OTHER PERSONS, UNKNOWN,	)	
CLAIMING ANY RIGHT,	)	
TITLE, ESTATE, INTEREST	)	
IN OR LIEN UPON THE REAL	)	
ESTATE DESCRIBED IN THE	)	
COMPLAINT HEREIN.	)	
	)	
Defendants.	)	
	/	

99 JAN 25 AM 11:37
CLERK OF COURT
BEAUFORT, S.C.

PETITION AND AFFIDAVIT

PERSONALLY appeared before me Carolyn S. Bair who, being duly sworn, deposes and says:

1. I am the plaintiff in the above-referenced action to quiet title to real estate in Beaufort County, South Carolina.

2. This being an action to quiet title, it is necessary to join as parties defendant all unknown persons who have or may claim any right, title, estate, interest in or lien upon the subject real estate. Because such fictitiously designated parties are presently unknown to the undersigned or to the plaintiff, it is impossible to find such unknown parties within Beaufort County and South Carolina, nor are the last addresses of said unknown parties known to the undersigned or to the plaintiff.

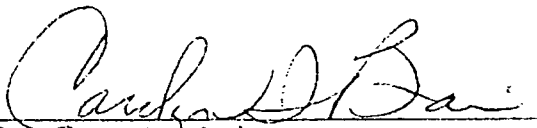
Accordingly, it is impossible with any amount of diligence to effect service of the summons and complaint upon such unknown parties exception by publication.

Bair v. Property Research
Petition and Affidavit

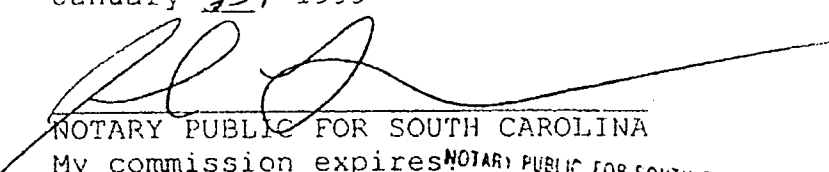
3. It is possible that unknown persons, if any, claiming an interest in the subject property may be minors, or persons under disability, or persons in the military service.

4. James B. Richardson, Jr., of the Beaufort and Richland County Bars, is a suitable person to serve as guardian ad litem for any such unknown minors and persons under disability, and as attorney for any such persons in the military service.

FURTHER DEPONENT SAYETH NAUGHT .


Carolyn S. Bair

Sworn to before me on
January 23, 1999


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires July 21, 2007

STATE OF SOUTH CAROLINA

CAROLYN S. BAIR,

Plaintiff,

vs.

JOSEPHAL RESEARCH
CORPORATION, INC.; ALFRED AND
OTHER PERSONS, UNKNOWN,
CLAIMING ANY RIGHT,
TITLE, ESTATE, INTEREST
IN OR LIEN UPON THE REAL
ESTATE DESCRIBED IN THE
COMPLAINT HEREIN.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 88-CP-7-1701

ORDER FOR SERVICE BY PUBLICATION AND
APPOINTMENT OF GUARDIAN AD LITEM

From the Petition and Affidavit of Carolyn S. Bair, it appears that the defendants are necessary and proper parties in this action, the subject of which is real estate in Beaufort County, South Carolina, in which they have or may claim an interest, actual or contingent, the relief demanded by the complaint of the plaintiff consisting of quieting and confirming title to such property. It further appears that there have been made as parties defendant, all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein. It also appears that after due diligence some of the parties, who may reside out of the State or out of the County aforesaid, cannot be found, and that the last known addresses of said defendants are wholly unknown as shown in said affidavit.

R-704

000210

2045/1539
ITIC0023

APPENDIX00781

Sally v. Property Research
Order for Service by Publication
and Appointment of Guardian

It further appears that persons under disability are joined as parties defendant. It is appropriate and necessary that a guardian ad litem be appointed. James B. Richardson, Jr., a member of the Beaufort and Richland County Bars, is an appropriate person to serve as guardian ad litem, and has consented to serve. Accordingly,

IT IS ORDERED that James B. Richardson, Jr., do, and he hereby is, appointed to serve as guardian ad litem on behalf of all unknown infants or persons under disability.

IT IS FURTHER ORDERED that, unless application be made to the Court within thirty (30) days of the date of service of notice of this Order, his appointment shall become absolute.

IT IS FURTHER ORDERED that service of the summons and notice of lis pendens be made on the defendants in this action by publication in the Beaufort Gazette, a newspaper published in the City of Beaufort, said County and State, as most likely to give notice to said defendants, once a week for three (3) successive weeks, the first publication being

Bill v. Property Receptor
Order for Service by Publication
and Appointment of Guardian

made within fourteen (14) days of this order.

15/
R. HENRY JACKSON
Clerk of Court for
Beaufort County

Beaufort, South Carolina

January 25, 1999.

12/94

PLAINTIFF'S
EXHIBIT
16
3-30-86 SLC

The Beaufort Gazette

State of South Carolina }
COUNTY OF BEAUFORT }

Personally appeared before me

Cathy Hoffmeyer
of The Beaufort Gazette, a newspaper published in the City of Beaufort, County and State aforesaid, who, being duly sworn, says that the advertisement of

SUMMONS

Carolyn S. Bair

-VS-

Property Research Holdings, Inc. et al.

Case # 98-CP-7-1721

appeared in the issues of said newspaper on the following

day(s) January 28 and February 4 & 11, 1999

Subscribed and sworn to

before me this 11th day

of February

A D. 19 99

Cathy Hoffmeyer

Dale G. Mayfield
NOTARY PUBLIC

My commission expires 26 Oct 2006

R-707

STATE OF
SOUTH CAROLINA
IN THE COURT OF
COMMON PLEAS FOR
THE FOURTEENTH
JUDICIAL CIRCUIT CIVIL
ACTION NO. 98-CP-7-1721
CAROLYN S. BAIR,
Plaintiff, vs.
PROPERTY RESEARCH
HOLDINGS, INC.; ALSO
ALL OTHER PERSONS,
UNKNOWN, CLAIMING
ANY RIGHT, TITLE,
ESTATE, INTEREST IN OR
LIEN UPON THE REAL
ESTATE DESCRIBED IN
THE COMPLAINT
HEREIN. Defendants.

SUMMONS
TO ALL PERSONS UN-
KNOWN, CLAIMING ANY
RIGHT, TITLE, ESTATE,
INTEREST IN OR LIEN
UPON THE REAL ESTATE
DESCRIBED IN THE COM-
PLAINT HEREIN:
YOU ARE HEREBY SUM-
MONED and required to an-
swer the allegations of the
complaint filed in this action
on November 20, 1998, at the
Beaufort County Courthouse,
Beaufort, South Carolina, and
to serve a copy of your an-
swer upon the plaintiff's at-
torney, L. Hunter Limbaugh,
111 Clark Ridge Road, Col-
umbia, South Carolina
29223, within thirty (30) days
after service hereof, exclu-
sive of the day of such ser-
vice. If you fail to answer the
complaint within the time
aforesaid, the above-named
plaintiff will apply to the
Court for the relief demanded
in the complaint.

January 22, 1999
L. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358

Attorney for Plaintiff
IN THE COURT OF
COMMON PLEAS FOR
THE FOURTEENTH
JUDICIAL CIRCUIT CIVIL
ACTION NO. 98-CP-7-1721
AMENDED NOTICE OF
PENDING

TO DEFENDANT PROP-
ERTY RESEARCH HOLD-
INGS, INC.; ALSO ALL
OTHER PERSONS, UN-
KNOWN, CLAIMING ANY
RIGHT, TITLE, ESTATE,
INTEREST IN OR LIEN
UPON THE REAL ES-
TATE DESCRIBED IN THE
COMPLAINT HEREIN,
AND ALL OTHERS
WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the
institution of this action on
November 20, 1998, by the
plaintiff against you seeking
to quiet the title to that cer-
tain real estate in Beaufort
County, South Carolina, de-
scribed more particularly:
From the northwestern corner
of Lot 5, Hilton Head Beach
Subdivision No. 1, run South
24°35'34" East for 100 feet
to the point of beginning,
thence run South 24°35'34"
East for 59.03 feet, then
run South 57°35'31" West for
106.03 feet, thence run North
24°18'26" West for 123.74
feet, thence run North 65°12'
East for 120.00 feet, then
run North 24°15'20"

East for 100 feet, thence run
northerly in the point of be-
ginning.
Dated and filed January 29, 1999
by L. Hunter Limbaugh
111 Clark Ridge Road
Columbia SC 29223
803-699-6358
Attorney for Plaintiff
IN THE COURT OF
COMMON PLEAS FOR
THE FOURTEENTH
JUDICIAL CIRCUIT CIVIL
ACTION NO. 98-CP-7-1721
ORDER FOR SERVICE BY
PUBLICATION AND
APPOINTMENT OF
GUARDIAN AD LITEM
From the Petition and Affidavit
of Carolyn S. Bair, it ap-
pears that the defendants are
necessary and proper parties
in this action, the subject of
which is real estate in Beau-
fort County, South Carolina,
in which they have or may
claim an interest, actual or
contingent. The relief de-
manded by the complaint of
the plaintiff consisting of qui-
eting and confirming title to
such property. It further ap-
pears that there have been
made as parties defendants all
other persons who may be
claiming any right, title, in-
terest, in or lien upon the
real estate described in the
complaint herein. It also
appears that after due dili-
gence some of the parties,
who may reside out of the
State or out of the County
aforesaid, cannot be found,
and that the last known ad-
dresses of said defendants are
wholly unknown as shown in
said affidavit.

It further appears that persons
unknown who may be minors
or persons under disability
are joined as parties defend-
ant. It is therefore ordered and de-
creed that James B. Richardson, Jr.,
a resident of Beaufort County, South Carolina,
and a member of the Beaufort and Richmond
County Bars, is an appropri-
ate person to serve as guard-
ian ad litem, and has consent-
ed to serve. Accordingly, IT
IS ORDERED that James B.
Richardson, Jr., be, and he
hereby is, appointed to serve
as guardian ad litem on be-
half of all unknown infants or
persons under disability. IT
IS FURTHER ORDERED
that, unless application by
made to the Court within thirty
(30) days of the date of
service of notice of this order,
the guardian ad litem shall
come absolute. IT IS FUR-
THER ORDERED that ser-
vice of the summons and no-
tice of his pendency be made
on the defendants in this ac-
tion by publication in the
Beaufort Gazette, a newspa-
per published in the City of
Beaufort, said County and
State, as most likely to give
notice to said defendants,
once a week for three (3) suc-
cessive weeks, the first pub-
lication being made within
(14) days of this Order.

W. Henry Jackson
Clerk of Court for
Beaufort County
Beaufort, South Carolina
January 21, 1999
FILED 2/11/99 W 3024

STATE OF SOUTH CAROLINA)

CAROLYN S. BAIR,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

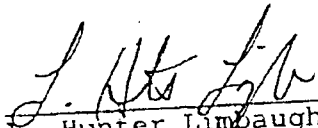
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

99 APR 20 AM 11:43
CLERK OF COURT
BEAUFORT, S.C.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Carolyn S. Bair, moves for summary judgment for the relief sought in the complaint on the ground that there is no genuine issue as to any material fact and that she is entitled to a judgment as a matter of law.


L. Hunter Limbaugh
Willcox, Buyck & Williams
1728 Main Street, Suite 103
Columbia SC 29201
803-251-0304
803-251-0109 (fax)
Attorney for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
CAROLYN S. BAIR, 98-CP-7-1721) FOR THE FOURTEENTH JUDICIAL CIRCUIT
Plaintiff,) CIVIL ACTION NO. 98-CP-7-1721
vs.)
PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)
Defendants.)

AFFIDAVIT OF PLAINTIFF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

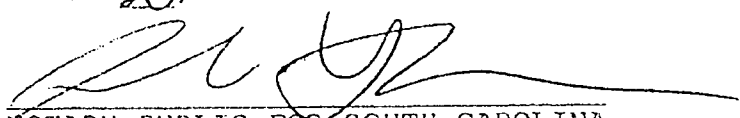
PERSONALLY appeared before me Carolyn S. Bair who, being duly sworn, deposes and says:

1. I am the plaintiff in this action to quiet title to real estate in Beaufort County, South Carolina.
2. I have read the complaint filed herein and on personal knowledge state that the facts alleged therein are true and correct.

FURTHER DEPONENT SAYETH NAUGHT


Carolyn S. Bair

Sworn to before me on
March 20, 1999


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires July 21, 2007

STATE OF SOUTH CAROLINA)
CAROLYN S. BAIR,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC.; ALSO ALL)
OTHER PERSONS, UNKNOWN,)
CLAIMING ANY RIGHT,)
TITLE, ESTATE, INTEREST)
IN OR LIEN UPON THE REAL)
ESTATE DESCRIBED IN THE)
COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 98-CP-7-1721

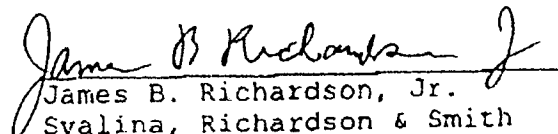
59 APR 20 AM 11:43
CLERK OF COURT
BEAUFORT, S.C.

WAIVER BY GUARDIAN AD LITEM

James B. Richardson, Jr., as guardian ad litem for all unknown infants or persons under disability, waives notice of hearing on plaintiff's motion for summary judgment.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to L. Hunter Limbaugh, Willcox, Buyck & Williams, 1728 Main Street, Suite 103, Columbia SC 29201, by mail this 30th day of March 1999.



James B. Richardson, Jr.
Svalina, Richardson & Smith
1138 Main Street, Suite 808
Columbia SC 29201
803-799-9412
803-799-9268 (fax)
Guardian ad Litem

R-710



MARK W. BUYCK, JR.
HUGH L. WILLCOX, JR.
WM. REYNOLDS WILLIAMS
MARK W. BUYCK, III
L. HUNTER LIMBAUGH
(Special Counsel)
E. LLOYD WILLCOX, II
C. CRAIG YOUNG
ROBERT T. KING
JOHN H. MUENCH I
(Taxation Specialist)
BRAD T. WILLBANKS
SAMUEL F. ARTHUR, III
ALLISON N. BURKE

LAW OFFICES
WILLCOX, BUYCK, & WILLIAMS
PROFESSIONAL ASSOCIATION
www.WillcoxLaw.com
1728 MAIN STREET
SUITE 103
COLUMBIA, SOUTH CAROLINA 29201

ESTABLISHED 1895

TELEPHONE (803) 251-0304

Fax (803) 251-0309

FLORENCE OFFICE:

248 WEST EVANS STREET
POST OFFICE BOX 1908
FLORENCE, S.C. 29503-1908
TELEPHONE (843) 667-3258
FAX (843) 667-1342

ALSO LICENSED IN FL
ALSO LICENSED IN NC
ALSO LICENSED IN GA & KY

REPLY TO: COLUMBIA

April 27, 1999

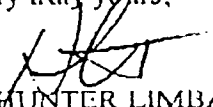
THE HONORABLE DONALD W BEATTY
CIRCUIT JUDGE

Dear Judge Beatty:

Attached is a complete copy of the final judgment against Property Research Holdings, Inc. In addition to this defendant, who also defaulted, we were required to serve the unknowns by publication, which was done as shown by the affidavit I am also attaching. Because one cannot get a default judgment against a minor (there is no reason believe that there are any minors involved, but to be safe, we have proceeded as if an unknown claimant could be a minor), Jim Richardson was appointed guardian ad litem for any unknown minors or persons under disability. Richardson filed an answer on their behalf in which he asserted a lack of knowledge of the truth of the allegations. We filed a motion for summary judgment against the unknown minors and persons under disability. Richardson is not contesting entry of the judgment and has waived notice of any hearing on the motion of summary judgment. No responsive pleading was filed on behalf of any of the class of folks served by publication, and default should have been entered against them.

Where that leaves us is with need of entry of default judgment against those served by publication, and entry of judgment in our favor on the motion for summary judgment against those unknowns represented by Richardson. The final judgment I sent you incorporates both. This case is completely uncontested. All proper steps have been followed to be sure that anyone with any possible adverse position has been notified. It would be a great favor if you would enter the order without the necessity of a hearing in Beaufort on unopposed matters. I truly appreciate your taking the time to consider this. Again, it was good to see you. I look forward to the next time.

Very truly yours,


L. HUNTER LIMBAUGH

R-711

APPENDIX00788

28770

108046

1749

STATE OF SOUTH CAROLINA)
 CAROLYN S. BAIR,)
 Plaintiff,)
 vs.)

PROPERTY RESEARCH)
 HOLDINGS, INC.; ALSO ALL)
 OTHER PERSONS, UNKNOWN,)
 CLAIMING ANY RIGHT,)
 TITLE, ESTATE, INTEREST)
 IN OR LIEN UPON THE REAL)
 ESTATE DESCRIBED IN THE)
 COMPLAINT HEREIN.)

Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 99-CF-7-1721

COMPTON
 COURT REPORTERS
 BEAUFORT, NC
 03/01/19 PM 2:05

FINAL JUDGMENT

This action came before the Court on plaintiff's motion for entry of final judgment under Rules 55 and 56, SCRPC.

The Court finds that default was properly entered against the unknown parties not otherwise represented by James B. Richardson as guardian ad litem.

The Court further finds that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law. Accordingly,

IT IS ORDERED AND ADJUDGED:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning.

being the real estate described in Exhibit "A" attached to the complaint, is a good title against any and all claims of defendants and of all persons claiming by, through, or under

Dep. Clerk Judge

R-712

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2045/1539

ITIC0001

APPENDIX00789

1750

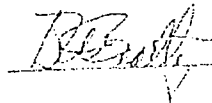
Bair v. Property Research, et al
Final Judgment

defendants or any of them since the filing of the notice of lis
pendens

2. Those claims or purported claims are canceled; and the
title to the real estate is forever quieted in plaintiff, Carolyn
S. Bair, against all of such claims.

3. Plaintiff, Carolyn S. Bair, is declared to hold title to
the real estate in fee simple absolute free and clear of all
pledges, mortgages, security interests, liens, charges,
restrictions, conditions, other encumbrances, claims, options,
and interests.

Dated at Beaufort, South Carolina, this 19 day of
May 1999.



R-713

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2045/1539

ITIC0002

APPENDIX00790

Robert Johnston 10:00
Satis.
JOHN A. SULLIVAN
FOLDER#

99 MAY 27 01 2:01
BK 1175 PG 1749
FOLDER#

1751

R-714

000190

2045/1539
ITIC0003
APPENDIX00791

FOREST BEACH OWNERS ASSOCIATION
303 The Professional Building, P.O. Box 6442
Hilton Head Island, SC 29938

Minutes of the Board of Directors
March 8, 2004

Present: John Snodgrass, Pamela Ovens, Mike Roberts, Alan Jackson, Joe Mezera, Debbie Urato

The meeting was called to order at 5:05 p.m.

Minutes: The minutes were approved as corrected.

Treasurer's Report: John is in the process of redoing the monthly financial statement. Approval of this month's report is tabled until next month.

ARB Report: There have been a lot of calls concerning our ARB process. There will be many plans submitted in the next few months. There are also some construction plans that we know of that have not been submitted. John will contact the owners, letting them know that we "look forward to their submissions." We receive email notification from the Town on new building permits.

Concerning the Farmer house at Heron and Dune: Mr. Farmer's attorney, Drew Laughlin, has asked Judge Kemmerlin for a reconsideration on his ruling. If that does not work, then they have said they would appeal. This case will be around for some time.

Old/New Business: Pamela will contact Jerry Burden for a move to the new office the first week in April. Gabe has donated a desk.

Mike Maddaloni resigned effectively immediately. He did not give us the password for our email so we will have to create a new one.

We have received a letter from Johnnie Lee Witt. She is concerned with the safety of the steps in the beach accesses at Jacana, Mallard and Sandpiper Streets. She states that steps are missing and that walking on them is dangerous. John will inspect them; he will forward concerns to the surrounding owners and pass along the information to David Berry.

The access at Avocet Street is completely blocked since the construction of the iron gates by Carolyn Bair. John will contact Barbara Barrett, since this is contrary to Town covenants.

Our 2003 tax returns are mailed. We owed \$41.00 to the State and \$95.00 to the IRS, this being 37% of the interest earned on compliance deposits.

Coastal Marketing has been contacted about Mike Maddaloni's departure from our employ.

There was a potential problem in the works that John has somewhat dissuaded. Since the roads have been graded down with the paving, the post office threatened not to deliver mail in North Forest Beach. John is in contact with them and the issue has settled down.

John will also investigate reports of businesses occurring in residences.

The meeting was adjourned at 6:25 p.m.

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R-714.2

APPENDIX00793

Beir

#15

8/31/94

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION #92-CP-07-2098

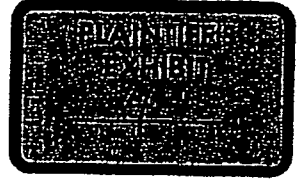
FOREST BEACH ASSOCIATION,)
INC.,)

Plaintiff,)

vs.)

PROPERTY RESEARCH)
HOLDINGS, INC., HILTON)
HEAD BEACH SUBDIVISION)
NO. 2 ASSETS HOLDING)
CORPORATION,)

Defendants.)



Reference hearing held before the Honorable
Thomas Kemmerlin, Jr., Master In Equity for Beaufort
County, South Carolina at the Beaufort County Courthouse,
1000 Ribaut Road, Beaufort, South Carolina, 29902, on the
31st day of August, 1994 commencing at or about 10:00 A.M.

Robert Hest. 10 00
FILED
JOHN A. SULLIVAN - DIR
FBI - NEW YORK
Satis.

99 MAY 27 01 2:01

BK 1175 PG 1749
FOLDER#

1751

R-714

000190

2045/1539

ITIC0003

APPENDIX00795

FOREST BEACH OWNERS ASSOCIATION
303 The Professional Building, P.O. Box 6442
Hilton Head Island, SC 29938

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March 8, 2004

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#15

8/31/94

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
FOREST BEACH ASSOCIATION,)
INC.,)
Plaintiff,)
vs.)
PROPERTY RESEARCH)
HOLDINGS, INC., HILTON)
HEAD BEACH SUBDIVISION)
NO. 2 ASSETS HOLDING)
CORPORATION,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION #92-CP-07-2098



Reference hearing held before the Honorable
Thomas Kemmerlin, Jr., Master In Equity for Beaufort
County, South Carolina at the Beaufort County Courthouse,
1000 Ribaut Road, Beaufort, South Carolina, 29902, on the
31st day of August, 1994 commencing at or about 10:00 A.M.

1 got enough money to buy the world, you got enough
2 money to own the world, but the law doesn't generally
3 agree with me anymore on that. I think you ought to
4 be able to exclude anybody if you own it. I don't
5 know if that has a bearing on the lawsuit now. We all
agree on that part at least. Okay.

6 MR. LAUGHLIN: That concludes the
7 evidentiary portion of the Plaintiff's case.

8 COURT: Okay. You got the record and the
9 covenants. Okay. Call your first witness, then.

10 MR. BERRY: Your Honor, could we just have
11 two minutes, please?

12 COURT: Okay, sure. Why don't we take a
13 recess, because I might then have all the lawyers come
14 back in before everybody else.

15 MR. BERRY: Okay.

16 COURT: Y'all take about 5-10 minutes.

17 MR. LAUGHLIN: All right, thanks.

18 (A Brief Recess Was Taken)

19 COURT: Have a seat. Raise your right hand.

20 CAROLYN BAIR, being
21 called as a witness, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. PHIPPS:

1 Q Ma'am, would you please state your full name for
the record, spelling your last?

2 A Carolyn Saunder Bair, B-A-I-R.

3 Q And Ms. Bair, where do you reside?

4 A Number One Dune Lane.

5 Q And where is that? Is that on Hilton Head?

6 A Yes, it is.

7 Q Is that on North Forest Beach?

8 A Yes, it is.

9 Q Which part of North Forest Beach is that in?

10 A Subdivision No. 1.

11 Q All right. I'd like to go ahead and have this
12 marked. I show the parties this is the plat of Subdivision
13 1. I think it's already in evidence.

14 MR. LAUGHLIN: No objection.

15 COURT: Let's mark it again so we can keep
16 up with it.

17 MR. PHIPPS: Yes, sir.

18 COURT: Now, we got new defendant's

19 exhibits. MR. LAUGHLIN: That is a

20 copy of the plat that was previously

21 introduced as Plaintiff's Exhibit 2,

22 Your Honor.

23 COURT: Okay.

(WHEREUPON, Defendants
Property Research Holding
Exhibit Number 1 was marked
and entered into evidence.)

BY MR. PHIPPS:

Q Ms. Bair, I'd like to show you what's been marked
as Defendant's Exhibit 1 here, and -- in fact, I'll turn
around over here so the Judge can see. Do you recognize
this document?

A I left my reading glasses.

Q I'll put it down in front of you then.

A Yes.

Q What is that?

A Lot 5 is Number 1 Dune Lane where I reside.

Q All right. Does that appear to you to be a plat
of Hilton Head Beach Subdivision Number 1?

A Yes, it does.

Q And would you show the Judge where you reside?

A This first lot. Right here.

Q Did you, or have you had any discussions with
anybody about purchasing various properties within Hilton
Head Beach Subdivision No. 1 from Property Research
Holdings?

A Yes, I have.

Q And who did you have conversations with?

1 Q When did you have these discussions with Mr.
2 Guscio?

3 A We started discussing it soon after he purchased
4 it from the Hilton Head bankruptcy trustees.

5 Q Do you recall approximately when that was?

6 A I assume it was about 5 or 6 years ago.

7 Q And what was then the nature of your discussions
8 up through 1991?

9 A Well, when we first started talking about it, he
10 -- there was an agreement with North Forest Beach
11 Association and he told me that if they didn't exercise
12 certain options in their agreement by a certain time, that
13 that would become null and void and that he would then be
14 able to do these transactions with us.

15 Q All right, now, when you're talking about an
16 agreement with North Forest Beach, was that a contract of
17 about two years ago?

18 A Yes. When I first started talking to Mr. Guscio
19 many years ago, it was in regards to just the -- my own
20 property. But as time went on, it evolved into all the
21 strand block and the upgrading.

22 Q For your whole subdivision?

23 A That's right, yes.

24 Q What did you know about the contract between
25 North Forest -- Forest Beach Association and Property

1 Research Holdings Company regarding the whole thing, both
2 Subdivision 1 and 2?

3 A What did I know about it?

4 Q Yes. Were you aware that there was a contract?

5 A I was aware that there was a contract that was in
6 question, as to whether there was really a contract or
7 whether the time had run out, or exactly who and what.

8 Q All right. Did there come a point in time when
9 you desired to buy the property which you described
10 previously as the strand and the road ends in Hilton Head
11 Beach Subdivision No. 1?

12 A Yes.

13 Q When was that?

14 A Well, I lose track of time, but I would say...
15 probably two years ago or so. Sometime within the last two
16 years.

17 Q All right. Do you recall when Hilton Head Beach
18 Assets Holding Corporation No. 2 purchased the assets of
19 Subdivision 2?

20 A I would say that's sometime within the last two
21 years, but time seems to get away from me.

22 Q All right, but you recall that event

23 A Absolutely. Uh huh.

24 Q Okay. In relation to that event, when were your
25 discussions with Mr. Guscio?

1 A Right after they had contracted with Subdivision
2 No. 2.

3 Q All right. You were aware of the conveyance of
4 the strand and beach accesses to Subdivision 2?

5 A Yes.

6 Q Why did you not -- or let me ask you, did you
7 have the money to pay the \$50,000?

8 A Yes, we did.

9 Q Why did you not purchase those assets from
10 Property Research Holdings?

11 A Because North Forest Beach brought litigation
12 against the group that bought No. 2. There was a lis
13 pendens on the property and therefore I wasn't interested
14 in purchasing another lawsuit.

15 Q All right. Is it your desire to purchase this
16 property in the future under the same terms?

17 A Yes.

18 COURT: Well, isn't the lis pendens matter
19 moot?

20 MR. PHIPPS: Yes, sir.

21 WITNESS: Once all of the legal
22 ramifications are cleared up, we're still interested.

23 MR. PHIPPS: All right. I don't have any
24 further questions of her, Your Honor.

25 COURT: Okay. Any cross examination?

CROSS EXAMINATION

1 BY MR. LAUGHLIN:

2 Q Ms. Bair, did you and Property Research Holdings
3 ever enter into any written contract with respect to this
4 property?

5 A No, there was no written contract. It was just
6 a verbal contract.

7 Q And -- no further questions.

8 COURT: Okay. You may come down, thank you.

9 MR. PHIPPS: If I could ask her a couple
10 follow-ups to that, Your Honor?

11 REDIRECT EXAMINATION

12 BY MR. PHIPPS:

13 Q Ms. Bair, why was there no written contract?

14 A Well, probably for a couple of reasons. One is -

15
16 MR. LAUGHLIN: I object, to probably some
17 speculation.

18 A Well, two reasons I can think of. One is because
19 I was dealing with Frank Guscio, whom I know to be the kind
20 of person that if we make an agreement he'll follow through
21 with it, and I would not have any reason to think
22 otherwise, that we would be able to sit down at some time
23 and do this.

24 Q Did you intend to reduce it to writing?

25

75

1 A Oh, yes. Surely.

2 Q And was there an intervening event that caused
3 you to stop short of reducing it to writing?

4 A Yes. The lawsuit against it.

5 Q All right. Thank you.

6 RE-CROSS EXAMINATION

7 BY MR LAUGHLIN:

8 Q Ms. Bair, you are, as we sit here today, still
9 desirous of purchasing that property on the same terms you
10 and Mr. Guscio talked about before?

11 A I would say that a lot of it has to do with what
12 comes out of this hearing and the final -- whatever the
13 final word is.

14 Q In other words, what can do with that property if
15 you purchase it; is that right?

16 A Am I allowed to respond to what I feel about
17 that?

18 Q Yes. I'd like a yes or no, first, if you can
19 give me one.

20 A Well, I can't really do that because I'm
21 interested in seeing North Forest Beach and those
22 properties adding to the value, the privacy, the comfort,
23 the total aspect of North Forest Beach being upgraded by
24 doing this. And I think that the best thing for North
25

1 Forest Beach is for these pieces of properties to belong
2 within the confines of the individual properties.

3 Q Isn't it true that what you really want is to be
4 able to keep other lot owners in the subdivision out of the
5 beach accesses and strand areas, adjacent to your property?

6 A Absolutely not. Absolutely not.

7 Q Haven't you blocked off the beach access adjacent
8 to your lot on Avocet?

9 A No, we did not. Uh uh.

10 Q You have not?

11 A No, we have not. There is a beach access right
12 in front of the parking lot.

13 Q Haven't you put a rather large planter made out
14 of railroad ties or something right in there?

15 A Not in the beach access. That has always been
16 our driveway, Mr. Laughlin. Since early '70's that has
17 been - -that's the only driveway we have. If we couldn't
18 park there, we would have no place to park. The only
19 reason we put the planter there was to try to divide the
20 beach access from my driveway. And people go down the side
21 of that planter to the beach, absolutely every day.

22 Q I have no further questions. Thank you.

23 COURT: Okay. Anybody else?

24 MR. PHIPPS: None, Your Honor.

25 COURT: Thank you.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

FOREST BEACH ASSOCIATION,
INC.,

Plaintiff,

vs.

CAROLYN BAIR and BRUCE R.
CLAYTON,

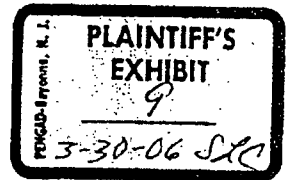
Defendants,

6/1/94
'94 JUN 6 PM 1 13

CLERK OF COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

IN THE COURT OF COMMON PLEAS

CASE NO. 94-CP-07-925



S U M M O N S
(A Non Jury Matter)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you and to serve a copy of your answer to said Complaint upon the subscriber, Drew A. Laughlin, Esquire, in his office at the law firm of Laughlin & Bowen, 800 Main Street, Suite 100, P. O. Drawer 21119, Hilton Head Island, South Carolina 29925 within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

LAUGHLIN & BOWEN

By:

Drew A. Laughlin
Attorneys for Plaintiff

P. O. Drawer 21119
Hilton Head Island, SC 29925
(803)689-5700

June 1, 1994

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 94-CP-07-

'94 JUN 6 PM 1 13

FOREST BEACH ASSOCIATION,
INC.,

Plaintiff,

vs.

CAROLYN BAIR and BRUCE R.
CLAYTON,

Defendants,

CLERK OF COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

C O M P L A I N T
(A Non-Jury Matter)

Plaintiff, complaining of the above-named Defendants, will show:

1. The parties, subject matter, and all things alleged in this Complaint are within the jurisdiction of this Court.

2. Plaintiff Forest Beach Association, Inc. is an incorporated non-profit property owners' association.

3. Upon information and belief, Defendants are the owners of real property and improvements located at Lot 23, Hilton Head Beach Subdivision No. 2, Hilton Head Island, South Carolina.

4. Recorded covenants and restrictions applicable to Lot 23, Hilton Head Beach Subdivision No. 2 and running with the land provide, among other things, that no building shall be erected, placed or altered on any lot in Hilton Head Beach Subdivision No. 2 until the building, architectural plans, specifications, and plot plan showing the location of such building, have been approved in writing by Forest Beach Association, Inc. No building may be located

on any lot nearer than twenty (20') feet to the front line, nor nearer than ten (10') feet to any adjacent street line, nor nearer than five (5') feet to any lot line.

5. Defendants are violating the covenants and restrictions running with the land by causing buildings to be constructed, placed or altered on Lot 23 Hilton Head Beach Subdivision No. 2 without plans approval from Forest Beach Association, Inc. Upon information and belief, building currently under construction includes the construction of a pool and deck, enclosure of porch areas, installation of windows, and other alterations to an existing residence located on the subject property. Upon information and belief, Defendants' building may violate setback requirements and architectural standards contained in the covenants.

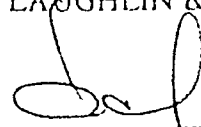
6. The actions of the Defendants present an immediate threat of irreparable harm to the Plaintiff and to the other properties in the subdivision for which Plaintiff has no adequate remedy at law.

7. Upon information and belief, Plaintiff is entitled to an injunction, pendente lite and permanently, enjoining and abating Defendants' violations of the applicable covenants running with the land.

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order enjoining the Defendants from further acts in violation of the covenants and restrictions running with the land and requiring the Defendants to take appropriate action to remove and abate the existing conditions that constitute violations of the applicable covenants and restrictions.

LAUGHLIN & BOWEN

By:



Drew A. Laughlin
Attorneys for Plaintiff

June 1, 1994

P. O. Drawer 21119
Hilton Head Island, SC 29925
(803)689-5700

PLAINTIFF'S
EXHIBIT

10
-06-82e

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION #94-CP-07-925

FOREST BEACH ASSOCIATION,)
INC.,)
Plaintiff,)
BEAUFORT COUNTY
BEAUFORT, S.C.

vs.)

CAROLYN BAIR AND)
BRUCE R. CLAYTON,)

Defendants.)

Reference hearing held before the Honorable
Thomas Kemmerlin, Jr., Master In Equity for Beaufort
County, South Carolina at the Beaufort County Courthouse,
1000 Ribaut Road, Beaufort, South Carolina, 29902, on the
20th day of October, 1994 commencing at or about 2:30 P.M.

APPEARANCES:

For the Plaintiff:

Drew A. Laughlin, Esq.
Post Office Drawer 21119
Hilton Head, SC 29925

For the Defendants:

Carolyn Bair

Also Present:

Mr. Carl C. Hendricks

Reported by:

Joanne B. McDonald

INDEX TO COURT'S EXHIBITS:

Number Description

Exp

A "As-Built" survey dated 9/16/94

---o0o---

PROCEEDINGS:

THURSDAY AFTERNOON

1 COURT: In connection with the captioned
2 case when it was called for trial, Mr. Drew Laughlin
3 representing the Plaintiff announced a settlement and
4 I'm going to ask him and the Defendant, Ms. Carolyn
5 Bair, who's present, and I'll ask her after Mr.
6 Laughlin states the terms of the settlement if she
7 agrees, then it will be marked "settled". But I
8 notice that Mr. Bruce Clayton is also mentioned as a
9 Defendant. What's the story on him?

10 MR. LAUGHLIN: When we brought this action,
11 we had information that caused us to believe that Mr.
12 Clayton may have an ownership interest in this
13 property. We were subsequently advised that he has
14 not.

15 COURT: So you take, at any rate, you'll
16 take a voluntary non-suit?

17 MR. LAUGHLIN: Yeah. We'll take a voluntary
18 non-suit as to him.

19 COURT: That answers that. Okay, now then,
20 if you will state the settlement, then I'll ask Ms.
21 Bair if she agrees to it.

22 MR. LAUGHLIN: All right, and it may be
23 helpful to --

24 COURT: You might want to refer to --
25

1 MR. LAUGHLIN: -- have the "as-built" survey
2 --

3 COURT: I'll have the "as-built" survey
4 attached to this transcript as the Court's Exhibit A,
5 or 1.

6 MR. LAUGHLIN: Exhibit A is an "as built"
7 survey dated September 16, 1994 of Lot 23, Dune Lane,
8 and it depicts certain encroachments into what is
9 described on the survey as the Jacana Street Right of
10 Way consisting of a portion of an area bordered by
11 railroad ties at the end of a wooden walkway, and a
12 landscaped berm. The Defendant has agreed to remove
13 the portions of those features that encroach into the
14 Jacana Street Right of Way effective immediately, and
15 then apply to the Forest Beach Association for the
16 approval, architectural approval, of the remainder of
17 the improvements made on Lot 23. The Association will
18 approve the renovations made to the two-story
19 residence on condition that the landscaping resulting
20 on the boundary of Jacana Street is brought into
21 acceptable standards after removal of the
22 encroachments, and with the exception of the
23 encroachment of the pool deck and wooden walk into the
24 strand area. As to those encroachments, it is my
25 understanding that Ms. Bair has acquired from Hilton

1 Head Beach Subdivision No. 2 Assets Holding
2 Corporation, a lease-option agreement similar to those
3 agreements that are before the Court in Case Number
4 92-2098, and the question of whether those agreements
5 permit these kinds of encroachments into the strand
6 area is before the Court in Case No. 92-2098. The
7 parties have agreed to await a final determination of
8 that issue in that case, and if the Court rules that
9 those agreements allow these kinds of encroachments,
10 they will be allowed to remain. If the Court rules
11 that those agreements do not allow these kinds of
12 encroachments, then once that ruling is final, the
13 Defendant will remove those encroachments into the
14 strand area, reconfigure the remainder and apply for
15 approval by Forest Beach Association as to that
16 remainder.

17 COURT: Okay, is that correctly stated as
18 far as you understand it, ma'am?

19 MS. BAIR: Correct.

20 COURT: Okay, thank y'all. I appreciate
21 y'all making my work easier. Thank you.
22
23
24
25

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BEAUFORT

3
4 C E R T I F I C A T E

5
6 I, Joanne B. McDonald, Certified Court Reporter
7 and Notary Public in and for the State of South Carolina,
8 do hereby certify that the foregoing six (6) pages of
9 typewritten testimony were taken down by me, then reduced
10 to transcript with computer-aided transcription; that the
11 same is a true, correct and complete transcript of the
12 proceedings as stated in the caption.

13 I further certify that I am not of kin nor
14 counsel to any of the parties hereto and, further, that I
15 have no interest whatsoever in the outcome of said
16 proceedings.

17 SO WITNESS MY HAND AND SEAL this 14th day of
18 November, 1994.

19 Joanne B McDonald

20 Notary Public

21 My Commission Expires

22 September 8, 2002

STATE OF SOUTH CAROLINA

IN COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 94-CP-07-925
DEC 7 1994

FOREST BEACH ASSOCIATION,
INC.,

Plaintiff,

vs.

ORDER

CAROLYN BAIR and BRUCE R.
CLAYTON,

Defendants.

This matter came to trial before me in Beaufort on October 20, 1994. Present were Drew A. Laughlin, attorney for the Plaintiff, and the Defendant, Carolyn Bair. ^{The} Also present was Carl C. Hendricks. Defendant Bruce Clayton was dismissed from the action on Plaintiff's motion.

At the commencement of the proceedings, the parties advised the Court that they had reached a settlement. The terms of the settlement are here recited and adopted as the order of this Court.

The Complaint alleges that the Defendant, Carolyn Bair, has caused alterations and additions to be made to improvements on real property owned by her and identified as Lot 23, Hilton Head Beach Subdivision No. 2, Hilton Head Island, South Carolina without plans approval of the Plaintiff in violation of applicable restrictive covenants. The Complaint also alleges that the Defendant's additions to

the property violate applicable building setbacks and encroach upon adjacent common properties. The Complaint seeks injunctive relief.

Defendant Bair admits that she owns Lot 23, Hilton Head Beach Subdivision No. 2 and that she caused the alterations and additions to be made without plans approval in violation of the covenants. She also admits that the additions violate the applicable setbacks and encroach into common properties identified as the "Jacana Street Right of Way" and the "Beach Strand", all as shown on that certain "as-built survey of Lot 23, Hilton Head Beach Subdivision No. 2 dated September 16, 1994, admitted into evidence as Plaintiff's Exhibit A.

The parties have agreed to settlement as follows:

1. Carolyn Bair will immediately remove all encroachments into the Jacana Street Right of Way, comply with the covenant setbacks from Jacana Street, and relandscape along the boundary between her property and Jacana Street. Ms. Bair will promptly submit plans for approval by Plaintiff depicting all alterations and additions to her property.
2. Upon receipt of Defendant's plans submission, Plaintiff will approve the renovations previously made to the two-story residence located on the subject property and shall review the new landscaping along Jacana Street. Plaintiff shall approve the new landscaping if it complies with the covenants and established neighborhood standards.
3. The rights of the Plaintiff and owners of lots in Hilton Head Beach Subdivision No. 2 in and to the "Beach Strand" areas of the subdivision are currently

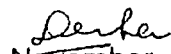
under consideration by this Court in the case of Forest Beach Association, Inc. vs. Property Research Holdings, Inc., et al., 92-CP-07-2098. If, in that case, this Court determines that encroachments into the Beach Strands similar to those present in this case are not permissible, then, in that event, Ms. Bair will immediately remove all encroachments she has placed into the Beach Strand adjacent to Lot 23 and will comply with the covenant setbacks from the Beach Strand. She will submit plans to reconfigure and relandscape the remaining improvements as necessary to the Plaintiff for approval consistent with the standards set forth in the covenants.

The Court approves the agreement of the parties and adopts it as the Order of the Court. Upon failure of compliance, the parties shall be subject to contempt sanctions.

AND IT IS SO ORDERED.


Thomas Kemmerlin, Jr.
Beaufort County Master-in-Equity

Beaufort,
South Carolina


November 2, 1994.

95714

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN COURT OF COMMON PLEAS
CASE NO. 94-CP-07-925

FOREST BEACH ASSOCIATION, INC.,
Plaintiff,
vs.
CAROLYN BAIR,
Defendant.

1995 APR 5 AM 11 57
CLERK OF COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

ORDER



On February 9, 1995 I issued a Rule to Show Cause and Order requiring the Defendant to appear before me and show cause why she should not be held in contempt of my Order dated December 2, 1994. A hearing was held on March 8, 1995, attended by the Defendant and Drew A. Laughlin, Esquire, counsel for the Plaintiff.

Based on the evidence presented at the hearing, I find that the Defendant, Carolyn Bair, is in contempt of my Order dated December 2, 1994 in that she has (1) failed to remove encroachments into the Jacana Street right-of-way and comply with covenant set backs from Jacana Street; (2) failed to apply for and obtain approval for all alterations and additions to her property located at Lot 23 Hilton Head Beach Subdivision No. 2, including landscaping; and (3) failed to relandscape along the boundary between her property and the Jacana Street right-of-way.

Enforcement of those portions of my Order that require the Defendant to remove encroachments into the beach strand adjacent to Lot 23 and comply with covenant set backs from the beach strand will be held in abeyance pending disposition of post trial motions and possible appeals to my Order in Forest Beach Association, Inc. v. Property Research Holdings, Inc., et al., 92-CP-07-2098 dated January 31, 1995.

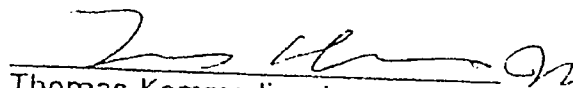
Based on the foregoing, it is

ORDERED, ADJUDGED and DECREED;

1. Defendant Carolyn Bair is in contempt of this Court's Order dated December 2, 1994 for the reasons aforesaid.

2. Defendant is fined the sum of \$500.00^{*} on account of her contempt. Further, Defendant shall be fined an additional \$100.00 per week until she complies with Paragraphs 1 and 2 of this Court's December 2, 1994 Order.

AND IT IS SO ORDERED. Nunc pro tunc.


Thomas Kemmerlin, Jr.
Beaufort County Master-in-Equity

Beaufort,
South Carolina

March 30, 1995.

** To be paid to the Court to be
Applied to the Plaintiffs' Attorney's fees*

PLAINTIFF'S
EXHIBIT

13

3-30-86 SLC

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

FOREST BEACH ASSOCIATION)
INC.)

Plaintiff,)

vs.)

CAROLYN S. BAIR)

Defendant.)

6/29/95
IN THE COURT OF COMMON PLEAS

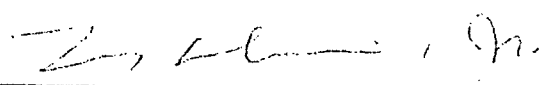
CIVIL ACTION NUMBER: 94-CP-07-925

95 JUL 3 PM 12 13

CLERK OF COURT
BEAUFORT COUNTY
BEAUFORT, S.C.
ORDER

The case comes before me upon the attached Rule to Show Cause Why the Defendant Should Not Held in Contempt. The Defendant came in and paid \$500.00 charged her previously for contempt and the Plaintiff's attorney indicated he had no wish to further punish the Defendant at this time, so the matter of contempt is ended and \$500.00 paid to the Plaintiff's attorney to compensate him in part for the expense his client had to incur to turn the Defendant in the right direction.

AND IT IS SO ORDERED,


Thomas Kemmerlin, Jr., Master in
Equity and Special Circuit Judge
for Beaufort Common Pleas

Beaufort, South Carolina

This 29th day of June, 1995.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CAROLYN SONGER AUSTIN,

Plaintiff,

vs.

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA,

Defendant.

2002 SEP 3 PM 3 40 THE JUDGE OF COMMON PLEAS

BEAUFORT COUNTY 02-CP-07-1536

CLERK OF COURT

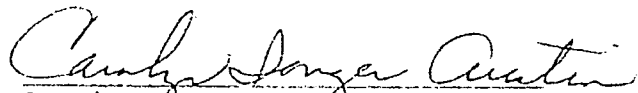
BEAUFORT, S.C.

SUMMONS

TO DEFENDANT TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:

YOU ARE HEREBY SUMMONED and required to answer the allegations of the attached complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer upon the plaintiff Carolyn Songer Austin, P. O. Box 5550, Hilton Head Island SC 29938, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint within the time aforesaid, the above-named plaintiff will apply to the Court for the relief demanded in the complaint.

September 3, 2002.



Carolyn Songer Austin
P. O. Box 5550
Hilton Head Island, SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff Pro Se

R-743

000145

APPENDIX00826

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CAROLYN SONGER AUSTIN,

Plaintiff,

vs.

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS

2002 SEP 3 PM 3 40
CASE NO.

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

COMPLAINT

Plaintiff, Carolyn Songer Austin, formerly known as Carolyn S. Bair ("Bair"), sues defendant, Town of Hilton Head Island, South Carolina ("Town"), and alleges:

1. This is an action seeking injunctive relief.
2. Bair is the owner of Lot 23, Hilton Head Beach Subdivision No. 2 ("Subdivision No. 2").
3. The plat for Subdivision No. 2 was recorded in the office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 9 at Page 20, a copy of which is attached as Exhibit A.
4. Subdivision No. 2 is subject to a "Declaration of Restrictions, Conditions, Easements Rights, Privileges, Etc." recorded in the office of the Register of Mesne Conveyances for Beaufort County, South Carolina, a copy of which is attached as Exhibit B.

Austin v. Hilton Head Island
Complaint

5. Among other things, these restrictions restrict the subdivision of the lots, restrict changes in boundary lines of the lots, and establish building setbacks.

6. Property Research Holding, Inc. ("Property Research") is successor to The Hilton Head Company and has the exclusive right to approve the subdivision of the lots and changes to the boundary lines of the lots.

7. Property Research has not consented to the subdivision of Lot 18 or any changes in its boundary lines.

8. The Town has approved the subdivision of Lot 18 into two lots and the incorporation of the strand property adjacent thereto into Lot 18.

9. The subdivision of Lot 18 into two lots and the incorporation of the strand property adjacent thereto into Lot 18 violate the restrictions.

10. The Town has before it an application for a permit for the construction of a building to be located nearer than twenty feet to the front line of Lot 18.

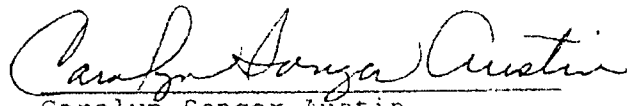
11. If Lot 18 is subdivided or reconfigured or if a building is constructed nearer than twenty feet to the front line of Lot 18 as alleged herein, Bair will sustain irreparable damage.

12. Bair has no adequate remedy at law.

Austin v. Hilton Head Island
Complaint

WHEREFORE Bair prays for an injunction (a) requiring the Town to rescind its approval of the subdivision of Lot 18 and incorporation of the adjacent strand property therein and (b) prohibiting construction of a building located nearer than twenty feet to the front line of Lot 18.

September 3, 2002.



Carolyn Songer Austin
P. O. Box 5550
Hilton Head Island, SC 29938
843-842-2424
843-785-8088 (fax)
Plaintiff Pro Se

**Austin v. Hilton Head Island
Complaint**



R-747

Exhibit A

Austin v. Hilton Head Island
Complaint

DB 78 @ p. 71

State of South Carolina County of Beaufort
Before me personally appeared C.S. Hendry Sr. and made oath that he saw the within named THE HILTON HEAD COMPANY by J. B. Fraser, its President and Fred C. Hack, its Secretary-Treasurer, sign and as its act and deed deliver the within written instrument; that he saw its corporate seal affixed by Fred C. Hack, its Secretary-Treasurer, and that he with Billie S. Hack witnessed the execution thereof. C.S. Hendry Sr.

SWORN to before me this 15th day of April, A.D. 1955 (Seal) Billie S. Hack

Recorded & Certified April 26, 1955. Elmer A. Rodgers Clerk of Court.

HILTON HEAD COMPANY) DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS, RIGHTS, PRIVILEGES, ETC.

TO: RESTRICTIONS ETC.) Applicable to Hilton Head Beach, Subdivision No. 2, the plat of which is recorded in HILTON HEAD BEACH, SUBDIV. No. 2) the office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 9, at page 20, made by Fred C. Hack, Land Surveyor, under date of May-June, 1953. WITNESSETH

The Hilton Head Company, a Georgia Corporation, domesticated in South Carolina, owner of the subdivision described above, hereby declares that The Hilton Head Company has established and by these presents does establish the following restrictions, conditions, limitations, easements, rights, and privileges in respect to lots in said Hilton Head Beach Subdivision No. 2, to-wit: 1. All the lots in said subdivision shall be used for residential purposes exclusively. No structures shall be erected, placed, or altered, or permitted to remain on any lot, other than one (1) detached single family dwelling not to exceed two and one half (2 1/2) stories in height and a private garage for not more than two cars (which may include servants' quarters) and other outbuildings incident to the use of one single family unit.

