

**EXHIBIT
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2023-CP-23-03629

Gregory W. Brown, Kathryn T. Brown, and
Margaret Anne McDaniel,

Plaintiffs,

vs.

Claudia M. Winkler, Wilson Earle Peden,
Christopher Allen Lamm, Jennifer Catherine
Lamm, Ian James Dolan, Laura Michelle Dolan,
David B. Richardson, Stephanie Richardson,
Sara Elizabeth Wallace, and the City of
Greenville,

Defendants.

**ORDER GRANTING DEFENDANTS'
AMENDED MOTION FOR SUMMARY
JUDGMENT**

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SC Court of Appeals

This matter is before the Court on an amended motion for summary judgment filed by Defendants Claudia M. Winkler, Wilson Earle Peden, Christopher Allen Lamm, Jennifer Catherine Lamm, Ian James Dolan, Laura Michelle Dolan, David B. Richardson, Stephanie Richardson, and Sara Elizabeth Wallace (“Defendants”). The Court heard oral argument on February 17, 2026. Demetri K. Koutrakos appeared on behalf of Defendants. Brandi B. Hinton, Sloan P. Ellis, and Burl F. Williams appeared on behalf of Plaintiffs Gregory W. Brown and Kathryn T. Brown. Sarah Anderson Timmons appeared on behalf of Plaintiff Margaret Anne McDaniel. Adam C. Bach appeared on behalf of Defendant City of Greenville. All attorneys have been well-prepared and presented clear and zealous advocacy for their respective clients.

The Court thoroughly reviewed the briefs, the materials in the record, the arguments made by counsel during the hearing, and those presented during a conference call on February 27, 2026. This matter is ready for consideration.

For the reasons stated herein, the Court grants Defendants' amended motion for summary judgment.

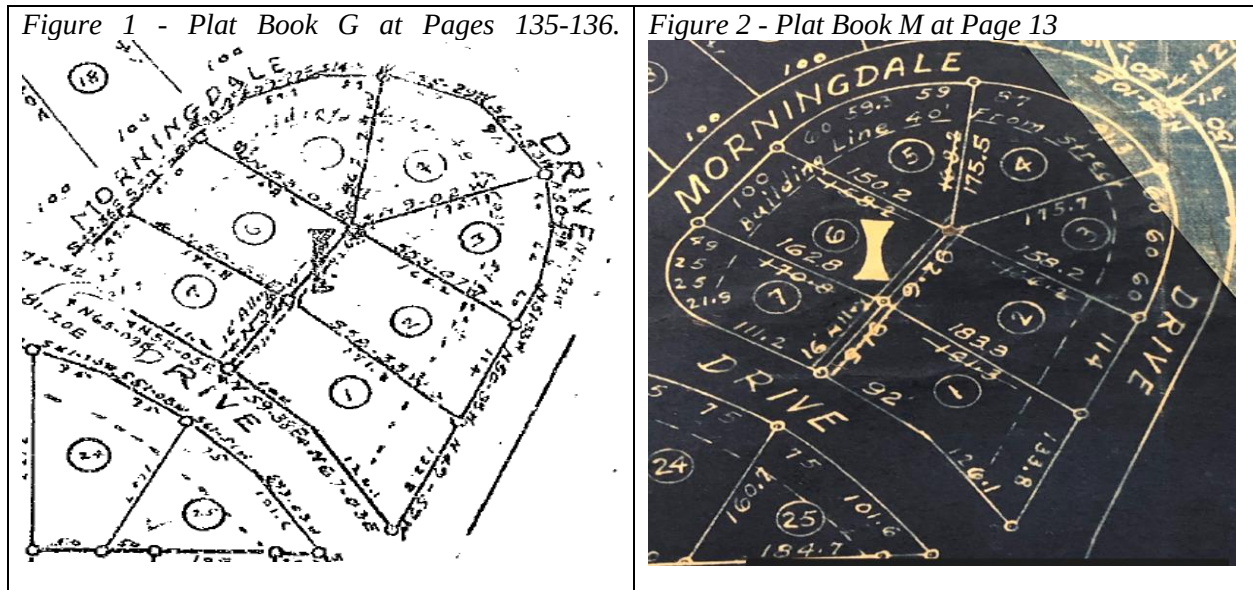
I. FACTUAL BACKGROUND¹

A. The Northgate Subdivision and Block I

The Utopian Developing Company of Greenville ("Utopian") established the Northgate Subdivision after acquiring title to approximately 41.5 acres of property in Greenville County, situated on Rutherford Road and the North Main Street Extension (the "Parent Tract"). In 1929, Utopian subdivided the property into a residential neighborhood per Plat Book G at Pages 135-36 (the "Subdivision Plat"). In 1939, revisions to the Subdivision Plat were made through a new plat of Northgate, recorded in Plat Book M at Page 13 (the "Revised Subdivision Plat"). Both the Subdivision Plat and the Revised Subdivision Plat depict Blocks A, B, C, D, G, H, I, and K, along with the lots within those blocks. Block I and Lots 1-7 within Block I are the subject of this action and are illustrated below.² This is a well-established, well-regarded neighborhood, just minutes from downtown Greenville.

¹ As it must at this stage, the Court construes the facts and all reasonable inferences therefrom in the light most favorable to Plaintiffs. *See, e.g., Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The title documents at issue have not been disputed by the parties; rather, the parties dispute their legal effect.

² *Defendants' Am. MSJ* at **Exhibit A**.



Both the initial Subdivision Plat and the Revised Subdivision Plat depict a 16-foot alley beginning at East Avondale Drive and extending through the center of Block I, which is part of, borders, or touches each of Lots 1-7 (the “Alley”). When Utopian severed title to its property through the aforementioned plats, it did so via deeds that expressly or impliedly referenced the Subdivision Plat, which illustrates the Alley. More specifically, each initial deed from Utopian conveying Lots 1, 2, 3, 4, and 7³ explicitly incorporated the Subdivision Plat within the legal description of each deed.

Regarding Lots 5 and 6, Utopian conveyed those lots in 1940 by deed to Surety Mortgage Company, recorded in Vol 227 at Page 130 (“Utopian Deed”).⁴ The Utopian Deed references the mortgage Utopian granted on the Parent Tract at the time of its acquisition, recorded in Mortgage Volume 154 at Page 224 (the “Mortgage”),⁵ and by blanket reference to “all those lots or portions of land...which have been heretofore conveyed by [Utopian] and released from the lien of the

³ *Id.* at **Exhibit B**.

⁴ *Id.* at **Exhibit C**.

⁵ *Id.* at **Exhibit D**.

[M]ortgage.”⁶ It is undoubtedly necessary to review the Subdivision Plat to determine the property conveyed by the Utopian Deed. Additionally, the Mortgage references releases that expressly incorporate the Plat.

Subsequent conveyances by Surety Mortgage to the individual purchasers of Lots 5 and 6 were made by express reference to the Revised Subdivision Plat.

B. The Parties and Their Respective Lots

Plaintiffs Gregory and Kathryn Brown reside at 112 East Avondale Drive (Lot 7), to the left of the entrance to the Alley. They purchased their home in May 2000 but began living there in December 2001. Plaintiff Margaret Anne McDaniel resides at 3 Morningdale Drive (Lot 2) and has also been living there since 2001. The remaining lots are owned by Defendants, as summarized in the table below:⁷

Lot	Owner(s)	Date Acquired
1	David Richardson and Stephanie Richardson	5/13/2022
2	Margaret Anne McDaniel	3/3/1991 (Residing since 2001)
3	Sara Elizabeth Wallace ⁸	8/21/1987
4	Christopher A. Lamm and Jennifer C. Lamm	6/22/2023
5	Wilson E. Peden and Claudia M. Winkler	5/6/2020
6	Ian J. Dolan and Laura M. Dolan	10/3/2008
7	Gregory Brown and Kathryn Brown	5/01/2000 (Residing since 2001)

⁶ In other words, the Utopian Deed references all of the aforementioned deeds that severed title from the Developer and conveyed the respective lots to the initial lot purchasers by reference to the Subdivision Plat.

