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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.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE LOWER COURT MAKE ERRONEOUS FACTUAL FINDINGS AND/OR OVERLOOK OR MISAPPREHEND THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT, CONSTITUTING REVERSIBLE ERROR?
- II. DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS ON THE CAUSE OF ACTION FOR PRESCRIPTIVE EASEMENT?
 - A. Did the Facts Presented by Appellants, Viewed in a Light Most Favorable to Non-Moving Parties, Support Appellants' Claim for Prescriptive Easement?
 - B. Did the Lower Court Commit Reversible Error in Relying on the 1984 FERC License as Constituting Permissive Use?
- III. DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT FOR RESPONDENTS AS TO APPELLANTS' CLAIM OF EASEMENT BY ESTOPPEL WHERE THERE WAS GENUINE ISSUES OF MATERIAL FACT?

STATEMENT OF THE CASE

The two cases which are consolidated in this appeal arise out of identical facts and assert the same claims against Respondents C. Ray Amick and Cheryl Littlejohn regarding property in Newberry County at the tip of the peninsula of “Lions Club Point.” These cases assert the party-plaintiffs’ rights to an easement along the length of Lions Club Road from State Park Road through the fringelands owned by the utility company at the boat ramp and beach areas at the waters of Lake Murray. These cases also assert that the easement has been enjoyed by the party-plaintiffs and the other nine adjacent property owners at Lions Club Point for over 60 years. Both cases, in addition to seeking a court order declaring their rights with respect to the easement, also assert a right to an injunction against Respondent Amick for blocking access to Lions Club Road.

The Complaint in Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club (Case No. 2018-CP-36-0089) was originally filed on March 3, 2018. It asserted a claim for specific performance against Newberry Lions Club. The Second Amended Complaint which added C. Ray Amick as a defendant was filed on May 14, 2018.

The Third Amended Complaint dated July 26, 2019, asserted a claim for injunctive relief based on the fact that Respondent Amick, after the initial Complaint was filed and served, blocked the use of Lions Club Road which ran through the 5.5 acre tract of land that Lions Club deeded to Amick on February 22, 2018. The Third Amended Complaint recited Amick’s deposition testimony acknowledging that all adjacent property owners of the subject property and their guests had unrestricted use of the road for access to the fringelands and Lake Murray for over 60 years (R. p. 214; Third Amended Complaint, Para. 81).

The Third Amended Complaint in Rice¹ asserted that after Amick obtained the deed from the Lions Club to the 5.5 acre tract in February 2018, he then installed “No Trespassing” signage and placed a barricade across Lions Club Road blocking access to the fringeland on the Lions Club peninsula and prevented Appellants and the adjoining landowners from utilizing the boat ramp and the beach area located on SCE&G fringelands (R. pp. 212-213; Third Amended Complaint, Para. 75). This Third Amended Complaint asserted that for over six decades Appellants and other adjacent landowners had spent money and provided labor repairing and maintaining Lions Club Road from State Park Road all the way to the shores of Lake Murray. The Third Amended Complaint alleged that Lions Club Road is the only road access for the Appellants and Landowners to use for vehicles to launch boats or to enter onto the fringeland to enjoy the beach area at the lake. The Answer of Amick filed on August 15, 2019, to the Third Amended Complaint asserted that, as of February 2018, “he owns the road and has a right to prohibit access to Plaintiffs and anyone else he chooses” (R. p. 249; Answer, Para. 58).

The Appellants’ Motion for Temporary Injunction against Respondent Amick, supported by 14 affidavits, was heard on June 12, 2019, by The Honorable Donald B. Hocker, Circuit Judge, who considered all of the affidavits filed by the parties as well as the depositions of Mr. Amick and his wife. Judge Hocker then issued his Order Granting Temporary Injunction on August 6, 2019. In that Order, Judge Hocker found, based on the evidence, that Appellants had established a *prima facie* case for an easement to justify the issuance of temporary injunctive relief based on: (a) prescriptive easement; (b) easement by estoppel; and/or, (c) easement by prior use. This Order determined that Appellants had made sufficient showing of a likelihood of success on the merits

¹ Both Rice v. Lions Club, Amick, and Littlejohn (Case No. 2018-CP-36-00089) and Gray and Schumpert v. Amick and Littlejohn (Case No. 2019-CP-36-00245) involve identical allegations and evidence in support of the claims to an easement.

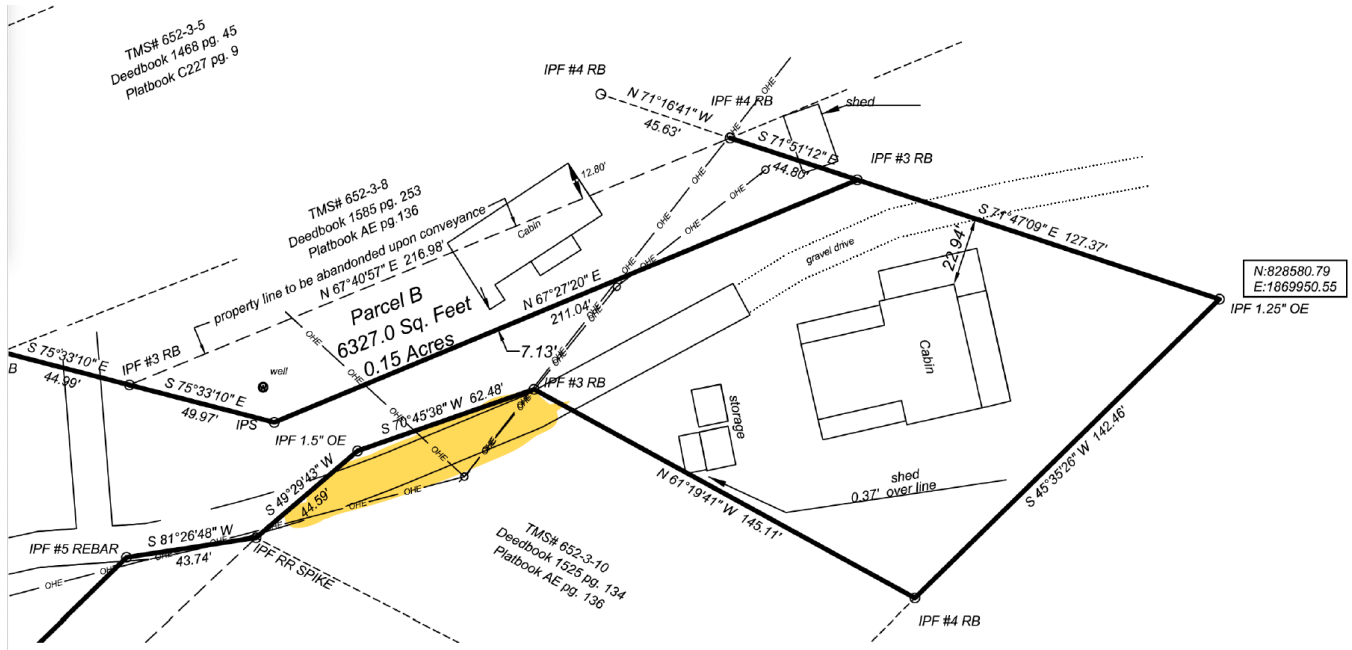
(R. p. 15; Order, p. 12). The Order further described the easement along Lions Club Road as including the gravel portion of the road that ran over and through the fringelands for several hundred feet and then to the boat ramp on the fringelands (R. p. 5; Order, p. 2). Judge Hocker found that given the shape and boundaries of the property there was no way for a vehicle to enter the fringelands (approximately two acres) except by use of Lions Club Road (R. p. 5; Order, p. 2). The Order also enjoined Amick from blocking Lions Club Road for its full length and width with any obstacles subject to a final determination of the merits of the case. After Judge Hocker's Order was entered, Amick filed a Notice of Appeal on August 28, 2019. On October 23, 2019, Amick withdrew his appeal of Judge Hocker's Order.

After Judge Hocker's Order Granting Temporary Injunction was filed, Respondent Amick purchased from Dominion Energy a 0.6 acre portion of the fringeland referred to in Judge Hocker's Order; the deed to Amick was executed on October 8, 2019, and recorded on October 15, 2019 (R. pp. 711-714).² On December 3, 2019, the two cases were consolidated, designated complex, and assigned to Judge J. Mark Hayes for handling and resolution (R. pp. 19-21).

The parcel which Respondent Littlejohn purchased in April 2018 included a portion of the paved Lions Club Road crossing over her property. For this reason, Appellants amended their Complaints to add Littlejohn as a Defendant in March 2020 (R. pp. 280-322; see Fourth Amended Complaint dated 3/18/20). Littlejohn purchased her property on Lions Club Road on April 6, 2018; her deed from Chris Jay and Stewart Jay described the property she purchased by reference to a prior plat of surveyor Tad Abraham dated September 13, 2017 and recorded in Plat Book D99 at Page 6. This plat shows that Lions Club Road crosses the corner of Littlejohn's property and it

² After Judge Hocker's Order, the parties engaged in discovery; numerous depositions were conducted. Ms. Littlejohn was added as a defendant on March 6, 2020, in the Second Amended Complaint in Gray/Schumpert and in the Fourth Amended Complaint in Rice filed on March 20, 2020.

also shows the route of Lions Club Road through the property Littlejohn purchased on April 6, 2018. This plat depicts the path of the Lions Club Road as a “gravel drive” onto the fringeland:



(R. p. 1460; Exhibit 8 to Cheryl Littlejohn depo. of 9/2/21)

On December 14, 2020, Appellants moved for an Order per Rule 34, SCRCP, allowing them to enter the property Amick acquired in October 2019 to survey and clarify the route of the Lions Club Road easement across the fringeland all the way to the boat ramp and beach area at the shore of the lake, and to identify boundaries (R. p. 578; Plaintiffs' Motion for Order Allowing Entry on Property for Surveyor dated 9/30/20). On December 18, 2020, the Court issued its Order Granting Motion for Survey and Inspection (R. p. 42).

