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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Judge
Trial Court Case No. 2016-CP-41-00153

Appellate Case No. 2024-000836

Carr Farms, Inc. and Titan Farms, LLC, ... Appellants,

v.

Susannah Smith Watson, Carson M. Watson,
and Jane Watson, ……..……Respondents.

APPENDIX

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Judge
Trial Court Case No. 2016-CP-41-00153

Appellate Case No. 2021-000659

Carr Farms, Inc. and Titan Farms, LLC, ... Appellants,

v.

Susannah Smith Watson, Carson M. Watson,
and Jane Watson, ……..……Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SALUDA	)	CASE NUMBER: 2016-CP-41-153
CARR FARMS, INC. AND TITAN FARMS, LLC	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	ORDER DENYING PLANTIFF'S AND DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGEMENT
	)	
SUSANNAH SMITH WATSON, CARSON M. WATSON, AND JANE WATSON,	)	
	)	
Defendants.	)	
	)	

This matter came before me on the 30th day of July, 2018 pursuant to cross motions for Partial Summary Judgement filed by both the Plaintiffs as well as the Defendants. The Plaintiffs were represented by Jonathan M. Milling, Esq. and the Defendants were represented by Daniel L. Draisen, Esq. of Krause, Moorehead and Draisen, P. A. The Court has carefully reviewed the record in this matter and while the arguments of counsel for both sides are well crafted, it does appear that there is a genuine dispute between the parties as to the nature, application and interpretation of the facts that each side is apparently relying upon. Based upon the aforementioned, the Court is inclined to deny the Plaintiffs' as well as the Defendants' Motion for Partial Summary Judgement. Marietta Garage, Inc vs. South Carolina Department of Public Safety, 337 S.C. 133 (1999).

Greenville, South Carolina
September 17, 2018

Alex Kinlaw, Jr.
Circuit Court Judge

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STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	Docket No. 2016-CP-41-00153 **ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court on July 30, 2018 pursuant to cross-Motions for Partial Summary Judgment filed by both the Plaintiffs and Defendants. The Plaintiffs were represented by Jonathan M. Milling, Esq. and the Defendants were represented by Daniel L. Draisen, Esq. of Krause, Moorhead and Draisen, P.A. Defendants' Motion is hereby **GRANTED**, and Plaintiffs' Motion is **DENIED.**

PROCEDURAL BACKGROUND

The Plaintiffs filed their Complaint on July 20, 2016 alleging, among other things, that Plaintiffs are entitled to: (1) a permanent injunction prohibiting Defendants from making false and slanderous statements about Plaintiffs; (2) a declaration that Plaintiffs are entitled to use the water from a pond that is partially located on their respective properties and partially on Defendant Susannah Smith Watson's ("Watson") property without limitation, and (3) damages for alleged defamation.

The Defendants filed their initial Answer on August 16, 2016 denying the allegations of the Plaintiffs' Complaint. Defendants then filed several Amended Answers and Counterclaims, including a Third Amended Answer and Counterclaims on October 10, 2017 asserting, among other things, that Defendants are entitled to: (1) a declaration that Defendant Watson is entitled to exclusive use and control of the water from the pond partially located on Plaintiff Titan Farms, LLC's ("Titan") property; (2) damages for trespass and for conversion of the water; (3) a declaration that so long as any portion of the Carr Farms, Inc.'s ("Carr") property is flooded,

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Plaintiff Carr may only use so much of the water as floods the Carr property and any use by Carr of the water from the pond must be reasonable in light of Defendants' otherwise exclusive right to impound and to use the water from the pond; and (4) that Plaintiffs' use of their property for a peach growing operation has caused the introduction of chemicals and pesticides into the soil and groundwater resulting in environmental damages and personal injuries to Defendant Watson.

On January 3, 2018, Defendants filed their Motion for Partial Summary Judgment as to their First and Fourth causes of action as stated in their Second Amended Answer and Counterclaim relating to Titan and Carr use of water. Defendants allege there are no genuine issues of material fact as to those claims and they are entitled to judgment as a matter of law. Thereafter, on February 2, 2018 Plaintiffs filed their response to Defendants' Motion and a Cross-Motion for Partial Summary Judgment as to the First, Third and Fourth Causes of Action as stated in Defendants' Second Answer and Counterclaims.

FACTUAL BACKGROUND

The following facts are not in dispute, with all parties outlining the same factual recitation. Those facts are as follows:

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette ("Bonnette") granted, bargained, sold and released unto F. Broadus Smith ("Smith"), his heirs and assigns:

> All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; Bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and Bounded on the West by lands now or formerly owned by Charles Abney.
>
> . . .
>
> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of the same.
>
> Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

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> To Have and To Hold all and singular the premises before mentioned unto the said F. Broadus Smith, his Heirs and Assigns forever.

Jt. Exh. 3. The October 1, 1960 conveyance from Bonnette to Smith was properly recorded in the office for the Clerk of Court for Saluda County, South Carolina on or about October 3, 1960 in Deed Book 50 at page 291 ("Smith Transfer"), and has been assigned tax map number 150-00-00-017 by Saluda County, South Carolina ("Smith Property").

Upon F. Broadus Smith's ("Smith") death, his property was left to his wife, Eliza S. Smith, for and during her natural life, and upon her death to his children Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson. See Deed of Distribution dated November 27, 1993, Jt. Exh. 8. On or about December 3, 2014, for valuable consideration, John F. Byrd, Jr., Special Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly owned by Smith. Jt. Exh. 18. Susanna Smith Watson ("Watson") is the daughter and heir of Smith and is the current owner of the property formerly owned by Smith. The property is more particularly described and shown on the plat prepared for Heirs of Broadus Smith dated December 3, 2013. Jt. Exh. 17. Watson is the sole owner of the property.

No water was impounded, nor dam constructed, at the time of the Smith Transfer in 1960. There is no evidence of when the dam was actually constructed; however, in 1970 it appears that Smith began construction. On or about September 21, 1970, Smith and D.C. Abney ("Abney"), the owner of the property to the West of Smith, entered into an Agreement in which it is acknowledged that Smith was constructing a pond on his property that "will back over and upon the lands of D.C. Abney." In the Agreement, Abney granted Smith the right to flood approximately one acre of Abney's property ("Abney Property"). In exchange for Abney allowing the flooding of one acre of his property, Smith granted to Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond." Jt. Exh. 4. Additionally, the rights granted to both parties based upon mutual promises were binding on the heirs, assigns, executors and administrators of both Smith and Abney. *Id.* A plat dated January 6, 1971, reflects the existence of the pond and dam at that time, and further shows the parameters of the pond extending upon lands owned by Abney and Bonnette as allowed in Bonnette's transfer of property to Smith. Jt. Exh. 5.

On or about May 25, 2010, the Abney Property was conveyed to Carr, with said Deed

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being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 913 at page 276. Jt. Exh. 15. A portion of the Abney Property owned by Carr remains flooded today. Carr, as the current owner of the Abney Property and assignee of Abney, has the authority and consent to use "said water from said pond" pursuant to the terms of the Agreement. Defendants' acknowledge Carr has a right to use water from the subject pond. The issue in this matter is how much water Carr may use.

After the dam was constructed, on or about March 22, 1976, Bonnette conveyed to Jean B. Holston ("Holston") property on the south and east of the Smith Property by Deed recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 76, page 148 ("Holston Transfer"). Jt. Exh. 6. The Deed conveyed 117 acres to Holston and does not reference the existence of any easement granted to Smith. Subsequently, through a series of deeds, Titan became the current owner of the Bonnette property conveyed to Holston, along with other land, by Deed dated January 24, 2012 and recorded in Saluda County at Deed Book 966, page 104. Jt. Exh. 16. A portion of the Bonnette Property, of which Titan is now the title owner, remains flooded today. Upon review of the chain of title between the Holston Transfer and the conveyance of the same property to Titan (attached to Plaintiffs' motion), no reservation of an easement to the pond at issue, or the exclusive use thereof, is mentioned or revealed in any of the deeds.[1]

The parties come before the Court seeking a declaration as to the rights of Titan, the owner of the Bonnette property, to use the pond. Additionally, Defendants seek a declaration regarding the parameters or use of water by Carr.

SUMMARY JUDGMENT STANDARD

South Carolina Rules of Civil Procedure Rule 56 provides that summary judgment:

> shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment

[1] The documents do not reflect a complete chain of title. However, the parties agree that Titan is the current owner. Based upon the records presented, this Court cannot state definitively that there is no reservation of an easement related to the pond in any deed in the chain of title.

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in his favor as to all or any part thereof. Rule 56(b), SCRCP. Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *See Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-209 (Ct. App. 2012) (*citing Fleming v. Rose*, 567 S.E.2d 857, 860 (2002)). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *Id.*, 732 S.E.2d at 209 (*citing Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Id.* (*quoting Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)). In the instant matter, it does not appear that the parties disagree on the actual facts at issue here, but rather have differing views on the interpretation of such facts and the application of South Carolina law to those facts.

LEGAL ANALYSIS

1. DEFENDANTS' FIRST CAUSE OF ACTION

The First Cause of Action in the Defendants' Counterclaim seeks a declaration that Watson has the exclusive right to impound and to use the water above her property located on the former Bonnette property, now owned by Titan. She also seeks a declaration that Titan has no right to use the water on that portion of its property because it is bound by the easement granted to Smith, his successors, heirs and assigns.

The remainder of the property owned by Bonnette, relative to this action, was ultimately deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick ("Frick") on January 24, 2012. Jt. Exh. 16. The property was transferred by Frick to Titan and is more particularly shown on the boundary survey prepared for Carey E. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. Jt. Exh. 12.

Watson asserts that Titan, as successor in interest to title to the Bonnette property, is subject to the conveyance made by Bonnette to Smith, his heirs and assigns, in the 1960 deed. Titan denies this claim. The dispute between the parties centers on whether the easement recited in the deed is an appurtenant easement or an easement in gross. "An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720

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(1971) (citations omitted). "An easement is therefore not an estate in lands in the usual sense." *Id*. The South Carolina Supreme Court distinguished between the types of easements, stating:

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

Tupper v. Dorchester County, 326 S.C. 318, 325-326, 487 S.E.2d 187, 191 (1997).

An easement may be created by reservation in a deed. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Wayburn v. Smith*, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-2 (1987).

Further, in determining the grantor's intent regarding an easement, the intention must be found within the four corners of the deed. *Williams v. Tamsberg*, 425 S.C. 249, 259, 821 S.E.2d 494, 500 (Ct. App. 2018)(Citations omitted); *Gardner v. Mozingo*, 293 S.C. at 25, 358 S.E.2d at 392. That is, each deed or granting document must stand on its own in determining the intention of the grantor. Whether the easement is appurtenant or in gross depends on the intent of the parties at the time the deed is executed. *Proctor v. Steedley*, 398 S.C. 561, 569, 730 S.E.2d 357, 362 (Ct. App. 2012).

Accordingly, to determine Bonnette's intent regarding the granting of the appurtenant

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easement to Smith, the other documents referenced by the Plaintiffs cannot be considered. The clear language of the Bonnette deed grants to F. Broadus Smith, his heirs and assigns, the exclusive right to impound and to use the water impounded on the Bonnette property. However, the language of the deed does not control if all the elements of an easement appurtenant are not met. *Proctor*, 398 S.C. at 572, 730 S.E.2d at 363.

Plaintiffs cite to the case *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) in support of the proposition that to be an easement appurtenant the easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. Without all of these necessary elements, an easement will be characterized as one in gross. *Proctor, supra.*

Inhere in the Land

Titan asserts that the grant is a personal privilege to Smith and that it does not "inhere" or "exist as a permanent, inseparable, or essential attribute or quality of a thing". On the contrary, the dam, the pond, and the water are permanent and inseparable from the land. Plaintiffs argue that at the time the easement was granted there was no impounded water to which Smith could have used exclusively. The construction of a dam and creation of a pond to impound water was not of a temporary nature as it has endured since 1970 when it was constructed. The cost, even in 1960, to construct a dam and to create the pond was no small undertaking. The existence of the dam and pond at the time of the deed is not determinative of whether the grant was temporary or permanent. It is clear from the language of the deed that Bonnette intended for Smith to create the dam, impound the water on both their properties, use it exclusively, and control its use. Although no water was impounded at the time the easement was granted, the spring that produced water existed, and water was accessible and available to and on the property. It is apparent that Bonnette and Smith recognized and intended a dam to be constructed on the property for water to be impounded.

Concern the Premises

Plaintiffs next assert that the easement is "nondescript" as to which premises would be encumbered at the time of conveyance. However, the granting language states "… to construct a dam partially located on the premises herein conveyed [to Smith] and other lands owned by the grantor [Bonnette]." This description is sufficient to indicate that the Bonnette understood and intended that the dam would be constructed on "other lands" owned by her as well as land

granted to Smith. The parties also understood that the dam would be in the general area of the proposed location of the pond. There could not be a more precise description of the boundaries of the pond at the time of the conveyance because the boundaries had to be determined after the dam was constructed and the lands flooded. Bonnette was still living in 1970 and 1971 at the time the dam was constructed and the water impounded. If there was any concern about the pond and its boundaries, Bonnette could have raised them during the construction. The pond was present at the time she conveyed the property to Holston in 1976 and the parameters of the pond are evident in the recorded plats.

Terminus in the Land

Absence of a terminus on the dominant estate is fatal to a claim of an appurtenant easement. *Williams v. Tamsberg*, 425 S.C. at 261, 821 S.E.2d at 500. The terminus must be on the land of the party claiming the appurtenant easement. *Windham v. Riddle*, 370 S.C. at 420, 635 S.E.2d at 560. Plaintiffs argue that because there is not a start and end point or a point of ingress and egress (as in a right of way easement) there is no terminus. Terminus is defined as a "boundary; a limit, either of space or time." Black's Law Dictionary p.1319 (5th Ed. 1979). As reflected in the recorded plat, the boundaries of the impounded water clearly exist on Watson's property. There was no evidence presented that the water levels have ever dropped to a point where the pond is wholly on lands owned by Titan. There is a terminus on the land of the party claiming the appurtenant easement.

Necessary to Enjoyment

Plaintiffs also assert that because no pond existed at the time of the transfer it is not "essentially necessary to the enjoyment thereof." It can be ascertained from the express language in the recorded documents that, at the time Smith bargained with Bonnette to purchase the property, both parties knew that construction of a pond on the property would be essential to Smith's intended use of the property and his enjoyment thereof. Smith negotiated with Bonnette not only for the purchase of the acreage, but also for the grant of an easement to construct a pond and to impound water on his land and "other lands" owned by Bonnette. Considering the language of the deed in full, it is apparent that Smith was purchasing not only a portion of Bonnette's property but also the grant of the easement for the impounding of water on both properties and for the exclusive use of the water. It is also clear that Bonnette was aware that she was bargaining with Smith for him to purchase some of her land, as well as giving him the right

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to impound water on her property. She also granted him exclusive use and control of the use of the water in the pond and on her property. Both the purchase of the land and the right to create a dam on Bonnette's property in the same deed establish that the pond was essential to Smith's use and the consummation of the transaction to which Bonnette assented. If use of the pond was not essential, Bonnette would not have allowed Smith to build a dam flooding the property or exclusively control its use. The use of the water impounded on the Bonnette property was and is, by the express terms of the grant, exclusive to Smith, his heirs and assigns.

Other issues raised

Plaintiffs also assert that because Bonnette did not specifically mention the easement in subsequent transfers of her property, there was no intention that the easement in the Smith transfer be one appurtenant to the land. At the time of the Holston transfer, March 22, 1976, Smith had completed the construction of the dam that had been impounding water for several years. The construction of the dam and location of the pond would have been open and obvious to Holston at the time of purchase and in the recorded deed of Bonnette and Smith. There is no evidence that Holston took water from the pond, exercised any rights over any portion of the pond on the property, or had any agreement to use any water from the pond on the property. This is in contrast to the agreement between Smith and Abney discussed later herein, in which Smith specifically granted Abney the right to use the pond. Holston could have negotiated with Smith for use of the pond if desired.

After the construction of the dam, there is no evidence that Bonnette ever complained of any trespass or misuse of her property prior to transferring it to Holston in 1976. Bonnette had already granted exclusive right to control the pond to Smith, his heirs and assigns. The dam has now existed for a period of more than forty (40) years, and no owner or successor in title to Bonnette's property has ever asserted any action for trespass against Smith, his heirs or assigns for the location of the dam or its impounded water. Even viewing the facts as asserted by the Plaintiffs as true, Smith would have adversely possessed that portion of the property (now owned by Titan) openly, notoriously, and hostile for a period far in excess of ten (10) years and would have obtained title to same by adverse possession in the absence of any agreement.

The easement conveyed by Bonnette, as Grantor to Smith, *his heirs and assigns* as Grantee "to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of the same" is an appurtenant easement that runs with the land

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and not an easement in gross as asserted by the Plaintiffs. When legal title to the dominant estate passed to Watson, the exclusive right to use and control the water pursuant to the appurtenant easement on the Bonnette property, now Titan's property, also passed to her. In accordance with the express language contained within the four corners of the deed granting the appurtenant easement, Watson (as heir, assignee, and successor in title of Smith) has the exclusive right to use and to control the water that is impounded on that portion of property formerly owned by Bonnette, now owned by Titan.

Accordingly, Watson is entitled to a declaration from this Court that Plaintiff Titan has no common law or other right to use of the water on that portion of its property within the boundaries of the appurtenant easement as specified in the deed.

2. AS TO DEFENDANTS' FOURTH CAUSE OF ACTION

On or about September 21, 1970 Smith and D.C Abney ("Abney") entered into an Agreement regarding the flooding of approximately one acre of the Abney property. Jt. Exh. 4. Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, Smith granted to Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

The Abney Agreement contains the express provision:

> The consideration for this Agreement is the mutual promises and rights of both parties hereto and said Agreement is binding upon the heirs, assigns, executors and administrators of both parties hereto.

The property (or a large portion thereof) formerly owned by Abney was acquired by R.W. Dubose & Sons, Inc. who on or about November 1, 2001 changed its name to Carr Farms, Inc. The Abney property was deeded to Carr Farms, Inc. by Quit Claim Deed May 25, 2010, recorded in Book 913 at Page 276. Jt. Exh. 15. The property transferred to Carr is more particularly shown on the boundary survey prepared for Carr Farms, Inc. dated June 18, 2004 as recorded in the public records for Saluda County. Jt. Exh. 14. Carr, as successor in interest to title to the Abney property, is subject to the Agreement made between Abney and Smith.

The easement to flood the Abney property and the right of Abney to use the water from the pond *so long as any portion of the (formerly Abney) property is flooded* is an appurtenant easement that runs with the land. The Abney property, the land that may be flooded, is the

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servient estate and the Smith property is the dominant estate.

While Carr, as the successor in title to Abney, has the right to use water from the pond *so long as any portion of the (formerly Abney) property is flooded*, the right granted by the easement is unquestionably non-exclusive. Unlike the express language contained in the 1960 Bonnette deed, the words "exclusive" or "sole right" do not appear in the Agreement. Accordingly, there can be no legitimate dispute that the only reasonable conclusion or inference drawn from the Agreement is that Watson, as successor to Smith, and Carr, as successor to Abney, both have the right to use the water from the pond to the extent that the water floods the Abney property (and only so long as any portion of the (former Abney) property is flooded). However, each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use that portion of the water that floods the Abney property. *See White's Mill Colony, Inc. v. Williams*, 363 S.C. 117, 609 S.E.2d 811 (2005)(right to reasonable use of body of water may not interfere with like rights of those above, below or on the opposite shore). Accordingly, Watson is entitled to a declaration that the Agreement with Abney constitutes and an appurtenant easement, that such easement runs with the land, and that the easement now inures to the benefit Defendant Watson as successor in title to F. Broadus Smith.

Watson is further entitled to a declaration that both Watson and Carr have the right to use the water from the pond to the extent that it floods the Abney property and only so long as any portion of the (former Abney) property is flooded. Further, each party's use of the portion of the water that floods the property must be reasonable and not in derogation of the rights of the other party to likewise use water that floods the Abney property. Additionally, if Watson elects at any time to cease flooding any portion of the former Abney property, or if such waters are drawn down to the point where no portion of the Abney property is flooded, Carr would no longer have the right to use water from the pond.

ORDER

Based upon the public records, the pleadings, the law applicable to the easements and the undisputed facts and viewing the evidence in the light most favorable to the Plaintiffs, and Defendants' motion for partial summary judgment, there are no genuine issues as to any material facts with regard to Defendants' first and fourth causes of action.

THEREFORE, IT IS ORDERED that Defendants' Motion for Partial Summary Judgment is **GRANTED** and Plaintiffs' Cross-Motion for Summary Judgment is **DENIED**.

SIGNATURE PAGE TO FOLLOW

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Saluda Common Pleas

Case Caption: Carr Farms Inc , plaintiff, et al VS Susannah Smith Watson , defendant, et al

Case Number: 2016CP4100153

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

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STATE OF SOUTH CAROLINA COUNTY OF SALUDA CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiffs, v. SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT DOCKET NO. 2016-CP-41-00153 **ORDER ON RECONSIDERATION**

Plaintiffs, Carr Farms, Inc. ("Carr Farms" or "Carr") and Titan Farms, LLC ("Titan"), filed a Motion to Reconsider on August 5, 2019 pursuant to Rule 59(e), SCRCP, in response to the Court's Order filed on July 26, 2019 granting Defendants Motion for Partial Summary Judgment. Defendants, Susannah Smith Watson *et. al.* ("Watson"), filed a response to the Motion on August 7, 2019.

DISCUSSION

The dispute between the parties' centers on whether the easement recited in the deed is an appurtenant easement or an easement in gross. Plaintiffs contend the Court's Order did not address (1) how the "terminus" element is satisfied as to the exclusive use; and (2) the exclusive use was not "necessary to the enjoyment" as Defendants predecessor granted use to Abney, thus eliminating their exclusive use. Plaintiffs assert the easement is one in gross and not an appurtenant easement. Plaintiffs argue there was no notice to the successors as to the Titan tract. Further, there was no notice to subsequent purchasers of the easement which it claims is required if the easement runs with the land if it is an appurtenant easement.

First, it is necessary to clarify some of the background in this matter. Plaintiffs are successors in interest to two separate parcels. Carr Farms obtained property previously owned by D.C. Abney in 1970 when the agreement at issue occurred. Titan obtained property previously owned by Bonnette in 1960 when the easement was conveyed.

For convenience, some of the factual background recited in this Court's order is repeated. On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette ("Bonnette")

granted, bargained, sold and released unto F. Broadus Smith ("Smith"), his heirs and assigns:

> All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; Bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and Bounded on the West by lands now or formerly owned by Charles Abney.
>
> . . .
>
> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct *a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of the same*. [Emphasis added]
>
> Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.
>
> To Have and To Hold all and singular the premises before mentioned unto the said F. Broadus Smith, his Heirs and Assigns forever.

Jt. Exh. 3. The October 1, 1960 conveyance from Bonnette to Smith was properly recorded in the office for the Clerk of Court for Saluda County, South Carolina on or about October 3, 1960 in Deed Book 50 at page 291 ("Smith Transfer"), and has been assigned tax map number 150-00-00-017 by Saluda County, South Carolina ("Smith Property").

Upon F. Broadus Smith's ("Smith") death, his property was left to his wife, Eliza S. Smith, for and during her natural life, and upon her death to his children Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson. See Deed of Distribution dated November 27, 1993, Jt. Exh. 8. On or about December 3, 2014, for valuable consideration, John F. Byrd, Jr., Special Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly owned by Smith. Jt. Exh. 18. Susanna Smith Watson ("Watson") is the daughter and heir of Smith and is the current owner of the property formerly owned by Smith. The property is more particularly described and shown on the plat prepared for Heirs of Broadus Smith dated December 3, 2013. Jt. Exh. 17. Watson is the sole owner of the property.

At the time of the Smith Transfer in 1960, there was no dam or impounded water on any property. There is no evidence of when the dam was actually constructed; however, in 1970 it

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appears that Smith began construction. On or about September 21, 1970, Smith and D.C. Abney ("Abney"), the owner of the property to the West of Smith, entered into an Agreement in which it is acknowledged that Smith was constructing a pond on his property that "will back over and upon the lands of D.C. Abney." In the Agreement, Abney granted Smith the right to flood approximately one acre of Abney's property ("Abney Property"). In exchange for Abney allowing the flooding of one acre of his property, Smith granted to Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond." Jt. Exh. 4. Additionally, the rights granted to both parties based upon mutual promises were binding on the heirs, assigns, executors and administrators of both Smith and Abney. *Id.* This easement was recorded in Misc. Book 11, Page 199 on September 21, 1970. A plat dated January 6, 1971, reflects the existence of the pond and dam at that time, and further shows the parameters of the pond extending upon lands owned by Abney and Bonnette as allowed in Bonnette's transfer of property to Smith. Jt. Exh. 5.

On or about May 25, 2010, the Abney Property was conveyed to Carr, with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 913 at page 276. Jt. Exh. 15. A portion of the Abney Property owned by Carr remains flooded today. Carr, as the current owner of the Abney Property and an assignee of Abney, has the authority and consent to use "said water from said pond" pursuant to the terms of the Agreement. Defendants' acknowledge Carr has a right to use water from the subject pond. The issue in this matter is how much water Carr may use.

After the dam was constructed, on or about March 22, 1976, Bonnette conveyed to Jean B. Holston ("Holston") property on the south and east of the Smith Property by Deed recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 76, page 148 ("Holston Transfer"). Jt. Exh. 6. The Deed conveyed 117 acres to Holston and does not reference the existence of any easement granted to Smith. Subsequently, through a series of deeds, Titan became the current owner of the Bonnette property conveyed to Holston, along with other land, by Deed dated January 24, 2012 and recorded in Saluda County at Deed Book 966, page 104.[1] Jt. Exh. 16. A portion of the Bonnette Property, of which Titan is now the title owner, remains flooded today.

Titan re-asserts in the motion for reconsideration that it did not have notice of the easement.

[1] In the Order, this Court stated in Footnote 1 that the documents presented by the parties did not reflect a complete chain of title from Bonnette to Titan Farms. This is incorrect. A complete chain of title was presented to the Court in the Joint Exhibits, many of which have been cited by the Court.

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Upon review of the chain of title between the Holston Transfer and Titan, the easement to construct the dam to impound the water and to have exclusive use and control of the pond at issue, is not specifically mentioned. Thus, Defendant Titan did not have *actual* notice of the easement. However, the transfers within the chain clearly state the conveyance is made "subject to the following exceptions: all *easements*, reservations, rights of way, restrictions, encroachments, *plats … of record* which may affect the above-described property and those that an inspection of the property would disclose." Emphasis added.

There are several plats recorded and referenced in the Titan chain of title after the pond was constructed that show the existence of the pond. In 2002, a boundary survey prepared for Carey E. Frick clearly shows the pond overlapping three properties. The plat clearly shows property owned by R.W. DuBose & Sons, Inc. (successor in interest to Abney), property "former Broadus Smith", and Tract 1 of property subsequently purchased by Frick. See Jt. Exh. 12. The plat specifically states, "This property is subject to all easements, R/W's and restrictions of record or on the ground." The plat also references a plat prepared by C. Ashley Abel for F. Broadus Smith dated January 6, 1971 [Jt. Exh. 5].[2]

Carr Farms also had notice of the pond. Carr is the successor in interest to R.W. DuBose & Sons, Inc. A survey was prepared for Carr Farms on June 18, 2004 showing the property formerly owned by Abney. Jt. Exh. 14. The plat notes, "Carr Farms, Inc. was formerly known as R.W. DuBose & Son, Inc." The plat clearly shows the pond overlapping three parcels belonging to Elizabeth Smith, et al. and Carey E. Frick. The plat cites to Deed Book page numbers, along with other information. The plat also states, "This property is subject to all easements, R/W's and restrictions of record or on the ground and also subject to any facts that may be revealed by a full and accurate title search."

Additionally, the deed conveying the property from Bonnette to Smith is recorded. "[W]here a deed describes land as is shown as a certain plat, such becomes part of the deed." *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); *accord Lynch v. Lynch*, 236 S.C. 612, 623, 115 S.E.2d 301, 307 (1960); *Frierson v. Watson*, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006). "Both deeds and easements are valid to subsequent purchasers without notice when they are recorded." *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876 (citing S.C.

[2] The plat prepared by C. Ashley Abel for Broadus Smith only depicts Smith's property but shows the pond on Smith's property and the boundary lines for Bonnette's property and Abney's property.

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Code Ann. § 30-7-10 (Supp. 2005)). "The purpose of the recording statute is to protect a subsequent buyer without notice." *Id.* Property owners are charged with constructive notice of instruments recorded in their chain of title. *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975). Thus, Titan and Carr had notice of the existence of the easement and could have discovered it.

South Carolina courts adhere strictly to the requirements for an appurtenant easement. "While a majority of jurisdictions hold that an appurtenant easement 'must inhere in the land, [and touch and] concern the premises,' South Carolina adds the additional requirements that an appurtenant easement 'be essentially necessary to the enjoyment thereof' and 'have one terminus on the land of the party claiming it." John E. Lansche, Jr., *Ancient, Antiquated, & Archaic: South Carolina Fails to Embrace the Rule That A Grantor May Reserve an Easement in Favor of A Third Party*, 52 S.C. L. Rev. 269, 276 (2000); *see also Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375, 382 (1927). "Without the requirement of a terminus on the dominate estate or the 'essentially necessary' character, an appurtenant easement in majority jurisdictions is considered an easement in gross under South Carolina law." *Id.* Also, in South Carolina, "unless an easement has all of the essential elements of an appurtenant easement, the court will characterize the easement as an easement in gross." *Id.*

"The existence of a terminus on the land of the party claiming an easement appurtenant may be established if the easement meets certain criteria such as the dominant estate having access to the purported easement." *Williams v. Tamsberg*, 425 S.C. at 263, 821 S.E.2d at 502. Additionally, a court could find an easement appurtenant "if the purported easement (1) at least touches the dominate estate and (2) in cases where the easement is an adjacent boundary between – or runs parallel to – the dominate and servient estates." *Id.*

Plaintiffs argue the existence of the pond and the exclusivity claim are different because Defendants' claimed right to exclusive use does not "inhere in the land." This Court disagrees. The word inhere means "[to] exist in and inseparable from something else."[3] As such, the easement for the pond inhered in the land within the meaning of this definition. The September 21, 1970 Agreement between F. Broadus Smith and D.C. Abney provides:

> It is understood by and between the parties hereto that the said F. Broadus

[3] Black's Law Dictionary 782 (6th ed. 1990); *see also Majestic Theater Co. v. Lutz*, 210 Ky. 92, 275 S.W. 16, 20 (1925)

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> Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will back over and upon lands of D.C. Abney and that the said D.C. Abney does hereby grant unto the said F. Broadus Smith the rights to flood approximately one acre of land belonging to D.C. Abney provided, however, that the said D.C. Abney shall have the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond.

From its plain language, the Abney agreement made during the construction of the pond anticipates that, while during construction water impounded in the pond will back over and upon the Abney land, after completion of construction that may not continue to be the case. This agreement with Abney had nothing to do with the easement granted by Bonnette and does not, nor can it, change the nature of the easement granted by Bonnette.

To insinuate that the "pond is not permanent" merely because the pond owner could elect to lower water levels in the pond such that the water does not back up and onto the land of Abney is misplaced. The granting of use "so long as the waters back over and upon the Abney land" does not prevent the adherence of the pond property itself upon the former Bonnette property. The Abney agreement merely addresses overflow waters from the pond. The evidence before the Court is that the pond is and has been a permanent fixture on the property since 1970. There is no evidence that Mrs. Watson intends to destroy the dam, to drain the pond, or to cease using the dam that create the pond by impounding the water.

Plaintiffs further argue that the exclusive use was not "necessary to the enjoyment" as Defendants' predecessor granted use to Abney thereby eliminating their exclusive use. Plaintiffs' argument is misplaced. The impoundment of the water and the use of the pond were exclusive to Defendant. By the terms of the easement, Smith and his heirs or assigns had exclusive use and control over its use. Defendants had exclusive use and controlled the manner and method of use. Exclusivity still exists as it is Defendants decision on the use for their enjoyment. Plaintiffs also argue that because Smith waited ten years to construct the dam, it was not necessary to their enjoyment of the land. The grant of the easement clearly anticipated that a dam had to be constructed. There was no time period in which that was required. What is clear is that a dam would be constructed to impound the water over Bonnette's property and Smith's property and Smith would have exclusive control over the use of that water.

As stated on page 8 of the Court's Order, "As reflected in the recorded plat, the boundaries of the impounded water clearly exist on Watson's property. There was no evidence presented that

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the water levels have ever dropped to a point where the pond is wholly on lands owned by Titan. There is a terminus on the land of the party claiming the appurtenant easement. Furthermore, page 11 of the Court's Order provides, "In accordance with the express language contained within the four corners of the deed granting the appurtenant easement, Watson (as heir, assignee, and successor in title of Smith) has the exclusive right to use and to control the water that is impounded on the portion of property formerly owned by Bonnette, now owned by Titan."

The only extension of the right to use water from the pond to Abney was to the extent such water backed over and onto the lands of Abney, and only for as long as that occurs. Such agreement was created during the construction of the pond and had nothing to do with Smith's exclusive right to use and to control the use of the water from the pond properly located on the Smith and Bonnette property. Evidence in the record shows the ability to construct and to have a pond on the property purchased by Smith was "necessary to his enjoyment" because Smith negotiated for and paid for the ability to construct and to maintain a pond at the time he purchased his land from Bonnette.

ORDER

Based upon the foregoing, it is therefore **ORDERED** that Plaintiffs' Motion to Reconsider is **DENIED**.

AND IT IS SO ORDERED.

Signature page to follow.

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Saluda Common Pleas

Case Caption: Carr Farms Inc , plaintiff, et al VS Susannah Smith Watson , defendant, et al

Case Number: 2016CP4100153

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

FILED

2016 JUL 20 PM 3:39

CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF SALUDA	
CARR FARMS, INC., and TITAN FARMS, LLC,	Civil Action No. 2016-CP-41-153
Plaintiff	**SUMMONS**
vs.	
SUSANNAH SMITH WATSON, CARSON McBEE WATSON, and JANE BRUNSON WATSON	
Defendants.	

YOU ARE HEREBY SUMMONED and required to answer the Complaint of Carr Farms, Inc. and Titan Farms, LLC in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the attorney for Carr Farms, Inc. and Titan Farms, LLC, Milling Law Firm, LLC, 1614 Taylor Street, Suite C, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within said time, judgment by the default will be rendered against you for the relief demanded in the Complaint.

PAID

Date 7-20-16

SALUDA COUNTY
CLERK OF COURT

$ 150.00

MILLING LAW FIRM, LLC
1614 Taylor Street
Columbia, South Carolina 29201
(803) 451-7700

By:_____
Jonathan M. Milling (SC Bar No. 15628)
Attorney for the Plaintiffs

20, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF SALUDA)

FILED
2016 JUL 20 PM 3:39
CLERK OF COURT
SALUDA CO. S.C.

CARR FARMS, INC., and TITAN FARMS, LLC,) Civil Action No. 2016-CP-41- 153

Plaintiffs,)

vs.)

SUSANNAH SMITH WATSON, CARSON McBEE WATSON, and JANE BRUNSON WATSON)

Defendants.)

VERIFIED COMPLAINT

The Plaintiffs, Carr Farms, Inc. and Titan Farms, LLC, (collectively "Plaintiffs") by and through their undersigned attorney, respectfully complains of the Defendant Susannah Smith Watson and alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff, Carr Farms, Inc., is a corporation organized and existing under the laws of the state of South Carolina, with a principal place of business in Saluda County, South Carolina.

2. Plaintiff, Titan Farms, LLC, is a limited liability company organized and existing under the laws of the state of South Carolina, with a principal place of business in Saluda County, South Carolina.

3. Defendant Susannah Smith Watson is a resident of the County of Saluda, State of South Carolina.

4. Upon information and belief, Defendant Carson M. Watson is a resident of the County of Saluda, State of South Carolina.

5. Upon information and belief, Defendant Jane Watson is a resident of the County of Edgefield, State of South Carolina.

6. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

7. Venue in this action is proper in this Court.

GENERAL ALLEGATIONS
(Smith Property)

8. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

9. On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto F. Broadus Smith

> All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; Bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and Bounded on the West by lands now or formerly owned by Charles Abney.
>
> On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.
>
> The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (1/2) acre from Mrs. Hassie P. Cogburn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (1/2) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.
>
> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is

to [sic] have exclusive use and control of the same.

10. The October 1, 1960 conveyance from Mattie Lee Bonnette to F. Broadus Smith was recorded in the office for the Clerk of Court for Saluda County, South Carolina on or about October 3, 1960 in Deed Book 50 at page 291 ("Smith Transfer"), and has been assigned tax map number 150-00-00-017 by Saluda County, South Carolina ("Smith Property").

(Abney Property)

11. On October 1, 1960, D.C. Abney, together with his wife, Irene O. Abney, owned property on the western border of the Smith Property by virtue of a conveyance for valuable consideration recorded in the office for the Clerk of Court for Saluda County, South Carolina, on October 15, 1959, and recorded in Deed Book 49 at page 308 ("Abney Property").

12. The Abney Property was more particularly described as

> All that certain tract of land containing 164 acres, more or less, known as the "John Cogburn Homeplace", in Ridge Spring School District, Saluda County, SC, lying on both sides of the Columbia-Augusta Highway or State Highway #23, 1 ½ miles East of Ridge Spring on waters of Cloud Creek and bounded on the North by lands of Mrs. Annie E. Boarwright; East by lands of Mrs. Annie Boatwright, J.H. Hipp, and A.L. Bonnett; South by lands of H.G. Cogburn and Estate lands of M.H. Cogburn, deceased. Said tract is more particularly described according to a plat prepared by U.S. Nicholson, Surveyor, on the 5th day of July, 1933, as amended, which is recorded in Plat Book 4, page 6, Office of the Clerk of Court for Saluda County, SC.

13. On or about September 21, 1970, F. Broadus Smith and D.C. Abney entered into an Agreement, a true and accurate copy of which is attached hereto and incorporated herein as Exhibit A (the "Agreement").

14. Pursuant to the terms of the Agreement, F. Broadus Smith was in the process of constructing a pond on the Smith Property in September 1970.

15. Pursuant to the terms of the Agreement, F. Broadus Smith sought to flood approximately one acre of the Abney Property.

16. Pursuant to the terms of the Agreement, in exchange for D.C. Abney's grant of authority to flood approximately one acre of the Abney Property, F. Broadus Smith, his heirs, assigns, executors and administrators granted to D.C. Abney, his heirs, assigns, executors and administrators without limitation "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond."

17. On or about May 25, 2010, the Abney Property was deeded to Carr Farms, Inc., with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 913 at page 276.

18. Carr Farms, Inc., a Plaintiff in this action, is the current owner of the Abney Property.

19. A portion of the Abney Property remains flooded today.

20. Carr Farms, Inc. has the authority and consent to use "said water from said pond of F. Broadus Smith" pursuant to the terms of the Agreement.

(Bonnette Property)

21. On October 1, 1960, Mattie L. Bonnette owned property on the southern and eastern borders of the Smith Property by virtue of a conveyance for valuable consideration recorded in the office for the Clerk of Court for Saluda County, South Carolina, on or about February 4, 1944, and recorded in Deed Book 36 at page 51 ("Bonnette Property").

22. On or about March 22, 1976, the Bonnette Property was deeded to Jean B. Holston, with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 76 at page 148 ("Holston Transfer").

23. No reference is made in the Holston Transfer to any easement granted unto F. Broadus Smith.

24. No reference is made in any subsequent conveyance in the chain of title following the

Holston Transfer to any easement granted unto F. Broadus Smith.

25. Titan Farms, LLC, a Plaintiff in this action, is the current owner of the Bonnette Property.

26. A portion of the Bonnette Property remains flooded today.

27. Titan Farms, LLC has the common law right to use the water above their property.

(Littoral Rights)

28. Included in the Smith Transfer is the following

> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same.

29. The foregoing easement and reference to the impounding of water and grant of use and control to F. Broadus Smith is a mere grant of a personal privilege to use the land, and the water above land, owned by Mattie Lee Bonnette.

30. The foregoing easement is not found in the chain of title to the Bonnette Property.

31. South Carolina law provides that the fee simple owner of the pond bed, has the exclusive right to the use of the surface waters above its property and may exclude all others from access to those waters.

32. Nothing in the foregoing easement indicates an intention of conveying to F. Broadus Smith all right, title, and interest in the land underneath the lake.

33. Titan Farms, LLC, pays property taxes to Saluda County, South Carolina for the Bonnette Property, including that land underneath the subject manmade lake.

34. In the Agreement, F. Broadus Smith granted an easement to D.C. Abney, and his heirs, assigns, administrators, and executors (collectively "Assigns"), use of the lake.

35. The Agreement does not change or modify D.C. Abney and his Assigns' common law rights to use the water above the land owned by D.C. Abney.

36. The Agreement grants unto D.C. Abney and his Assigns the ability to use the water above the land owned by F. Broadus Smith and his heirs, assigns, administrators, and executors (collectively "Assigns").

37. The Agreement does not limit the ability of D.C. Abney and his Assigns to use the water above the Smith Property, and F. Broadus Smith and his Assigns have consented to any such use.

38. Based upon the foregoing, Defendant, as the current owner of the Smith Property, has the common law right to use the water above the Smith Property.

39. Based upon the foregoing, Titan Farms, LLC, as owner of the Bonnette Property, has the common law right to use the water above the Bonnette Property.

40. Based upon the foregoing, Carr Farms, Inc., as the current owner of the Abney Property, has the common law right to use the water above the Abney Property, as well as the contractual right pursuant to the Agreement to any use of the water above the Smith Property.

41. Despite the foregoing, Defendant has impeded, interfered with, infringed upon and otherwise attempted to preclude the rights of Carr Farms, Inc. and Titan Farms, LLC to use the subject water.

42. Plaintiffs have suffered harassment, annoyance, and now defamation at the hands of Defendants.

43. Plaintiffs continues to suffer harassment, annoyance, and defamation until Defendants' actions are stopped.

44. This action is ripe for adjudication.

FOR A FIRST CAUSE OF ACTION
(INJUNCTION AS TO ALL DEFENDANTS)

45. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

46. Despite the right and authority of the Plaintiffs to use the water from the subject pond, Defendants have initiated frivolous, inaccurate, and fraudulent claims against Plaintiffs regarding Plaintiffs' use of the water.

47. Defendants have frivolously, inaccurately, fraudulent and falsely made defamatory statements about Plaintiffs, and claimed Plaintiffs are "illegally" using the pond water.

48. Defendants' claims are false and defamatory per se.

49. Defendants have published these false representations to third parties.

50. Defendants have further harassed Plaintiffs, attempting to preclude and interfere with Plaintiffs' rights to use the subject pond and thereby caused Plaintiffs to suffer harassment, annoyance, and a loss of reputation as a result of Defendants' actions.

51. Plaintiffs continue to suffer harassment and annoyance and a loss of reputation as a result of Defendants' actions.

52. If the illegal and unlawful harassment, slander and defamation are allowed to remain, Plaintiffs will have no adequate remedy at law.

53. If the illegal and unlawful harassment, slander and defamation are allowed to continue, Plaintiffs will suffer irreparable harm due to Defendants' actions.

54. Defendants will not be prejudiced by the issuance of an injunction which preserves the status quo in this matter.

55. Plaintiff has a likelihood of success on the merits in that the actions taken by the Defendants actions are clearly slanderous and unlawful and Plaintiffs' objection is timely.

56. Plaintiffs are informed and believe that they are entitled to a temporary restraining order, preliminary and permanent mandatory injunction ordering Defendants to refrain from further slanderous actions, and from any further attempts to preclude Plaintiffs' right to use the water from the pond.

FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANT SUSANNAH SMITH WATSON
(DECLARATORY JUDGMENT)

57. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

58. As outlined herein, the easement to F. Broadus Smith was an easement in gross, a mere personal privilege to use the land of another, incapable of transfer.

59. The easement in gross to F. Broadus Smith does not exist in the chain of title to the Bonnette property.

60. The easement in gross was incapable of transfer to Defendant Susannah Smith Watson.

61. Defendant Susannah Smith Watson only has those common law rights to use the surface water above that property titled in her name.

62. Plaintiff Titan Farms, LLC has the common law rights to use the surface water above the property titled in its name.

63. Plaintiff Carr Farms, Inc. has not only the common law rights to use the surface water above the property titled in its name, but also the contractual rights to use the surface water above the property titled in Defendant Susannah Smith Watson's name.

64. Plaintiffs seek a declaration from this Court confirming that the easement granted to F. Broadus Smith was one in gross.

65. Plaintiffs would further seek a declaration from this Court confirming that Plaintiffs have the common law right to the use of water above the property titled in their name.

66. Plaintiffs would also seek a declaration from this Court confirming that Plaintiff Carr Farms, Inc. has, in addition to those common law rights outlined herein, the contractual right to use the water above the property titled in the name of Susannah Smith Watson with her consent and without limitation.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(DEFAMATION)

67. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

68. Defendants have each published false, defamatory, deceptive, and misleading statements to third parties about Plaintiff Titan Farms, LLC.

69. Defendants false, defamatory, deceptive, and misleading publications allege Titan Farms, LLC is engaged in illegal activities such as the theft of water from Defendants.

70. Defendants' false, defamatory, deceptive, and misleading publications allege Titan Farms, LLC is engaged the improper use of pesticides and fertilizers in the production of their peaches.

71. Defendants' publications have been made to third parties verbally, and in internet writings.

72. Defendants' publications are defamation per se.

73. Plaintiffs have suffered, and continue to suffer harm and damages as a result of

Defendants' actions.

74. Plaintiffs are entitled to a Judgment against the Defendants in an amount to be established at trial for all actual damages, as well as punitive damages in an amount to be awarded by the jury.

WHEREFORE, having fully set forth in its Complaint, Plaintiffs respectfully prays for the following relief:

A. The issuance of a temporary restraining order, preliminary and permanent injunction against the Defendants as outlined herein.

B. A declaration from this Court as outlined herein that the easement to F. Broadus Smith was one in gross.

C. A declaration from this Court as outlined herein that the Plaintiffs have the common law rights to use the water from the pond.

D. A declaration from this Court as outlined herein that Plaintiff Carr Farms, Inc. has the contractual right to use the water from the pond above the property owned by Susannah Smith Watson.

E. Judgment against the Defendants for all losses sustained by Plaintiffs as a direct and proximate cause of Defendants' conduct, including punitive damages, all in an amount to be proven at trial.

F. For such other and further relief as the Court deems fit and just.

RESPECTFULLY SUBMITTED,

MILLING LAW FIRM, LLC
1614 Taylor Street, Suite C
Columbia, South Carolina 29201
(803) 451-7700

By: _____
Jonathan M. Milling (SC Bar No. 15628)
Attorney for the Plaintiffs

July 20, 2016
Columbia, South Carolina

EXHIBIT A

This Agreement made and entered into this [illegible] between F. Broadus Smith and D. C. Abney

It is understood by and between the parties [illegible] said F. Broadus Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will flow over and upon lands of D. C. Abney and that the said D. C. Abney does hereby grant unto the said F. Broadus Smith the right to flood approximately one acre of land belonging to D. C. Abney, it being understood that the said D. C. Abney shall have the right to use the water from said pond of F. Broadus Smith as long as any portion of the land of D. C. Abney is flooded by said pond.