⁷ Lot 3, owned by Sara Wallace, also contains a portion of Lot 2 as originally laid out. See Plat Book 20W at Page 36 and Deed Book 144 at Page 778. As explained further below, Lot 6 is the greater portion of Lot 6 because Lot 6 and Lot 7 were once owned by the same person, who retained the smaller part of Lot 6 and combined it with Lot 7.

⁸ On August 21, 1987, Michael P. Keeshen and Sara Elizabeth Wallace acquired Lot 3, and on August 9, 1991, Mr. Keeshen conveyed his interest in the property to Sara Elizabeth Wallace, although he has remained a resident of Lot 3 since 1987. Mr. Keeshen and Ms. Wallace have lived in the neighborhood longer than any other resident.

C. Use of the Alley: Current and Historic

It is not disputed that the residents of Block I, Lots 1-7, have historically and regularly used the Alley. Plaintiffs admit this, as do others who have testified.

Plaintiff Kathryn Brown acknowledges that when the Browns purchased their home in 2000, she noticed Lots 1, 4, 5, and 6 either had a parking structure or driveway facing the Alley and that those lot owners used the Alley for ingress/egress with varying frequency. (*K. Brown Dep. Pt. 1* 19:10-23:1).⁹ Before purchasing Lot 7, Mrs. Brown was informed that others used the Alley. (*Id.* at 17:6-14).

When the Browns purchased their home, they commissioned a survey and knew the city or the county did not maintain the Alley and that their property extended eight feet to the centerline of the Alley. (*Id.* at 17:15-22). When the Browns bought the home, Plaintiff Gregory Brown testified that the Browns knew “Homeowners used it to access their property...” (*G. Brown Dep.* 13:15-18).¹⁰ Shortly after the Browns moved into Lot 7, the Browns moved the mailbox so it faces the Alley and they constructed a driveway that directly connects to the Alley, where often three cars are parked. (*K. Brown Dep. Pt. 1* 23-25, 32).

Mrs. Brown testified that no one ever asked her for permission to use the Alley, and she never gave anyone permission to use the Alley. (*K. Brown Dep. Pt. 2* 116). With only a couple of exceptions, she never tried to block anyone from using the Alley. (*K. Brown Dep. Pt. 1* 26:17-20). She contends the owners of Lots 1, 2, 3, and 6 have the right to use the Alley. (*Id.* at 78-79).

⁹ *Defendants’ Am. MSJ* at **Exhibit E** (containing all portions of Mrs. Brown’s deposition cited herein).

¹⁰ *Defendants’ Am. MSJ* at **Exhibit F** (containing all portions of Mr. Brown’s deposition cited herein).

Plaintiff Gregory Brown testified that the owners of Lots 1-6 never asked him for permission and he never gave them permission to use the Alley. (G. Brown Dep. 17-18). Prior to 2021, he never stopped anyone from using the Alley, and there was no controversy regarding the lot owners' use of the Alley. (*Id.* at 16). When he purchased his home in 2001, the homeowners used the Alley to access their lots. (*Id.* at 13, 15).

Plaintiff Margaret Anne McDaniel's father bought most of Lot 2 from Michael Keeshen and Sara Wallace in 1991 and lived there from 1991 to 1994. (*M. McDaniel Dep.* 21:6-10). When her father lived there and before she bought the property, she observed the residents of Block I accessing their homes through the Alley. (*Id.* at 22:1-5).¹¹ None of the lot owners ever asked Ms. McDaniel for permission to use the Alley. (*Id.* at 28: 3-13; 69:24- 70;127:3-5). The Alley has been regularly used for vehicular access and pedestrian use. (*Id.* at 70:2-17). Ms. McDaniel herself constructed a parking pad directly facing the Alley in 2001. (*Id.* at 56-57, Dft. Ex 11). When she became the owner of Lot 2, she thought she had a right to use the Alley. (*Id.* at 49:21-25). She testified that everyone has the right to use the Alley but claims that right should be taken away from certain lot owners because of claims of overuse.¹² (*Id.* at 65-66; 68:19-24). Ms. McDaniel testified that the owners of these lots have been continuously using the Alley for the past 30 years, and no one tried to block them, and there was no dispute about it. (*M. McDaniel Dep.* 116-117).

James H. Simkins, Jr. was a resident of 105 Morningdale Drive (Lot 5) and grew up there. He is likely the earliest living resident of Block I and has the most far-reaching historical knowledge of Block I. He testified that his grandfather built the house for Mr. Simkins' parents, and Mr. Simkins grew up in the house with his parents since he was six years old, beginning in the

¹¹ *Id.* at **Exhibit G** (containing all portions of Ms. McDaniel's deposition cited herein).

¹² Plaintiffs had asserted a claim regarding the misuse or overuse of the Alley, but they dropped that claim, and it is not included in the operative complaint.

early 1960s. (*J. Simkins Dep.* 10:20-22;13:12-14).¹³ He also testified that residents, friends, family members, contractors, construction workers, the paperboy, and trash collectors all used the Alley (*Id.* at 31:4-38:25; 68:22-23), the Alley was always paved (*Id.* at 18:18-20), and nobody ever stopped anyone else from using the Alley or granted or denied anyone permission to use the Alley (*Id.* at 31:4-7); that it was used on a daily basis by the residents and each family member drove separate cars (*Id.* at 38:13-39:6); and that 400-500 uses of the Alley a month would not have been unusual. (*Id.* at 72:1-15).

Mary Simkins married Mr. Simkins in 1994 and started “to visit at his family home around ‘83...” (*M. Simkins Dep.* 6:1-23).¹⁴ She was not aware of any written rules or regulations regarding the use of the Alley; she never asked anybody permission to use the Alley; she had no knowledge of her husband or her in-laws asking anybody else for permission to use the Alley; no one contested the use of the Alley; and has no knowledge of anybody expressly asking for or giving permission to use the Alley. (*Id.* at 21:3-20).

Michael Keeshen has lived continuously on Lot 3 since 1987 and provided testimony in his deposition corroborating the facts included above, including additional information on the historic use of the Alley. (*M. Keeshen Dep.* 7:13-15).¹⁵ He testified that the Alley “absolutely has” been consistently used by contractors in the last 38 years (*Id.* at 12:18-21) and provided a number of examples: his first recollection of a contractor using the Alley was a contractor Mr. Keeshen hired to put in a hedge between Lot 2 and Lot 3, and a hedge between Lot 3 and Alley (*Id.* at 14:20-15:4); he corroborated Ms. Simkins’s contractors using the Alley for approximately six months

¹³ *Id.* at **Exhibit H** (containing all portions of Mr. Simkins’ deposition cited herein).

¹⁴ *Id.* at **Exhibit I** (containing all portions of Ms. Simkins’ deposition cited herein).

¹⁵ *Id.* at **Exhibit O** (containing all portions of Mr. Keeshen’s deposition cited herein).

preceding the sale of Lot 5 (*Id.* at 15:5-14) and that she had a yard service that used the Alley on a weekly basis for 30 years (*Id.* at 24:6-17); Plaintiff McDaniel’s contractors used the Alley to install a parking pad for McDaniel (*Id.* at 15:18-21); contractors used the Alley to build a fence on Lot 6 (*Id.* at 15:23-25) and a carport there in the 90s (*Id.* at 17:5-7); “several renovations happened in Lot 4” including “kitchen renovations...and a lot of landscape work.” (*Id.* at 16:16-17:1); and, generally, service trucks have continuously used the Alley over the last 38 years (*Id.* at 22:15-17). Ultimately, Mr. Keeshen testified that during the last 38 years of his residence in the home on Lot 3, residents of Lots 1 through 7, and their guests and invitees, used the Alley regularly without interruption. (*Id.* at 61:1-7).

Lot 4:

Walter Scott Jones and his wife owned Lot 4 from 1999 to 2002. (*Jones Aff.* ¶ 4).¹⁶ He testified that during their ownership, the Alley at the rear of Lot 4 was the only means of vehicular access, because the house had no driveway, garage, or carport facing Morningdale Drive. (*Id.* ¶ 8). Jones stated that he, his wife, and their guests used the Alley multiple times each day to travel between East Avondale Drive and their carport and driveway, and that such use was open, visible, and continuous throughout their ownership. (*Id.* ¶ 9). He further testified that they never sought or received permission from anyone to use the Alley and believed they had the right to use it. (*Id.* ¶ 10). He added that there were no rules or disputes concerning its use, and that no one ever interfered with their daily access (*Id.* ¶ 11).

