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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas for the Eighth Circuit

J. Mark Hayes, II, Circuit Court Judge
Trial Court Case No. 2018CP3600089, 2019CP3600245

Appellate Case No. 2025-000497

Lisa Summer Rice and Joseph F. Rice.....Appellants,

v.

Newberry Lions Club and Betty S. Amick, as Personal
Representative of the Estate of C. Ray Amick.....Respondents,

AND

A. Murray Gray, Claude H. Schumpert, and Melissa B.
Schumpert.....Appellants,

v.

Betty S. Amick, as Personal Representative of the Estate
of C. Ray Amick, and Cheryl Littlejohn.....Respondents.

RECORD ON APPEAL
Vol. I of IV

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on June 19, 2019 upon Plaintiffs' Motion to Amend the complaint. Plaintiffs moved, based on Rule 15, SCRPC, and matters developed in discovery, to add three new causes of action as set forth its proposed Third Amended Complaint. The proposed amendment included adding the causes of action for breach of contract accompanied by a fraudulent act, intentional interference with a contract, and declaratory judgement for enforcement and injunctive relief of an easement by prior use, prescription, and/or by estoppel. The Court granted Plaintiffs' motion in full at the hearing.

On June 17, 2019, this Court signed an order granting Plaintiffs' Motion to Amend the complaint as to claims regarding an easement. Due to a scrivener's error, the remaining two causes of action were neglected to be included in the order. Therefore, this amended order serves as clarification that Plaintiffs' Motion to Amend is granted in full as to all additional causes of action.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/19/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-07-19 10:40:54 page 3 of 3

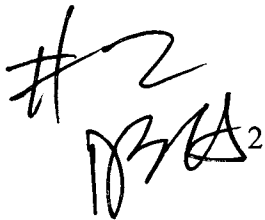
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and	)	
Melissa B. Schumpert,	)	
	)	
	)	ORDER GRANTING
	)	TEMPORARY INJUNCTION
v.	)	
	)	
C. Ray Amick,	)	
	)	
Defendant.	)	

This matter came before the Court for a hearing on Plaintiffs' Motion for Temporary Injunction. This Court convened a hearing on this motion on June 19, 2019. Present at the hearing were the parties and their counsel. In considering this motion, the Court reviewed and duly considered the following: the pleadings, the affidavits submitted at or after the hearing by Plaintiffs (affidavits of Murray Gray, Lucia Schumpert Renwick, Young Schumpert, John Summer, Chris Jay, Ferd Summer, Jr., Julia B. McSwain, Julia Rebecca McSwain, Neel McSwain, Chuck Meadows, Claude Schumpert, Joe Rice, Barry Koon, Melissa B. Schumpert, and Plaintiffs' counsel, Thomas H. Pope III), the affidavits submitted by the defendant (affidavits of Doggett Whitaker, Cheryl A. Littlejohn, Ray Amick, and the supplemental affidavit of Ray Amick), the depositions of Ray Amick and Betty Amick, the testimony of Ray Amick, the Plaintiffs' memorandum in support of their motion, the defendant's response in opposition to the motion, and the Plaintiffs' reply memorandum in support of the motion. This Court also considered the arguments of counsel presented at the hearing.

Based on all of the matters considered by this Court, including the longstanding usage of Lions Club Road which runs to and onto the fringelands of Lions Club Point, this Court grants Plaintiffs' Motion for Temporary Injunction.

The verified complaint in this matter asserts that Lions Club Road has been used and enjoyed by the Plaintiffs, their guests, and their predecessors in interest for over 60 years. Lions Club Road runs from State Park Road and onto the fringelands of Lions Club Point, which fringelands are owned by SCE&G (now Dominion). As depicted on a plat recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at page 6, Lions Club Road is 12 feet wide and mostly paved, but there is a gravel portion of this road that runs to the fringelands and onto the fringelands for several hundred feet. Over the years, this fringeland has been used by the property owners at Lions Club Point to enjoy the lake, including community events, picnics, launching boats at the boat ramp on the fringelands, using the beach area at the tip of Lions Club Point, and other recreational uses such as fishing, go-carts, and swimming. The portion of Lions Club Point over which Lions Club Road traverses is the only means by which these property owners have historically used to access the fringelands, and its use over these past many decades has been both vehicular and pedestrian. The fringelands have been basically utilized as “community recreational property” by the Plaintiffs and other landowners at Lions Club Point. There is nothing in the record to indicate that any complaint was ever made about the Plaintiffs’ (or any other property owner at Lions Club Point) use of Lions Club Road to drive or walk onto the fringelands at any time during these many decades. Given the shape and boundaries of the property, there is no way for a vehicle to enter the fringelands except by use of Lions Club Road.

In 1933, the Lions Club of Newberry purchased approximately 10 acres at Lions Club Point. Over the years since, the Lions Club sold lake front lots to its members leaving only approximately 5 acres which comprises Lions Club Point which bottlenecks to the point at which Lions Club Road enters the fringelands. Mr. Amick obtained a deed to the remaining Lions Club

Handwritten signature and initials, possibly reading "H-2" and "D3/A2".

property in February 2018.¹ Within a short time after obtaining that deed, Mr. Amick placed a rope across Lions Club Road at a point approximately 100 feet before the road runs to the border of the fringeland. He also installed no trespassing signs. Mr. Amick's position is that he obtained title to a portion of Lions Club Road because part of the purchase he had from the Lions Club included the old Lions Club cabin beside Lions Club Road which is adjacent to the fringelands. Mr. Amick contends that because he owns the property underlying the road anyone wishing to use it has to obtain his permission². Mr. Amick contends that when he obtained his deed from the Newberry Lions Club to the property he acquired the rights which the Lions Club allegedly had and presented an affidavit of a Lions Club member (Affidavit of Doggett Whitaker) which asserts that the use of Lions Club Road was by permission. No evidence was presented as to the Lions Club ever being asked permission nor was any evidence presented indicating that permission was ever granted or denied during the last many decades. Almost all of the affidavits submitted by Plaintiffs, including those of two former Lions Club members and one from a former Lions Club resident (John Summer), state that no permission was ever sought, granted, or denied for the adjacent property owners and their guests to use Lions Club road in the last six decades.

I. STANDARD OF REVIEW

The singular purpose of a temporary injunction is to preserve the *status quo ante* and avoid irreparable injury to a plaintiff pending final adjudication of a case. Compton v. SCDOC, 392 S.C. 361, 709 S.E.2d 639 (2011); Helsel v. City of North Myrtle Beach, 307 S.C. 29, 413 S.E.2d 824 (1992). When a court is requested to issue a temporary injunction, it may consider

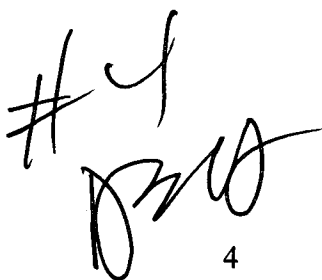
¹ Mr. Amick's deed is contested in the case of Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018 CP 36-0089.

² The record shows that Amick has sought to make this "permission" subject to his whim (Exs. 1-5, Affidavit of Thomas H. Pope, III).

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the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Helsel, *supra*. A temporary injunction is entered without prejudice to the rights of parties pending a hearing on the merits, and where other issues are brought to trial, they are determined without reference to the temporary injunction. Id.

An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. Compton, *supra*. As a result, in order to obtain an injunction, a party must demonstrate (1) irreparable harm; (2) likelihood of success on the merits; and, (3) absence of an adequate remedy at law. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005). In analyzing the element of “likelihood of success on the merits,” the plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, rather the plaintiff must present only a reasonable question as to the existence of such a right. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). Moreover, the question of whether a wrong is irreparable, such that equity should intervene, and whether there is an adequate remedy at law, are questions that are not decided with reference to narrow and artificial rules. Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). Instead, the court must balance the benefit of an injunction to the plaintiff against the prejudice to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances. Foster Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950). And, once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted. Peek, *supra*.

A handwritten signature in black ink, appearing to be 'HJ' followed by a stylized name, possibly 'Dunn' or 'Black', written in a cursive script.

II. PLAINTIFFS' RIGHT TO RELIEF

The Plaintiffs claim an easement for the use of Lions Club Road as a prescriptive easement, an easement by estoppel, or an easement implied by prior use. The verified Complaint, together with the affidavits filed in support of the instant motion, presents a *prima facie* showing which clearly justifies the issuance temporary injunctive relief.

A. Prescriptive Easement

Our Supreme Court recently clarified the elements for a prescriptive easement in the case of Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016). There, the Court held that an easement is a right given to a person to use the land of another for a specific purpose, and a prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner. *Id.* To establish a prescriptive easement, it must be shown that (1) the Plaintiff had the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use was adverse under claim of right. *Id.* When it appears that the Plaintiff has enjoyed such an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse. *Id.*, citing Williams v. Abbott, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

With reference to the first two elements, the lot owners, including the Plaintiffs, have clearly presented sufficient evidence for purposes of temporary injunctive relief that they have had use of Lions Club Road for access to the boat ramp and beach area in the fringe lands (which constitutes the "thing enjoyed") continuously and uninterrupted for much more than 20 years.³

³ A party may 'tack' the period of use of prior owners in order to satisfy the 20-year requirement. Morrow v. Dyches, 328 S.C. at 527, 492 S.E.2d at 423 (Ct. App. 1997). Thus, the use of the Plaintiffs' predecessors in title is properly referenced in this proceeding.

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18/3/19

The significance of the Simmons decision is its clarification of the third element of a prescriptive easement under the Williams test. The Simmons Court stated, “we believe the test for a prescriptive easement can be simplified as follows: [i]n order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years.” Id. at 392. Thus, as the other requirements are encapsulated in the first two elements, in order to show their use was adverse under the Williams test, the Plaintiffs must show the use was “open” and “notorious”.

For a use to be “open”, it must not be “secret or stealthily” but must be “visible or apparent” Id. at 392. Here, the Plaintiffs have submitted affidavits showing that the use of the Lions Club Road for access to the fringelands was made often for the purpose of neighborhood and family gatherings. Use was further routinely made to launch and trailer boats and for swimming at the beach area in the summer months. All of these uses made in broad daylight would have been visible and apparent. It certainly was not in secret. Indeed, a former President of the Lions Club, John Summer, states in his affidavit that the lot owners routinely performed maintenance on the road over the years. Therefore, the Plaintiffs have made the requisite showing that the use was “open” within the meaning of the Williams test.

Finally, the Simmons court explained that for a use to be “notorious”, it must be “known to the owner” or “widely known in the neighborhood.” Id. at 392. Again, the verified complaint and each of the Plaintiffs’ affidavits provide that all of the lot owners used Lions Club Road to access the fringe lands. In other words, the use was not specific to merely the Plaintiffs. It was common to all property owners on Lions Club Point. Even the defendant, who did not own (or have a claim to own) any property there until 2018, acknowledged the use for decades of the lot

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owners to access the fringe lands. Accordingly, the use was “widely known in the neighborhood”. Moreover, the use of the lot owners was “acknowledged by all” Lions Club members. (Affidavit of John M. Summer, ¶16). Consequently, the Plaintiffs have likewise shown the use was “known to the owner”. Therefore, the Plaintiffs have shown sufficiently for purposes of a temporary injunction that the lot owners use of Lions Club road for these purposes was “notorious” under the Williams test, and in so doing, the Plaintiffs have made a prima facie case for a prescriptive easement.

It should be noted as well that the obtaining of an easement by prescription can arise from the acquiescence of the owner. 8 S.C. Jur., Adverse Possession § 14; *e.g.*, Shia v. Pendergrass, 222 S.C. 342, 72 S.E.2d 699 (1952); see also, Blume v. Southern Ry. Co., 85 S.E. 440, 67 S.E. 546 (1910). There is a sufficient record showing acquiescence for purposes of the instant motion.

B. Easement by Estoppel

The party claiming an easement by estoppel must show the following elements as to the party sought to be estopped: “(1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts.” Paine Gayle Properties, LLC v. CSX Trasp., Inc., 400 S.C. 568, 735 S.E.2d 528 (2012). All of the foregoing elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other party's prejudicial change in position. *Id.*, *citing*, O'Cain v. O'Cain, 322 S.C. 551, 557–59, 473 S.E.2d 460, 464–65 (Ct.App.1996) (holding that a landowner was equitably estopped from denying the use of a driveway on his property by an adjoining landowner when the first landowner remained

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silent during the second landowner's construction of the driveway and improvements to land to which the driveway led). Lastly, the following elements must be shown as to the party claiming estoppel: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance on the conduct of the party sought to be estopped; and (3) a prejudicial change in position." Id.

The Plaintiffs presented a *prima facie* showing of an easement by estoppel. In O'Cain, *supra*, the Court of Appeals affirmed the declaration of an easement by estoppel. There, Lever O'Cain knew of and watched as Harold O'Cain used his property to construct a driveway; yet, Lever O'Cain did not voice any objection to this use or construction until after it was completed. Moreover, Lever O'Cain remained silent as the appellant improvements to lands beyond which the driveway led. The O'Cain court held that Harold O'Cain's use and improvements to the land coupled with Lever O'Cain's silence satisfied all of the estoppel requirements with regard to the respondents. Id. at 558. With regard to the estoppel requirements as to Harold O'Cain, the court found the fact that he believed he had the right to use the land for a driveway meant that he did not have knowledge of the truth, i.e., that he did not have such a right. Id. at 558. Given the improvements made by Harold O'Cain both to the driveway and beyond, the Court found that he had a prejudicial change of position. Id. at 558.

Generally, the O'Cain opinion stands for the proposition that one cannot sit idly by, watch as another uses his property and makes improvements both to his own property - in the form of a way - and to the property to which the way leads, and only voice an objection after the other has been prejudiced.

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Here, the Plaintiffs have presented the Schumpert, Rice and Koon affidavits which all clarify that no one with the Lions Club voiced any objection to the lot owners use of Lions Club Road for sixty years, all the while the lot owners were spending their money and providing labor in making improvements to the road and constructing and maintaining the boat ramp and beach area. What is more, John Summer states in his affidavit that the lot owners right to use the road was “acknowledged by all”. Plaintiffs presented documentary evidence that they and other Lions Club Point property owners paid \$40,000 to pave the subject road in 2012, that they had maintained the gravel road prior to 2012⁴, and that after 2012 they had maintained the gravel portion of the road at and onto the fringeland. Thus, the lot owners consequently believed they had a right to do so. The verified complaint and each of the Plaintiffs’ affidavits make that fact plain.

The Defendant and Lions Club, his alleged predecessor “in title,” were aware of Plaintiffs’ use of the easement for decades without complaint. They had actual and constructive knowledge that the Rice family was building a \$300,000 home in reliance on access, both vehicle and pedestrian, to the fringeland (Affidavit of Rice, ¶16). Mr. Amick and the Lions Club also had notice of the fact that Plaintiff Schumpert had spent over \$800,000 building his permanent residence at 131 Lions Club Circle and that he was relying on the use of Lions Club Road for launching his boat and accessing the beach as he would otherwise have no vehicular access to launch a boat without using Lions Club Road. (Ex. 2, Affidavit of Murray Gray).

Therefore, just as Lever O’Cain was found to be estopped to deny Harold O’Cain’s easement, the Plaintiffs have, again, at a minimum, presented a prima facie showing that the

⁴ Amick only paid \$1,000 of this total. The Lions Club paid nothing.

defendant is estopped to prevent the Plaintiffs and the lot owners from using Lions Club Road to access the fringe lands.

C. Easement by Prior Use

In South Carolina, a party asserting the right to an easement implied by prior use must establish the following: “(1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title.” Boyd v. Bellsouth telephone Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). While the “necessity” required of an easement by necessity must be “actual, real, and reasonable as distinguished from convenient”, the “necessity” required for an easement implied by prior use “may be less than required for an easement by necessity.” Id. at 141. “This lesser showing of necessity may stem in part from an often unspoken realization on the part of the fact finder that a prior use [itself] indicates a need for a particular easement.” Id. at 142. Ultimately, the purpose of an implied easement is to give effect to the intentions of the parties to a transaction. Pendarvis v. Cook, 391 S.C. 528, 706 S.E.2d 520 (Ct. App. 2011).

The case at bar also presents a prima facie showing of an easement by prior use. As laid out in the verified Complaint and discussed above, all of the parties to this proceeding trace their claim to title to the Lions Club. The evidence presented by Plaintiffs show that Lions Club Road, the boat ramp and beach area were constructed for the express purpose of providing access to fringe lands to enjoy the same. The use of it for this purpose was, therefore, intended by the Lions Club.

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The Lions Club subdivided portions of the original 10 acres to provide lots to all of the lot owners, including the Plaintiffs' predecessors. The use of Lions Club Road to access the fringe lands was and is the only means of accessing the boat ramp and beach area. As discussed above, this use has been continual and uninterrupted for over sixty years and known by all parties, including the defendant. Accordingly, the use of the road was not casual or temporary, and the evidence shows that the Lions Club clearly intended the continued use after subdividing the lots, as the use, in fact, continued for decades thereafter.

Lastly, the question of the "necessity" can be answered with one rhetorical question: what good would building a boat ramp and beach area on the shores of Lake Murray be if one could not get to it? Given that there is no other means of accessing the fringe lands, the use is necessary as defined by the Boyd court. Therefore, the Plaintiffs have also presented a *prima facie* case for an easement implied by prior use.

III. THE ELEMENTS OF TEMPORARY INJUNCTIVE RELIEF HAVE BEEN ESTABLISHED

1. Irreparable Harm

The Plaintiffs have demonstrated that Defendant's blocking the road has kept them and the entire neighborhood from accessing the fringeland to boat, fish, and swim as they did for over 60 years before 2018. This harm is especially critical during the summer and warm weather months when boating and lake usage is at its peak and access to the fringe land is essential for Plaintiffs and the neighborhood to have full enjoyment of their property. Mr. Amick lives one-half mile from where he blocked the road. His actions have upset the *status quo ante*.

The purpose of the three-acre fringelands owned by SCE&G/Dominion is for the recreational use of the property owners at Lions Club Point. Because Plaintiffs have established a *prima facie* showing that they have a legal or equitable right to use the road and that without such use

there is no vehicular access to the fringeland for launching boats, driving to the beach, or walking onto the fringeland, this Court finds that Defendant's blocking the road which prevents the Plaintiffs and the other property owners from exercising their right to the use of it has caused, and will cause, irreparable damage in the absence of a temporary injunction. After all, if the Plaintiffs have made a *prima facie* showing establishing their right to use the road, Mr. Amick's actions which, in effect, prohibits such use without lawful process constitute irreparable harm.

2. Likelihood of Success

As set forth above, Plaintiffs have made a *prima facie* showing of (a) Prescriptive Easement; (b) Easement by Estoppel; and/or, (c) Easement by Prior Use.

This Court has fully considered the Defendant's position in opposition to the motion of Plaintiffs for a temporary injunction wherein he asserts that the Plaintiffs cannot prevail on their claim of a prescriptive easement. The affidavit of Lions Club member Doggett Whitaker asserted that the use of the road prior to the Lions Club deed to Amick was "by permission" from the Lions Club. This is refuted by the affidavits of former Lions Club President John Summer, Lions Club Plaintiff Murray Gray and Chuck Meadows, and by the affidavits of property owners or former property owners, Plaintiff Claude Schumpert, Neel McSwain, Becki McSwain, Young Schumpert, Ferd Summer, Jr., and Chris Jay. Whitaker's affidavit is not specific as to permissions being granted, requested, or denied. It references no dates, documents, or details of any permission. It is but a bald assertion.

There exists in the record before me, at a minimum, "a reasonable question" as to the Plaintiffs and the other property owners right to use of Lions Club Road to access the fringelands. Therefore, Plaintiffs have made a sufficient showing for purposes of a temporary injunction of a likelihood of success on the merits. AJG Holdings, LLC v. Dunn, *supra*.

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3. No Adequate Remedy at Law

Defendant argues that Plaintiffs have a cause of action for trespass which constitutes an adequate remedy at law if the temporary injunction were to be denied. This is incorrect. The Plaintiff's position is that Amick's trespass commenced in 2018 when he blocked the road. Such an interference with the Plaintiffs and the other property owners right to use of the road continues each day they are denied use of it because these obstructions remain in place. Our Supreme Court has long recognized that "an injunction is a proper remedy for a continuous trespass to land." McClellan v. Taylor, 54 S.C. 430, 32 S.E. 527 (1899). If this were not the case, Plaintiffs would have to sue Mr. Amick for each day's trespass.

In Mack v. Edens, 306 S.C. 433, 412 S.E.2d 431 (1992); reh. denied January 15, 1992, certiorari denied May 6, 1992, the Court of Appeals reversed the denial of an injunction to a downstream landowner. Writing the opinion was Judge Randy Bell, who stated:

"Because of the permanent and recurring nature of the injury, which cannot otherwise be prevented, **the courts should enjoin the continuous trespasser** to protect the landowner's rights from hurt or destruction, Carter v. Lake City Baseball Club, 218 S.C. 255, 62 S.E.2d 470 (1950); Shelley v. Hucks, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984)." Id. at 434. (emphasis added)

Judge Bell's reasoning follows a long held tenet of South Carolina jurisprudence. See McClellan v. Taylor, 54 S.C. 430, 325 S.E. 527 (1899) (an injunction is a proper remedy for a continuous trespass to land.)

Amick's filings cited to this Court the case of Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) for the proposition that a trespass claim is an adequate remedy at law. However, Nutt was not a trespass action, but a breach of contract action for which the plaintiff obtained damages in excess of \$34,000 for its breach. This Court finds

and concludes that in this case where it is alleged that Amick's actions constitute a continuous, ongoing trespass, Plaintiffs do not have an adequate remedy at law.

Amick has argued that Plaintiffs have not met the requirements for a temporary injunction, citing Flanagan South Carolina Civil Procedure. This authority references the three elements referenced above, which have been discussed. In Flanagan, Civil Procedure (2nd Ed., p.343), there is a discussion that in ruling on a temporary injunction, "the interests of the parties must be balanced." Id. at 344. In point of fact, there is no "separate requirement that a judge perform such a balancing before deciding to issue a preliminary injunction." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). Instead, a preliminary injunction should issue "if necessary to preserve the status quo ante". Id. at 17. The status quo ante as of February 2018 is that plaintiffs and all adjoining property owners at Lions Club Point, and their guests, enjoyed full use of Lions Club Road for access to an onto the fringelands.

Even still, if the equities here are balanced, this Court finds, they favor the Plaintiffs. Defendant Amick lives a half mile from where he blocked the road. He has testified that he knew that Plaintiffs and other neighbors (and their guests) had used and maintained the road to drive and walk onto the fringelands for over 60 years, and never complained. While Amick's desire to exercise control over the fringelands may be temporarily thwarted by a temporary injunction, he appears at this time to be hard pressed to make a rational claim of prejudice.

While Defendant Amick has not asserted how he would be harmed by a temporary injunction, Rule 65(c), SCRCP, provides that the court will direct where such an injunction is issued that a Plaintiff post security (surety bond) to protect defendant's interest if a defendant prevails on the merits and is otherwise able to establish proof of damages after the merits of the case have been ruled upon. Rule 65(c) SCRCP provides that the Court shall set security "...in such sum as the Court

deems proper for the payment of such costs and damages as may be incurred by any party who is found to have been wrongfully enjoined or restrained.” Accordingly, this Court sets a bond/security of \$50,000 which Plaintiffs shall post or file evidence of a surety in such amount with the Clerk of Court. The injunction herein granted shall be in effect immediately upon such posting or filing.

The findings and conclusions herein are not a determination of the merits of this action and are without prejudice to the parties in this proceeding. Helsel, *supra*.

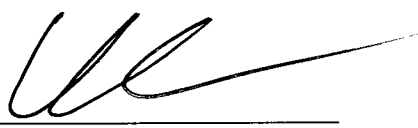
THEREFORE, IT IS ORDERED that Plaintiffs’ Motion for Temporary Injunction is GRANTED, and

IT IS FURTHER ORDERED that:

- (a) Defendant Amick shall remove from Lions Club Road all obstructions to vehicular and/or pedestrian travel for a width of 12 feet, including ropes, chains, barricades, parked cars, debris, and the like;
- (b) Defendant Amick is enjoined from blocking Lions Club Road for its full length and width with any obstacles, including ropes, chains, barricades, parked cars, debris, and the like until there is a final determination of the merits of this action (including any appeals) and further Order of the Court;
- (c) Pending a final determination of the merits, Lions Club Road will remain open for the use of the Plaintiffs and the adjacent property owners (and their guests) for access to the fringelands until further Order of the Court.
- (d) The Plaintiffs shall post an injunction bond in the principal amount of \$50,000.00 with the Clerk of Court of Newberry County; and,
- (e) This temporary injunction will go into effect immediately upon the filing of the injunction bond with the Office of the Clerk of Court for Newberry County.

AND IT IS SO ORDERED.

Lanner, S.C.
8-5, 2019


Donald B. Hocker
Judge, Eighth Judicial Circuit

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STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Lisa Summer Rice and Joe Rice,)
Plaintiff(s),)

Case Number **2018-CP-36-0089**

v.)

ORDER

Newberry Lions Club and C. Ray Amick,)
Defendant(s).)

(To establish complex case designation
and time for trial)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

A. Murray Gray, Claude H. Schumpert)
and Melissa B. Schumpert,)
Plaintiff(s),)

Case Number **2019-CP-36-00245**

v.)

ORDER

C. Ray Amick,)
Defendant(s).)

(To establish complex case designation
and time for trial)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Claude H. Schumpert and Melissa B.)
Shumpert,)
Plaintiff(s),)

Case Number **2019-CP-36-00496**

v.)

ORDER

Newberry Lions Club and C. Ray)
Amick,)
Defendant(s).)

To establish complex case designation
and time for trial

ORDER/COMPLEX CASE

MOTION GRANTED. IT IS ORDERED that these cases be designated as complex and that the trial of these cases take place after April, 2020. This court finds that the parties may agree as to consolidate or re-caption these cases to accommodate any electronic filing issues, otherwise the assigned judge may issue an order if needed to that end.

IT IS FUTHER ORDERED that this case be assigned to the Honorable J. Mark Hayes to hear and handle all pre-trial motions and other matters pertaining to this case.

Chief Judge for Administrative Purposes

_____ day of _____, 2019.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-12-03 08:54:04 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and	)	
Melissa B. Schumpert,	)	
	)	
	)	ORDER GRANTING
	)	MOTION TO ADD PARTY
v.	)	
	)	
C. Ray Amick,	)	
	)	
	)	
	)	

This matter came before the Court by consent of counsel based on Defendant Amick's Motion to Add Cheryl A. Littlejohn as a party-defendant.

THEREFORE, IT IS ORDERED that the Motion is GRANTED, and

IT IS FURTHER ORDERED that Plaintiff has leave to file a Second Amended Complaint adding Cheryl A. Littlejohn as a party-defendant.

AND IT IS SO ORDERED.

J. Mark Hayes, II
Circuit Court Judge

_____, S.C.

_____, 2020

We move.

s/Thornwell F. Sowell
Thornwell F. Sowell
Attorney for Defendant

We consent.

s/Thomas H. Pope III
Thomas H. Pope III
Attorney for Plaintiffs



Newberry Common Pleas

Case Caption: A Murray Gray , plaintiff, et al VS C Ray Amick

Case Number: 2019CP3600245

Type: Order/Consent Order

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-03-05 16:11:03 page 2 of 2

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

) CASE NO.: 2018-CP-36-00089

LISA SUMMER RICE AND JOSEPH F. RICE,

Plaintiffs,

V.

NEWBERRY LIONS CLUB and C. RAY AMICK,

Defendants.

),

**ORDER
GRANTING MOTION TO ADD PARTY**

This matter came before the Court by consent of counsel based on Defendant Amick's Motion to Add Cheryl A. Littlejohn as a party-defendant.

THEREFORE, IT IS ORDERED that the Motion is GRANTED, and

IT IS FURTHER ORDERED that Plaintiff has leave to file a Fourth Amended Complaint adding Cheryl A. Littlejohn as a party-defendant.

AND IT IS SO ORDERED.

J. Mark Hayes, II
Circuit Court Judge

_____, S.C.

_____, 2020

We move.

s/Thornwell F. Sowell
Thornwell F. Sowell
Attorney for Defendant C. Ray Amick

We consent.

s/Samuel M. Price, Jr.
Samuel M. Price, Jr.
Attorney for Defendant Newberry Lions Club

s/Thomas H. Pope III
Thomas H. Pope III
Attorney for Plaintiffs



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al
Case Number: 2018CP3600089
Type: Order/Consent Order

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-03-17 12:19:36 page 2 of 2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**ORDER GRANTING DEFENDANT C.
RAY AMICK'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

This matter is before the Court on Defendant C. Ray Amick's ("Mr. Amick") motion pursuant to Rule 56, SCRPC, for an order granting Mr. Amick partial summary judgment in his favor on whether a contract was formed between the Newberry Lions Club ("Lions Club") and Plaintiffs Lisa Summer Rice and Joseph F. Rice ("Rices") and on the Rices' specific performance claim. After the parties briefed this motion, a hearing was held in Spartanburg on August 27, 2020. Thomas H. Pope, III and Kyle B. Parker appeared on behalf of the Rices, Demetri K. Koutrakos and Harry A. Dixon appeared on behalf of Mr. Amick, and Sam Price appeared on behalf of the Lions Club. The parties fully briefed these issues and this matter is ripe for consideration. The Court carefully considered the evidence and materials in the record, the memoranda of law submitted, and the arguments of counsel. For the following reasons, Mr. Amick's motion is granted.

I. FACTS

The facts viewed in the light most favorable to the non-moving party, the Rices, are as follows:

In early 2017, the Lions Club sent letters (the “Lions Club Letter”) to adjoining landowners and Lions Club members explaining that the Lions Club would be selling a certain parcel of property on Lake Murray in Newberry County (“Property”). In pertinent part, the letter provided:

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. ***We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.***

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. ***First consideration will be given to current members of the Newberry Lions Club.***

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

(emphasis added)

Both the Rices and Mr. Amick received the Lions Club Letter. Mr. Amick is both an adjoining landowner and a Lions Club member while the Rices are only adjoining landowners.

On February 14, 2017, the Rices responded to the Lions Club Letter with a letter from their attorney (the “Rice Response”), which stated in pertinent part:

Pursuant to your recent letter to [the Rices], they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

On February 28, 2017, Mr. Amick sent the Lions Club a \$1,000 earnest money check and an unexecuted contract of sale offering \$300,000.00 for the Property.

On March 28, 2017, the Lions Club held a board meeting and voted to accept “Amick’s offer of \$300,000.00 provided that closing would take place by June 1st.”

On May 15, 2017, the Rices’ attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the Property pursuant to their “bid.”

On May 23, 2017, the Lions Club held another board meeting and decided to “send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.”

On June 5, 2017, the attorney for the Lions Club sent identical letters to Mr. Amick and the Rices, which stated in full:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

The encroachment issues were eventually resolved.¹

On November 21, 2017, the Rices’ attorney sent another letter to the Lions Club indicating the Rices “are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.”

On January 23, 2018, the Lions Club voted to sell the Property to Mr. Amick. On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the Property for \$300,000.00. A closing took place on February 21, 2018, and the deed transferring the Property to Mr. Amick was recorded on February 22, 2018.

¹ It is undisputed the Lions Club sold the portion of the Property with the encroachment to the encroaching party, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club Letter and the 5.35 acres eventually conveyed to Mr. Amick.

II. PROCEDURAL HISTORY

The day before Mr. Amick's deed was recorded, but after the deed was delivered, the Rices filed a lis pendens against the Property. Subsequently, the Rices filed a complaint against the Lions Club seeking specific performance of an allegedly breached contract. The Rices have since added Mr. Amick as a defendant, and their current Fourth Amended Complaint asserts, among other things, claims for a declaratory judgment/injunction, specific performance, and intentional interference with a contract against Mr. Amick, all based on the Rices' alleged contract with the Lions Club.

On February 8, 2019, Mr. Amick first moved for summary judgment. The Rices moved for summary judgment as well, and this Court heard the parties' cross motions on June 19, 2019, with the Honorable Eugene C. Griffith, Jr. presiding. Shortly after the hearing, Judge Griffith emailed the parties wherein he stated he was denying the motions, and noted he did not feel comfortable hearing further matters in the case because he lived in the neighborhood of the parties and the Property. He later entered a Form 4 order denying both motions for summary judgment.

In May 2019, several landowners adjoining the Property filed suit against Mr. Amick alleging an easement over the Property with case number 2019-CP-36-00245. Mr. Amick then filed a motion to bifurcate the trial in this case and to first try the specific performance claims raised by the Rices before proceeding to the Rices' remaining claims. However, in October 2019, two adjoining landowners, Claude and Melissa Schumpert, filed a suit alleging claims similar to the Rices, including a claim for specific performance, with case number 2019-CP-36-00496. These three cases concerning the Property were then consolidated and designated as complex by order of this Court dated December 3, 2019, with the undersigned assigned to hear all matters in the consolidated cases.

On May 22, 2020, the Court held a status conference to discuss discovery and pretrial matters. During this status conference, the parties agreed to another round of summary judgment motions and to first have a trial on only the specific performance claims raised by the Rices and Schumperts. On July 24, 2020, this Court set trial dates for September 16 and 17. The Court also set a briefing schedule for dispositive motions with all briefing to be completed by August 25, 2020, and set a hearing for those motions on August 27, 2020. Mr. Amick timely filed his motion for partial summary judgment to which the Rices timely filed a response in opposition. Mr. Amick timely replied and filed a motion to strike an expert affidavit attached to the Rices' response. The Court heard argument on all motions related to the specific performance issue as scheduled on August 27, 2020, where the parties agreed the summary judgment record would include all matters raised by all parties in either the Rice or Schumpert cases.²

III. LEGAL STANDARD

Summary judgment is appropriate where “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.” Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact

² The Court notes the Schumperts timely moved for summary judgment with respect to their claim for specific performance, and Mr. Amick moved for summary judgment with respect to the Schumperts' claim as well. The Court grants Mr. Amick's motion for summary judgment and denies the Schumperts' motion by separate order.

finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); see also *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment “mirrors” standard for directed verdict).

Normally, whether a contract exists is a question of fact. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). However, “[w]here, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract vel non is a question of law.” *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) (quoting *Valjar, Inc. v. Maritime Terminals, Inc.*, 220 Va. 1015, 1018, 265 S.E.2d 734, 736 (1980)).

IV. ANALYSIS

A. Mr. Amick’s Second Motion for Summary Judgment is Properly before this Court.

The Court concludes Mr. Amick’s second motion for summary judgment on whether the Lions Club and the Rices formed a contract is properly before this Court given the procedural history of this case. Moreover, South Carolina allows parties to re-assert the arguments raised in a denied motion for summary judgment and for courts to reconsider earlier denials of summary judgment.

First, the Rices dispute that Amick could re-file his motion for summary judgment during the status conferences that took place on May 22, 2020, and July 24, 2020.

Nevertheless, the denial of a summary judgment motion is not binding on this Court and parties may re-file a summary judgment motion. See *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (“The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to

reconsider the summary judgment motion”); *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993) (holding “trial court interlocutory orders are amendable” where the trial court denied a motion for summary judgment, allowed leave to re-file after a motion to amend, and ultimately granted the re-filed motion for summary judgment); *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) (“A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.”). The Court finds it is particularly appropriate to address Mr. Amick’s motion for partial summary judgment because Judge Griffith informally recused himself after hearing the first summary judgment motion and indicated he did not want to further hear the case or make additional rulings. Additionally, the Court holds *Ballenger*, *Johnston*, and *Orangeburg Paint* are clear this Court may consider a second motion for summary judgment as a motion to reconsider the earlier ruling denying summary judgment.

Conversely, the Rices assert Mr. Amick cannot raise a second motion for summary judgment or motion to reconsider and rely upon *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E. 2d 546 (1986). However, *Enoree Baptist Church* was decided under the old rules of civil procedure and does not apply given the clear authority since *Enoree Baptist Church* that allows a second motion for summary judgment or a motion to reconsider the denial of a summary judgment motion. See *Ballenger*, 313 S.C. at 477, 443 S.E.2d at 380; *Johnston*, 313 S.C. at 63, 437 S.E.2d at 47; *Orangeburg Paint*, 297 S.C. at 183, 375 S.E.2d at 334.

The Court concludes Mr. Amick properly filed a second motion for summary judgment—whether or not construed as a motion to reconsider this Court’s earlier denial of summary

judgment—even if Mr. Amick’s re-filed motion for summary judgment had not been consented to by the Rices. Accordingly, Mr. Amick’s motion is properly before this Court.

B. The Lions Club Letter Was Not an Offer Because It Was Not Capable of Acceptance and Could Not Conclude a Bargain.

Turning to the merits, this Court concludes no fact finder could reasonably consider the Lions Club Letter to be an offer and that summary judgment is appropriate on this issue as a matter of law.

“The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). For parties to form a contract, there must be “a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).

Furthermore, “[a]n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999). “An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.” *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932).

In *McLaurin*, the defendant sent a letter to his brother stating he would buy out several other investors and he thought he could obtain financing to do so. *See McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see what they would like to do” and stated “[i]f all decide to do this have each write me at once and you wire me ‘all accept’” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held this letter was not “such an offer as could, by acceptance, be changed,

converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary negotiations rather than to form a contract and upheld the trial court’s directed verdict in favor of the defendant. *See id.*

This Court concludes the Lions Club Letter was not an offer because it merely opened negotiations for the Property and did not indicate that an offer could be accepted or that assent to certain terms would conclude a deal. *See McLaurin*, 165 S.C. at 411, 164 S.E. at 5; *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926. Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter’s recipients by stating “[i]f you have an interest in the property please let us know right away.” Moreover, the Lions Club Letter did not invite acceptance but offers by stating “[f]irst consideration will be given to current members of the Newberry Lions Club.” (emphasis added). By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept.

Moreover, the Court is not persuaded that the phrases “decided to offer the property for sale” and “[t]his offer is valid until” turn the letter into an offer capable of being accepted. The *McLaurin* letter contained directions for communicating an acceptance, but the court held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term “offer.” In fact, the Rices realized as much: the Rice Response described itself as a “bid” rather than an “acceptance” and only contemplated acceptance by the Lions Club, stating, “We would need 30 days from notice that the **bid was accepted**” (emphasis added).

Likewise, this Court is not persuaded by the Rices' reliance on § 29 of the Restatement (Second) of Contracts. The examples given there are items capable of multiple acceptances—a publisher's reward for information, a bank advance if people perform certain acts, and anyone with a certain disease who uses a treatment. No reasonable person could imagine the Lions Club could sell the Property to different persons several times over based on the Lions Club Letter.

Accordingly, this Court concludes the Lions Club Letter was not an offer as a matter of law and no reasonable fact finder could find otherwise. The Lions Club Letter used the word "offer" only to communicate an offer to open negotiations and did not state an offer capable of acceptance. Therefore, partial summary judgment in favor of Mr. Amick is appropriate on this ground alone.

C. The Rice Response Was Not an Acceptance Because It Described Itself as a "Bid" Rather Than an Acceptance and Added Additional Terms.

Even if this Court concluded the Lions Club Letter were an offer, this Court concludes the Rice Response was not an acceptance as a matter of law because the Rice Response described itself as a bid and violated South Carolina's "mirror-image" rule by requiring additional terms.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." See *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). Further, "[t]he acceptance must be unequivocal and unconditional" and additional conditions operate as a rejection and counteroffer. See *Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) ("If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the

modification suggested.”); *see also Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 80, 484 S.E.2d 468, 469 (1997).