2. No building shall be erected placed or altered on any lot in this subdivision until the building plans, specifications and plot plan showing the location of such buildings, have been approved in writing by THE HILTON HEAD COMPANY, its successors or assigns.

3. No building shall be located on any lot nearer than twenty (20) feet to the front line, nor nearer than ten (10) feet to any side streetline, nor nearer than five (5) feet to any lot line.

4. No dwelling shall be permitted on any lot which structure shall have less than six hundred and fifty (650) square feet of permanently enclosed space, exclusive of garages.

5. THE HILTON HEAD COMPANY hereby covenants, assigns, conveys, releases, conveys, assigns, a perpetual, alienable and releasable easement, over and under, by, through, and along, its easements, rights, privileges, and other suitable equipment for the conveyance and use of electricity, telephone, gas, sewage, water or other public conveniences or utilities on, in, or over the rear five (5) feet of each lot and five (5) feet along one (1) side of certain lots, all as shown on the plat of said subdivision.

6. Prior to the occupancy of a residence on any lot in said subdivision, proper and suitable septic tank, or tanks, shall be constructed on such lot for the disposal of all sewage, and all sewage shall be emptied or discharged unto such tanks, or tanks. No sewage shall be emptied or discharged into or upon the ocean or the beach thereof.

7. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood.

8. No livestock or live fowl shall be maintained on any lot without written consent of THE HILTON HEAD COMPANY, its successors or assigns.

9. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

10. No lot shall be subdivided, or its boundary lines changed except with the written consent of THE HILTON HEAD COMPANY, its successors or assigns. However, THE HILTON HEAD COMPANY, hereby expressly reserves to itself, its successors and assigns, the right to subdivide (by deed or otherwise) or replat any two (2) or more lots shown on the plat of said subdivision so as to create building plot each larger in size than any one of the lots so subdivided or replatted. When such a building plot is created, the restrictions and covenants herein apply to such building plot as a unit, and as to such building plot the word "lot" as used herein, shall be construed to mean "building plot."

11. These covenants shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from January 1, 1952, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of said lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

12. If the parties hereto, or any of them or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said subdivision to prosecute any lawful proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violation.

13. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

14. THE HILTON HEAD COMPANY may include in any contract or deed hereafter made additional covenants and restrictions that are not inconsistent with and which do not lower the standards of the covenants and restrictions set forth herein.

In witness whereof, The Hilton Head Company has caused this instrument to be executed by the authorized officers and its corporate seal to be affixed under proper authority of its Board of Directors, this 15th DAY of April, 1955.

THE HILTON HEAD COMPANY (SEAL) By: J.B. Fraser President Attest: Fred C. Hack Secretary Signed, sealed and delivered in the presence of: Billie S. Hack O.S. Hendry Sr.

STATE OF SOUTH CAROLINA) BEFORE ME personally appeared C.S. Hendry Sr. and made oath that he SAW the within named THE COUNTY OF BEAUFORT) HILTON HEAD COMPANY by J.B. Fraser, its President and Fred C. Hack, its Secretary-Treasurer, sign, and as its act and deed deliver the within written instrument; and that he saw its corporate seal affixed by Fred C. Hack, its Secretary-Treasurer, and that he with Billie S. Hack witnessed the execution thereof. C.S. Hendry Sr. SWORN

to before me this 15th day of April, A.D. 1955 (SEAL) BILLIE S. HACK

Recorded & Certified April 26, 1955. Elmer A. Rodgers Clerk of Court.

Exhibit B

R-748

Theresa A. Gould
THERESA A. GOULD
CLERK OF COURT

APPENDIX00831



1 IN THE DISTRICT COURT OF THE UNITED STATES
2 DISTRICT OF SOUTH CAROLINA
3 BEAUFORT DIVISION

4 INVESTORS' TITLE)
INSURANCE COMPANY,) 9:05-CV-1434
5 Plaintiff) Charleston,
6 VS) South Carolina
7 CAROLYN BAIR,) March 8, 2007
8 Defendant)

9 TRANSCRIPT OF BENCH TRIAL
10 BEFORE THE HONORABLE P. MICHAEL DUFFY,
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff: MR. ROBERT P. WOOD, ESQ.
14 Rogers Townsend
and Thomas
P.O. Box 100200
Columbia, SC 29202

15
16 For the Defendant: MR. MARK WESTON HARDEE, ESQ.
17 1426 Richland Street
Columbia, SC 29201

18
19
20
21
22 Court Reporter: Amy C. Diaz, RPR, CRR
P.O. Box 835
Charleston, South Carolina 29402

23
24
25 Proceedings recorded by mechanical shorthand,
transcript produced by computer-aided transcription.

AMY C. RUEMELIN, RPR, CRR OFFICIAL COURT REPORTER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Investors Title Insurance Company,

Plaintiff,

v.

Carolyn S. Bair a/k/a Carolyn Songer
Austin,

Defendant.

C.A. No.: 9:05-1434-PMD

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

PLAINTIFF'S
EXHIBIT

1010-D

This matter was tried without a jury on March 8, 2007. The court -having considered the admissions in the pleadings, the public records of Beaufort County, South Carolina, a stipulation entered by the parties, the arguments and briefs of counsel, and the evidence offered at the trial - enters a judgment in favor of Plaintiff Investors Title Insurance Company.

1. BACKGROUND

1. In the 1950s the Hilton Head Company developed five residential subdivisions in the North Forest Beach area of Hilton Head Island, South Carolina. These were known as Hilton Head Beach Subdivisions No. 1, 1-A, 2, 2-A, and 3. Each of the five subdivisions was separately platted, and in each case the subdivision plats showed residential lots and roads.

2. As a part of that development, a plat of Hilton Head Beach Subdivision No. 1 was recorded in Beaufort County Plat Book 9, Page 4 (the "Subdivision Plat"). This plat shows Dune Lane running parallel with the beach and a number of streets (named "A Street," "B Street," "C Street," and so forth) running from Baynard Drive (on the far side of Dune Lane from the beach) to the beach. Baynard Drive is now known as N. Forest Beach Drive, and A Street is now known as

Avocet Street.

3. Lot 5 (also known by the street address of 1 Dune Lane) is on the southwestern edge of the subdivision. It is shown as 65.28' on the northerly (Dune Lane) side, 65.74' on the southerly (beach) side, and 100' on the eastern and western sides.

4. The Subdivision Plat shows A Street running along the western side of Lot 5. The Subdivision Plat does not show whether the portion of A Street next to Lot 5 is paved, dirt, landscaped, or otherwise different from the other streets in the subdivision. The Subdivision Plat shows four lots (Lots 1, 2, 3, and 4) directly behind Lot 5, all of which abut A Street.

5. The name of Hilton Head Subdivision was later changed to North Forest Beach Subdivision.

6. Forest Beach Association was formed in 1974 as a non-profit corporation in South Carolina. Pl. Ex. 2.

7. Defendant, Carolyn Bair (hereinafter referred to as "Mrs. Austin"), is a licensed South Carolina real estate broker. She bought Lot 5 in Hilton Head Beach Subdivision No. 1 in 1984. As owner of Lot 5, she, with all other owners in the subdivision, had an easement to use all of Avocet Street. Mrs. Austin also owns Lot 23 in Hilton Head Beach Subdivision No. 2.

8. In 1987 the Hilton Head Co. filed bankruptcy, and two years later Property Research Holdings, Inc. bought some of the assets of the estate. Specifically, it bought the common properties of Forest Beach Subdivision No. 1 and took an assignment of the developer's rights under the covenants applicable to the common properties. Pl. Ex. 4. The common properties included what the parties call the Strand Block and the Beach Access Lots. Property Research Holdings later made a non-exclusive assignment of its rights to enforce the declarant's rights under the covenants

applicable to the Forest Beach subdivisions to Forest Beach Association. Pl. Ex. 5.

9. Sometime thereafter, Mrs. Austin spoke to the principal of Property Research Holdings, Frank Guscio, about buying the Strand Block and Beach Access Lots from Property Research Holdings.

10. On January 31, 1995, the Beaufort County Master-in-Equity entered an order declaring that the Strand Properties and Beach Access Lots in Hilton Head Subdivision 1, 1-A, 2, 2-A, and 3 shall be forever held in trust for the use and benefit of all present and future owners of lots within the subdivisions described in the covenants and enjoining inconsistent uses. Pl. Ex. 11. The court would, later that year, however, vacate its order on the grounds that the plaintiff did not have standing to bring that suit.

11. Mrs. Austin was not a named party to this 1995 action; nonetheless, Mr. Austin admitted to being aware of the holding in this case, although he could not be sure when he first read it.

12. In 1996, Property Research Holdings conveyed streets between Dune Lane and the beach to Forest Beach Association.

13. In 1998, Mrs. Austin, then Carolyn S. Bair, became reacquainted with an old friend, Robert E. Austin, Jr., Esq., and the two became engaged to be married that fall. Mr. Austin is an attorney licensed in Florida. He is astute, experienced and knowledgeable in the matters of real estate law. During their courtship Mr. Austin began learning about the title issues related to the Beach Access Lots. He derived his knowledge from discussions with locals, discussions with Guscio, and extensive reviews of courthouse records.

14. On November 18, 1998, Guscio sent Mr. Austin a draft of a plat showing the Strand

Block and the Beach Access Lots, together with a proposed quit claim deed for the Strand Block.

15. Two days later, Mrs. Austin, employing the assistance of Mr. Austin, brought a lawsuit against Property Research Holdings to quiet title in her to the end of Avocet Street (the part of Avocet Street immediately to the west of her lot). She also named as additional defendants "unknown persons" who might claim an interest in the real property. For reasons she never explained, she did not name as defendants Beaufort County, the Town of Hilton Head, the State of South Carolina, Forest Beach Association, or any of the owners of the four lots behind her house. Her suit was based on adverse possession for ten years (going back at least to 1988).

16. Mrs. Austin and her husband acted as a team in the prosecution of the quiet title action. Mr. Austin admitted to knowing more about the problems with the title in Hilton Head Beach Subdivision No. 1 than anyone with the exception of Mr. Guscio. He had researched the town ordinances and compared them with the restrictions on record, and he talked to residents of the area and learned the local "lore" relating to the title issues. He testified that it was common knowledge that there were title issues in the Forest Beach area of Hilton Head Island.

17. Mrs. Austin effected service of process on Property Research Holdings personally, but she served the allegedly unknown persons by publication in the Beaufort Gazette. She did not explain why she chose a Beaufort newspaper over the Island Packet, the newspaper serving Hilton Head Island. ~~She admitted however that she wanted to keep the quiet title lawsuit "quiet."~~

18. Mrs. Austin obtained a judgment by default against Property Research Holdings and later against the supposedly unknown persons. This judgment had the apparent effect of quieting title to the end of Avocet Street in Mrs. Austin.

19. Shortly thereafter, Forest Beach Association lost its corporate charter. Pl. Ex. 2.

20. Mrs. Austin thereafter sought the services of Attorney James O. Hale regarding a quit claim deed and additional title work. Following discussions, she received a proposed fee agreement from him. The parties stipulated that a letter was written by Attorney Hale and sent to Mrs. Austin, and received by her on or about March 8, 2000. The letter is a proposal by Attorney Hale to prepare a quit claim deed for Property Research Holdings and to review the title background. He goes on to state: "After a conversation I had with Frank Guscio, I am concerned that the Town of Hilton Head Island, the Forest Beach Association and possibly the State of South Carolina should have been named in the Quiet Title Action in order to clear title in a manner sufficient to insure it. This is based on the understanding that there may be a claim that the property constitutes a portion of the access-ways within the Forest Beach Community." The letter is not signed, but the very next day, Mrs. Austin received a quit claim deed from Property Research Holdings covering the end of Avocet Street. Mrs. Austin did not explain why Property Research Holdings would have given her such a quit claim deed, and it appears to be the fruit of her collusive relationship with Mr. Guscio. Attorney Hale's office recorded the deed and had it returned to Attorney Hale's office.

21. Mrs. Austin had her newly expanded Lot 5 re-surveyed in August 2002. Based on this new survey, Terry G. Hatchell, RLS prepared an individual plat dated April 24, 1997, last revised August 29, 2002 ("Hatchell Plat"). In March, Mrs. Austin refinanced her mortgage. As a part of that transaction, she asked the closing attorney to sell her an owner's policy of title insurance. In the process of closing the loan and obtaining the title insurance policy, she never disclosed to the closing attorney (who served as the title agent) that she had obtained title to the end of Avocet Street by adverse possession, a quiet title suit that left out important parties, and by a quit claim deed. And she never disclosed her dealings with Mr. Guscio or her possession of the many documents she and

her husband had that were not part of the public record.

22. Investors Title issued the Policy (Policy No. OR-A 052147) on March 18, 2003. The Policy insures many aspects of the title to Lot 5 of Hilton Head Beach Subdivision No. 1, subject to various exclusions, exceptions, and conditions. Lot 5 is described as:

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as Lot 5 of Hilton Head Beach Subdivision No. 1 on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 9 at Page 4 ["Subdivision Plat"]. For a more complete description of said property, reference may be had to an individual plat prepared by Terry G. Hatchell, RLS dated April 24, 1997, last revised August 29, 2002 ["Hatchell Plat"].

Policy, Schedule C (Complaint ¶ 7; Am. Ans. ¶ 7).

The Policy specifically takes exception from coverage for "loss, costs, attorney's fees and expenses resulting from . . . 3. Easements and/or rights of way as shown on plat recorded in Plat Book 9 at Page 4, on plat for Bair for Hatchell and as referenced in restrictions below."

And the policy contains the following two exclusions:

You are not insured against loss, costs, attorney's fees, and expenses resulting from ...
3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date – unless they appeared in the public records

23. Just two months after the closing, Mrs. Austin, represented by Mr. Austin, filed a brief in a lawsuit wherein she argued that the streets of Subdivision No. 2 are easements. ~~Pl. Ex. 35.~~

24. On November 9, 2004, Forest Beach Owners Association, claiming to own property in Forest Beach Subdivision No. 1, sued Mrs. Austin for access to the beach across the end of Avocet Street (the "underlying suit"). Mrs. Austin forwarded the lawsuit to Investors Title for a defense. Investors denied the claim and brought this declaratory judgment lawsuit seeking a

declaration that the Policy does not provide coverage for the loss, costs, attorney's fees, or expenses resulting from the underlying lawsuit. Mrs. Austin counterclaimed for breach of the insurance policy and for bad faith, but has since agreed to dismiss her bad-faith claims and her claims for attorney's fees in this declaratory judgment action.

25. The court has already considered and ruled upon several of the issues in this declaratory judgment action pursuant to three separate motions for summary judgment. On September 6, 2006, the court issued an Order finding that because the Policy incorporates two inconsistent plats - the Subdivision Plat depicts the contested portion of land as an easement extending to the ocean front and the Hatchell Plat depicts the contested portion of land as part of Lot 5 - the scope of the Policy is ambiguous as a matter of law. Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and against the insurer; therefore, the court found that the Policy covers the larger section of land described as "Revised Lot 5" in the Hatchell Plat, not the smaller lot shown and designated as Lot 5 in the Book 9 Plat. Because the portion of the Lot which is the subject of the underlying lawsuit is included in Lot 5 as described by the Hatchell Plat, the court found that title risks relating to this portion are covered by the Policy. As such, Investors is required to defend Defendant's title to this property in the underlying lawsuit, unless a Policy exception or exclusion applies.

II. BENCH TRIAL

On March 8, 2007, the court conducted a bench trial in which the only outstanding issue was whether a Policy exclusion applies to release Investors from its obligation to defend Mrs. Austin's title in the underlying lawsuit. The court now makes the following Findings of Fact and Conclusions of Law in accordance therewith:

Actions Tried Without a Jury

26. Rule 52(a) of the Federal Rules of Civil Procedure sets forth the standard of review of actions tried without a jury. Rule 52(a) provides that "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

27. "It surely does not stretch the language of Rule [52(a)] to characterize an inquiry into what a person knew at a given point in time as a question of 'fact.'" *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498, 104 S.Ct. 1949, 1958 (1984) (holding that district court's determination regarding a party's actual knowledge of the falsity of a published statement constituted a determination of fact entitled to Rule 52(a) deference); *Herbert v. Lando*, 441 U.S. 153, 170, 99 S.Ct. 1635, 1645, 60 L.E.2d 115 (1979) (referring in passing to actual malice as "ultimate fact").

28. In a bench trial, the court, as the trier of fact, is the sole judge of the credibility of witnesses and the weight to be given their testimony. *J.S.K. Realty Co. v. New Plan Realty Trust*, 9 Fed. Appx. 89 (4th Cir. 2001). The trial court, sitting as a trier of fact, has both the right and the duty to weigh the evidence and to draw reasonable inferences and deductions. *United States v. Bales*, 813 F.2d 1289 (4th Cir. 1987) (finding that where jury trial is waived, judge weighs the evidence, determines the credibility of the witnesses, and finds the facts).

29. If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse the district court's decision even though convinced that it would have weighed the evidence differently. *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). "Where there are two permissible views of the evidence, the factfinder's

choice between them cannot be clearly erroneous.” *Id.* (citations omitted). The reviewing court “must give due regard to the opportunity of the district court to judge the credibility of the witnesses.” *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable*, 65 F.3d 1113, 1122 (4th Cir. 1995). As the Supreme Court has reasoned, a trial on the merits “should be the main event . . . rather than a tryout on the road.” *Anderson*, 470 U.S. at 575 (citations omitted).

Legal Standard for Construction of Insurance Policies

30. Insurance policies are subject to the general rules of contract construction, so courts must enforce (and not write) contracts of insurance, and the language of policies must be given its plain meaning. *Botany Bay Marina, Inc. v. Great American Ins. Co.*, 760 F. Supp. 88 (D.S.C. 1991); see also *Diamond State Ins. Co. v. Homestead Industries, Inc.*, 318 S.C. 231, 456 S.E.2d 912 (1995) (holding that insurance policies are subject to the general rules of contract construction); *Sloan Construction Co. v. Central Nat. Ins. Co. of Omaha*, 269 S.C. 183, 236 S.E.2d 818 (1977). Similarly, an insurer’s obligation under a policy of insurance is defined by the terms of the policy itself, and the obligation cannot be enlarged by judicial construction. *South Carolina Farm Bur. Mut. Ins. Co. v. Wilson*, 344 S.C. 525, 544 S.E.2d 848 (Ct. App. 2001) (cert. den.).

31. If the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties. *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 562 S.E.2d 676 (Ct. App. 2002) (cert. den.).

32. Courts are not authorized to pervert policy language or to exercise inventive powers in order to create an ambiguity where none exists. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000).

Applicability of Policy Exclusions

33. As discussed above, the Policy provides by general exclusion that the insured is "not insured against loss, costs, attorneys' fees, and expenses resulting from ... [t]itle risks that are created, allowed, or agreed to by [the insured], or that are known to [the insured], but not to [Investors], on the Policy Date – unless they appeared in the public records."

34. "Title risks" is a defined term under the Policy that includes "someone else['s] own[ing] an interest in your title" or "someone else['s] ha[ving] an easement on your land," if that situation affected the title on the Policy date. (Policy at 1.) A title risk will be said to have been known by an insured when the owner of the title insurance policy knew of facts not in the public record before the issuance of the policy that would have put a reasonable person on notice that there was a likelihood that somebody would come along later and challenge his title to the property. *See* Joyce D. Palomar, *Title Insurance Law* §§ 6:14, 6:15 (West Group 2004). Because the language of an exclusion will be resolved in favor of the insured and coverage, the court finds that the Policy exclusion applies only when an insured has *actual* knowledge of the facts that would have put a reasonable person on notice of the title risk which is the subject of the underlying lawsuit. *See New York Underwriters Ins. Co. v. Cent. Union Bank of South Carolina*, 65 F.2d 738 (4th Cir. 1933) (holding that, under a fire insurance policy, an exclusion for when mortgagee has "knowledge of change in occupancy" is interpreted to require actual knowledge of the change); *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005) (holding that the insurance company bears the burden of establishing the exclusion's applicability).

35. Mrs. Austin testified that she did not have "actual knowledge" that members of the Forest Beach Community retained an easement across the contested portion of Lot 5 which was

formerly Avocet Street, in spite of the 1999 judgment purporting to quiet title in her. However, considering her familiarity with the law of easements (as evidenced by the lawsuits filed by her in 1998 and 2003), the letter she received from Attorney Hale warning her that the Forest Beach Community may retain such an interest, and her husband's admission that he had "superior knowledge" of Hilton Head's title issues, including the 1995 Order by the Beaufort County Master-in-Equity, the court finds this testimony is not credible. When the testimony of a witness is not credible, the trier of fact may simply disregard it. *Bose Corp.*, 466 U.S. at 512, 104 S.Ct. at 1966.

36. In this case, the evidence presented at trial shows that shortly after acquiring the Policy, Mrs. Austin, through Mr. Austin, filed a brief in an unrelated lawsuit in which she acknowledged that the streets of Hilton Head Subdivision No. 2 are easements for the use and benefit of all present and future lot owners. Based on this evidence, the court finds Mrs. Austin had actual knowledge that all lot owners in the Hilton Head Subdivisions owned an easement interest in the streets of their respective Subdivisions, including Avocet Street in Subdivision No. 1.

37. Mrs. Austin admitted that she took the land formerly known as Avocet Street by adverse possession, then filed a declaratory judgment action related to it in which she failed to name members of the Forest Beach Community as defendants, and then obtained, for no consideration at all, a quit claim deed to the land from the businessman with whom she had arranged to obtain the judgment. As such, although Mrs. Austin knew that all Subdivision No. 1 lot owners owned an easement across Avocet Street, she and her husband took possession of the beach access property by hostile and adverse means and then brought an adverse possession lawsuit in which she failed to name parties that she knew had an interest in the property in dispute. See *Pinckney v. Atkins*, 317 S.C. 340, 454 S.E.2d 339 (Ct. App. 1995); 59 Am. Jur. 2d *Parties* § 130 (2006).

38. The court is convinced that Mr. Austin expertly orchestrated the quiet title suit in the way a good patent attorney lawyer would prepare a suit for a client who attempted to reverse-engineer a competitor's invention. While he was very skillful, he would not and could not have undertaken it without the knowledge and consent of his wife, an experienced realtor and experienced litigator. It is therefore inescapable that following the quiet title action that resulted in the May 27, 1999 judgment, both Mr. and Mrs. Austin knew of the title risk at issue in the underlying lawsuit. The fact that both knew the risk involved in the quiet title suit is amply demonstrated by the omission of necessary parties from the quiet title action, by the limited scope of notice to these necessary parties by publication in a neighboring town's paper, and, most tellingly, by the fact that Mr. and Mrs. Austin filed legal briefs only two months later in a different suit contradicting their actions.

39. In assessing the applicability of the Policy exclusion for "title risks known to the insured," Mrs. Austin's knowledge of the title risk is the relevant issue. It is not relevant whether or not she knew the name of the person who would ultimately sue her. See J. Bushnell Nielsen, *Title & Escrow Claims Guide* 320 (Woodridge Legal Publishers, 1996).

40. The Policy defines "public records" to mean "title records that give constructive notice of matters affecting [the insured's] title - according to the state statutes where your land is located." (Policy at 2.) In other words, the title risk inherent in the 1999 judgment is excluded from the scope of the Policy unless this risk is recorded in those South Carolina records established to put purchasers of real property on constructive notice of matters relating to the title of real property. See *Haw River Land & Timber Co. v. Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998). Stated

otherwise, the risk transferred to Investors by the Policy is the risk of not conducting an adequate title search among the records established by the state for searching titles to real property.

41. South Carolina Code section 30-7-10 requires "generally all instruments in writing conveying an interest in real estate" are valid so as to affect the rights of purchasers for valuable consideration without notice if they are "recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated."

42. The closing attorney for Investors, Henri Ann Logan, testified that she conducted a title search of the grantor-grantee index in the Beaufort County Office of the Register of Deeds prior to issuing the Policy to Mrs. Austin. In the course of this search, Ms. Logan found and did not take exception to the 1999 judgment purporting to quiet title of the contested portion of Avocet Street in Mrs. Austin "free and clear of all . . . encumbrances, claims, options, and interests." The court finds Ms. Logan properly limited her search to matters of public record and did not consider local ordinances, the pleadings from the quiet-title action, or other papers not recorded in the Office of the Register of Deeds which may have impugned the legal effectiveness of the 1999 judgment. As such, the title risk inherent in the 1999 judgment did not appear in the public record when it was examined by Ms. Logan. Mrs. Austin admitted that she did not disclose the circumstances surrounding the quiet-title action regarding Avocet Street to her closing attorney. ~~Had she done so, she would have ruined a carefully crafted plan designed and executed by her attorney/husband.~~

43. As to matters that are outside the public record and not normally discoverable via standard title examination – e.g., wild or stray deeds, instruments filed outside the chain of title, frauds, forgeries, conveyances made under undue influence or by minors or incompetents – the title insurance policy normally provides coverage, but will not if an insured has knowledge of these

matters outside the public record. See Joyce D. Palomar, *Title Insurance Law*, § 6.17 (2004); J. Bushnell Nielsen, *Title & Escrow Claims Guide* 170 (Woodridge Legal Publishers, Supp. 2005).

44. Because Mrs. Austin knew of title risks which did not appear in the public records and which Investors Title knew nothing of, coverage for litigation relating to the ownership of Avocet Street is excluded under the exclusion that the insured is "not insured against loss, costs, attorneys' fees, and expenses resulting from ... [t]itle risks that are created, allowed, or agreed to by you, that are known to you, but not to [Investors], on the Policy Date – unless they appeared in the public records."

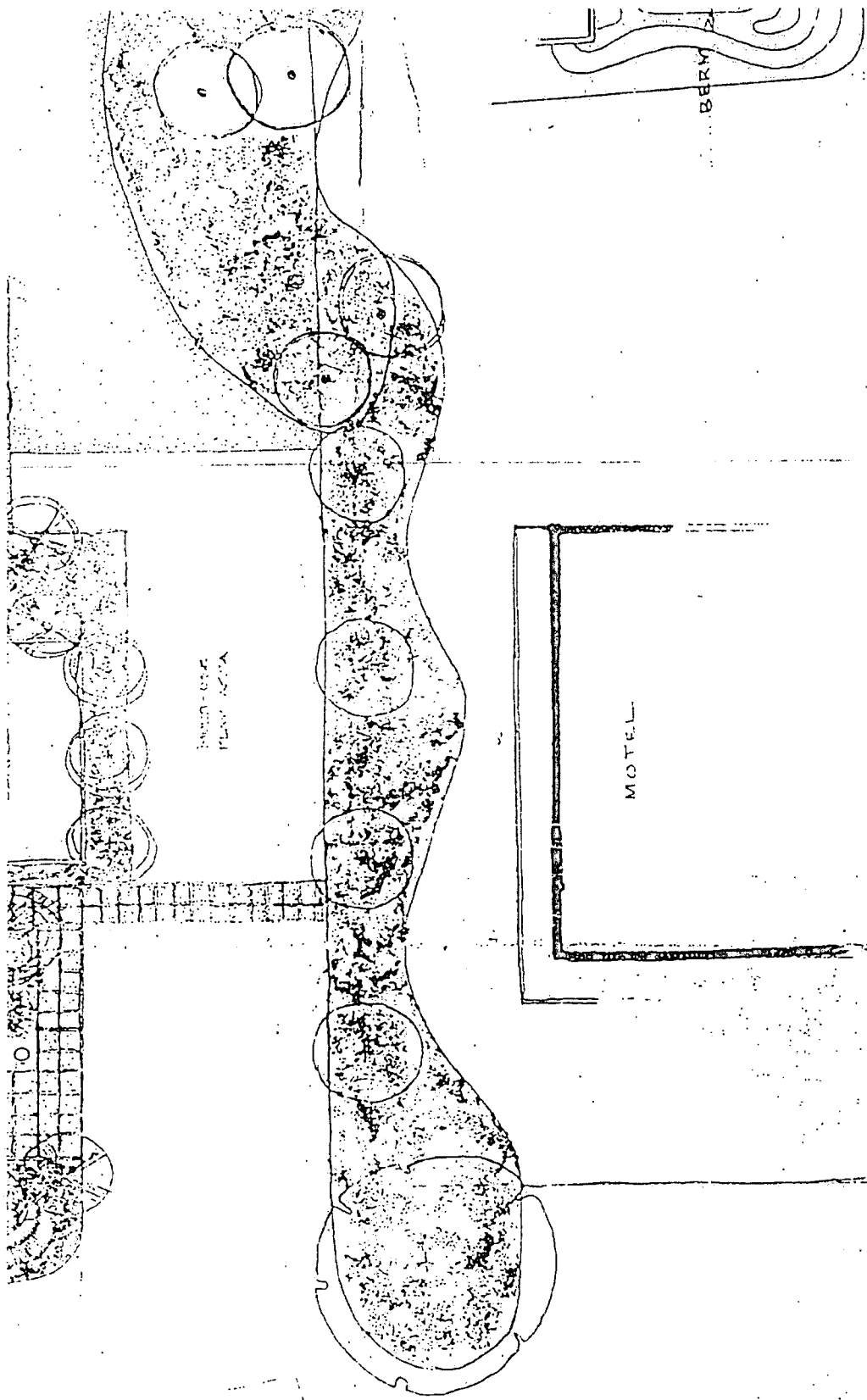
CONCLUSION

It is therefore DECLARED, for the foregoing reasons, that the Policy does not provide coverage for the loss, costs, attorney's fees, or expenses resulting from the underlying lawsuit and that Investors Title has no duty to defend or indemnify Mrs. Austin under the Policy for loss, costs, attorney's fees, or expenses resulting from the underlying lawsuit.

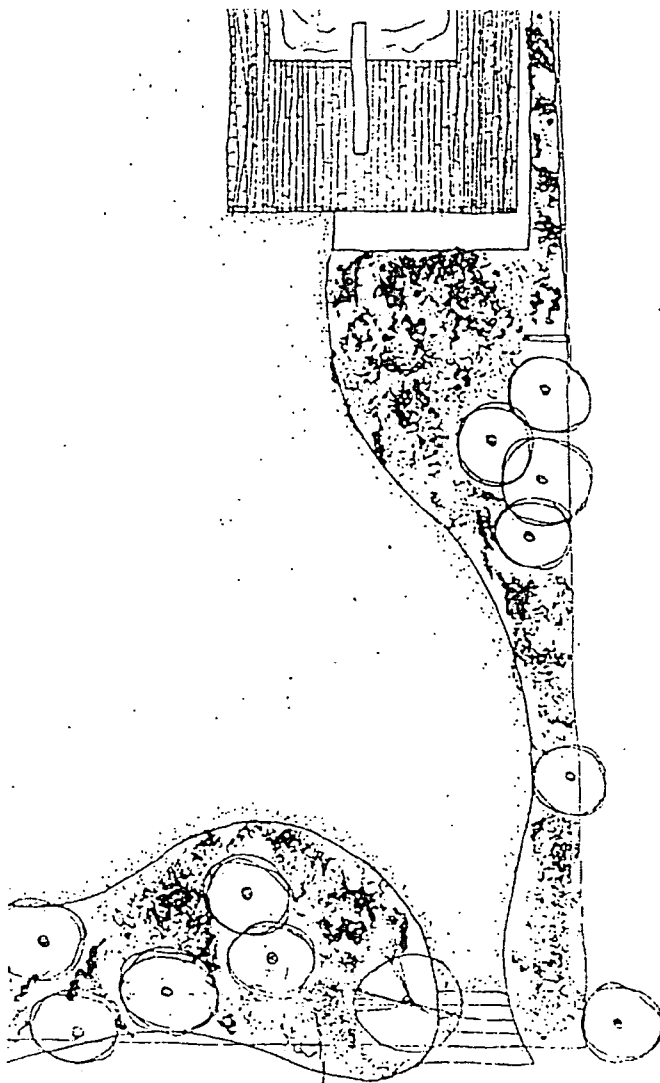
AND IT IS SO ORDERED.


PATRICK MICHAEL DUFFY
United States District Judge

Charleston, South Carolina
April 26, 2007.

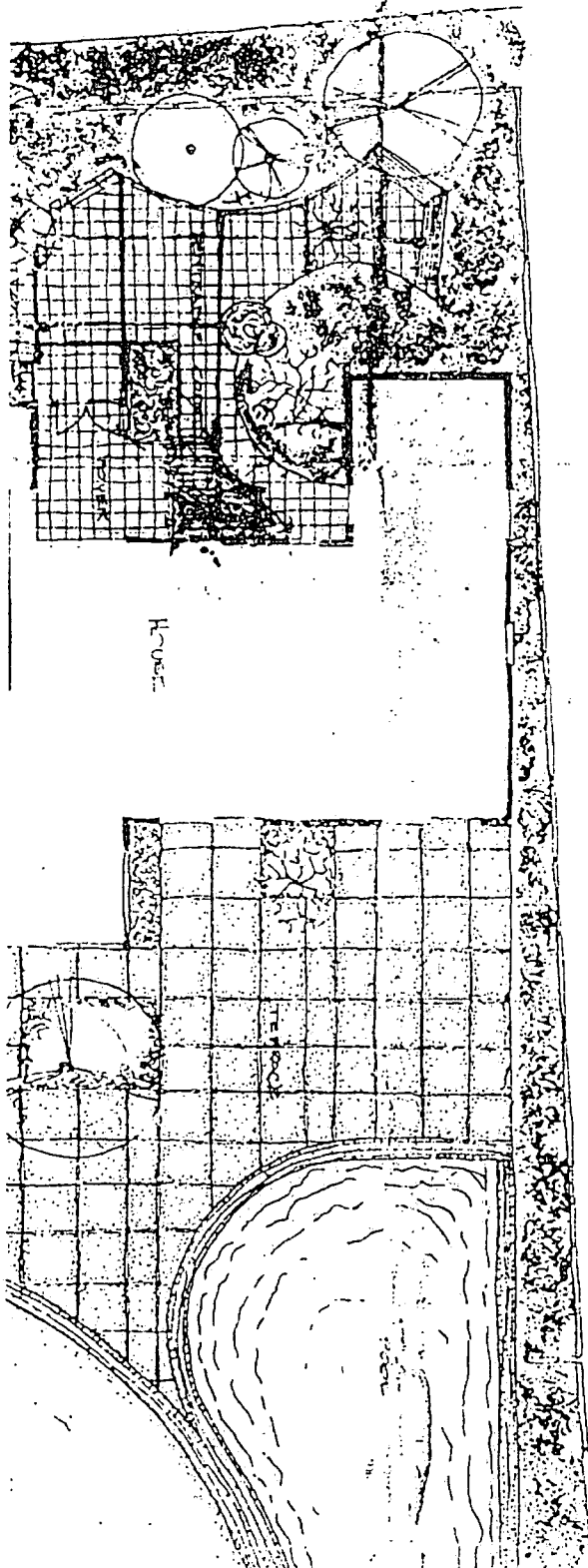


R-764

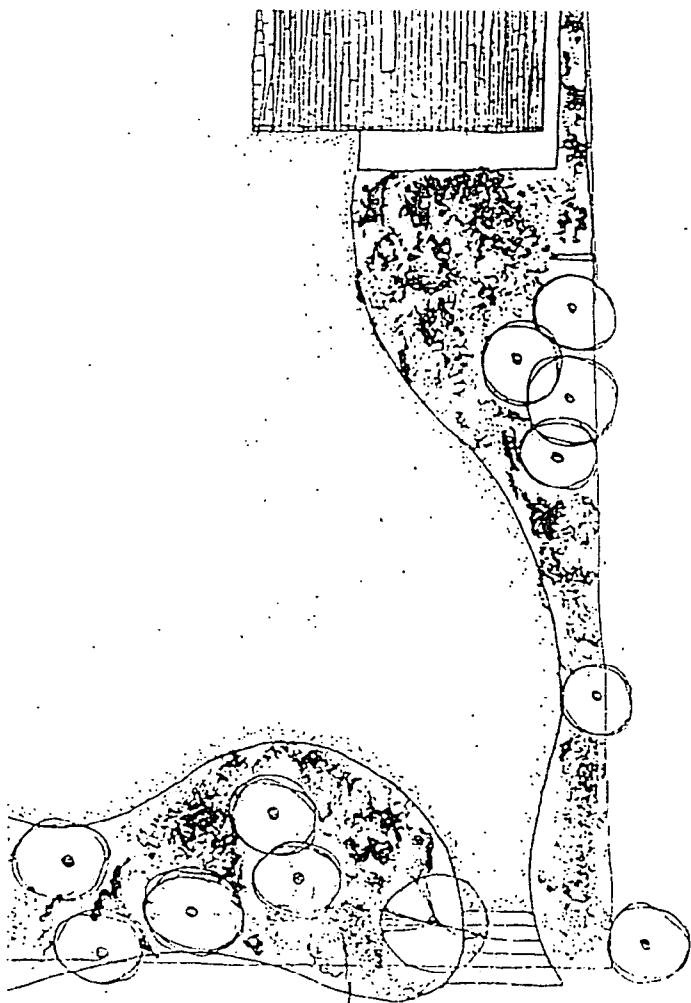


BEACH

R-765

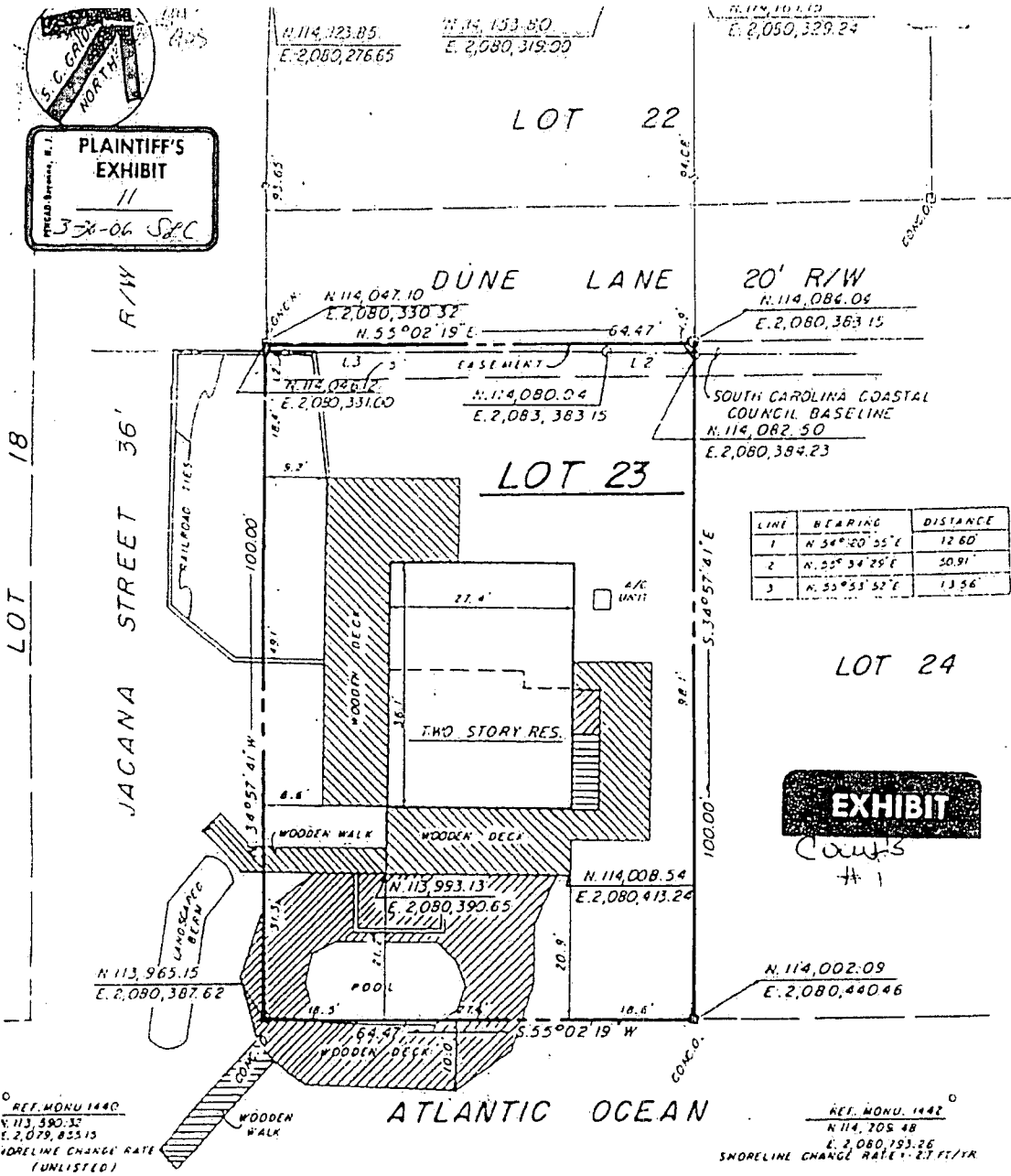
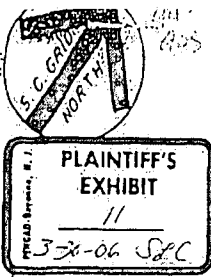


R-766



BRACH

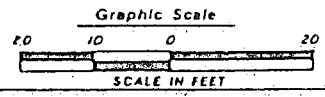
R-767



PREPARED FOR: CAROLYN A. BAIR
REFERENCE PLAT: HILTON HEAD BEACH SUBDIVISION NO. 2
DATED MAY - JUNE, 1953 (NO SURVEYOR'S NAME SHOWN ON REFERENCE PLAT)

BOOK 9 PAGE 20

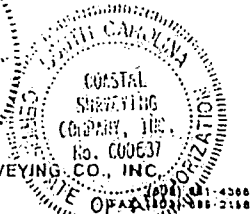
NOTE:
ALL CONCRETE MONUMENTS FOUND (CONCD.) ARE 3" x 3" SQUARE WITH 1 REBAR.



SCALE: 1" = 20'
DATE: 9/16/94
FIELD WORK: E.Z.
DRAWN BY: M.C.
OFFICE CK: AD
JOB NO. 26,424

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN.

Michael R. Dungan
MICHAEL R. DUNGAN
S.C. R.L.S. NO. 11905



A PLAT OF
LOT 23
DUNE LANE
"UPDATE AS-BUILT SURVEY"
A SECTION OF
NORTH FOREST BEACH
(HILTON HEAD BEACH SUBDIVISION NO. 2)

HILTON HEAD ISLAND
BEAUFORT COUNTY
SOUTH CAROLINA

4/28/86
39270

STATE OF SOUTH CAROLINA,

County of Beaufort

1313
LX 33
HH NW

BEAUFORT COUNTY, SC
REVENUE STAMPS COLLECTED
COUNTY 481.00
Real Estate Transfer Fee Collected
\$ 462.50

KNOW ALL MEN BY THESE PRESENTS, THAT

LEONA MAY MacKERCHER, as Personal Representative of The Estate of Rexann Bell Northway Zegler (f/k/a Rex Ann Northway) and Co-Guardian of Dustin Bard Northway and Natalie Ann Northway, Minors under The Last Will and Testament of Rexann Bell Northway Zegler (f/k/a Rex Ann Northway), Deceased; AND

FREDERICK REX MacKERCHER, as Co-Guardian of Dustin Bard Northway and Natalie Ann Northway, Minors under The Last Will and Testament of Rexann Bell Northway Zegler (f/k/a Rex Ann Northway), Deceased.

in the State aforesaid _____ for and _____ in consideration of the sum of
Ten Dollars and 00/100 (\$10.00) and other valuable consideration _____ DOLLARS,
to us _____ in hand paid at and before the sealing of these presents by TREVOR G. HOWARD and
JANET I. HOWARD, 16 Dove Street, Hilton Head Island, SC 29928

in the State aforesaid _____ for which _____ 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 TREVOR G. HOWARD and JANET I. HOWARD, as Joint Tenants with the

Right of Survivorship, and not as Tenants in Common, their Heirs and Assigns, forever, in fee simple, the following-described real property, to-wit:

ALL that certain lot, tract or parcel of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as Lot Number 33 of Hilton Head Beach Subdivision No. 1 as shown on a plat of said subdivision made by Fred C. Hack, Land Surveyor, under date of April-June, 1952, and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, July 7, 1952, in Plat Book 9 at Page 4. Said Lot Number 33 is more particularly described as bounded Northeasterly by D. Street (now known as Dove Street) of said Subdivision; Southeasterly by Lot Number 32; Southwesterly by Lot Number 23, and Northwesterly by Baynard Avenue, and being quadrangular in shape, fronting 80.02 feet on D. Street (now known as Dove Street) with a depth of 100 feet.

SAID PROPERTY is conveyed subject to all easements, covenants, restrictions, and obligations contained in the instrument recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, in Deed Book 74 at page 20.

BEAUFORT COUNTY TAX MAP REFERENCE

Dist.	Map	Submap	Parcel	Block
540	15	A	240	

THIS being the same property conveyed to Jeffrey R. Zegler and Rex Ann Northway by Deed of Rodger A. Keyes dated the 7th day of September, 1989, and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina on the 25th day of September, 1989, in Deed Book 537 at Page 982; and by The Last Will and Testament of Rexann Bell Northway Zegler, (f/k/a Rex Ann Northway) filed on September 20, 1994, in Will File 94-489.

This Deed was prepared in the Law Offices of Biel, Clark & Johnson, P.A., Suite 102 Atlantic Savings Bank Building, 200 Merchant Street, Hilton Head Island, South Carolina 29926, by Barry L. Johnson, Esquire.

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

Trevor G. Howard and Janet L. Howard, as Joint Tenants with the Right of Survivorship,
and not as Tenants in Common, their Heirs and Assigns, forever.

AND we do hereby bind ourselves and our Heirs, Successors, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said TREVOR G. HOWARD and JANET L. HOWARD, their Heirs and Assigns, against us and our Heirs, Successors and Assigns.

WITNESS our Hands and Seals, this 21st day of October, in the year of our Lord one thousand nine hundred and ninety-four, and in the two hundred and nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(2) Barry L. Johnson
First Witness

(3) Linda B. Behling
Second Witness (notary public)

(1) Leona May MacKercher
Leona May MacKercher, as Personal Representative

(1) Leona May MacKercher
Leona May MacKercher, as Co-Guardian of Dustin Bard Northway and Natalie Ann Northway, Minors

(1) Frederick Rex MacKercher
Frederick Rex MacKercher, as Co-Guardian of Dustin Bard Northway and Natalie Ann Northway, Minors

THE STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF (4) BEAUFORT)

PERSONALLY appeared before me (5) Barry L. Johnson and made oath that s/he saw the within-named Leona May MacKercher, as Personal Representative and Co-Guardian and Frederick Rex MacKercher, as Co-Guardian sign, seal and as their act and deed, deliver the within-written Deed, and that s/he together with (6) Linda B. Behling witnessed the execution thereof.

(7) Barry L. Johnson
First Witness (same as #2 and #3 above)

SWORN TO before me this 21st day of October, 1994.

(8) Linda B. Behling
Notary Public for the State of South Carolina
My Commission Expires: 3/25/03

(Same as #3 and #6 above)

~~FILED
JAMES A. SULLIVAN JR.
S.C.
BEAUFORT COUNTY S.C.
JAN 27 1983 11:03
S.C. FC
FOLDER #~~

Qualey 27555
FILED
JAMES A. SULLIVAN JR.
S.C.
BEAUFORT COUNTY S.C.
JAN 27 1983 11:03
S.C. FC
FOLDER #
740 PG 1313
1316
RECORDED THIS 5th DAY
OF December 1984
IN BOOK HA PAGE 1186
Mary B. Davis
AUDITOR, BEAUFORT COUNTY, S.C.

1017

APPENDIX00856

3/8/00

1/2/9d

10733

1267/655

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) QUIT CLAIM DEED

WHEREAS, Final Judgment was entered by the Honorable Donald W. Beatty, dated May 19, 1999, in the Action captioned Carolyn S. Bair v. Property Research Holdings, Inc., et al. C.A. #98-CP-07-1721 and filed under Judgment Roll #108046 provided that Carolyn S. Bair has good title against Property Research Holdings, Inc.; also, all other persons unknown, claiming any Right, Title, Estate, Interest in or lien upon the Real Estate described below and in the Complaint in the above referenced Action;

WHEREAS, the Defendant Property Research Holdings, Inc. wishes to provide this Quit-Claim to further support the ruling issued in the above referenced Action and to confirm its conveyance of any and all interest, if any, that Property Research Holdings, Inc. may have in the property referenced below.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT PROPERTY RESEARCH HOLDINGS INC. ("Grantor") in consideration of the premises and also in consideration of the sum of Ten and no/100 (\$10.00) Dollars to it in hand paid at and before the sealing and delivery of these presents by CAROLYN SONGER AUSTIN, FORMERLY KNOWN AS CAROLYN S. BAIR ("Grantee") having an address of P. O. BOX 550, HILTON HEAD ISLAND, SC 29938, the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said CAROLYN SONGER AUSTIN FORMERLY KNOWN AS CAROLYN S. BAIR, her heirs and/or assigns, forever, in fee simple, the following described real property to wit:

SEE ATTACHED EXHIBIT "A"

* 550
DIST ~~540~~ 15A-224 #

R-774

000071

APPENDIX00857

This Quit Claim Deed was prepared by the Law Office of Hale & Hale, P.A., P. O. Box 22561, Hilton Head Island, South Carolina 29936, by James O. Hale, Esquire, without the benefit of a title search.

TOGETHER with all and singular the rights, memberships, hereditaments and appurtenance 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 Grantee her heirs and/or assigns forever, forever--so that neither the said Grantor, nor its successors and/or assigns, nor any other person or persons, claiming under it or itself, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

Witness in hand and seal this 8th day of MARCH, in the year of our Lord two thousand.

SIGNED, SEALED AND DELIVERED

PROPERTY RESEARCH
HOLDINGS, INC.

IN THE PRESENCE OF:

BY: Francis J. Gussie, Jr.

E. Sigurdson
witness signature

ITS: PRESIDENT

Michael Smith
notary signature

STATE OF SC)

COUNTY OF Beaufort)

I, Robinson, Notary Public for the State of SC do hereby certify that, Grantor personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 8th day of Mar, 2000.

Michael Smith

Notary Public for: Notary Public, South Carolina, State at Large
My Commission Expires: September 9, 2003

Z:\New Files\RESEARCH\Quit Claim Deed.wpd March 2, 2000 (1:14PM)

Letter to:
HALE & HALE, P.A.
ATTORNEYS AT LAW
P.O. BOX 22561
HILTON HEAD ISL., SC 29925

657

EXHIBIT "A"

From the northwestern corner of Lot 5, Hilton Head Reach Subdivision No. 1, run South $24^{\circ}35.34'$ East for 100 feet to the point of beginning, thence run South $24^{\circ}35.34'$ for 59.03 feet, thence run South $57^{\circ}55'51''$ West for 106.03 feet, thence run North $24^{\circ}18'26''$ West for 173.37 feet, thence run North $65^{\circ}42'22''$ East for 36 feet, thence run South $24^{\circ}18'26''$ East for 100 feet, thence run northerly to the point of beginning.