Louis DeJesus and his wife purchased Lot 4 from the Joneses in 2002 and owned it until 2005. (*DeJesus Aff.* ¶ 4).¹⁷ DeJesus confirmed that the carport and driveway at the back of Lot 4

¹⁶ *Id.* at **Exhibit P.**

¹⁷ *Id.* at **Exhibit Q.**

could only be reached through the Alley, which connected to East Avondale Drive and served as the exclusive vehicular access to the home. (*Id.* ¶¶ 6-7). He testified that he, his wife, their daughter, guests, and contractors used the Alley openly and continuously whenever they stayed at Lot 4, with vehicles and pedestrians regularly traveling the Alley during that period. (*Id.* ¶ 9). He added that they never requested permission to use it and recognized no one else's right to control their use. (*Id.* ¶ 10). He further testified that no disputes or restrictions ever arose concerning the Alley. (*Id.* ¶ 11).

Nolley Sanchelli and her husband bought Lot 4 in 2005 and owned it until 2015. (*Sanchelli Aff.* ¶ 4).¹⁸ She stated that the carport and driveway were located at the rear of Lot 4 and accessible only through the Alley, a large part of which was paved and connected to East Avondale Drive (*Id.* ¶¶ 6-7). While residing there, she used the Alley several times daily for ingress and egress. (*Id.* ¶ 10). She observed that tenants who later rented the home continued to park in the carport, demonstrating ongoing vehicular use of the Alley during her entire ownership. (*Id.* ¶ 9-10). She testified that they never sought or obtained permission to use the Alley and that no one interfered with their use of the Alley. (*Id.* ¶¶ 11-12). She states that their use and their guests' use of the Alley was open, visible, and continuous throughout her tenure. (*Id.* ¶ 10). They used the Alley as a matter of right, not by permission or under the control of anyone else, and they did not recognize any other party's right to control her use. (*Id.* ¶ 11).

John David Batson and his wife purchased Lot 4 in 2015 and owned it until 2023. (*Batson Aff.* ¶ 4).¹⁹ He affirmed that the Alley was the primary and exclusive vehicular access to Lot 4. (*Id.* ¶¶ 6-8). He testified that he, his wife, guests, and contractors used it multiple times each day to

¹⁸ *Id.* at **Exhibit R**.

¹⁹ *Id.* at **Exhibit S**.

reach the carport and driveway. (*Id.* ¶ 9). Their use was open, obvious, and continuous, and no one ever attempted to restrict or prevent that use. (*Id.* ¶ 7, 11). Batson further testified that he and his wife never asked for or received permission from anyone to travel the Alley and believed they had the right to do so for access to and from Lot 4. (*Id.* ¶¶ 10).

Christopher and Jennifer Lamm purchased Lot 4 on June 23, 2023, from Mary and John Batson, and moved into the home a few weeks later. (*Lamm Aff.* ¶¶ 4–5).²⁰ Their moving truck used the Alley to access Lot 4 when they took possession. (*Id.* ¶ 5). The carport and driveway at the rear of Lot 4 face a sixteen-foot alley running from East Avondale Drive and terminating within Lots 3, 4, and 5, and those improvements existed when they purchased the property. (*Id.* ¶ 6). The carport and driveway can only be reached through the Alley, which is largely paved and connects to East Avondale Drive. (*Id.* ¶ 7). The Alley is their primary and exclusive means of vehicular access, as Lot 4 has no driveway, garage, or carport facing Morningdale Drive. (*Id.* ¶ 8).

Except when out of town, the Lamms use the Alley multiple times daily to travel to and from Lot 4, and their guests and invitees also use it regularly. (*Id.* ¶ 9). Their use has been open, visible, and continuous since they purchased Lot 4, with both vehicles and pedestrians accessing the lot through the Alley. (*Id.* ¶ 9). They use the Alley as a matter of right, not by permission or under anyone else’s control, and have never sought or received permission to use it. (*Id.* ¶ 10). The Lamms have always believed and acted as though they have the right to use the Alley for access to and from Lot 4. (*Id.* ¶ 10). They know of no rules or regulations governing the Alley and state that no one has ever attempted to interfere with their daily use. (*Id.* ¶ 11).

Lot 5:

²⁰ *Id.* at **Exhibit T**.

James H. Simkins, Jr. was a resident of 105 Morningdale Drive (Lot 5) and grew up there. He testified to the following: (i) his grandfather built the house for Mr. Simkins' parents and Mr. Simkins grew up in the house with his parents since he was six years old, or beginning in the early 1960s (*J. Simkins Dep.* 10:20-22;13:12-14); (ii) his mother lived there for approximately 50 years (*Id.* at 14:14-15); (iii) residents, friends, family members, contractors, construction workers, the paperboy, and trash collectors all used the Alley (*Id.* at 31:4-38:25; 68:22-23); (iv) the Alley was always paved (*Id.* at 18:18-20); (v) the primary method of accessing the house located on Lot 5 was through the garage located at the back of the house and via the Alley (*Id.* at 47:7-9; 42:14-16) because Lot 5 is positioned on a "very steep site" (*Id.* at 21:11-12) and did not have a front driveway (*Id.* at 21:20-21); (vi) nobody ever stopped anyone else from using the Alley, or granted or denied anyone permission to use the Alley (*Id.* at 31:4-7); (vii) his parents' use of the Alley was "unquestionably" continuous from 1962 or 1963 through 2018 (*Id.* at 35:9-11) and used the Alley "on a daily basis" (*Id.* at 38:12-15); (viii) their use of the Alley was "open" (or notorious) throughout their use (*Id.* at 35:12-15); (ix) the Alley was used on a daily basis by the residents and each family member drove separate cars (*Id.* at 38:13-39:6); (x) if his mother would take a walk, she would use the Alley (*Id.* at 62:24-63:9); (xi) that 400-500 uses of the Alley a month would not have been unusual (*Id.* at 72:1-15); (xii) there was never a "quota" implemented by neighbors dictating how often the Alley could be used (*Id.* at 72:1-15); and (xiii) it would have been "ludicrous" to break down or track the daily ingresses/egresses (*Id.* at 71:20-25).

Mary Simkins married Mr. Simkins in 1994 and started "to visit at his family home around '83..." (*M. Simkins Dep.* 6:1-23). When visiting Lot 5 with Mr. Simkins, they would "come down the [A]lley, and then turn and park at the back of the house where there was a paved area." (*Id.* at 8:4-14). Throughout her visits to the property, she recalled neighbors walking down the Alley and

she would also take the dog on a walk (*Id.* at 23:4-7). She testified that at big family gatherings, like holidays, people would park in the back of Lot 5 via the Alley (*Id.* at 10:6-20), which could hold approximately six (6) cars (*Id.* at 10:8-9) and there was never a time she visited the property and parked on the street (*Id.* at 10:21-23). When Mr. Simkins' mother was planning to move out of the house, Mary Simkins assisted her with clearing the home and observed significant renovations taking place, which lasted approximately six to eight months. (*Id.* at 14:1-16:18).

During the renovations, Mary Simkins testified that a dumpster was placed “on the [A]lley side of the property at the back of the garage” (*Id.* at 15:23-16:10), which was “brought [in] down the [A]lley” (*Id.* at 16:13-15), and the contractors conducting work on Lot 5 “would come down the [A]lley and park there” (*Id.* at 16:23-25). Additionally, she recalled her mother-in-law having her landscaper deliver mulch with a “big truck” “by way of the Alley” (*Id.* at 24:6-13). She was not aware of any written rules or regulations regarding the use of the Alley; she never asked anybody permission to use the Alley; she had no knowledge of her husband or her in-laws asking anybody else for permission to use the Alley; no one contested the use of the Alley; no knowledge of anybody expressly asking for or giving permission to use the Alley. (*Id.* at 21:3-20).

