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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough,
Circuit Court Judge

Appellate Case No. 2025-001719

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

Appellants,

v.

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

Defendants,

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

Respondents.

BRIEF OF RESPONDENT TOWN OF MOUNT PLEASANT

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April 7, 2026

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STATEMENT OF ISSUES ON APPEAL

I. Whether, given the length of time between the John Ballam Road's public dedication and the initiation of this action, Plaintiffs' claims are barred by the statute of limitations.

II. Whether, given the significant delay between John Ballam Road's public dedication and the initiation of this action, Plaintiffs' claims are barred by the doctrine of laches.

III. Whether the trial court properly granted summary judgment because there was no genuine dispute that John Ballam Road was, by express or implied dedication, a public road.

IV. Whether, because Plaintiffs have not appealed summary judgment as to their inverse condemnation or adverse possession claims against the Town of Mount Pleasant, those rulings are the law of the case.

STATEMENT OF THE CASE

Almost 40 years after their family subdivided its property and dedicated John Ballam Road ("John Ballam Road" or "the road") to the public, Henry Bailem, IV brought this suit on February 23, 2023, against the County of Charleston ("County") and the Town of Mount Pleasant ("Town"), disputing the public dedication of the road. *See* R. p. 50, 54-57, Compl. at ¶¶ 1–3, 28–47. On June 6, 2024, the Bailem family filed an amended complaint adding several plaintiffs and naming DRB Group South Carolina, LLC ("DRB") and a number of private parties as defendants. R. p. 60-62, 68-83, Amended Compl. at ¶¶ 1, 4–11, 45–136.

In their amended complaint, Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons (collectively, "Plaintiffs") asserted six causes of action. R. p. 68-83, Amended Compl. at ¶¶ 45–136. Against the Town, Plaintiffs asserted (1) a claim seeking a declaration that John Ballam Road is a private road, R. p. 68-70, Amended Compl. at ¶¶ 45–55, (2) a quiet title action regarding "the lands of John Ballam, including John Ballam Road," R. p. 70-79, Amended Compl. at ¶¶ 56–107, (3) alternatively, adverse possession by Plaintiffs, R. p. 80-81, Amended Compl. at ¶¶ 108–16; and (4) also alternatively, inverse condemnation. R. p. 81-82, Amended Compl. at ¶¶ 117–27. The

County, Town, and DRB each filed Answers and Counterclaims. R. p. 136-147, Town Answer to & Counterclaim June 27, 2024; R. p. 159-185, County Answer & Counterclaim Nov. 7, 2024; R. p. 148-158, DRB Answer & Counterclaim Aug. 7, 2024. Upon a motion by DRB, the trial court bifurcated the critical question of whether John Ballam Road is public or private from the other issues in the suit. R. p. 36-38, Order on Multiple Mots. Oct. 28, 2024; R. p. 39-48, Order on Multiple Mots. Feb. 4, 2025.

During the same period, the County moved to dismiss the claims against it. R. p. 186-191, Motion to Dismiss July 1, 2024; R. p. 192-247, Memo. in Support of Mot. to Dismiss Oct. 21, 2024. The trial court granted that motion as to the claims of inverse condemnation, adverse possession, and trespass against the County. R. p. 36-38, Order on Multiple Mots. Oct. 28, 2024; R. p. 39-48, Order on Multiple Mots. Feb. 4, 2025.

Next, on May 27, 2025, the Town, County, and DRB all moved for summary judgment. R. p. 838-860, Town Mot. for Summary Judgment & Memo. in Support; R. p. 252-253, County Mot. for Summary Judgment; R. p. 254-273, County Memo. in Support of Mot. for Summary Judgment; R. p. 464-514, DRB Mot. for Summary Judgment & Memo. in Support. On July 8, the trial court granted summary judgment in favor of the Town, County, and DRB, concluding that Plaintiffs' claims were barred by the ten-year recovery of real property statute of limitations, the three-year fraud claim statute of limitations, or the doctrine of laches. R. p. 3, 10-16, Summary Judgment Order at 8–14. The court also held that there was no genuine dispute of material fact that John Ballam Road was dedicated to the public, either expressly or impliedly, R. p. 16-25, *id.* at 14–23, and that Plaintiffs' claims against the Town for inverse condemnation or adverse possession failed, R. p. 25, *id.* at 23. Plaintiffs moved for reconsideration, R. p. 1112-1138, Rule 59(e) Mot. to

Reconsider July 18, 2025, and the trial court denied that motion, R. p. 29-31, Order Denying Rule 59(e) Mot. Aug. 1, 2025.

Plaintiffs appealed, but they do not challenge the trial court's ruling on the inverse condemnation or adverse possession claims against the Town. R. p. 1139-1140, Notice of Appeal Aug. 28, 2025; Initial Br. at 1.

STATEMENT OF FACTS

This appeal raises key questions about the fundamental unfairness of allowing plaintiffs to bring a property dispute after they have slept on their rights for decades. Facing new development near their homes in Mount Pleasant, South Carolina, Plaintiffs seek to contest their ancestors' unambiguous dedication of John Ballam Road to the public use. For almost four decades, Plaintiffs have had at least constructive notice of that dedication, yet they seek to challenge it now, only when public use is no longer convenient for them.

39 years ago, in 1986, the heirs of the Estate of John Ballam sought to subdivide the family property located off of Six Mile Road in Mount Pleasant, Charleston County, South Carolina. R. p. 63-64, 90-92, Amended Compl. at ¶¶ 16, 23–25 & Ex. 1 (Affidavit of Estelle Capers). At the time, the Bailem family retained the services of James G. Pennington, a licensed land surveyor, to subdivide the property into four lots. R. p. 877, 905, Pennington Depo. at 11, 39; R. p. 369, D. Jefferson Depo. at 10. They later changed their minds and added a fifth lot. R. p. 369, D. Jefferson Depo. at 9–10. After a series of draft plats, Pennington signed a final plat, which Charleston County officials also signed, noting approval of the plat on October 7, 1986. R. p. 64-65, 128, Amended Compl. at ¶¶ 23–31, Ex. D.

This signed plat depicts a 50-foot right-of-way designated and labeled as "John Ballam Road 50' R/W" and bears the following dedication:

> We hereby dedicate this 50' road right of way for the use of the public forever. We hereby dedicate this 20' drainage easement to the use of the public forever. The approval of this plat in no way obligates the County of Charleston to accept the easement for maintenance or construction.

R. p. 128, Amended Compl. Ex. D. Three signatures follow that dedication: Henry Ballam,[1] Rebecca Jefferson, and Estelle Capers—the property owners. *Id.* The plat, including the public dedication, was recorded with the Office of the Register of Deeds for Charleston County on October 24, 1986. R. p. 977, Pennington Depo. at 111. Plaintiffs present no evidence that they, or any other person, have recorded any other legal instrument contradicting the public dedication of John Ballam Road. R. p. 408, 411, 414, H. Bailem Depo. at 25, 36, 47.