The plat of surveyor Tad Abraham was thereafter prepared on February 23, 2021 (R. p. 1357; Exhibit 1 to Abraham depo. taken 8/20/21), and provided to Respondents. It depicted the route of the gravel portion of Lions Club Road over and through the fringeland to the boat ramp and Lake Murray (R. p. 1357). Appellants in both consolidated cases moved to amend the Complaints to add Abraham’s plat, as it was based on information developed in discovery. The

lower court issued its Order Granting Motion to Amend Complaints in the consolidated cases on August 30, 2021 (R. pp. 45-46). Appellants filed a Third Amended Complaint in Gray/Schumpert³ on August 31, 2021, which attached the recent plat of surveyor Abraham as an exhibit. Respondent Littlejohn's Answer was filed on September 15, 2021. Amick filed an Amended Answer and Third-Party Complaint on October 14, 2021, asserting a claim for indemnity against Newberry Lions Club (R. p. 747; Amick's Amended Answer and Third-Party Complaint dated 10/14/21).

Appellants filed a Joint Motion for Summary Judgment in the consolidated cases on September 5, 2023 (R. p. 789). Amick filed his amended Motion for Summary Judgment on November 29, 2023 (R. p. 791; Defendant Amick's Amended Motion for Partial Summary Judgment on 11/29/23). Plaintiffs' Memorandum in Support of their Motion for Summary Judgment and in Opposition to Amick's Motion for Summary Judgment was filed on November 30, 2023 (R. p. 794) and their Supplemental Memorandum in regard to these motions was filed on December 5, 2023 (R. p. 798). Defendant Littlejohn also filed a Motion for Summary Judgment. Mr. Amick died on July 27, 2023, and the Court entered a Consent Order Substituting as Defendant in this matter Betty S. Amick, Personal Representative of the Estate of C. Ray Amick, which was filed on January 24, 2024.

On December 6, 2023, the lower court held a hearing on the cross-motions for Summary Judgment. A Form 4 Order was issued on January 3, 2024, in which the lower court requested that defense counsel prepare a proposed Order Denying Plaintiffs' Motions for Summary Judgment and granting in part and denying in part the Defendant's Motion for Summary Judgment. In its Order filed February 9, 2024, the lower court found and concluded that Defendant's Motion for Summary Judgment with respect to an easement over Lions Club Road was denied, but was

³ See also the Fifth Amended Complaint in Rice filed on August 31, 2021, which attached the plat of Abraham (R. pp. 715-716; Fifth Amended Complaint dated 8/31/21).

granted as to the fringelands. It further denied Plaintiffs' Motion for Summary Judgment (R. p. 65; Order of 2/9/24, p. 9).

Appellants moved on February 20, 2024, to alter or amend and reconsider that Order. On September 11, 2024, Appellants filed their Memorandum in Support of Motion to Reconsider under Rule 59, SCRCF. Respondents on September 11, 2024, filed their Motions to Alter or Amend the Order of February 9, 2024.

The Court held a hearing on the parties' cross-motions to alter or amend on September 12, 2024. In its Order filed on February 19, 2025, the lower court denied Plaintiffs' Motion to Alter or Amend, but granted Defendants' Motion to Alter or Amend and granted Defendants' Motion for Summary Judgment (R. p. 71; Order of February 19, 2025, p. 2). Appellants timely filed their Notice of Appeal of the lower court orders on March 12, 2025.

STATEMENT OF FACTS

In the 1930's, the Newberry Lions Club purchased approximately 10 acres in Newberry County at Lake Murray. The area was known as "Lions Club Point". The Lions Club sold lots to at least seven of the adjacent property owners (R. pp. 829-846; Exhibit B to Amick's Memorandum filed 12/5/23). In 1971, the Lions Club recited in these deeds that "over many years properties at Lake Murray have been carried in the name of the Newberry Lions Club and the deeds to the various lots have never been recorded and have in many instances been lost..." On June 28, 1971, the Lions Club recorded seven deeds to 15 lots at Lions Club Point recorded in Deed Book 103, Pages 569 through 579. After these out-conveyances in June 1971, the Lions Club still owned approximately 5.5 acres at Lions Club Point (R. p. 221), including an old clubhouse. Over the years, Lions Club membership dwindled and by 2016 the club stopped using the clubhouse for meetings. By 2017, there were only a handful of members in the club. At a meeting of the board

of directors of the Lions Club in Newberry in 2017, the decision was made to sell the entire 5.5 acres to C. Ray Amick, a former board member of the Lions Club. The deed of this property from the Lions Club to Amick was recorded on February 22, 2018.⁴

According to surveyor Tad Abraham's June 30, 2015, plat (R. p. 1193), Lions Club Road went through the center of the 5.5 acre tract. The paved portion of Lions Club Road went from State Park Road for a distance of more than half-mile to a point beside the old clubhouse building. Lions Club Road then passed by the clubhouse and continued as a "gravel drive" onto what was referred to as "fringeland" then owned by SCE&G. Below is the GIS aerial photo depicting Lions Club Point before Amick purchased the fringeland.



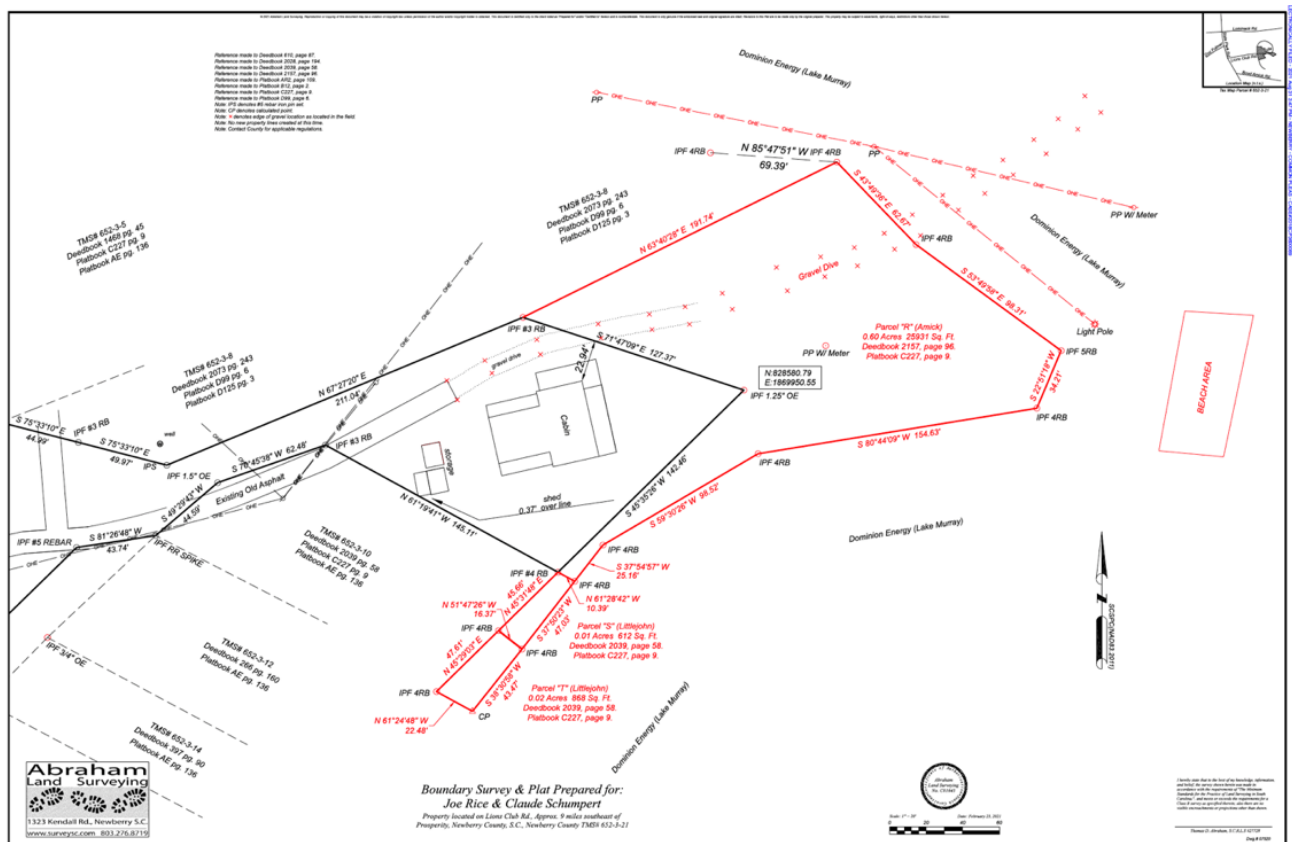
(R. pp. 1027-1028; Exhibit 2 to Affidavit of Murray Gray)

Notwithstanding Judge Hocker's Order Granting Temporary Injunction dated August 6, 2019, Amick purchased an 0.6 acre portion of the fringeland from Dominion Energy (see Page 9 herein). Mr. Abraham surveyed the precise route of the Lions Club Road and his plat depicted it

⁴ The issuance of the deed was challenged by the Rices, but this issue is not a subject of this appeal.

all the way through the fringeland, through the 360 contour line, through the 75-foot vegetative buffer zone, and to the boat ramp on the shore of Lake Murray (R. p. 675) (R. p. 711-714 referencing the 360 contour and vegetative buffer zone).

In his deposition, surveyor Abraham explained the physical evidence he found for the route of Lions Club Road, the width of the road, the gravel he found on the road, where the road crossed the fringeland, where it entered the boat ramp, and the presence of gravel to and under the water at the ramp (R. pp. 1334-1338 and R. p. 1357; Abraham depo. of 8/20/21, pp. 9-13 and Exhibit 1). The plat of Abraham shows Lions Club Road as a “gravel drive” approximately 12 feet in width through the fringeland⁵ to the boat ramp on the shores of Lake Murray as depicted below:



(R. pp. 715-716; Exhibit 7 to Fifth Amended Complaint dated 8/31/21)

⁵ In Judge Hocker’s Order Granting Temporary Injunction, he found that the injunction required Amick to move obstructions along the easement area for a width of 12-feet (R. p. 18).

In connection with Amick's purchase of the 5.5 acre tract from the Lions Club in February 2018, he obtained a title insurance policy. This policy contained an exception from coverage for the "rights of others to use and/or maintain the private roads designated as Lions Club Road...all of which abut, traverse, or encroach upon the insured premises..." (R. p. 633) Amick admitted being aware of that exception at the time that he bought the policy (R. pp. 1373-1374; Amick depo. of 9/2/21, pp. 6-7). He testified that he understood that this exception meant that there may be rights of others to use and/or maintain Lions Club Road (R. p. 1375; Amick depo. of 9/2/21, p. 8). The 2018 title policy also included a provision that it was issued subject to the rights of the public for public rights of access to any navigable waters (R. p. 633).