Mrs. Simkins conveyed Lot 5 to Jordan DiNola and Stephanie DiNola on April 14, 2018. (*Dinola Aff.* ¶ 3).²¹ Throughout their ownership of Lot 5, the Alley was the primary means of vehicular access to and from the Property and the exclusive way to enter the Property by vehicle. The Property does not contain a driveway or a garage facing Morningdale Drive.” (*Id.* ¶ 8). During their ownership of Lot 5, the DiNolas “used the [A]lley numerous times daily to go to and from the Property.” (*Id.* ¶ 9). The Alley was used by the DiNolas and their “guests, invitees, and a contractor who worked on the Property.” (*Id.* ¶ 9). They and their “guests and invitees used the

²¹ *Id.* at **Exhibit U**.

[A]lley openly and continuously throughout [their] ownership of the Property.” (*Id.* ¶ 9) The use of the Alley by them and their “guests, [their] invitees, and contractors was visible and apparent, not hidden. The use of the [A]lley was by vehicle and by foot, including taking trashcans to the curb at the beginning of the [A]lley at East Avondale Drive.” (*Id.* ¶ 9). They never asked anyone for permission to use the Alley, and no one gave them permission to use the Alley. (*Id.* ¶ 10). “There were no rules or regulations regarding the use of the [A]lley.” (*Id.* ¶ 11). We freely used the [A]lley, as did other residents of the block, particularly those with parking structures facing the [A]lley, including our two next-door neighbors. The two lots at the beginning of the [A]lley at East Avondale Drive also used the [A]lley daily.” (*Id.* ¶ 11). “No one ever prevented or tried to prevent [their] daily use of the [A]lley.” (*Id.* ¶ 12).

Claudia Winkler and Wilson Peden bought Lot 5 in May 2020 from the DiNolas and have lived there since that time. (*Peden Winkler Aff.* ¶¶ 5–6).²² The driveway and garage at the back of Lot 5 were present when they purchased the property and face the same sixteen-foot alley that runs to East Avondale Drive. (*Id.* ¶¶ 7–8). The Alley provides the only means of vehicular access, as Lot 5 has no driveway, garage, or carport facing Morningdale Drive. (*Id.* ¶ 9). Since moving in, they have continuously used the Alley on a daily basis to go to and from Lot 5, and their use, as well as that of guests and contractors, has been open, visible, and apparent. (*Id.* ¶ 10). They also move their trash cans through the Alley to East Avondale Drive for collection. (*Id.* ¶ 11).

Winkler and Peden use the Alley as a matter of right, not by permission or under anyone else’s control, and they have never asked for or received permission to do so. (*Id.* ¶ 12). They state there have been no rules or regulations restricting Alley use and that they have always used it freely, as have other residents of the block. (*Id.* ¶ 13). Apart from a single 2022 delivery-truck

²² *Id.* at **Exhibit V**.

complaint raised by one plaintiff, no one has ever prevented or tried to prevent their use of the Alley before this dispute. (*Id.* ¶ 14). They purchased their home based on the understanding that the Alley provided unrestricted access, observed neighbors and agents using it freely before closing, and saw no signs or disclosures indicating any limitation on use. (*Id.* ¶ 15).

Lot 6:

The owners of Lot 6 have used the Alley for over twenty years. Plaintiff Kathy Brown acknowledged there is a carport facing the Alley and that Steven and Allesandra Umphlett, who owned Lot 6 beginning in 2003, used the Alley to access their carport daily. (*K. Brown Dep Pt. 1* 22-23). The Umphletts owned Lot 6 from February 14, 2003, until they sold it to Mr. and Mrs. Dolan in 2008.

Steven Umphlett testified that he and his then-wife, Alessandra Umphlett purchased Lot 6 “on February 14, 2003, from Robert B. Kitten and Mary McClellan Kitten.” (*Umphlett Aff.* ¶ 4).²³ They moved into their home in February 2003. (*Id.* ¶ 5). The 1995 plat referenced in the deed to the Umphletts shows that “a carport and driveway are located in the back of the Property, facing a 16-foot Alley. The carport and the driveway were there when [they] purchased [Lot 6] and was there when we sold it.” (*Id.* ¶ 6). “The carport and driveway are accessible only through the [A]lley. A substantial part of the 16-foot [A]lley was paved. The [A]lley leads to East Avondale Drive.” (*Id.* ¶ 7).

²³ *Id.* at **Exhibit W**.

Throughout their ownership of Lot 6, “the [A]lley was the primary means of vehicular access to and from [Lot 6] and the exclusive way to enter [Lot 6] by vehicle. [Lot 6] does not contain a driveway, garage, or carport facing Morningdale Drive.” (*Id.* ¶ 8).

During their ownership of Lot 6, the Umphletts “used the [A]lley numerous times daily to go to and from the [Lot 6]. [They and their] guests, invitees, and contractors who worked on the [Lot 6], used the [A]lley throughout our ownership of [Lot 6]. [They and their] guests, and invitees used the [A]lley openly and continuously throughout our ownership of [Lot 6]. The use of the [A]lley by [them and their] guests, our invitees, and contractors was visible and apparent, not hidden. The [A]lley was used by vehicle and foot, including taking trashcans to the [A]lley by the carport where they were picked up. The [A]lley was also used to deliver US mail. All this activity and use of the [A]lley occurred throughout [their] ownership of Lot 6]”. (*Id.* ¶ 9).

They never asked anyone for permission to use the Alley. (*Id.* ¶ 10). No one gave them permission to use the Alley. (*Id.* ¶ 10). “There were no rules or regulations regarding the use of the [A]lley. (*Id.* ¶ 11). “[They] freely used the [A]lley, as did other residents of the block, particularly those with parking structures and garages facing the [A]lley, including the owners of 105 Morningdale Drive and 103 Morningdale Drive. The two lots at the beginning of the [A]lley at East Avondale Drive also used the [A]lley daily.” (*Id.*). “There were no disputes regarding our use of the [A]lley” and to their “knowledge, there were no disputes regarding anyone else’s use of the [A]lley.” (*Id.* ¶ 12). “No one ever prevented or tried to prevent [their] daily use of the [A]lley.” (*Id.* ¶ 13).

Ian and Laura Dolan purchased and moved into Lot 6 in October 2008 and continue to reside there today. (*Dolan Aff.* ¶¶ 5–6).²⁴ The carport and driveway at the rear of Lot 6 face a

²⁴ *Id.* at **Exhibit X**.

sixteen-foot alley, and both were present when they purchased the property and remain there now. (*Id.* ¶ 7). The carport and driveway can only be accessed through the Alley, which connects to East Avondale Drive. (*Id.* ¶ 8). Since buying Lot 6, the Dolans have continuously used the Alley as their primary and exclusive vehicular access, as the lot has no driveway or garage facing Morningdale Drive. (*Id.* ¶ 9). They, their guests, and contractors have openly and continuously used the Alley throughout their ownership, and such use has always been visible and apparent. (*Id.* ¶ 10).

Mail is delivered to a rear mailbox along the Alley, and the postal vehicle drives down the Alley to reach their home before turning around and leaving, a practice that has occurred throughout their ownership. (*Id.* ¶ 11). FedEx and UPS also make deliveries through the Alley. (*Id.* ¶ 12). When they moved in, the City of Greenville collected trash directly from the Alley, and they continue to move their cans through it to Avondale Drive for pickup. (*Id.* ¶ 14). They have always used the Alley as a matter of right, never by permission or under anyone's control. (*Id.* ¶ 15). No one has ever interfered with or attempted to prevent their daily use of the Alley, and they purchased their home with the understanding that it provided unrestricted access through the Alley. (*Id.* ¶¶ 18–19).

Currently, each of the Defendant lot owners utilizes the Alley with the typical frequency and use of a residential drive for ingress/egress to their respective properties. None of the Defendants operates an in-home business or other enterprise that would increase traffic, or use the Alley in a manner inconsistent or unconnected with the enjoyment of their estates. *See (K. Brown Dep. Pt. 1 106:19-107:1)* (acknowledging no additional homes or apartments created on Lots 1 through 7 and no businesses that she is aware of).