In *Sossamon*, the South Carolina Supreme Court held that a purported acceptance letter opening with “[y]our offer of sale . . . is hereby accepted” but including different terms for the time and manner of payment “imposed new or other conditions not contemplated in the offer” and that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487, 129 S.E.2d at 128. Similarly, in *Columbia Hyundai*, the court held there was no contract under the mirror image rule where the party attempting to accept added only the words “current year” between the words “saleable” and “new” in the phrase “[a]ll of Seller’s right title and interest in and to all saleable new Hyundai vehicles.” *Columbia Hyundai, Inc.*, 326 S.C. at 80, 484 S.E.2d at 469 (upholding a jury verdict finding there was no contract).

To begin with, this Court concludes the Rice Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted the Rices’ bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the Rice Response stated: (1) The Rices authorized their attorney to “make a bid of \$325,000.00”; (2) The Rices understood the “bids” would be opened at an upcoming meeting; and (3) The Rices “would need 30 days from notice that **the bid was accepted**” to close the sale. (emphasis added). The use of the term “bid” three times and their request that the Lions Club inform the Rices if the Lions Club accepted the bid is dispositive. A “bid” is “[a] buyer’s **offer** to pay a specified price for something that may or may not be for sale.” BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8th Cir. 1992) (“the words ‘bid’ and ‘bidder’ commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction.”).

Accordingly, these statements show the Rices did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

Furthermore, the Court concludes the Rice Response would not be an acceptance even if the Rice Response were titled “**WE ACCEPT**” because South Carolina law follows the mirror image rule. Specifically, the Rice Response contained three conditions not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition:** The Rices “need 30 days from notice that the bid was accepted in which to conduct the title search and close” with payment “due and payable at closing”; and
3. **A different price term:** The Lions Club asked for \$300,000.00 while the Rices offered \$325,000.00.

First, the Lions Club Letter did not explain what title the Lions Club would convey and stated that encroachments would have to be dealt with after the property was sold. While the Rice Response accepted the encroachment issue, the “good and marketable” title condition added terms not in the Lions Club Letter.

Second, the Lions Club Letter was silent as to terms of payment and delivering possession of the property. Where the contract is silent on these terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 (“when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery of the property . . . he imposed new or other conditions not contemplated in the offer.”). By requiring 30 days to search title with payment at closing, the Rices conditioned their acceptance of the alleged offer and therefore rejected it.

Third, the Rice Response stated a different price. While the Rices offered a price higher than what the Lions Club sought, the Lions Club Letter indicated the club was selling the property

for less than the appraisal and that first consideration would go to Lions Club members. Obtaining the highest price was not the Lions Club's sole or primary goal by the terms of the letter, and the Rices offered a different price term.

Additionally, the Court rejects the Rices' "auction" theory. The Rices have asserted Mr. Amick withdrew his offer, leaving the Rices' bid and one other offer as the only operative offers on June 1, 2017. Following this theory, the Rices' bid must have been accepted because it was higher than the other offer. However, there is no evidence in the record to support any such procedure by the Lions Club. Rather, the Court holds the evidence in the record is clear the "auction" theory is actually the Rices' own characterization outside of the Lions Club Letter. Indisputably, the Lions Club Letter—which stated "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public"—did not impose a hard deadline to *sell* by June 1 as part of an auction process. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (a writing must show the contract's essential terms without needing parol evidence). The "auction" theory is a red herring, and this Court concludes it does not create a genuine dispute of material fact.

Accordingly, the Court concludes the Rice Response was not an acceptance as a matter of law. Even by viewing the facts in favor of the Rices as the Court must do at this stage, it cannot be reasonably disputed that the Rices never accepted and instead made an offer expressly leaving it to the Lions Club to decide whether to accept the Rices' offer. Like *Sossamon* and *Columbia Hyundai*, the Rice Response added terms in the alleged acceptance and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina's mirror image rule.

Therefore, partial summary judgment in favor of Mr. Amick is also appropriate on this ground alone.

D. This Court did not consider Expert Affidavits.

The Rices attached to their memorandum in opposition expert affidavits from Professor Stephen A. Spitz. Mr. Amick took the position that expert testimony was not admissible, but submitted an affidavit from Professor Ben Means in case this Court thought otherwise.

First, this Court holds the expert affidavits from Professor Spitz were previously excluded to the extent they contain legal conclusions and that legal conclusions are not proper expert testimony. Mr. Amick moved to strike the affidavit attached to the Rices' memorandum in opposition and relied upon *Dawkins v. Fields*, 354 S.C. 58, 65-66, 580 S.E.2d 433, 437 (2003) (holding expert testimony on issues of law or offered to establish a conclusion of law is inadmissible, and noting expert testimony that constitutes a legal conclusion or which relates to legal issues which will determine the outcome of a case is inadmissible); *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 249 S.E.2d 734 (1978); and *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002). *Cf. Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (allowing expert testimony on standard of care for breach of fiduciary duty claim). Additionally, Mr. Amick pointed to the prior order of this Court excluding expert testimony to the extent the expert asserted legal conclusions. The Court notes the Rices have not asked this Court to reconsider the Court's earlier order excluding expert testimony on legal conclusions or otherwise contested the order's application in this case.

The Court concludes it is not proper for it to consider these expert affidavits from law professors on issues of law or offered to establish a conclusion of law. Accordingly, the Court did not consider these expert affidavits in deciding Mr. Amick's motion for summary judgment.³

V. CONCLUSION

For these reasons, the Court concludes Mr. Amick's motion for partial summary judgment is properly before this Court. Furthermore, the Court concludes the Lions Club Letter was not an offer as a matter of law, and even if it were, the Rice Response is not an acceptance as a matter of law. Finally, the Court concludes the expert affidavits should not be considered because expert testimony was previously excluded and because these affidavits set forth legal conclusions that are exclusively for this Court to make.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- A. Defendant C. Ray Amick's motion for partial summary judgment is **GRANTED**;
- B. No contract was formed between the Newberry Lions Club and Plaintiffs Lisa Summer Rice and Joseph F. Rice; and
- C. Defendant C. Ray Amick is granted summary judgment in his favor on Plaintiffs Lisa Summer Rice and Joseph F. Rice's cause of action for specific performance.

IT IS SO ORDERED.

[Judge's Signature Page to Follow]

³ The Court notes it reviewed those few portions of the affidavits cited in the Rices' brief in the course of reaching its decision. However, the few expert statements cited in the brief would not be dispositive either way even if the Court concluded the statements were admissible.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-12-09 10:43:07 page 16 of 16

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,
Plaintiffs,

v.

Newberry Lions Club, C. Ray Amick, and Cheryl
Littlejohn,
Defendants.

**ORDER GRANTING
MOTION FOR SURVEY
UNDER RULE 34 SCRPC**

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and
Melissa B. Schumpert,
Plaintiffs,

v.

C. Ray Amick, and Cheryl Littlejohn,
Defendants.

This matter came before the Court at a WebEx hearing on December 16, 2020, on Plaintiffs' motions in the above cases for survey under Rule 34 SCRPC.

This Court was presented with memoranda in support by Plaintiffs' and a memorandum in opposition by Defendant Amick, as well as documents and affidavits. The Court has considered all documents filed in regards to this motion as well as the arguments presented by counsel.

Based on the most recent Complaints in these matters, it appears to this Court that this discovery sought by these motions is relevant to the issues set out in the pleadings and will result in no prejudice to the Defendants. This Court therefore finds and concludes that such discovery is within the scope of Rule 26, SCRPC and, consequently, permissible under Rule 34, SCRPC.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Motion for Survey is granted and the surveyor designated by Plaintiffs, Tad Abraham, shall be allowed access onto the lands of the Defendants for the purpose of completing his survey and inspection.

IT IS FURTHER ORDERED that reasonable notice for the date of this survey shall be given by Plaintiffs' counsel to Defense counsel.

AND IT IS SO ORDERED.

J. Mark Hayes, II
Circuit Court Judge

_____, S.C.

_____, 2020



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-12-18 13:59:54 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,
Plaintiffs,

v.

Newberry Lions Club, C. Ray Amick, and Cheryl
Littlejohn,
Defendants.

**ORDER GRANTING
MOTION TO AMEND
COMPLAINTS**

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and
Melissa B. Schumpert,

Plaintiffs,

v.

C. Ray Amick, and Cheryl Littlejohn,
Defendants.

This matter came before the Court for a hearing on June 24, 2021, to hear arguments on Plaintiffs' Motion to Amend their Complaints in these easement cases. Present at the hearing were Thomas H. Pope III and Kyle B. Parker for Plaintiffs; Biff Sowell for Defendant Amick; and, Kathleen Muthig for Defendant Littlejohn. This Court has carefully considered the parties' filings, the record in the case, and the arguments of counsel.

The motions in these consolidated easement cases seek to amend the Complaints based on developments since these actions were commenced. The Rice action began in 2018 and the Gray case commenced in 2019. Both actions sought temporary and permanent injunctive relief for an easement via Lions Club Road to the waters of Lake Murray. These Defendants deny the Plaintiffs' allegations. Circuit Judge Donald Hocker issued his Order Granting Temporary

1 

0045

Injunction filed on August 6, 2019, which directed Amick to remove barriers in the easement area and which recognized an easement through lands then owned by Amick per his deed from the Lions Club.

After the Order Granting Temporary Injunction was filed and served on the parties, Amick purchased .6-acre of fringeland from Dominion Energy by Deed dated October 15, 2019.

Plaintiff moved for leave to perform a survey per Rule 34 SCRCP to determine the route of their asserted easement along Lions Club Road to the boat ramp. This Court granted leave for Plaintiffs to survey the route of its alleged easement to the boat ramp by Order dated December 18, 2020. On or about February 25, 2021, the survey by surveyor Tad Abraham was completed and a plat prepared.

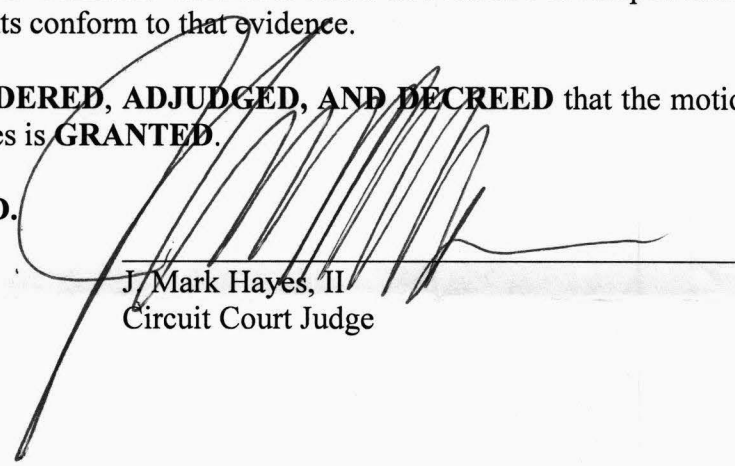
Plaintiffs moved to amend their Complaints on April 8, 2021, to include reference to the 2021 plat as showing the route of their alleged easement along Lions Club Road. Both Defendants objected to the motion. The amendment is necessary not only to incorporate the plat, but also to include the allegations that the new property of Amick is subject to the easement claimed just as the Lions Club property previously described in the pleadings.

Rule 15 SCRCP provides that amendments to pleadings are freely granted when justice so requires and does not prejudice any other party. The non-moving party has the burden of proof to show prejudice.

This Court finds and concludes that justice is served by allowing the amendment and that neither Defendant has established prejudice. All parties' positions on the merits of the case in opposition to easement are preserved. Plaintiffs' motion is based on evidence developed since the original filing, and their amendments conform to that evidence.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the motion to amend the Complaints in these cases is **GRANTED**.

AND IT IS SO ORDERED.



J. Mark Hayes, II
Circuit Court Judge

Newberry, S.C.
August 19, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

CONSENT ORDER
SUBSTITUTING PARTY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert,
and Melissa B. Schumpert,

Plaintiffs,

vs.

C. Ray Amick and Cheryl Littlejohn,

Defendants.

This matter comes before me on the parties' consent motion, pursuant to Rule 25(a), SCRPC, to substitute Defendant C. Ray Amick with Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, as a defendant in this matter.

Mr. Amick passed away on July 27, 2023, and his wife, Betty S. Amick, was appointed as the personal representative of his Estate on September 12, 2023. A copy of the Certificate of Appointment is attached as **Exhibit A**. Rule 25, SCRPC, provides "[i]f a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties."

THEREFORE, IT IS HEREBY ORDERED that the Motion is **GRANTED**, and Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, is substituted as a defendant in this action for Defendant C. Ray Amick, and

IT IS FURTHER ORDERED that the caption is here amended to reflect this change.

IT IS SO ORDERED.

J. Mark Hayes, II
Judge for Designated Complex Case

December __, 2023

_____, South Carolina

We move.

s/ Caroline D. Gimenez-Kaushik
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We consent:

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Newberry Common Pleas

Case Caption: A Murray Gray , plaintiff, et al VS C Ray Amick , defendant, et al

Case Number: 2019CP3600245

Type: Order/Substitution of Parties

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2024-01-02 12:15:19 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-36-00245

A. Murray Gray, et. al.

C. Ray Amick, et. al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See Below

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

SCRPC Form 4C (03/2013)

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Kyle B. Parker
Thomas H Pope

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mary Caskey; Dolores Gimenez - Kaushik
Jennifer Dowd Nichols; Thornwell F. Sowell III
Samuel Price

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

The above referenced matters came before the Court on Cross Motions for Summary Judgement. The subject matter of the motions concern easements claimed by the plaintiffs over lands belonging to the Defendants. After reviewing the numerous depositions, affidavits, plats, various documents, and photographs, this Court better understands the historical and, as revealed from the testimony, personal nature of dispute between the parties. The parties (all close neighbors on Lake Murray in Newberry—formerly Lexington-- County) own individual properties that were formerly part of a larger tract of land owned by the Newberry Lions Club.

After considering the extensive record and the written and oral arguments, one of the lawyers for the defendants is asked to prepare an order granting the motion for partial summary judgment on the limited basis expressed herein. The Court understands that each defendant has separate counsel. The Court will accept separate orders from the individual defendants if the defendants' attorneys believe their respective clients' interests are compromised by submitting only one proposed order.

In the proposed order include a summary of the standard review for a SCRCP Rule 56, summary judgment motion. Broadly and generally, the standard of review is correctly summarized in the memorandums offered by the parties. Please, again, make reference that these are cross motions for summary judgment. Thus, the required standard of review of viewing the facts—and the inferences from those facts-- in a light most favorable to the non-moving party, flips back and forth in favor and against each side, depending which motion is being analyzed. Notwithstanding, the proposed order will not need to address all of the reasons for denying each side's argument asking for summary judgment be granted because, as this Court understands the law, a decision denying motions for summary judgement are not required to contain findings of fact and conclusions of law. Ballenger v.

Bowen 313 S.C. 476. Please also include this Court's belief that summary judgement motions assist parties with avoiding—or mitigating-- the burdens associated with conducting trials when genuine issues of material facts can be identified and resolved with a court's assistance.

Also, note two specific points as to the standard of review. First, note that where the burden of proof for a cause of action is by clear and convincing evidence, this Court has NOT applied a different standard of review but rather the SAME standard of review applicable to causes of action where the burden of proof is by a preponderance of the evidence. If a motion for reconsideration is proper and is filed, the parties may consider offering an alternative standard than the one applied in cases where the burden of proof is by the preponderance of evidence (opposing party must only show a mere scintilla of evidence). As referenced in *Turner v. Millman*, 392 S.C. 116, in cases requiring a heightened burden of proof, the non-moving party must submit more than a scintilla of evidence to withstand a motion for summary judgment. In reviewing the arguments offered and viewing the facts in a light most favorable to the non-moving party, a difference between the two standards which was material to the decision to deny the motions could not be discerned or articulated as part of the present decision.

Second, note this Court's concern that Plaintiffs contend that Judge Hocker's ruling in granting the Preliminary Injunction is binding on this Court when considering the Defendants' present motions for Summary Judgement. In footnote 6 of Plaintiff's memorandum, the Plaintiffs state, a ruling granting the defendants' motion would be "impermissible", cites the *Enoree Baptist Church v. Fletcher* case, and summarizes its holding that "one circuit judge does not have the authority to set aside an order of another". Plaintiffs' position reads that, as a matter of law, this Court cannot make a decision that is contrary to Judge Hocker's decision. This Court is not aware of legal precedent that establishes a circuit court judge's ruling granting a preliminary injunction under Rule 65 in favor of one party prevents the adverse party from being granted a subsequent motion for summary judgment made pursuant to SCRCP Rule 56. But, Plaintiffs' argument, at first blush, is logical given the types of evidence a party allowed to offered for a summary judgment review (evidence that may not be admissible at trial) and the prohibition against weighing the evidence—a Rule 56 analysis involves merely searching for the existence of evidence. This Court notes that in the depositions of witnesses opposing the Plaintiffs, the deposed witnesses were asked to counter the assertions made in the affidavits presented to Judge Hocker. In criminal cases, this type of questioning has been explained as improperly "pitting" witnesses against another. *Burgess v. State*, 329 S.C. 88 (1998). Thus, this Court notes the analytical restriction Plaintiffs wish to place on this Court in ruling on the defendants' Rule 56 motions. Even without the analytical restrictions, this Court's desire would be to show the necessary and appropriate respect to Judge Hocker's Rule 65 decision. Again, if a Motion for Reconsideration is proper and is filed, this issue—the interplay and effect of a Rule 65 decision has on a subsequent Rule 56 motion, as applied to the facts developed through discovery-- may wished to be addressed. Without further direction or argument separating the affidavits from the subsequent discovery conducted, this Court felt constrained by Plaintiffs' argument. The flip side of the analysis, after reviewing materials, is clear that genuine disputes of material exists to deny the plaintiffs motions— Ms. Littlejohn was combative and adamant in her views.

Notwithstanding the above, a statement of uncontested facts should be given in the order. The proposed order may list certain aspects/facts of each side that are genuinely undisputed. All of the surrounding relevant lands was owned by the Lion Club (approx. 10 acres)---minus the fringe land which was owned by SCE&G. The dominant property owners (those seeking an easement) benefit from having the easement because the easement allows them access to the boat ramp area and beach area on the "point". Without the easement the dominant property is not landlocked. The property referred to as the fringe lands (aka fringeland) was never owned by the Lion Club. Additional undisputed facts may be offered in the proposed order. Note however, that the facts need to be undisputed (such as the exitance of an alternative lake access for boats).

This Court notes that after reviewing evidence associated with the present motions, when viewed in a light most favorable to the non-moving party, the material facts—and the inferences to be drawn there from-- are disputed as it relates to use of the disputed area. Even the meaning of and the area referred to as "Lion Club Road" is disputed. This basic dispute highlights the granular nature of the disputes that relate to the legal theories and facts at issue in the present case. The historical/factual significance of the gate is just example. This Court also notes its difficulty, even with the benefit of plats, in declaring with exact specificity the area of the alleged easement once off the paved road—this Court understanding is that the pave road is not an issue. Likewise, if an easement were to be declared over the Amick and Littlejohn properties, this Court would need information to define to which portions of the properties will be effected by the easement and to which owners the easement will be granted so as to help define the use of the easement (see Amick's daughter's deposition where the inference can be made that the easement was being used in a manner inconsistent with the purpose being sought by the plaintiffs).

The proposed order granting the Defendants Motions for Summary Judgement should be limited, again, to the fringe lands. Based on the arguments and information presented to this Court, the only evidence presented established that the fringe lands' prior owner, at whatever time the properties were used, granted permission to use the property. Even with an unresolved dispute of facts concerning the existence of an easement over the Amick and Littlejohn lands, the theories of easement when separately analyzed do not apply to the fringe lands. No evidence was presented that ownership of the fringe lands ever was claimed by Lion's Club (the prior owner of the 10 acres subject to the prior easement analysis). Judge Hocker's order reads consistent with this conclusion where he stated that the "fringe lands are owned by SCE&G (now Dominion)." P.2.

Please note that this Court's final ruling will be the final order that is signed and filed. The dispute has been protracted. The lawyers have presented in-depth arguments on both sides. This Court appreciates the work of the lawyers. Once the proposed order is received, it will be reviewed and edited as needed.



Newberry Common Pleas

Case Caption: A Murray Gray , plaintiff, et al VS C Ray Amick , defendant, et al

Case Number: 2019CP3600245

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2024-01-02 12:15:39 page 6 of 6

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and Betty S.
Amick, as Personal Representative of the
Estate of C. Ray Amick,

Defendants.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert,
and Melissa B. Schumpert,

Plaintiffs,

vs.

Betty S. Amick, as Personal
Representative of the Estate of C. Ray
Amick, and Cheryl Littlejohn,

Defendants.

ORDER

This matter comes before me on the parties' cross motions for summary judgment pursuant to Rule 56, SCRCP. A hearing was held in this matter on December 6, 2023. Having thoroughly and carefully considered the extensive record, as well as the written and oral arguments of counsel,

the court hereby grants in part Defendants' motions for summary judgment and denies Plaintiffs' joint motion for summary judgment for the reasons set forth herein.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder, *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003), and to assist parties in avoiding—or mitigating—the burdens associated with conducting trials when there exist no genuine issues of material fact. Summary judgment is appropriate if the pleadings and other supporting documents “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.” Rule 56(e), SCRCP. In determining whether a genuine issue of material fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). At the summary judgment stage, “the court does not weigh conflicting evidence with respect to a disputed material fact.” *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

In this case, Plaintiffs and Defendants have submitted cross motions for summary judgment. Therefore, the required standard of viewing the facts and any inferences that may arise therefrom in the light most favorable to the non-moving party flips back and forth in favor of and against each side, depending on which motion is under consideration. Nevertheless, when denying a motion or opposing motions for summary judgment, the Court is not required to make specific findings of fact or conclusions of law and, as such, need not address every reason for denying each

party's arguments in support of summary judgment. *Ballenger v. Bowen*, 313 S.C. 476, 478 n.1, 443 S.E.2d 379, 380 n.1 (1994).

Additionally, as Defendants correctly note in their motion, the burden of proof with respect to prescriptive easements is heightened and requires proof of each element by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015). Previously, “to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party [was] only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). On the other hand, “[i]n cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.” *Id.* (citing *Hancock*, 381 S.C. at 330–31, 673 S.E.2d at 803). While the South Carolina Supreme Court has overruled the “mere scintilla of evidence” standard with respect to claims to be proven by a preponderance of the evidence, *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023), the court did not address the standard for claims requiring a heightened burden of proof. Nevertheless, based on the Supreme Court’s holding in *Kitchen Planners* that “the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of [Rule 56,]” *id.* at 463, 892 S.E.2d at 301, the Court has applied the same Rule 56 standard to all claims in this case, regardless of their ultimate burden of proof.

UNDISPUTED FACTS

The undisputed facts are as follows. Plaintiffs and Defendants all own real property on a peninsula on Lake Murray referred to as “Lions Club Point.” The property at Lions Club Point is comprised of approximately ten (10) acres and was originally purchased by the Newberry Lions

Club in 1933. Lions Club Road bisects the property from east to west, beginning from State Park Road on the west boundary of the property. The adjacent fringe lands between the property and Lake Murray were, at all times prior to 2019, owned by SCE&G.

At some point after 1933, the Newberry Lions Club divided up the property and deeded out multiple lake front parcels to various Club members, including Plaintiffs' fathers. The Lions Club retained a five-acre parcel containing Lions Club Road and the surrounding wooded area, as well as a small structure closer to the point of the peninsula which was used as the Lions Club clubhouse (the "Lions Club Property" or the "Property"). Over the years, the Lions Club created a boat ramp and a beach area on the SCE&G fringe land adjoining the Lions Club Property (the "Fringe Land"), beyond the clubhouse. The parties agree that the Lions Club permitted its members, including Plaintiffs' predecessors and their families, to use Lions Club Road and traverse the Lions Club Property to access the boat ramp and beach beyond the Fringe Land.

In 2017, Defendant Cheryl A. Littlejohn ("Littlejohn") purchased the parcel next to the Lions Club Property on the southeastern side. Then, in 2018, the Lions Club sold its Property to Defendant Amick ("Amick"). The following year, Amick also purchased the Fringe Land from SCE&G's successor, Dominion. Plaintiffs subsequently initiated this action to seek an easement over Defendants' properties to use a disputed portion of Lions Club Road to access the boat ramp and beach on beyond Fringe Land.

Thereafter, Plaintiffs initiated these actions seeking, *inter alia*, (1) an order declaring Plaintiffs' right to use Lions Club Road and the Fringe Land pursuant to a prescriptive easement, an easement implied by prior use, or an easement by estoppel; (2) a permanent injunction enjoining Amick from obstructing or in any way impeding Plaintiffs' access to or use of Lions Club Road and the Fringe Land; and (3) an award of actual and punitive damages against Amick for

intentionally infringing upon Plaintiffs’ asserted right to use Lions Club Road and the Fringe Land.¹

ANALYSIS

A. Lions Club Road

As an initial matter, the Court notes its concern as to whether Judge Hocker’s August 6, 2019 ruling granting a preliminary injunction in this matter is binding on this Court’s consideration of Defendants’ present motions for summary judgment. In particular, Plaintiffs assert in their Supplemental Memorandum in Support of their Motion for Summary Judgment and in Opposition to Defendants’ Motions for Summary Judgment that a ruling granting Defendants’ motions would be “impermissible,” relying on the South Carolina Supreme Court’s holding in *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986), that “[o]ne Circuit Court Judge does not have the authority to set aside the order of another.” Plaintiffs’ position reads that, as a matter of law, this Court cannot make a decision that is contrary to Judge Hocker’s order granting a preliminary injunction. This Court is not aware of any legal precedent establishing that a circuit court judge ruling granting a preliminary injunction under Rule 65, SCRCF, in favor of one party prevents the adverse party from being granted a subsequent motion for summary judgment made pursuant to Rule 56, SCRCF. *But see Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981) (“[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.”); *S.C. Pub. Interest Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) (holding that, “despite the ‘long-standing

¹ The remaining claims not specifically set forth above—specific performance, promissory estoppel, intentional interference with contractual rights, and breach of contract accompanied by a fraudulent act—are asserted only in *Rice v. Newberry Lions Club et al.*, Newberry County Court of Common Pleas, Case No. 2018-CP-36-00089 (filed Feb. 20, 2018), and are raised in the alternative to the easement claims identified and at issue herein.

rule in this State that one judge of the same court cannot overrule another,’ interlocutory orders ‘may be reconsidered and corrected by the court before entering a final order on the merits’” (internal citations omitted)). Moreover, the Court notes that at the time Judge Hocker issued his ruling, very little, if any, discovery had been conducted by the parties; since then, the parties have engaged in extensive discovery greatly expanding the record beyond what was available to Judge Hocker.

At the hearing in this matter, Plaintiffs clarified their position to assert that Judge Hocker’s order is not binding, but merely instructive in the context of these opposing motions for summary judgment. However, Plaintiffs’ original argument is, at first blush, logical. In granting a preliminary injunction, Judge Hocker necessarily determined that Plaintiffs made a prima facie showing with respect to their claims based on the evidence in the record at that time—specifically, Plaintiffs’ affidavits. *See, e.g., Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011) (“In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief.”); *Levine v. Spartanburg Reg’l Servs. Dist., Inc.*, 367 S.C. 458, 464, 465–66, 626 S.E.2d 38, 41–42 (““Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.”” (quoting *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992))). Given the types of evidence a party may offer in support of summary judgment—particularly evidence that may not be admissible at trial—and the prohibition against weighing the evidence on a motion for summary judgment, a Rule 56 analysis essentially involves merely searching for the existence of evidence. Accordingly, because Judge Hocker’s order relies upon a finding that there does exist

some evidence to support Plaintiff's claims, any grant of summary judgment for Defendants on the claimed easement as it stood before Judge Hocker² necessarily either: (1) in effect, overrules Judge Hocker's finding in this regard or (2) requires the impermissible weighing of contradictory evidence.

Thus, although the Court is not aware of any controlling precedent prohibiting it from granting Defendants' subsequent Rule 56 motions for summary judgment following Judge Hocker's prior issuance of a preliminary injunction pursuant to Rule 65, without further direction or argument distinguishing the Plaintiffs' affidavits from the subsequent discovery conducted, this Court feels constrained by Plaintiffs' argument. Further, even without these analytical restrictions, this Court's desire would be to show the necessary and appropriate respect to Judge Hocker's decision under Rule 65. Therefore, Defendants' motions for summary judgment with respect to the existence of an easement over Lions Club Road is **DENIED**.

This conclusion inevitably leads the Court to find that, after reviewing the materials and the record, there are clearly genuine disputes of material fact—particularly as it relates to the use of the disputed area—which require that Plaintiffs' motion for summary judgment as to the Road is likewise **DENIED**.

B. Fringe Lands

Even with unresolved disputes of facts concerning the existence of an easement over Lions Club Road on Defendants' properties, however, Plaintiffs' asserted theories of easement when separately analyzed do not apply to the Fringe Lands as a matter of law. The only evidence

² The Court notes that when Judge Hocker issued his ruling granting the preliminary injunction on August 6, 2019, the Fringe Lands still belonged to SCE&G and had not yet been purchased by Mr. Amick, and Plaintiffs did not assert an easement over them. Therefore, this analysis with respect to the limiting impact of Judge Hocker's order—if any—is restricted to the issue of the existence of an easement over Lions Club Road, not the Fringe Lands.

presented establishes that the prior owner of the Fringe Lands—SCE&G—at whatever time the property was used, granted permission to use the property such that no prescriptive easement could arise thereon. See June 1, 1984 Federal Energy Regulatory Commission License; see also *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016) (noting “it ‘is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse’” (quoting *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015))).

Similarly, no evidence was presented that ownership of the Fringe Lands was ever claimed by the Newberry Lions Club nor that there was ever any unity of title between the Fringe Lands and the parties’ properties. Accordingly, no implied easement by prior use for the benefit of Plaintiffs’ properties can arise over the Fringe Lands. *Boyd v. Bellsouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

Finally, Plaintiffs have failed to allege or present any evidence that SCE&G, its successor, Dominion, or Defendants engaged in any “conduct which amounts to a false representation or concealment of material facts . . . which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which [Defendants now] attempt[] to assert[,]” as required for establishment of an easement by estoppel. *Id.* at 422, 633 S.E.2d at 142 (citing *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993)). Furthermore, “[a] properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it.” *Id.* at 423, 633 S.E.2d at 142 (quoting *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). According to the record before the Court, the properly recorded

title to the Fringe Lands clearly establishes that no easement has ever existed or been granted over that land. Thus, Plaintiffs cannot establish an easement by estoppel as a matter of law. Therefore, Plaintiffs' motion for summary judgment is **DENIED** and Defendants' motions for summary judgment are **GRANTED** as to the Fringe Lands.

CONCLUSION

For the reasons set forth herein, Plaintiffs' motion for summary judgment is **DENIED** and Defendants' motions for summary judgment are **GRANTED in part** and **DENIED in part**. Accordingly, Plaintiffs' claims (1) for an order declaring the existence of an easement over Defendants' properties; (2) for a permanent injunction enjoining Defendants from erecting or placing any obstructions to interfere with or impede Plaintiffs' access to Defendants' properties; and (3) for trespass and nuisance are **DISMISSED** with respect to the Fringe Lands.

IT IS SO ORDERED.

J. Mark Hayes, II
Judge for Designated Complex Case

January __, 2024

_____, South Carolina



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See additional information.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/16/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Thank you all for your briefings and arguments in regards to the Motions for Reconsiderations. Your arguments, the briefing and the record is extensive.

The presentations have served to further clarify the positions of the parties. Included in the clarification provided by the additional arguments is the use of the terms fringe lands (aka fringelands) and the term 360. Further clarification was presented as to the history of the development/ownership of Lake Murray and the permitted use.

The Court also had the opportunity to revisit the recent articulation/clarification of the summary judgment standard of review after the Kitchens Planters case wherein the Supreme Court clarified the scintilla of evidence standard as it relates the a summary judgment review.

My decision is to not grant the Plaintiffs' motion for reconsideration.

The fringe lands in question were owned by SCE&G/Dominion or other electrical power companies until 2019 when the fringe lands were sold to Mr. Amick. Until 2019, access over the fringe lands was with permission from the power company owner. This permission was given to access to the 360 lands—at all times relevant---also was owned by the electrical power company. Use of the 360 lands allowed use of Lake Murray—also owned by the power company. Use of the 360 lands or the immediate coast of Lake Murry was—and is-- with permission by the power company.

The factual assertion that the installation of the boat ramp in this case is not with permission, but rather “adverse” to the electrical power company’s ownership rights so that the power company rights are diminished, clearly requires the addition of the electrical power company as a party---even if such a position were accepted as supported by more than a scintilla of evidence. The boat ramp is noted because plaintiff’s argument was that the electrical power company is not needed as a party because they have no interest adverse to the electrical power company while also arguing the maintaining of the boat ramp is adverse to the electrical power company’s interest for purposes of diluting the electrical power company’s real property interest.

In making this ruling, this Court has attempted to keep within the long standing rules that new issues may not be raised for the first time in a motion for reconsideration.

One of the attorneys is asked to prepare a formal order consistent with this email for consideration. Counsel has the discretion to prepare the order in a manner that sets forth statements of facts and conclusion of law as he/she deems appropriate. The formal order will not become final until it has been reviewed, edited as needed, and filed.

Again, thank you all for the extensive arguments and briefings.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al
Case Number: 2018CP3600089
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and Betty S.
Amick, as Personal Representative of the
Estate of C. Ray Amick,

Defendants.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert,
and Melissa B. Schumpert,

Plaintiffs,

vs.

Betty S. Amick, as Personal
Representative of the Estate of C. Ray
Amick, and Cheryl Littlejohn,

Defendants.

ORDER ON CROSS-MOTIONS TO ALTER OR AMEND

This matter comes before me on both parties' cross motions for the Court to alter or amend its Order dated February 9, 2024 (the "Order"), pursuant to which the Court granted in part and denied in part Defendants' Motion for Summary Judgment and denied Plaintiffs' Motion for Summary Judgment. A hearing was held in this matter on September 12, 2024. Having thoroughly

and carefully considered the extensive record, as well as the written and oral arguments of counsel, the Court hereby grants Defendants' Motion to Alter or Amend the Order, denies Plaintiffs' Motion to Alter or Amend the Order, and grants summary judgment in full in favor of Defendants.

In the prior Order, the Court granted Defendants' summary judgment motion as to the Fringe Land¹, finding that Plaintiffs had failed to prove any theory that would support finding an easement over the Fringe Land as a matter of law. The Court denied the Parties' cross summary judgment motions as to Plaintiffs' claims that an easement exists over Lions Club Road, finding that there were genuine disputes of material fact, particularly with respect to the use of the disputed area.

At the hearing on the Motions to Alter or Amend, counsel for both Parties presented argument and demonstratives to further clarify the Parties' positions. These presentations included clarification on the nature of the Fringe Lands and the term "360," which refers to the boundary line between property owned by public utilities and the upland property owners along the shoreline of Lake Murray. Counsel for the Parties also offered information as to the history of the development/ownership of Lake Murray and the permitted use of the Fringe Lands.

First, the Court declines to reconsider the Order as it relates to Plaintiffs' claims that an easement exists over the Fringe Lands. As set forth in the Order, the Fringe Lands were owned by SCE&G/Dominion or other electrical power companies (collectively the "Utility") until 2019 when the fringe lands were sold to C. Ray Amick. Until 2019, access over the Fringe Lands was with permission from the Utility. The purpose of this permission was to access the "360" lands and Lake Murray, which at all relevant times, were also owned by the Utility. The use of the 360 lands or the immediate coast of Lake Murray was, (and still is), with permission by the Utility.

¹ All capitalized terms used herein that are not otherwise defined shall have the meaning set forth in the February 9, 2024 Order.

In support of their Motion to Alter or Amend the Order, Plaintiffs argued that the boat ramp that exists on the Fringe Land was installed without permission, and therefore was “adverse” to the Utility’s ownership rights over the Fringe Lands. This allegation was not supported by any evidence, and therefore is insufficient to defeat Defendants’ arguments that the use of the Fringe Lands was permissive. Even if there was any evidence to support the boat ramp allegations, such factual allegations would require the Utility be added as a party to these lawsuits, despite Plaintiffs’ position to the contrary. Plaintiffs cannot utilize the alleged adverse installation of the boat ramp to support their claim for an easement while simultaneously taking the position they were not adverse to the owner of the property upon which the boat ramp was built.

In considering the parties’ Motions to Amend the Order, and in particular the impact of granting summary judgment as to the Fringe Lands, the Court is compelled to revisit whether or not there are genuine issues of material fact as to Plaintiffs’ claim of an easement over Lions Club Road. The Court finds there are no genuine issues of material fact that the sole purpose of the easement over Lions Club Road is to access the Fringe Land.

Use of the Fringe Lands is cited as the exclusive purpose of the easement in Plaintiffs’ cause of action for an easement, and no other purpose for the use of Lions Club Road has ever been alleged. All of the evidence submitted by the Plaintiffs concerns the historical use of Lions Club Road to use the beach and boat ramp located beyond the Fringe Land, and the purported need of the Plaintiffs to use the boat ramp. Further, the easement sought by Plaintiffs is an ingress/egress easement, and serves no purpose without an exit point at the end of the gravel path off Lions Club Road. As a result, Plaintiffs’ remaining claims seek a “road to nowhere,” which cannot be the basis for an easement. *See Jimmie Luecke Children P’Ship, Ltd. V. Pruncutz*, No. 03-10-00840-CV, 2013 WL 4487541, at *5 (Tex. Ct. App. Aug. 16, 2013) (nothing that “[a]n implied easement

cannot arise across lands owned by third parties that were never owned in conjunction with the partitioned tract” such that, without access to a third parties’ property, “the easement the [plaintiff] seeks to imply would be a road to nowhere”).

An easement must have a particular purpose. “An easement is the right of one person to use the land of another for a specific purpose.” *Snow v. Smith*, 416 S.C. 72, 84, 784 S.E.2d 242, 248 (Ct. App. 2016) (citing *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009)). When the purpose for an easement ends, so does the easement. *See Francis L. Austin Family Limited Partnership v. City of Highpoint*, 630 SE2d 37, 40 (N.C. App. 2006). In *Francis L. Austin Family Limited Partnership v. City of Highpoint*, the Plaintiff’s predecessor-in-interest granted an express sewer easement to the City of Highpoint “forever.” However, the City abandoned the sewer lines, removing the need for the easement. In holding that the easement was extinguished, the Court relied on reasoning from the Supreme Court of North Carolina in the case of *Atlantic and NCRR v. Way*, 172 NC 774, 778, 90 S.E. 937, 939 (1916):

When the purpose, reason, and necessity, for an easement cease, within the intent for which it was granted, the easement is extinguished. Hence, if an easement is not granted for all purposes, but for a particular purpose only, the right continues while the dominant tenement is used for that purpose, and ceases when the specified use ceases.

See also Shaw v. Williams, 332 S.W.2d 797, 800 (Tex. Civ. App. 1960), *writ refused NRE* (May 25, 1960) (“An easement granted for a particular purpose terminates as soon as such purpose... is rendered impossible of accomplishment.”); *Shaw v. Pyramid Development, LLC v D&J Assocs.*, 262 V.A. 750, 553 S.E. 2d 725, 728 (Va. 1958) (“If the particular purpose for which [an] easement is granted is fulfilled or otherwise ceases to exist . . . the easement falls to the ground.”) (citation omitted).

Ultimately, the Court’s determination that Plaintiffs have no right to access the Fringe Land eliminated the stated purpose for the easement over Lions Clubs Road. Therefore, the Court’s

finding that summary judgment is not proper as to the Lions Clubs Road is not compatible with the Court's correct finding that the Plaintiffs have no right over the Fringe Lands. No implied easement for the benefit of Plaintiffs' properties arises, either by necessity or by prior use, over Lions Club Road.