After he received his deed to the Lions Club property in early-2018, without obtaining legal advice, Amick put a rope across Lions Club Road with a sign prohibiting entry (R. p. 140, R. p. 1023). Amick's actions in that regard blocked access to the boat ramp and the fringelands.

A. Order Granting Temporary Injunction (August 9, 2019)

On June 19, 2019, Circuit Court Judge Donald Hocker held a hearing on Plaintiffs' Motion for a Temporary Injunction. Counsel for Appellants and for Respondent Amick presented arguments, affidavits, and the depositions of Mr. & Mrs. Amick. Appellants submitted the affidavits of 14 witnesses who were familiar with the usage of Lions Club Road to access the fringeland, boat ramp, and beach areas at Lions Club Point by all adjacent landowners for over 60 years. The Court granted Plaintiffs' Motion for Temporary Injunction based on all of the matters considered "...including the longstanding usage of Lions Club Road which runs to and onto the fringelands of Lions Club Point" (R. p. 4; Order Granting Motion for Temporary Injunction, p. 1).

The evidence relied upon by Judge Hocker in July 2019 includes the Affidavit of Murray Gray that the Appellants and lot owners used Lions Club Road (12-feet wide) to access the

fringelands and lake for over 50 years (R. p. 1023; Affidavit of Murray Gray, Para. 4); that the owners used Lions Club Road since the 1950's to go through the fringelands (R. p. 1039; Affidavit of Young Schumpert, Para. 3-4); John Summer, former Lions Club President, who stated that the Appellants and owners used Lions Club Road across the fringelands since the 1960's and that no permission was required, asked for, or granted for this purpose (R. pp. 1041-1042; Affidavit of John Summer, Para. 5-6); and, the Affidavit of Ferd Summer, Jr. that the Appellants and property owners maintained Lions Club Road (paved and dirt portions) his entire life until 2018 when Amick blocked the road and that he was aware of no permission being requested in the six decades before that (R. p. 1047; Affidavit of Ferd Summer, Jr., Para. 7-9).

Several other affidavits in the record before Judge Hocker (and before the lower court) corroborated that the owners accessed the fringelands, boat ramp, and beach via Lions Club Road for decades without restriction or permission (R. p. 1048; R. p. 1050; Affidavit of Julia McSwain, Para. 2; Affidavit of Rebecca McSwain, Para. 8). A former Lions Club member, Chuck Meadows, confirmed that Lions Club Road was the only access to the fringelands (R. p. 1053; Affidavit of Meadows, Para. 2).

The relevant facts found by Judge Hocker were as follows:

“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...

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...

Mr. Amick contends that because he owns the property underlying the road anyone wishing to use it has to obtain his 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 President (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..." (R. pp. 5-6).

Judge Hocker applied the applicable law to the facts presented and ruled that Appellants had made a *prima facie* case for a prescriptive easement, and an easement by estoppel.⁶

B. Prescriptive Easement

Judge Hocker found that Appellants had "clearly presented sufficient evidence for purposes of temporary injunctive relief that they had use of Lions Club Road for access to the boat ramp and beach area in the fringelands" continuously and uninterrupted for much more than 20 years" (R. p. 8; Order Granting Motion for Temporary Injunction, p. 5).

Judge Hocker also concluded that Appellants presented sufficient evidence to show a *prima facie* case that all adjacent landowners to the Lions Club tract had used Lions Club Road all the way to the lake openly, notoriously, continuously, uninterruptedly and contrary to the rights of the Lions Club for a period greater than 20 years (R. pp. 8-9; Order Granting Temporary Injunction, pp. 5-6). The evidence, according to Judge Hocker's findings, was that the use of the easement was widely known in the neighborhood and acknowledged by all. His Order further noted that the

⁶ Judge Hocker also ruled that Appellants had made a *prima facie* case for an easement based on prior use, but Appellants abandon prior use as a separate basis for an easement because it does not apply to the portion of the fringelands acquired by Amick.

Respondent Amick and the Lions Club, his predecessor in title, were aware of Appellants' use of the road for access to the fringelands and boat ramp and beach area for decades without complaint. The Order also noted that the family of Appellants Lisa & Joe Rice built a \$300,000 home at Lions Club Point in reliance on that access to the fringeland (R. p. 1075; R. p. 12; Affidavit of Rice, Para. 16; Order Granting Temporary Injunction, p. 9). Further, the Order noted that Plaintiff Schumpert had spent more than \$800,000 building his permanent residence at 131 Lions Club Circle and he was also relying on the use of Lions Club Road for launching his boat and accessing the beach (R. p. 12; Order Granting Temporary Injunction, p. 9).

C. Easement by Estoppel

Judge Hocker found and concluded that Appellants had also presented a *prima facie* showing of an easement by estoppel based on the applicable South Carolina law.

Judge Hocker's Order found that the Schumpert, Rice, and Koon affidavits all clarified 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. (R. p. 12; Order Granting Temporary Injunction, p. 9). Judge Hocker noted that 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 portion of the road prior to 2012, and that after 2012 they had maintained the portion of the road at and onto the fringeland, including the portion purchased by Amick. (R. p. 12; Order Granting Temporary Injunction, p. 9). He found the evidence showed the lot owners consequently believed they had a right to do so.

Judge Hocker's Order found that Defendant Amick and Lions Club before him were aware of Plaintiffs' use of the road for decades without complaint. (R. p. 12; Order Granting Temporary

Injunction, p. 9). They both 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 (R. p. 1075; Affidavit of Rice, Para. 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. (R. pp. 1027-1028; Exhibit 2 to Affidavit of Murray Gray dated 6/5/2019).

There was evidence in the record before the lower court that several property owners, including Appellants, testified in depositions or in sworn affidavits that the property owners maintained Lions Club Road at their expense – supplying labor and materials (R. p. 1217; Becki McSwain depo., p. 11). Neel McSwain testified that Lions Club Road ends in the lake beyond the fringeland (R. p. 1246) and that the Lions Club never put down gravel for the boat ramp, but the property owners did (R. p. 1240; Neel McSwain depo., p. 25). Thad McCrackin also corroborated that no permission was required to get to the fringeland (R. p. 1260; McCrackin depo., p. 22) and that the adjacent property owners maintained Lions Club Road, fixed potholes, and picked up trash in the roadway (R. pp. 1261-1262; McCrackin depo., pp. 27-28). Claude Schumpert testified in his deposition that “all gravel on Lions Club Road on the fringeland has been placed there by the property owners” (R. p. 1315; Claude Schumpert depo., p. 57) and that the property owners placed a picnic table on the fringeland and they had workdays at the fringeland (R. pp. 1312-1313; Claude Schumpert depo., pp. 54-55). Mr. Schumpert’s affidavit clarified that the property owners maintained the boat ramp and beach for more than 50 years, including repairing potholes, raking gravel, and clearing debris from Lions Club Road (R. p. 1056; Schumpert Affidavit, Para. 8).

D. Permission/Fringelands

The Appellants have consistently pointed to portions of the record relating to use of the fringelands. In each such instance, the evidence concerns use of the very fringelands acquired by Amick from Dominion Energy because the road goes through the former Lions Club property over these fringelands onto the remaining fringelands and vegetative buffer to the boat ramp at the lake. The record contains the following concerning the Appellants and the surrounding lot owners' (and that of their predecessors') use and maintenance of the portion of Lions Club Road existing on the subject fringelands:

- a. Murray Gray Affidavit (dated June 5, 2019 and filed June 6, 2019) states that only access to the boat ramp and beach area via the 12-foot wide Lions Club Road through the fringelands (R. p. 1022; Affidavit, Paragraph 3), and that this road access has been used by the property owners for over 60 years without restriction or permission (R. pp. 1022-1023; Affidavit, Paragraph 2).
- b. Lucia S. Renwick Affidavit (filed June 7, 2019) states that the property owners have accessed the fringelands by using Lions Club Road for over 50 years (R. p. 1032; Affidavit, Paragraph 4).
- c. Young Schumpert Affidavit (filed June 7, 2019) (age 59) states that all property owners used the road to get to the lake since the 1950's and used Lions Club Road through the fringelands to the boat ramp and beach, and every property owner would launch boats using the road until 2018 when Amick blocked access to the road (R. p. 1039; Affidavit, Paragraphs 3-4).
- d. John Summer Affidavit (filed June 7, 2019) (age 57) states he was a former member of the Lions Club (President 1994-1995); that the property owners used the road

and the fringelands to go to the boat ramp and beach area since the 1960's (R. pp. 1041-1042; Affidavit, Paragraph 5-6); and that the Lions Club Road has always been open for pedestrian and vehicular access to the boat landing and the community beach; that the road was used by all property owners for many decades until Mr. Amick blocked it in 2018.

- e. Chris Jay Affidavit (filed June 7, 2019) (age 57) states that he was the owner of the property which was conveyed to Littlejohn in 2017; that for his entire life (57 years) his family and those of other Lions Club property owners used the Lions Club Road to access the fringelands, the boat ramp, and beach areas (R. p. 1044; Affidavit, Paragraph 3); that all property owners used the Lions Club Road without any restrictions, limitations, or permission from anyone (R. p. 1044; Affidavit, Paragraph 4); and, that Lions Club Road and fringelands was the only access to the boat ramp and beach area for the property owners.
- f. Ferd Summer, Jr. Affidavit (filed June 7, 2019) (age 67) states that Lions Club Road has been open for all property owners (and Lions Club members) for access to the fringelands, beach, and boat ramp (R. p. 1046; Affidavit, Paragraph 5); that the neighboring property owners all took part in maintaining "both the paved and dirt portions of Lions Club Road" throughout his life (R. p. 1047; Affidavit, Paragraph 7); that the road has been open his entire life until Amick blocked it in 2018; and, that the property owners have never asked for permission to use the road for at least six decades (R. p. 1047; Affidavit, Paragraph 9).
- g. Julia McSwain Affidavit (filed June 7, 2019), 89-year old witness (now deceased), states that for the previous 60 years, until Mr. Amick blocked the road, property

owners and their guests have used Lions Club Road to gain access through the fringelands to the boat ramp and beach area at Lions Club point (R. p. 1048; Affidavit, Paragraph 2); and that all property owners enjoyed open access to the fringelands via Lions Club Road (R. p. 1048; Affidavit, Paragraph 3).

