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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, Master-In-Equity

Case No. 2023-CP-10-00947
Appellate Case No. 2025-001719

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailey 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, and DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC are the

Respondents.

FINAL BRIEF OF RESPONDENT DRB GROUP SOUTH CAROLINA, LLC F/K/A DAN RYAN BUILDERS SOUTH CAROLINA, LLC

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STATEMENT OF THE CASE[1]

The underlying case concerns whether a road commonly known as John Ballam Road, located in Mount Pleasant, South Carolina (the "Road"), has been duly dedicated and accepted as a public road. This case was initiated by Appellant Henry Bailem IV's ("Henry Bailem IV") filing of the Summons and Complaint on February 23, 2023. At that time, the sole plaintiff was Henry Bailem IV, and the sole defendants were Respondents County of Charleston (the "County") and Town of Mount Pleasant (the "Town"). Respondent DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC ("DRB") was not named in the initial Complaint. Through this Complaint, Henry Bailem IV sought (i) a declaratory judgment that the Road was private; (ii) a claim for adverse possession that he was the owner of the Road; and (iii) a claim against the County and the Town for inverse condemnation.

Pursuant to Consent Order filed on January 26, 2024 (the "Consent Order"), this action

[1] DRB adopts and incorporates by reference the factual recitations and legal arguments contained in the Briefs of Respondents County of Charleston and Town of Mount Pleasant, insofar as they are applicable to DRB and the issues raised in this appeal.

was referred to the Honorable Mikell R. Scarborough, as Master-In-Equity for Charleston County, with any appeal directly to the Court of Appeals. This same order granted Henry Bailem IV leave to amend his Complaint; however, he failed to do so for an extended, and unexplained, period of time.

On June 6, 2024, over a year after the original filing of this action, and almost six months after the Consent Order, Appellants Henry Bailem IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr. ("Michael Jefferson"), Rashica Coakley, and Ann Bailem Simmons (collectively, "Appellants") filed their Amended Complaint. The Amended Complaint added numerous Appellants and defendants, among them, for the first time, DRB. Relevant to this appeal, Appellants brought claims for declaratory judgment that the Road is a private road and an action seeking to quiet title in the Road in Appellants.

DRB timely filed its Answer to the Amended Complaint and Counterclaims on August 7, 2024, to which Appellants filed their Reply on November 6, 2024. In its Answer and Counterclaim, DRB raised defenses including, inter alia, the statute of limitations and laches. DRB also incorporated the defenses of others, including acquiescence. Appellants filed their Reply to DRB's Counterclaims on November 6, 2024.[2]

Pursuant to a Form 4 Order filed October 28, 2024, and a formal Order filed February 2, 2025, the lower court granted DRB's Motion to Bifurcate, thereby bifurcating the issue of whether the Road is public or private from the remaining issues in the underlying case.

On May 27, 2025, Respondents each moved for summary judgment on the bifurcated issue of whether the Road is public or private, and a hearing was conducted on June 2, 2025. On July 8, 2025, the lower court entered an Order Granting Summary Judgment, holding Appellants' claims

[2] DRB preserves all rights to assert its Counterclaims after this appeal and any trial, if necessary.

were barred by the statutes of limitations and the doctrine of laches, and that the Road was validly dedicated and accepted as a public road.

On July 18, 2025, Appellants filed a motion to alter or amend the lower court's Order granting Respondents' Motions for Summary Judgment, which the lower court denied by a Form 4 Order entered August 1, 2025. Appellants filed a notice of appeal on August 28, 2025.

STATEMENT OF FACTS

I. The Bailem Family's 1986 Subdivision Plat Expressly Dedicated John Ballam Road to the Public.

In 1986, the Bailem[3] family hired surveyor James G. Pennington to subdivide property that had been owned by the family for years into five separate lots. (R. at 64 ¶ 23, 614:10-15, 369 (10:5-10).) Pennington prepared a plat entitled "Plat of Lands of John Ballam Estate Located Liberty Hill Area of Christ Church Parish Charleston County, South Carolina," dated July 23, 1986 (the "Plat"), which depicted five lots and a fifty-foot roadway labeled John Ballam Road (the Road). (R. at 64 ¶ 24, 515, 618:16-619:1.) Appellants are the owners of Lots 1–5 on the Plat, and all acquired ownership after the execution and recordation of the Plat by Appellants' predecessors in title.

Pennington testified that when preparing plats, he acted at the direction of the property owners and included statements and features requested by them. (R. at 620:4-6, 627:11-16.) He further testified that property owners were required to approve a final plat before he took any further action, such as submitting it to the County for recording. (R. at 624:17-23, 625:6-10.) Pennington could not recall the Bailem family ever raising concerns about the content of the Plat, including, without limitation, the dedication language, and testified no member of the family ever

[3] The Bailem family's surname was formerly spelled "Ballam" or "Ballaam." (*See* R. at 540.)

sought correction of the Plat or claimed it contained an error. (R. at 625:15-18, 626:2-10.)

The Plat contains an explicit and unambiguous dedication statement providing: "WE HEREBY DEDICATE THIS 50' ROAD RIGHT OF WAY FOR THE USE OF THE PUBLIC FOREVER." (R. at 515.) Immediately following this dedication appear the signatures of Henry Bailem Jr., Rebecca Jefferson, and Estelle Capers. (R. at 515.) Appellant Ann Bailey Simmons testified that she personally witnessed these three individuals sign the Plat. (R. at 355-56 (7:16-8:9).) Appellant Michael Jefferson confirmed that his grandmother Rebecca Jefferson's signature appears on the Plat. (R. at 990:5-15.)

All other Appellants and witnesses who testified made clear they were not present when Henry Bailem Jr., Rebecca Jefferson, and Estelle Capers signed the Plat. (R. at 410 (34:8-22), 425 (92:19-22), 437 (24:17-23), 444 (5:25-6:6), 446 (13:5-7), 453 (6:17-7:1), 455 (13:20-14:1).) Diane Jefferson attempted to avoid answering whether she was present but ultimately conceded that she did not witness the signatures on the Plat. (R. at 394-95 (109:20-112:8).) With a lack of personal knowledge, Appellants offer mere speculations that the signatories allegedly did not sign the Plat. (*See* R. at 394-94 (109:20-112:8), 408-09 (26:15-27:15).) Neither Appellants nor their predecessors have ever recorded a competing plat dedicating the Road to private ownership. (R. at 414 (47:11-22).)

Following preparation of the Plat, Appellants Diane Jefferson and Michael Jefferson submitted a Subdivision Application to the County seeking approval of the Plat. (R. at 112-26, 377 (41:9-20), 635.) The County assigned the Subdivision Application number 11829, (R. at 112-26), which is handwritten in the lower right corner of the recorded Plat, indicating it is the plat associated with application number 11829. (R. at 515; *see* also R. at 307 (17:22-18:4), 319 (65:21-66:21).)

At a regular meeting on October 7, 1986, Charleston County Council approved the Plat. (R. at 638; *see also* R. at 306-07 (15:5-10, 17:2-18:14), 317 (59:16-60:3), 319 (65:21-66:21).) Not only is "11829" affixed to the Plat in the lower right corner, but the Plat also bears the signatures of the Clerk of Charleston County Council and the Director of Planning of the Charleston County Planning Board, confirming it as an approved final plat. (R. at 515; *see also* R. at 308 (23:13-22).) Directly below the "APPROVED FINAL PLAT" stamp and signatures is "#11829." (R. at 515.) The Plat also states: "This approval in no way obligates the County of Charleston to maintain this right-of-way until it has been constructed to County standards." (R. at 515; *see also* R. at 311 (36:4-18).)

After County Council's approval, the Plat was recorded on October 24, 1986, in Plat Book BK at Page 135. (R. at 515.) Since that time, the Plat has remained continuously available to the public for nearly forty years. (R. at 515.)

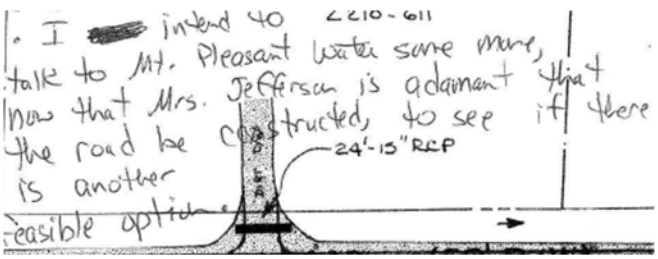
II. County's Acceptance and Public Improvement and Treatment of the Road.