CONCLUSION

For the reasons set forth herein, Plaintiffs' Motion to Alter or Amend is DENIED, and Defendants' Motion to Alter or Amend is GRANTED, and Defendants' motions for summary judgment is hereby GRANTED.

IT IS SO ORDERED.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al

Case Number: 2018CP3600089

Type: Order/Amend

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2025-02-19 10:40:02 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2018-CP-3600089

LISA SUMMER RICE AND JOSEPH F. RICE,

Plaintiffs,

V.

NEWBERRY LIONS CLUB,

Defendant.

AMENDED COMPLAINT

The Plaintiffs complaining of the Defendant and pursuant to Rule 15(a), SCRPC, in that the Summons and Complaint having been served on the agent for service on February 22, 2018, but no responsive pleading has been submitted, hereby amends the Complaint as a matter of right and alleges:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice (“Rices”) are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

4. The Newberry Lions Club published and offered to sell the 5.5 acres tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

5. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1.

6. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other property owners who were adjoining landowners to this property.

7. The offer stated in part, "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

8. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property please let us now right away . . ." Exhibit 1 attached hereto.

9. The offer further stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." Exhibit 1.

10. The above-referenced offer was sent to the Rices and upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

11. As a result of the offer, the Rices through their attorney sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

12. Upon information and belief, the Rices' bid was the highest received and therefore, was the offer which was accepted by the Rices and the Newberry Lions Club.

13. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of the Defendant's offer.

14. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

15. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club, which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

16. As a result of the May 15, 2017 letter attached hereto as Exhibit 3, an attorney for the Newberry Lions Club sent a letter dated June 5, 2017, indicating that the Newberry Lions Club Board of Directors met on May 23, 2017 and voted not to sell the property located at Lake Murray at this time because they were not able to convey a good fee simple marketable title hereto because of encroachments. All is set forth in the letter attached hereto and made part hereof as Exhibit 4.

17. The Rices had already complied with the Defendant's offer and the Defendant was attempting to avoid selling the property at the agreed upon price.

18. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold for the offer of \$325,000.00 which complied with the terms of the original offer letter attached hereto as Exhibit 1. The letter dated November 21, 2017 is attached hereto and made part hereof as Exhibit 5.

19. Upon information and belief, the Defendant Newberry Lions Club is considering to convey this property to others in breach of the accepted offer that was made by the Rices.

20. Upon information and belief, the Defendant Newberry Lions Club has conveyed certain property to an adjoining landowner which resolved an encroachment issue with the owner of this property to Joseph T. McCrackin, III and Gena B. McCrackin in Deed Book 2017 page 110, and this has resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified by TMS 652-3-22.

21. The Plaintiffs are ready, willing and able to close and provide the consideration for the purchase of the property as it is now configured after the settlement of the encroachment issue.

22. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

23. The Rices are again reiterating their agreement to purchase the property for \$325,000.00 as set forth in the original letter accepting the terms of the offer outlined in Exhibit 1.

24. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are again ready, willing and able to pay the agreed upon price of \$325,000.00 for the property in question as presently configured.

25. As a result of the failure of the Defendant to follow through with the offer and convey the property, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance due to the failure to close on this agreement, together with prejudgment interest.

26. The Defendant should be required to specifically perform the agreement which was outlined to the Plaintiffs in which the Plaintiffs were the successfully bidder and further pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A FIRST CAUSE OF ACTION
(Specific Performances)

27. Plaintiffs reiterate and reallege the above 1-26 and said are hereby incorporated by reference.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment/Injunction)

28. Plaintiffs reiterate and reallege the above 1-23 and said are hereby incorporated by reference.

29. The Plaintiffs were the successful bidder and accepted the offer to purchase the property from the Defendant. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and their acceptance of the terms and requested that the property be made to them for the \$325,000.00 consideration.

30. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

31. The actions by Defendant Newberry Lions Club in failing to perform, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreements and/or the presentations as set forth in the communications from the Newberry Lions Club and/or its representatives.

32. In the meantime, the Plaintiffs request that the Defendant be enjoined and restrained from conveying the property to any other person or entity and that the Rices be given the right to

participate in any further offers of sale for this property or any portion thereof as may be offered by the Defendant.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

33. Plaintiffs reiterate and reallege the above 1-23 and said are hereby incorporated by reference as if repeated verbatim herein.

34. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

35. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant.

36. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by the Defendant.

37. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their ready, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to the Defendant several times.

38. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, another individual who had not made a successful bid is being considered as the one to receive the property in spite of the Rices successful bid.

39. Although the Rices had performed and complied with the offer in Exhibit 1, the Defendant claimed that it would not sale the property at this particular time and contradicted the terms of its offer outlined in Exhibit 1.

40. As a result of the Defendant's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, the Defendant is contemplating a transfer to another party that did not comply with the original bid requirements as set forth in Exhibit 1 and/or had undisclosed and/or attempted to repudiate the offer outlined in the letter attached hereto as Exhibit 1.

41. The Plaintiffs suffered damages as a result of the promises made and not kept.

42. In the alternative, if the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to those who were relying on the original bid procedures, then the Defendant should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property with as it may have done to any other individual who is attempting to purchase the property now.

43. The Plaintiffs are entitled to actual damages resulting from the promissory estoppel and/or are entitled to obtain the property under specific performance.

44. Pursuant to Rule 38 SCRCP, Plaintiffs request trial by jury as to the claims and/or facts that may be so determined by a jury.

WHEREFORE, Plaintiffs pray as follows:

1. An order requiring Defendant to specifically perform under the terms of the agreement.
2. Award Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
3. Enjoin the Defendant from transferring the property to any other person or entity.
4. In the alternative, award such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by the Defendant and thereafter breached, as well as the damages flowing therefrom.

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

Dated: March 8, 2018

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III
Thomas H. Pope, III (SC004508)
E-mail: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
E-mail: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276-8684

MCNAIR LAW FIRM, P.A.

By: s/Michael A. Scardato
Michael A. Scardato (SC004962)
E-mail: mcardato@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227

Attorneys for Plaintiffs

EXHIBIT 1



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete
Pete Simpson,
Secretary, Newberry Lions Club

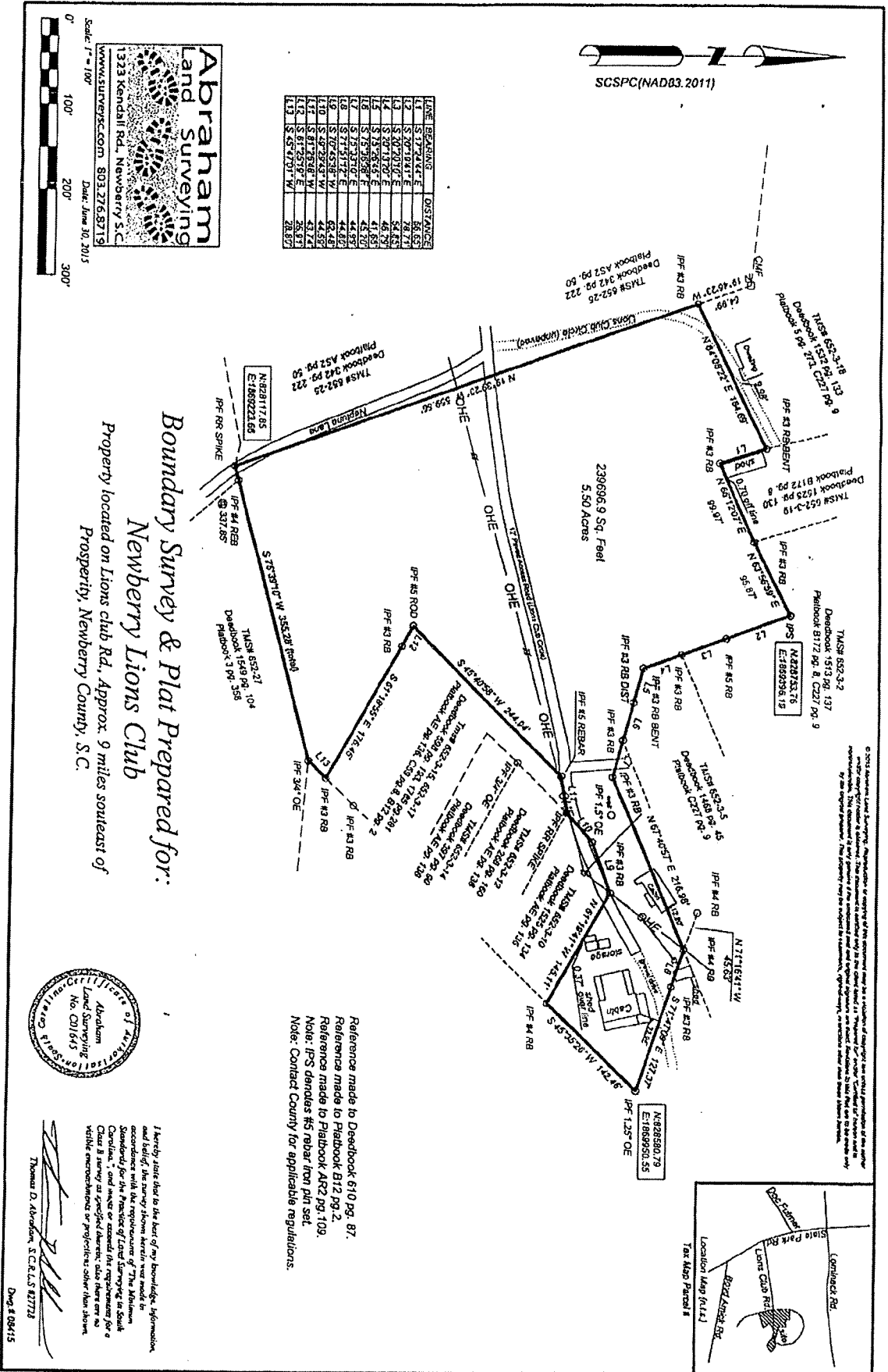


EXHIBIT 2

February 14, 2017

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

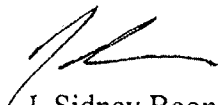
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT 3

MCNAIR

ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

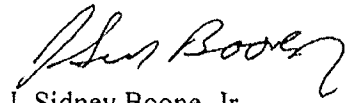
mcnair.net

Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

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EXHIBIT 4

Rcvd 6/8/17

HARLEY & VERNER LLP

ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER

CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

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EXHIBIT 5

COPY

MCNAIR
ATTORNEYS

November 21, 2017

Michael A. Scardato

mcardato@mcnair.net

T 843.723.7831

F 843.722.3227

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

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Eugene Crocker, President
James S. Verner, Esq.
November 21, 2017
Page 2

MCNAIR
ATTORNEYS

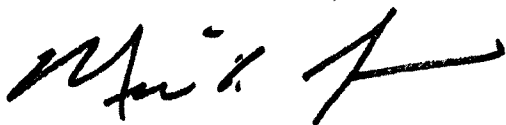
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Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	2018-CP-36-00089
Lisa Summer Rice and Joseph F. Rice,	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	
Newberry Lions Club,	)	
Defendant.	)	

Defendant Newberry Lions Club would respectfully answer the Amended Complaint of plaintiffs as follows:

IN RESPONSE TO ALLEGED BACKGROUND

1. That defendant would deny each and every allegation of the Amended Complaint unless expressly admitted herein.
2. That as to paragraph one (1), defendant can neither affirm nor deny the allegations therein.
3. That as to paragraph two (2), defendant would admit the allegations contained therein.
4. That as to paragraph three (3), defendant would admit that it owned 5.50 acres according to a plat prepared by Thomas D. Abraham on June 30, 2015.
5. That in response to paragraphs four (4), five (5), six (6), seven (7), eight (8), and nine (9), the letter from the Newberry Lions Club referred to in plaintiff's Amended Complaint as Exhibit 1 was not an offer of sale; it was a notice of intention to sell.
6. That in response to paragraphs ten (10), eleven (11), twelve (12) and thirteen (13), the letter dated February 14, 2017, from J. Sidney Boone, Jr. to the Newberry Lions Club (referred to as Exhibit 2 in the Amended Complaint) was an offer to purchase subject to "the property having

good and marketable title". Defendant never accepted the offer.

7. That in response to paragraph thirteen (13), there was never a bid process nor bid requirements.

8. That defendant would admit the allegations contained in paragraph fourteen (14) of the Amended Complaint.

9. That in response to paragraph fifteen (15), defendant would admit that the letter dated May 15, 2017, (Exhibit 3) was in fact sent by J. Sidney Boone, Jr. but it was an offer to purchase with conditions, not an acceptance of the defendant's unconditional offer to sell. Defendant never made an unconditional offer to sell. Defendant simply gave a notice of intention to sell.

10. That defendant would admit the allegations contained in paragraph sixteen (16) of the Amended Complaint.

11. That as to paragraph seventeen (17), defendant would deny that "Defendant was attempting to avoid selling the property at the agreed upon price." There was never an agreed upon price between plaintiffs and defendant.

12. That as to paragraph eighteen (18), defendant would agree that the letter dated November 21, 2017, was in fact sent by Michel A. Scardato. Defendant would deny that the initial letter sent (Exhibit 1) was an offer of sale. On the contrary, it was notice to a limited class that the defendant intended to sell the property. It was not an offer to sell.

13. That in response to paragraph nineteen (19), the defendant has in fact conveyed subject property to C. Ray Amick by deed dated February 21, 2018. Subject deed was recorded in the office of the Clerk of Court for Newberry in Record Book 2028 at page 194.

14. That as to paragraph twenty (20), defendant did in fact convey to Joseph T. McCracken, III and Gena B. McCracken 0.15 acre, more or less, by deed dated December 14,

2017, and recorded in the office of the Clerk of Court for Newberry County in Record Book 2017 at page 110 on December 20, 2017. Reference is made to plat prepared by Thomas D. Abraham dated November 9, 2017, and recorded in the office of the Clerk of Court for Newberry County in Slide D 99-6.

15. That in response to the allegations of paragraphs twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26), defendant would deny each allegation and demand strict proof thereof.

16. That in paragraph twenty-three (23), plaintiffs alleged their offer to pay \$325,000.00 as set forth in the letter dated February 14, 2017 (Exhibit 2) was an acceptance of the so-called "offer" outlined in Exhibit 1. Exhibit 1 was notice of intent to sale. It was not an offer to sale.

17. That as to paragraph twenty-four (24), the plaintiffs and defendant never agreed upon a price of \$325,000.00.

IN DEFENSE OF THE FIRST CAUSE OF ACTION
(Specific Performance)

18. That defendant would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

19. That subject property has been sold to C. Ray Amick, bona fide good faith purchaser on February 21, 2018, by deed recorded in Record Book 2028 at page 194. C. Ray Amick has not been made a party to this action.

IN DEFENSE OF THE SECOND CAUSE OF ACTION
(Declaratory Judgment/Injunction)

20. That defendant would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

21. That in response to paragraph twenty-nine (29) plaintiffs were never the successful

bidder on the aforementioned real estate transactions. The plaintiffs made an offer of purchase to defendant which was never accepted by the defendant. The letter referred to as Exhibit 1 plainly indicated "first consideration will be given to current members of the Newberry Lions Club." Grantee C. Ray Amick was and is a current member of the Newberry Lions Club. Defendant acknowledges that the law in South Carolina is that contracts have an implied covenant of good faith and fair dealings. However, in this case, there was never a contract nor was there ever an agreement.

22. That as to paragraphs thirty (30), thirty-one (31) and thirty-two (32), defendant would expressly deny the allegations contained therein. As to defendant being enjoined or restrained from conveying the property, this action was filed on February 20, 2018. Defendant did not know that this action was filed on that date. The deed conveying subject property to C. Ray Amick was recorded on February 21, 2018. Defendant was served in this action on February 22, 2018.

IN DEFENSE OF THE THIRD CAUSE OF ACTION
(Promissory Estoppel)

23. That defendant would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

24. That in response to the allegations of paragraphs thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43) and forty-four (44), the letter now known as Exhibit 1 was not an offer of sale or promise to sale. Exhibit 1 was a notice of intent to sale. The notice clearly indicated a current member of the Newberry Lions Club will be given first consideration. No promises were made by defendant's letter known as Exhibit 1.

COUNTERCLAIM

25. That defendant would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

26. That defendant did in fact send a letter to adjoining property owners shown as Exhibit 1 in plaintiff's Amended Complaint. This was not an offer to sell. This was a letter to determine what adjoining property owners might be interested in subject property. The letter was simply a statement of defendant's intent to sell.

27. That plaintiffs' so-called "acceptance" was simply an offer to purchase because the defendant did not make an offer to sell; it simply gave notice of intent to sell.

28. That plaintiffs knew and understood that plaintiffs' offer to purchase subject property for \$325,000.00 was in fact an offer to purchase.

29. That defendant made it clear in the letter described as Exhibit 1 of plaintiff's Amended Complaint "First consideration will be given to current members of the Newberry Lions Club."

30. That C. Ray Amick, the purchaser and grantee of subject property, was and is a current member of the Newberry Lions Club.

31. That there was never a formal bidding process. Defendant had the right to sell subject property to whomever defendant chose.

32. That defendant had no legal requirement to sell subject property to the person who made the highest offer.

33. That plaintiff Joseph F. Rice is in fact an attorney at law and is governed by §15-36-10, *et seq.*, the South Carolina Frivolous Civil Proceedings Sanctions Act.

34. That this case is a frivolous civil action. Defendant would seek sanctions as set forth

in §15-36-10(G).

WHEREFORE, having set forth its Answer and Counterclaim in full, defendant would respectfully request of this Honorable Court:

- (a) For an Order of this Court dismissing plaintiffs' action.
- (b) For an Order of this Court for defendant's legal costs, attorney's fees and the like.
- (c) For such other and further relief as the Court deems necessary and proper.

/s/ Samuel M. Price, Jr.
SAMUEL M. PRICE, JR.
SC Bar No. 04566
Attorney for Defendant
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC
April 11, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2008 CP 36-00089
COUNTY OF NEWBERRY	)	

Lisa Summer Rice and Joseph F. Rice,)

Plaintiffs,

v.

Newberry Lions Club,

Defendant.

REPLY TO COUNTERCLAIM

The plaintiffs, reserving their rights under their motion to dismiss and their right to move to amend the Complaint, reply to the Counterclaim as follows:

1. Each and every allegation in the Counterclaim which is not specifically herein is denied.
2. Plaintiffs deny the allegations of Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Counterclaim, and assert that rather than being frivolous, the allegations of the amended complaint are well founded law and fact.
3. Further responding to the allegations in said Counterclaim, the plaintiffs assert that the Counterclaim fails to state a cause of action brought under §15-36-10, et seq. because that statute requires a motion to be made at the conclusion of the trial of the matter only if an order or dismissal in favor of the moving party before the Frivolous Civil Proceedings Act can be raised.
4. Having answered the allegations in the counterclaim, the plaintiffs pray that same be dismissed, with costs.

WHEREFORE, having responded to the allegations of the Counterclaim, plaintiffs request that this Court issue its Order

(a) dismissing the Counterclaim with prejudice;

- (b) granting plaintiffs the relief sought in the Complaint; and
- (c) such other and further relief as the Court deems appropriate.

Dated: April 30, 2018

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope III
Thomas H. Pope III (SC004508)
Email: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
Email: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276.8684

MCNAIR LAW FIRM, P.A.

s/Michael A. Scardato
Michael A. Scardato (SC004962)
Email: mscardato@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2018-CP-3600089
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	
Plaintiffs,	)	SECOND
	)	AMENDED SUMMONS
v.	)	
	)	
NEWBERRY LIONS CLUB and C. RAY AMICK,	)	(Jury Trial Demanded)
	)	
Defendants.	)	
	)	

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer or a motion under Rule 12 of the South Carolina Rules of Civil Procedure in response to said Second Amended Complaint on Plaintiffs' attorneys, Pope Parker Jenkins, P.A., at their office located at 1508 College Street, P.O. Box 190, Newberry, South Carolina 29108, within thirty (30) days after service thereof, exclusive of the date of such service. If you fail to answer or move in response to the Second Amended Complaint within the time period above stated, the Plaintiffs in this action will apply for a default judgment and the relief demanded in the Second Amended Complaint and a judgment by default will be rendered against you. You also must file your answer or motion with the Court.

(Signatures of Counsel Appear on Following Page)

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

Thomas H. Pope, III (SC004508)

E-mail: tom@ppjlaw.com

s/Kyle B. Parker

Kyle B. Parker (SC071764)

E-mail: kyle@ppjlaw.com

Post Office Box 190

1508 College Street

Newberry, SC 29108

Telephone: 803.276.2532

Fax: 803.276-8684

MCNAIR LAW FIRM, P.A.

s/Michael A. Scardato

Michael A. Scardato (SC004962)

E-mail: mcardato@mcnair.net

Post Office Box 1431

Charleston, SC 29402

Telephone: 843.723.7831

Fax: 843.722.3227

Attorneys for Plaintiffs

May 11, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2018-CP-3600089
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	
Plaintiffs,	)	SECOND
	)	AMENDED COMPLAINT
v.	)	
	)	
NEWBERRY LIONS CLUB and C. RAY AMICK,	)	
	)	
Defendants.	)	
	)	

The Plaintiffs complaining of the Defendants would show and allege as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice ("Rices") are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.
2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.
3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and was, upon information and belief, a member of Defendant Newberry Lions Club at all times relevant to this proceeding.
4. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

5. The Newberry Lions Club published and offered to sell the 5.5 acres tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

6. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1.

7. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other property owners who were adjoining landowners to this property.

8. The offer stated in part, "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

9. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property please let us now right away . . ." Exhibit 1 attached hereto.

10. The offer further stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." Exhibit 1.

11. The above-referenced offer was sent to the Rices and upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

12. As a result of the offer, the Rices through their attorney sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

13. Upon information and belief, the Rices' bid was the highest received and therefore, was the offer which was accepted by the Rices and the Newberry Lions Club.

14. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club's offer.

15. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

16. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club, which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

17. As a result of the May 15, 2017 letter attached hereto as Exhibit 3, an attorney for the Newberry Lions Club sent a letter dated June 5, 2017, indicating that the Newberry Lions Club Board of Directors met on May 23, 2017 and voted not to sell the property located at Lake Murray at this time because they were not able to convey a good fee simple marketable title hereto because of encroachments. All is set forth in the letter attached hereto and made part hereof as Exhibit 4.

18. The Rices had already complied with Defendant Newberry Lions Club's offer and it was attempting to avoid selling the property at the agreed upon price.

19. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold for the offer of \$325,000.00 which complied with the terms of the original offer letter attached hereto as Exhibit 1. The letter dated November 21, 2017 is attached hereto and made part hereof as Exhibit 5.

20. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32pm. A lis pendens properly describing the property which is the subject of this action was filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

21. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property to an adjoining landowner which resolved an encroachment issue with the owner of this property to Joseph T. McCrackin, III and Gena B. McCrackin in Deed Book 2017 page 110, and this has resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified by TMS 652-3-22.

22. The Plaintiffs are ready, willing and able to close and provide the consideration for the purchase of the property as it is now configured after the settlement of the encroachment issue.

23. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

24. The Rices are again reiterating their agreement to purchase the property for \$325,000.00 as set forth in the original letter accepting the terms of the offer outlined in Exhibit 1.

25. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are again ready, willing and able to pay the agreed upon price of \$325,000.00 for the property in question as presently configured.

26. As a result of the failure of Defendant Newberry Lions Club to follow through with the offer and convey the property, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance due to the failure to close on this agreement, together with prejudgment interest.

27. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs claims to the property in favor of one of their own members conveying the property at a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was \$300,000 and “other consideration”. The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee’s fiduciary duties.

28. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney’s fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

29. Plaintiffs reiterate and reallege the above 1-28 and said are hereby incorporated by reference.

30. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

31. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from “day and hour” when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

32. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

33. Because the said deed was recorded more than twenty-eight hours after Plaintiffs' lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

34. Instead, the Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be made to them for the \$325,000.00 consideration.

35. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

36. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

37. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and that the Rices be given the right to participate in any further offers of sale for this property or any portion thereof as may be offered by Defendant Newberry Lions Club.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

38. Plaintiffs reiterate and reallege the above 1-37 and said are hereby incorporated by reference.

39. For the reasons set forth above, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

40. Plaintiffs reiterate and reallege the above 1-39 and said are hereby incorporated by reference as if repeated verbatim herein.

41. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

42. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

43. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

44. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

45. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices successful bid.

46. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

47. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or had undisclosed and/or attempted to repudiate the offer outlined in the letter attached hereto as Exhibit 1.

48. The Plaintiffs suffered damages as a result of the promises made and not kept.

49. In the alternative, if the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property as it has done with Defendant C. Ray Amick.

50. The Plaintiffs are entitled to actual damages resulting from the promissory estoppel and/or are entitled to obtain the property under specific performance.

51. Pursuant to Rule 38 SCRCP, Plaintiffs request trial by jury as to the claims and/or facts that may be so determined by a jury.

WHEREFORE, Plaintiffs pray for the issuance of an order as follows:

- a. Setting the aforesaid conveyance to Defendant C. Ray Amick aside;

- b. Requiring Defendant to specifically perform under the terms of the agreement;
- c. Awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
- d. Enjoining the Defendants from transferring the property to any other person or entity;
- e. In the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;
- f. Awarding such other and further relief as this Court may deem just and proper.

Dated: April 27, 2018

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III
 Thomas H. Pope, III (SC004508)
 E-mail: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
 E-mail: kyle@ppjlaw.com
 Post Office Box 190
 1508 College Street
 Newberry, SC 29108
 Telephone: 803.276.2532
 Fax: 803.276-8684

MCNAIR LAW FIRM, P.A.

By: s/Michael A. Scardato
 Michael A. Scardato (SC004962)
 E-mail: mscardato@mcnair.net
 Post Office Box 1431
 Charleston, SC 29402
 Telephone: 843.723.7831
 Fax: 843.722.3227

Attorneys for Plaintiffs

EXHIBIT 1



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

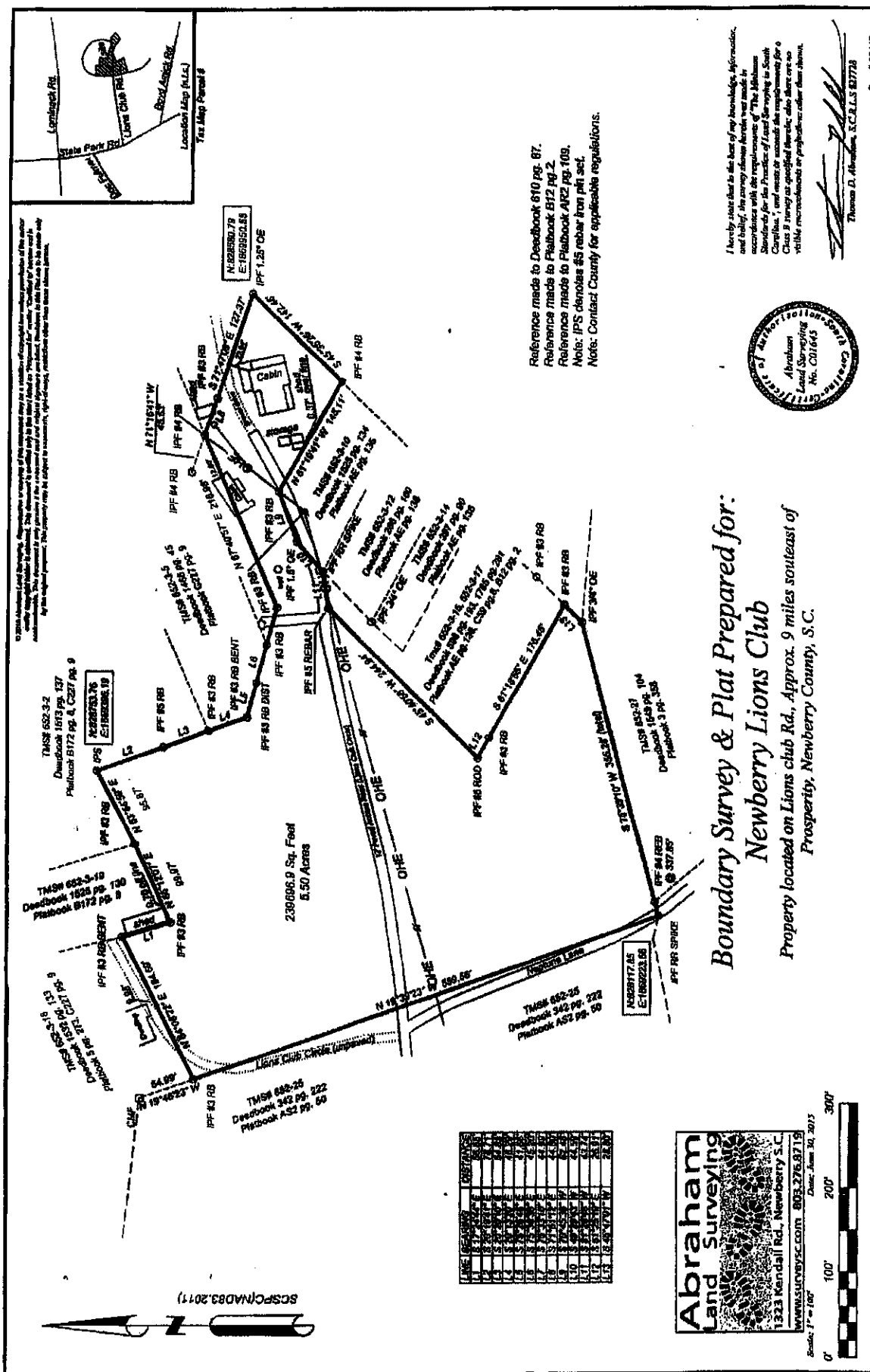


EXHIBIT 2

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



EXHIBIT 3

MCNAIR
ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



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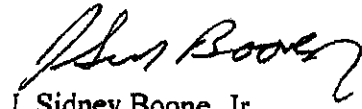
BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH | PAWLEY'S ISLAND

Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT 4

HARLEY & VERNER LLP

ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER

CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

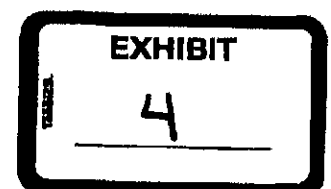
With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



0126

EXHIBIT 5

COPY

MCNAIR
ATTORNEYS

November 21, 2017

Michael A. Scardato

mcardato@mcnair.net
T 843.723.7831
F 843.722.3227

ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 40
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



1698325v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

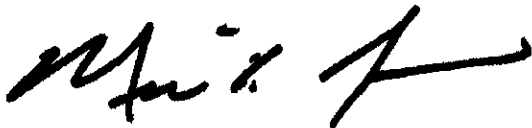
0128

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Lisa Summer Rice and	)	Civil Action No.: 2018-CP-36-00089
Joseph F. Rice,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	ANSWER OF C. RAY AMICK
	)	
Newberry Lions Club and C. Ray Amick,	)	
	)	
Defendants.	)	
_____	)	

C. Ray Amick (“Amick” or “Defendant”) hereby answers the Second Amended Complaint in this action and denies each and every allegation thereof not hereinafter specifically admitted, qualified, or explained, and further alleges as follows:

FOR A FIRST DEFENSE

1. Amick admits the allegations of paragraph 1 of the Second Amended Complaint, upon information and belief.
2. Amick admits the allegations of paragraph 2 of the Second Amended Complaint, upon information and belief.
3. Amick admits the allegations of paragraph 3 of the Second Amended Complaint.
4. Amick admits the allegations of paragraph 4 of the Second Amended Complaint, upon information and belief.
5. Responding to the allegations of paragraph 5 of the Second Amended Complaint, Amick craves reference to the document attached to the Second Amended Complaint as Exhibit 1, and to the extent the allegations of paragraph 5 are inconsistent with said document, Amick denies the same and demands strict proof thereof.

6. Responding to the allegations of paragraph 6 of the Second Amended Complaint, Amick craves reference to the document attached to the Second Amended Complaint as Exhibit 1, and to the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same and demands strict proof thereof.

7. Amick admits the allegations of paragraph 7 of the Second Amended Complaint, upon information and belief.

8. Responding to the allegations of paragraph 8 of the Second Amended Complaint, Amick craves reference to the document attached to the Second Amended Complaint as Exhibit 1, and to the extent the allegations of paragraph 8 are inconsistent with said document, Amick denies the same and demands strict proof thereof.

9. Responding to the allegations of paragraph 9 of the Second Amended Complaint, Amick craves reference to the document attached to the Second Amended Complaint as Exhibit 1, and to the extent the allegations of paragraph 9 are inconsistent with said document, Amick denies the same and demands strict proof thereof.

10. Responding to the allegations of paragraph 10 of the Second Amended Complaint, Amick craves reference to the document attached to the Second Amended Complaint as Exhibit 1, and to the extent the allegations of paragraph 10 are inconsistent with said document, Amick denies the same and demands strict proof thereof.

11. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Second Amended Complaint, and therefore, denies them.

12. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Second Amended Complaint, and therefore, denies them.

13. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Second Amended Complaint, and therefore, denies them. Further responding, Amick denies that any contractual relationship was formed between Plaintiffs and the Newberry Lions Club.

14. Amick denies the allegations of paragraph 14 of the Second Amended Complaint.

15. The allegations of paragraph 15 of the Second Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Amick craves reference to applicable law regarding the issues of the implied covenant of good faith and fair dealing.

16. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Second Amended Complaint, and therefore, denies them.

17. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Second Amended Complaint, and therefore, denies them. Furthermore, Amick craves reference to the letters referenced in paragraph 17, and to the extent the allegations of paragraph 17 are inconsistent with said letters, Amick denies the same and demands strict proof thereof.

18. Amick denies the allegations of paragraph 18 of the Second Amended Complaint.

19. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Second Amended Complaint, and therefore, denies them. Furthermore, Amick craves reference to the letters referenced in paragraph 19, and to the extent the allegations of paragraph 19 are inconsistent with said letters, Amick denies the same and demands strict proof thereof.

20. Responding to the allegations of paragraph 20 of the Second Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to the public court docket, and to the extent the allegations of paragraph 20 are inconsistent with the docket, Amick denies the same and demands strict proof thereof. Regarding the remaining allegations of paragraph 20, Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore, denies them.

21. Responding to the allegations of paragraph 21 of the Second Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gene B. McCrackin, Amick craves reference to said deed, and to the extent the allegations of paragraph 21 are inconsistent with the deed, Amick denies the same and demands strict proof thereof. Regarding the remaining allegations of paragraph 21, Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore, denies them.

22. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Second Amended Complaint, and therefore, denies them. Further responding, Amick avers that Plaintiffs have no ability to close on the property at issue.

23. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Second Amended Complaint, and therefore, denies them.

24. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Second Amended Complaint, and therefore, denies them. Further responding, Amick avers that Plaintiffs did not accept any offer to purchase to the property at issue.

25. Amick denies the allegations of paragraph 25 of the Second Amended Complaint.

26. Amick denies the allegations of paragraph 26 of the Second Amended Complaint.

27. Responding to the allegations of paragraph 27 of the Second Amended Complaint regarding the deed from Newberry Lions Club to Amick, Amick craves reference to said deed, and to the extent the allegations of paragraph 27 are inconsistent with the deed, Amick denies the same and demands strict proof thereof. Amick denies the remaining allegations of paragraph 27 of the Second Amended Complaint.

28. Amick denies the allegations of paragraph 28 of the Second Amended Complaint.

29. Paragraph 29 of the Second Amended Complaint incorporates prior paragraphs. To the extent a response is required, Amick reincorporates his responses to prior paragraphs.

30. Responding to paragraph 30 of the Second Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records, and to the extent the allegations of paragraph 30 are inconsistent with the public documents, Amick denies the same and demands strict proof thereof. Further responding, Amick avers that the filing of the lis pendens was not proper.

31. The allegations of paragraph 31 of the Second Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, Amick craves reference to the cited statute and applicable law.

32. Amick denies the allegations of paragraph 32 of the Second Amended Complaint.

33. Amick denies the allegations of paragraph 33 of the Second Amended Complaint.

34. Amick denies the allegations of paragraph 34 of the Second Amended Complaint.

35. Amick lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Second Amended Complaint, and therefore, denies them. Further responding, Amick avers that Plaintiffs have no agreement with the Newberry Lions Club regarding the property at issue.

36. Amick denies the allegations of paragraph 36 of the Second Amended Complaint.

37. Amick denies the allegations of paragraph 37 of the Second Amended Complaint.

38. Paragraph 38 of the Second Amended Complaint incorporates prior paragraphs. To the extent a response is required, Amick reincorporates his responses to prior paragraphs.

39. Amick denies the allegations of paragraph 39 of the Second Amended Complaint.

40. Paragraph 40 of the Second Amended Complaint incorporates prior paragraphs. To the extent a response is required, Amick reincorporates his responses to prior paragraphs.

41. Amick denies the allegations of paragraph 41 of the Second Amended Complaint.

42. Amick denies the allegations of paragraph 42 of the Second Amended Complaint.

43. Amick denies the allegations of paragraph 43 of the Second Amended Complaint.

44. Amick denies the allegations of paragraph 44 of the Second Amended Complaint.

45. Responding to paragraph 45 of the Second Amended Complaint, Amick was conveyed the property at issue. Amick denies the remaining allegations of paragraph 45 of the Second Amended Complaint.

46. Responding to paragraph 46 of the Second Amended Complaint, Amick admits, upon information and belief, that the Newberry Lions Club would not sell the property at issue to the Plaintiffs. Amick denies the remaining allegations of paragraph 46 of the Second Amended Complaint.

47. Responding to paragraph 47 of the Second Amended Complaint, Amick was conveyed the property at issue. Amick denies the remaining allegations of paragraph 47 of the Second Amended Complaint.

48. Amick denies the allegations of paragraph 48 of the Second Amended Complaint.

49. Amick denies the allegations of paragraph 49 of the Second Amended Complaint.

- 50. Amick denies the allegations of paragraph 50 of the Second Amended Complaint.
- 51. Amick denies the allegations of paragraph 51 of the Second Amended Complaint.
- 52. Amick denies that Plaintiffs are entitled to any relief requested in their prayer.

FOR A SECOND DEFENSE

- 53. Plaintiffs fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

- 54. Plaintiff's claims are barred or limited by all equitable doctrines available to Amick, including but not limited to, waiver and estoppel.

WHEREFORE, having fully answered the Second Amended Complaint, C. Ray Amick prays that this matter be dismissed, with costs, and for such other and further relief as is just and proper.

SOWELL & DuRANT, LLC

By: s/Bess J. DuRant
 Thornwell F. Sowell III, SC Bar No. 5197
 Bess J. DuRant, SC Bar No. 77920
 1310 Gadsden Street (29201)
 Post Office Box 11449
 Columbia, South Carolina 29211
 (803) 929-1400

Attorneys for Defendant C. Ray Amick

Columbia, South Carolina
 July 13, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiff,)

v.)

C. Ray Amick,)

Defendant.)

**COMPLAINT
(Non-Jury)**

FILED
MAY 22 2019
CLERK OF COURT
NEWBERRY COUNTY, SC

The above-named plaintiffs, complaining of Defendant C. Ray Amick, would show and allege as follows:

BACKGROUND

1. Plaintiffs A. Murray Gray, Claude H. Schumpert and Melissa B. Schumpert are residents and citizens of the State of South Carolina, County of Newberry, and own property on Lions Club Road and Lions Club Circle in Newberry County, South Carolina access to which is by way of Lions Club Road.