- h. Rebecca McSwain Affidavit (filed June 7, 2019), adjacent property owner, states that the property owners have used Lions Club Road to access the fringelands of SCE&G and used the road without restriction for 60 years (R. p. 1050; Affidavit, Paragraph 8).
- i. Neel McSwain Affidavit (filed June 7, 2019) (age 56) states the property owners used the “community boat ramp” on the fringelands of SCE&G since 1960 (R. p. 1051; Affidavit, Paragraphs 3-4) until 2018 when Mr. Amick blocked the road; that the property owners maintained the beach area and the boat ramp during this time period (R. p. 1051; Affidavit, Paragraph 4); that in years prior to the affidavit all of the property owners chipped in money to pave a portion of Lions Club Road and the owners maintained the road; that he has launched boats at the boat ramp via Lions Club Road for many years; and, that community boat ramp was used since at least 1960 (R. p. 1051; Affidavit, Paragraph 3) and that Lions Club Road ran from State Park Road all the way through the fringelands to the boat ramp and beach (R. p. 1052; Affidavit, Paragraph 6).
- j. Gene Crocker deposition (taken October 2, 2019), current Lions Club President, says that no permission was required to use Lions Club Road to get to the fringeland (R. p. 1142; Deposition, p. 9) and there was no verbal requirement for same; that permission was never discussed for adjacent property owners to use Lions Club

Road (R. p. 1145; Deposition, p. 12); he was not aware of any adjacent owners being blocked from use of Lions Club Road prior to 2018 (R. p. 1147; Deposition, p. 14); and, he assumed that Lions Club Road was used by the adjacent property owners to launch boats at the ramp.

- k. Pete Simpson deposition (taken October 2, 2019), current Lions Club Secretary, states he never heard any Lions Club members saying permission was required to use Lions Club Road to go to the fringelands (R. p. 1169; Deposition, p. 5).
- l. Doggett Whitaker deposition (taken October 2, 2019) states that he is a Lions Club member and states to his knowledge no one has ever requested permission to use Lions Club Road to get to the boat ramp and that he has used Lions Club Road to get to the boat ramp; and, that he was not aware of anyone who asked Lions Club for permission to use Lions Club Road to go to the fringeland (R. p. 1182; Deposition, p.12).
- m. Nan Spicer deposition (taken January 28, 2020) states she is Mrs. Ray Amick's daughter and she moved to the Lion Club clubhouse in May 2018 (R. p. 1198; Deposition, p. 9); that Lions Club Road was never blocked before she moved into the clubhouse; that there is no way for someone to take a vehicle on to the fringeland other than Lions Club Road; she is not aware of any Lions Club person saying permission was needed to use Lions Club Road (R. p. 1203; Deposition, p. 17).
- n. Becki McSwain deposition (taken January 30, 2020) (age 56) states that Lions Club Road goes all the way to the boat ramp; that gravel was placed by property owners from 1960 to 2018 that maintained the road and that families of the adjacent property owners paid for the gravel (R. pp. 1216-1217; Deposition, p. 11).

- o. Neel McSwain deposition (taken January 30, 2020), adjacent property owner, states that the road goes all the way to the ramp and he has seen several people putting in boats at the same time over the years, that his boat and trailer weigh 5,000 pounds, and there is no problem at the ramp launching the boat (R. p. 1239; Deposition, p. 24). He says that the Lions Club never put down any gravel for the boat ramp; the property owners did (R. p. 1240; Deposition, p. 25). He also says that Lions Club Road ended in the lake (beyond the fringelands) and the road was adequate to launch boats (R. p. 1246; Deposition, p. 84).
- p. Thad McCrackin deposition (taken February 6, 2020), adjacent land owner, states he has frequently used the boat ramp since 1978 and that all adjacent owners used it (R. p. 1252; Deposition, p.12); that boat trailers were on the fringeland after boats were launched (R. p. 1257); that a picnic table for the community had been on the fringeland areas for “several decades” (R. p. 1259; Deposition, p. 21); that no permission was required for landowners to use Lions Club Road to get to the fringeland (R. p. 1260; Deposition, p. 22); that to repave Lions Club Road the property owners paid to do that in 2010; that before that the adjacent owners maintained the road, potholes, trash, etc. (R. pp. 1261-1262; Deposition, p. 27-28); and, that no one asked Lions Club permission to use the road to access the fringelands.
- q. Claude Schumpert deposition (taken February 27, 2020), adjacent landowner, states that he has never asked permission to use Lions Club Road to access the Lions Club Point fringelands; that he has put gravel on the boat ramp himself between 1995 and 2000 and had loads of gravel delivered to the boat ramp for that purpose (R.

pp. 1293-1294; Deposition, p. 20); that he requested a boat ramp for himself in 2020 and SCE&G denied the permit because he had access to the boat ramp in question (R. p. 1298; Deposition, p. 25); he has pictures of landowners using the boat ramp back in the 1950's and they (not the Lions Club) have maintained the boat ramp since then (R. p. 1300; Deposition, p. 27); that SCE&G acknowledged the landowners right to continue to maintain and use the beach since they had used it so long before (R. p. 1300, 1303; Deposition, p. 27); that the beach and boat ramp were created before he was born (R. p. 1315; Deposition, p. 57); explains that Lions Club Road continues as pavement beyond the fringelands, then as tar and gravel, and then it is gravel and dirt and goes on to the fringeland to the lake (R. p. 1310; Deposition, p. 52); that Lions Club Road access to the boat ramp has been adequate for launching boats and he has maintained the area in the last 20 years by mowing grass, weedeating, etc. (R. p. 1311); that property owners had work days to remove the old gazebo that blew down four and a half years prior (R. pp. 1312-1313); that he installed the picnic table (R. p. 1313); that the fringeland was used during warm months on a regular, continuous basis until 2018 when access was blocked by Amick (R. p. 1314); that gravel is continuous all the way to the boat ramp and beach, and that all gravel on Lions Club Road on the fringeland has been placed there by property owners at Lions Club Point (R. p. 1315); and, that Lions Club Road is in good shape and no additional gravel was required at the time of the deposition (R. pp. 1315-1316).

- r. Thomas ("Tad") Abraham deposition (taken August 20, 2021) states that Abraham is a surveyor who, after a Court Order was obtained on motion of Plaintiffs,

performed a survey of the route of Lions Club Road from its inception over the fringelands to the lake (R. pp. 1334-1335; R. p. 1357) (Deposition, pp. 3, 9-10, Exhibit 1); that during his survey he saw the fringeland, the improvements made, power poles, light poles, beach, electric meter, and gravel along the route of Lions Club Road, and he found a path for the gravel across the entire traverse of the fringelands down to the boat ramp (R. p. 1336); that attached to Abraham's deposition was his survey which clearly delineates the route of Lions Club Road from the clubhouse through the fringeland for a distance of approximately 190 feet to the boat ramp (R. p. 1357) with a width of 12-feet; states that his finding gravel on the route of Lions Club Road corroborates what affidavits of Plaintiffs' witnesses say about gravel being placed on the drive (R. p. 1355); and, that the gravel road to the ramp is in good shape and did not need maintenance at that time (R. p. 1356).

- s. Ray Amick deposition (taken September 2, 2021) has Exhibit 1 as the Title Policy Exceptions when he purchased the Lions Club property in February 2018, Schedule B to Exhibit 1 (R. p. 1372) recites: "An exception is taken to 'rights of others to use and/or maintain the private roads designated as Lions Club Road..'which traverse or encroach upon the insured premises without a recorded road maintenance agreement" (R. p. 1372); Amick acknowledges he read this policy at the time of purchase (R. p. 1374); Amick also acknowledged that Paragraph 7 of the Title Policy Exceptions informed him that there may be rights of others to use and/or maintain Lions Club Road (R. p. 1375); Amick testified that he purchased the fringeland from Dominion Energy on October 8, 2019 (R. pp. 1376-1377); Amick

acknowledged that to go from Lions Club Road to the boat ramp you have to go through the fringelands he bought (R. p. 1384); Amick stated he understood that Plaintiffs' claim prior to June 2019 was to "cross over the fringeland to get to the boat ramp" (R. p. 1392); Amick admitted that before he purchased the fringeland he was aware of Plaintiffs' claim to cross the fringelands he purchased in their Amended Complaint (dated June 2019) (R. p. 1393); Amick acknowledged it was clear from Paragraphs 10 and 11 of the Amended Complaint that Plaintiffs alleged the right to go across SCE&G to the boat ramp and beach area (R. pp. 1400-1401); and, Amick agreed that Plaintiffs claimed from May 2019 a right to go across fringelands to get to the boat ramp (R. p. 1401).

- t. Joe Rice Affidavit in Support of Temporary Injunction (dated June 17, 2019) states that all adjacent property owners have had free reign and free use "without any interference to the paved road leading to the boat ramp on the SCE&G property that adjoins the Newberry Lions Club property" (R. p. 1073; Affidavit, Paragraph 4); that the property owners over the years pitched in to refurbish the boat ramp with gravel and rock, and to do manual labor to maintain the ramp (R. p. 1073; Affidavit, Paragraph 6); that the way the lots are situated, it is impossible to get a boat in and out of any of the properties except by using Lions Club Road to get to and from the boat ramp (R. p. 1074) (Affidavit, Paragraph 11); that when he spent hundreds of thousands of dollars to build his home at the Lions Club area he relied upon the fact there was immediate access to the boat ramp, the point, and the beach which he had used for over 30 years (R. p. 1074; Affidavit, Paragraph 11); that when Amick blocked the road in 2018, Mr. Amick in fact shut down the use of the SCE&G

property by closing off and barricading the “only entrance road available” (R. p. 1075; Affidavit, Paragraph 14);

- u. Barry Koon Affidavit (expert) in Support of Motion for Temporary Injunction (filed June 6, 2018), a licensed real estate broker, was the selling broker in 2017 in which Chris Jay and his sister sold their property on Lions Club Road to Cheryl Littlejohn; he was familiar with the fact that there was a large fringeland owned by SCE&G at the peninsula and that the fringeland areas are desirable for all property owners because in the warm months there are many people at the peninsula fishing, swimming, and boating (R. p. 1077; Affidavit, Paragraph 5); that he visited the boat ramp, the fringeland areas, the beach area, and the general area; that the boat ramp appears to be ten or twelve feet wide, and has a gravel bottom that is clearly visible; that the gravel is solid in that area and it was clear evidence to him that the boat ramp had been maintained to ensure that boats can be launched and taken out by trailer; that he walked Lions Club Road on the fringeland and that the gravel portion of the road extends at least 400-feet on to the fringeland and is gravel throughout that area (R. pp. 1077-1078; Affidavit, Paragraph 11); and, that there is a clear indication that the boat ramp has been graveled and has rocks so it can be a good surface for launching and retrieving boats (R. p. 1079; Affidavit, Paragraph 19).