On August 16, 1994, County Council approved the construction and acceptance of, among other roads, the Road, as recommended by the Public Works Department and funded in the FY 1995 Public Works Budget. (R. at 651-52, 665.) The Council's meeting minutes reflect that the roads approved, including the Road, were "unimproved roads in the unincorporated area that residents have requested to be constructed, rocked or paved." (R. at 651, 665.) Notably, unlike other roads on the list that identified maintenance responsibility as belonging to the "Community" or "Owner/Fee," John Ballam Road showed no owner or community maintenance responsibility. (R. at 665.)

Following the County's acceptance of the Road, the Town adopted an ordinance on April 11, 1995, annexing numerous lots, including Appellants' properties and the Road. (R. at 667-71.)

The annexation petition was signed by Abraham Simmons, the then husband of Appellant Ann Bailey Simmons and co-tenant of Lot 1, Florence Coakley, then owner of Lot 2, and Appellant Michael Jefferson. (R. at 674; *see also* R. at 582-85, 600-03.) For each of Appellants' properties listed on the petition, the corresponding entry expressly references the recorded Plat. (R. at 673-74.)

On March 11, 1996, the County Transportation Committee approved funding for John Ballam Road for FY 96. (R. at 679.) Mark Cain, a former Civil Engineer I with Charleston County Public Works, testified that he assisted with the engineering portions of improving roads in the County to County standards, and that he recalls speaking with Appellants Diane Jefferson and Henry Bailem IV regarding the Road in 1996. (R. at 681 ¶¶ 2-4.) Cain testified he reviewed the Plat and observed the fifty-foot right-of-way which was dedicated to the public. (R. at 681 ¶ 5.) Cain further testified that Appellant Diane Jefferson "made it abundantly clear that the Bailem family wanted John Ballam Road upgraded to County Standards, using County funds. Ms. Jefferson was persistent and tenacious in her pursuit of having John Ballam Road upgraded to County Standards, using County funds. She repeatedly told me that she wanted the [R]oad paved." (R. at 681 ¶ 6.) Cain's contemporaneous notes reflect statements that "Mrs. Jefferson is adamant that the road be constructed," and document the family's refusal to dedicate any *additional* right-of-way beyond what already existed:



(R. at 683-84.)

Following these conversations, additional revisions to the Road plans took place, the County improved the Road to County standards by approximately 1998 using County funds, and paved it in 2002, again using public funds. (R. at 685-90.) No Appellant contributed financially to construction or paving of the Road. (R. at 425 (92:23-93:8).) If the Road were a private road, the property owners would be responsible for constructing the road, and the public entity would not take over the maintenance responsibility until the road was built to county or city standards. (R. at 632:5-15.)

Despite now claiming the Road is private, Henry Bailem IV testified that since 1994 the family has performed no maintenance other than minimal grass cutting and trying to keep the ditch clean because "*it's their road* [(i.e., the Town or the public's)]. *What would we have to do?*" (R. at 412 (39:14-17) (emphasis added).) Moreover, since 1986, the Road has been treated as public on County tax maps, and Appellants have not paid taxes on it. (R. at 307-08 (20:24-21:25), 691-92.)

III. Appellants' Chains of Title Confirm Ownership of Lots Only, Not the Road.

Appellants own Lots 1 through 5 as depicted on the Plat. Every deed in Appellants' respective chains of title expressly incorporates the Plat and conveys only the individual lot, describing the conveyed property as butting and bounding the Road, not including it. (*See* R. at 516-24 537-54, 561-72, 578-85, 591-603.) None of Appellants' deeds conveys any portion of the Road.

Each deed conveying Lots 1–5 contains substantially identical operative language defining the scope of the property conveyed. By way of example, the deeds convey:

> All that lot, piece, parcel or tract of land, . . . as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of Land of John Ballam Estate located in the Liberty Hall area of Christ Church Parish, Charleston County, South Carolina dated July 23, 1986, and recorded in Book BK at Page 135 of the RMC Office for Charleston County.
>
> Said property [being] shown as Lot [1–5] on the aforementioned plat.
>
> Subject to the easements as shown on said plat.
>
> BUTTING AND BOUNDING . . . *on John Ballam Road* . . . .

(*See id.* (emphasis added); *see also* R. 71-77 ¶¶ 61, 65-66, 72-73, 76-78.)

This quoted language appears consistently across all chains of title. Each deed conveys only the numbered lot as shown on the Plat, expressly subject to the easements depicted thereon, and identifies the Road as a boundary. The Road is never included within the legal description of any conveyed parcel.

The physical evidence on the ground mirrors the recorded title documents. The Plat reflects iron pins found and set marking the boundary line between Appellants' lots and the Road, further confirming that the Road lies outside the lots conveyed and functions as a separate right-of-way. (R. at 515.)

The individual chains of title confirm the same conclusion. Appellant Ann Bailey Simmons acquired Lot 1 by deed from Henry Bailem Jr., Rebecca Bailem Jefferson and Estelle Bailem Capers—the same individuals who signed the dedication on the Plat—and later obtained full ownership through recorded quitclaim deeds. (R. at 357 (13:13-14:6), 591-603.) Each deed into Simmons conveys Lot 1 as shown on the Plat, subject to the easements shown thereon, and describes the property as butting and bounding the Road. None conveys any interest in the Road itself. (*See* R. at 591-603; *see also* R. at 71-72 ¶ 61.)

Appellant Rashica Coakley holds a partial interest in Lot 2 through a quitclaim deed, with earlier deeds tracing title from the original dedicators Henry Bailem Jr., Rebecca Bailem Jefferson, and Estelle Bailem Capers. (R. at 444 (7:14-23), 578-85.) Those deeds likewise convey Lot 2 as shown on the Plat, subject to the easements thereon, and describe the lot as butting and bounding the Road, without conveying any portion of the Road itself. (*See* R. at 578-85; *see also* R. at 72-73 ¶ 65-66.)

Appellants Diane and Michael Jefferson own Lot 3 through multiple deeds, including deeds from Henry Bailem Jr., Rebecca Bailem Jefferson, and Estelle Bailem Capers. (*See* R. at 537-54.) Each deed conveys Lot 3 as depicted on the Plat, expressly subject to the easements shown thereon, and identifies the Road as a boundary rather than as part of the conveyed property. (R. at 537-54; *see also* R. at 74-75 ¶¶ 72-73.)

Appellants Joseph and Sheila Bailem own Lot 4 by deed from Estelle Bailem Capers. (R. at 561-64; *see also* R. at 454 (8:24-9:6).) That deed, like the others in Appellants' chains of title, conveys Lot 4 as shown on the Plat, expressly subject to the easements thereon, and describes the lot as butting and bounding the Road. (R. at 561; *see also* R. at 75-76 ¶¶ 76-77.)

Appellant Henry Bailem IV owns Lot 5 by deed from Henry Bailem Jr., Rebecca Bailem

Jefferson, and Estelle Bailem Capers, together with a later quitclaim deed. (R. at 516-24; 409 (28:8-29:4).) Each deed conveys Lot 5 as shown on the Plat, expressly subject to the easements thereon, and describes the property as butting and bounding the Road, not including it. (R. at 516-24; *see also* R. at 76-77 ¶¶ 77-78.)

Beyond the deeds themselves, Appellants' chains of title include additional recorded instruments that independently confirm their notice that the Road was public. In January 1997, Appellants or their predecessors in title granted utility easements to the Commissioners of Public Works of the Town of Mount Pleasant, South Carolina (i.e., the Town) describing the easement area, in part, as lying:

> generally within a community 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 . . . *JOHN BALLAM ROAD PUBLIC 50' RIGHT-OF-WAY* . . . ," (sheet 1), dated November 1, 1995, a copy of which is recorded in the RMC Office . . . in Plat Book E8, Page 614, and which is made a part hereof and incorporated herein by reference.

(*See* R. at 525-29, 555-59, 573-77, 586-90, 604-08 (the "1997 Easements") (emphasis added).)

Taken together, Appellants' chains of title, the Plat, the physical boundary markers, and the later-recorded easements uniformly establish that Appellants acquired ownership of Lots 1–5 only. The Road was consistently excluded from every conveyance, identified as a boundary and right-of-way, and repeatedly recognized in recorded instruments as a public road.