2. Defendant C. Ray Amick ("Amick" or "Defendant") is a resident and citizen of the State of South Carolina, County of Newberry County, and owns property at 62 Lions Club Road, in Newberry County Carolina. Amick further claims title to lands over which both Lions Club Road and Lions Club Circle traverses and has in recent weeks erected certain obstructions to the remaining parties' access to a boat ramp and beach area on lands now or formerly of SCE&G lying east of the property Amick claims.

3. The Lions Club Point ("LC Point"), as described herein, is the area/peninsula on the shores of Lake Murray in Newberry County lying east of State Park Road approximately 1.75 miles from Dreher Island State Park. The LC Point property originally consisted of approximately ten (10) acres conveyed to the Newberry Lions Club ("Lions Club") by deed recorded on February 18, 1933 in the Office of the Clerk of Court for Lexington County in Deed Book 4Q at Page 603¹. Thereafter, the Lions Club subdivided the LC Point and conveyed certain lots to various Lions Club members.

4. Plaintiffs are the successors in interest of the grantees of certain of these out conveyances.

5. Following all of these Lions Club out conveyances, the remainder of the property of the Lions Club consisted of approximately 5.0 acres ("the Lions Club Property"). The Lions Club Property has been shown and depicted on a plat by Thomas D. Abraham recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6. Lions Club Road is shown and depicted on said plat as a 12' paved road and gravel drive traversing into, over and extending beyond the Lions Club Property to the said lands of SCE&G to the east. A copy of said plat is attached hereto as Exhibit A. (Lions Club Road is highlighted in yellow.)

6. This is an action which seeks, in part, the removal of obstructions to the access to the Plaintiffs' property, the boat ramp and beach areas in the lands of SCE&G and a temporary and permanent injunction enjoining the erection of any such further obstructions along with any further efforts on the part of Amick to interfere or otherwise unlawfully impede the Plaintiffs' access to their said property, boat ramp and beach area. This action further seeks a declaration that the Plaintiffs had and have an appurtenant, non-exclusive easement for ingress and egress

¹ Due to a subsequent change in the boundary of Lexington and Newberry County, LC Point is now in Newberry County.

over Lions Club Road to their respective properties, the said boat ramp and beach area located on lands east of the Lions Club Property.

7. Lions Club Road has been used and enjoyed by the Plaintiffs and their predecessors in interest (and their guests) for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from Dreher Island Road) to their respective properties, the said boat ramp and beach areas for many decades.

8. Defendant Amick claims ownership of the Lions Club Property by virtue of a deed of the Lions Club dated February 18, 2018; however his right to title to this property is being disputed based on circumstances described in another action, Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018-CP-36-0089. A lis pendens describing the Lions Club Property in that case was filed prior the recordation of the purported deed to Amick; thus, any title he claims is subject to the final order rendered therein.

9. When Amick obtained his purported title to the property (disputed in Case No. 2018-CP-36-0089), he obtained a title insurance policy; however, such policy did not insure him against claims for:

- (a) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..."

10. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from Dreher Island Road through "Lions Club Point" to the fringe lands owned by SCE&G. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

11. The plaintiffs and their predecessors in interest have used and enjoyed Lions Club Road for many decades for vehicular and pedestrian access to the aforesaid boat ramp and the beach area on the point for family gatherings, picnics, boat launching, and swimming.

12. This usage by the plaintiffs and their predecessors in interest has been without permission, restriction or limitation, and the Lions Club Road at no time during this period has been blocked from usage by the Plaintiffs, Lions Club members and the adjacent property owners on LC Point and their guests.

13. Amick has lived near and otherwise owned the property adjacent to LC Point over which Lions Club traverses for over 50 years. In a deposition taken in Case No. 2018-CP-36-0089, Amick acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

14. In the spring or summer of 2018, Defendant Amick blocked the eastern portion of Lions Club Road, installed "No Trespassing" signs, a rope, trash piles, parked cars, and other obstructions which prohibited Plaintiffs and other adjoining land owners from having access to the boat ramp, beach and fringe lands.

15. Defendant Amick's action in blocking the Lions Club Road is in violation of the rights of the plaintiffs and other adjoining owners to use the road, which rights have existed without restriction for over 50 years.

16. This matter is of some urgency because the summer months are coming, and Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

17. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

18. Defendant Amick's recent actions (see attached Exhibit B which are emails of the second week of May 2019) indicate that he intends to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

19. Plaintiffs are informed and believe that Defendant Amick's actions are an unreasonable restriction of the parties right to use Lions Club Road without legal or equitable excuse.

20. As set forth more fully hereinbelow, plaintiffs believe that Amick should be enjoined both temporarily and permanently from blocking the road.

FOR A FIRST CAUSE OF ACTION
(Temporary and Permanent Injunction)

21. Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-27 above and incorporate the same as if fully set forth verbatim herein.

22. Plaintiffs have the undeniable right to access their property, the said boat ramp and beach area as set forth herein.

23. Plaintiffs have no adequate remedy at law to redress the denial of such access, which is further evidenced by the repeated nature of Amick's actions and threats to continue such actions.

24. The denial of access has and will continue to cause Plaintiffs to suffer irreparable harm.

25. Given that the Plaintiffs used the road for some time prior to the erection of the obstructions, their continued use thereof cannot and does not prejudice Amick and merely returns the parties to the status quo ante.

26. Therefore, equity demands that this court issue its order requiring Amick to remove the obstructions in so much as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

27. The Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-26 above and incorporate the same as if fully set forth verbatim herein.

28. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

29. The Plaintiffs and their predecessors in title have openly and continuously used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from Dreher Island Road) to their respective properties, the said boat ramp and beach area under a claim of right beyond any applicable time period required by law.

30. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evidenced an intent to the continued use of Lions Club Road following the subdivision.

31. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above.

32. The enjoyment of the herein described use of Lions Club Road was promised by the Lions Club and such promise was relied on by the parties' predecessors in title when taking title to their respective properties.

33. As a result, the Court should issue its order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

FOR A THIRD CAUSE OF ACTION
(Trespass/Nuisance)

34. Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-33 above and incorporate the same as if fully set forth verbatim herein.

35. Amick has intentionally infringed on the the Plaintiffs' right to use of Lions Club Road, a right that he has acknowledged in deposition testimony, by erecting the aforementioned obstructions.

36. Such actions constitute an interference with the Plaintiffs' right to use and enjoy their property and all rights associated therewith.

37. As a direct and proximate result thereof, the Plaintiffs have suffered and will continue to suffer damages as proscribed by law in an amount to be determined upon the trial of this case.

38. As described above, Amick's actions were done with reckless disregard of the Plaintiffs' rights, and, therefore, the Plaintiffs are entitled to an award of actual and punitive damages in an amount to be determined the upon the trial of this case.

WHEREFORE, the Plaintiffs pray the Court inquire into the matter and issue its Order as follows:

- a. requiring Amick to remove the obstructions in so much as the same blocks the Plaintiffs' access to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- b. enjoining Amick, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access, both vehicular and pedestrian, to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- c. declaring the Plaintiffs' right to use of Lions Club Road as an easement implied by prior use, a prescriptive easement, or an easement by estoppel;
- d. awarding the Plaintiffs actual and punitive damages in an amount to be determined upon the trial of this case; and,
- e. taxing the costs of this action, including Plaintiffs' attorneys fees, against Amick; and,
- f. awarding such other and further relief as the court deems necessary and appropriate.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

s/Kyle B. Parker

Thomas H. Pope, III

Kyle B. Parker

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

(803) 276-2532

Attorneys for Plaintiffs

Newberry, South Carolina
May 20, 2019

EXHIBIT A

FILED
MAY 22 4:19:07 PM
CLERK OF COURT

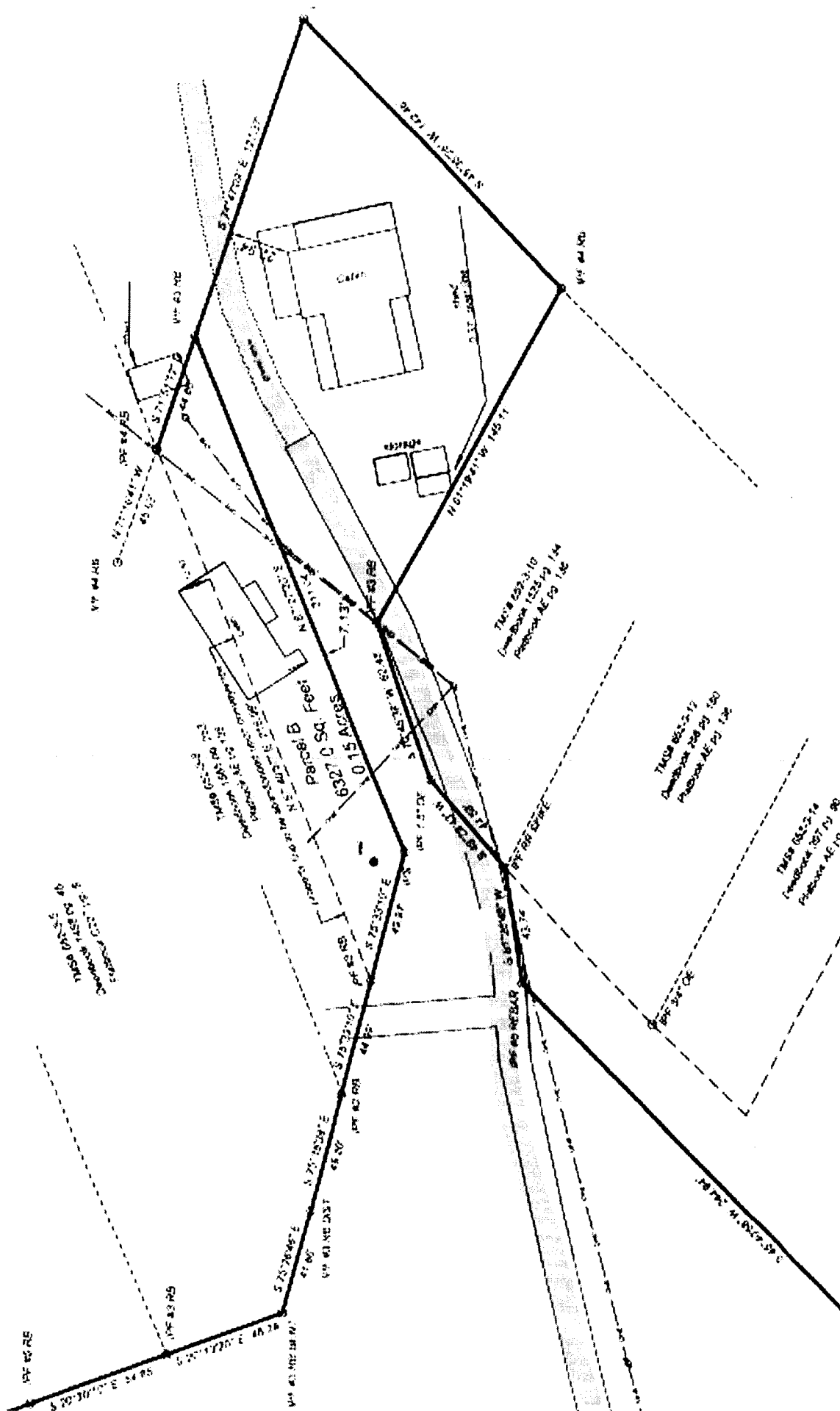


EXHIBIT B

FILED
MAY 22 AM 9:07
NEWBERRY

From: **Tom Pope** tom@ppjlaw.com
 Subject: **RICE/LIONS CLUB and Amick**
 Date: **May 8, 2019 at 11:58 AM**
 To: **Jim Koutrakos** jimkoutrakos@callisontighe.com
 Cc: **Biff Sowell** bsowell@sowelldurant.com, **sam price** rshealy517@hotmail.com, **Kyle Parker** kyle@ppjlaw.com, **Betsy Alexander** betsy@ppjlaw.com

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles ... He was of course unable to move the pontoon"

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs, and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.

We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.

We need your client to follow through with his promise. Please give us your response today.

Tom Pope
 Pope Parker Jenkins, P.A.
 (formerly Pope & Hudgens PA)
 1508 College Street - P.O. Box 190
 Newberry, SC 29108
 803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

From: Jim Koutrakos JimKoutrakos@callisontighe.com

Subject: RE: RICE/LIONS CLUB and Amick

Date: May 8, 2019 at 12:12 PM

To: Tom Pope tom@ppjlaw.com

Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com)

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: **Tom Pope** tom@ppjlaw.com
 Subject: RICE/LIONS CLUB and Amick
 Date: May 8, 2019 at 12:47 PM
 To: Jim Koutrakos JimKoutrakos@callisontighe.com
 Cc: Bliff Sowell bsowell@sowelldurant.com, Sam Price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com)

Jim

My email last week (May 3) stated that the rope would be taken down last weekend and remain down for 10-14 days :

"... in the next 10-14 days or so, Lisa's brother John Summer will likely be moving it....This is to advise that we expect that the LC Road will be open (no rope) this weekend and remain open until the Rice's boat can be returned from the boat shop."

John works and cannot go move the pontoon during work times - that's why we wanted the 10 to 14 -day window.

Instead of leaving the road open for 10 days (which has not expired) Mr Amick has "doubled down" on his illegal position and put up more no trespassing signs and placed more barriers.

John reported to Lisa that he can return next Monday .

Since it's been open for decades until a few months ago (when Mr Amick blocked it), this is only reasonable. We will inform you

when John will bring the boat back after it's repaired/serviced .Please confirm that Mr Amick will leave the road open Monday (no rope, parked cars, or obstacles).

We appreciate your assistance on this.

Tom Pope
Pope Parker Jenkins, P.A.
 (formerly Pope & Hudgens PA)
 1508 College Street - P.O. Box 190
 Newberry, SC 29108
 803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

**Please note that Pope & Hudgens, P.A. is now Pope Parker Jenkins, P.A. My new email address is tom@ppjlaw.com

From: **Jim Koutrakos** JimKoutrakos@callisontighe.com

Subject: RE: RICE/LIONS CLUB and Amick

Date: May 9, 2019 at 10:22 AM

To: Tom Pope tom@ppjlaw.com

Cc: Biff Sowell bsowell@sowelldurant.com, Sam Price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com) bdurant@sowelldurant.com

Tom,

Mr. Amick will remove the ropes Sunday evening so the path to the boat ramp will be open Monday to permit Mr. Summer to do what your clients have requested, consistent with the permission granted by Mr. Amick. After the pontoon boat is removed Monday, Mr. Amick will put the ropes back up. Please contact me and let me know when Mr. Summer plans to put the pontoon boat back in the water and I will let Mr. Amick know so he can remove the ropes consistent with the permission he has given.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope tom@ppjlaw.com
Subject: Re: RICE/LIONS CLUB and Amick
Date: May 9, 2019 at 2:16 PM
To: Jim Koutrakos JimKoutrakos@callisontighe.com
Cc: Biff Sowell bsowell@sowelldurant.com, Sam Price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com)
bdurant@sowelldurant.com

Jim

Mrs Rice's brother John has arranged his schedule to pick up the pontoon boat on Monday afternoon (May 13) to trailer it to be serviced.
Please advise Mr Amick of this .We expect that John will not be met with cars parked in the road, ropes across the road, or any thing else that blocks his access to the lake, the dock or to the Rice property .
Thank you.

Tom

Tom Pope
Pope Parker Jenkins, P.A.
(formerly Pope & Hudgens PA)
1508 College Street - P.O. Box 190
Newberry, SC 29108
803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

**Please note that Pope & Hudgens, P.A. is now Pope Parker Jenkins, P.A. My new email address is tom@ppjlaw.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
 Melissa B. Schumpert,)

Plaintiff,)

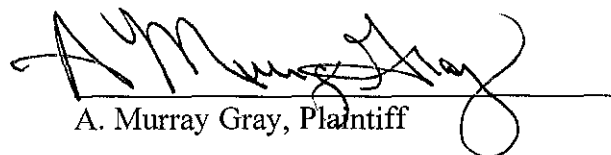
v.)

C. Ray Amick,)

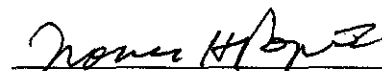
Defendant.)

VERIFICATION

PERSONALLY appeared before me, A. Murray Gray, who being first duly sworn, states that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of his knowledge; and, as to those, he verily believes them to be true.


 A. Murray Gray, Plaintiff

SWORN TO and subscribed before me
 this 20th day of May, 2019.

 (L.S.)
 NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission Expires: 3-28-2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiff,)

v.)

C. Ray Amick,)

Defendant.)

VERIFICATION

PERSONALLY appeared before me, Claude H. Schumpert, who being first duly sworn, states that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of his knowledge; and, as to those, he verily believes them to be true.


Claude H. Schumpert, Plaintiff

SWORN TO and subscribed before me
this 21st day of May, 2019.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/7/2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiff,)

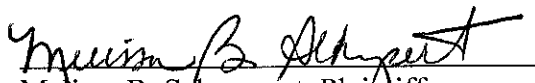
v.)

C. Ray Amick,)

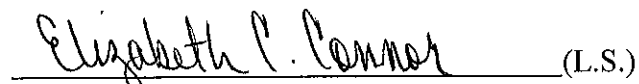
Defendant.)

VERIFICATION

PERSONALLY appeared before me, Melissa B. Schumpert, who being first duly sworn, states that she is a Plaintiff in the foregoing action; that she has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of her knowledge; and, as to those, she verily believes them to be true.


Melissa B. Schumpert, Plaintiff

SWORN TO and subscribed before me
this 21st day of May, 2019.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/7/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.:
A. Murray Gray, Claude H. Schumpert, and	)	
Melissa B. Schumpert,	)	
	)	
Plaintiffs,	)	
	)	PLAINTFFS' MOTION FOR A
v.	)	TEMPORARY RESTRAINING ORDER
	)	AND TEMPORARY AND PERMANENT
C. Ray Amick,	)	INJUNCTIVE RELIEF
	)	
Defendant.	)	

Plaintiffs will move before this Court on June 19, 2019, at 10:30 a.m. in the Courtroom of the Newberry County Courthouse for an Order issuing a temporary injunction and temporary restraining order pursuant to Rule 65, SCRCPP, prohibiting Defendant Amick from blocking the eastern portion of Lions Club Road which is plaintiffs' access to Lions Club Point and Lake Murray, the beach, and the boat ramp on said property. A summons and verified complaint are filed simultaneously with this motion and will be served on the above-named defendants in accordance with the provisions of Rule 4, SCRCPP. The facts asserted are as follows:

1. The allegations of the complaint dated May 20, 2019, are hereby incorporated herein by reference.

2. The eastern portion of Lions Club Road (approximately 300 to 400 feet in length) had been used by plaintiffs and the adjoining property owners at Lions Club Point for many decades (over 80 years).

3. In the late spring or early summer of 2018 and continuing to present, Defendant Amick has taken action to block access to that portion of said road asserting that he owns it, even though he has acknowledged in his sworn testimony that the road was used by the plaintiffs and

adjacent property owners for many decades. In recent weeks, Amick has taken further actions to completely obstruct access.

4. The summer months are now fast approaching, and the plaintiffs and the adjoining property owners will not be allowed access to the lake to launch boats, utilize the beach established on said point or otherwise if Amick is allowed to block this road.

5. Amick has placed a rope across said road, installed “private property” and “no trespass” signs, and allowed cars to park in the roadway. He has left debris in the roadway. He refuses to acknowledge the easement which has existed for ingress and egress for vehicles and pedestrians along this road for many prior years.

6. The issuance of a temporary injunction and restraining order is necessary for the protection of the plaintiffs’ rights during the course of this litigation, and the plaintiffs are likely to prevail on the complaint for permanent injunction and restraining order and the merits of this action.

7. The plaintiffs have no adequate remedy at law with regard to the ongoing obstruction to the access to the lake as described in the complaint.

8. The plaintiffs further request a hearing upon this application for temporary and permanent injunction at the earliest possible time as required by Rule 65, SCRCP.

9. For this Court to grant a temporary injunction prohibiting Amick from blocking vehicular and pedestrian access to the said road will merely maintain the status quo ante until this action can be concluded.

10. Given that plaintiffs used Lions Club Road for many years prior to Amick’s erection of obstructions, their continued use of it pursuant to any injunction entered by this Court cannot and does not prejudice Amick.

11. Due to the immediate hardship imposed by Defendant Amick upon the plaintiffs and the other adjoining owners, and the lack of any foreseeable prejudice to Amick, plaintiffs respectfully request that this Court, within its discretion, impose a bond in connection with the temporary restraining order and temporary and permanent injunction in the least amount possible.

Based on the law of South Carolina and Rule 65, and the deposition testimony of Amick, plaintiffs pray for an Order of this Court temporarily restraining Defendant Amick from blocking this road by signs, obstacles, ropes, debris, cars or any other objects that impede ingress and egress, both vehicular and pedestrian, during the pendency of this action and for any such other relief as this Court may permit.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III
Thomas H. Pope, III
Kyle B. Parker
1508 College Street
P.O. Box 190
Newberry, South Carolina 29108
(803) 276-2532

Attorneys for Plaintiff

Newberry, South Carolina
May 20, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
 Melissa B. Schumpert,)

Plaintiff,)

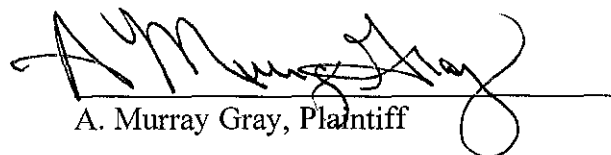
v.)

C. Ray Amick,)

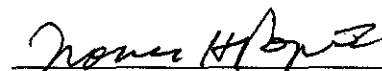
Defendant.)

VERIFICATION

PERSONALLY appeared before me, A. Murray Gray, who being first duly sworn, states that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of his knowledge; and, as to those, he verily believes them to be true.


 A. Murray Gray, Plaintiff

SWORN TO and subscribed before me
 this 20th day of May, 2019.

 (L.S.)
 NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission Expires: 3-28-2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiff,)

v.)

C. Ray Amick,)

Defendant.)

VERIFICATION

PERSONALLY appeared before me, Claude H. Schumpert, who being first duly sworn, states that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of his knowledge; and, as to those, he verily believes them to be true.


Claude H. Schumpert, Plaintiff

SWORN TO and subscribed before me
this 21st day of May, 2019.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/7/2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-_____

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiff,)

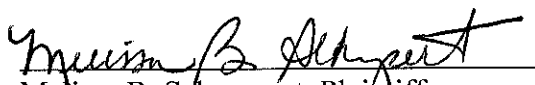
v.)

C. Ray Amick,)

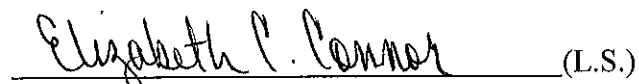
Defendant.)

VERIFICATION

PERSONALLY appeared before me, Melissa B. Schumpert, who being first duly sworn, states that she is a Plaintiff in the foregoing action; that she has read the foregoing Complaint and Plaintiffs' Motion for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief; that the statements contained therein are true to the best of her knowledge; and, as to those, she verily believes them to be true.


Melissa B. Schumpert, Plaintiff

SWORN TO and subscribed before me
this 21st day of May, 2019.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/7/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and	)	
Melissa B. Schumpert,	)	
	)	
Plaintiffs,	)	
	)	PLAINTFFS' MEMORANDUM IN
v.	)	SUPPORT OF MOTION FOR
	)	TEMPORARY INJUNCTIVE RELIEF
C. Ray Amick,	)	
	)	
Defendant.	)	

This matter is before the Court on Plaintiff's Motion for a Temporary Restraining Order and Temporary Injunctive Relief. This memorandum is submitted for the benefit of the Court in connection with the hearing on said motion on June 12, 2019, at 9:30am.

STATEMENT OF FACTS

This is an action which seeks a declaration that the Plaintiffs have an easement for the pedestrian and vehicular use of Lions Club Road from their respective properties to the fringe lands of SCE&G on the shores of Lake Murray. As is more fully set out in the verified Complaint, Lions Club Road bisects property which was once owned by the Lions Club of Newberry (the "Lions Club"). The property was originally purchased by the Lions Club in 1933. At that time the property comprised of approximately ten (10) acres which formed a point/peninsula with acres of waterfront lying east of State Park Road approximately 1.75 miles from Dreher Island State Park ("Lions Club Point").

Prior to and during 1960's, the Lions Club began selling lake front lots to various members of the Lions Club including the Plaintiffs' fathers (the "lot owners"). What remained following these out conveyances was approximately five (5) acres. This remaining five acres contains no waterfront and consists of a wooded area, Lions Club Road, and a small structure formerly used

as the Lions Club clubhouse, beyond which are SCE&G fringe lands leading to the water¹. There exists a boat ramp and beach area on the fringe lands beyond the clubhouse site. Access to use these fringe lands is the subject of the instant motion.

Since acquiring their lots, the lot owners used Lions Club Road to access the boat ramp and beach area. Plaintiffs have filed ten affidavits representing those lot owners or their immediate predecessor in title, who have personal knowledge of the use of Lions Club Road dating back to the 1960's. Without exception, these individuals state that each of the lot owners has used Lions Club Road to access the fringe lands without restriction for sixty (60) years. Plaintiffs, in the verified Complaint, have averred that they likewise used Lions Club Road under a claim of right. John Summer, a former President of the Lions Club, states, in his affidavit, that the lot owner's right to use of Lions Club Road to access the fringe lands was acknowledged by all. In fact, Defendant Amick has acknowledged in a deposition taken in another matter that the lot owners used Lions Club Road to access the fringe lands for decades without restriction (Deposition of C. Ray Amick, p. 8, ln. 16 thru p. 13, ln. 17).

The verified Complaint and each of the Plaintiffs' affidavits indicate that the use had been uninterrupted during the preceding sixty years. That has recently changed. On February 22, 2018, a deed which purports to convey the remaining five acres of Lions Club Point to the defendant was recorded in the Office of the Clerk of Court for Newberry County. Some months after that, despite having knowledge of the prior use of Lions Club Road, the defendant began attempting to restrict the lot owner's access to it. He initially placed ropes and no trespassing signs. In the last few weeks, however, the defendant has placed further obstructions to the fringe lands in the form of piles of debris, cars in the road, additional ropes, and signs. He now claims ownership and control

¹ A plat of Lion Club Point was attached as Exhibit A to the Complaint.

over the use of Lions Club Road. As a result, the lot owners have no access to the fringe lands they have used for decades. The Plaintiffs ask this Court to issue its order requiring these obstructions be removed and enjoining the defendant from any further attempts to restrict the lot owner's use of Lions Club Road to access the fringe lands until such time as the rights of the parties in the road can be finally adjudicated.

STANDARD OF REVIEW

The singular purpose of a temporary injunction is to preserve the status quo ante and avoid irreparable injury to a plaintiff pending final adjudication of a case. Compton v. SCDOC, 392 S.C. 361, 709 S.E.2d 639 (2011); Helsel v. City of North Myrtle Beach, 307 S.C. 29, 413 S.E.2d 824 (1992). When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Helsel, *supra*. A temporary injunction is entered without prejudice to the rights of parties pending a hearing on the merits, and where other issues are brought to trial, they are determined without reference to the temporary injunction. Id.

An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. Compton, *supra*. As a result, in order to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E. 2d 833 (2005). In analyzing the element of "likelihood of success on the merits", The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, rather the plaintiff must present only a reasonable question as to the existence of such a right. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). Moreover, the question of whether a wrong is irreparable, such that equity should intervene, and whether there is an adequate remedy at law, are

questions that are not decided with reference to narrow and artificial rules. Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). Instead, the court must balance the benefit of an injunction to the plaintiff against the prejudice to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances. Foster Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950). And, once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted. Peek, *supra*.

ARGUMENT

The Plaintiffs claim an easement for the use of Lions Club Road as a prescriptive easement, an easement by estoppel, or an easement implied by prior use. The verified Complaint, together with the affidavits filed in support of the instant motion, presents a prima facie showing which clearly justifies the issuance temporary injunctive relief.

I. Prescriptive Easement.

Our Supreme Court recently clarified the elements for a prescriptive easement in the case of Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016). There, the Court held that an easement is a right given to a person to use the land of another for a specific purpose, and a prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner. Id. To establish a prescriptive easement, it must be shown that (1) the Plaintiff had the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use was adverse under claim of right. Id. When it appears that the Plaintiff has enjoyed such an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse. Id., *citing* Williams v. Abbott, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

With reference to the first two elements, the lot owners, including the Plaintiffs, have clearly presented sufficient evidence for purposes of temporary injunctive relief that they have had use of Lions Club Road for access to the boat ramp and beach area in the fringe lands (which constitutes the “thing enjoyed”) continuously and uninterrupted for much more than 20 years.²

The significance of the Simmons decision is its clarification of the third element of a prescriptive easement under the Williams test. The Simmons Court stated, “we believe the test for a prescriptive easement can be simplified as follows: [i]n order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years.” Id. at 392. Thus, as the other requirements are encapsulated in the first two elements, in order to show their use was adverse under the Williams test, the Plaintiffs must show the use was “open” and “notorious”.

For a use to be “open”, it must not be in “secret or stealthily” or “visible or apparent” Id. at 392. Here, the Plaintiffs have submitted affidavits showing that the use of the Lions Club Road for access to the fringe lands was often made for the purpose of neighborhood and family gatherings. Use was further routinely made to launch and trailer boats and for swimming at the beach area in the summer months. All of these uses in broad daylight would have been visible and apparent. It certainly was not in secret. Indeed, a former President of the Lions Club, John Summer, states in his affidavit that the lot owners routinely performed maintenance on the road over the years. Therefore, the Plaintiffs have made the requisite showing that the use was “open” within the meaning of the Williams test.

² A party may ‘tack’ the period of use of prior owners in order to satisfy the 20-year requirement. Morrow v. Dyches, 328 S.C. at 527, 492 S.E.2d at 423 (Ct. App. 1997). Thus, the use of the Plaintiffs’ predecessors in title is properly referenced in this proceeding.

Finally, the Simmons court explained that for a use to be “notorious”, it must be “known to the owner” or “widely known in the neighborhood.” Id. at 392. Again, the verified complaint and each of the Plaintiffs’ affidavits provide that all of the lot owners used Lions Club Road to access the fringe lands. In other words, the use was not specific to merely the Plaintiffs. It was common to all property owners on Lions Club Point. Even the defendant, who did not own (or have a claim to own) any property there until 2018, acknowledged the use of the lot owners to access the fringe lands. Accordingly, the use was “widely known in the neighborhood”. Moreover, the use of the lot owners was “acknowledged by all” Lions Club members. (Affidavit of John M. Summer, ¶ 16). Consequently, the Plaintiffs have likewise shown the use was “known to the owner”. Therefore, the lot owners use of Lions Club road for these purposes was “notorious” under the Williams test, and in so doing, the Plaintiffs have made a prima facie case for a prescriptive easement.

II. Easement by Estoppel.

The party claiming an easement by estoppel must show the following elements as to the party sought to be estopped: “(1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts.” Paine Gayle Properties, LLC v. CSX Trasp., Inc., 400 S.C. 568, 735 S.E.2d 528 (2012). All of the foregoing elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other party's prejudicial change in position. Id., citing, O'Cain v. O'Cain, 322 S.C. 551, 557–59, 473 S.E.2d 460, 464–65 (Ct.App.1996) (holding that a landowner was equitably estopped from denying the use of a driveway on his property by an adjoining landowner when the first landowner remained silent

during the second landowner's construction of the driveway and improvements to land to which the driveway led). Lastly, the following elements must be shown as to the party claiming estoppel: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance on the conduct of the party sought to be estopped; and (3) a prejudicial change in position.” Id.

The Plaintiffs presented a prima facie showing of an easement by estoppel. In O’Cain, supra, the Court of Appeals affirmed the declaration of an easement by estoppel. There, Lever O’Cain knew of and watched as Harold O’Cain used his property to construct a driveway; yet, Lever O’Cain did not voice any objection to this use or construction until after it was completed. Moreover, Lever O’Cain remained silent as the appellant improvements to lands beyond which the driveway led. The O’Cain court held that Harold O’Cain’s use and improvements to the land coupled with Lever O’Cain’s silence satisfied all of the estoppel requirements with regard to the respondents. Id. at 558. With regard to the estoppel requirements as to Harold O’Cain, the court found the fact that he believed he had the right to use the land for a driveway meant that he did not have knowledge of the truth, i.e., that he did not have such a right. Id. at 558. Given the improvements made by Harold O’Cain both to the driveway and beyond, the Court found that he had a prejudicial change of position. Id. at 558.

Generally, the O’Cain opinion stands for the proposition that one cannot sit idly by, watch as another uses his property and makes improvements both to his own property - in the form of a way - and to the property to which the way leads, and only voice an objection after the other has been prejudiced.

Here, the plaintiffs have presented evidence to the effect that no one with the Lions Club voiced any objection to the lot owners use of Lions Club Road for sixty years, all the while the lot

owners were making improvements to the road and constructing and maintaining the boat ramp and beach area. What is more, John Summer states in his affidavit that the lot owners right to use the road was acknowledged by all. Thus, the lot owners consequently believed they had a right to do so. The verified complaint and each of the Plaintiffs' affidavits make that fact plain. Therefore, just as Lever O'Cain was found to be estopped to deny Harold O'Cain's easement, the Plaintiffs have, again, at a minimum, presented a prima facia showing that the defendant is estopped to prevent the Plaintiffs and the lot owners from using Lions Club Road to access the fringe lands.

III. Easement by Prior Use.

In South Carolina, a party asserting the right to an easement implied by prior use must establish the following: “(1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title.” Boyd v. Bellsouth telephone Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). While the “necessity” required of an easement by necessity must be “actual, real, and reasonable as distinguished from convenient”, the “necessity” required for an easement implied by prior use “may be less than required for an easement by necessity.” Id. at 141. “This lesser showing of necessity may stem in part from an often unspoken realization on the part of the fact finder that a prior use indicates a need for a particular easement.” Id. at 142. Ultimately, the purpose of an implied easement is to give effect to the intentions of the parties to a transaction. Pendarvis v. Cook, 391 S.C. 528, 706 S.E.2d 520 (Ct. App. 2011).

The case at bar also presents an easement by prior use. As laid out in the verified Complaint and discussed above, all of the parties to this proceeding trace their claim to title to the Lions Club.

The evidence presented by Plaintiffs show that Lions Club Road, the boat ramp and beach area was constructed for the express purpose of providing access to fringe lands to enjoy the same. The use of it for this purpose was, therefore, intended by the Lions Club.

The Lions Club subdivided portions of the original 10 acres to provide lots to all of the lot owners, including the Plaintiffs predecessors. The use of Lions Club Road to access the fringe lands was and is the only means of accessing the boat ramp and beach area. As discussed above, this use has been continual and uninterrupted for sixty years and known by all parties, even the defendant. Accordingly, the use of the road was not casual or temporary, and the evidence shows that the Lions Club clearly intended the continued use after subdividing the lots as the use, in fact, continued for decades thereafter.

Lastly, the question of the “necessity”, is answered with one rhetorical question: what good would building a boat ramp and beach area on the shores of Lake Murray be if one could not get to it? Given that there is no other means of accessing the fringe lands, the use is necessary as defined by the Boyd court. Therefore, the Plaintiffs have also presented a prima facie case for an easement implied by prior use.

CONCLUSION

The Plaintiffs and lot owners are being irreparably harmed each day their access to the fringe lands beyond Lions Club Road is denied by the defendant. It is equally plain that no remedy at law will provide for such access. The Plaintiffs assert that they have presented a text book case for the easement sought, and the Court has before it what can at a bare minimum be fairly described as a “reasonable question” as to whether such an easement exists. As a result, the Plaintiffs have demonstrated a likelihood of success on the merits sufficient for the issuance of a temporary injunction. Dunn, *supra*.

Because there can be no prejudice to the defendant in continuing a use that has existed for sixty years until he took it upon himself to place obstacles in the road, the Court should order that the defendant remove all obstacles from Lions Club Road so as to provide for access to boat ramp and beach area on the fringe lands and enjoin him from erecting any future obstructions until such time as the case can be resolved on the merits.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

Thomas H. Pope, III

Kyle B. Parker

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

(803) 276-2532

Attorneys for Plaintiff

Newberry, South Carolina
June 11, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and)
 Melissa B. Schumpert,)

Plaintiffs,)

v.)

C. Ray Amick,)

Defendant.)

**AMENDED COMPLAINT
 (Non-Jury)**

The above-named plaintiffs, complaining of Defendant C. Ray Amick, would show and allege as follows:

BACKGROUND

1. Plaintiffs A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert are residents and citizens of the State of South Carolina, County of Newberry, and own property on Lions Club Road and Lions Club Circle in Newberry County, South Carolina access to which is by way of Lions Club Road.

2. Defendant C. Ray Amick (“Amick” or “Defendant”) is a resident and citizen of the State of South Carolina, County of Newberry County, and owns property at 62 Lions Club Road, in Newberry County Carolina. Amick further claims title to lands over which both Lions Club Road and Lions Club Circle traverses and has in recent weeks erected certain obstructions to the remaining parties’ access to a boat ramp and beach area on lands now or formerly of SCE&G lying east of the property Amick claims.

3. The Lions Club Point (“LC Point”), as described herein, is the area/peninsula on the shores of Lake Murray in Newberry County lying east of State Park Road approximately 1.75 miles from Dreher Island State Park. The LC Point property originally consisted of approximately ten (10) acres conveyed to the Newberry Lions Club (“Lions Club”) by deed recorded on February 18, 1933 in the Office of the Clerk of Court for Lexington County in Deed Book 4Q at Page 603¹. Thereafter, the Lions Club subdivided the LC Point and conveyed certain lots to various Lions Club members.

4. Plaintiffs are the successors in interest of the grantees of certain of these out conveyances.

5. Following all of these Lions Club out conveyances, the remainder of the property of the Lions Club consisted of approximately 5.0 acres (“the Lions Club Property”). The Lions Club Property has been shown and depicted on a plat by Thomas D. Abraham recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6. Lions Club Road is shown and depicted on said plat as a 12’ paved road and gravel drive traversing into, over and extending beyond the Lions Club Property to the said lands of SCE&G to the east. A copy of said plat is attached hereto as Exhibit A. (Lions Club Road is highlighted in yellow.)

6. This is an action which seeks, in part, the removal of obstructions to the access to the Plaintiffs’ property, the boat ramp and beach areas in the lands of SCE&G and a temporary and permanent injunction enjoining the erection of any such further obstructions along with any further efforts on the part of Amick to interfere or otherwise unlawfully impede the Plaintiffs’ access to their said property, boat ramp and beach area. This action further seeks a declaration that the Plaintiffs had and have an appurtenant, non-exclusive easement for ingress and egress

¹ Due to a subsequent change in the boundary of Lexington and Newberry County, LC Point is now in Newberry County.

over Lions Club Road to their respective properties, the said boat ramp and beach area located on lands east of the Lions Club Property.

7. Lions Club Road has been used and enjoyed by the Plaintiffs and their predecessors in interest (and their guests) for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach areas for many decades.

8. Defendant Amick claims ownership of the Lions Club Property by virtue of a deed of the Lions Club dated February 18. His right to title to this property is being disputed based on circumstances described in another action, Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018-CP-36-0089. A lis pendens describing the Lions Club Property in that case was filed prior to the recordation of the purported deed to Amick; thus, any title he claims is subject to the final order rendered therein.