Several of the Plaintiffs admit knowledge of the family's communications with Pennington and the veracity of the signatures. For example, Diane Jefferson testified that she "was involved in the creation" of both the initial four-lot plat and the final five-lot plat. R. p. 369, D. Jefferson Depo. at 10. Michael Jefferson testified that he recognized the signature of his grandmother, Rebecca Jefferson, on the recorded plat. R. p. 990, M. Jefferson Depo. at 11. And Ann Bailem Simmons testified that she was present when the signatures of Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers "were affixed to" the recorded plat and that she knew that plat was signed. R. p. 355-356, A. Simmons Depo. at 7–8.

In 1987 and 1988, the property owners conveyed the five new lots to various Bailem family members. The deeds to each of the lots included a description that referenced the 1986 plat and noted the location of John Ballam Road. For example, Ann Bailem Simmons's deed reads:

> ALL that lot, piece, parcel of [*sic*] tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of

[1] There are several spellings of the Bailems' family name: Ballam, Ballaam, and Bailem. *See* R. p. 60-61, Amended Compl. at ¶ 1. Although the name listed on the plat is "Henry Ballam," there appears to be no dispute that this refers to Henry Bailem, Jr. *See* R. p. 77-78, *id.* at ¶¶ 85–87; *see also* R. p. 409, H. Bailem Depo. at 30.

> Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.
>
> Said property containing approximately 1.67 acres of land and shown as Lot 1 on the aforementioned plat.
>
> Subject to the easements as shown on said plat.
>
> BUTTING AND BOUNDING to the north on lands of Ballam, to the west on John Ballam Road and Lot 2, to the east on lands now or formerly of Mitchum and to the south on lands now or formerly of Howard McManus and McCaster.

R. p. 295, County Memo. in Support of Mot. for Summary Judgment Ex. D at 18; *see also* R. p. 71-72, Amended Compl. at ¶ 61. The deeds of Rashica Coakley, Michael Jefferson, Sr., and Diane Jefferson, Joseph and Sheila Bailem, and Henry Bailem, IV are all materially identical, containing the same references to the recorded plat and to John Ballam Road as a boundary of the lots. R. p. 279, 283, 287, 291, County Memo. in Support of Mot. for Summary Judgment Ex. D at 2, 6, 10, 14. The deeds vary only in their specific acreage, their lot numbers, and the other boundaries of the various lots. *Id.* Each of these deeds was originally executed by property owners Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers, in 1987 or 1988. R. p. 281, 285, 289, 293, 297, *Id.* at 4, 8, 12, 16, 20. Each of the Plaintiffs confirmed at their deposition that their deeds referenced the recorded plat—easements, dedication, and all. *See* R. p. 357, A. Simmons Depo. at 12–14; R. p. 444-445, R. Coakley Depo. at 7–8; R. p. 374, D. Jefferson Depo. at 27 (same deed as Michael Jefferson, Sr.); R. p. 454, S. Bailem Depo. at 8–9 (same deed as Joseph Bailem); R. p. 409, H. Bailem Depo. at 28–30.

In 1993, a letter from Charleston County Public Works Department to Plaintiff Diane Jefferson explained that, despite Jefferson's apparent inquiry, John Ballam Road could not be accepted in the County maintenance system without first undergoing improvements. R. p. 130-131, Amended Compl. Ex. E. Until the road was improved to meet the County's standards, the County would "consider [it] to be a private road." *Id.* But the letter left open the possibility that,

upon such improvements and a petition, the County might accept the road and consider it public. *Id.*

Then, on August 16, 1994, the County Council accepted John Ballam Road into its system as part of a list of unimproved roads petitioned for county acceptance and construction. R. p. 133-135, Amended Compl. Ex. F; R. p. 299-301, County Memo. in Support of Mot. for Summary Judgment Ex. E. In 1995, the Town annexed John Ballam Road and the Plaintiffs' property. R. p. 67, Amended Compl. at ¶ 37; R. p. 321-331, County Memo. in Support of Mot. for Summary Judgment Ex. G. Several Bailem family members signed the petition for annexation, which included "all adjacent and abutting rights-of-way." R. p. 321-331, County Memo. in Support of Mot. for Summary Judgment Ex. G. With annexation, maintenance responsibilities for John Ballam Road transferred from the County to the Town. R. p. 1018-1021, Town 30(b)(6) Depo. at 26–29. The County began surveying the road for future improvements. R. p. 311, County 30(b)(6) Depo. at 35. And in 1997, Plaintiffs or their predecessors signed utility easements to the Commissioners of Public Works for the Town. For example, Ann Bailem Simmons signed a water and sewer easement that read:

> ALL that strip of land located in Christ Church Parish, Charleston County, South Carolina designated as Parcel 1263 and described as follows: a permanent utility easement located generally within a community road known as John Ballam Road and more fully shown on a plat prepared by E. M. Seabrook, Jr., Inc.[,] entitled "PLAT OF PERMANENT UTILITY EASEMENTS OF VARIOUS WIDTHS SITUATE ON UNDEDICATED BRENTLEY ROAD[,] UNDEDICATED McMANUS ROAD, JOHN BALLAM ROAD PUBLIC 50' RIGHT-OF-WAY AND DAVID GREEN ROAD PUBLIC 50' INGRESS-EGRESS EASEMENT ABOUT TO BE ACQUIRED BY MOUNT PLEASANT WATERWORKS AND SEWER COMMISSION," (sheet 1), dated November 1, 1995, a copy of which is recorded in the RMC Office for Charleston County in Plat Book E8, Page 614[,] and which is made a part hereof and incorporated herein by reference.
>
> This easement may cover a portion of the property conveyed to the Grantors by deed of Henry Bailem, Jr., et al. dated December 21, 1987 and recorded in the RMC Office for Charleston County in Book H-171, Page 779.

R. p. 604-606, DRB Mot. for Summary Judgment & Memo. in Support Ex. 28 at 29–31; *see also* R. p. 525-528, 555-558, 573-576, 586-589, *id.* Ex. 5, 16, 24, 26 (other easements).

In 2002, the County paved John Ballam Road using funds from the Charleston County Transportation Committee, R. p. 314-315, County 30(b)(6) Depo. at 48–51, as part of the County's "Dirt to Pave Program," which sought to improve public roads in the County, including within the Town, R. p. 1025-1028, Town 30(b)(6) Depo. at 33–36. Although there is some dispute as to who requested the paving or why the road was paved, there is no dispute that the road was improved with public funds. *See* R. p. 1074, Plaintiffs' Mem. in Opp. to Mots. for Summary Judgment at 18. Since its paving, the Town has been responsible for any required maintenance on the road, R. p. 1019-1021, Town 30(b)(6) Depo. at 27–29; R. p. 389-390, D. Jefferson Depo. at 89–91 (describing maintenance on a ditch next to the road), and has prevented Plaintiffs' attempt to block access to the road, R. p. 423, H. Bailem Depo. at 84–85 (explaining that police took down a barrier that Henry Bailem, IV erected to block the road).