2. The consideration for this agreement is the mutual benefits of both parties hereto and said Agreement is binding upon the heirs, assigns, executors and administrators of both parties.

WITNESS our Hands and Seals this 31st day of [illegible]

In the presence of:

[illegible]

[illegible]

2005

FILED

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CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **SUMMONS TO COUNTERCLAIMS**

TO THE PLAINTIFFS/COUNTER-DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscriber at his office at 207 East Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Counterclaim within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Counterclaim.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

KRAUSE, MOORHEAD & DRAISEN, P.A.

August 19, 2016

FILED
2016 AUG 24 PM 3:21
CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **AMENDED ANSWER AND COUNTERCLAIMS OF SUSANNAH SMITH WATSON**

Defendant Susannah Smith Watson, answering the Complaint of the Plaintiffs, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

1.

Defendant Susannah Smith Watson (hereinafter "Watson") generally denies each and every allegation of the Plaintiffs' Complaint not hereinafter admitted, modified or explained.

2.

Defendant Watson admits the allegations of Paragraphs 1 through 7 of the Plaintiffs' Complaint.

3.

Upon information and belief, Defendant Watson admits the allegations of Paragraphs 9 through 20 of the Plaintiffs' Complaint.

4.

With regard to Paragraphs 21 through 26, upon information and belief Defendant Watson admits the allegations contained therein subject to the following point of clarification: The chain of title referenced in Paragraphs 21 through 26 omits reference to the 1960 deed referenced in Paragraph 9 of Plaintiffs' Complaint. As is set forth in Paragraph 9, the 1960 deed clearly states:

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

5.

Defendant Watson denies the allegations of Paragraph 27 of the Plaintiffs' Complaint and demands strict proof thereof.

6.

Defendant Watson admits the allegations of Paragraph 28 of the Plaintiffs' Complaint.

7.

Except with regard to the allegations that restate the allegations of Paragraph 20 of Plaintiffs' Complaint (i.e., that Carr Farms, Inc. has the right to use water from the pond of F. Broadus Smith pursuant to the terms of the Agreement), which is admitted, Defendant Watson denies the allegations of Paragraphs 29 through 44 of the Plaintiffs' Complaint and demands strict proof thereof.

8.

Defendant Watson denies the allegations of Paragraphs 46 through 56 the Plaintiffs' Complaint and demands strict proof thereof.

9.

Defendant Watson denies the allegations of Paragraphs 58 through 66 the Plaintiffs' Complaint and demands strict proof thereof.

10.

Defendant Watson denies the allegations of Paragraphs 68 through 74 the Plaintiffs' Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

11.

Defendant Watson reiterates the allegations contained in her previous Defense as if fully restated herein.

12.

Pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, Plaintiffs have failed to state facts sufficient to constitute a cause of action against Defendant Watson.

FOR A THIRD DEFENSE

13.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

14.

The causes of action as stated by the Plaintiffs are time barred by the applicable Statute of Limitations.

FOR A FOURTH DEFENSE

15.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

16.

The damages sought by the Plaintiffs are entirely speculative in nature and the Plaintiffs are therefore barred from recovery.

FOR A FIFTH DEFENSE

17.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

18.

To the extent Plaintiffs that have made allegations about the discussions, negotiations and or representations of the Plaintiffs' or Defendants' predecessors in title concerning the terms of the grant of easements or the right to impound water, any such negotiations, terms, conditions or representations were and are merged into the express terms of the written Agreements or Deeds pursuant to the Doctrine of Merger.

FOR A SIXTH DEFENSE

19.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

20.

The transaction contemplated by and between the parties (or their predecessors in title) was for the purchase and sale of real property. To the extent any of Plaintiffs' claims are deemed to be outside the terms of the written contract, Plaintiffs' claims are barred by the Statute of Frauds.

FOR A SEVENTH DEFENSE

21.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

22.

Plaintiffs' claims are barred by the Doctrine of Laches. Due to the passage of time, documents, information and witnesses are or may no longer be available for the proper adjudication of this matter.

FOR AN EIGHTH DEFENSE

23.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

24.

Defendant Watson would show that any statements made, if any, by her concerning the Plaintiffs were true, were her opinion, or were based upon her reasonable opinion and belief, and therefore the Plaintiffs are precluded from recovery against this Defendant.

FOR A NINTH DEFENSE

25.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

26.

Plaintiffs' claims are barred by the Doctrines of Waiver, Consent, and Estoppel.

FOR A TENTH DEFENSE

27.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

28.

The Plaintiffs are not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) The South Carolina judiciary's ability to correct a punitive damages award at the appellate level is inconsistent with due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) To the extent and award of punitive damages is excessive, such award violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) The Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

29.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

30.

Defendant Watson is a citizen and resident of the County of Saluda, State of South Carolina.

31.

Titan Farms, LLC is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

32.

Carr Farms, LLC is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

33.

All parties, matters and things herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION AS TO TITAN FARMS, LLC

34.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

35.

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, soled and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

36.

In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

37.

The easement and right to impound water granted to F. Broadus Smith is an appurtenant easement that runs with the land.

38.

When legal title to the servient estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the dominant estate) also passed to her.

39.

Susannah Smith Watson has the exclusive right to use and to control the water that is impounded on the property formerly owned by Bonnette, now owned by Titan Farms, LLC.

40.

Titan Farms, LLC has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

41.

Watson seeks a declaration from this Court confirming that the easement granted to F. Broadus Smith was an appurtenant easement, that said runs with the land, and that the easement now inures to the benefit Watson as successor in title to F. Broadus Smith.

42.

Watson further seeks a declaration from this Court that she has the exclusive right to impound and to use the water above her property located on the former Bonnette property.

43.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement.

FOR A SECOND CAUSE OF ACTION AS TO TITAN FARMS, LLC

44.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

45.

On or about April 1, 2015 Defendant Titan farms, LLC did knowingly, willfully and intentionally trespass upon the property of Watson with machinery and equipment, thereby causing the destruction of her rose bushes and to the grass and ground.

46.

Defendant Titan Farms, LLC knew, or with reasonable diligence should have known, where the property line was located.

47.

As a direct and proximate result of Defendant's trespass, Watson sustained damage to her property, all in an amount to be determined by the Court at the trial of this case.

FOR A THIRD CAUSE OF ACTION AS TO TITAN FARMS, LLC

48.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

49.

Defendant Titan Farms, LLC took large volumes of water from Watson that she had the sole and exclusive right to impound and to use thereby converting same to its own use and depriving Watson, the rightful owner, of same.

50.

Defendant Titan Farms, LLC knew, or with reasonable diligence should have known, that it was taking water from Watson that she had the sole and exclusive right to impound and to use, and that it was doing so unlawfully.

51.

As a direct and proximate result of Defendant's conversion of Watson's water, Watson has lost the use and the value of the water taken, all in an amount to be determined by the Court at the trial of this case.

FOR A FOURTH CAUSE OF ACTION AS TO CARR FARMS, INC.

52.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

53.

On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property (copy attached to Plaintiffs' Complaint).

54.

Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

55.

The easement to flood the Abney property and the right of Abney to use the water from the pond so long as any portion of the property is flooded is an appurtenant easement that runs with the land.

56.

While Defendant Carr Farms, Inc., as the successors in title to Abney, has the right to use water from the pond so long as any portion of the (formerly Abney) property is flooded, the right granted by the easement is not exclusive and Watson also has the right to use the water from the pond.

57.

Because both Watson and Defendant Carr Farms have the right to use the water from the pond, each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond.

58.

Defendant Carr Farms asserts that it has the right to use any amount of the water from the pond, up to and including all of it, for its irrigation purposes.

59.

Watson asserts that the use of water from the pond by Defendant Car Farms cannot be so excessive so as to effectively deprive Watson of the use of water from the pond.

60.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement and with regard to the rights of the parties to use the water from the pond.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Watson prays for the following relief:

1. That the Plaintiffs' Complaint be dismissed with prejudice;

2. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, this Court determine and declare the rights and duties of the parties with regard to the right to impound and to use water from the pond;

3. That Watson be awarded damages for the trespass of Titan Farms in an amount to be determined by the Court;

4. That Watson be awarded damages for the conversion of water by Titan Farms in an amount to be determined by the Court; and

5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

DANIEL L. DRAISEN (SC Bar# 13536)
207 E. Calhoun Street
Anderson, S.C. 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
ATTORNEYS FOR DEFENDANT SUSANNAH SMITH WATSON

August 19, 2016
Anderson, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SALUDA	)	CIVIL ACTION NO.: 2016-CP-41-153
	)	
CARR FARMS, INC. and TITAN FARMS, LLC,	)	
	)	
Plaintiff(s),	)	**REPLY TO COUNTERCLAIM**
vs.	)	
	)	
SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,	)	
	)	
Defendant(s).	)	

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CLERK OF COURT
SALUDA CO. S.C.

Plaintiffs, Carr Farms, Inc. and Titan Farms, LLC (collectively "Plaintiffs"), do hereby reply to the Answer and Counterclaims of Defendant Susannah Smith Watson ("Watson" or "Defendant") and would respectfully show as follows:

FOR A FIRST DEFENSE

1. Plaintiffs expressly deny any and every allegation contained in the Answer and Counterclaims of Susannah Smith Watson ("Answer") not specifically admitted herein.

2. The allegations contained within Paragraphs 1 through 10 of the Answer require no response. To the extent any response is required, Plaintiffs deny any allegations inconsistent with the Complaint.

3. Plaintiffs deny the allegations contained within Paragraphs 11 through 28 of the Answer, and further deny the application of the affirmative defenses included therein to the instant action.

4. The allegations contained within Paragraph 29 of the Answer requires no response. To the extent any response is required, Plaintiffs deny any allegations inconsistent with the Complaint.

5. Plaintiffs admit the allegations contained within Paragraphs 30 through 33 of the Answer; the same allegations are also made in Paragraphs 1, 2, 3, 6 and 7 of the Complaint.

6. Paragraph 34 of the Answer states a legal conclusion to which no response is required. To the extent any response is required, Plaintiffs deny any allegations inconsistent with the Complaint.

7. Plaintiffs admit the allegations contained within Paragraph 35 of the Answer to the extent they allege the conveyance of real estate in Saluda County, South Carolina as recorded in Deed Book 50, at page 291. Plaintiffs deny the remaining allegations contained within Paragraph 35 of the Answer, if any, to the extent they allege matters inconsistent with the recorded deed.

8. Plaintiffs deny the allegations contained within Paragraph 36 of the Answer. Further responding to the allegations contained within Paragraph 36 of the Answer, Plaintiffs would outline that the easement reference in Paragraph 36 was only an easement in gross, granted only unto F. Broadus Smith, individually, and incapable of conveyance.

9. Plaintiffs deny the allegations contained within Paragraphs 37 through 43 of the Answer.

10. The allegations contained within Paragraph 44 of the Answer requires no response. To the extent any response is required, Plaintiffs deny any allegations inconsistent with the Complaint.

11. Plaintiffs deny the allegations contained within Paragraphs 45 through 47 of the Answer.

12. The allegations contained within Paragraph 48 of the Answer requires no response. To the extent any response is required, Plaintiffs deny any allegations inconsistent with the Complaint.

13. Plaintiffs deny the allegations contained within Paragraphs 49 through 51 of the Answer.

14. Paragraph 52 of the Answer states a legal conclusion to which no response is required. To the extent any response is required, Plaintiffs deny any allegations inconsistent with South Carolina law or the Complaint.

15. Plaintiffs admit the allegations contained within Paragraph 53 of the Answer to the extent they allege the agreement referenced in Paragraphs 13 through 20 of the Complaint. Plaintiffs deny the remaining allegations contained within Paragraph 53 of the Answer, if any, to the extent they allege matters inconsistent with the Complaint.

16. Plaintiffs admit the allegations contained within Paragraph 54 of the Answer to the extent they allege the agreement referenced in Paragraphs 13 through 20 of the Complaint. Plaintiffs deny the remaining allegations contained within Paragraph 54 of the Answer, if any, to the extent they allege matters inconsistent with the Complaint.

17. Plaintiffs admit the allegations contained within Paragraph 55 of the Answer to the extent they allege the agreement referenced in Paragraphs 13 through 20 of the Complaint. Plaintiffs deny the remaining allegations contained within Paragraph 55 of the Answer, if any, to the extent they allege matters inconsistent with the Complaint.

18. Plaintiffs admit the allegations contained within Paragraph 56 of the Answer to the extent they allege the agreement referenced in Paragraphs 13 through 20 of the Complaint. Plaintiffs deny the remaining allegations contained within Paragraph 56 of the Answer, to the extent they allege matters inconsistent with the Complaint, and specifically deny Defendant has the ability to use or access of the pond above lands owned by Plaintiff Carr Farms, Inc..

19. The allegations contained within Paragraph 57 of the Answer state a legal conclusion. Plaintiffs deny any allegations contained within Paragraph 57 of the Answer which are inconsistent with South Carolina law.

20. Plaintiffs deny the allegations contained within Paragraph 58 of the Answer to the extent they attempt to mischaracterize or are inconsistent with the allegations of the Complaint.

21. Plaintiffs deny the allegations contained within Paragraphs 59 and 60 of the Answer.

FOR A SECOND DEFENSE
To all Counterclaims

22. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

23. Defendant's counterclaims fail to state a claim upon which relief may be granted and therefore should each be dismissed.

FOR A THIRD DEFENSE
To Defendant's First and Third Causes of Action

24. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

25. Plaintiff Carr Farms, Inc. has granted unto Plaintiff Titan Farms, LLC a license, permission, authority, and otherwise the ability to use the water from the subject pond such that Plaintiff Titan Farms, LLC has the same rights, abilities and authority to use the water as Plaintiff Carr Farms, Inc.

26. As previously outlined in the Complaint, the predecessor in interest to Defendant, F. Broadus Smith, granted unto Carr Farms, Inc., as assignee of D.C. Abney, the right to use the water from the subject pond without limitation.

4 of 6

27. Defendant has, therefore, granted unto Carr Farms, Inc., and its assigns, the ability to use of the water from the subject pond without limitation.

28. Defendant's claims are barred by the affirmative defenses of condonation, agreement, release, consent, estoppel and waiver.

FOR A FOURTH DEFENSE
To Defendant's First, Third and Fourth Causes of Action

29. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

30. Defendant proposes an interpretation of the subject easement that is inconsistent with the plain language of the referenced instrument.

31. Defendant's proposed interpretation, to be enforceable, must be reduced to a clear, plain, and unambiguous writing to be binding, which it is not.

32. Defendant's claims are barred by the statute of frauds.

FOR A FIFTH DEFENSE
To Defendant's First, Third and Fourth Causes of Action

33. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

34. Defendant's claims are further barred by laches and the statute of limitations.

FOR A SIXTH DEFENSE
To Defendant's Second Causes of Action

35. Each and every allegation contained in the preceding Paragraphs are incorporated by reference as if set forth herein verbatim.

5 #6

36. Plaintiffs deny Defendant's claims as alleged in the Second Cause of Action.

37. In the alternative, Defendant's claims are barred by her own assumption of the risk, contributory negligence, and her mistake as to the location of the property line.

WHEREFORE, having fully answered the Counterclaims of Defendant Susannah Smith Watson, Plaintiffs pray that Defendants' Counterclaims be dismissed, for a judgment to be entered on behalf of the Plaintiffs with costs, and for such other and further relief as may be just and proper.

Respectfully Submitted,

MILLING LAW FIRM, LLC
2910 Devine Street
Columbia, South Carolina 29205
(803) 451-7700

By: _____
Jonathan M. Milling (SC Bar No. 15628)
Attorneys for the Plaintiffs

Sept 28, 2016

Columbia, South Carolina

6 of 6

FILED

2017 SEP 14 AM 10:38

CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS

CARR FARMS, INC. and TITAN FARMS, LLC,

Plaintiff(s),

-vs-

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,

Defendant(s).

C/A No. 2016-CP-41-153

SUMMONS TO AMENDED COUNTERCLAIMS

TO THE PLAINTIFFS/COUNTER-DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscriber at his office at 207 East Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Counterclaim within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Counterclaim.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

KRAUSE, MOORHEAD & DRAISEN, P.A.

September 11, 2017

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CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **SECOND AMENDED ANSWER AND COUNTERCLAIMS OF SUSANNAH SMITH WATSON**

Defendant Susannah Smith Watson, answering the Complaint of the Plaintiffs, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

1.

Defendant Susannah Smith Watson (hereinafter "Watson") generally denies each and every allegation of the Plaintiffs' Complaint not hereinafter admitted, modified or explained.

2.

Defendant Watson admits the allegations of Paragraphs 1 through 7 of the Plaintiffs' Complaint.

3.

Upon information and belief, Defendant Watson admits the allegations of Paragraphs 9 through 20 of the Plaintiffs' Complaint.

4.

With regard to Paragraphs 21 through 26, upon information and belief Defendant Watson admits the allegations contained therein subject to the following point of clarification: The chain of title referenced in Paragraphs 21 through 26 omits reference to the 1960 deed referenced in Paragraph 9 of Plaintiffs' Complaint. As is set forth in Paragraph 9, the 1960 deed clearly states:

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

5.

Defendant Watson denies the allegations of Paragraph 27 of the Plaintiffs' Complaint and demands strict proof thereof.

6.

Defendant Watson admits the allegations of Paragraph 28 of the Plaintiffs' Complaint.

7.

Except with regard to the allegations that restate the allegations of Paragraph 20 of Plaintiffs' Complaint (i.e., that Carr Farms, Inc. has the right to use water from the pond of F. Broadus Smith pursuant to the terms of the Agreement), which is admitted, Defendant Watson denies the allegations of Paragraphs 29 through 44 of the Plaintiffs' Complaint and demands strict proof thereof.

8.

Defendant Watson denies the allegations of Paragraphs 46 through 56 the Plaintiffs' Complaint and demands strict proof thereof.

9.

Defendant Watson denies the allegations of Paragraphs 58 through 66 the Plaintiffs' Complaint and demands strict proof thereof.

10.

Defendant Watson denies the allegations of Paragraphs 68 through 74 the Plaintiffs' Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

11.

Defendant Watson reiterates the allegations contained in her previous Defense as if fully restated herein.

12.

Pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, Plaintiffs have failed to state facts sufficient to constitute a cause of action against Defendant Watson.

FOR A THIRD DEFENSE

13.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

14.

The causes of action as stated by the Plaintiffs are time barred by the applicable Statute of Limitations.

FOR A FOURTH DEFENSE

15.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

16.

The damages sought by the Plaintiffs are entirely speculative in nature and the Plaintiffs are therefore barred from recovery.

FOR A FIFTH DEFENSE

17.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

18.

To the extent Plaintiffs that have made allegations about the discussions, negotiations and or representations of the Plaintiffs' or Defendants' predecessors in title concerning the terms of the grant of easements or the right to impound water, any such negotiations, terms, conditions or representations were and are merged into the express terms of the written Agreements or Deeds pursuant to the Doctrine of Merger.

FOR A SIXTH DEFENSE

19.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

20.

The transaction contemplated by and between the parties (or their predecessors in title) was for the purchase and sale of real property. To the extent any of Plaintiffs' claims are deemed to be outside the terms of the written contract, Plaintiffs' claims are barred by the Statute of Frauds.

FOR A SEVENTH DEFENSE

21.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

22.

Plaintiffs' claims are barred by the Doctrine of Laches. Due to the passage of time, documents, information and witnesses are or may no longer be available for the proper adjudication of this matter.

FOR AN EIGHTH DEFENSE

23.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

24.

Defendant Watson would show that any statements made, if any, by her concerning the Plaintiffs were true, were her opinion, or were based upon her reasonable opinion and belief, and therefore the Plaintiffs are precluded from recovery against this Defendant.

FOR A NINTH DEFENSE

25.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

26.

Plaintiffs' claims are barred by the Doctrines of Waiver, Consent, and Estoppel.

FOR A TENTH DEFENSE

27.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

28.

The Plaintiffs are not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) The South Carolina judiciary's ability to correct a punitive damages award at the appellate level is inconsistent with due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) To the extent and award of punitive damages is excessive, such award violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) The Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

29.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

30.

Defendant Watson is a citizen and resident of the County of Saluda, State of South Carolina.

31.

Titan Farms, LLC is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

32.

Carr Farms, LLC is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

33.

All parties, matters and things herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION AS TO TITAN FARMS, LLC

34.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

35.

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, soled and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

36.

In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

37.

The easement and right to impound water granted to F. Broadus Smith is an appurtenant easement that runs with the land.

38.

When legal title to the servient estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the dominant estate) also passed to her.

39.

Susannah Smith Watson has the exclusive right to use and to control the water that is impounded on the property formerly owned by Bonnette, now owned by Titan Farms, LLC.

40.

Titan Farms, LLC has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

41.

Watson seeks a declaration from this Court confirming that the easement granted to F. Broadus Smith was an appurtenant easement, that said runs with the land, and that the easement now inures to the benefit Watson as successor in title to F. Broadus Smith.

42.

Watson further seeks a declaration from this Court that she has the exclusive right to impound and to use the water above her property located on the former Bonnette property.

43.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement.

FOR A SECOND CAUSE OF ACTION AS TO TITAN FARMS, LLC

44.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

45.

On or about April 1, 2015 Defendant Titan farms, LLC did knowingly, willfully and intentionally trespass upon the property of Watson with machinery and equipment, thereby causing the destruction of her rose bushes and to the grass and ground.

46.

Defendant Titan Farms, LLC knew, or with reasonable diligence should have known, where the property line was located.

47.

As a direct and proximate result of Defendant's trespass, Watson sustained damage to her property, all in an amount to be determined by the Court at the trial of this case.

FOR A THIRD CAUSE OF ACTION AS TO TITAN FARMS, LLC

48.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

49.

Defendant Titan Farms, LLC took large volumes of water from Watson that she had the sole and exclusive right to impound and to use thereby converting same to its own use and depriving Watson, the rightful owner, of same.

50.

Defendant Titan Farms, LLC knew, or with reasonable diligence should have known, that it was taking water from Watson that she had the sole and exclusive right to impound and to use, and that it was doing so unlawfully.

51.

As a direct and proximate result of Defendant's conversion of Watson's water, Watson has lost the use and the value of the water taken, all in an amount to be determined by the Court at the trial of this case.

FOR A FOURTH CAUSE OF ACTION AS TO CARR FARMS, INC.

52.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

53.

On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property (copy attached to Plaintiffs' Complaint).

54.

Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

55.

The easement to flood the Abney property and the right of Abney to use the water from the pond so long as any portion of the property is flooded is an appurtenant easement that runs with the land.

56.

While Defendant Carr Farms, Inc., as the successors in title to Abney, has the right to use water from the pond so long as any portion of the (formerly Abney) property is flooded, the right granted by the easement is not exclusive and Watson also has the right to use the water from the pond.

57.

Because both Watson and Defendant Carr Farms have the right to use the water from the pond, each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond.

58.

Defendant Carr Farms asserts that it has the right to use any amount of the water from the pond, up to and including all of it, for its irrigation purposes.

59.

Watson asserts that the use of water from the pond by Defendant Car Farms cannot be so excessive so as to effectively deprive Watson of the use of water from the pond.

60.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement and with regard to the rights of the parties to use the water from the pond.

FOR A FIFTH CAUSE OF ACTION AS TO BOTH TITAN FARMS, LLC and. CARR FARMS, INC.

SUBSTANTIVE ALLEGATIONS

61. From approximately 1999 to present, each Defendant, at respective times, directly or indirectly owned, operated, controlled and/or managed the Peach Farm, and/or was responsible for such ownership, control, operation and/or management of the Peach Farm site, which is located between State Highway 23 and Early Sims Rd, State Road S-41-34, Ridge Spring, South Carolina, hereinafter referred to as the "Peach Farm." Said Peach Farm is located adjacent to the Plaintiff's real estate parcel.

62. At all times during said time periods, numerous and extensive amounts of hazardous and toxic chemicals, volatile organic compounds, pollutants and contaminants were used and handled at said Peach Farm site by the Defendants, and were handled and used in their peach growing and farming processes, and were released and discharged into the soil, groundwater, surface water, and environment.

63. That the aforesaid hazardous and toxic chemicals, volatile organic compounds, pollutants and contaminants used and handled at said Peach Farm site by Defendants included, upon information and belief, fertilizers (nitrogen, phosphate, potash) and pesticides (herbicides, insecticides and fungisides) which may have included, but are not limited to, sulfur, propiconazole, esfenvalerate, lambda-cyhalothrin, glyphosate isopropylamine salt, 2, 4-D, dimethylamine salt, Dibromochloropropane (DBCP), Ethylene Dibromide (EDB), Trichloroethylene (TCE) and other hazardous and toxic substances.

64. That the Defendants, during the aforesaid periods of operation of the Peach Farm site, on numerous, frequent, and continuous occasions, released and discharged massive quantities of said hazardous and toxic substances, pollutants, and contaminants and their breakdown products into the environment, including the soil, groundwater, and surface water onsite at said Peach Farm site, which subsequently and ultimately spread offsite and onto Plaintiff's property as defined herein.

65. That the hazardous and toxic substances, pollutants, and contaminants released and discharged by Defendants are classified by "the United States Environmental Protection Agency ("EPA") and by the South Carolina Dept. of Health and Environmental Control ("DHEC") as toxic chemicals and as hazardous substances which can cause severe illness, including cancer and other medical problems, and death, in humans and animals. Many of said hazardous and toxic substances, pollutants and contaminants can cause numerous adverse health effects.

On or about September 26, 2016, Defendant Watson received the results of testing performed by the Department of Pesticide Regulation, Clemson University, on groundwater samples collected from her well. The test results showed elevated levels of nitrates in the samples collected. The Department of Pesticide Regulation recommends follow-up water samples for readings higher than 3.0 ppm or higher. The levels detected in the Watson well were 5.16 ppm. Follow-up testing is being conducted with the results thereof to be determined.

66. That the aforesaid releases and discharges by Defendants proximately resulted in the contamination and pollution of Plaintiff's property, as defined herein, including the groundwater, pond on Plaintiff's property, and in the soil.

67. That said releases and discharges by Defendants were due to negligent, reckless, careless, grossly negligent, wanton and willful and intentional behavior by Defendants and their agents and servants. Many of said releases and discharges by Defendants and their agents and servants occurred by improper application and disposal of liquid hazardous and toxic substances. Further, Defendants have continued, upon information and belief, from said time to the present time, to engage in further negligent, reckless, careless, grossly negligent, wanton and willful and intentional behavior by failing to remove or remediate said contamination and pollution, by allowing said contaminants and pollutants to continue to migrate offsite, and onto the property of the Plaintiff.

68. That the levels of various hazardous and toxic substances, contaminants and pollutants present in the groundwater on Plaintiff's property exceed the maximum contaminant levels as established by the EPA, by the Department of Pesticide Regulation, Clemson University, by and by the South Carolina Primary Drinking Water Regulations, SC-DHEC, and have rendered Plaintiff's property to be contaminated.

69. That Defendants knew or should have known that said discharges and releases would likely migrate and contaminate the groundwater, pond, and soils of Plaintiff's property. In spite of such knowledge, Defendants caused, allowed, and failed to prevent contamination of Plaintiff's property, and further failed to properly remove or remediate said contamination and pollution, thereby allowing it to continue to impact Plaintiff's property. Further, Defendants continue to allow further migration of said contaminants and pollutants from their Peach Farm site to Plaintiff's property.

70. That Defendants' actions and inactions regarding said discharges and releases are in reckless and/or willful disregard of Plaintiff's rights and property.

71. As a proximate result of Defendants' acts and delicts, the Plaintiff has suffered and will in the future suffer damage to her property, including financial loss, loss of the value of the property, loss of the use and enjoyment of her property, an increased risk of exposure to hazardous and toxic substances, as well as a continued interference with use and enjoyment of her property. Also, Plaintiff now has the risk of having to pay remediation costs in the future.

72. It is unlikely at this time that all the property contaminated by such substances can be returned to its pre-contamination condition. Further, the migration of hazardous and toxic constituents to Plaintiff's property is continuing.

FOR A FIRST CAUSE OF ACTION - INTENTIONAL ACTS

73. Plaintiff reasserts and reaffirms all allegations herein stated.

74. That all Defendants, upon information and belief, have committed one or more of the following intentional acts:

(a) Discharge and/or release of hazardous substances, toxic substances, pollutants and contaminants into the soil, groundwater and surface water; and

(b) Knowingly allowing hazardous substances, toxic substances, pollutants and contaminants to continue to migrate and seep, continuing to the present.

75. That these intentional acts were the proximate cause of Plaintiff s damages.

76. That these intentional acts of the Defendants entitle the Plaintiff to actual and punitive damages.

FOR A SECOND CAUSE OF ACTION – NEGLIGENCE AND RECKLESSNESS

77. Plaintiff reasserts and reaffirms all allegations herein stated.

78. Defendants engaged in a business that involved using and handling hazardous substances. Defendants knew or through, the exercise of reasonable care should have known that improper handling, and releases and discharges of such would invade groundwater of Plaintiffs property, and thereby damage Plaintiff.

79. Defendants owed and continue to owe Plaintiff a duty of care. This duty includes a duty to not allow or cause contaminants to leak into the soil, groundwater and surface water surrounding their Peach Farm site.

80. Defendants knew or should have known of the risks to person and property caused by such releases and discharges.

81. Defendants have a duty to comply with all federal, state and local laws.

82. Defendants knew or should have known that such substances are toxic and hazardous and would present a serious risk of injury to persons, property and the environment in the event of release or discharge. Despite this knowledge, Defendants' handling, releasing, discharging, maintenance, inspection, monitoring and use of hazardous substances was inadequate, improper and reckless.

83. Defendants knew or should have known that their discharges and releases of hazardous substances were migrating and continue to migrate onto Plaintiffs property.

84. Defendants, by and through their agents and servants, were negligent, grossly negligent, reckless, careless, wanton, and willful, as follows:

(a) In allowing the release and discharge of hazardous and toxic substances, contaminants and pollutants into the soil, groundwater, surface water, and environment;

(b) In causing the release and discharge of hazardous and toxic substances, contaminants and pollutants into the soil, groundwater, surface water, and environment;

(c) In failing to establish, implement, and maintain an appropriate procedure for using, handling, maintaining and disposing of such substances;

(d) In failing to design, construct and maintain and appropriate collection, storage and disposal system for such substances;

(e) In failing to timely inform state and federal authorities of the releases and discharges;

(f) In failing to timely warn persons such as the Plaintiff of the hazardous and dangerous discharges and releases, and of the propensity of such to migrate and contaminate Plaintiff's property;

(g) In failing to warn persons such as the Plaintiff of the hazardous and dangerous nature of such activities;

(h) In failing to prevent further migration of such contaminants and pollutants onto Plaintiff s property;

(i) In failing to timely remove and/or remediate such contamination, both on the plant site and throughout the "impacted area";

(j) In continuing to allow the further migration of such contaminants and pollutants, thereby further impacting Plaintiffs property;

(k) In violating the applicable federal and state laws regarding releases and discharges of hazardous substances, which constitutes negligence per se.

85. As a proximate result of Defendants' acts and delicts, Plaintiff has been damaged as set forth hereinabove. Further, the migration of such toxic and hazardous substances onto Plaintiffs property is continuing.

86. That the aforesaid acts and delicts of defendants are in violation of the South Carolina Pollution Control Act, South Carolina Code §48-1-10, et. Seq., and constitute negligence per se.

FOR A THIRD CAUSE OF ACTION – TRESPASS

87. The Plaintiff reasserts and reaffirms all allegations herein stated.

88. Defendants discharged and released hazardous and toxic substances into the soil, groundwater, surface water, and environment, which then migrated onto Plaintiffs properties. These hazardous and toxic substances invaded the property of the Plaintiff.

89. At no time did Defendants have permission or license to leak, release or discharge hazardous and toxic substances into the soil and groundwater surrounding their Peach Farm.

90. Defendants' release, discharge and leaking of hazardous and toxic substances into the soil and groundwater of the Plaintiff's property, has invaded and interfered with Plaintiff's possessory interest in her property.

91. Molecules of toxic and hazardous substances escaped from Defendants' property and invaded and remain in the soil and groundwater of Plaintiff's property. They will remain in the soil and groundwater into the indefinite future, and have interfered with the Plaintiff's possessory interest in their property.

92. Molecules of toxic and hazardous substances present in the soil and groundwater are the property of Defendants and were allowed into the soil and groundwater by Defendants and amount to an unauthorized entry onto the land of the Plaintiff without legal authority, and without the permission or license of any state or federal governmental agency or the Plaintiff.

93. That said trespasses are continuing in nature, and said migration and trespasses continue at present to impact Plaintiff's property.

94. As a proximate result of Defendants' trespass, the property rights of the Plaintiff have been injured and continue to be injured, and Plaintiff has suffered damages specified hereinabove.

FOR A FOURTH CAUSE OF ACTION - NUISANCE

95. The Plaintiff reasserts and reemphasizes all allegations herein stated.

96. Defendants are engaged in a business that involves use and handling of hazardous and toxic substances.

97. Defendants released and discharged hazardous and toxic substances into the surrounding soil and groundwater. These hazardous substances invaded the property of the Plaintiff.

98. The Plaintiff at no time gave Defendants permission or license to leak such substances into the soil and groundwater of the Plaintiff's property.

99. Defendants' release of hazardous substances into the soil and groundwater of the Plaintiff's property has invaded and interfered with Plaintiff's use and enjoyment of her property.

100. Molecules of dangerous chemicals escaped from the Defendants' Peach Farm site and invaded and remain in the soil and groundwater, and will continue to be present into the future, and have interfered with the Plaintiff's use and enjoyment of her property.

101. That Defendants' use and utilization of their property, including the handling and release of hazardous and toxic constituents into the impacted area and onto Plaintiff's property, is an improper and inappropriate use of Defendants' property.

102. Molecules of dangerous chemicals present in the soil and groundwater that were released and discharged onto the Plaintiff's property by Defendants created a private nuisance to the Plaintiff, and Defendants have not been granted license or permission by any state or federal governmental agency or the Plaintiff to create such a nuisance.

103. As a further result of Defendants' releases and discharges into the soil and groundwater, Defendants have created a private nuisance, which proximately resulted in the damages to Plaintiff as specified hereinabove.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Watson prays for the following relief:

1. That the Plaintiffs' Complaint be dismissed with prejudice;

2. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, this Court determine and declare the rights and duties of the parties with regard to the right to impound and to use water from the pond;

3. That Watson be awarded damages for the trespass of Titan Farms in an amount to be determined by the Court;

4. That Watson be awarded damages for the conversion of water by Titan Farms in an amount to be determined by the Court;

5. That, with regard to the environmental, soil and groundwater contamination causes of action, Watson be granted the following:

A. Actual damages, to be determined by the Court;

B. Punitive damages, to be determined by the Court;

C. An Order requiring Defendants to indemnify and hold harmless Plaintiff from any and all liability asserted against her by any third parties in the future, including any state, local, or federal regulatory agencies, in any manner related to the contamination of Plaintiff's property by Defendants, or in the alternative, for judgment sufficient to reimburse Plaintiff for any and all costs, time and resources used by Plaintiff in the defense of any such action in the future;

D. For an Order requiring Defendants to remediate and clean up Plaintiff's property and the underground aquifer, to the extent that such remediation and cleanup can feasibly occur;

E. For the costs of this action; and

5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

DANIEL L. DRAISEN (SC Bar# 13536)
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ddraisen@kmdlawyers.com
ATTORNEYS FOR DEFENDANT SUSANNAH SMITH WATSON

September 11 2017
Anderson, South Carolina

ELECTRONICALLY FILED - 2017 Oct 10 1:57 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **SUMMONS TO THIRD AMENDED COUNTERCLAIMS**

TO THE PLAINTIFFS/COUNTER-DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscriber at his office at 207 East Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Counterclaim within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Counterclaim.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

KRAUSE, MOORHEAD & DRAISEN, P.A.

October 2, 2017 s/Daniel L. Draisen

ELECTRONICALLY FILED - 2017 Oct 10 1:57 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **THIRD AMENDED ANSWER AND COUNTERCLAIMS OF SUSANNAH SMITH WATSON**

Defendant Susannah Smith Watson, answering the Complaint of the Plaintiffs, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

1.

Defendant Susannah Smith Watson (hereinafter "Watson") generally denies each and every allegation of the Plaintiffs' Complaint not hereinafter admitted, modified or explained.

2.

Defendant Watson admits the allegations of Paragraphs 1 through 7 of the Plaintiffs' Complaint.

3.

Upon information and belief, Defendant Watson admits the allegations of Paragraphs 9 through 20 of the Plaintiffs' Complaint.

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4.

With regard to Paragraphs 21 through 26, upon information and belief Defendant Watson admits the allegations contained therein subject to the following point of clarification: The chain of title referenced in Paragraphs 21 through 26 omits reference to the 1960 deed referenced in Paragraph 9 of Plaintiffs' Complaint. As is set forth in Paragraph 9, the 1960 deed clearly states:

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

5.

Defendant Watson denies the allegations of Paragraph 27 of the Plaintiffs' Complaint and demands strict proof thereof.

6.

Defendant Watson admits the allegations of Paragraph 28 of the Plaintiffs' Complaint.

7.

Except with regard to the allegations that restate the allegations of Paragraph 20 of Plaintiffs' Complaint (i.e., that Carr Farms, Inc. has the right to use water from the pond of F. Broadus Smith pursuant to the terms of the Agreement), which is admitted, Defendant Watson denies the allegations of Paragraphs 29 through 44 of the Plaintiffs' Complaint and demands strict proof thereof.

8.

Defendant Watson denies the allegations of Paragraphs 46 through 56 the Plaintiffs' Complaint and demands strict proof thereof.

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9.

Defendant Watson denies the allegations of Paragraphs 58 through 66 the Plaintiffs' Complaint and demands strict proof thereof.

10.

Defendant Watson denies the allegations of Paragraphs 68 through 74 the Plaintiffs' Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

11.

Defendant Watson reiterates the allegations contained in her previous Defense as if fully restated herein.

12.

Pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, Plaintiffs have failed to state facts sufficient to constitute a cause of action against Defendant Watson.

FOR A THIRD DEFENSE

13.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

14.

The causes of action as stated by the Plaintiffs are time barred by the applicable Statute of Limitations.

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FOR A FOURTH DEFENSE

15.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

16.

The damages sought by the Plaintiffs are entirely speculative in nature and the Plaintiffs are therefore barred from recovery.

FOR A FIFTH DEFENSE

17.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

18.

To the extent Plaintiffs that have made allegations about the discussions, negotiations and or representations of the Plaintiffs' or Defendants' predecessors in title concerning the terms of the grant of easements or the right to impound water, any such negotiations, terms, conditions or representations were and are merged into the express terms of the written Agreements or Deeds pursuant to the Doctrine of Merger.

FOR A SIXTH DEFENSE

19.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

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20.

The transaction contemplated by and between the parties (or their predecessors in title) was for the purchase and sale of real property. To the extent any of Plaintiffs' claims are deemed to be outside the terms of the written contract, Plaintiffs' claims are barred by the Statute of Frauds.

FOR A SEVENTH DEFENSE

21.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

22.

Plaintiffs' claims are barred by the Doctrine of Laches. Due to the passage of time, documents, information and witnesses are or may no longer be available for the proper adjudication of this matter.

FOR AN EIGHTH DEFENSE

23.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

24.

Defendant Watson would show that any statements made, if any, by her concerning the Plaintiffs were true, were her opinion, or were based upon her reasonable opinion and belief, and therefore the Plaintiffs are precluded from recovery against this Defendant.

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FOR A NINTH DEFENSE

25.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

26.

Plaintiffs' claims are barred by the Doctrines of Waiver, Consent, and Estoppel.

FOR A TENTH DEFENSE

27.

Defendant Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

28.

The Plaintiffs are not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) The South Carolina judiciary's ability to correct a punitive damages award at the appellate level is inconsistent with due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) To the extent and award of punitive damages is excessive, such award violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

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(f) The Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

29.

Susannah Smith Watson reiterates the allegations contained in her previous Defenses as if fully restated herein.

30.

Susannah Smith Watson (hereinafter "Watson") is a citizen and resident of the County of Saluda, State of South Carolina.

31.

Titan Farms, LLC (hereinafter "Titan") is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

32.

Carr Farms, Inc. (hereinafter "Carr") is, upon information and belief, a domestic for-profit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Saluda County, South Carolina.

33.

All parties, matters and things herein are within the jurisdiction of this Court.

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FOR A FIRST CAUSE OF ACTION AS TO TITAN FARMS, LLC

34.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

35.

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, soled and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

36.

In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

37.

The easement and right to impound water granted to F. Broadus Smith is an appurtenant easement that runs with the land.

38.

When legal title to the servient estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the dominant estate) also passed to her.

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39.

Watson has the exclusive right to use and to control the water that is impounded on the property formerly owned by Bonnette, now owned by Titan.

40.

Titan has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

41.

Watson seeks a declaration from this Court confirming that the easement granted to F. Broadus Smith was an appurtenant easement, that said runs with the land, and that the easement now inures to the benefit Watson as successor in title to F. Broadus Smith.

42.

Watson further seeks a declaration from this Court that she has the exclusive right to impound and to use the water above her property located on the former Bonnette property.

43.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement.

FOR A SECOND CAUSE OF ACTION AS TO TITAN FARMS, LLC

44.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

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45.

On or about April 1, 2015 Titan did knowingly, willfully and intentionally trespass upon the property of Watson with machinery and equipment, thereby causing the destruction of her rose bushes and to the grass and ground.

46.

Titan knew, or with reasonable diligence should have known, where the property line was located.

47.

As a direct and proximate result of Titan's trespass, Watson sustained damage to her property, all in an amount to be determined by the Court at the trial of this case.

FOR A THIRD CAUSE OF ACTION AS TO TITAN FARMS, LLC

48.

Watson reiterates the allegations contained in her previous Defenses and Cause of Action as if fully restated herein.

49.

Titan took large volumes of water from Watson that she had the sole and exclusive right to impound and to use thereby converting same to its own use and depriving Watson, the rightful owner of same.

50.

Titan knew, or with reasonable diligence should have known, that it was taking water from Watson that she had the sole and exclusive right to impound and to use, and that it was doing so unlawfully.

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51.

As a direct and proximate result of Titan's conversion of Watson's water, Watson has lost the use and the value of the water taken, all in an amount to be determined by the Court at the trial of this case.

FOR A FOURTH CAUSE OF ACTION AS TO CARR FARMS, INC.

52.

This action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

53.

On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property (copy attached to Plaintiffs' Complaint).

54.

Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

55.

The easement to flood the Abney property and the right of Abney to use the water from the pond so long as any portion of the property is flooded is an appurtenant easement that runs with the land.

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56.

While Carr, as the successors in title to Abney, has the right to use water from the pond so long as any portion of the (formerly Abney) property is flooded, the right granted by the easement is not exclusive and Watson also has the right to use the water from the pond.

57.

Because both Watson and Carr have the right to use the water from the pond, each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond.

58.

Carr has asserted that it has the right to use any amount of the water from the pond, up to and including all of it, for its irrigation purposes.

59.

Watson asserts that the use of water from the pond by Carr cannot be so excessive so as to effectively deprive Watson of the use of water from the pond.

60.

Watson asserts that a justiciable controversy has arisen between the parties hereto; therefore she Plaintiff prays, pursuant to the South Carolina Uniform Declaratory Judgments Act, that this Court determine and declare the rights and duties of the parties with regard to the easement and with regard to the rights of the parties to use the water from the pond.

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FOR A FIFTH CAUSE OF ACTION AS TO BOTH TITAN FARMS, LLC and. CARR FARMS, INC.

SUBSTANTIVE ALLEGATIONS

61. From approximately 1999 to present, Titan and Carr, at respective times, directly or indirectly owned, operated, controlled and/or managed the Peach Farm, and/or was responsible for such ownership, control, operation and/or management of the Peach Farm site, which is located between State Highway 23 and Early Sims Rd, State Road S-41-34, Ridge Spring, South Carolina, hereinafter referred to as the "Peach Farm." Said Peach Farm is located adjacent to the residence and acreage owned by Susannah Smith Watson at 3296 Highway 23, Ridge Spring, South Carolina (hereinafter the "Watson Property").

62. At all times during said time periods, numerous and extensive amounts of hazardous and toxic chemicals, volatile organic compounds, pollutants and contaminants were used and handled at said Peach Farm site by Titan and/or Carr, and were handled and used in their peach growing and farming processes, and were released and discharged into the soil, groundwater, surface water, and environment.

63. That the aforesaid hazardous and toxic chemicals, volatile organic compounds, pollutants and contaminants used and handled at said Peach Farm site by Titan and/or Carr included, upon information and belief, fertilizers (nitrogen, phosphate, potash) and pesticides (herbicides, insecticides and fungisides) which may have included, but are not limited to, sulfur, propiconazole, esfenvalerate, lambda-cyhalothrin, glyphosate isopropylamine salt, 2, 4-D, dimethylamine salt, Dibromochloropropane (DBCP), Ethylene Dibromide (EDB), Trichloroethylene (TCE) and other hazardous and toxic substances.

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64. That Titan and/or Carr, during the aforesaid periods of operation of the Peach Farm site, on numerous, frequent, and continuous occasions, released and discharged massive quantities of said hazardous and toxic substances, pollutants, and contaminants and their breakdown products into the environment, including the soil, groundwater, and surface water onsite at said Peach Farm site, which subsequently and ultimately spread offsite and onto the Watson Property as defined herein.

65. That the hazardous and toxic substances, pollutants, and contaminants released and discharged by Titan and/or Carr are classified by "the United States Environmental Protection Agency ("EPA") and by the South Carolina Dept. of Health and Environmental Control ("DHEC") as toxic chemicals and as hazardous substances which can cause severe illness, including cancer and other medical problems, and death, in humans and animals. Many of said hazardous and toxic substances, pollutants and contaminants can cause numerous adverse health effects.

On or about September 26, 2016, Watson received the results of testing performed by the Department of Pesticide Regulation, Clemson University, on groundwater samples collected from her well. The test results showed elevated levels of nitrates in the samples collected. The Department of Pesticide Regulation recommends follow-up water samples for readings higher than 3.0 ppm or higher. The levels detected in the Watson well were 5.16 ppm. Follow-up testing is being conducted with the results thereof to be determined.

66. That the aforesaid releases and discharges by Titan and/or Carr proximately resulted in the contamination and pollution of the Watson Property, including the groundwater, pond on the

Watson Property, and in the soil.

67. That said releases and discharges by Titan and/or Carr were due to negligent, reckless, careless, grossly negligent, wanton and willful and intentional behavior by Titan and/or Carr and their agents and servants. Many of said releases and discharges by Titan and/or Carr and their agents and servants occurred by improper application and disposal of liquid hazardous and toxic substances. Further, Titan and/or Carr have continued, upon information and belief, from said time to the present time, to engage in further negligent, reckless, careless, grossly negligent, wanton and willful and intentional behavior by failing to remove or remediate said contamination and pollution, by allowing said contaminants and pollutants to continue to migrate offsite, and onto the Watson Property.