9. When Amick obtained his purported title to the property (disputed in Case No. 2018-CP-36-0089), he obtained a title insurance policy; however, such policy did not insure him against claims for:

(7) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..." (Exhibit B attached)

10. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through "Lions Club Point" to the fringe lands owned by SCE&G. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

11. The plaintiffs and their predecessors in interest have used and enjoyed Lions Club Road for many decades for vehicular and pedestrian access to the aforesaid boat ramp and the beach area on the point for family gatherings, picnics, boat launching, and swimming.

12. This usage by the plaintiffs and their predecessors in interest has been without permission, restriction or limitation, and the Lions Club Road at no time during this period has been blocked from usage by the Plaintiffs, Lions Club members and the adjacent property owners on Lions Club Point and their guests.

13. For over 50 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to the fringe lands, including in May and June 2010 when they spent over \$42,000. The amounts paid by Plaintiff Schumperts (\$10,550), Plaintiff Gray (\$1,500), and others are shown on Exhibit C, attached hereto. No one complained about these improvements.

14. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to LC Point over which Lions Club Road traverses for over 50 years. In a deposition taken in Case No. 2018-CP-36-0089, Amick acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

15. In the spring or summer of 2018, Defendant Amick blocked the eastern portion of Lions Club Road, installed “No Trespassing” signs, a rope, trash piles, parked cars, and other obstructions which prohibited Plaintiffs and other adjoining land owners from having access to the boat ramp, beach and fringe lands.

16. Defendant Amick's action in blocking the Lions Club Road is in violation of the rights of the plaintiffs and other adjoining owners to use the road, which rights have existed without restriction for over 50 years.

17. This matter is of some urgency because the summer months are coming, and Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

18. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

19. Defendant Amick's recent actions (see attached Exhibit B which are emails of the second week of May 2019) indicate that he intends to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

20. Plaintiffs are informed and believe that Defendant Amick's actions are an unreasonable restriction of the parties right to use Lions Club Road without legal or equitable excuse.

21. As set forth more fully hereinbelow, plaintiffs believe that Amick should be enjoined both temporarily and permanently from blocking the road.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

22. The Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

23. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

24. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (or received) permission for such use.

25. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evidenced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

26. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club.

27. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road, the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

28. As a result, the Court should issue its order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

FOR A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction)

29. Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

30. Plaintiffs have the undeniable right to access their property, the said boat ramp and beach area as set forth herein.

31. Plaintiffs have no adequate remedy at law to redress the denial of such access, which is further evidenced by the repeated nature of Amick's actions and threats to continue such actions.

32. The denial of access has and will continue to cause Plaintiffs to suffer irreparable harm as set forth in the affidavits of witnesses filed in this matter.

33. Given that the Plaintiffs used the road for some time prior to the erection of the obstructions, their continued use thereof cannot and does not prejudice Amick and merely returns the parties to the status quo ante.

34. Therefore, equity demands that this court issue its order requiring Amick to remove the obstructions in so much as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road.

FOR A THIRD CAUSE OF ACTION
(Trespass/Nuisance)

35. Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-33 above and incorporate the same as if fully set forth verbatim herein.

36. Amick has intentionally infringed on the the Plaintiffs' right to use of Lions Club Road, a right that he has acknowledged in deposition testimony, by erecting the aforementioned obstructions.

37. Such actions constitute an interference with the Plaintiffs' right to use and enjoy their property and all rights associated therewith.

38. As a direct and proximate result thereof, the Plaintiffs have suffered and will continue to suffer damages as proscribed by law in an amount to be determined upon the trial of this case.

39. As described above, Amick's actions were done with reckless disregard of the Plaintiffs' rights, and, therefore, the Plaintiffs are entitled to an award of actual and punitive damages in an amount to be determined the upon the trial of this case.

WHEREFORE, the Plaintiffs pray the Court inquire into the matter and issue its Order as follows:

- a. requiring Amick to remove the obstructions in so much as the same blocks the Plaintiffs' access to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- b. enjoining Amick, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access, both vehicular and pedestrian, to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- c. declaring the Plaintiffs' right to use of Lions Club Road as an easement implied by prior use, a prescriptive easement, or an easement by estoppel;
- d. awarding the Plaintiffs actual and punitive damages in an amount to be determined upon the trial of this case; and,
- e. taxing the costs of this action, including Plaintiffs' attorneys fees, against Amick; and,
- f. awarding such other and further relief as the court deems necessary and appropriate.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

s/Kyle B. Parker

Thomas H. Pope, III

Kyle B. Parker

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

(803) 276-2532

Attorneys for Plaintiffs

Newberry, South Carolina
June 14, 2019

EXHIBIT A

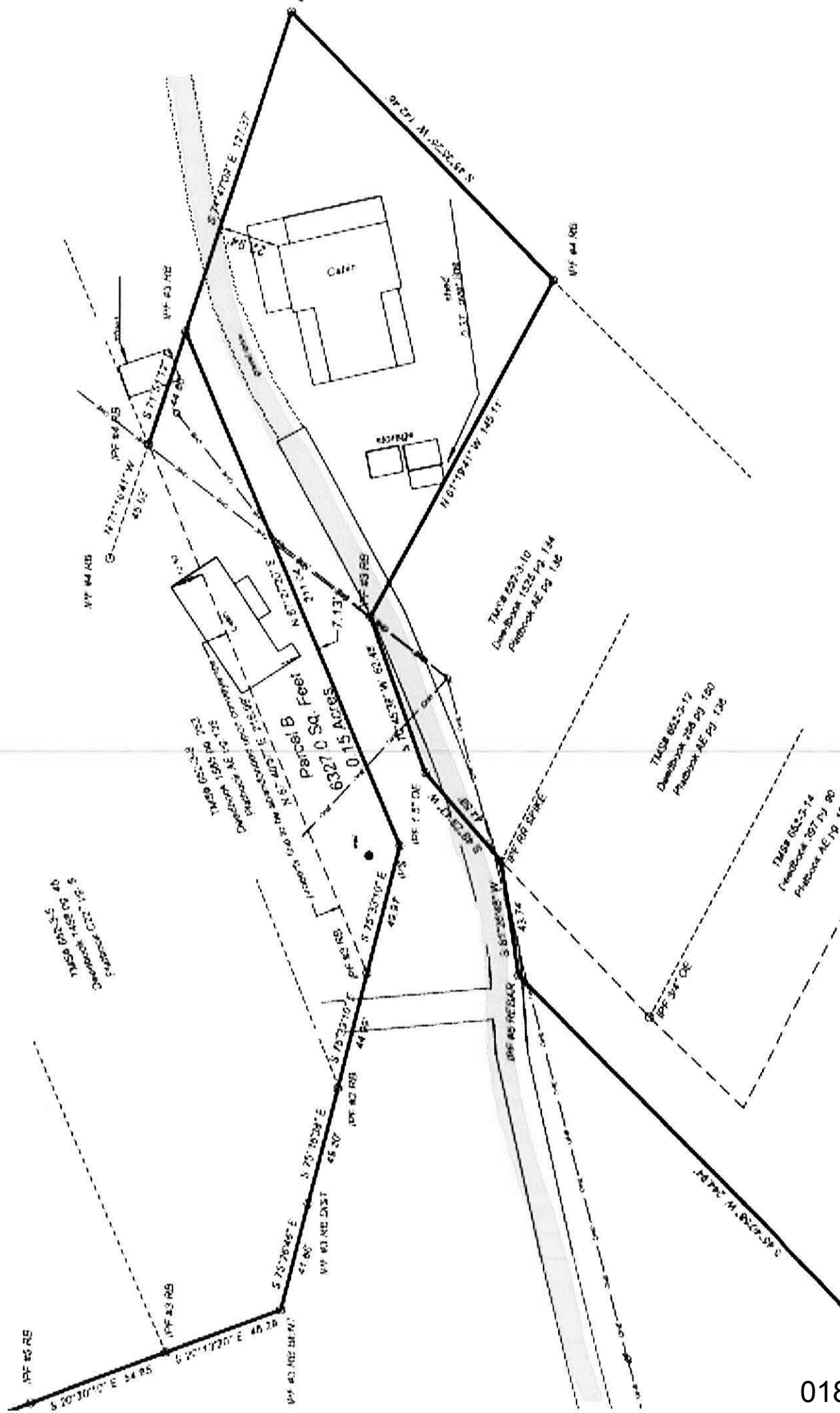


EXHIBIT B

SCHEDULE B EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK)

Policy No.: 813064040-213470248

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
- 5.
5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.
6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267.
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
 - a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before accessing the eastern portion of the property;
 - b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;
 - c. Overhead electric lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and
 - d. Shed in the eastern area of the property projects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10, located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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ALTA Owner's Policy (Schedule B)

AMERICAN
LAND TITLE
ASSOCIATION



(17-0534-01 (AMICK).PFD/17-0534-01 (AMICK)/21)

Lisa Smith Closing File_0076

0184

EXHIBIT C

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total	
Amick, Ray	\$ 1,000	\$ 1,000		\$ 1,000	
Byars, Wick	\$ 1,500	\$ 1,500		\$ 1,500	
Gray, Murray	\$ 1,500	\$ 1,125.00	\$ 375.00	\$ 1,500	
Jay, Nelda	\$ 500	\$ 375.00	\$ 125.00	\$ 500	
McCrackin, Ruth	\$ 1,000	\$ 750.00	\$ 250.00	\$ 1,000	
McSwain, Bill & Julia	\$ 2,000	\$ 2,000		\$ 2,000	
Parr, Jim	\$ 5,050	\$ 5,050		\$ 5,050	
Rice, Joe & Lisa	\$ 9,800	5050	\$ 4,750	\$ 9,800	
Schumpert, Claude & Missy	\$ 10,550	5050	\$ 5,500	\$ 10,550	(pd \$11950: \$1,400 to be reimbursed by Sharicks)
Sharick, Merle & Cheryl	\$ 5,050	\$ 5,050		\$ 5,050	(pd \$3,650: \$1,400 to be reimbursed to Schumperts)
Stewart, Dave & Susan	\$ 5,050	\$ 5,050		\$ 5,050	
	<u>\$ 43,000</u>	<u>\$ 32,000</u>	<u>\$ 11,000</u>	<u>\$ 43,000</u>	

Total Cost from Rd. to Gate	32000
Miscellaneous Contributions	-6750 (Amick, Byars, Gray, Jay, McCrackin, McSwain)
Balance to be Shared Equally	<u>25250</u> (Parr, Rice, Schumpert, Sharick, Stewart)
Divide by 5	<u><u>5050</u></u> each

Total Cost Beyond Gate	11000
Miscellaneous Contributions	-750 (Gray, Jay, McCrackin)
Balance to be Shared Equally	<u>10250</u> (Rice, Schumpert)
Divide by 2	<u><u>5125</u></u>

MERLE D SHARICK
CHERYL J SHARICK

08-01

2650

67-448/539 SC
708

5/14/10

Date

Holland Clarke

Pay
to the order of

Jim Parr

Three thousand six hundred fifty + no 100 \$ 3,650.00
DollarsSecurity
Features
Details on
Back

Bank of America

ACH R/T 053904483

Memo

Road paving

Merle D. Sharick

MP

SUSAN F STEWART
DAVID E STEWART

3865

64-22/610
BRANCH 77271

June 5, 2010

Date

Pay to the
Order of

Bird Paving

Five thousand + fifty + no 100 \$ 5,050.00
DollarsSecurity
Features
Details on
Back

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

For

Susan F. Stewart

Bank of America Advantage

NELDA E. JAY

07-69

6781

67-448/539 SC
402

May 14, 2010

Date

Holland Clarke

Pay
to the order of

Bird Paving Company

five hundred + no 100 \$ 500.00
DollarsSecurity
Features
Details on
Back

Bank of America

ACH R/T 053904483

Memo

Lions Club Road Paving

Nelda Jay

MP

JOHN J McSWAIN
JULIA B McSWAIN

3105

67-776/532
BRANCH 77454

5/11/10

Date

Pay to the
Order of

Bird Paving
Two thousand and no/100

\$2,000.00

Dollars



Security
Features
Details on
Back



WACHOVIA

Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For

Road paving

Julia B McSwain

MP

JAMES N PARR JR

111

67-604/539
BRANCH 142

6/3/10

Date

Pay to the
Order of Bird Paving
Five thousand fifty

\$5,500.00

Dollars



Security
Features
Details on
Back

First Citizens
First Citizens Bank & Trust Company, Inc.

For

James N Parr Jr

MP

THE MURRAY CO. OF NEWBERRY INC.

005520

67-448/539 SC
402

5-27-10

Date

Pay To The
Order of

Bird Construction
One thousand five hundred & no/100

\$1,500.00

Dollars



Security
Features
Details on
Back

Bank of America

Murray

MP

Joseph F. or Lisa S. Rice

1ST CITIZENS BANK & TRUST COMPANY, INC.
CHARLESTON, SC 29401
67-148/532

10963

5/12/2010

Pay to the
Order of

Bird Paving

\$**9,800.00

Nine Thousand Eight Hundred and 00/100*****

Dollars

Bird Paving

Lisa S. Rice

CLAUDE H OR MELISSA B SCHUMPERT

BB&T
BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE
ORDER OF

Bird Paving

\$**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100*****

DOLLARS

Bird Paving

MEMO

Paving Lions Club Road

Melissa B Schumpert
AUTHORIZED SIGNATURE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and	)	
Melissa B. Schumpert,	)	
	)	
Plaintiffs,	)	
v.	)	PLAINTIFFS' REPLY MEMORANDUM
C. Ray Amick,	)	IN SUPPORT OF MOTION FOR
	)	TEMPORARY INJUNCTION
Defendant.	)	
_____	)	

I. INTRODUCTION

After the hearing on June 12, 2019, plaintiffs filed and submitted to the Court the affidavits of Claude Schumpert, Joe Rice, and Barry Koon in support of our motion for temporary injunction. Mr. Sowell, counsel for the defendant, filed affidavits on June 10 and 11, 2019, on behalf of his client, C. Ray Amick.

This Memorandum is to summarize Plaintiffs' position that a temporary injunction should be granted because plaintiffs have presented sufficient evidence to show that (a) they will suffer irreparable harm; (b) there is a likelihood of success on the merits; and, (c) there is not an adequate remedy at law. The facts in our three recent affidavits in support of a temporary injunction are set forth below.

II. AFFIDAVITS OF SCHUMPERT, RICE, AND KOON

Schumpert's affidavit pointed out that the adjoining property owners at Lions Club Point maintained Lions Club Road for many years, and in 2012, they paid to pave Lions Club Road. The paving costs in 2012 were \$39,000 (Affidavit of Claude Schumpert dated June 14, 2019, ¶¶6 and 7 and Exhibit 2). The Schumperts' contribution was \$10,550, Murray Gray's was \$1,500, and the Rice family's was \$9,800. Throughout his 55-year lifetime, Schumpert said that Lions Club Road had at all times been open to vehicular access to the fringe lands (without permission being sought or granted), and that defendant's actions in 2018 have blocked that access and that the other landowners do not now have walking or vehicular access to the fringe lands (Affidavit, ¶13). When he and the other adjoining property owners (including defendant) spent their personal funds to pave Lions Club Road in 2012, no one complained. Even though Schumpert's home abuts the fringe land, he can no longer get a boat trailer to the boat ramp to launch his boat (Affidavit, ¶10). He estimated that dozens of people in recent years have used the fringe land every weekend to launch boats, swim, fish and have community cook-outs. Access to these areas for the last year has been blocked by Mr. Amick, and the area is overgrown at present (Affidavit, ¶13). Amick lives a half-mile away from the fringe land on the upper portion of Lions Club Road near State Park Road. (Affidavit, ¶15).

Schumpert's affidavit included numerous photographs going back 50 years of people at the beach, the 4th of July parade at the fringe land, and cars parked there.

The Joe Rice affidavit stated that the families at Lions Club Point maintained the road, the boat ramp, and the beach by restoring the sand when necessary (Rice affidavit, ¶¶5-7). He stated that all the families were reliant on the boat ramp to launch their boats; that Lions Club Road was the only entrance road to the fringe lands; and, that the defendant for the last year had blocked access to the entire fringe land (Affidavit, ¶15). Most importantly, he had invested over \$300,000 in building his home in reliance "on over 50 years of use of the entrance road" and having access and freedom to use the road, the boat ramp, and beach "until Mr. Amick's attempts to shut down access over the last year or so" (Affidavit, ¶16).

Realtor Barry Koon submitted an affidavit dated June 18, 2019. He was already familiar with the Lions Club area and aware of the frequent warm weather use of the boat ramp, beach, and fringe land. He walked the area and confirmed the boat ramp had a gravel bottom and had been used to launch boats. He confirmed that the gravel portion of Lions Club Road runs onto the fringe land for a distance of 400 feet and that there is a pile of limbs and debris on top of Lions Club Road approximately 250 feet east of the old clubhouse (Affidavit, ¶¶11 and 12; Attachment 3 shows photos).

Mr. Koon further confirmed that Lions Club Road is the only access point for a vehicle to get to the fringe land, boat ramp, and beach (Affidavit, ¶13). He confirmed that the photos attached to Claude Schumpert's affidavit go back 50 years and show people swimming at the beach and cars parked near the beach (Affidavit, ¶15). Mr. Koon concluded that unless the property owners can utilize Lions Club Road freely, their properties will be diminished in value by 10% (Affidavit, ¶20), and that full access to the fringe land is essential for the maximum enjoyment of their lake properties, particularly since they had full access for many decades until last year (Affidavit, ¶23).

The Koon affidavit concluded by stating that he saw no evidence as a realtor that Mr. Amick "would suffer any harm or damage if the Court imposes a temporary injunction to open the road" (Affidavit, ¶24).

III. ARGUMENT

A. *THE ELEMENTS OF TEMPORARY INJUNCTIVE RELIEF HAVE BEEN ESTABLISHED.*

1. Irreparable Harm

The plaintiffs have demonstrated that defendant's blocking the road has kept them and the entire neighborhood from using the fringe land to boat, fish, and swim as they did for over 60 years before 2018. This harm is especially critical during the summer and warm weather months when boating and lake usage is at its peak and access to the fringe land is essential for Plaintiffs and the neighborhood to have full enjoyment of their property. Mr. Amick lives one-half mile from where he blocked the road. His actions have upset the *status quo ante*.

2. Likelihood of Success

Plaintiffs' Memorandum of June 11, 2019 shows that they have made a *prima facie* showing of each of the following: (a) Prescriptive Easement (pp. 4-6); (b) Easement by Estoppel (pp. 6-8); and/or, (c) Easement by Prior Use (pp. 8-9).

The Schumpert, Rice and Koon affidavits clarify that all Lions Club property owners maintained Lions Club Road and the fringe lands with their own money and labor. No one complained at any time, including in 2012 when they paid almost \$40,000 for paving (Affidavit of Schumpert, ¶16 and Exhibit 2). Amick only paid \$1,000 of this total. The Lions Club paid nothing.

A prescriptive easement, in addition to the cases cited in plaintiffs' Memorandum, is supported by a showing of continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right. Bundy v. Shirley, 772 S.E.2d 163 (2015). All of these elements have been established. In addition, the obtaining of an easement by prescription can arise from the acquiescence of the owner. Blume v. Southern Ry. Co., 85 S.E. 440, 67 S.E. 546 (1910). Both the Lions Club and Amick acquiesced.

For the same reasons, plaintiffs have presented a prima facie showing of an easement by estoppel. The defendant and his alleged predecessor "in title" Lions Club were aware of plaintiffs' use of the easement for decades without complaint. They had actual and constructive knowledge that the Rice family was building a \$300,000 home in reliance on access, both vehicle and pedestrian, to the fringe land (Affidavit of Rice, ¶16). Mr. Amick and the Lions Club also had notice of the fact that Plaintiff Schumpert had built his permanent residence at 131 Lions Club Circle and that he was using Lions Club Road for launching his boat and accessing the beach. Exhibit 2 to the Affidavit of Murray Gray illustrates the Schumpert's permanent home does not have road access to launch a boat without using Lions Club Road.

3. No Adequate Remedy at Law

Defendant argues that plaintiffs have a cause of action for trespass which is an adequate remedy at law if the temporary injunction were to be denied. This is incorrect. Amick's trespass commenced in 2018 and is continuing daily. Our Supreme Court has long recognized that "an injunction is a proper remedy for a continuous trespass to land." McClellan v. Taylor, 54 S.C. 430, 32 S.E. 527 (1899). If this were not the case, Plaintiffs would have to sue Mr. Amick for each day's trespass.

In Mack v. Edens, 306 S.C. 433, 412 S.E.2d 431 (1992); reh. denied January 15, 1992, certiorari denied May 6, 1992, the Court of Appeals reversed the denial of an injunction to a downstream landowner. Writing the opinion was Judge Randy Bell, who stated:

“Because of the permanent and recurring nature of the injury, which cannot otherwise be prevented, **the courts should enjoin the continuous trespasser** to protect the landowner’s rights from hurt or destruction, Carter v. Lake City Baseball Club, 218 S.C. 255, 62 S.E.2d 470 (1950); Shelley v. Hucks, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984).” Id. at 434. (emphasis added)

IV. DEFENDANT AMICK’S RESPONSES DO NOT REFUTE PLAINTIFFS’ ENTITLEMENT TO A TEMPORARY INJUNCTION

Amick filed his Memorandum in Opposition to Temporary Injunction on July 8, 2019. In that Memorandum, he asserted eight reasons in opposition. These are addressed below.

1 & 2. Affidavit of Cheryl Littlejohn

Amick argues that Littlejohn’s deed (which was conveyed to her by Affiant Chris Jay in 2017) does not refer to an easement or right of way to access Lions Club Road. This is true because there is no recorded written easement on the properties conveyed by the Lions Club. The road is clearly visible. Unlike Ms. Littlejohn, her predecessor in title Chris Jay was aware that his family and the other neighbors had provided labor and money to maintain Lions Club Road over many years. The Chris Jay affidavit in his affidavit points out that his family maintained the road (Affidavit of Chris Jay, ¶15). He confirmed that for his entire life the road was open for vehicular and pedestrian use without permission and without limitation. His mother Nelda Jay paid \$500 for the paving costs in 2012 (Affidavit of Claude Schumpert, Exhibit 2).

Littlejohn, it is argued, claims that the plaintiffs have docks on the lake. This is true, but they are without road access to launch boats. Amick’s argument is that plaintiffs and the other landowners can use another landing (Billy Dreher Island) two and a half miles away. This is a total deviation from the *status quo ante* prior to 2018 when Amick blocked the road.

3 & 4. Doggett Whitaker Affidavit

Whitaker claimed the use of the road was “by permission” from the Lions Club. Mr. Amick claims this is not refuted by plaintiffs. This is incorrect. It is specifically refuted by former Lions Club President John Summer (Affidavit of John Summer, ¶16) and by former Lions Club members Chuck Meadows (Affidavit of Meadows, ¶14), and Plaintiff Murray Gray (Affidavit of Gray, ¶18). It is also refuted by the Affidavits of Claude Schumpert (Schumpert Affidavit, ¶18); Neel McSwain (McSwain Affidavit, ¶11); Becki McSwain (McSwain Affidavit, ¶13); Young Schumpert (Schumpert Affidavit, ¶14); Ferd Summer, Jr. (Summer Affidavit, ¶9); and, Chris Jay (Jay Affidavit, ¶13).

The Whitaker Affidavit is the only piece of evidence alluding to the use of Lions Club Road being “permissive” only. It references no dates, documents, or details of such “permission”. It is not a sufficient basis for the temporary injunction to be denied.

5. No Irreparable Harm is Alleged by Amick

Amick overlooks that his conduct in blocking Lions Club Road and usurping the Lions Club Road easement is a continuing trespass (see above) for which a temporary injunction is appropriate. Each day the road is blocked is a separate trespass. Plaintiffs should not be required to bring suit for each day of Mr. Amick’s bad conduct. It is irreparable harm for Plaintiffs and their neighbors to be denied access to what is essentially “community recreational property” at Lake Murray because of one irascible neighbor who lives half-mile away. Mr. Amick’s intentions are clear. He is not only trying to control the road, but to control, restrict, and limit access to the fringe land, which he does not own.

6. Amick Alleges Plaintiffs Have Adequate Remedy at Law

As set forth above, our Supreme Court has long recognized that “an injunction is a proper remedy for a continuous trespass to land.” McClellan v. Taylor, 54 S.C. 430, 32 S.E. 527 (1899). The Amick Memorandum cites Nutt Corp. v. Howell Rd, LLC, 396 S.C. 323, 327, 721 S.E. 2d 447, 449 (Ct. App. 2011) in support of his claim that plaintiffs have a trespass claim which is an adequate remedy at law. Nutt was not a trespass action, but a breach of contract case in which the plaintiff there had a contractual agreement which was breached, and he received damages in excess of \$34,000.

Amick has overlooked this as his actions here are a continuous, ongoing trespass, where injunctive relief is appropriate. See above.

7. Amick Says Plaintiffs Are Not Likely to Succeed on the Merits

Plaintiffs have submitted 13 affidavits which demonstrate a likelihood of succeeding on the merits. Of particular note are the fact that the easement has existed for over 60 years, and the paved and gravel portions of Lions Club Road have been maintained by the property owners and their families for this entire period. The easement is not permissive, but by claim of right (and/or estoppel). In addition, when Lions Club Road was paved in 2012, the following adjoining landowners (who purchased their property from the Lions Club) paid for the work:

a. Byars:	\$1,500
b. McSwain:	\$2,000
c. Schumpert:	\$10,550
d. Rice:	\$9,800
e. McCrackin:	\$1,000
f. Jay (Littlejohn):	\$500
g. Gray:	\$1,500
h. Amick	\$1,000 (residence is located half-mile away on Lions Club Road at State Park Road)

See attached herewith a copy of Exhibit 2 to Affidavit of Murray Gray with notations.

No one (including the Lions Club or Defendant Amick) took the position that they had no right to maintain Lions Club Road before it was paved in 2012 or to pay for paving it and maintaining it thereafter. Nor did anyone contest the continuous use of Lions Club Road for over 60 years to gain access to the fringe lands. Plaintiffs and their neighbors all deny permission was ever sought or granted for their access.

8. Amick Argues No Requirements Are Met for a Temporary Injunction

Amick's Memorandum cites Flanagan, South Carolina Civil Procedure (3rd Edition) at Pages 532-536, but does not state how plaintiffs have failed to meet any "requirements". This argument should be rejected. It can be noted that Professor Flanagan does cite the three factors plaintiffs have discussed above and in their Memorandum in Support of Temporary Injunction. In general, Flanagan states that "the temporary injunction is an ancillary relief designed to maintain the existing relationship between the parties during the litigation" – i.e., to maintain the status quo. (Flanagan, S.C. Civil Procedure (2nd Edition), p. 343. He further discusses that "the interests of the parties must be balanced." Id. at p. 344.

V. BALANCING THE INTERESTS OF THE PARTIES **SUPPORTS INJUNCTIVE RELIEF**

Balancing the interests here surely favors the plaintiffs. They have paid money to pave and to maintain the road. No one can refute this. The Schumperts build their beautiful permanent residence (and paid over \$10,000 to pave the road) with full expectations that they would have full and free use of the road to launch his boat. Likewise, see Affidavit of Joe Rice, ¶16. Amick lives half-mile from the fringe land. He knew the plaintiffs and their adjoining neighbors paved and maintained the road – for 60 years – until he blocked it in 2018. Can he suffer harm if a temporary injunction is granted? No. His actions in blocking the road are an attempt to keep Plaintiffs, Joe and Lisa Rice, and the other neighbors from enjoying launching boats and using the fringe land as they have without restriction or permission – for decades. Mr. Amick is asserting a "right", by blocking the road, simply out of vengeance. He is trying to restrict access (and prohibit vehicular access) to property he does not own.¹

¹ The term "dog in the manger" applies here. It is defined in Dictionary.com as:

"A person who selfishly keeps something that he or she does not really need or want so that others may not use or enjoy it."

**VI. THIS COURT SHOULD ORDER THAT PLAINTIFFS POST SECURITY
DURING THE PENDENCY OF THIS CASE**

While Defendant Amick has not asserted how he would be harmed by a temporary injunction (which seeks to maintain the status quo for over 60 years prior to 2018), his interest, if any, can be protected by this Court directing that Plaintiffs post security (or a bond) per Rule 65(c) SCRCP.

After the conclusion of the merits of this action, if Defendant Amick prevails, he can move for a hearing on damages and, if proven, can recover against Plaintiffs and/or the security posted. It is discretionary with this Court to set this security “...in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Rule 65(c) SCRCP. (emphasis added).

In view of the strength of the facts presented in the 13 affidavits submitted by Plaintiffs, the Court should issue a temporary injunction and set the security in whatever sum it deems proper.

CONCLUSION

The *status quo ante* as of 2018 should be maintained. The temporary injunction should be entered. Amick will suffer no loss or damage if Lions Club Road is unblocked during the pendency of this action. He has not asserted how he could be harmed. He lives a half-mile away from the fringeland where he placed the road block. The plaintiffs understand that this Court can protect any “damage” that Amick were to prove at the conclusion of the hearing on the merits (assuming he were to prevail) by directing the plaintiffs to provide security (or post a bond) under Rule 65 SCRCP. The plaintiffs will gladly do so. If Amick would later prevail on the merits, he could move the Court to establish how he has been damaged which amount could be applied against the bond and paid to him after all appeals were concluded.

The Plaintiffs respectfully request, for the reasons set forth herein and in previous filings and memoranda, that this Court issue an Order as follows:

- (a) Temporarily enjoining Defendant Amick and his agents and tenants (if any) from blocking Lions Club Road with any obstacles, including ropes, chains, barricades, parked cars, debris, and the like, until the conclusion of this action (including any appeals) and further Order of the Court.
- (b) Directing that Defendant Amick remove from Lions Club Road all obstructions to vehicular or pedestrian travel for a width of 12 feet during the period of this injunction.
- (c) Directing that Plaintiffs post via the Clerk of Court of Newberry County a bond or security pursuant to Rule 65(c) SCRCP in an amount this Court deems proper.

The Plaintiffs understand that if this Court grants the motion for temporary injunction, said injunction should go into effect after Plaintiffs have posted whatever bond is directed.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

s/Kyle B. Parker

Thomas H. Pope, III

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Attorneys for Plaintiffs

Newberry, South Carolina
July 9, 2019



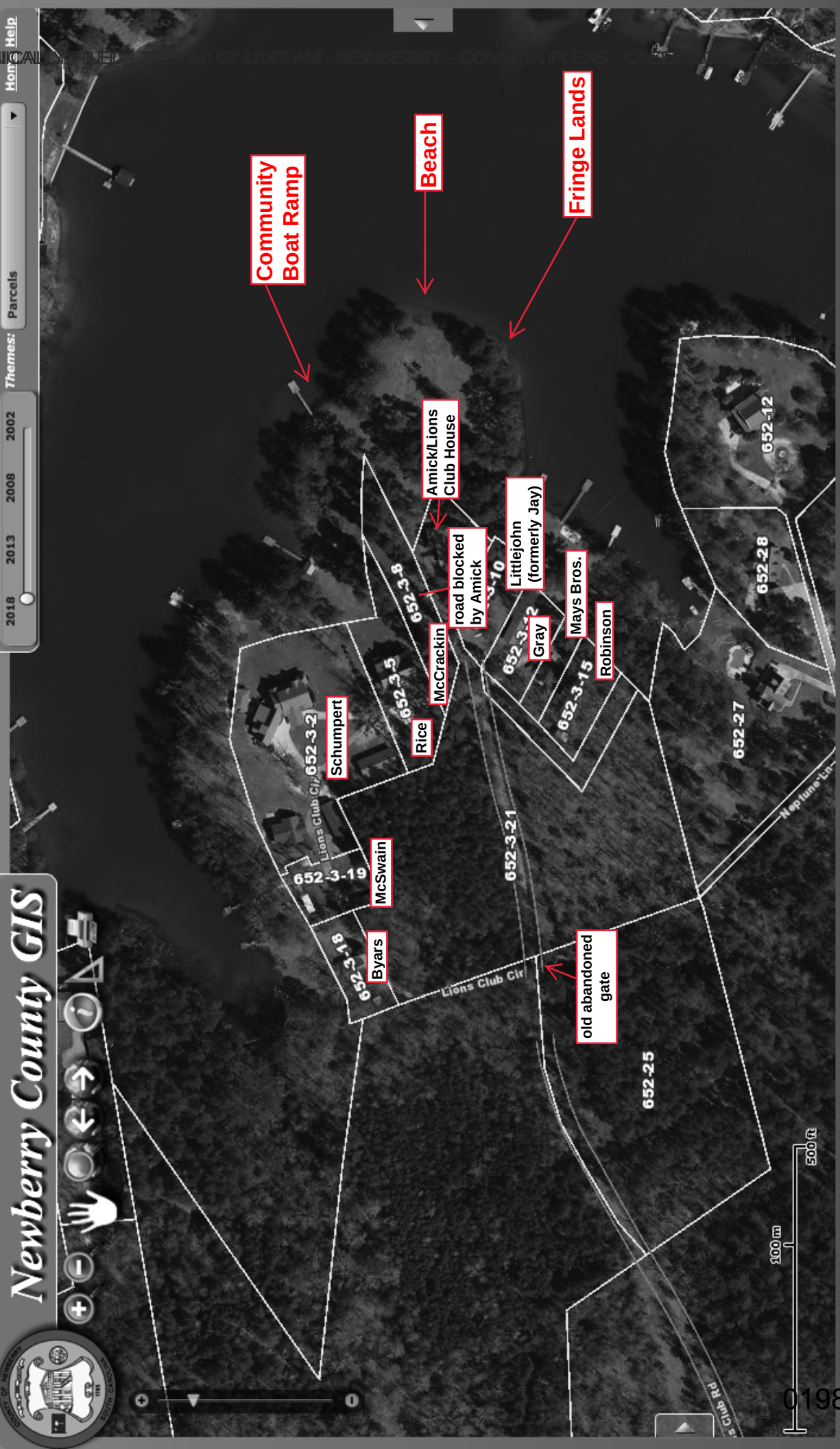
Newberry County GIS



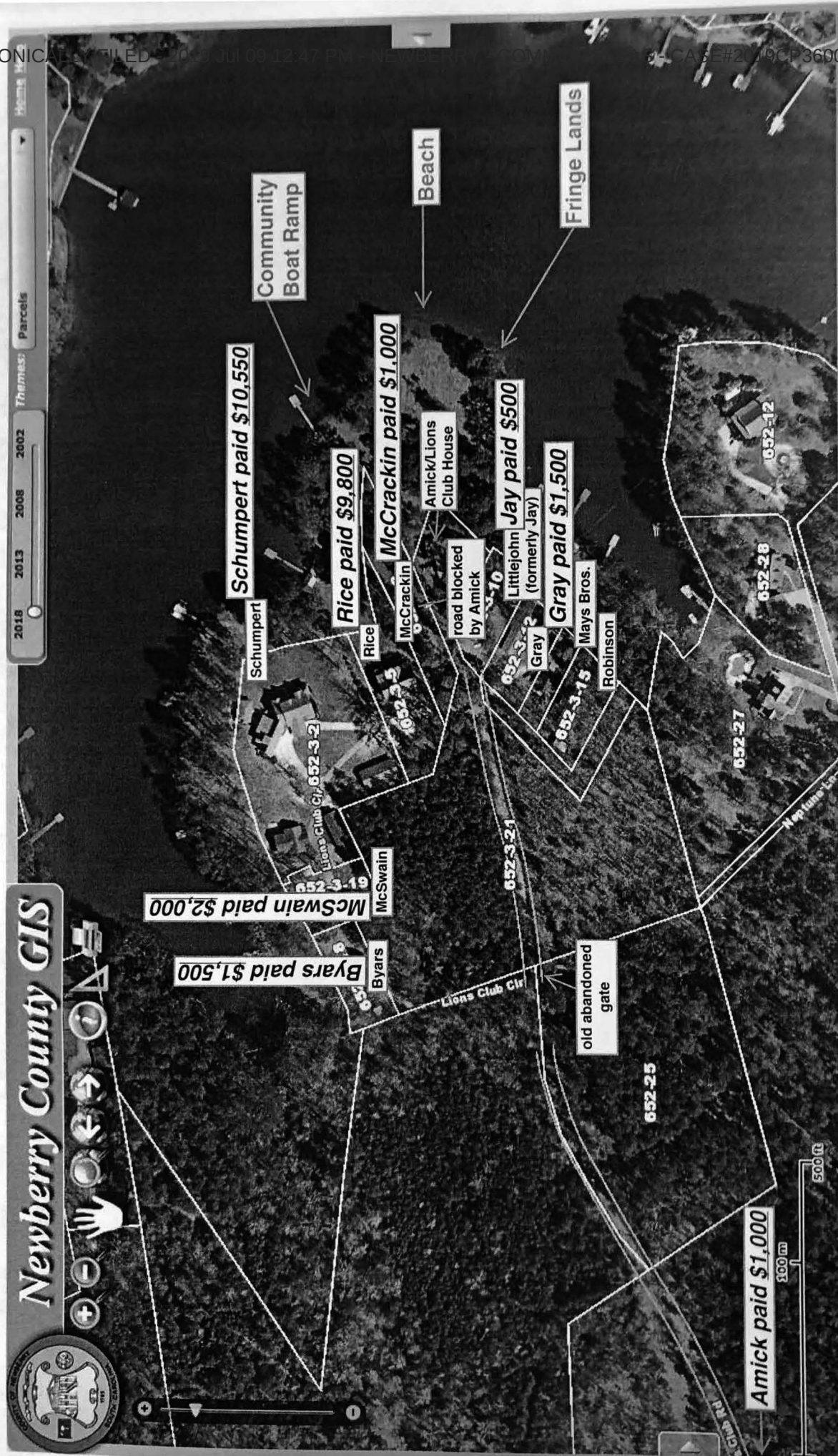
2018 2013 2008 2002

Themes: Parcels

Home Help



Road Maintenance/Paving



*These payments are itemized on Exhibit 2 to Claude Schumpert's Affidavit dated 6/14/19.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2018-CP-36-00089
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	
Plaintiffs,	)	THIRD
	)	AMENDED COMPLAINT
v.	)	(NON-JURY)
	)	
NEWBERRY LIONS CLUB and C. RAY AMICK,	)	
	)	
Defendants.	)	
	)	

The Plaintiffs complaining of the Defendants would show and allege as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice (“Rices”) are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and upon information and belief, was a member of Defendant Newberry Lions Club at all times relevant to this proceeding.

4. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and, at all times relevant to this proceeding, retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

5. The Newberry Lions Club published and offered to sell the 5.5 acre tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

6. At a meeting of the Board of Directors of the Lions Club on January 14, 2017, the board was presented with a proposed letter drafted by the President of Defendant Lions Club offering the property for sale to all adjacent property owners of the subject property. Defendant Ray Amick, although not a member of the board of the Lions Club, was in attendance at that meeting. Before a vote was taken by the board at the meeting on January 14, 2017, Defendant Amick insisted that he needed until June 1, 2017, to buy the property. In response to his demand, by unanimous vote of the board of directors, the Lions Club acquiesced in Amick's demand.

7. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1. This letter was approved by the board of the Lions Club after being amended at Amick's insistence to include a deadline of June 1, 2017, after which the Lions Club's offer would no longer be valid.

8. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other adjoining landowners.

9. The offer stated in part, "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

10. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property, please let us now right away . . ." Exhibit 1 attached hereto.

11. The offer provided that any prospective purchaser would take title subject to encroachments where it stated, “[a]ny encroachments will have to be settled after the property is sold.”

12. The offer further stated, “This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.” Exhibit 1.

13. The above-referenced offer was sent to the Rices and, upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

14. As a result of the offer and accepting the conditions set forth therein, the Rices, through their attorney, sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

15. The Newberry Lions Club, upon information and belief, received other offers including one for \$300,000 from Claude Schumpert.