IV. DRB Acquired and Developed Property in Reliance on the Road's Public Status.

DRB owns property located directly south of the Road (the "Development"),[4] which it

[4] *See generally* R. at 693-98 (Limited Warranty Deed of Ballam Rd LLC to Dan Ryan Builders South Carolina, LLC dated July 19, 2021, recorded in the Official Records on August 6, 2021 in Book 1021 at Page 015); R. at 699-703 (Affidavit of Name Change Pursuant to S.C. Code § 33-4-104 dated June 2, 2022, recorded in the Official Records on June 9, 2022 in Book 1115 at Page 899); R. at 704-08 (Quit Claim deed by DRB Group South Carolina, LLC to Ballam Oaks Property Owners Association, Inc. dated July 29, 2024, recorded in the Official Records on August 21, 2024

acquired by reference to a plat recorded in the RMC in Plat Book BV at Page 82. (R. at 710.) That plat depicts the Road as a public road. (R. at 710.)

DRB acquired the property now comprising the Development from Ballam Rd LLC in July 2021. (R. at 693-98.) The Development currently consists of eighteen single-family homes. (*See* R. at 709, 766.) Prior conveyances in the chain of title identify portions of the Development as having addresses on John Ballem Road. (*See* R. at 733, 737, 753-58.)

Once the property was acquired, and in reliance on the Road's public status, DRB and its predecessor undertook extensive development efforts. (*See, e.g.*, R. at 709, 764-829 (collecting recorded easements, agreements, and surveys executed in furtherance of developing the Development), 835:14-17.) More specifically, DRB and its predecessor undertook construction of sewer and water systems to adequately serve the Development, and roads and ponds for the stormwater drainage within the Development, all at vast expense, and in accordance with approved plans. (*See* R. at 709; *see also* R. at 723-24.) DRB also acquired encroachment permits from the County and Town, specifically related to the Road. (R. at 721-22, 837.)

V. Appellants Did Not File Suit Until 2023, Decades After Dedication, Acceptance, Improvement, and Notice.

The undisputed record establishes that any claim challenging the public status of the Road accrued, and Appellants were on notice of such, decades before this action was filed. Appellants baldly assert, contrary to record evidence and without any evidentiary citation, that the Bailem family has exclusively used the land where the Road is located for over 100 years. (*See* Appellants'

in Book 1262 at Page 917); R. at 709 (Final Subdivision Plat John Ballam Subdivision Charleston County TMS 561-00-00-055, -058, -059, & -067, Property of Dan Ryan Builders South Carolina, LLC, Located in Christ Church Parish, Charleston County, South Carolina" prepared by Christopher R. Elmer, SCPLS No. 30759 of Tim Elber RLS, LLC dated January 23, 2024, and recorded in the Charleston County Register of Deeds Office in Plat Book L24 at Page 0039 (the "Subdivision Plat")).

Initial Br. 2.) In 1986, the Road was expressly dedicated to the public by recorded plat, approved by the County, and placed in the public land records. (R. at 515, 638.) In the decades that followed, the Road was formally accepted, improved, and paved with public funds, and consistently treated by governmental authorities and adjoining landowners as a public roadway. (*E.g.*, R. at 651-52, 665-76, 679-92.)

Throughout that period, Appellants and their predecessors acquired title to their properties with actual and constructive notice that the Road was excluded from their ownership and was publicly dedicated. (R. at 516-24 537-54, 561-72, 578-85, 591-603.) Each chain of title incorporates the Plat and describes the conveyed property as butted and bounded by the Road. (R. at 516-24 537-54, 561-72, 578-85, 591-603.) No plat, deed, or other recorded instrument has ever dedicated the Road to private ownership.

The record further reflects that the Bailem family, including all Appellants, has long been aware of disputes concerning whether the Road is public. Marilyn Bailem, Appellant Henry Bailem IV's wife, testified that these issues were discussed within the family decades ago and that the family began seeking legal counsel "as soon as we realized . . . what was going on when they said it was a public road." (R. at 437 (23:20-22); *see also* R. at 436 (20:22-22:11) (discussing regular meetings amongst Appellants and the Bailem family to discuss issues with the Road).) She confirmed this realization occurred in the 1990s, explaining that "[i]t had to been in the '90s . . . because that's when everything started to come out . . . ." (R. at 437 (24:4-6).) Thus, by the 1990s—more than twenty-five years before this lawsuit was filed—Appellants or their predecessors in title were on actual notice that the Road was being treated as public and were actively attempting to retain counsel to challenge the status.

That longstanding awareness is further confirmed by the execution, in January 1997, of the

1997 Easements by Appellants, or their predecessors in title, which expressly reference the Road as a public road. (R. at 525-29, 555-59, 573-77, 586-90, 604-08.)

Despite this longstanding knowledge, and despite the eventual expenditure of public funds to improve and pave the Road, Appellants took no legal action for years while continuing to enjoy the benefits of the Road's public status. By August 2016, Diane Jefferson expressly advised a County employee that the family was prepared to "go to court" over the Road's status. (R. at 376 (37:10-38:23).) In January 2017, she went further, sending a letter to the owners of Lots 1–5 stating: "Our rights to ownership of John Ballam Rd is being challenged and we are requesting the service of an attorney to help protect our rights." (R. at 560; *see also* R. at 376 (35:23-36:9).)

Yet, even after these explicit acknowledgements of the dispute and stated intent to litigate, Appellants did nothing. No lawsuit was filed until February 23, 2023, and DRB was not added as a party until June 6, 2024, more than seven years after the latest date on which Appellants themselves expressly recognized that the Road's status was being challenged.

During that time, the County and Town relied on the Road's public status for decades, and DRB later acquired and developed adjoining property in reliance on that status. Appellants nevertheless did not initiate this action until 2023, nearly forty years after the Road's dedication, more than thirty years after its acceptance by the County, almost thirty years after approval of public improvements, and more than twenty years after the Road was paved with public funds.

Based on these undisputed facts, Respondents moved for summary judgment, and the lower court granted the motions. (Order.) This appeal followed.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488,

493, 567 S.E.2d 857, 860 (2002); *see also* Rule 56(c), SCRCP (providing summary judgment shall be granted "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").

"Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citation omitted). "When 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 but 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) (internal quotations omitted) (emphasis added). "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (quoting *Floyd*, 403 S.C. at 477, 744 S.E.2d at 166).

ARGUMENTS

The lower court's summary judgment in favor of DRB should be affirmed for multiple, independent reasons. Appellants' claims against DRB are time barred under the three-year limitations period under S.C. Code Ann. § 15-3-530(7). The claims are also untimely under the ten-year statute governing actions for the recovery of real property, S.C. Code Ann. § 15-3-340, because Appellants cannot establish that they, their predecessors, or their grantors were seized or possessed of the Road within ten years before DRB was sued on June 6, 2024. Additionally, Appellants' claims are independently barred by equitable doctrines, including laches and acquiescence, given Appellants' decades-long delay while public authorities and private parties,

including DRB, relied on the Road's public status. Finally, even if the Court were to reach the merits, Appellants failed to produce evidence sufficient to create a genuine issue of material fact because the record establishes dedication and acceptance as a matter of law.

I. The Lower Court Correctly Held Appellants' Claims Against DRB Are Barred by the Three-Year Statute of Limitation in S.C. Code Ann. § 15-3-530(7).

The lower court expressly found that, notwithstanding Appellants' efforts to distance themselves from a forgery theory, "the essence of Plaintiffs' Complaint is the allegation, without admissible evidentiary support, that the signatures on the '86 Plat are the result of fraud or forgery," and therefore held that "the three-year statute of limitations contained in S.C. Code Ann. § 15-3-530(7) applies." (R. at 11.) That ruling is correct as a matter of South Carolina law and, because it was not preserved or appealed, is binding as the law of the case with respect to Appellants' claims against DRB.

A. The lower court correctly applied § 15-3-530(7).

Under § 15-3-530(7), an action for relief on the grounds of fraud must be commenced within three years after the aggrieved party knew or should have known of the facts constituting fraud. *See* S.C. Code Ann. § 15-3-530(7). Because Appellants' claims rest on allegations that the Plat is invalid due to fraudulent or forged signatures, the applicable statute of limitations is the three-year period governing fraud-based claims. "*See McKinnon v. Summers*, 224 S.C. 331, 336, 79 S.E.2d 146, 148 (1953) (holding that where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, the statute of limitations governing the action is the one for relief on the ground of fraud).