68. That the levels of various hazardous and toxic substances, contaminants and pollutants present in the groundwater on the Watson property exceed the maximum contaminant levels as established by the EPA, by the Department of Pesticide Regulation, Clemson University, by and by the South Carolina Primary Drinking Water Regulations, SC-DHEC, and have rendered the Watson Property to be contaminated.

69. That Titan and/or Carr knew or should have known that said discharges and releases would likely migrate and contaminate the groundwater, pond, and soils of the Watson Property. In spite of such knowledge, Titan and/or Carr caused, allowed, and failed to prevent contamination of the Watson Property, and further failed to properly remove or remediate said contamination and pollution, thereby allowing it to continue to impact the Watson Property. Further, Titan and/or Carr continue to allow further migration of said contaminants and pollutants from their Peach Farm site to the Watson Property.

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70. That Titan and/or Carr's actions and inactions regarding said discharges and releases are in reckless and/or willful disregard of Watson's rights and property.

71. As a proximate result of Titan and/or Carr's acts and delicts, Watson has suffered and will in the future suffer damage to her property, including financial loss, loss of the value of the property, loss of the use and enjoyment of her property, an increased risk of exposure to hazardous and toxic substances, as well as a continued interference with use and enjoyment of her property. Also, Watson now has the risk of having to pay remediation costs in the future.

72. It is unlikely at this time that all the property contaminated by such substances can be returned to its pre-contamination condition. Further, the migration of hazardous and toxic constituents to the Watson Property is continuing.

FOR A FIRST CAUSE OF ACTION - INTENTIONAL ACTS

73. Watson reasserts and reaffirms all allegations herein stated.

74. That Titan and Carr, upon information and belief, have committed one or more of the following intentional acts:

(a) Discharge and/or release of hazardous substances, toxic substances, pollutants and contaminants into the soil, groundwater and surface water; and

(b) Knowingly allowing hazardous substances, toxic substances, pollutants and contaminants to continue to migrate and seep, continuing to the present.

75. That these intentional acts were the proximate cause of Watson's damages.

76. That these intentional acts of Titan and Carr entitle the Watson to actual and punitive damages.

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FOR A SECOND CAUSE OF ACTION – NEGLIGENCE AND RECKLESSNESS

77. Watson reasserts and reaffirms all allegations herein stated.

78. Titan and Carr engaged in a business that involved using and handling hazardous substances. Titan and Carr knew or through, the exercise of reasonable care should have known that improper handling, and releases and discharges of such would invade groundwater of the Watson Property, and thereby damage Watson.

79. Titan and Carr owed and continue to owe Watson a duty of care. This duty includes a duty to not allow or cause contaminants to leak into the soil, groundwater and surface water surrounding their Peach Farm site.

80. Titan and Carr knew or should have known of the risks to person and property caused by such releases and discharges.

81. Titan and Carr have a duty to comply with all federal, state and local laws.

82. Titan and Carr knew or should have known that such substances are toxic and hazardous and would present a serious risk of injury to persons, property and the environment in the event of release or discharge. Despite this knowledge, Titan and Carr's handling, releasing, discharging, maintenance, inspection, monitoring and use of hazardous substances was inadequate, improper and reckless.

83. Titan and Carr knew or should have known that their discharges and releases of hazardous substances were migrating and continue to migrate onto the Watson Property.

84. Titan and Carr, by and through their agents and servants, were negligent, grossly negligent, reckless, careless, wanton, and willful, as follows:

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(a) In allowing the release and discharge of hazardous and toxic substances, contaminants and pollutants into the soil, groundwater, surface water, and environment;

(b) In causing the release and discharge of hazardous and toxic substances, contaminants and pollutants into the soil, groundwater, surface water, and environment;

(c) In failing to establish, implement, and maintain an appropriate procedure for using, handling, maintaining and disposing of such substances;

(d) In failing to design, construct and maintain and appropriate collection, storage and disposal system for such substances;

(e) In failing to timely inform state and federal authorities of the releases and discharges;

(f) In failing to timely warn persons such as Watson of the hazardous and dangerous discharges and releases, and of the propensity of such to migrate and contaminate the Watson Property;

(g) In failing to warn persons such as Watson of the hazardous and dangerous nature of such activities;

(h) In failing to prevent further migration of such contaminants and pollutants onto the Watson Property;

(i) In failing to timely remove and/or remediate such contamination, both on the plant site and throughout the "impacted area";

(j) In continuing to allow the further migration of such contaminants and pollutants, thereby further impacting the Watson Property;

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(k) In violating the applicable federal and state laws regarding releases and discharges of hazardous substances, which constitutes negligence per se.

85. As a proximate result of Titan and Carr's acts and delicts, Watson has been damaged as set forth hereinabove. Further, the migration of such toxic and hazardous substances onto the Watson Property is continuing.

86. That the aforesaid acts and delicts of defendants are in violation of the South Carolina Pollution Control Act, South Carolina Code §48-1-10, et. Seq., and constitute negligence per se.

FOR A THIRD CAUSE OF ACTION – TRESPASS

87. Watson reasserts and reaffirms all allegations herein stated.

88. Titan and Carr discharged and released hazardous and toxic substances into the soil, groundwater, surface water, and environment, which then migrated onto the Watson Property. These hazardous and toxic substances invaded the Watson Property.

89. At no time did Titan or Carr have permission or license to leak, release or discharge hazardous and toxic substances into the soil and groundwater surrounding their Peach Farm.

90. Titan and Carr's release, discharge and leaking of hazardous and toxic substances into the soil and groundwater of the Watson Property, has invaded and interfered with Watson's possessory interest in her property.

91. Molecules of toxic and hazardous substances escaped from Titan and Carr's property and invaded and remain in the soil and groundwater of the Watson Property. They will remain in the soil and groundwater into the indefinite future, and have interfered with the Watson's possessory interest in her property.

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92. Molecules of toxic and hazardous substances present in the soil and groundwater are the property of Titan and Carr and were allowed into the soil and groundwater by Titan and Carr and amount to an unauthorized entry onto the land of Watson without legal authority, and without the permission or license of any state or federal governmental agency or of Watson.

93. That said trespasses are continuing in nature, and said migration and trespasses continue at present to impact the Watson Property.

94. As a proximate result of Titan and Carr's trespass, the property rights of Watson have been injured and continue to be injured, and Watson has suffered damages specified hereinabove.

FOR A FOURTH CAUSE OF ACTION - NUISANCE

95. Watson reasserts and reemphasizes all allegations herein stated.

96. Titan and Carr are engaged in a business that involves use and handling of hazardous and toxic substances.

97. Titan and Carr released and discharged hazardous and toxic substances into the surrounding soil and groundwater. These hazardous substances invaded the Watson Property.

98. Watson at no time gave Titan or Carr permission or license to leak such substances into the soil and groundwater of the Watson Property.

99. Titan and Carr's release of hazardous substances into the soil and groundwater of the Watson Property has invaded and interfered with Watson's use and enjoyment of her property.

100. Molecules of dangerous chemicals escaped from the Defendants' Peach Farm site and invaded and remain in the soil and groundwater, and will continue to be present into the future, and have interfered with Watson's use and enjoyment of her property.

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101. That Titan and Carr's use and utilization of their property, including the handling and release of hazardous and toxic constituents into the impacted area and onto the Watson Property, is an improper and inappropriate use of Titan and Carr's property.

102. Molecules of dangerous chemicals present in the soil and groundwater that were released and discharged onto the Watson Property by Titan and Carr created a private nuisance to Watson, and Titan and Carr have not been granted license or permission by any state or federal governmental agency or by Watson to create such a nuisance.

103. As a further result of Titian and Carr's releases and discharges into the soil and groundwater, Titan and Carr have created a private nuisance, which proximately resulted in the damages to Watson as specified hereinabove.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Watson prays for the following relief:

1. That the Plaintiffs' Complaint be dismissed with prejudice;

2. That, pursuant to the South Carolina Uniform Declaratory Judgments Act, this Court determine and declare the rights and duties of the parties with regard to the right to impound and to use water from the pond;

3. That Watson be awarded damages for the trespass of Titan Farms in an amount to be determined by the Court;

4. That Watson be awarded damages for the conversion of water by Titan Farms in an amount to be determined by the Court;

5. That, with regard to the environmental, soil and groundwater contamination causes of action, Watson be granted the following:

A. Actual damages, to be determined by the Court;

B. Punitive damages, to be determined by the Court;

C. An Order requiring Defendants to indemnify and hold harmless Watson from any and all liability asserted against her by any third parties in the future, including any state, local, or federal regulatory agencies, in any manner related to the contamination of the Watson Property by Titan and Carr, or in the alternative, for judgment sufficient to reimburse Watson for any and all costs, time and resources used by Watson in the defense of any such action in the future;

D. For an Order requiring Titan and Carr to remediate and clean up the Watson Property and the underground aquifer, to the extent that such remediation and cleanup can feasibly occur;

E. For the costs of this action; and

5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

s/Daniel L. Draisen
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ATTORNEYS FOR DEFENDANT SUSANNAH SMITH WATSON

October 2, 2017
Anderson, South Carolina

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State of South Carolina)	In the Court
)	Of Common Pleas
County of Saluda)	Case No.: 2016-CP-41-00153
)	
Carr Farms, Inc., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Transcript of Record
)	
Susannah Smith Watson,)	
)	
Defendant.)	
_____)	

July 30, 2018

Saluda, South Carolina

BEFORE:

The Honorable Alex Kinlaw, Junior, Judge

APPEARANCES:

Jonathan McKay Milling, Esquire
Attorney for the Plaintiffs

Daniel L. Draisen, Esquire
Attorney for the Defendant

ALSO PRESENT:

Susannah Smith Watson

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

Thereupon, the following proceedings were had,

THE COURT: Gentlemen, y'all ready?

MR. MILLING: Yes, sir.

MR. DRAISEN: Yes, sir.

THE COURT: You've got two motions.

MR. MILLING: Competing motions for summary judgment, Judge, over essentially the same issue all surrounding the interpretation of an easement.

THE COURT: All right. Let me go ahead and announce the case and then I'll hear from both sides. All right. Let's go on the record. We are on the non-jury roster. This is in the interest of Carr Farms, Incorporated versus Susannah Smith Watson and that is case number 2016-CP-41-00153. I've got both lawyers present. Mr. Milling.

MR. MILLING: That's me. Yes, Your Honor.

THE COURT: You represent the plaintiff. And then Mr. Draisen.

MR. DRAISEN: Yes, sir.

THE COURT: Mr. Draisen represents the defendant and I'm assuming also with him is your client; is that correct?

MR. DRAISEN: Yes. Ms. Watson.

THE COURT: Okay. So, you've got a pending motion for summary judgment and you have one too.

MR. MILLING: Yes. He actually filed his first. I'm fine if he wants to start it off.

THE COURT: All right. Tell me about it.

MR. DRAISEN: Yes, sir, may it please the Court. I'm Daniel Draisen of the Anderson Bar and I represent Susannah Watson.

THE COURT: I like history. Give me a little history of the case and then bring me to the water that you want me to drink.

MR. DRAISEN: Yes, sir. So basically, you probably have the unamiable task of dealing with two dirt lawyers today and it's probably gonna make you dig back in your mind to property law which I don't know how long it's been since you've had that, but Mr. Milling and I are arguing the finer points of property law class. Our property investors are probably proud of us even trying to do this, but a long story short, the issue of this is that back in early '60s Ms. Watson's father, Mr. Smith, Brauda Smith bought five acres here in Saluda County and he bought it from a lady named Bonet, last name was Bonet. Ms. Bonet conveyed the five acres. She owned all the surrounding property. There was a natural spring on the property and when Mr. Smith bought it, he had plans to build a pond and impound the water. So along with that 1960 deed where Mrs. Bonet conveyed the five acres,

she also conveyed the rights to Mr. Smith, and this is kind of the big argument here, to his heirs, successors and assigns to impound water and have the exclusive use of the water we argue is what the deed says, the actual language in the deed and so at some point in time Mr. Smith did build a pond and did impound the water.

So let me see if I can go through this. The pond not only floods a portion of the Smith property that was purchased but some of the other Bonet property, so she granted the right to flood other lands of hers as a portion of the pond that was done in the '60s. There's a second agreement here that involved the pond overflowing onto a second owner's property which is the Abney property. So you've got the Bonet on the north and the Abney property on the east, if you will, and then you've got the Smith property here. The deal with the Abney property was that so long as any water is flooding over onto the Abney property they can use the water that floods over into the Abney property. So what we've got now is fast forward a little bit. All these surrounding properties have been sold and acquired by Mr. Milling's companies. On the north is Titan Farms. They're on what was the Bonet property. Carr Farms which is a sister company of theirs, I'm not sure of the relationship, owns the Abney property now. So you've got this peach farm

essentially that's surrounding Ms. Watson's property at this point and, of course, water is important for irrigation so you have both Titan and Carr essentially arguing they have the right to draw the water out of this pond as they want to for irritation purposes. The dispute is essentially in a nutshell, what rights were conveyed in the easements that were granted for purposes of the use of the pond.

So Ms. Watson's position basically is with regard to the Bonet property which is the Titan property that that easement is very specific. We argue that that's an appurtenant easement because it says to the heirs, successors and assigns and it says that Mr. Smith has the right to control, exclusively control what happens with the water on the Bonet property, okay? And we've provided, this has been briefed. There's substantial briefs here for you with attached documents. Both Mr. Milling and I have both extensively briefed these issues. We just sit on different sides of the fence. Mr. Milling's position is this is an easement in gross --

THE COURT: Your briefs have been filed?

MR. DRAISEN: Yes, sir. They've all been filed. It's an easement in gross that was granted just to Mr. Smith and not to the heirs and assigns, but we believe if you look at the granting language and even the

specific language in the deed which is Exhibit A, Judge, that says basically, this is the paragraph, it says, also granted herein is the right, privilege, and easement for F. Brauda Smith to construct a dam partially located on the premises herein conveying and other lands owned by the grantor herein to impound water on lands owned by the grantor and the grantees herein and that the grantee is to have exclusive use and control of same.

Well, I think the confusion is, is that they have specifically named F. Brauda Smith with regard to the construction portion, but then they change back over to grantor and grantee language and if you look at the top of the deed, then you've got that the grantor, you've got the grantor defined as Maggie Lee Bonet and the grantee as F. Brauda Smith, his heirs and assigns. So our position is that this deed, and for easements there's case law in South Carolina that says you have to look at the four corners of the document granting the easement. You can't go outside of this to figure out what else they may have meant or wanted. So our position is with regards to the Titan property, the property to the north, that Ms. Watson now controls exclusive right as to what happens with the water there. Now, let's turn to the east. The east property, the language is completely different in the Abney property.

THE COURT: That's Carr Farms?

MR. DRAISEN: That's Carr Farms. Right. And Carr Farms, there is no words of exclusivity in that easement granted at all. So we're not asserting that we have the exclusive right with regard to that. We believe that both parties have the right to use water that floods their property. The issue here is whether or not the usage by both Ms. Watson and Carr have to be reasonable. In other words, can Carr use it and take all the water they want including draining down the pond proper itself or may they use the water that only floods their property to the extent they've taken all the water that floods theirs and all that's left is what's in the pond or somewhere in the middle and our position basically is because in that deed there is no specific grant of exclusivity. In fact, it doesn't have the word exclusive at all in it. It just says for so long as the Abney property is flooded which we interpret to mean, Judge, that if Ms. Watson actually stopped the water from backing up onto the Abney property which she would have the right to do, Carr would have no access to the water at the point in which we no longer flooded any portion of their property and that's exactly what the easement says.

THE COURT: Repeat that statement again.

MR. DRAISEN: Yes. Okay. It may help you, Judge, if I read the language specifically.

THE COURT: Yeah. I was looking at this plat.

MR. DRAISEN: So here's what it says. It's Exhibit B. This is the agreement.

THE COURT: Okay.

MR. DRAISEN: And it says, it's understood by the parties hereto that the said F. Brauda Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will back over and upon the lands of D.C. Abney and that the said D.C. Abney does hereby grant to said F. Brauda Smith the rights to flood approximately one acre of land belonging to D.C. Abney provided, however, that the said D.C. Abney shall have the right to use said water from said pond of F. Brauda Smith as long as any portion of the lands of D.C. Abney is flooded by said pond.

So if we don't flood their land anymore, they don't have the right to any water not flooding their pond. That's what I think it says. But it is flooded right now so that's a what if. But the point is as so long as it is flooded, then the question becomes for the Court what rights do the parties, for a declaratory judgment, what rights do the parties have to that water that floods the one acre plus property on the Carr Farms. Can they take

it? How much can they take? And can they take water from the pond proper or only so much as it's flooded? Our position is because we dealt with a pond proper, that's Titan's deal with Ms. Watson and she has the exclusive right to use it, that the Abney portion only deals with the flooded section of their land and we believe they can take as much water off of it as constitutes flooding their property, but that they can't then go and draw down the pond to one foot as well from that side.

THE COURT: Right. Right.

MR. DRAISEN: So that's the issue that we're confronting and there's a lot more that you can peel back on this onion. Mr. Milling argues that what was Bonet property, some of the other Bonet property in the 1970's passed to another owner. He says, well, there's no grant of an easement to the prior owner of that property by Ms. Bonet and so, therefore, there's no - we can go take the water off that section of the property because it goes over onto that piece. My argument is that the grant by Ms. Bonet was to other lands owned by her back in the '60s so when she made that conveyance in the '70s, she couldn't convey to the person that bought that from her anymore than what she had so it was already subject to the granted easement that she gave in 1961. So my

position on that is it's really much ado about nothing and as an aside even if that were true, then you would have to say that F. Brauda Smith and his heirs and now Ms. Watson adversely possessed that piece since 1960. If there was no grant, it would have been hostile, open and notorious because it was flooded with water and if there was no grant of easement on that property for all those years, then nobody has asserted any right to it until Titan Farms is now asserting a right to it. So that's basically -- I don't want to bore you with this, Judge, because you probably have to read the briefs and look at the deeds. I wouldn't expect as much time as he and I have been involved in it that that is something that the Court's gonna want to make a decision on while you sit here, but you may. It may be that you just love our argument so much.

But Mr. Milling is gonna outline his views and I think it really boils down to an evaluation by the Court of the language in the deeds and understand he's a fine attorney and we're both just standing on different sides of the fence with regard to what these deeds say and what they do. And I just ask the Court to remember that we're talking about the construction of a pond in 1961 which is not a minor undertaking. That's a major undertaking that would have cost a significant amount of money in those

dollars at that time. So when you hear arguments from opposing counsel about it being potentially some kind of a easement in gross, meaning only good to Mr. Smith, you have to ask yourself whether or not it was reasonable that Mr. Smith would have spent the kind of money that he did constructing this pond back in 1961 dollars for it to only be good during his lifetime and not being something that he meant to run with the land. So we ask you to keep that in mind. But we think the actual language of the deed and the grant itself in Exhibit A for the Titan property is very clear that that's, that is an appurtenant easement. We also think that the deed to the Abney property which is Carr Farms is an appurtenant easement that runs with the land because Carr is a subsequent owner down the line from Abney and so if that wasn't true, there wouldn't even be an existing easement now to flood their property if it had only been to Mr. Smith. Mr. Smith passed away in 1993 so if it was only during his lifetime, we have a problem with everybody continuing under those assumptions for a period in excess of --

THE COURT: How does Hassie Cogburn fit into all of this?

MR. DRAISEN: Cogburn?

THE COURT: Hassie, H-a-s-s-i-e, P. Cogburn. She's

a - she -- There was a conveyance from Hassie P. Cogburn to Bonet. She just happened to be in the chain?

MR. DRAISEN: She's in the chain and that's part of what became the Bonet property. The Bonet property, we call that as the proper, involves a number of pieces of land all combined together. If you look at Exhibit A, that's how they say it actually. They say that Ms. Bonet got several pieces of property and they were calling it the Bonet property.

THE COURT: All right. That's going back to 1938.

MR. DRAISEN: Yes. Ms. Bonet acquired property over many years before she sold even this five acres to Mr. Smith.

THE COURT: In 1932.

MR. DRAISEN: Yes, sir.

THE COURT: 1929 looks like. Okay.

MR. DRAISEN: So that's a nutshell for us.

THE COURT: All right.

MR. MILLING: Judge, you would truly be surprised to know I have a different stance or a different take on this.

THE COURT: I would, but go ahead.

MR. MILLING: Ms. Bonet, since we're talking about Ms. Bonet, she apparently did very well for herself back in the day especially during this time period where she

was able to accumulate a lot of property here in Saluda County, many, not many, but some of the acreage of which is identified and dealt with here in this lawsuit. Judge, I think it's important for us to go back and look at actually what an easement is. I have identified in my brief what, or how South Carolina defines what an easement is, and it's a right which one person has to use the land of another for a specific purpose and it gives no title to the land on which the servitude is imposed. Now, if, as opposing counsel has argued, that this was a conveyance for the exclusive use and right of this water, then my client Titan Farms is paying property taxes here in Saluda County on dirt underneath the pond that they can't ever use.

So effectively if you take their interpretation, then my client, or the predecessor in interest, conveyed the property that my client just doesn't get it which is not what an easement is. If we look at how South Carolina has defined what the literal or the riparian rights are, and I tried to identify some of those in our brief, in South Carolina if we don't have another governing document, a debt owner, if you own the dirt underneath the water, you have the right to use that water which is above it. In this case we've got property, dirt which is owned by Ms. Watson now, we've

got property which is owned by Carr Farms, and we've got property which is owned by Titan Farms. Those three parcels intersect underneath the pond at issue and so the default in South Carolina is Ms. Watson can use the water above her property line, Carr can use it above their property line, and then Titan use it above theirs. Her position is that she gets to use all the water because of this 1960 deed, but her father did grant to D.C. Abney, and that was one of the agreements that Mr. Draisen talked about, the right to use the water so long as any portion of his property is flooded.

Now, based on everything that we've looked at since this dam was constructed, and it looks like from some of the documents that we've got at issue here that it would be constructed in or about 1970 because that's when the agreement was entered into between Mr. Smith, Brauda Smith and D.C. Abney and it makes reference to the construction or the process of construction of the dam at that point in time. So some 10 years after he bought the property from Ms. Bonet is when he's constructing the dam and enters into the agreement with Mr. Abney which is now with the Carr agreement. So we've got that sort of as a background. So based upon essentially on top of all of that would be Ms. Watson would have the right to use the property - or the water above her property, D.C. Abney or

now Carr Farms has the right to use the water above their property because it is flooded, but also the water above Ms. Watson's property because of the agreement that her father had with Carr's predecessor in interest.

So essentially it gets us back to Titan Farms and what can Titan Farms do. Well, Titan's an assignee of Carr as well so they have that side of the equation, they can use the same rights that Carr Farms has by virtue of D.C. Abney. But on their own it's important to take a look at the actual language of the agreement. This is what Mr. Draisen is making reference to. If we look at the deed itself, and this is, I think, Exhibit A in both of our motions, we've got identified Maggie Bonet of Saluda County. She's the one who was conveying the property, not necessarily defined as the grantor, but that's for all practical purposes what she is. Brauda Smith is the individual who is paying $17,500.00 for the property. When we go down to the description of what is being conveyed, we've got language identified in all caps, F. BRAUDA SMITH, HIS HEIRS AND ASSIGNS. Now, that clause, that language is identified under the law as an addendum clause, if I'm pronouncing that right, which is essentially a clause which identifies what is being conveyed. Is this a fee simple conveyance? Is it a life estate conveyance? What exactly is the dirt which is

being conveyed? So Ms. Bonet is granting to Brauda Smith for the dirt the fee simple title to this land. The last paragraph says, also granted herein is the right, privilege and easement for Brauda Smith -- It does not say heirs and assigns -- to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor, which would be Ms. Bonet because she's the only one conveying any lands here. And as we talked about earlier as Your Honor pointed out, she had a lot of property here in Saluda County in a lot of different areas so we're not specifically identifying exactly where the dam is going to be constructed or what exactly is going to be conveyed.

THE COURT: Let me ask you this: Looking at that, I don't mean to interrupt, but if that clause says also granted here is right, privilege, easement to F. Brauda Smith's heirs and assigns, we're talking something different.

MR. MILLING: Well, no. I don't think we're talking about anything different because if you go on and read the grantor is giving the exclusive right, the grantor, there's no reference that the grantor, her heirs, assigns, successors in interest are doing anything, is an individual right which is being conveyed by Ms. Bonet to Mr. Brauda Smith. She doesn't say anything in here about

binding -- She may not have cared. We don't know, but that's outside really of what we're looking at. But it's interesting to note, and Mr. Draisen got into this, that in 1976 when she conveyed that tract of land which subsequently made its way to Titan, she did not convey or make reference to any easements that were granted to Brauda Smith. Now, is that something that shows us for sure what the intent was? Maybe not. But, if we're looking at the four corners of this document where she individually, she's the only one who is referenced who is conveying this right to the exclusive use of the water, why wouldn't it have been included in a subsequent deed for that transaction for that tract of land?

THE COURT: Why wouldn't it be.

MR. MILLING: Exactly. And so furthermore, if it was her intention to convey the exclusive right, and again, going back to what the common law is in South Carolina, common law is you own the dirt, you own the water above it, you can use it above it. Why not convey the tract of land that was actually flooded if that was her intention? Because that's actually what, if you take the defendant's meaning or their reading, that's what's happening. They're conveying the actual entirety of that pond, the dirt underneath it for the exclusive use. But that's not what was done here.

Judge, even if we look outside of, if Your Honor says, Jonathan, because it says heirs and assigns, I got a problem with your reading of it, South Carolina law says that doesn't matter because easements in gross and easement appurtenant are determined based upon the actual nature of what we're talking about. You've got to look, and this is part of what I've outlined in my brief, for it to be an easement appurtenant to run with the land, one, it's got to inhere in the land, two, it's got to concern the premises, three, it's got to have one terminus on the land, and four, it must be essentially necessary for the enjoyment of the land.

Now, South Carolina law, and I have outlined this in my brief, it's clear, if you don't have any one of these, it's an easement in gross. It cannot be an easement appurtenant unless you've got all of those and it doesn't matter if you've got the heirs and assigns language, and there's a case that I have cited in there, it is the Steel versus Williams case, a 1944 case, 28 Southeastern Second 644 which says it doesn't matter if you've got the heirs and assigns if the nature of what is going on makes it an easement in gross as opposed to an easement appurtenant.

THE COURT: Let in ask you a question.

MR. MILLING: Yes, sir.

THE COURT: You know, a lot of these old deeds back when they did them back then, they have this boiler plate language, I mean every single one you get has boiler plate language. I'm looking at this old deed that was done, it has together with all the singular rights, members, hereditist and appurtenances to said premises, belonging or in any wise incident or appertaining. I mean, that's it there.

MR. MILLING: Which deed are you looking at?

THE COURT: I'm looking at the one that you were talking about from --

MR. MILLING: Exhibit A?

THE COURT: -- from, let's see, Maggie Bonet, Exhibit A.

MR. DRAISEN: Exhibit A, page 2.

THE COURT: I'm looking at Exhibit A, page 2, the boiler plate language on that.

MR. MILLING: Yes, sir.

THE COURT: You know, is that boiler plate language? I mean, it's in all those deeds.

MR. MILLING: Yes, sir.

THE COURT: I mean, I think it's still in the deeds that you look at today, they stick that boiler plate language in and then it's up to the lawyers to come in here and argue about what applies and what doesn't apply.

MR. MILLING: Yes, sir.

THE COURT: And that's what you're doing today.

MR. MILLING: Well, that's what the Steel case says is you've got to look beyond what that language is and what the boiler plate might say and look at what the nature of it actually is. And I'm gonna take this in a little bit reverse order because if the pond and the exclusive use of the pond was essentially necessary for the enjoyment of, which is a key element which is required here for it to be an appurtenant easement, then how are they gonna satisfy that when the pond wasn't there when the right was granted? How they gonna satisfy that when they granted parts of their rights to somebody else? So the exclusive right is not something that is necessary for the use and enjoyment of the property because it wasn't even there when they bought the property and they granted away a part of their rights to D.C. Abney, and now to Carr. Then we go back and we look at some of the other elements that are required whether or not it inheres in the land. I've tried to do some research into what exactly does that mean and I haven't found any set cases in South Carolina that defines what is inhere in the land and so I went back and I looked in Black's Law Dictionary as I cited on page 7 of my brief and it says to exist as a permanent, inseparable or

essential attribute or quality of a thing, to be intrinsic to something.

Now, when the conveyance was made, there wasn't a pond and so I find it odd that it could have been intrinsic in the land when there was no pond. Then we look at the next one, whether it concerns the premises. And most of the easements that we see are easements across somebody's property, easements where somebody may be land locked if they don't have a right of ingress and egress across another parcel of land, but that's not what we've got here. We've just got a spring, a creek that's been dammed up and a pond made out of it. I would just submit that that's not concerning of the premises because frankly we don't even know under the deed itself where the pond, where it was gonna be dammed up or anything like that. We talked about that in our brief. I've already addressed whether or not it's essentially necessary and whether or not it's got one terminus on the property. Here we've got a pond which is flooding three different parcels.

Judge, I would just submit, and again I've gone into more detail in the brief, but if we're looking at this trying to determine the rights of the parties and whether or not the easement is properly construed to grant the exclusive rights, the exclusive use of the property to

Mr. Brauda Smith and now Ms. Watson, to read it that way would be to effectuate a conveyance of that parcel of land that my clients paid for which is not what an easement is. Rather an easement is for somebody to use land or to use your own land for their purposes and you can't interfere with that. Here the defendant's reading of the easement is that we get to use your land, the water over your land and you can't touch it and there's nothing you can do about it even though you're paying property taxes for it which is not what an easement is and that's contrary to the law.

MR. DRAISEN: Just briefly, Judge, that last statement that he made is totally wrong. If you grant the Department of Transportation a right to put a road in, an easement over your property, you may pay taxes, your property line may go to the middle of the highway, but yet they've asphalted over that and they've got their ditches in and so on and so forth on top of your dirt, yet you never have the right to use that because they've got a road over it. So this is no different than that. This is an easement which says, yeah, you own the dirt under the pond, but you've given away by easement the right to impound water on top of it and we have the exclusive right to use it because you agreed to that. That's what you gave us.

And back to his other point about these -- We did reply to his brief on all the points of the easement and that's in here, but I'll make one point. Mr. Smith negotiated specifically in 1961 when he bought his five acres to put this pond on it so it was essential to his enjoyment of the property, he asked for it when he bought the five acres from Ms. Bonet. It was so essential to his use that he negotiated the right to build this pond. He might not have built it for 10 years, but who knows, maybe he didn't have the money to do it, or maybe it was too expensive to do it, but he did get it done and it was essential because he negotiated it as a term, a necessary thing in order to buy that five acres. So that satisfies completely these arguments about whether or not it was essential to the property. It was essential to his purchase of the property. He negotiated it at the time he acquired title to the five acres from Ms. Bonet.

So with all due respect to my opposing counsel on this case, I don't know anything that is more clearly a grant of easement than what these documents convey because he's right, she didn't convey the title to the dirt and I think the reason they did this is because they didn't know exactly how much of her land would be flooded. When they built the dam and made the pond, they weren't exactly sure where the borders of the pond were

gonna be and I don't think there was any way for them to necessarily know how full the springs would make that pond. So she left it an undetermined amount of property until it was built and then it became this is where this land is and it's been essentially at that level without draw downs ever since and established the boundaries of the pond. I think when they went to construct it, is when they realized that they were gonna have a pour over onto the Abney property or may have spill over onto the Abney property and that's when he made the agreement with Mr. Abney specifically there.

And again, in the Bonet to Smith deed there is words of exclusivity. In the Abney there is not words of exclusivity at all. We don't disagree that Carr Farms has the right to draw water from the property, from the Abney property, but I think if they draw the water to the point where no more water is backed up on their property, they take all that water off to the point where it's not backed up, then that's as much as they can take simply because at that point no more water is being backed up onto their property. They want to say that they can draw it down even beyond that as long as the water would back up onto their property and our position is that's not a reasonable interpretation for use because Mr. Smith obviously built this dam to impound water for his use,

and the byproduct of it was there was gonna be water flowing over onto Abney.

So I think Carr can take some of the water. It's just up to the Court to interpret how much they can take and I think that that's, the intent was as much as is flooded by the agreement and I think that's, without beating a dead horse, I think that's pretty much it.

THE COURT: So your position is the easement is a right to impound the water that was granted to Mr. Smith, was considered appurtenant, granted with the land, that's your position?

MR. DRAISEN: It is. And also, and we say that, Judge, because exactly as you've pointed out, as to Mr. Smith as grantors and assigns and also when you go down the actual paragraph, we're talking about constructing it. They do name him to construct the pond, but then it changes back to grantor and grantee and, of course, the argument that Ms. Bonet needed to bind her heirs and assigns, if she gave away the title or the easement, she didn't need to bind. She bound her successors and assigns by deeding it away.

THE COURT: Let me just ask the question. I like to simplify matters, you know, so everybody understands. Let me just ask you this: These are motions for summary judgment on both sides?

MR. DRAISEN: Yes, sir.

THE COURT: Counsel, skinto, you've heard that word?

MR. MILLING: Yes, sir.

THE COURT: I think Justice Few used that word in his opinion and you know why he used it? He was talking about how when trial judges look at these matters, and I'm not making any statement as to what position I have, I just wonder, I'm listening to both sides, I've got an old deed in front of me, okay? I've got some language in a deed that everybody is disputing. You know, this thing about the also granted, the heirs, the rights, privileges, easement for F. Brauda Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein, that grantee is to have exclusive use and control of the same. There's a reason he underlined that because that's, you know, that's - that's - that's the kind of, you know, that's what we're talking about or arguing about a little bit. But my question, counsel, on both sides, is that if this is a motion for summary judgment and you're stating to the Court that there's no genuine issue of material fact, not what the case law says --

MR. DRAISEN: Yes, sir.

MR. MILLING: Yes, sir.

THE COURT: -- but we've got this document over here that we're trying to put some degree of interpretation on it, okay, a document that was done back in 1960 some 60 years ago, prior deeds in the chain was done in the 1920's, 1930's, but I'm assuming both of your argument is, Your Honor, even though we have this dispute on quote unquote "interpretation", we don't think that there's any genuine issue of material fact. As a matter of fact, I should grant summary judgment on your motion because, hey, Judge, I've argued that. There's no dispute about that, even though I've got this old deed and I've got this language in here and I'm grappling with heirs and assigns and all that kind of stuff that's in here, you say, oh, Judge, there is no genuine issue of material fact. I don't care what all the deed says. That's the motions that are before me.

MR. MILLING: Yes, sir.

THE COURT: And I'm listening to both sides and I'm looking at these documents and I'm looking at the briefs and I'm gonna read them. I'm gonna read them more in detail. I'm gonna sit down and I'm gonna read them over and over and over and over and over again, but just listening to the two of you it just seems to me that, it just looks like some issue, but I'll take a look at it.

MR. DRAISEN: Yeah, if you would. Briefly, here's

the thing. I don't think we disagree. The documents say what they say. We both agree with that and there's case law in South Carolina that says that when you're looking at an easement and granted an easement, it's very clear that you can't look beyond the four corners of the document itself. I think we both agree with that. So the point is that we're arguing to you what we think they say, but I think the facts, and we both agree, these documents control your decision in terms of what you decide. We're just giving you our views legally as to what they mean and how you look at it, but I think it's a matter of law.

These are declaratory judgment causes of action which means we're not asking for a jury to decide these or whatever. If you believe there's some question of fact outside of the written documents that should be considered or has to be considered to make a decision, then we would beg to your deference on that, but I think that our position and while we both filed cross motions, this doesn't resolve it all. There's some other issues in the case. This is two of the biggest ones.

THE COURT: But at the end of the day we're talking about a dispute over the of use of water.

MR. MILLING: Yes, sir.

THE COURT: At the end of the day that's what we're

talking about.

MR. DRAISEN: Yes, sir.

MR. MILLING: And whose got the right to use it.

THE COURT: And whose got the right. We're talking about use of water.

MR. MILLING: Yes, sir.

MR. DRAISEN: And obviously to a peach farmer, you know, irrigation is important, and to our client having the beauty of a pond that has water in it and has a natural habitat is important to her. So that's what the fight is. It's family property for her. She's had three generations of family on this land and so it's important that she keep a pond with water and they want to be able to use the water to irrigate their peach crops. That's why there's a dispute over the use of the water.

THE COURT: You know, if the good Lord knows people were down here fighting over the use of water, they're in a courtroom fighting over water that they, that they're not even entitled to it. I mean, nobody is -- If the good Lord didn't send us water, we don't have any rights to it. I mean, who has rights to water? You guys have rights to water?

MR. MILLING: I have no rights to anything. Just ask my wife.

THE COURT: I don't have any rights to water. I'm

just thankful that every now and then the good Lord sends us some water.

MR. MILLING: That's right.

THE COURT: But we're in a courtroom fighting about who uses water.

MR. DRAISEN: Fortunately, Judge, we do have a great civil justice system and we get to come here instead of everybody holding a pistol and pacing off and shooting at each other. I do think it's a better --

THE COURT: Like I said, I try to keep things simple but at the end of the day what you're telling me, what the arguments are on both sides is who has the use of water.

MR. MILLING: Yes, sir.

THE COURT: I mean, that's what this is about.

MR. DRAISEN: That's it.

THE COURT: I mean, that's it. Who has use the of water.

MR. MILLING: Yes, sir.

THE COURT: We got water on this side, water on that side. Who has use. But what you're also telling me is that there's no middle ground, otherwise you wouldn't be here. There's no middle ground between the parties in terms of how you resolve this so everybody --

MR. DRAISEN: We've tried. We've tried, Judge. We

met. We mediated this case. We tried to reach an agreement.

MR. MILLING: We're still working on it.

MR. DRAISEN: We are still working on it, but we also have to keep moving forward because the case keeps showing up on the roster and I think Mr. Milling and I agree that if we could chip off the issues that might be resolved as a matter of law depending on what Your Honor decides here, it may go a long way to us reaching a conclusion on the rest of this case and we may make progress in the case, but we just felt like, you know, in moving this forward this might be the best way to help the parties understand as a matter of law, at least, what the issue is with those rights and the rest of it may get solved. But we're trying to advance the ball. We're here before you because we think this is the best way and the fastest way to advance the ball for the parties is to get a resolution of what those rights are by the documents that granted them and I think, you know, Mr. Milling and I have spoken extensively about this. We're not hostile with each at all about it. We just have different views on what they say and, you know, we're here together to say we think this is a good way to resolve it so we hope Your Honor will, you know, take our views into consideration and maybe whatever you decide

will help us end this case.

THE COURT: All right. Is that pretty much it?

MR. MILLING: I think so, Your Honor.

THE COURT: All right. You've already submitted briefs and memorandum.

MR. MILLING: Yes, sir.

THE COURT: And I'll -- I'm going to be fair and obviously I'll just go back to Greenville and I'll read them. I don't know when. I'll try to get back to you as expeditiously as I can. If I've got any questions, I'll arrange a conference call between the two of you.

MR. MILLING: Yes, sir. I think both sides would be willing to submit proposed orders if that's something Your Honor would like.

THE COURT: Well, yeah. Send it to me. You need 30 days, 10 days?

MR. MILLING: Maybe earlier. 30 days might be --

MR. DRAISEN: That would be great, 30 days.

THE COURT: Well, 30 days might, you know, we may have some rain to come through and kind of see how the rain goes, where the water goes. Might help things out. So I normally do - sometimes I do 15 days, sometimes I do 30 days. What's y'alls schedules look like? 30 days? I don't want this thing hanging around too long. It's a 2017 case, right?

MR. MILLING: It's '16. It's an older case.

MR. DRAISEN: Yeah. There were several amendments. That's why it's gone on. A couple of amended versions of the suit just to address all of the issues in one. It's up to you, Judge. I mean, we'll do whatever you tell us to do.

THE COURT: There wasn't any mandatory mediation in this, right?

MR. MILLING: We've already mediated. We actually mediated up in, Bruce mediated it for us.

THE COURT: Bruce was the mediator?

MR. MILLING: Yes, sir.

THE COURT: Okay. All right. How much time do you need? 30 days? Let's just say 20 days. Send me a proposed order both sides and I'll, I'm gonna read all of the -- I looked at them before I got here, but I really didn't know what kind of docket I had here in Saluda so I didn't - I read them but one time, once, but I'll look at them again. If I've got any questions, I'll get you both on the phone once I go through it. If there's any cases that's not in your memos and you want to make me aware of, send them to me and I'll take a look at them.

MR. MILLING: Yes, sir. And as you go through it, you say Jonathan or Daniel, if y'all could address this one issue that pops in your mind, just let us know.

THE COURT: Okay. I'll email you so I can get a conference call going.

MR. MILLING: Yes, sir.

THE COURT: Y'all are both right here in Saluda?

MR. DRAISEN: No. I'm in Anderson.

MR. MILLING: I'm in Columbia.

THE COURT: Okay. All right. We'll do it.

MR. DRAISEN: All right, Judge.

MR. MILLING: Thank you, Judge.

THE COURT: Thank you.

WHEREUPON, THE HEARING WAS CONCLUDED.

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 30th day of July, 2018.

I FURTHER CERTIFY that the forgoing 35 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 7th day of September, 2021.

By:s/Steven E. LeBlanc
_____
Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: JONATAHN M. MILLING, ESQ., ATTORNEY FOR THE ABOVE-NAMED PLAINTIFFS.

You are hereby notified that Defendant Susannah Smith Watson in the above-captioned matter, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP), will move the Court for an Order granting her Summary Judgment in regard to Defendant's First and Fourth causes of action contained in her Counterclaims within ten (10) days of the date of the filing of this Notice and Motion, or as soon thereafter as is convenient to the Court.

COMES NOW Defendant Susannah Smith Watson in the above-captioned matter and moves the Court for an Order granting her Summary Judgment as to her First and Fourth causes of action on the following grounds:

Defendant's First and Fourth causes of action are brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 1976, Section 15-53-10 et seq., for the purpose of determining a question of actual controversy between the parties as is fully set forth in the

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Defendant's Counterclaims.

SATEMENT OF UNDISPUTED MATERIAL FACTS

1. On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

2. In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

(see Title to Real Estate dated October 1, 1960, recorded in Book 50 at Page 291, attached hereto as **EXHIBIT A**).

3. The easement and right to impound water granted to F. Broadus Smith is an appurtenant easement that runs with the land.

4. On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property.

5. Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond." (see Agreement dated September 21, 1970, recorded in Book 11 at Page 199, attached hereto as **EXHIBIT B**).

6. The easement to flood the Abney property and the right of Abney to use the water from the pond so long as any portion of the property is flooded is an appurtenant easement that

runs with the land.

7. F. Broadus Smith died and left his property to his wife, Eliza S. Smith, for and during her natural life, and upon her death to [his children] Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson (see Deed of Distribution from the estate of Frances B. Smith a/k/a/ F. Broadus Smith dated January 6, 1995, recorded in Book 312 at Page 141, attached hereto as **EXHIBIT C**).

8. On or about December 3, 2014, for valuable consideration, John F. Byrd, Jr., Special Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly of F. Broadus Smith (see Foreclosure Special Referee Deed dated December 3, 2014, recorded on January 16, 2015 in Book 1064 at Page 77, attached hereto as **EXHIBIT D**).

9. Susanna Smith Watson is the daughter and heir of F. Broadus Smith and is the current owner of the property formerly owned by F. Broadus Smith, same being more particularly described and shown on that certain plat prepared for Heirs of Broadus Smith dated December 3, 2013 (see Plat Prepared for Heirs of Broadus Smith dated December 3, 2013, recorded on January 16, 2015 in Book A-136 at Page 12, attached hereto as **EXHIBIT E**).

10. The remainder of the property owned by Mattie Lee Bonnette relative to this action was deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012 (see General Warranty Deed dated January 24, 2012, recorded in Book 966 at Page 104, attached hereto as **EXHIBIT F**).

11. The property transferred by Mr. Frick to Titan Farms, LLC is more particularly shown on that certain boundary survey prepared for Carey E. Frick, revised November 4, 2002 as

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recorded in the public records for Saluda County and attached hereto as **EXHIBIT G**.

12. Titan Farms, LLC, as successor in interest to title to the Bonnette property, is subject to the conveyance made to F. Broadus Smith, his heirs and assigns, in the 1960 deed attached hereto as Exhibit A.

13. The property (or a large portion thereof) formerly owned by D.C Abney was acquired by R.W. Dubose & Sons, Inc. who on or about November 1, 2001 changed its name to Carr Farms, Inc. The Abney property was deeded to Carr Farms, Inc. by Quit Claim Deed May 25, 2010, recorded in Book 913 at Pate 276, and is attached hereto as **EXHIBIT H**.

14. The property transferred to Carr Farms, Inc. is more particularly shown on that certain boundary survey prepared for Carr Farms, Inc. dated June 18, 2004 as recorded in the public records for Saluda County and attached hereto as **EXHIBIT I**.

15. Carr Farms, Inc., as successor in interest to title to the Abney property, is subject to the Agreement made between D.C. Abney and F. Broadus Smith attached hereto as Exhibit B.

STANDARD FOR SUMMARY JUDGMENT

South Carolina Rules of Civil Procedure Rule 56 provides that summary judgment:

> "shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Marietta Garage, Inc. v. South Carolina Dept. of Public Safety*, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999), *citing* *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998). Even where there is no dispute as to evidentiary fact, but only as to the conclusions or inferences to be drawn from them,

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summary judgment should be denied. *Etheredge v. Richland School District*, 330 S.C. 447, 449 S.E.2d 238 (Ct. App. 1998).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial. *Id.* At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Tanner v. Florence City-County Bldg. Com'n*, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999). It is not for the Court to weigh the evidence, as such is strictly the province of the jury.

South Carolina case law is clear that "the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party." *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). *See also Etheredge v. Richland School District, supra; City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994); *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994); *State Farm Fire & Casualty Co. v. Breazell*, 324 S.C. 228, 478 S.E.2d 831 (1996). All ambiguities, conclusions, and inferences must be construed most strongly against the movant, and the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Etheredge v. Richland School District, supra.*

LEGAL ARGUMENT

I. As to Defendant's First Cause of Action for Declaratory Judgment

"An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed." Douglas v. Med. Investors, Inc., 256 S.C. 440, 182 S.E.2d 720 (1971) (citations omitted). "An easement is

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therefore not an estate in lands in the usual sense." Id. An easement may be created by reservation in a deed. Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 143 S.E.2d 803 (1965).

In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." Wayburn v. Smith, 270 S.C. 38, 239 S.E.2d 890 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." Gardner v. Mozingo, 293 S.C. 23. 358 S.E.2d 390 (1987). "The intention of the grantor must be found within the four corners of the deed." Id.

In Tupper v. Dorchester County, this Court distinguished between the types of easements, stating:

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

Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

In the instant case, the easement conveyed by Bonnette (Grantor) to F. Broadus Smith***, his heirs and assigns*** (Grantee) "to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same" is an appurtenant easement

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(as opposed to an easement in gross). The Bonnette property, the lands upon which the water may be impounded, is the servient estate and the Smith property is the dominant estate.