Without reference to evidence in the record to the contrary, the lower court found that until 2019 Appellants’ access over the fringelands purchased by Amick was by permission such that Appellants claims to an easement over that property fail and as a result Appellants now seek an easement over the former Lions Club property by way of a “road to nowhere” (R. pp. 72-73; Order, p. 3). The only matter serving as the basis for this finding was a single provision of the FERC

License for the Lake Murray project issued in 1984 to SCE&G. The court ignored that the remainder of the FERC License which makes clear that the character of the use of the fringeland made by Appellants and their predecessors has not been permitted. As noted above, the record shows that despite the requirements of the FERC License, no permit has ever been sought and SCE&G acknowledged Appellants and the surrounding lot owners' rights to use of the road over the fringelands to the boat ramp and beach area. (R. pp. 1299-1300; Deposition of Claude Schumpert, February 27, 2020, p. 27).

The lower court Order did not acknowledge or reference evidence in the record regarding the use of the fringelands, the maintenance of Lions Club Road by Appellants and property owners, the fact that Lions Club Road is the only access to the fringelands, the boat ramp, and the beach, or Amick's knowledge of Appellants' claims to an easement prior to his purchase of either the 5.5 acre parcel or the 0.6 acre portion of the fringelands. The record contains more than sufficient evidence to show the presence of questions of material fact precluding summary judgment.

STANDARD OF REVIEW

Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial. *e.g.*, Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *e.g.*, Carolina Chloride, Inc. v. SCDOT, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact. *e.g.*, John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc., 443 S.C. 424, 435, 904 S.E.2d 889, 895 (Ct. App. 2024), reh'g denied (Aug. 12, 2024), cert. denied (Feb. 12, 2025). Instead, all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the

movant. *e.g.*, Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *e.g.*, Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Generally, summary judgment should be granted only when it is perfectly clear that *no* issue of fact is involved. *e.g.*, Piedmont Eng'rs, Architects & Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 196, 293 S.E.2d 706, 707 (1982).

ARGUMENTS

I. THE LOWER COURT MADE NUMEROUS ERRONEOUS FACTUAL FINDINGS AND OVERLOOKED OR MISAPPREHENDED THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT, CONSTITUTING REVERSIBLE ERROR.

The lower court erred in finding and concluding that there were no genuine issues of material fact such that summary judgment could have been granted to Respondents under Rule 56, SCRPC. The trial court failed to view all evidence in the light most favorable to the non-moving party (Appellants herein) in determining whether any triable issues of fact exist. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). Had the court below done so, the Respondents' Motion for Summary Judgment would have been denied.

While the Order of February 9, 2024, purports to apply the Rule 56 standard to all claims in the case, it overlooked that the facts in the numerous affidavits and depositions in the record (and all inferences which are reasonably drawn from such evidence), viewed in a light most favorably to the non-moving party, create genuine issues of material fact as to Appellants' entitlement to an easement along Lions Club Road, all of the way through the fringeland to the boat ramp and beach areas at the waters of Lake Murray.

Instead, the lower court seemed to apply an altogether different standard and erroneously found that certain facts were “undisputed” (R. pp. 59-61; Order of 2/9/24, pp. 3-5), when in fact they were clearly disputed based in the record.

The lower court erred on Pages 3-4 of the Order in finding it “undisputed” that “[o]ver the years, the Lions Club created a boat ramp and a beach area on the SCE&G fringeland adjoining the Lions Club property”. This finding, which formed the basis of a later finding relating to permissive use, is not supported by any evidence; rather, the evidence is that the boat ramp and beach area were constructed by the adjacent property owners and maintained by them for over 60 years. (R. p. 1300; e.g., Deposition of Claude Schumpert, February 27, 2020, p. 27). In any event, the record contains plenty of evidence showing that for more than 20 years, the property owners (not the Lions Club) have performed all maintenance (labor and money for materials) on the fringeland, boat ramp, and beach. See depositions and affidavits referenced herein. This finding is indicative of the problem with the lower court’s review of the record and constitutes reversible error.

The Court erred in finding on Page 4 of its Order that “[t]he parties agree that the Lions Club permitted its members, including Appellants’ predecessors and their families, to use the Lions Club Road and traverse the Lions Club property to access the boat ramp and beach beyond the fringelands,” the error being there is an abundance of evidence in the record that the Lions Club was never asked for, nor did it give, permission to the adjacent property owners to use Lions Club Road to access the boat ramp and beach through the fringeland for over 60 years. See affidavits and depositions referenced herein, (R. p. 1051) e.g., Affidavit of Neel McSwain, Para. 3-4. The lower court erroneously found that the Lions Club created the boat ramp and beach area and

thereafter permitted members to use it. There is no evidence to support those finding and constitutes reversible error.

The Court erred in finding on Page 4 of its Order, after finding that “in 2018 the Lions Club sold its property to Defendant Amick and that the following year Amick also purchased the fringeland from SCE&G’s successor Dominion”, that “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 beyond the fringeland.” This finding is a critical error because it is chronologically incorrect and it implies that Amick did not have knowledge of Appellants’ easement claims before he purchased the subject portion of the fringelands. The finding is also manifestly incorrect and unsupported by the record.

Appellants’ complaints have always sought an easement through the fringeland. The Complaint in Gray (R. p. 139; filed May 22, 2019, Para. 10) and the Amended Complaint in Rice (R. pp. 212-214; filed July 26, 2019, Para. 74-75, 79-80, 82) both asserted easement rights over the fringeland to the boat ramp and beach months before Amick purchased the fringeland.

The lower court overlooked or misapprehended that in the original Complaint in Gray v. Amick (filed May 22, 2019) the Appellants asserted a claim for easement “access to a boat ramp and beach area on lands now or formerly of SCE&G...” (R. p. 137; Paragraph 2 of Complaint) and that Lions Club was “a 12’ paved road and gravel drive traversing into, over and extending beyond the Lions Club property to the said lands of SCE&G” (R. p. 138; Paragraph 5 of Complaint).

The Court overlooked that the Appellants’ allegations of easement claims crossing the SCE&G fringeland for access to the boat ramp and beach areas were repeated in the Amended Complaint (filed June 14, 2019) and in the Second Amended Complaint in Gray and Schumpert (filed March 6, 2020). Further, the Order Granting Temporary Injunction by Judge Hocker dated

Amick's purchase of his portion of the fringelands, Plaintiffs have asserted claims to an easement over and through these fringelands.

Amick bought his portion of fringeland from Dominion in October 2019. Amick admitted he had notice of the Appellants' claim across the fringeland in their Complaints and that he had been enjoined by Judge Hocker's July 2019 Order referencing the easement across this fringeland prior to acquiring it (R. pp. 1390-1392; Amick depo., pp. 32-34). The only reasonable inference to be drawn from Amick's purchase of the fringeland after being on notice of Appellants' claim of easement through it is that he sought to enhance his position in this litigation. Amick had full notice of Appellants' claimed easement across the fringeland to the boat ramp and beach because he knew that crossing the fringeland is the only possible route for Lions Club Road to connect to the boat ramp and that, without this route, Appellants had no way to use Lions Club Road (or any other means) to get to the boat ramp. Amick testified as follows:

“Q: ...you understood that [Plaintiffs'] claim was to be able to cross over these fringelands to get to the boat ramp?

A: Right.” (R. p. 1392; Amick depo of 9/2/21, p. 34).

“Q: ...the Plaintiffs in this case amended their Complaint to assert expressly that they had a right to go over these fringelands in June 2019, you would have seen that, Would you not?

A: I would have.” (R. p.1393; Amick depo. of 9/2/21, p. 36).

The Court overlooked the deposition testimony of Respondent Amick (taken September 2, 2021) who stated that he was aware that the Gray Complaint (filed on May 22, 2019) asserted a claim to an easement via Lions Club Road all the way to the boat ramp and beach and that Appellants' claim of easement went through the fringelands of SCE&G (R. pp. 1384, 1393; Amick Deposition, p. 25, 36) (R. pp. 1460, 1475; Exhibit 8 to Littlejohn deposition of 9/2/21) and Amick knew that

to go on Lions Club Road to the beach area required using the fringeland. (R. p. 1386; Deposition, p. 27). The Court overlooked Respondent Amick's deposition testimony where he admits receiving and reviewing the Amended Complaint of June 2019 against him in which Appellants expressly asserted a right to an easement which went over the fringelands, (R. p. 1393; Deposition, p. 36), alleging that for 85 years the property owners used the Lions Club Road "to the fringelands owned by SCE&G." (R. pp. 1398-1399; R. p. 139; Deposition of Amick, p. 41; Page 3, Paragraph 10 of Complaint filed May 22, 2019). The Court likewise overlooked Respondent Amick's testimony at his deposition where he admitted he obtained his deed from Dominion Energy after he received the Order Granting Temporary Injunction filed August 6, 2019. (R. pp. 1390-1391; Amick deposition, p. 32).

Amick admitted he had prior knowledge of Appellants' easement claims over and over again. He acknowledged that it was clear since the initial Complaint in Gray against him in May 2019 that Appellants claimed their rights to cross the fringelands to get to the boat ramp and beach (R. p. 1401; Deposition, p. 44) and that Amick purchased the fringeland with the knowledge that it was subject to Appellants' easement claims.

Thus, he admitted he bought the fringeland parcel from Dominion with full knowledge of Appellants' claim to an easement through that parcel. The lower court's finding to the contrary is unsupported by the evidence in the record and Appellants assert lead the court to impermissibly grant summary judgment.

All of these facts were necessarily ignored in the lower court's findings, and when properly considered, show at a minimum questions of material fact remain as to these issues, precluding summary judgment. Piedmont Eng'rs, supra. The Court should reverse the trial court and remand the case for trial on the merits.

II. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS IN THE CAUSE OF ACTION FOR PRESCRIPTIVE EASEMENT.

A. The Facts Presented By Appellants, Viewed In A Light Most Favorable To The Non-Moving Party, Supports Appellants' Claim for Prescriptive Easement.

As noted by Judge Hocker, pursuant to Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016), 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. The *Simmons* case held that to establish a prescriptive easement it must be shown (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. The *Simmons* case, as cited by Judge Hocker, established that where a plaintiff has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use is presumed to have been adverse. Id. at 229, citing _, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

With reference to the first two elements, Appellants, have clearly presented sufficient evidence to at least show questions of material fact remain that they have had use of Lions Club Road over the fringelands for access to the boat ramp and beach area continuously and uninterruptedly for much more than 20 years.⁷

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

⁷ 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.

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 Appellants 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 Appellants have submitted affidavits and depositions 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. There is no evidence in the record which would tend to show any such use was made in secret. In fact, 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. (R. p. 1042; Affidavit of John Summer, Para. 8) (R. p. 1051; Affidavit of Neel McSwain, Para. 3-4). Therefore, when the evidence is construed "most strongly" against the Respondents, it is clear that questions of material fact remain precluding summary judgment on the question of whether 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 each of the affidavits and depositions referred to herein provide that all of the lot owners used Lions Club Road to cross the Lions Club point property, through the fringelands to the boat ramp and beach area. In other words, the use was not specific to merely the Appellants. It was common

to all property owners on Lions Club Point. Even Respondent Amick, who did not own (or have a claim to own) any property there until 2018, acknowledged the use for decades of the lot owners to access the fringelands. (R. pp. 1375-1376; Amick depo., pp. 8-9). Accordingly, the use was "widely known in the neighborhood". Moreover, the use of the lot owners was "acknowledged by all" Lions Club members (R. p. 1043; Affidavit of John M. Summer, Para. 16). Consequently, when the evidence is viewed in the light most favorable to Appellants, Appellants and their predecessors' use was "known to the owner". Therefore, Appellants have sufficiently shown a genuine issue of material fact that the lot owners use of Lions Club road for these purposes was "notorious" under the Williams test, and in so doing, Appellants have shown a right to a trial on their claim to a prescriptive easement.

No evidence was presented by Respondents 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. There ample references in the numerous affidavits and depositions in the record referenced above, including those of two former Lions Club members and one from a former Lions Club President (John Summer), which state that no permission was ever sought, granted, or denied for the adjacent property owners, including Appellants and their predecessors, to use Lions Club road in the last six decades.

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 abundant evidence in the record showing acquiescence.

When the evidence is properly construed strongly against the Respondents, it is clear that there remain genuine issues of material fact which preclude summary judgment on Appellants' claim to a prescriptive easement.

B. The Court Committed Reversible Error in Relying on the 1984 FERC License As Constituting Permissive Use.

The trial court's February 9, 2024, Order erroneously found that prior to Amick's ownership of the fringelands, SCE&G "granted permission" to Plaintiffs for use of Lions Club Road over the fringelands. (Order, p.8). In doing so, the court below did not cite any evidence; rather, the court referenced SCE&G's FERC license.⁸ Suffice it to say, nowhere in the FERC license are Appellants granted permission to cross the subject fringelands to access the boat ramp and beach area, nor have Appellants sought or been issued a permit for doing so. The lower court's finding that the FERC license in and of itself granted Appellants permission is consequently reversible error.

However, the most unmistakable error with respect to the lower court's findings concerning the FERC license begins with the fact that the license was issued in 1984. The record is replete with evidence that the use of the fringelands by Appellants' predecessors in title began in the 1950's. When viewed in the light most favorable to Appellants, as noted above, the record reflects this use was (and has been since it started) open, notorious, continuous and uninterrupted in degradation of the owner's rights for a period far exceeding 20 years before the FERC license was ever issued. Therefore, SCE&G could not have granted permission for Appellants' predecessors use by virtue of the license issued 30 years after the fact. Instead, the use of the subject fringelands

⁸ Appellants assume that the Court took judicial notice of the FERC license at Respondent's suggestion. A single provision of the FERC license were referenced by Respondent Amick. See Rule 201, SCRE. In this instance, the Court has gone beyond simply taking notice of the license but has endeavored to construe (erroneously) only a select portion of it against Plaintiffs' claims, which is contrary to the Court's obligation to view the evidence in the light most favorable to Plaintiffs.

by Appellants' predecessors in title was of a character and duration as to establish a prescriptive easement according to law. Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016). And, where that is the case, the 1984 FERC license is entirely irrelevant. Once a claimant establishes use of a nature that gives rise to an easement by prescription, the easement cannot thereafter be defeated by any unilateral act of servient tenant. See Cuthbert v. Lawton, 14 S.C.L. (3 McCord) 194 (1825) (holding that once a prescriptive easement is acquired, it can only be defeated by obstruction by the owner of the servient estate for the requisite adverse possession time period); Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597(Ct. App. 2005), reversed on other grounds by Simmons, *supra* (holding that once a prescriptive easement is established by twenty years of continuous use, subsequent conduct does not defeat the established right by prescription); Bundy v. Shirley, 412 S.C. 292, 772 S.E.2d 163 (2015) (stating that “a prescriptive easement is analogous to adverse possession” and the analysis of adverse possession is instructive for consideration of prescriptive easements); see also, Taylor v. Heirs of William Taylor, 419 S.C. 639, 799 S.E.2d 919 (Ct. App. 2017) (holding that once title is acquired by adverse possession, it cannot be lost as a result of subsequent conduct); Johnson v. Pritchard, 302 S.C. 437, 395 S.E.2d 191 (Ct. App. 1990) (finding that once title is acquired by adverse possession, subsequent conduct has no effect).

The evidence in the record shows that the Appellants' predecessors used the subject fringelands for access to the boat ramp and beach area for more than 20 years prior to the issuance of the FERC license in 1984. For example, Appellants point the Court to the following:

- a. Affidavit of A. Murray Gray (signed 6/5/19) – Mr. Gray states that he and the other property owners have used the fringelands for access to the boat ramp and beach area for “over 60 years” (R. p. 1022).

- b. Affidavit of Young Schumpert (signed 6/4/19) – Mr. Schumpert states that, since his parents built their house on their lot “in the 1950’s”, he, his parents, his family, and the other property owners used the fringelands to access the boat ramp and beach area (R. p. 1039) (Exhibit J, Paragraphs 2-4, to Plaintiffs’ Memorandum filed 8/21/20).
- c. Affidavit of John M. Summer (signed 6/3/19) – Mr. Summer states “[d]uring the summers of my childhood and continuing from the 1960’s until 2018 [when Amick obstructed the road leading to the fringelands], the property owners at the Lions Club Point used Lions Club Road to access the fringelands” for using the boat ramp and beach area (R. pp. 1041-1042).
- d. Affidavit of Chris Jay (signed 6/4/19) – Mr. Jay, 57 years old on the date of the affidavit, states “[f]or [his] entire life” he, his family, and the other property owners used the “fringelands of SCE&G” to launch boats at the boat ramp and access the beach area (R. p. 1044; Paragraphs 2-3).
- e. e) Affidavit of Julia B. McSwain (signed 6/4/19) – Mrs. McSwain states that “for the last 60 years” she, her family, and the property owners have used the Lions Club Road to pass through the fringelands to the boat ramp and beach area (R. p. 1048)
- f. Affidavit of Julia Rebecca McSwain (signed 6/4/19) – Ms. McSwain states that “beginning in 1960 when [her] grandparents owned [the McSwain] property” her family and the other property owners have used the road to “access the fringelands of SCE&G” (R. pp. 1049-1050).

- g. Affidavit of Ferd Summer, Jr. (dated 6/5/19) – Mr. Summer stated he used the Lions Club Road “to access the boat landing and the beach area on the fringelands of SCE&G” for his entire life and witness was 67 years old at the time of the affidavit (R. p. 1046; Paragraph 5).
- h. Affidavit of Neel McSwain (signed 6/4/19) – Mr. McSwain states that because his family’s property was too steep for a boat ramp of their own, he and his family used Lions Club Road to traverse through the fringelands to access the boat ramp “beginning in 1960” (R. pp. 1051-1052; Paragraphs 3, 4, 6).
- i. Affidavit of Melisa B. Schumpert (signed 7/18/19) – Mrs. Schumpert states that the gravel portion of Lions Club Road “as it goes onto the fringelands for several hundred feet” had been used for access to the boat ramp and beach area on fringelands “for over 60 years” (R. pp. 1109-1110; Paragraphs 3-4).
- j. Affidavit of Joseph F. Rice (signed 7/17/19) – Mr. Rice states that “both the paved and gravel portions [on the fringelands] of Lions Club Road have been used to access the fringelands for over 60 years” (R. p. 1114; Paragraph 6).
- k. Deposition of Claude Schumpert (pp. 27, 57) – Mr. Schumpert testified that the boat ramp was constructed before he was born and the property owners have maintained it since the 1950’s by placing gravel on the fringelands (R. pp. 1300, 1315).

The evidence in the record, when viewed in the light most favorable to Appellants, shows that the use by the Appellants’ predecessors of the subject fringelands described by these witnesses has continued unabated since it began in the 1950’s and that such use was open, notorious, continuous, uninterrupted and in degradation of the owner’s rights for more than the requisite 20

year period. Thus, the presumption is that this use was adverse such as to give rise to a prescriptive easement. Simmons, *supra*. Accordingly, granting summary judgment is improper because to do so necessarily required the lower court to impermissibly weigh the evidence so as to find that this presumption was sufficiently rebutted by Respondents. deBont v. Carlton Motorcars, Inc., 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000) (stating that a trial court does not weigh conflicting evidence or make credibility determinations in deciding a motion for summary judgment).

That notwithstanding, to the extent it is relevant in the first place, in granting summary judgment as to the subject fringelands, the Court further misapprehended the import of the FERC license as a whole. There is simply no reasonable construction of the license which grants Appellants carte blanche permission to use the fringelands at issue here in the manner actually asserted in this case. In fact, the license merely provides that SCE&G (now Dominion Energy) has “the authority to grant permission for certain types of use and occupancy of project lands and waters...[and] may exercise the authority only if the proposed use and occupancy is consistent with...its Shoreline Management Plan.” (R. p. 908; FERC License, Article 30). The license then authorizes and directs SCE&G to establish a permit program for a number of different uses on the fringelands around Lake Murray. The permit program is itself subject to the approval and control of FERC. Contrary to the trial court’s finding, there is no evidence in the record that SCE&G ever granted Appellants’ permission to use Lions Club Road. As a result, the lower court’s Orders must be reversed.