Fifteen years later, in 2017, a developer bought property abutting John Ballam Road and requested access to the road. R. p. 412-413, H. Bailem Depo. at 42–43 (discussing October 2017 Town Council meeting). Around the same time, additional surveys were conducted on the road. R. p. 376, D. Jefferson Depo. at 36. In reaction, Diane Jefferson informed the other lot owners that their "rights of ownership of John Ballam Rd [were] being challenged" and the lot owners requested "the service of an attorney to protect [their] rights." R. p. 560, DRB Mot. for Summary Judgment & Memo. in Support Ex. 17; R. p. 376, D. Jefferson Depo. at 35–36. Despite this concern, Plaintiff Henry Bailem, IV did not initiate this suit challenging the public designation of the road until 2023, six years later. R. p. 54-55, Compl. at ¶¶ 28–34.

Finally, in 2019, DRB and affiliated development companies began developing the property adjacent to John Ballam Road. *See, e.g.*, R. p. 837, DRB Mot. for Summary Judgment & Memo. in Support Ex. 61 (encroachment permit inspections). DRB relied on having access to John Ballam Road as a public road. R. p. 835, DRB Mot. for Summary Judgment & Memo. in Support Ex. 60 at 10.

STANDARD OF REVIEW

Courts agree that "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). This Court reviews the grant of summary judgment using "the same standard of review applied by the trial court." *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024). "A party against whom a claim . . . is asserted or a declaratory judgment is sought may, at any time, move . . . for a summary judgment in his favor as to all or any part thereof." S.C. R. Civ. P. 56(b). Summary judgment is appropriate if "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 a judgment as a matter of law." S.C. R. Civ. P. 56(c). Although "the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party," that party may not rely on unreasonable inferences or "an issue of fact that is not genuine" "[t]o survive summary judgment." *Isaac v. Onions*, --S.C.--, 915 S.E.2d 492, 496 (2025) (citations and internal quotation marks omitted). In other words, "[w]hen opposing a summary judgment motion, the nonmoving party must do more than simply show that there is a metaphysical doubt as to the material facts"; instead, they "must come forward with specific facts showing that there is a genuine issue for trial." *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013) (citation and internal quotation marks omitted). A "mere scintilla" of

evidence will not suffice. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (holding the proper standard is the "genuine issue of material fact" standard set forth in Rule 56(c), not the previous "mere scintilla" standard).

ARGUMENT

Here, there are four independent but equally compelling reasons to affirm the summary judgment order.[2] First, Plaintiffs' challenge to the public dedication of John Ballam Road comes decades too late. The critical facts giving rise to this action occurred nearly 40 years ago, in 1986, when Plaintiffs' ancestors dedicated their land to the public to create the road. In the decades since that dedication, Plaintiffs have repeatedly received notice that the road was dedicated to the public, yet they failed to bring this challenge until 2023. Both the ten-year statute of limitations that applies to claims for recovery of real property and, alternatively, the three-year statute of limitations for claims based on fraud bar Plaintiffs' claims.

Second, the doctrine of laches similarly bars Plaintiffs' claims. Plaintiffs' decades-long delay in bringing this challenge to the public dedication is unreasonable in the light of the repeated notices that the road is public. That delay has prejudiced the Town, County, and DRB, causing each to rely on the public dedication, expend resources treating the road as public, and face difficulty litigating this case without key witnesses and evidence.

Plaintiffs' evidence also fails to create a genuine dispute of material fact as to their declaratory judgment and quiet title claims. Although Plaintiffs contend that the 1986 public dedication was invalid, Plaintiffs cannot present more than a scintilla of evidence to support that theory. Instead, the Town, County, and DRB are entitled to summary judgment because there is

[2] The Town addresses the issues before the Court in the order laid out in the Statement of the Issues because the procedural and equitable bars to Plaintiffs' claims make it unnecessary for this Court to reach the merits of those claims. Plaintiffs' initial brief takes the issues in a different order.

no genuine dispute that John Ballam Road is dedicated to the public, either expressly or impliedly, and accepted by the County and the Town.

Finally, Plaintiffs do not contest the trial court's grant of summary judgment on the adverse possession or inverse condemnation claims against the Town. Accordingly, those rulings are the law of the case, and Plaintiffs have forfeited any argument to revive their claims.

In sum, the trial court correctly held that the Town, County, and DRB are entitled to summary judgment on all claims arising out of the determination that John Ballam Road is a public road. This Court should therefore affirm.

I. Plaintiffs' Claims Are Untimely.

Two alternative statutes of limitations bar Plaintiffs' claims.[3] "Statutes of limitations are not simply technicalities" but "fundamental" features in a "well-ordered judicial system." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016) (citation and internal quotation marks omitted). They serve several ends, helping to "stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* (citations and internal quotation marks omitted). They also "protect potential defendants from protracted fear

[3] Although the Town's motion for summary judgment raised only the ten-year statute of limitations, the trial court considered the three-year statute of limitations governing fraud claims as well. *See* R. p. 13, Summary Judgment Order at 11. South Carolina law permits a respondent to "'raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.'" *Penza v. Pendleton Station, LLC*, 404 S.C. 198, 206, 743 S.E.2d 850, 854 (Ct. App. 2013) (quoting *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000)). As the South Carolina Supreme Court has observed, "[i]t would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review." *I'On, LLC*, 338 S.C. at 419, 526 S.E.2d at 723. So long as "[t]he basis for respondent's additional sustaining grounds . . . appear[s] in the record on appeal," this Court may consider the argument. *Id.* at 420, 526 S.E.2d at 723 (explaining that appellate courts may rely on respondents' additional reasons, just as they may rely on "any other reason appearing in the record to affirm the lower court's judgment").

of litigation" and "relieve the courts of the burden of trying stale claims when a plaintiff has slept on his or her rights." *Id.* (citations and internal quotation marks omitted).

Claims for recovery of real property are subject to a ten-year statute of limitations. S.C. Code Ann. § 15-3-340. As relevant here, Plaintiffs' claims all seek to recover an interest in the property containing John Ballam Road. *See* R. p. 68-79, Amended Compl. at ¶¶ 45–107. Even Plaintiffs' declaratory judgment action, which challenges the public dedication or purported "taking" of the road, is subject to the same statute of limitations because the underlying claim is for recovery of an interest in real property. *See Harvey v. S.C. Dep't of Corr.*, 338 S.C. 500, 506–08, 527 S.E.2d 765, 769 (Ct. App. 2000); *see* R. p. 70, Amended Compl. at ¶ 55.

Alternatively, if this Court concludes that the claims do not constitute an action to recover real property, the core dispute in Plaintiffs' brief turns on whether the signatures on the recorded plat were forged or fraudulently applied to the plat. Actions based on a claim of fraud or forgery are subject to a three-year statute of limitations. *See McKinnon v. Summers*, 224 S.C. 331, 336, 79 S.E.2d 146, 148 (1953); S.C. Code Ann. § 15-3-530(7). Under either statute of limitations, Plaintiffs' claims are barred.