R-776

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APPENDIX00859

Hale \$10
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SEARCHED INDEXED
SERIALIZED FILED
MAR-9 AM 10:33 *MLL*
BK 1267 PG 655
FOLDER #

658

1267 PG 655
J

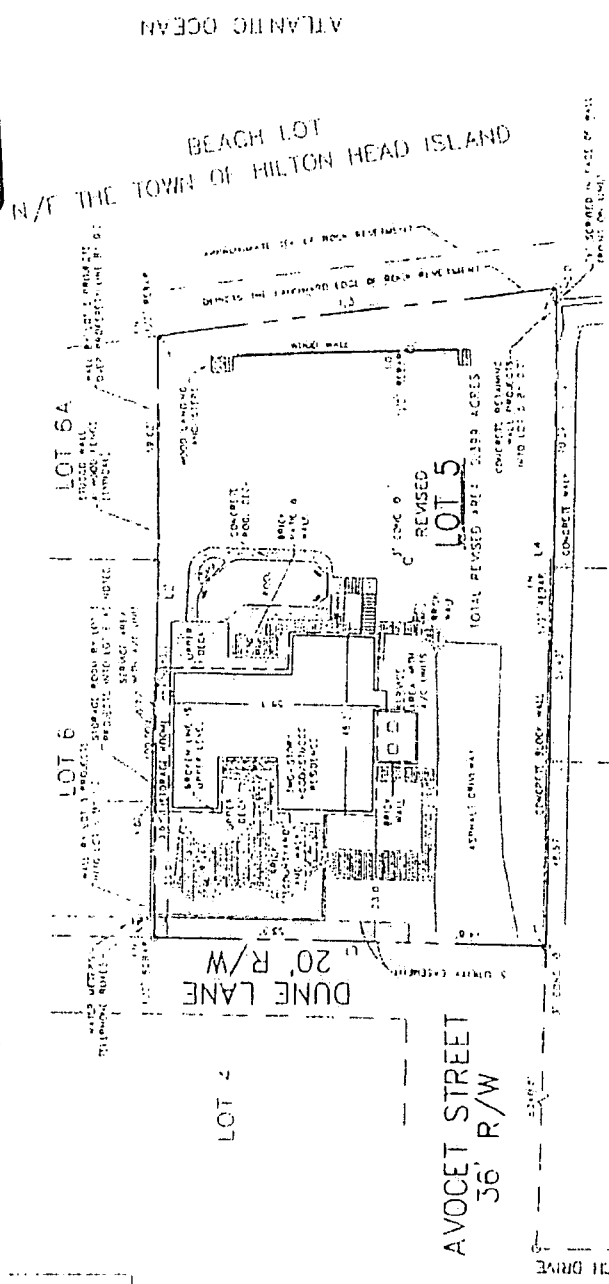
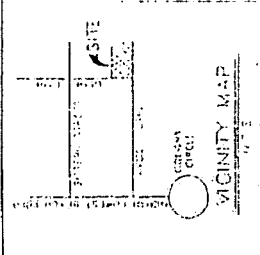
R-777

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APPENDIX00860

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TIME 10:30
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ADDRESS [illegible]
CITY [illegible]
STATE [illegible] ZIP [illegible]

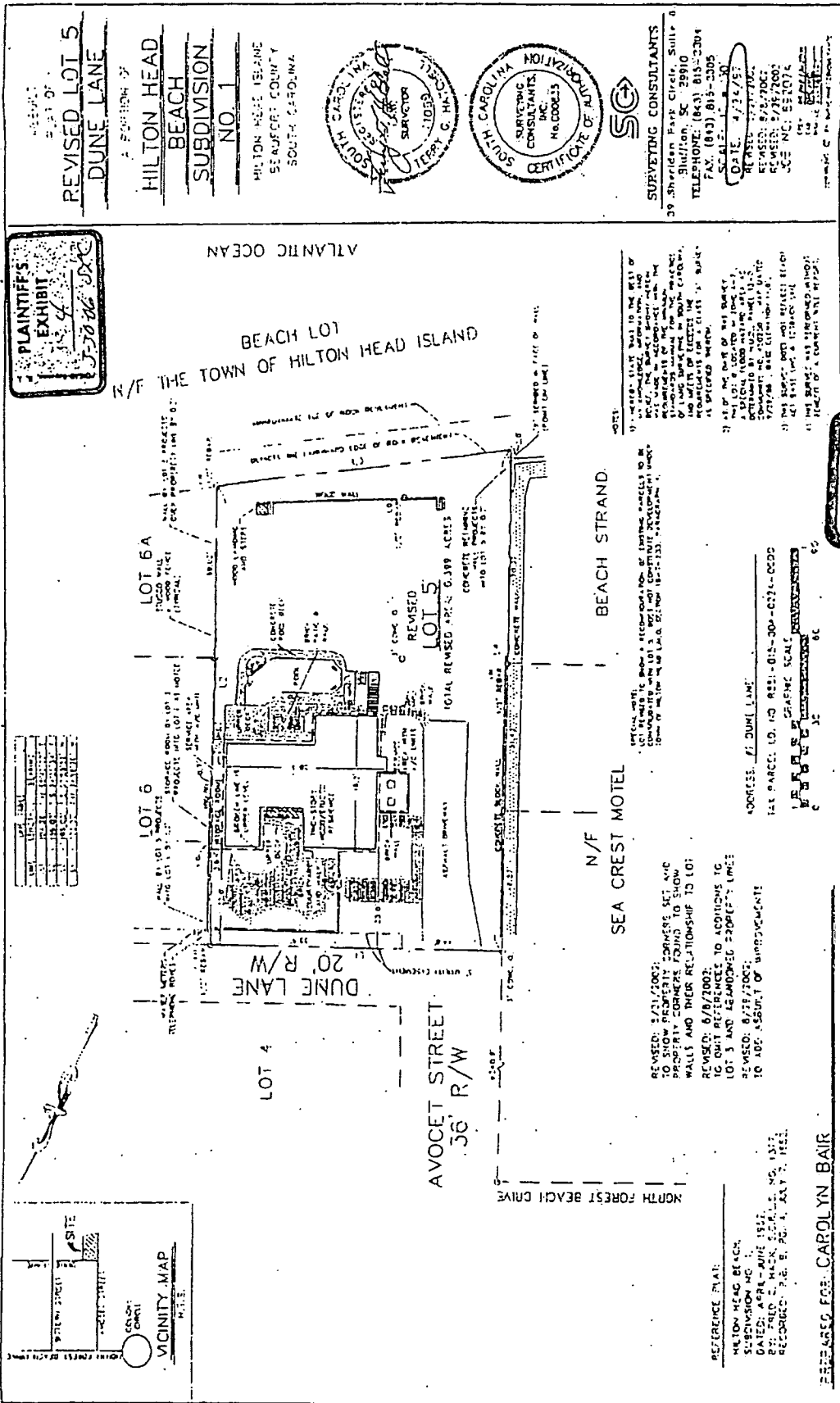
105



SEA CREST MOTEL
N/F
BEACH STRAND

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REFERENCE: 141:
 NATIONAL HEAD SEARCH
 COLUMBIA UNIVERSITY
 1000 34TH STREET
 NEW YORK, N.Y. 10018
 TELEPHONE: 212-850-4100



R-779

000199

2045/1539

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

ACKNOWLEDGEMENT

I, CHESTER C. WILKINS the undersigned Notary Public, do hereby
certify that Francis J. Guscio, Jr., President of Property Research Holdings, Inc., and George D.
Womble, Secretary of Property Research Holdings, Inc., personally appeared before me this day
and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23
day of May, 2001.

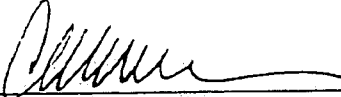

Notary Public for South Carolina
My Commission Expires: 9-24-2006

Exhibit 76

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R-780

APPENDIX00864

EX 77



2A



2B



2C

R-781



1A



1B



1(c)

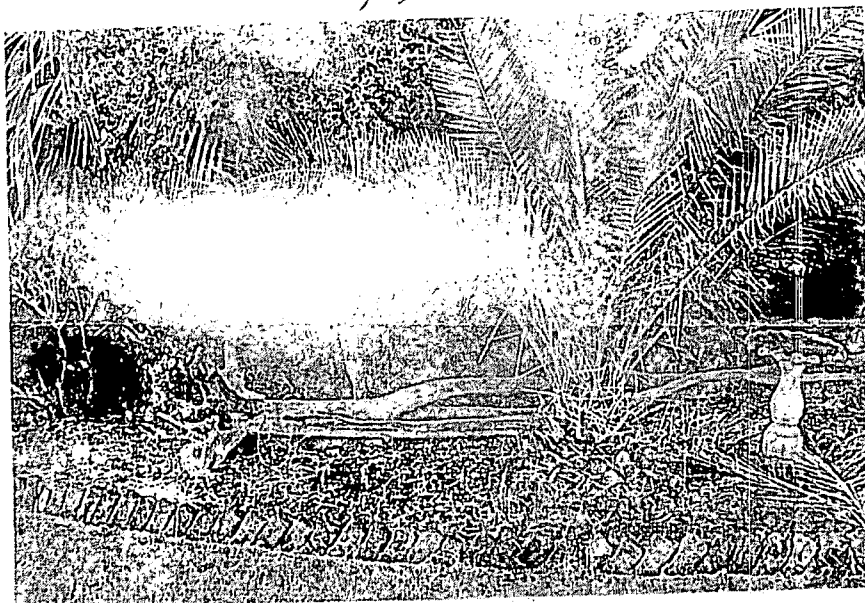
R-782



3A



3B



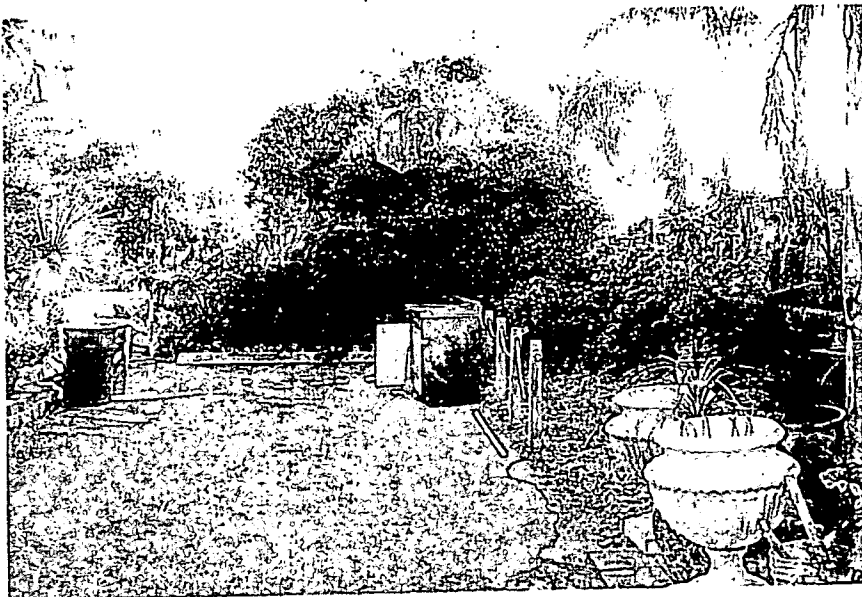
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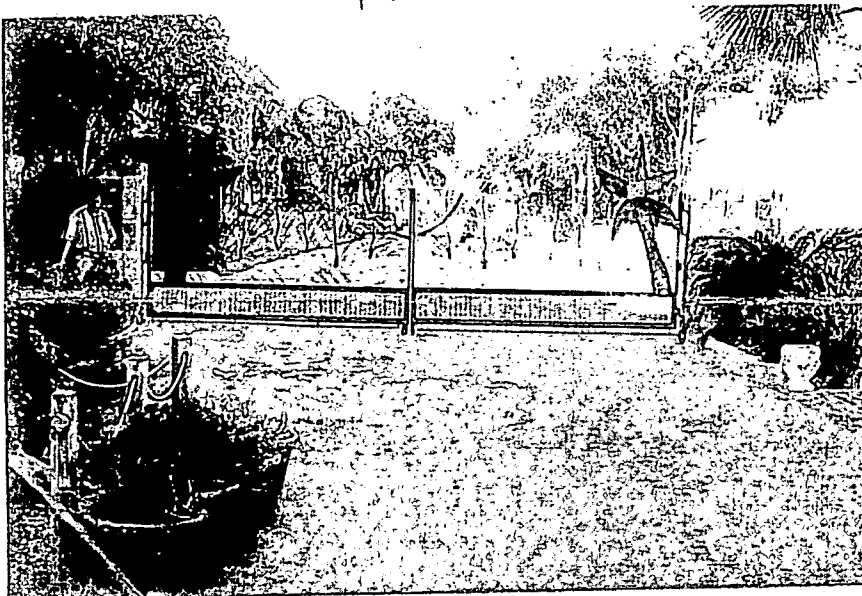


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R-784



ER 77

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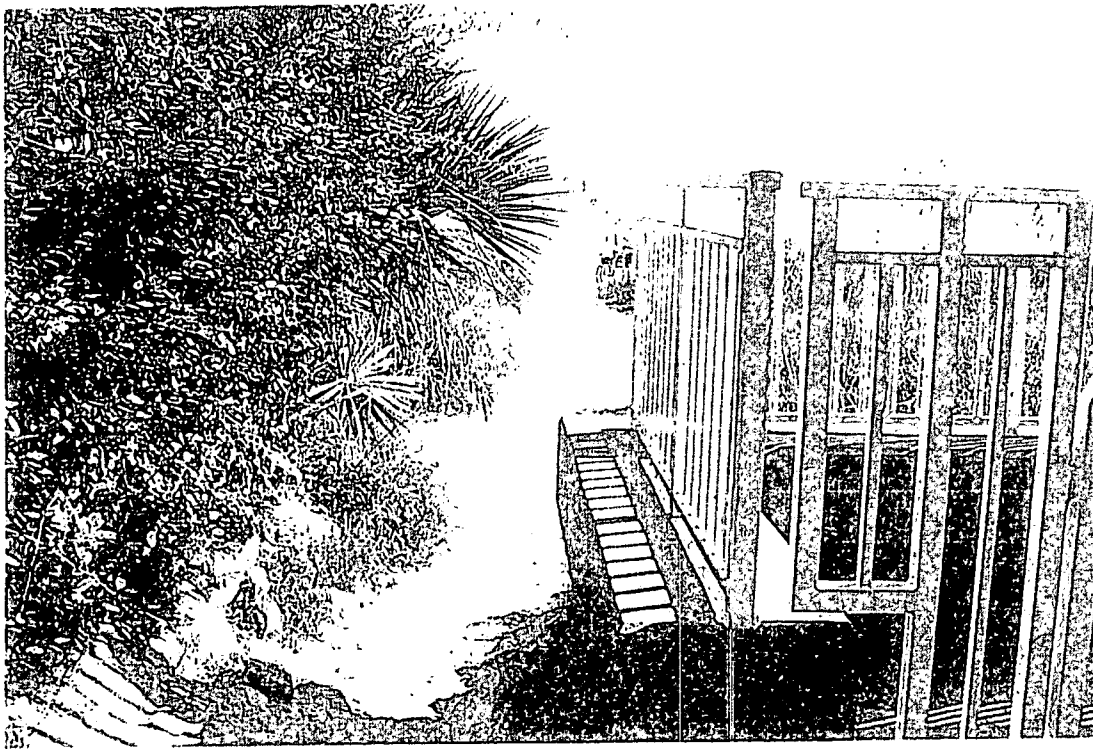
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6B

R-786

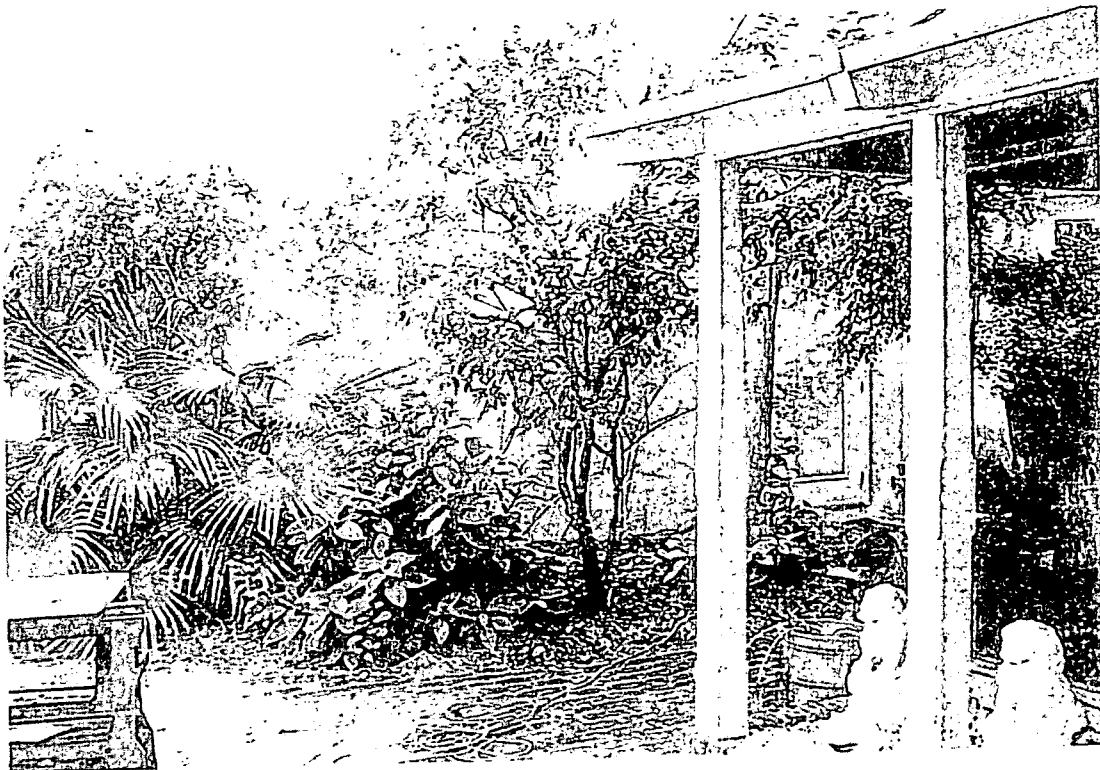
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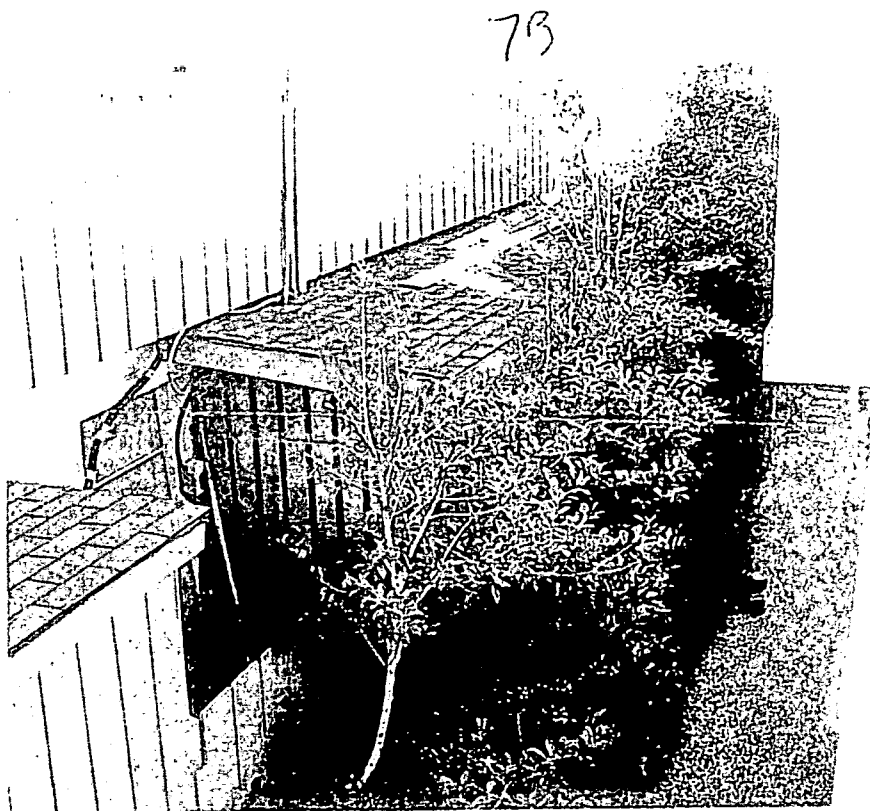
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R-787

APPENDIX00871



Ex 78



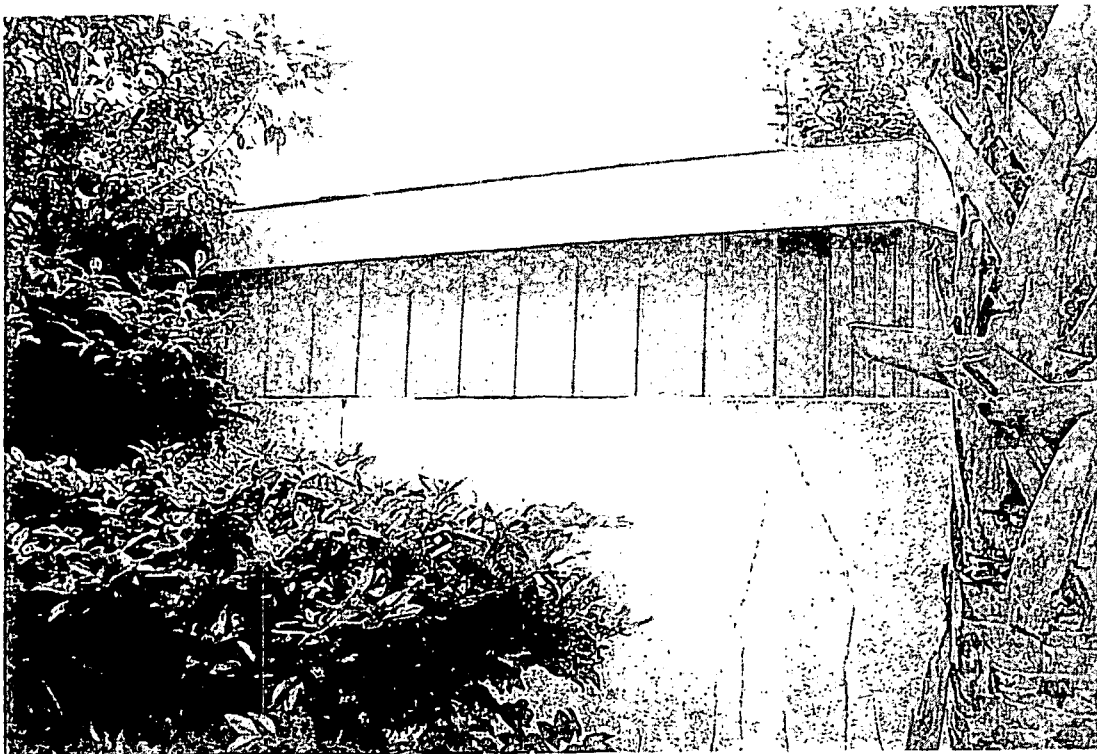
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R-788

Ex. 18



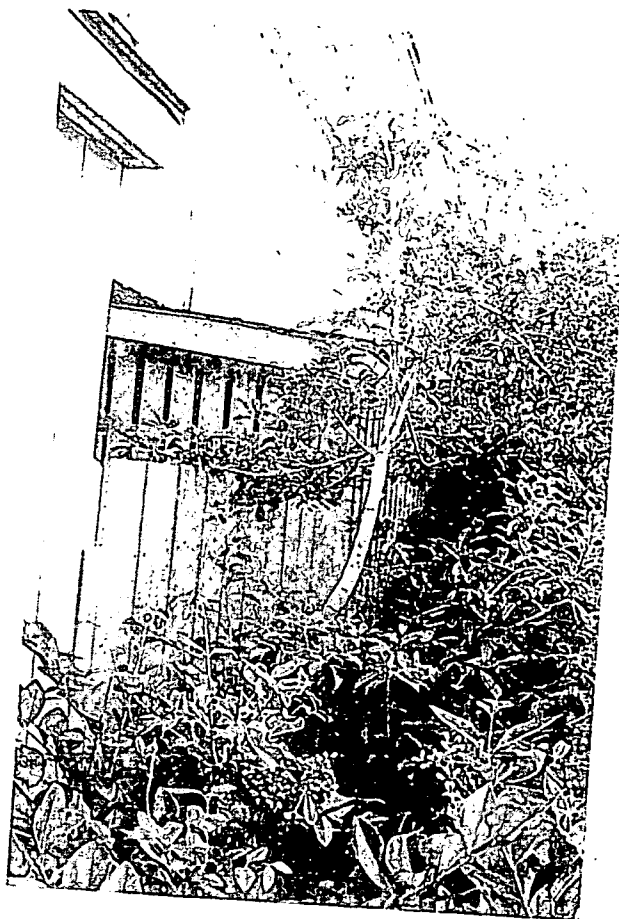
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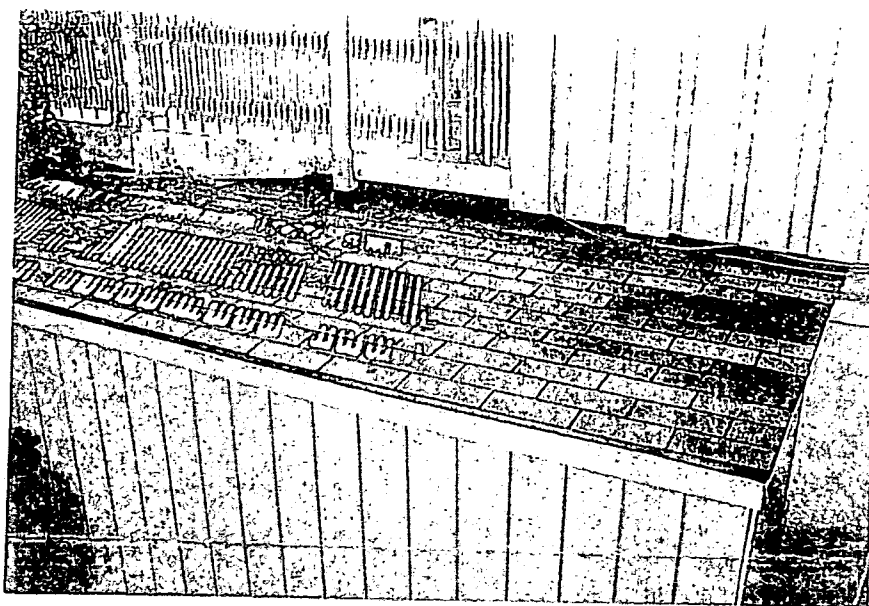
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EX-78

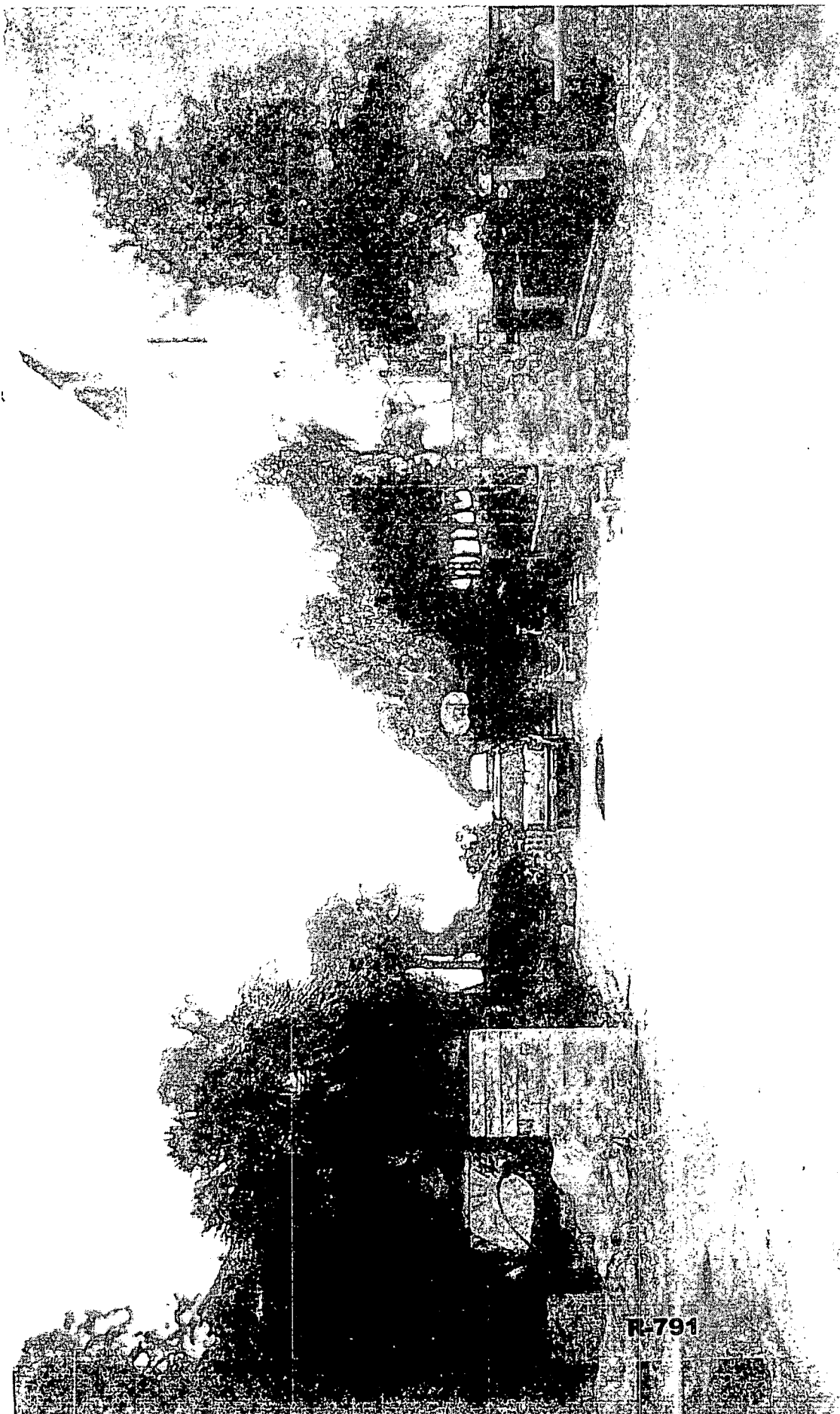


9A



9B

R-790



Avocet

EX. 7804

R-791

91



92



Investors Title Insurance Company
A Stock Company
P. O. Drawer 2687
Chapel Hill, NC 27515-2687

OWNER'S POLICY OF TITLE INSURANCE

Schedule A

File Number: 03-0307ALF
Owners Policy Number: OR-A 052147
Date of Policy: March 18, 2003 at 3:03:29 P.M.
Amount of Insurance: \$650,000.00

1. Name of Insured:
Carolyn S. Bair (AKA Carolyn Songer Austin)
2. Your interest in the land covered by this policy is:
FEE SIMPLE
3. The estate or interest referred to herein is at Date of Policy vested in the insured.
4. The land referred to in this policy is described in the attached Schedule C.

Issued through the Office of:

HENRI ANN LOGAN
Post Office Box 1008
806 Charles Street (29902)
Beaufort, SC 29901

Authorized Officer or Agent

This Policy consists of insert pages labeled Schedule A, Schedule B and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

Investors Title Insurance Company
A Stock Company
P. O. Drawer 2687
Chapel Hill, NC 27515-2687

OWNER'S POLICY OF TITLE INSURANCE

Schedule B

File Number: 03-0307ALE

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees and expenses resulting from:

1. The lien of the security instrument:

Mortgage dated 03/12/03 and recorded 03/18/03 from Carolyn S. Bair (AKA Carolyn Songer Austin) to Lehman Brothers Bank in the original principal amount of \$650,000.00 and recorded among the Land Records of the County of Beaufort, State of South Carolina, in Book 01730 at Page 0794.

2. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
3. Easements and/or rights of way as shown on plat recorded in Plat Book 9 at Page 4, on plat for Bair for Hatchell and as referenced in restrictions below.
4. Restrictions filed for record in Deed Book 77 at Page 11, Deed Book 74 at Page 20 and Deed Book 78 at Page 306, but this policy insures that such restrictions have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title.
5. Taxes for the year 2003 and all subsequent years, a lien not yet due and payable.
6. No coverage is afforded as to setback lines (which are subject to change) and limitations on the right to build, rebuild or repair structures as set forth in South Carolina Code Section 48-39-10 through 48-39-370, Code of Laws of South Carolina, 1976, as amended. You may not be able to repair, rebuild or build residential structures on your property. This policy does not insure your right to do so.

This Policy consists of insert pages labeled Schedule A, Schedule B and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

Investors Title Insurance Company
A Stock Company
P. O. Drawer 2687
Chapel Hill, NC 27515-2687

OWNER'S POLICY OF TITLE INSURANCE

Schedule C

File Number: 03-0507ALP

The land referred to in this policy is described as follows:

Situated in the County of Beaufort, State of South Carolina, and more particularly described as follows:

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and designated as Lot 5 of Hilton Head Beach Subdivision No. 1 on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 9 at Page 4.. For a more complete description of said property, reference may be had to an individual plat prepared by Terry G. Hatchell, RLS dated April 24, 1997, last revised August 29, 2002.

Beaufort County Tax Map Reference: 551-15A-224

This Policy consists of insert pages labeled Schedule A, Schedule B and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

R-795

000244
APPENDIX00879



Investors Title Insurance Company

Residential Title Insurance Policy OR-A 052147
One-To-Four Family Residences

OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A — if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 2-3

We insure you against actual loss resulting from:

- any title risks covered by this Policy — up to the Policy Amount

and

- any costs, attorneys' fees and expenses we have to pay under this Policy.

This Policy Amount will automatically increase by 10% of the amount shown in Schedule A on each of the first five anniversaries of the Policy Date.

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right or access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
 - a mortgage or deed of trust
 - a judgment, tax, or special assessment
 - a charge by a homeowner's or condominium association
8. There are liens in your title, arising now or later, for labor and material furnished before the Policy Date - unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure - other than a boundary wall or fence - because:
 - it extends on to adjoining land or on to any easement.
 - it violates a restriction shown in Schedule B.
 - it violates an existing zoning law.
13. You cannot use the land for a single-family residence because such a use violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

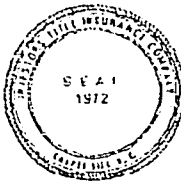
We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

This Policy is not complete without Schedules A and B.

This Policy is not valid until countersigned by an authorized person

David A. Benington

Secretary



W. Thomas Foster

President

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of those matters which appear in public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A

or

- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS

- Easement** -- the right of someone else to use your land for a special purpose
- Land** -- the land or condominium unit described in Schedule A and any improvements on the land which are real property.
- Mortgage** -- a mortgage, deed of trust, trust deed or other security instrument.
- Public Records** -- title records that give constructive notice of matters affecting your title -- according to the state statutes where your land is located.
- Title** -- the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE

This Policy protects you as long as you:

- own your title
- or
- own a mortgage from anyone who buys your land
- or
- are liable for any title warranties you make

This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM

a. You Must Give The Company Notice of Your Claim

If anyone claims a right against your insured title, you must notify us promptly in writing.

Send the notice to Investors Title Insurance Company, P.O. Drawer 2687, Chapel Hill, North Carolina 27515-2687. Please include the Policy number shown in Schedule A, and the county and state where the land is located.

Our obligation to you could be reduced if:

- you fail to give prompt notice
- and
- your failure affects our ability to dispose of or to defend you against the claim.

b. Proof Of Your Loss Must Be Given To The Company

You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.

The statement must include the following facts:

- the Covered Title Risks which resulted in your loss
- the dollar amount of your loss
- the method you used to compute the amount of your loss

You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.

We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.

We may require you to answer questions under oath.

Our obligation to you could be reduced if you fail or refuse to:

- provide a statement of loss
- or
- answer our questions under oath
- or
- show us the papers we request
- and
- your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

- Pay the claim against your title.
- Negotiate a settlement.
- Prosecute or defend a court case related to the claim.
- Pay you the amount required by this Policy.
- Take other action which will protect you.
- Cancel this Policy by paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

Conditions Continued Inside Cover

R-797

000246
APPENDIX00881

CONDITIONS (Continued)

5. HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all relevant information.

We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.

When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY

a. We will pay up to your actual loss or the Policy Amount in force when the claim is made -- whichever is less.

b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.

If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:

- the cause of the claim is removed
- or
- we settle your claim.

c. The Policy Amount will be reduced by all payments made under this Policy -- except for costs, attorneys' fees and expenses.

d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.

e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.

We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.

With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION

If it is permitted in your state, you or the Company may demand arbitration.

The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.

The arbitration award may:

- include attorneys' fees if allowed by state law
- be entered as a judgment in the proper court.

The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

The law used in the arbitration is the law of the place where the property is located.

You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

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SCHEDULE A	
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1. Name of Insured	
2. Interest in Land Covered	
3. Description of the Land	
SCHEDULE B - Exclusions	
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3. How To Make A Claim	2
4. Our Choices When You Notify Us of a Claim	2
5. Handling a Claim or Court Case	3
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7. Transfer of Your Rights	3
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R-799

Owner's Residential Title Insurance Policy

One-To-Four Family Residences

 Investors Title
Insurance Company

P.O. Drawer 2587
Chapel Hill
North Carolina 27515-2587
(919) 953-2209

OWNER'S INFORMATION

Your Title Insurance Policy is a legal contract between you and the Company.

It applies only to a one-to-four family residential lot or a condominium unit. If you and it are not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page two of the Policy. The Policy is limited by:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on pages 2-3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 2.

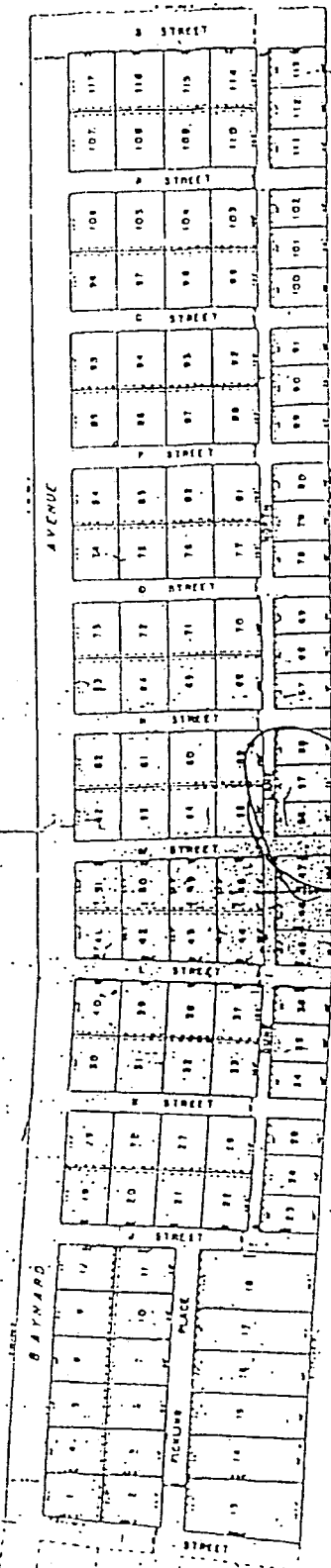
You do not owe any more premiums for the Policy. This information panel is not your insurance Policy. It is only a brief outline of some of the important policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy — and not this panel — is the legal document.

**YOU SHOULD READ THE POLICY
VERY CAREFULLY.**

If you have any questions about your Policy, contact:

Investors Title Insurance Company
P.O. Drawer 2587
Chapel Hill, North Carolina 27515-2587

9/20/42



HILTON HEAD BEACH
SUBDIVISION NO. 2

PROPERTY OF
THE HILTON HEAD COMPANY
HILTON HEAD, S. C.



See sheet

SHOW LINES WITH
SECTION 9 PL. SHEET

PLAT BOOK 9
PAGE 20

R-800

PLAT BOOK 9
PAGE 31

AVENUE

9	10	11	12	13	14	15	16	17	18

HILTON HEAD BEACH
SUBDIVISION NO. 3
PROPERTY OF
THE HILTON HEAD COMPANY
HILTON HEAD, S. C.

SCALE: 1 INCH = 100 FEET

SURVEYED: JANUARY 1964

Frederic C. Hinkle

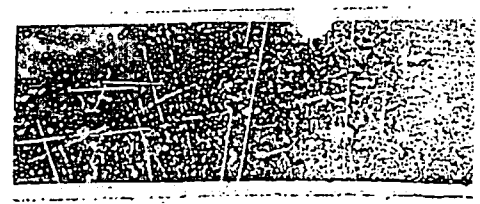
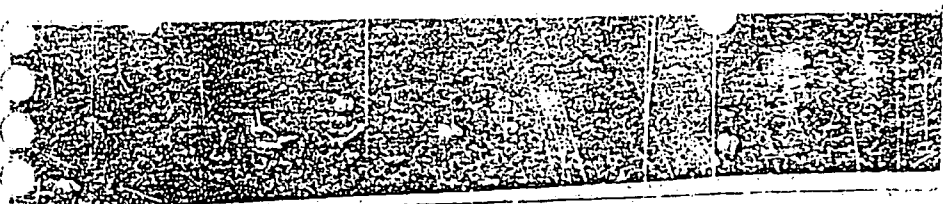
LAND SURVEYOR



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1/3

R-801

C E A N



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BAYNARD

1765

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AVENUE

9	10	11	12

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R-802

A N T I C

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PLAT BOOK 9 PAGE 31

EX 80

AVENUE

10	11	12	13	14	15	16	17	18

R-803.1 9

HILTON HEAD BEACH
SUBDIVISION NO. 3

PROPERTY OF

THE HILTON HEAD COMPANY
HILTON HEAD, S. C.

SCALE: 1 INCH = 100 FEET

SURVEYED JANUARY 1904

Fred C. Hack

LAND SURVEYOR



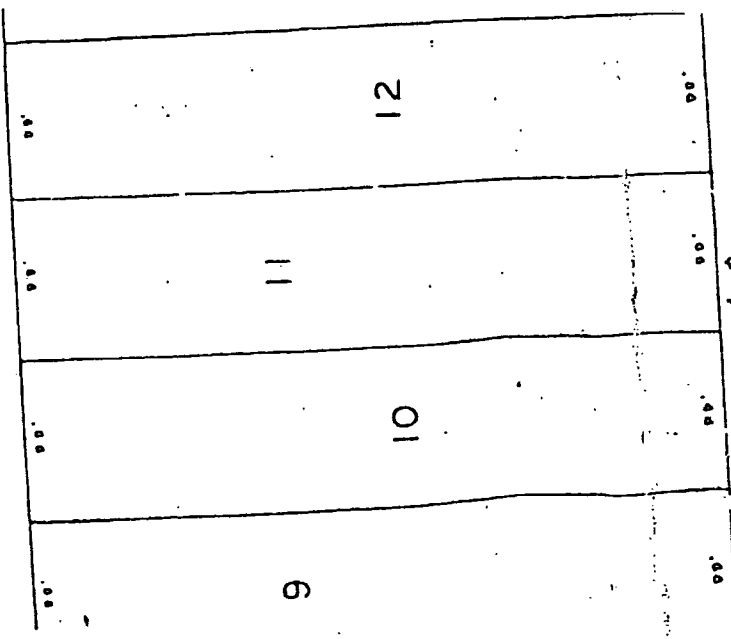
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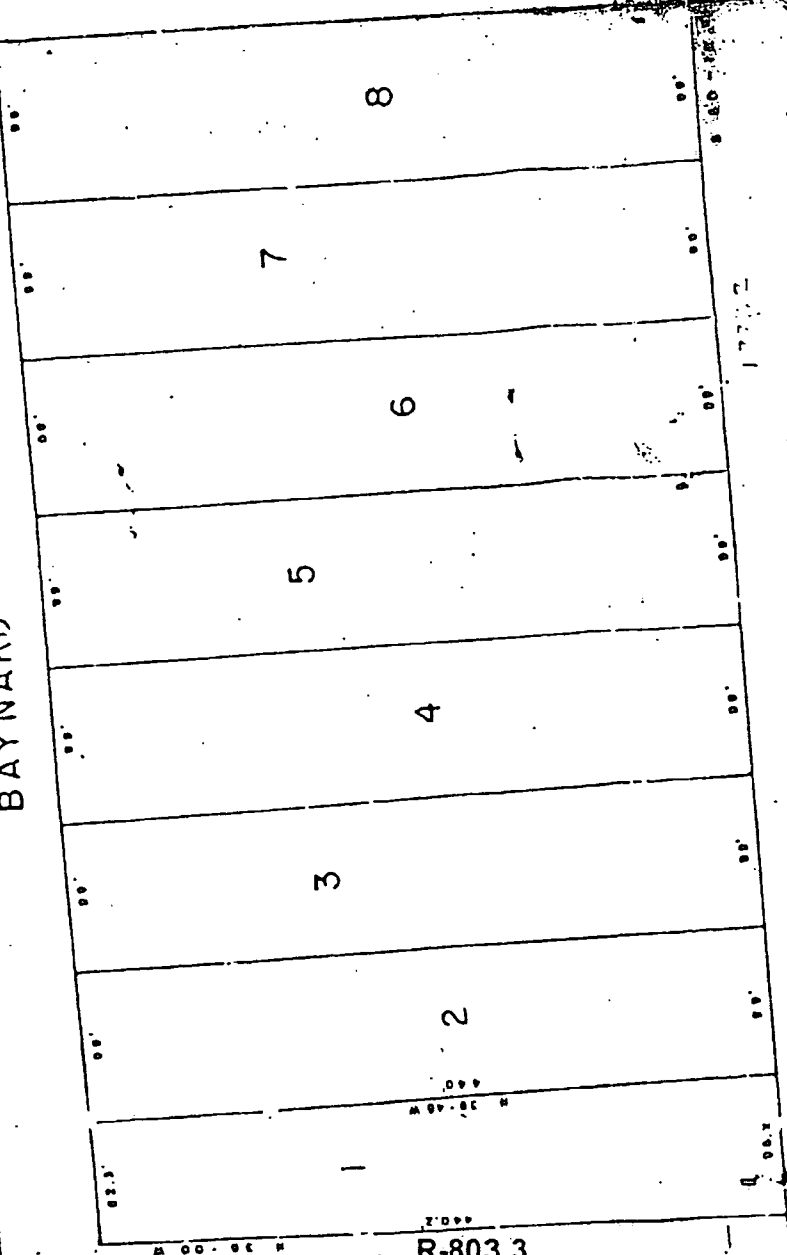
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AVENUE



BAYNARD



R-803.3

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W

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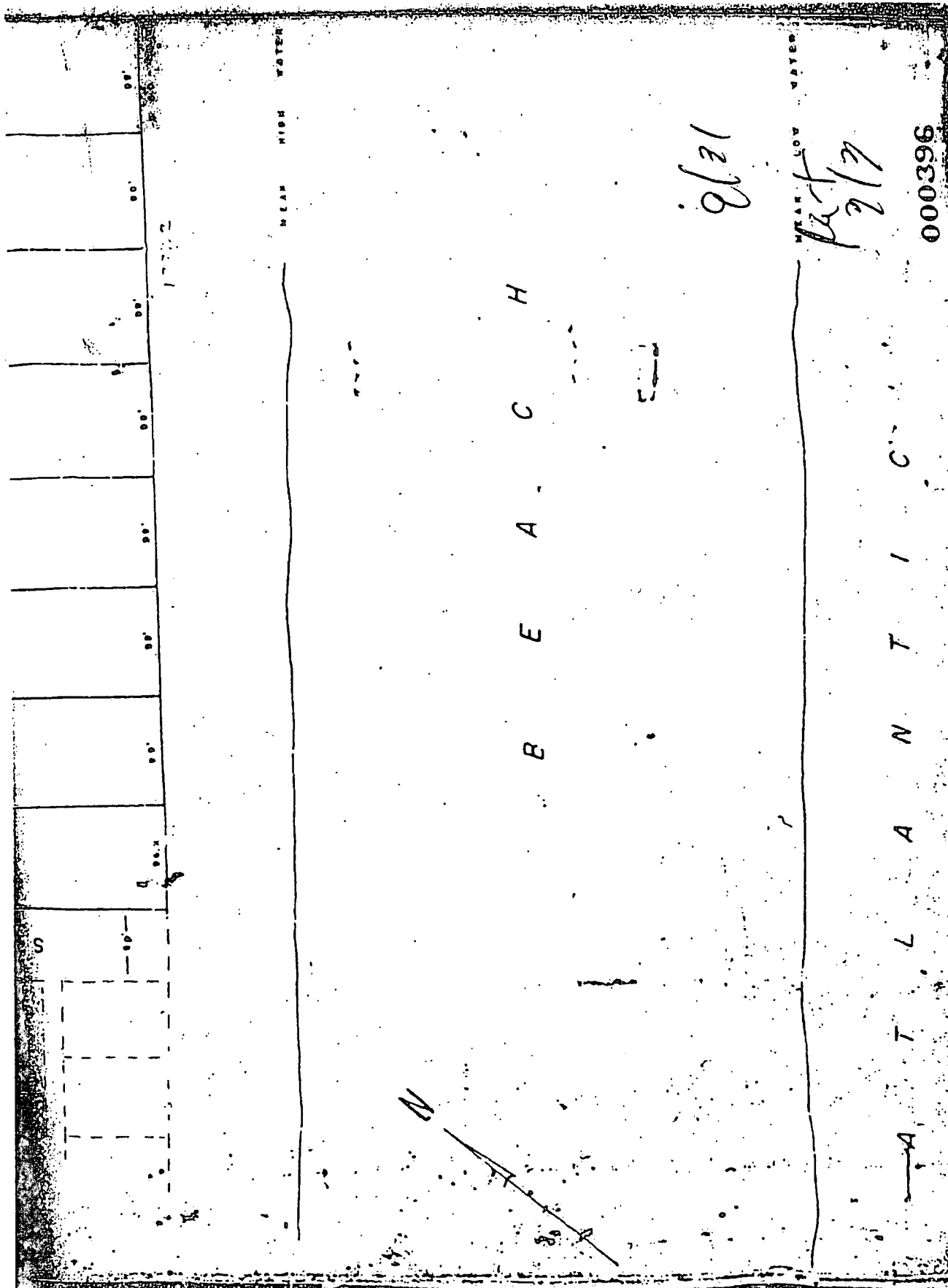
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R-803.4

APPENDIX00892



R-803.6

III

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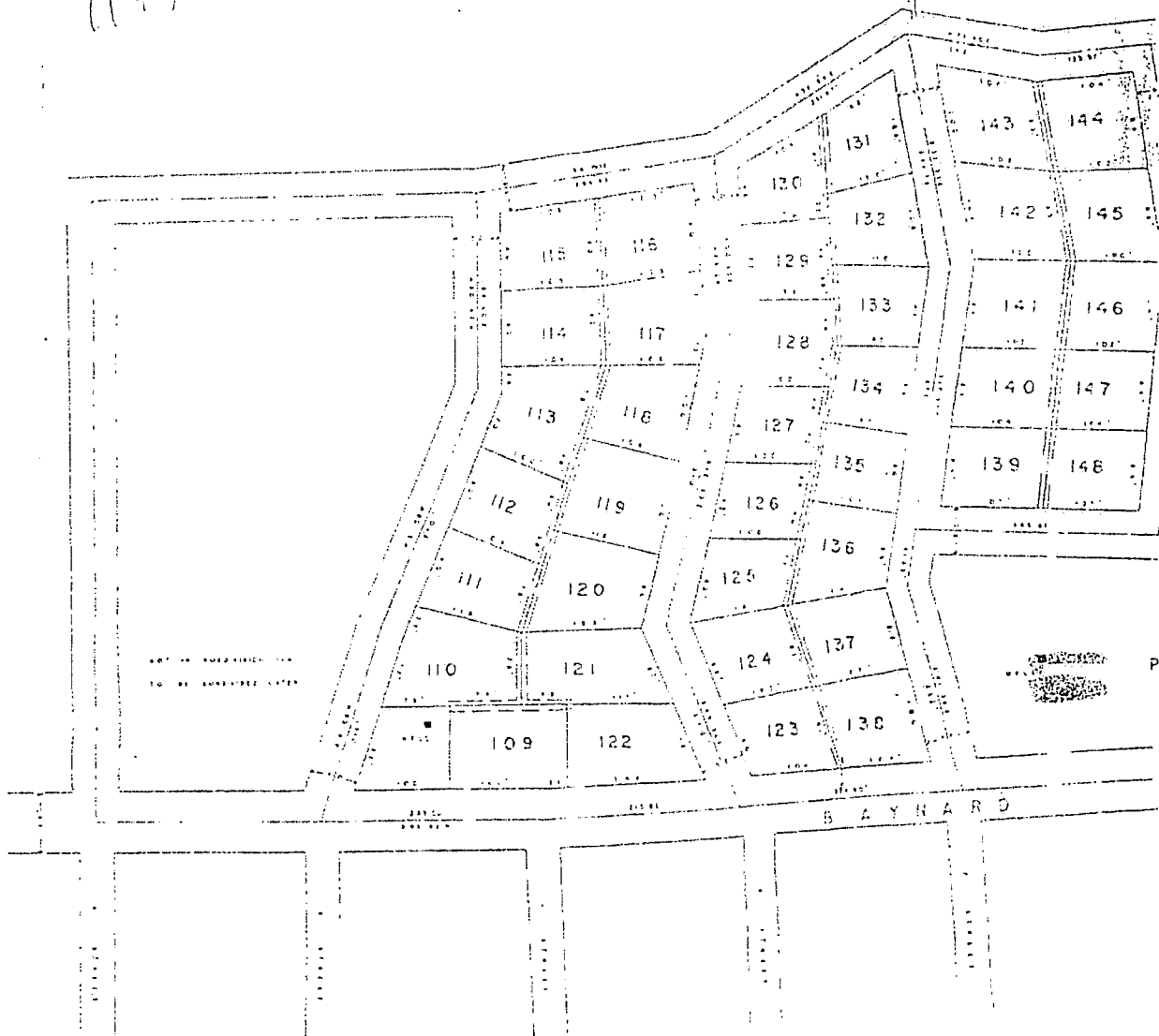
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PLAT BOOK 9
PAGE 44

10/10/10

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9/49

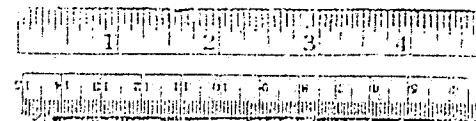


SUBDIVISION

L E G E N D

.....