D. Plaintiffs' Claims

In their Second Amended Complaint filed on June 20, 2025,²⁵ Plaintiffs assert one cause of action for declaratory relief. As to these Defendants, Plaintiffs are asking the court to declare that (1) the Alley shall only be used for maintenance access to the sewer lines located thereon; (2) the Alley shall not be used for vehicular and pedestrian access to the lots; (3) the Alley shall not be used by the occupants of the homes along the Alley to travel across the Alley to place trash, recycling receptacles, and yard debris at the access point to the Alley; and (4) alternatively, the Alley shall be used for sewer maintenance and access, and for a limited use that excludes everyday and regular vehicular and pedestrian access by the occupants or visitors of the lots, and excludes any construction related access, and imposes a financial obligation on the Block I lots to maintain and repair the Alley. (*Second Amend. Compl.* ¶ 99).

E. Defendants' Counterclaims

Defendants denied the material allegations of the Second Amended Complaint. Defendants also asserted various counterclaims to establish an easement, but the ones at issue here are claims seeking an implied easement by plat and a prescriptive easement. More specifically, Defendants seek an order declaring Defendants, their heirs, successors, assigns, agents, contractors, guests, and invitees possess an implied easement by plat (all defendants) and a prescriptive easement (Defendants who own Lots 4, 5, and 6) over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive, which easement shall run with and benefit title to Defendants' lots and burden Plaintiffs' lots in perpetuity.

²⁵ Plaintiffs Gregory W. Brown and Kathryn T. Brown initially filed suit against the Defendants and Margaret Ann V. McDaniel on July 17, 2023; however, McDaniel joined as a Plaintiff in the Amended Complaint.

Defendants also asserted a counterclaim for a permanent injunction enjoining Plaintiffs, including their agents and contractors, from blocking or obstructing any portion of the Alley and preventing Defendants from having unfettered and unlimited use of the Alley.

II. LEGAL STANDARD

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment “mirrors” standard for directed verdict).

A party opposing summary judgment must show a genuine dispute of fact – “the ‘mere scintilla’ standard does not apply under Rule 56(c). “Rather, the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of the Rule.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (citing and overruling *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). Moreover, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.*

III. ANALYSIS²⁶

A. DEFENDANTS HAVE AN EASEMENT BY IMPLICATION BECAUSE EACH OF THE INITIAL DEEDS CONVEYING THE RESPECTIVE LOTS BY THE DEVELOPER DESCRIBED AND CONVEYED THE PROPERTIES BY EXPLICIT OR IMPLIED REFERENCE TO THE SUBDIVISION PLAT.

Plaintiffs concede an implied easement exists over the Alley. (*Second Amend. Compl.* ¶¶ 33, 92, 99). Defendants agreed and moved for summary judgment on this issue.

“[W]hen the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners [and] their successors in title.” *Carolina Land Co. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); *see also Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 120, 145 S.E.2d 922, 925 (1965) (“[A]ccording to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases”); *Inlet Harbour v. S.C. Dep’t of Parks, Recreation & Tourism*, 377 S.C. 86, 93, 659 S.E.2d 151, 155 (2008) (“the grantor presumably intends for grantees to have access to the abutting subdivision streets for normal residential purposes”). “Stated differently, a presumption of an implied easement arises unless rebutted by a specific, contrary intention by the *grantor*.” *Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 338, 811 S.E.2d 779, 782 (2018) (emphasis added).

All deeds from Utopian to each of the initial purchasers of Lots 1, 2, 3, 4, and 7 expressly referenced the Subdivision Plat, which clearly and unmistakably delineates the Alley running from East Avondale Drive through the middle of Block I and which borders, touches, or runs through

²⁶ On March 11, 2026, 22 days after the hearing and 12 days after the Court issued its oral ruling on the motion during the conference call on February 27, 2026, Plaintiffs Gregory W. Brown and Kathryn T. Brown filed a supplemental response raising arguments for the first time and filing affidavits, well past the deadline to do so. This is not timely, and the Court will neither consider the supplemental response nor the affidavits.

each of the Lots. Additionally, a signed note by the surveyor appears on the right-hand margin of the Subdivision Plat stating, “Note – 16’ Alley cut in Block I September 1, 1929.” No evidence produced by Plaintiffs, or otherwise existing in the record, supports a “*specific, contrary intention*” by Utopian sufficient to rebut the presumption that Utopian intended to convey an easement.

As a matter of law, an implied easement by plat arose over the Alley through the Subdivision Plat.

Plaintiffs contend that Lots 5 and 6 lack an implied easement because of how they were conveyed by Utopian, the developer.

The Utopian Deed of Lots 5 and 6 was a single deed to Surety Mortgage.²⁷ At the outset, the first page of the Utopian Deed in the granting clause clearly references the Northgate subdivision as follows: “That certain tract of land situate in the County and State aforesaid, known as Northgate Heights, on extension of North Main Street, and Rutherford Road” By that time, there were two plats of record showing the Northgate Subdivision, the Subdivision Plats.

The Utopian Deed conveys “land . . . known as Northgate Heights . . . containing 91 acres.” It then excepts “from this conveyance all those lots . . . which have been heretofore conveyed by the grantor.” Without reviewing the deeds that conveyed “those lots” that were “excepted from this conveyance,” which deeds reference the Subdivision Plat, it is impossible to determine what property was conveyed by the Utopian Deed.

South Carolina courts recognize that, “[w]here a deed describes the property to be conveyed as is shown on another recorded document, the document becomes a part of that deed for the purpose of showing the boundaries, metes, courses, and distances of the property

²⁷ As mentioned in Defendants’ Amended Motion for Summary Judgment, Utopian and Surety Mortgage were both controlled by the Hipp Family.

conveyed.” *Walters v. Summey Bldg. Sys., Inc.*, 311 S.C. 507, 510, 429 S.E.2d 854, 856 (Ct. App. 1993). Long-standing principles of real estate conveyancing also recognize that when a deed’s description cannot be understood without reference to another recorded instrument, the instruments may be read together to identify the property conveyed. The incorporated instrument is given the same legal effect as if it were copied in the deed itself. *See* 26A C.J.S. *Deeds* § 270 (2024) (“by a proper reference in a deed to another instrument that contains a description of the property conveyed, the latter instrument may in many cases be considered as incorporated in the deed and the two may be construed together for the purpose of identifying the particular property that was meant to be conveyed by the deed,” and such incorporation “*is as effective as if the deed had been copied into the deed making the reference*”) (emphasis added); 4 *Tiffany Real Property* § 992 (3d ed. 2023) (“real estate is sufficiently described in a conveyance by reference for identification to another instrument in which the land is sufficiently described to be identifiable,” and a plat or other writing “may accordingly be utilized to identify the land conveyed”); 1 *Patton & Palomar on Land Titles* § 122 (3d ed. 2023) (stating that “[i]n a way, all descriptions according to a recorded survey are descriptions by reference to another instrument, namely, the plat of the survey,” and that where land is described by reference to another recorded conveyance, “the description in the latter is then considered as incorporated into the former”).

Because the Utopian Deed cannot be properly interpreted without reference to the Subdivision Plat, and because both are undisputed public records, the Court may determine their legal effect as a matter of law by applying settled principles of deed construction. *Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981) (“The construction of a clear and unambiguous deed in respect to the property conveyed is a question of law for the Court”).

Under these principles, the Subdivision Plat is incorporated into the Utopian Deed to identify what was conveyed.²⁸

There are no genuine issues of material fact over this unambiguous deed and plat. Accordingly, the Court finds that Defendants have an implied easement by plat over the alley as a matter of law, as the existence and scope of the alley arise from the recorded instruments themselves and present questions of law for the Court.

In addition, Defendants Ian and Michelle Dolan possess a separate easement by plat over that part of the Alley owned by Plaintiffs Brown. This is because Lot 6 (now owned by Defendants Dolan) and Lot 7 (now owned by Plaintiffs Brown) were owned by the same person, Selma Major, who altered the dimensions of both lots and conveyed the Dolan lot (the greater portion of Lot 6) by reference to a plat referencing the alley. This was accomplished through the following conveyances:

- By Deed recorded January 20, 1938, in Deed Book 138 at Page 28, Utopian conveyed Lot 7 to Selma Garrett a.k.a. Selma Major.²⁹
- By Deed recorded December 7, 1944, in Deed Book 270 at Page 74, Surety Mortgage Company conveyed Lot 6 to Selma Garrett a.k.a. Selma Major.³⁰
- By deed recorded in Deed Book 396 at Page 517, Selma Garrett a.k.a. Selma Major on November 26, 1949, conveyed the *greater portion of Lot 6* to Flora Hudson.³¹ This deed references Plat Book M at Page 13, which shows the Alley. It also references a 1949 unrecorded plat and describes the property by way of that plat and references the Alley as follows:

²⁸ In addition, as thoroughly explained in Defendants' Amended Motion for Summary Judgment, one would also need to review the mortgage releases, and by doing so, one would see the Subdivision Plats.