A. The Ten-Year Statute of Limitations for Claims Related to Recovery of Real Property Applies.

The trial court correctly held that Plaintiffs' claims are barred by the ten-year statute of limitations. "No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action." S.C. Code Ann. § 15-3-340. By its plain text, this limitations period runs from the last date on which Plaintiffs or their predecessors were "seized or possessed of the premises." *Id.* No South Carolina authority suggests that the discovery rule, discussed more fully

below, applies to this statute of limitations. *Cf. Jones v. City of Folly Beach*, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (explaining that South Carolina precedent "did not adopt the discovery rule for all causes of action"); *Phillips v. Quick*, 399 S.C. 226, 231, 731 S.E.2d 327, 329 (Ct. App. 2012) (explaining that the discovery rule found in Section 15-3-530 "does not apply to all causes of action"). So for Plaintiffs' claims against the Town to be timely, the latest date on which they must have been "seized or possessed of" John Ballam Road was February 23, 2013.

B. The Ten-Year Statute of Limitations Bars Plaintiffs' Claims.

To be timely under the statute of limitations for recovery of real property, Plaintiffs must have brought their actions within ten years of their (or their ancestors') last possession of the land. Plaintiffs have not had exclusive possession of John Ballam Road since at least 2002—and, more likely, 1986. *Cf. Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987) ("Possession is presumed to follow the legal title to land."). Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers dedicated the road to the public, and that dedication was recorded with the County in October 1986. R. p. 64-65, 128, Amended Compl. at ¶¶ 23–31, Ex. D.; R. p. 977, Pennington Depo. at 111. They then deeded the five lots abutting John Ballam Road to their family members in 1987 and 1988. *See, e.g.*, R. p. 278-298, County Memo. in Support of Mot. for Summary Judgment Ex. D; *see also, e.g.*, R. p. 71-72, Amended Compl. at ¶ 61. Each deed both contains a reference to the recorded plat—including the public dedication—and describes the lots as "butting and bounding"—not "encompassing"—John Ballam Road. *Id.* Accordingly, Plaintiffs' legal titles to their land have borne the public dedication and the attendant public interest in the land for almost four times the statute of limitations.

The County's and Town's actions in 1994, 1995, 1997, and 2002 also clearly evince public possession of the road. As discussed above, in 1994, the County formally accepted John Ballam Road into its road system. R. p. 132-135, Amended Compl. Ex. F; R. p. 299-301, County Memo.

in Support of Mot. for Summary Judgment Ex. E. In 1995, the Town annexed the road "adjacent [to] and abutting" the Plaintiffs' properties upon a petition signed by several of the Plaintiffs' family members and one plaintiff, Michael Jefferson. R. p. 67, Amended Compl. at ¶ 37; R. p. 321-331, County Memo. in Support of Mot. for Summary Judgment Ex. G. In 1997, the Plaintiffs signed easements that referenced John Ballam Road as a public road. *See, e.g.*, R. p. 604-606, DRB Mot. for Summary Judgment & Memo. in Support Ex. 28 at 29–31. And finally, in 2002, John Ballam Road was paved using public funds without a request by Plaintiffs. R. p. 314-315, County 30(b)(6) Depo. at 48–51; R. p. 1025-1028, Town 30(b)(6) Depo. at 33–36; R. p. 388, D. Jefferson Depo. at 84. At each point, it became clearer and clearer that Plaintiffs no longer possessed John Ballam Road. Yet Plaintiffs continued to sit on their purported claim to recover this property.

Plaintiffs have also engaged the County's or Town's services to maintain the road and even admitted that the road belonged to the County or Town, further reinforcing public possession of the road. For example, Diane Jefferson admitted in her deposition that she specifically sought Town maintenance of the ditch next to John Ballam Road. R. p. 389-390, D. Jefferson Depo. at 89–91. And Henry Bailem, IV stated in his deposition, upon being asked whether Plaintiffs had done anything to maintain the road since it was paved, that "it's their [the Town's] road. What would we have to do?" R. p. 412, H. Bailem Depo. at 39.

Plaintiffs' arguments on appeal fail to overcome the 37-year gap between the 1986 plat and their 2023 lawsuit and cannot save their claims from the ten-year statute of limitations. Plaintiffs first contend that their claims are not "for recovery of real property" by arguing that "[t]hey have always possessed" John Ballam Road. Initial Br. at 27. That argument falls flat. Plaintiffs' claims rely on the theory that the 1986 public dedication was erroneously filed, contesting that there is any public interest in the road at all. *See, e.g.*, Initial Br. at 11–15, 23. They also raise these claims

only in response to development that relies on the public dedication. *See* R. p. 413, H. Bailem Depo. at 45–46. "[W]hen a [party's] right to property is attacked and . . . he raises the 'flag of dominion' the issue of recovery has been established." *Winn v. Grantham*, 263 S.C. 368, 372, 210 S.E.2d 602, 604 (1974). Plaintiffs have therefore put the recovery of their interest in the property at issue.

Next, Plaintiffs argue that various statements by government officials prevented them from discovering the adverse public claim to John Ballam Road. That argument has two critical flaws. First, Plaintiffs present no authority suggesting that South Carolina courts have extended the discovery rule to this statute of limitations. *See* Initial Br. at 27–28; *cf. Jones*, 326 S.C. at 368, 483 S.E.2d at 774; *Phillips*, 399 S.C. at 231, 731 S.E.2d at 329. And the text of Section 15-3-340 contemplates that the limitations period runs from possession of the property, not notice of a potential claim.

And second, even if the discovery rule did apply, Plaintiffs were on notice that John Ballam Road was a public road—or at least that there was a dispute as to its public character. Again, the 1986 plat bearing the public dedication of the road was publicly recorded. And Plaintiffs' deeds, originally executed in 1987 and 1988, specifically referenced that plat, the easements represented in the plat, and, as a boundary of the property, John Ballam Road itself. *See, e.g.*, R. p. 278-298, County Memo. in Support of Mot. for Summary Judgment Ex. D; *see also* R. p. 71-72, Amended Compl. at ¶ 61. "Property owners are charged with constructive notice of instruments recorded in their chain of title," so Plaintiffs had notice of the public dedication of John Ballam Road no later than 1988 because their deeds incorporated that dedication. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (citing *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975)).

Were that constructive notice not enough to establish that Plaintiffs' claims fall outside of the ten-year statute of limitations, the County's 1994 public acceptance of the road into its system, the 1995 annexation, the 1997 easements referencing John Ballam Road as a public road, and the 2002 paving should have put the Plaintiffs on actual notice that the road was public. *See* R. p. 299-301, 321-331, County Memo. in Support of Mot. for Summary Judgment Ex. E, G; R. p. 604-606, DRB Mot. for Summary Judgment & Memo. in Support Ex. 28 at 29–31; R. p. 314-315, County 30(b)(6) Depo. at 48–51. At each of these points, Plaintiffs should have known that the road was dedicated to the public. Plaintiffs simply chose not to timely dispute the road's ownership despite all these events. The trial court correctly ruled that Plaintiffs' claims were untimely under the ten-year statute of limitations.

C. Alternatively, If the Ten-Year Statute of Limitations Does Not Apply, the Three-Year Statute of Limitations for Claims Related to Fraud Applies.