When legal title to the dominant estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the servient estate) also passed to her. In accordance with the express language contained within the four corners of the deed granting the appurtenant easement, Watson (as heir, assignee, and successor in title of F. Broadus Smith) has the exclusive right to use and to control the water that is impounded on the property formerly owned by Bonnette now owned by Titan Farms, LLC. Accordingly, Titan has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

Watson is entitled to judgment confirming that the easement granted to F. Broadus Smith was an appurtenant easement, that such easement runs with the land, and that the easement now inures to the benefit Watson as successor in title to F. Broadus Smith. Watson is further entitled to judgment declaring that she has the exclusive right to impound and to use the water on the former Bonnette property now owned by Titan Farms, LLC.

As to Defendant's Fourth Cause of Action for Declaratory Judgment

The determination of the extent of a grant of an easement is an action in equity. Tupper v. Dorchester County., 326 S.C. 318, 487 S.E.2d 187 (1997).

In the instant case, on September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property (attached hereto as Exhibit B). The Agreement, by the express terms contained within the four corners of the document, states that in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use

said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

The Agreement further expressly states that "2. The consideration for this Agreement is the mutual promises and rights of both parties hereto and said Agreement is ***binding upon the heirs, assigns, executors and administrators of both parties*** hereto."

As such, the easement to flood the Abney property and the right of Abney to use the water from the pond *so long as any portion of the (formerly Abney) property is flooded* is an appurtenant easement that runs with the land. The Abney property, the land that may be flooded, is the servient estate and the Smith property is the dominant estate.

Carr Farms, Inc. asserts that it has the right to use any amount of the water from the pond, up to and including all of it, for its irrigation purposes. Watson asserts that the use of water from the pond by Carr cannot be so excessive so as to effectively deprive Watson of the use of water from the pond.

While Carr Farms, Inc., as the successor in title to Abney, has the right to use water from the pond *so long as any portion of the (formerly Abney) property is flooded*, the right granted by the easement is unquestionably non-exclusive. Unlike the express language contained in the 1960 deed, the words "exclusive" or "sole right" do not appear in the Agreement. To construe that the Agreement grants an exclusive right to use the water would make little to no sense inasmuch as the flooding of a portion of the Abney property was necessitated by F. Broadus Smith's construction of his pond itself. Accordingly, there can be no legitimate dispute that the only reasonable conclusion or inference that can be drawn from the Agreement is that Watson, as successor to F. Broadus Smith, likewise has the right to use the water from the pond.

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Because both Watson and Carr have the right to use the water from the pond (so long as any portion of the (former Abney) property is flooded), each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond.

Watson is entitled to judgment confirming that the Agreement with Abney constitutes and an appurtenant easement, that such easement runs with the land, and that the easement now inures to the benefit Watson as successor in title to F. Broadus Smith. Watson is further entitled to judgment declaring that both Watson and Carr have the right to use the water from the pond so long as any portion of the (former Abney) property is flooded, that each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond, and that should Watson elect at any time to cease flooding any portion of the former Abney property Carr would no longer have the right to use water from the pond.

Accordingly, viewing the documents of public record, and the undisputed facts in this matter in a light most favorable to the Plaintiffs, the Defendant respectfully asserts that the Court should find that there are no genuine issues as to any material facts with regard to Defendant's first and fourth causes of action and that Defendant is entitled as a matter of law to judgment as set forth herein above on those causes of action.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
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Anderson, S.C. 29621
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ATTORNEYS FOR DEFENDANT SUSANNAH SMITH WATSON

January 3, 2018
Anderson, South Carolina

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$35.00 State Stamps; $19.25 Federal Stamps

TITLE TO REAL ESTATE Form 14
The R. L. Bryan Company, Columbia, S. C.

State of South Carolina,
COUNTY OF SALUDA

Know All Men by These Presents, That I, Mattie Lee Bonnette of the County of Saluda

in the State aforesaid, for and in consideration of the sum of Seventeen thousand, five hundred and 00/100 ($17,500.00) DOLLARS to me paid by F. Broadus Smith in the State aforesaid -- the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and bounded on the West by lands now or formerly owned by Charlie Abney.

On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.

The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (½) acre from Mrs. Hessie P. Cogburgn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (½) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.

Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

F. Broadus Smith, his

Heirs and Assigns forever.

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

F. Broadus Smith, his

Heirs and Assigns, against myself and all of my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my *Hand and Seal this* 1st *day of* October *in the year of our Lord one thousand nine hundred and* Sixty *and in the one hundred and* eighty-fifth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

DORA D. HARE

JAMES B. HARE

MATTIE LEE W. BONNETTE (SEAL)

(SEAL)

STATE OF SOUTH CAROLINA,
SALUDA County.

PERSONALLY appeared before me Dora D. Hare

and made oath that she saw the within-named Mattie Lee Bonnette

sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with James B. Hare witnessed the execution thereof.

SWORN to before me this 1st
day of October *, 19* 60

JAMES B. HARE (L. S.)
N.P. Seal
Notary Public of S. C.

DORA D. HARE

STATE OF SOUTH CAROLINA,
County.

RENUNCIATION OF DOWER

NO DOWER NECESSARY--GRANTOR WOMAN

I, , do hereby certify unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this
day of
Anno Domini 19

(L. S.)
Notary Public of S. C.

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I do hereby certify this is a true and correct copy of real estate deed as recorded in the Office of the Clerk of Court for Saluda County, South Carolina, and copied from Deed Book 50 at page 291 this September 11, 1970.

Julius T. Merchant
JULIUS T. MERCHANT
Notary Public for S.C.
My commission expires: 1-1-71

State of South Carolina,

County of SALUDA

Mattie Lee Bonnette

TO

F. Broadus Smith

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 10 A. M. o'clock on the 3rd day of October, 19 60 and was immediately entered upon the proper indexes and duly recorded in Book 50 of Deeds, page 291

H. F. PADGET

Clerk of Court of Common Pleas and General Sessions for SALUDA County, S. C.

I hereby certify that the within Deed has been this day of , A. D. 19 , Recorded in Book of Deeds, page

Auditor for County

The R. L. Bryan Company, Columbia, S. C.

DEFENDANT'S EXHIBIT B
tabbies

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

AGREEMENT

This Agreement made and entered into this 21st day of September 1970 by and between F. Broadus Smith and D. C. Abney, WITNESSETH:

1. It is understood by and between the parties hereto that the said F. Broadus Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will back over and upon lands of D. C. Abney and that the said D. C. Abney does hereby grant unto the said F. Broadus Smith the rights to flood approximately one acre of land belonging to D. C. Abney provided, however, that the said D. C. Abney shall have the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D. C. Abney is flooded by said pond.

2. The consideration for this Agreement is the mutual promises and rights of both parties hereto and said Agreement is binding upon the heirs assigns, executors and administrators of both parties hereto.

WITNESS our Hands and Seals this 21st day of September 1970.

F. Broadus Smith L.S.
F. Broadus Smith

D. C. Abney L.S.
D. C. Abney

In the presence of:

Sept 1970

125

Mail to
F. Broadus
Edisto, S.C.

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

000275 BOOK 32 PAGE 141

FILED
CLERK OF COURT
SALUDA CO., S.C.
95 FEB -3 PM 4:14

DEFENDANT'S EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE MATTER OF FRANCIS B. SMITH

CASE NUMBER 94ES4100007

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 27th day of November 19 93 and,

WHEREAS, The estate of the decedent is being administered in the Probate Court for Saluda County, South Carolina in File # 94ES4100007 and,

WHEREAS, The grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent, and,

WHEREAS, The undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter, and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted bargained, sold and released, and by these Presents does grant, bargain, sell and release to

Eliza S. Smith, for and during her natural life, and upon her death to Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson, to share and share alike, with the further provision that if Eliza S. Smith no longer makes her home on this property, this property is to be sold and the proceeds divided one-fourth (1/4) to my said wife, and one-fourth (1/4) to each of the abovenamed children, their heirs and assigns forever, the following described real estate, to wit:

All that piece, parcel or tract of land with all improvements thereon, in School District #2, Saluda County, S.C., containing 5 acres, more or less, and bounded on the North by Highway #23; East and South by lands of Jean Holston, et al.; and West by lands of R.W. DuBose and Son. This being the identical property conveyed to Francis B. Smith by deed recorded in Deed Book 50, at page 291, in the Office of the Clerk of Court for Saluda County, S.C.
TAX MAP NO. 150-17

F. Broadus Smith, Sr. further provided in his Will that if said property is sold, his children are to be given the first choice of purchasing the property at the time of the sale.

FORM 8480PC (7/97)
SCPC 3-997 3-998

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BOOK 32 PAGE 142

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Eliza S. Smith, for and during her natural life, and upon her death to Francis B. Smith, Jr., Jane S. McCuigan and Susie S. Watson, to share and share alike their heirs and assigns forever

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 6th day of January 1995

FRANCIS B. SMITH ESTATE

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Signature Eliza S. Smith
Eliza S. Smith

Witness Shirley B. Witt

Francis B. Smith, Jr.
Francis B. Smith, Jr., Personal Representatives

Witness Billy C. Coleman

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

PROBATE

PERSONALLY appeared before me the undersigned

and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with Billy C. Coleman witnessed the execution thereof.

SWORN to before me this 6th day of January 19 95

Witness Signature Shirley B. Witt

Billy C. Coleman
Notary Public for South Carolina
My Commission Expires 10/27/99

PAID
FEB 3 1995
SALUDA COUNTY TREASURER
AMOUNT 10.00

I hereby certify that the within Deed was filed for record in my office at 11:48 M o'clock on 2-3- 19 95 and was immediately entered upon the proper indexes and duly recorded in Record Book 32 Page 141

Doris B. Holmes
Doris B. Holmes
Saluda County Clerk of Court & RMC

Recorded in Assessor's Office
Book 2 Page 642
Jane S. Guy
Auditor for
Saluda, S. C.

FORM 4468PC (7/87)

PAGE 2 OF 2

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

1064 77
Filed for Record in
SALUDA COUNTY SC
DORIS B HOLMES, CLERK OF COURT
01-16-2015 At 11:58:24 am.
DEED 10.00
STATE 312.00
COUNTY 132.00
ER Volume 1064 Page 77 - 80

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA)
) FORECLOSURE
) SPECIAL REFEREE
COUNTY OF SALUDA)

TO ALL TO WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

Or whom the same may in anywise concern, John Byrd, Special Referee for the County and State aforesaid SEND GREETING:

WHEREAS, SUSANNAH SMITH WATSON , did exhibit its complaint in the Court of Common Pleas in the County and State aforesaid, Case No. 2013-CP-41-73, against FRANCIS B. SMITH, JR., JANE S. McGUIGAN and PERSONS CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST IN OR LIEN UPON THE REAL ESTATE DESCRIBED HEREIN, ANY UNKNOWN ADULTS BEING A CLASS DESIGNATED AS JOHN DOE, AND ANY UNKNOWN MINORS OR OTHER PERSONS UNDER LEGAL DISABILITY BEING A CLASS DESIGNATED AS RICHARD ROWE;

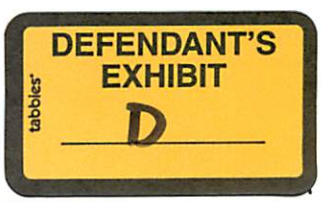
And the Cause, being at issue before John F. Byrd, Jr., Special Referee, came on to be heard on September 23, 2014, when the said John F. Byrd, Jr., after being advised that the parties had reached a settlement agreement, Did Order, Adjudge and Decree that the premises hereinafter mentioned and described should be sold to Susannah Smith Watson on the terms and for the purposes mentioned in said Decretal Order.

NOW, KNOW ALL MEN, That I, the said Special Referee in consideration of the premises, and also in consideration of the sum of $120,000.00 paid me by the below-named Grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto the below named Grantee, her heirs and assigns:

GRANTEE: SUSANNAH SMITH WATSON
202 Green Street, Ridge Spring, SC 29129

All that piece, parcel or tract of land, containing 4.45 acres, more or less, with all improvements thereon, situate, lying and being in the County of Saluda, State of South Carolina as shown on a plat by Todd Surveys Inc. dated December 3, 2013 and recorded in the Office of the Clerk of Court for Saluda County, South Carolina in Cab A-136 Page 12 **. Specific reference is made to said plat for the exact metes, bounds, courses and distances and it is incorporated herein by reference.**

This being the identical property devised to Eliza S. Smith for and during her natural life, and upon her death to Francis B. Smith, Jr., Jane S. McGuigen and Susie S. Watson, with further provision that if Eliza S. Smith no longer makes her home on the property, this property is to be sold and the proceeds divided in 1/4 equal shares as shown in Estate File 94ES4100007 filed in the Office of the Judge of Probate for Saluda County, South Carolina and as shown by Deed of Distribution recorded in the Office of the Clerk of Court for Saluda County, South Carolina in Record Book 312 at Page 141. Eliza S. Smith is now deceased and pursuant to Item 6 of an Order filed in



Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded December 2, 2002 in Record Book 579 at Page 159 in the Office of the Clerk of Court for Saluda County.

TAX MAP REFERENCE: TMS#179-00-00-021

Tract 3

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 1, containing 89.52 acres, more or less, as shown by a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 1998 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

Tract 4

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 3, containing 4.68 acres, more or less, on a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 2002 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

TAX MAP REFERENCE: TMS# 149-00-00-015 (Tracts 3 & 4)

Tract 5

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the Counties of Aiken and Saluda, State of South Carolina, the same being shown and delineated as Tract No.1, containing 8.28 gross acres (7.32 net acres), more or less, as shown on a plat prepared for Carey Frick by George S. Todd, SCRLS #7409, dated July 14, 1988 and recorded in Plat Book 21 at Page 27, in the RMC Office for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of James Lannes Holston, dated July 29, 1988 and recorded on July 29, 1988 in Record Book 1050 at Page 30, Office of the RMC for Aiken County, South Carolina.

TAX MAP REFERENCE: P/O TMS# 177-00-03-002

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

estate in Liza S. Smith is void.

Tax Map No.: 150-00-00-017

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit, claim and demand whatsoever, both at law and in equity, of the said FRANCIS B. SMITH, JR., JANE S. McGUIGAN and PERSONS CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST IN OR LIEN UPON THE REAL ESTATE DESCRIBED HEREIN, ANY UNKNOWN ADULTS BEING A CLASS DESIGNATED AS JOHN DOE, AND ANY UNKNOWN MINORS OR OTHER PERSONS UNDER LEGAL DISABILITY BEING A CLASS DESIGNATED AS RICHARD ROWE and of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, her heirs and assigns, forever.

IN WITNESS WHEREOF, I the said John F. Byrd, Jr. under and by virtue of the said Decree, have hereunto set my Hand and Seal at Saluda, South Carolina this 3RD day of DECEMBER, 2014.

John F. Byrd, Jr.
Special Referee for Saluda County

Sealed and Delivered in the
Presence of:

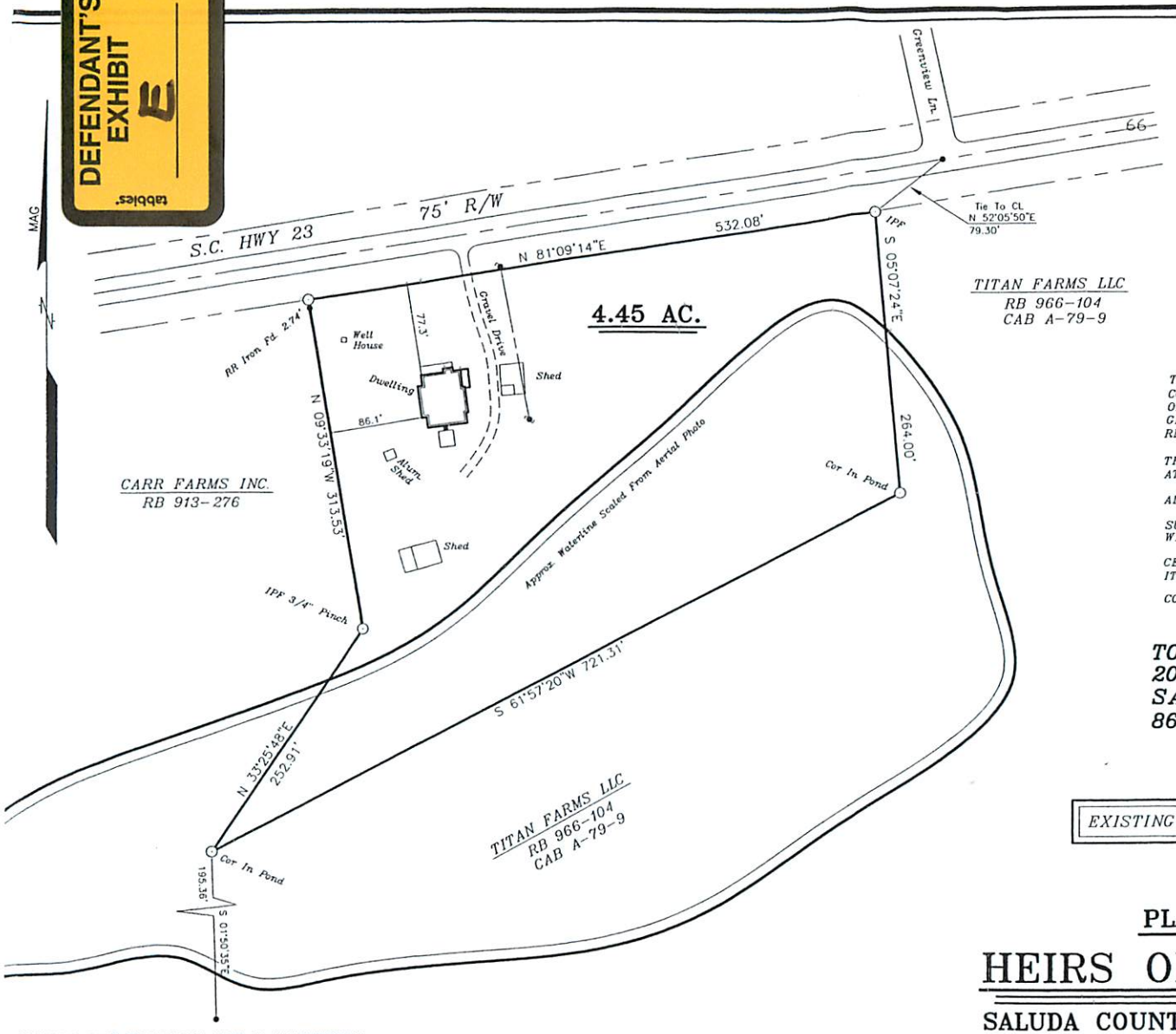
Edith B. Waldrop

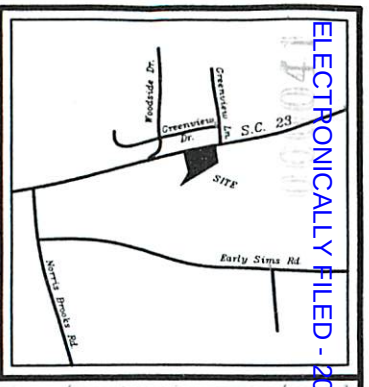
Jeremy Satcher

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

DEFENDANT'S EXHIBIT E

tabbies





LEGEND:
IPS - Iron Pin Set
IPF - Iron Pin Found
Lt. Knt. - Liter Knot
CL - Center Line
OEL - Overhead Elec. Line
Spk. - Spike
Con. Mon. - Concrete Monument
R/W - Right Of Way

THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, RIGHTS-OF-WAY, RESTRICTIVE COVENANTS, BUILDING SETBACKS, ZONING AND OTHER LAND USE REGULATIONS OR RESTRICTIONS AND ENVIRONMENTAL LAWS, BE THEY OF RECORD OR ON THE GROUND AND ALSO SUBJECT TO ANY MORTGAGES, LIENS OR FACTS THAT MAY BE REVEALED BY AN ACCURATE AND CURRENT TITLE SEARCH.

THERE MAY BE UNDERGROUND UTILITIES ON THIS PROPERTY THAT ARE NOT VISIBLE AT THE SURFACE THAT ARE NOT SHOWN HEREON.

ALL IP'S ARE 5/8" REBAR UNLESS NOTED OTHERWISE.

SUBSURFACE CONDITIONS, ENVIRONMENTAL CONDITIONS AND WETLAND CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.

CERTIFICATION OF THIS PLAT AND IT'S USE IS FOR THOSE PARTIES FOR WHOM IT IS PREPARED ONLY, AND IS NOT TRANSFERABLE.

COPYRIGHT 2013 TODD SURVEYS INC.

TODD SURVEYS INC.
200 DENNY HWY.
SALUDA, S.C. 29138
864-445-7892

TSI 1972

EXISTING TMS 150-00-00-017

201500000081
Filed for Record in
SALUDA COUNTY SC
DORIS B HOLMES, CLERK OF COURT
01-16-2015 At 11:54:54 am.
PLAT 10.00
Volume A-136 Page 12

PLAT PREPARED FOR

HEIRS OF BROADUS SMITH

SALUDA COUNTY SOUTH CAROLINA
DEC. 3, 2013 SCALE: 1"=00'

100 0 100 200 300

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 CLASS A SURVEY AS SPECIFIED.

GEORGE S. TODD PLS 7409
12-3-2013

WTN1113

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

Instrument 201200000159 OR Volume Page 966 104

DEFENDANT'S EXHIBIT F
tabbies

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

THIS DEED IS EXECUTED IN DUPLICATE, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL. ONE OF WHICH IS BEING FILED FOR RECORD IN SALUDA COUNTY, SOUTH CAROLINA AND THE OTHER IS BEING FILED IN AIKEN COUNTY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
)
COUNTIES OF SALUDA & AIKEN)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **CAREY FRICK A/K/A CAREY EDWARD FRICK**, in the State aforesaid, for and in consideration of the sum of ONE MILLION FOUR HUNDRED EIGHTY EIGHT THOUSAND THIRTY TWO AND 92/100 ($1,488,032.92) Dollars to it in hand paid at and before the sealing of these presents by **TITAN FARMS, LLC** in the State aforesaid (the receipt whereof is hereby acknowledged), and **CAREY FRICK A/K/A CAREY EDWARD FRICK**, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, subject to the exceptions listed below, unto the said **TITAN FARMS, LLC**, its successors and assigns forever in fee simple, the following-described real estate to wit:

Tract 1

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 2.5 miles southwest of the Town of Batesburg-Leesville (29006), County of Saluda, State of South Carolina, containing 190.70 acres, more or less, being more fully shown and designated as Parcel No. 1 on that certain plat prepared for Carey Edward Frick by T. Jennison Weed, PLS #21234, dated June 25, 2002 and recorded December 2, 2002, Plat Cabinet A Slide 79 at Page 8 in the Office of the Clerk of Court for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded December 2, 2002 in Record Book 579 at Page 159 in the Office of the Clerk of Court for Saluda County.

TAX MAP REFERENCE: TMS#179-00-00-014

201200000159
Filed for Record In
SALUDA COUNTY SC
DORIS B HOLMES, CLERK OF COURT
01-24-2012 At 01:31:54 pm.
DEED 10.00
STATE 2476.50
COUNTY 1047.75
OR Volume 966 Page 104 - 109

Tract 2

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 2.5 miles southwest of the Town of Batesburg-Leesville (29006), County of Saluda, State of South Carolina, containing 12.97 acres, more or less, being more fully shown and designated as Parcel No. 2 on that certain plat prepared for Carey Edward Frick by T. Jennison Weed, PLS #21234, dated June 25, 2002 and recorded December 2, 2002, Plat Cabinet A Slide 79 at Page 8 in the Office of the Clerk of Court for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

Requested By: stg 11/23/2016

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded December 2, 2002 in Record Book 579 at Page 159 in the Office of the Clerk of Court for Saluda County.

TAX MAP REFERENCE: TMS#179-00-00-021

Tract 3

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 1, containing 89.52 acres, more or less, as shown by a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 1998 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

Tract 4

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 3, containing 4.68 acres, more or less, on a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 2002 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

TAX MAP REFERENCE: TMS# 149-00-00-015 (Tracts 3 & 4)

Tract 5

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the Counties of Aiken and Saluda, State of South Carolina, the same being shown and delineated as Tract No.1, containing 8.28 gross acres (7.32 net acres), more or less, as shown on a plat prepared for Carey Frick by George S. Todd, SCRLS #7409, dated July 14, 1988 and recorded in Plat Book 21 at Page 27, in the RMC Office for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of James Lannes Holston, dated July 29, 1988 and recorded on July 29, 1988 in Record Book 1050 at Page 30, Office of the RMC for Aiken County, South Carolina.

TAX MAP REFERENCE: P/O TMS# 177-00-03-002

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

Tract 6

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 3 miles southwest of the Town of Batesburg-Leesville (29006), County of Aiken, State of South Carolina, containing 41.87 net acres, more or less, and being more fully shown and delineated on that certain plat prepared for Carey Edward Frick by T. Jeanison Weed, PLS #21234, dated June 25, 2002 and recorded December 9, 2002 in Plat Book 46 at Page 63-1, in the Office of the RMC for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded in Record Book 2264 at Page 85 in the Office of the RMC for Aiken County, South Carolina.
TAX MAP REFERENCE: TMS# 177-00-01-005

Tract 7 containing approximately 114.36 net acres

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Aiken, State of South Carolina, the same being shown and delineated as Tract No.2, containing 136.40 gross acres (135.70 net acres), more or less, as shown on a plat prepared for Carey Frick by George S. Todd, SCRLS #7409, dated July 14, 1988 and recorded in Plat Book 21 at Page 27, in the RMC Office for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended; LESS AND EXCEPTING 21.34 ACRES, more or less, as shown by plat prepared for Carey E. Frick by Todd Surveys Inc., dated April 28, 2006 and recorded on June 6, 2006 in Plat Book 51 at Page 427, Office of the RMC for Aiken County, South Carolina South Carolina.

DERIVATION: This being a portion of the property conveyed to Carey Frick by deed of James Lannes Holston, dated July 29, 1988 and recorded July 29, 1988 in Records Book 1050 at Page 30, Office of the RMC for Aiken County, South Carolina.

TAX MAP REFERENCE: TMS# 178-00-01-001, 177-00-03-004 & P/O 177-00-03-002

This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.

GRANTEE'S ADDRESS:
Titan Farms, LLC
5 R.W. Dubose Road
Ridge Spring, SC 29129

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining thereto.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto the said Titan Farms, LLC, its successors and assigns forever.

And I do hereby bind myself and my heirs, executors and administrators to warrant and forever defend all and singular, the said Premises unto the Titan Farms, LLC, its successors and assigns, against me and my heirs, executors and administrators, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Recorded in Assessor's Office
Book 4 Page 1426
Jane B. Gray
Auditor for
Saluda, S.C.

CarrTitan-Watson 1-13

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

WITNESS my Hand and Seal this 24th day of January in the year of our Lord two thousand twelve and in the two hundred thirty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness

Witness

By: _____ (SEAL)
Carey Frick a/k/a Carey Edward Frick

STATE OF SOUTH CAROLINA)
)
LEXINGTON COUNTY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named Carey Frick a/k/a Carey Edward Frick sign, seal, and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness, witnessed the execution thereof.

SWORN to before me this 24th day of January, 2012

_____ (L.S.)
Notary Public of South Carolina
My Commission expires: 4-27-2017

Witness

Prepared By:
Kennedy Law Firm, LLC
Post Office Box 2159
Batesburg-Leesville, SC 29070
Phone (803) 533-4100

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

Instrument 2012000000159 GR Volume 966 Page 108

STATE OF SOUTH CAROLINA)
)
COUNTIES OF AIKEN & SALUDA)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is 462.38 total acres, more or less, located _____ with 164.51 acres, more or less, bearing Aiken County Tax Map Number 177-00-03-002, 177-00-01-005, 178-00-01-001, 177-00-03-004& 297.87 acres, more or less, bearing Saluda County Tax Map Number 179-00-00-014, 179-00-00-021, 149-00-00-015, was transferred by Carey Edward Frick to Titan Farms, LLC on January 24th, 2012.

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): ____

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) ___X___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,488,032.92 Total.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes_____ or No_____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is:_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $1,488,032.92 Total

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $1,488,032.92 Total

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $5,507.45 TOTAL ($1982.68 for Aiken County & $3524.77 for Saluda County).

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.

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9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 24th day of January, 2012

(L.S.)
Notary Public of S.C.
My Commission Expires: 4-27-2017

Responsible Person Connected with the Transaction

Carey Edward Frick
Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred to determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a corporation, a partnership, or other entity and a stockholder, a partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided no consideration of any kind is paid or to be paid for the corrective or quitclaim deed.

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.

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DEFENDANT'S EXHIBIT 6

PAID DEC 02 2002

REFERENCE MATERIALS:
A.J. WEED FOR JAMES ARNOLD & JEAN B. HOLSTON – 48.08 AC. – AUG. 30, 1993
C. ASHLEY ABEL FOR ELEANOR & W.N. QUATTLEBAUM – 46.90 AC. NET – JULY 7, 1993
H.S. CLARK JR. FOR W.B. WEED – 4.0 AC. – PB 10 AT 85 – OCT. 20, 1967
H.Z. DUFFIE FOR SARAH B. SCHWARZ – RB 321 AT 258 – 7.13 AC. – MAY 16, 1995
C. ASHLEY ABEL FOR F. BROADUS SMITH – 4.49 AC. – JANUARY 6, 1971.
C.D. CAUGHMAN FOR JOHN COCBURN JR. – 139.53 AC. – NOV. 6, 1952
JOHN K. DAVIS FOR DOUBLE BRANCHES PENTACOSTAL HOLINESS CHURCH – 3.8 AC.
FEB 2, 1978 PB 27 AT 38

THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, R/W'S AND RESTRICTIONS OF RECORD OR ON THE GROUND

THERE MAY BE UNDERGROUND UTILITIES ON THIS PROPERTY THAT ARE NOT VISIBLE AT THE SURFACE THAT ARE NOT SHOWN HEREON

ALL IP'S ARE 3/4" PIPE UNLESS NOTED OTHERWISE

S.C. 23 75' R/W

IPF 1/2" Rebar DOUBLE BRANCHES PENTECOSTAL HOLINESS
PB 27/38
S 35°22'34"E 162.62'
S 88°52'24"E 1028.53'
IPF 1/2" Rebar
N 89°56'57"E 30.00'
IPF 1/2" Rebar
N 05°07'24"W 364.00'
IPS 3/4" Pipe 126.7'
FORMERLY BROADUS SMITH DB 59-291
Cor. in Pond
IPF 3/4" Pipe
N 39°55'46"E 253.91'
N 61°57'20"E 721.31'
POND (Potential to Expand)
Cor. in Pond
N 01°50'35"W 195.36'
Axle Fd.
N/F R.F. DUBOSE & SON INC. DB 122/314 DB 125/200
N 55°54'25"E 1393.17'
MONETTA FARRIER SPECIALTIES RB 321/258 RB 321/256
IPF
S 35°02'41"E 82.71'
N 89°16'22"E 156.23'
IPF 3/4" Pipe
IPF 3/4" Pipe
COCBURN GAILLARD DB 175/253 PB 4/59
IPS 3/4" Pipe
L25
N 84°31'14"W 622.90'
CL of RR Track
N 84°31'14"W 2023.48'
NORFOLK SOUTHERN RR 130' RIGHT OF WAY
IPF 3/4" Pipe
L24
S 84°31'14"E 623.37' R/E
RICKY JEFFERY DB 114/227 PB 114/231
N 22°31'05"E 244.98'
IPF 3/4" Pipe
Tract 3 4.68 AC.
IPF 3/4" Pipe
L23
4.27 AC. IN RR R/E
S 84°31'14"W 432.44'
IPF 3/4" Pipe 1.1'
GWENDOLYN DUBOSE DB 254/30 PB 10/85
S 07°15'47"W 334.87'
N 07°28'24"E 371.20'
L22
256.47'
N 84°31'14"W
IPS 3/4" Pipe
IPF 3/4" Rebar
N 84°33'34"W 729.87'
R/E The Line
L21
L20
C
ELEANOR QUATTLEBAUM DB 80/15 Plat: Abel 7/1/1993
L1 L2 L3 L4 L5 L6 L7 L8
IPF 3/4" Pipe
IPF 3/4" Pipe
N 82°30'12"E 470.43'
S41-34 66' R/W

Tract 1
89.52 AC.

NOTE: LINES A TO B TO C TO D WERE ESTABLISHED BY MUTUAL AGREEMENT BETWEEN SAMUEL BURTON AND JEAN HOLSTON AND JAMES A. HOLSTON III AS SHOWN IN AGREEMENT DATED JULY 28, 1998 AND RECORDED IN RECORD BOOK 413 AT PAGE 275 OF SALUDA COUNTY CLERK OF COURT.

SEE ALSO AGREEMENT AS TO A BOUNDARY LINE BETWEEN E. PHILLIPS BOATWRIGHT AND LAGARR S. BURTON II AND ANNETTE S. BURTON DATED NOV 1, 2002.

SEE PLAT IN CAB. A-48-B

LINES COMMON TO BURTON SURVEYED SUBJECT TO THESE AGREEMENTS.

THIS TRACT CONTAINS LAND ACQUIRED BY E. P. BOATWRIGHT IN 2 DEEDS AS SHOWN IN RB 527 AND RB 418 AT PAGE 44.

REF: TMS 149-00-00-015

BOUNDARY SURVEY FOR
CAREY E. FRICK
SALUDA COUNTY SOUTH CAROLINA

PLAT REVISED NOV. 4, 2002 TO INCLUDE 3 AC. ACQUIRED FROM ELEANOR QUATTLEBAUM IN TRACT 1, TO DELETE TRACT 2 WHICH WAS CONVEYED TO [illegible]

CarrTitan-Watson 1-46

Requested By: stg 11/23/2016

Instrument 201000001090 OR Volume 913 Page 276

201000001090
Filed for Record in
SALUDA COUNTY SC
DORIS B HOLMES, CLERK OF COURT
06-11-2010 At 02:51:59 pm.
CORR DEED 10.00
OR Volume 913 Page 276 - 284

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

QUIT CLAIM DEED TO REAL ESTATE
(Corrective Deed)

WHEREAS, Grantor's name was changed to that of the Grantee by filing with the office of the South Carolina Secretary of State on November 15, 2001; and

WHEREAS, at the request of the Saluda County, South Carolina Assessor's Office, Grantor is now executing and delivering to Grantee this Quit Claim Deed to Real Estate to correct the name of the Grantee in the property tax records of Assessor's Office and to conform title already vested in the Grantee; and

WHEREAS, no consideration is being paid for the transfer described herein.

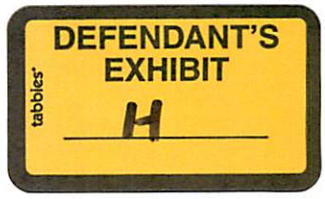
KNOW ALL MEN BY THESE PRESENTS, that **R. W. DuBose & Son, Inc.**, a South Carolina corporation whose mailing address is 5 R.W. DuBose Road, Ridge Spring, South Carolina 29129 (hereinafter referred to as the "Grantor"), for and in consideration of the sum of One and No/100 Dollars ($1.00) to it in hand paid, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does hereby remise, release and forever quitclaim unto **Carr Farms, Inc.**, a South Carolina corporation whose mailing address is 5 R.W. DuBose Road, Ridge Spring, South Carolina 29129 (hereinafter referred to as the "Grantee") all its right, title and interest in and to the following described property (the "Property"):

SEE EXHIBIT A ATTACHED HERETO
AND INCORPORATED HEREIN

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

TO HAVE AND TO HOLD all and singular, the said Property before mentioned unto the said Grantee, its successors and assigns forever, so that neither the Grantor nor any other person or persons claiming under Grantor, its successors and assigns, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid Property or appurtenances, or any part or parcel thereof, forever.

[Remainder of page intentionally left blank]
[Signature pages to follow]



Recorded In Assessor's Office
Book 3 Page 1364
Jane B Guy
Auditor for Saluda, S.C.
By: BF

COLUMBIA 997895v1

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Requested By: stg 11/23/2016

WITNESS the Hand and Seal of this Grantor effective as of the 25th day of May, in the year of our Lord two thousand ten and in the two hundred thirty-fifth year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered
in the presence of:

Witness #1

Witness #2

GRANTOR:

R. W. DUBOSE & SON, INC.

By: Chalmers R. Carr, III

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF Edgefield)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deposed and said that s/he saw the within named Grantor by Chalmers R. Carr, III, its President, sign, seal and deliver the foregoing Quit Claim Deed to Real Estate and that s/he, together with the other witness whose signature appears above, witnessed the execution thereof.

Witness #1 signs again here

SWORN TO and subscribed before me
this 25th day of May, 2010.

Notary Public for South Carolina
My Commission expires: August 13, 2013

[NOTARY SEAL]

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

EXHIBIT A

PROPERTY DESCRIPTION

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Parcel V V and Parcel Q

All that piece, parcel or tract of land in Edgefield County, South Carolina, containing sixty-four and five-tenths (64.5) acres, more or less, and bounded on the north by lands of Kathleen R. Martin, on the east by Flat Rock Creek, on the south by Tracts "C" and "E1" as shown on the plat of C. Ashley Abel, Registered Surveyor, dated September 20, 1985, and recorded in the office of the Clerk of Court for Edgefield County in Plat Book 27, at page 109; and on the west by Tract "G" on said plat.

This tract consists of Tract "D" (consisting of 17.81 gross acres, more or less) and Tract "B" (consisting of 47.2 gross acres, more or less) on the aforesaid plat.

ALSO:

All that piece, parcel or tract of land in Edgefield County, South Carolina, containing seventy-two and fifty-six hundredths (72.56) gross acres, more or less; and designated as Tract "E-1" on the aforementioned plat of C. Ashley Abel; being bounded on the north by Tract "D" on said plat, on the east by the centerline of Highway S-19-20, on the south by lands of Sandra J. DuBose and William C. Rutland, and on the west by the right-of-way of Highway S-19-275 and by lands of Satcher.

ALSO:

All that piece, parcel or tract of land containing forty-nine and ninety-four hundredths (49.94) acres, more or less, in Saluda and Edgefield Counties, South Carolina which is designated as Tract "G" on the aforementioned plat of C. Ashley Abel, Registered Surveyor, dated September 20, 1985. Said tract is bounded on the north by lands now or formerly of Rembert DuBose, on the east by lands of Kathleen R. Martin, and by Tract "D" on said plat, on the south by Tract "E-1" on said plat, on the west by Boggs Branch, and on the northwest by the right-of-way of Highway S-41-91.

This is the same property conveyed to R.W. DuBose and Son, Inc., by deed of G. Glenn Harling, Probate Judge of Edgefield County, dated December 16, 1985, and recorded in the Office of the Clerk of Court for Edgefield County on December 16, 1985, in Book 102, at Page 166; and recorded in the Office of the Clerk of Court for Saluda County on December 19, 1985, in Deed Book 111, at Page 56.

TMS # Edgefield 202-00-00-025-000 (64 acres)
202-00-00-028-000 (43.94 acres)
202-00-00-039-000 (71.04 acres)
Saluda 109-00-00-008 (5.20 acres)

Parcel XX and Parcel D

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, partially in Saluda County and partially in Edgefield County, containing 80 acres, more or less; said lands being now or formerly bounded on the north by county road and also by lands of G. W. Rauton, Jr.; northeast by paved State Highway S-41-24; south by lands of Mrs. Pearl R. Harmon; southeast by Possum Branch, which is the line, and across which lies lands of Mrs. Pearl R. Harmon; and southwest by lands of J. W. Yonce, Jr. and by lands of M. T. Hallman Estate.

This is a portion of the property conveyed to R.W. DuBose and Son, Inc. by Deed of Elaine K DuBose dated December 15, 1992, and recorded in the Office of the Clerk of Court for Edgefield County on December 23, 1992, in Deed Book 142 at page 35; and recorded in the Office of the Clerk of Court for Saluda County on January 29, 1993 in Record Book 257 at page 107.

Edgefield County TMS No. 196-00-00-010-000 (44.78 acres)
Saluda County TMS No. 108-00-00-002 (15.00 acres)

016

Requested By: stg 11/23/2016

Parcel R and Parcel WW

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, Counties of Saluda and Edgefield, containing 89.85 gross acres, or 88.31 net acres, as shown by plat made by Henry Z. Duffie, Jr., RLS, dated October 26, 1977, recorded in Plat Book 24 at page 103, in the Office of the Clerk of Court for Edgefield County, South Carolina, of which approximately 31 acres lies in Saluda County and approximately 59 acres lies in Edgefield County, and according to said plat, the property bounded now or formerly as follows:

North by lands of R. W. DuBose and by lands of Lona Rutland; east by lands of Watson Brothers, lands of Homer Threlkill and lands of Lona Rutland; south by lands of Burdett Jones; and west by lands of Guy Rutland.

This is the same property conveyed to R. W. DuBose and Son, Inc. by Deed of Kathleen R. Martin, recorded in the Office of the Clerk of Court for Edgefield County on March 17, 1986 in Book 104 at page 36, and recorded in the Office of the Clerk of Court for Saluda County on March 24, 1986, in Deed Book 114 at page 49.

Edgefield County TMS No 202-00-00-027-000 (59.23 acres)
Saluda County TMS No. 147-00-00-012 (30.00 acres)

Parcel C

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in Ridge Spring School District #2, containing 36 acres, more or less, bounded now or formerly on the north by lands of Otis Price; east by lands of Lula Lybrand; south by lands of Derrick and DuBose; west by Ridge Spring-Saluda Highway and lands of Jones, Hammond and Thompson and perhaps others.

This is the same property conveyed to R.W. DuBose & Son, Inc., by Deed of Mildred Cumbee, dated December 23, 1981, and recorded in the Office of the Clerk of Court for Saluda County on December 31, 1981, in Book 92 at page 143.

TMS No. 145-00-00-010

Parcel E

All that piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing .64 acre as shown by plat made by C.A. Abel, RLS, dated September 12, 1986, recorded in Deed Book 119 at Page 141, Office of the Clerk of Court for Saluda County, South Carolina, said lot being now or formerly bounded as follows:

North for 214.41 feet by lands of Booker T. Anderson; east for 94.65 feet by lands of Booker T. Anderson; then southeast for a total of 179.56 feet and then east for 103.67 feet by lands of Johnny C. Hopkins; south for 49.04 feet by center line of a road, across which lies lands of Walter Davis; and west for 229.93 feet by lands of Booker T. Anderson.

This is the same property conveyed to R. W. DuBose and Son, Inc. by Deed of Trotter Builders, Inc., dated May 10, 1991, and recorded in the Office of the Clerk of Court for Saluda County on May 14, 1991, in Record Book 215 at page 70.

TMS No. 110-00-00-019

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Requested By: stg 11/23/2016

Parcel H

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, approximately one mile east of the Town of Ridge Spring, containing 33 acres, more or less, and being all of the lands of the Charlie Abney Tract that are located on the south side of S.C. Highway #23, and bounded now or formerly as follows:

North by right-of-way of S.C. Highway #23; east by lands of Jean B. Holston and lands of F.B. Smith; south by lands of Jean B. Holston; southwest and west by lands of the Cogburn Gaillard Estate.

LESS AND EXCEPT:

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, approximately one (1) mile east of the Town of Ridge Spring, containing 3.76 acres, as shown by plat of George S. Todd, RLS, dated January 27, 1990, and recorded in Records Book 185 at Page 278, Office of the Clerk of Court for Saluda County, and according to the plat the property is now or formerly bounded as follows.

North by South Carolina Highway 23 and by lands of R.W. DuBose & Son, Inc., east and south by lands of R. W. DuBose & Son, Inc.; southwest and west by lands of the Cogburn Gaillard Estate.

This property was conveyed to Larry C. Price by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court for Saluda County on February 16, 1990, in Deed Book 185 at Page 274.

ALSO, LESS AND EXCEPT:

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing 7.13 acres as shown by plat made by Henry Z. Duffie, Jr., RLS, dated May 16, 1995, recorded in Records Book 321 at page 258, in the Office of the Clerk of Court for Saluda County.

Said lands being now or formerly bounded on the north by SC Highway 323; east by lands of R.W. DuBose & Son, Inc.; southeast and south by lands of Jean B. Holston; southwest by lands of Cogburn Gaillard, Jr.; and west by other lands of R.W. DuBose & Son, Inc.

This property was conveyed to Monetta Farrier Specialties, Inc., by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court for Saluda County on June 27, 1995, in Deed Book 321 at page 256.

ALSO, LESS AND EXCEPT:

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing 2.97 acres as shown by plat made by Henry Z. Duffie, Jr., RLS, dated May 16, 1995, recorded in Records Book 331 at page 158 in the Office of the Clerk of Court for Saluda County, South Carolina.

Said lands being bounded now or formerly on the north by SC Highway 323; east by lands of Monetta Farriers, Inc.; southwest by lands now or formerly of Cogburn Gaillard, Jr.; and west by lands of Larry C. Price.

This property was conveyed to Larry C. Price by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court on October 5, 1995, in Deed Book 331 at page 158.

This is a portion of the property conveyed to R.W. DuBose & Son, Inc., by Deed of Billy L. Amick, recorded in the Office of the Clerk of Court on December 31, 1986, in Deed Book 122 at page 314.

TMS No. 150-00-00-024

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Requested By: stg 11/23/2016

Instrument 201000001090 OR Volume 913 Page 282

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred located in Saluda County, South Carolina, bearing Saluda County Tax Map Numbers 109-00-00-008, 108-00-00-002, 147-00-00-012, 145-00-00-010, 110-00-00-019, and 150-00-00-024 and was transferred by R.W. DUBOSE & SON, INC. to CARR FARMS, INC. as of March 1, 2010.

3. Check one of the following: The deed is

(a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because: this is quitclaim deed used to conform title already vested in the Grantee for which no consideration is to be paid (Exemption #12 below) and S.C. Revenue Ruling # 04-6. (If exempt, please skip items 4-7, and go to item 8 of this affidavit.).

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) ☐ The fee is computed on the fair market value of the realty, which is $_____.

(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $ 0

(b) Place the amount listed in item 5 above here: $ 0

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 0

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $_____.

ELECTRONICALLY FILED - 2018 Jan 03 11:23 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

Requested By: stg 11/23/2016

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: The President of the Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 25th day of May, 2010.

Notary Public for South Carolina
My Commission Expires: August 13, 2013

Chalmers R. Carr, III, President of Grantor

INFORMATION

"Value" means "the consideration paid or to be paid in money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interests and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer. Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or a trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value of the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

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Requested By: stg 11/23/2016

(12) that constitute a corrective deed or a quitclaim deed used to conform title already vested in the grantee, provided no consideration is paid or is to be paid under the corrective or quitclaim deed.