Importantly, boat ramps happen to be one of the uses of the fringelands specifically mentioned in Article 30(b) as being the subject of SCE&G’s permit program. Moreover, because the construction of a beach area on the fringelands is not a use or occupancy referenced in Article 30(b), SCE&G does not even have authority to grant a permit for this without the approval of

FERC. The terms of the license, therefore, explicitly deny Appellants' permission for the very use asserted in this case. The court below simply got it wrong.

The FERC license, specifically *Exhibit R* thereto, further required the implementation and maintenance of a Shoreline Management Plan ("SMP"). The SMP itself expressly provides, "[b]oat ramps...cannot be constructed, replaced or added to without a permit...No boat ramps are allowed within/across...fringe land." (R. p. 919) Furthermore, the SMP prohibits encroaching upon any lands below the 360' contour line by the dumping of sand for a beach. Here, there is no evidence that Plaintiffs, nor their predecessors in title, ever sought, much less received a permit to install the boat ramp or beach area. Clearly, constructing a boat ramp and beach area without a permit (i.e., permission) and for 70 years thereafter routinely using and maintaining a drive over the fringelands to have access to it is by definition a use adverse to SCE&G's rights as the owner of the land. The terms of the FERC license as a whole, when construed most strongly against Respondent, is evidence which supports Appellants' claim of a prescriptive easement over the subject fringelands.

Though not specifically stated in the trial court's order, Appellants assume the Court relied on Article 18 of the FERC license (R. p. 933) given that this is the section pointed to by Amick. Article 18 provides that "[s]o far as is consistent with proper operation of the project, [SCE&G] shall allow the public free access, to a reasonable extent, to the project waters and project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting. Provided, that [SCE&G] may reserve from public access such portions of the project waters, adjacent lands and project facilities as may be necessary for the protection of life, and property." (R. p. 933) There are three separate qualifiers to the "free public access" in this section of the license and for good

reason: later articles flesh out those provisos. It is, therefore, error for the lower court to cherry pick this provision without reading it conjunction with these other provisions of the license.

When Article 18 and Article 30 of the license are read together, it is clear that the “free public access” language in Article 18 is not referring to the uses of the fringelands asserted by Appellants. It certainly cannot be construed to be “granting” Appellants (and/or their predecessors) permission to construct, maintain, access and use a boat ramp and beach within the fringelands.

Moreover, the court below ignored the fact that the “free public access” provision of Article 18 is only to be “[s]o far as is consistent with the proper operation of the project..” The “project” includes other matters explicitly set forth in the license which required SCE&G to prohibit certain public uses of fringelands. Under the lower court’s apparent construction of the FERC license, any member of the public could make use of any fringeland to build a boat ramp, dock, beach or any other improvement and SCE&G would be powerless to stop it because they are required to “allow free public access”. Such a construction is untenable.

On the contrary, because Article 30 of the FERC license (R. p. 921) provides that boat ramps and other structures may only be permitted pursuant to certain guidelines and procedures required to be put in place by SCE&G, that necessarily means that these uses can also be (and often are) refused. If the FERC license explicitly authorizes SCE&G to allow these specific items only pursuant to its permitting program, no rational construction of the license can be had to assert that these items are within the uses contemplated by its general requirement of “free public access” to project lands. Rather, the specific language as to uses in Article 30 of the license is controlling over the more general language of Article 18. Crenshaw v. Erskine College, 432 S.C. 1, 850 S.E.2d 1 (2020) (noting that a proper construction of a writing requires specific terms to be given effect

over any general language). In short, the FERC license simply does not state what the lower court said it does.

There is evidence in the record which fully illustrates this point that the trial court ignored. Claude Schumpert testified at his deposition that he asked for and was denied a permit for a boat ramp on his property, which adjoins the Lions Club property, specifically because SCE&G acknowledged his right to use the boat ramp at issue in this case as a result of the property owners historical adverse use. (R. pp. 1298-1300; Deposition of Claude Schumpert, February 27, 2020, pp. 25-27). Again, this is evidence that the construction, maintenance, and use of the fringelands for a boat ramp is not the type of use contemplated by the FERC license's "free public access" language but is instead a use that is subject to the permitting procedures imposed on "project lands and waters" pursuant to Article 30(b). Naturally, if the use of the subject fringelands asserted by Appellants may be refused under Article 30 of the FERC license, Appellants and their predecessors' use of these fringelands without seeking or obtaining a permit is clearly adverse. The lower court's finding to the contrary is reversible error.

At a minimum, the court below erred in granting summary judgment as it is clear the inferences to be drawn from the provisions of the FERC license as applied to the facts of this case are in dispute. Where further inquiry into the facts would be helpful in clarifying the application of law, summary judgment is improper. CEL Products, LLC v. Rozelle, 357 S.C. 125, 591 S.E.2d 643 (Ct. App. 2004) (summary judgment is improper where the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute); Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 659 S.E.2d 496 (2008) (summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law). The FERC license does not support summary judgment and the trial court's order should be reversed.

III. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR THE RESPONDENT ON APPELLANTS' CLAIM TO EASEMENT BY ESTOPPEL.

The trial court's grant of summary judgment as to Appellants' claim to an easement by estoppel is reversible error. The lower court erred in concluding that no claim for an easement by estoppel can be maintained because "no easement has ever...been granted over..." over the fringelands. This is, of course, true⁹ because, after all, if there had been an express easement granted, there would be no controversy for this Court to resolve; however, this fact does not in any way serve to prevent a claim for an easement by estoppel. If the lack of an express grant of an easement was a defense to a claim to an easement by estoppel, no such claim could ever be maintained.

Pursuant to Paine Gayle Properties, LLC v. CSX Transportation, Inc., 400 S.C. 568, 735 S.E.2d 528 (2012), an easement by estoppel has the following elements:

"(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."

Judge Hocker emphasized that, per South Carolina law, all of these foregoing elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other parties' prejudicial change in position. Id. at 580, citing O'Cain v. O'Cain, 322 S.C. 551, 557-559, 473 S.E.2d 460, 464-465 (Ct. Appt. 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

⁹ However, the plat attached as page 2 of Exhibit 1 attached to the Fifth Amended Complaint depicts Lions Club Road extending from State Park Road and beyond the Lions Club property onto the fringelands. This plat has been a matter of record since November 9, 2017 (R. p. 699; Page 2, Fifth Amended Complaint dated 8/31/21).

the improvements to the land to which the driveway led). Judge Hocker noted that the *O’Cain* opinion stands for the proposition that one cannot sit idly by, watch as another uses property, and makes improvements to bolster his property.

The lower court erroneously found that the lack of a properly recorded easement in this case precludes Appellants’ claim to an easement by estoppel. This is also error.

Where there is no express grant of easement, the Supreme Court in Boyd v. Bellsouth Tel. Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006), held only that a properly recorded title “normally” precludes an easement by estoppel by preventing the party claiming it to be ignorant of the true state of title. The Boyd Court cited with approval this Court’s opinion in O’Cain v. O’Cain, 322 S.C. 551, 473 S.E.2d 460 (Ct. App. 1996). The Court in O’Cain noted that the party denying the easement by estoppel in that case argued that the claim for such an easement could not be maintained because there was no written or recorded easement or permission for the construction or use of the driveway at issue in that case. O’Cain at 559. In the face of the silence of the party opposing the easement during the seven years the driveway was constructed, the O’Cain court held the mere fact that the party asserting the easement “believed” they had a right to build the driveway on the other’s property was all that was necessary to conclude that asserting party did not, in fact, know the truth of the facts in question irrespective of the fact that no written permission was ever given or made of record.

The Boyd court also cited Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993). In Southern, the Supreme Court again found an exception to the general rule on this point. There, it held that Santee Cooper was estopped from condemning certain property of Southern Development Land and Golf Co. for purposes of installing a large scale transmission line. Santee Cooper pointed to the general rule and argued that documents in the

public record precluded estoppel because it prevented any claim that it had misled the developer. However, while noting that an easement in favor of Santee Cooper over the subject lands existed on the public record, the Supreme Court nevertheless estopped Santee Cooper because it remained silent in circumstances that gave rise to a duty to speak. *Id.* at 751.

In other words, as these discussions indicate, the existence or non-existence of matters of record is merely the start of the analysis. The Court must then look to the underlying facts to determine whether the elements of an easement by estoppel have been met. On that score, the court below again erred in concluding Appellants failed to present evidence that SCE&G or the Respondents engaged in any conduct which amounts to a false representation or concealment of facts inconsistent with the position which they now assert. In doing so, the trial court overlooked the import of O’Cain. 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 driveway - and to the property to which the way leads, and only voice an objection after the other has been completed the improvements. Silence by one party with a prejudicial change of position by the other is the very definition of equitable estoppel and such silence satisfies the requirement of a false representation. e.g., O’Cain, supra; Paine Gayle Properties, LLC, supra; see also Southern Ry. Co. v. Day, 140 S.C. 388, 138 S.E. 870 (1926) (holding that an easement by estoppel arises where the owner of land -or superior rights to it-stands by in silence, with knowledge, and without protest, while another, relying on such silence and in good faith makes improvements to the land intended for his use and enjoyment); see also, Columbia, N. & L.R. Co. v. Laurens Cotton Mills, 82 S.C. 24, 61 S.E. 1089 (1908) (holding that where a servient tenant erects buildings within the right of way of a railroad with the full knowledge of the railroad

company yet the railroad did not voice any objection to the buildings until over twenty years later, the railroad was estopped to complain that the buildings encroached upon its right of way).

In O’Cain, the party opposing the easement in that case, Lever O’Cain, argued there was “no evidence of a false representation or concealment of facts calculated to convey the impression that the facts are otherwise than those that they now want to assert.” O’Cain at 558. Lever argued instead that he was merely silent as to the fact that they had not given any permission to Harold O’Cain to build the driveway at issue in that case. The O’Cain court disagreed finding that where there was evidence that Lever was present during the seven year construction of the driveway and was otherwise aware of the improvements made on lands where the driveway led, yet never expressed opposition to the building or use of the driveway but instead remained silent, such evidence was sufficient to estop the denial of the easement asserted by in that case.