Plaintiffs' claims are alternatively barred by the three-year statute of limitations that applies to claims based on fraud. South Carolina Code § 15-3-530(7) provides that plaintiffs must bring "any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud" "[w]ithin three years." An action to quiet title is an action in equity. *See Corbin v. Carlin*, 366 S.C. 187, 192, 620 S.E.2d 745, 748 (Ct. App. 2005). And Plaintiffs' declaratory claim is an action to determine "whether [the] roadway has been dedicated to the public," so it may also be considered "an action in equity." *Town of Kingstree v. Chapman*, 405 S.C. 282, 301, 747 S.E.2d 494, 504 (Ct. App. 2013) (citation and internal quotation marks omitted); *see also Thomerson v. DeVito*, 430 S.C. 246, 252, 844 S.E.2d 378, 381 (2020) (observing that Section 15-3-530(7) "applies to matters in equity"). Both claims turn on whether the 1986 plat

was fraudulently executed with forged or copied signatures, allowing Pennington to file an allegedly unauthorized plat. R. p. 65, Amended Compl. at ¶ 31; *see also* R. p. 1061, Plaintiffs' Resp. to Mots. for Summary Judgment at 5. *See McKinnon*, 224 S.C. at 336, 79 S.E.2d at 148 ("[T]he gravamen of the cause of action stated in the complaint was cancellation of the deeds on the ground of forgery and . . . such cause of action was barred by the . . . limitation governing actions for relief on the ground of fraud.").

Section 15-3-530(7) has a "built in" discovery rule. *See Majstorich v. Gardner*, 361 S.C. 513, 520, 604 S.E.2d 728, 732 (Ct. App. 2004) (citation and internal quotation marks omitted) (explaining that some statutes are not subject to a general discovery rule because they contain their own discovery terms). "According to the discovery rule, the three-year statute of limitations begins to run when the underlying cause of action reasonably ought to have been discovered." *McAlhany v. Carter*, 415 S.C. 54, 63, 781 S.E.2d 105, 110 (Ct. App. 2015) (citation and internal quotation marks omitted). "The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "[R]easonable diligence" means that the injured party acted "with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Id.* at 363–64, 468 S.E.2d at 647. Thus, "[t]he date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995).

D. The Three-Year Statute of Limitations Bars Plaintiffs' Claims.

Plaintiffs' claims are untimely under either the ten-year or the three-year statute of limitations. As for the three-year limitations period for fraud claims, the events on each of the dates discussed above—1986, 1987 and 1988, 1994, 1995, 1997, and 2002—should have put Plaintiffs

on notice that the County and Town might consider John Ballam Road public. Under the discovery rule, that notice suffices to start the limitations clock. *See Dean*, 321 S.C. at 363, 468 S.E.2d at 647. But even if this Court finds that a "reasonable person" would not have recognized the possible claim based on the dedication, acceptance by the County, annexation into the Town, deeds and utility easements, or paving, Plaintiffs' claims are still barred under the three-year statute of limitations. In 2017, a developer bought land adjacent to and sought access to John Ballam Road. R. p. 412-413, H. Bailem Depo. at 42–43 (discussing October 2017 Town Council meeting). Although the Town denied the developer access to the road at the time, Plaintiffs were aware that there was a challenge to their purported property interests. *Id.* They even sought legal advice to enforce their purported rights. R. p. 560, DRB Mot. for Summary Judgment & Memo. in Support Ex. 17; R. p. 376, D. Jefferson Depo. at 35–36. Even without the many other and earlier indications that there was a dispute as to the public or private designation of the road, this 2017 development should have objectively put Plaintiffs on notice of their claim.

Lastly, in 2019, DRB and an affiliated development company sought and received a series of easements for their new development project. *See, e.g.*, R. p. 837, DRB Mot. for Summary Judgment & Memo. in Support Ex. 61. In beginning its development, DRB relied on having access to John Ballam Road as a public road. R. p. 835, DRB Mot. for Summary Judgment & Memo. in Support Ex. 60. DRB's activities should have also put Plaintiffs on notice of their potential claim.

But Henry Bailem, IV, waited until February 2023 to bring the original complaint in this suit against the Town and County: four years after DRB began development; six years after a different developer sought access; 21 years after the County paved the road; 26 years after the Plaintiffs signed utility easements recognizing that the road was public; 28 years after the Town annexed the road; 29 years after the County accepted the road into its maintenance system; 35 or

36 years after the Plaintiffs received deeds incorporating the road's public dedication; and 37 years after Plaintiffs' predecessors dedicated John Ballam Road to the public. In the face of these decades of notices, it defies logic to say that Plaintiffs could not with "reasonable diligence" have discovered their purported claim as to the ownership of the road until 2020.

Contrary to Plaintiffs' argument on appeal, no genuine dispute of material fact prevents holding that the three-year statute of limitations bars Plaintiffs' claims. The mere fact that Plaintiffs present some evidence does not create a genuine dispute of fact. *See Kitchen Planners*, 440 S.C. at 463, 892 S.E.2d at 301. Although Plaintiffs claim that certain County officials may have represented that John Ballam Road was private at various times, it is undisputed that Plaintiffs' own correspondence in 2017 evinces knowledge that "a claim against another party might exist" based on Plaintiffs' purported property rights in the road. *See Dean*, 321 S.C. at 364, 468 S.E.2d at 647. In her 2017 letter to her family members, Diane Jefferson alerted several other Plaintiffs that surveyors had been assessing John Ballam Road for development. R. p. 560, DRB Mot. for Summary Judgment & Memo. in Support Ex. 17; R. p. 376, D. Jefferson Depo. at 35–36. She went so far as to inform them that she had "requested the services of an attorney to help protect [their] rights" and to call her family members to "united" action, saying "if we don't act now it can lead to a much bigger problem and cost." R. p. 560, DRB Mot. for Summary Judgment & Memo. in Support Ex. 17. That letter establishes that the Plaintiffs were aware that they "might" have a claim against another party based on their purported ownership of John Ballam Road.

At best, the evidence at summary judgment establishes that there was a known dispute about the ownership of John Ballam Road no later than 2017. That dispute would have "place[d] a reasonable person" on notice of a potential claim in this property dispute. *Dean*, 321 S.C. at 364, 468 S.E.2d at 647. And that notice satisfied the discovery rule and started the three-year clock

under Section 15-3-530(7). Because Plaintiffs failed to bring their complaint against the County and the Town until 2023, their claims are untimely.

II. The Plaintiffs' Claims Are Barred by the Doctrine of Laches.

Plaintiffs' equitable claims are also barred by the doctrine of laches. *See Thomerson*, 430 S.C. at 253–54, 844 S.E.2d at 382 (explaining that laches applies to equitable claims).