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

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DEFENDANT'S EXHIBIT 1

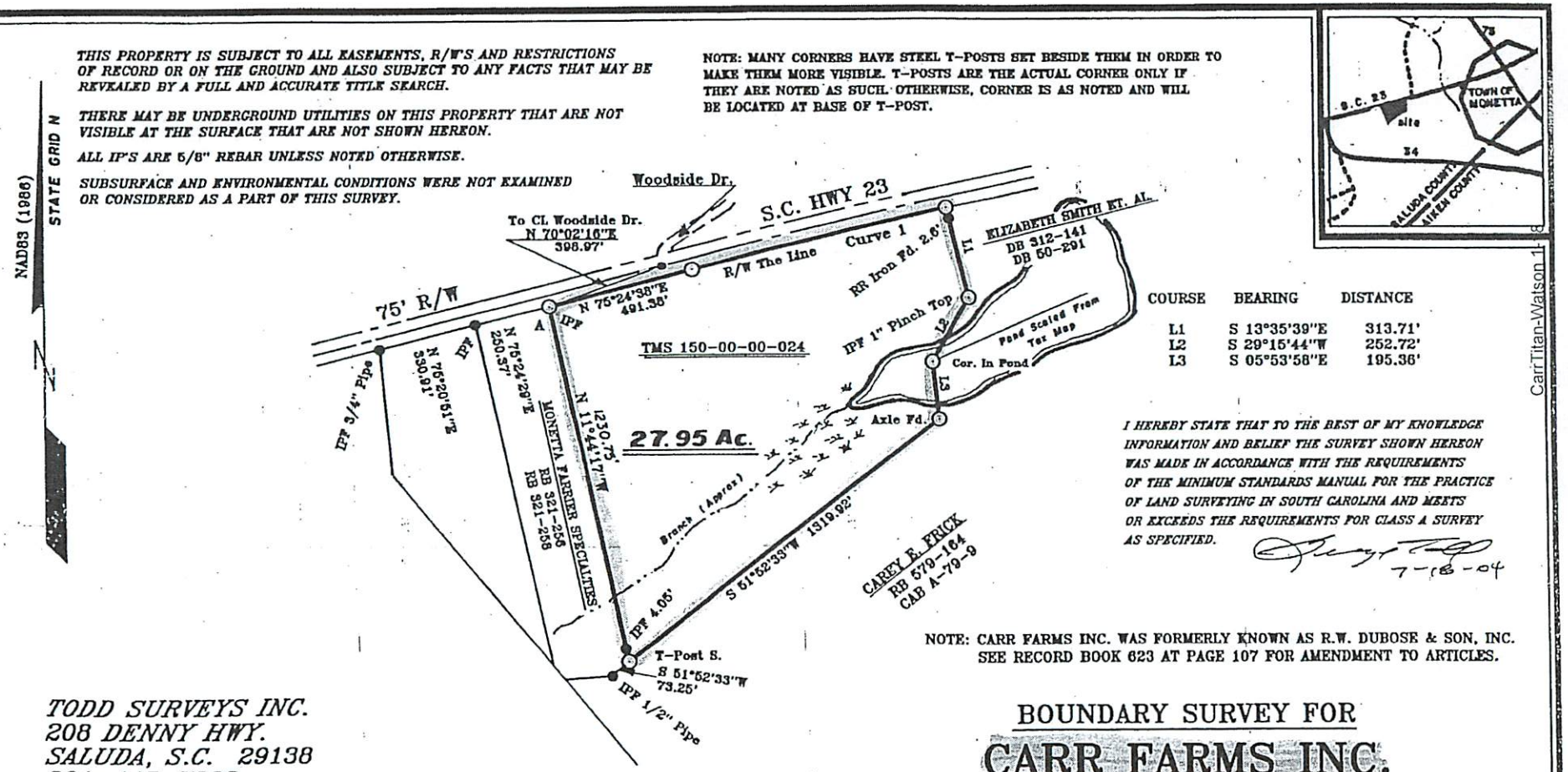
THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, R/W'S AND RESTRICTIONS OF RECORD OR ON THE GROUND AND ALSO SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH.

THERE MAY BE UNDERGROUND UTILITIES ON THIS PROPERTY THAT ARE NOT VISIBLE AT THE SURFACE THAT ARE NOT SHOWN HEREON.

ALL IP'S ARE 5/8" REBAR UNLESS NOTED OTHERWISE.

SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.

NOTE: MANY CORNERS HAVE STEEL T-POSTS SET BESIDE THEM IN ORDER TO MAKE THEM MORE VISIBLE. T-POSTS ARE THE ACTUAL CORNER ONLY IF THEY ARE NOTED AS SUCH. OTHERWISE, CORNER IS AS NOTED AND WILL BE LOCATED AT BASE OF T-POST.



COURSE	BEARING	DISTANCE
L1	S 13°35'39"E	313.71'
L2	S 29°15'44"W	252.72'
L3	S 05°53'58"E	195.36'

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 CLASS A SURVEY AS SPECIFIED.

7-18-04

NOTE: CARR FARMS INC. WAS FORMERLY KNOWN AS R.W. DUBOSE & SON, INC. SEE RECORD BOOK 623 AT PAGE 107 FOR AMENDMENT TO ARTICLES.

TODD SURVEYS INC.
208 DENNY HWY.
SALUDA, S.C. 29138
864-445-7892

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CH.BEARING
Curve 1	28644.72'	433.89'	867.71'	1°44'08"	0°12'00"	867.68'	N 76°16'44"E

BOUNDARY SURVEY FOR
CARR FARMS INC.

SALUDA COUNTY SOUTH CAROLINA
JUNE 18, 2004 SCALE: 1"=400'

400 0 400 800

165-32
TITAN21F:

CarrTitan-Watson 1

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SALUDA	)	CIVIL ACTION NO.: 2016-CP-41-153
	)	
CARR FARMS, INC. and TITAN FARMS, LLC,	)	**RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**
Plaintiff(s),	)	
vs.	)	
	)	
SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,	)	
Defendant(s).	)	

TO: DANIEL L. DRAISEN, ESQUIRE, ATTORNEY FOR THE DEFENDENT

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiffs, Carr Farms, Inc. and Titan Farms, LLC (collectively "Plaintiffs"), hereby submit this response in Opposition to Defendant's Motion for Partial Summary Judgment. Plaintiffs further move before the Presiding Judge of the Eleventh Judicial Circuit as soon as counsel may be heard, for an Order pursuant to Rule 56 SCRCP granting Plaintiffs partial summary judgment as a matter of law. Specifically, Plaintiffs seek judgment as a matter of law on the Second Cause of Action contained within the Complaint, and the First, Third and Fourth Counterclaims included in the Third Amended Answer and Counterclaims. This Motion is based upon South Carolina law, the South Carolina Rules of Civil Procedure, the pleadings filed in this case, the deeds properly recorded in Saluda County, as well as others attached hereto which are incorporated herein, and such other matters as may be properly presented to the Court at the Hearing. For the reasons set forth herein, Plaintiffs are entitled to Judgment as a matter of law.

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FACTUAL BACKGROUND

The facts, in the light most favorable to the Defendant, are as follows:

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto F. Broadus Smith in fee simple

> All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; Bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and Bounded on the West by lands now or formerly owned by Charles Abney.
>
> On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.
>
> The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (1/2) acre from Mrs. Hassie P. Cogburn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (1/2) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.
>
> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same.

The October 1, 1960 conveyance from Mattie Lee Bonnette to F. Broadus Smith was recorded in the office for the Clerk of Court for Saluda County, South Carolina on or about October 3, 1960 in Deed Book 50 at page 291 ("Smith Transfer"), and has been assigned tax map number 150-00-00-017 by Saluda County, South Carolina ("Smith Property"). A true and accurate copy of the Smith Transfer is attached hereto and incorporated herein as Exhibit A.

On October 1, 1960, D.C. Abney, together with his wife, Irene O. Abney, owned property

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on the western border of the Smith Property by virtue of a conveyance for valuable consideration recorded in the office for the Clerk of Court for Saluda County, South Carolina, on October 15, 1959, and recorded in Deed Book 49 at page 308 ("Abney Property"). The Abney Property was more particularly described as

> All that certain tract of land containing 164 acres, more or less, known as the "John Cogburn Homeplace", in Ridge Spring School District, Saluda County, SC, lying on both sides of the Columbia-Augusta Highway or State Highway #23, 1 ½ miles East of Ridge Spring on waters of Cloud Creek and bounded on the North by lands of Mrs. Annie E. Boarwright; East by lands of Mrs. Annie Boatwright, J.H. Hipp, and A.L. Bonnett; South by lands of H.G. Cogburn and Estate lands of M.H. Cogburn, deceased. Said tract is more particularly described according to a plat prepared by U.S. Nicholson, Surveyor, on the 5th day of July, 1933, as amended, which is recorded in Plat Book 4, page 6, Office of the Clerk of Court for Saluda County, SC.

On or about September 21, 1970, F. Broadus Smith and D.C. Abney entered into an Agreement, a true and accurate copy of which is attached hereto and incorporated herein as Exhibit B (the "Agreement"). Pursuant to the terms of the Agreement, F. Broadus Smith was in the process of constructing a pond on the Smith Property in September 1970. F. Broadus Smith sought to flood approximately one acre of the Abney Property. In exchange for D.C. Abney's grant of authority to flood approximately one acre of the Abney Property, F. Broadus Smith, his heirs, assigns, executors and administrators granted to D.C. Abney, his heirs, assigns, executors and administrators without limitation "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond."

On or about May 25, 2010, the Abney Property was deeded to Carr Farms, Inc., with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 913 at page 276. A true and accurate copy of this conveyance is attached hereto and incorporated herein as Exhibit C. Carr Farms, Inc., ("Carr") a Plaintiff in this action, is the current owner of the Abney Property. A portion of the Abney Property remains flooded today. Carr, as the current

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owner of the Abney Property and assignee of D.C. Abney, has the authority and consent to use "said water from said pond" pursuant to the terms of the Agreement. Defendant acknowledges Carr has a right to use water from the subject pond. *See Third Amended Answer and Counterclaims, Paragraph 56*. There is no language included in the Agreement which limits the ability of the assignees of D.C. Abney to use the water or the manner in which the assignees of D.C. Abney use the water.

On October 1, 1960, the date of the Smith Transfer, Mattie L. Bonnette owned property on the southern and eastern borders of the Smith Property. On or about March 22, 1976, Mattie L. Bonnette conveyed to Jean B. Holston property adjacent to the Smith Property ("Bonnette Property"), with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 76 at page 148 ("Holston Transfer"). A true and accurate copy of the Holston Transfer is attached hereto and incorporated herein as Exhibit D. No reference is made in the Holston Transfer to any easement granted unto F. Broadus Smith. Titan Farms, LLC, ("Titan") a Plaintiff in this action, is the current owner of the Bonnette Property by way of conveyance recorded in Saluda County at Deed Book 966 at page 104, a true and accurate copy of which is attached hereto and incorporated herein as Exhibit E. A portion of the Bonnette Property, of which Titan is the title owner, remains flooded today. None of the conveyances from the Holston Transfer to the conveyance reflected in Exhibit E reveal any reservation of an easement to the pond at issue in this action. *See* Exhibits G, H, I and J.

SUMMARY JUDGMENT

Based upon the foregoing facts, Plaintiffs seek judgment as a matter of law on the Second Cause of Action contained within the Complaint, and the First, Third and Fourth Counterclaims included in the Third Amended Answer and Counterclaims. Each of these claims are for

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declaratory relief based upon a claimed littoral rights to a man-made, non-navigable pond over the Smith Property, the Bonnette Property, and the Abney Property (the "Pond"). For the reasons set forth herein, Defendant does not have a claimed easement granting exclusive rights to maintain the Pond, and Defendant, Carr and Titan are all able to use the water from the Pond as outlined herein.

Summary Judgment is properly granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Southern Glass & Plastics Co., Inc. v. Kemper*, No. 5021, 2012 WL 3322639, *3 (S.C. August 15, 2012)(*citing Fleming v. Rose,* 567 S.E.2d 857, 860 (2002)). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *Id.* (*citing Sauner v. Pub. Serv. Auth. of S.C.,* 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Id.* (*quoting Sides v. Greenville Hosp. Sys.,* 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App.2004)).

EASEMENTS

"An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed." *Windham v. Riddle,* 672 S.E.2d 578, 582 (S.C. 2009)(*quoting Douglas v. Med. Investors, Inc*., 182 S.E.2d 720, 722 (S.C. 1971)). "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Snow v. Smith*, 784 S.E.2d 242, 248 (S.C. Ct. App. 2016)(*quoting Binkley v. Rabon Creek Watershed Conservations Dist. of Fountain Inn,* 558 S.E.2d 902, 909 (S.C. Ct. App. 2001)). "[T]he intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Windham*, 672 S.E.2d at 582-

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83 (*quoting Wayburn v. Smith*, 239 S.E.2d 890, 892 (S.C. 1977)). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Winham*, 672 S.E.2d at 583 (*quoting Gardner v. Mozingo*, 358 S.E.2d 390, 391-92 (S.C. 1987)). The grantor's intent must be determined from the four corners of the deed. *Id*.

There are two types of easements, easements in gross and appurtenant easements. "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer." *Windham*, 672 S.E.2d at 583 (*quoting Tupper v. Dorchester County*, 487 S.E.2d 187, 191 (S.C. 1977)). "In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof." *Id*. "Unless an easement has ***all*** the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross." *Id*. (***emphasis*** added). "The character of an express easement is determined by the nature of the right and the intention of the parties creating it." *Id*. "Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted." *Id*.

In the instant situation, we have three (3) documents that require consideration in evaluating the claims of the parties, including whether the instant easement is one in gross, or appurtenant. The first is the Smith Transfer, which contains the following language:

> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same.

The second document is the Agreement, whereby Broadus Smith granted unto D.C. Abney, and his assigns (Carr) the right to use the pond. The third document is the Holston Transfer, which

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conveys the property to the south of the Smith Property. No mention or reservation of any easement is noted in the Holston Transfer, or any subsequent conveyances in that chain of title which is now held by Titan. *See* Exhibits D, G, H, I, and J.

A careful review of the Smith Transfer reveals that the easement was that of a personal privilege and thus one in gross, not appurtenant. If we look at the nature of the easement, it outlines the right of Broadus Smith to exclusively use and control water impounded upon lands owned by the grantor, Mattie Lee Bonnette. A plain reading of this paragraph reveals that only Broadus Smith is referenced as the recipient of the privilege, and only the grantor, Mattie Lee Bonnette is referenced as granting such privilege. By its plain language, a privilege is conveyed to impound, use and control water over lands owned by Mattie Lee Bonnette. As noted, to be an easement appurtenant, the easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *See Windham*, 672 at 578. Without ***all*** of these necessary elements, an easement will be characterized as one in gross. *See id*.

"***Inhere in the land***"

Black's Law Dictionary (7th Ed. 2000) defines "inhere" as "to exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something." The nature of the claimed instant, exclusive, privilege does not "inhere in the land" as it is not a permanent or inseparable attribute of the conveyance. To the contrary, at the time the easement was granted, there was no impounded water to which Broadus Smith could have used exclusively. The easement was not necessary or inseparable from the land as the grant of privilege was prospective. It wasn't until ten (10) years later that Broadus Smith elected to start constructing the dam to impound the water. Furthermore, if the spring which fills the pond dries up, there will be no pond

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and yet the parties would still have their land. If the parties had intended for Broadus Smith to permanently have exclusive use of the pond, the Smith Transfer would have included additional acreage to accommodate the entirety of the pond. This was not done, however. Based upon the foregoing, the grant is not permanent, or inseparable from the land. The instant easement fails this element.

"Concern the Premises"

The Smith Transfer references the authority of Broadus Smith to create a dam located partially on the conveyed property, and partially on land owned by Mattie Lee Bonnette, and to flood part of the property owned by Mattie Lee Bonnette. The description of the property conveyed revealed that at the time of the conveyance, Mattie Lee Bonnette owned property on the South of the conveyed property, and property on the East of the conveyed property. Thus, the easement is nondescript as to which premises would be encumbered at the time of conveyance, other than to note other lands of Mattie Lee Bonnette could be flooded. Hardly can it be said that the easement "concerns the [Bonnette Property]" without further description in the easement. Furthermore, the grant of privilege at issue is the "exclusive" use and control of the pond, notably the water over property owned by Titan. If the issue is the use of water over property owned by Titan, the issue doesn't concern the premises owned by Defendant. The instant easement fails this element as well.

"One Terminus on the Property"

Traditionally, one would interpret this clause to reference the starting or ending point of an easement or rite of way for passage to have a "terminus on the property." That is not the case here, as the easement is not one of ingress or egress. It is not a rite of way. Rather, it is the grant of a privilege to flood, and exclusive use and control water over the lands owned by another, essentially

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divesting the owner of the dominant estate of the ability to use and enjoy water over their property. Doing so would prohibit Titan from being even being able to access property owned by Titan, property that Titan pays taxes on. Further, the easement doesn't have a "terminus" on the property, as the water levels could drop to a point where the pond is wholly on lands owned by Titan and Carr, without any contact to the Smith Property. The instant easement fails this element.

"Is essentially necessary to the enjoyment thereof"

This element is the most damning for Defendant's claim. The easement, and Defendant's claim of exclusive water rights, is not "essentially necessary to the enjoyment" of the Smith Property. The pond did not exist at the time of the Smith Transfer. It did not exist for at least ten (10) years following the Smith Transfer as that was when the Agreement was entered referencing Broadus Smith being in the process of constructing the dam. The pond may be aesthetically pleasing to Defendant. It may be a luxury for Defendant. A claim of exclusive use of the water over property titled in the name of someone else does not change the appeal or enjoyment. An exclusive privilege to use the water over property owned by Titan is not "essentially necessary to the enjoyment" of Defendant's property. This is especially true when Broadus Smith granted the Agreement, giving the right to use the water to D.C. Abney. If D.C. Abney (and his heirs and assigns) could use the without eliminating the enjoyment thereof, and thereby end Broadus Smith's exclusive rights, the easement is not "essentially necessary to the enjoyment thereof."

In short, reviewing the necessary elements for an appurtenant easement, Defendant fails on each, and thus, the easement was one in gross. As a result, Defendant does not have "exclusive use and control" of the pond. In South Carolina, the title owner of the bed of the pond "ha[s] the right to use those portions of the pond immediately above their titled property." *See White's Mill Colony Inc. v. Williams*, 609 S.E.2d 811, 821 (S.C. Ct. App. 2005).

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Defendant attempts to rely upon the Smith Transfer to support her position that the easement was one appurtenant, and not in gross. Specifically, Defendant asserts such claim despite the fact that the specific paragraph related to the grant of an easement only refers to the right of *F. Broadus Smith* to construct a dam, on lands owned by *grantor* (Mattie Lee Bonnette), and *grantee* (F. Broadus Smith) having exclusive use and control of the same. Reliance is made by Defendant upon the fact that the language preceding the devise of land includes reference to F. Broadus Smith, his heirs and assigns. Such language was necessary to convey fee simple title. *See Hunt v. Forestry Com'm*, 595 S.E.2d 846, 849-50 (S.C. Ct. App. 2004)(citations omitted) Despite the fact that the paragraph conveying the easement does not contain such language, only referencing the individuals involved in the actual conveyance, "[t]he fact that the words 'heirs and assigns forever' were used does not and cannot change an easement in gross to an easement appurtenant to land" where the four essential elements are not satisfied. *See Steele v. Williams*, 28 S.E.2d 644, 647 (S.C. 1944). As noted herein, the failure of this easement to satisfy these elements renders it in gross.

That the easement was to be one in gross, and not appurtenant, is further evidenced by the Holston Transfer. Had there been an intention that the easement in the Smith Transfer be one appurtenant, Mattie Lee Bonnette, the owner of both parcels of land, clearly could have reserved a right in the Holston Transfer for F. Broadus Smith to exclusively use the subject pond. This was not done, however. Rather, while there is reference to the property conveyed being bordered on the west by properties owned by Charles Abney and Broadus Smith, there is no reference, reservation, or evidence of any easement. Thus, the easement was clearly intended to be one in gross.

Because of the foregoing, the littoral rights of the parties are determined by the laws of South Carolina. The parties in this case do not dispute the fact that the instant pond is non-

navigable. Thus, the common law rule controls the rights of the parties. Therefore, "the fee simple owner of the pond bed [] has the exclusive right to the use of the surface waters above its property and may exclude all others from access to those waters." *White's Mill Colony Inc. v. Williams,* 609 S.E.2d 811, 820 (S.C. Ct. App. 2005). Similar to the instant situation, the pond in *White's Mill* was a man-made pond, created when a dam was constructed. *Id*. at 814. The Court noted that the pond was not listed as a navigable water, as such a classification would allow access to the public. See id. at 815, S.C. Const. art XIV, § 4, S.C. Code Ann. 49-1-10. After a careful analysis, the Court concludes that South Carolina follows the common law rule which provides that "owners of land along rivers, streams, lakes and other bodies of water possess a property right incident to their ownership of the bank and bed of a watercourse that is distinct from those rights that may be enjoyed by the public at large. In general, these special rights allow abutting landowners to make 'reasonable use' of the bond of water for any lawful purpose, whether for commerce or recreation." *See id*. at 817 (*citing Lowe v. Ottaray Mills*, 77 S.E. 135, 136 (S.C. 1913). "These rights are subject to the limitation that the use may not interfere with the like rights of those above, below, or on the opposite shore." *Id*. (citations omitted).

The specific question in *White's Mill* was "who may control the surface waters of a private, man-made, non-navigable pod, when the pond bed is owned entirely by an adjoining landowner." *Id*. at 818. The Court concluded, as noted, "to the extent the [Plaintiff] is the fee simple owner of the pond bed, it has the exclusive right to use the surface waters above its property and may exclude all others from access of those waters." *Id*. at 820. The special referee originally presiding over this matter declined to adjudicate the unsettled boundaries between the parties, so the Court of Appeals further outlined that "[i]f [others] hold title to portions of the bed of the pond, then those landowners have the right to use those portions of the pond immediately above their titled property.

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Similarly, they have the right to exclude others from those portions of the lake." *Id*. at 821.

Different from *White's Mill*, it is clear that three adjoining property owners have title in fee to the pond bed: Defendant, Carr and Titan. Such is demonstrated by those plats collectively attached hereto and incorporated herein as Exhibit F. Thus, under the law of South Carolina, Defendant, Carr, and Titan have the right to make reasonable use those portions of the pond immediately above their titled property. As previously noted, Exhibit B demonstrates that beyond the foregoing, Defendant has also granted unto Carr the right to use the water above Defendant's property. Titan and Carr have common ownership and Titan and Carr have granted unto each other the right and ability to use the water above their respective tracts. Thus, Defendant has the right to use the water above her titled property. Carr has the right to use the entire pond and Titan has the right to use water above its property and above Carr's property.

CONCLUSION

Based upon the foregoing, Plaintiffs are entitled to Judgment as a matter of law on the Second Cause of Action contained within the Complaint, and the First, Third and Fourth Counterclaims included in the Third Amended Answer and Counterclaims. There exist no genuine issue of material fact and the law as outlined herein is clear. Defendant's Motion for Partial Summary Judgment should be denied and Plaintiffs' Motion for Partial Summary Judgment should be granted.

MILLING LAW FIRM, LLC
s/ Jonathan M. Milling
Jonathan M. Milling
2910 Devine Street
Columbia, SC 29205
Telephone: (803) 451-7700
Facsimile: (803) 451-7701
Email: jmm@millinglaw.net
ATTORNEY FOR PLAINTIFFS

Dated: February 2, 2018

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$35.00 State Stamps; $19.25 Federal Stamps

TITLE TO REAL ESTATE Form 14
The R. L. Bryan Company, Columbia, S. C.

State of South Carolina,
COUNTY OF SALUDA

Know All Men by These Presents, That I, Mattie Lee Bonnette of the County of Saluda

in the State aforesaid, for and in consideration of the sum of Seventeen thousand, five hundred and 00/100 ($17,500.00) DOLLARS to me paid by F. Broadus Smith in the State aforesaid -- the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and bounded on the West by lands now or formerly owned by Charlie Abney.

On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.

The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 20 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (½) acre from Mrs. Hessie P. Cogburgn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (½) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.

Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

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STATE OF SOUTH CAROLINA,
SALUDA County.

PERSONALLY appeared before me Dora D. Hare
and made oath that she saw the within-named Mattie Lee Bonnette
sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with James B. Hare witnessed the execution thereof.

SWORN to before me this 1st
day of October *19* 60
JAMES B. HARE (L. S.)
N.P. Notary Public of S. C.
Seal

DORA D. HARE

STATE OF SOUTH CAROLINA,
County.

RENUNCIATION OF DOWER
NO DOWER NECESSARY--GRANTOR WOMAN

I, , do hereby certify unto all whom it may concern, that Mrs.
the wife of the within-named
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this
day of
Anno Domini 19

(L. S.)
Notary Public of S. C.

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State of South Carolina,

County of SALUDA

Mattie Lee Bonnette

TO

F. Broadus Smith

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 10 A. M. o'clock on the 3rd day of October, 19 60 and was immediately entered upon the proper indexes and duly recorded in Book 50 of Deeds, page 291

H. F. PADGET

Clerk of Court of Common Pleas and General Sessions for SALUDA County, S. C.

I hereby certify that the within Deed has been this day of , A. D. 19 , Recorded in Book of Deeds, page

Auditor for County

The R. L. Bryan Company, Columbia, S. C.

I do hereby certify this is a true and correct copy of real estate deed as recorded in the Office of the Clerk of Court for Saluda County, South Carolina, and copied from Deed Book 50 at page 291 this September 11, 1970.

Julius T. Merchant

JULIUS T. MERCHANT
Notary Public for S.C.
My commission expires: 1-1-71

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

AGREEMENT

This Agreement made and entered into this 21st day of September 1970 by and between F. Broadus Smith and D. C. Abney, WITNESSETH:

1. It is understood by and between the parties hereto that the said F. Broadus Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will back over and upon lands of D. C. Abney and that the said D. C. Abney does hereby grant unto the said F. Broadus Smith the rights to flood approximately one acre of land belonging to D. C. Abney provided, however, that the said D. C. Abney shall have the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D. C. Abney is flooded by said pond.

2. The consideration for this Agreement is the mutual promises and rights of both parties hereto and said Agreement is binding upon the heirs assigns, executors and administrators of both parties hereto.

WITNESS our Hands and Seals this 21st day of September 1970.

F. Broadus Smith L.S.
F. Broadus Smith

D. C. Abney L.S.
D. C. Abney

In the presence of:

Sept 1970

125

Mail to

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Requested By: stg 11/23/2016

Instrument 201000001090 OR Volume 913 Page 276

201000001090
Filed for Record in
SALUDA COUNTY SC
DORIS B HOLMES,CLERK OF COURT
06-11-2010 At 02:51:59 pm.
CORR DEED 10.00
OR Volume 913 Page 276 - 284

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

QUIT CLAIM DEED TO REAL ESTATE
(Corrective Deed)

WHEREAS, Grantor's name was changed to that of the Grantee by filing with the office of the South Carolina Secretary of State on November 15, 2001; and

WHEREAS, at the request of the Saluda County, South Carolina Assessor's Office, Grantor is now executing and delivering to Grantee this Quit Claim Deed to Real Estate to correct the name of the Grantee in the property tax records of Assessor's Office and to conform title already vested in the Grantee; and

WHEREAS, no consideration is being paid for the transfer described herein.

KNOW ALL MEN BY THESE PRESENTS, that **R. W. DuBose & Son, Inc.**, a South Carolina corporation whose mailing address is 5 R.W. DuBose Road, Ridge Spring, South Carolina 29129 (hereinafter referred to as the "Grantor"), for and in consideration of the sum of One and No/100 Dollars ($1.00) to it in hand paid, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does hereby remise, release and forever quitclaim unto **Carr Farms, Inc.**, a South Carolina corporation whose mailing address is 5 R.W. DuBose Road, Ridge Spring, South Carolina 29129 (hereinafter referred to as the "Grantee") all its right, title and interest in and to the following described property (the "Property"):

SEE EXHIBIT A ATTACHED HERETO
AND INCORPORATED HEREIN

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

TO HAVE AND TO HOLD all and singular, the said Property before mentioned unto the said Grantee, its successors and assigns forever, so that neither the Grantor nor any other person or persons claiming under Grantor, its successors and assigns, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid Property or appurtenances, or any part or parcel thereof, forever.

[Remainder of page intentionally left blank]
[Signature pages to follow]

Recorded In Assessor's Office
Book 3 Page 1364
Jane B Guy
Auditor for Saluda, S.C.
By: BF

COLUMBIA 997895v1

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Requested By: stg 11/23/2016

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WITNESS the Hand and Seal of this Grantor effective as of the 25th day of May, in the year of our Lord two thousand ten and in the two hundred thirty-fifth year of the Sovereignty and Independence of the United States of America.

Signed, sealed and delivered in the presence of:

GRANTOR:

R. W. DUBOSE & SON, INC.

Witness #1

By: _____
Chalmers R. Carr, III

Witness #2

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF Edgefield)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deposed and said that s/he saw the within named Grantor by Chalmers R. Carr, III, its President, sign, seal and deliver the foregoing Quit Claim Deed to Real Estate and that s/he, together with the other witness whose signature appears above, witnessed the execution thereof.

Witness #1 signs again here

SWORN TO and subscribed before me
this 25th day of May, 2010.

Notary Public for South Carolina
My Commission expires: August 13, 2013

[NOTARY SEAL]

Requested By: stg 11/23/2016

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EXHIBIT A

PROPERTY DESCRIPTION

Requested By: stg 11/23/2016

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Parcel V V and Parcel Q

All that piece, parcel or tract of land in Edgefield County, South Carolina, containing sixty-four and five-tenths (64.5) acres, more or less, and bounded on the north by lands of Kathleen R. Martin, on the east by Flat Rock Creek, on the south by Tracts "C" and "E1" as shown on the plat of C. Ashley Abel, Registered Surveyor, dated September 20, 1985, and recorded in the office of the Clerk of Court for Edgefield County in Plat Book 27, at page 109; and on the west by Tract "G" on said plat.

This tract consists of Tract "D" (consisting of 17.81 gross acres, more or less) and Tract "B" (consisting of 47.2 gross acres, more or less) on the aforesaid plat.

ALSO:

All that piece, parcel or tract of land in Edgefield County, South Carolina, containing seventy-two and fifty-six hundredths (72.56) gross acres, more or less; and designated as Tract "E-1" on the aforementioned plat of C. Ashley Abel; being bounded on the north by Tract "D" on said plat, on the east by the centerline of Highway S-19-20, on the south by lands of Sandra J. DuBose and William C. Rutland, and on the west by the right-of-way of Highway S-19-275 and by lands of Satcher.

ALSO:

All that piece, parcel or tract of land containing forty-nine and ninety-four hundredths (49.94) acres, more or less, in Saluda and Edgefield Counties, South Carolina which is designated as Tract "G" on the aforementioned plat of C. Ashley Abel, Registered Surveyor, dated September 20, 1985. Said tract is bounded on the north by lands now or formerly of Rembert DuBose, on the east by lands of Kathleen R. Martin, and by Tract "D" on said plat, on the south by Tract "E-1" on said plat, on the west by Boggs Branch, and on the northwest by the right-of-way of Highway S-41-91.

This is the same property conveyed to R.W. DuBose and Son, Inc., by deed of G. Glenn Harling, Probate Judge of Edgefield County, dated December 16, 1985, and recorded in the Office of the Clerk of Court for Edgefield County on December 16, 1985, in Book 102, at Page 166; and recorded in the Office of the Clerk of Court for Saluda County on December 19, 1985, in Deed Book 111, at Page 56.

TMS # Edgefield 202-00-00-026-000 (64 acres)
202-00-00-028-000 (43.94 acres)
202-00-00-039-000 (71.04 acres)
Saluda 109-00-00-008 (5.20 acres)

Parcel XX and Parcel D

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, partially in Saluda County and partially in Edgefield County, containing 60 acres, more or less; said lands being now or formerly bounded on the north by county road and also by lands of G. W. Rauton, Jr.; northeast by paved State Highway S-41-24; south by lands of Mrs. Pearl R. Harmon; southeast by Possum Branch, which is the line, and across which lies lands of Mrs. Pearl R. Harmon; and southwest by lands of J. W. Yonce, Jr. and by lands of M. T. Hallman Estate.

This is a portion of the property conveyed to R. W. DuBose and Son, Inc. by Deed of Elaine K DuBose dated December 16, 1992, and recorded in the Office of the Clerk of Court for Edgefield County on December 23, 1992, in Deed Book 142 at page 35; and recorded in the Office of the Clerk of Court for Saluda County on January 29, 1993 in Record Book 257 at page 107.

Edgefield County TMS No. 196-00-00-010-000 (44.78 acres)
Saluda County TMS No. 108-00-00-002 (15.00 acres)

016

Requested By: stg 11/23/2016

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, Counties of Saluda and Edgefield, containing 89.85 gross acres, or 88.31 net acres, as shown by plat made by Henry Z. Duffie, Jr., RLS, dated October 26, 1977, recorded in Plat Book 24 at page 103, in the Office of the Clerk of Court for Edgefield County, South Carolina, of which approximately 31 acres lies in Saluda County and approximately 59 acres lies in Edgefield County, and according to said plat, the property bounded now or formerly as follows:

North by lands of R. W. DuBose and by lands of Lona Rutland; east by lands of Watson Brothers, lands of Homer Thrailkill and lands of Lona Rutland; south by lands of Burdett Jones; and west by lands of Guy Rutland.

This is the same property conveyed to R. W. DuBose and Son, Inc. by Deed of Kathleen R. Martin, recorded in the Office of the Clerk of Court for Edgefield County on March 17, 1986 in Book 104 at page 36, and recorded in the Office of the Clerk of Court for Saluda County on March 24, 1986, in Deed Book 114 at page 49.

Edgefield County TMS No 202-00-00-027-000 (59.23 acres)
Saluda County TMS No. 147-00-00-012 (30.00 acres)

Parcel C

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in Ridge Spring School District #2, containing 36 acres, more or less, bounded now or formerly on the north by lands of Ottis Price; east by lands of Lula Lybrand; south by lands of Derrick and DuBose; west by Ridge Spring-Saluda Highway and lands of Jones, Hammond and Thompson and perhaps others.

This is the same property conveyed to R.W. DuBose & Son, Inc., by Deed of Mildred Cumbee, dated December 23, 1981, and recorded in the Office of the Clerk of Court for Saluda County on December 31, 1981, in Book 92 at page 143.

TMS No. 145-00-00-010

Parcel E

All that piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing .64 acre as shown by plat made by C.A. Abel, RLS, dated September 12, 1986, recorded in Deed Book 119 at Page 141, Office of the Clerk of Court for Saluda County, South Carolina, said lot being now or formerly bounded as follows:

North for 214.41 feet by lands of Booker T. Anderson; east for 94.65 feet by lands of Booker T. Anderson; then southeast for a total of 179.56 feet and then east for 103.67 feet by lands of Johnny C. Hopkins; south for 49.04 feet by center line of a road, across which lies lands of Walter Davis; and west for 229.93 feet by lands of Booker T. Anderson.

This is the same property conveyed to R. W. DuBose and Son, Inc. by Deed of Trotter Builders, Inc., dated May 10, 1991, and recorded in the Office of the Clerk of Court for Saluda County on May 14, 1991, in Record Book 215 at page 70.

TMS No. 110-00-00-019

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Requested By: stg 11/23/2016

Parcel H

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, approximately one mile east of the Town of Ridge Spring, containing 33 acres, more or less, and being all of the lands of the Charlie Abney Tract that are located on the south side of S.C. Highway #23, and bounded now or formerly as follows:

North by right-of-way of S.C. Highway #23; east by lands of Jean B. Holston and lands of F.B. Smith; south by lands of Jean B. Holston; southwest and west by lands of the Cogburn Gaillard Estate.

LESS AND EXCEPT:

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, approximately one (1) mile east of the Town of Ridge Spring, containing 3.76 acres, as shown by plat of George S. Todd, RLS, dated January 27, 1990, and recorded in Records Book 185 at Page 278, Office of the Clerk of Court for Saluda County, and according to the plat the property is now or formerly bounded as follows.

North by South Carolina Highway 23 and by lands of R.W. DuBose & Son, Inc., east and south by lands of R. W. DuBose & Son, Inc.; southwest and west by lands of the Cogburn Gaillard Estate.

This property was conveyed to Larry C. Price by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court for Saluda County on February 16, 1990, in Deed Book 185 at Page 274.

ALSO, LESS AND EXCEPT:

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing 7.13 acres as shown by plat made by Henry Z. Duffie, Jr., RLS, dated May 16, 1995, recorded in Records Book 321 at page 258, in the Office of the Clerk of Court for Saluda County.

Said lands being now or formerly bounded on the north by SC Highway 323; east by lands of R.W. DuBose & Son, Inc.; southeast and south by lands of Jean B. Holston; southwest by lands of Cogburn Gaillard, Jr.; and west by other lands of R.W. DuBose & Son, Inc.

This property was conveyed to Monetta Farrier Specialties, Inc., by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court for Saluda County on June 27, 1995, in Deed Book 321 at page 256.

ALSO, LESS AND EXCEPT:

All that piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Saluda, in School District #2, containing 2.97 acres as shown by plat made by Henry Z. Duffie, Jr., RLS, dated May 16, 1995, recorded in Records Book 331 at page 158 in the Office of the Clerk of Court for Saluda County, South Carolina.

Said lands being bounded now or formerly on the north by SC Highway 323; east by lands of Monetta Farriers, Inc.; southwest by lands now or formerly of Cogburn Gaillard, Jr.; and west by lands of Larry C. Price.

This property was conveyed to Larry C. Price by Deed of R.W. DuBose & Son, Inc., recorded in the Office of the Clerk of Court on October 5, 1995, in Deed Book 331 at page 156.

This is a portion of the property conveyed to R.W. DuBose & Son, Inc., by Deed of Billy L. Amick, recorded in the Office of the Clerk of Court on December 31, 1986, in Deed Book 122 at page 314.

TMS No. 150-00-00-024

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Requested By: stg 11/23/2016

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred located in Saluda County, South Carolina, bearing Saluda County Tax Map Numbers 109-00-00-008, 108-00-00-002, 147-00-00-012, 145-00-00-010, 110-00-00-019, and 150-00-00-024 and was transferred by R.W. DUBOSE & SON, INC. to CARR FARMS, INC. as of March 1, 2010.

3. Check one of the following: The deed is

(a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because: this is quitclaim deed used to conform title already vested in the Grantee for which no consideration is to be paid (Exemption #12 below) and S.C. Revenue Ruling # 04-6. (If exempt, please skip items 4-7, and go to item 8 of this affidavit.).

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) ☐ The fee is computed on the fair market value of the realty, which is $_____.

(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $ 0

(b) Place the amount listed in item 5 above here: $ 0

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 0

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $_____.

Requested By: stg 11/23/2016

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: The President of the Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 25th day of May, 2010.

Notary Public for South Carolina
My Commission Expires: August 13, 2013

Chalmers R. Carr, III, President of Grantor

INFORMATION

"Value" means "the consideration paid or to be paid in money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interests and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer. Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or a trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value of the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

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(12) that constitute a corrective deed or a quitclaim deed used to conform title already vested in the grantee, provided no consideration is paid or is to be paid under the corrective or quitclaim deed.

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

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TITLE TO REAL ESTATE Form 14
The R. L. Bryan Co., Printers, Binders, Stationers, Columbia, S. C.

State of South Carolina,

COUNTY OF SALUDA

76-148

KNOW ALL MEN BY THESE PRESENTS, That I, Mattie L. Bonnette, of the County of Saluda in the State aforesaid, in consideration of the sum of Five and no/100 ($5.00) Dollars, love and affection to me paid by Jean B. Holston, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Jean B. Holston:

All that certain piece, parcel or tract of land, situate, lying and being in Ridge Spring School District, County of Saluda, State of South Carolina, containing one hundred seventeen (117) acres, more or less, and bounded now or formerly as follows: On the North by South Carolina Highway Number 23, which separates this land from lands of J. H. Hipp and Joseph Burton; on the East by lands of Burton and estate lands of D. L. Cato; on the South by lands of D. L. Cato and Webb and others; and on the West by lands of Charlie Abney, formerly Cogburn, and lands of Brodus Smith.

The above-described tract of land being shown and delineated on plat of lands of A. L. Bonnette prepared by H. E. Unger, Surveyor, dated June 4, 1934, with the exception of three small tracts cut off on the southern boundary to Webb, et al. Being lands conveyed to Mattie Lee Bonnette by A.L. Bonnette by deed dated February 1, 1944 and recorded February 4, 1944 in Deed Book 36 at page 51 in the office of the Clerk of Court for Saluda County, South Carolina.

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Jean B. Bolston her

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Jean B. Holston, her

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

WITNESS my *Hand and Seal this* 22nd *day of* March *in the year of our Lord one thousand nine hundred and* seventy-six *and in the ~~two hundred and~~* two hundredth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF
MAJOR V.McCARTY
BILLY C. COLEMAN

MATTIE L. BONNETTE (SEAL)

(SEAL)

STATE OF SOUTH CAROLINA,
SALUDA COUNTY.

PERSONALLY appeared before me and made oath that saw the within-named Mattie Lee Bonnette sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he, with Billy C. Coleman witnessed the execution thereof.

SWORN to before me this 22nd *day of* March ,19 76 .
BILLY C. COLEMAN
MAJOR V. MCCARTY
(L. S.)
Notary Public of S. C.
My Commission Expires: 12/16/79

STATE OF SOUTH CAROLINA,
COUNTY.

NO **RENUNCIATION OF DOWER**
GRANTOR FEMALE

I, , do hereby certify unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

heirs

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

Given under my Hand and Seal, this *day of* ,19 .

(L. S.)

Notary Public of S. C.

State of South Carolina
County of Saluda

Mie Lee Bonnette
TO
J. B. Holston

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 2:20 P M. o'clock on the 22 day of March , 19 76 , and was immediately entered upon the proper indexes and duly recorded in Book 76 of Deeds, page 146

EDITH C. PADGET
Clerk of Court of Common Pleas and General Sessions SALUDA County, S. C.

I hereby certify that the within Deed has been this day of , A. D. 19 , Recorded in Book of Deeds, page

Auditor
County

THE R. L. BRYAN COMPANY, COLUMBIA, S. C.

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2391

BOOK 415 PAGE 276

FILED
CLERK OF COURT
S.C.

98 AUG 28 PM 12:22

DOCUMENTARY TAX
FROM $ 1256.70
SUSTA. AMT.
TAXABLE

STATE $304.20

State of South Carolina

COUNTY OF SALUDA

KNOW ALL MEN BY THESE PRESENTS, That we, Jean Bonnette Holston and James Arnold Holston III,

in the state aforesaid, for and in consideration of the sum of One Hundred and Sixteen Thousand, Eight Hundred and Thirty-seven, and 50/100s ($116,837.50) paid by to us Sarah B. Schwarz, PO Box 116, Monetta, SC 29105 in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Sarah B. Schwarz, her heirs and assigns forever, in fee simple, the following described real estate, to wit:

SEE ATTACHED "EXHIBIT A"

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belong or in anywise incident of appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Sarah B. Schwarz, her Heirs and Assigns forever.

And we do hereby bind all our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Sarah B. Schwarz, her Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

WITNESS our *Hand and Seal* this 28th day of August *in the year of our Lord one thousand nine hundred and* ninety-eight *and in the two hundred and* twenty-second *year of Sovereignty and Independence of the United States of America*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

James A. Holston

Betty C. Coleman

Jean Bonnette Holston (SEAL)
Jean Bonnette Holston

James Arnold Holston, III (SEAL)
James Arnold Holston, III

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EXHIBIT A

All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 86.52 acres, shown as Tract #1 on a plat made by Todd Surveys, Inc., dated May 26, 1998, and recorded in Plat Cabinet A: Slide 218, Page 8, in the Office of the Clerk of Court for Saluda County, S.C., said Tract #1 bounded on the North by SC Highway #23, and by lands belonging to Double Branches Pentecostal Holiness Church; East by lands of Samuel L. Burton; South by Norfolk Southern Railroad right-of-way, and by lands of Elanor Quattlebaum; Southwest by lands of Cogburn Gaillard; and Northwest by lands of Monetta Farrier Specialties, and by lands of R.W. DuBose and Sons, Inc., and by lands of Shirley D. Gibson.

Also, all that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 2.27 acres, shown as Tract #2 on the above-mentioned plat; said Tract #2 bounded North by Norfolk Southern Railroad right-of-way; East by lands of Elanor Quattlebaum; South by Highway S 41-34; and West by lands of Gwendolyn DuBose.

Also, all that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 4.68 acres, shown as Tract #3 on the above-mentioned plat; said Tract #3 bounded North by Norfolk Southern Railroad right-of-way; East by lands of Gwendolyn DuBose; South by Highway S 41-34; and West by lands of Ricky Jeffery.

The above three tracts of land being land conveyed to the Grantors by deeds recorded in Deed Book 76, at Page 148, and Record Book 282, at Page 258.

TAX MAP NO. 149-15

Recorded in Assessor's Office
for 2 8/4
Jane B. Guy
Auditor for
Saluda, S. C.

I hereby certify that the within Deed was filed for record in my office at 12:22 P M o'clock on 8-28 1998 and was immediately entered upon the proper docket and duly recorded in Deed Book 415 Page 276
Donald B. Holmes
Saluda County Clerk of Court & RMC

Requested By: stg 11/23/2016

Instrument 201200000159 OR Volume 966 Page 104

THIS DEED IS EXECUTED IN DUPLICATE, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL. ONE OF WHICH IS BEING FILED FOR RECORD IN SALUDA COUNTY, SOUTH CAROLINA AND THE OTHER IS BEING FILED IN AIKEN COUNTY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY DEED
COUNTIES OF SALUDA & AIKEN)

KNOW ALL MEN BY THESE PRESENTS, that **CAREY FRICK A/K/A CAREY EDWARD FRICK**, in the State aforesaid, for and in consideration of the sum of ONE MILLION FOUR HUNDRED EIGHTY EIGHT THOUSAND THIRTY TWO AND 92/100 ($1,488,032.92) Dollars to it in hand paid at and before the sealing of these presents by **TITAN FARMS, LLC** in the State aforesaid (the receipt whereof is hereby acknowledged), and **CAREY FRICK A/K/A CAREY EDWARD FRICK**, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, subject to the exceptions listed below, unto the said **TITAN FARMS, LLC**, its successors and assigns forever in fee simple, the following-described real estate to wit:

Tract 1

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 2.5 miles southwest of the Town of Batesburg-Leesville (29006), County of Saluda, State of South Carolina, containing 190.70 acres, more or less, being more fully shown and designated as Parcel No. 1 on that certain plat prepared for Carey Edward Frick by T. Jennison Weed, PLS #21234, dated June 25, 2002 and recorded December 2, 2002, Plat Cabinet A Slide 79 at Page 8 in the Office of the Clerk of Court for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded December 2, 2002 in Record Book 579 at Page 159 in the Office of the Clerk of Court for Saluda County.