16. Upon information and belief, the Rices’ bid was the highest received and therefore, was the offer which was accepted by the the Newberry Lions Club.

17. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club’s offer.

18. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club (Exhibit 3), which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

19. Defendant Lions Club did not respond to either letter (Exhibit 2 or Exhibit 3) and never contested that Plaintiffs were the high bidder for the subject property or that the bid response of the Plaintiffs was anything other than acceptance of the offer of the Lions Club.

20. At the meeting of the Board of Directors of the Lions Club on May 23, 2017, Defendant Amick, a non-board member, was present. He spoke at the meeting and said that he would not accept the encroachments on the subject property referenced in the Lions Club offer of late-January 2017. By unanimous vote of the Lions Club board, it voted to withdraw its offer set forth in Exhibit 1 and instead opted to clear up “encroachments.” The board voted at that meeting for its attorney to write the landowners who had submitted bids (Plaintiffs and Claude Schumpert) to inform them that the Lions Club offer on Exhibit 1 was withdrawn.

21. Amick’s actions at the meeting on May 23, 2017, constituted a withdrawal of any offer he may contend he made.

22. The effect of the vote of the board at this board meeting on May 23, 2017, was an attempt to negate the bids of Plaintiffs (and Schumpert) and rescind its prior offer before the June 1 deadline. However, Defendant Lions Club did not reserve the right to do so in its offer (Exhibit 1), nor did it inform Plaintiffs (or Schumpert) before the June 1 deadline of its attempt to withdraw its offer of sale.

23. On June 1, 2017 (which was the deadline imposed by the Lions Club in late February 2017; Exhibit 1), there were only two bids pending: Plaintiffs’ bid of \$325,000 and Schumpert’s bid of \$300,000. Plaintiffs were high bidders.

24. Defendant Lions Club has refused to acknowledge that Plaintiffs were the high bidders and it has ignored Plaintiffs original bid as well as the follow-up letters from Plaintiffs’ counsel on May 15, 2017.

25. After the letter of May 15, 2017 (Exhibit 3), the attorney for the Newberry Lions Club sent a letter dated June 5, 2017 (Exhibit 4), indicating that at its meeting on May 23, 2017, the Lions Club board had voted not to sell the property located at Lake Murray at that time because they were not able to convey a good fee simple marketable title hereto “because of encroachments.”

26. At the time of this letter (Exhibit 4), the Lions Club deadline of June 1 had passed and the Rices had already accepted Defendant Newberry Lions Club’s offer as highest bidder and thereby agreed to accept title subject to the encroachments.

27. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold to them as highest bidders. The letter dated November 21, 2017, is attached hereto and made part hereof as Exhibit 5.

28. Even though not a member of the Lions Club’s board, Defendant Amick attended every board meeting in 2017 except April. His purpose in being present at these meetings was to try to insure that he obtain title to the subject property by insisting on terms favorable to him, which were not in the public interest and about which no adjoining property owners had knowledge.

29. From at least November 2017, Amick had knowledge that the Rice’s bid response was the highest and that Plaintiffs had accepted the Lions Club offer. Despite that knowledge, and in full assumption of any risk, Amick and Lions Club proceeded to attempt to close for a sale price (\$300,000) that was less than Plaintiffs’.

30. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32 pm. A lis pendens properly describing the property which is the subject of this action was

filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

31. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property which resolved an encroachment issue with an adjoining landowners, Joseph T. McCrackin, III and Gena B. McCrackin, by deed recorded in the Office of the Clerk of Court in Deed Book 2017 page 110. This transaction resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified as TMS 652-3-22.

32. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

33. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are ready, willing and able to pay the agreed upon price of \$325,000 for the property in question even as it is presently configured.

34. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs' claims to the property in favor of one of their own members conveying the property at a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55 pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was \$300,000 and "other consideration". The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee's fiduciary duties.

35. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder.

36. Furthermore, as a result of the failure of Defendant Newberry Lions Club to follow through with their offer, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance, together with prejudgment interest.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

37. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

38. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

39. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

40. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from "day and hour" when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

41. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

42. Because the said deed was recorded more than twenty-eight hours after Plaintiffs' lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

43. Instead, the Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be conveyed to them for the consideration of \$325,000.00.

44. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

45. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

46. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and if the Court determines that the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property in similar fashion.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

47. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

48. For the reasons set forth above, including Defendant Lions Club's breach of contract with Plaintiffs, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

49. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

50. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

51. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

52. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

53. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

54. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices' successful bid.

55. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

56. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or who had by his conduct repudiated and/or withdrew (on May 23, 2017) any prior acceptance of the offer outlined in the letter attached hereto as Exhibit 1.

57. The Plaintiffs suffered damages as a result of the promises made and not kept.

58. The Plaintiffs are entitled to obtain the property and/or actual damages under the doctrine of promissory estoppel.

FOR A FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

59. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

60. From June 1, 2017 through February 2018, Defendant Amick was not a member of the board of directors of the Defendant Lions Club ("the "board"); nevertheless, he insinuated himself into the decisions of the board by attending every board meeting in which the subject of the sale of the Lions Club property was discussed during this time period. (See attached Exhibit 6, copies of all minutes of board meetings, January 2017 through February 2018).

61. In attending these board meetings, Amick was pursuing his own personal agenda to buy the subject property on terms favorable to him without regard to Plaintiffs' rights as highest bidder.

62. At said board meetings during 2017, Defendant Amick made demands to the board as follows:

- a. He insisted the board extend the offer period to June 1, 2017 (see Minutes of January 24, 2017).
- b. He insisted at the May 23, 2017, meeting that the board clear up the encroachments so that he could purchase the property with "clear title."

Defendant Lions Club acquiesced in all of Defendant Amick's demands.

63. Based on his personal agenda, Defendant Amick did not want to, or was not able to, purchase the subject property by the June 1, 2017, deadline in the Lions Club's offer, and he coerced the Lions Club to try to change the bid conditions in May 2017 without notice to Plaintiffs so that encroachments would be cleared up by the Lions Club at his insistence, that the offer deadline of June 1 would be ignored, that the Plaintiffs' bid response/acceptance would be ignored and that he would be able to purchase the property in February 2018 – all with his knowledge of Plaintiffs' highest bid.

64. Amick's actions were wrongful and interference with Plaintiffs' contract with the Lions Club in each of the following particulars:

- a. As set forth herein, Plaintiffs had a contract with Defendant Lions Club to purchase the subject property for \$325,000 (plus their agreement to accept the encroachments as stipulated by the offer of the Lions Club);
- b. Defendant Amick had actual and/or constructive knowledge of Plaintiffs' contract;
- c. Defendant Amick intended to interfere with Plaintiffs' contract;

d. Defendant Amick's interference with Plaintiffs' contract was without justification because he exerted pressures and maneuvers to get Defendant Lions Club to accept his bid by circumventing the Plaintiffs' highest bid and/or by changing the terms and conditions of the sale to circumvent Plaintiffs' high bid as set forth herein; and,

e. By virtue of Defendant Amick's conduct, Plaintiffs have been damaged by the fact that they are not able to place the property in a conservation easement to protect it from development.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

65. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

66. Defendant Lions Club knew or should have known that, in offering for sale the subject property, its handling of said sale included an implied covenant of good faith and fair dealing.

67. Defendant Lions Club, after offering said property for sale in January 2017 (Exhibit 1), knew or should have known that all bids received were entitled to be treated in good faith and dealt with fairly.

68. Plaintiffs' bid-response to the offer of the Lions Club constituted the highest bid and was an acceptance by Plaintiffs of the offer of the Lions Club.

69. Defendant Lions Club, in failing to honor Plaintiffs' bid, was in breach of the contract/agreement with Plaintiffs.

70. Based on the circumstances surrounding the breach, Defendant Lions Club had fraudulent intent and its unfair dealings and fraudulent intentions were manifested as follows:

- a. Lions Club allowed Amick (an "insider") to have input in the decision of the Lions Club even though Amick was not a board member;
- b. Lions Club fielded and acquiesced to Amick's demands relating to the terms and conditions of the sale as set forth above;

- c. Lions Club, knowing that Amick withdrew his bid on May 23, 2017, refused to honor Plaintiffs highest bid as of the June 1, 2017, deadline;
- d. Lions Club, after the June 1 deadline, without notice to Plaintiffs, let Amick in effect purchase the property on his terms in a single-bid process in January 2018, and for a price lower than Plaintiffs; and,
- e. Lions Club ignored all written communications from Plaintiffs' attorneys in February, May, and November 2017 demanding that Lions Club acknowledge Plaintiffs' highest bid and consummate the sale to Plaintiffs.

71. Lions Club's breach of contract was accompanied by a fraudulent act and unfair dealing as set forth herein.

72. These actions by the Lions Club constitute breach of contract accompanied by fraudulent act which have damaged Plaintiffs as set forth above, and Plaintiffs are entitled to all damages therefrom.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment – Easement – Injunction As To Amick)
(IN THE ALTERNATIVE)

73. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein. This cause of action is set forth alternatively.

74. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through "Lions Club Point" to and onto the fringe lands owned by SCE&G. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

75. Within a short time after obtaining a deed from the Lions Club to the subject property in February 2018, Defendant Amick installed "no trespassing" signage and placed a barricade across Lions Club Road, which barricade blocked access to the fringeland or Point of

the Lions Club peninsula and prevented the Plaintiffs and adjoining landowners from utilizing the boat ramp and the beach area on said point that are located on SCE&G fringe lands.

76. Plaintiffs and all property owners adjoining the subject property have used Lions Club Road for over 50 years to access the boat ramp and the beach area on the Point. The usage of this road by the neighborhood of at least 15 adjoining property owners has been without permission, restriction, or limitation, and at no time during this 50-year period has the road been blocked.

77. Defendant Amick's actions in blocking the use of Lions Club Road for such access is unlawful and in contravention of the rights of the Plaintiffs and all other property owners to use said road for access to boating and recreational use of the Point as has been the case for over five decades.

78. Plaintiffs believe this is a genuine controversy that should be determined by the Court in a declaratory judgment.

79. For over 50 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to and onto the fringe lands, including in May and June 2010 when they spent over \$42,000. The amounts paid by these Plaintiffs and others are shown on Exhibit 6, attached hereto. No one complained about these improvements, and the landowners spent this money relying on their right to use the road for the purpose which heretofore remained unquestioned.

80. The Plaintiffs and the Lions Club Point property owners, all of whom acquired their titles from the Newberry Lions Club, also have maintained those portions of Lions Club Road which are gravel: beside the old Lions Club clubhouse and for several hundred feet on the fringeland. The

Plaintiffs and their neighbors have purchased gravel, spread gravel, and performed other maintenance of the gravel portion in these areas of Lions Club Road for more than 50 years.

81. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to LC Point over which Lions Club Road traverses for over 50 years. Amick has acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

82. The Lions Club Road is the only road access for the Plaintiffs and the Lions Club Point landowners to use for vehicles to launch boats or to drive onto the fringeland.

83. This matter is of some urgency because the summer is here, and Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

84. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

85. Defendant Amick's recent actions in May 2019 (emails attached as Exhibit 7) reveal his intention to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

86. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

87. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (or received) permission for such use.

88. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evinced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

89. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club and Amick.

90. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road (both paved and gravel), the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

91. Plaintiffs constructed a large home on their lot expecting and believing that they had and would have use of said Road. Without the use of the Road, there would be no way for them to take a vehicle and boat trailer to the lake to launch and use said boat. Amick had full knowledge of Plaintiffs' use of the road yet remained silent regarding the same prior to obtaining his deed. Amick is estopped by his conduct from asserting to the contrary.

92. Plaintiffs have an easement implied by prior use because they have unity of title with Defendant; there has been severance of title; the prior use was not temporary; it was known or apparent to the parties; and, there is a necessity for the easement.

93. Plaintiffs are entitled to an Order of this Court declaring that they (and them neighbors) have one or more of the following:

- (a) An easement by prescription
- (b) an easement by estoppel; and
- (c) an easement by prior use.

94. As a result, the Court should issue its Order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

95. Given that the Plaintiffs and their predecessor in title used the road for many decades prior to Defendant's erection of the obstructions without complaint from anyone, including Defendant, their continued use (to trailer fishing and pleasure boats for launch at the boat ramp) cannot and does not prejudice Defendant and the entry of injunctive relief will merely return the parties to the *status quo ante*.

96. When Amick obtained his purported title to the property (which is disputed), he obtained a title insurance policy; however, such policy did not insure him against claims for:

- (7) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..." (Exhibit 8 attached)

97. Furthermore, Plaintiffs have no adequate remedy at law and have demonstrated a likelihood of success on the merits. Therefore, equity demands that this Court issue its Order requiring Amick to remove the obstructions insomuch as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road.

WHEREFORE, the Plaintiffs pray for the issuance of an Order as follows:

- a. setting the aforesaid conveyance to Defendant C. Ray Amick aside;
- b. requiring Defendant to specifically perform under the terms of the agreement by conveying said subject property to Plaintiffs;
- c. awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
- d. enjoining the Defendants from transferring the property to any other person or entity;
- e. in the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;
- f. in the alternative, declaring that Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as it has been historically, per one or more easements set forth above;
- g. enjoining temporarily and permanently Defendant Amick from blocking, fencing, or any act which attempts to restrict the use of Lions Club Road and directing him to remove the ropes, parked cars, debris, and any other obstructions which exist as of the time of a Court Order; and,
- h. awarding such other and further relief as this Court may deem just and proper.

Dated: July 26, 2019

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III
Thomas H. Pope, III (SC004508)
E-mail: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
E-mail: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276.8684

Attorneys for Plaintiffs

EXHIBIT 1



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

0220

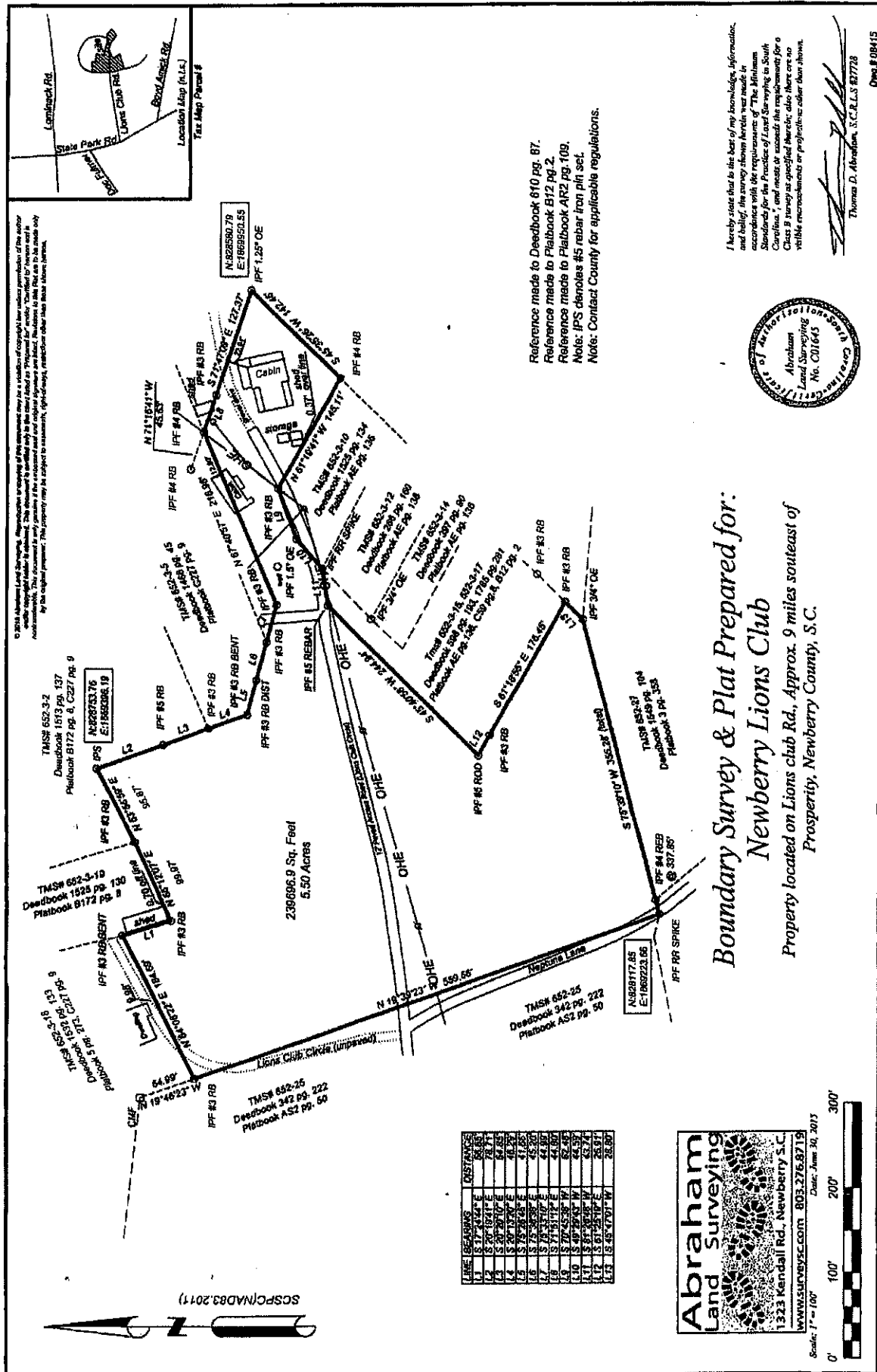


EXHIBIT 2

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

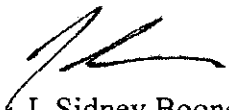
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



EXHIBIT 3

MCNAIR

ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

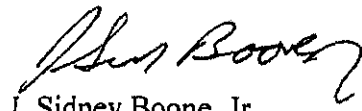


Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com*)

ELECTRONICALLY FILED - 2019 Jul 26 9:02 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT 4

HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER

CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

ELECTRONICALLY FILED - 2019 Jul 26 9:02 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



0226

EXHIBIT 5

COPY

MCNAIR
ATTORNEYS

November 21, 2017

Michael A. Scardato

mcardato@mcnair.net

T 843.723.7831
F 843.722.3227

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 4C
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



1698525v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

0230

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Eugene Crocker, President
James S. Verner, Esq.
November 21, 2017
Page 2

MCNAIR
ATTORNEY

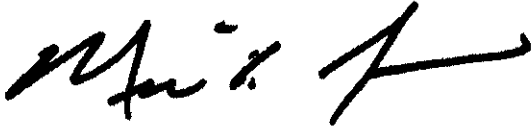
ELECTRONICALLY FILED - 2019 Jul 26 9:02 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

Exhibit 6

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total	
Amick, Ray	\$ 1,000	\$ 1,000		\$ 1,000	
Byars, Wick	\$ 1,500	\$ 1,500		\$ 1,500	
Gray, Murray	\$ 1,500	\$ 1,125.00	\$ 375.00	\$ 1,500	
Jay, Nelda	\$ 500	\$ 375.00	\$ 125.00	\$ 500	
McCrackin, Ruth	\$ 1,000	\$ 750.00	\$ 250.00	\$ 1,000	
McSwain, Bill & Julia	\$ 2,000	\$ 2,000		\$ 2,000	
Parr, Jim	\$ 5,050	\$ 5,050		\$ 5,050	
Rice, Joe & Lisa	\$ 9,800	5050	\$ 4,750	\$ 9,800	
Schumpert, Claude & Missy	\$ 10,550	5050	\$ 5,500	\$ 10,550	(pd \$11950: \$1,400 to be reimbursed by Sharicks)
Sharick, Merle & Cheryl	\$ 5,050	\$ 5,050		\$ 5,050	(pd \$3,650: \$1,400 to be reimbursed to Schumperts)
Stewart, Dave & Susan	\$ 5,050	\$ 5,050		\$ 5,050	
	<u>\$ 43,000</u>	<u>\$ 32,000</u>	<u>\$ 11,000</u>	<u>\$ 43,000</u>	

Total Cost from Rd. to Gate	32000
Miscellaneous Contributions	-6750 (Amick, Byars, Gray, Jay, McCrackin, McSwain)
Balance to be Shared Equally	25250 (Parr, Rice, Schumpert, Sharick, Stewart)
Divide by 5	<u>5050 each</u>

Total Cost Beyond Gate	11000
Miscellaneous Contributions	-750 (Gray, Jay, McCrackin)
Balance to be Shared Equally	10250 (Rice, Schumpert)
Divide by 2	<u>5125</u>

MERLE D SHARICK 08-01
 CHERYL J SHARICK
 182 NEPTUNE LN (803) 364-0120
 PROSPERITY, SC 29127

2650

67-448/539 SC
 708

5/14/10

Date

Pay to the order of Jim Barr \$ 3,650.00
Three thousand six hundred fifty + no Dollars

Bank of America

ACH R/T 053904483

Memo Road paving

1053904483 000776221896 2650

SUSAN F STEWART 803-920-5807
 DAVID E STEWART 803-600-6944
 732 GARD COURT 130 Neptune Lane
 CHAPIN, SC 29036 Prosperity, SC 29127

3865

64-22/610
 BRANCH 77271

June 5, 2010

Date

Pay to the order of Bird Paving \$ 5,050.00
Five thousand + fifty + no Dollars



WACHOVIA

Wachovia Bank, N.A.
 wachovia.com

For

061000227 1010075223898 3865

Bank of America Advantage

NELDA E. JAY 07-69
 PH. 803-276-2239 SCDL1676789
 1320 SUMMER ST.
 NEWBERRY, SC 29108-3046

6781

67-448/539 SC
 402

May 14, 2010

Date

Pay to the order of Bird Paving Company \$ 500.00
five hundred + no Dollars

Bank of America

ACH R/T 053904483

Memo Lions Club Road paving

1053904483 000704205294 6781

JOHN J McSWAIN
JULIA B McSWAIN
85 Lions Club Circle
Prosperity, SC 29127

3105
67-776/532
BRANCH 77454

5/11/10

Date

Pay to the
Order of

Bird Paving
Two thousand and no/100

\$2,000.00

Dollars



WACHOVIA

Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For

Road paving

Julia B McSwain

MP

⑆053207766⑆005910785669⑆3105

JAMES N PARR JR
1303 MAIN ST. STE 311
NEWBERRY, SC 29108

111

67-604/539
BRANCH 142

6/3/10

Date

Pay to the
Order of Bird Paving
Five thousand fifty

\$5,500.00

Dollars



First Citizens
First Citizens Bank & Trust Company, Inc.

For

James N Parr Jr

MP

⑆05390604⑆⑆083153459909⑆0111

THE MURRAY CO. OF NEWBERRY INC.

12 BEAVER DAM CREEK RD.
NEWBERRY, SC 29108-8991

005520

67-448/539 SC
402

5-27-10

Date

Pay To The
Order of

Bird Construction
One thousand five hundred & no/100

\$1,500.00

Dollars



Bank of America

⑆005520⑆⑆053904483⑆000056910680⑆

0235

Joseph F. or Lisa S. Rice

676 Olde Salt Run
Mt. Pleasant, SC 29464

1ST CITIZENS BANK & TRUST COMPANY, INC.

CHARLESTON, SC 29401

67-148/532

10943

5/12/2010

Pay to the
Order of

Bird Paving

\$**9,800.00

Nine Thousand Eight Hundred and 00/100*****

Dollars

Bird Paving
c/o Claude Schumpert
322 Hill Haven Road
Chapin, SC 29036

Lisa S. Rice

⑈010943⑈ ⑆053201487⑆24661 2842409⑈

CLAUDE H OR MELISSA B SCHUMPERT

322 Hill Haven Rd
Chapin, SC 29036

BB&T

BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE
ORDER OF Bird Paving

\$**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100*****

DOLLARS

Bird Paving
P.O. Box 27
Gramling, SC 29348

MEMO

Paving Lions Club Road

Melissa B Schumpert
AUTHORIZED SIGNATURE

⑈001450⑈ ⑆053201607⑆0005221019506⑈

0236

Exhibit 7

From: **Jim Koutrakos** JimKoutrakos@callisontighe.com
 Subject: RE: RICE/LIONS CLUB and Amick
 Date: May 8, 2019 at 12:12 PM
 To: Tom Pope tom@ppjlaw.com
 Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com)

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
 CALLISON TIGHE & ROBINSON, LLC
 1812 Lincoln Street, 2nd Floor
 Post Office Box 1390 (29202-1390)
 Columbia, South Carolina 29201
 Office: (803) 404-6900
 Direct Dial: (803) 404-6966
 Mobile: (803) 603-9079
 Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope <tom@ppjlaw.com>
 Sent: Wednesday, May 08, 2019 11:59 AM
 To: Jim Koutrakos <JimKoutrakos@callisontighe.com>
 Cc: Biff Sowell <bsowell@sowelldurant.com>; sam price <rshealy517@hotmail.com>; Kyle Parker <kyle@ppjlaw.com>; Betsy Alexander <betsy@ppjlaw.com>
 Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon”

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.

We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.

We need your client to follow through with his promise. Please give us your response today.

Tom Pope

Pope Parker Jenkins, P.A.

(formerly Pope & Hudgens PA)

1508 College Street - P.O. Box 190

Newberry, SC 29108

803.276.2532 F: 803.276.8684

tom@ppjlaw.com

www.ppjlaw.com

Exhibit 8

SCHEDULE B EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK)

Policy No.: 813064040-213470248

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
- 5.
5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.
6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267.
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
 - a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before accessing the eastern portion of the property;
 - b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;
 - c. Overhead electric lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and
 - d. Shed in the eastern area of the property projects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10, located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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ALTA Owner's Policy (Schedule B)

AMERICAN
LAND TITLE
ASSOCIATION



(17-0534-01 (AMICK).PFD/17-0534-01 (AMICK)/21)

Lisa Smith Closing File_0076

0241

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

DEFENDANT C. RAY AMICK'S ANSWER
AND CROSS-CLAIM TO
THIRD AMENDED COMPLAINT
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick") answers the allegations of the Third Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Amick denies all allegations of the Third Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Third Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Third Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Third Amended Complaint upon information and belief.

5. As to the allegations of paragraph 5 of the Third Amended Complaint, Amick craves reference to the document attached to the Third Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 5 are inconsistent with said document, Amick denies the same.

6. As to the allegations of paragraph 6 of the Third Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to

the minutes of that board meeting. To the extent the allegations of paragraph 6 are inconsistent with the minutes of the board meeting, Amick denies the same.

7. As to the allegations of the first sentence of paragraph 7 of the Third Amended Complaint, Amick craves reference to the letter attached to the Third Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 7.

8. Amick admits the allegations of paragraph 8 of the Third Amended Complaint upon information and belief.

9. As to the allegations of paragraph 9 of the Third Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Third Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 9 are inconsistent with said letter, Amick denies the same.

10. As to the allegations of paragraph 10 of the Third Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Third Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Third Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Third Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Third Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Third

Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.

13. As to the allegations of paragraph 13 of the Third Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

14. As to the allegations of paragraph 14 of the Third Amended Complaint, Amick admits the Rices through their attorney sent an offer of \$325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 14 inconsistent with the foregoing.

15. Amick admits the allegations of paragraph 15 of the Third Amended Complaint.

16. As to the allegations of paragraph 16 of the Third Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 16. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

17. As to the allegations of paragraph 17 of the Third Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 17.

18. As to the allegations of paragraph 18 of the Third Amended Complaint, Amick craves reference to the letter attached to the Third Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 18 are inconsistent with said letter, Amick denies the same.

19. As to the allegations of paragraph 19 of the Third Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter attached as Exhibit 2 and Exhibit 3 to the Third Amended Complaint. Amick denies the remaining allegations of paragraph 19.

20. As to the allegations of paragraph 20 of the Third Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 20 are inconsistent with said minutes, Amick denies the same.

21. Paragraph 21 of the Third Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

22. Amick denies the allegations of paragraphs 22 and 23 of the Third Amended Complaint.

23. Amick admits the allegations of paragraph 24 of the Third Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

24. As to the allegations of paragraph 25 of the Third Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Third Amended Complaint. To the extent the allegations of paragraph 25 are inconsistent with said letters, Amick denies the same.

25. Amick denies the allegations of paragraph 26 of the Third Amended Complaint.

26. As to the allegations of paragraph 27 of the Third Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Third Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 27 are inconsistent with said letter, Amick denies the same.

27. Amick admits the allegations of the first sentence of paragraph 28 of the Third Amended Complaint. Amick denies the remaining allegations of paragraph 28.

28. Amick denies the allegations of paragraph 29 of the Third Amended Complaint.

29. As to the allegations of paragraph 30 of the Third Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to the public court docket and, to the extent the allegations of paragraph 30 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and

information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 30 and, therefore, denies the same.

30. As to the allegations of paragraph 31 of the Third Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 31 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 32 of the Third Amended Complaint and, therefore, denies the same.

32. Amick denies the allegations of paragraph 33 of the Third Amended Complaint.

33. As to the allegations of paragraph 34 of the Third Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was \$300,000 and “other consideration.” Amick denies the remaining allegations of paragraph 34.

34. Amick denies the allegations of paragraphs 35 and 36 of the Third Amended Complaint.

35. As to the reiterated allegations of paragraph 37 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

36. Paragraph 38 of the Third Amended Complaint contains legal conclusions to which no response is required.

37. As to the allegations of paragraph 39 of the Third Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 39 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

38. Paragraph 40 of the Third Amended Complaint contains legal conclusions to which no response is required.

39. Amick denies the allegations of paragraphs 41, 42, and 43 of the Third Amended Complaint.

40. As to the allegations of paragraph 44 of the Third Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 44.

41. Amick denies the allegations of paragraphs 45 and 46 of the Third Amended Complaint.

42. As to the reiterated allegations of paragraph 47 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

43. Amick denies the allegations of paragraph 48 of the Third Amended Complaint.

44. As to the reiterated allegations of paragraph 49 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

45. Amick denies the allegations of paragraphs 50, 51, 52, and 53 of the Third Amended Complaint.

46. As to the allegations of paragraph 54 of the Third Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 54.

47. As to the allegations of paragraph 55 of the Third Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Third Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 56.

49. Amick denies the allegations of paragraphs 57 and 58 of the Third Amended Complaint.

50. As to the reiterated allegations of paragraph 59 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

51. Amick denies the allegations of paragraphs 60, 61, 62, 63, and 64 of the Third Amended Complaint.

52. As to the reiterated allegations of paragraph 65 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

53. The allegations of paragraphs 66, 67, 68, 69, 70, 71, and 72 of the Third Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

54. As to the reiterated allegations of paragraph 73 of the Third Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

55. Amick denies the allegations of paragraphs 74, 75, 76, 77, 78, 79, and 80 of the Third Amended Complaint.

56. Amick admits the allegations of paragraph 81 of the Third Amended Complaint upon information and belief.

57. Amick denies the allegations of paragraphs 82 and 83 of the Third Amended Complaint.

58. As to the allegations of paragraph 84 of the Third Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 84.

59. Amick denies the allegations of paragraph 85 of the Third Amended Complaint.

60. Amick admits the allegations of paragraph 86 of the Third Amended Complaint upon information and belief.

61. Amick denies the allegations of paragraphs 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, and 97 of the Third Amended Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

62. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

63. Plaintiff's Third Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

64. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

65. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

66. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

67. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(No Contract)

68. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

69. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

FOR A SIXTH DEFENSE
(Bona Fide Purchaser for Value)

70. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

71. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

FOR A SEVENTH DEFENSE AND
BY WAY OF CROSS-CLAIM
(Indemnity/Breach of Deed Warranty)

72. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

73. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

74. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

75. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

76. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Third Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

77. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

78. In Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and

proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

79. If the allegations of the Plaintiffs' Third Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

80. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

81. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

82. If the allegations of the Plaintiffs' Third Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

83. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Third Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

84. Amick respectfully requests a trial by jury on any and all claims so triable.

WHEREFORE, having fully answered Plaintiffs' Third Amended Complaint and having set forth his Counterclaim and Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

- A. Dismissing Plaintiffs' Third Amended Complaint;
- B. Awarding Amick the relief requested in his Cross-Claim;
- C. Awarding Amick attorney fees and the costs of this action (to the extent allowable); and
- D. Awarding any such further relief as the Court deems just and proper.

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

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**ATTORNEYS FOR DEFENDANT
 C. RAY AMICK**

August 15, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	2018-CP-36-00089
Lisa Summer Rice and Joseph F. Rice,	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER OF NEWBERRY LIONS CLUB
	)	TO THIRD AMENDED COMPLAINT AND
Newberry Lions Club and C. Ray Amick,	)	ANSWER TO C. RAY AMICK'S
Defendants.	)	CROSS-CLAIM AGAINST
		NEWBERRY LIONS CLUB

Defendant Newberry Lions Club would respectfully answer the Third Amended Complaint of plaintiffs and answer C. Ray Amick's Cross-Claim as follows:

IN RESPONSE TO ALLEGED BACKGROUND

1. That defendant Newberry Lions Club would deny each and every allegation of the Third Amended Complaint and C. Ray Amick's Cross-Claim unless expressly admitted herein.
2. That as to paragraphs one (1), three (3), six (6), eight (8), fifteen (15), twenty-five (25), thirty-one (31), defendant Newberry Lions Club would admit the allegations contained in therein.
3. That as to paragraphs two (2) and four (4), defendant Newberry Lions Club would admit that the Newberry Lions Club is a corporation organized and existing under the Laws of South Carolina with its principal place of business in Newberry County. However, defendant Newberry Lions Club sold its lake property to Ray Amick on February 21, 2018.

4. That as to paragraphs five (5), seven (7) and nine (9), defendant Newberry Lions Club would admit that a letter listed as Exhibit 1 in the Complaint was prepared by defendant Newberry Lions Club. The letter was a notice of intent to sale.

5. That as to the allegations contained in paragraph ten (10), the letter as shown in Exhibit 1 of the Third Amended Complaint was a notice of intent to sale. As to the other allegations in paragraph ten (10), defendant Newberry Lions Club would admit.

6. That as to paragraphs eleven (11), twelve (12), and thirteen (13) the letter referred to in Exhibit 1 of the Complaint was not an offer of sale; it was a notice of intent to sale. The reference to encroachments was in subject letter as alleged. Subject letter did indicate that after June 1, 2017, the property would be advertised for sale to the public. All references by plaintiff to the Exhibit 1 letter referring to an offer of sale shall be considered as a notice of intention to sale not an offer to sale.

7. That as to the allegations of paragraph fourteen (14), letter of plaintiffs' attorney J. Sidney Boone, Jr. (Exhibit 2) was merely an offer to purchase.

8. That as to paragraphs sixteen (16) and seventeen (17), defendant Newberry Lions Club would deny all allegations therein. Plaintiffs' offer to purchase was never accepted by the Newberry Lions Club.

9. That as to paragraph eighteen (18), defendant Newberry Lions Club would admit that such a letter (Exhibit 3) was sent; but, defendant Newberry Lions Club would deny all other allegations contained in paragraph eighteen (18) of the Third Amended Complaint.

10. That as to paragraph nineteen (19), defendant Newberry Lions Club would admit that Newberry Lions Club did not respond to either letter (Exhibit 2 and Exhibit 3), however,

defendant Newberry Lions Club would deny all other allegations contained therein.

11. That as to paragraph twenty-one (21) of the Third Amended Complaint, defendant Newberry Lions Club would deny all allegations contained therein.

12. That as to paragraphs twenty (20), twenty-two (22), twenty-three (23), and twenty-four (24), defendant Newberry Lions Club can neither affirm nor deny and would demand strict proof thereof.

13. That as to paragraph twenty-six (26), defendant Newberry Lions Club would deny the allegations contained therein.

14. That as to paragraph twenty-seven (27), defendant Newberry Lions Club would admit that the letter was sent and deny all other allegations contained in paragraph twenty-seven (27) of the Third Amended Complaint.

15. That as to paragraphs twenty-eight (28), twenty-nine (29), thirty (30), thirty-two (32), thirty-three (33), and thirty-four (34), defendant Newberry Lions Club can neither affirm nor deny the allegations and would demand strict proof thereof.

16. That as to paragraphs thirty-five (35) and thirty-six (36), defendant Newberry Lions Club would deny all allegations contained therein.

17. That upon information and belief, defendant Newberry Lions Club at all pertinent times had the ability and the right to sell subject Lake Murray property to any one or any entity it chose to do so. Defendant Newberry Lions Club could sell the property for any amount it decided. The action of the plaintiffs herein is a frivolous lawsuit. Attorneys fees and legal costs should be awarded to defendant Newberry Lions Club to be paid by plaintiffs.

IN DEFENSE OF THE FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

18. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

19. That defendant Newberry Lions Club would deny the allegations contained in paragraphs thirty-seven (37), forty-three (43) and forty-six (46) of the Third Amended Complaint.

20. That defendant Newberry Lions Club would admit the allegations contained in paragraph thirty-eight (38) of the Third Amended Complaint.

21. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraphs thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-four (44), and forty-five (45) and would demand strict proof thereof.

IN DEFENSE OF THE SECOND CAUSE OF ACTION
(Specific Performance)

22. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

23. That defendant Newberry Lions Club would deny the allegations contained in paragraphs forty-seven (47) and forty-eight (48) of the Third Amended Complaint.

IN DEFENSE OF THE THIRD CAUSE OF ACTION
(Promissory Estoppel)

24. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

25. That as to paragraph fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-

four (54), fifty-five (55), fifty-six (56), fifty-seven (57), and fifty-eight (58), defendant Newberry Lions Club would deny all allegations contained therein.

IN DEFENSE OF THE FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

26. That no response is necessary from defendant Newberry Lions Club because this cause of action is directed toward defendant Amick.

IN DEFENSE OF THE FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

27. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

28. That defendant Newberry Lions Club would deny the allegations contained in paragraphs sixty-five (65), sixty-six (66), sixty-seven (67), sixty-eight (68), sixty-nine (69), seventy (70), seventy-one (71), and seventy-two (72) of the Third Amended Complaint.

29. That the notice of intent to sale clearly stated that preference would be given to a Newberry Lions Club member.

IN DEFENSE OF THE SIXTH CAUSE OF ACTION
(Declaratory Judgment – Easement – Injunction as to Amick)
(IN THE ALTERNATIVE)

30. That no response is necessary from defendant Newberry Lions Club because this cause of action is directed toward defendant Amick.

IN REPLY TO SEVENTH DEFENSE AND ANSWER TO CROSS-CLAIM
(Indemnity/Beach of Deed Warranty)

31. That defendant Newberry Lions Club would deny each and every allegation of defendant C. Ray Amick's Answer and Cross-Claim unless expressly admitted herein.

32. That defendant Newberry Lions Club would deny the allegations contained in paragraphs seventy-three (73), seventy-nine (79), and eighty-three (83) of defendant C. Ray Amick's Answer and Cross-Claim.

33. That defendant Newberry Lions Club would admit the allegations contained in paragraphs seventy-four (74), seventy-seven (77), and eighty-four (84) of defendant C. Ray Amick's Answer and Cross-Claim.

34. That as to the allegations contained in paragraph seventy-five (75), defendant Newberry Lions Club would admit; however, the transfer was subject to "Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement."

35. That as to the allegations contained in paragraphs seventy-six (76), eighty (80), eighty-one (81), and eighty-two (82) defendant Newberry Lions Club can neither affirm nor deny and would demand strict proof thereof.

36. That as to the allegations contained in paragraph Seventy-eight (78), defendant Newberry Lions Club did convey a good and proper legal title conveying good title subject to right of ways, easements, access, and the like as reflected on plat dated June 30, 2015, prepared by Thomas D. Abraham, SCRLS No. 27728.

WHEREFORE, having set forth its Answer to Third Amended Complaint and in Answer to C. Ray Amick's Cross-Claim against Newberry Lions Club in full, defendant Newberry Lions Club would respectfully request of this Honorable Court:

(a) For an Order of this Court dismissing plaintiffs' action.