A. The Doctrine of Laches Bars Claims that Plaintiffs Unreasonably Delay Asserting.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Robinson v. Estate of Harris*, 388 S.C. 616, 627, 698 S.E.2d 214, 220 (2010) (citation and internal quotation marks omitted). The equitable doctrine of laches prevents plaintiffs from being rewarded for "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Robinson*, 388 S.C. at 627, 698 S.E.2d at 220 (citation and internal quotation marks omitted). An affirmative defense of laches requires "(1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice." *Id.* (citation and internal quotation marks omitted). Whether a delay was unreasonable can turn on whether the party "refus[ed] to embrace an opportunity to ascertain facts" leading to the claim. *See Emery v. Smith*, 361 S.C. 207, 215–16, 603 S.E.2d 598, 602 (Ct. App. 2004) (citation and internal quotation marks omitted) (comparing precedents). And whether a claim is barred by laches is a fact-dependent determination focused on whether the delay

caused "injury, prejudice, or disadvantage to the other party." *Hallums*, 296 S.C. at 198–99, 371 S.E.2d at 527. Plaintiffs' delay in this action meets all three elements.

B. Plaintiffs Unreasonably Waited Over 20 Years To Assert Their Claims, Prejudicing Defendants.

As the trial court observed, *Robinson v. Estate of Harris* is instructive here. There, in 2005, the petitioners challenged deeds from 1946 and a quiet title action from 1966 as fraudulent. 388 S.C. at 621, 698 S.E.2d at 217. Although petitioners tried to excuse this 39-year delay on the ground that they lacked notice of their potential claim, their own affidavits reflected that county records, such as tax documents, would have placed the petitioners on notice of the possible title dispute. *Id.* at 628, 698 S.E.2d at 220–21. The South Carolina Supreme Court held that because "the deeds and the quiet title action were publicly-recorded and documented," 39 years "was an unreasonable length of time for Petitioners to delay in instituting the 2005 quiet title action." *Id.* (emphasis added). The Court further held that the "[r]espondent would be undoubtedly prejudiced if Petitioners' claim is not barred by laches given she purchased her lot for significant consideration and has been in possession of it since 1997 and built a family residence in 2002." *Id.* Thus, the petitioners' claim was barred by the "well-established equitable doctrine" of laches based on their "flagrant and egregious delay." *Id.*

This appeal follows the same path, and there can be no dispute that there was a delay. Publicly-filed documents like the plat, deeds, and easements all put Plaintiffs on notice between 1986 and 1997 that John Ballam Road was dedicated to the public. And when the County paved the road in 2002, Plaintiffs knew that they had not paid for or requested the paving, meaning the cost of the improvement came out of public County funds. R. p. 314-315, County 30(b)(6) Depo. at 48–51; R. p. 1025-1028, Town 30(b)(6) Depo. at 33–36. In the light of that information, Plaintiffs should have been on notice of their claims as much as 37 years and a minimum of 21

years before they initiated this action. In short, each of these instances presented Plaintiffs with "a reason or situation that demand[ed] assertion" of their purported property rights, but Plaintiffs still delayed. *See Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999).

That delay was unreasonable. Although the doctrine of laches is not tied to a specific time frame, statutes of limitations can serve as useful analogies in determining what constitutes unfair delay. *See Thomerson*, 430 S.C. at 251, 844 S.E.2d at 381 ("[T]he statute of limitations may be applied by analogy in a court of equity . . . ."). So even if this Court determines that neither the ten-year nor the three-year limitations periods apply, they provide a useful benchmark for determining how long a delay is too long under the doctrine of laches. The minimum 21-year delay here should be considered the "quintessential situation that the doctrine of laches was intended to protect" against. *Robinson*, 388 S.C. at 628, 698 S.E.2d at 221. But even if it were not, it is at least double the statute of limitations for recovery of real property, and seven times the limitations period for fraud claims. The Court should therefore affirm the trial court's conclusion that Plaintiffs' delay is unreasonable.

Plaintiffs' argument that their delay was reasonable because some officials represented that the road was public is untenable. Despite the mistaken conclusions of a few government employees, the legal documents at issue here—the 1986 plat, the Plaintiffs' deeds to their land, the County acceptance of John Ballam Road, and the utility easements—uniformly recognize that the road is public. *See, e.g.*, R. p. 128, Amended Compl. Ex. D; R. p. 299-301, County Memo. in Support of Mot. for Summary Judgment Ex. E (noting approval of 32 roads for construction under the Public Works Budget); R. p. 604-606, DRB Mot. for Summary Judgment & Memo. in Support Ex. 28 at 29–31. Plaintiffs' attempt to contest that designation decades later cannot stand where Plaintiffs indisputably knew that publicly filed documents contradicted the erroneous conclusions

of a few government employees. That conflict put them on notice of their claim, as discussed above, and yet they continued to delay while taking advantage of public services on John Ballam Road. *See, e.g.*, R. p. 389-390, D. Jefferson Depo. at 89–91. That delay is unreasonable and cannot be adequately explained simply by pointing to further evidence that the status of the road was in dispute.

The delay was also prejudicial to the Town. Importantly, Plaintiffs make no argument on appeal to suggest that the Town was not prejudiced by their unreasonable delay. *See* Initial Br. at 33–34 (discussing prejudice only to the County and DRB). And the Town has been at least partly responsible for the maintenance of John Ballam Road for decades, even receiving maintenance requests from the Plaintiffs. *See, e.g.*, R. p. 1013-1015, 1018, Town 30(b)(6) Depo. at 21–23, 26 (describing Town processing maintenance requests); R. p. 389-390, D. Jefferson Depo. at 89–91 (explaining that Diane Jefferson spoke with Town employees about a ditch abutting John Ballam Road that was not draining and that Town employees attempted to drain the ditch). These facts, along with the expenses from the County to pave the road and the development expenses incurred by DRB, show that Plaintiffs' delay was clearly prejudicial. If nothing else, Plaintiffs' delay has undermined the parties' abilities to litigate this case. *See Hallums*, 296 S.C. at 198–99, 371 S.E.2d at 527 (noting that "disadvantage" to the opposing party can constitute sufficient prejudice to support laches). Most of the signatories of the 1986 plat have died, and the passage of almost four decades has made documents and complete testimony more difficult to gather. *See* R. p. 374, 389, D. Jefferson Depo. at 30, 90 (explaining that she could not recall relevant dates); R. p. 1060, Plaintiffs' Memo in Opp. to Mots. for Summary Judgment at 4 (explaining that no one could locate an original, signed copy of the four-lot plat). Based on these expenses, the County, Town, and DRB's reliance on the public dedication, and the difficulties presented in litigating this case

decades after that dedication, the trial court correctly held that the doctrine of laches bars Plaintiffs' claims.

Finally, Plaintiffs' contention that issues of fact prevent finding their claims barred by laches ignores the undisputed facts before the Court. Plaintiffs cannot meaningfully dispute that legal instruments repeatedly put them on notice that John Ballam Road bore a public dedication starting in 1986. And they cannot dispute that the Town, County, and DRB acted in reliance on the road's public designation in investing in and maintaining the road. Given these most important facts, Plaintiffs had decades to bring this action, knowing that there was a public claim to the road. Plaintiffs' delay in the face of those facts is unreasonable and prejudicial, and summary judgment based on laches is appropriate.