TAX MAP REFERENCE: TMS#179-00-00-014

201200000159
Filed for Record in
SALUDA COUNTY SC
DORIS B HOLMES, CLERK OF COURT
01-24-2012 At 01:31:54 pm.
DEED 10.00
STATE 2476.50
COUNTY 1047.75
OR Volume 966 Page 104 - 109

Tract 2

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 2.5 miles southwest of the Town of Batesburg-Leesville (29006), County of Saluda, State of South Carolina, containing 12.97 acres, more or less, being more fully shown and designated as Parcel No. 2 on that certain plat prepared for Carey Edward Frick by T. Jennison Weed, PLS #21234, dated June 25, 2002 and recorded December 2, 2002, Plat Cabinet A Slide 79 at Page 8 in the Office of the Clerk of Court for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

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Requested By: stg 11/23/2016

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded December 2, 2002 in Record Book 579 at Page 159 in the Office of the Clerk of Court for Saluda County.

TAX MAP REFERENCE: TMS#179-00-00-021

Tract 3

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 1, containing 89.52 acres, more or less, as shown by a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 1998 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

Tract 4

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 3, containing 4.68 acres, more or less, on a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on December 2, 2002 in Plat Cabinet A, Slide 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical property conveyed to Carey Edward Frick by deed of E. Phillips Boatwright, dated November 27, 2002 and recorded on December 2, 2002 in Record Book 579 at Page 164 in the Office of the Clerk of Court for Saluda County, South Carolina.

TAX MAP REFERENCE: TMS# 149-00-00-015 (Tracts 3 & 4)

Tract 5

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the Counties of Aiken and Saluda, State of South Carolina, the same being shown and delineated as Tract No.1, containing 8.28 gross acres (7.32 net acres), more or less, as shown on a plat prepared for Carey Frick by George S. Todd, SCRLS #7409, dated July 14, 1988 and recorded in Plat Book 21 at Page 27, in the RMC Office for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being a portion of the property conveyed to Carey E. Frick by deed of James Lannes Holston, dated July 29, 1988 and recorded on July 29, 1988 in Record Book 1050 at Page 30, Office of the RMC for Aiken County, South Carolina.

TAX MAP REFERENCE: P/O TMS# 177-00-03-002

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Requested By: stg 11/23/2016

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Tract 6

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being approximately 3 miles southwest of the Town of Batesburg-Leesville (29006), County of Aiken, State of South Carolina, containing 41.87 net acres, more or less, and being more fully shown and delineated on that certain plat prepared for Carey Edward Frick by T. Jeanison Weed, PLS #21234, dated June 25, 2002 and recorded December 9, 2002 in Plat Book 46 at Page 63-1, in the Office of the RMC for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the property conveyed to Carey E. Frick by deed of Sarah E. Watson, as Personal Representative of the Estate of Annie Shealy Watson, dated November 27, 2002 and recorded in Record Book 2264 at Page 85 in the Office of the RMC for Aiken County, South Carolina.
TAX MAP REFERENCE: TMS# 177-00-01-005

Tract 7 containing approximately 114.36 net acres

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Aiken, State of South Carolina, the same being shown and delineated as Tract No.2, containing 136.40 gross acres (135.70 net acres), more or less, as shown on a plat prepared for Carey Frick by George S. Todd, SCRLS #7409, dated July 14, 1988 and recorded in Plat Book 21 at Page 27, in the RMC Office for Aiken County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended; LESS AND EXCEPTING 21.34 ACRES, more or less, as shown by plat prepared for Carey E. Frick by Todd Surveys Inc., dated April 28, 2006 and recorded on June 6, 2006 in Plat Book 51 at Page 427, Office of the RMC for Aiken County, South Carolina South Carolina.

DERIVATION: This being a portion of the property conveyed to Carey Frick by deed of James Lannes Holston, dated July 29, 1988 and recorded July 29, 1988 in Records Book 1050 at Page 30, Office of the RMC for Aiken County, South Carolina.

TAX MAP REFERENCE: TMS# 178-00-01-001, 177-00-03-004 & P/O 177-00-03-002

This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.

GRANTEE'S ADDRESS:
Titan Farms, LLC
5 R.W. Dubose Road
Ridge Spring, SC 29129

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining thereto.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto the said Titan Farms, LLC, its successors and assigns forever.

And I do hereby bind myself and my heirs, executors and administrators to warrant and forever defend all and singular, the said Premises unto the Titan Farms, LLC, its successors and assigns, against me and my heirs, executors and administrators, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Recorded in Assessor's Office
Book 4 Page 1426
Auditor for
Saluda, S.C.

Requested By: stg 11/23/2016

WITNESS my Hand and Seal this 24th day of January in the year of our Lord two thousand twelve and in the two hundred thirty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness

Witness

By: _____ (SEAL)
Carey Frick a/k/a Carey Edward Frick

STATE OF SOUTH CAROLINA)
)
LEXINGTON COUNTY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named Carey Frick a/k/a Carey Edward Frick sign, seal, and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness, witnessed the execution thereof.

SWORN to before me this 24th day of January, 2012

_____ (L.S.)
Notary Public of South Carolina
My Commission expires: 4-27-2017

Witness

Prepared By:
Kennedy Law Firm, LLC
Post Office Box 2359
Batesburg-Leesville, SC 29070
Phone (803) 532-4100

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Requested By: stg 11/23/2016

Instrument 201200000159 OR Volume 966 Page 108

STATE OF SOUTH CAROLINA)
)
COUNTIES OF AIKEN & SALUDA)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is 462.38 total acres, more or less, located _____ with 164.51 acres, more or less, bearing Aiken County Tax Map Number 177-00-03-002, 177-00-01-005, 178-00-01-001, 177-00-03-004& 297.87 acres, more or less, bearing Saluda County Tax Map Number 179-00-00-014, 179-00-00-021, 149-00-00-015, was transferred by Carey Edward Frick to Titan Farms, LLC on January 24th, 2012.

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): ____

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,488,032.92 Total.

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes_____ or No_____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is:_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $1,488,032.92 Total

(b) Place the amount listed in item 5 above here: ____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $1,488,032.92 Total

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $5,507.45 TOTAL. ($1982.68 for Aiken County & $3524.77 for Saluda County).

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.

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Requested By: stg 11/23/2016

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 24th day of January, 2012

(L.S.)
Notary Public of S.C.
My Commission Expires: 4-27-2017

Responsible Person Connected with the Transaction

Carey Edward Frick
Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a corporation, a partnership, or other entity and a stockholder, a partner or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "Family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided no consideration of any kind is paid or to be paid for the corrective or quitclaim deed.

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.

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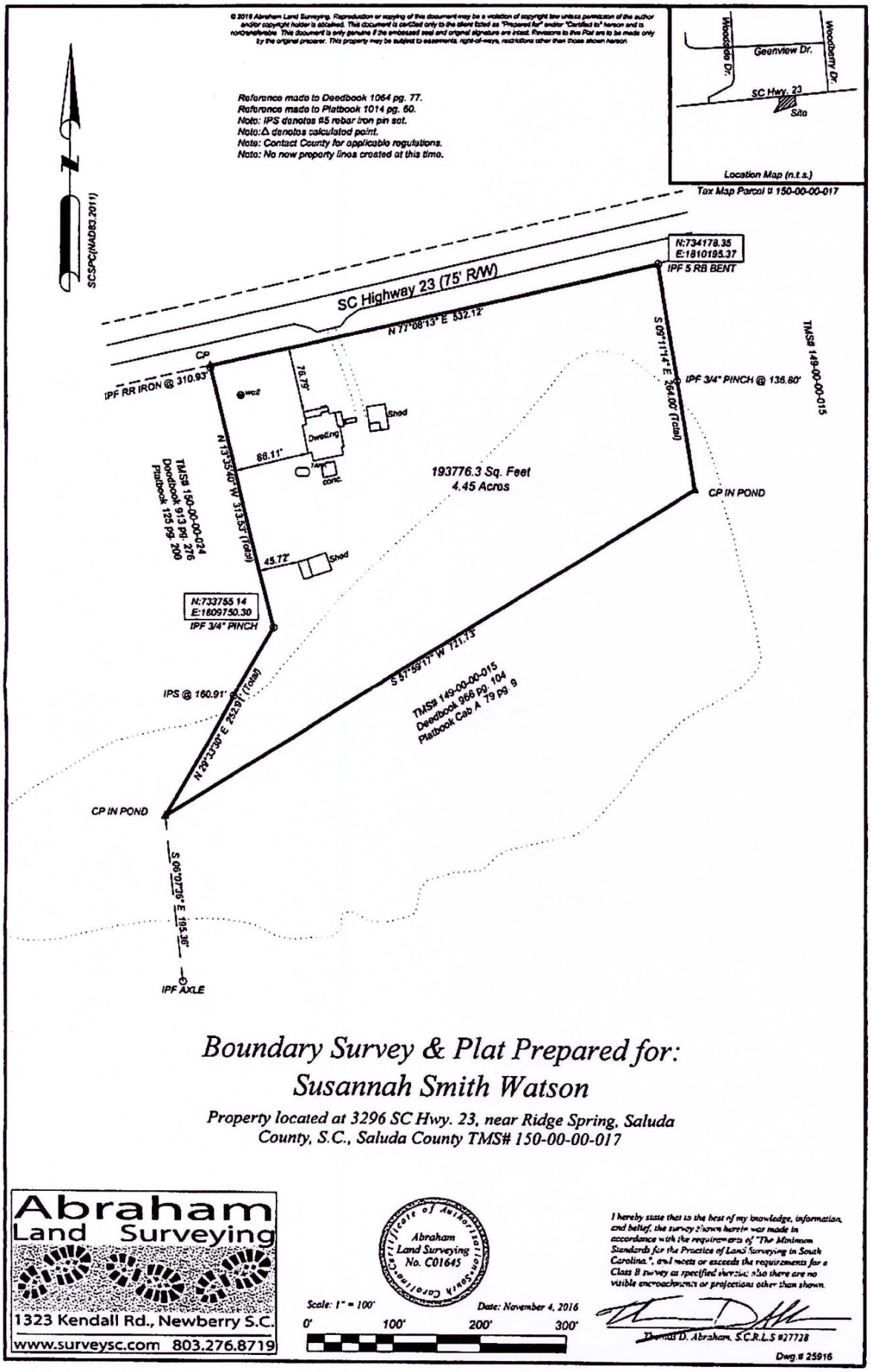
© 2016 Abraham Land Surveying. Reproduction or copying of this document may be a violation of copyright law unless permission of the author and/or copyright holder is obtained. This document is provided only to the client listed as "Prepared for" and/or "Certified to" hereon and is non-transferable. This document is only genuine if the embossed seal and original signature are intact. Revisions to this Plat are to be made only by the original preparer. This property may be subject to easements, right-of-ways, restrictions other than those shown hereon.



Boundary Survey & Plat Prepared for:
Susannah Smith Watson

Property located at 3296 SC Hwy. 23, near Ridge Spring, Saluda County, S.C., Saluda County TMS# 150-00-00-017

Abraham Land Surveying
1323 Kendall Rd., Newberry S.C.
www.surveysc.com 803.276.8719

Abraham Land Surveying No. C01645 — Certificate of Authorization South Carolina

Scale: 1" = 100'
0' 100' 200' 300'

Date: November 4, 2016

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina.", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Dennis D. Abraham, S.C.R.L.S #27728

Dwg.# 25916

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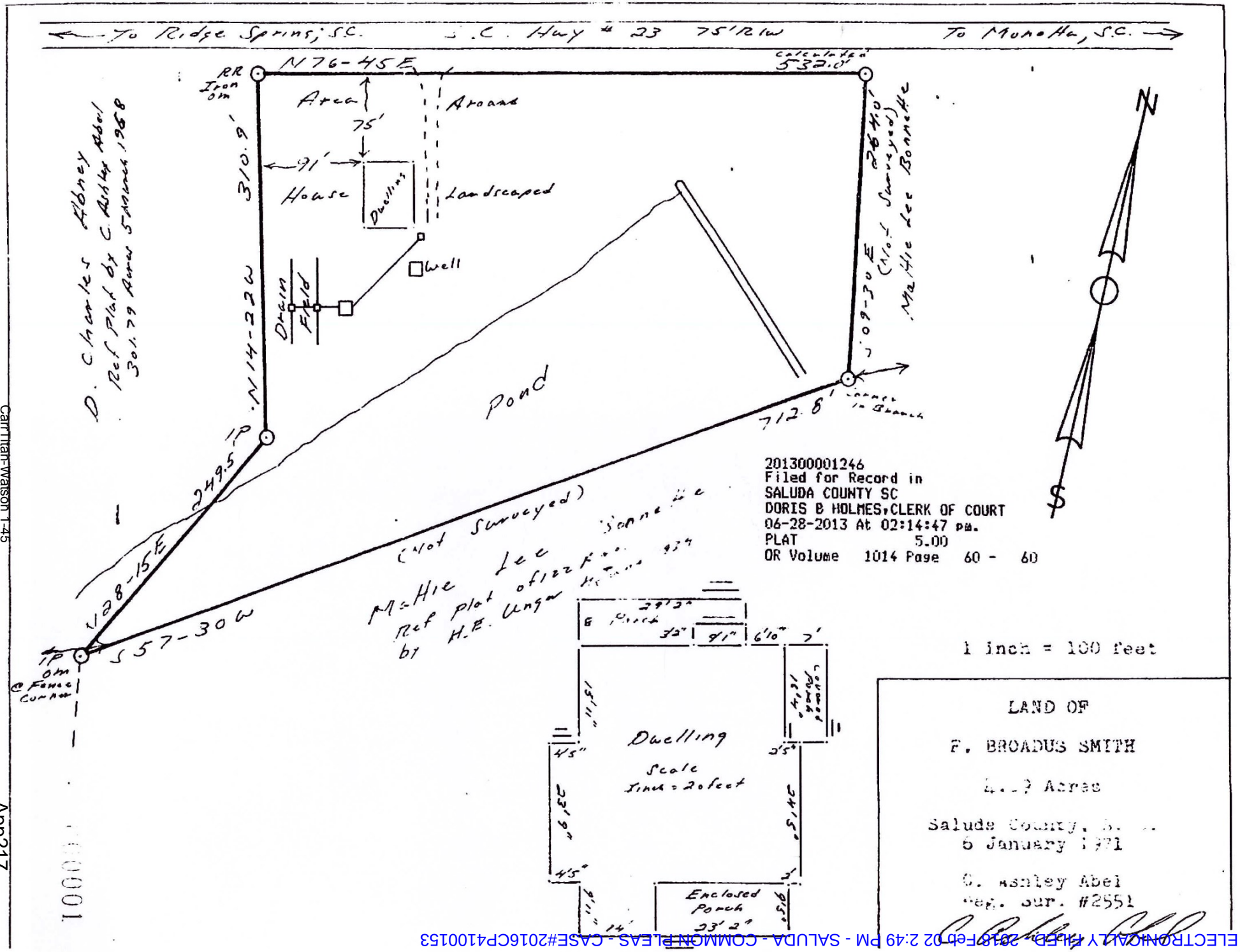
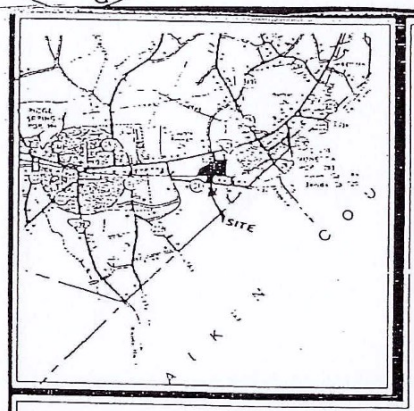


ELECTRONICALLY FILED - 2018-Feb-02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

FILED DEC 02 2002



REFERENCE MATERIALS:
A.J. WEED FOR JAMES ARNOLD & JEAN B. HOLSTON - 48.08 AC. - AUG. 30, 1993
C. ASHLEY ABEL FOR ELEANOR & W.N. QUATTLEBAUM - 46.90 AC. NET - JULY 7, 1993
R.S. CLARK JR. FOR W.B. WEBB - 4.0 AC. - PB 10 AT 85 - OCT. 20, 1967
H.Z. DUFFIE FOR SARAH B. SCHWARZ - RB 321 AT 258 - 7.13 AC. - MAY 16, 1995
C. ASHLEY ABEL FOR F. BROADUS SMITH - 4.49 AC. - JANUARY 6, 1971.
C.D. CAUGHMAN FOR JOHN COGBURN JR. - 139.53 AC. - NOV. 6, 1952
JOHN K. DAVIS FOR DOUBLE BRANCHES PENTACOSTAL HOLINESS CHURCH - 3.8 AC.
FEB 2, 1978 PB 27 AT 38

THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, R/W'S AND RESTRICTIONS OF RECORD OR ON THE GROUND

THERE MAY BE UNDERGROUND UTILITIES ON THIS PROPERTY THAT ARE NOT VISIBLE AT THE SURFACE THAT ARE NOT SHOWN HEREON

ALL IP'S ARE 3/4" PIPE UNLESS NOTED OTHERWISE

S.C 23 75' R/W

IPF 1/2" Rebar

DOUBLE BRANCHES PENTECOSTAL HOLINESS CHURCH
PB 27/38

S 35°22'34"E 162.62'

S 88°52'24"E 1028.53'

IPF 1/2" Rebar

N 88°52'24"W 80.00'

IPF 1/2" Rebar

N 05°07'24"W 364.00'

IPS 3/4" Pipe 126.7

FORMERLY BROADUS SMITH
DB 50-291

Cor. in Pond

IPF 3/4" Pipe

N 33°23'48"E 232.91'

N 61°57'20"E 721.31'

POND
(Exterior is Approx.)

Cor. in Pond

N 01°50'35"W 195.36'

Axle Fd.

N/F
R.F. DUBOSE & SON INC.
DB 122/214
DB 125/200

N 55°54'25"E 1393.17'

WONETTA FARRIER SPECIALTIES
RB 321/258
RB 321/256

IPF

BRZ 74'
S 35°02'41"E

N 89°46'22"E 156.23'

IPF 3/4" Pipe

IPF 3/4" Pipe

COGBURN GAILLARD
DB 175/253
PB 4/59

68.12'
S 40°31'47"E

IPS 3/4" Pipe

L25

N 84°31'14"W 622.90'
CL Of RR Track

N 84°31'14"W 2023.48'

NORFOLK SOUTHERN RR
130' RIGHT OF WAY

IPF 3/4" Pipe

L24

S 84°31'14"E 623.37' R/W

4.27 AC. IN RR R/W

N 84°31'14"W 472.44'

IPF 3/4" Rebar

N 84°33'34"W 729.87'
R/W The Line

C

L23

L22

256.47'
N 84°31'14"W

L21

L20

RICKY JEFFERY
DB 114/227
PB 114/231

N 22°01'08"E 244.88'

Tract 3
4.68 AC.

IPF 3/4" Pipe

IPF 3/4" Pipe

IPF 3/4" Pipe 1.19

IPS 3/4" Pipe

L8 L7 L6 L5 L4 L3 L2 L1

S 07°15'47"W 354.87'

GWENDOLYN DUBOSE
DB 254/30
PB 10/85

N 07°28'54"E 371.20'

ELEANOR QUATTLEBAUM
DB 80/15
Plat: Abel 7/7/1993

IPF 3/4" Pipe

N 82°30'12"E 470.43'

IPF 3/4" Pipe

S41-34 66' R/W

Tract 1
89.52 AC.

NOTE: LINES A TO B TO C TO D WERE ESTABILSHED BY MUTUAL AGREEMENT BETWEEN SAMUEL BURTON AND JEAN HOLSTON AND JAMES A. HOLSTON III AS SHOWN IN AGREEMENT DATED JULY 28, 1998 AND RECORDED IN RECORD BOOK 415 AT PAGE 275 OF SALUDA COUNTY CLERK OF COURT.

SEE ALSO AGREEMENT AS TO A BOUNDARY LINE BETWEEN E. PHILLIPS BOATWRIGHT AND LACARR S. BURTON II AND ANNETTE S. BURTON DATED NOV 1, 2002.

SEE PLAT IN CAB. A-48-B

LINES COMMON TO BURTON SURVEYED SUBJECT TO THESE AGREEMENTS.

THIS TRACT CONTAINS LAND ACQUIRED BY E. P. BOATWRIGHT IN 2 DEEDS AS SHOWN IN RB 527 AND RB 418 AT PAGE 44.

REF: TMS 149-00-00-015

BOUNDARY SURVEY FOR

CAREY E. FRICK

SALUDA COUNTY SOUTH CAROLINA

PLAT REVISED NOV. 4, 2002 TO INCLUDE 3 AC. ACQUIRED FROM ELEANOR QUATTLEBAUM IN TRACT 1, TO DELETE TRACT 2 WHICH WAS CONVEYED TO [illegible]

App218
CarrTitan-Watson 1-46
RA 214

ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, R/W'S AND RESTRICTIONS OF RECORD OR ON THE GROUND AND ALSO SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH.

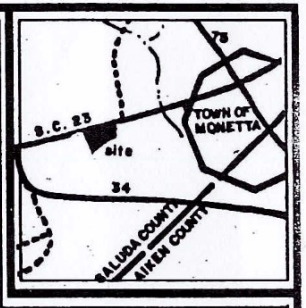
THERE MAY BE UNDERGROUND UTILITIES ON THIS PROPERTY THAT ARE NOT VISIBLE AT THE SURFACE THAT ARE NOT SHOWN HEREON.

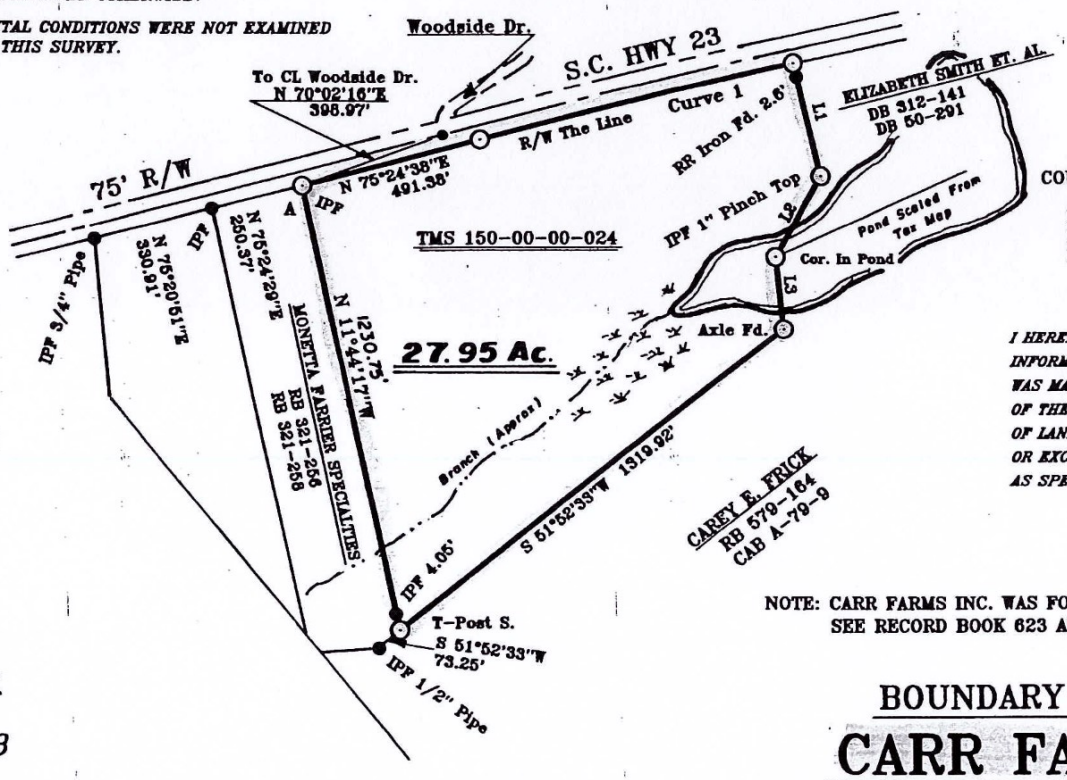
ALL IP'S ARE 5/8" REBAR UNLESS NOTED OTHERWISE.

SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.

NOTE: MANY CORNERS HAVE STEEL T-POSTS SET BESIDE THEM IN ORDER TO MAKE THEM MORE VISIBLE. T-POSTS ARE THE ACTUAL CORNER ONLY IF THEY ARE NOTED AS SUCH. OTHERWISE, CORNER IS AS NOTED AND WILL BE LOCATED AT BASE OF T-POST.

NAD83 (1986) STATE GRID N





COURSE	BEARING	DISTANCE
L1	S 13°35'39"E	313.71'
L2	S 29°15'44"W	252.72'
L3	S 05°53'58"E	195.36'

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 CLASS A SURVEY AS SPECIFIED.

7-18-04

NOTE: CARR FARMS INC. WAS FORMERLY KNOWN AS R.W. DUBOSE & SON, INC. SEE RECORD BOOK 623 AT PAGE 107 FOR AMENDMENT TO ARTICLES.

TODD SURVEYS INC.
208 DENNY HWY.
SALUDA, S.C. 29138
864-445-7892

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CH.BEARING
Curve 1	28644.72'	433.89'	867.71'	1°44'08"	0°12'00"	867.68'	N 76°16'44"E

BOUNDARY SURVEY FOR
CARR FARMS INC.

SALUDA COUNTY SOUTH CAROLINA
JUNE 18, 2004 SCALE: 1"=400'

400 0 400 800

166-32
TITAN21F:

CarrTitan-Watson 1-47

2391

BOOK 415 PAGE 276

FILED
CLERK OF COURT
S.C.

98 AUG 28 PM 12:22

S. C. DEPT. OF REVENUE
DOCUMENTARY TAX
FROM $ 1256.70
SUBSEQUENT TAX
TAX PAID
STATE $304.20

State of South Carolina

COUNTY OF SALUDA

KNOW ALL MEN BY THESE PRESENTS, That we, Jean Bonnette Holston and James Arnold Holston III,

in the state aforesaid, for and in consideration of the sum of One Hundred and Sixteen Thousand, Eight Hundred and Thirty-seven, and 50/100s ($116,837.50) to us paid by Sarah B. Schwarz, PO Box 116, Monetta, SC 29105 in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Sarah B. Schwarz, her heirs and assigns forever, in fee simple, the following described real estate, to wit:

SEE ATTACHED "EXHIBIT A"

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belong or in anywise incident of appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Sarah B. Schwarz, her Heirs and Assigns forever.

And we do hereby bind all our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Sarah B. Schwarz, her Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

WITNESS our *Hand and Seal this* 28th *day of* August

in the year of our Lord one thousand nine hundred and ninety-eight

and in the two hundred and twenty-second *year of Sovereignty and Independence of the United States of America*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

James A. Holston

Betty C. Gleaton

Jean Bonnette Holston (SEAL)
Jean Bonnette Holston

James Arnold Holston, III (SEAL)
James Arnold Holston, III

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ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

EXHIBIT A

All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 86.52 acres, shown as Tract #1 on a plat made by Todd Surveys, Inc., dated May 26, 1998, and recorded in Plat Cabinet A: Slide 218, Page 8, in the Office of the Clerk of Court for Saluda County, S.C., said Tract #1 bounded on the North by SC Highway #23, and by lands belonging to Double Branches Pentecostal Holiness Church; East by lands of Samuel L. Burton; South by Norfolk Southern Railroad right-of-way, and by lands of Elanor Quattlebaum; Southwest by lands of Cogburn Gaillard; and Northwest by lands of Monetta Farrier Specialties, and by lands of R.W. DuBose and Sons, Inc., and by lands of Shirley D. Gibson.

Also, all that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 2.27 acres, shown as Tract #2 on the above-mentioned plat; said Tract #2 bounded North by Norfolk Southern Railroad right-of-way; East by lands of Elanor Quattlebaum; South by Highway S 41-34; and West by lands of Gwendolyn DuBose.

Also, all that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 4.68 acres, shown as Tract #3 on the above-mentioned plat; said Tract #3 bounded North by Norfolk Southern Railroad right-of-way; East by lands of Gwendolyn DuBose; South by Highway S 41-34; and West by lands of Ricky Jeffery.

The above three tracts of land being land conveyed to the Grantors by deeds recorded in Deed Book 76, at Page 148, and Record Book 282, at Page 258.

TAX MAP NO. 149-15

Recorded in Register of Deeds Office
Co. 2 814
Jane B. Guy
Auditor for
Saluda, S. C.

I hereby certify that the within Deed was filed for record in my office at 12:22 P.M. o'clock on 8-28-1998 and was immediately entered upon the proper records and duly recorded in Book 415 Page 276
Doris B. Holmes
Saluda County Clerk of Court & RMC

002633 BOOK 418 PAGE 44

FILED
CLERK OF COURT
S.C.

98 SEP 22 AM 11:14

State of South Carolina

COUNTY OF SALUDA

STATE

KNOW ALL MEN BY THESE PRESENTS, That I, Sarah B. Schwarz

in the state aforesaid, for and in consideration of the sum of Love and Affection to me paid by E. Phillips Boatwright, 214 DuBose St., Ridge Spring, SC 29129 in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said E. Phillips Boatwright, his heirs and assigns forever, the following described real estate, to wit:

All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 86.52 acres, shown as Tract #1 on a plat made by Todd Surveys, Inc., dated May 26, 1998, recorded in Plat Cabinet A: Slide 48-8, in the Office of the Clerk of Court for Saluda County, S.C.; said Tract #1 bounded on the North by SC Highway #23 and by lands belonging to Double Branches Pentecostal Holiness Church; East by lands of Samuel L. Burton; South by Norfolk Southern Railroad right-of-way and by lands of Eleanor Quattlebaum; Southwest by lands of Cogburn Gaillard; and Northwest by lands of Monetta Farrier Specialties and by lands of R.W. DuBose and Sons, Inc. and by lands of Shirley D. Gibson.

ALSO, All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 2.27 acres, shown as Tract #2 on the above mentioned plat; said Tract #2 bounded on the North by Norfolk Southern Railroad right-of-way; East by lands of Eleanor Quattlebaum; South by Highway S 41-34; and West by lands of Gwendolyn DuBose.

ALSO, All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 4.68 acres, shown as Tract #3 on the above mentioned plat; said Tract #3 bounded on the North by Norfolk Southern Railroad right-of-way; East by lands of Gwendolyn DuBose; South by Highway S 41-34; and West by lands of Ricky Jeffery.

This is the identical property conveyed to Sarah B. Schwarz by Jean B. Holston, et al., by deed dated August 28, 1998, recorded in Record Book 415, at page 276, in the Office of the Clerk of Court for Saluda County, S.C.

TAX MAP NO. 149-15

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belong or in anywise incident of appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E. Phillips Boatwright, his Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E. Phillips Boatwright, his Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

WITNESS my *Hand* and *Seal* this 11th *day of* September *in the year of our Lord one thousand nine hundred and* ninety-eight *and in the two hundred and* twenty-third *year of Sovereignty and Independence of the United States of America*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Shirley D. Gibson

Brad Wareham

Sarah B. Schwarz (SEAL)

(SEAL)

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ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

002943

BOOK 527 PAGE 249

State of South Carolina

CLERK OF COURT
S. S.C.

COUNTY OF SALUDA

01 OCT 16 PM 3:57

STATE
Exempt

KNOW ALL MEN BY THESE PRESENTS, That I, Eleanor S. Quattlebaum

in the state aforesaid, for and in consideration of the sum of Love and Affection to me paid by E. Phillips Boatwright, 214 DuBose St., Ridge Spring, SC 29129 in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

E. Phillips Boatwright, his heirs and assigns forever, the following described real estate, to wit:

All that piece, parcel or tract of land in School District #2, Saluda County, S.C., containing 4.00 acres and shown on a plat made by Todd Surveys, Inc., dated May 26, 1998, recorded in Plat Cabinet A: Slide 48-8, in the Office of the Clerk of Court for Saluda County, S.C.; said lands bounded on the West, North and East by other lands of E. Phillips Boatwright; South by Norfolk Southern RR right-of-way. This being Tract #1 conveyed to Eleanor S. Quattlebaum in a Deed recorded in Deed Book 80, at page 150, in the Office of the Clerk of Court for Saluda County, S.C.

TM# 149-16

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belong or in anywise incident of appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said E. Phillips Boatwright his Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said E. Phillips Boatwright, his Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

WITNESS my *Hand and Seal this* 2nd *day of* October *in the year of our Lord two thousand and* one *and in the two hundred and* twenty-sixth *and Independence of the United States of America* *year of Sovereignty*

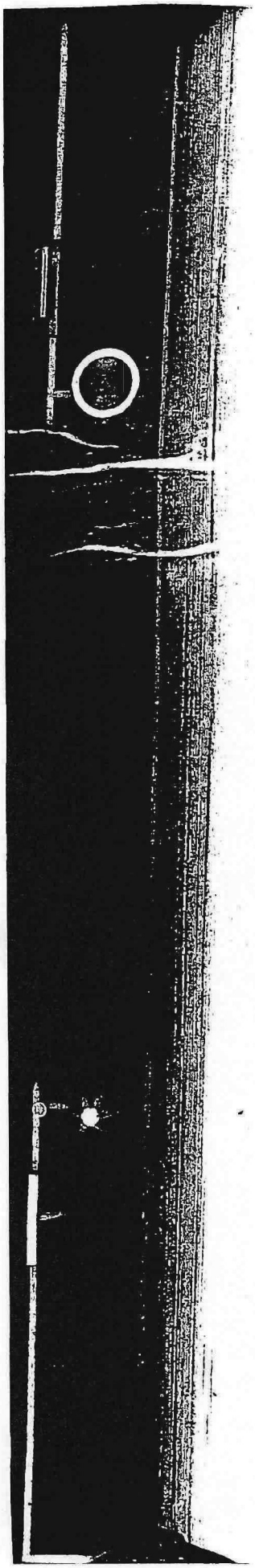
SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Shirley B. Witt

Betty O. Bleam

Eleanor S. Quattlebaum (SEAL)
Eleanor S. Quattlebaum

(SEAL)



ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

SALUDA COUNTY DOCUMENTARY TAX PAID $ 154 55 Treasurer

003437

STATE $ 365

FILED CLERK OF COURT SALUDA CO., S.C.

BOOK 579 PAGE 164

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA DEC 2 AM 11:33

COUNTY OF SALUDA

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that I, E. Phillips Boatwright, in the State aforesaid, for and in consideration of the sum of One Hundred Forty Thousand, Two Hundred-Fifty Dollars and No/100's ($140,250.00) to me in hand paid at and before the sealing of these presents by Carey Edward Frick, in the State aforesaid (the receipt whereof is hereby acknowledged), and I, E. Phillips Boatwright, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Carey Edward Frick, his heirs and assigns forever, the following described real estate; to wit:

TRACT 1

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 1, containing 89.52 acres, more or less, as shown by a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on 12-2, 2002 in ~~Plat Book~~ Cab A 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This 89.52 acre tract being resurveyed and a combination of an 86.52 acre tract conveyed to E. Phillips Boatwright by deed of Sarah B. Schwarz, dated September 11, 1998 and recorded on September 22, 1998 in Records Book 418 at Page 44; and a 4.00 acre tract conveyed to E. Phillips Boatwright by deed of Eleanor S. Quattlebaum, dated October 2, 2001 and recorded on October 16, 2001 in Records Book 527 at Page 249, Office of the Clerk of Court for Saluda County, South Carolina.

TRACT 3

All that certain piece, parcel or tract of land with all improvements thereon, if any, situate, lying and being in the County of Saluda, State of South Carolina, the same being shown and delineated as Tract 3, containing 4.68 acres, more or less, on a plat prepared for Carey E. Frick by George Todd, SCRLS, of Todd Surveys, Inc., dated May 26, 1998, revised on November 4, 2002 and recorded on 12-02, 2002 in ~~Plat Book~~ Cab A 79 at Page 9 in the Clerk of Court's Office for Saluda County, South Carolina, and having such metes and bounds as are shown on said plat, this description being in lieu of metes and bounds, as permitted under Section 30-5-250 of the 1976 Code of Laws of South Carolina, as amended.

DERIVATION: This being the identical 4.68 acre tract conveyed to E. Phillips Boatwright by deed of Sarah B. Schwarz, dated September 11, 1998 and recorded on September 22, 1998 in Records Book 418 at Page 44, Office of the Clerk of Court for Saluda County, South Carolina.

TAX MAP REFERENCE: TMS# 149-00-00-015 (for both Tract 1 & Tract 3)

GRANTEE'S ADDRESS:
Carey Edward Frick
122 Carey Frick Drive
Monetta, SC 29105

PAID DEC 02 2002 10 00 SALUDA COUNTY TREASURER

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining thereto.

Prepared By
Law Offices of Ralph S. Kennedy, Jr
Post Office Box 2199
Batesburg-Leesville, SC 29070
Phone (803) 532-4100

ELECTRONICALLY FILED - 2018 Feb 02 2:49 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

BOOK 579 PAGE 165

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto the said Carey Edward Frick, his Heirs, Successors and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular, the said Premises unto the said Carey Edward Frick, his Heirs, Executors, Successors and Assigns, against me and my Heirs, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 27th day of November in the year of our Lord two thousand two and in the two hundred twenty-seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness

Witness

E. Phillips Boatwright (SEAL)
E. Phillips Boatwright

STATE OF SOUTH CAROLINA)
)
LEXINGTON COUNTY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named E. Phillips Boatwright sign, seal, and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness, witnessed the execution thereof.

SWORN to before me this 27th day of November, 2002

(L.S.)
Notary Public of South Carolina
My Commission expires: 1-4-03

Witness

State of South Carolina
County of SALUDA

E. PHILLIPS BOATWRIGHT
TO
CAREY EDWARD FRICK

TITLE OF REAL ESTATE

I Hereby certify that the within Deed was filed for record in my office at 1:33 P.M. o'clock on the 2 day of Dec, 2002, and was immediately entered upon the proper indexes and duly recorded in Records Book 579 at Page 164
Edna B Tidwell
Clerk of Court's Office for Saluda County, S.C.

I Hereby certify that the within Deed has been this 11th day of December A.D. 2002, Recorded in Records Book 2 at Page 1024
Auditor
for Saluda County

ELECTRONICALLY FILED - 2018 Mar 12 10:42 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW Defendant Susannah Smith Watson in the above-captioned matter and submits her Memorandum in Opposition to Plaintiffs' Partial Motion for Summary Judgment as follows:

As an initial matter, Defendant incorporates by reference thereto as if fully restated herein the statement of undisputed material facts and the legal arguments contained in her Motion for Summary Judgment as to her First and Fourth causes of action previously filed with the Court.

LEGAL ARGUMENT

First, with regard to the assertions by the Plaintiffs that the easement granted to F. Broadus Smith, his heirs and assigns, is an easement *in gross* rather than an *appurtenant* easement, Defendant looks to the language and construction of the deed itself. The Title to Real Estate from Mattie Lee Bonnette to F. Broadus Smith, his heirs and assigns dated October 1,

1960 appears as follows:

*****NOTE WHERE PARAGRAPH INDENTION BEGINS*****

Know All Men by These Presents, That I, Mattie Lee Bonnette of the County of Saluda

in the State aforesaid, for and in consideration of the sum of Seventeen thousand, five hundred and 00/100 ($17,500.00) DOLLARS to me paid by F. Broadus Smith in the State aforesaid -- the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and bounded on the West by lands now or formerly owned by Charlie Abney.

On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.

The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 20 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (½) acre from Mrs. Hessie P. Cogburgn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (½) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.

Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

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The granting language is **"…..grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"** After the colon (:), the entire conveyance is described by an indented paragraph which goes the remainder of the page. The indented conveyance includes the right of the grantee **"F. Broadus Smith, to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same."**

The granting language contained in the Title to Real Estate does not break and separate out the grant of land from the grant of the easement, rather it continues and includes the words **Also, granted herein….."**

Plaintiffs assert in their Motion that three (3) documents require consideration in evaluating the claims of the parties. With regard to the easement granted on the Bonnette property, the Defendant disagrees as a matter of law. "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." Gardner v. Mozingo, 293 S.C. 23. 358 S.E.2d 390 (1987). "The intention of the grantor ***must be found within the four corners of the deed***." Id. (emphasis added).

In Gardner, the Supreme Court made it perfectly clear that determining the grantor's intent with regard to an easement, the intention must be found within the four corners of the deed. That is, each deed or granting document must stand on its own with regard to determining the intention of the grantor. Accordingly, with regard to the Bonnette deed, the other two documents should not be considered when determining the intent of Bonette regarding the granting of the appurtenant easement to Smith. The clear language of the Bonnette deed grants

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to F. Broadus Smith, his heirs and assigns, the exclusive right to impound and to use the water impounded on the Bonnette property.

Plaintiffs assert that the grant is a personal privilege to Smith and that it does not "inhere" or "exist as a permanent, inseparable, or essential attribute or quality of a thing." This is likewise incorrect. The construction of a dam and creation of a pond for the purpose of impounding water to water crops or livestock cannot be said to have been something of a "temporary" nature in 1960. The cost, even in 1960, to construct a dam and to create the pond was no small undertaking. The Plaintiffs argue that at the time the easement was granted there was no impounded water to which Smith could have used exclusively. While the water was not yet being impounded, the spring existed that produced water, and water was accessible and available on the property. This is how the parties knew that a dam could be constructed and water impounded. The construction of the dam to prevent the water from running is what necessarily created the pond, caused the water to back up, and has been and is now being used to impound the water.

Next, with regard to the easement, the Plaintiffs assert that the easement is "nondescript" as to which premises would be encumbered at the time of conveyance. The Defendant disagrees. The granting language states "…**to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor."** Such description is sufficient to indicate that the grantor understood and agreed that the dam would be constructed on her "other lands" in the area of the proposed pond and that water would be impounded thereon. After the construction of the dam, there is no record that the grantor ever complained of any trespass or misuse of her property. The construction of the dam and impounding of water in the pond has

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existed for a period of not less than forty (40) years, and no owner has ever asserted any action for trespass against Smith, his heirs or assigns, with regard to the location of the dam or its impounded water. As such, even if Plaintiffs' assertions were true (which are denied), Smith has adversely possessed such property openly, notoriously, and hostilely for a period far in excess of ten (10) years and would have obtained title to same by adverse possession in the absence of any agreement if the facts are as asserted by the Plaintiffs.

Plaintiffs' "terminus" arguments are entirely speculative as the water levels have never dropped to a point where the pond is wholly on lands owned by titan and Carr, do not reflect the current facts or situation, and therefore will not be addressed by the Defendant.

Lastly, the Plaintiffs argue that the pond did not exist at the time of the Smith transfer, and that because no pond existed at the time of the transfer, it is not "essentially necessary to the enjoyment thereof." This is false and not at all damning. In fact, the opposite is true. When Smith bargained with Bonnette to purchase his property, Smith obviously knew that the construction of a pond on his property was essential to his intended use of the property and his enjoyment thereof. We know this because Smith negotiated with Bonnette not only for the purchase of the acreage, but for the grant of an appurtenant easement to construct a pond and to impound water on other lands owned by Bonnette. The pond being so essential, that Smith did not agree to purchase only the Bonnette property without the inclusion of the grant of the easement for the impounding of water in the same deed. The use of the water impounded on the Bonnette property was and is, by the express terms of the grant, exclusive to Smith. The arguments by Plaintiff that others may have negotiated to use some of the water as a result of agreements reached with adjoining landowners does not destroy the exclusivity of the agreement

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with Bonnette or the use of water impounded on the Bonnette property.

The Defendant does concede that Plaintiffs correctly assert with regard to the Abney property and the Holston property, that the deed or granting documents (if any) must be independently evaluated to determine Smith's agreements with these other surrounding land owners regarding construction of the pond.

The determination of the extent of a grant of an easement is an action in equity. Tupper v. Dorchester County., 326 S.C. 318, 487 S.E.2d 187 (1997). In the instant case, on September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property. That Agreement, by the express terms contained within the four corners of the document, states that in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond."

The Agreement further expressly states that "2. The consideration for this Agreement is the mutual promises and rights of both parties hereto and said Agreement is ***binding upon the heirs, assigns, executors and administrators of both parties*** hereto."

As such, the easement to flood the Abney property and the right of Abney to use the water from the pond *so long as any portion of the (formerly Abney) property is flooded* is an appurtenant easement that runs with the land. The Abney property, the land that may be flooded, is the servient estate and the Smith property is the dominant estate.

Carr Farms, Inc. asserts that it has the right to use any amount of the water from the pond, up to and including all of it, for its irrigation purposes. Watson asserts that the use of water from

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the pond by Carr cannot be so excessive so as to effectively deprive Watson of the use of water from the pond.

While Carr Farms, Inc., as the successor in title to Abney, has the right to use water from the pond *so long as any portion of the (formerly Abney) property is flooded*, the right granted by the easement is unquestionably non-exclusive. Unlike the express language contained in the 1960 deed, the words "exclusive" or "sole right" do not appear in the Agreement. To construe that the Agreement grants an exclusive right to use the water would make little to no sense inasmuch as the flooding of a portion of the Abney property was necessitated by F. Broadus Smith's construction of his pond itself. Accordingly, there can be no legitimate dispute that the only reasonable conclusion or inference that can be drawn from the Agreement is that Watson, as successor to F. Broadus Smith, likewise has the right to use the water from the pond.

Because both Watson and Carr have the right to use the water from the pond (and only so long as any portion of the (former Abney) property is flooded), each party's use of the water must be reasonable and not in derogation of the rights of the other party to likewise use water from the pond.

Finally, the Plaintiffs assert that because Bonnette did not reserve any right in the Holston transfer, it necessarily must be construed that there was no intention that the easement in the Smith transfer be one appurtenant to the land. This too is false. At the time of the Holston transfer, March 22, 1976, Smith had completed the construction of the dam and the pond and had been impounding water thereon for a number of years. The construction of and location of the pond would have been open and obvious to Holston at the time of purchase. There is no evidence that Holston ever took water from the pond, that Holston otherwise exercised any rights

over any portion of the pond that exists on the property, or that there was any agreement for Holston to use any water from the pond that was on the property (formerly Bonnette propery).

After the construction of the dam, Bonnette did not complain of any trespass or misuse of her property later transferred to Holston. Such construction of the dam has now existed for a period of not less than forty (40) years, and no owner has ever asserted any action for trespass against Smith, his heirs or assigns for the location of the dam or its impounded water. As such, even if Plaintiffs' assertions were true, Smith has adversely possessed such property (formerly of Holston) openly, notoriously, and hostilely for a period far in excess of ten (10) years and would have obtained title to same by adverse possession in the absence of any agreement if the facts are as asserted by the Plaintiffs.

Accordingly, when viewing the documents of public record, and the undisputed facts in this matter in a light most favorable to the Defendant with regard to Plaintiffs' Partial Motion for Summary Judgment, and when evaluating Plaintiffs' tortured application of the law applicable (the parties both agreeing on the applicable law) to the easements granted in this case, the Defendant respectfully asserts that the law and arguments contained in her Motion for Summary Judgment must prevail, that the Court should find that there are no genuine issues as to any material facts with regard to Defendant's first and fourth causes of action and that Defendant is entitled as a matter of law to judgment as set forth herein above on those causes of action.