²⁹ *Defendants' Am. MSJ* at **Exhibit L**.

³⁰ *Id.* at **Exhibit M**.

³¹ *Id.* at **Exhibit N**.

BEGINNING at an iron pin on the Southwest side of Morningsdale Drive at the corner of Lot No. 5, of Block I, and running thence along the line of said lot, S. 53-05 W. 168.2 feet to an iron pin in the center of a 16-foot alley at the rear corner of Lots Nos. 2, 3, 4, 5 and 6, of Block I; thence along the center of said alley, and along the line of Lot No. 2, N. 39-0 W. 67.2 feet to an iron pin in the center of said alley, which point is 25.4 feet Southeast of the rear corner of Lot No. 7, of Block I; thence on a new line across Lot No. 6, of Block I, N. 49-10 E. 169.3 feet to an iron pin on the Southwest side of Morningsdale Drive, which point is 22 feet Southeast of the corner of Lot No. 7; thence along the Southwest side of Morningsdale Drive, S. 37-39 E. 78 feet to an iron pin at the beginning corner.

Accordingly, pursuant to the deed from Selma Garrett, a.k.a. Selma Major of the greater portion of Lot 6 to Flora Hudson, an implied easement by plat arose as a matter of law in favor of the Dolans as the owners of the greater portion of Lot 6 over the Alley as it may exist over parts of Lot 7 and the smaller portion of Lot 6 owned by Plaintiffs Brown.

From a thorough review of the exhaustive record herein, I find there are no genuine issues of material fact. Defendants are entitled to an order declaring the Defendants, their heirs, successors, assigns, agents, contractors, guests, and invitees possess an unrestricted implied easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive, which easement shall run with and benefit title to Lots 1, 3, 4, 5, and 6 and burden Lots 2 and 7 in perpetuity.

B. THE SUBDIVISION PLAT IS CLEAR AND UNAMBIGUOUS, AND THE COURT WILL NOT CONSIDER EXTRINSIC EVIDENCE TO IMPOSE RESTRICTIONS ON THE ALLEY WHEN NONE WERE EVER EXPRESSED OR IMPLIED.

Plaintiffs argue that the purpose of the Alley was to access and maintain the sewer lines and not for everyday residential purposes. However, Plaintiffs' assertions regarding the intended purpose of the Alley appear to not be based upon the uncontroverted historical use of the Alley but based solely on an expert from North Carolina who issued a report in 2025 that speculates about the developer's intent in 1929. However, this Court will not consider the expert testimony because the use of the word "alley" on the Subdivision Plat is clear and unambiguous, and there are no

restrictions on its use.

At the outset, the Court recognizes that in *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 659 S.E.2d 151 (2008), our Supreme Court analyzed “the facts and circumstances surrounding the conveyance” of the property in question to determine that the parties did not intend a road referenced by a plat be used for residential development purposes but for environmental purposes associated with maintaining the navigability of Murrells Inlet. *Id.* at 93, 659 S.E.2d at 155 (“Our guidepost must be what the parties intended, and the best evidence of the parties’ intentions are the facts and circumstances surrounding the conveyance.”).

In reaching its conclusion, the court considered the specific and limited use of the property evidenced by the *parties’* testimony which supported the parties’ intentions to preclude access for any purpose unrelated to the navigability project. Importantly, the court also noted that the property at issue *was not subdivided residential property and did not abut the road in question. Id.* In other words, the Court possessed specific, concrete evidence of what the parties intended, which overrode the general presumption that our courts have consistently applied in determining a grantor intends to allow the grantee the use of the delineated streets and ways of passage. Stated differently, the Court in *Inlet Harbour* had competent, admissible evidence that did not depend on speculation or inferences by third parties.

The Court further recognizes our Court of Appeals decision in *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct. App. 2008). That case also involved an implied easement by plat. There, the developer subdivided the property, showing an adjacent right-of-way, but then testified to something differently. Despite her testimony regarding her intent, the Court of Appeals refused to upset the expectations of the subsequent lot purchaser who relied on the public records. More specifically, the court stated:

In the instant case, when Ward subdivided the property and recorded a plat referencing a fifty foot right-of-way, it may be inferred that she intended the right-of-way to be a private easement dedicated to the use of the lot owners, their successors in title, and the public. The deed and the recorded plat in this case are controlling notwithstanding an “intent” analysis. By recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision. When Ward originally conveyed Lot 4 with reference to the recorded plat, her grantees and any subsequent purchasers acquired the right to use this easement to the full extent that it is indicated in the plat. MIC relied upon the recorded plat when it purchased Lot 4. The dedication of the private easement was complete when Ward originally conveyed the lot. It would now be unfair to deny MIC the right to the full use and enjoyment of the easement as indicated in the plat, regardless of what Ward now argues were her intentions at the time the plat was recorded. Subsequent purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property.

Id. at 236, 662 S.E.2d at 457 (emphasis added).

Similar to the holding and analysis in *Murrells Inlet Corp.*, our courts have often described the creation of such an implied easement by reference to a plat as complete at the time of the conveyance and as irrevocable. That is because it is sound public policy to have certainty in real estate transactions and to allow purchasers to rely on the public records. *See, e.g., Murrells Inlet Corp.*, 378 S.C. at 233, 662 S.E.2d at 456 (“As to the grantor, who conveyed the property with reference to the plat, and the grantee and his successors, the dedication of the easement is complete at the time the conveyance is made.”); *Immanuel Baptist Church of N. Augusta v. Barnes*, 274 S.C. 125, 130–31, 264 S.E.2d 142, 144 (1980) (“The dedication of this private easement is complete as to the grantee, becomes part of the property conveyed, and inures to the benefit of the grantee's successors in title.”); *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 119, 145 S.E.2d 922, 925 (1965) (“as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities.”); *Outlaw v. Moise*, 222 S.C. 24, 30–31, 71 S.E.2d 509, 512 (1952) (“In this connection it must be kept in view that the platting and sale create certain rights

in the grantees of the original owner, which, as between the grantor and the grantee, are *irrevocable in their nature*.”).

Furthermore, when the language of a deed or plat is unambiguous, its construction is a question of law for the Court, and extrinsic evidence is neither necessary nor admissible to vary, explain, or limit its meaning. *See K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009) (holding that the grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments); *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012) (“The determination of the grantor’s intent when reviewing a clear and unambiguous deed is a question of law for the court”); *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975) (“[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed.”); *Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) (“When a deed is unambiguous, any attempt to determine the grantor’s intent when reserving the easement must be limited to the deed itself, and using extrinsic evidence to contradict the plain language of the deed is improper.”).

“The determination of whether language in a deed is ambiguous is a question of law.” *Proctor*, 398 S.C. at 573 n. 8, 730 S.E.2d at 363–64 n. 8. Plaintiffs’ subjective views, historical guesses, or expert interpretations of “likely” intent are irrelevant when the instrument clearly speaks for itself and is unambiguous.

The Subdivision Plat demonstrates the creation and presence of a 16-foot alley. The Court can easily discern the grantor/developer’s unambiguous intent by analyzing the meaning of “alley” and understanding why the width was denoted as sixteen feet on the Subdivision Plat.

The use of the term “alley” is not ambiguous. The ordinary meaning of an alley is “a narrow street,” particularly “a thoroughfare through the middle of a block giving access to the rear of lots

or buildings.”³² That understanding is consistent with the General Assembly’s definition of the term: “[a] street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.” S.C. Code Ann. § 56-5-611. The specification that the alley is sixteen feet wide further confirms its function as a physical accessway. At the time the alley was created, South Carolina law required that a roadbed be “not ... less than sixteen feet wide,” absent special authorization. S.C. Code Ann. § 57-17-510. The designation of an “alley,” the statutory definition, and the statutory width leave no ambiguity as to the nature of the interest created.³³

Plaintiffs are attempting to introduce extrinsic evidence to alter the developer’s clearly stated intentions. However, the language in the plat does not indicate any use restrictions, nor does it reserve the alley for utilities or prohibit access for those with adjacent properties. Because the language is unambiguous, the Court’s responsibility is to enforce it as it is written, rather than to look for any unexpressed intentions or to rewrite the language to include a restriction that was never intended.