Appellants' own pleadings and briefing confirm that this case sounds in fraud or forgery. Appellants alleged "questions of . . . validity arising under the [Appellants'] deeds," asserted that "the wrong plat was erroneously recorded without proper dedication," and claimed "the language

on the plat regarding public dedication was erroneous, without authority, [and] without the knowledge of the property owners." (R. at 65-66 ¶¶ 31, 51; 249 ¶ 7.) On appeal, Appellants repeatedly argue that the signatures on the Plat are not authentic, that the Plat was never validly executed, and that that evidence of forgery is not barred by the parol evidence rule. (*See* Appellants' Initial Br. 6, 11-12, 14-15, 24.) Having framed their claims in those terms, Appellants cannot avoid that statute of limitations that governs such claims.

Appellants also failed to preserve any meaningful challenge to the lower court's application of § 15-3-530(7), particularly with respect to the claims against DRB. In their motion to reconsider, Appellants did not mention § 15-3-530(7) at all, did not challenge the lower court's determination that their claims sounded in fraud or forgery, and did not address the lower court's findings regarding accrual or expiration of the three-year statute as to DRB. Instead, Appellants focused exclusively on § 15-3-340 and alleged conduct by the County, not DRB. Appellants likewise failed to appeal the lower court's ruling that § 15-3-530(7) applies or its alternative holding that, even using Appellants' own asserted discovery dates, the statute expired before suit was filed against DRB. (R. at 11, 13.) They also failed to appeal the lower court's unchallenged holding that the Amended Complaint does not relate back to the original filing as to DRB under Rule 15(c), SCRCP. (R. at 11 n.6.) Those unappealed rulings are therefore the law of the case and provide independent grounds for affirmance. *See Portman v. Garbade*, 337 S.C. 186, 190, 522 S.E.2d 830, 832 (Ct. App. 1999) (collecting cases regarding law of the case).

B. Appellants' claims are time barred under any plausible accrual date.

"According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. 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). "We have interpreted the exercise of reasonable diligence to mean that the injured party must act 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.* (emphasis in original). "Moreover the fact that the injured party may not comprehend the full extent of the damage is immaterial." *Id*. "The date on which discovery should have been made is an objective, not subjective, question." *McAlhany v. Carter*, 415 S.C. 54, 63, 781 S.E.2d 105, 110 (Ct. App. 2015).

Applying those principles, the lower court correctly concluded that Appellants' claims are barred even under the most generous possible accrual dates. The undisputed evidence shows Appellants had actual knowledge of the public-road issue decades ago. Marilyn Bailem testified that the Bailem family, including all Appellants, held regular meetings specifically to address issues concerning the Road's status and began searching for legal counsel as soon as "everything started to come out" about the Road, which she confirmed "had to [have] been in the '90s." (R. at 436-37 (20:25-22:11, 23:6-24:6).) That testimony alone establishes actual notice of no later than the 1990s.

Moreover, as the lower court correctly recognized, Appellants are charged with constructive notice of the Plat and all instruments recorded in their chain of title. *See Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975). (R. at 13, 15, 21.) Consistent with that principle, the lower court properly held Appellants had constructive notice of the Plat and its dedication language for nearly forty years before initiating this action. (R. at 21.)

Even if Appellants were not charged with constructive notice, Appellants' own conduct independently confirms discovery long before suit. Appellants, or their predecessors in title, signed

the 1997 Easements, which made specific reference to the Road being a public road. (R. at 525-29, 555-59, 573-77, 586-90, 604-08.) The 1997 Easements describe the granted interest by reference to a plat that, within its title, distinguishes between private and public road and unambiguously designates the Road as "John Ballam Road *Public 50' Right-Of-Way*." (*Id.* (emphasis added).) Appellants cannot plausibly claim ignorance of facts stated plainly in instruments they signed or that were of record in their chain of title; they are charged with notice of the contents of those recorded documents as a matter of law. *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003). Based on that recorded notice alone, any claim accrued no later than January 1997, and the three-year statute expired in January 2000, more than twenty-four years before DRB was added as a defendant on June 6, 2024.

Independent of the recorded instruments, the lower court correctly held "the paving of the road in 2002 would have put [Appellants] on notice of a potential claim." (R. at 13.) Appellants offer little, if any, challenge to this separate and sufficient ground for summary judgment. At the summary judgment hearing, Appellants' counsel conceded that, in 2002, "[w]hen they paved the road, [Appellants] had a pretty good idea that there was a problem with the County." (R. at 1184:19-23.) Counsel further acknowledged that Appellants "continued to consider the road private and did not know anyone contended otherwise until the County paved their road without private notice of their approval." (R. at 1189:24-1190:2.) These concessions confirm that Appellants were on notice of a potential claim no later than 2002, triggering the statute of limitations and causing it to expire in 2005, nearly two decades before this action was filed.

Even Appellants' own correspondence confirms expiration of the three-year statute of limitations. On January 3, 2017, Diane Jefferson wrote to the owners of Lots 1–5: "Our rights to ownership of John Ballam Rd is being challenged and we are requesting the service of an attorney

to help protect our rights." (R. at 560; *see also* R. at 376 (35:19-36:14).) Even under this far more generous accrual date, the three-year statute of limitations expired no later than January 3, 2020.

Appellants' inaction continued even after DRB's involvement became known. Some Appellants were aware that the Road was paved in 2002 but were simply not interested in addressing the issue at that time. (R. at 454 (10:6-8).) When initial construction activity began on the Development in 2019, some Appellants *still* took no action. They did not talk to or otherwise contact the Town, the County, or anyone at all. (R. at 454-55 (10:21-25, 12:4-12), 445 (10:12-20).) Appellants also did nothing to try to stop DRB's construction of the Development or timely file suit. (R. at 413 (45:6-21).)

Even crediting Appellants' own alternative timeline, their claims remain untimely. Appellants admitted in their motion to reconsider that 2019 marked the "first clear assertion by governmental entities that the [R]oad was public." (R. at 1133.) The lower court correctly held that even using 2019 as the accrual date, the three-year statute expired in 2022. (R. at 13.) Appellants did not file suit against anyone until February 23, 2023, and did not add DRB until June 6, 2024. Based on Appellants' own admissions, their claims are untimely as a matter of law.

C. Appellants' equitable arguments do not apply to claims against DRB.

Appellants argue that the County's conduct prevented discovery of their claims, but they offer no authority to support that argument, rendering it conclusory and abandoned. *See Jones v. Leagan*, 384 S.C. 1, 20–21, 681 S.E.2d 6, 16–17 (Ct. App. 2009) (providing a party abandons an issue on appeal for failure to cite supporting authority and making only conclusory arguments).

In any event, equitable tolling or estoppel cannot apply to DRB. Appellants offer no evidence that DRB engaged in any conduct that prevented discovery of claims against it, nor do they explain how any alleged conduct by the County could toll limitations as to a private developer.

See Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 361, 559 S.E.2d 327, 339 (Ct. App. 2001) ("[S]ummary judgment is proper where there is no evidence of conduct on the defendant's part warranting estoppel.") (citing *Vines v. Self Memorial Hosp.*, 314 S.C. 305, 309, 443 S.E.2d 909, 911 (1994)); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009) ("[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use."); *Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 136, 898 S.E.2d 102, 114 (2024) ("In South Carolina, the party claiming the application of equitable tolling bears the burden of establishing sufficient facts to justify its use.").

To the contrary, DRB consistently asserted its right to use the Road as a public road. *See Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 211, 503 S.E.2d 761, 769 (Ct. App. 1998) (providing "defendant's refusal to accept liability further weakened unimpressive evidence of estoppel") (citing *Black v. Lexington Sch. Dist. No. 2,* 327 S.C. 55, 65, 488 S.E.2d 327, 332 (1997)).

Moreover, Appellants' equitable arguments do not reach, much less undermine, the lower court's dispositive statute-of-limitations ruling as to DRB. The lower court expressly held that Appellants' claims against DRB were barred by the three-year statute of limitations and further held that, even using Appellants' own asserted discovery date in 2019, the statute expired before DRB was sued. (R. at 13.) Appellants have not appealed that holding, identified it as error, or offered any argument addressing why the limitations period did not run as to DRB. Instead, they rely solely on alleged conduct by the County, which does not pertain to DRB and does not affect the lower court's statute-of-limitations analysis. Because Appellants failed to challenge this independent ground for summary judgment, it is the law of the case and dispositive of their claims against DRB, rendering their equitable arguments irrelevant. See *Portman*, 337 S.C. at 190, 522

S.E.2d at 832.