Here, Appellants have presented evidence that no one with the Lions Club or SCE&G voiced any objection to the lot owners use of Lions Club Road through the fringelands for sixty years, all the while the lot owners made improvements to the road and constructed and maintained the boat ramp and beach area. Each of Appellants’ witnesses have stated that each consequently believed they had a right to maintain and use the road over the fringelands to the boat ramp and beach without restriction.

For example, the deposition testimony of Appellant Claude Schumpert is critical to understanding the estoppel issue and why the FERC license is not a bar to the declaration of an easement for Appellants. Claude enjoyed life at his family home at the lake since his birth (Depo., p. 22). Since 2010, the Schumperts have owned and have their permanent residence on a large lot shown on Page 7 of this brief (see also R. pp. 1027-1028; Exhibit 2 to Affidavit of Murray Gray). They spent \$10,550 toward paving Lions Club Road in 2010. The other adjacent property owners

contributed also (R. pp. 186). They incurred a mortgage debt in excess of \$800,000 to build their new home there in August 2010 (R. p. 1111).

Because the Schumperts would be living full-time at the lake, Claude inquired of SCE&G about getting a private ramp on his property. He met with Tom Boozer of SCE&G in 2010 and Boozer declined to allow a boat ramp (R. p. 1298; Schumpert depo., p. 25). He also declined to allow a beach to be placed on Schumpert's property (R. p. 1299; Schumpert depo., p. 26). Boozer declined a permit for a private boat ramp for Schumpert "because we would have access to a boat ramp we always had access to" (R. p. 1308) – i.e., the subject boat ramp maintained by and for the lot owners.

Later, Schumpert contacted Dominion Energy and they looked into the history of the property and informed Schumpert that he could maintain the beach area as it was. Schumpert showed Dominion photos of the usage of the boat ramp and beach area from the 1950's (R. p. 1300; Depo., p. 27). Schumpert explained that the boat ramp and beach were created before he was born (R. p. 1303; Schumpert depo., p. 31). Brandon McCartha with Dominion told Schumpert that the beach area could continue to be maintained as it had been historically (R. pp. 1302-1303; Schumpert depo., pp. 30-31). Schumpert did not attempt to get any formal approvals for a private boat ramp because he relied on continued access to the Lions Club Road access at the boat ramp permanently (R. pp. 1056-1057; Schumpert Affidavit, Para. 10). Schumpert explicitly identified the maintenance and usage of the gravel portion of Lions Club Road. He had pictures of his father launching a boat at the ramp before Claude was born (R. pp. 1304-1305).¹⁰

In response to a question about his maintenance for the last 20 years, Schumpert said he had mowed the grass and weedeated the fringeland (R. p. 1311). His affidavit corroborated that

¹⁰ Schumpert's photographs of the ramp and beach areas were taken in the early-1970's (R. pp. 1034-1038) (Depo., p. 41; Exhibit 1 to Affidavit of Schumpert).

he assisted with the maintenance work on Lions Club Road (both paved and dirt portions), the boat ramp, and the beach access from the mid-1970's through his graduation from veterinary school in May 1990. He said he and the property owners had installed a gazebo and picnic table on the fringeland during work days over the years (R. pp. 1312-1313). The beach area had been used by them all of his life (R. p. 1315), and all of the gravel on Lions Club Road on the fringeland had been placed there by the private property owners (R. p. 1315). They also mixed gravel and tar to fix potholes (R. p. 1295). Schumpert also hired/bartered with Larry Higginbotham, a land clearing client of his, to limb trees and cut underbrush in the fringeland area (R. p. 1312). Schumpert paid for loads of gravel to be placed on Lions Club Road between 1995 and 2000 (R. p. 1293) because this was the only way to access the boat ramp (R. p. 1312) (Depo., p. 54).

Just as Lever O'Cain was found to be estopped to deny Harold O'Cain's easement based on Harold's belief that he had permission and Lever's silence until after Harold's improvements were complete, the Appellants have, at a minimum, shown a question of fact exists that the Respondents are estopped to prevent Appellants and the lot owners from using Lions Club Road to traverse the fringelands to access the boat ramp and beach. Therefore, summary judgment is improper and the lower court's orders should be reversed.

The lower court's Order regarding Appellants' claim for an easement by estoppel further overlooks altogether the facts in the record that primarily give rise to their claim. "Normally the change in position that triggers application of [easements by estoppel] is an investment in improvements either to the servient estate or to other land of the investor...Failure to object to an investment made in improvements to land by another may give rise to an estoppel against the owner...of the land, if the owner...knows or reasonably should know that the investment is being made on the basis of a mistaken belief that the investor has a nonrevocable right to use the land."

O’Cain, *supra*; Southern Dev., *supra*; Restatement (Third) Property, Servitudes § 2.10 (2023). Here, evidence in the record reflects that Appellants and their predecessors expended their own funds to construct, maintain, and use the boat ramp and beach area for 60 years (see Brief of Appellants above, references to testimony of Joe Rice, Becki McSwain, Neel McSwain, Thad McCrackin, and Claude Schumpert). This construction, use, and maintenance was therefore not done in a secreted way and Appellants’ evidence is that it has continued for over 60 years. It is unreasonable to conclude that SCE&G or Respondents and their predecessors should not have known it occurred, particularly when the evidence is construed most strongly against Respondents. Therefore, where the owner remains silent in these circumstances the “recorded title” rule is inapplicable. See, *e.g.*, O’Cain, *supra*. The lower court’s order should therefore be reversed.

The lower court’s order also failed to recognize that the question of permission cuts both ways. To the extent Appellants and their predecessors’ use of the fringelands was, as the lower court found, permissive as a result of the FERC license (which is incorrect as stated above), then the FERC license itself constitutes the requisite public record which provides the permission necessary for the lower court’s desired easement by estoppel analysis. After all, if the license provides Appellants and their predecessors with permission to use the fringelands as asserted, the silence of SCE&G, the Lions Club, and Amick while the construction and maintenance was performed over the course of more than 60 years, estops any of them from denying Appellants’ easement at this late date. O’Cain, *supra*. Furthermore, because Amick had knowledge of the nature of Plaintiffs easement claims (specifically with regard to the fringelands) prior to acquiring title, he cannot now avoid the consequences of his, SCE&G and the Lions Club’s silence.

Again, the O’Cain court held that an easement by estoppel existed, despite the absence of direct, written permission (or easement), based on the fact that the parties believed they had

permission to construct the driveway. After all, an easement by estoppel is most often based on permissive use. See Restatement (Third) Property, Servitudes, sec 2.10 (2023). Therefore, even if Appellants' and their predecessors' use of the fringelands in the construction, maintenance and use of the boat ramp and beach area was permissive, an easement by estoppel is applicable in light of the evidence of Appellants and their predecessors' "investment" in the construction and maintenance of these items coupled with the silence of the land owner. O'Cain, supra; Restatement (Third) Property, Servitudes, sec 2.10 (2023). If, however, that use was not permissive, then, based on this record, it was adverse and Appellants have at least shown questions of fact with respect to a prescriptive easement. In other words, the trial court's order cannot properly grant summary judgment on both easement claims in this case. It is for this very reason for the rule that summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. CEL Products, supra.

The lower court's treatment of the FERC license belies the fallacy underlying its Order. The FERC license cannot constitute the permission necessary to defeat Appellants' claim to a prescriptive easement in one breath while simultaneously failing to provide the requisite permission to maintain Appellants' claim to an easement by estoppel in another. It is either a grant of permission for the use of the fringelands asserted by Appellants or it is not. The proper conclusion may be one of those, but certainly not both. Either way, when these facts, conclusions, and interferences therefrom are "strongly construed" against Respondents, it is clear summary judgment should have been denied. Tupper, supra.

Finally, the lower court erred in failing to apply equitable principals in analyzing this case. Actions for easements by estoppel are matters of equity and are governed by equitable principles. Shaw v. Coleman, 373 S.C. 485, 645 S.E.2d 252 (2007). As noted in "SUEM – *Spitz's Ultimate*

Equitable Maxim: In Equity, Good Guys Should Win and Bad Guys Should Lose,” Young & Spitz, 55 S.C. Law Review 175 (2003), there are nine equitable principles recognized and used by South Carolina courts.¹¹ The equitable maximum “equity will not suffer a wrong without a remedy” is applicable here. It is entirely inequitable for Appellants and their predecessors in title to have expended their funds, time, and labor in the construction and maintenance of the boat ramp, beach and road leading to it over the fringelands over more than 60 years only to now be denied use of them. This is particularly true where not a single objection was made at any point during that entire time. Again, the record is clear: Amick had full knowledge of Appellants’ claims to an easement over the fringelands well before he purchased them. Equitable estoppel arises from the conduct of the parties and is a remedy which prevents the assertion of technical rights which may run contrary to equity and good conscience. e.g., Jackson v. Rogers, 111 S.C. 49, 96 S.E. 692 (1918). Appellants have done no wrong and have relied on the silence of Amick and SCE&G. They should not be denied a right they and their predecessors have poured money into and exercised for decades. Equity demands a remedy in the face of the facts of this case. Summary judgment is improper and the lower court’s order should be reversed.

CONCLUSION

The Orders of the lower court overlooked or misapprehended that there are genuine issues of material fact as to prescriptive easement and/or easement by estoppel, making summary judgment reversible error, per Rule 56, SCRPC. Its Orders impermissibly “weighed” the evidence,

¹¹ The other equitable principles applicable here, which were overlooked by the lower court, are: equity regards as done that which ought to be done; equity acts in personam, not in rem; equity regards substance rather than form; one who seeks equity must do equity; and, he who comes into equity must come with clean hands. Here, the facts show that Amick knew Appellants and their predecessors had used SCE&G lands as asserted unabated in this case and an easement was being claimed as to the subject fringelands, yet he bought the property anyway to try to enhance his position that there could be no easement because he now owned it.

and the factual findings of the lower court were erroneous as they overlooked contradictory evidence.

Pursuant to Rule 56, SCRCP and the case law of South Carolina, the lower court orders constituted reversible error and should be reversed and the case remanded for a trial on the merits.

Respectfully Submitted,

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May 5, 2026

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