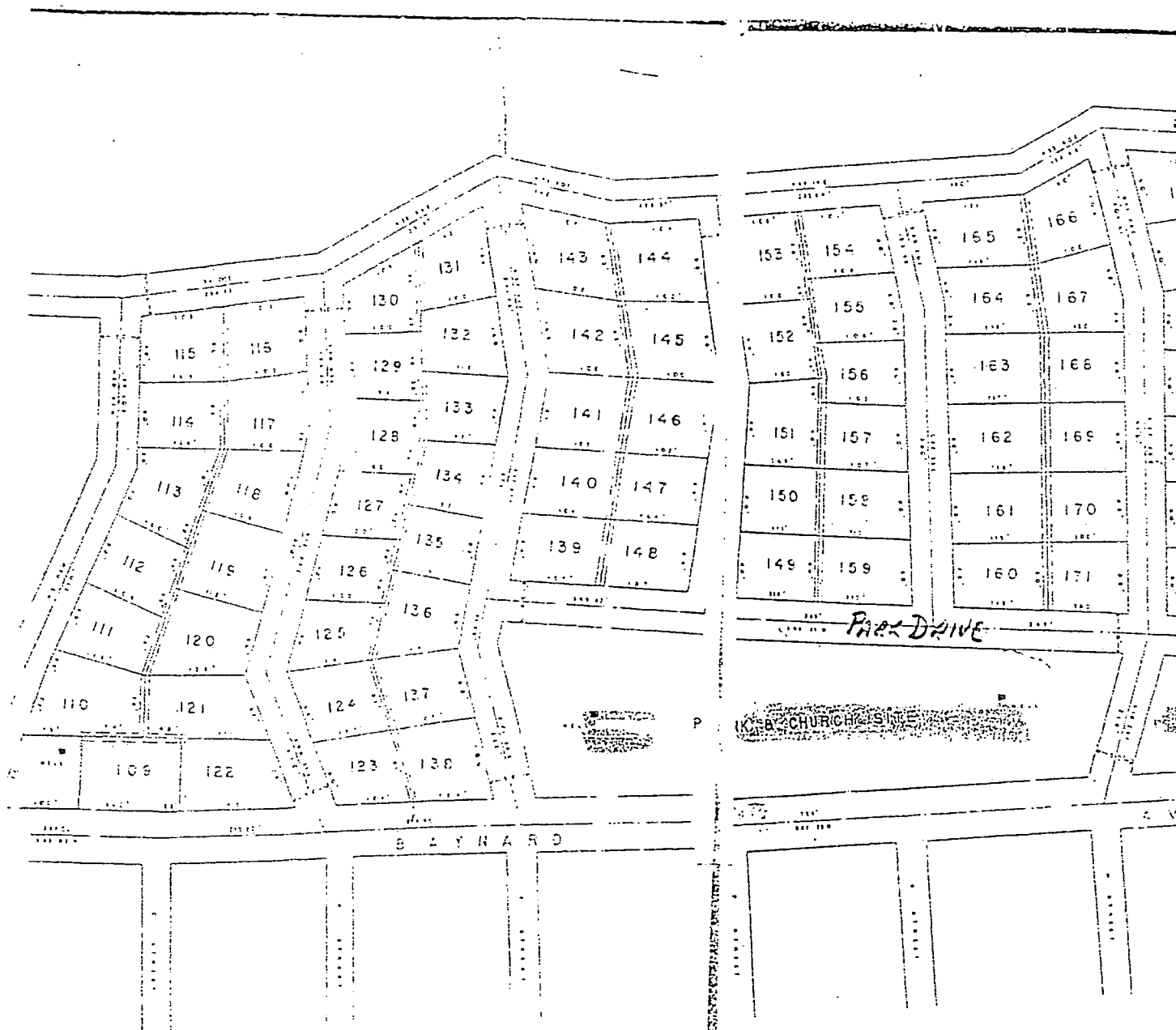
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Part of lot 9/4/55
Elmer H. Rodgers
owner of land

PLAT BOOK
PAGE 64

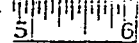
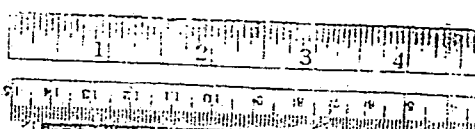
R-805



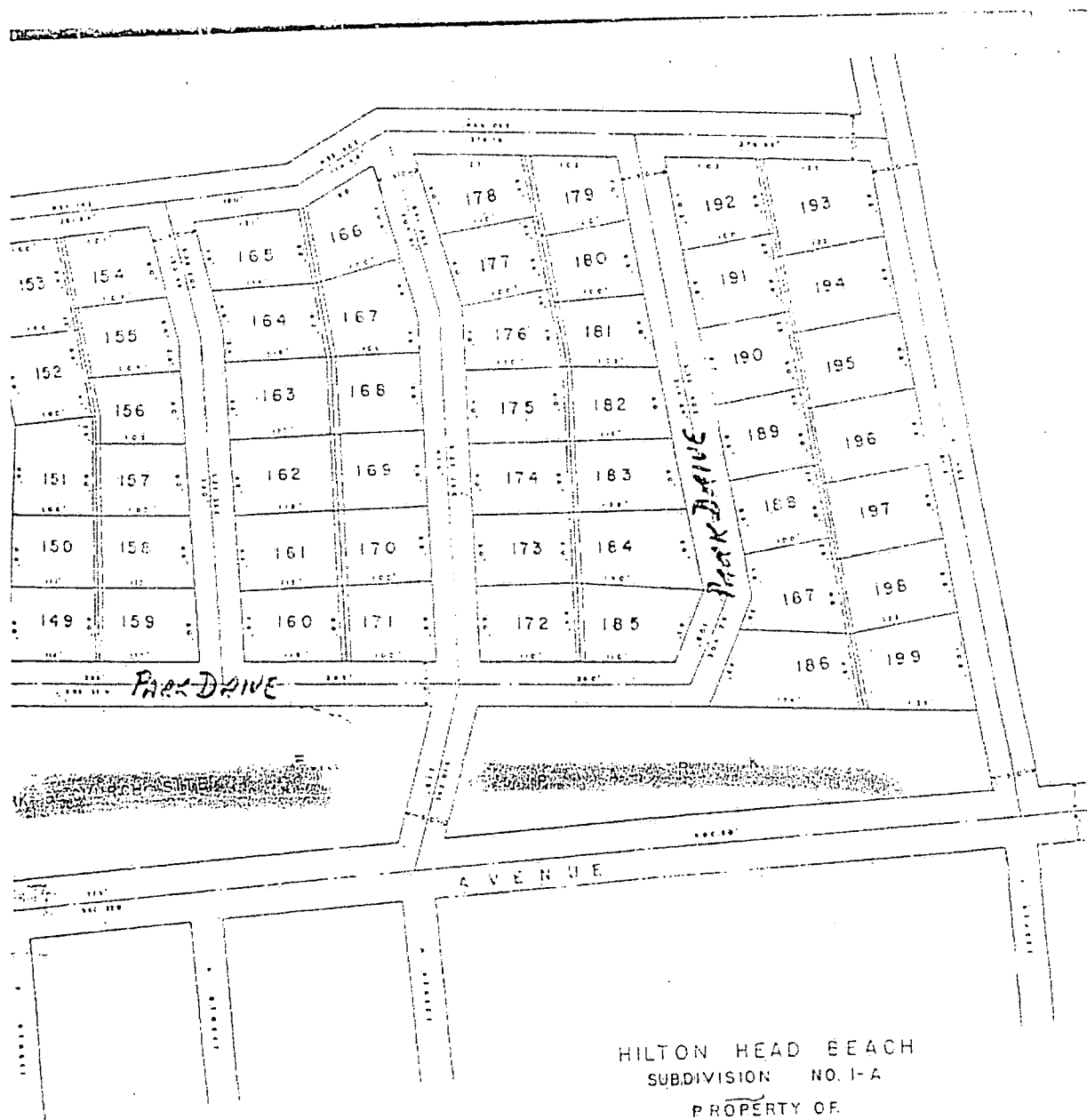
SUBDIVISION

NO. 1

R-806



000098 APPENDIX00896



HILTON HEAD BEACH
SUBDIVISION NO. 1-A
PROPERTY OF
THE HILTON HEAD COMPANY
HILTON HEAD, S. C.

SCALE: 1" = 100 FEET
CORRECTED MAP: APRIL, 1938

Frederick C. Hack
LAND SURVEYOR



R-807

part 3/3

01/10/9

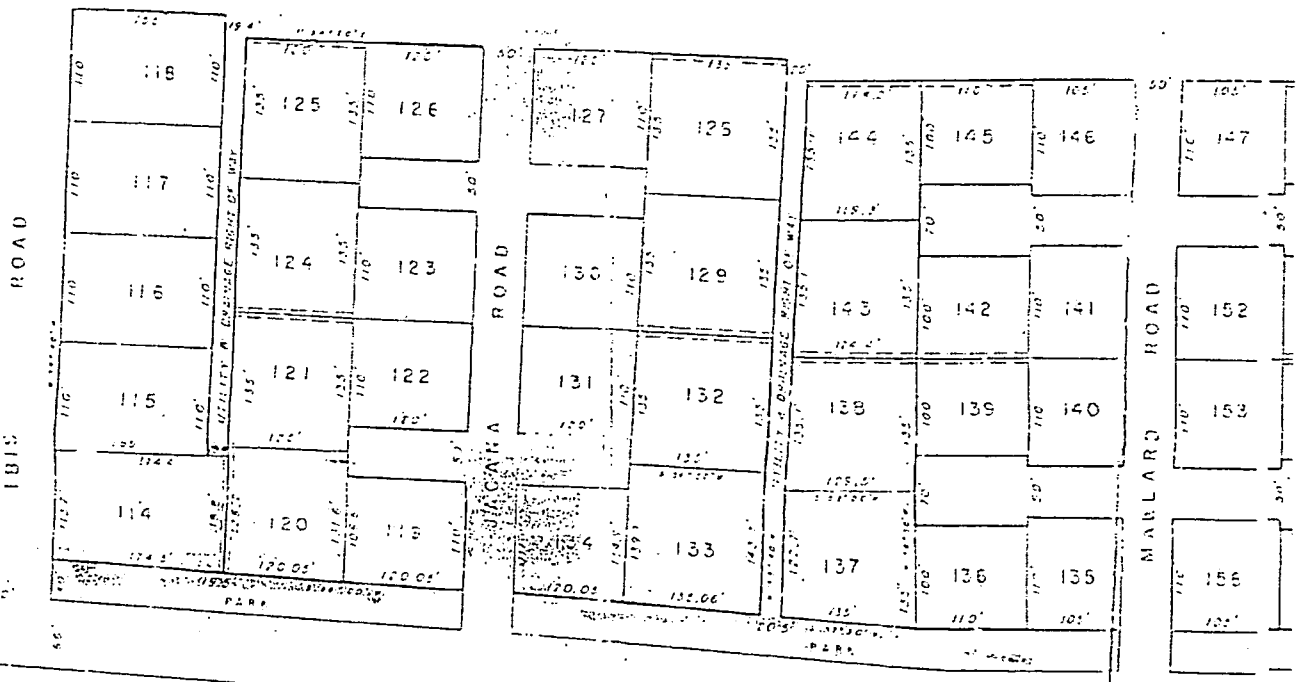
11/19

HILTON HEAD B

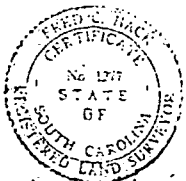
HILTON HEAD

10

PROPERTY

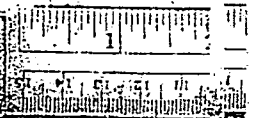


SURVEYED JAN - JUNE, 1958
Frederic C. Rogers
LAND SURVEYOR



READ
9/19/58
J.L. Rodgers
C.C.

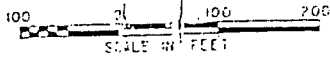
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part
10-3



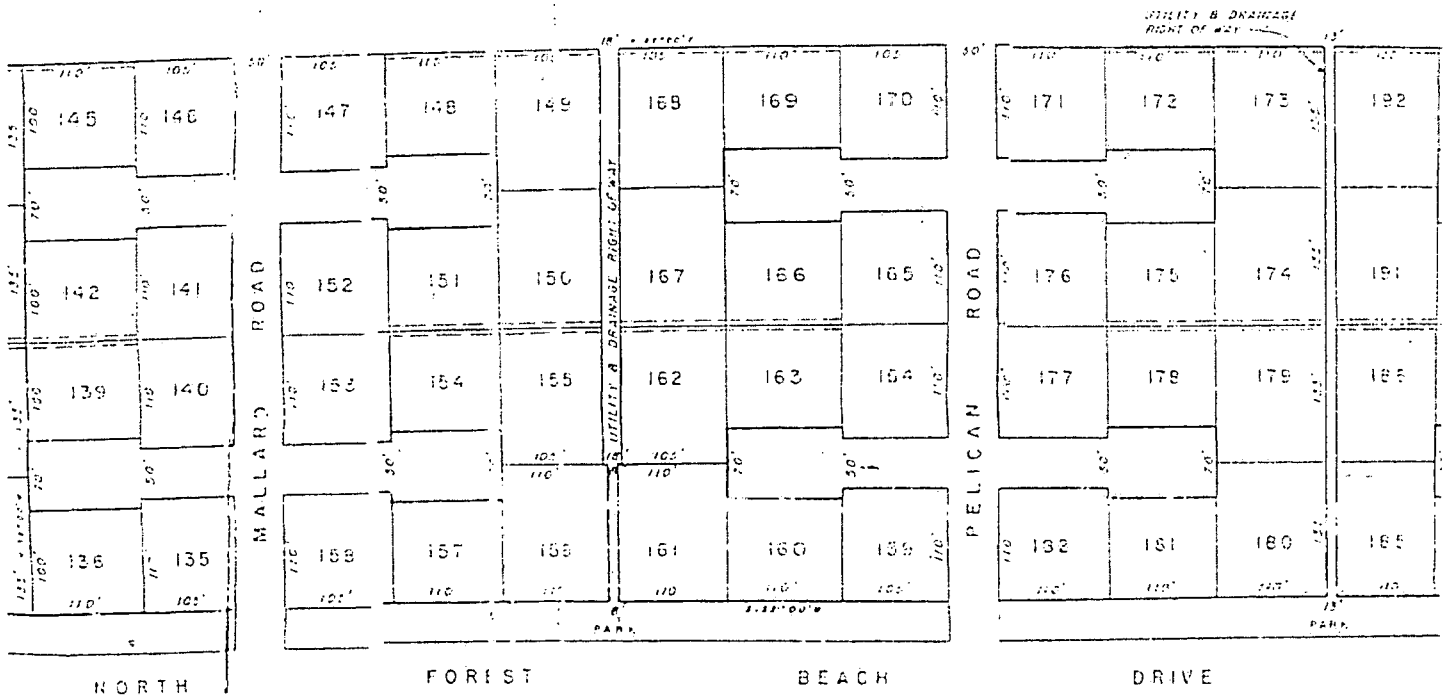
PLAT

ON HEAD BEACH SUBDIVISION NO. 2-A

HILTON HEAD ISLAND, SOUTH CAROLINA

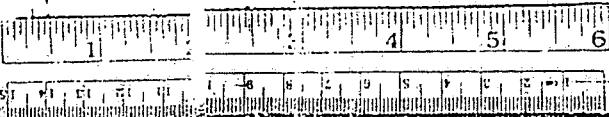


PROPERTY OF THE HILTON HEAD COMPANY

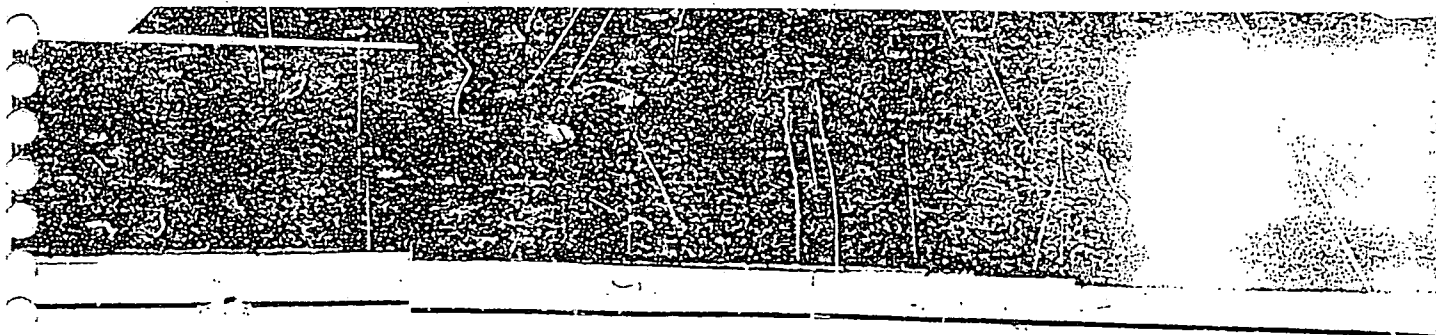


HILTON HEAD BEACH SUBDIVISION NO. 2

11/19
124 243



PLAT BOOK 11
PAGE 19

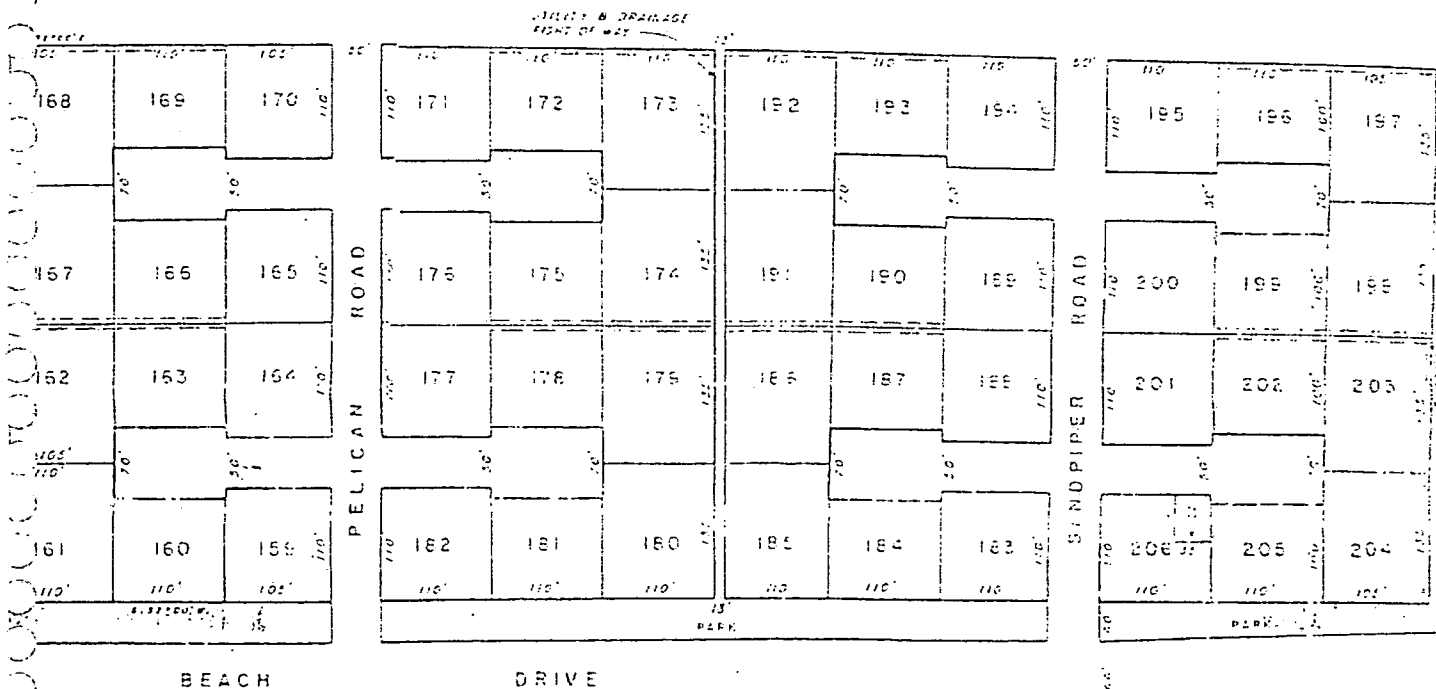


BDIVISION NO. 2-A

SOUTH CAROLINA

200

AD COMPANY

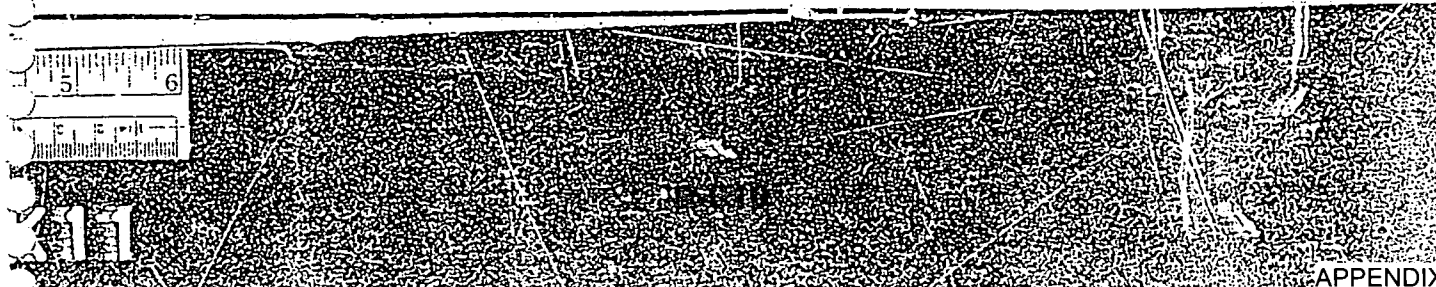


SUBDIVISION NO. 2

HILTON HEAD BEACH
SUBDIVISION NO. 3

BROKEN LINES INDICATE 3" UTILITY EASEMENT

11/19
16-1-30-7



1G. PLAT FILE
PB 12 PG.89

R-811

That is consideration of the prelates and the mutual covetous hearts mentioned in the following, to-wit:

1. That the parties hereto shall, as partners, engage in and conduct a restaurant business known as AL'S STEAK HOUSE, performing a general restaurant business, with the principal place of business at South Street in the City of Newfport.
2. That the building owned or leased by C.G. Brown and rented from him, the said C.G. Brown.
3. That the name of the partnership be the business to be conducted shall be AL'S STEAK HOUSE.
4. That the business hereto do acknowledge that all of the equipment, fixtures, supplies, inventory and accessories now at the business known as AL'S STEAK HOUSE are jointly owned by the parties hereto in equal shares, there and these parties as a share of share be in like amounts.
5. That the term of the partnership shall begin immediately upon the signing of this document and shall be terminated only by mutual consent of the parties hereto as hereinafter set forth. However, upon the death of one of the parties hereto it is not to automatically terminate the partnership, but the living partner may have no opportunity to purchase the deceased partner's share from the estate, executor, administrator and/or personal representative of such deceased partner at a sum of the book value at the time of the death of one of the partners; said book value to be arrived at in the normal fashion with no regard given to book value; and this agreement to be continued by Act of Court of law to the effect that the deceased partner or hereby direct his executor, administrator or personal representative to convey his entire interest in this partnership to the remaining partner. That unless the estate of the surviving partner or his entire interest in this partnership is exercised within thirty (30) days from the appointment and qualification of the appointee of the said partner, the said partner, then said administrator, executor and/or personal representative of the appointee of the said partner shall have the right to sell to any party for any amount in the open market.
6. That the capital of the partnership and all other monies of, as well as all instruments of payment of monies and all monies credited therein to the partnership shall be subject to withdrawal only by check made in the name of the partnership and signed by one of the parties hereto.
7. That neither of the parties shall, without the written consent of the other, advance any monies to the partnership, but any such advances made by either party with the written consent of the other, advance any monies to the partnership, at six (6%) per centum per annum.
8. That if either party shall, with the consent of the other, become indebted to the partnership, such indebtedness shall bear interest at the rate of six (6%) per centum per annum.
9. That each party shall execute all necessary time and attention to the business of the partnership and shall not interfere with the business of the partnership, except with the written consent of the other party hereto.
10. That all and accurate accounts of the transactions of the partnership shall be kept in the proper books and each party shall ensure to be entered into the said partnership books a full and accurate account of his transactions and in detail of the partnership.
11. That the books of the partnership shall be kept in the place of business and each party shall, at all times, have access to and may inspect or copy any of said books.
12. A proper audit or check shall be explored to keep the books of the partnership, balance sheets shall be drawn off monthly and profit and loss statements on a semi-annual basis, unless otherwise agreed to by the partners.
13. That withdrawals from the said partnership shall be made from time to time by agreement of the parties hereto, in equal amounts.
14. That neither party shall, without the written consent of the other, make, execute, deliver, endorse or guarantee any commercial paper or agree to answer for or indemnify against any act, debt, default or misfortune of any person.
15. That at the end of each calendar year a full and accurate inventory shall be prepared and the assets and liabilities of the partnership determined.
16. That the net profits or net losses shall be divided equally between the parties hereto and the amount of each shall be credited or debited, as the case may be, with his proportionate share thereof.
17. That employment of the said business may be employed from time to time by agreement between the parties with salaries to be determined by the parties hereto.
18. That it is agreed that either of the parties hereto shall at any time become dissatisfied or wish to dispose of his interest in the said partnership, that he shall first offer his interest to a give and take proposition, to the surviving partner and that such surviving partner shall have a period of thirty days after notice in writing of the offer and such offer has not been accepted, then the leaving partner or selling partner may offer his interest in the partnership at any price to any other person of his choosing.
19. That the parties hereto have hereunto set their hands and seals to validate the day and year first written, AL VILHELM (Sole) Party of the First Part, J. A. PATTERSON JR. (Sole) Party of the Second Part, and S. G. BROWN (Sole) Party of the Third Part, and the said J. A. PATTERSON JR. and S. G. BROWN have hereunto set their hands and seals to validate the day and year first written, AL VILHELM (Sole) Party of the First Part, J. A. PATTERSON JR. (Sole) Party of the Second Part, and S. G. BROWN (Sole) Party of the Third Part, and the said J. A. PATTERSON JR. and S. G. BROWN have hereunto set their hands and seals to validate the day and year first written, AL VILHELM (Sole) Party of the First Part, J. A. PATTERSON JR. (Sole) Party of the Second Part, and S. G. BROWN (Sole) Party of the Third Part, and the said J. A. PATTERSON JR. and S. G. BROWN have hereunto set their hands and seals to validate the day and year first written, AL VILHELM (Sole) Party of the First Part, J. A. 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IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Court, at the City and County of Nevada, this 27th day of March, 1953.

 Clerk of Court.

Shirley Bush

HILTON HEAD COMPANY) STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT
TO: DECLARATION) WHEREAS, The Hilton Head Company, a Corporation organized and existing under the
Laws of the State of South Carolina, is the owner of the following described lands located in the County and
State aforesaid, on Hilton Head Island, in said County, and
WHEREAS, The Hilton Head Company desirous to make certain declaration concerning the said land in accordance
with a resolution of its Board of Directors adopted at a meeting held on March 11, 1953 wherein the
President and the Secretary of The Hilton Head Company were authorized to make this declaration and execute
the same on behalf of said Company:
NOW, THEREFORE, in consideration of the premises, The Hilton Head Company does hereby make the following
declaration:

(1) That the Hilton Head Company, its successors and assigns, shall forever held in Trust the following
described lands for the use and benefit of all present and future property owners of said lot or lots in
Hilton Head Beach Subdivision No. 1, said land is more particularly described as follows: to-wit:
All that certain piece, parcel, or lot of land situate, lying and being on Hilton Head Island, Beaufort
County, South Carolina, being that land located between high water mark of the Atlantic Ocean and the front
lot line of the lots in the Subdivision known as Hilton Head Beach Subdivision No. 1 and described as
beginning at the Southeastern corner of A Street as shown on a plat of said Subdivision; thence
Northeasterly along the front lot lines of the lots fronting on the Atlantic Ocean in said Subdivision #1
500 feet; thence in a Southeasterly direction to the mean high water mark of the Atlantic Ocean; thence
along the mean high water mark of the Atlantic Ocean approximately 500 feet to a point South 26° 06' East of
the point of beginning; thence North 26° 08' next to the point of beginning.

(2) That the persons for whose benefit this declaration is made; to-wit: the owners of the lots as
aforesaid, shall save and hold The Hilton Head Company, its successors and assigns, harmless from any and
all claims and demands made upon said company or its successors or assigns arising out of or from its
ownership of said land described above.

IN RETURN: HEREOF The Hilton Head Company has caused these premises to be executed this 23rd day of March,
1953, by its President and its Secretary, THE HILTON HEAD COMPANY (SEAL) by J.H. Fraser President ATTESTED
Fred C. Hack Secretary witness: Dinky B. Hendry C. Sidney Hendry, Jr.

Deed, Book 74, Page 305

Trial Ex. 85

[illegible]

The MILLER ROAD COMPANY) I, the undersigned, Secretary of the Miller Road Company, hereby certify that the following
701 MILWAUKEE ST.
1953.) Resolution was passed by the Board at the meeting of the said Board held on March 11,
be and they are hereby resolved that the President of the Miller Road Company and the Secretary of the same, on March 11,
land lying between Front lot 1866 of Miller Road Beach Subdivision No. 1 and the Atlantic Ocean, containing 1.2 acres of land,
Atlantic Bldg. from the Western end of said subdivision to the Eastern end of said subdivision as shown on a plat re-
order to the Office of the Surveyor General of the State of Florida, South Florida end of said subdivision as shown on a plat re-
of a distance of one thousand (1000) feet. Said area to be declared a public beach and the use and benefit of all persons and
the owners of property located on the Miller Road Beach Subdivision NO. 1 and adjacent thereto and the said Miller Road
Company hereby authorize and empower its officers and agents which the said officers may execute to carry out the terms, con-
ditions and purposes hereof. WALTER C. RACE, Secretary, THE MILLER ROAD COMPANY
Attest: A Certified April 1, 1953.

[illegible][illegible]

STATE OF SOUTH CAROLINA) PERSONALLY appeared before me Dinky E. Hendry who, on oath, said that she saw the
COUNTY OF BEAUFORT) within named The Hilton Head Company by J.B. Fraser its President sign the within
instrument, and Fred C. Hack as Secretary attest the same, and the said Corporation, by said officers, seal
said instrument, and, as its act and deed, deliver the same, and that she with C. Sidney Hendry, Jr.
witnessed the executions thereof. Dinky B. Hendry Sworn to before me this 24th day of March, 1953 (SEAL) C.
Sidney Hendry, Jr. (L.S.) Notary Public for South Carolina, recorded & Certified April 1, 1953. Elena D.
Rodgers Deputy C.C.C.P.

The HILTON HEAD COMPANY) I, the undersigned, Secretary of the Hilton Head Company, hereby certify that the
TO: RESOLUTION) following resolution was passed and adopted at the meeting of the said Corporation
held on March 11, 1953. Be it hereby resolved that the President of the Hilton Head Company and the
Secretary of the Hilton Head Company be and they are hereby authorized and directed to execute any
instrument or instruments declaring that certain area of land lying between the front lot lines of Hilton
Head Beach Subdivision No. 1 and the mean high water mark of the Atlantic Ocean; from the southern end of
said subdivision to the northern end of said subdivision as shown on a plat recorded in the Office of the
Clerk of Court for Beaufort County, South Carolina and northward from said subdivision for a distance of one
thousand (1000) feet. Said area to be declared a _____ for the use and benefit of all present and future
owners of property located in Hilton Head Beach Subdivision No. 1 and extensions thereof and the said Hilton
Head Company hereby authorizes and certifies any instrument which the said officers may execute to carry out
the terms, conditions and purposes hereof. FRED C. HACK Secretary, THE HILTON HEAD COMPANY
Recorded & Certified April 1, 1953. Elena D. Rodgers Deputy C.C.C.P.

Deed, Book 74, Page 306

Trial Ex. 86

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R-813.2

JAMES H. JONES STATE OF MARYLAND COUNTY OF CHATEAU
 I, James H. Jones, of the County of Chateau, State of Maryland, do hereby certify that the within and foregoing instrument, bearing date of the 15th day of March, 1954, and in and to which said by South Carolina Electric & Gas Company, its successors and assigns, the right to construct, operate, and maintain its lines of power and electric and telephone lines, over and across the following described land situated in South Carolina County, South Carolina, a tract of land containing approximately forty (40) acres, more or less, bounded on the north, south, east and west by lands here or formerly of K.F. Wilson, and on the east by the right of way of the South Carolina Electric & Gas Company the right to operate and maintain the power lines built on the above described property about 1938 to come on-line in the vicinity beyond my lands, together with all the rights and privileges necessary or convenient for the full enjoyment thereof, and the right of ingress and egress to and from said lines and all the rights to cut and keep clear all trees and other obstructions that may injure or endanger said lines, so that and to have the same to the said South Carolina Electric & Gas Company, its successors and assigns forever, in witness whereof I have hereunto set my hand and seal this 15th day of March, 1954. J.H. JONES Notary Public, S.C.
 JAMES H. JONES, Notary Public, S.C.
 STATE OF SOUTH CAROLINA I personally appeared before me JAMES H. JONES, Notary Public, S.C., James H. Jones, who appeared before me as JAMES H. JONES, and as their act and deed, deliver the within instrument of writing; and that he with JAMES H. JONES, Notary Public, S.C., delivered the same to me this 15th day of March, 1954. J.H. JONES, Notary Public, S.C.
 Recorded & Certified March 23, 1954. J.H. JONES, Notary Public, S.C.

FIDELITY AND DEPOSIT CO.
 JAMES H. JONES, Notary Public, S.C.
 I, JAMES H. JONES, Notary Public, S.C., do hereby certify that the within and foregoing instrument, bearing date of the 15th day of March, 1954, and in and to which said by South Carolina Electric & Gas Company, its successors and assigns, the right to construct, operate, and maintain its lines of power and electric and telephone lines, over and across the following described land situated in South Carolina County, South Carolina, a tract of land containing approximately forty (40) acres, more or less, bounded on the north, south, east and west by lands here or formerly of K.F. Wilson, and on the east by the right of way of the South Carolina Electric & Gas Company the right to operate and maintain the power lines built on the above described property about 1938 to come on-line in the vicinity beyond my lands, together with all the rights and privileges necessary or convenient for the full enjoyment thereof, and the right of ingress and egress to and from said lines and all the rights to cut and keep clear all trees and other obstructions that may injure or endanger said lines, so that and to have the same to the said South Carolina Electric & Gas Company, its successors and assigns forever, in witness whereof I have hereunto set my hand and seal this 15th day of March, 1954. J.H. JONES, Notary Public, S.C.
 JAMES H. JONES, Notary Public, S.C.
 STATE OF SOUTH CAROLINA I personally appeared before me JAMES H. JONES, Notary Public, S.C., James H. Jones, who appeared before me as JAMES H. JONES, and as their act and deed, deliver the within instrument of writing; and that he with JAMES H. JONES, Notary Public, S.C., delivered the same to me this 15th day of March, 1954. J.H. JONES, Notary Public, S.C.
 Recorded & Certified March 23, 1954. J.H. JONES, Notary Public, S.C.

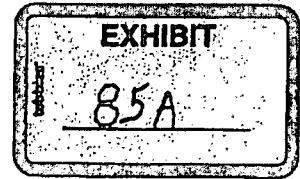
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~~RPT~~
ATTY-CLIENT
PRIVILEGED

STRAND BLOCK COVENANTS

~~9/7/08~~



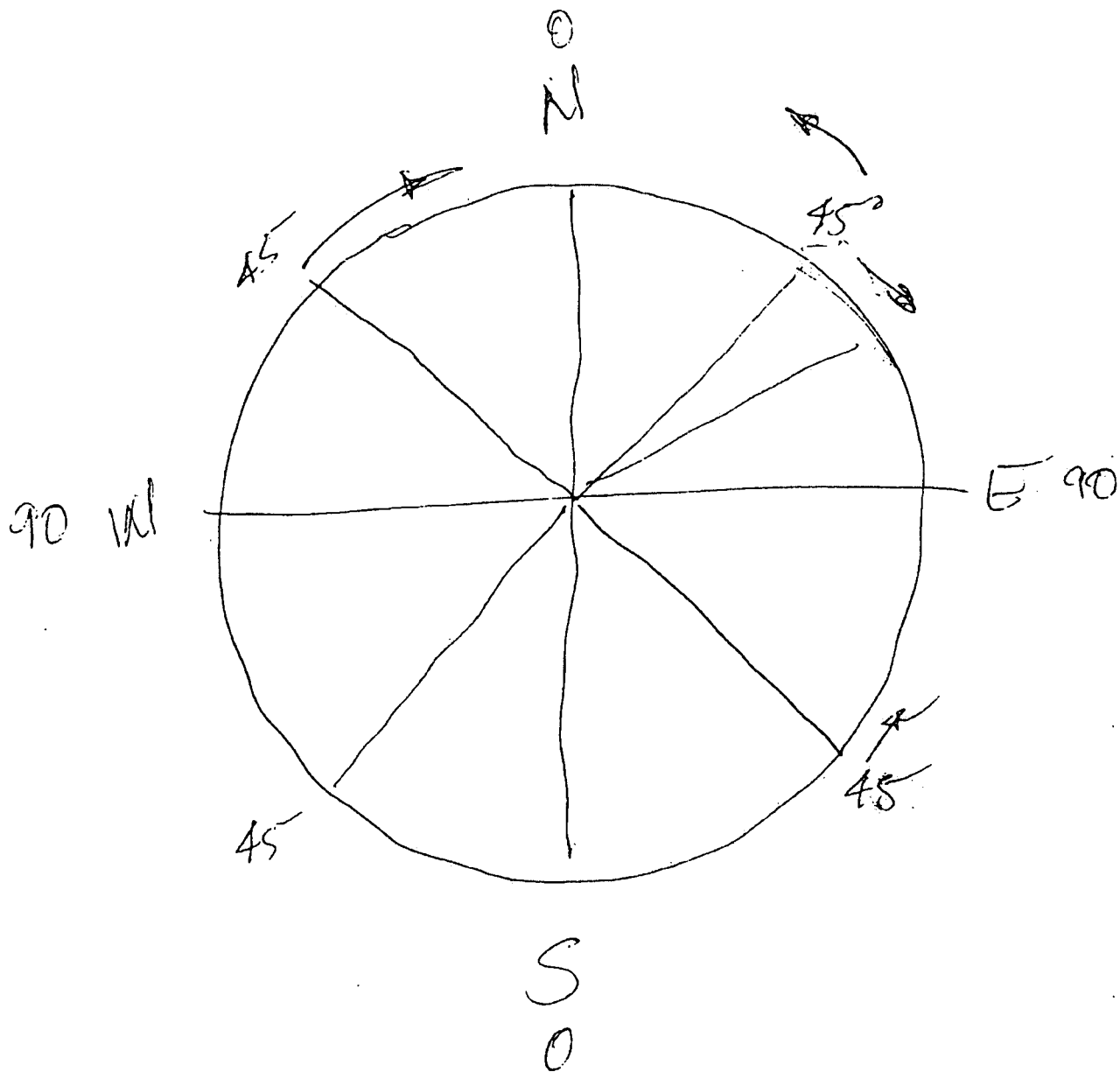
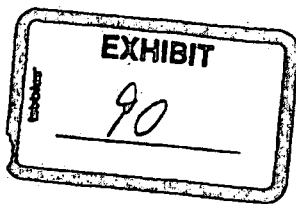
1. 74/305 – Declaration by The Hilton Head Company. Approved 3/11/53

"That The Hilton Head Company, its successors and assigns, shall forever hold in Trust the following described lands for the use and benefit of all present and future property owners of any lot or lots in Hilton Head Beach Subdivision No. 1, said land is more particularly described as follows, to-wit:

"All that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being that land located between the high water mark of the Atlantic Ocean and the front lot line of the lots in the Subdivision known as Hilton Head Beach Subdivision #1, and described as beginning at the Southeastern corner of A Street as shown on a Plat of said Subdivision thence northeasterly along the front lot lines of the lots fronting on the ocean in said Subdivision #1 500 feet; thence in a southeasterly direction to the mean high water mark of the Atlantic Ocean, thence along the mean high water mark of the Atlantic Ocean approximately 500 feet to a point South 6°08' East of the point of beginning; thence North 6°08' West to the point of beginning."

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R-816.1



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 04-CP-07-2036
FOREST BEACH OWNERS	)	
ASSOCIATION, INC.,	)	
	)	
	)	
Plaintiff.	)	
	)	
vs.	)	
	)	
CAROLYN S. BAIR,	)	
	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S POST TRIAL BRIEF

Defendant Carolyn S. Austin, formerly known as Carolyn S. Bair ("Bair"), submits (a) that plaintiffs' claims should be dismissed under Rule 41(b), SCRCP, on the ground that, upon the facts and law, plaintiffs have shown no right to relief, and so renews her motion to that effect, and (b) that she is entitled to judgment under her counterclaim, and so moves. In support thereof and in response to plaintiffs' pretrial brief, Bair states:

1. The description of the property in the judgments rendered in the quiet action and in the quit claim deed from Property Research Holdings to Bair is not defective.

Plaintiffs contend that the description in the underlying quiet title action "does not close and in fact describes no

property at all." Notwithstanding the opinion of Rodney Walker (Tr. pp. 164 - 180), the description does close.

Here, the description begins at a designated point of beginning and then follows a course of metes and bounds and ends with the final call "thence run northerly to the point of beginning." It is with this final call that Mr. Walker takes exception. Mr. Walker is of the opinion that it should say "easterly" because it is more "easterly" than "northerly." He overlooks that this is only a general direction.

In that respect the opinion in Marchel v. Bunker, 533 P.2d 406 (Wash. Ct. App. 1975) is instructive. There, the court stated:

Marchel contends that the description does not close because the terms "westerly" and "southwesterly" contained in the description mean "due west" and "due southwest." We disagree. These terms mean in a general southwesterly or westerly direction.

The court then found that:

There being three fixed points in the description, it is evident that the southwesterly and westerly courses join at a fixed point and thus the description closes, and Marchel's contention to the contrary is without merit.

Here, the judgments in the quiet title action and in the quit claim deed from Property Research to Bair describe a course beginning with metes and bounds and ending with a final call, "thence northerly to the point of beginning," thereby joining and

closing at a fixed point.

Moreover, Mr. Walker's opinion is based solely on the description contained in the quit claim deed (Exhibit 73A). He made no effort to field check the description. Even the most cursory review of that deed would reveal that it was given in furtherance of the final judgment rendered in the quiet title action (Exhibit 52). That final judgment was recorded in O.R. Book 1175 at 1149 and recites that the description contained therein as "being the real estate described Exhibit "A" attached to the complaint." (Exhibit 38). There has been no suggestion that the survey attached the complaint in the quiet title action does not accurately depict the property involved herein.¹

Mr. Walker's opinion is based on an erroneous premise and should be disregarded. As can be discerned from the survey attached to complaint in the quiet title action, the property is properly described. Accordingly, plaintiffs' contention to the contrary is without merit.

¹See Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981) ("As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance, they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of land.")

2. THE STATUTE OF USES IS NO LONGER RELEVANT, AND ANY OTHERWISE CO-TENANTS ARE PRESUMED TO HAVE BEEN OUSTED.

Plaintiffs are attempting to draw from Bair's argument in the Jacana Street litigation and apply it to this case. There is no similarity. In the Jacana Street litigation, the declaration of trust described the all of land lying between the seaward boundary of Subdivision No. 2 and the mean high water mark. Here, the declaration of trust (Exhibit 85) describes an area lying seaward of the southeastern lots of Subdivision No. 1 fronting 500 feet on the ocean.

The Hilton Head Company declared that it was holding the area described in declaration for the benefit of "owners of any lot or lots" in Subdivision No. 1. FBOA is not now, nor has it ever been, a lot owner. Howard appears in this action as a member of FBOA, not as an individual.

Bair acquired Lot 5 by warranty deed recorded on April 26, 1984. Bair, as had her predecessors in title before her, took possession and occupied Lot 5, together with adjacent area encompassed in what was designated as A Street on the subdivision plat and seaward to the mean high water mark. (Tr. 266; Exhibit 67).²

²Exhibit 67 is a landscape plan prepared for Robert Graves who had an ownership interest in the property from January 3, 1966 to September 20, 1978 and shows that area designated as A Street on

This action was commenced on November 15, 2004, with FBOA's filing a complaint seeking access over what was formerly A Street, or Avocet Street as it is now known, and the area seaward to the mean high water mark. Subsequently, on May 13, 2007, the court entered an order granting leave to file a second amended complaint under which Howard was added as a plaintiff and FBOA asserted an ownership interest the area designated as A Street on the subdivision plat and seaward to the mean high water mark. Howard's claim is not clear. As will be discussed later, any claim that either FBOA or Howard might have had is time barred.

Assuming the statute of uses were applicable, it would have immediately "executed" the beneficial interests under the March 23, 1953, declaration of trust, resulting in the lot owners being tenants in common. Even without tacking the time of possession of her predecessors, Bair had notoriously and exclusively possessed the area seaward of Lot 5 and Avocet Street for over twenty years when this action was commenced. Thus, while the other lot owners might have been co-tenants, after twenty years they would be presumed to have been ousted and Bair would have undisputed legal title to the area seaward of Lot 5 and Avocet Street. Watson v. Little, 224 S.C. 359, 79 S.E.2d 384 (1953);

the subdivision plat and seaward to the mean high water mark was used by the owners of Lot 5 without distinction.

Powers v. Smith, 80 S.C. 110, 61 S.E. 222 (1908).

3. Any claim that might be asserted by plaintiffs is time barred.

South Carolina Code, Section 15-67-90, provides:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

On May 19 & 27, 1999, judgment was entered and filed in the quiet title action, Civil Action No. 98-CP-7-1721 (Exhibit 52) adjudging that:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning,

being the real estate described in Exhibit "A" attached to the complaint, is a good title against any and all claims of defendants and of all persons claiming by, through, or under defendants or any of them since the

filing of the notice of lis pendens.

2. Those claims or purported claims are canceled; and the title to the real estate is forever quieted in plaintiff, Carolyn S. Bair, against all of such claims.

3. Plaintiff, Carolyn S. Bair, is declared to hold title to the real estate in fee simple absolute free and clear of all pledges, mortgages, security interests, liens, charges, restrictions, conditions, other encumbrances, claims, options, and interests.

In that action Property Research Holdings, Inc., the record owner of the property, was named as a defendant. Here, FBOA claims its interest in the property through Property Research.

As succinctly stated by the court of appeals, Section 15-67-90 "imposes a three year statute of limitations on an action to set aside 'for any reason' a judgment quieting title to land." Yarborough v. Collins, 301 S.C. 339, 341, 391 S.E.2d 873, 875 (Ct. App. 1990) (emphasis added).³

Plaintiffs' reliance on Ford v. Watson, 282 S.C. 66, 316 S.E.2d 429 (Ct. App. 1984) is misplaced. There, the court was concerned with res judicata, not the three year statute of limitations imposed by Section 15-67-90 and discussed in Yarborough.

Plaintiffs' claims herein are simply time barred. While

³This proposition was recently reaffirmed in the unpublished opinion of the court of appeals in Robinson v. Estate of Harris, No. 2008-UP-649 (Nov. 24, 2008).

this might appear draconian, a certified copy of the judgment quieting Bair's title was filed in the Beaufort County public records on May 27, 1999. FBOA was a party to the negotiations between Property Research and the Town of Hilton Head regarding the street ends. As a result of those negotiations, on or about May 23, 2001, FBOA received the quit claim deed that erroneously included the property adjacent to Lot 5 from Property Research; it was recorded on July 25, 2001.⁴ Yet, FBOA did not claim any interest in the property until November 15, 2004, when it filed this action. Howard was a member of the board of directors of FBOA from 1998 to 2004, a period that spanned the quiet title action, the quit claim deeds, and the construction of the wall.⁵ However, Howard did not claim to be affected until he joined FBOA as a plaintiff in this action under the second amended complaint on May 14, 2007. Howard simply turned a blind eye toward the property or preferred to be deliberately ignorant.