There is no genuine issue of material fact that Appellants' claims are time barred. Appellants slept on their rights for decades while the public and DRB relied on recorded plats, easements, and public improvements. The statute of limitations exists to promote diligence, punish neglect, and promote repose and certainty in property rights. *See Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 12, 825 S.E.2d 707, 712 (Ct. App. 2019). Those principles apply with full force here. The lower court correctly granted summary judgment to DRB, and this Court should affirm.

II. The Lower Court Correctly Held Appellants' Claims Against DRB Are Also Barred by the Ten-Year Statute of Limitation in S.C. Code Ann. § 15-3-340.

As shown above, Appellants' claims are barred by the statute of limitations in § 15-3-530(7). The Court may affirm on that ground alone. Even if reached, however, the claims are also barred under the statute of limitations in § 15-3-340.

The lower court correctly held that Appellants' claims against DRB are barred by the ten-year statute of limitations governing actions for the recovery of real property. (R. at 10-14.) Section 15-3-340 provides that "[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action." S.C. Code Ann. § 15-3-340.

The "purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights." *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) (internal quotations omitted). "Another purpose of the statute of limitation is to protect potential defendants from protracted fear of litigation." *Id.* "Statutes of limitations are not simply technicalities." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016). "On the contrary, they have long

been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* (internal quotations and citations omitted). "Statutes of limitations are, indeed, fundamental to our judicial system." *Id.*

A. This is an action for recovery of real property governed by § 15-3-340.

Appellants contend § 15-3-340 does not apply because, in their view, this is not an action to recover real property. (Appellants' Initial Br. 27-28.) This contention fails as a matter of South Carolina law and as a matter of pleading.

South Carolina courts have long held that "[t]he character of an action is not to be determined by the terminology which the pleaders may chance to give to it." *Walsh v. Evans*, 112 S.C. 131, 99 S.E. 546, 548 (1919). Instead, "the character of an action is fixed by the events which the pleaders have recited" and by the rights one party seeks to enforce and the other seeks to resist. *Id.* In determining whether a proceeding is an action for recovery of real property within the meaning of § 15-3-340, the court must consider the pleadings as a whole. *Winn v. Grantham*, 263 S.C. 368, 371, 210 S.E.2d 602, 603 (1974) (citing *Walsh*, 112 S.C. 131, 99 S.E. 546). "[W]hen a defendant's right to property is attacked and in his answer he raises the 'flag of dominion' the issue of recovery has been established." *Id.* at 372, 210 S.E.2d at 604.

Measured by these principles, Appellants' claims against DRB are plainly actions for the recovery of real property. In their Amended Complaint, Appellants allege that "no member of the public should have access upon John Ballam Road, as it is [Appellants'] property." (R. at 68 ¶ 43.) They allege that DRB and its contractors used the Road to access the Development and characterize that use as wrongful. (R. at 67-68 ¶ 41.) They further allege that Respondents are "attempting to railroad the Bailem family of their land." (R. at 68 ¶ 44.)

Appellants' causes of action confirm the nature of the relief sought. They seek a declaratory judgment declaring the Road is private and contend that any contrary determination would constitute an unconstitutional taking. (R. at 70 ¶ 55.) In their quiet title claim, Appellants assert ownership of the Road itself and seek a judgment "terminating any and all interest" of Respondents in the Road and request that Appellants' titles "be made clear and marketable" through new deeds. (R. at 79 ¶¶ 105-107.) In the alternative, Appellants assert adverse possession and ask the court to declare them the "true owners and title holders" of the Road. (R. at 81 ¶¶ 115-116.)

These allegations and requests for relief go directly to ownership, exclusive possession, and the right to exclude others from the Road. Appellants seek to divest DRB, the County, the Town, and the public of any right to use the Road and to vest exclusive title and dominion in themselves. This is, by any measure, an action for the recovery of real property and governed by § 15-3-340. *See Portside Owners Ass'n, Inc. v. S. Beach Racquet Club, Inc.*, No. 2008-UP-153, 2008 WL 9837329, at *2–3 (S.C. Ct. App. Mar. 11, 2008) (per curiam) (holding where the gravamen of the complaint was to remove a cloud on title and affirm exclusive rights to a tract of land, the action was one for the recovery of real property subject to § 15-3-340).

B. The discovery rule does not toll S.C. Code Ann. § 15-3-340.

To the extent Appellants challenge the lower court's conclusion that the discovery rule does not apply to § 15-3-340, any such argument fails. Appellants cite no authority supporting the application of the discovery rule to § 15-3-340, rendering any such argument conclusory and abandoned. *See Jones*, 384 S.C. at 20–21, 681 S.E.2d at 16–17.

Moreover, the absence of discovery-rule language in § 15-3-340 is significant. The General Assembly has expressly incorporated the discovery rule into other limitation statutes. *See, e.g.*, S.C. Code Ann. § 15-3-535 (expressly provides that certain actions "must be commenced within

three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). Its decision not to do so in § 15-3-340 reflects an intent to impose a strict possession-based limitations period for actions seeking to recover real property.

C. Appellants were not seized or possessed of the Road within ten years of their lawsuit.

Under § 15-3-340, Appellants' claims may be maintained only if Appellants, their ancestors, predecessors, or grantors were seized or possessed of the Road within ten years before the commencement of the action against DRB on June 6, 2024. The lower court correctly found they were not. (R. at 12.)

Henry Bailem Jr., Rebecca Jefferson, and Estelle Capers dedicated the Road to the public in 1986. (R. at 515.) They conveyed the adjoining lots to family members in 1987 and 1988. (R. at 521-24, 541-54, 569-72, 582-85, 600-03.) The County changed its tax maps in 1986 to reflect that the Road was not being taxed to the then owners, evidencing acceptance at this early date. The County expressly accepted the Road in 1994 when it approved the construction and acceptance of the Road into the County's road system. (R. at 651-52, 665-66.) This acceptance alone was sufficient to trigger the beginning of the ten-year statute of limitations, which would have run in 2004, twenty years before filing of this action against DRB.

Even considering later actions, Appellants' claims are still untimely. The Town annexed the Road in April 1995; public funds were approved for improvements in March 1996; the Road was improved using public funds in 1998; and it was paved with public funds in March 2002. (R. at 67 ¶ 38, 667-90.) Each of these events occurred more than ten years before suit and was individually sufficient to start the clock on the statute of limitations.

Viewing the evidence in the light most favorable to Appellants, the lower court treated the paving of the Road in 2002 as the latest possible acceptance date and correctly concluded that

Appellants' claims were barred at the latest in 2012, over twelve years prior to Appellants bringing any action against DRB. (R. at 12-13.)

Permission to use a roadway does not constitute possession within the meaning of § 15-3-340, and there is no evidence that Appellants possessed the Road under a deeded easement or other conveyance during the statutory period. "Possession is presumed to follow the legal title to land." *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987). "Acts of ownership of open land need only be exercised in a way consistent with the use to which the land may be put and which the situation of the property permits without actual residency or occupancy." *Id.* at 471, 361 S.E.2d at 623. The undisputed record shows Appellants were not seized or possessed of the Road within ten years of filing suit.

Because Appellants' claims against DRB are actions for the recovery of real property and Appellants cannot establish seizure or possession within ten years of suit, those claims are barred as a matter of law. The lower court properly granted summary judgment to DRB, and this Court should affirm.

III. The Lower Court Correctly Held Appellants' Claims Against DRB Were Barred by the Doctrine of Laches.

The Court need not reach this issue if it affirms the lower court's ruling that Appellants' claims are barred by the applicable statutes of limitations. Even if the Court were to conclude otherwise, then the lower court's judgment should be affirmed on the independent ground that Appellants' claims against DRB are barred by the equitable doctrine of laches.

Laches is grounded in fundamental principles of equity. Although equitable maxims are not binding rules of law, they reflect long-standing concepts that guide courts in achieving just results. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 249, 715 S.E.2d 348, 352 (Ct. App. 2011). Among these principles are that "equity abhors a forfeiture; equity follows the law;

and one who seeks equity must do equity." *Id.* at 250, 715 S.E.2d at 352-3. "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Id.* at 252, 715 S.E.2d at 354.