³² <https://www.merriam-webster.com/dictionary/alley#dictionary-entry-1>

³³ In analyzing this legal doctrine, our courts have not differentiated between streets, roads, and alleys. In fact, our courts have grouped them together. *See e.g. Carolina Land Co. v. Bland*, 265 S.C. 98, 106, 217 S.E.2d 16, 20 (1975) (“Generally, where property sold is described in the conveyance with reference to a plat or map on which *streets, alleys, parks*, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.”) (emphasis added); *Epps v. Freeman*, 261 S.C. 375, 388, 200 S.E.2d 235, 242 (1973) (same); *Cason v. Gibson*, 217 S.C. 500, 508, 61 S.E.2d 58, 62 (1950) (streets, alleys); *Newton v. Batson*, 223 S.C. 545, 550, 77 S.E.2d 212, 214 (1953) (streets, alleys); *see also Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 120, 145 S.E.2d 922, 925 (1965) (“[A]ccording to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases.”) (emphasis added).

Furthermore, Plaintiffs' theory would impose a restriction on the use of the alley, but such restrictions "must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). It would also contravene the historical use of the Alley since the original plat was recorded.

There are no express terms creating restrictions on the use of the Alley. The developer did not call the Alley a "service alley," "limited alley," "sewer maintenance alley," or anything similar. The developer could certainly have used those words, but chose not to. *See Taylor v. Lindsey*, 332 S.C. 1, 5, 498 S.E.2d 862, 864 (1998) ("Here, the restrictive covenant was written in the 1960s when mobile homes were prevalent. Therefore, if the grantor had wanted to restrict mobile homes, he could have done so.").

There is no "unmistakable implication" that the use of the Alley is limited to maintaining sewer lines or otherwise restricted in use. In fact, even if the implication of a restriction can be construed to be reasonable, which is not the case here, "it is not enough for the implication to be reasonable—it must be unmistakable." *Community Servs. Assocs., Inc. v. Wall*, 421 S.C. 575, 584, 808 S.E.2d 831, 836 (Ct. App. 2017); *Websters New International Dictionary* 2785 (2d ed. 1956) (defining "unmistakable" as "not capable of being mistaken or misunderstood; clear; plain; obvious; evident").

Plaintiffs' attempt to rely on expert testimony to narrow or redefine the scope of the Alley improperly invites the Court to do exactly what the law prohibits: rely on extrinsic evidence to impose limitations not found in the recorded instrument. Expert testimony cannot be used to create ambiguity where none exists, nor can it be used to add restrictions to an unambiguous grant.

Accordingly, because the Subdivision Plat's designation of a 16-foot alley is clear and unambiguous, the expert report is irrelevant to the Court's analysis and the Court will not consider it. The scope and permissible use of the alley are determined as a matter of law from the face of the plat without resorting to extrinsic evidence.

C. EVEN IF THE COURT CONSIDERS THE EXPERT'S OPINIONS, THE REPORT DOES NOT RAISE A GENUINE ISSUE OF MATERIAL FACT.

Even accepting the expert's opinions as true and drawing all reasonable inferences in Plaintiffs' favor, the report is not sufficient to raise a genuine issue of material fact and does not establish the restriction Plaintiffs seek. At most, it provides a general historical overview of alley design in early-twentieth-century residential neighborhoods. It does not identify any express intent by the developer of the platted subdivision in question to exclude ordinary residential use in 1929, nor does it articulate any historical rule or planning principle allowing routine service access while residents themselves were barred from using the same access corridor.

The expert explains that alleys from this era were designed to support service activities related to residential living, such as deliveries, trash removal, and access by household staff. The report also notes that "Servants may have been expected to use the 'back' door to keep up appearances." Even if that statement is accepted as true, it does not support Plaintiffs' claim. An access route meant for deliveries and regular ingress and egress by household staff is, by definition, an access route to the residence itself. The report does not, nor could it all these years later, clarify how the developer intended the alley to serve as a means for servants to access the property while also preventing the residents they served from using the same route. Nothing in the report indicates such an exclusion, and Plaintiffs' proposed distinction finds no support in the expert's analysis.

Plaintiffs heavily rely on the expert's statement that the developer "did not intend for the alley to provide routine automobile access." Even if this is accepted as true, that opinion does not

support Plaintiffs' claim. Having an intent not to provide routine or primary automobile access does not mean there is an intent to prohibit residential use entirely, nor does it suggest an intent to restrict the alley to utilities only. The expert does not state that residents were excluded from using the alley, that incidental, occasional, or regular vehicular use was prohibited, or that the alley was reserved solely for utilities. Plaintiffs' attempt to turn a belief about primary access into a complete restriction on use is not supported by the report.

Plaintiffs also argue that the expert "opined that the alley was also likely intended as a sewer access easement." Even if that opinion is accepted as true, it does not support Plaintiffs' claim. An opinion framed in terms of what was "likely" intended does not establish a clear or definite intent to limit use, nor does it prove the restriction Plaintiffs seek to impose. Plaintiffs ask the Court to convert a likelihood-based inference about potential utility use into an enforceable limitation on the alley's use. The law does not permit restrictions to be created through inference or probability, particularly where the recorded plat contains no language limiting use. Rather, such restrictions must be stated in express terms or arise by plain and unmistakable implication, not from an expert's retrospective opinion made nearly a century later that something was merely likely. *Cf. Hamilton*, 274 S.C. at 157, 263 S.E.2d at 380 ("A restriction on the use of property must be created in express terms or by plain and unmistakable implication."); *see also Kitchen Planners*, 440 S.C. at 463, 892 S.E.2d at 301 ("[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.").

Finally, even when the inquiry is framed in terms of original intent, the law does not require an easement to be frozen in the precise manner of use contemplated at the moment of its creation. The governing principles recognize that "the manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal

development of the dominant estate or enterprise benefited by the servitude.” *Restatement (Third) of Property: Servitudes* § 4.10 (2000).³⁴

Therefore, even if the expert report is considered, it does not support Plaintiffs’ proposed limitation and fails to establish a genuine issue of material fact. In any case, the plat’s clear and unambiguous designation of a 16-foot alley is conclusive as a matter of law.

Accordingly, Defendants are entitled to an order declaring that Defendants, their heirs, successors, assigns, agents, contractors, guests, and invitees possess an easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive as a matter of law.

D. THE HISTORICAL USE OF THE ALLEY BY THE OWNERS OF LOTS 4, 5, AND 6 GIVE RISE TO AN EASEMENT BY PRESCRIPTION.

I have reviewed the testimony regarding the long-term use of the alley by the current and previous owners of Lots 4, 5, and 6, along with Plaintiffs’ relevant testimony. I find there are no genuine issues of material fact and that the owners of Lots 4, 5, and 6, possess a prescriptive easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive as a matter of law based on the historical use of the Alley.

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. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016). “‘Open’ generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent.” *Id.* at 233. “‘Notorious’ generally means

³⁴ Our Supreme Court has favorably cited the *Restatement (Third) of Property: Servitudes*. See *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

that the use is actually known to the owner, or is widely known in the neighborhood.” *Id.* at 244. To satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant. *Bundy v. Shirley*, 412 S.C. 292, 312–13, 772 S.E.2d 163, 174 (2015); *Jones v. Daley*, 363 S.C. 310, 318, 609 S.E.2d 597, 601 (Ct. App. 2005), *overruled on other grounds by Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016) (citing 25 Am.Jur.2d *Easements and Licenses* § 68 (1996) (“[The element of continued use] does not require the use thereof every day for the statutory period or even on a weekly or monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and the needs of the claimant.”)).

Each of the Lot 4, 5, and 6 owners or their predecessors in title has utilized the Alley in an open, notorious, continuous, uninterrupted manner, contrary to the true property owner’s rights for a period of twenty years. Plaintiffs’ testimony corroborates this.