(b) For an Order of this Court finding that the sale of the Lake Murray property by the Newberry Lions Club to C. Ray Amick was proper, lawful and correct and the sale should be confirmed by this Court.

(c) For an Order of this Court dismissing the Cross-Claim of C. Ray Amick.

(d) For an Order of this Court awarding defendant Newberry Lions Club's legal costs and attorneys fees to be paid by plaintiffs.

(e) For such other and further relief as the Court deems necessary and proper.

/s/ Samuel M. Price, Jr.
SAMUEL M. PRICE, JR.
SC Bar No. 04566
Attorney for Defendant
Newberry Lions Club
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC
October 9, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF NEWBERRY) CASE NO.: 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiffs,)

V.

**SECOND AMENDED COMPLAINT
(Non-Jury)**

C. Ray Amick and Cheryl Littlejohn,)
)
Defendants.)

The above-named plaintiffs, complaining of Defendants C. Ray Amick and Cheryl Littlejohn, would show and allege as follows:

BACKGROUND

1. Plaintiffs A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert are residents and citizens of the State of South Carolina, County of Newberry, and own property on Lions Club Road and Lions Club Circle in Newberry County, South Carolina access to which is by way of Lions Club Road.

2. Defendant C. Ray Amick (“Amick” or “Defendant”) is a resident and citizen of the State of South Carolina, County of Newberry County, and owns property at 62 Lions Club Road, in Newberry County Carolina. Amick further claims title to lands over which both Lions Club Road and Lions Club Circle traverses and has in mid-2018 and May 2019 erected certain obstructions to the remaining parties’ access to a boat ramp and beach area on lands now or formerly of SCE&G lying east of the property Amick claims.

3. Defendant Cheryl Littlejohn (“Littlejohn”) is a resident and citizen of Newberry County and owns property at 454 Lions Club Road, Prosperity, in Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

4. The Lions Club Point (“LC Point”), as described herein, is the area/peninsula on the shores of Lake Murray in Newberry County lying east of State Park Road approximately 1.75 miles from Dreher Island State Park. The LC Point property originally consisted of approximately ten (10) acres conveyed to the Newberry Lions Club (“Lions Club”) by deed recorded on February 18, 1933 in the Office of the Clerk of Court for Lexington County in Deed Book 4Q at Page 603¹. Thereafter, the Lions Club subdivided the LC Point and conveyed certain lots to various Lions Club members.

5. Plaintiffs are the successors in interest of the grantees of certain of these out conveyances.

6. Following all of these Lions Club out conveyances, the remainder of the property of the Lions Club consisted of approximately 5.0 acres (“the Lions Club Property”). The Lions Club Property has been shown and depicted on a plat by Thomas D. Abraham recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6. Lions Club Road is shown and depicted on said plat as a 12’ paved road and gravel drive traversing into, over and extending beyond the Lions Club Property to the said lands of SCE&G to the east. A copy of said plat is attached hereto as Exhibit A. (Lions Club Road is highlighted in yellow.)

¹ Due to a subsequent change in the boundary of Lexington and Newberry County, LC Point is now in Newberry County.

7. This is an action which seeks, in part, the removal of obstructions to the access to the Plaintiffs' property, the boat ramp and beach areas in the lands of SCE&G and a temporary and permanent injunction enjoining the erection of any such further obstructions along with any further efforts on the part of Amick to interfere or otherwise unlawfully impede the Plaintiffs' access to their said property, boat ramp and beach area. This action further seeks a declaration that the Plaintiffs had and have an appurtenant, non-exclusive easement for ingress and egress over Lions Club Road to their respective properties, the said boat ramp and beach area located on lands east of the Lions Club Property.

8. Lions Club Road has been used and enjoyed by the Plaintiffs and their predecessors in interest (and their guests) for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach areas for many decades.

9. Defendant Amick claims ownership of the Lions Club Property by virtue of a deed of the Lions Club dated February 18. His right to title to this property is being disputed based on circumstances described in another action, Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018-CP-36-0089. A lis pendens describing the Lions Club Property in that case was filed prior to the recordation of the purported deed to Amick; thus, any title he claims is subject to the final order rendered therein.

10. When Amick obtained his purported title to the property (disputed in Case No. 2018-CP-36-0089), he obtained a title insurance policy; however, such policy did not insure him against claims for:

- (7) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..." (Exhibit B attached)

11. Littlejohn acquired title to the above referenced property on LC Road by deed of Stewart Jay Layman and Christopher Jay (the “Jays”) dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

12. At the time Littlejohn acquired such title, the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, depicting LC Road traversing over the LC and Littlejohn property to the fringelands beyond the eastern boundary of the LC property had been recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

13. Upon information and belief, Littlejohn had actual notice of the location of LC Road and the use made of it by the Plaintiff and the other adjoining land owners for access to the fringeland on a continuous basis for over 70 years.

14. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the LC properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

15. Littlejohn uses the portion of LC Road traversing over the LC property for access to her own property. She and the Jays before her have exclusively used LC Road for access to such property since its subdivision from the LC property decades ago.

16. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through “Lions Club Point” to the fringe lands owned by SCE&G. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

17. The plaintiffs, their predecessors in interest, their guests, and the adjoining property owners, have used and enjoyed Lions Club Road for many decades for vehicular and pedestrian access to the aforesaid boat ramp and the beach area on the point for family gatherings, picnics, boat launching, and swimming.

18. This usage by the plaintiffs and their predecessors in interest has been without permission, restriction or limitation, and the Lions Club Road at no time during this period has been blocked from usage by the Plaintiffs, Lions Club members and the adjacent property owners on Lions Club Point and their guests.

19. For over 50 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to the fringe lands, including in May and June 2010 when they spent over \$42,000. The amounts paid by Plaintiff Schumperts (\$10,550), Plaintiff Gray (\$1,500), and others are shown on Exhibit C, attached hereto. No one complained about these improvements. Defendant Littlejohn's predecessor in title also contributed to this fund.

20. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to LC Point over which Lions Club Road traverses for over 50 years. In a deposition taken in Case No. 2018-CP-36-0089, Amick acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

21. In the spring or summer of 2018, Defendant Amick blocked the eastern portion of Lions Club Road, installed "No Trespassing" signs, a rope, trash piles, parked cars, and other obstructions which prohibited Plaintiffs and other adjoining land owners from having access to the boat ramp, beach and fringe lands.

22. Even though she obtained her deed less than two years ago, Defendant Littlejohn has at no time ever voiced to Plaintiffs or other Lions Club Point property owners any complaint about the legitimacy of Plaintiffs' assertions in this Complaint.

23. Plaintiffs have learned in discovery that Defendant Littlejohn may have aided and abetted Amick in either placing a private property sign or in blocking Lions Club Road in mid-2018.

24. Defendant Amick's action in blocking the Lions Club Road is in violation of the rights of the plaintiffs and other adjoining owners to use the road, which rights have existed without restriction for over 50 years.

25. This matter is of some urgency because the summer months are coming, and Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

26. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

27. Defendant Amick's recent actions (see attached Exhibit B which are emails of the second week of May 2019) indicate that he intends to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

28. Plaintiffs are informed and believe that Defendant Amick's actions are an unreasonable restriction of the parties right to use Lions Club Road without legal or equitable excuse.

29. As set forth more fully hereinbelow, plaintiffs believe that Amick should be enjoined both temporarily and permanently from blocking the road.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

30. The Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

31. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

32. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (or received) permission for such use.

33. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evidenced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

34. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road

and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club.

35. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road, the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

36. As a result, the Court should issue its order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

FOR A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction)

37. Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

38. Plaintiffs have the undeniable right to access their property, the said boat ramp and beach area as set forth herein.

39. Plaintiffs have no adequate remedy at law to redress the denial of such access, which is further evidenced by the repeated nature of Amick's actions and threats to continue such actions.

40. The denial of access has and will continue to cause Plaintiffs to suffer irreparable harm as set forth in the affidavits of witnesses filed in this matter.

41. Given that the Plaintiffs used the road for some time prior to the erection of the obstructions, their continued use thereof cannot and does not prejudice Amick or Littlejohn and merely returns the parties to the status quo ante.

42. Therefore, equity demands that this court issue its order requiring Amick to remove the obstructions in so much as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road, as well as the access of the adjacent landowners, Plaintiffs' family members, and guests.

FOR A THIRD CAUSE OF ACTION
(Trespass/Nuisance)

43. Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-33 above and incorporate the same as if fully set forth verbatim herein.

44. Amick has intentionally infringed on the the Plaintiffs' right to use of Lions Club Road, a right that he has acknowledged in deposition testimony, by erecting the aforementioned obstructions.

45. Such actions constitute an interference with the Plaintiffs' right to use and enjoy their property and all rights associated therewith.

46. As a direct and proximate result thereof, the Plaintiffs have suffered and will continue to suffer damages as proscribed by law in an amount to be determined upon the trial of this case.

47. As described above, Amick's actions were done with reckless disregard of the Plaintiffs' rights, and, therefore, the Plaintiffs are entitled to an award of actual and punitive damages in an amount to be determined the upon the trial of this case.

WHEREFORE, the Plaintiffs pray the Court inquire into the matter and issue its Order as follows:

- a. requiring Amick to remove the obstructions in so much as the same blocks the Plaintiffs' access to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- b. enjoining Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access, both vehicular and pedestrian, to their property, the said boat ramp and beach area by way of Lions Club Road; and,
- c. declaring the Plaintiffs' right to use of Lions Club Road as an easement implied by prior use, a prescriptive easement, or an easement by estoppel;
- d. awarding the Plaintiffs actual and punitive damages in an amount to be determined upon the trial of this case; and,
- e. taxing the costs of this action, including Plaintiffs' attorneys fees, against Amick; and,
- f. awarding such other and further relief as the court deems necessary and appropriate.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III

s/Kyle B. Parker

Thomas H. Pope, III (S.C. Bar No. 4508)

Kyle B. Parker (S.C. Bar No. 71764)

1508 College Street – P.O. Box 190

Newberry, South Carolina 29108

Tel: (803) 276-2532 – Fax: (803) 276-8684

tom@ppjlaw.com

kyle@ppjlaw.com

Attorneys for Plaintiffs

March 6, 2020

EXHIBIT A

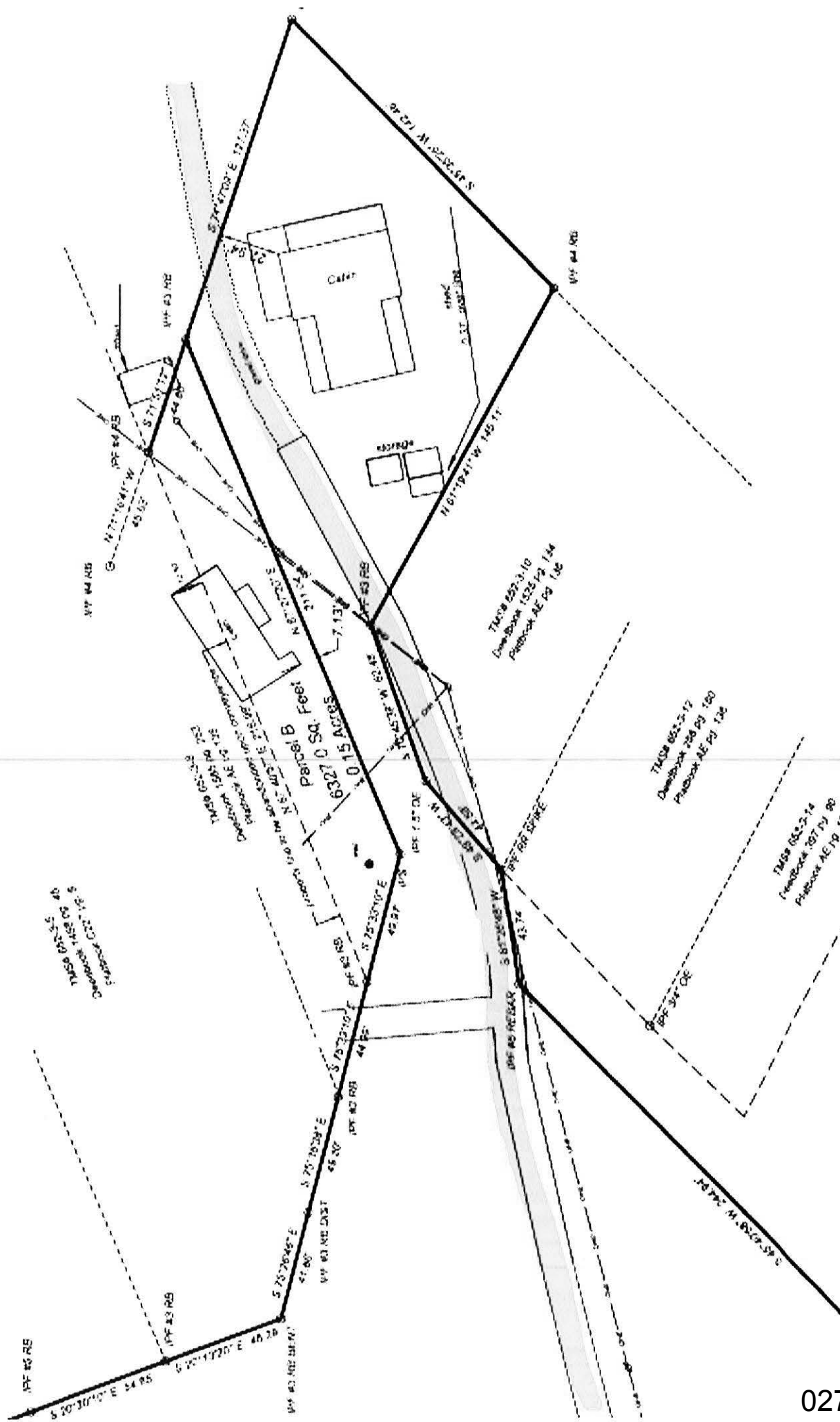


EXHIBIT B

SCHEDULE B EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK)

Policy No.: 813064040-213470248

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
- 5.
6. Easement(s) to State Rural Electrification Authority or its successor in interest recorded in Book 45 at Page 277.
7. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267.
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
 - a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before accessing the eastern portion of the property;
 - b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;
 - c. Overhead electric lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and
 - d. Shed in the eastern area of the property projects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10, located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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ALTA Owner's Policy (Schedule B)

AMERICAN
LAND TITLE
ASSOCIATION



(17-0534-01 (AMICK).PFD/17-0534-01 (AMICK)/21)

Lisa Smith Closing File_0076

0274

EXHIBIT C

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total
Amick, Ray	\$ 1,000	\$ 1,000		\$ 1,000
Byars, Wick	\$ 1,500	\$ 1,500		\$ 1,500
Gray, Murray	\$ 1,500	\$ 1,125.00	\$ 375.00	\$ 1,500
Jay, Nelda	\$ 500	\$ 375.00	\$ 125.00	\$ 500
McCrackin, Ruth	\$ 1,000	\$ 750.00	\$ 250.00	\$ 1,000
McSwain, Bill & Julia	\$ 2,000	\$ 2,000		\$ 2,000
Parr, Jim	\$ 5,050	\$ 5,050		\$ 5,050
Rice, Joe & Lisa	\$ 9,800	\$ 5,050	\$ 4,750	\$ 9,800
Schumpert, Claude & Missy	\$ 10,550	\$ 5,050	\$ 5,500	\$ 10,550
Sharick, Merle & Cheryl	\$ 5,050	\$ 5,050		\$ 5,050
Stewart, Dave & Susan	\$ 5,050	\$ 5,050		\$ 5,050
	\$ 43,000	\$ 32,000	\$ 11,000	\$ 43,000

(pd \$11,950: \$1,400 to be reimbursed by Sharicks)
 (pd \$3,650: \$1,400 to be reimbursed to Schumperts)

Total Cost from Rd. to Gate
 Miscellaneous Contributions
 Balance to be Shared Equally
 Divide by 5

32000
 -6750 (Amick, Byars, Gray, Jay, McCrackin, McSwain)
 25250 (Parr, Rice, Schumpert, Sharick, Stewart)
 5050 each

Total Cost Beyond Gate
 Miscellaneous Contributions
 Balance to be Shared Equally
 Divide by 2

11000
 -750 (Gray, Jay, McCrackin)
 10250 (Rice, Schumpert)
 5125

MERLE D SHARICK
CHERYL J SHARICK

08-01

2650

67-448/539 SC
708

5/14/10

Date

Pay to the order of

Jim Parr

\$ 3,650.00

Bank of America

ACH R/T 053904483

Memo Road paving

Merle D. Sharick

Security Features Details on Back.

SUSAN F STEWART
DAVID E STEWART

3865

64-22/610
BRANCH 77271

June 5, 2010

Date

Pay to the Order of

Bird Paving

\$ 5,050.00

Five thousand & fifty - no/100

Dollars

Security Features Details on Back.



WACHOVIA

Wachovia Bank, N.A.
wachovia.com

For

Susan F. Stewart

Bank of America Advantage

NELDA E. JAY

07-69

6781

67-448/539 SC
402

May 14, 2010

Date

Pay to the order of

Bird Paving Company

\$ 500.00

five hundred & no/100

Dollars

Security Features Details on Back.

Bank of America

ACH R/T 053904483

Memo Lions Club Road paving

Nelda Jay

JOHN J McSWAIN
JULIA B McSWAIN

3105

67-776/532
BRANCH 77454

5/11/10

Date

Pay to the
Order of

Bird Paving
Two thousand and no/100

\$2,000.00

Dollars



Security
Features
Details on
Back



WACHOVIA

Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For Road paving

Julia B McSwain

MP

JAMES N PARR JR

111

67-604/539
BRANCH 142

6/3/10

Date

Pay to the
Order of Bird Paving
Five thousand fifty

\$5,500.00

Dollars



Security
Features
Details on
Back

First Citizens
First Citizens Bank & Trust Company, Inc.

For

James N Parr Jr

MP

THE MURRAY CO. OF NEWBERRY INC.

005520

67-448/539 SC
402

5-27-10

Date

Pay To The
Order of Bird Construction
One thousand five hundred & no/100

\$1,500.00

Dollars



Security
Features
Details on
Back

Bank of America

Murray

MP

Joseph F. or Lisa S. Rice

1ST CITIZENS BANK & TRUST COMPANY, INC.
CHARLESTON, SC 29401
67-148/532

10903

5/12/2010

Pay to the
Order of

Bird Paving

\$**9,800.00

Nine Thousand Eight Hundred and 00/100*****

Dollars

Bird Paving

Lisa S. Rice

MEMO

CLAUDE H OR MELISSA B SCHUMPERT

BB&T
BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE
ORDER OF

Bird Paving

\$**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100*****

DOLLARS

Bird Paving

Melissa B Schumpert
AUTHORIZED SIGNATURE

MEMO

Paving Lions Club Road

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2018-CP-36-00089
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	
Plaintiffs,	)	FOURTH
	)	AMENDED COMPLAINT
v.	)	(NON-JURY)
	)	
NEWBERRY LIONS CLUB, C. RAY AMICK,	)	
AND CHERYL LITTLEJOHN,	)	
	)	
Defendants.	)	

The Plaintiffs complaining of the Defendants would show and allege as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice (“Rices”) are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and upon information and belief, was a member of Defendant Newberry Lions Club at all times relevant to this proceeding.

4. Defendant Cheryl A. Littlejohn (“Littlejohn”), upon information and belief, is a citizen and resident of Newberry County and is the owner of property at 454 Lions Club Road, in

Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

5. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and, at all times relevant to this proceeding, retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

6. The Newberry Lions Club published and offered to sell the 5.5 acre tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

7. At a meeting of the Board of Directors of the Lions Club on January 14, 2017, the board was presented with a proposed letter drafted by the President of Defendant Lions Club offering the property for sale to all adjacent property owners of the subject property. Defendant Ray Amick, although not a member of the board of the Lions Club, was in attendance at that meeting. Before a vote was taken by the board at the meeting on January 14, 2017, Defendant Amick insisted that he needed until June 1, 2017, to buy the property. In response to his demand, by unanimous vote of the board of directors, the Lions Club acquiesced in Amick's demand.

8. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1. This letter was approved by the board of the Lions Club after being amended at Amick's insistence to include a deadline of June 1, 2017, after which the Lions Club's offer would no longer be valid.

9. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other adjoining landowners.

10. The offer stated in part, “We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.”

11. As part of this offer of sale, the offer further stated: “A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property, please let us now right away . . .” Exhibit 1 attached hereto.

12. The offer provided that any prospective purchaser would take title subject to encroachments where it stated, “[a]ny encroachments will have to be settled after the property is sold.”

13. The offer further stated, “This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.” Exhibit 1.

14. The above-referenced offer was sent to the Rices and, upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

15. As a result of the offer and accepting the conditions set forth therein, the Rices, through their attorney, sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

16. The Newberry Lions Club, upon information and belief, received other offers including one for \$300,000 from Claude Schumpert.

17. Upon information and belief, the Rices’ bid was the highest received and therefore, was the offer which was accepted by the Newberry Lions Club.

18. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club's offer.

19. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club (Exhibit 3), which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

20. Defendant Lions Club did not respond to either letter (Exhibit 2 or Exhibit 3) and never contested that Plaintiffs were the high bidder for the subject property or that the bid response of the Plaintiffs was anything other than acceptance of the offer of the Lions Club.

21. At the meeting of the Board of Directors of the Lions Club on May 23, 2017, Defendant Amick, a non-board member, was present. He spoke at the meeting and said that he would not accept the encroachments on the subject property referenced in the Lions Club offer of late-January 2017. By unanimous vote of the Lions Club board, it voted to withdraw its offer set forth in Exhibit 1 and instead opted to clear up "encroachments." The board voted at that meeting for its attorney to write the landowners who had submitted bids (Plaintiffs and Claude Schumpert) to inform them that the Lions Club offer on Exhibit 1 was withdrawn.

22. Amick's actions at the meeting on May 23, 2017, constituted a withdrawal of any offer he may contend he made.

23. The effect of the vote of the board at this board meeting on May 23, 2017, was an attempt to negate the bids of Plaintiffs (and Schumpert) and rescind its prior offer before the June

1 deadline. However, Defendant Lions Club did not reserve the right to do so in its offer (Exhibit 1), nor did it inform Plaintiffs (or Schumpert) before the June 1 deadline of its attempt to withdraw its offer of sale.

24. On June 1, 2017 (which was the deadline imposed by the Lions Club in late February 2017; Exhibit 1), there were only two bids pending: Plaintiffs' bid of \$325,000 and Schumpert's bid of \$300,000. Plaintiffs were high bidders.

25. Defendant Lions Club has refused to acknowledge that Plaintiffs were the high bidders and it has ignored Plaintiffs original bid as well as the follow-up letters from Plaintiffs' counsel on May 15, 2017.

26. After the letter of May 15, 2017 (Exhibit 3), the attorney for the Newberry Lions Club sent a letter dated June 5, 2017 (Exhibit 4), indicating that at its meeting on May 23, 2017, the Lions Club board had voted not to sell the property located at Lake Murray at that time because they were not able to convey a good fee simple marketable title hereto "because of encroachments."

27. At the time of this letter (Exhibit 4), the Lions Club deadline of June 1 had passed and the Rices had already accepted Defendant Newberry Lions Club's offer as highest bidder and thereby agreed to accept title subject to the encroachments.

28. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold to them as highest bidders. The letter dated November 21, 2017, is attached hereto and made part hereof as Exhibit 5.

29. Even though not a member of the Lions Club's board, Defendant Amick attended every board meeting in 2017 except April. His purpose in being present at these meetings was to try to insure that he obtain title to the subject property by insisting on terms favorable to him,

which were not in the public interest and about which no adjoining property owners had knowledge.

30. From at least November 2017, Amick had knowledge that the Rice's bid response was the highest and that Plaintiffs had accepted the Lions Club offer. Despite that knowledge, and in full assumption of any risk, Amick and Lions Club proceeded to attempt to close for a sale price (\$300,000) that was less than Plaintiffs'.

31. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32 pm. A lis pendens properly describing the property which is the subject of this action was filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

32. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property which resolved an encroachment issue with an adjoining landowners, Joseph T. McCrackin, III and Gena B. McCrackin, by deed recorded in the Office of the Clerk of Court in Deed Book 2017 page 110. This transaction resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified as TMS 652-3-22.

33. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

34. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are ready, willing and able to pay the agreed upon price of \$325,000 for the property in question even as it is presently configured.

35. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs' claims to the property in favor of one of their own members conveying the property at

a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55 pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was \$300,000 and “other consideration”. The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee’s fiduciary duties.

36. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder.

37. Furthermore, as a result of the failure of Defendant Newberry Lions Club to follow through with their offer, the Plaintiffs have suffered special damages including attorney’s fees and costs which should be paid in addition to ordering specific performance, together with prejudgment interest.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

38. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

39. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

40. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

41. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from “day

and hour” when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

42. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

43. Because the said deed was recorded more than twenty-eight hours after Plaintiffs’ lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

44. Instead, the Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be conveyed to them for the consideration of \$325,000.00.

45. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

46. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

47. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and if the Court determines that the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to

those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property in similar fashion.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

48. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

49. For the reasons set forth above, including Defendant Lions Club's breach of contract with Plaintiffs, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

50. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

51. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

52. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

53. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

54. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

55. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices' successful bid.

56. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

57. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or who had by his conduct repudiated and/or withdrew (on May 23, 2017) any prior acceptance of the offer outlined in the letter attached hereto as Exhibit 1.

58. The Plaintiffs suffered damages as a result of the promises made and not kept.

59. The Plaintiffs are entitled to obtain the property and/or actual damages under the doctrine of promissory estoppel.

FOR A FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

60. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

61. From June 1, 2017 through February 2018, Defendant Amick was not a member of the board of directors of the Defendant Lions Club (“the “board”); nevertheless, he insinuated himself into the decisions of the board by attending every board meeting in which the subject of the sale of the Lions Club property was discussed during this time period. (See attached Exhibit 6, copies of all minutes of board meetings, January 2017 through February 2018).

62. In attending these board meetings, Amick was pursuing his own personal agenda to buy the subject property on terms favorable to him without regard to Plaintiffs’ rights as highest bidder.

63. At said board meetings during 2017, Defendant Amick made demands to the board as follows:

- a. He insisted the board extend the offer period to June 1, 2017 (see Minutes of January 24, 2017).
- b. He insisted at the May 23, 2017, meeting that the board clear up the encroachments so that he could purchase the property with “clear title.”

Defendant Lions Club acquiesced in all of Defendant Amick’s demands.

64. Based on his personal agenda, Defendant Amick did not want to, or was not able to, purchase the subject property by the June 1, 2017, deadline in the Lions Club’s offer, and he coerced the Lions Club to try to change the bid conditions in May 2017 without notice to Plaintiffs so that encroachments would be cleared up by the Lions Club at his insistence, that the offer deadline of June 1 would be ignored, that the Plaintiffs’ bid response/acceptance would be ignored and that he would be able to purchase the property in February 2018 – all with his knowledge of Plaintiffs’ highest bid.

65. Amick's actions were wrongful and interference with Plaintiffs' contract with the Lions Club in each of the following particulars:

a. As set forth herein, Plaintiffs had a contract with Defendant Lions Club to purchase the subject property for \$325,000 (plus their agreement to accept the encroachments as stipulated by the offer of the Lions Club);

b. Defendant Amick had actual and/or constructive knowledge of Plaintiffs' contract;

c. Defendant Amick intended to interfere with Plaintiffs' contract;

d. Defendant Amick's interference with Plaintiffs' contract was without justification because he exerted pressures and maneuvers to get Defendant Lions Club to accept his bid by circumventing the Plaintiffs' highest bid and/or by changing the terms and conditions of the sale to circumvent Plaintiffs' high bid as set forth herein; and,

e. By virtue of Defendant Amick's conduct, Plaintiffs have been damaged by the fact that they are not able to place the property in a conservation easement to protect it from development.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

66. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

67. Defendant Lions Club knew or should have known that, in offering for sale the subject property, its handling of said sale included an implied covenant of good faith and fair dealing.

68. Defendant Lions Club, after offering said property for sale in January 2017 (Exhibit 1), knew or should have known that all bids received were entitled to be treated in good faith and dealt with fairly.

69. Plaintiffs' bid-response to the offer of the Lions Club constituted the highest bid and was an acceptance by Plaintiffs of the offer of the Lions Club.

70. Defendant Lions Club, in failing to honor Plaintiffs' bid, was in breach of the contract/agreement with Plaintiffs.

71. Based on the circumstances surrounding the breach, Defendant Lions Club had fraudulent intent and its unfair dealings and fraudulent intentions were manifested as follows:

- a. Lions Club allowed Amick (an "insider") to have input in the decision of the Lions Club even though Amick was not a board member;
- b. Lions Club fielded and acquiesced to Amick's demands relating to the terms and conditions of the sale as set forth above;
- c. Lions Club, knowing that Amick withdrew his bid on May 23, 2017, refused to honor Plaintiffs highest bid as of the June 1, 2017, deadline;
- d. Lions Club, after the June 1 deadline, without notice to Plaintiffs, let Amick in effect purchase the property on his terms in a single-bid process in January 2018, and for a price lower than Plaintiffs; and,
- e. Lions Club ignored all written communications from Plaintiffs' attorneys in February, May, and November 2017 demanding that Lions Club acknowledge Plaintiffs' highest bid and consummate the sale to Plaintiffs.

72. Lions Club's breach of contract was accompanied by a fraudulent act and unfair dealing as set forth herein.

73. These actions by the Lions Club constitute breach of contract accompanied by fraudulent act which have damaged Plaintiffs as set forth above, and Plaintiffs are entitled to all damages therefrom.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment – Easement – Injunction As To Amick and Littlejohn)
(IN THE ALTERNATIVE)

74. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein. This cause of action is set forth alternatively.

75. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through “Lions Club Point” to and onto the fringe lands owned by SCE&G. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

76. Within a short time after obtaining a deed from the Lions Club to the subject property in February 2018, Defendant Amick installed “no trespassing” signage and placed a barricade across Lions Club Road, which barricade blocked access to the fringeland or Point of the Lions Club peninsula and prevented the Plaintiffs and adjoining landowners from utilizing the boat ramp and the beach area on said point that are located on SCE&G fringe lands.

77. Plaintiffs and all property owners adjoining the subject property have used Lions Club Road for over 50 years to access the boat ramp and the beach area on the Point. The usage of this road by the neighborhood of at least 15 adjoining property owners has been without permission, restriction, or limitation, and at no time during this 50-year period has the road been blocked.

78. Defendant Amick’s actions in blocking the use of Lions Club Road for such access is unlawful and in contravention of the rights of the Plaintiffs and all other property owners to use said road for access to boating and recreational use of the Point as has been the case for over five decades.

79. Littlejohn acquired title to the above referenced property on LC Road by deed of Stewart Jay Layman and Christopher Jay (the “Jays”) dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

80. At the time Littlejohn acquired such title, the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, which depicts LC Road traversing over the LC and Littlejohn property to the fringelands beyond the eastern boundary of the LC property. Said plat is recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

81. Upon information and belief, Littlejohn had actual notice of the location of LC Road and the use made of it by the Plaintiffs and the other adjoining land owners for access to the fringeland on a continuous basis for over 70 years.

82. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the LC properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

83. Littlejohn uses the portion of LC Road traversing over the LC property for access to her own property. She and the Jays before her have exclusively used LC Road for access to such property since its subdivision from the LC property decades ago.

84. Littlejohn, by virtue of the facts herein, is estopped from denying the existence of the easements asserted herein.

85. Plaintiffs believe this is a genuine controversy that should be determined by the Court in a declaratory judgment.

86. For over 50 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to and onto the fringe lands, including in May and June 2010 when they spent over \$42,000. The amounts paid by these Plaintiffs and others are shown on Exhibit 6, attached hereto. No one complained about these improvements, and the landowners spent this

money relying on their right to use the road for the purpose which heretofore remained unquestioned.

87. The Plaintiffs and the Lions Club Point property owners, all of whom acquired their titles from the Newberry Lions Club, also have maintained those portions of Lions Club Road which are gravel: beside the old Lions Club clubhouse and for several hundred feet on the fringeland. The Plaintiffs and their neighbors have purchased gravel, spread gravel, and performed other maintenance of the gravel portion in these areas of Lions Club Road (including the boat ramp) for more than 50 years.

88. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to LC Point over which Lions Club Road traverses for over 50 years. Amick has acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

89. The Lions Club Road is the only road access for the Plaintiffs and the Lions Club Point landowners to use for vehicles to launch boats or to drive onto the fringeland.

90. This matter is of some urgency because the summer is here, and Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

91. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

92. Defendant Amick's recent actions in May 2019 (emails attached as Exhibit 7) reveal his intention to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

93. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

94. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (or received) permission for such use.

95. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evinced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

96. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club and Amick.

97. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road (both paved and gravel), the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

98. Plaintiffs constructed a large home on their lot expecting and believing that they had and would have use of said Road. Without the use of the Road, there would be no way for them to take a vehicle and boat trailer to the lake to launch and use said boat. Amick had full knowledge of Plaintiffs' use of the road yet remained silent regarding the same prior to obtaining his deed. Amick is estopped by his conduct from asserting to the contrary.

99. Plaintiffs have an easement implied by prior use because they have unity of title with Defendant; there has been severance of title; the prior use was not temporary; it was known or apparent to the parties; and, there is a necessity for the easement.

100. Plaintiffs are entitled to an Order of this Court declaring that they (and them neighbors) have one or more of the following:

- (a) An easement by prescription
- (b) an easement by estoppel; and
- (c) an easement by prior use.

101. As a result, the Court should issue its Order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

102. Given that the Plaintiffs and their predecessor in title used the road for many decades prior to Defendant's erection of the obstructions without complaint from anyone, including Defendant, their continued use (to trailer fishing and pleasure boats for launch at the boat ramp) cannot and does not prejudice Defendant and the entry of injunctive relief will merely return the parties to the *status quo ante*.

103. When Amick obtained his purported title to the property (which is disputed), he obtained a title insurance policy; however, such policy did not insure him against claims for:

(7) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..." (Exhibit 8 attached)

104. Furthermore, Plaintiffs have no adequate remedy at law and have demonstrated a likelihood of success on the merits. Therefore, equity demands that this Court issue its Order requiring Amick to remove the obstructions insomuch as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road.

WHEREFORE, the Plaintiffs pray for the issuance of an Order as follows:

- a. setting the aforesaid conveyance to Defendant C. Ray Amick aside;
- b. requiring Defendant to specifically perform under the terms of the agreement by conveying said subject property to Plaintiffs;
- c. awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
- d. enjoining the Defendants from transferring the property to any other person or entity;
- e. in the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;

- f. in the alternative, declaring that Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as it has been historically, per one or more easements set forth above (easement implied by prior use, a prescriptive easement, or an easement by estoppel);
- g. enjoining temporarily and permanently the Defendants from blocking, fencing, or any act which attempts to restrict the use of Lions Club Road and directing Amick to remove the ropes, parked cars, debris, and any other obstructions which exist as of the time of a Court Order; and,
- h. awarding such other and further relief as this Court may deem just and proper.