A. Appellants unreasonably delayed asserting their claims to DRB's substantial prejudice.

The undisputed record demonstrates that DRB acquired the Development in reliance on the Road being public and in accordance with approved plans by the applicable government authorities (i.e., the Town and/or County). (R. at 835:14-17.) The entirety of the public records reflect that the Road is, indeed, a public road. In equity, the Court should regard as done that which ought to have been done and, in fact, was done through dedication and acceptance of the Road decades ago. *See Wingard Props., Inc.*, 394 S.C. at 250, 715 S.E.2d at 352-53 (discussing "several equitable maxims: equity regards as done that which ought to have been done; equity applies substance over form; equity abhors a forfeiture; equity follows the law; and one who seeks equity must do equity").

Equity also abhors a forfeiture. *Id.* A ruling that deprives DRB of access via the public right-of-way would effectively forfeit nearly the entirety of DRB's investment in the Development, exceeding approximately $3.5 million based on the purchase price alone, and would continue to compound losses as DRB remains unable to sell or convey eighteen fully constructed single-family homes. Such a result would be manifestly inequitable, particularly where Appellants waited decades to assert their alleged rights while DRB relied on the public record and the Road's long-recognized public status.

As detailed throughout this brief, the Road was publicly dedicated, accepted, improved, and paved. Appellants' claims are also barred by the applicable statutes of limitations. Consistent with the maxim that equity follows the law, the Court should affirm that the Road is public and

that Appellants' claims are barred by laches.

Appellants also failed to act equitably. Although they complain that Respondents have seized land allegedly held by their family for years, it was Appellants' own ancestors who signed the Plat and Appellants themselves who failed to take prompt action. Had Appellants acted with diligence, the public or private status of the Road would have been adjudicated decades ago, long before DRB acquired the property which now has been constructed into the Development and invested millions of dollars in reliance on the Road's public status.

The lower court correctly concluded that Appellants waited an unreasonable length of time to bring this action, resulting in substantial prejudice to DRB. Laches is defined as "neglect for an unreasonable and unexplained length of time, under the circumstances affording opportunity for diligence, to do what in law should have been done." *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007). "In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed in its assertion of a right, resulting in prejudice to the defendant." *Id.* "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 changes his position, then equity will ordinarily refuse to enforce those rights." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (2004).

Here, the lower court correctly found DRB had established laches by showing Appellants unreasonably delayed in asserting their rights, resulting in prejudice to DRB. While Appellants challenge this issue on appeal, such was not challenged at the trial court, and there is no evidence in the record to support any finding that DRB's conduct is self-inflicted. (Appellants' Initial Br. 34). Notably, Appellant's Initial Brief cites no evidence in the record, nor any legal authority. (*Id.*) Nor was this issue raised in opposition to DRB's Motion for Summary Judgment, or Appellants'

motion for reconsideration. As such, it is unpreserved for review. *State v. Sheppard*, 391 S.C. 415, 423, 706 S.E.2d 16, 20 (2011) ("Our law is clear tha[t] an issue may not be raised for the first time on appeal.").

The Plat was prepared, signed, approved, and recorded nearly forty years ago in 1986. Appellants were well aware of its existence yet did nothing. As Marilyn Bailem testified, Appellants knew about the challenge to the ownership of the Road in the 1990s. (R. at 437 (23:6-24:6).) They also knew the Development's construction commenced in 2019 yet did nothing. They allowed DRB, and its predecessors, to expend large sums of money in reliance on the Road being public. Yet, Appellants failed to file suit. This greatly prejudiced DRB, as it continued construction and development, expended over $3.5 million, and now, is unable to sell any homes within the Development because of Appellants' unfounded allegations.

As the lower court correctly recognized, *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010), is closely analogous. In *Robinson*, certain heirs brought a quiet title action claiming that deeds and a previous quiet title action were procured by fraud. "In their Complaint, Petitioners sought to establish their legitimate relationship as lineal descendants and heirs of Simeon B. Pinckney." *Id.* at 650, 698 S.E.2d at 232. "In support of these claims, Petitioners alleged the 1946 deeds and 1966 action to quiet title were fraudulent and were undertaken without consideration for the rights or interest of Petitioners and other heirs." *Id.* The Court held that the petitioners were barred by the doctrine of laches, reasoning that the petitioners waited thirty-nine years to challenge the prior quiet title action, and that while petitioners claimed not to have knowledge of that action, their own affidavits discounted that claim. *Id.* at 657, 698 S.E.2d at 236. The Court further relied on the fact that the documents granting title to the defendants (deeds and the quiet title action) were "publicly-recorded and documented" thus "it was an unreasonable

length of time for Petitioners to delay in instituting" the action. *Id.* The Court went on to state that "Respondent would be undoubtedly prejudiced if Petitioner's claim is not barred by laches given she purchased her lot for significant consideration and has been in possession of it since 2001." *Id.*

Appellants attempt to distinguish *Robinson* by asserting that the County's conduct somehow explains their delay and arguing laches cannot apply when defendant's own conduct caused the delay. (Appellants Initial Br. 31-32.) However, Appellants identify no conduct nor evidence in the record to support that DRB caused or justified their delay. Accordingly, nothing in Appellants' argument precludes application of laches as to claims against DRB, particularly given the substantial prejudice DRB would suffer if Appellants' claims were allowed to proceed.

B. DRB's prejudice is neither speculative nor self-inflicted.

Appellants now argue, without citation to any record evidence, that DRB's claim of prejudice is self-inflicted because DRB allegedly relied "solely on the recorded plat, without contacting the Bailem family about road access, investigating the actual status and use of the road, obtaining express permission from the Bailem family, or insuring clear title to road access before spending money on development." (Appellants' Initial Br. 34.) This argument would invert the purpose of public records and record notice. Appellants cite no authority requiring a purchaser to seek informal permission or information from neighboring landowners where recorded plats and governmental actions establish public access. The law permits, and indeed encourages, reliance on recorded instruments. *See Ward v. Evans*, 387 S.C. 401, 409–10, 693 S.E.2d 7, 11 (Ct. App. 2010) ("The purpose of the recording statute is to protect a subsequent buyer without notice; therefore, once recorded, deeds and easements are valid to subsequent purchasers without notice.") (citation omitted). Moreover, there is no evidence in the record that DRB was aware of any road access issues prior to purchasing the Development.

This argument is also not preserved as to DRB. Appellants did not raise it in their motion to reconsider the circuit's findings regarding prejudice to DRB. (R. at 15.) Accordingly, it is not properly before this Court. Even if preserved, the argument fails. The lower court's order thoroughly explains how Appellants' unreasonable delay caused DRB to incur substantial expense and materially change its position. Appellants offered no evidence creating a genuine issue of material fact on laches and cannot avoid summary judgment by merely asserting unanswered questions or speculative assertions. (*See* Appellants' Initial Br. 34.)

The lower court correctly held that Appellants' claims against DRB are barred by laches, and this Court should affirm that ruling.

C. As an additionally sustaining ground, Appellants' claims are also barred under the doctrine of acquiescence.

As an additional sustaining ground, Appellants' claims are also barred under the doctrine of acquiescence. Acquiescence has been characterized as follows:

> If a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and make no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interests are affected. His silence is acquiescence and it estops him.

Coker v. Cummings, 381 S.C. 45, 53, 671 S.E.2d 383, 388 (Ct. App. 2008). "Acquiescence can be established even if the period of time is very short." *Id.*

In this case, Appellants saw the road being improved and paved. This was inconsistent with their alleged rights. They did nothing, other than allegedly speak with County officials. They did not seek to have the Plat changed. They did not file a lawsuit, likely because they benefited from the paving of the Road using public funds. Additionally, Appellants acquiesced in the public authorities' use, including through a work order submitted by Appellant Diane Jefferson in September 2021, which stated: "Resident would like ditch cleaned out since it is now a Town

Road." (R. at 534.)

Moreover, Appellants did not file suit when the Development was under initial construction. They waited until the Development was nearly complete to add DRB to this lawsuit. They sat on their hands. This encouraged DRB, and others, to expend its commercial efforts and extraordinary monetary sums to construct the Development in reliance on the Road being public. Their claims, thirty years later, are now barred by the doctrine of acquiescence.