⁴Mr. Guscio testified that the segment of Avocet Street adjacent to Lot 5 and seaward was erroneously included in the quit claim deed from Property Research to FBOA as parcels A and AA. (Tr. 193).

⁵See Multimedia Publishing Co. v. Mullins, 314 S.C. 351, 355, 431 S.E.2d 569, 572 (1993) ("A corporate director is chargeable with all matters pertaining to the corporation's affairs, of which he has or should have knowledge in the exercise of the duties required of him as a director. ... Whatever knowledge a party acquired as director, he will be presumed to have as a private individual. Therefore, any knowledge imputed to [him] in his capacity as a director can be charged to him as an individual.).

In the meanwhile, Bair continued to cultivate and improve the property to its betterment and that of the neighborhood."

4. All proper parties were joined in the quiet title action.

When the quiet title action was commenced in 1998, Property Research was the only entity that had claimed an interest in the property adjacent to Lot 5. No identifiable person ever attempted to use the segment of Avocet Street adjacent to Lot 5 for access or any other purpose. Until Howard was joined as a party to this action in 2007, no lot owner questioned Bair's exclusive use of the segment of Avocet Street adjacent to Lot 5. Howard is still the only lot owner who has questioned Bair's ownership and use of the property

Plaintiffs reliance on Perry v. Gadsden Heirs, 313 S.C. 296, 437 S.E.2d 174 (Ct. App. 1993) is misplaced.⁷ While the master's Christmas dinner analogy might have been appropriate in that case, there is no similarity with its premise and that now before the court. In Perry, the court found there to be an intentional

⁶Regarding the covered storage bins attached to the northern side of the house, similar bins have always been there. There has never been an objection. Plaintiffs' request for their removal is barred by laches.

⁷It is noteworthy that James B. Richardson, Jr. of Svalina, Richardson & Smith, then of Columbia, formerly of Beaufort, guardian ad litem herein, was attorney for appellant therein.

omission of co-tenants, coupled with an intent to deprive them of their fee simple interest in the property. Here, any potential co-tenant was presumed ousted before the quiet title action was commenced.

5. The relief sought by plaintiffs would violate the beach protection ordinances of the Town of Hilton Head and would endanger its dune systems and the environment.

Through its Ordinance Code, Sections 16-6-301 through 16-6-305, the Town of Hilton Head has adopted standards to protect its beaches and dune systems. As readily discernable from the photographs admitted into evidence, the area over which plaintiffs seek access to the beach is an environmentally sensitive area. Over the years, indigenous vegetation has stabilized the area. Bair has planted additional vegetation that has provided further stabilization.

Plaintiffs apparently have no concern for the negative impact that imposing a beach access over area adjacent to Lot 5 would have on the neighborhood. This lack of concern becomes particularly obvious in Howard's case when one considers that he resides at D (now Dove) Street and has uncluttered and easy access to the beach at B, C, D, and E Streets. Moreover, he had difficulty pinpointing when or if he was ever deprived of using Avocet Street as a beach access.

CONCLUSION

In this action the parties seek equitable relief. When Bair acquired Lot 5 in 1984, the area to the south was the site of the Sea Crest Motel, a small family oriented vacation retreat. Since that time, the area has changed. A multi-story condominium has taken the place of the motel. Across North Forest Beach Drive, formerly Baynard Avenue, are other multi-storied vacation condominiums. All of these have exponentially increased vehicular and pedestrian traffic. The privacy formerly enjoyed by Bair in her home is gone. The only remnant of privacy that remains is provided by the wall and vegetation for which plaintiffs seek removal.

Bair respectfully submits that she had a legal right to erect the wall, that she has the right to maintain the premises in their current condition, and that plaintiffs have shown no equitable basis for any change.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____

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1310 Gadsden Street
P. O. Box 11449
Columbia, South Carolina
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Attorneys for Defendant
Carolyn S. Bair

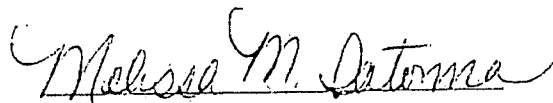
Columbia, South Carolina
December __, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	14 th JUDICIAL CIRCUIT
	)	
FOREST BEACH OWNER'S	)	Civil Action No. 04-CP-07-2036
ASSOCIATION, INC., TREVOR G.	)	
HOWARD,	)	
	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
CAROLYN S. BAIR,	)	
	)	
Defendant.	)	

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings: DEFENDANT'S POST TRIAL BRIEF

Counsel Served: Russell P. Patterson, Esquire
 Jones Patterson Simpson & Newton, PA
 Post Office Drawer 7049
 Hilton Head Island, SC 29938


 Melissa M. Latonna

Columbia, South Carolina

December 18, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO: 04-CP-07-2036
	)	
FOREST BEACH OWNER'S	)	
ASSOCIATION, INC. and	)	
TREVOR HOWARD,	)	
	)	
Plaintiffs,	)	
vs.	)	PLAINTIFFS' POST TRIAL BRIEF
	)	
CAROLYN S. BAIR,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiffs, Forest Beach Owner's Association, Inc. ("FBOA"), and Trevor Howard ("Howard") (collectively "Plaintiffs") respectfully submits their Post Trial Brief in connection with this matter. As the Plaintiffs extensively detailed their position on the issues tried in their Pre-Trial Brief, dated October 9, 2008, the Plaintiffs will only briefly respond to the issues set forth in the Defendant's Post Trial Brief ("Brief").

1. The description of the property in the judgments rendered in the quiet title action and in the quit claim deed from Property Research Holdings to Bair is defective.

The property description in the deed from Property Research Holdings, Inc. ("PRHI") to Bair (Ex. 73A) only contains a metes and bounds description that clearly does not close. In the Plaintiffs' Pre-Trial Brief, the Plaintiffs have cited various legal authorities that provide that if a deed does not contain a valid property description, no property is conveyed (P's Brief, p. 6). Rodney Walker, who provided expert testimony, prepared a graph depicting the property description in the subject deed, which clearly confirms the property description does not close. (Exs. 89, 90, Tr. p. 171, lines 11-13). It was his opinion that the correct course in the property

description should have stated "easterly", not "northerly" (Tr. p. 173, lines 11-24). This same erroneous property description was used in the Amended Lis Pendens and Decree in the 1998 Bair QTA. (Exs. 45, 52)

Bair only cites one case in her Brief in support of her position that this property description is sufficient. The holding relied upon by Bair in Marchel v. Bunker, 13 Wash.App. 81, 533 P.2nd 406 (1975) is merely dicta, and was not a necessary finding in the decision of the court. In addition, the challenged property description in Marchel used the terms "westerly" and "southwesterly", which the court found were sufficient since the accurate property descriptions were in a generally "westerly" and "southwesterly" direction. In the instant case, as testified by Mr. Walker, the correct course for the PRHI deed was "easterly", not "northerly". Thus, this subject description is not analogous to the generally accurate description found in Marchel.

Bair's argument that the court can correct this erroneous property description by relying on the survey found in the Judgment Roll of the Bair quiet title action should also be rejected. A close review of the PRHI deed (Ex. 73A) confirms that PRHI was not conveying the property that was subject to the quiet title action, but specifically conveyed only the property described in the attached metes and bounds property description. ("... and to confirm its conveyance of any and all interest, if any, that Property Research Holdings, Inc. may have in the property referenced below" - Ex. 73(A), 2nd Whereas provision).

Finally, as set forth in its Pre-Trial Brief, it is the Plaintiffs' position that PRHI, due to the applicability of the Statute of Uses, owned no interest in the property at the time this deed was executed, thus the issue of the property description is not determinative as to the issues before the Court.

2. Statute of Uses is Applicable to the Beach Trust Properties.

Bair asserts in her Brief that the Statute of Uses is no longer relevant, but sets forth little or no basis for this position. The chain of title introduced at trial reflects at least three documents which establish a trust on the two (2) strand properties in dispute: (1) the land seaward of Lot 5, owned by Bair, and (2) the land seaward of the end of the Avocet Street Extension, as follows:

- a. March 11, 1952 Covenants (Ex. 11);
- b. September 15, 1952 Covenants (Ex. 12);
- c. July, 1965 Plat – denotes area as beach trust property (Ex. 84).

The Plaintiffs have set forth in their Pre-Trial Brief beginning at page 7 their position as to why the Statute of Uses is applicable. These arguments are consistent with, but do not exclusively rely on this court's similar findings in the case of Petersburg vs. Sokol, issued January 30, 2001 (Ex. 63-1, para. 31), dealing with virtually identical covenants for adjoining Hilton Head Beach Subdivision No. 2.

3. The Plaintiffs have Standing to Assert Rights as Co-tenants.

Trevor Howard is clearly a lot owner and a co-tenant of the Beach Trust Property under the Beach Trust Covenants and the plat cited above (Exs. 11, 12, 84). He has owned Lot 33, Hilton Head Beach Subdivision No. 1, since October, 1994, and appeared at trial and testified in his capacity as a lot owner (Tr., p. 109, line 7 through p. 110, line 12). The FBOA is unquestionably a property owner, owning numerous parcels in Hilton Head Beach Subdivision No. 1, and thus also has standing. (Exs. 19, 24, 25). As there is no definition of a "lot" in the Beach Trust Covenants (Exs. 85, 86), there is no reason not to equate a lot owner to a property owner.

4. Bair Fails to Meet the Required Elements for an Ouster of Co-tenants Under South Carolina Law.

Bair's short, one paragraph explanation of how she has met the extensive and onerous elements for a cotenant to prove ouster of other co-tenants falls woefully short of the stringent requirements under South Carolina law.

An "ouster" is defined as the actual turning out or keeping excluded a party to possession of real estate. Grant v. Grant, 288 S.C. 86, 340 S.E.2d 791 (Ct.App. 1986) "The possession of one tenant in common is the possession of all and, in order for one tenant to establish title against a cotenant by adverse possession, he must overcome the strong presumption that he holds possession in recognition of the cotenancy. Felder v. Fleming, 278 S.C. 327, 330, 295 S.E.2d 640, 642 (1982).

In Wells v. Coursey, 197 S.C. 483, 489, 15 S.E.2d 752, (1941), at page 755, the court described the required occupancy needed to evidence an ouster.

"In order that one of several cotenants may acquire title by adverse possession as against the others, his possession must be such an actual, open, notorious, exclusive and hostile character as to amount to an ouster of the other cotenants. . . . The acts relied on to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of other cotenants that the intention to dispossess is clear and unmistakable."

"Only in rare, extreme cases will the ouster of one cotenant of other cotenants be implied from exclusive possession and dealings with the property, such as collection of rents and improvement of the property." Freeman, p. 470.

"Ouster is presumed from possession only if it is continued for a period of twenty years." (emphasis added) Watson v. Little, 224 S.C. 359, 79 S.E.2d 384, 387 (1953). When claiming title to land by adverse possession, a party has the burden of proving adverse possession

by clear and convincing evidence. Lusk v. Callahan, 287 S.C. 459, 460; 339 S.E.2d 156, 157 (1986). A review of the evidence in this case confirms clearly that no ouster has taken place.

At the outset, it must be noted that Bair only acquired title to Lot 5 in April, 1984 (Ex. 9). The Plaintiffs filed this action in November, 2004, just a little longer than twenty (20) years after she obtained title. Thus, if Bair is to prove ouster, the ouster must have begun almost immediately upon her taking possession of the property. There is absolutely no evidence of any activity by Ms. Bair taking such steps during the early years after her acquisition, or at any time thereafter. The evidence of exclusive, open, notorious, hostile or continuous possession of the subject property for 20 years, or any period close to 20 years, is completely lacking. A summary from the trial follows:

A. Testimony of Carolyn Bair

a. The beach path was established and in use when Robert Graves built the house. (TR. 277, Line 22 – P. 279, Line 2; Ex. 92);

b. When she first bought the property in 1984, people walked down the street extension, to the right of the wooden planter, to access the beach. (TR. P. 277, Lines 11-21; Ex. 76).

c. At the time of her purchase there was an obvious path to the beach. (Bair testimony in Investors Title trial, Ex. 66A(1) P. 82);

d. People have been coming down the beach path of Avocet forever and ever. (TR. P. 280, Line 25 – P. 281, Line 3);

e. People go down the side of that planter to the beach absolutely every day. (TR. P. 280, Line 5 – P. 281, Line 3)

f. April 24, 1997 as-built survey (Ex. 72) – This survey, attached to the Complaint in the 1998 Bair quiet title action (Ex. 38) clearly reflects the existence of a beach path over the subject properties with the label: “Existing Beach Access Path”.

g. Bair admitted she never stopped anyone from walking down to the right of the planter to reach the beach. (TR P. 330, Line 22 – P. 331, Line 6).

h. Even after the gate was installed in mid-2004, Ms. Bair never tried to stop anyone from accessing the beach. (TR P. 331).

It is clear from the direct testimony of Bair herself that no ouster has taken place and that none of the required elements for an adverse possession for 20 years, 10 years, or any other time period was met.

B. Testimony of Trevor Howard – Property Owner

a. Since acquiring Lot 33 in 1994, Mr. Howard and his family used the Avocet Beach access weekly. (TR P. 90, Line 17 – P. 91, Line 13);

b. Mr. Howard and his family used the beach access from 1994 until the gates went up recently. (TR P. 92, 93);

c. Numerous other people parked cars on said property and used same to access the beach. (TR P. 95, Lines 8-15).

C. Testimony of John Snodgrass, Property Owner and Administrator of FBOA

a. The Avocet Street Extension has been historically used for beach access by the interior lot owners. (TR P. 21-22)

b. He, as well as many others, walked on either side of the planter on the Avocet Street Extension to access the beach. (TR P. 23, Line 4 – P. 19; Ex. 76)

c. Cars would use the street extension to allow people to access the beach.
(TR P. 24, Line 3 – 17)

d. Mr. Snodgrass confirmed that the beach access that he used, as well as many others, was the same beach path reflected on the 1997 as-built survey used by Ms. Bair in her quiet title action. (TR P. 24 – Line 18 to P. 26, Line 3; Ex. 72);

e. The beach access paths were first blocked when the gates were installed in March, 2004. (TR P. 26, Line 22 – P. 27, Line 8; Ex. 55);

f. Shortly thereafter, in November, 2004, the FBOA filed the instant action to address the blockage of beach access and other issues (FBOA Complaint, 11/2004);

g. That at least since 2004, the Plaintiff has been paying the property taxes on the disputed street extension property. (TR P. 52 – Lines 11-15, Ex. 33)

The testimony is overwhelming that the lot owners in Hilton Head Beach Subdivision #1 have for decades continuously used the Avocet Street Extension and Strand Block for the sole purpose it was created – to access the beach. At no time has anyone been stopped using same, until Bair constructed the gates in 2004. The Plaintiffs promptly filed suit in response to said actions. As Bair admitted, she never tried to stop the other property owners from using said property, and said property owners in fact used same from at least 1984 until 2004. No ouster or adverse possession can be found under these facts.

4. Section 15-67-90 Does Not Serve as a Bar to Plaintiffs' Action.

The Plaintiffs have discussed in detail all of the relevant South Carolina authorities applying Section 15-67-90 and will not restate these arguments in this Brief. The Plaintiffs would note that contrary to the assertion made by Bair in her Brief, the case of Ford v. Watson,

282 S.C. 66, 316 S.E.2d 429 (1984) did clearly interpret this statute to provide that it only applies to parties that are bound by a valid judgment. At page 431 the court stated as follows:

"It is clear that this section, which operates as a statute of limitations, will preclude the instant action only as to those heirs who are 'bound' by the 1974 or 1978 actions."

Thus, as the Plaintiffs have argued in their Pre-Trial Brief, due to the devious plan of Bair and her counsel in filing a wholly defective quiet title action, this statute is not applicable, since the Plaintiffs were not bound by said defective action.

In addition, Bair's terse argument that Trevor Howard, while he was serving on the board of the FBOA, had notice of the 1998 quiet title action has absolutely no basis. As there is absolutely no evidence that the FBOA was aware, or could have possibly become aware of the quiet title action, it simply follows that Mr. Howard, an out-of-town director, would have had no such knowledge.

As succinctly described by Judge Patrick Michael Duffy in the Investors Title v. Bair action, the entire 1998 quiet title action was nothing more than a "carefully crafted plan designed and executed by her [Bair's] attorney/husband" and should be ignored. (Ex. 66(d), ¶ 42)

5. None of the Proper Parties Were Joined in the 1998 Quiet Title Action.

Bair raises no substantive issues in her Brief that require any additional response by the Plaintiffs on this issue.

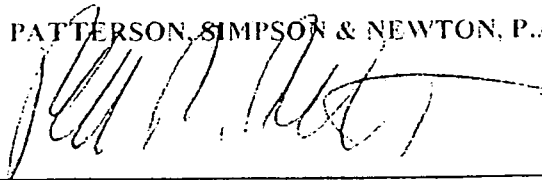
6. The Relief Sought by the Plaintiffs Does Not Violate any Town Ordinance and was Not Raised as an Affirmative Defense in the Defendant's Answer.

a. Town ordinance as an affirmative defense that was not plead – Although Section 16-3-301-305 of the Town Land Maintenance Ordinance (Defendant's Ex. 35) was never referenced at any time during the trial, Bair raises said Ordinance as a bar to the relief sought by the Plaintiffs. This is clearly an affirmative defense that Bair was required to plead. As it was

never raised in the pleadings, nor mentioned during the trial, the Plaintiffs would assert that said argument should be dismissed on this basis alone.

b. 16-6-301 is not a bar – Even if properly before the Court, there is absolutely no evidence in the record that would support Bair's argument that this Town statute applies to the subject property, or would pose a bar to any relief sought by the Plaintiffs in their Complaint. At a minimum, for Bair to assert this argument, it was incumbent upon Bair to have a qualified person from the Town of Hilton Head inspect the subject property and give his or her opinion as to the applicability of said statute. The Court, based upon the record, is simply not in a position to determine even if the statute applies, much less if any provision may prevent the relief sought by the Plaintiffs. As it is clear that the beach access in dispute has been in existence since well before the Town was incorporated, it is simply not possible for the Court to attempt to apply this statute. Surely restoring the beach access that had been in existence since well before 1984, which is the relief sought by the Plaintiffs, could not violate any Town statute. Obviously if the Plaintiffs, after this Court issues its order, seek to improve or alter the dune system, they will have to comply with the Town regulations, and any other federal or state regulations that are applicable.

JONES, PATTERSON, SIMPSON & NEWTON, P.A.



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Attorneys for the Plaintiff

Hilton Head Island, South Carolina
January 16, 2009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

FOREST BEACH OWNER'S
ASSOCIATION, INC.,

Plaintiff,

vs.

CAROLYN S. BAIR,

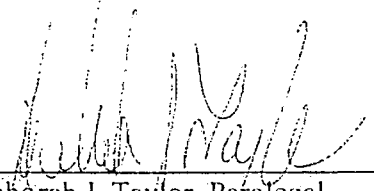
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 04-CP-07-2036

CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, the undersigned, of the Law Firm of Jones, Patterson, Simpson & Newton, P.A., have this date served a true and accurate copy of the Plaintiffs' Post Trial Brief upon the Defendant by mailing a copy of the same via United States Mail, postage prepaid to her counsel as follows:

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January 14, 2009.

R-838

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) CASE NO. 04-CP-07-2036

 FOREST BEACH OWNERS)
 ASSOCIATION, INC., and)
 TREVOR HOWARD,)
)
 Plaintiffs,)
)
 vs.)
)
 CAROLYN S. BAIR,)
)
 Defendant.)
 _____)

DEFENDANT'S MOTION TO AMEND FINDINGS OF FACT,
 TO ALTER OR AMEND FINAL ORDER, TO AMEND THE
 PLEADINGS TO CONFORM TO THE EVIDENCE, TO
 REOPEN THE CASE TO PRESENT ADDITIONAL EVIDENCE,
 AND FOR ORAL ARGUMENT

Defendant, Carolyn S. Bair, moves the court to amend its findings of fact or make additional findings, to alter or amend its final order, to amend the pleadings to conform to the evidence, to reopen the case to present additional evidence, and for oral argument, and in support thereof respectfully submits:

1. The court erred in failing to find that plaintiffs' claims are time barred. S.C. Code Ann. § 15-67-90 plainly states:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

What could be more clear? The court of appeals had no problem with this clear statement when it stated:

Section 15-67-90 imposes a three year statute of limitations on an action to set aside "for any reason" a judgment quieting title to land.

Yarborough v. Collins, 301 S.C. 339, 341, 391 S.E.2d 873, 875 (Ct. App. 1990).

Likewise, the court of appeals had no problem with the clear meaning of Section 15-67-90 when it relied on the statute and Yarborough and affirmed summary judgments in Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-646 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-647 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-648 (Ct. App. Nov. 24, 2008); and Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-649 (Ct. App. Nov. 24, 2008).

Moreover, no South Carolina statute or case had modified the statute's provisions, no matter how harsh or draconian they might appear to be. Simply stated section 15-67-90 is a statute of repose.

Accordingly, the supreme court's decision in Capro of Summerville, Inc. v. J.H. Gayle Construction Co., 368 S.C. 137, 628 S.E.2d 38 (2006) is instructive. There, the court explained:

A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time. Langley v. Pierce, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body. Id. at 404, 438 S.E.2d at 243. A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted ... even if this period ends before the plaintiff has suffered a resulting injury." Black's Law Dictionary 1451 (8th Ed. 2004). " Statutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." Camacho v. Todd and Leiser Homes, 706 N.W.2d 49, 54, n. 6 (Minn. 2005) citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 30, p. 168 (5th ed.

1984). As noted by the Virginia Supreme Court, "[a] statute of repose differs from a statute of limitations.... [T]he expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued." School Bd. of the City of Norfolk v. U.S. Gypsum, 234 Va. 32, 360 S.E.2d 325, 327-328 (1987).

Cabro, 368 S.C. at 142, 628 S.E.2d at 41.

Here, final judgment was entered in defendant's quiet title action against Property Research on May 19, 1999 and recorded in Book 1175 at Page 1745 on May 27, 1999. Consequently, any claim that plaintiffs might have had was extinguished May 17, 2002.¹

2. The court erred in failing to find that Bair is the fee simple owner of the segment of Avocet Street abutting Lot 5.

Upon recording of the plat of Hilton Beach Subdivision No. 1 fee simple title to Avocet Street vested in the abutting lot owners. Here, the court found that "[l]egal title to the streets ... remained in the Hilton Head Company." (Order, 3/17/09, at 4). Defendant respectfully disagrees.

The plat of Hilton Head Beach Subdivision No. 1 ("HHBSub1") was recorded on July 11, 1952. (Tr. Ex. 10). HHCo did not specifically reserve any right or interest in the streets.

The court appears to have overlooked the South Carolina Supreme Court's decision in Andrews v. McDade, 201 S.C. 24, 21 S.E.2d 202 (1942). There, the court stated:

It is well settled, as the trial judge correctly held, that in the event of the abandonment of a public highway, title thereto to the center of the road remains vested in the abutting property owners on either side. . . .

Andrews, 21 S.E.2d at 204 (emphasis added).

¹Defendants should be afforded little sympathy. FBOA received the erroneous quit claim from Property Research Holdings on or about May 23, 2001. The deed was recorded on July 25, 2001. Yet, FBOA did not commence this action until November 15, 2004, and Howard was not joined as a party to this action until May 14, 2007. So much for due diligence.

Adopting the rationale of Supreme Court of Georgia in Tietjen v. Meldrim, 169 Ga. 678, 151 S.E. 349, 359, the South Carolina Supreme Court further stated:

As lots in this subdivision were sold, and the purchasers got their deeds thereto, the purchasers acquired title to the lots and the rights of way over these streets as appurtenant thereto. The fee in the land embraced in the streets became vested in the owners of the abutting lots to the middle of the street, subject to the rights of way over the same in favor of the purchasers of the lots in this subdivision, for the purposes of ingress and egress to and from their lots. [Citing authorities] These purchasers acquired a clear title to their lots, a complete right to the rights of way in and over these streets as appurtenant to their lots, and title in fee in one-half of the soil embraced in the streets adjoining their lots.

Andrews, 21 S.E.2d at 204.

Here, the subdivision plat of Hilton Head Beach Subdivision No. 1 shows no reservation of any interest in the streets by the Hilton Head Company. As the abutting lots in Hilton Head Subdivision No. 1 were sold, their purchasers acquired title to the streets.²

The court correctly found that at the time of its bankruptcy, the Hilton Head Company had no interest in the streets, but overlooked that title to the streets had long passed to their abutting lot owners, including defendant and her predecessors in title.

Thus, notwithstanding any perceived problem with the quiet title action or the quit claim deeds, defendant has fee simple title to the segment of Avocet Street abutting Lot 5.

3. The court erred in failing to find that plaintiff Forest Beach Owners Association received no interest in Avocet Street or its extension under the quit claim deed from Property Research.

²The general rule is that owners of lots abutting a perimeter street take title to the entire width of the street, unless specifically reserved. See Caples v. Taliferro, 194 So. 861 (Fla. 1940); Owsley v. Johnson, 103 N.W. 903 (Minn. 1905).

Plaintiffs mistakenly contend that the description of the property in the judgments rendered in quiet title action against Property Research and in the quit claim deed from Property Research to Bair is defective; thus, Bair acquired nothing under any of them. Unfortunately, the court accepted this contention.

This contention is based on the erroneous premise that the judgments and deed are defective because the description does not close. That is wrong. First, the description does close. Secondly, plaintiffs and the court have misapplied applicable South Carolina law.

Based on the testimony of Rodney Walker, plaintiffs contend that because the description's last call states "thence northerly to the point of beginning," instead of "easterly to the point of beginning," it is defective. Mr. Walker readily admitted that he did not field check the description (Tr. 167) and that he does not know the effect of the phrase "run to the point of beginning" in South Carolina (Tr. 177). Nevertheless, Mr. Walker then rendered an opinion that, because last and closing call should have been "northeast 65-42-22," "easterly" instead of "northerly" should have been used. According to Mr. Walker, an angle in excess of 45 degrees required use of "easterly." Notwithstanding counsel's being unable to find any authority for this distinction, Mr. Walker's testimony is both enlightening and useful.

South Carolina has long subscribed to the principle that a deed is not void for uncertainty where, even though there might be errors, if from the whole description the land sought to be conveyed can be identified. McNair v. Johnson, 95 S.C. 176, 78 S.E. 892 (1913). In McNair, the court found support for that principle in two authorities stating:

One of the maxims recognized in Broom's Legal Maxims (star page 605) is: "Mere false description does not make an instrument inoperative" (falsa demonstratio non nocet). The author in commenting thereon uses this language: "Falsa demonstratio may be defined to be an erroneous description of a person or thing in a written instrument; and the above rule respecting it may be thus stated and qualified as soon as there is an adequate and sufficient definition with convenient certainty of what is intended to pass, by the particular instrument; a subsequent erroneous addition will not vitiate it." The judgment of foreclosure refers to "the mortgaged premises described in the complaint in this action" and was sufficient to put all

parties (especially those who were parties to the action and their privies) upon inquiry which, if pursued with due diligence, would have shown the true description, not only from the mortgage but from the complaint, to which reference was made. Therefore, the description in the judgment of foreclosure was not rendered inoperative by a subsequent erroneous addition. Another maxim of the law applicable to this case is: "That is sufficiently certain which can be made certain."

In Devlin on Real Estate, vol. 2, § 1012, the author says: "A deed is not void for uncertainty because there may be errors or an inconsistency in some of the particulars. Generally the rule may be stated to be that the deed will be sustained, if it is possible from the whole description, to ascertain and identify the land intended to be conveyed." In a note to that section it is said: "As that is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient." He also says: "Where there are several calls in a deed, and with the exception of one they may all be applied upon the face of the earth, constituting an intelligent and correct description of the lot, to which they refer, the one that does not apply will be rejected as surplusage and the others will prevail.*** If the deed contains two descriptions, one correct and the other false in fact, the latter should be rejected as surplusage. Where one of two different descriptions applies to land to which the grantor had title, and the other to land which he did not own, the former will be taken as the true description, and the latter will be rejected as false. If sufficient remains after rejecting a part of the description which is false, the deed will take effect." Section 1016.

McNair, 78 S.E. at 892-93. See also Brownlee v. Miller, 208 S.C. 252, 37 S.E.2d 658 (1946) (citing McNair).

In the underlying quiet title action, the judgments specifically referred to the described property as "being the real estate described in Exhibit 'A' to the complaint." Moreover, the complaint refers to real estate referred to therein as "Addition to Lot 5 containing 0.101 acres" and "Addition to Lot 5 containing 0.141 acres." The quit claim deed from Property

Research to Bair refers to the May 19, 1999 final judgment and provides that it was being given in support of the final judgment against Property Research. The written description in the judgments and quit claim deed are the same. The judgments and quit claim deed are specifically interrelated. Here, the quit claim deed refers to the judgment which refers to the complaint which refers to the plat. "[W]here a deed describes land as it is shown on a plat, the plat becomes part of the deed for the purposes of showing the boundaries, metes, courses and distances of the property conveyed." Bellamy v. Bellamy, 292 S.C. 107, 110-11, 355 S.E. 1, 3 (1987)

It would appear that either Mr. Walker was not provided with a copy of the plat or as he stated did not understand principles of South Carolina law. In any event, he had no difficulty determining that the final call should be "northeast 65-41-22" (Tr. 172) "at a distance of 68,76" and identifying the land.³

Since the description that appears in the judgments and quit claim deed "will enable a person of ordinary prudence acting in good faith and making inquiries . . . to identify the land; it is sufficient."

Whether the final call is northerly or easterly, the calls of the metes and bounds description return to the point of beginning and the description closes. Bair thus submits that the court's finding to the contrary is erroneous.

4. The court erred by misapplying the Statute of Uses to the declaration of trust and the facts herein and erroneously concluding that the Forest Beach Owner's Association derived an interest in the area lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark.

On or about March 23, 1953 and April 1, 1953, the Hilton Head Company ("HHC") recorded a declaration of trust and

³Using Metes & Bounds software, counsel for Bair computed the final call to the point of beginning to be North 65°42'10" East for 68.759 feet. Whether the final call was denominated northerly or easterly, it still returned to the point of beginning, a known and ascertainable location. Counsel's research indicates that descriptions begin with North or South as appropriate followed by the azimuth in degrees etc., then followed an East or West direction, not "northeast." (See attached Exhibit A).

resolution relating to lands lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark. Those documents were recorded in Deed Book 74 at Pages 305 and 306 respectively. (Trial Exs. 85 & 86). A retyped version of each was previously provided on February 13, 2009. Similar documents relating to Subdivisions Nos. 2 and 3, have been admitted as Trial Exhibits 87 and 88. The area encompassed by the descriptions in Trial Exhibits 87 and 88 is not limited to the area lying between the front lot lines and the mean high water mark. Because of this difference, prior commentary relating to the strand or trust property adjacent to Subdivisions Nos. 2 and 3 has no relevance. In any event, none of the documents impose an active duty of the trustee.

In a trust where the trustee is instructed to use the property for the benefit of another, the Statute of Uses executes to vest legal title with the beneficiary, if the beneficiary is capable of taking legal title and the trustee has no active duties. Restatement (Second) of Trusts § 67 (1959); see, id. at cmt. b ("When the Statute of Uses executes a use or trust not only is the interest of the beneficiary made legal but the interest of the person who otherwise would hold subject to the use or trust is extinguished. The Statute thus has a double effect in turning the equitable interest of one person into a legal interest and extinguishing the legal interest of the other."); Johnson v. Thornton, 264 S.C. 252, 257, 214 S.E.2d 124, 127 (1975) ("In a passive trust the legal and equitable titles are merged in the beneficiaries and the beneficial use is converted into legal ownership, but as to an active trust the title remains in the trustee for the purpose of the trust.")

All Saints Parish, Waccamaw v. Protestant Episcopal Church, 358 S.C. 209, 222-23, 595 S.E. 253, 261 (Ct. App. 2004), cert. denied (2005).

Notwithstanding the scope of their descriptions, each of the "trusts" is passive, triggering the statute of uses. Thus, the legal and equitable titles to the land lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark merged, essentially resulting in HHCo's retaining fee simple title.⁴

⁴HHCo conveyed Lot 5 to E. E. Cowart (Bair's predecessor in title) by deed recorded in Deed Book 77 at Page 11 on July 15,

There are no deeds from HHCo conveying any interest in the land lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark. With the exception of such interest as the owners of previously conveyed lots might have gained, legal title to the area lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark remained in HHCo until its bankruptcy. No one appears to have asserted any co-tenancy interest in that area.

When Property Research acquired the interests of the HHCo from the bankruptcy trustee, it acquired HHCo's interest in the area seaward of the lots in Subdivision No. 1 and the area seaward of street ends, including Avocet Street. Neither of those areas is within the platted area of Subdivision No. 1.

Through the quiet title action Bair obtained Property Research's interest in the area adjacent to Lot 5, leaving Property Research with nothing. This was ratified by Property Research's quit claim deed to Bair. As has been previously stated, under the quit claim deed, FBOA could only acquire such interest in the area adjacent to Lot 5 as Property Research might have had, which was nothing.

5. The court erred in finding that, when the "trusts failed," an implied covenant was created. Bair respectfully suggests that there is no basis for this finding. First, the trusts did not fail. There was simply a merger of the equitable and legal titles to the trust property under the Statute of Uses. Second, a court cannot rewrite a contract. Moreover, it cannot designate a corporation to act as a trustee unless that corporation is legally authorized.

6. The court erred in finding that Property Research Holding conveyed the fee to the beach strand and streets to FBOA. The only interest that FBOA could acquire under the quit claim deed was that intended by Property Research and described in the deed. Mr. Guscio testified that the Avocet segment and its seaward extension were included by mistake. In any event, Property Research had parted with title to each.

7. The court erred in finding that Bair cannot assert

1952. HHCo conveyed Lot 33 to Martha F. Poythress (Howard's predecessor in title) by deed recorded in Deed Book 78 at Page 24 on January 12, 1955.

adverse possession as an additional basis for claiming title to the area lying between the front lot lines of Hilton Beach Subdivision No. 1 and seaward of Avocet Street and the mean high water mark. For the reasons previously stated, neither Bair, FBOA nor Howard are co-tenants, so adverse possession can be appropriately considered. The court is concerned with two parcels, the area seaward of Lot 5 as originally platted and the area seaward of Avocet Street. There is no evidence that anyone ever attempted to use the former. There is no evidence of any identifiable person ever attempting to use the latter, with the exception of Howard who vaguely testified as to crossing some portion and the Sea Crest property.

8. The court erred in ordering Bair to remove vegetation from the eastern end of Avocet Street so that one can view the beach and ocean. Bair respectfully suggests that this violates statutes, regulations, and ordinances. Moreover, there is no right to ocean view in South Carolina. Hill v. Beach Co., 279 S.C. 313, 315, 306 S.E.2d 604, 605 (1983 (citing Schroeder v. O'Neil, 179 S.C. 310, 315, 184 S.E. 679 (1936))).

10. It would be appropriate to reopen the case to present additional evidence. Through their pretrial brief, plaintiffs represented that Rodney Walker is a "local surveyor" who would confirm that the description in the judgments rendered in the quiet title action and the quit claim deed from Property Research to Bair "does not close and does not describe any property." Mr. Walker is not a licensed surveyor and, by his own admission, does not know the effect of the phrase "run to the point of beginning" in South Carolina. Bair proffers herewith the opinion of Terry G. Hatchell, a South Carolina Registered Professional Surveyor, who found the description "to be of sound closure" and stated that the words "thence run northerly to the point of beginning" is a true statement. (See attached Exhibit B). Since the court found that the description does not close, it is appropriate and in the furtherance of due process that Bair be allowed to submit the opinion of a licensed South Carolina surveyor.

11. The pleadings should be amended to conform to the evidence.

(a) The evidence supports a finding that Lots A and AA were included in the quit claim deed from Property Research Holdings to Forest Beach Owner's Association by mistake and that it was not the intent of Property Research that those lots be included in the quit claim deed since they had previously been the subject of the quiet title action and the quit claim deed from Property Research to Bair. Accordingly, Bair respectfully

requests that the Bair's counterclaim be amended to include a claim for reformation of the FBOA quit claim deed to delete Lots A and AA from its description.

(b) The evidence supports a finding that FBOA slandered Bair's title by recording the quit claim from Property Research when it knew, or should have known, of Bair's interest in the segment of Avocet Street abutting Lot 5 and the area seaward of Avocet Street and that Property Research had no interest to convey.

12. Due process and the complexities of the issues in this action require oral argument.

WHEREFORE, for the reasons stated, Bair respectfully requests that the court amend its findings of fact or make additional findings, alter or amend its final order, amend the pleadings to conform to the evidence, reopen the case to present such evidence as is now appropriate, and grant oral argument.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Russell P. Patterson, Esquire, P. O. Box 7049, Hilton Head Island, SC 29938, and the Honorable Thomas Kemmerlin, Jr., 20 Fen Lane, Beaufort, SC 29907, by mail on March 30, 2009.



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10,546.32 square feet.

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S 57:55:51 W 106.03
N 24:18:26 W 173.37
N 65:42:22 E 36
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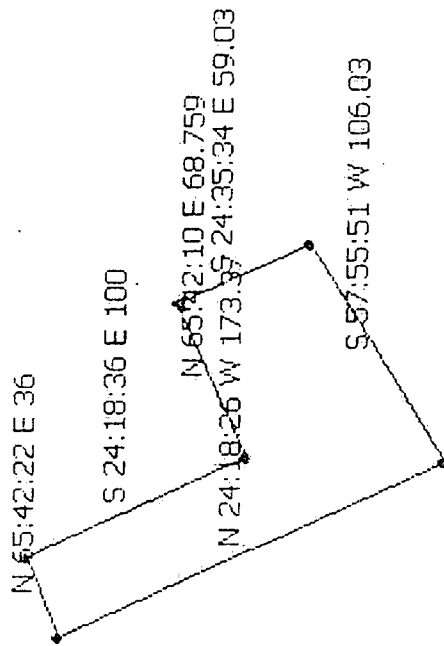


EXHIBIT A

Addition to Lot 5, Hilton Head Beach Subdivision No. 1



SURVEYING CONSULTANTS

PO Box 2395, Bluffton, SC 29910 Delivery: 17 Sherington Drive, Suite C, Bluffton, SC 29910
Phone: (843) 815-3304, Fax (843) 815-3305
Terry Hatchell, President
thatchell@surveyingconsultants.com

March 25, 2009

Mr. Robert E. Austin, Jr.
Robert E. Austin, Jr. Law Offices
P.O. Box 490200
Leesburg, FL 34749-0200

(o) 352-728-1020
(f) 352-728-0595
(email) reair@robertaustinlaw.com

RE: Lot 5, Dune Lane, Hilton Head Beach subdivision No. 1
Hilton Head Island, SC

Dear Mr. Austin:

The Final Judgment found in the attached Civil Action No. 98-CP-7-1721 shows a written legal description in Item 1.

I have run the said description mathematically and found it to be of sound closure. The words "thence run northerly to the point of beginning" is a true statement.

I have based the above paragraphs on my twenty three years of experience as a SC Registered Professional Surveyor.

Should you have need of any discussion, please do not hesitate to contact me.

Sincerely,

Terry G. Hatchell, President
S.C.P.L.S. No. 11059

EXHIBIT B

C:\letters, word documents\Robert Austin Job 89207A 3-25-09

R-851

APPENDIX00946

28770

108046

1749

STATE OF SOUTH CAROLINA)
)
 CAROLYN S. BAIR,)
)
 Plaintiff,)
 vs.)
)
 PROPERTY RESEARCH)
 HOLDINGS, INC.; ALSO ALL)
 OTHER PERSONS, UNKNOWN,)
 CLAIMING ANY RIGHT,)
 TITLE, ESTATE, INTEREST)
 IN OR LIEN UPON THE REAL)
 ESTATE DESCRIBED IN THE)
 COMPLAINT HEREIN.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 98-CP-7-1721

99 MAY 19 PM 2:05
 BEAUFORT COUNTY
 CLERK OF COURT
 BEAUFORT, S.C.

FINAL JUDGMENT

This action came before the Court on plaintiff's motion for entry of final judgment under Rules 55 and 56, SCRCP.

The Court finds that default was properly entered against the unknown parties not otherwise represented by James B. Richardson as guardian ad litem.

The Court further finds that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law. Accordingly,

IT IS ORDERED AND ADJUDGED:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning,

being the real estate described in Exhibit "A" attached to the complaint, is a good title against any and all claims of defendants and of all persons claiming by, through, or under

R-852

#189207A

APPENDIX00947

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
FOREST BEACH OWNER'S	)	CIVIL ACTION NO. 04-CP-07-2036
ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION FOR
	)	CLARIFICATION OF ORDER
CAROLYN S. BAIR,	)	
	)	
Defendant.	)	
_____	)	

TO: THE DEFENDANT, AND HER ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the Plaintiff moves this Court for a clarification of certain portions of the Order of the Court, dated March 17, 2009 as follows:

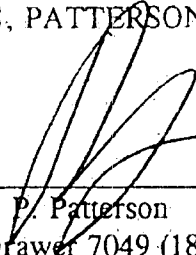
1. Paragraph 4, Conclusions of Law - The Plaintiff requests this Court clarify, perhaps with a specific listing, along with referencing one of the as-built surveys submitted into evidence and/or photographs, exactly what improvements Ms. Bair is required to remove. For example, the Plaintiff is unclear if the approximately 8-foot high block wall running along the property line between the street extension and the property formerly owned by Sea Crest should be removed (See: Exs. 74, 77 attached). Further, the Plaintiff is unclear as to what landscaping in the street extension must also be removed. Finally, a more exact definition of "planters,"

R-853

would be helpful so the parties can determine if Ms. Bair is in compliance with said Order after she removes said designated improvements.

The Plaintiff so moves.

JONES, PATTERSON, SIMPSON & NEWTON



Russell P. Patterson
P.O. Drawer 7049 (18 Pope Avenue - 29928)
Hilton Head Island, South Carolina 29938
(843) 842-6111

Attorneys for Plaintiff

Hilton Head Island, South Carolina
April 2, 2009

1.
2.
3.
4.
5.

100

BEACH

NO. 1

The logo is a circular seal. The outer ring contains the text "SOUTH CAROLINA" at the top and "ENVIRONMENTAL CONSULTANTS, INC." at the bottom. Inside this ring, the words "SURVEYING" and "CONSULTANTS" are stacked vertically on the left, and "INC." and "No. 00045" are stacked vertically on the right. The words "CERTIFICATE OF" are written along the bottom inner edge of the seal.



SURVEYING CONSULTANTS
9 Sheridan Park Circle, Suite
Bluffton, SC 29910
TELEPHONE: (843) 815-3301
FAX: (843) 815-3305
57-12-1-30

DATE: 4/24/97
 REVISION: 5/21/2002
 REVISION: 8/8/2007
 REVISION: 5/25/2002
 JOB NO: 552074
 CRY: 552074

$\frac{d}{dt} \left(\frac{x^2 + y^2}{2} \right) = x \dot{x} + y \dot{y}$

ATLANTIC OCEAN

BEACH LOT
N/F THE TOWN OF HILTON HEAD ISLAND

LOT 6A

LOT 9

DUNE LANE
' 20' R/W

LOT 4

AVOCET STREET
36' R/W

BEACH STRAND

SEA CREST MOTEL

[illegible]

REFERENCE S.A.:

WILSON NEW ORLEANS
SUBDIVISION NO. 1
DATED APRIL - JUNE 1957.
BY FIELD CLARK, S.E.R.
RECORDED 20 8. PG. 4.

===== CAROLYN BAIR

101-1

1) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

2) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

3) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

4) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

5) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

6) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

7) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

8) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

9) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

10) "We do not want in the best of all worlds to have a large number of Negroes in the South, but we do not want to have a large number of Negroes in the South who are not citizens of the United States." - President Lincoln, 1862

SPECIAL AGENT:
LOI REQUEST TO SHOW RECORDS RE NEW OR EXISTING PARCELS TO BE
CONSIDERED WITH LOI 5. DUE TO CONSTITUTIONAL PROTECTION UNDER
THE FREEDOM OF INFORMATION ACT (5-1-73), PARCELS ARE:

ADDRESS: P: DUNE LAKE
TEL: 222-400-510-1550 ON: 332-400-510-1550

03 09 01 02 03 04 05 06 07 08 09 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

39 24

000199

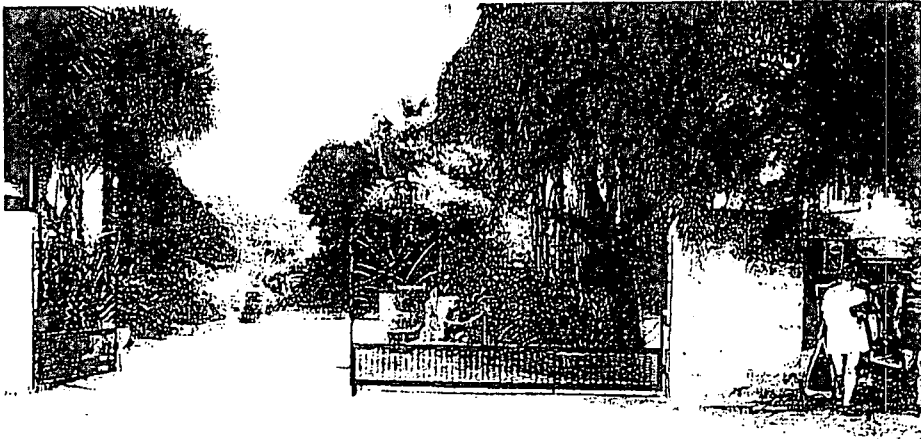
2045/1539

Exhibit 74 R-855

APPENDIX00950



1A



1(e)

R-856

Exhibit 77



2A



2B



R-857

2C



3A

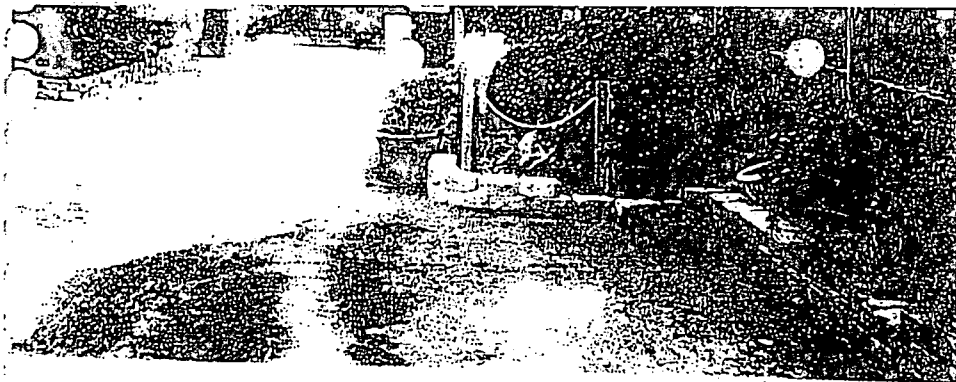


3B

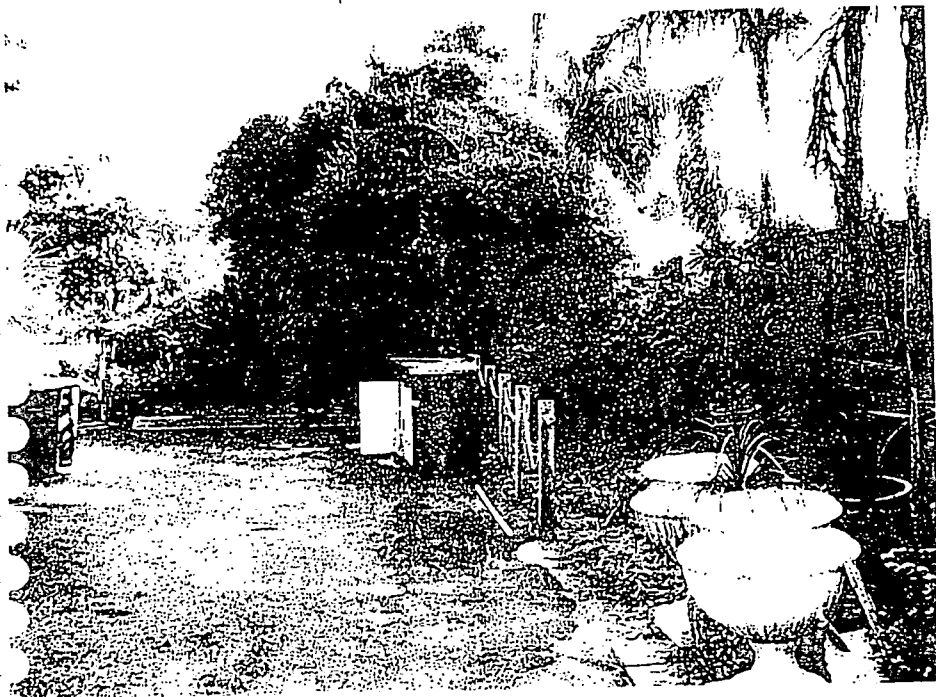


3C

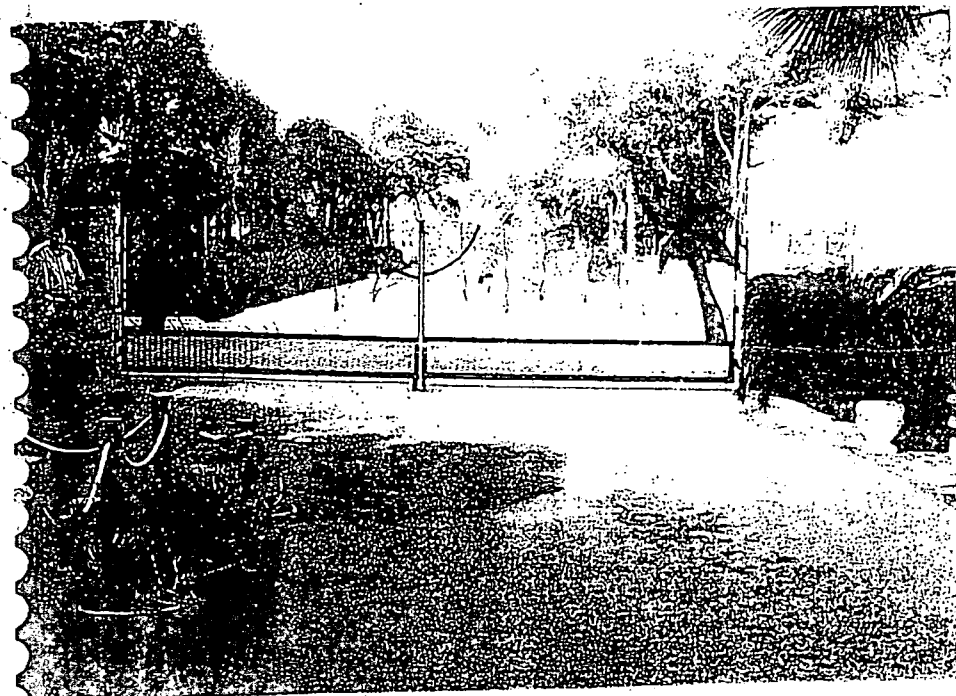
R-858



4A

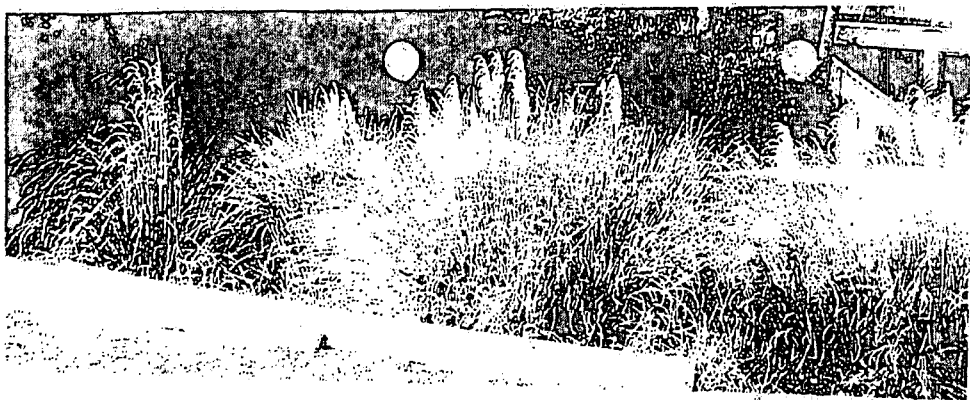


4B



4C

R-859



5A

R-860

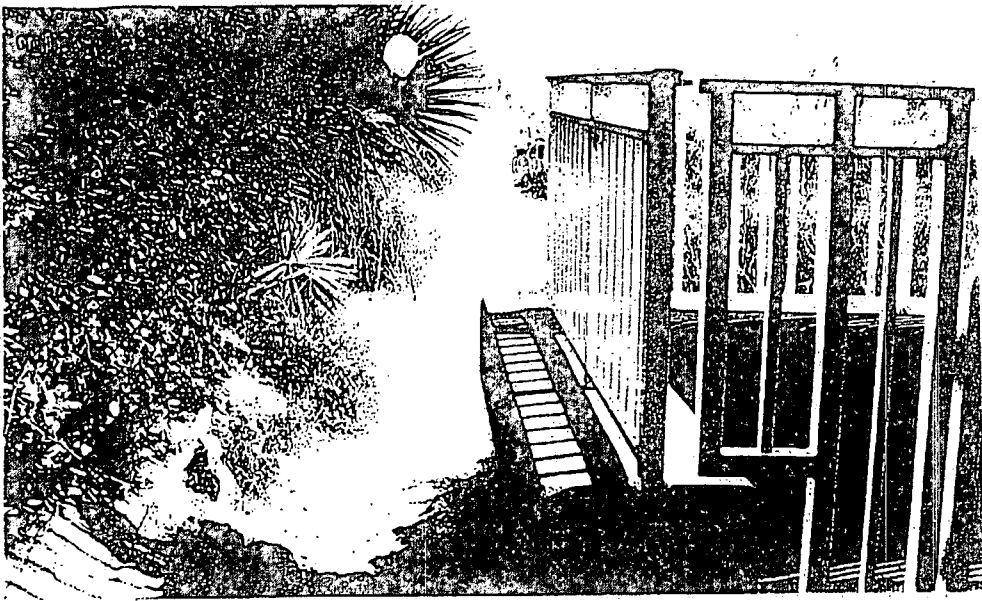


6A



6B

R-861



7A

R-861

Town of Hilton Head Island, South Carolina

Land Management Ordinance

ARTICLE III. BEACHES

Sec. 16-6-301. Purpose

The purpose of this section is to promote protection and stabilization of existing beaches on Hilton Head Island. All standards shall apply except that when the Town adopts a shoreline management program, including any ordinance or policy, such program standard shall supersede the following standards if there are any conflicts.