(signature page follows)

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Respectfully submitted,

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March 12, 2018
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ELECTRONICALLY FILED - 2019 Aug 05 3:10 PM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	)	THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), v. SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON Respondent.	)	Docket No. 2016-CP-41-00153 **MOTION TO RECONSIDER**

Plaintiffs, Carr Farms, Inc. and Titan Farms, LLC ("Plaintiffs"), having received the Order Granting Defendants' Motion for Partial Summary Judgment issued by this Court on July 26, 2019 ("Order"), hereby timely moves this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, requesting reconsideration of the Order. For the reasons set forth herein, the undersigned submits that this Court should reconsider its decision in this Order, deny Defendants' Motion for Partial Summary Judgment and grant Plaintiffs' Motion for Partial Summary Judgment.[1]

I. Chain of Title to Titan Tract

As outlined in the Factual Background portion of the Order, the chain of title for the Titan tract of land contains no reference to an easement or any description which would notify the public as to any exclusive use of a water body or other reservation of rights. See Order, p. 4. Unfortunately, Footnote 1 incorrectly notes that an incomplete chain of title was included with the

[1] For those matters not specifically outlined herein, Plaintiffs would rely upon those arguments previously presented.

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Titan Tract. Rather, because the Carr Tract was not in issue, and because the parties did not challenge the authority of Carr to use the water, a complete chain of title was not included for that Tract.[2] For the Titan Tract, however, the chain of title is, in fact, complete.[3]

Deeds included in the Titan chain included the conveyance from Bonnette to Holston (Book 76 at 148), Holston to Swartz (Book 415 at 276), Swartz to Boatwright (Book 418 at 44), Boatwright to Frick (Book 579 at 164), and Frick to Titan (Book 966 at 104). Additionally, Boatwright obtained additional properties from Quattelbaum which were included in the subsequent conveyances noted above. The Quattelbaum to Boatwright conveyance was also included (Book 527 at 249). None of these conveyances reference water rights, so as a matter of law, there is no reservation of an easement related to the pond in any deed in the Titan chain. Property owners are charged with constructive notice of instruments recorded in their chain of title. *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975). No such notice can be imputed here as there is no easement. To the contrary, the owners would be placed on notice of the absence of any such reservation.

The absence of any reservation of rights in the Titan chain is critically important, especially considering the Order's position on notice, as outlined on Page 9 of the Order. While it is clear that a pond was present following the construction of the dam in or about 1970, what is missing is the exclusivity claimed by Defendant. If there is no reservation of rights or easement in the Titan chain of title, then there is nothing to place the public on notice as to the rights claimed by

[2] Emails regarding the Carr Tract and the incomplete chain or title were exchanged with the Court on or about July 16 and 17, 2019.

[3] The Deeds referenced herein were included as Exhibits to Plaintiffs' Response in Opposition to Defendant's Motion for Partial Summary Judgment and Cross Motion for Partial Summary Judgment.

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Defendant, notably their exclusive use. Furthermore, while the Order makes reference to adverse possession of that portion of the Titan property over which the pond was situated, nothing in the record reflects Defendant used the pond to the exclusion of the owner of the Titan Tract or that any such possession was "open" or "hostile" to the use of any other adjoining landowner, an essential element to establish adverse possession. The pond was not fenced off. No signs were erected outlining private property. Nothing shows the public would be put on notice of anything other than the presence of the pond. Notice of the existence of the pond and dam are one thing, but it is the claimed exclusive right which could not have been known. Adverse possession provides no support for Defendant's claim.

II. Appurtenant Easement v. Easement in Gross

As the Order outlines, there are four characteristics that distinguish an appurtenant easement from an easement in gross. One of the elements necessary to establish the existence of an appurtenant easement is that it "inheres in the land." While the Order outlines on page 7 that the dam and pond are permanent and inseparable from the land, it wasn't until 1970, ten (10) years after the property was acquired that the dam was erected and the property flooded. Furthermore, as the Order outlines in Section 2, on page 11, "if Watson elects at any time to cease flooding any portion of the former Abney property, or if such waters are drawn down to the point where no portion of the Abney property is flooded, Carr would no longer have the right to use the water from the pond." Thus, the Order acknowledges that the existence of the pond can be changed, to the point where the waters recede from the Abney/Carr Tract. If this is the case, then certainly the pond is not permanent.

Beyond the foregoing, the existence of the pond and the exclusivity claim are different. Defendant's claimed right to exclusive use does not "inhere in the land." Nothing reveals that the

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claimed exclusivity is permanent and inseparable from the land. To the contrary, the granting of use to Abney reveals the exclusive use is not inseparable from the land.

Similarly, Defendant's claimed exclusive right to use the pond has no "terminus in the land" and is not "necessary to the enjoyment" of the property. While the Order concludes that there is terminus in the land with regards to the pond, no discussion is given as to whether or how the "terminus" element is satisfied as to the exclusive use. Furthermore, the exclusive use was not "necessary to the enjoyment" as Defendant's predecessor granted use to Abney, thereby eliminating their exclusive use. Additionally, waiting ten (10) years to construct the dam reveals it was not necessary to their enjoyment of the land.

As cited by the Court, the grantor's intent in creating an easement must be found within the four corners of the deed. *Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494, 500 (Ct. App. 2018) (Citations omitted); *Gardner v. Mozingo*, 293 S.C. at 25, 358 S.E.2d at 392. This requires a review at the time of the conveyance. Evaluation of the necessary elements for an easement appurtenant at this moment reveals the in gross nature of the easement, as at that moment, the pond and the claimed exclusive use (1) did not inhere in the land, (2) did not concern the premises, (3) did not have one terminus in the land, and (4) was not necessary for the enjoyment of the land. As noted, it wasn't until ten (10) years later that the dam and pond began to materialize. The easement was one in gross.

III. Conclusion

Based upon the foregoing, as well as those arguments previously presented, the undersigned would respectfully move this Honorable Court to reconsider the Order Granting Defendants' Motion for Partial Summary Judgment, conclude that the easement at issue was one in gross, and enter an Order granting partial summary judgment to Plaintiffs.

Respectfully Submitted,

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ELECTRONICALLY FILED - 2019 Nov 19 9:29 AM - SALUDA - COMMON PLEAS - CASE#2016CP4100153

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS
CARR FARMS, INC. and TITAN FARMS, LLC, Plaintiff(s), -vs- **SUSANNAH SMITH WATSON, CARSON M. WATSON, and JANE WATSON,** Defendant(s).	C/A No. 2016-CP-41-153 **AMENDED REPLY TO MOTION TO RECONSIDER**

COMES NOW Defendant Susannah Smith Watson in the above-captioned matter and in response to Plaintiffs' Motion to Reconsider the Court's Order of July 26, 2019 Granting Defendant's Motion for Partial Summary Judgment asserts the following:

Defendants assert that the Court has not misapprehended the law or facts applicable to the instant matter and the Court should, respectfully, deny Plaintiffs' Motion.

As an initial matter, Defendants correctly point out to the Court that the chain of title provided for the Carr Tract (not the Titan Tract) is incomplete. Defendants did not challenge the authority of Carr to use water from the pond but rather dispute the amount of water Carr can use thereby making a complete chain of title unnecessary to determine the Carr Tract issues. The chain of title for the Titan Tract provided to the Court is a complete chain of title. The Court's Order mistakenly references the Titan Tract where it should reference the Carr Tract.

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I. Plaintiffs fail to acknowledge the easement expressly conveyed in the Bonnette to Smith Deed

In its Motion, Plaintiffs first assert that none of the *subsequent* conveyances from Bonnette in the chain of title reference water rights, and therefore as a matter of law there is no reservation of an easement related to the pond in any deed in the Titan chain. Defendants disagree.

Plaintiffs ignore the Bonnette to Smith deed, which is in the Titan Tract chain of title (the Smith property being a part of the larger Bonnette Tract that Titan now owns), wherein the easement is specifically granted, to wit:

> Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

While the subsequent conveyances from Bonnette to Holston up to Frick do not appear to make specific reference to the easement granted by Bonnette to Smith, the deed from Frick to Titan specifically states:

> **This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.**

In addition, several of the plats recorded and referenced in the Titan Tract chain of title (after construction of the pond in 1970) do show the existence of the pond. Easements may be created by specific grant in a deed and may be created by reference to the lands as shown on a plat.

" 'An easement is a right which one person has to use the land of another for a specific purpose.' " Frierson v. Watson, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006) (quoting Steele v. Williams, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944)); accord Forest Land Co. v.

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Black, 216 S.C. 255, 261, 57 S.E.2d 420, 423 (1950); Smith, 312 S.C. at 465, 441 S.E.2d at 335. " 'A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands.' " Frierson, 371 S.C. at 67, 636 S.E.2d at 875 (quoting Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965)); accord Douglas v. Medical Investors, Inc., 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971). "[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); accord Lynch v. Lynch, 236 S.C. 612, 623, 115 S.E.2d 301, 307 (1960); Frierson, 371 S.C. at 67, 636 S.E.2d at 876. "**Both deeds and easements are valid to subsequent purchasers without notice when they are recorded." Frierson, 371 S.C. at 67, 636 S.E.2d at 876 (citing S.C. Code Ann. § 30-7-10 (Supp. 2005)).** "The purpose of the recording statute is to protect a subsequent buyer without notice." Frierson, 371 S.C. at 67, 636 S.E.2d at 876 (emphasis omitted) (citing Burnett v. Holliday Bros., 279 S.C. 222, 225, 305 S.E.2d 238, 240 (1983)).

As cited by the Plaintiffs, property owners are charged with constructive notice of instruments recorded in their chain of title. *Carolina Land Co.* v. *Bland,* 265 S.C. 98,107,217 S.E.2d 16,20 (1975). In addition, an inspection of the premises would have revealed the existence and location of the pond and its boundaries. The pond is not hidden and is readily visible and accessible by anyone walking the property. As such, Plaintiffs' claims must fail.

II. There is no evidence in the record that the use by Smith was anything other than exclusive.

Plaintiffs next assert that "while it is clear that a pond was present following the construction

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of the dam in or about 1970, what is missing is the exclusivity claimed by Defendant." This is false. Not only are there sufficient documents of record to place the public on notice of the rights to construct a dam and to impound water claimed by the Defendants (as heirs of Broadus Smith), and the pond is readily visible and accessible by inspection of the property, but the Plaintiffs have provided no evidence to the Court (or to the Defendants) by way of affidavits (of former owners) or otherwise that anyone other than Broadus Smith or his heirs used the water from the pond. This is because prior to Titan's ownership none of the former owners planted a commercial peach grove on the Bonnette property that required the kind of irrigation that Titan now needs.

For these same reasons, Plaintiffs arguments against the Court's finding of adverse possession must fail. Plaintiffs misapprehend the Court's point on this. If Plaintiffs assertions are taken as true (i.e., that the owners in the Titan Tract chain of title were not on actual or constructive notice of the claimed rights to dam and to impound water on the Bonnette property), then the use by Broadus Smith and his heirs from 1970 forward would have, in fact, been "open" or "hostile" to the use of any other adjoining landowner, an essential element to establish adverse possession. There is simply no evidence in the record provided by the Plaintiffs that from 1970 and for a period in excess of ten (10) years thereafter that *anyone* other than Broadus Smith and his heirs used the pond or the water from the pond. There was no need to fence the pond or to erect signs because the surrounding owners all knew that the pond was built by Mr. Smith, and that he had the rights to use the pond and its water.

III. The Bonnette Easement and the Abney Agreement are two separate agreements.

Finally, the Plaintiffs re-hash their arguments as to the nature of the easement. Bonnette did not own and therefore could not convey any rights to the Abney property, nor could Abney

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convey any rights to the Bonnette property. The Plaintiffs arguments attempt to intertwine the two separate agreements as if they were one single agreement affecting only one property. This is not so. The Bonnette easement was granted on October 1, 1960 and the Abney agreement was not signed until September 21, 1970 when the pond was actually being constructed.

The language of the Order cited by the Plaintiffs that, "if Watson elects at any time to cease flooding any portion of the former Abney property, or if such waters are drawn down to the point where no portion of the Abney property is flooded, Carr would no longer have the right to use the water from the pond." Refers only to the water that "backs over and upon" the Abney property.

This Agreement made and entered into this 21st day of September 1970 by and between F. Broadus Smith and D. C. Abney, WITNESSETH:

1. It is understood by and between the parties hereto that the said F. Broadus Smith is in the process of constructing a pond on his farm and that the said water which is impounded in said pond will back over and upon lands of D. C. Abney and that the said D. C. Abney does hereby grant unto the said F. Broadus Smith the rights to flood approximately one acre of land belonging to D. C. Abney provided, however, that the said D. C. Abney shall have the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D. C. Abney is flooded by said pond.

From its plain language, the Abney agreement made during the construction of the pond anticipates that, while during construction water impounded in the pond will back over and upon the Abney land, after completion of construction that may not continue to be the case. This agreement with Abney has nothing to do with the easement granted by Bonnette and does not, nor can it, change the nature of the easement granted by Bonnette. To insinuate that the "pond is not

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permanent" merely because the pond owner could elect to lower water levels in the pond such that the water does not back up and onto the lands of Abney is *post hoc ergo propter hoc.* The granting of use "so long as the waters back over and upon the Abney land" does not prevent the adherence of the pond proper itself upon the former Bonnette property. The Abney agreement merely addresses overflow waters from the pond.

Further, the arguments advanced are wrought with speculation about what Mrs. Watson "may or could" one day do with the pond. However, as the pond is and has been since 1970, none of those arguments "hold water." The evidence before the Court is that the pond is and has been a permanent fixture on the property since 1970. There is no evidence that Mrs. Watson intends to destroy the dam, to drain the pond, or to cease using the dam to create the pond and to impound water. The Court's ruling cannot be based on speculative future uses of the property.

The Plaintiffs assert that while the Court's Order concludes that there is terminus in the land with regards to the pond, no discussion is given as to whether or how the "terminus" element is satisfied as to the exclusive use. Plaintiffs argue that the exclusive use was not "necessary to the enjoyment" as Defendant's predecessor granted use to Abney thereby eliminating their exclusive use, and that because Smith waited ten (10) years to construct the dam it was not necessary to their enjoyment of the land.

Again, these arguments are *post hoc ergo propter hoc.* The only extension of the right to use water from the pond to Abney was to the extent such water backed over and onto the lands of Abney, and only for so long as that occurs. Such agreement was created during the construction of the pond and had nothing to do with Smith's exclusive right to use the water from the pond proper located on the Smith and Bonnette property. This is also the case as to Plaintiffs' assertion that because Smith

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waited 10 years to construct the pond, it must not have been "necessary to his enjoyment." To reach such conclusion, Plaintiffs want the Court to assume that Smith had the financial resources in 1960 to both purchase the Bonnette property and to immediately construct the dam and build the pond. There is no such evidence in the record. In today's market, pond construction costs can easily exceed $100,000.

To the contrary, the evidence in the record is that the "ability" to construct and to have a pond on the property purchased by Smith was "necessary to his enjoyment" because Smith negotiated for (and paid for) the ability to construct and to maintain a pond at the time he purchased his land from Bonnette. The only assumptions that can be made from the plain language of the Deed itself is that having a pond on the property was important enough to Smith that he obtained the rights to construct one when he bought the land.

As cited by the Court, the grantor's intent in creating an easement must be found within the four corners of the deed. *Williams* v. *Tamsberg*, 425 S.C. 249, 821 S.E.2d 494, 500 (Ct. App. 2018) (Citations omitted); *Gardner* v. *Mozingo*, 293 S.C. at 25, 358 S.E.2d at 392. This requires a review at the time of the conveyance. Evaluation of the necessary elements for an easement appurtenant at this moment reveals the in gross nature of the easement, as at that moment, the pond and the claimed exclusive use (1) did not inhere in the land, (2) did not concern the premises, (3) did not have one terminus in the land, and (4) was not necessary for the enjoyment of the land. The Court has correctly concluded (based upon all the reasons set forth in its Order) that the easement was an appurtenant easement.

Plaintiffs want the Court to consider the 1960 easement granted to Smith in his deed and the 1970 Abney agreement as one single transaction. This is simply not the case. The easement for the

creation of the pond was negotiated and paid for when Smith bought his land, and the Abney agreement was made 10 years later during the construction of the pond when it became evident that the water for the pond would (at least for some time) back up over and onto the Abney property.

For all the foregoing reasons, with the exception of a correction of the reference to the Carr Tract rather than the Titan Tract, the Court should deny Plaintiffs' Motion to Reconsider.

Respectfully submitted,

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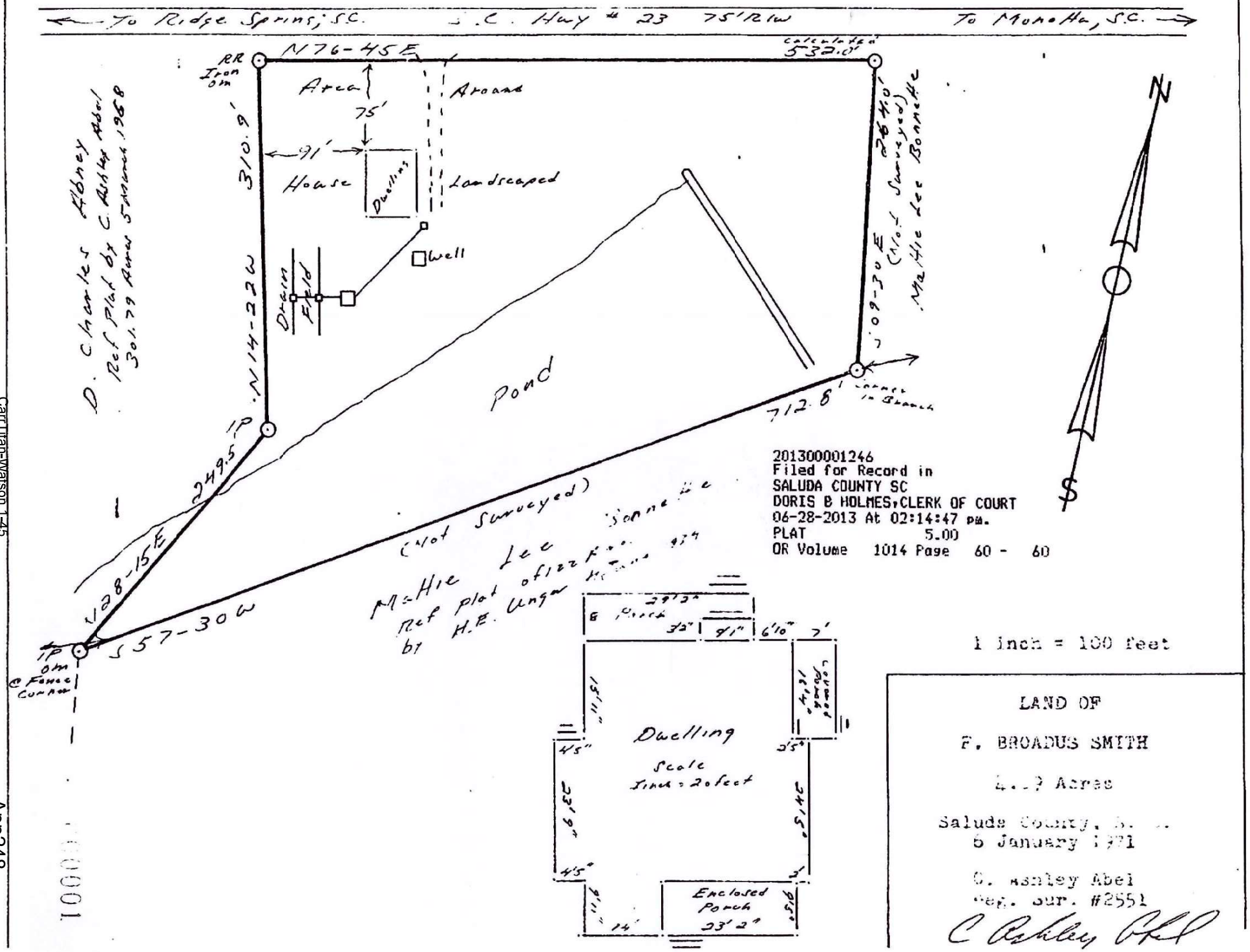

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Judge
Civil Action No. 2016-CP-41-00153

Appellate Case No. 2021-000659

Carr Farms, Inc. and Titan Farms, LLC, ... Appellants,

v.

Susannah Smith Watson, Carson M. Watson,
and Jane Watson……Respondents.

FINAL BRIEF OF APPELLANTS

---

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN CONCLUDING THAT THE EASEMENT AT ISSUE WAS APPURTENANT, AND THAT THE CURRENT EASEMENT OWNER CAN UTILIZE THE WATER TO THE EXCLUSION OF THE TITLE OWNER OF THE PROPERTY UNDERNEATH THE IMPOUNDED WATER?

STATEMENT OF THE CASE

This appeal arises from the circuit court's Order Granting Defendants' Motion for Partial Summary Judgment entered on July 26, 2019, to which Plaintiff's timely Motion to Reconsider was denied by Order of May 26, 2021. The basis of this appeal involves the scope of an easement and determination of whether the grant of such right was in gross or appurtenant.

The underlying civil action was commenced on July 20, 2016, in Saluda County Court of Common Pleas, Case No. 2016-CP-41-00153. Relevant to the instant appeal, the Second Cause of Action listed in the Complaint seeks a declaration from the Court that a 1960 easement was one in gross. (R. p. 31-32). Respondent Answered and included a Counterclaim seeking a determination that the aforementioned easement was appurtenant. (R. p. 45-46). The parties each moved for partial summary judgment on the issue of whether the subject easement was in gross or appurtenant and a hearing conducted on July 30, 2018 before the Honorable Alex Kinlaw, Junior. (R. p. 103-230). Both cross motions were denied. (R. p. 1).

Thereafter, the matter came before the Honorable Alison R. Lee evaluating the same issue on the easement. Judge Lee concluded the easement was appurtenant, and issued an Order Granting Partial Summary Judgment. (R. p. 2-14). Appellant timely moved for reconsideration of this decision, and on May 26, 2021, Judge Lee entered an Order on Reconsideration denying Appellant's motion. (R. p. 15-22; 231-35). Appeal was timely taken.

STATEMENT OF THE FACTS

The facts, which largely are not in dispute, are as follows:

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette ("Bonnette") granted, bargained, sold and released unto F. Broadus Smith ("Smith") in fee simple

> All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; Bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and Bounded on the West by lands now or formerly owned by Charles Abney.
>
> On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.
>
> The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (1/2) acre from Mrs. Hassie P. Cogburn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (1/2) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.
>
> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same.
>
> (R. p. 149-52; 189-91) ("Smith Deed").

The October 1, 1960 conveyance from Bonnette to Smith was recorded in the office for the Clerk of Court for Saluda County, South Carolina on or about October 3, 1960 in Deed Book 50 at page 291 ("Smith Transfer"), and has been assigned tax map number 150-00-00-017 by Saluda County, South Carolina ("Smith Property").

On October 1, 1960, D.C. Abney ("Abney"), together with his wife, Irene O. Abney, owned property on the western border of the Smith Property by virtue of a conveyance for valuable consideration recorded in the office for the Clerk of Court for Saluda County, South Carolina, on October 15, 1959, and recorded in Deed Book 49 at page 308 ("Abney Property"). See Abney Deed Recorded at Book 49, Page 308. The Abney Property was more particularly described as

> All that certain tract of land containing 164 acres, more or less, known as the "John Cogburn Homeplace", in Ridge Spring School District, Saluda County, SC, lying on both sides of the Columbia-Augusta Highway or State Highway #23, 1 ½ miles East of Ridge Spring on waters of Cloud Creek and bounded on the North by lands of Mrs. Annie E. Boatwright; East by lands of Mrs. Annie Boatwright, J.H. Hipp, and A.L. Bonnett; South by lands of H.G. Cogburn and Estate lands of M.H. Cogburn, deceased. Said tract is more particularly described according to a plat prepared by U.S. Nicholson, Surveyor, on the 5th day of July, 1933, as amended, which is recorded in Plat Book 4, page 6, Office of the Clerk of Court for Saluda County, SC.

On or about September 21, 1970, Smith and Abney entered into an Agreement regarding the prospective impounding of water onto Smith's and Abney's properties (the "Agreement"). (R. p. 153; 192). As outlined in the Agreement, Smith was in the process of constructing a pond on the Smith Property in September 1970. Smith sought to flood approximately one acre of the Abney Property. In exchange for Abney's grant of authority to flood approximately one acre of the Abney Property, Smith, his heirs, assigns, executors and administrators granted to Abney, his heirs, assigns, executors and administrators without limitation "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C. Abney is flooded by said pond."

On or about May 25, 2010, the Abney Property was deeded to Carr Farms, Inc. ("Carr"), with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 913 at page 276. (R. p. 167-75; 193-201). Carr is the current owner of the Abney Property. As a portion of the Abney Property remains flooded today, Carr has the authority and consent to use "said water from said pond" pursuant to the terms of the Agreement. (R. p. 153;

156-58; 166; 176; 192; 212-15; 244). Respondent acknowledges this right of Carr. (R. p. 49, ¶ 56; 69, ¶ 56; 92, ¶ 56).

On October 1, 1960, the date of the Smith Transfer, Bonnette also owned property on the southern and eastern borders of the Smith Property. On or about March 22, 1976, Bonnette conveyed to Jean B. Holston ("Holston") property adjacent to the Smith Property ("Holston Property"), with said Deed being recorded in the office of the Clerk of Court for Saluda County, South Carolina, at Book 76 at page 148 ("Holston Transfer"). (R. p. 202-05). No reference is made in the Holston Transfer to any easement granted unto Smith. See id. Titan Farms, LLC, ("Titan") is the current owner of the Holston Property by way of conveyance recorded in Saluda County at Deed Book 966 at page 104. (R. p. 160-65; 206-11). A portion of the Holston Property, of which Titan is the title owner, remains flooded today. (R. p. 156-58; 166; 176; 212-15; 244). None of the conveyances from the Holston Transfer to the conveyance to Titan reveal any reservation of an easement to the pond at issue in this action. (R. p. 202-21).

Standard of Review

The scope of an easement is an equitable matter in which a reviewing court may take its own view of a preponderance of the evidence. *See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 67, 558 S.E.2d 902, 906–07 (Ct. App. 2001)

ARGUMENTS

I. THE LOWER COURT ERRED IN HOLDING THAT RESPONDENT HAS THE RIGHT TO THE EXCLUSIVE USE OF THE POND PARTIALLY COVERING APPELLANTS' PROPERTY.

"An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed." *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582 (2009)(*quoting Douglas v. Med. Investors, Inc*., 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971)). "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Snow v. Smith*, 416 S.C. 72, 84, 784 S.E.2d 242, 248 (Ct. App. 2016)(*quoting Binkley v. Rabon Creek Watershed Conservations Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). "[T]he intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Windham*, 381 S.C. 192, 201, 672 S.E.2d at 582-83 (*quoting Wayburn v. Smith*, 270 S.C. 38, 41-42, 239 S.E.2d 890, 892 (1977)). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Winham*, 381 S.C. at 201, 672 S.E.2d at 583 (*quoting Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987)). The grantor's intent must be determined from the four corners of the deed. *Id*.

"The character of an express easement is determined by the nature of the right and the intention of the parties creating it." *See Tupper v. Dorchester County*, 326 S.C. 318, 325-26, 487 S.E.2d 187, 191 (1997)(*citing* 25 Am.Jur. (2d) *Easements and Licenses* § 13 (1966)). There are two types of easements, easements in gross and appurtenant easements. "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer." *Windham*, 381 S.C. at 201-02, 672 S.E.2d at 583 (*quoting Tupper v. Dorchester County*, 326 S.C.

318, 325-26, 487 S.E.2d 187, 191 (1977)). "In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof." *Id*. "Unless an easement has ***all*** the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross." *Id*. (***emphasis*** added). "Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted." *See Hamilton v. CCM, Inc*., 274 S.C. 152, 263 S.E.2d 378 (1980).

A. THE SUBJECT EASEMENT DOES NOT EVIDENCE A CLEAR INTENT FOR RESPONDENT TO HAVE THE EXCLUSIVE USE.

In the instant situation, the Smith Transfer contains the following language:

> Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same.

(R. p. 149-152; 189-191).

As an initial matter, this easement identifies Smith, individually, as the recipient of the easement, without any reference to his heirs or assigns. Id. Without further reflection, then, it would appear that the intent was for the right to be bestowed as a personal privilege. He is the grantee, referenced later in the clause, and again, no reference is made to the easement passing to others. Thus, at least initially, it appears that the intent of the parties was to allow for Respondent's predecessor in interest to enjoy the privilege outlined in the easement and infringe upon the property rights of the grantor, should he elect to do so while the grantor owned those adjacent properties.[1]

[1] Nothing in the easement suggests that Smith had the authority to construct the dam or impound the water in the event Bonnette conveyed her adjacent properties prior to Smith beginning construction of a dam.

This reservation of "right, privilege and easement" can be broken down into two distinct aspects. Initially we have the ability in the future to construct dam and impound water. See id. The language used does not express the continuation of a continuing construction project. "[T]o construct" is not an existing or ongoing situation but rather looks prospectively to something that could or might take place. No timeline is set forth. The only parameter outlined is the authority for future construction to occur "partially" on the conveyed premises and "partially" on lands owned by the grantor.[2] See id.

The language does not recite the breadth of the grantor's land which was authorized to be used for the construction of the dam, nor does it speak to the amount of land which might be authorized to be covered with the impounded water. It is apparent from the plain language, and specifically the reference to an "easement," that title was not to be conveyed to the land that might be covered by the impounded water, or the land upon which the dam might be constructed. *See Douglas v. Med. Investors, Inc.,* 256 S.C. 440, 182 S.E.2d 720 (1971)("An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed."). The language used, and the lack of specificity regarding the extent of the burden on Bonnette's property, is akin to neighbors being "neighborly." The grantor has no personal interest in using a pond if the water is impounded and she indicates such in the language. Nothing in the four corners of the document suggests that she intended to prohibit future landowners from utilizing the impounded water that partially covered their property. See id.

As suggested from the foregoing, the second privilege in the subject easement, and perhaps most important to the matter at hand, is the grant of the "exclusive use and control of the same

[2] As will be discussed, the restriction upon construction partially upon lands owned by "grantor" is important to the appurtenant easement elements.

[impounded water]" to grantee. Id. Like with the foregoing analysis, the plain language does not award anyone but the grantee the "exclusive use and control" of the impounded water. Absent from the easement language is any reference to "heirs and assigns." Beyond this, however, is the absence of the subject easement from the chain of title for the estate of the grantor. The circuit court acknowledged that Appellant (the successor in interest to the property of Grantor) "did not have *actual* notice of the easement." (R. p. 18) (*emphasis* in original). Reliance is, thereafter, placed upon whether the existence of the pond would put the world (and Appellant) on notice of the existence of the pond. Id; (R. p. 156-58; 166; 176; 212-15; 244). The issue, however, isn't whether Appellant had notice of the existence of a pond, but rather whether Appellant would have notice of the purported grant of "exclusive use and control" of said pond. Nothing in the chain of title reveals any such notice. (R. p. 202-21). Imputing upon an unsuspecting landowner the inability to use a portion of his land, or the water upon his land, without anything in the chain of title evidencing such a restriction is contrary to the settled South Carolina law and public policy. *See Wayburn v. Smith*, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977). The "exclusive use" easement was in gross and cannot preclude Appellant's use of the impounded water.

B. THE SUBJECT EASEMENT FAILS TO MEET THE NECESSARY ELEMENTS FOR AN APPURTENANT EASEMENT.

As outlined herein, despite what may be the announced intent of the parties, for an easement to be appurtenant, it must meet all of the elements outlined by our Courts. *See Windham*, 381 S.C. at 201-02, 672 S.E.2d at 583. It must "inhere[] in the land, concern[] the premises, ha[ve] one terminus on the land of the party claiming it, and [be] essentially necessary to the enjoyment thereof." *Id.* Thus, even if the Court disagrees with the foregoing, because the easement fails to

satisfy the necessary elements, it must be deemed in gross. *Id.*

i. The easement does not "*inhere in the land.*"

As outlined in *Windham*, the initial element for an easement appurtenant is that it must "inhere in the land." *Id*. Black's Law Dictionary (7th Ed. 2000) defines "inhere" as "to exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something." The nature of the claimed instant, exclusive, privilege does not "inhere in the land" as it is not a permanent or inseparable attribute of the conveyance. To the contrary, at the time the easement was granted, there was no impounded water to which Broadus Smith could have used exclusively. The easement was not necessary or inseparable from the land as the grant of privilege was prospective. It wasn't until ten (10) years later that Broadus Smith elected to start constructing the dam to impound the water. Furthermore, if the spring which fills the pond dries up, there will be no pond and yet the parties would still have their land.

Additionally, if the parties had intended for Broadus Smith to permanently have exclusive use of the pond, the Smith Transfer would have included additional acreage to accommodate the entirety of the pond. This was not done, however. Further, there is nothing to suggest that the "exclusive use" of the pond "inheres in the land." This aspect of the easement is *not* "permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something." In fact, as noted, Smith granted unto Abney and his heirs and assigns the ability to use the impounded water. This clearly demonstrates that Smith's "exclusive use" of the pond was "essential." Based upon the foregoing, the grant is not permanent, or inseparable from the land. The instant easement fails this element.

ii. The easement does not *"concern the premises."*

The second element that an easement must meet to be deemed appurtenant is that it must

"concern the premises." *See Windham*, 381 S.C. at 201-02, 672 S.E.2d at 583. As has been outlined herein, the Smith Transfer references the privilege of Smith to create a dam located partially on the conveyed property, and partially on land owned by Bonnette, and to flood part of the property owned by Bonnette. The privilege also awards Smith the "exclusive use and control" of the dam and water. The description of the property conveyed revealed that at the time of the conveyance, Bonnette owned property on the South of the conveyed property, and property on the East of the conveyed property. Thus, the easement is nondescript as to which premises would be encumbered at the time of conveyance, other than to note other lands of Bonnette could be flooded. Hardly can it be said that the easement "concerns the [Bonnette Property]" without further description in the easement.

Even if this description is seen as sufficient to "concern the premises," it cannot be said that the second part of the privilege, the "exclusive use and control" aspect, "concerns the premises." "An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude imposed." *Douglas*, 256 S.C. at 445, 182 S.E.2d at 722. The interpretation espoused by Respondent, and adopted by the circuit court, does not grant the privilege to "use the land of another for a specific purpose" but rather excludes the use of the land of another for the use of water. The exclusive use does not "concern the land" but only concerns the water, wherever it might be impounded. This interpretation defies the common law of South Carolina as it defines easements and therefore cannot be appurtenant.

iii. The easement does not have ***"one terminus on the property of the party claiming it."***

Traditionally, one would interpret this clause to reference the starting or ending point of an easement or rite of way for passage to have a "terminus on the property." That is not the case here, as the easement is not one of ingress or egress. It is not a rite of way. Rather, it is the grant of a

privilege to impound water, and also the exclusive use and control water over the lands owned by another.

Whether the easement is appurtenant or in gross depends upon the intent of the parties at the time the deed is executed. *See Proctor v. Steedley*, 398 S.C. 561, 569, 730 S.E.2d 357, 362 (Ct. App. 2012). At the time of the conveyance, there was no impounded water so it would be impossible to determine whether the impounded water would be on the property of the party claiming the easement. While the language does outline the intent to construct the dam partially on the Smith property, and the impounded water to be partially on the Smith property, this does not end the inquiry for this element.

The privilege to exclusively use the water over the Bonnette property, if appurtenant, essentially divests the owner of the servient estate of the ability to use their land, and enjoy water over their property. This effectively renders the easement a conveyance of the property, not an easement. It is clear that this was not the intent in the deed, or the language would have been different. Furthermore, the grant of exclusive use of the impounded water over the Bonnette property does not have a "terminus" in the land; the exclusive use portion of the easement relates *only* to the Bonnette property. If Smith impounded water wholly on his land there is no question that he could exclusively use that water. Because the easement's grant of exclusive use of water over the land of Bonnette, that grant does not relate to the property of Smith and thus has no terminus in the land of Smith. Such is fatal to the claim that the easement is appurtenant. *See Williams v. Tamsberg*, 425 S.C. 249, 261, 821 S.E.2d 494, 500 (Ct. App. 2018).

iv. The easement is not "*essentially necessary to the enjoyment thereof.*"

Respondent's claim to exclusive use of the impounded water is not "essentially necessary to the enjoyment of the property." It must, thus, be considered appurtenant. In considering

whether the easement is appurtenant or in gross depends, the intent of the parties must be evaluated at the time the deed is executed. *See Proctor v. Steedley,* 398 S.C. 561, 569, 730 S.E.2d 357, 362 (Ct. App. 2012). In the present situation, there was no pond at the time the deed was executed. There was no dam. While the deed reflects an intention at some point in time to possibly impound water, it did not exist at the time of the execution of the deed. The exclusive use of a future pond is, therefore, not "essentially necessary to the enjoyment of the property."

If we look beyond the existence (or lack thereof) of impounded water at the time the deed was executed to evaluate whether the exclusive use of the pond was necessary to the enjoyment of the property, we need look no further than the easement Smith granted to Abney. In that easement, Smith demonstrates the exclusive use of the pond is not "essentially necessary" as he therein grants Abney the ability to use the impounded water.

The pond may be aesthetically pleasing to Respondent. It may be a luxury for Respondent. A claim of "exclusive use" of the water over property titled in the name of someone else does not change the appeal or enjoyment and thus is not "essentially necessary to the enjoyment" of Defendant's property. This is especially true when considering Smith entered into the Agreement with Abney which gave Abney (and his heirs and assigns) the ability to use the water without eliminating the enjoyment thereof. The Agreement therefore demonstrates Smith's "exclusive use" of the water was not "essentially necessary to the enjoyment thereof."

C. THE GRANT OF EXCLUSIVE USE OF THE WATER IS CONTRARY TO THE ESTABLISHED LAWS OF THIS STATE.

As noted herein, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Windham*, 381 S.C. at 201, 672 S.E.2d at 582-83 (*quoting Wayburn v. Smith*, 270 S.C. 38, 41-42, 239 S.E.2d 890, 892 (1977)) (emphasis added). Imputing upon an unsuspecting landowner the inability to use a portion

of his land, or the water on his land, without anything in the chain of title evidencing such a restriction is contrary to the settled South Carolina law and public policy. *See Wayburn,* 270 S.C. at 41, 239 S.E.2d at 892. This is especially true when "the fee simple owner of the pond bed [] has the exclusive right to the use of the surface waters above its property and may exclude all others from access to those waters." *White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 135, 609 S.E.2d 811, 820 (S.C. Ct. App. 2005). Allowing Respondent to have exclusive use of the water over the pond bed owned by Titan is, thus, contrary to the laws of this State. Even if the intent of Smith and Bonnette was to create an appurtenant easement, the purported "exclusive use" is contrary to the laws of South Carolina and therefore cannot stand.

CONCLUSION

Based upon the foregoing, it is clear that in reviewing the necessary elements for an appurtenant easement, the subject easement and the claim of "exclusive use" fails. As a result, Appellant should be allowed to utilize the pond. The circuit court erred in concluding that the easement prevented Titan cannot use the water over the property it owns. The judgment of the circuit court should, therefore, be reversed.

Respectfully submitted,

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January 24, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge

C/A No. 2016-CP-41-00153
Appellate Case No. 2021-000659

CARR FARMS, INC. and TITAN FARMS, LLC.....Appellants,

v.

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JUNE WATSON.....Respondents.

FINAL BRIEF OF RESPONDENTS

---

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STATEMENT OF THE FACTS

It is agreed by Respondents that the facts are largely not in dispute in this matter. A brief recitation of the relevant facts are as follows:

On or about October 1, 1960, for valuable consideration, Mattie Lee Bonnette granted, bargained, sold and released unto "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:" certain real property located in Saluda County, South Carolina.

In addition to the conveyance of the real property, Mattie Lee Bonnette also conveyed the following to "F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"

Also granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to [sic] have exclusive use and control of the same. (emphasis added)

(R. p. 149)

On or about September 21, 1970 F. Broadus Smith and D.C Abney entered into an Agreement regarding the flooding of approximately one acre of the Abney property.

Pursuant to the Agreement, in exchange for Abney's grant of authority to flood the approximately one (1) acre of the Abney Property, F. Broadus Smith granted to D. C. Abney "the right to use said water from said pond of F. Broadus Smith as long as any portion of the lands of D.C Abney is flooded by said pond." (R. p. 153)

F. Broadus Smith died and left his property to his wife, Eliza S. Smith, for and during her natural life, and upon her death to [his children] Francis B. Smith, Jr., Jane S. McGuigan and Susie S. Watson (R. p. 154)

On or about December 3, 2014, for valuable consideration, John F. Byrd, Jr., Special

Referee, granted, bargained, sold and released unto Susannah Smith Watson (a/k/a Susie S. Watson) the property formerly of F. Broadus Smith. (R. p. 159)

Susanna Smith Watson is the daughter and heir of F. Broadus Smith and is the current owner of the property formerly owned by F. Broadus Smith, same being more particularly described and shown on that certain plat prepared for Heirs of Broadus Smith dated December 3, 2013. (R. p. 156)

The remainder of the property owned by Mattie Lee Bonnette relative to this action was deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012. (R. p. 160)

The property transferred by Mr. Frick to Titan Farms, LLC is more particularly shown on that certain boundary survey prepared for Carey E. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. (R. p. 166).

The property (or a large portion thereof) formerly owned by D.C Abney was acquired by R.W. Dubose & Sons, Inc. who on or about November 1, 2001 changed its name to Carr Farms, Inc. The Abney property was deeded to Carr Farms, Inc. by Quit Claim Deed May 25, 2010, recorded in Book 913 at Page 276. (R. p. 193)

The property transferred to Carr Farms, Inc. is more particularly shown on that certain boundary survey prepared for Carr Farms, Inc. dated June 18, 2004 as recorded in the public records for Saluda County. (R. p. 176).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). That standard is that "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." *Folkens v. Hunt*, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston County Parks & Recreation Comm.*, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). If "the parties vehemently dispute the inferences and conclusions to be drawn from the undisputed facts, . . . that simply establishes that summary judgment is not appropriate[.]" *Montgomery v. CSX Transp. Inc.*, 656 S.E.2d 20, 29 (S.C. 2008).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues." *Englert. Inc. v. LeafGuard USA. Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008).

In 2009, the South Carolina Supreme Court clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802-03 (2009). In *Hancock*, the Court held that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Id. What is required to defeat a summary judgment motion in cases requiring heightened burdens of proof or applying federal law is simply more than a scintilla of evidence. Id.

ARGUMENT

I. THE LOWER COURT CORRECTLY HELD THAT THE EASEMENT AT ISSUE IS AN APPURENANT EASEMENT AND THAT RESPONDENT HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND PARTLY ON THE FORMER BONNETTE PROPERTY NOW OWNED BY APPELLANT TITAN.

The lower court did not misapprehend the law or the facts applicable to this matter. As such, the ruling of the lower court should be affirmed. Respondents incorporate, by reference thereto, all of the arguments and authority contained in their Motion for Summary Judgment, Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, and Amended Reply to the Motion to Reconsider as if fully set forth herein.

" 'An easement is a right which one person has to use the land of another for a specific purpose.' " *Frierson v. Watson*, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006) (quoting *Steele v. Williams*, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944)); accord *Forest Land Co. v. Black*, 216 S.C. 255, 261, 57 S.E.2d 420, 423 (1950); *Smith v. Commissioners of Public Works*, 312 S.C. at 465, 441 S.E.2d at 335. " 'A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the

easement by the grantee of the lands.' " *Frierson*, 371 S.C. at 67, 636 S.E.2d at 875 (quoting *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965)); accord *Douglas v. Medical Investors, Inc.*, 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971). "[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); accord *Lynch v. Lynch*, 236 S.C. 612, 623, 115 S.E.2d 301, 307 (1960); *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876. "Both deeds and easements are valid to subsequent purchasers without notice when they are recorded." *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876 (citing S.C. Code Ann. § 30-7-10 (Supp. 2005)). "The purpose of the recording statute is to protect a subsequent buyer without notice." *Frierson*, 371 S.C. at 67, 636 S.E.2d at 876 (emphasis omitted) (citing *Burnett v. Holliday Bros.*, 279 S.C. 222, 225, 305 S.E.2d 238, 240 (1983)).

"An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720 (1971) (citations omitted). "An easement is therefore not an estate in lands in the usual sense." Id. An easement may be created by reservation in a deed. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965).

In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." *Wayburn v. Smith*, 270 S.C. 38, 239 S.E.2d 890 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo*, 293 S.C. 23. 358 S.E.2d 390 (1987). "***The intention of the grantor must be found within the four corners of the deed.***" Id. (emphasis added).

The determination of the extent of a grant of an easement is an action in equity. *Tupper v. Dorchester County.*, 326 S.C. 318, 487 S.E.2d 187 (1997). In *Tupper*, the Court distinguished between the types of easements, stating:

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

Property owners are charged with constructive notice of instruments recorded in their chain of title. *Carolina Land Co. v. Bland,* 265 S.C. 98,107,217 S.E.2d 16,20 (1975). In addition, a physical inspection of the premises in the instant case would have revealed the existence and location of the pond and its boundaries. The pond is not hidden and is readily visible and accessible by anyone walking the property.

A. THE EASEMENT GRANTED BY BONNETTE IS AN APPURTENANT EASEMENT AND RESPONDENT, AS HEIR AND ASSIGN OF THE ORIGINAL GRANTEE, HAS THE EXCLUSIVE RIGHT TO IMPOUND AND TO USE THE WATER FROM THE POND.

Addressing Appellants' assertion that the easement granted to F. Broadus Smith, his heirs and assigns, is an easement *in gross* rather than an *appurtenant* easement, Respondents direct the Court's attention to the language and construction of the deed from Mattie Lee Bonnette to F.

Broadus Smith, his heirs and assigns, dated October 1, 1960, to wit:

NOTE WHERE PARAGRAPH INDENTION BEGINS*

Know All Men by These Presents, That I, Mattie Lee Bonnette of the County of Saluda

In the State aforesaid, for and in consideration of the sum of Seventeen thousand, five hundred and 00/100 ($17,500.00) DOLLARS to me paid by F. Broadus Smith in the State aforesaid -- the receipt whereof is hereby acknowledged have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, together with all improvements thereon, containing five (5) acres, more or less, located in Ridge Spring School District, Saluda County, South Carolina, and generally described as follows: Bounded on the North by South Carolina State Highway No. 23; bounded on the East by other lands of Mattie Lee Bonnette; Bounded on the South by other lands of Mattie Lee Bonnette; and bounded on the West by lands now or formerly owned by Charlie Abney.

On the above tract of land is now located the home of Mattie Lee Bonnette and her husband, Roy Bonnette.

The tract was originally conveyed to Mattie Lee Bonnette by three separate deeds. The first deed, dated April 2, 1929, and recorded in Deed Book 26 at page 481 in the office of the Clerk of Court for Saluda County, South Carolina, conveyed one-half (½) acre from Mrs. Hassie P. Cogburn, et al. to Mattie Lee Bonnette; the second deed, recorded in Deed Book 28, page 29 in the office of the Clerk of Court for Saluda County, South Carolina, and dated January 15, 1932, conveyed three and 96/100 (3.96) acres to Mattie Lee Bonnette from the Joint Stock Land Bank of Columbia; the third deed recorded in Deed Book 34 at page 310 in the office of the Clerk of Court for Saluda County, South Carolina and dated December 26, 1938, conveyed one-half (½) acre from the heirs of Hassie P. Cogburn to Mattie Lee Bonnette.