IV. The Lower Court Correctly Concluded Appellants Failed to Present Evidence Sufficient to Create a Genuine Issue of Material Fact that the Road Is Public.

Even if the Court determines Appellants' claims are not barred by the applicable statute(s) of limitations, laches, or acquiescence, Appellants' claims still fail because the Bailem family expressly dedicated the Road to the public, and the record establishes public acceptance as a matter of law.

Appellants frame this case as turning on "a surveyor's [alleged] unauthorized insertion of dedication language on a subdivision plat." (Appellants' Initial Br. 2.) They further contend the County's later conduct and "contradictory" records preclude summary judgment. (*Id.* at 11.) The undisputed record and controlling dedication principles do not support Appellants' narrative.

"The determination of whether a roadway has been dedicated to the public is an action in equity." *Town of Kingstree v. Chapman*, 405 S.C. 282, 301, 747 S.E.2d 494, 504 (Ct. App. 2013) (quoting *Mack v. Edens,* 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995)). Dedication requires two elements: (1) the property owner must positively and unmistakenly express the intent to dedicate his property to public use; and (2) there must be express or implied public acceptance of the property made within a reasonable time. *Id.* at 302, 747 S.E.2d at 504 (quoting *Mack*, 320 S.C. at 239, 464 S.E.2d at 126). The burden of proof rests with the party claiming it. *Id.* (quoting *Anderson v. Town of Hemingway,* 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977)).

On this record, both elements are met.

A. The Bailem family expressly dedicated the Road to the public by the unambiguous written dedication on the Plat.

"No 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) (citing 23 Am. Jur. 2d *Dedication* § 27 (1983)). "All that is required is that an owner must have expressed an intention to dedicate his property to public use in a positive and unmistakable manner." *Id.* (citing *Anderson v. Town of Hemingway,* 269 S.C. 351, 237 S.E.2d 489 (1977)). "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 (quoting *Boyd*, 294 S.C. at 364, 364 S.E. at 480).

"A recorded plat may be sufficient to disclose a landowner's intent to dedicate property to public use." *Id.* at 303, 747 S.E.2d at 505 (quoting *Van Blarcum v. City of N. Myrtle Beach,* 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999)). "If 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 (quoting *Van Blarcum*, 337 S.C. at 451, 523 S.E.2d at 488); *see also* 22B Am. Jur. 2d *Dedication* § 26 ("Generally, when a plat is recorded, it is presumed that there is an intent to dedicate particular types of land interests to public use, such as roads and parks, and when that offer of dedication is accepted, the dedication is complete, and the local government will generally have jurisdiction over that land.").

Here, the Plat contains an express dedication statement, signed by the then-owners, stating: "WE HEREBY DEDICATE THIS 50' ROAD RIGHT OF WAY FOR THE USE OF THE PUBLIC FOREVER." (R. at 515.)

Appellant Ann Bailey Simmons testified that she personally observed the signatories execute the Plat and confirmed during her deposition that the signatures appearing on the recorded Plat are the signatures she witnessed. (R. at 355-56 (7:15-8:9).) Appellant Michael Jefferson likewise confirmed that the signature of his grandmother, Rebecca Jefferson, appeared on the Plat. (R. at 990:5-15.)

This evidence establishes a clear, written, and signed dedication by the landowners themselves. The language constitutes an unequivocal, written declaration dedicating the Road to the public use "forever." When construing a recorded plat that effects a dedication, the plat "must be fairly and reasonably construed, in accordance with the general rules pertaining to the construction of deeds or other instruments granting or pertaining to real property. It must be construed as a whole; each element of the plat is to be given a meaning . . . ." 22B Am. Jur. 2d *Dedication* § 29 (footnotes omitted). Where, as here, the instrument is unambiguous, the plain language controls. *Id.*; *see also Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204-05, 743 S.E.2d 850, 853 (Ct. App. 2013) ("When a deed is unambiguous, any attempt to determine the grantor's intent when reserving the easement must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper.").

No reasonable reading of the dedication language supports any intent other than a public dedication.

B. Appellants' attack on the signatures are speculative and do not create a genuine issue of material fact.

Appellants attempt to avoid the legal effect of the express dedication by asserting that the signatures on the Plat are inaccurate or were "transferred" from another document. Their theories are inconsistent, unsupported, and speculative.

Henry Bailem IV testified that the signatures could not be authentic because Rebecca

Jefferson was blind, Estelle Capers "always" signed her name differently, and Henry Bailem Jr.'s signature "doesn't look like my daddy's." (R. at 408-09 (26:15-27:15).) This testimony fails to create a genuine issue of fact. Henry Bailem IV did not testify that he was familiar with Henry Bailem Jr.'s signature, did not testify that Henry Bailem Jr. was his "daddy," and did not offer any basis for authenticating or discrediting the signature on the Plat. (R. at 408-09 (26:15-27:15).) Appellants nonetheless argue, without citation to any authority or evidence, that "[s]ons are intimately familiar with their fathers' signatures, particularly in family matters." (Appellant's' Initial Br. 13.) This assertion is unsupported by South Carolina law and finds no footing in the evidentiary record.

Henry Bailem IV's testimony regarding Rebecca Jefferson's signature fares no better. Although he testified she "couldn't have signed it because she was blind," Appellants have morphed their argument to be that she "consistently signed documents with an 'X' because she was blind[.]" (R. at 408 (26:21-22); Appellants' Initial Br. 12.) That claim is undermined by Appellants' own evidence. The signatures they rely upon post-date the Plat by several years, (*see* Appellants' Initial Br. 11 (referencing a deed signed *two years* after the Plat)), and Henry Bailem IV admitted that Rebecca Jefferson's eyesight progressively deteriorated over time, (R. at 416 (57:7-21)). Signatures executed years later shed no light on whether she was capable of signing her name at the time the Plat was executed.

Appellants similarly assert Estelle Capers "always" signed her name as "Estelle Bailem Capers." The lower court correctly noted that Estelle Capers signed an affidavit submitted by Appellants themselves as "Estelle Capers." (R. at 7, 92.) Although Ms. Capers had adequate opportunity to contest her signature in her affidavit, she never testified that she did not sign the Plat, and no evidence in the record supports the contention that the signature on the Plat was not

hers. As the lower court observed, "none of the other signatories on the '86 Plat are alive to testify as to their signatures' authenticity." (R. at 7.)

Henry Bailem IV further testified that the reason the dedication must be wrong is because "it says to the public forever." (R. at 409 (27:17-18).) That testimony is not evidence of forgery; it is disagreement with the substance of the document. Critically, Henry Bailem IV admitted he was not present when the Plat was signed. (R. at 410 (34:14-22).) His testimony fails to put forth a single genuine issue of material fact to dispute the signatures. Moreover, his testimony is directly contradicted by other documents in the record. (*See, e.g.*, R. at 562 (signing "Estelle B. Capers"), 92 (signing "Estelle Capers").)

Diane Jefferson offered a different theory, suggesting that the surveyor "transferred" signatures from another plat onto the Plat. (R. at 370 (47:23-48:4).) She then speculated that County employees may have signed the Plat, before admitting she did not witness the execution of the Plat and had no personal knowledge of how it was signed. (R. at 395 (111:10-112:8).) Her testimony rests entirely on hearsay and conjecture and is inadmissible to create a genuine issue of fact. *See* Rules 403, 602, 701, 801, SCRE.

Critically, Appellants produced no alternative signed plat that would make this "signature transfer" theory possible. The only other plat produced contains no signatures at all and is marked "VOID." (R. at 725.) Contrary to Appellant's arguments, no signatures are visible on this alleged plat. Surveyor Pennington testified he could see no signatures on that document and described it as a rough draft. (R. at 616:5-617:21, 621:18-622:22.)

Appellants' reasons for why the signatures are not accurate do no more than rest on allegations and denials rather than create a genuine dispute of material fact as they are unsupported by any additional evidence or first-hand, personal knowledge. Appellants have offered no genuine

evidence challenging the authenticity of the signatures. By contrast, the record contains eyewitness testimony confirming execution of the Plat and family testimony confirming signature authenticity. Appellants' conjecture cannot overcome the legal effect of a recorded instrument.