Sec. 16-6-302. General Standards

A development plan approval shall be granted for development or site alteration adjacent to the beach only if the applicant can demonstrate that the proposed development or site alteration:

- A. Will not result in the removal or diminution of the amount of sand, silt, shell, sediment or other geologic components of any beach, or interfere with natural patterns of wind and water movement of sand, silt, shell, sediment or other beach components, except for maintenance of any structures causing these effects which were existing prior to the enactment of this Title.
- B. Will not result in the direct discharge of stormwater onto any beach;
- C. Will not result in the discharge of treated or untreated sewage or other human waste from land or waterborne sources, with the exception of advanced treated effluent irrigation systems approved by the South Carolina Department of Health and Environmental Control;
- D. Will not result in the direct or indirect removal, destruction, depletion or digging out of vegetation which contributes to beach stability;
- E. Will minimize any interference with the natural use of the beach for feeding, foraging, resting, nesting and breeding by indigenous and migratory birds, shellfish, marine fishes, sea turtles and other wildlife. Such interference shall include the destruction or diminution of organisms or material upon which wildlife feed; and
- F. Will not interfere with the customary rights of the public for access to and use of the active beach;
- G. Will not remove, alter or destroy any beach protection structure, such as walls or revetments, unless specifically authorized by an appropriate development plan approval or building permit.

Sec. 16-6-303. Beach Nourishment and Erosion Control

Private or public projects for beach nourishment or control of beach erosion shall adhere to the following standards:

1. Fill materials shall come from approved areas and use approved methods as regulated by the appropriate state and federal agencies. Fill materials shall be of similar sediment size and material as the existing material.
2. Use of natural features of the beach and dune system shall be favored over artificial structures. (Example: trapping sand by use of sand fencing; planting dune vegetation on small dunes to encourage growth.)
3. Erosion control structures normally shall not be approved except when erosion imminently threatens permanent primary structures, such as habitable buildings.

4. Erosion control structures shall not interfere with existing or planned public access to the beach unless equivalent, alternate access can be provided.
5. Beach nourishment or construction of control structures shall be done at times of the year when impact on wildlife, particularly Endangered species, is minimized. Appropriate state and federal permits shall be secured before Town approval.

Sec. 16-6-304. Beach Access Standards

- A. Access (pedestrian or bicyclist) to beach areas shall be provided by elevated walkways where dunes of any size or age exist or are to be restored. In no case shall direct vehicular access to beach areas be permitted unless specifically authorized by the Town.
- B. In reviewing all development applications involving property adjacent to the beach, the Administrator shall consider the need for beach access to meet the general public interest. In the event the Administrator determines that purchase by the Town of access is necessary for the general welfare and benefit of the public (beyond property of the development), the Administrator may recommend such action to the Town Council.
- C. Development on property adjacent to the beach which would cause the net loss of any existing officially designated beach access shall not be approved by the Administrator.

Sec. 16-6-305. Dune Protection Standards

- A. For purposes of protecting, stabilizing and restoring dunes on Hilton Head Island (both the primary and secondary dune systems), the following standards shall apply:
 1. Development on dunes is prohibited with the exception of the construction of very limited elevated pedestrian walkways necessary for beach access, approved by the Town, that comply with paragraphs 2 and 3 below.
 2. No primary dune shall be leveled, breached, altered or undermined in any way by development or other human-caused activity such as boat storage, nor shall primary dune vegetation be disturbed or destroyed, with the exception of construction of boardwalks or similar beach access which have minimal effect on the natural features of the dune. If removal or disturbance of dune vegetation cannot be avoided, replacement vegetation shall be planted.
 3. Access to beach areas shall be provided by elevated walkways when traversing the primary dune. Walkways shall not exceed a maximum of 6 feet in width, so as not to result in severe shading of dune plants, unless approved by OCRM.
 4. Planting of vegetation and construction of wood, sand and wire fences shall be permitted. (Note that OCRM permit may also be needed.) Hard materials (other than fences) shall not be permitted without extensive scientific documentation and assurances that there are no detrimental on or off-site impacts.
 5. Removal, alteration or destruction of any dune protection structure shall be prohibited, unless specifically authorized by an appropriate development plan approval or building permit.
- B. Private or public projects to restore or stabilize dunes shall use measures acceptable to the Administrator. Use of sand fences and vegetation is highly encouraged.
- C. Where significant dune erosion or removal has occurred, the restoration or stabilization of existing dunes and creation of new dunes compatible with natural beach profiles may be required for new developments and redeveloping properties.

LAW OFFICES
ROBERT E. AUSTIN, JR.

ROBERT E. AUSTIN, JR.
BOARD CERTIFIED IN CIVIL TRIAL LAW

1330 CITIZENS BLVD., STE. 401
P. O. BOX 490200
LEESBURG, FL 34749-0200
TELEPHONE 352-728-1020
FAX 352-728-0595

February 13, 2009

Hon. Thomas Kemmerlin, Jr.
Special Referee
20 Fen Lane
Beaufort, SC 29907

Re: Forest Beach Owners' Association, Inc. v.
Carolyn S. Bair, Case No. 2004-CP-07-2036

Dear Judge Kemmerlin:

On February 2, 2009, we received your letter advising that you see no need for further argument. Our request arose from statements in the post trial brief of plaintiffs, Forest Beach Owners' Association ("FBOA") and Trevor Howard ("Howard"), that we submit to be erroneous or not supported by the evidence or applicable law. While we remain of the opinion that oral argument would assist the court in its deliberative process, we submit the following:

1. Description of the property and quit claim deed.
FBOA's assertion that the description of the property is erroneous is derived from the testimony on Rodney Walker. Mr. Walker is not a surveyor. He is not licensed as a surveyor in South Carolina. Mr. Walker was offered by FBOA "as an expert draftsman." (Transcript p. 167, lines 3-4). Mr. Walker has "not done any field work on the subject property." (Id. lines 12-13). Mr. Walker's "purpose [was] to comment on what property [is] encompassed by the metes and bounds description and the deed." (Id., lines 22-24). Mr. Walker's only concern was with the metes and bounds description, nothing more.

Here, the underlying quiet title action was commenced with the filing of a complaint to which there was attached a survey of the property. See, Rule 10(c), SCRCP ("A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."). On January 25, 1999, the court

entered final judgment against Property Research Holding, Inc. ("Property Research") in which it found that Bair's title to the subject property, described by metes and bounds as "being the real estate described in Exhibit 'A' attached to the complaint, is a good title against any and all claims of defendant Property Research Holdings, Inc." (Trial Ex. 44).

The supreme court's decision in Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135 16 S.E.2d 816, 823 (1941) is instructive. There, the court stated:

"As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land ***."

(citation omitted) (emphasis added).

The January 25, 1999 judgment further found that "the title to the real estate is forever quieted in plaintiff Carolyn S. Bair" against all claims arising through Property Research. Thus, as of January 25, 1999, Property Research no longer had any interest in the subject property that it could convey to anyone. Any claim to the subject property based on a quit claim deed from Property Research after January 25, 1999 is meaningless.

A quit claim deed does not convey the fee, but only the right, title, and interest of the grantor. Martin v. Ragsdale, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905). Since Property Research had parted with title to the subject property, it had nothing to convey. Therefore, FBOA received nothing under the Property Research quit claim deed on which to base a claim to the subject property and any perceived deficiency in the description of the subject property is moot.

2. Declaration of Trusts and Statute of Uses. On or about March 23, 1953 and April 1, 1953, the Hilton Head Company ("HHCo") recorded a declaration of trust and resolution relating to lands lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark. Those documents were recorded in Deed Book 74 at Pages 305 and 306 respectively. (Trial Exs. 85 & 86). A retyped version of each is attached. Similar documents relating to Subdivisions Nos. 2 and 3, have been admitted as Trial Exhibits 87 and 88. The area encompassed by the descriptions in Trial Exhibits 87 and 88 is not limited to the area lying between the front lot lines and the mean high water mark. Because of this difference, prior commentary relating to the strand or trust property adjacent to Subdivisions Nos. 2 and 3 has no relevance. In any event, none of the

documents impose an active duty of the trustee.

In a trust where the trustee is instructed to use the property for the benefit of another, the Statute of Uses executes to vest legal title with the beneficiary, if the beneficiary is capable of taking legal title and the trustee has no active duties. Restatement (Second) of Trusts § 67 (1959); see, id. at cmt. b ("When the Statute of Uses executes a use or trust not only is the interest of the beneficiary made legal but the interest of the person who otherwise would hold subject to the use or trust is extinguished. The Statute thus has a double effect in turning the equitable interest of one person into a legal interest and extinguishing the legal interest of the other."); Johnson v. Thornton, 264 S.C. 252, 257, 214 S.E.2d 124, 127 (1975) ("In a passive trust the legal and equitable titles are merged in the beneficiaries and the beneficial use is converted into legal ownership, but as to an active trust the title remains in the trustee for the purpose of the trust.")

All Saints Parish, Waccamaw v. Protestant Episcopal Church, 358 S.C. 209, 222-23, 595 S.E. 253, 261 (Ct. App. 2004), cert. denied (2005).

Notwithstanding the scope of their descriptions, each of the "trusts" is passive, thus triggering the statute of uses. At the time the use was executed for Subdivision No. 1, HHCo held title to Lots 5 (Bair) and 33 (Howard). HHCo conveyed Lot 5 to E. E. Cowart by deed recorded in Deed Book 77 at Page 11 on July 15, 1952. HHCo conveyed Lot 33 to Martha F. Poythress by deed recorded in Deed Book 78 at Page 24 on January 12, 1955. Thus, none of Bair or Howard's predecessors were vested with an interest in the area seaward of Subdivision No. 1 by virtue of the statute's execution.

When Property Research acquired the interests of the HHCo from the bankruptcy trustee, it acquired HHCo's interest in the area seaward of the lots in Subdivision No. 1 and the area seaward of street ends, including Avocet Street. Neither of those areas is within the platted area of Subdivision No. 1.

Through the quiet title action Bair obtained Property Research's interest in the area adjacent to Lot 5, leaving Property Research with nothing. As previously stated, FBOA could acquire no more under the quit claim deeds than Property Research's interest, which was nothing.

3. Plaintiffs have no standing as co-tenants. Since title

to Lot 33 was vested in HHCo when the use was executed, Howard's predecessor acquired no additional interest as a result of the execution. Thus, Howard cannot be a co-tenant.

4. Ouster of co-tenants. Through her quiet title action against Property Research, Bair acquired HHCo's former interest in the area adjacent to Lot 5. Since neither FBOA nor Howard is a co-tenant, ouster would have limited application. Notwithstanding, Bair, together with her predecessors, exercised exclusive dominion and control over the subject property for over twenty years and from at least January 3, 1966, when Robert Graves acquired Lot 5. In any event, continuous possession by Bair and her predecessors is irrefutable and "ouster" can be presumed.

5. Affected Property. Attached to the complaint as Exhibit A in the quiet title action is a survey of Lot 5 and the property in which FBOA and Howard claim an interest. The survey delineates what was formerly known as Avocet Street extending from Dune Lane to line "L3." Seaward from "L3" is a portion of the property that is often and commonly referred to as the Strand. It can be easily discerned that the path to which FBOA and Howard refer is only generally located and only shows access to the beach by crossing property southwesterly of Subdivision No. 1. Moreover, the photographs of Bair's driveway clearly show a basketball goal and gate that were present before Bair's acquisition of the property in 1984. Furthermore, no one could have gained access to the beach without crossing property that was outside of Subdivision No. 1.

6. Testimony of Carolyn Bair. FBOA and Howard's attempt to disparage Bair's testimony is disappointing. Their counsel, as did Investor Title's counsel before him, cannot accept the fact that neither has a valid claim.

7. Testimony of Trevor Howard. Mr. Howard must be mistaken as to the route that he gained access to and from the beach. As the photographs show, there was never a clear path to the beach. The gate and thick vegetation at the end of what was formerly Avocet Street prevented anyone from gaining access to the beach in the manner described by Mr. Howard.

8. Testimony of John Snodgrass. As with Mr. Howard, Mr. Snodgrass is similarly mistaken. Here, Mr. Snodgrass and FBOA are attempting to capitalize of the mistaken inclusion of what was formerly Avocet and the seaward area in the quit claim deed from Property Research. Not only had Property Research parted with its interest in the subject property, Mr. Guscio, president testified that the property was erroneously included in the 2001 quit claim deed to FBOA.

9. Section 15-67-90, S.C. Code, bars the claim of FBOA and Howard. Contrary to assertion by counsel, plaintiffs' claim is time barred. Section 15-67-90, S.C. Code, plainly states:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

(emphasis added).

What could be more clearer? The court of appeals had no problem with this clear statement when it stated:

Section 15-67-90 imposes a three year statute of limitations on an action to set aside "for any reason" a judgment quieting title to land.

Yarborough v Collins, 301 S.C. 339, 341, 391 S.E.2d 873, 875 (Ct. App. 1990).

Likewise, the court of appeals had no problem with the clear meaning of Section 15-67-90 when it relied on the statute and Yarborough and affirmed summary judgments in Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-646 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-647 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-648 (Ct. App. Nov. 24, 2008); and Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-649 (Ct. App. Nov. 24, 2008). A copy of the opinion rendered in each of cases in enclosed.

10. The unsupported attack on Bair and her counsel should be summarily disregarded. At trial, Mr. Guscio explained Property Research's reasoning for not defending the quiet title action brought by Bair, executing the quit claim deed to the subject property, and the mistaken inclusion of the subject property in the quit claim deed from Property Research to FBOA. There was no suggestion of malevolence on the part of Bair or her counsel, Robert E. Austin, Jr.

From comments made by plaintiffs' counsel, it must be assumed that he read the transcript of the trial that resulted in

"findings of fact and conclusions of law" in the federal action. The undersigned respectfully refrains from commenting on those findings except to point out several discrepancies. For example, the name of Hilton Head Subdivision was not changed to North Forest Beach Subdivision (§ 5), Property Research did not convey streets between Dune Lane and the beach to Forest Beach Association (§ 12), and Mrs. Austin did not seek the services of Attorney James O. Hale regarding the quit claim deed from Property Research and additional title work (§ 20). Most importantly, Mr. Guscio did not testify; his deposition was not taken in the federal action. Nevertheless the court adopted verbatim Investor Title's proposed finding that:

The [cover] letter [Attorney Hale to Mrs. Austin] is not signed, but the very next day, Mrs. Austin received a quit claim deed from Property Research Holdings covering the end of Avocet Street. Mrs. Austin did not explain why Property Research Holdings would have given her such a quit claim deed, and it appears to be the fruit of her collusive relationship with Mr. Guscio. Attorney Hale's office recorded the deed and had it returned to Attorney Hale's office.

(Investor Title's Proposed Findings at pg. 5; Trial Exhibit 66(b), pg. 5, § 20).

Having heard Mr. Guscio's testimony, this Court is well aware that the quit claim deed from Property Research to Bair was unsolicited and voluntary. In any event, it was not the "fruit of [any] collusive relationship." In fact, and for the reasons previously stated, Property Research had no interest in the subject property to convey. "Collusion" implies fraud or unlawful purpose. No where is there evidence of fraud or unlawful purpose.

It is extremely disturbing that an attorney would submit or propose findings when there is no evidence to support them. See, Rule 3.3 (Candor Toward the Tribunal, Rules of Professional Conduct).

It is equally disturbing that plaintiffs would even suggest the existence of a "devious plan of Bair and her counsel in filing a wholly defective quiet title action." There is no evidence to support such a statement. Spurious assertions such as this have no place in the practice of law. See, Rule 3.4 (Fairness to Opposing Party and Counsel), Rules of Professional Conduct.

10. Application of Hilton Head Ordinances. The environment and preservation of ecological systems must be of paramount

concern to each resident of Hilton Head, particularly a homeowner's association. As the photographs demonstrate, the vegetation on the subject property acts as an environmental and ecological protection. Its removal or alteration would adversely affect both. Bair suggests it would be an abuse of discretion for a court to fashion a remedy that would endanger the fragile environment and ecology in violation of applicable ordinances, especially as here where there is unrestricted access to the beach one block away at Bittern Street.

For the reasons stated herein and in Bair's post trial brief, neither FBOA nor Howard has shown a right to relief.

Respectfully submitted,

Robert E. Austin, Jr.

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September 13, 2009

The Honorable Thomas Kemmerlin, Jr.
Helena House
1624 Paris Avenue
Port Royal, SC

Re: Forest Beach Owner's Association v.
Carolyn S. Bair, Case No. 04-CP-07-2036

Dear Judge Kemmerlin:

For the reasons previously and hereinafter stated, we respectfully submit that fee simple title to Avocet Street had passed to its abutting lot owners before commencement of the quiet title action and execution and delivery of the quit claim deeds from Property Research Holdings, Inc. ("Property Research"),

In Whitter v. Harvey, 1 McCord 67, 12 S.C.L. 67 (S.C. Const. App. 1821), the court found that where two tracts of land call for a road, as the dividing line, the owners on each side own to the middle of the road. Mr. Justice Nott delivered the court's opinion stating:

I take it to be a conceded principle of national law, that where two states are separated by a river, each is entitled to hold to the middle of the stream. It is laid down in Vattel, 110, B. 1, ch. 22, that where a river divides two nations, and neither can shew a preference, the dominion of each extends to the middle of the river. It has however been said, that this is a principle of national law only, and not applicable to cases of individuals. But I think it will appear to be equally a rule of municipal law, and that it applies as well to roads as to rivers. Lord Hale says, that "fresh rivers do of common right belong to the owners of the soil adjacent; so that the owners of the one side have

of common right the property of the soil, and consequently the right of fishing usque ad filum aquae: and the owners of the soil on the other side, the right of soil and ownership, and fishing unto the filum aquae on their side." (Harg. Law. Tracts, 5.)

Similarly, in Noble v. Cunningham, McMul. Eq. 289, 16 S.C. Eq. 289 (S.C. App. Eq. 1841), the court found, "[t]here is no doubt about the principle, that when a road or unnavigable water-course is called for as a boundary to a tract of land, the tract extends to the centre of the boundary so called for."

In United States v. City of Chicago, 48 U.S. 185 (1849), the Court was similarly concerned with title to streets abutting lots occupied by Fort Dearborn. While the ultimate question revolved around sovereignty, government citing Witter, conceded:

The lots were sold by their numbers, and were, in fact, bounded on the streets. The title passed to the centre of the streets, subject to the easement. The adjoining proprietors own to the centre, subject to the way, as if it had been laid out by public authority. This is the legal presumption, liable to be rebutted. English authorities: Goodtitle v. Alker, 1 Burr. 143; Pring v. Pearsey, 7 Barn. & Cres. 306; Stevens v. Whistler, 11 East, 51; Cook v. Green, 11 Price, 136. Maine: Howard v. Hutchinson, 1 Fairfield, 335. New Hampshire: Makepeace v. Worden, 1 N. Hamp. R. 16. Massachusetts: United States v. Harris, 1 Sumner, 21; Adams v. Emerson, 6 Pick. 57. Connecticut: Peck v. Smith, 1 Conn. R. 103; Watrous v. Southworth, 5 ib. 305; Hart v. Chalker, 5 ib. 311; Chatham v. Brainard, 11 ib. 60. New York: Cortelvou v. Van Brundt, 2 Johns. 357; Gedney v. Earl, 12 Wend. 98; Willoughby v. Jencks, 20 ib. 96. Virginia: Bolling v. Mayor, 3 Rand. 563. South Carolina: Witter v. Harvey, 1 McCord, 67.

Consistent with these precedents, the South Carolina Supreme Court rendered its decision in Andrews v. McDade, 201 S.C. 24, 21 S.E.2d 202 (1942). There, the court logically stated:

It is well settled, as the trial judge correctly held, that in the event of the abandonment of a public highway, title thereto to the center of the road remains vested in the abutting property owners on either side. . . .

Andrews, 21 S.E.2d at 204 (emphasis added).

Adopting the rationale of Supreme Court of Georgia in Tietjen v. Meldrim, 169 Ga. 678, 151 S.E. 349, 359, the South Carolina Supreme Court further stated:

As lots in this subdivision were sold, and the purchasers got their deeds thereto, the purchasers acquired title to the lots and the rights of way over these streets as appurtenant thereto. The fee in the land embraced in the streets became vested in the owners of the abutting lots to the middle of the street, subject to the rights of way over the same in favor of the purchasers of the lots in this subdivision, for the purposes of ingress and egress to and from their lots. [Citing authorities] These purchasers acquired a clear title to their lots, a complete right to the rights of way in and over these streets as appurtenant to their lots, and title in fee in one-half of the soil embraced in the streets adjoining their lots.

Andrews, 21 S.E.2d at 204.

Later, the supreme court in Rushing v. Sellers, 225 S.C. 173, 81 S.E.2d 281 (1954), citing both Witter and Noble, discussed an abutting owner's fee simple title to the center of a highway. There, the court stated:

In support of his contention that the boundary line should be determined by giving respondent one acre at this intersection measured from the center of the highway, appellant relies upon the rule that in a conveyance of land calling for a highway as the boundary, it is presumed that the grantor intends to convey to the center of such highway, subject to the easement of the public way, provided the grantor at the time owned the fee to the center. This rule has been long established in this as well as other jurisdictions. Witter v. Harvey, 1 McCord 67; Noble v. Cunningham, McMul.Eq. 289; Boney v. Cornwell, 117 S.C. 426, 109 S.E. 271; 11 C.J.S., Boundaries, § 35; 8 Am.Jur., Boundaries, Section 36. Of course, this presumption is a rebuttable one, but as there is nothing in the conveyance by the Davises showing a contrary intent, it will be presumed that they intended to convey title to the center of these highways, subject to the public easement.

Appropriately, the South Carolina Attorney General opined that title to abandoned roadways remains vested in the abutting

property owners. S.C. Atty Gen. Ops. 1235 (1961) & 2428 (1968).

In the absence of a South Carolina case specifically addressing title to boundary streets such as Avocet, the opinion of the Supreme Court of Appeals of Virginia in Cogito v. Dart, 33 S.E.2d 759 (Va. 1945) is instructive. In Cogito, the court referring to earlier decisions stated:

The general rule is that a conveyance of land bounded on a highway or private stream includes the soil to the centre of the highway or the centre of the stream, provided the grantor at the time owned to the centre, and there are no words or specific description to show a contrary intent. [Citations omitted] And where the land conveyed is bounded on a private way the same rule of construction obtains, though perhaps not so universally. 2 Devlin on Real Estate, sec. 1225h.

* * *

It also seems to be the prevailing rule, and for like reasons, that when the call in a deed is for an alley, which alley is owned by the grantor and is the limit of his land at that point, it gives title to the bed of the alley.

Cogito, 33 S.E.2d at 763. It is Bair's contention that the conclusion reached by of the Virginia court in Cogito is consistent South Carolina law and should be applied in this case.

Accordingly, Bair submits that fee simple title to the segment of Avocet abutting Lot 5 vested in her when she acquired the lot and, at no time, did Property Research Holdings have an interest in that segment. Thus, Forest Beach Owners' Association could not have acquired any interest in Avocet segment from Property Research.

Respectfully submitted,

Robert E. Austin, Jr.

Enclosures

Copy to:

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Robert E. Stepp

Forest Beach Owners' Association, Inc. v.
Carolyn S. Bair, Case No. 2004-CP-07-2036

ENCLOSURES TO FEBRUARY 13, 2009 LETTER

1. Copy of plat attached to complaint in quiet title action
2. Declaration at Deed Book 74, Page 305
3. Resolution at Deed Book 74, Page 306
4. Title information from Advantage Title
5. Section 15-67-09, S.C. Code Ann.
6. Yarborough v. Collins, 301 S.C. 339, 391 S.E.2d 873 (Ct. App. 1990)
7. Unpublished Pinckney decisions
 - a. Opinion No. 2008-UP-646
 - b. Opinion No. 2008-UP-647
 - c. Opinion No. 2008-UP-648
 - d. Opinion No. 2008-UP-649
8. Proposed findings submitted by Investors Title in federal action

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November _____, 2010

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr.
Special Referee

Case No. 2004-CP-07-2036

Forest Beach Owner's Association,, Inc.,
and Trevor Howard, ... Respondents,

v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, ... Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT RESPONDENTS' CLAIMS ARE TIME BARRED?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT BAIR IS THE FEE SIMPLE OWNER OF THE SEGMENT OF AVOCET STREET ABUTTING LOT 5?
3. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT FBOA RECEIVED NO INTEREST IN AVOCET STREET OR ITS EXTENSION UNDER THE QUITCLAIM DEED FROM PROPERTY RESEARCH?
4. DID THE TRIAL COURT ERR BY MISAPPLYING THE STATUTE OF USES TO THE DECLARATION OF TRUST AND THE FACTS HEREIN AND ERRONEOUSLY CONCLUDING THAT THE FOREST BEACH OWNER'S ASSOCIATION DERIVED AN INTEREST IN THE AREA LYING BETWEEN THE FRONT LOT LINES OF HILTON BEACH SUBDIVISION NO. 1 AND THE MEAN HIGH WATER MARK?
5. DID THE TRIAL COURT ERR IN FINDING THAT, WHEN THE "TRUSTS FAILED," AN IMPLIED COVENANT WAS CREATED?
6. DID THE TRIAL COURT ERR IN FINDING THAT PROPERTY RESEARCH CONVEYED THE FEE TO THE BEACH STRAND AND STREETS TO FBOA?
7. DID THE TRIAL COURT ERR IN FINDING THAT BAIR COULD NOT ASSERT ADVERSE POSSESSION AS AN ADDITIONAL BASIS FOR CLAIMING TITLE TO THE AREA LYING BETWEEN THE FRONT LOT LINES OF HILTON BEACH SUBDIVISION NO. 1 AND SEAWARD OF AVOCET STREET AND THE MEAN HIGH WATER MARK?
8. DID THE TRIAL COURT ERR IN ORDERING BAIR TO REMOVE VEGETATION FROM THE EASTERN END OF AVOCET STREET AND ADJACENT STRAND BLOCK SO THAT ONE CAN VIEW THE BEACH AND OCEAN?
9. DID THE TRIAL COURT ABUSE ITS DISCRETION BY FAILING TO REOPEN THE CASE TO PRESENT ADDITIONAL EVIDENCE WITH RESPECT TO THE DESCRIPTION IN THE FINAL JUDGMENTS AND QUITCLAIM DEED?
10. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE PLEADINGS SHOULD BE AMENDED TO CONFORM TO THE EVIDENCE?

STATEMENT OF THE CASE

Forest Beach Owner's Association, Inc. ("FBOA") commenced this action on November 15, 2004, with the filing of a complaint against Carolyn S. Bair ("Bair") seeking a declaratory judgment and injunctive relief with respect to its use of Avocet Street, Hilton Head Beach Subdivision No. 1. (R. pp. 24-27). Bair answered the complaint generally denying its allegations and asserted affirmative defenses. (R. pp. 28-32).

On June 29, 2006, FBOA filed an amended complaint seeking substantially the same relief as sought in its initial complaint and for injunctive relief with respect to alleged violations of restrictive covenants. (R. pp. 33-38).

Bair answered the amended complaint generally denying its allegations and asserted affirmative defenses. (R. pp. 39-44).

On June 15, 2007, FBOA, joined by Trevor G. Howard ("Howard"), filed a second amended complaint in which it (a) challenged an earlier quiet title action in which Bair was found to have fee simple title to Avocet Street and a quitclaim deed relating to that judgment, asserting that FBOA is the fee simple owner of the portion of Avocet Street claimed by Bair and that other property owners are owners of property claimed by Bair, (b) sought a declaratory judgment

with respect to use of Avocet Street, and (c) sought relief with respect to improvements allegedly violating the restrictive covenants. (R. pp. 45-55).

Bair answered the second amended complaint generally denying its allegations and affirmatively alleging that FBOA and Howard lacked standing and that their claims were barred (a) by S. C. Code Ann. § 15-67-90, (b) waiver, estoppel, and laches, (c) res judicata and collateral estoppel, and (d) abandonment. (R. pp. 56-62). By counterclaim, Bair alternatively asserted that any alleged deficiencies were cured by her continuous, hostile, actual, notorious, and exclusive use of the property for the requisite time to establish title by adverse possession. (R. pp. 60-61). FBOA and Howard generally denied the allegations of the counterclaim and asserted affirmative defenses. (R. pp. 70-72).

The action was referred to the Honorable Thomas Kemmerlin, Jr., as special referee and trial judge. The action came before court for bench trial on October 14 and 15, 2008. On March 17, 2009, after having heard testimony and receiving documentary evidence, the trial judge rendered judgment in favor of FBOA and Howard. (R. pp. 4-15). Bair's timely filed motions under Rule 59(e), SCRPC (R. pp. 839-851), were denied on December 11, 2009, written notice

of which was received on December 14, 2009. (R. pp. 16-17).
Bair's notice of appeal was served and filed on January 13,
2010.

FACTS

Hilton Head Beach Subdivision No. 1 is a platted ocean front subdivision that was developed by The Hilton Head Company ("HHC") in April/June 1952. (R. p. 527). HHC reserved no right or interest under the plat. Seaward of the subdivision's front lot line to the mean high water mark is an area known as the Strand Block or Trust Property. (R. p. 608). Running along the southerly boundary of the subdivision is A Street or Avocet Street as it is now known. This action is concerned with Lot 5, the segment of Avocet Street abutting Lot 5, and the adjacent Strand Block.¹

Bair acquired Lot 5 by warranty deed recorded on April 24, 1984. (R. pp. 523-526). Bair, as had her predecessors in title, took and held exclusive possession of Lot 5, together with the abutting portion of Avocet Street and adjacent Strand Block, all of which they landscaped, maintained, and improved.

In late 1986, HHC went into bankruptcy. (R. pp: 532-

¹The streets were designated alphabetically from south to north. The letter designations were subsequently changed to names of birds, each having their first letter to correspond with the alphabet designation, for example "A" became Avocet.

540). On or about January 30, 1989, the trustee in bankruptcy conveyed the residual assets of HHC to Property Research Holdings, Inc. ("Property Research") of which F. Guscio was a principal. (R. pp. 541-548). Among the assets that Property Research claims to have received from the trustee are the Strand Block and the streets in Subdivision No. 1, including Avocet Street. (R. p. 532-540).

Thereafter, F. Guscio and Bair discussed Bair's acquiring the interest claimed by Property Research in the segment of Avocet Street abutting Lot 5, and the adjacent Strand Block. Notwithstanding that discussion, no deal was struck. Bair remained of the opinion that she had acquired the abutting property when she purchased Lot 5. Other than Property Research, no one claimed any interest in the segment of Avocet Street abutting Lot 5 or the adjacent Strand Block. Likewise, no known person attempted to use or cross the segment of Avocet Street abutting Lot 5 or the adjacent Strand Block.

On November 20, 1998, Bair commenced Civil Action No. 98-CP-7-1721 in the Court of Common Pleas for Beaufort County against Property Research and "all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint" to quiet the title to the segment of Avocet Street abutting Lot

5 and the adjacent Strand Block. (R. pp. 686-688).

Paragraph 1 of the complaint refers to attached Exhibit A which is a plat of "Revised Lot 5 Dune Lane" and incorporates the segment of Avocet Street abutting Lot 5 and the adjacent Strand Block. (R. p. 688). Property Research was served with summons and a copy of the complaint. (R. p. 691). Property Research did not respond. Default was entered. (R. p. 694). On January 25, 1999, the court entered final judgment against Property Research under Rule 54(b), SCRCP, finding that:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning,

being the real estate described in Exhibit "A" attached to the complaint, is a good title against any and all claims of defendants and of all persons claiming by, through, or under defendants or any of them since the filing of the notice of lis pendens.

2. Those claims or purported claims are canceled; and the title to the real estate is forever quieted in plaintiff, Carolyn S. Bair, against all of such claims.

3. Plaintiff, Carolyn S. Bair, is declared

to hold title to the real estate in fee simple absolute free and clear of all pledges, mortgages, security interests, liens, charges, restrictions, conditions, other encumbrances, claims, options, and interests.

(R. pp. 697-698).

This final judgment was filed on January 25, 1999, and on February 8, 1999, a certified copy was recorded in Book 1138 at Page 518 of the Public Records of Beaufort County. (R. pp. 697-699). In the meanwhile, James B. Richardson, formerly having his office in Beaufort, was appointed guardian ad litem for any minors who might have a claim. (R. pp. 704-706). Mr. Richardson waived notice of hearing on Bair's motion for summary judgment. (R. p. 710).

On May 19, 1999, the quiet title action came before the court for entry of final judgment under Rules 55 and 56, SCRPC. After finding that default was properly entered against unknown parties not otherwise represented by Mr. Richardson, the court again found:

1. The title of plaintiff, Carolyn S. Bair, to the following real estate in Beaufort County, South Carolina:

From the northwestern corner of Lot 5, Hilton Head Beach Subdivision No. 1, run South 24°35'34" East for 100 feet to the point of beginning, thence run South 24°35'34" East for 59.03 feet, thence run South 57°55'51" West for 106.03 feet, thence run North 24°18'26" West for 173.37 feet, thence run North 65°42'22" East for 36 feet, thence run South 24°18'26" East for 100 feet, thence run northerly to the point of beginning,

being the real estate described in Exhibit "A" attached to the complaint, is a good title against any and all claims of defendants and of all persons claiming by, through, or under defendants or any of them since the filing of the notice of lis pendens.

2. Those claims or purported claims are canceled; and the title to the real estate is forever quieted in plaintiff, Carolyn S. Bair, against all of such claims.

3. Plaintiff, Carolyn S. Bair, is declared to hold title to the real estate in fee simple absolute free and clear of all pledges, mortgages, security interests, liens, charges, restrictions, conditions, other encumbrances, claims, options, and interests.

(R. pp. 712-713).

This final judgment was filed on May 19, 1999, and on May 27, 1999, a certified copy was recorded Book 1175 at Page 1749 of the Public Records of Beaufort County. (R. pp. 712-714). There has been no further activity in Civil Action No. 98-CP-7-1721. Neither the January 25, 1999 final judgment nor the May 19, 1999 final judgment has been vacated or set aside.

On March 8, 2000, Property Research voluntarily and unilaterally acknowledged the May 19, 1999 final judgment and executed a quitclaim deed in favor of Bair to the segment of Avocet Street abutting Lot 5 and the adjacent Strand Block as described in the final judgments. (R. pp. 774-776). This quitclaim deed was recorded on March 8,

2000, in Book 1267 at Page 635 of the Public Records of Beaufort County. (R. pp. 774-777).

Unbeknownst to Bair, Property Research, Forest Beach Association, and the Town of Hilton Head were involved in litigation under civil actions numbered 99-CP-07-95 and 00-CP-07-1471. As previously stated, as of January 25, 1999, and May 19, 1999, and certainly by March 8, 2000, Property Research was divested or had divested itself of any interest that it might have had in the segment of Avocet Street abutting Lot 5 and the adjacent Strand Block.

On or about May 23, 2001, the litigation between Property Research, Forest Beach Association, and the Town of Hilton Head settled with Property Research executing, "as a donation and gift," a quitclaim deed in favor of FBOA, that mistakenly included the segment of Avocet Street abutting Lot 5 and the adjacent Strand Block, which Property Research had designated as Lots "A" and "AA." This deed was recorded on July 25, 2001, Book 1450 at Page 0723 of the Public Records of Beaufort County. (R. pp. 601-607).

FBOA did not enter or make any effort to take possession of the segment of Avocet Street abutting Lot 5 or the adjacent Strand Block. It did not return the property for taxes until 2004. (R. p. 641).

It was not until November 15, 2004, when it filed this

action against Bair, that FBOA sought to assert an interest in the segment of Avocet Street abutting Lot 5 or the adjacent Strand Block. (R. pp. 24-27).

ARGUMENTS

1. THE TRIAL COURT ERRED IN FAILING TO FIND THAT RESPONDENTS' CLAIMS ARE TIME BARRED.

S.C. Code Ann. § 15-67-90 provides:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

What could be more clear? This Court had no problem with this clear statement when it stated:

Section 15-67-90 imposes a three year statute of limitations on an action to set aside "for any reason" a judgment quieting title to land.

Yarborough v. Collins, 301 S.C. 339, 341, 391 S.E.2d 873, 875 (Ct. App. 1990).

Likewise, this Court had no problem with the clear meaning of Section 15-67-90 when it relied on the statute and Yarborough and affirmed summary judgments in Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-646 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case

No. 2008-UP-647 (Ct. App. Nov. 24, 2008); Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-648 (Ct. App. Nov. 24, 2008); and Robinson v. Estate of Eloise Pinckney, Case No. 2008-UP-649 (Ct. App. Nov. 24, 2008).

Moreover, no South Carolina statute or case had modified the statute's provisions, no matter how harsh or draconian they might appear to be. Simply stated: section 15-67-90 is a statute of repose.

Accordingly, the supreme court's decision in Capco of Summerville, Inc. v. J.H. Gayle Construction Co., 368 S.C. 137, 628 S.E.2d 38 (2006) is instructive. There, the court explained:

A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time. Langley v. Pierce, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body. Id. at 404, 438 S.E.2d at 243. A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted ... even if this period ends before the plaintiff has suffered a resulting injury." Black's Law Dictionary 1451 (8th Ed. 2004). "Statutes of repose by their nature impose on some Respondents the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." Camacho v. Todd and Leiser Homes, 706 N.W.2d 49, 54, n. 6 (Minn. 2005) citing W. Page Keeton, et al., Prosser and Keeton on the Law of

Torts § 30, p. 168 (5th ed. 1984). As noted by the Virginia Supreme Court, "[a] statute of repose differs from a statute of limitations.... [T]he expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued." School Bd. of the City of Norfolk v. U.S. Gypsum, 234 Va. 32, 360 S.E.2d 325, 327-328 (1987).

Capro, 368 S.C. at 142, 628 S.E.2d at 41.

Here, final judgment was entered in Bair's quiet title action against Property Research on January 25, 1999 and recorded in Book 1138 at Page 518 on February 8, 1999. (R. pp. 697-699). Consequently, any claim that Respondents might have had was extinguished February 8, 2002.²

2. THE TRIAL COURT ERRED IN FAILING TO FIND THAT BAIR IS THE FEE SIMPLE OWNER OF THE SEGMENT OF AVOCET STREET ABUTTING LOT 5.

For the reasons hereinafter stated, Bair submits that fee simple title to Avocet Street passed to its abutting lot owners before commencement of the quiet title action and execution and delivery of the quitclaim deeds from Property Research.

In Witter v. Harvey, 1 McCord 67, 12 S.C.L. 67 (S.C. Const. App. 1821), the court found that where two tracts of

²Respondents should be afforded little sympathy. FBOA received the erroneous quitclaim from Property Research on or about May 23, 2001. (R. pp. 601-607). The deed was recorded on July 25, 2001. Yet, FBOA did not commence this action until November 15, 2004 (R. p. 24), and Howard was not joined as a party to this action until May 14, 2007. (R. pp. 45-55). So much for due diligence.

land call for a road, as the dividing line, the owners on each side own to the middle of the road. Mr. Justice Nott delivered the court's opinion stating:

I take it to be a conceded principle of national law, that where two states are separated by a river, each is entitled to hold to the middle of the stream. It is laid down in Vattel, 110, B. 1, ch. 22, that where a river divides two nations, and neither can shew a preference, the dominion of each extends to the middle of the river. It has however been said, that this is a principle of national law only, and not applicable to cases of individuals. But I think it will appear to be equally a rule of municipal law, and that it applies as well to roads as to rivers. Lord Hale says, that "fresh rivers do of common right belong to the owners of the soil adjacent; so that the owners of the one side have of common right the property of the soil, and consequently the right of fishing usque ad filum aquae: and the owners of the soil on the other side, the right of soil and ownership, and fishing unto the filum aquae on their side." (Harg. Law. Tracts, 5.)

Similarly, in Noble v. Cunningham, McMul. Eq. 289, 16 S.C. Eq. 289 (S.C. App. Eq. 1841), the court found, "[t]here is no doubt about the principle, that when a road or unnavigable water-course is called for as a boundary to a tract of land, the tract extends to the centre of the boundary so called for."

In United States v. City of Chicago, 48 U.S. 185 (1849), the Court was similarly concerned with title to streets abutting lots occupied by Fort Dearborn. While the ultimate question revolved around sovereignty, the government citing Witter, conceded:

The lots were sold by their numbers, and were, in fact, bounded on the streets. The title passed to the centre of the streets, subject to the easement. The adjoining proprietors own to the centre, subject to the way, as if it had been laid out by public authority. This is the legal presumption, liable to be rebutted. English authorities: Goodtitle v. Alker, 1 Burr. 143; Pring v. Pearsey, 7 Barn. & Cres. 306; Stevens v. Whistler, 11 East, 51; Cook v. Green, 11 Price, 136. Maine: Howard v. Hutchinson, 1 Fairfield, 335. New Hampshire: Makepeace v. Worden, 1 N. Hamp. R. 16. Massachusetts: United States v. Harris, 1 Sumner, 21; Adams v. Emerson, 6 Pick. 57. Connecticut: Peck v. Smith, 1 Conn. R. 103; Watrous v. Southworth, 5 ib. 305; Hart v. Chalker, 5 ib. 311; Chatham v. Brainard, 11 ib. 60. New York: Cortelyou v. Van Brundt, 2 Johns. 357; Gedney v. Earl, 12 Wend. 98; Willoughby v. Jenks, 20 ib. 96. Virginia: Balling v. Mayor, 3 Rand. 563. South Carolina: Witter v. Harvey, 1 McCord, 67.

U. S. v. Chicago, 48 U.S. at 188.

Consistent with these precedents, the South Carolina Supreme Court rendered its decision in Andrews v. McDade, 201 S.C. 24, 21 S.E.2d 202 (1942). There, the court logically stated:

It is well settled, as the trial judge correctly held, that in the event of the abandonment of a public highway, title thereto to the center of the road remains vested in the abutting property owners on either side. . . .

Andrews, 21 S.E.2d at 204 (emphasis added).

In Andrews, the supreme court also adopted the opinion of Supreme Court of Georgia in Tietjen v. Meldrim, 169 Ga. 678, 151 S.E. 349, 359 (1930), that stated:

As lots in this subdivision were sold, and the

purchasers got their deeds thereto, the purchasers acquired title to the lots and the rights of way over these streets as appurtenant thereto. The fee in the land embraced in the streets became vested in the owners of the abutting lots to the middle of the street, subject to the rights of way over the same in favor of the purchasers of the lots in this subdivision, for the purposes of ingress and egress to and from their lots. [Citing authorities] These purchasers acquired a clear title to their lots, a complete right to the rights of way in and over these streets as appurtenant to their lots, and title in fee in one-half of the soil embraced in the streets adjoining their lots.

Andrews, 21 S.E.2d at 204.

Later, the supreme court in Rushing v. Sellers, 225 S.C. 173, 81 S.E.2d 281, 283 (1954), citing both Witter and Noble, discussed an abutting owner's fee simple title to the center of a highway. There, the court stated:

In support of his contention that the boundary line should be determined by giving respondent one acre at this intersection measured from the center of the highway, appellant relies upon the rule that in a conveyance of land calling for a highway as the boundary, it is presumed that the grantor intends to convey to the center of such highway, subject to the easement of the public way, provided the grantor at the time owned the fee to the center. This rule has been long established in this as well as other jurisdictions. Witter v. Harvey, 1 McCord 67; Noble v. Cunningham, McMul.Eq. 289; Boney v. Cornwell, 117 S.C. 426, 109 S.E. 271; 11 C.J.S., Boundaries, § 35; 8 Am.Jur., Boundaries, Section 36. Of course, this presumption is a rebuttable one, but as there is nothing in the conveyance by the Davises showing a contrary intent, it will be presumed that they intended to convey title to the center of these highways, subject to the public easement.

Consistently, the South Carolina Attorney General

opined that title to abandoned roadways remains vested in the abutting property owners. S.C. Atty Gen. Ops. 1235 (1961) & 2428 (1968).

In the absence of a South Carolina case specifically addressing title to boundary streets such as Avocet, the opinion of the Supreme Court of Appeals of Virginia in Cogito v. Dart, 33 S.E.2d 759 (Va. 1945) is instructive. In Cogito, the court referring to earlier decisions stated:

The general rule is that a conveyance of land bounded on a highway or private stream includes the soil to the centre of the highway or the centre of the stream, provided the grantor at the time owned to the centre, and there are no words or specific description to show a contrary intent. [Citations omitted] And where the land conveyed is bounded on a private way the same rule of construction obtains, though perhaps not so universally. 2 Devlin on Real Estate, sec. 1225h.

* * *

It also seems to be the prevailing rule, and for like reasons, that when the call in a deed is for an alley, which alley is owned by the grantor and is the limit of his land at that point, it gives title to the bed of the alley.

Cogito, 33 S.E.2d at 763. Bair submits that the logical conclusion reached by of the Virginia court in Cogito is consistent South Carolina law and should be applied in this action.

Accordingly, fee simple title to the segment of Avocet abutting Lot 5 vested in Bair when she acquired the lot. At no time, did Property Research have an interest in that

segment. Thus, FBOA could not have acquired any interest in Avocet segment under the quitclaim deed from Property Research.

Here, the trial court overlooked controlling precedent and erroneously found that "[l]egal title to the streets ... remained in the Hilton Head Company." (R. p. 7).

If the trial court had considered and followed controlling precedent, it could only have found that, upon recording of the plat of Hilton Beach Subdivision No. 1, fee simple title to Avocet Street vested in the abutting lot owners. Likewise, if the trial court had considered and applied Tietjen, as adopted in Andrews, it could only have found that "as lots in [Hilton Head Beach Subdivision No. 1] were sold, and the purchasers got their deeds thereto, the purchasers acquired title to the lots and the rights of way over these streets as appurtenant thereto."

Here, the subdivision plat of Hilton Head Beach Subdivision No. 1 shows no reservation of an interest in the streets by the HHC. As the abutting lots in Hilton Head Subdivision No. 1 were sold, their purchasers acquired title to the streets.

The trial court correctly found that at the time of its bankruptcy, the Hilton Head Company had no interest in the streets, but, as previously stated, overlooked that title to

the streets had long passed to their abutting lot owners, including Bair and her predecessors in title.

Notwithstanding any perceived problem with the quiet title action or the quitclaim deeds, Bair acquired and holds fee simple title to the segment of Avocet Street abutting Lot 5 and the adjacent Strand Property.³

3. THE TRIAL COURT ERRED IN FAILING TO FIND THAT FBOA RECEIVED NO INTEREST IN AVOCET STREET OR ITS EXTENSION UNDER THE QUITCLAIM DEED FROM PROPERTY RESEARCH.

Respondents mistakenly contend that the description of the property in the judgments rendered in quiet title action against Property Research and in the quitclaim deed from Property Research to Bair is defective; thus, Bair acquired nothing under any of them. Unfortunately, the trial court accepted this contention.

This contention is based on the erroneous premise that the judgments and deed are defective because the description

³The trial court's objection to the quiet title action is without basis: It was commenced in 1998. Final judgments were entered and recorded in 1999. FBOA was not incorporated until October 6, 2000. (R. pp. 667-668). Hardly could it have been a party to an action before its existence. Under no possible scenario should Howard have been a party to an action determining ownership and quieting title to property in which he neither had nor claimed an interest. The only person or entity that claimed an ownership interest in the segment of Avocet Street abutting Lot 5 or the adjacent Strand Block was Property Research. Property Research was a party to the quiet title action, it defaulted, judgment was entered, end of story.

does not close. This is wrong: First, the description does close. Secondly, the trial court failed to recognize and apply applicable South Carolina law.

Based on the testimony of Rodney Walker, Respondents contend that because the description's last call states "thence northerly to the point of beginning," instead of "easterly to the point of beginning," it is defective. (R. pp. 325-327). Mr. Walker readily admitted that he did not field check the description (R. p. 320) and that he does not know the effect of the phrase "run to the point of beginning" in South Carolina (R. p. 330). Nevertheless, Mr. Walker then rendered an opinion that, because last and closing call should have been "northeast 65-42-22," "easterly" instead of "northerly" should have been used. (R. p. 331). According to Mr. Walker, an angle in excess of 45 degrees required use of "easterly." (R. p. 329). Notwithstanding counsel's being unable to find any authority for this distinction, Mr. Walker's testimony is both enlightening and useful.