III. The Town Is Entitled to Summary Judgment on Plaintiffs' Claims Because It Cannot Be Disputed that John Ballam Road Is Dedicated to Public Use.

If this Court reaches the merits of Plaintiffs' claims, Plaintiffs have not presented a "genuine issue of material fact" but instead only "scintilla" of evidence supporting their claims.[4] *Kitchen Planners*, 440 S.C. at 463, 892 S.E.2d at 301. "[I]t is not sufficient for [Plaintiffs] to create an inference that is not reasonable or [to rely on] an issue of fact that is not genuine." *Id.* at 463, 892 S.E.2d at 301 (citation and internal quotation marks omitted).

Plaintiffs' declaratory judgment and quiet title claims seek to have the public dedication of John Ballam Road declared invalid. "Dedication is the giving of land or an easement for the use of the public by the owner." *Grady v. City of Greenville*, 129 S.C. 89, 123 S.E. 494, 496 (1924); *see also Timberlake Plantation Co. v. County of Lexington*, 314 S.C. 556, 560, 431 S.E.2d 573,

[4] To the extent that the County and DRB raise additional arguments on appeal related to the public dedication of John Ballam Road and the trial court's summary judgment on the merits of Plaintiffs' claims, the Town incorporates those arguments by reference.

575 (1993) ("The essence of a dedication is that it shall be for the use of the public at large."). Simply put, Plaintiffs point to no reasonable inference that John Ballam Road was not dedicated to the public use in 1986, so their declaratory judgment and quiet title claims fail.

A. No Genuine Dispute of Material Fact Exists as to the Express Public Dedication of the Road.

Valid public dedication "requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504 (quoting *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995)).

As to the first element, "[n]o particular formality is necessary to effect a common law dedication." *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). A party may expressly dedicate their land through an act or declaration that "fully demonstrates" their intention to give the land to the public. *Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504. Even where a dedication is merely implied, "[a] recorded plat may be sufficient to disclose a landowner's intent to dedicate property to the public use." *Id.* at 303–04, 747 S.E.2d at 505 (citation and internal quotation marks omitted).

As to the second element, "there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Id.* at 302, 747 S.E.2d at 504. "No formal acceptance by a public authority is necessary to show public acceptance." *Id.* at 303, 747 S.E.2d at 504. For example, "[t]he use, repair, and working of the streets by public authorities is a mode of acceptance." *Tupper v. Dorchester County*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997). And what constitutes a "reasonable time" is determined by looking at the surrounding circumstances of a case. *Chafee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800, 800 (1900).

Plaintiffs' predecessors expressly dedicated John Ballam Road "for the use of the public forever" in the 1986 plat subdividing their land. R. p. 128, Amended Compl. Ex. D. That plat, recorded with the County, bears the unequivocal dedication and the signatures of three landowners: Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers. *Id.* That dedication evinces "a positive and unmistakable" intent to dedicate the road to the public, satisfying the first element of an express dedication. *See Helsel v. City of N. Myrtle Beach*, 307 S.C. 24, 26, 413 S.E.2d 821, 823 (1992).

Plaintiffs attempt to undermine this express intent to dedicate by attacking the validity of the signatures on the plat, but their effort to manufacture a genuine dispute as to the three landowners' dedicatory intent relies on a "mere scintilla" of evidence for each and unreasonable inferences. First, Plaintiffs argue that the three signatures are not the signatures of the landowners. Initial Br. at 11–13. Rebecca Jefferson, they say, was blind and did not usually sign her name. Initial Br. at 6, 12. But Plaintiff Michael Jefferson testified in his deposition that he recognized his grandmother's signature, R. p. 990, M. Jefferson Depo. at 11, and Ann Bailem Simmons testified that she was present when the three landowners signed the plat, R. p. 355-356, A. Simmons Depo. at 7–8. Estelle Capers, Plaintiffs contend, "consistently" signed her middle name, "Bailem." Initial Br. at 6, 12. But in her affidavit in this action, she signed her name "Estelle Capers." R. p. 90-92, Amended Compl. Ex. 1. And as for Henry Bailem, Jr.'s signature, Plaintiffs can muster only his son's statement that the signed name does not look like his father's signature. Initial Br. at 13; R. p. 409, H. Bailem Depo. at 27. But despite Plaintiffs' unsupported contention that "[s]ons are intimately familiar with their fathers' signatures," Initial Br. at 13, this statement is the quintessential "scintilla" of evidence and falls short of creating a genuine dispute of fact as to the validity of this signature because no evidence supports that bald assertion of Henry Bailem, IV's

familiarity with this signature. *Cf. Benedict, Hall & Co. v. Flanigan*, 18 S.C. 506, 507, 509–10 (1883) (noting that testimony as to the genuineness of a signature should come from someone who has "seen him write or [is] otherwise familiar with his acknowledged writing," and implying that although witness testimony to a handwriting sample is likely admissible, it alone is weak). Indeed, each piece of evidence that Plaintiffs' point to in challenging the validity of the signatures affixed to the 1986 plat is just that: a scintilla.

Second, Plaintiffs' argument on appeal is in tension with itself. In addition to arguing that the signatures never belonged to the original landowners, Plaintiffs also argue that the signatures were authentically placed on previous draft of the plat but improperly transferred to the final plat containing the allegedly unauthorized public dedication language. Initial Br. at 13–14.

This argument fails for two reasons. Most importantly, Plaintiffs can point to no evidence that such a transfer happened. At most, Diane Jefferson recalled that Pennington told her this kind of transfer could be done without the landowners signing again. R. p. 379-380, D. Jefferson Depo. at 47–51. Yet Plaintiffs can present no witness—including Pennington—who remembers that transfer. R. p. 894-895, Pennington Depo. at 28–29 ("Q: Do you have any recollection at all whatsoever of those individuals signing [the plat]? A: . . . [N]o."). To the contrary, Ann Bailem Simmons testified that she was present when Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers signed the recorded plat. R. p. 355-356, A. Simmons Depo. at 7–8. Diane Jefferson's testimony about what might have happened is mere speculation. As such, it does not rise to the level of a genuine dispute of fact.

And Plaintiffs cannot conjure a dispute of fact by presenting two theories of the case that contradict each other. *Cf. Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (in the context of competing affidavits, there "is an exception to a general prohibition against a judge

excluding a contradictory affidavit from consideration . . . used only when the affidavit is an attempt to create a sham issue of material fact." (emphasis added)). In one breath, they argue that the signatures were forged; in the next, they contend that the signatures were real, just transferred from another document. But if Rebecca Jefferson never signed her name, Henry Bailem's signature does not "look like" his, and Estelle Capers always signed her middle name, how could these signatures be transferred from a properly signed document? That Plaintiffs' own theory of the case points in different directions is not enough to create a genuine dispute of fact, especially in the light of the clear dedicatory statement and the decades of evidence that the landowners intended the road to be public.