Dated: March 18, 2020

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III
 Thomas H. Pope, III (SC004508)
 E-mail: tom@ppjlaw.com

s/Kyle B. Parker
 Kyle B. Parker (SC071764)
 E-mail: kyle@ppjlaw.com
 Post Office Box 190
 1508 College Street
 Newberry, SC 29108
 Telephone: 803.276.2532
 Fax: 803.276.8684

Attorneys for Plaintiffs

EXHIBIT 1



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

0301

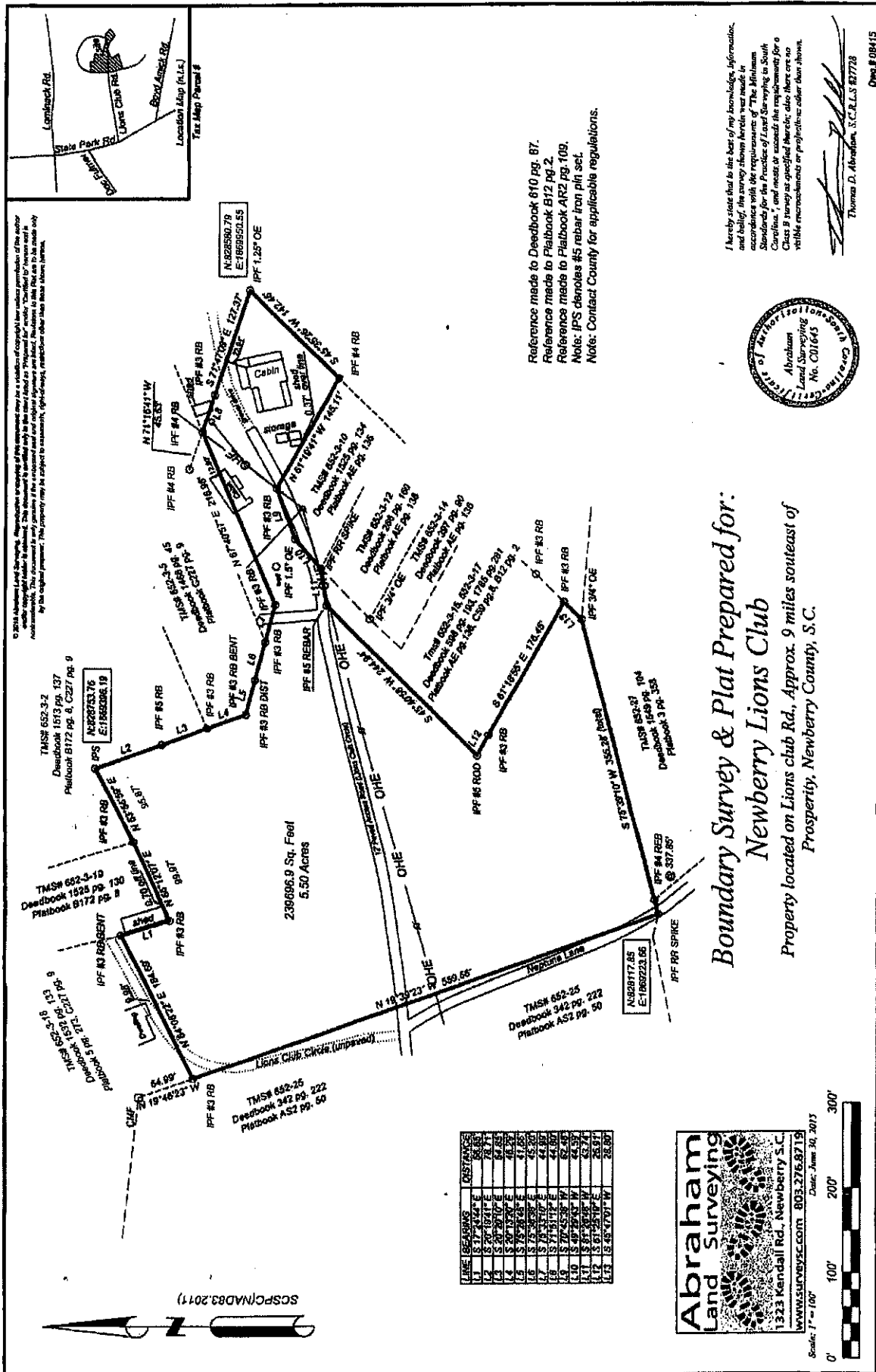


EXHIBIT 2

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

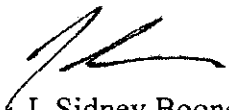
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



EXHIBIT 3

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

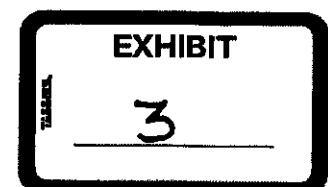
If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

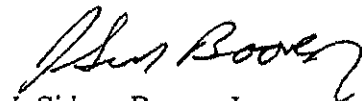


Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com*)

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EXHIBIT 4

HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER

CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

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0309

EXHIBIT 5

COPY

MCNAIR
ATTORNEYS

November 21, 2017

Michael A. Scardato

mcardato@mcnair.net

T 843.723.7831

F 843.722.3227

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 4C
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



1698525v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

0311

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Eugene Crocker, President
James S. Verner, Esq.
November 21, 2017
Page 2

MCNAIR
ATTORNEY

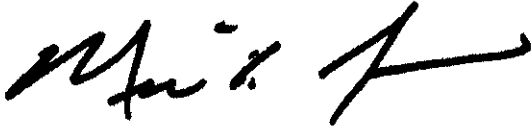
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Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

Exhibit 6

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total
Amick, Ray	\$ 1,000	\$ 1,000		\$ 1,000
Byars, Wick	\$ 1,500	\$ 1,500		\$ 1,500
Gray, Murray	\$ 1,500	\$ 1,125.00	\$ 375.00	\$ 1,500
Jay, Nelda	\$ 500	\$ 375.00	\$ 125.00	\$ 500
McCrackin, Ruth	\$ 1,000	\$ 750.00	\$ 250.00	\$ 1,000
McSwain, Bill & Julia	\$ 2,000	\$ 2,000		\$ 2,000
Parr, Jim	\$ 5,050	\$ 5,050		\$ 5,050
Rice, Joe & Lisa	\$ 9,800	\$ 5,050	\$ 4,750	\$ 9,800
Schumpert, Claude & Missy	\$ 10,550	\$ 5,050	\$ 5,500	\$ 10,550
Sharick, Merle & Cheryl	\$ 5,050	\$ 5,050		\$ 5,050
Stewart, Dave & Susan	\$ 5,050	\$ 5,050		\$ 5,050
	<u>\$ 43,000</u>	<u>\$ 32,000</u>	<u>\$ 11,000</u>	<u>\$ 43,000</u>

(pd \$11,950: \$1,400 to be reimbursed by Sharicks)
 (pd \$3,650: \$1,400 to be reimbursed to Schumperts)

Total Cost from Rd. to Gate
 Miscellaneous Contributions
 Balance to be Shared Equally
 Divide by 5

32000
 -6750 (Amick, Byars, Gray, Jay, McCrackin, McSwain)
25250 (Parr, Rice, Schumpert, Sharick, Stewart)
5050 each

Total Cost Beyond Gate
 Miscellaneous Contributions
 Balance to be Shared Equally
 Divide by 2

11000
 -750 (Gray, Jay, McCrackin)
10250 (Rice, Schumpert)
5125

MERLE D SHARICK
CHERYL J SHARICK

08-01

2650

67-448/539 SC
708

5/14/10

Date

Holland Clarke

Pay
to the order of

Jim Barr

\$ 3,650.00

Three thousand six hundred fifty + no

no
100

Dollars

Security
Features
Details on
Back

Bank of America

ACH R/T 053904483

Memo

Road paving

Merle D. Sharick

MP

SUSAN F STEWART
DAVID E STEWART

3865

64-22/610
BRANCH 77271

June 5, 2010

Date

Pay to the
Order of

Bird Paving

\$ 5,050.00

Five thousand & fifty + no

Dollars

Security
Features
Details on
Back

WACHOVIA

Wachovia Bank, N.A.
wachovia.com

For

Susan F. Stewart

Bank of America Advantage

NELDA E. JAY

07-69

6781

67-448/539 SC
402

May 14, 2010

Date

Holland Clarke

Pay
to the order of

Bird Paving company

\$ 500.00

five hundred & no/100

Dollars

Security
Features
Details on
Back

Bank of America

ACH R/T 053904483

Memo

Lions Club Road paving

Nelda Jay

MP

JOHN J McSWAIN
JULIA B McSWAIN

3105

67-776/532
BRANCH 77454

5/11/10

Date

Pay to the
Order of

Bird Paving
Two thousand and no/100

\$2,000.00

Dollars



Security
Features
Details on
Back



WACHOVIA

Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For

Road paving

Julia B McSwain

MP

JAMES N PARR JR

111

67-604/539
BRANCH 142

6/3/10

Date

Pay to the
Order of Bird Paving
Five thousand fifty

\$5,500.00

Dollars



Security
Features
Details on
Back

First Citizens
First Citizens Bank & Trust Company, Inc.

For

James N Parr Jr

MP

THE MURRAY CO. OF NEWBERRY INC.

005520

67-448/539 SC
402

5-27-10

Date

Pay To The
Order of

Bird Construction
One thousand five hundred & no/100

\$1,500.00

Dollars



Security
Features
Details on
Back

Bank of America

Murray

MP

Joseph F. or Lisa S. Rice

1ST CITIZENS BANK & TRUST COMPANY, INC.
CHARLESTON, SC 29401
67-148/532

10903

5/12/2010

Pay to the
Order of

Bird Paving

\$**9,800.00

Nine Thousand Eight Hundred and 00/100*****

Dollars

Bird Paving

Lisa S. Rice

ELECTRONICALLY FILED - 2020 Mar 18 4:03 PM

CLAUDE H OR MELISSA B SCHUMPERT

BB&T
BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE
ORDER OF

Bird Paving

\$**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100*****

DOLLARS

Bird Paving

Melissa B Schumpert
AUTHORIZED SIGNATURE

MEMO

Paving Lions Club Road

NEWBERRY COMMON PLEAS - CASE#2018CP3600089

Details on Back.

Security Features Included

0317

Exhibit 7

From: **Jim Koutrakos** JimKoutrakos@callisontighe.com

Subject: RE: RICE/LIONS CLUB and Amick

Date: May 8, 2019 at 12:12 PM

To: Tom Pope tom@ppjlaw.com

Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com)

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope <tom@ppjlaw.com>

Sent: Wednesday, May 08, 2019 11:59 AM

To: Jim Koutrakos <JimKoutrakos@callisontighe.com>

Cc: Biff Sowell <bsowell@sowelldurant.com>; sam price <rshealy517@hotmail.com>; Kyle Parker <kyle@ppjlaw.com>; Betsy Alexander <betsy@ppjlaw.com>

Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon”

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.

We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.

We need your client to follow through with his promise. Please give us your response today.

Tom Pope

Pope Parker Jenkins, P.A.

(formerly Pope & Hudgens PA)

1508 College Street - P.O. Box 190

Newberry, SC 29108

803.276.2532 F: 803.276.8684

tom@ppjlaw.com

www.ppjlaw.com

Exhibit 8

SCHEDULE B EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK)

Policy No.: 813064040-213470248

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
- 5.
5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.
6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267.
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
 - a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before accessing the eastern portion of the property;
 - b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;
 - c. Overhead electric lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and
 - d. Shed in the eastern area of the property projects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10, located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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ALTA Owner's Policy (Schedule B)

AMERICAN
LAND TITLE
ASSOCIATION



(17-0534-01 (AMICK).PFD/17-0534-01 (AMICK)/21)

Lisa Smith Closing File_0076

0322

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No. 2019-CP-36-00245

A. Murray Gray, Claude H.
Schumpert, and Melissa B.
Schumpert

Plaintiffs

v.

C. Ray Amick and Cheryl
Littlejohn

Defendants

**ANSWER TO SECOND AMENDED
COMPLAINT
(Jury Trial Demanded)**

Without waiving its Motion to Dismiss, Defendant C. Ray Amick (“Defendant Amick”) responds to the Second Amended Complaint as follows:

1. Defendant Amick admits the allegations of paragraph 1 of the Second Amended Complaint.
2. Defendant Amick denies the allegations of paragraph 2 of the Second Amended Complaint.
3. Defendant Amick admits the allegations of paragraph 3 of the Second Amended Complaint.
4. Defendant Amick admits the allegations of paragraph 4 of the Second Amended Complaint.
5. Upon information and belief, Defendant Amick admits the allegations of paragraph 5 of the Second Amended Complaint.
6. Defendant Amick denies the allegations of paragraph 6 of the Second Amended Complaint.

7. Upon information and belief, Defendant Amick admits the allegations of paragraph 7 of the Second Amended Complaint.

8. Defendant Amick denies the allegations of paragraphs 8, 9 and 10 of the Second Amended Complaint.

9. Defendant Amick admits the allegations of paragraphs 11 and 12 of the Second Amended Complaint.

10. Defendant Amick denies the allegations of paragraphs 13 and 14 of the Second Amended Complaint.

11. Upon information and belief, Defendant Amick admits the allegations of paragraph 15 of the Second Amended Complaint.

13- Defendant Amick denies the allegations of paragraph 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Second Amended Complaint.

22 Defendant Amick admits the allegations of paragraph 26 of the Second Amended Complaint.

23 Defendant Amick denies the allegations of paragraphs 27, 28, and 29 of the Second Amended Complaint.

24 Responding to paragraph 30 of the Second Amended Complaint, Defendant Amick restates responses hereinabove.

25 Defendant Amick admits the allegations of paragraph 31 of the Second Amended Complaint.

26 Defendant Amick denies the allegations of paragraphs 32, 33, 34, 35, and 36 of the Second Amended Complaint.

27 Responding to paragraph 37 of the Second Amended Complaint, Defendant Amick restates responses hereinabove.

28 Defendant Amick denies the allegations of paragraphs 38, 39, 40, 41 and 42 of the Second Amended Complaint.

29 Responding to paragraph 43 of the Second Amended Complaint, Defendant Amick restates responses hereinabove.

30 Defendant Amick denies the allegations of paragraphs 44, 45, 46 and 47 of the Second Amended Complaint.

31 Except as admitted specifically, all claims are denied.

FOR A SECOND DEFENSE

32 The Second Amended Complaint fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

33 All claims are barred by the applicable statute of frauds.

FOR A FOURTH DEFENSE

34 All claims are barred by the doctrines of waiver and estoppel.

FOR A FIFTH DEFENSE

35 Plaintiffs have an adequate remedy at law.

FOR A SIXTH DEFENSE

36 All claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE

37 All claims are barred by the doctrines of laches and unclean hands.

WHEREFORE, having fully answered the Second Amended Complaint, C. Ray Amick prays that this matter be dismissed, with costs, and for such other and further relief as is just and proper.

SOWELL & DuRANT, LLC

By: s/Thornwell F. Sowell, III
Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
1325 Park Street, Suite 100
Columbia, South Carolina 29201
(803) 722-1100

Attorneys for Defendant C. Ray Amick

Columbia, South Carolina
March 23, 2020

JURY TRIAL DEMANDED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick and
Cheryl Littlejohn,

Defendants.

DEFENDANT C. RAY AMICK'S ANSWER
AND CROSS-CLAIM TO FOURTH
AMENDED COMPLAINT
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick") answers the allegations of the Fourth Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Amick denies all allegations of the Fourth Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Fourth Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Fourth Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Fourth Amended Complaint upon information and belief.

5. Amick admits the allegations of paragraph 5 of the Fourth Amended Complaint upon information and belief.

6. As to the allegations of paragraph 6 of the Fourth Amended Complaint, Amick craves reference to the document attached to the Fourth Amended Complaint as Exhibit 1 and, to

the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same.

7. As to the allegations of paragraph 7 of the Fourth Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to the minutes of that board meeting. To the extent the allegations of paragraph 7 are inconsistent with the minutes of the board meeting, Amick denies the same.

8. As to the allegations of the first sentence of paragraph 8 of the Fourth Amended Complaint, Amick craves reference to the letter attached to the Fourth Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 8.

9. Amick admits the allegations of paragraph 9 of the Fourth Amended Complaint upon information and belief.

10. As to the allegations of paragraph 10 of the Fourth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fourth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Fourth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fourth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Fourth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fourth

Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.

13. As to the allegations of paragraph 13 of the Fourth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fourth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 13 are inconsistent with said letter, Amick denies the same.

14. As to the allegations of paragraph 14 of the Fourth Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

15. As to the allegations of paragraph 15 of the Fourth Amended Complaint, Amick admits the Rices through their attorney sent an offer of \$325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 15 inconsistent with the foregoing.

16. Amick admits the allegations of paragraph 16 of the Fourth Amended Complaint.

17. As to the allegations of paragraph 17 of the Fourth Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 17. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

18. As to the allegations of paragraph 18 of the Fourth Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 18.

19. As to the allegations of paragraph 19 of the Fourth Amended Complaint, Amick craves reference to the letter attached to the Fourth Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 19 are inconsistent with said letter, Amick denies the same.

20. As to the allegations of paragraph 20 of the Fourth Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter

attached as Exhibit 2 and Exhibit 3 to the Fourth Amended Complaint. Amick denies the remaining allegations of paragraph 20.

21. As to the allegations of paragraph 21 of the Fourth Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 21 are inconsistent with said minutes, Amick denies the same.

22. Paragraph 22 of the Fourth Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

23. Amick denies the allegations of paragraphs 23 and 24 of the Fourth Amended Complaint.

24. Amick admits the allegations of paragraph 25 of the Fourth Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

25. As to the allegations of paragraph 26 of the Fourth Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Fourth Amended Complaint. To the extent the allegations of paragraph 26 are inconsistent with said letters, Amick denies the same.

26. Amick denies the allegations of paragraph 27 of the Fourth Amended Complaint.

27. As to the allegations of paragraph 28 of the Fourth Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Fourth Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 28 are inconsistent with said letter, Amick denies the same.

28. Amick admits the allegations of the first sentence of paragraph 29 of the Fourth Amended Complaint. Amick denies the remaining allegations of paragraph 29.

29. Amick denies the allegations of paragraph 30 of the Fourth Amended Complaint.

30. As to the allegations of paragraph 31 of the Fourth Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to the public court docket and, to the extent the allegations of paragraph 31 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. As to the allegations of paragraph 32 of the Fourth Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 32 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 and, therefore, denies the same.

32. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Fourth Amended Complaint and, therefore, denies the same.

33. Amick denies the allegations of paragraph 34 of the Fourth Amended Complaint.

34. As to the allegations of paragraph 35 of the Fourth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was \$300,000 and “other consideration.” Amick denies the remaining allegations of paragraph 35.

35. Amick denies the allegations of paragraphs 36 and 37 of the Fourth Amended Complaint.

36. As to the reiterated allegations of paragraph 38 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

37. Paragraph 39 of the Fourth Amended Complaint contains legal conclusions to which no response is required.

38. As to the allegations of paragraph 40 of the Fourth Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 40 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

39. Paragraph 41 of the Fourth Amended Complaint contains legal conclusions to which no response is required.

40. Amick denies the allegations of paragraphs 42, 43, and 44 of the Fourth Amended Complaint.

41. As to the allegations of paragraph 45 of the Fourth Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 45.

42. Amick denies the allegations of paragraphs 46 and 47 of the Fourth Amended Complaint.

43. As to the reiterated allegations of paragraph 48 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

44. Amick denies the allegations of paragraph 49 of the Fourth Amended Complaint.

45. As to the reiterated allegations of paragraph 50 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

46. Amick denies the allegations of paragraphs 51, 52, 53, and 54 of the Fourth Amended Complaint.

47. As to the allegations of paragraph 55 of the Fourth Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Fourth Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 56.

49. As to the allegations of paragraph 57 of the Fourth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 57.

50. Amick denies the allegations of paragraphs 58 and 59 of the Fourth Amended Complaint.

51. As to the reiterated allegations of paragraph 60 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

52. Amick denies the allegations of paragraphs 61, 62, 63, 64, and 65 of the Fourth Amended Complaint.

53. As to the reiterated allegations of paragraph 66 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

54. The allegations of paragraphs 67, 68, 69, 70, 71, 72, and 73 of the Fourth Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

55. As to the reiterated allegations of paragraph 74 of the Fourth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

56. Amick denies the allegations of paragraphs 75, 76, 77, 78 of the Fourth Amended Complaint.

57. Amick admits the allegations of paragraph 79 of the Fourth Amended Complaint upon information and belief.

58. Amick denies the allegations of paragraphs 80, 81, and 82 of the Fourth Amended Complaint.

59. Amick admits the allegations of paragraph 83 of the Fourth Amended Complaint upon information and belief.

60. Amick denies the allegations of paragraph 84 of the Fourth Amended Complaint.

61. Amick denies the allegations of paragraphs 85, 86, and 87 of the Fourth Amended Complaint.

62. Amick admits the allegations of paragraph 88 of the Fourth Amended Complaint upon information and belief.

63. Amick denies the allegations of paragraphs 89 and 90 of the Fourth Amended Complaint.

64. As to the allegations of paragraph 91 of the Fourth Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 91.

65. Amick denies the allegations of paragraph 92 of the Fourth Amended Complaint.

66. Amick admits the allegations of paragraph 93 of the Fourth Amended Complaint upon information and belief.

67. Amick denies the allegations of paragraphs 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 104 of the Fourth Amended Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

68. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

69. Plaintiffs' Fourth Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

70. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

71. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

72. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

73. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(No Contract)

74. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

75. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

FOR A SIXTH DEFENSE
(Bona Fide Purchaser for Value)

76. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

77. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

FOR A SEVENTH DEFENSE AND
BY WAY OF CROSS-CLAIM
(Indemnity/Breach of Deed Warranty)

78. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

79. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

80. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 (“Lions Club Deed”).

81. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

82. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Fourth Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

83. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee’s Heirs, Successors and Assigns, against the Grantor and the Grantor’s Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

84. In the Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

85. If the allegations of the Plaintiffs' Fourth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

86. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

87. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

88. If the allegations of the Plaintiffs' Fourth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

89. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Fourth Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

90. Amick respectfully requests a trial by jury on any and all claims so triable.

WHEREFORE, having fully answered Plaintiffs' Fourth Amended Complaint and having set forth his Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

- A. Dismissing Plaintiffs' Fourth Amended Complaint;
- B. Awarding Amick the relief requested in his Cross-Claim;
- C. Awarding Amick attorney fees and the costs of this action (to the extent allowable); and
- D. Awarding any such further relief as the Court deems just and proper.

CALLISON TIGHE & ROBINSON, LLC

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**ATTORNEYS FOR DEFENDANT
 C. RAY AMICK**

April 6, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and
Melissa B. Schumpert,

Plaintiffs,

vs.

C. Ray Amick,

Defendant.

ANSWER OF CHERYL LITTLEJOHN

Defendant Cheryl Littlejohn ("Littlejohn") answers the Second Amended Complaint (the "Complaint") of Plaintiffs A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert (collectively the "Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Littlejohn denies any allegation of the Complaint not hereafter expressly admitted.

Background

2. On information and belief, Littlejohn admits the allegations of paragraph 1.
3. Answering the allegations of paragraph 2, Littlejohn admits that C. Ray Amick ("Amick") resides at 62 Lions Club Road, Newberry, SC. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations and therefore denies them.
4. Littlejohn admits the allegations of paragraph 3.
5. Answering the allegations of paragraph 4, Littlejohn admits that the property that is in dispute in the complaint includes the area described in paragraph 4, and admits the allegations

to the extent they are consistent with the documents recorded in the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 4, and therefore denies them.

6. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

7. Answering the allegations of paragraph 6, Littleton admits the allegations to the extent they are consistent with the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 6, and therefore denies them.

8. Answering the allegations of paragraph 7, Littlejohn denies that Plaintiffs are entitled to the relief requested in the Complaint as to her property. The remaining allegations of paragraph 7 seek relief from persons other than Littlejohn and do not require a response from Littlejohn. To the extent a response is required, Littlejohn denies the remaining allegations of paragraph 7.

9. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

10. Answering the allegations of paragraph 9, Littlejohn admits that Amick's title is being disputed in the lawsuit described in paragraph 9 and that a lis pendens has been filed on the Lions Club Property. The remaining allegations concerning the impact of the other lawsuit and the lis pendens call for legal conclusions and no response is required. To the extent a response is required, Littlejohn denies the allegations.

11. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

12. Littlejohn admits the allegations of paragraphs 11 and 12.

13. Littlejohn denies the allegations of paragraphs 13 and 14.

14. Answering the allegations of paragraph 15, Littlejohn admits that she uses the LC Road to access her own property. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 15, and therefore denies them.

15. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 16 through 20, and therefore denies them.

16. Answering the allegations of paragraph 21, Littlejohn admits that at some point in 2018, Amick blocked the eastern portion of Lions Club Road with a rope and installed a no trespassing sign. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 21, and therefore denies them.

17. Answering the allegations of paragraph 22, Littlejohn denies that she had knowledge of Plaintiffs' assertions in the complaint before the lawsuit was filed and therefore could not have raised any concerns or objections. As set forth herein, Littlejohn denies that Plaintiffs have any rights to her property.

18. Littlejohn denies the allegations of paragraphs 23 through 25.

19. Answering the allegations of paragraph 26, Littlejohn admits that she is aware of certain trespassing signs placed by Amick, but she does not know the specific date or circumstances around the sign. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 26, and therefore denies them.

20. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

21. The allegations of paragraphs 28 and 29 do not apply to Littlejohn and therefore, no response is required. To the extent a response is required, Littlejohn denies them. Further responding, Littlejohn denies that the Plaintiffs have any right to access her property.

**For a First Cause of Action
Declaratory Judgment**

22. Answering the allegations of paragraph 30, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

23. On information and belief, Littlejohn admits the allegations of paragraph 31.

24. Littlejohn denies the allegations of paragraphs 32 through 36.

**For a Second Cause of Action
(Temporary and Permanent Injunction)**

25. Answering the allegations of paragraph 37, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

26. Answering the allegations of paragraph 38, Littlejohn denies that Plaintiffs have the right to interfere with or use her property, and denies that Plaintiffs are entitled to any relief or recovery from Littlejohn.

27. Littlejohn denies the allegations of paragraphs 39 through 42.

**For a Third Cause of Action
(Trespass/Nuisance)**

28. Answering the allegations of paragraph 43, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

29. The allegations of paragraphs 44 through 47 do not state any claim or include any allegations against Littlejohn and therefore do not require a response. To the extent a response is required, Littlejohn denies them.

30. Littlejohn denies that Plaintiffs are entitled to the relief requested in their prayer for relief.

FOR A SECOND DEFENSE

31. The Complaint fails to state facts sufficient to constitute any cause of action as to Littlejohn, and should be dismissed with prejudice pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

32. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.

FOR A FOURTH DEFENSE

33. The Plaintiffs claims are barred in whole or in part by all equitable doctrines available to Littlejohn, including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

FOR A FIFTH DEFENSE

34. Plaintiffs' claims are barred by any applicable statute of limitations.

FOR A SIXTH DEFENSE

35. The Plaintiffs' damages, if any, directly and proximately result, in whole or in part, from the intervening and superseding acts of third parties over whom Littlejohn had no control and are not responsible.

FOR AN EIGHTH DEFENSE

36. Littlejohn is a bona fide purchaser for value of the subject property. Therefore, Plaintiffs have no claim against Littlejohn and no right, title, or interest in the property that she owns.

WHEREFORE, Littlejohn, having fully answered the Complaint of the Plaintiffs, pray that the Complaint be dismissed with prejudice and that the Court order such other and further relief as this Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Mary M. Caskey

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May 11, 2020

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick, and
Cheryl Littlejohn,

Defendants.

ANSWER OF CHERYL LITTLEJOHN

Defendant Cheryl Littlejohn (“Littlejohn”) answers the Fourth Amended Complaint (the “Complaint”) of Plaintiffs Lisa Summer Rice and Joseph F. Rice (collectively the “Plaintiffs”) as follows:

FOR A FIRST DEFENSE

1. Littlejohn denies any allegation of the Complaint not hereafter expressly admitted.

Background

2. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 1.
3. On information and belief, Littlejohn admits the allegations of paragraphs 2.
4. Answering the allegations of paragraph 3, Littlejohn admits on information and belief that C. Ray Amick (“Amick”) resides in Newberry County, but is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 3.
5. Littlejohn admits the allegations of paragraph 4.

6. Littlejohn admits the allegations of paragraph 5 to the extent they are consistent with the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 5 and therefore denies them.

7. The allegations of paragraph 6 through 37 do not reference or apply to Littlejohn. To the extent the allegations do apply to Littlejohn, she is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 6 through 37, and therefore denies them.

**For a First Cause of Action
Declaratory Judgment**

8. Answering the allegations of paragraph 38, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

9. The allegations of paragraph 39 state a legal conclusion to which no response is required. To the extent a response is required, Littlejohn denies them.

10. On information and belief, Littlejohn denies the allegations of paragraph 40.

11. The allegations of paragraph 41 state a legal conclusion to which no response is required. To the extent a response is required, Littlejohn denies them.

12. On information and belief, Littlejohn denies the allegations of paragraphs 42 through 47.

**For a Second Cause of Action
(Specific Performance)**

13. Answering the allegations of paragraph 48, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

14. On information and belief, Littlejohn denies the allegations of paragraph 49.

**For a Third Cause of Action
(Promissory Estoppel)**

15. Answering the allegations of paragraph 50, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

16. On information and belief, Littlejohn denies the allegations of paragraphs 51 through 59.

**For a Fourth Cause of Action
(Intentional Interference with Contractual Rights as to Defendant Amick)**

17. The allegations of paragraphs 60 through 65 do not apply to Littlejohn, and therefore do not require a response from Littlejohn. To the extent a response is required, Littlejohn denies the allegations of paragraphs 60 through 65.

**For a Fifth Cause of Action
(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)**

18. The allegations of paragraphs 66 through 73 do not apply to Littlejohn, and therefore do not require a response from Littlejohn. To the extent a response is required, Littlejohn denies the allegations of paragraphs 66 through 73.

**For a Sixth Cause of Action
(Declaratory Judgment – Easement- Injunction as to Amick and Littlejohn)**

19. Answering the allegations of paragraph 74, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

20. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 75, and therefore denies them.

21. Answering the allegations of paragraph 76, Littlejohn admits that she knew Amick placed “no trespassing” signs on the subject property. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 76, and therefore denies them.

22. Littlejohn denies the allegations of paragraphs 77 and 78.

23. Littlejohn admits the allegations of paragraph 79.

24. Answering the allegations of paragraph 80, Littlejohn admits a plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, is recorded in the Office of the Clerk of Newberry County in Plat Slide D99, at Page 6. Answering the remaining allegations of paragraph 80, Littlejohn craves reference to the plat itself and denies that it creates any right of Plaintiffs over Littlejohn's property.

25. Littlejohn denies the allegations of paragraphs 81 and 82.

26. Answering the allegations of paragraph 83, Littlejohn admits that she uses the portion of the LC Road, but she is without information or knowledge sufficient to form a belief as to the truth of the allegations of remaining allegations of paragraph 83, and therefore denies them.

27. Littlejohn denies the allegations of paragraphs 84 and 85.

28. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 86 through 88, and therefore denies them.

29. Littlejohn denies the allegations of paragraphs 89 and 90.

30. Answering the allegations of paragraph 91, Littlejohn admits that she is aware of certain trespassing signs placed by Amick, but she does not know the specific date or circumstances around the sign. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 91, and therefore denies them.

31. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 92, and therefore denies them.

32. On information and belief, Littlejohn admits the allegations of paragraph 93.

33. Littlejohn denies the allegations of paragraphs 94 through 97.

34. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 98, and therefore denies them.

35. Littlejohn denies the allegations of paragraphs 99 through 102.

36. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 103, and therefore denies them.

37. Littlejohn denies the allegations of paragraph 104.

38. Littlejohn denies that Plaintiffs are entitled to the relief requested in their prayer for relief.

FOR A SECOND DEFENSE

39. The Complaint fails to state facts sufficient to constitute any cause of action as to Littlejohn, and should be dismissed with prejudice pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

40. The Plaintiffs' claims are barred in whole or in part by her failure to mitigate their damages.

FOR A FOURTH DEFENSE

41. The Plaintiffs claims are barred in whole or in part by all equitable doctrines available to Littlejohn, including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

FOR A FIFTH DEFENSE

42. Plaintiffs' claims are barred by any applicable statute of limitations.

FOR A SIXTH DEFENSE

43. The Plaintiffs' damages, if any, directly and proximately result, in whole or in part, from the intervening and superseding acts of third parties over whom Littlejohn had no control and are not responsible.

FOR AN EIGHTH DEFENSE

44. Littlejohn is a bona fide purchaser for value of the subject property. Therefore, Plaintiffs have no claim against Littlejohn and no right, title, or interest in the property that she owns.

WHEREFORE, Littlejohn, having fully answered the Complaint of the Plaintiffs, pray that the Complaint be dismissed with prejudice and that the Court order such other and further relief as this Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Mary M. Caskey

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Mary 19, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and)
Melissa B. Schumpert,)

Plaintiffs,)

v.)

C. Ray Amick and Cheryl Littlejohn,)

Defendants.)

**PLAINTIFFS' FIRST REQUESTS
FOR ADMISSION TO DEFENDANT
CHERYL LITTLEJOHN**

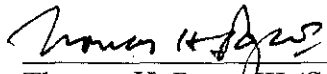
**TO: DEFENDANT CHERYL LITTLEJOHN AND HER COUNSEL, MARY CASKEY,
ESQUIRE:**

Pursuant to Rule 36, SCRCP, Plaintiffs hereby request that the Defendants admit the matters specified below in writing and return the written responses to these Requests to Plaintiffs' counsel within thirty days after service hereof.

1. Admit that Plaintiffs' Second Amended Complaint does not assert any claim for damages against Defendant Littlejohn.
2. Admit that Littlejohn purchased her lot on Lions Club Road by deed from Christopher Jay & Stewart J. Layman dated April 6, 2018, and recorded in the Newberry County Clerk of Court's office in Deed Book 2039 at Page 58 ("Littlejohn Property").
3. Admit that this property is assigned to Tax Max No. 652-3-10.
4. Admit that the records of the Office of the Newberry County Clerk of Court show that the attached Exhibit A, Plat of Abraham Land Surveying, was recorded on November 9, 2017 ("Abraham Plat") in Plat Book D99 at Page 6.
5. Admit that the 2017 Abraham Land Surveying Plat referred to above reflects that Lions Club Road extends over and across the Littlejohn property.
6. Admit that the attached plat, Exhibit A hereto, is the Abraham plat referenced above.

Dated: May 28, 2020

POPE PARKER JENKINS, P.A.

By: 
Thomas H. Pope III (S.C. Bar No. 4508)
E-mail: tom@ppjlaw.com

Kyle B. Parker (S.C. Bar No. 71764)
E-mail: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276.8684

Boundary Survey & Plat Prepared for:
Newberry Lions Club
 Property located on Lions Club Rd, Approx. 2 miles southeast of
 Prosperity, Newberry County, S.C., Newberry County T18N R53E S31

Date: 11-21-17 Date: September 11, 2017



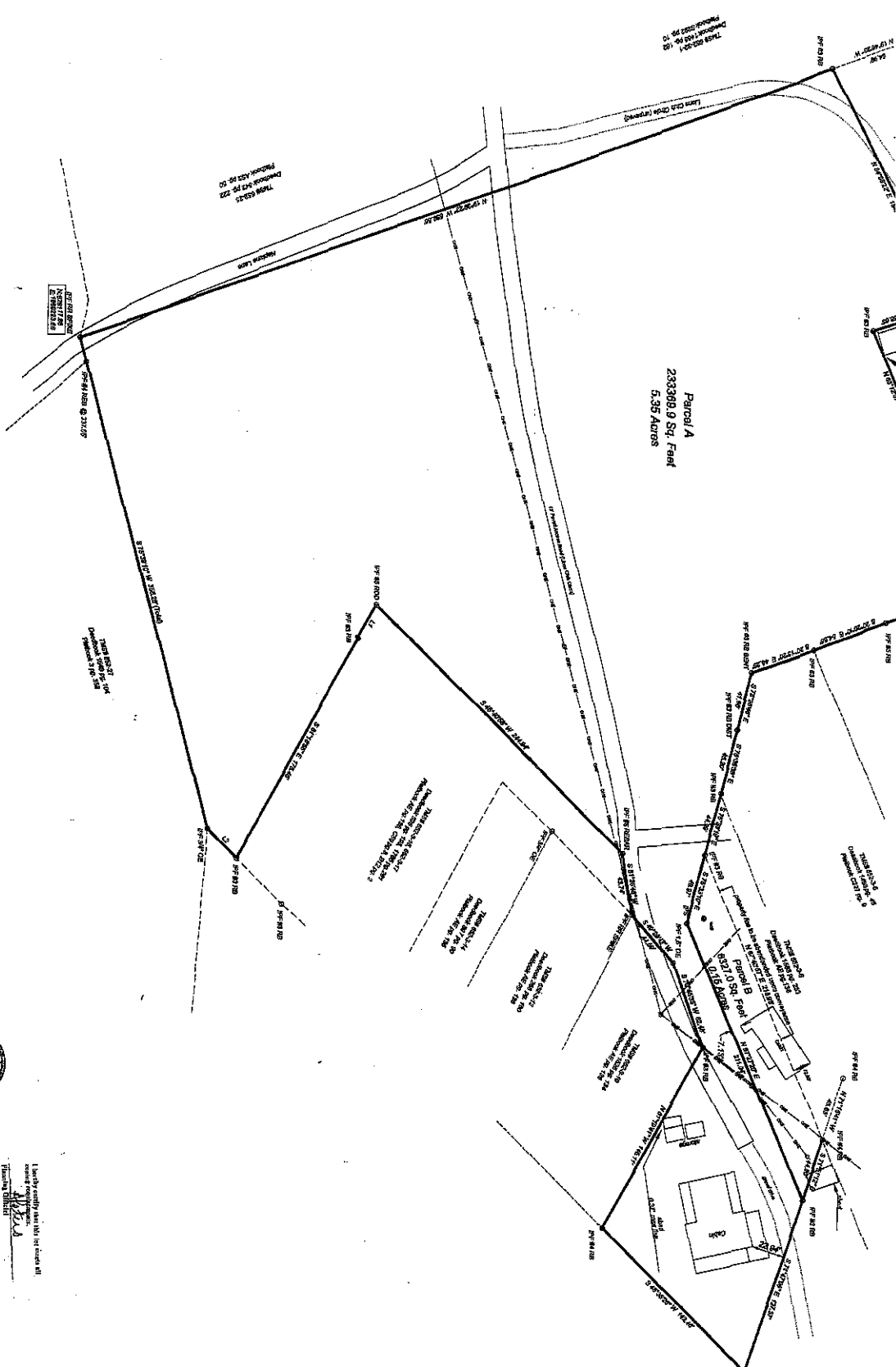
I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original survey and plat as the same appears in the records of the Surveyors Office.
 Surveyor
 Date: 11-21-17

1. I hereby certify that the above is a true and correct copy of the original survey and plat as the same appears in the records of the Surveyors Office.
 Surveyor
 Date: 11-21-17

2. I hereby certify that the above is a true and correct copy of the original survey and plat as the same appears in the records of the Surveyors Office.
 Surveyor
 Date: 11-21-17

EXHIBIT A

0354



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

CASE NO: 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and
Melissa B. Schumpert,

Plaintiffs,

v.

C. Ray Amick and Cheryl Littlejohn,

Defendants.

**DEFENDANT CHERYL LITTLEJOHN'S RESPONSES TO PLAINTIFFS'
FIRST REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant Cheryl Littlejohn ("Littlejohn") herein responds to the Plaintiffs' First Set of Requests for Admission as follows:

ANSWERS TO REQUESTS FOR ADMISSION

1. Admit that Plaintiffs' Second Amended Complaint does not assert any claim for damages against Defendant Littlejohn.

ANSWER: Admitted.

2. Admit that Littlejohn purchased her lot on Lions Club Road by deed from Christopher Jay & Stewart J. Layman dated April 6, 2018, and recorded in the Newberry County Clerk of Court's office in Deed Book 2039 at Page 58 ("Littlejohn Property").

ANSWER: Admitted.

3. Admit that this property is assigned Tax Map No. 652-3-10.

ANSWER: Admitted.

4. Admit that the records of the Office of the Newberry Clerk of Court show that the attached Exhibit A, Plat of Abraham Land Surveying, was recorded on November 9, 2017 ("Abraham Plat") in Plat Book D99 at Page 6.

ANSWER: Admitted.

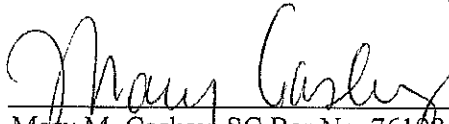
5. Admit that the 2017 Abraham Land Surveying Plat referred to above reflects that Lions Club Road extends over and across the Littlejohn property.

ANSWER: Denied. The Abraham Plat shows a roadway that is labeled "12' Paved Access Road (Lions Club Circle)", and this path extends over the Littlejohn Property after the Lions Club Circle turns toward the Plaintiffs' properties.

6. Admit that the attached plat, Exhibit A hereto, is the Abraham plat referenced above.

ANSWER: Admitted.

HAYNSWORTH SINKLER BOYD, P.A.



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June 24, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

DEFENDANT C. RAY AMICK'S
NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON THE
EASEMENT ISSUE

Defendant C. Ray Amick, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby moves for summary judgment on the Sixth Cause of Action easement claims by plaintiffs that assert the right to an easement, whether implied, by estoppel, by prescription, by prior use, or otherwise, over the Amick property referenced in the complaint herein. This motion is made on the ground that there is no genuine issue of MATERIAL fact, and the defendant C. Ray Amick is entitled to judgment as a matter of law. The grounds for this motion are as follows:

There is no proof herein that plaintiffs' use of the Lions Club property heretofore was open and adverse to the Lions Club property rights as prior owner. Rather, any such uses were permissive as set forth in the Complaint and the depositions and affidavits herein.

For a prescriptive easement, plaintiffs must plead and prove by clear and convincing evidence that their use of the property was adverse or under a claim of right. *See Simmons v. Berkeley Elec. Coop, Inc.*, 797 SE 2d 387, 390 (2016). Evidence of permissive use defeats the establishment of a prescriptive easement. Further, a prescriptive easement requires continued adverse use for the full period of 20 years. There is no sufficient allegation or proof that the Lions Club ever expressed an intent by deed or otherwise that the boat ramp and beach could be

continually used by the plaintiffs after they purchased property from the Lions Club. *See Boyd v. BellSouth*, 633 SE 2d 136, 142 (2006).

An implied easement by prior use requires pleading and proof that the alleged easement is essential to the beneficial enjoyment of the dominant estate. Plaintiffs have not produced any evidence that they do not have other means of enjoying their property, the dominant tenement. Further, the land that the Plaintiffs seek to enjoy by using the alleged easement is not their property; it is property owned by a third party.

Regarding an easement by estoppel, plaintiffs cannot enforce against defendant Ray Amick promises, if any, made by the Lions Club because the lack of an easement is of public record. There is no easement in any deed of public record, which plaintiffs and their predecessors in title had knowledge or the means to obtain knowledge that there was no legal right. *See Boyd*, 369 S.C. at 423, 633 S.E.2d at 142. Further, Plaintiffs have failed to plead or prove with any particularity any promise by the Lions Club related to any easement contradictory to the public records.

For the reasons stated, and based upon any further arguments to be made at a hearing of this matter, the Complaint should be dismissed, and summary judgment granted to defendant C. Ray Amick.

This motion is based upon the pleadings, affidavits and discovery herein, and the defendant C. Ray Amick incorporates herein by reference the motion for summary judgment and memorandum in support filed even date by defendant Cheryl Littlejohn.

s/Thornwell F. Sowell, III

Thornwell F. Sowell, III
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Sowell & DuRant, LLC
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Demetri K. Koutrakos, SC Bar No. 11318

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**ATTORNEYS FOR DEFENDANT
C. RAY AMICK**

August 13, 2020