South Carolina has long subscribed to the principle that a deed is not void for uncertainty where, even though there might be errors, if from the whole description the land sought to be conveyed can be identified. McNair v. Johnson, 95 S.C. 176, 78 S.E. 892 (1913). In McNair, the

court found support for that principle in two authorities stating:

One of the maxims recognized in Broom's Legal Maxims (star page 605) is: "Mere false description does not make an instrument inoperative" (*falsa demonstratio non nocet*). The author in commenting thereon uses this language: "Falsa demonstratio may be defined to be an erroneous description of a person or thing in a written instrument; and the above rule respecting it may be thus stated and qualified as soon as there is an adequate and sufficient definition with convenient certainty of what is intended to pass, by the particular instrument; a subsequent erroneous addition will not vitiate it." The judgment of foreclosure refers to "the mortgaged premises described in the complaint in this action" and was sufficient to put all parties (especially those who were parties to the action and their privies) upon inquiry which, if pursued with due diligence, would have shown the true description, not only from the mortgage but from the complaint, to which reference was made. Therefore, the description in the judgment of foreclosure was not rendered inoperative by a subsequent erroneous addition. Another maxim of the law applicable to this case is: "That is sufficiently certain which can be made certain."

In Devlin on Real Estate, vol. 2, § 1012, the author says: "A deed is not void for uncertainty because there may be errors or an inconsistency in some of the particulars. Generally the rule may be stated to be that the deed will be sustained, if it is possible from the whole description, to ascertain and identify the land intended to be conveyed." In a note to that section it is said: "As that is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient." He also says: "Where there are several calls in a deed, and with the exception of one they may all be applied upon the face of the earth, constituting an intelligent and correct description of the lot,

to which they refer, the one that does not apply will be rejected as surplusage and the others will prevail.*** If the deed contains two descriptions, one correct and the other false in fact, the latter should be rejected as surplusage. Where one of two different descriptions applies to land to which the grantor had title, and the other to land which he did not own, the former will be taken as the true description, and the latter will be rejected as false. If sufficient remains after rejecting a part of the description which is false, the deed will take effect." Section 1016.

McNair, 78 S.E. at 892-93. See also Brownlee v. Miller, 208 S.C. 252. 37 S.E.2d 658 (1946) (citing McNair).

In the underlying quiet title action, the judgments specifically referred to the described property as "being the real estate described in Exhibit 'A' to the complaint." (R. pp. 66-67, 697-699, 712-714). Moreover, the complaint refers to real estate referred to therein as "Addition to Lot 5 containing 0.101 acres" and "Addition to Lot 5 containing 0.141 acres." (R. p. 686). The quitclaim deed from Property Research to Bair refers to the May 19, 1999 final judgment and provides that it was being given in support of the final judgment against Property Research. (R. pp. 774-777). The written descriptions in the judgments and quitclaim deed are the same. The judgments and quitclaim deed are specifically interrelated. Here, the quitclaim deed refers to the judgment which refers to the complaint which refers to the plat. "[W]here a deed describes land as it is shown on a plat, the plat becomes part of the deed for

the purposes of showing the boundaries, metes, courses and distances of the property conveyed." Bellamy v. Bellamy, 292 S.C. 107, 110-11, 355 S.E. 1, 3 (1987).

One can only conclude that either Mr. Walker was not provided with a copy of the plat or, as he stated, did not understand principles of South Carolina law. In any event, he had no difficulty determining that the final call should be "northeast 65-41-22" (R. p. 325) "at a distance of 68,76" and identifying the land (R. p. 337).⁴

Since the description that appears in the judgments and quitclaim deed "will enable a person of ordinary prudence acting in good faith and making inquiries . . . to identify the land, it is sufficient."

Whether the final call is northerly or easterly, the calls of the metes and bounds description return to the point of beginning and the description closes. Bair thus submits that the trial court's finding to the contrary is erroneous.

⁴Using Metes & Bounds software, counsel for Bair computed the final call to the point of beginning to be North 65°42'10" East for 68.759 feet. Whether the final call was denominated northerly or easterly, it still returned to the point of beginning, a known and ascertainable location. Counsel's research indicates that descriptions begin with North or South as appropriate followed by the azimuth in degrees etc., then followed an East or West direction, not "northeast." (R. p. 350).

4. THE TRIAL COURT ERRED BY MISAPPLYING THE STATUTE OF USES TO THE DECLARATION OF TRUST AND THE FACTS HEREIN AND ERRONEOUSLY CONCLUDING THAT FBOA DERIVED AN INTEREST IN THE AREA LYING BETWEEN THE FRONT LOT LINES OF HILTON BEACH SUBDIVISION NO. 1 AND THE MEAN HIGH WATER MARK.

On or about March 23, 1953 and April 1, 1953, the Hilton Head Company ("HHC") recorded a declaration of trust and resolution relating to lands lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark. Those documents were recorded in Deed Book 74 at Pages 305 and 306 respectively. (R. pp. 812.1 & 813.1). Neither document imposes an active duty of the trustee.

In a trust where the trustee is instructed to use the property for the benefit of another, the Statute of Uses executes to vest legal title with the beneficiary, if the beneficiary is capable of taking legal title and the trustee has no active duties. Restatement (Second) of Trusts § 67 (1959); see, id. at cmt. b ("When the Statute of Uses executes a use or trust not only is the interest of the beneficiary made legal but the interest of the person who otherwise would hold subject to the use or trust is extinguished. The Statute thus has a double effect in turning the equitable interest of one person into a legal interest and extinguishing the legal interest of the other."); Johnson v. Thornton, 264 S.C. 252, 257, 214 S.E.2d 124, 127 (1975) ("In a passive trust the legal and equitable titles are merged in the beneficiaries and the beneficial use is converted into legal ownership, but as to an active trust the title remains in the trustee for the purpose of the trust.")

All Saints Parish, Waccamaw v. Protestant Episcopal Church, 358 S.C. 209, 222-23, 595 S.E. 253, 261 (Ct. App. 2004),

cert. denied (2005).

The trial court correctly found that the "trust" is passive, triggering the statute of uses. Thus, the legal and equitable titles to the land lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark merged, essentially resulting in HHC's retaining fee simple title.⁵

There are no deeds from HHC conveying any interest in the land lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark. With the exception of such interest as the owners of previously conveyed lots might have gained, legal title to the area lying between the front lot lines of Hilton Beach Subdivision No. 1 and the mean high water mark remained in HHC until its bankruptcy. No one appears to have asserted any co-tenancy interest in that area.⁶

When Property Research acquired the interests of the HHC from the bankruptcy trustee, it acquired HHC's interest in the area seaward of the lots in Subdivision No. 1 and the area seaward of street ends, including Avocet Street.

⁵HHC conveyed Lot 5 to E. E. Cowart (Bair's predecessor in title) by deed recorded in Deed Book 77 at Page 11 on July 15, 1952, which predates the declaration of trust.

⁶Even if a co-tenant had made a claim to the area seaward of Lot 5, his claim would have failed because he would have been presumed to have been ousted.

Neither of those areas is within the platted area of Subdivision No. 1.

Through the quiet title action any interest that Property Research might have had in the area adjacent to Lot 5 was canceled, leaving Property Research with nothing. This was ratified by Property Research's quitclaim deed to Bair. Through the quitclaim deed from Property Research, FBOA could only acquire such interest in the area adjacent to Lot 5 as Property Research might have had, i.e., nothing.

5. THE TRIAL COURT ERRED IN FINDING THAT, WHEN THE "TRUSTS FAILED," AN IMPLIED COVENANT WAS CREATED.

Bair submits that there is no basis for this finding. First, the trusts did not fail. There was simply a merger of the equitable and legal titles to the trust property under the Statute of Uses. Second, a court cannot rewrite a contract.

Moreover, the trial court clearly erred when it found that:

Legal title to all streets including those which serve as beach access and to the beach strand property rests in the Plaintiff Association, but it is held for the benefit of lot holders, not just those within the Association.⁷

(R. p. 13).

A court cannot designate a corporation to act as

⁷FBOA was never a lot owner, nor did it ever assert that it was.

trustee unless that corporation is legally authorized.⁸

Here, the trial overlooked or failed to consider that FBOA was not so authorized and could not act as a trust company or fiduciary.

6. THE TRIAL COURT ERRED IN FINDING THAT PROPERTY RESEARCH CONVEYED THE FEE TO THE BEACH STRAND AND STREETS TO FBOA.

The only interest that FBOA could have acquired under the quitclaim deed was that intended by Property Research and described in the deed. Mr. Guscio testified that the segment of Avocet Street abutting Lot 5 and adjacent Strand Block, described in the quitclaim deed as Lots A and AA, were included by mistake. (R. p. 346). In any event, Property Research had previously parted with any interest that it might have had, leaving it with nothing to convey.

7. THE TRIAL COURT ERRED IN FINDING THAT BAIR CANNOT ASSERT ADVERSE POSSESSION AS AN ADDITIONAL BASIS FOR CLAIMING TITLE TO THE AREA LYING BETWEEN THE FRONT LOT LINES OF HILTON BEACH SUBDIVISION NO. 1 AND SEAWARD OF AVOCET STREET AND THE MEAN HIGH WATER MARK.

For the reasons previously stated, neither Bair, FBOA

⁸See S.C. Code Ann. § 33-3-101(b) (A corporation engaging in a business that is subject to regulation under another statute of this State may incorporate under Chapters 1 through 20 of this Title only if permitted by, and subject to all limitations of, the other statute.) and § 34-21-10 (No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board.)

nor Howard are co-tenants, so adverse possession can be appropriately considered. The court is concerned with two parcels, the area seaward of Lot 5 as originally platted and the area seaward of Avocet Street. There is no evidence that anyone ever attempted to use the former. There is no evidence of any identifiable person ever attempting to use the latter, with the exception of Howard who vaguely testified as to crossing some portion and the Sea Crest property.⁹

8. THE TRIAL COURT ERRED IN ORDERING BAIR TO REMOVE VEGETATION FROM THE EASTERN END OF AVOCET STREET AND ADJACENT STRAND SO THAT ONE CAN VIEW THE BEACH AND OCEAN.

Bair suggests that the trial court was without jurisdiction to enter such an order in violation of statutes, regulations, and ordinances. See, S.C. Code Ann. § 48-39-310 and S.C. Code Regs. R. 30-11(6) ("The destruction of beach or dune vegetation seaward of the setback line is prohibited unless there is no feasible alternative."), see also, Town of Hilton Head Island Ordinances, Art. III, § 16-6-305 ("Walkways [providing access to beach areas] shall not exceed a maximum of 6 feet in width."). The trial court's

⁹If one were to consider Mr. Howard's testimony, together with the photographs of the area he allegedly crossed for beach access, it is not believable. The vegetation would have prevented beach access over all, but a small portion, of Avocet Street. Furthermore, its nonuse constitutes an abandonment of any right to use the area.

orders violate the statute, regulation, and town ordinance.

Moreover, there is no right to ocean view in South Carolina. Hill v. Beach Co., 279 S.C. 313, 315, 306 S.E.2d 604, 605 (1983 (citing Schroeder v. O'Neil, 179 S.C. 310, 315, 184 S.E. 679 (1936))).

The trial court not only abused its discretion with regard to clearing an access to the beach, it was also without jurisdiction to order the removal of vegetation contrary to applicable South Carolina law.

9. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO REOPEN THE CASE TO PRESENT ADDITIONAL EVIDENCE WITH RESPECT TO THE DESCRIPTION IN THE FINAL JUDGMENTS AND QUITCLAIM DEED.

Through their pretrial brief, Respondents represented that Rodney Walker is a "local surveyor" who would confirm that the description in the judgments rendered in the quiet title action and the quitclaim deed from Property Research to Bair "does not close and does not describe any property." (R. p. 83). However, at trial Mr. Walker was offered not as a surveyor, but as "an expert draftsman."¹⁰ (R. p. 320). Mr. Walker presented testimony and a drawing prepared by him depicting his interpretation of the metes and bounds

¹⁰Bair can only suggest that Respondents awakened to discover that Mr. Walker was not only unlicensed, but was unlawfully practicing land surveying, and by his testifying as a "draftsman" were attempting to escape from their participation in Mr. Walker's unlawful endeavor. See, S.C. Code Ann. §§ 40-1-200 & 40-22-30.

description. Mr. Walker is not a licensed surveyor and, by his own admission, did not know the effect of the phrase "run to the point of beginning" in South Carolina. (R. p. 330).

In support of her motion to reopen, Bair proffered the opinion of Terry G. Hatchell, a South Carolina Registered Professional Surveyor, who found the description in the judgments and quitclaim deed "to be of sound closure" and stated that the words "thence run northerly to the point of beginning" is a true statement. (R. p. 851).

Moreover, the trial court rendered its opinion regarding the description without the opinion of a "surveyor." In so doing the trial court appears to have failed to heed the admonition of S.C. Code Ann. § 27-1-20:

If any cause be pending in any circuit court or within its jurisdiction wherein the title or boundaries of lands shall be brought into dispute, the judge of the court shall appoint surveyors at the nomination of the parties, to survey such lands, at the charge of such parties, and to return such survey, on oath, at the next sitting of the court.

Before the trial court was an obvious dispute that involved title and boundaries of lands. Notwithstanding the nature of the dispute and lack of an opinion by a licensed surveyor, the trial court, over Bair's objection, found that the description does not close and thus defective. Due process dictated that Bair be allowed to submit the opinion

of a licensed South Carolina surveyor, especially since Mr. Walker was not a surveyor as represented by Respondents, but only a draftsman who allegedly worked for a surveyor.

By failing to reopen the case and consider the testimony of a licensed surveyor, the trial court abused its discretion and deprived Bair of due process.

10. THE TRIAL COURT ERRED BY FAILING TO RECOGNIZE THAT THE PLEADINGS HAD BEEN AMENDED TO CONFORM TO THE EVIDENCE.

As provided by Rule 15, SCRCP, the pleading were amended to conform to the evidence as follows:

(a) The uncontroverted unequivocal testimony of Mr. Guscio supports a finding that Lots A and AA were included in the quitclaim deed from Property Research to FBOA by mistake (R. p. 346) and that it was never the intent of Property Research to include those lots in the quitclaim deed, since they had been the subject of the previous quiet title action and the quitclaim deed from Property Research to Bair. Accordingly, Bair submits that the her counterclaim should have been deemed amended to include a claim for reformation of the FBOA quitclaim deed to delete Lots A and AA from its description. Moreover, as the quitclaim deed from Property Research to FBOA clearly recites, it was a "donation and gift." (R. p. 601). Contrary to the trial judge's comments, there has been no

intervening interest holder. By allowing FBOA to benefit from this erroneous quitclaim deed, the trial court unjustly enriched FBOA at Bair's expense, all to her detriment.

(b) Mr. Snodgrass (R. pp. 191-193) and Mr. Howard (R. p. 250) sheepishly testified that there had been mention of Property Research's having conveyed its interest in the segment abutting Lot 5. Apparently, despite their incumbent duty to inquire, neither did anything. Yet, FBOA accepted and recorded an obviously erroneous quitclaim deed, when Bair's possession of the segment of Avocet Street abutting Lot 5 and the area seaward of Avocet Street could have been easily confirmed.

The evidence supports a finding that FBOA slandered Bair's title by recording the quitclaim deed from Property Research when it knew, or should have known, of Bair's interest in the segment of Avocet Street abutting Lot 5 and the area seaward of Avocet Street and that Property Research had no interest to convey.

The trial court erred and abused its discretion by failing to find and recognize that the pleadings had been amended to conform to the evidence.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

November _____, 2010

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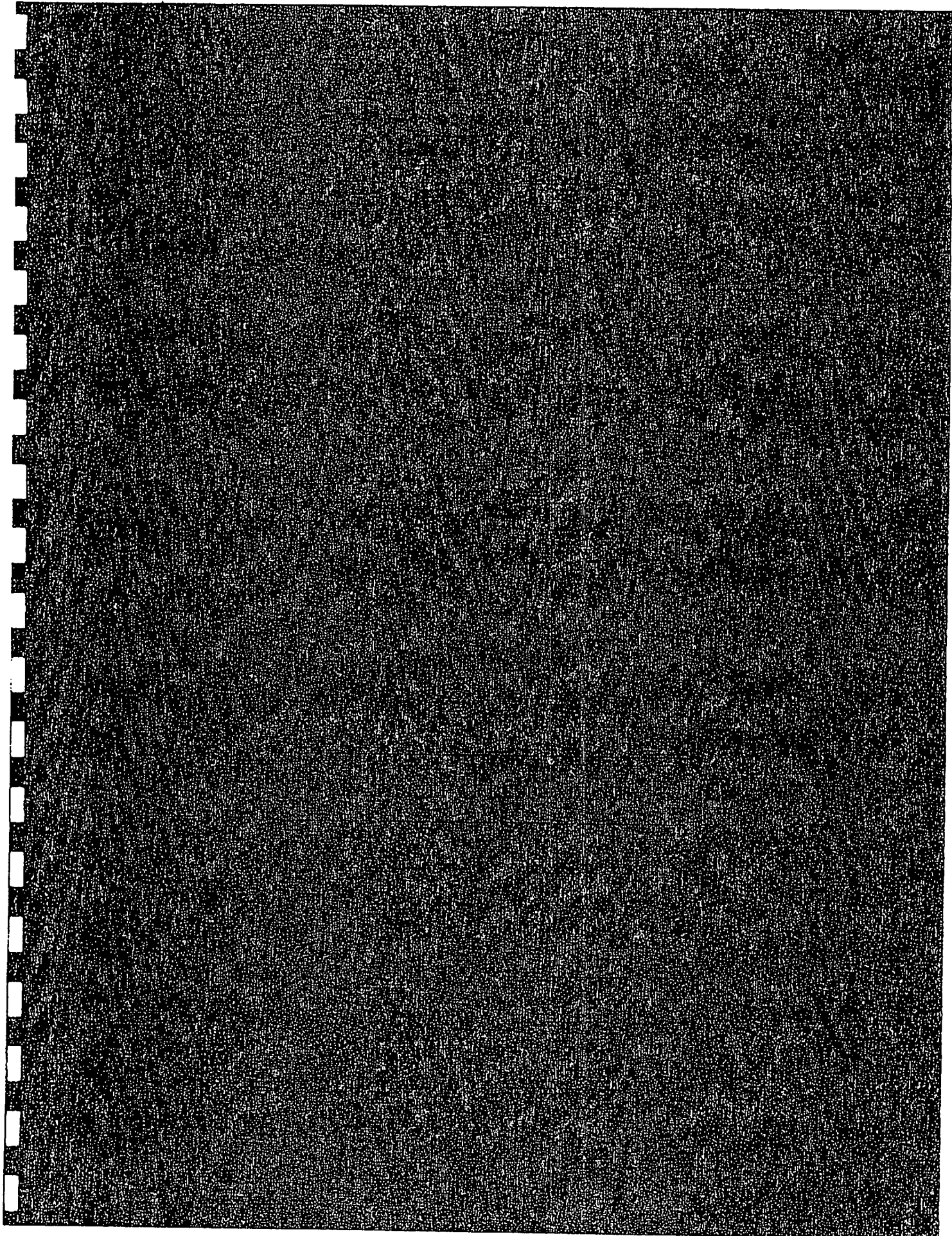


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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT RESPONDENTS' CLAIMS ARE TIME BARRED UNDER § 57-67-90.
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT BAIR IS THE FEE SIMPLE OWNER OF THE AVOCET STREET EXTENSION.
3. DID THE TRIAL COURT ERR BY MISAPPLYING THE STATUTE OF USES TO THE BEACH STRAND PROPERTY.
4. DID THE TRIAL COURT ERR IN FINDING THAT BAIR COULD NOT CLAIM TITLE UNDER ADVERSE POSSESSION.
5. DID THE TRIAL COURT ERR IN ORDERING BAIR TO REMOVE VEGETATION FROM THE AVOCET STREET EXTENSION AND BEACH STRAND PROPERTY.
6. DID THE TRIAL COURT ABUSE ITS DISCRETION BY FAILING TO REOPEN THE CASE TO PRESENT ADDITIONAL EVIDENCE.

STANDARD OF REVIEW

This action was instituted by Respondents as a declaratory judgment action seeking a determination of the ownership of land, the applicability of certain easements and specific performance of certain covenants. The Appellant raised various defenses, including title by adverse possession. "Declaratory judgment actions are neither legal nor equitable; thus, the standard of review depends on the nature of the underlying issues." South Carolina Electric & Gas Company v. Hartough, 375 S.C. 541, 654 S.E.2d 87, 89 (2008)

All of the issues in this matter are legal issues. Baumann v. Long Cove Club Owners Association, Inc., 380 S.E. 131, 668 S.E.2d 420 (2008) – enforcement of covenants; Cook v. Eller, 298 S.C. 395, 379, 380 S.E. 2d 853, 854 (Ct.App. 1989) – title to real estate; Miller v. Leard, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992) – adverse possession; West v. Newberry Elec. Co-op, 357 S.C. 537, 593 S.E.2d 500 (Ct.App. 2004) – existence of easements. "In a law case tried by the judge without a jury the standard of appellate review is limited to a correction of errors of law and a determination if there is any evidence to support the factual findings of the trial judge." *Id.* "Questions regarding credibility and the weight of the evidence are exclusively for the trial court." Bauman, p. 424.

ARGUMENT

1. The Three Year Statute of Limitations Under § 57-67-90 Does Not Bar Respondents' Claim

Bair asserts that under § 15-67-90 the Respondents cannot contest or challenge the judgment rendered in Bair's quiet title action completed on May 19, 1999 ("Bair OTA" – Tr. Exs. 38 – 52, R. pp. 685-714). This three (3) year statute of limitations to re-open a judgment

quieting title is clearly not applicable under the facts in this case. This is true since the Bair QTA is not binding on the Respondents who were known parties and intentionally not named. There are numerous other material defects in the Bair QTA. A review of the three (3) published South Carolina cases construing this section, and just basic common sense, leads to this conclusion.

In Ford v. Watson, 282 S.C. 66, 70, 316 S.E.2d 429, 431 (Ct. App. 1984), the Court, in construing § 15-67-90, held that this section will preclude a subsequent litigation only as to those who are bound by the prior litigation. In Ford, the party seeking the protection of § 15-67-90 had filed a prior quiet title action ("QTA") listing unknown defendants and served same by publication. The Court held that although § 15-67-40 provides "... for authorization to serve certain unknown persons ... it is doubtful that an adverse claimant in possession can be properly served with process by being designated as an unknown and served by publication". Ford, p. 431, n.4. (emphasis added) In essence, the Court held that § 15-67-90 does not absolutely lead to an impenetrable stamp of validity after three (3) years for every QTA – only those that were properly completed. The Court noted you cannot serve one in possession by publication as a "John Doe". If § 15-67-90 is to be construed as Bair asserts today, the Court in Ford would not care if service by publication was completed properly in connection with said possession claim. The only relevant issue would be an action challenging the QTA filed within three (3) years. That is not how this statute has been interpreted.

A Beaufort County case heard by Judge Thomas Kemmerlin, Jr., the trial judge in this case, perhaps best illustrates how the Court applies this statute when parties are intentionally omitted. In Perry v. Heirs at Law & Distributees of Gadsden, 313 S.C. 296, 301, 437 S.E.2d 174, 177 (Ct. App. 1993), *aff'd as modified*, 316 S.C. 224, 449 S.E.2d. 250 (1996), a party

¹ Bair's citation to three unpublished opinions are in violation of Rule 268(d)(2) SCACR and are thus not addressed by Appellants.

committed actionable fraud by not mentioning the existence of children of siblings in an action to quiet title. Judge Kemmerlin ruled § 15-67-90 was not available as a defense when the "undisclosed" siblings surfaced after three years to dispute the earlier action. The appellate court quoted directly from Judge Kemmerlin's Order where he eloquently stated the possible misapplication of § 15-67-90 as an absolute bar after three (3) years, at p. 178:

"If this is true, I can eat Christmas dinner with my sister each year in Sumter during which time I secretly bring a suit alleging that I am the sole heir to a piece of property in Beaufort County left to us as tenants in common by our intestate father, in which suit I, of course, do not name nor serve my sister, so that three Christmases after a decree in my favor, I can announce to my sister as I approach her sideboard for a second serving of turkey and oyster stuffing, 'hereafter I will not appear at your home for Christmas because I will celebrate the holidays at our old ancestral [sic] home in Beaufort, in which home, incidentally, you have no interest, and to which you are not invited!'"

By including this portion of the trial judge's order in its opinion, the Court in Perry, as in Ford, provided clear guidance as to the application of § 15-67-90. This statute is clearly not an absolute bar after three (3) years if necessary parties are not included in the original action or if the original action was not properly completed.

The only other published South Carolina case mentioning or construing § 15-67-90 is Yarborough v. Collins, 301 S.C. 339, 391 S.E.2d 873 (Ct.App. 1990). In that case, Richardson filed a QTA in 1979 naming Yarborough as a party. A judgment was rendered in Richardson's favor in 1980. One year later, Yarborough also filed a QTA, naming Richardson's successors-in-interest involving the same property and subsequently lost. Some eight (8) years later, in 1988, Yarborough filed another action seeking to set aside the 1980 Richardson judgment based upon intrinsic fraud. The Court of Appeals dismissed the 1988 action under § 15-67-90, but only after noting Yarborough was a named party in the 1979 action and that Yarborough "... had actual knowledge or could have by reasonable diligence acquired full knowledge of all the facts

constituting the extrinsic fraud claim more than three years before she began the instant action in 1998." Yarborough, *Id.* p. 875. The Court clearly concluded the three (3) year time period starts only after a party should have known of the existence of the claim.

In analogous situations, various other jurisdictions have reached the same. See: Porter v. Coco, 2006 WL 3103157 (N.H. 2006) – omission of landowners' predecessors in interest as expressly named defendants in a previous action to quiet title brought by the predecessors in interest of adjoining property owners, despite the fact that the landowners' predecessors in interest were persons known to have an interest in the subject property of such action, resulted in a failure to meet statutory requirements for quieting title and rendered the court that issued judgment in the action void of jurisdiction, and therefore, landowners could collaterally attack the previous quiet title decree that held that disputed portion of property was part of the adjoining land; Konantz v. Stein, 283 Minn. 33, 44-45, 167 N.W.2d 1, 9-10 (1969) – an owner deprived of possession can be required to seek his legal remedy promptly or not at all, but an owner whose possession has not been contested to his knowledge cannot be expected to bring suit against parties unknown to protect his property from adverse claims of which he is unaware.

There are two separate parcels of land involved in this appeal. The portion of Avocet Street, shown on the original 1952 subdivision plat (Ex. 10, R. p. 527), immediately adjacent to Bair's Lot 5 shall be referred to as the "Avocet Street Extension." The property between the seaward boundary of Lot 5 and the Avocet Street Extension, to the mean high water mark, shall be referred to as "Beach Strand Property".

All three South Carolina cases interpreting § 15-67-90 (Ford; Perry and Yarborough) have looked at the original QTA to determine if it was properly completed and included the correct, lawful parties. In the instant case, until Bair installed the large iron gates blocking the

beach access through the Avocet Street Extension and Beach Strand Property in August, 2004, the Respondents, nor any other property owner, would have any way to know of the existence of the Bair OTA since they were not named parties and due to the very unusual manner the Bair QTA was completed, as discussed below.

(1) Not Binding on Known Parties Not Named

Bair intentionally did not name parties she knew had an interest in the subject properties and who would object. Only Property Research Holdings, Inc. ("PRHI") was a party Defendant in said action (Ex. 38, R. pp. 685-690). Bair represented to the Court she did not know of any other parties claiming an interest in the case and relied on § 15-67-40 to name "unknown" parties, just as the Plaintiff in Ford. (Tr. Ex. 47, R. pp. 702-703)

Although this statute authorizes the use of fictitious defendants in real property actions, it is clearly meant only for those defendants whom the plaintiff cannot reasonably glean from the appropriate land records or other means as having some right, title, or interest in the subject property. § 15-67-40 provides that "[i]n any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: 'Also all other persons known, claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein.'" (emphasis added)

As summarized in 67A C.J.S. Parties, § 171:

The purpose of the rule governing fictitious parties is to provide a mechanism to bring in known, but unidentified, responsible parties who may only be ascertained through the use of judicial mechanisms such as discovery. Filing an action against a fictitious party is only appropriate when circumstances exist in which the identity of the unknown defendant is reasonably capable of discovery.

The plaintiff has no duty to exercise reasonable diligence to ascertain the true facts before filing a complaint designating a defendant by a fictitious name; however, the ignorance of the name must be real, and not willful, ignorance, or such as might be removed by mere inquiry or a resort to means of information. So, an action to quiet title against unknown defendants does not affect owners of record who cannot be classified as unknown persons, and they are not made parties by such designation. (emphasis added)

In 74 C.J.S. Quieting Title, § 90, it provides as follows:

Final judgment in action to quiet title cannot be entered, even as between the parties, where persons other than the parties may have an estate or interest in the property. Thus, a judgment in an action to quiet title in which the owners of the land are not made parties, . . . is void. (emphasis added)

See Also: 74 C.J.S., *supra*, § 92 – "Where the jurisdiction of the court is wrongfully invoked by false allegations in the bill, the decree may be canceled in a direct proceeding or vacated on a motion."

There was extensive evidence at trial that Bair was well aware of the existence and identity of the property owners association and the other lot owners in Hilton Head Beach Subdivision No. 1 who held rights in the subject properties at the time of the filing of the Bair QTA, as reflected below:

a. The identity of all property owners in the subdivision was a matter of public record at the courthouse but her attorney made no effort to identify same by title search. (R. p. 271; line 25 – p. 272, line 18; p. 281, line 12 – p. 282, line 8).

b. At the time the Bair QTA was filed, Bair admitted it was obvious there was an existing beach access on the property since it was shown on the survey she attached to the Complaint (R. p. 468, line 21 – p. 470, line 25).

c. Bair admitted the beach access path was used every day by those in the neighborhood (R. p. 427, line 2 – p. 429, line 21; p. 432, line 5 – p. 433, line 3; Ex. 76, R. p. 780; Ex. 77, R. pp. 781-787; Ex. 78A, R. p. 791).

d. Frank Guscio, one of the most knowledgeable persons as to the history of the neighborhood, told her the owners of the lots on Avocet Street had the legal right to use Avocet Street Extension to reach the beach (R. p. 433, line 4 – p. 435, line 4);

e. Bair in 1988 - 1989 was actually a member of the Forest Beach Association, Inc. ("FBA"), the predecessor to the Respondent, Forest Beach Owners Association, Inc. ("FBOA")² (R. p. 413, line 22 – p. 414, line 19; p. 441, lines 6 – 24)

f. Bair was aware around 1990, some eight (8) years prior to filing the QTA, of the existence of the FBA because she sought their approval to build a pool on her lot, as required under the applicable covenants. (R. p. 413, line 22 – p. 414, line 14)

g. The FBA filed suit against Bair personally for violation of various covenants in the same neighborhood on another oceanfront lot she owned on June 2, 1994, some four (4) years prior to the Bair QTA. These violations included building improvements in another street extension providing beach access to interior lot owners next to another oceanfront lot owned by Bair (R. p. 455, line 10 – p. 459, line 18; Ex. 62, R. pp. 726-729; Ex. 79, R. p. 800). Bair personally attended the reference hearing on October 20, 1994 wherein a settlement was reached. (Ex. 62(b), R. pp. 730-736) When Bair failed to comply with the Settlement Order, she was held in Contempt of Court (Ex. 62(d), R. pp. 740-741; Ex. 62(e), R. p. 742). She eventually removed all improvements on the street extension in the same neighborhood. (R. p. 455, line 10 – p. 456, line 11)

h. On August 31, 1994, Bair testified on behalf of PRHI in another lawsuit filed by FBA against PRHI and others as to certain land disputes in the neighborhood. She was cross-

² The Forest Beach Association, Inc. was the original property owners' association. On September 20, 1999 it was administratively discharged by forfeiture for failure to file its annual report (Ex. 35A, R. pp. 662-663). Before it could be reinstated, the principal of PRHI filed Articles of Incorporation using that identical name on September 22, 2000 (R. p. 664). The property owners association formed a new entity under the name "Forest Beach Owners Association, Inc." on October 6, 2000 (Ex. 35B, R. pp. 666-668).

examined by FBA's attorney specifically about the Avocet Street Extension which serves as a beach access. It was at this hearing in 1994, some four (4) years prior to her filing the Bair QTA, that she acknowledged the street extension was a beach access (R. p. 431, line 9 – p. 433 line 3; Ex. 61(a), R. pp. 715-725).

i. Bair testified that the property owners association “. . . sued me more than anybody in North Forest Beach. Every time I turned around they've got another suit coming after me.” (R. p. 414, line 20 – p. 415, line 1)

It is thus abundantly clear that when Bair filed the QTA on November 11, 1998, she intentionally did not name the parties most likely to object to her adverse possession claim, the other lot owners and the property owners' association, which was actively looking out for the property owners' rights in Hilton Head Beach Subdivision No. 1.

This devious plan by Bair was further buttressed by the letter of L. Hunter Limbaugh, counsel for Bair in the Bair QTA, dated April 27, 1999, to Judge Donald W. Beatty (Ex. 51, R. p. 711), Mr. Limbaugh made the very unusual request in an adverse possession case for an Order to be issued without any live testimony or other evidence:

“This case is completely uncontested. All proper steps have been followed to be sure that anyone with any possible adverse position has been notified.”

In fact, no effort was made to name anyone who asserted or potentially would assert an adverse interest since Bair knew her claim to title would be met with vehement opposition.

Robert Austin (“Austin”), Bair's husband, is an attorney licensed in Florida. He actually was the one who came up with the plan to file the Bair QTA and actually drafted the pleadings. His testimony is very enlightening as to how this QTA was devised and completed.

a. Austin made no effort to identify the lot owners in the neighborhood by searching the records at the courthouse (R. 271, line 25 – p. 272, line 18; R. p. 277, line 12 – p. 278, line 6; R. 281, line 12 – p. 282, line 8)

b. He was aware of the prior litigation by the FBA against Bair but intentionally did not name the association in the Bair QTA (R. p. 274, line 20 – p. 277, line 11; Ex. 62, R. pp. 726-742)

c. His goal was to keep the Bair QTA as “quiet as possible,” as it would be advantageous to his family (R. p. 289, line 18 – p. 290, line 10)

d. He told his wife, Bair, not to make any changes on the property until three (3) years had elapsed so the statute of limitations would pass (R. p. 290, line 15 – p. 291, line 8)

Rather than using reasonable efforts to track down the appropriate parties, Bair and her husband simply named "John Does" and effected service by publication in Beaufort, not on Hilton Head Island where the property was located. In the instant case, Bair used fictitious defendants in an obvious effort to avoid notifying persons Bair knew would object. The Bair QTA is not binding on the Plaintiffs or other property owners who were not named parties. Under Ford and Perry, § 15-67-90 is not applicable.

(1) False Affidavit for Publication – Bair signed and filed a Petition and Affidavit, dated January 23, 1999 (Ex. 47, R. pp. 702-703) used as the basis to serve the “unknown” parties by publication. Bair represented to the Court in Paragraph 2 the following:

“Because such fictitiously designated parties are presently unknown to the undersigned or to the plaintiff, it is impossible to find such unknown parties within Beaufort County and South Carolina, nor are the last addresses of said unknown parties known to the undersigned or to the plaintiff. Accordingly, it is impossible with any amount of diligence to effect service of the summons and complaint upon such unknown parties exception (sic) by publication.”

The Petition and Affidavit were drafted by Bair's husband, Austin (R. 282, line 9 – p. 284, line 21). As discussed above in detail, Bair was very much aware of the existence of the FBA³ as well as the identity of the other owners in the subdivision which had clear rights to access and use both properties in 1998 when the Bair QTA was filed.

(2) Improper Summons – The Summons filed with the Complaint was only directed to PRHI, not the other “unknown” Defendants, in violation of Rule 4(b) SCRCF. This is a jurisdictional defect.

(3) Newspaper Used for Publication of Summons – The Summons and Amended Lis Pendens was published in the Beaufort Gazette, not the local Hilton Head Island Packet. While both papers are legally valid papers of general circulation in Beaufort County, it is well known very few people on Hilton Head read the Beaufort Gazette, which is predominantly circulated in Beaufort.

(4) Selection of Guardian Ad Litem – James B. Richardson, Jr., a well known Columbia, South Carolina attorney, was appointed guardian ad litem. Given his residence, it would be very unlikely he would have any direct knowledge of the location or use of the subject property and is certainly a questionable choice for a Beaufort County real estate dispute. He waived all notices (Ex. 50, R. p. 710) and took little or no action in the Bair QTA. A more logical choice would have been a local attorney, which is the customary practice. The use of an out-of-town attorney fit into the plan of Bair and Austin to keep the Bair QTA as “quiet as possible”.

(5) Legal Descriptions Invalid - Bair's 1998 QTA purports to affirm that Bair is the owner of certain real estate based upon adverse possession, and provides a legal description of

³ The FBA was in existence on November 20, 1988 when Bair filed her QTA and at the time she submitted the Petition and Affidavit of Publication. It was not dissolved by forfeiture until September 20, 1999 (Exhibit 35A, R. p. 662-663), four months after the final order was signed.

the property she claimed ownership. However, there was a critical, fatal mistake in the metes and bound description in the publication of the legal description for the Amended Lis Pendens (Ex. 45, R. p. 700; Ex. 49, R. 707) and the legal description in the Final Decree (Ex. 52, R. pp. 712-714). This property description did not close and does not describe any property. This is the same legal description used in the deed from PRHI to Bair and is discussed in detail on page 26 of this Brief.

Clearly, it was Bair's burden to establish her title in the quiet title action. Hoogenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 881 (Ct. App. 1992). A significant element of Bair's quiet title claim was to identify the land in question. Although a quiet title petition "... need not describe the land with the particularity or definiteness . . . the description contained in a petition must not be so indefinite that it would not support an order making the rule absolute." 74 C.J.S., Quieting Title, § 97; See also: Powers v. Rawles, 119 S.C. 134, 112 S.E. 78, 86 (1922) – "The sole purpose of a description of land as contained in a deed is to identify the subject-matter of the grant."

Because Bair failed to adequately describe the subject property, her quiet title action is not valid or binding. See: Ford, Id. at 431 – § 15-67-90 will preclude a subsequent litigation "only as to those . . . who are 'bound' by" the previous litigation; e.g., Boone v. Pritchett, 259 N.C. 226, 228, 130 S.E.2d 288, 289-90 (1963) – a complaint failed to state a cause of action to quiet title where it was based on a deed void for vagueness and uncertainty of description in that the land could not be identified; Deans v. Deans, 241 N.C. 1, 7, 84 S.E.2d 321, 325 (1954) – in a quiet title action, "[t]he description must identify the land, or [else] . . . the description is void for uncertainty".

Finally, the Bair QTA clearly did not impact any easement rights applicable to the subject properties. If Bair truly intended to adjudicate the fee *and all easement rights* associated with the parcels, then Bair's Complaint and other pleadings (Tr. Exs. 38, 39, R. pp. 685-690) to quiet title should have expressly so stated. See: Hoogenboom, Id. at 881 – it is the petitioner's burden to establish title in a quiet title action. See Also: 74 C.J.S., Quieting Title, § 90 – A judgment by default in an action to quiet title “. . . may not indulge presumptions which are not supported in the complaint.” Because Bair's quiet title petition did not do so, Bair's quiet title decree did not extinguish, or even impact, the various easement rights held by the Appellants to use and access said properties. The Bair QTA Complaint (Ex. 38, R. pp. 685-688) makes no reference to easement rights.

Judge Patrick Michael Duffy, South Carolina U.S. District Court Judge, issued a damaging condemnation of Bair and Austin's actions in an Order on April 26, 2007 involving this identical factual background in the case of Investors Title Insurance Company v. Carolyn S. Bair a/k/a Carolyn Songer Austin (R. pp. 750-763; Ex. 66(d)). The Trial Judge's findings of fact were affirmed in an unpublished opinion by the Fourth Circuit. Investors Title v. Bair, 296 Fed. Appx. 332, 2008 WL 4570478 (C.A. 4 (S.C. 2008)). This was a declaratory judgment action by the title company against Bair seeking an Order that there was no title insurance coverage concerning the subject litigation initiated by the Respondent. Bair had asked the title company to defend her in the suit now before the Court. Judge Duffy considered the testimony of Bair, Austin, and others and found no coverage based on Bair's prior knowledge of the existence of the title claims of FBOA and the lot owners.

As to the 1998 Bair QTA, Judge Perry basically ruled it was an “expertly orchestrated” sham by Bair and her husband, Austin. Included in his findings:

1. Bair never explained why she did not name FBOA and the four lot owners behind her house (§ 15, R. p. 753)
2. Bair and her husband acted as a team in the QTA (§ 16, R. p. 753)
3. Bair could not explain why she chose a Beaufort newspaper for publication rather than The Island Packet, which serves Hilton Head Island (§ 17, R. p. 753)
4. Bair admitted she wanted to keep the QTA lawsuit "quiet" (§ 17, R. p. 753)
5. Bair had knowledge prior to the filing of the 1989 Bair QTA of the existence of claims of title to the Avocet Street Extension (§ 35, R. pp. 756-760)
6. Bair and her husband filed a QTA in which they failed to name parties in which Bair knew had an interest in the property in dispute (§ 37, R. p. 760)

Just like Judge Duffy, this court should conclude the Bair QTA was merely a sham. This Court should not let § 57-67-90 be used as a shield as part of a devious plan to complete an improper QTA, wait three (3) years and begin making improvements on property Bair and her husband knew others claimed an interest. The trial court correctly held § 57-67-90 is not applicable to the Respondents.

2. The Trial Court Correctly Found Title to the Avocet Street Extension is Held by the FBOA, Not By Bair

A.³ Bair Cannot Assert on Appeal Title was Obtained at the Time of Her Lot Purchase.

Bair asserted for the first time in a post trial motion, filed March 30, 2009 (R. pp. 839-851 – Motion to Amend Judgment) that she held title to the portion of Avocet Street adjoining her house based on her original purchase of Lot 5 on April 24, 1984. Since this theory was not argued or asserted at trial, it cannot be raised for the first time under Rule 59(e) SCRPC. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (1990) – "A party cannot use Rule

59(e) to present to the court an issue the party could have raised prior to judgment but did not.”
Henderson Memorial Hospital, Inc. v. Hagen, 313 S.C. 497, 443 S.E.2d 3991 (1994); Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (1995); Tallent v. S.C. Department of Transportation, 363 S.C. 160, 609 S.E.2d 554 (2005).

Bair’s claim to ownership of the Avocet Street Extension in her pleadings and at trial was based purely on her claims of ownership pursuant to the Bair QTA, adverse possession and the quit claim deed from PRHI (R. pp. 56-62; Bair Answer to Second Amended Complaint; Ex. 73A). At no time in her pleadings, or in her two (2) post-trial briefs (R. pp. 817-828; Post Trial Brief, 12/18/08; R. pp. 865-871, 2/13/09 Austin letter to Trial Judge) she submitted to the Court, did she assert title to the street solely to the fact that she was an abutting lot owner under the authority of Whitter v. Harvey, 1 McCord, 67, 12 S.C.L. 67 (1821). Under the authorities cited above, Rule 59(e) cannot be used to raise issues that appropriately should have been plead and asserted during trial.

B. Even if this issue is preserved for appeal, this theory of recovery is not recognized in South Carolina and is not applicable.

Even if this issue is preserved for appeal, South Carolina law simply does not provide that a purchaser of property on a private, platted residential street also acquires title to the middle of the adjoining street at the time of purchase. The Court in Epps v. Freeman, 261 S.C. 375, 200 S.E.2d 235 (1973), at p. 388, succinctly summarized the rights of a purchaser under this scenario:

“Generally, where a property sold as described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.”

See also: Newton v. Babson, 223 S.C. 545, 77 S.E.2d 212 (1953); Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975); Immanuel Baptist Church of North Augusta v. Barnes, 274 S.C. 125, 264 S.E.2d 142 (1980).

Under these well-established authorities, when Bair acquired title to Lot 5, Hilton Head Beach Subdivision No. 1 in April, 1984, she obtained title to Lot 5 pursuant to the dimensions in the referenced, recorded plat (Ex. 9, R. pp. 523-526; Ex. 10, R. p. 527) and the right to use all streets and roadways as shown on the plat, including those adjacent to her property as well as those far from her property.

In an attempt to either ignore or divert the Court's attention to the above well established legal authorities, Blair has cited cases in South Carolina and various foreign jurisdictions which deal with the determination of boundary line disputes where either a road, stream or other waterway is used as a material part of a boundary line between two parcels. These "boundary line" determination cases are simply not applicable to Bair's lot purchase. As even a cursory review of Bair's deed (Ex. 9, R. pp. 523-526) and the accompanying subdivision plat (Ex. 10, R. p. 527) reveal, there is no ambiguity or question whatsoever as to the property she purchased.

A close review of the authorities Bair relied upon confirm this conclusion. Whitter involved the interpretation of a property description in a deed which referenced a public road serving as the common boundary of two adjoining parcels. Thus, the Court was attempting to discern the intent of the grantor of the deeds in the chain as to who should own the public road that was no longer in use. The Court in Whitter, in attempting to determine the intent of the grantor, stated a long-standing rule of construction that in such circumstances, each adjoining owner owned to the middle of the road, it being presumed that that was the original intent of the grantor.

A similar property description dispute was faced by the Court in Noble v. Cunningham, 16 S.C.Eq. (McMul Eq.) 289 (1841) where a purchaser agreed to pay a certain price per acre, to be verified by a survey. One of the boundary lines of the property was a river. The seller demanded the purchaser pay for the acreage to the middle of the river. As said land was under water, the purchaser refused. In attempting to discern the intent of the grantor, the Court again applied the general principle that where a road or water course is used as a boundary in a property description, the tract normally extends to the center of said roadway or waterway, unless there is evidence of the grantor's intent to exclude said stream or roadway. Again, the Court in Noble was simply attempting to construe a property description, and not create new rights that clearly were not intended by the grantor under the conveyance documents.

In Andrews v. McDade, 201 S.C. 24, 21 S.E.2d 202 (1942), two adjoining property owners claimed title to a public roadway that had been abandoned. The lower court ruled as a matter of law an abandonment had been shown. On appeal, the Court in Andrews cited the general rule that upon an abandonment of a public highway, title to the center of the roadway reverts to the adjoining property owners. The key issue on appeal was whether an abandonment of the easement rights was shown as a matter of law. The court held that there could be no abandonment of a fee simple interest, but there could be an abandonment of any inchoate rights or equitable rights, including mere possessory rights. Our Court quoted extensively from the Georgia case of Tietjen v. Meldrim, et. al., 169 Ga. 678, 151 S.E. 349 (1930). A close review of Andrews reveals that it was the intent of the court to use the reasoning and logic of Tietjen to support its conclusion as to the issue of a possible abandonment of certain inchoate rights, and not to dramatically create new property rights for purchasers of lots pursuant to recorded plats in a subdivision, as Bair now asserts. If that were the case, the court in Newton, Epps, Carolina

Land Co., and Immanuel Baptist Church would have reached decidedly different results when discussing the precise rights of property owners purchasing pursuant to recorded plats. Instead of finding the purchasers of lots in those cases merely held easement rights to all platted roadways, the court in each case would have concluded said purchaser actually owned at least one-half of the roadway adjoining their lots. This is not the law in our state.

Finally, the last South Carolina case relied upon by Bair is Rushing v. Sellers, 225 S.C. 173, 81 S.E.2d 281 (1954), which is another property description case where a grantor used a public highway as one of the boundaries in a deed. In Rushing, the court stated that the rule of general construction cited in Whitter and other similar cases only creates a rebuttable presumption. After reviewing the deeds, plats and other information, the court found it was obvious the intent of the grantor was not to convey to the center of the adjoining roads in that case.

Assuming, arguendo, this Court adopted Bair's assertion that she potentially owned a portion of the adjoining roadway when she acquired her lot, this court must still determine if that was the true intent of the original grantor, the Hilton Head Company, Inc. ("HHCO"). A review of the conveyance documents, the overall scheme of the original developer, the plats, the deeds and relevant covenants clearly indicate an intent that the adjoining property owners hold mere easements, and not fee simple title to the roads adjoining their lots.

As concluded by the trial judge, a review of the subdivision plat (Ex. 10, R. p. 527) confirms that the only access for the rear lots to the ocean is through the streets that run all the way past the oceanfront lots. If, as Bair asserts, each oceanfront lot owner at the time of the conveyance of their lot also obtained title to all or half of the street next to same, they would have the legal right, as Bair has attempted in this case, to completely block off access to the

ocean. This is entirely inconsistent with the overall scheme of development by the HHCO in all seven (7) of its oceanfront developments, as shown by the subdivision plats (R. p. 527, Ex. 10; pp. 800-811, Exs. 79-84) and confirmed by the property owners association's manager (R. p. 168, line 24 – p. 169, line 19; p. 172, line 24 – p. 176, line 15).

In addition, the restrictive covenants at Deed Book 78 at Page 306 (R. pp. 528-531, Ex. 13) specifically designate the open areas between groups of lots in any subdivision or between subdivisions as means of access to the beach for the rear lots. Said provision reads as follows at R. p. 531:

"V. PARK AREAS

1. That portion of the lands of The Hilton Head Company shown as the open areas between groups of lots in any subdivision or between subdivisions, which constitute means of access to the beach for rear lots, and any other areas designated by The Hilton Head Company, its successors or assigns, shall be set aside as park areas to be allowed to stand free of buildings, billboards, etc., or to be landscaped and maintained, for the beautification of the Island and enjoyment of its residents and visitors."

A portion of Avocet Street adjoining Bair's property is an open area between two subdivisions and is clearly subject to said covenants (R. p. 527, Ex. 10; R. p. 811, Ex. 84). Pursuant to the testimony of John Snodgrass, the Administrator of the FBOA ("Snodgrass"), the street ends have provided the sole means of access to a large number of rear property owners not only in Hilton Head Beach Subdivision No. 1, but all of the surrounding ocean-oriented developments that were developed by HHCO in the 1950s. (R. p. 168, line 24 – p. 169, line 19; p. 173, line 22 – p. 176, line 18; Ex. 10, R. p. 527; Exs. 79-84, R. pp. 800-811). Thus, as in Rushing, if a rebuttable presumption applies, the undisputable evidence clearly reflects the HHCO's original intent that the streets remain open to provide access to the beach for the use and benefit of all lot owners.

Finally, for Bair to prevail on this theory, she must also show that Avocet Street has been abandoned. Mere non-use of rights and a roadway acquired by a property owner pursuant to a recorded plat will not amount to an abandonment, regardless of the length of inactivity. There must be clear and unequivocal evidence from the acts and conducts of the owner of the easement rights clearly indicating an intent to relinquish its rights under the easement. Carolina Land Co., Id. p. 21. There has been absolutely no evidence presented by Bair that this stringent standard has been met. In contrast, the use of the property by vehicles and many, many lot owners to access the beach was admitted by Bair, and amply supported by other witnesses at trial, as summarized starting at page 34 herein, in the discussion of Bair's adverse possession claim.