C. The intent of anyone other than the 1986 owners is legally irrelevant.

Appellants repeatedly suggest that the "family's intent" was to dedicate the Road only to the property owners. That argument fails as a matter of law. The only relevant intent is that of the landowners at the time of dedication: Henry Bailem Jr., Rebecca Jefferson, and Estelle Capers. Later generations' disagreement with that decision is immaterial.

Although the Plat is not a deed, it is construed under the same principles governing written instruments affecting title. 22B Am. Jur. 2d *Dedication* § 29. Where the language is unambiguous, construction is a question of law, and extrinsic evidence may not be used to contradict its plain meaning. *Penza*, 404 S.C. at 204, 743 S.E.2d at 853. The dedication language here is not susceptible to multiple interpretations. Accordingly, parol evidence, including the Draft Plat and post hoc testimony about alleged family intent, cannot be used to rewrite the dedication.

D. County approval and recording confirm the Plat with the public dedication was the document submitted and approved.

Appellants also imply that the Plat may not have been the document approved by the County. The record forecloses that suggestion. The subdivision application bears application number 11829. (R. at 114-20.) The Plat bears that same number in two locations. (R. at 515.) County Council minutes also reflect approval of application number 11829. (R. at 638.) Furthermore, County witnesses and Surveyor Pennington confirmed that the Plat approved and recorded corresponds to that application. (R. at 306-07 (15:5-10, 17:2-18:4), 319 (65:21-66:21), 628:13-15, 629:10-14.)

Appellants produced no evidence that any different plat was submitted to or approved by

Council. There is no final four-lot plat in the record, no application for such a plat, and no Council minutes reflecting approval of anything other than the 1986 Plat. Appellants rely instead on Paragraph 25 and Exhibit 1(B) of their Amended Complaint to assert that, "[o]n July 23, 1986, Pennington drafted a plat that included dedication language with the words 'dedicate the . . . ingress-egress easement over my property to the use of the property owners . . .' above the signature lines." (Appellants' Initial Br. 4.) That assertion is not supported by the record. Exhibit 1(B) is plainly an unfinished, unsigned draft bearing only the handwritten fragment "We hereby ded." (R. at 111.) Appellants go further and allege that "[t]he three owners of the lots signed that plat." (Appellants' Initial Br. 4.) Yet there are no signatures on Exhibit 1(B), and Appellants identify no signed version of any four-lot plat anywhere in the record. The deposition testimony they cite does not support this claim. (*See* Appellants' Initial Br. 4; R. at 405 (11:17-12:19).) Indeed, Appellants ultimately concede that "no original signed copy of the earlier four-parcel plat with the appropriate private dedication can be located[.]" (Appellants' Initial Br. 4.)

Confronted with the absence of admissible evidence undermining the Plat's validity, Appellants instead rely on informal and unofficial correspondence from County staff. (*See* Appellants' Initial Br. 21.) The unofficial letters Appellants cite, dated September 29, 1986, and October 10, 1986, both predate the filing and formal acceptance of the Plat by the County. (*See id.*; R. at 113-26, 515.) Tellingly, neither of these letters were addressed to Appellants, and the Plat was recorded shortly after the October 10, 1986 unofficial letter.

E. Even absent express dedication, the record establishes implied dedication as a matter of law.

Even if the Court were to disregard the express dedication, which it should not, the Road was impliedly dedicated under two independent theories recognized by South Carolina law: (1) conveyance of subdivided lots by reference to a plat showing roads, and (2) acquiescence in public

use. *See Town of Kingstree*, 405 S.C. at 302, 747 S.E.2d at 504.

Each Appellant took title by deed expressly referencing the Plat and conveying property "subject to the easements as shown on said plat." (R. at 516-24 537-54, 561-72, 578-85, 591-603.) The Plat depicts "John Ballam Road 50' R/W," not a private easement. When land is subdivided and lots are sold by reference to a plat showing streets, those streets are dedicated to public use. *Carolina Land Co.*, 265 S.C. at 105, 217 S.E.2d at 19 ("[W]hen the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public.") (citing *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965)).

The deeds themselves reinforce that intent. Each lot is described as "butting and bounding" John Ballam Road, confirming that the Road was not conveyed as part of the lots. Appellants therefore cannot claim ownership of the Road under the express terms of their deeds.

Appellants' conduct further confirms acquiescence. They requested Town maintenance of drainage ditches, acknowledged the Road as a Town road, paid no taxes on the Road, allowed public services such as garbage collection and school buses to access the Road, and admitted they performed no maintenance because "it's their road." (R. at 412 (39:14-17).) Such conduct is wholly inconsistent with private ownership.

On appeal, Appellants contend that implied dedication principles do not apply to intrafamily transfers. (Appellants' Initial Br. 37.) Appellants cite no legal authority supporting this proposition. An argument raised without supporting authority is conclusory and should be deemed abandoned on appeal. *See Jones*, 384 S.C. at 20–21, 681 S.E.2d at 16–17.

F. Public acceptance is established by formal action and decades of public use and maintenance.

Finally, the public accepted the dedication through both express governmental action and

long-standing use and maintenance. "[N]o formal acceptance by a public authority is necessary to show public acceptance." *Town of Kingstree*, 405 S.C. at 303, 747 S.E.2d at 504. Acceptance may be evidenced by either general public use or by act of the public authority made within a reasonable time. *Giles v. Parker*, 304 S.C. 69, 73, 403 S.E.2d 130, 132 (Ct. App. 1991); *Town of Kingstree* at 302, 747 S.E.2d at 504. What constitutes a reasonable time is determined by looking at the surrounding circumstances of a case, including the size of a town and its growth, and where it may be expanding. *Chafee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800, 800 (1900).

Acceptance may be shown through use, repair, and working of the roadway. *Town of Kingstree*, 405 S.C. at 303, 747 S.E.2d at 504 (quoting *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997)). "The nonassessment of taxes is a factor in the determination of dedication and acceptance." *Id.* (citing *Tupper*, 326 S.C. at 327, 487 S.E.2d at 192); *see also Mack*, 320 S.C. at 240, 464 S.E.2d at 126–27; *Anderson*, 269 S.C. 351, 237 S.E.2d 489.

Here, the County expressly accepted the Road in 1994. (R. at 651-52, 666.) It thereafter planned, improved, and paved the Road with public funds, annexed it into the Town, provided garbage service, public school transportation, maintained drainage, enforced ordinances, and treated the Road as public for more than two decades.

More specifically, in 1986, County tax maps were changed to reflect the Road's public dedication, and Plaintiffs have paid no taxes on the Road since that time. (R. at 307-08 (20:24-21:25), 691-92.) In 1994, Charleston County formally approved the Road for construction and accepted it into the County's road maintenance system, and County officials prepared plans for the Road that same year. (R. at 421 (75:11-15), 651-52.) The following year, in 1995, the Road was annexed into the Town, after which it received public garbage collection services. (R. at 67 ¶ 38, 417 (60:2-21), 667-76.) From the time the Road was accepted into the County's maintenance

system in 1994 through the present, Town and County workers have consistently maintained the drainage ditches along both sides of the Road. (R. at 534-36, 422 (80:10-25, 81:6-15), 389-90 (90:23-91:14, 93:19-20).) In 2002, the County paved the Road using public funds. (R. at 688-90.) Public school buses have serviced the Road since at least August 2011. (R. at 417-18 (62:20-63:13), 533.) When members of the Bailem family attempted to block access to the Road, Town police removed the blockades and gates, further demonstrating governmental control. (R. at 423 (84:20-85:6).) The Town also exercised regulatory authority over the Road by pursuing enforcement proceedings against Henry Bailem IV for failure to pay stormwater drainage fees. (R. at 422 (81:6-15).) Collectively, these facts establish long-standing public use, maintenance, and control of the Road and conclusively demonstrate acceptance of the dedication by both the County and the Town.

The undisputed facts leave no genuine issue for trial and establish that the Road was accepted by public authorities and has functioned as a public road for decades.

CONCLUSION

For the foregoing reasons, the lower court correctly granted summary judgment to DRB. Appellants' claims against DRB are barred by the applicable statutes of limitations and equitable doctrines, and Appellants have failed to adduce evidence creating a genuine issue of material fact to defeat summary judgement. The undisputed evidence shows long-standing public dedication and acceptance. For these reasons, the lower court correctly granted summary judgment to DRB. DRB respectfully requests that this Court affirm the order below in its entirety.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

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