Also, granted herein is the right, privilege and easement for F. Broadus Smith to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same.

(R. p. 149)

In the Bonnette to Smith deed, which is in Appellant Titan's chain of title (the Smith property being a part of the larger Bonnette Tract that Titan now owns), the granting language is **".....grant, bargain, sell and release unto the said F. BROADUS SMITH, HIS HEIRS AND ASSIGNS:"** and thereby identifies the "grantee" as F. Broadus Smith, his heirs and assigns. After the colon (:), the entire conveyance is described by an indented paragraph which goes the

remainder of the page. The conveyance includes title to certain property and the **"....right, privilege and easement for F. Broadus Smith, to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein and that grantee is to have exclusive use and control of same."**

The granting language contained in the deed does not break and separate out the grant of land from the grant of the easement, rather it continues and includes the words **Also, granted herein....."** Even assuming, arguendo, that Appellants' assertions are even partly valid (which is denied), while the grantor specifically names "F. Broadus Smith" when giving the right to construct a dam to impound water (which Mr. Smith in fact did), the grantor gives "grantee" the exclusive use and control of same (i.e., Mrs. Bonnette did not specifically name "F. Broadus Smith" to have exclusive use and control, but rather stated that "grantee" is to have same).

While the subsequent conveyances from Bonnette to Holston up to Frick do not appear to make specific reference to the easement granted by Bonnette to Smith, the deed from Frick to Titan specifically states:

> **This conveyance is made subject to the following exceptions: all easements, reservations, rights of way, restrictions, encroachments, plats, zoning regulations and covenants of record which may affect the above-described property and those that an inspection of the property would disclose.**

(R. p. 160)

In addition, several of the plats recorded and referenced in the Titan Tract chain of title (after construction of the pond in 1970) do show the existence of the pond. (R. p. 156, R. p. 166, R. p. 176, R. p. 212. R. p. 244) Easements may be created by specific grant in a deed and may be

created by reference to the lands as shown on a plat. *Frierson*, 371 S.C. at 67, 636 S.E.2d at 875.

In the instant case, the easement conveyed by Bonnette (grantor) to ***F. Broadus Smith, his heirs and assigns*** (grantee) "to impound water on lands owned by the grantor and grantee herein and that **grantee** is to [sic] have exclusive use and control of the same" is an appurtenant easement that runs with the land. The Bonnette property, the lands upon which the water may be impounded, being the servient estate and the Smith property being the dominant estate.

When legal title to the dominant estate passed to Watson, the right to the appurtenant easement on the Bonnette property (the servient estate) also passed to her. In accordance with the express language contained within the four corners of the deed granting the appurtenant easement, Watson (as heir, assignee, and successor in title of F. Broadus Smith) has the exclusive right to impound and to use the water from the pond partly located on the property formerly owned by Bonnette and now owned by Titan Farms, LLC. Accordingly, Titan has no common law or other right to use of the water on that portion of its property bound by the appurtenant easement.

In *Gardner*, the Supreme Court made it clear that "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo*, 293 S.C. 23. 358 S.E.2d 390 (1987). "The intention of the grantor ***must be found within the four corners of the deed.***" Id. (emphasis added). That is, each deed or granting document must stand on its own with regard to determining the intention of the grantor. The clear and unambiguous language contained in the Bonnette deed grants to "grantee", F. Broadus Smith, his heirs and assigns, the exclusive right to impound and to use the water from the pond partly on the Bonnette property.

B. THE EASEMENT GRANTED BY BONNETTE TO IMPOUND AND TO USE THE WATER CONTAINS THE NECESSARY ELEMENTS FOR AN APPURTENANT EASEMENT.

With regard to the nature of the easement (i.e., whether it is appurtenant or in gross), in *Tupper*, the South Carolina Supreme Court set forth the elements necessary to establish an appurtenant easement as follows:

(1) the easement inheres in the land;
(2) the easement concerns the premises;
(3) the easement has one terminus on the land of the party claiming it; and
(4) the easement is essentially necessary to the enjoyment of the land.

By contrast, "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement...passes with the Dominant Estate upon conveyance." See *Tupper v. Dorchester County*, 326 S.C. 318 (1997)

1. **The Easement Inheres in the Land**

Appellants assert that the grant of the easement is a personal privilege to F. Broadus Smith and that it does not "inhere" or "exist as a permanent, inseparable, or essential attribute or quality of a thing." This is incorrect. The construction of a dam for the purpose of creating a pond to impound water to water crops or livestock cannot be said to have been something of a "temporary" nature. The cost, even in 1970, to construct a dam to create the pond was no small undertaking. The Appellants argue that at the time the easement was granted there was no impounded water to which Smith could have used exclusively. This argument is misdirected. While water was not yet being impounded at the time of the grant, the spring existed that produced water, and water was accessible and available on the property. This is how the parties knew that if a dam were constructed that water could be impounded. The right granted was first

to construct a dam "**partially located on the premises herein conveyed and other lands owned by the grantor herein to impound water on lands owned by the grantor and grantee herein.**" and then to impound and to use the water resulting therefrom. (R. p. 149)

2. **The Easement Concerns the Premises**

Next, with regard to the easement, the Appellants assert that the easement is "nondescript" as to which premises would be encumbered at the time of conveyance. The Respondents disagree. The granting language states "...**to construct a dam partially located on the premises herein conveyed and other lands owned by the grantor.**" Such description is sufficient to indicate that the grantor understood and agreed that the dam would be constructed on her "other lands" in the area of the proposed pond and that water would be impounded thereon. After the construction of the dam, there is no record that the grantor ever complained of any trespass or misuse of her property. The construction of the dam and impounding of water in the pond has existed for a period of not less than forty (40) years, and no owner has ever asserted any action for trespass against Smith, his heirs or assigns, with regard to the location of the dam or its impounded water.

Even if Appellants assertions are taken as true (i.e., that the owners in the Titan Tract chain of title were not on actual or constructive notice of the claimed rights to dam and to impound water on the Bonnette property, which is denied), then the use by F. Broadus Smith and his heirs from 1970 forward would have been "open" or "hostile" to the use of any other adjoining landowner, an essential element to establish adverse possession. There is no evidence in the record that from 1970 and for a period in excess of ten (10) years thereafter that *anyone* other than F. Broadus Smith and his heirs used the pond or the water from the pond.

There are, however, sufficient documents of record to place the public on notice of the rights claimed by the Respondent to construct a dam and to impound water thereon (as heirs of F. Broadus Smith), and the pond is readily visible and accessible by inspection of the property. The Appellants have submitted no evidence to the Court by way of affidavits (of former owners) or otherwise that anyone other than F. Broadus Smith or his heirs used the water from the pond. Respondents further assert that there was no need to fence the pond or to erect signs because the surrounding owners all knew that the pond was built by Mr. Smith, and that he had the exclusive right to use the pond and its water. Prior to Titan's ownership, none of the former owners planted a commercial peach grove on the Bonnette property such that they would have needed the extensive ability to irrigate that Titan now needs.

3. **The Easement has one Terminus on the Land**

Appellants' "terminus" arguments must fail. The terminus must be on the land of the party claiming the appurtenant easement. *Windham v. Riddle*, 370 S.C. 420, 635 S.E.2d 560. In the instant case, the party claiming the appurtenant easement are the Respondents. Terminus is defined as a "boundary; a limit, either of space or time." Black's Law Dictionary, p.1319 (5th Ed. 1979). The undisputed evidence as reflected on the recorded plats clearly show that a portion of the dam and the shoreline of the pond containing the impounded water exists on the Respondent's property. There is no evidence that the portion of the dam on Respondent's property has ever been removed, or that the water levels have ever dropped to a point where the pond is wholly on the lands owed by Appellant Titan. As such, there is a terminus on the Respondent's property.

4. **The Easement is Essentially Necessary to the Enjoyment of the Land**

Lastly, the Appellants argue that the pond did not exist at the time of the Smith transfer, and that because no pond existed at the time of the transfer, it is not "essentially necessary to the enjoyment thereof." This is false and not at all damning. In fact, the opposite is true. When Smith bargained with Bonnette to purchase his property, Smith obviously knew that the construction of a pond on his property was essential to his intended use of the property and his enjoyment thereof. We know this because Smith negotiated with Bonnette not only for the purchase of the acreage, but for the grant of an appurtenant easement to construct a pond and to impound water on other lands owned by Bonnette. The pond being so essential, that Smith did not agree to purchase only the Bonnette property without the inclusion of the grant of the easement for the impounding of water in the same deed. The use of the water impounded on the Bonnette property was and is, by the express terms of the grant, exclusive to Smith. The arguments by Appellants that others may have negotiated to use some of the water as a result of agreements reached with adjoining landowners does not destroy the exclusivity of the agreement with Bonnette or the use of water impounded on the Bonnette property.

The Respondents have previously conceded that Appellants correctly assert with regard to the Abney property and the Holston property, that the deed or granting documents (if any) must be independently evaluated to determine Smith's agreements with these other surrounding landowners regarding construction of the pond. However, no issues regarding same have been asserted herein on appeal.

C. APPELLANTS MISCHARACTERIZE THE LAW RELATIVE TO APPURTENANT EASEMENTS AND THE EXCLUSIVE USE OF THE IMPOUNDED WATER IN THE INSTANT CASE.

Lastly, citing *Wayburn v. Smith*, 270 S.C. 38, 239 S.E.2d 890 (1977), Appellants claim that "imputing upon an unsuspecting landowner the inability to use a portion of his land, or the water on his land, without anything in the chain of title evidencing such a restriction is contrary to the settled South Carolina law and public policy."

First, Appellants' claims that they are "unsuspecting landowners" is inconsistent with the evidence in this case. Not only are there sufficient documents of record to place the public on notice of the rights to construct a dam and to impound water claimed by the Respondents (as heirs of F. Broadus Smith), and the pond is readily visible and accessible by inspection of the property, but the Appellants have provided no evidence to the Court by way of affidavits (of former owners) or otherwise that anyone other than F. Broadus Smith or his heirs used the water from the pond. There was no need to fence the pond or to erect signs because the surrounding owners all knew that the pond was built by Mr. Smith, and that he had the rights to use the pond and its water. In fact, prior to Titan's ownership, none of the former owners planted a commercial peach grove on the Bonnette property that required the kind of irrigation that Titan now needs.

Second, if the law were as suggested by Appellants, same would essentially void all appurtenant easements where "exclusive" use is granted. Smith did not need any easement from himself to himself to use the water impounded on his own property. However, without the easement from Bonnette to impound the water and to use same a) impounding water on the Bonnette property after construction of the dam would constitute a trespass, and b) without the exclusivity provision, Bonnette would have likewise had the right to use any of the impounded

water that covered her property. It is the grant of exclusive easement from Bonnette that creates the sole right in Smith, his heirs and assigns, to impound water on and to use the water over the Bonnette Property.

Appellants' argue that the privilege to exclusively use the water over the Bonnette property, if appurtenant, essentially divests the owner of the servient estate the ability to us their land...and effectively renders the easement a conveyance of the property. While it is true that an easement does divest the owner of the servient estate from use of the property so long as the easement exists, it does not constitute a conveyance of title to the property. "An easement is a right which one person has to use the land of another for a specific purpose and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 182 S.E.2d 720 (1971). If the law were as suggested by Appellants, same would essentially void all appurtenant easements where "exclusive" use is granted. For example, if the SC Department of Transportation acquires an easement to construct a highway, while the servient estate would maintain ownership of its land subject to the easement, the use by the SC Department of Transportation to construct and maintain a highway would deprive the owner of the servient estate of the ability to use same. Smith did not need any easement from himself to himself to use the water impounded on his own property. However, without the easement from Bonnette to impound the water and to use same a) impounding water on the Bonnette property after construction of the dam would constitute a trespass, and b) without the exclusivity provision, Bonnette would have likewise had the right to use any of the impounded water that covered her property. It is the grant of exclusive easement from Bonnette that creates the sole right in Smith, his heirs and assigns, to impound water on and to use the water over the Bonnette Property.

South Carolina law clearly allows owners of real property to grant easements, both appurtenant and in gross. Appellants essentially argue that all easements that are appurtenant and that run with the land, which necessarily deprive the servient estate owner of some right of use of his/her property, should be void as a matter of law or public policy. To the contrary, both South Carolina law and public policy dictate that owners of real property are free to make voluntary agreements concerning the use of their property so long as that use does not violate the law or public policy of this State. In the instant case, it cannot be said that granting an appurtenant easement to an adjoining owner, after giving him the ability to construct a dam partially on the property of the grantor, the exclusive right to impound and to use the water is illegal or that such would violate public policy.

CONCLUSION

Accordingly, when viewing the documents of public record, the undisputed facts in this matter in a light most favorable to the Appellants, and when evaluating the applicable law (which the parties essentially agree upon) to the grant of easement in this case, the Respondents respectfully asserts that the lower court correctly concluded that there are no genuine issues as to any material facts with regard to Respondents' first and fourth causes of action, that Respondents are entitled to judgment as a matter of law on those causes of action, and that the ruling of the lower court should be affirmed.

Respectfully submitted,

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January 7, 2022
Anderson, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Judge
Civil Action No. 2016-CP-41-00153

Appellate Case No. 2021-000659

Carr Farms, Inc. and Titan Farms, LLC, ... Appellants,

v.

Susannah Smith Watson, Carson M. Watson,
and Jane Watson……Respondents.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Having received and reviewed the Initial Brief of Respondents, and arguments raised therein, Appellants, Carr Farms, Inc. and Titan Farms, LLC (collectively "Appellant"), hereby submits this Reply Brief of Appellant pursuant to Rule 208(a)(3) of the South Carolina Rules of Appellate Procedure, responding to those issues raised by Respondents and not previously addressed by Appellant.[1] Appellant submits this Brief as a supplement to the Initial Brief of Appellant, and hereby specifically adopts and reargues those arguments presented therein. For these reasons presented herein, as well as those previously presented, the circuit court erred in granting summary judgment to Respondent.

I. Respondent misinterprets the notice provided to Appellant.

In arguing that Appellants were on notice of the subject easement, Respondent states that the deed from Bonnette to Smith was in Titan's chain of title and suggests, therefore, that Titan should have been on notice of the subject easement. Such is not the case. While both the Smith Tract and the tract ultimately acquired by Titan both come from the same grantor, Bonnette, these are different chains of title and a title abstract of the Titan tract would not include the Smith deed. Furthermore, as found by the Circuit Court, the deeds from Bonnette to Titan fail to disclose the existence of the subject easement. (R. p. 18). The suggestion that the subject easement is in the Titan chain of title is simply inaccurate.

Respondent goes on to argue that because the plats on record for the subject properties include the existence of a pond that Appellants should have been on notice of the subject easement.

[1] Appellant rests on the arguments presented in his Initial Brief of Appellant as sufficient where no Reply is included herein.

This too misses the point. While the existence of the pond has never been disputed, it is the exclusive use aspect of the subject easement that the public is without notice of. Respondent points to the absence in the record of evidence that anyone other than Respondent utilized the pond before Appellant's acquisition of the property, but there is also an absence in the record that Respondent actually utilized the pond or that Respondent attempted to preclude anyone else from using the pond. An inspection of the respective properties themselves would simply alert one that the pond covers three parcels. The Initial Brief of Appellant has outlined the common law of riparian rights and the right of a property owner to use the water over his or her property. Nothing in a physical inspection of the pond at issue, or the chain of title for the Titan tract, would reflect anything differently.

II. The subject easement fails the necessary elements for an appurtenant easement.

a. The easement does not "inhere in the land."

Respondent argues that because a spring of water existed and produced water prior to the execution of the deed containing the subject easement that this element is met. Unfortunately, the existence of the spring, and the production of water, is not enough. The easements relate to the impoundment of water and the "exclusive use" of the impounded water. This did not occur until at least 10 years after the deed was executed. The impounded water and "exclusive use" thereof does not "inhere in the land."

b. The easement does not "concern the premises."

Challenging the argument of Appellant, Respondent essentially argues the description is "good enough" to establish that the easement "concern[s] the premises." Surely, Respondent

would not believe that if the impounded water completely covered the neighboring parcel owned by Bonnette that the description was "good enough." This certainly was not the intent of the grantor, but the lack of specificity creates this precise issue. That no claim of trespass was raised by Bonnette is the proverbial "red herring" as Bonnette's easement was in gross and as such she authorized the impounding of water and use thereof. Thereafter, there is no evidence in the record prior to the instant legal proceedings that Smith or anyone in his lineage has attempted to prevent anyone else from using the pond or claimed exclusive use.

c. The easement does not have "one terminus on the land."

While Respondent argues that the requirement that the easement have "one terminus on the land" is met because no evidence is in the record that the water levels ever dropped to a point where the water was wholly on Appellant's property, such argument misses the point. The claimed easement is for the "exclusive use" of the subject pond. As outlined in the Initial Brief, and herein, the common law allows for the use of the water over one's own property. Thus, Respondent's claimed "exclusive use" has no "terminus" on Respondent's property as Respondent would be able to utilize the water over Respondent's property. Rather the claimed "exclusive use" of the water over Appellant's property has no terminus in the land of Respondent. This element also fails.

d. The easement is not "essentially necessary to the enjoyment of the land."

It appears that Respondent takes the position that because he asked that the easement be included in the deed, even though the dam was not constructed for ten years, the subject easement and the exclusive use was "essentially necessary to the enjoyment of the land." This position belies the fact that Respondent used and enjoyed the land for ten years before construction of the

dam. The argument further ignores the fact that Smith waived the "exclusive use" and deemed "exclusive use" unnecessary when he abandoned any claim of exclusive use and allowed Abney and his heirs and assigns to use the impounded water. The pond was not "essentially necessary" and the "exclusive use" was not "essentially necessary."

III. This Court need not find all "exclusive use" easements are invalid, just the instant one.

As outlined in the Initial Brief of Appellant, Respondent's claimed "exclusive use" of the pond prevents Appellant from making use of the property owned underneath the water. While the owner of a servient estate cannot make use of their property in contravention of any valid easement, such a proposition does not prevent the owner of the servient estate from making *any* use of their property. This is precisely what Respondent argues should be the instant situation, however. Relying upon misperception of how the SC Department of Transportation operates (without citation), Respondent argues that an easement to construct a highway across an owner's property results in an analogous situation. Unfortunately, and contrary to this argument, when the SC Department of Transportation constructs a highway, the subject property is acquired by the State and the property owner compensated. See S.C. Constitution, Art. I, § 13; S.C. Code Ann. §§ 28-2-10 *et seq* (The Eminent Domain Procedure Act); *see also SC Dep't of Transp. v. Powell*, 424 S.C. 206, 818 S.E.2d 433 (2018). The State is not allowed to deprive the owner of total use of their property through an easement.

Beyond the foregoing, as previously recognized by this Court in *Willimon v. Gilstrap*, No. 2014-001233, 2016 WL 245073 (S.C. Ct. App. Jan. 20, 2016), the term exclusive cannot be interpreted so as to exclude the owner of the servient property from using it consistent with the

purpose of the easement. *See Willimon*, at *1 (*citing Hundley v. Michael*, 105 N.C.App. 432, 413 S.E.2d 296, 298 (N.C. Ct. App. 1992)). In *Hundley*, similar to the instant situation, the owner of two parcels of land (lots 2 and 3) and sold lot 2 and granted a "permanent and exclusive easement of ingress and regress over a road fifteen feet in width" across lot 3. *See Hundley*, 105 N.C.App. at 433-34, 413 S.E.2d at 297. Thereafter, lot 3 was sold but contrary to the present situation, reference is made to the existence of the easement of ingress and egress to lot 2. The owners of lot 3 made use of the fifteen foot portion of the servient estate subject to the easement and thereafter the owners of the dominant estate holding the easement (lot 2) erected a fence along the burdened portion of the property to prevent the owners of the servient estate (lot 3) from making any use of that portion of their property. *See id*.

The North Carolina Court of Appeals in evaluating this situation noted that the original owner of both lots elected not to retain the fee simple title to the fifteen foot parcel encumbered by the easement when she conveyed lot 3, instead conveying the entire parcel subject to the easement. *See id*. 105 N.C.App. at 435, 413 S.E.2d at 298. "[T]o now exclude the servient tenement owner from using the property within the easement would indeed produce an 'unusual' result." *Id*. The Court does note that "[a]bsent explicit language to the contrary, the owner of land subject to an easement has the right to continue to use his land in any manner and for any purpose which is not inconsistent with the reasonable use and enjoyment of the easement." *Id*. (*citing Chesson v. Jordan*, 224 N.C. 289, 29 S.E.2d 906 (1944). In *Hundley*, using the language "exclusive easement" and including the reservation of the easement in both the chain of title for the dominant estate and the servient estate did not support the position advanced by the dominant estate that they could not exclude the owner of lot 3 from using that portion of their property burdened by the

easement. Respondent, likewise, cannot preclude Appellant from making use of their property or the water above.

CONCLUSION

For the reasons stated, the circuit court erred in granting Respondent summary judgment.

Respectfully submitted,

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January 24, 2022

The South Carolina Court of Appeals

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March 20, 2024

Mr. Daniel L. Draisen, Esquire
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Mr. Jonathan McKey Milling, Esquire
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Re: Carr Farms, Inc. v. Susannah Smith Watson
Appellate Case No. 2021-000659

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Catherine Harrison, deputy

CLERK

cc: The Honorable Alison Renee Lee

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

Carr Farms, Inc. and Titan Farms, LLC, Appellants,

v.

Susannah Smith Watson, Carson M. Watson, and Jane Watson, Respondents.

Appellate Case No. 2021-000659

Appeal From Saluda County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2024-UP-086
Heard December 5, 2023 – Filed March 20, 2024

AFFIRMED

Jonathan McKey Milling, of Milling Law Firm, LLC, of Columbia, for Appellants.

Daniel L. Draisen, of The Injury Law Firm, PC, of Anderson, for Respondents.

PER CURIAM: Carr Farms, Inc. and Titan Farms, LLC (collectively, Appellants) appeal the circuit court's order granting Susannah Smith Watson partial summary judgment, arguing the circuit court erred in holding Watson's

easement (the Smith Deed Easement)[1] for a pond (the Pond) located partially on Appellants' properties was appurtenant and that Titan Farms did not have the right to use the portion of the Pond on its property. We affirm.

1. We hold the circuit court did not err in finding the Smith Deed Easement met each of the necessary elements for an appurtenant easement. *See Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) ("The character of an express easement is determined by the nature of the right and the intention of the parties creating it."); *id.* (explaining that while "[a]n easement in gross is a mere personal privilege to use the land of another" and "is incapable of transfer," an appurtenant easement "passes with the dominant estate upon conveyance."); *id.* ("[A]n appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof."); *id.* ("Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross."); *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994) ("[E]asements in gross are not favored by the courts, and an easement will never be presumed as personal when it may fairly be construed as appurtenant to some other estate."); *Proctor v. Steedley*, 398 S.C. 561, 571, 730 S.E.2d 357, 362 (Ct. App. 2012) ("The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement.").

First, the Smith Deed Easement met the requirements that it "inhere in the land" and "concern the premises." *See Inhere*, Black's Law Dictionary (11th ed. 2019) (defining "[i]nhere" as "[t]o exist as a permanent, inseparable, or essential attribute or quality of a thing; to be intrinsic to something"). The right to the impoundment of water on the servient estate was inseparable from the land on the servient estate. The land was essential to the dominant estate's use of the servient estate for the creation of the Pond as granted in the Smith Deed. Appellants cite no authority to support their contention the Smith Deed Easement did not inhere to the land because at the time of the grant, no water was impounded on the servient estate

---

[1] Mattie Lee Bonnette was the predecessor-in-title for Watson and Titan Farms. In a deed dated October 1, 1960 (the Smith Deed), Bonnette conveyed to "F. Broadus Smith, his heirs and assigns" five acres in Saluda County, which were bounded on the east and south by other lands Bonnette owned, and an easement for the creation of the Pond. Although Carson M. Watson and June Watson are named as defendants, only Susannah Watson currently owns the property conveyed in the Smith Deed.

that Smith, the original grantee, could have used exclusively. *See McCall v. IKON*, 380 S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008) (stating "an appealed order comes to the appellate court with a presumption of correctness and the burden is on appellant to demonstrate reversible error"). Furthermore, the legal creation of an easement by express grant can precede the physical creation and use of the easement. S*ee Binkley v. Burry*, 352 S.C. 286, 297, 573 S.E.2d 838, 844 (Ct. App. 2002) ("An easement by its very nature involves the right to encroach upon another's property."); *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015) ("An easement is a right given to a person to use the land of another for a specific purpose."); *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 69, 558 S.E.2d 902, 908 (Ct. App. 2001) (holding the "clear and unambiguous language" of a deed granting the defendant flowage rights over the dam created an easement that extended to the top of the dam, even though the impounded waters did not extend that far until a flood almost twenty years after the creation of the easement).

The Smith Deed Easement met the requirement of having a terminus on the land of the dominant estate. *See Williams v. Tamsberg*, 425 S.C. 249, 263, 821 S.E.2d 494, 502 (Ct. App. 2018) (stating that in order for a terminus on the land of the party claiming an easement appurtenant to exist, "the dominant estate must have access to the purported easement"); *id.* ("[A] court could find an easement appurtenant if the purported easement . . . at least touches the dominant estate."). Here, the Smith Deed Easement clearly touched the dominant estate as the waters of the Pond touched both the servient and dominant estates. Finally, the Smith Deed Easement was essentially necessary to the enjoyment of the dominant estate because it was necessary to grant the dominant estate the right for the impounded waters to encroach on the servient estate, and therefore necessary for the dominant estate to enjoy the Pond, which was built in accordance with the intentions of the Smith Deed grantor and grantee.

2. We disagree with Appellants' argument that the Smith Deed Easement did not evidence a clear intent for Watson to have exclusive use of the Pond. First, the grant of the Smith Deed Easement fell under the Smith Deed's granting clause, which was to Smith and his heirs and assigns. The deed's easement provision distinguished between "F. Broadus Smith," who was to construct the dam, and the "grantee," which included Smith and his heirs and assigns, who was to have "exclusive use and control" of the Pond. Thus, considering the plain language of the deed, we hold the parties intended for the grant of the exclusive use of the easement to be to the grantee, which was Smith, and his heirs and assigns. *See Proctor*, 398 S.C. at 574, 730 S.E.2d at 364 ("Generally, the phrase 'heirs and

assigns' will not convert an easement in gross to an appurtenant easement when the elements of an appurtenant easement are not otherwise present."); *id.* ("However, such language is relevant to the determination of the grantor's intent."); *Rabon Creek*, 348 S.C. at 71, 558 S.E.2d at 909 (stating that in order to determine the parties' intent, the "grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments" (quoting 28A C.J.S. *Easements* § 57, at 235 (1996))); *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 583 (2009) (stating "the deed must be construed as a whole and effect given to every part if it can be done consistently with the law" (quoting *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987))); *id.* ("The intention of the grantor must be found within the four corners of the deed." (quoting *Gardner*, 293 S.C. at 25, 358 S.E.2d at 392)). Thus, we hold Watson, as Smith's heir and assign, now has the right to the exclusive use and control of the Pond.

Second, we hold the lack of specificity of the amount of the servient estate authorized for the use of the construction of the dam or to be covered with the impounded water did not make the easement invalid. *See Smith*, 312 S.C. at 469, 441 S.E.2d at 337 ("[A]n easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated.").

Third, we disagree with Appellants' argument that because the Smith Deed Easement was absent from their chain of title, they should not be bound by the easement's purported grant of "exclusive use and control" of the Pond. *See Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (holding constructive notice is "notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts" (quoting *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n.6 (1998))); *Rabon Creek*, 348 S.C. at 71, 558 S.E.2d at 909 ("Notice of a deed is notice of its whole contents . . . and *it is also notice of whatever matters one would have learned by any inquiry which the recitals of the instrument made it one's duty to pursue*." (emphasis in original) (quoting 66 C.J.S. *Notice* § 19 (1998))); *Ten Woodruff Oaks, LLC v. Point Dev., LLC*, 385 S.C. 174, 184, 683 S.E.2d 510, 515 (Ct. App. 2009) ("[C]onstructive notice is not necessarily confined to the public record . . . ."); 66 Am. Jur. 2d *Records and Recording Laws* § 78 (2021) ("[T]here is authority that a purchaser cannot ignore deeds issued by a common grantor, or fail to search for them, on the theory that the deeds are outside the servient estate's chain of title, since to hold otherwise would undermine the broad constructive notice afforded recorded conveyances under the recording statutes."); *id.* ("If a deed or a contract for the

conveyance of one parcel of land with a covenant or easement affecting another parcel of land owned by the same grantor is duly recorded, the record is constructive notice to a subsequent purchaser of the other parcel."); *S.C. Dep't of Transp. v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, 25 (2011) (holding servient estate holders had constructive notice of an easement their predecessor-in-title granted the State even though their 1985 deeds did not mention the easement, explaining, "[i]n this case, the deed creating the easement was properly recorded; thus, Appellants had constructive notice of the easement, regardless of their legally unfounded argument that finding the deed in question would be like 'finding a needle in a haystack.'"). Here, the Pond was apparent from a visual inspection of the property and Titan Farms's deed referenced a plat prepared for its grantor showing the Pond was partially on the property conveyed. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008) ("[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." (alteration in original) (quoting *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975))). Thus, Titan Farms had notice of the existence of the Pond and was on inquiry notice about the legal ownership of the Pond, which spanned three separate properties. Furthermore, if Titan Farms had searched for deeds from its common predecessor-in-title with Watson, it would have discovered the properly recorded Smith Deed. Accordingly, Appellants were not entitled to claim they were not bound by the easement.

3. We disagree with Appellants' argument that the granting of the exclusive easement is contrary to the established law of South Carolina. *See Morris v. Townsend*, 253 S.C. 628, 635, 172 S.E.2d 819, 822-23 (1970) (holding the plaintiffs did not have the right to use waters impounded on their land, for which the defendant had an easement, because the plaintiffs did not acquire an interest in defendant's water); *id.* at 635, 172 S.E.2d at 823 ("The gist of the creation of the easement in this case is in order that the defendant may have and operate his own lake."); *id.* at 636, 172 S.E.2d at 823 ("While it is true that plaintiffs may use their land for any purpose not inconsistent with the rights acquired by the defendant, such does not include the right to use the lake and its waters which came into being solely by reason of the fact that the defendant, at his own expense, built the dam. Except for the dam, which defendant may maintain or remove, water would not approach plaintiffs' land and no riparian rights are here involved."); *White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 130, 134-35, 609 S.E.2d 811, 818, 820 (Ct. App. 2005) (holding "owners of all or part of a pond or lake bed have the right to exclude others from accessing or using the surface waters above their property" but noting the owner of the land under a lake is free to make other arrangements with the abutting property owners). Here, even if Appellants would have had an interest

in the use of the Pond's waters by virtue of owning the land beneath the waters, the grantor and grantee of the Smith Deed made an agreement giving the grantee, who undertook the investment to construct the Pond, exclusive use of its waters to protect his investment. We hold the circuit court's finding that Watson had exclusive use and control of the Pond is consistent with both *Morris* and *White's Mills Colony*. *See* 363 S.C. at 131, 363 S.E.2d at 818 ("Because the construction of a man-made water body often involves the expenditure of substantial sums of money and the expense is not, as a rule, divided proportionately among the various abutting owners, the individual making the expenditure is justified in expecting that superior privileges will inure to him in return for his investment." (quoting *Anderson v. Bell*, 433 So. 2d 1202, 1205 (Fla. 1983))).

AFFIRMED.

WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Judge
Civil Action No. 2016-CP-41-00153

Appellate Case No. 2021-000659

Carr Farms, Inc. and Titan Farms, LLC, ... Appellants,

v.

Susannah Smith Watson, Carson M. Watson,
and Jane Watson…….……Respondents.

PETITION FOR REHEARING

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Pursuant to Rule 221 of the South Carolian Appellate Court Rules, Appellants respectfully request that the Court grant rehearing and review of *Carr Farms, Inc. and Titan Farms, LLC v. Susannah Smith Watson, et al.*, Op. No. 2024-UP-086 (S.C. Ct. App. Filed March 20, 2024)(the "Opinion"). While the Opinion addresses some of the arguments raised and presented by Appellants, other arguments raised, which would be dispositive, appear to have been overlooked or misapprehended by the Court. Consideration of these arguments should yield a decision in favor of Appellants, and a reversal of the decision of the circuit court. For the reasons set forth herein, Appellants respectfully seek rehearing.

I. The Opinion overlooks or misapprehends several key arguments which demonstrate that the subject easements fail to meet the necessary requirements for an appurtenant easement.

As presented by Appellants, the easement at issue is comprised of two (2) components, each seeking to encumber the servient estate separately. The language of the easement seeks to (1) encumber the property of the servient estate with water should a dam be erected and water impounded in the future (which was ultimately done), and (2) encumber the servient estate such that the owner of the servient estate's use or access of their property or the water through the "exclusive use" clause. Admittedly, it is possible for the owner of the servient estate to use its property consistent with the impoundment encumbrance, if said easement meets the necessary requirement for an appurtenant easement. The "exclusive use" encumbrance, however, would eliminate the owner of the servient estate from making any use of its property. While the Opinion addresses some of the arguments raised regarding the impoundment easement, it does not address how the "exclusive use" easement satisfies the necessary elements for an appurtenant easement.

A. Neither the impoundment easement, nor the "exclusive use" easement inhere in the land.

As it relates to the impoundment easement, the Opinion determines that "[t]he right to the impoundment of water on the servient estate was inseparable from the land on the servient estate. The land was essential to the dominant estate's use of the servient estate for the creation of the Pond as granted in the Smith Deed." Unfortunately, in making this determination the Opinion may have overlooked the fact that at the time of the Smith Deed there was no impounded water, and thus the right to impound water, as well as the impounded water itself, *was*, in fact, separable from the land. Such would defeat this necessary element.

While it is true that Appellants have cited no cases which have the specific factual situation as present here, the scope of an easement (and whether it is appurtenant or in gross) must be determined based upon the facts of each case. Without each of the essential elements being present, the easement will be characterized as in gross. *See Windham v. Riddle*, 381 S.C. 192, 201-02, 672 S.E.2d 578, 583 (2009). Such is a factual determination, and this Court takes its own view of the evidence. *See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 67, 558 S.E.2d 902, 906-07 (Ct. App. 2001). Some evidence of each element must be present, however, and there is an absence of evidence to demonstrate that as a part of a conveyance of land, the water which might be impounded in the future is permanent, inseparable, or essential attribute or quality of the property, to be intrinsic to the property. Without meeting these requirements, it does not inhere in the land.

While in *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, this Court did have an occasion to review an easement for the impoundment of water, the question was not presented whether the subject easement was in gross or appurtenant, and thus there was no discussion of this particular issue. Of note, the *Binkley* easement was not included land

conveyance, but rather a stand-alone easement.[1] Further, the *Binkley* easement included a Sketch Map outlining the location of impounded water, the acres covered, elevation and contour lines. *See Binkley*, 348 S.C. at 68-69, 558 S.E.2d at 907-08.[2] The *Binkley* easement thus evidences an imminent intent to impound the water, and where it would flow. Beyond this, however, and completely different from the instant easement, is the absence of any purported easement that only the easement holder which impounded the water would be permitted to use the water. While the water was impounded, access and use of the water was in no way restricted.

This distinction is important, especially when viewing the essential elements of appurtenant easements, as there is no evidence from which the circuit court or this Court may rely to determine that the second aspect of the subject easement, the "exclusive use" inheres in the land. The "exclusive use" is not "permanent, inseparable, or essential" as it did not exist at the time of the conveyance. Furthermore, any argument that the "exclusive use" inheres in the land erodes when we recall that Smith granted unto Abney the right to use the impounded water. In so doing, it is clear that the "exclusive use" easement was not essential, permanent, inseparable. As this argument was not addressed in the Opinion, the Court may have overlooked or misapprehended the argument. Thus, Appellants ask the Court to rehear the foregoing arguments which were not addressed in the Opinion, and therefore may have been overlooked or misapprehended. When considering these arguments, the decision of the circuit court should be reversed.

[1] While easements in a deed are certainly permissible and valid, having a stand-alone easement of this nature certainly evidences the intent of the parties. Further, grantee of the easement, Rabon Creek Watershed Conservation District of Fountain Inn, remained the holder of the easement at the time of the action, and thus the nature of the easement (appurtenant or in gross) was not relevant to the proceeding.

[2] These are the attributes the *Binkley* Court noted were customarily included in "flowage" easements. None of them are present in the instant easement.

B. Neither the impoundment easement, nor the "exclusive use" easement are essentially necessary to the enjoyment of the dominant estate.

Akin to the foregoing, Appellants ask the Court to rehear the "necessity" essential element in light of the following overlooked or misapprehended arguments previously presented but not addressed in the Opinion. The Opinion concludes that the easement "was essentially necessary to the enjoyment of the dominant estate to enjoy the Pond. . .." Appellants respectfully submits that the proper way to view the "necessity" element is whether the subject easement is "essentially necessary for the enjoyment of the property" as a whole. Evaluating the "necessity" element in this way explains how easements for ingress and egress of landlocked property satisfy this element, as without the easement the owner cannot enjoy (or use) their property. Viewed this manner, the instant easement is not "essentially necessary for the enjoyment" of the property as impounded water didn't exist at the time of the conveyance or for approximately ten (10) years thereafter. Smith had the ability, right and use of his property this entire time without the impounded water. The impounded water was not essentially necessary for the enjoyment of his property.

In addition to the foregoing, and consistent with the "exclusive use" position outlined in discussing the "inhere" requirement, the "exclusive use" of the impounded water (once it was impounded) was not essentially necessary for the enjoyment of the property as Smith granted unto Abney the ability to use the impounded water. If the "exclusive use" of the impounded water was "essentially necessary for the enjoyment of the property," then he would not have allowed Abney, his heirs and assigns, to use the impounded water. As with the foregoing section, Appellants ask the Court to rehear these overlooked or misapprehended arguments, and when considered, yields a different result.

II. The Opinion overlooks or misapprehends Appellant's argument on notice.

The Opinion further outlines that Appellants are bound by the "exclusive use" easement even though the Opinion acknowledges that the subject deed it is absent from Titan's chain of title. In making this determination, the Opinion concludes that because the pond was readily apparent (which Appellants do not challenge), the fact that it spanned three adjacent properties put Titan on inquiry notice about the legal ownership of the pond. In support of this conclusion, reference is made to 66 Am. Jur. 2d *Records and Recording Laws* § 78 (2021). Before this Opinion, however, South Carolina has never adopted this provision and has not otherwise made such a proclamation. Thus, if the Court is now adopting this position, Appellants would urge that a prospective application of this new rule would be appropriate such that it would not govern the instant matter, which would yield a different result in this Court's decision.

The Opinion does reference *S.C. Dep't of Transp. v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, 25 (2011), but in *S.C. Dep't of Transp. v. Horry County*, the subject easement was included in the chain of title of the servient estate, as opposed to the easement being recorded in a different chain of title as we have in the present case. *Id.*, 391 S.C. at 80, 84, 705 S.E.2d at 23, 25. Rehearing and consideration of this misapprehended argument yields a different outcome in this matter.

III. The Opinion overlooks or misapprehends Appellants' argument regarding the practical impact of the decision.

Finally, the Opinion overlooks or misapprehends Appellants' argument that by permitting the "exclusive use" easement to prevail, the Opinion transforms the nature of the conveyance from an easement whereby the dominant and servient estates must coexist, to a fee simple devise and thereby divests Titan Farms of the ability to make any use of the property underneath the

impounded water. As was argued by Appellants, this Court in *Willimon v. Gilstrap*, No. 2014-001233, 2016 WL 245073 (S.C. Ct. App. Jan. 20, 2016) previously found the term "exclusive" cannot be interpreted so as to exclude the owner of the servient property from using it consistent with the purpose of the easement, yet that is the precise situation we have at hand. In making the earlier decision, this Court relied upon the North Carolina case of *Hundley v. Michael*, 105 N.C.App. 432, 413 S.E.2d 296, 298 (N.C. Ct. App. 1992), which stated "to now exclude the servient tenement owner from using the property within the easement would indeed produce an 'unusual' result." *Id.,* 105 N.C. at 435, 413 S.E.2d at 298. Appellants seek rehearing on the foregoing argument so as to avoid the "unusual result" noted in *Hundley*. Upon rehearing and consideration of this overlooked or misapprehended argument, Appellants submit that the only way to avoid such a result is to vacate the circuit court's decision on the "exclusive use" easement.

CONCLUSION

For the reasons set forth herein, Appellants respectfully asks this Court grant its petition for rehearing and review the Opinion to address those matters addressed herein.

Respectfully submitted,

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March 29, 2024

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Apr 03 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge

C/A No. 2016-CP-41-00153
Appellate Case No. 2021-000659

CARR FARMS, INC. and TITAN FARMS, LLC……..……Appellants,

v.

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JUNE WATSON……Respondents.

RETURN TO PETITION FOR REHEARING

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Respondent, Susanna Smith Watson, by and through her undersigned attorney, hereby files her Return to Appellants Petition for Rehearing on Opinion Number 2024-UP-086 filed on March 20, 2024.

ARGUMENTS

I. The Court has not misapprehended the facts or law applicable to this matter.

The Court has not misapprehended the facts or the law applicable to this matter. As such, Appellant's Motion for Rehearing should be denied.

II. The Court correctly evaluates that the subject easement is an appurtenant easement.

Appellant simply rehashes its arguments asserted in its prior briefs and at oral arguments. Respondent has shown by the documents, facts, and evidence that the easement at issue in this matter (i.e., the easement to construct and maintain a dam and to impound water) meets each of the necessary elements for the creation of an appurtenant easement. The Court, in its Opinion, addressed the necessary elements including the "exclusive use" element. Appellant's argument is without merit that, "the 'exclusive use' encumbrance, however, would eliminate the owner of the servient estate from making any use of its property." This is a red herring. First, only a portion of Appellant's overall property is being used for the dam and to impound water. Second, easements by their very nature prevent the servient estate owner from making full use of the property subject to the easement granted (either in whole or in part). While it is the sole right of Respondent to use that portion of Appellant's property to construct and maintain a dam and to impound water, Appellant still owns the property. If Respondent, her successors or assigns, ever abandons or terminates the easement, Appellant would then regain the right to full use of that portion of its property. Finally, any owner granting an easement is presumed to be aware that he/she is giving

up some right, title, or interest to the full use of that portion of his/her property encumbered by the easement. This the very nature of an easement.

Appellant's argument that [sic] because the dam was not there and the water not impounded at the time of the Smith deed it is necessarily separable from the land, if accepted as a basis for defeating the element of "inhering in the land" for an appurtenant easement would necessarily mean that ANY easement granted wherein the intended use is not in existence at the time of the grant *could not* inhere in the land and therefore *could not* be an appurtenant easement. Appellant would have the Court hold that prior to granting an appurtenant easement the servient estate owner must first allow the dominant owner to exercise control over his/her property, to install the road, pond, fence, utility, or whatever the use being made is, and to do so *prior* to the granting of the easement. Otherwise, if the Court accepts Appellant's argument, such easements could only be *in gross* and not appurtenant. This is simply not the law.

III. The Court correctly determined that Titan had notice of the easement.

Respondent asserts that the Smith deed is not completely "absent from their chain of title" as asserted by Appellant. The title history of the Titan tract is within the title history of the greater Bonnette tract that includes: a) that Mattie Lee Bonette owned the greater tract of land; b) that Mrs. Bonette, at various times, sold off parts of her property including, but not limited to, on October 1, 1960 the property soled to F. Broadus Smith, his heirs and assigns. It is also from this greater tract that:

The remainder of the property owned by Mattie Lee Bonnette relative to this action was deeded to Titan Farms, LLC by deed from Carey Frick a/k/a Carey Edward Frick on January 24, 2012. (R. p. 160)

The property transferred by Mr. Frick to Titan Farms, LLC is more particularly shown on that certain boundary survey prepared for Carey E. Frick, revised November 4, 2002 as recorded in the public records for Saluda County. (R. p. 166).

Appellant's argument appears to be that when a greater tract of property is subdivided, the title history of the greater tract of land, and particularly other tracts subdivided therefrom, are not within the chain of title for each of the other portions divided therefrom. This is not entirely the case. When the Smith property was subdivided from the greater Bonnette property, there is record notice of this subdivision and such subdivision is part of the chain of title to the Bonnette property. Any subsequent purchaser of the remainder of the Bonnette property searching the title history would (or should) have discovered the portion subdivided and sold to Smith and should have taken note of the granting of the easement contained in the Bonnette to Smith deed.

While the title history of each of the subdivided tracts may not be directly within the title chain of each separate tract, it is clearly within the overall title history of the greater piece of property. This is why it is necessary when searching the title to look for deeds issued by a common grantor. As stated by the Court, to do so would otherwise undermine the broad constructive notice afforded recorded conveyances under the recording statute.

Further, and more importantly to the analysis here, in the instant case a simple visual inspection of the property clearly put Titan on notice that there was water being impounded on a portion of the property it was purchasing. It was then incumbent on Titan, prior to closing, to ascertain who had the legal rights to the impounded water. Appellant would have the Court find that reliance on ONLY a title search is appropriate for determining "notice" of the existence of an

easement. Such egal position is contrary to the law of easements by necessity, easements by prior use, and other types of easements that exist, not because of an express grant, but based on a number of other factors.

IV. The Court's decision in this matter comports with the laws of this State.

Appellant's assertion that by permitting exclusive use the nature of the conveyance must necessarily be a fee simple devise is misplaced. Again, as set forth above, Appellant mischaracterizes the exclusive use granted. While it is solely the right of Respondent to use that portion of Appellant's property subject to the easement to construct and maintain a dam and to impound water, Appellant still owns the property. If Respondent, her successors or assigns, ever abandons or terminates the easement, Appellant would then have the right to full use of that portion of its property. This is consistent with the law of easements in this State and generally throughout the country.

CONCLUSION

The Court has not misapprehended the facts or the law applicable to this matter. As such, Appellants Motion for Rehearing should respectfully be denied, and the previous ruling of this Court should be affirmed.

Respectfully Submitted,

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April 3, 2024
Anderson, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Allison Renee Lee, Circuit Court Judge

C/A No. 2016-CP-41-00153
Appellate Case No. 2021-000659

CARR FARMS, INC. and TITAN FARMS, LLC……Appellants,

v.

SUSANNAH SMITH WATSON, CARSON M. WATSON, and JUNE WATSON……Respondents.

PROOF OF SERVICE

I certify that I served a copy of the *Return to Petition for Rehearing* by e-mail and by depositing a copy of same in the United States Mail, postage pre-paid, on April 3, 2024, to Appellant's attorney of record, addressed to:

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The South Carolina Court of Appeals

Carr Farms, Inc. and Titan Farms, LLC, Appellants,

v.

Susannah Smith Watson, Carson M. Watson, and Jane Watson, Respondents.

Appellate Case No. 2021-000659

ORDER

After 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. Accordingly, the petition for rehearing is denied.

H. Bruce Williams C.J.

J.

J.

Columbia, South Carolina

FILED
Apr 25 2024

cc:
Daniel L. Draisen, Esquire
Jonathan McKey Milling, Esquire