In summary, this new theory, never presented below at trial, that Bair acquired title at the time of her closing in 1984 is not available and should not be allowed to be argued for the first time on appeal. If the Court considers this issue, a close review of the cases will confirm that they involve interpretations of property descriptions that are not relevant to the facts in this case. Even if they were applied, the original developer's intent is plain and unmistakable – to ensure perpetual access to the beach for all property owners. Such access will clearly be denied if Bair's arguments are adopted. Finally, no valid evidence of abandonment was presented.

C. The trial court properly found that the property description in the quit claim deed from PRHI to Bair was invalid.

In addition to asserting her new theory of a claim of ownership of the road at the time of her lot purchase, Bair also asserts ownership to the disputed properties pursuant to a quit claim deed from PRHI, dated March 8, 2000, approximately eight (8) months after the Bair QTA was complete (R. pp. 774-776; Ex. 73A). The findings by the trial judge that the property description in this deed was insufficient to convey any property was supported by the expert testimony of

Rodney Walker, who prepared a graph depicting the metes and bounds description in the subject deed. This depiction clearly confirmed the property description did not close. (R. p. 321, line 5 – p. 324, line 13; R. 816.1, Ex. 89; R. 816.2, Ex. 90) It was his opinion that the correct course in the property description should have stated “easterly”, not “northerly”. (R. p. 326, lines 11-24)

Bair, citing McNair v. Johnson, 95 S.C. 176, 78 S.E. 892 (1913), argues that the trial judge should have used the documents filed in the Bair QTA to resolve any errors or inconsistencies in the property description. However, a close reading of the quit claim deed reflects that there is no express intent that the quit claim deed convey the identical property that was the subject of the Bair QTA.

In the first Whereas provision in the quit claim deed (R. pp. 774-776; Ex. 73A), there is specific reference to the Bair QTA and the property that was the subject of said action. However, in the second Whereas provision, the grantor in the deed does not state its intention to convey the identical property that was the subject of the Bair QTA, but set forth a separate property description. Said language reads as follows:

“WHEREAS, the Defendant, Property Research Holdings, Inc., wishes to provide this Quit Claim Deed to further support the ruling issued in the above-referenced Action and to confirm its conveyance of any and all interest, if any, that Property Research Holdings may have in the property referenced below.” (emphasis added)

If it was the intent of PRHI to convey by quit claim deed the same property which was subject to the Bair QTA, the language in the deed would have stated “. . . and to confirm its conveyance of any and all interest, if any, that Property Research Holdings may have in the above-referenced property”, or alternatively, “. . . that property Research Holdings may have in the property which was the subject of the above quiet title action.” Thus, the property description in the quit claim deed must stand on its own.

A deed which contains an invalid property description is wholly ineffective to convey any property whatsoever. 26A CJS, Deeds, § 53 – Deed inoperative where the area is not defined; Floyd v. Carswell, 211 Ga. 36, 83 S.E.2d 586 (1954) – Metes and bounds description with no starting point fatally defective; Herrington v. Church of the Lord Jesus Christ, 22 Ga. 542, 150 S.E.2d 805 (1966) – Deed containing an indefinite terminal point and indefinite course is insufficient and renders deed inoperable.

Bair's counsel's reference to his own personal surveying work, apparently using surveying software after the trial was complete, is clearly inappropriate, inadmissible and should be ignored. (Bair Final Brief, p. 22, n. 4) It was not presented during the trial. There is also obviously lacking a foundation for Bair's counsel to provide such expert testimony.

The trial court's conclusion the PRHI quit claim into Bair was inoperative to convey any land should be upheld.

D. Bair's Untimely Request to Reform the PRHI Deed was Properly Denied

Bair attempts to assert a final theory to support a claim of ownership by arguing that the legal description in the May 23, 2001 deed from PRHI to FBOA (R. pp. 601-607; Ex. 24) should be reformed to include the Avocet Street Extension and the Beach Strand Property upon the basis of a mutual mistake.

The issue of the reformation of this deed pursuant to a theory of mutual mistake was never raised in any pleadings filed by Bair. This is clearly an affirmative defense under Rule 9(b) SCRPC. The only time the issue was presented to the trial judge was after his order had been issued, in Bair's March 30, 2010 Motion to Amend Findings and Facts (R. pp. 839-851, Bair's Motion to Amend). As discussed above, Bair cannot raise for the first time on a

Rule 59(e) SCRCPP motion issues not previously raised in the pleadings and tried by the parties.
Hickman; Henderson Memorial Hospital.

E. Bair's Request to Amend the Pleadings to Include This
Issue to Conform to the Evidence was Properly Denied.

Rule 15(b) SCRCPP allows, in limited circumstances, issues not raised in the pleadings to be tried and ruled upon if said issues are tried by the express or implied consent of the parties. While it is true that it's been often stated that amendments to conform to the evidence should be liberally allowed, this is only the case where no prejudice to the other side is shown. The decision to grant or deny the motion is within the sound discretion of the court. Williams v. Addison, 314 S.C. 35, 443 S.E.2d 582 (1994); Kelly v. South Carolina Farm Bureau Mutual Insurance Company, 316 S.C. 319, 450 S.E.2d 59 (1995) "[T]his power should not be used indiscriminately or to prejudice or surprise another party. . . ." Berry v. McCloud, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (1998).

No amendment should be allowed if it is clear all parties did not recognize the issue during trial, even if there was evidence related to some other issue which would support the amendment. The rationale for this restraint on the power to grant the amendment is because the opposing party may not be fully aware of the relevance of the evidence to the issues not raised in the pleadings. Williams, Id. p. 584. In this case, at no time during trial or in the two post-trial submissions made by Bair did she ever assert that the deed into FBOA should be reformed due to a mutual mistake. (R. pp. 817-828, Bair Post-Trial Brief December 18, 2008; R. pp. 865-871, Bair Post-Trial Letter February 13, 2009) The Respondents had taken the deposition of Frank Guscio, owner of PRHI, on September 26, 2006, well prior to trial. The issue of a mutual mistake or the potential reformation of this deed was not presented or mentioned during said deposition, although both parties asked numerous questions about the subject deed. The obvious

prejudice to the Respondents in not having an opportunity to prepare for or to present specific testimony as to a potential reformation claim is obvious. It is for this reason the trial judge correctly denied Bair's belated effort to introduce this new issue into the litigation months after trial had been completed.

Assuming, arguendo, this issue is available on appeal to Bair, it is clear she has failed to meet the required elements to reform a deed under mutual mistake. South Carolina law is clear that before the court will reform an instrument, "... it must be shown by evidence which is most clear and convincing, not simply that it was a mistake on the part of one of the parties, but that it was a mutual mistake A mutual mistake is one where both parties intended a certain thing and by mistake in the drafting did not get what both parties intended." Sims v. Tyler, 276 S.C. 640, 642, 281 S.E.2d 229, 230 (1981)

While Frank Guscio of PRHI testified there was a "mistake" in the legal description (R. p. 342, line 16 – p. 348, line 10), there was no similar testimony on behalf of FBOA, nor any other evidence to support a finding of a mutual mistake. At best, there is only evidence of a unilateral mistake. As the court stated in Sims, Id., p. 230, the court will refuse to reform an instrument due to a unilateral mistake "... except under strong and extraordinary circumstances showing imbecility or something which would make it a great wrong to enforce the agreement. These circumstances must be shown by competent testimony of the clearest kind." No such evidence is present in this case and Bair is thus not entitled to reformation of the property description of the PRHI deed into FBOA.

The Trial Judge correctly concluded title to the Avocet Street Extension is held by the FBOA pursuant to their 2001 deed from PRHI. The prior PRHI deed to Bair failed to convey any property interest, and Bair's efforts to reform said deed are untimely and insufficient.

**3. The Trial Court Properly Applied the Statute
of Uses (§ 62-7-418(a)) as to the Beach Strand Property**

In addition to determining the ownership and use of Avocet Street Extension, the trial court also had to determine the ownership and rights of the parties as to the Beach Strand Property. As found by the trial judge, the Beach Strand Property is subject to the following restrictions and covenants:

A. March 11, 1953 Restrictive Covenants (DB 74/305) (R. p. 812, Ex. 85; R. p. 812.1, Ex. 85A (typed version of Ex. 85)) – These covenants were recorded by the HHCO and are applicable to the area seaward of all the platted oceanfront lots in Hilton Head Beach Subdivision 1, including the end of Avocet Street, and seaward of Lot 5. They impose the following restriction:

“... That the Hilton Head Company, its successors and assigns, shall forever hold in Trust the following described lands for the use and benefit of all present and future property owners of any lot or lots in Hilton Head Subdivision No. 1. . . .” (emphasis added)

B. March 24, 1953 Restrictive Covenants (DB 74/306) (R. p. 813, Ex. 86; R. 813.1, Ex. 86A (typed version of Ex. 86)) – Some six (6) months later, the HHCO, for basically the same parcels, imposed the following additional restriction:

“Said area to be declared a common for the use and benefit of all present and all future owners of property located in Hilton Head Beach Subdivision No. 1 and extensions thereof. . . .” (emphasis added)

C. July 1960 Plat Recorded at PB 12 at P. 89 (R. p. 811, Ex. 84) – The HHCO designated the area seaward of Avocet Street and Lot 5 as “Strand of Hilton Head Beach Subd. No. 1 Trust Property”.

There are no other covenants, restrictions or plats which impose any other additional duties on the HHCO as to said Beach Strand Property. It should be noted similar restrictions were placed on the properties seaward of the platted lots and streets by the HHCO in the adjoining oceanfront neighborhoods No. 2 and 3 (No. 2 – R. p. 800, PB 9/20; R. p. 815, DB 77/181; No. 3 – R. pp. 801-803, PB 9/31; R. pp. 814, DB 77/180). The trial court found that under the above three documents, the HHCO placed said property in a trust for the benefit of all property owners in Hilton Head Beach Subdivision No. 1. Since the HHCO had no active duties under the trust, title to the properties transferred by operation of law under § 62-7-418(a) to the property owners.

The Court in Johnson v. Thornton, 264 S.C. 252, 214 S.E.2d 124 (1975) provides the following definition of active versus passive trusts, at p. 127:

“For a trust to be active it is essential that the interposition of the trustee be necessary to carry out the valid purposes of the trust, the test being that, with respect to the control, protection, management or disposition of the trust property, the trustee has imposed on him, expressly or by implication, some active or substantial duty to perform or useful purpose to subserve.” (emphasis added)

As found by the trial court, it is clear that the HHCO, as original developer, had no duties or obligations under the trusts created under the covenants and plat using this standard.

Under § 62-7-418(a) and a long line of South Carolina cases, since the HHCO, as trustee, had no duties or obligations under the trusts it created, the legal and equitable title to the Beach Strand Property, including the portion claimed by Bair, was transferred by operation of law to all of the owners in said subdivision, who were the beneficiaries of said trust. Faber v. Police, 10 S.C. 376 (1878); Spann v. Carson, 123 S.C. 371, 116 S.E. 427 (1923); Welborn v. Holder, 143 S.C. 277, 141 S.E. 448 (1928); Frierson v. Porter Academy, 217 S.C. 168, 60 S.E.2d 82 (1950). As stated by the Court in All Saints v. The Protestant Episcopal Church, 358 S.C. 209, 223, 595

S.E.2d 253, 260 (2004), the Statute of Uses “. . . has a double effect in turning the equitable interest of one person into a legal interest and extinguishing the legal interest of another.”

The leading South Carolina case applying this statute is clearly Faber. In Faber, under a father's will, property was left in trust to a trustee for the use and benefit of his son, John Faber, for his life, then upon his death to John Faber's son. The Court found fee simple title was held by John Faber since the trustees had no duties under the trust. The Court stated the rule as follows:

“The rule undoubtedly is that where there is a conveyance to one for the use of another, and the trustee is charged with no duty which renders it necessary that the legal estate should remain in him to enable him to properly perform such duty, the Statute of Uses executes the use and carries the legal title to the *cestri que use*.⁴”

In Spann, the Court was again interpreting a trust created in a will. The Court found the trustee had no duties whatsoever other than to hold legal title. Title was deemed held by the beneficiary of the trust as a matter of law.

The Beach Strand Property was not owned by the HHCO when it filed for bankruptcy in 1986 (it had previously conveyed all the lots to third parties in Hilton Head Subdivision No. 1 (R. p. 207, lines 19-23; p. 358, line 24 – p. 359, line 2). Under the above authorities, the Bankruptcy Trustee's subsequent quit-claim deed to PRHI on January 30, 1989 (R. pp. 774-777, Ex. 14) did not convey any of the Beach Strand Property in any of the three oceanfront North Forest Beach Subdivisions (Nos. 1, 2, 3). The subsequent quit-claim deed from PRHI to Bair on March 8, 2000 (R. pp. 774-776, Ex. 73(A)) also did not convey to her the Beach Strand Property as PRHI did not own same. Respondents would concede that ~~the trial judge~~ should not have found the FBOA holds title to the Beach Strand Property under these legal authorities for the

⁴ The person who holds the right to receive the profits and benefits of the estate, but legal title and possession reside in another. Blacks Law Dictionary (5th ed. 1979).

same reason. (R. pp. 4-15, Order, dated March 17, 2009) If PRHI did not own the property, it could not have conveyed the subject Beach Strand Property to FBOA. Title to the Beach Strand Property is properly vested in all property owners in Hilton Head Beach Subdivision No. 1.

4. The Trial Court Properly Found that Bair Failed to Meet the Required Elements to Claim Title by Adverse Possession

As to both the Avocet Street Extension and the Beach Strand Property, the trial court properly found that Bair failed to meet the required elements of adverse possession. To constitute such a claim, possession must be open, notorious, exclusive, hostile, continuous, and unbroken for a full ten-year period. Atlantic Coastline R. Co. v. Searson, 137 S.C. 468, 135 S.E. 567 (1926). Bair's claim for adverse possession fails at least three of these requirements: exclusive, adverse and hostile possession. Exclusive possession requires a possession or claim of ownership precluding the rights of any other party to occupy or use same. Curtis v. Owings, 290 S.C. 315, 325, 350 S.E.2d 201, 207 (1986). If possession is permissive or through some legal right, possession clearly does not meet the elements of adverse or hostile. Haithcook v. Haithcook, 123 S.C. 61, 115 S.E. 727 (1923); Young v. Nix, 286 S.C. 134, 332 S.E.2d 773 (1985); Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986).

As discussed above, Bair's use and "possession" of Avocet Street Extension and the Beach Strand Property were based upon the legal rights she held as a property owner under the recorded plats and covenants which benefited all property owners in Hilton Head Beach Subdivision No. 1. As a lot purchaser, she held the right to use all of the streets shown on the recorded subdivision plat under Epps. Under the 1978 Covenants, she had the right to use the designated Park Areas to access the beach (R. pp. 528-531, Ex. 13, Section V); under the restrictive covenants recorded in 1953 (DB 74/305), she had the right to use, along with all other

property owners, the "Trust" property (R. p. 812, Ex. 85; p. 812.1, Ex. 85A (retyped version of Ex. 85)), and to use said property that has been designated as a "common". The use by Bair, and all other property owners, were entirely consistent with the continued use and enjoyment of said rights. This evidence is summarized below.

A. Testimony of Carolyn Bair

a. The beach path was established and in use when Robert Graves built the house. (R. p. 429, line 22 – p. 431, line 2; R. p. 792, Ex. 92);

b. When she first bought the property in 1984, people walked down the street extension, to the right of the wooden planter, to access the beach. (R. p. 277, lines 11-21; R. p. 780, Ex. 76).

c. At the time of her purchase there was an obvious path to the beach. (Bair testimony in Investors Title trial, R. p. 495.67 line 7 to p. 495.68, line 1.

d. People have been coming down the beach path of Avocet forever and ever. (R. p. 432, line 25 – p. 433, line 3);

e. People go down the side of that planter to the beach absolutely every day. (R. p. 432, line 5 – p. 433, line 3)

f. April 24, 1997 as-built survey (R. p. 773, Ex. 72) – This survey, attached to the Complaint in the 1998 Bair quiet title action (R. p. 688, Ex. 38) clearly reflects the existence of a beach path over the subject properties with the label: "Existing Beach Access Path".

g. Bair admitted she never stopped anyone from walking down to the right of the planter to reach the beach. (R. p. 482, line 22 – p. 483, line 6; R. p. 780, Ex. 76; R. p. 792, Ex. 92).

h. Even after the gate was installed in mid-2004, Ms. Bair never tried to stop anyone from accessing the beach. (R. p. 483, lines 13-19).

B. Testimony of Trevor Howard – Property Owner

a. Since acquiring Lot 33 in 1994, Mr. Howard and his family used the Avocet Beach access weekly. (R. p. 244, line 17 – p. 245, line 13);

b. Mr. Howard and his family used the Avocet beach access from 1994 until the gates went up recently. (R. p. 246, line 2 – p. 247, line 7; R. p. 252, line 10 – p. 253, line 10);

c. Numerous other people parked cars on said property and used same to access the beach. (R. p. 249, lines 8-15);

d. The path was an open dune area you could walk through to the beach. There was no specific path or sidewalk (R. p. 248, lines 2-21; p. 252, line 3 – p. 252, line 14; R. p. 780, Ex. 76);

e. No one ever stopped him from using Avocet beach access until gates went up (R. p. 260, lines 19-24).

C. Testimony of John Snodgrass, Property Owner and Administrator of FBOA

a. For the seventeen (17) years he has lived in the area, the Avocet Street Extension has been historically used for beach access by the interior lot owners. (R. p. 172, line 24 – p. 178, line 2; p. 187, line 20 – p. 188, line 2; R. p. 780, Ex. 76)

b. He, as well as many others, walked on either side of the planter on the Avocet Street Extension to access the beach. (R. p. 177, lines 4 – 19; R. p. 780, Ex. 76)

c. Cars would use the street extension to allow people to access the beach. (R. p. 189, lines 3 – 16)

d. The beach access that he used, as well as many others, was the same beach path reflected on the 1997 as-built survey used by Bair in her quiet title action. (R. p. 178, line 18 – p. 18, line 3; R. p. 773, Ex. 72);

e. Avocet was one of the busiest beach access points for all of the neighborhoods (R. p. 205, lines 2-17);

f. Prior to the gates being installed, no one blocked or prohibited access down Avocet (R. p. 205, line 8 – p. 206, line 1)

g. The beach access paths were first blocked when the gates were installed in March, 2004. (R. p. 180, line 22 – p. 181, line 8; R. p. 714.1, Ex. 55);

h. Shortly thereafter, in November, 2004, the FBOA filed the instant action to address the blockage of beach access and other issues (R. pp. 24-27, FBOA Complaint, 11/2004);

i. That at least since 2004, the Plaintiff has been paying the property taxes on the disputed street extension property. (R. p. 172, lines 12-22; p. 206, lines 11-15; R. pp. 638-659, Ex. 33)

D. Testimony of Frank Guscio

a. In 1982, Avocet Street was a dirt road leading to the beach that narrowed somewhat into a pathway to the beach (R. p. 349, line 18 – p. 350, line 16)

b. He had seen cars parked at the end of Avocet (R. p. 352, line 21 – p. 353, line 14)

The testimony is overwhelming that the lot owners in Hilton Head Beach Subdivision No. 1 have for decades continuously used the Avocet Street Extension and Beach Strand Property for the purposes for which they were created and protected – to access the beach. At no time has anyone been stopped from using same, until Bair constructed the gates in 2004. The

Respondents promptly filed suit on November 15, 2001 in response to said actions (R. pp. 24-27, Complaint). As Bair admitted, she never tried to stop the other property owners from using said property, and said property owners in fact used same from at least 1984 until 2004. (R. p. 482, line 22 – p. 483, line 6) Based on the above, the trial judge properly denied Bair's claim under her adverse possession theory.

5. The Trial Judge Did Not Commit Error in Concluding that Landscaping Must be Removed from Avocet Street Extension and the Beach Strand Property

A. Decision Not Based on Legal Recognition of Right to an Ocean View

Under the trial judge's Supplemental Order, dated December 30, 2009 (R. pp. 18-23, Supplemental Order), specific requirements were imposed on Bair in order to restore the long-standing use of the subject properties as beach access for the rear property owners. In essence, the trial judge required Bair to remove most, if not all, of the vertical improvements that currently obstruct said beach access path (iron gate, brick wall, moveable planters, etc.) and to remove much of the landscaping she has installed over the years that not only directly blocks access to the beach but clearly gives the impression that said properties are included as part of her residence. The improvements that need to be removed are described in the Supplemental Order and identified in the photos attached to same.

* The requirements in the Supplemental Order are not based on any finding that the Respondents, or any lot owners, were entitled to a "view easement" to the Atlantic Ocean based upon some legal right, as asserted by Bair. The trial judge was simply attempting to restore beach access that is now blocked or substantially hindered by the efforts of Bair in making said property as part of her residence. It is just common sense that if a visitor renting a home on a rear lot in Hilton Head Beach Subdivision No. 1 can see the ocean through the Avocet Street Extension, they will know that is a beach path they can use to access same. With the Avocet

Street access currently being blocked by Bair, lot owners seeking access to the beach travel to the right of Bair's seven (7') foot wall on a beach path owned by the adjoining Sea Crest hotel project. Respondents have no legal right to use said walkway. (R. p. 182, line 12 – p. 183, line 25; p. 358, lines 4-9; R. p. 782, Ex. 77(1)(B); R. p. 786, Ex. 77(6)(A)) The wall built by Bair is virtually on the western boundary line of the Avocet Street Extension. (R. pp. 779, Ex. 74)

B. No Evidence of Breach of State or Local Statutes

There is no evidence in the record that the state and local statutes cited by Bair would be applicable or even violated, if Bair complied with the Supplemental Order. § 48-39-320 of the South Carolina Code of Laws, 1976, simply prohibits the destruction of beach or dune vegetation seaward of the setback line. There is no evidence that any of the items to be removed are in fact seaward of the setback line, or that any of the vegetation is "beach or dune vegetation", as defined under said statute.

Under Article III, § 16-6-305 of the Town of Hilton Head Ordinance (R. pp. 863-864), there are certain standards which apply to development activities within the dune systems on Hilton Head Island. There is no evidence that the conditions of the Supplemental Order, in restoring access that had been in existence for a long period of time, would fall within the requirements of this section. Further, there is no evidence that there is an existing dune system that will be impacted by the requirements of the trial judge.

It was incumbent upon Bair to put in the record during the trial below evidence sufficient for both the trial court and subsequently this Court to determine the applicability of the statutes. As no such evidence exists, Bair's arguments should be dismissed.

**6. The Trial Judge Did Not Abuse Its Discretion in Not
Opening the Record to Allow Bair to Present Additional Testimony**

The trial judge properly denied Bair's post-trial motion, dated March 30, 2009 (R. pp. 839-851, Bair Motion to Amend Findings of Fact) to re-open the record to allow Bair's newly retained expert surveyor to present testimony. "The decision whether to reopen a record for additional evidence is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion." (cites omitted.) The trial judge is endowed with considerable latitude and discretion in allowing a party to reopen a case. Brenco v. South Carolina Department of Transportation, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008).

The sole basis for Bair's assertion that the record should be opened is that she was "misled" into believing that a witness called at trial by the Respondents, Rodney Walker was a "local surveyor" based upon the statements contained in the Respondents' Amended Pre-Trial Brief. A review of the relevant pleadings in this matter reflect that the Respondents' position that the deed was invalid because the property description did not close, the specific witnesses the Respondents intended to present to prove same, and their capacity, were clearly disclosed to Bair years before trial.

In an affidavit signed by Rodney Walker on July 21, 2006, over two (2) years prior to trial, in opposition to Bair's Motion for Summary Judgment, Mr. Walker specifically disclosed that he was "... the chief draftsman and survey manager for Rudy W. Wheeler, who has been a licensed surveyor in the State of South Carolina since July, 1978 (RLS 7263)" (R. pp. 63-70, Affidavit of Rodney Walker, ¶ 3). Mr. Walker attached to his affidavit the graph of the metes and bounds property description for the disputed deed to confirm that it did not close. This same graph was submitted by him during his testimony at trial two (2) years later in which he again

testified that he was the chief draftsman and survey manager for Rudy W. Wheeler. (R. p. 318, lines 7-17; R. p. 64.1 , Ex. 89). At no time did Bair make any effort to depose this witness nor did she present any testimony at trial from a registered surveyor, draftsman, or any other qualified individual to rebut same.

Counsel for the Respondents would admit that in its Pre-Trial Brief, which was provided to counsel at the commencement of the trial, he erroneously referred to Mr. Walker as a "local surveyor" (R. pp. 94-163, Plaintiff's Amended Pre-Trial Brief, at R. pp. 107-08) Said reference is as follows: "The property description does not close and does not describe any property. This will be confirmed by the testimony of Rodney Walker, who is a local surveyor." However, Bair cannot assert any prejudice by this unintentional mistake in the pre-trial brief since she had in her possession for over two years the sworn affidavit from Mr. Walker, which clearly stated he was a draftsman. If Bair, arguendo, believed Mr. Walker was a registered surveyor prior to trial, logic would lead to the conclusion that she would have retained an opposing expert to rebut said testimony. However, no such witness was presented. While it is possible understating the credentials of an expert during discovery could well lead to a false sense of security in opposing counsel, overstating the credentials should result in opposing counsel taking necessary steps in retaining rebuttal witnesses. In this case, if Bair's counsel thought Mr. Walker was a registered surveyor based on the statement in the pre-trial brief, counsel clearly should have retained their own surveyor for use at trial in October, 2008 and not wait some five (5) months later when filing post trial motions.

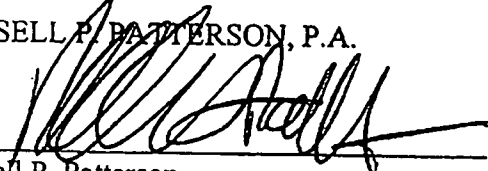
It is clear that after the trial, and after the trial judge had issued his order against Bair, Bair realized that she should have addressed this issue by competent expert testimony. This is the same scenario as the Plaintiff in Brenco was in, when the appellate court refused to allow the

Plaintiff to have a separate opportunity to present evidence on its inverse condemnation claim after it had failed on all other claims at trial. The trial judge's decision on this issue should be affirmed.

Conclusion

The elaborate scheme of Bair to file a deceptive, improper QTA, wait three years, and then build a huge iron gate and seven foot brick wall in an effort to basically steal valuable oceanfront property used for decades as a beach access for the neighborhood cannot be condoned by this Court. Just as Judge Duffy and the Fourth Circuit found, this "expertly orchestrated" sham should be completely ignored. The Avocet Street Extension and the Beach Strand Property were established by the HHCO in the early 1950's as a permanent beach access and it must be protected by the Court. Title to the Avocet Street Extension should be confirmed as held by the FBOA, subject to access easement rights in all property owners in Hilton Head Beach Subdivision No. 1. The title by all property owners in Hilton Head Beach Subdivision No. 1 to the Beach Strand Property should be established by this Court under the Statute of Uses. Bair should be required to remove the gate, seven (7') wall, columns and other landscaping items to finally reopen this important beach access, as ordered by the trial judge. Just as President Reagan told Gorbachev, this Court needs to tell Bair, "Ms. Bair, tear down this wall!"

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November 12, 2010

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr.
Special Referee

Case No. 2004-CP-07-2036

Forest Beach Owner's Association,, Inc.,
and Trevor Howard, ... Respondents,

v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, ... Appellant.

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INTRODUCTION

Final judgments were entered in the underlying quiet title action on January 25, 1999, and May 19, 1999, a certified copy of each was duly recorded in the public records of Beaufort County on February 9, 1999, and May 27, 1999, respectively. (R. pp. 697-699, 66-67).

Forest Beach Owner's Association, Inc. ("FBOA") was incorporated October 6, 2000. (R. pp. 667-668). FBOA did not exist at any time during the pendency of the quiet title action. Since it did not then exist, it cannot claim prejudice by not having been named as a party to that action, a fact that appears to have eluded FBOA and the trial court.

FBOA bases its claim on a quitclaim deed from Property Research Holdings, Inc. ("Property Research") dated May 23, 2001, and recorded on July 25, 2001 (R. pp. 678-684), two years after Bair was found to be the fee simple owner of the segment of Avocet Street abutting the Lot 5 and the adjacent Strand Block. The property in which FBOA claims an ownership interest is the same property of which Bair was found to be fee simple owner; it was differently described. In either case, since Property Research had nothing to quitclaim, FBOA acquired nothing.

Notwithstanding FBOA's assertion to the contrary, this

action was commenced on November 15, 2004, not 2001 as FBOA states. (R. p. 24). Moreover, it was not until June 15, 2007, eight years later, when Trevor G. Howard ("Howard") was added as a party, that any individual lot owner asserted a right to use Avocet Street or the adjacent Strand Block. (R. p. 45). To date, no other lot owner has come forward.

ARGUMENT

1. RESPONDENTS' CLAIMS ARE TIME BARRED.

When the underlying quiet title action was commenced in 1998 and judgments were entered on January 25, 1999, and May 19, 1999, only Bair and Property Research claimed an ownership interest in the segment of Avocet Street abutting Lot and the adjacent Strand Block. Appropriately, only Bair and Property Research were parties.

Since FBOA was not incorporated until October 6, 2000, it could not have been a party to the 1999 quiet title action. FBOA's claim to an ownership interest is based on a quitclaim deed executed by Property Research on May 23, 2001, and recorded in July 25, 2001, over two years after entry of the judgments in the quiet title action that found Bair to be the fee simple owner of the segment of Avocet Street abutting Lot and the adjacent Strand Block.

Moreover, FBOA did not assert an ownership interest in the property until June 15, 2007, when it filed the second

amended complaint, over eight years after entry of the judgments in the quiet title action.

John Snodgrass, then FBOA's president, testified that FBOA became, aware of the quiet title action "in 2004, at the onset of this suit." (R. p. 182). Yet, it waited from November 15, 2004 (commencement of "this suit") until June 15, 2007, to assert an ownership interest in the property.

As previously argued, S.C. Code Ann. § 15-67-90 is clear and unequivocal:

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

Since this action was not commenced within the statutory three year period, the order on appeal must be reversed. Robinson v. Estate of Eloise Pinckney Harris, Op. No. 28262 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearhouse Adv. Sh. No. 32 at 108); Robinson v. Estate of Eloise Pinckney Harris, Op. No. 28263 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearhouse Adv. Sh. No. 32 at 123); Robinson v. Estate of Eloise Pinckney Harris, Op. No. 28264 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearhouse Adv. Sh. No. 32 at 138);

Robinson v. Estate of Eloise Pinckney Harris, Op. No. 28265 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearhouse Adv. Sh. No. 33 at 13).

In the Robinson opinions, the supreme court found that it "must determine whether section 15-97-90 constitutes an 'absolute bar' to Petitioner's action or whether Petitioner's claim of extrinsic fraud supersedes this statute of limitations" and then stated:

"A judgment may be set aside on the ground of fraud only if the fraud is 'extrinsic' and not 'intrinsic.'" Hagy [v. Pruitt], 339 S.C. [425] at 431, 529 S.E.2d [714] at 717 [(2000)]. Extrinsic fraud is "'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" Id. at 431, 529 S.E.2d at 717-18 (quoting Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). "[R]elief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action." Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003). If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief from the judgment. Center v. Center, 269 S.C. 367, 373, 237 S.E.2d 491, 494 (1977).

Since FBOA had yet to be incorporated when the judgments were entered in the quiet title action, it cannot assert that it was deprived of the opportunity to be heard.

In its Robinson opinions, the supreme court further stated:

As evidenced by our decision in Hagy, this Court recognized that the doctrine of laches would be applicable in determining whether an action is time-barred even if extrinsic fraud is established. Hagy, 339 S.C. at 431 n. 7, 529 S.E.2d at 717 n. 7 (discussing the one-year statute of limitations for a collateral attack on an adoption decree and stating "[a]lthough not an issue in this case, the doctrine of laches will apply in determining whether such an action is barred"). We believe the instant case presents such a scenario.

* * *

The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "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." Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 199, 371 S.E.2d at 528.

While the period here is shorter than the thirty-nine years in Robinson, FBOA's delay in waiting over five years until November, 15, 2004, to commence this action and in waiting over eight years until June 15, 2007, to assert a claim to an ownership interest was unreasonable. Thus, any claim that FBOA might have had is barred by laches. Similarly, any claim that Howard might have had is also

barred by laches.

For over twenty-six years, Bair has been in continuous possession of Lot 5, together with the abutting segment of Avocet Street and the adjacent Strand Block. Since her acquisition of the property in April 1984, she has maintained and improved it to the betterment of the neighborhood. She has seen a small family motel razed to be replaced by a multistoried condominium complex that dwarfs her home. Yet, FBOA and Howard apparently prefer harming her, rather than acknowledging that she would be unfairly prejudiced if Judge Kemmerlin's order were affirmed.

For these reasons, Respondents' claims are time barred.

2. TITLE TO THE SEGMENT OF AVOCET STREET ABUTTING LOT 5 VESTED IN ITS OWNER UPON RECORDING THE SUBDIVISION PLAT.

Relying in part on Witter v. Harvey, 1 McCord 67, 12 S.C.L. 67 (S.C. Const. App. 1821), Professors Patton and Palomar, in their treatise on land titles, state:

It is the general rule to construe . . . conveyances [of land adjoining a right of way] to carry the title to the center of the right of way, subject to the public easement, provided the grantor at the time owned to the center, and no words of specific description show a contrary intent. The rule naturally includes not only roads and streets, but also alleys. If the thoroughfare is laid out on an owner's land along the margin of the land so that nothing is owned beyond the margin, a conveyance of the land or of a lot bounded on the street also carries the fee title to the entire street, alley, or highway.

In order to come within the rule, the conveyance need not describe the land as bounded by a street or highway, provided it is actually so bounded. Nor is the presumption of intention to include the grantor's title in the street necessarily overcome by a description by metes and bounds that stops at the side of the street. When the description is by a lot of a plat that shows the lot to be bounded by a highway, street, or alley, then the grant extends to the center of the public way, if the grantor owns that far, in the absence of a clear intention to the contrary.

Here, the plat of the subdivision shows no retained interest by its developer, Hilton Head Company ("HHC"). To the contrary, HHC simply developed the subdivision and never looked back.

Bair has always assumed that she acquired the abutting segment of Avocet Street and adjacent property when she acquired Lot 5. While the quiet title action was based in part on adverse possession, she already had title to the abutting and adjacent property. The quiet title action only confirmed that which she already owned.

At the trial before Judge Kemmerlin, Mr. Austin was called as a witness by Respondents and adopted, for all purposes, his prior testimony in the trial before Judge Duffy. (R. p. 315). In response to a question by Mr. Wood in that trial, Mr. Austin replied, "Now, you know as well as I to that the title to Avocet is vested in the abutting landowners." (R. p. 495.35, lines 23-24).

Moreover, Mr. Austin expressed the same opinion in

response to a question by Respondents' counsel: "[I]n my opinion the fee simple title to the street always was in the abutting land owner." (R. pp. 307, line 23 - p. 308, line 1). Consistently Mr. Austin expressed his opinion that any co-tenant would be presumed ousted. (R. p. 308, lines 7-20).

Respondents apparently overlooked these opinions when they argued that Bair's common law claim to the abutting and adjacent property was "not asserted at trial" and was "raised for the first time under Rule 59(e), SCRCp."

Even without the quiet title action or the quitclaim deed from Property Research, fee simple title to the segment of Avocet Street abutting Lot 5 and the adjacent Strand Property was vested in Bair. Absent adverse possession, Bair cannot be divested of that fee simple title.¹

3. AVOCET STREET IS NOT A PARK.

Respondents' argument that Avocet Street and the area seaward to the mean high water mark is a "park" is confusing. First, the plat shows Avocet Street to be a

¹Respondents apparently misread Andrews v. McDade, 201 S.C. 24, 21 S.E.2d 202 (1942). The Andrews court did not say, as argued by Respondents, that on abandonment title reverted to the center of the roadway reverts to the adjoining property owners. The Andrews court said, "It is well settled . . . that in the event of the abandonment of a public highway, title thereto to the center of the road remains vested in the abutting property owners on either side. . . ." This is illustrative of Bair's position that the abutting lot owners always had fee simple title to Avocet Street.

street. Second, Avocet Street does not extend to the mean high water mark; it extends to a line extending from the front lot lines to the boundary of the subdivision. The area seaward of Avocet Street is not in the subdivision.

Accordingly, this area is not affected by the covenants. If it were, Respondents would have no basis for seeking removal of the vegetation that is so vital to the environment and stabilizing the dunes: Parks are to be landscaped and maintained for the beautification of the island. (R. p. 531).

4. THE DESCRIPTION OF THE PROPERTY AS STATED IN THE FINAL JUDGMENTS ENTERED IN THE QUIET TITLE ACTION AND THE QUITCLAIM DEED FROM PROPERTY RESEARCH TO BAIR CORRECTLY DESCRIBES THE PROPERTY.

The only criticism of the description in the final judgments and quitclaim deed was by Rodney Walker. Contrary to Mr. Walker's opinion, the description closes. Since Mr. Walker made no inquiries to identify the property, it is doubtful that he acted in good faith or was a "person of ordinary prudence." Brownlee v. Miller, 208 S.C. 252, 37 S.E.2d 658 (1946). But, of course, he was a draftsman, not a licensed surveyor who would be subject to ethical and professional standards.²

²Not surprisingly Respondents objected to Bair's reopening the case to present the testimony of a licensed surveyor. Respondents, as did the trial court, overlooked that in response to questioning by Respondents' counsel, Mr. Austin,

Respondents' argument regarding the validity of the descriptions is disingenuous. Each has a definite point of beginning and a definite ending point: the point of beginning; ergo it closes, despite the northerly or easterly commentary.

5. REFORMATION IS AN APPROPRIATE EQUITABLE REMEDY.

The uncontroverted testimony establishes that Property Research mistakenly included the segment of Avocet abutting Lot 5 and the area seaward to the mean high water mark in the quitclaim deed to FBOA. (R. pp. 345-347). The deed was a gift. (R. p. 601). FBOA paid nothing. Bair was in possession. No inquiry was made of her. No third parties are involved. The description in the quitclaim deed to FBOA is not reflective of descriptions in other documents that were part of the settlement package between Property Research, Town of Hilton Head, and FBOA that omitted the Avocet property. (R. p. 347).

FBOA has simply taken advantage of an obvious mistake and now seeks to be unjustly enriched at Bair's expense.

"[E]quitable relief is available where the parties acted under a mistake of fact going to the essence of the

an attorney, stated the obvious: He had reviewed the description in the deed from Mr. Guscio (Property Research) to Bair (R. pp. 774-777) and that there was no error in the description and that it closed (R. p. 301).

particular transaction, but not if the mistake was one of law." In re Estate of William D. Holden, 343 S.C. 267, 278-79, 539 S.E.2d 703, 709 (2000). Consistently, First Palmetto Savings Bank v. Patel, 344 S.C. 179, 183-84, 543 S.E.2d 241, 243 (Ct. App. 2001) is instructive:

Equitable principles may be applied to cancel a mortgage satisfaction. Specifically, "'when the legal rights of the parties have been changed by mistake, equity restores them to their former condition, when it can be done without interfering with any new rights acquired on the faith and strength of the altered condition of the legal rights, and without doing injustice to other parties.'" Thus, a mortgage that has been mistakenly satisfied may be reinstated only where there is no third party who, without notice of the mistake, subsequently and in good faith acquires an interest in the property.

Bair was a stranger to the settlement between Property Research, Town of Hilton Head, and FBOA. (R. pp. 592-599). Unfortunately, she is being prejudiced by it.

Accordingly, equity demands that the portion of the quitclaim deed under which FBOA claims an interest in the segment of Avocet abutting Lot 5 and the area seaward to the mean high water mark be reformed and cancelled.

6. STATUTE OF USES.

In view of Respondents' concession that the trial court erred in finding that FBOA hold title to the Beach Strand Property (Strand Block), Bair maintains her argument in her initial brief.

7. RESPONDENTS' BRIEF LACKS THE PROFESSIONALISM AND
CANDOR EXPECTED OF COUNSEL IN 2010.

Generally, counsel for Bair would refrain from commenting on the vicious and unprofessional comments by Respondent's counsel. So that Bair cannot be considered to have acquiesced in their content, the following observations are randomly made:

Notwithstanding suggestions to the contrary, only Property Research had asserted an ownership interest adverse to Bair in Avocet Street, the area seaward of Avocet Street, and the Strand Block adjacent to Lot 5. Accordingly, Property Research was the only indispensable party to the underlying quiet title action.

FBOA had yet to be incorporated when the quiet title action was commenced and final judgments were entered.

FBOA appears to have overlooked the following exchange between Bair's counsel and Mr. Snodgrass, then president of FBOA:

BY MR. STEPP:

Q Let's look at Exhibit 24. It shows that's the deed from Property Research Holdings from --
Mr. Snodgrass, this deed -- and I'll give you a minute to get there.

A (Witness complied.) Okay.

Q All right. You with me?

A Yeah.

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A (Witness complied.) Okay.

Q All right. You with me?

A Yeah.

Similarly, FBOA overlooks that Bair was in possession of the area abutting and adjacent to Lot 5 and, as her predecessors before her, was using the area as her driveway. Yet, FBOA, oblivious to Guscio's statement, failed to inquire of Bair as to her interest in the area.

The vegetation in the Avocet Street right-of-way and its seaward area prevented direct access to the beach, despite Howard's testimony to the contrary. (R. pp. 780-781).

The beach access path shown on the plat attached to the complaint in the quiet title action is not defined, nor capable of being defined; it has no beginning or end and barely touches the Avocet Street right of way. (R. p. 690).

"Neighborhood" is a vague term for which the record contains no definition.

The action brought against Bair by Forest Beach Association related to Subdivision No. 2, not Subdivision 1. (R. p. 727).

Forest Beach Association never claimed an ownership interest in Avocet Street or the area abutting and adjacent to Lot 5. Thus, it would have been improper to have named it as a party to the quiet title action.

No lot owner, other than Howard, who was asked by FBOA's counsel to be a party, has asserted a right to use

Avocet Street. (R. p. 261).

With regard to the federal coverage action, FBOA incorrectly states Judge Duffy's ruling. Judge Duffy did not use the word "sham." Moreover, when this case was heard by Judge Kemmerlin, an appeal of Judge Duffy's order was pending. Appropriately, Mr. Austin declined to comment on Judge Duffy's rulings. Moreover, Judge Kemmerlin took Judge Duffy's order subject to objection stating that he had "not made up [his] mind on it." (R. p. 147, lines 4-6). Judge Kemmerlin's final order makes no mention of Judge Duffy's order. Judge Duffy's order was not admitted in evidence. FBOA could have no reason, other than attempting to unfairly prejudice Bair, for even mentioning Judge Duffy's order, especially since it was not admitted into evidence.

Likewise, FBOA's accusation of Bair's filing a false affidavit has no place in this appeal. (R. pp. 702-703). First, Bair's affidavit is correct: The only person or entity that claimed an ownership interest in the property was Property Research; it was named as defendant; thus, if any other person or entity that might have been claiming an ownership interest, its name was unknown. Second, whether or not a person or entity might object or not object cannot be the basis for naming or not naming either as a party. The accuracy of the affidavit is corroborated by their having

been no challenge by anyone other than Howard, who was asked to be a party by FBOA's counsel and added as a party in 2007, seven years after entry of judgment in the quiet title action. (R. p. 261).

At trial, FBOA's counsel was scolded by Judge Kemmerlin for making similar derogatory remarks. (R. p. 288, line 20 - p. 289, line 21). Apparently, he has yet to learn. He persists in using such terms as "deceptive" and "steal." See Dial v. Niggel Associates, Inc., 133 S.C. 253, 509 S.E.2d 269 (1999); Major v. Alverson, 183 S.C. 123, 190 S.E. 449 (1937). Under the circumstances, FBOA would have no reason for making these comments or accusations, except in an attempt to impugn Bair's character and arouse prejudice against her.

FBOA's criticism of the selection of James B. Richardson, Jr. as guardian ad litem is likewise unfounded. At the time of his selection, Mr. Richardson was a respected member of the Beaufort and Richland County bars. Again, FBOA's unfair attacks are without merit.

This is not a difficult case. The facts are simple. Resort to unprofessional conduct has no place in its presentation.

CONCLUSION

For the reasons stated in this reply and the initial brief, this Court should reverse the judgment of the circuit court.

November ____, 2010

Respectfully submitted,

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Attorneys for Appellant

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**

Forest Beach Owner's
Association, Inc., and Trevor
Howard, Respondents,

v.

Carolyn S. Austin, formerly
known as Carolyn S. Bair, Appellant.

Appeal From Beaufort County
Thomas Kemmerlin, Jr., Special Referee

Unpublished Opinion No. 2012-UP-217
Heard March 13, 2012 – Filed April 4, 2012

AFFIRMED

Robert E. Stepp, of Columbia, and Thomas A.
Pendarvis, of Beaufort, for Appellant.

Russell P. Patterson, of Hilton Head Island, for
Respondents.

PER CURIAM: Forest Beach Owner's Association brought suit against Carolyn S. Austin to assert its claim of ownership over real property on Hilton Head Island. Austin defended claiming superior title by a 1998 default judgment and 2000 quitclaim deed, arguing the statute of limitations barred Forest Beach's claim. The special referee found Austin intentionally failed to serve Forest Beach with notice of her 1998 quiet title action. Accordingly, the referee found Forest Beach owned the property and ordered Austin to remove improvements. We find the referee ruled correctly in all respects, and affirm. See Investors Title Ins. Co. v. Bair, 2007 WL 6738625 (D.S.C. 2007), aff'd, 296 F. App'x 332 (4th Cir. 2008) ("[T]he court finds Mrs. Austin had actual knowledge that all lot owners in the Hilton Head Subdivisions owned an easement interest in the streets of their respective Subdivisions, including Avocet Street in Subdivision No. 1. . . . [A]lthough Mrs. Austin knew that all Subdivision No. 1 lot owners owned an easement across Avocet Street, she and her husband took possession of the beach access property by hostile and adverse means and then brought an adverse possession lawsuit in which she failed to name parties that she knew had an interest in the property in dispute."). Additionally, Austin contends the referee erred in ordering her to remove improvements from the property because removal would violate section 48-39-310 of the South Carolina Code (2008). Section 48-39-310 states: "The destruction of beach or dune vegetation seaward of the setback line is prohibited unless there is no feasible alternative." We disagree with Austin and affirm the referee's order of removal because Austin did not show that the vegetation she must remove is located on the beach or dune seaward of the setback line.

AFFIRMED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr., Special Referee

Case No. 2004-CP-07-2036
Unpublished Opinion No. 2012-UP-217

Forest Beach Owner's Association, Inc.,
and Trevor Howard Respondents,

v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair,.. Appellant.

PETITION FOR REHEARING

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Attorney for Appellant, Carolyn S. Austin

ARGUMENT FOR REHEARING

Pursuant to Rule 221, SCRCP, Appellant, Carolyn S. Austin respectfully petitions the Court for rehearing on the Opinion issued on April 4, 2012, affirming the special referee's order finding that Respondent, Forest Beach Owner's Association, owned the property in question and ordering Ms. Austin to remove certain improvements. Respectfully, Appellant believes the Opinion overlooked or misapprehended one particular point of law with regard to the superiority of deeds in the chain of title.

I. APPELLANT'S DEED IS SUPERIOR TO SUBSEQUENT DEED TO RESPONDENT.

The undisputed facts establish that Property Research Holdings, Inc. (PRH) conveyed all interests in the subject lots (Lot A and Lot AA) to Appellant by Quit Claim Deed dated March 8, 2000 (R. 774-76), over a year prior to PRH's deed conveying property and easements on other Forest Beach property to Respondent. (R. 601-609). Clearly, PRH could not have conveyed any title to Lot A or Lot AA to Respondent after it had conveyed title to Appellant. Therefore, Appellant's deed to Lot A or Lot AA is superior in the chain of title to the deed PRH later conveyed to Respondent.

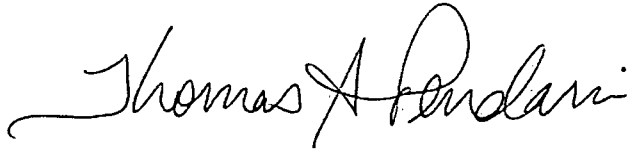
Appellant respectfully suggests this Court's Opinion overlooked or misapprehended the superiority of Ms. Austin's deed to the property over the later subsequent deed for other property PRH conveyed to Respondent. In addition, the Court's Opinion fails to address the fact that Appellant still has an ownership interest in the property and removal of the gate alone would allow those owners of lots entitled to use the easement with access to the easement without the removal of vegetation vaguely referenced in the trial court's order.

CONCLUSION

Based upon the foregoing, Appellant, Carolyn S. Austin, respectfully requests this Court grant her petition for rehearing.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

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Attorney for Appellant, Carolyn S. Austin

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April 10, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr., Special Referee

Case No. 2004-CP-07-2036
Unpublished Opinion No. 2012-UP-217

Forest Beach Owner's Association, Inc.,
and Trevor Howard Respondents,

v.

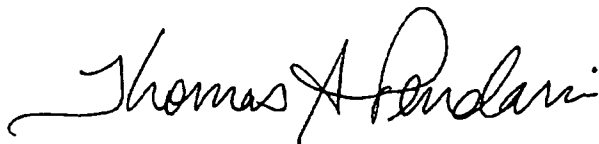
Carolyn S. Austin, formerly known as
Carolyn S. Bair, ... Appellant.

CERTIFICATE OF SERVICE

I, Thomas A. Pendarvis, J.D., attorney for Appellant, certify that I have served one (1) copy of PETITION FOR REHEARING on counsel for Respondents, Russell P. Patterson, J.D., by depositing one copy of the same in the United States Mail, postage prepaid, on April 10, 2012 addressed to Russell P. Patterson, J.D., PO Box 8047, Hilton Head Island, SC 29938.

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SC Court of Appeals

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with the first name "Thomas" and last name "Pendarvis" clearly legible.

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April 10, 2012

Beaufort, South Carolina

The South Carolina Court of Appeals

Forest Beach Owner's Association, Inc.,
and Trevor Howard,

Respondents,

v.

Carolyn S. Austin, formerly known as
Carolyn S. Bair,

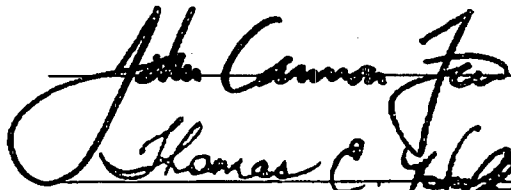
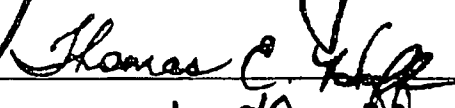
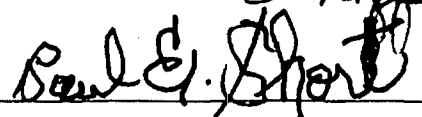
Appellant.

The Honorable Thomas Kemmerlin, Jr.
Beaufort County
Trial Court Case No. 2004-CP-07-02036

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.

 C. J.
 J.
 J.

Columbia, South Carolina

cc: Thomas A. Pendarvis
Russell P. Patterson

FILED

11 May 2012