Moreover, the remaining evidence strongly supports an intent to dedicate. For example, Pennington worked for the landowners in subdividing the property and recording the 1986 plat. That he filed a plat with a public dedication while acting as their agent supports the theory that the landowners intended to convey John Ballam Road to the public use. *See* R. p. 902, Pennington Depo. at 36 ("If the [customer] asked me to do a certain job for them, they tell me how they want it done, then that's what I do."). Yet Plaintiffs argue on appeal that Pennington lacked authority to file that plat. *See* Initial Br. at 23–24. The fact remains that, authorized or unauthorized, the public dedication was recorded, and the County and Town were entitled to rely on Pennington's filing. *See Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996) ("[A] principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation."). Indeed, even accepting *arguendo* that he erroneously filed the plat with the public dedication, Pennington did so as the Bailems' agent—

not the County's, and certainly not the Town's. Any dispute should therefore lie between the Bailems and Pennington, not with the County or Town.

And, as described more fully above, Plaintiffs have had nearly four decades to contest the validity of the plat, yet they failed to do so. Multiple disputes, maintenance issues, and communications with the County and Town should have put Plaintiffs on notice that their purported ownership of John Ballam Road might not be secure. Even Plaintiffs' own deeds pointed them to the very instrument that created the public dedication. *See, e.g.*, R. p. 278-298, County Memo. in Support of Mot. for Summary Judgment Ex. D. Still Plaintiffs chose not to contest the ownership of the road. The sheer length of time that the public dedication has gone unchallenged lends credence to the conclusion that the family originally intended that dedication, and Plaintiffs now attempt to undermine the dedication only in reaction to increased development.

Nor have Plaintiffs shown a genuine issue of material fact as to the second element of express dedication. The County expressly accepted John Ballam Road into its road system in 1994. R. p. 299-301, County Memo. in Support of Mot. for Summary Judgment Ex. E. The Town then annexed the Plaintiffs' properties and John Ballam Road in 1995, after the County's public acceptance. R. p. 321-331, County Memo. in Support of Mot. for Summary Judgment Ex. G. Since then, the County and the Town have behaved consistently with their responsibility for a public road: they have used public funds to improve and maintain the road, accepted service calls about the road, and allowed public use of the road. *See, e.g.*, R. p. 423, H. Bailem Depo. at 84–85 (explaining that police took down a barrier the Henry Bailem, IV erected to block the road). The evidence presents no genuine dispute as to whether the County and Town timely accepted John Ballam Road for public use, so Plaintiffs' claims cannot survive summary judgment.

B. Alternatively, No Genuine Dispute of Material Fact Exists as to the Implied Dedication of the Road.

If this Court finds that the landowners' express dedication in the 1986 plat was invalid, John Ballam Road is nonetheless impliedly dedicated to the public use. Again, "[n]o particular formality is necessary to effect . . . dedication," so "[a]n intention to dedicate may be implied from the circumstances." *Boyd*, 294 S.C. at 364, 364 S.E.2d at 480. "Any act or declaration on the part of the dedicator which fully demonstrates his intention to appropriate his land to public use, or from which a reasonable inference of his intent to dedicate may be drawn, is sufficient." *Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504 (citation and internal quotation marks omitted). For example, "[i]f a landowner subdivides and plats an area of land into lots and streets and then sells lots with reference to the plat, the owner manifests an intent to dedicate those common areas to be used by both the purchasers and the public, absent evidence of a contrary intent." *Id.* at 304, 747 S.E.2d at 505 (citation and internal quotation marks omitted).

Here, both the Plaintiffs' deeds and their behavior support the conclusion that John Ballam Road was impliedly dedicated to the public. First, the deeds all reference the plat which in turn contains the public dedication. Where a deed references a plat, landowners are charged with knowledge of that plat. *See Binkley*, 348 S.C. at 71, 558 S.E.2d at 909. And where that plat contains a public dedication, landowners are similarly charged with knowledge of the dedication. *See Helsel*, 307 S.C. at 28, 413 S.E.2d at 824 ("Where a deed describes land as shown on a certain plat, the plat becomes part of the deed. The [landowners] therefore are charged with knowledge that the street end had been offered for dedication to the public and could not be converted to private use." (citation omitted)). And the deeds also reference John Ballam Road as "butting and bounding" the properties, not as a part of the property. *See, e.g.*, R. p. 278-298, County Memo. in Support of Mot. for Summary Judgment Ex. D.

Although the deeds themselves may not be dedicatory, the incorporated references to the plat reaffirm that dedication because the same landowners that signed the plat—Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers—also signed each deed containing those references. *Id.* This incorporation creates "a reasonable inference of [the landowners'] intent to dedicate." *Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504. Thus, the deeds imply that even if the original dedication was ineffective, the landowners impliedly dedicated the road in the years that followed.

Plaintiffs themselves have not consistently behaved as if they own John Ballam Road. They have submitted work orders to the Town, R. p. 1019-1021, Town 30(b)(6) Depo. at 27–29; R. p. 389-390, D. Jefferson Depo. at 89–91 (describing maintenance on a ditch next to the road); acquiesced in Town maintenance, *id.*; and admitted in depositions that the Town should be responsible for the maintenance of the road, R. p. 412, H. Bailem Depo. at 39. Plaintiffs cannot now complain that a dedication of which they had full knowledge led to public possession of which they have taken advantage. So even if the express dedication outlined above was ineffective, the decades of inaction since its recording reinforce the implied intent to dedicate.

In arguing the contrary, Plaintiffs attempt to draw a distinction between general conveyances that create an implied dedication and "intrafamily" conveyances. Initial Br. at 37. The latter, they contend, do not impliedly dedicate roads in the conveyance. *Id.* Plaintiffs argument lacks any supporting authority, and it presents no compelling reason to draw arbitrary lines between subdivisions into lots for sale, which create implied dedications, and subdivisions to family members that incorporate by reference an express dedication, even if that express dedication was flawed. Even if intra-family conveyances do not give rise to as strong an inference of implied dedication, the other evidence here bridges the gap to implied dedication.

As discussed above, the County expressly accepted the road into its maintenance system, and the Town impliedly accepted the road when it annexed the adjacent properties in 1995. Upon those acceptances, the public dedication was complete. Plaintiffs' attempt to challenge it now falls short of creating a genuine dispute of fact. This Court should affirm the trial court's grant of summary judgment as to the merits of the declaratory judgment and quiet title claims.

IV. Summary Judgment in Favor of the Town on Plaintiffs' Inverse Condemnation or Adverse Possession Claims Is the Law of the Case.

Plaintiffs do not challenge the trial court's grant of summary judgment on the inverse condemnation and adverse possession claims against the Town. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("No point will be considered which is not set forth in the statement of issues on appeal."); *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 270, 818 S.E.2d 447, 455 (2018) ("[A]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." (citation and internal quotation marks omitted)). The trial court's ruling is therefore the law of the case, and Plaintiffs have forfeited any opportunity to challenge that court's holding. *See Bone v. U.S. Food Serv.*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) ("The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so."). This Court should affirm the trial court's decision on inverse condemnation and adverse possession.

CONCLUSION

For the foregoing reasons, this Court should affirm summary judgment in favor of the Town.

Respectfully submitted,

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April 7, 2026

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Respondent Town of Mount Pleasant do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

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