When a claimant shows the elements of open, notorious, continuous, uninterrupted, and in derogation of another’s rights for twenty years, the claimant is entitled to a presumption that the use was adverse. Once that presumption applies, the servient owner bears the burden of rebutting the presumption. *See Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 162, 857 S.E.2d 16, 26 (Ct. App. 2021).

Here, Plaintiffs did not rebut this presumption. Plaintiffs admitted that no one asked for permission, they never granted permission, and they identified no relationship, accommodation, or conduct indicating consent.

For instance, Plaintiff McDaniel provided no evidence to rebut the presumption. As a result, as a matter of law, the owners of Lots 4, 5, and 6 have a prescriptive easement over the alley as to Ms. McDaniel’s property.

Similarly, Plaintiffs Browns' efforts to rebut the presumption of adversity are based on the sole statement of Plaintiff Gregory Brown that he gave "implied permission." However, that alleged "implied permission" is based on the Browns "acquiesced" to the use and "allowed it to occur." *G. Brown Dep.* v1 p. 17, lines 4-17.

If acquiescence were sufficient to establish permission, no prescriptive easement could ever arise, because prescriptive use necessarily occurs openly and with the owner's knowledge. The law, therefore, differentiates between acquiescence and permission. *See The Law of Easements & Licenses in Land* § 5:24 (2025) ("the notion of acquiescence is inconsistent with the adverse use theory of prescription"); 4 *Tiffany Real Prop.* § 1196 (3d ed. 2025) ("Thus, ordinarily, mere inaction and passive acquiescence is not a sufficient basis for proving that the use of the claimed right was with the permission of the owner of the servient tenement.").

Plaintiff Gregory Brown's testimony that he "allowed" and "acquiesced" to the use of the alley is insufficient to rebut the presumption.

Plaintiffs raised various other issues on the prescriptive easement claims that I will address.

20 Years' Use

Plaintiffs submitted a chart that included information on those lots that did not move for summary judgment on the prescriptive easement issue and argued that Defendants did not provide evidence of continuous use of the alley for the past twenty years. However, Defendants presented undisputed evidence from the current owners of Lots 4, 5, and 6, as well as from the previous owners of those lots dating back at least twenty years before the filing of this lawsuit.

Sporadic use and absence

Plaintiffs appear to argue that periods of travel, vacancy, or changes in occupancy defeat the continuity requirement. South Carolina law does not require constant daily use or uninterrupted

physical presence.

“[T]o satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant.” *Jones v. Daley*, 363 S.C. 310, 318, 609 S.E.2d 597, 601 (Ct. App. 2005), *overruled on other grounds* by *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). This does not require use “every day for the statutory period or even on a weekly or monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and the needs of the claimant.” *Id.* (quoting 25 Am. Jur. 2d *Easements and Licenses* § 68 (1996)). Furthermore, “the existence of gaps in time between the claimant’s use of another’s land will not necessarily destroy the continuity of use required to establish a prescriptive easement.” 25 Am. Jur. 2d *Easements and Licenses* § 51 (2026). This requirement of “continuity does not, however, involve any necessity that the use[] be exercised constantly and without intermission, and it is sufficiently continuous, it would seem, if it is exercised with such frequency and constancy as to affect the landowner with notice that it is being exercised.” 4 *Tiffany Real Prop.* § 1202 (3d ed.).

As to Lot 4, Plaintiffs argue there were periods of time when the house sat empty, or it was rented. Mr. DeJesus testified that he purchased Lot 4 “to have a place to stay when we visited our daughter, who attended Wofford at that time. Our daughter also occasionally stayed at the Property when we were not there.” *DeJesus Aff.* ¶ 5. However, he unequivocally testified that he used the alley when staying at the house. *Id.* ¶ 9.

Also regarding Lot 4, Plaintiffs attempt to discredit Ms. Sanchelli’s testimony because she rented the home. However, she provided un rebutted evidence that the renters used the alley. *Sanchelli Aff.* ¶ 9, 10. See *Click Properties, LLC v. Thomas SC Properties, LLC*, 445 S.C. 468,

476, 914 S.E.2d 488, 492 (Ct. App. 2025) (finding a prescriptive easement even though property was rented).

Regarding Lot 5, Plaintiffs argue that the continuous element is not satisfied because the house sat empty for a few years. However, Ms. Simkins testified that her mother-in-law moved out in 2015 and the house was sold in 2018. During that time, the house was cleared of her mother-in-law's belongings, and renovations were done. *M. Simkins Dep.* p. 13-17.³⁵ A dumpster was placed in the driveway facing the alley. She visited the property “once a month.” *Id.* p. 32.

Regarding Lot 6, Plaintiffs appear to argue that the continuous requirement is not met because Mr. Dolan testified that plumbers and lawn crews did not use the alley, but that two contractors he used did so. It is unclear why this was argued, but it certainly does not create a genuine issue of material fact on the continuity requirement or any other element.

As mentioned above, to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant, and daily, weekly, or even monthly use is not required. In addition, the fact that one property was rented is irrelevant.

Mr. Simkins’ testimony

Contractors

Plaintiffs say Mr. Simkins’ testimony proves no contractors used the alley. However, I reviewed the testimony in question, and Mr. Simkins testified that his mother did not want anyone blocking the alley or parking in the alley. *J. Simkins Dep.* 52:15-53:5. (emphasis added).³⁶ This testimony is aimed at contractors who parked in the alley and blocked it. It is not directed at contractors using the alley for access to the homes in the alley. In fact, Mr. Simkins clearly testified

³⁵ The references to Ms. Simkins’ deposition here are collectively attached as to Defendants’ reply memorandum as **Exhibit A**.

³⁶ Attached to Defendants’ Reply Brief as **Exhibit B**.

that “They [construction workers] would only have gone through the alley.” *Id.* 33:18-22.

Mary Simkins testified that a dumpster was placed “on the alley side of the property at the back of the garage” (*M. Simkins Dep.* 15:23-16:10), which was “brought [in] down the alley” (*Id.* 16:13-15), and the contractors conducting work on Lot 5 “would come down the alley and park there” (*Id.* 16:23-25). Additionally, she recalled her mother-in-law having her landscaper deliver mulch with a “big truck” “by way of the Alley.” (*Id.* 24:6-13).

Friends and Guests

Plaintiffs appear to argue Mr. Simkins’ testimony supports the fact that no friends or guests used the alley. However, Mr. Simkins clearly testified that (a) “really good friends. . . might be allowed the privilege of coming down the alley and using that.” *J. Simkins Dep.* 54:3-6; and (b) “People who were friends or friends of the family used the alley.” *Id.* 68:22-23.

The fact that one owner’s guests were primarily close friends or family does not defeat an easement by prescription. Use by family members, invitees, and contractors is legally attributable to the dominant estate. Constant public traffic or uniform intensity of use is not required. Instead, the use should be consistent with the nature of residential access. Nothing in the record suggests interruption, abandonment, or use pursuant to license during that period by the Simkins or anyone else.

There are no genuine issues of material fact. The use of the Alley by these defendants and their predecessors in title has been extensive, and the evidence of use is overwhelming. Defendants are entitled to an order declaring Defendants Dolan (Lot 6), Defendants Winkler/Peden (Lot 5), Defendants Lamm (Lot 4), their heirs, successors, assigns, agents, contractors, guests, and invitees

possess an unrestricted prescriptive easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive, which easement shall run with and benefit title to Lots 4, 5, and 6 and burden Lots 2 and 7 in perpetuity.

E. PLAINTIFFS' CLAIM FOR APPORTIONMENT OF MAINTENANCE EXPENSES IS AN ISSUE NOT RIPE FOR ADJUDICATION.

Plaintiffs allege “[t]here is a current controversy over who has the obligation to pay for the maintenance and repair of the Alley” and seek to impose a shared maintenance obligation.

“Before any action can be maintained, there must exist a justiciable controversy, and, this Court will not ... make an adjudication where there remains no actual controversy.” *Jowers v. S.C. Dep’t of Health & Env’t Control*, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018). “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 227, 467 S.E.2d 913, 917–18 (1996).

“Justiciability encompasses ... ripeness ... and standing.” *Id.* For a plaintiff to possess standing, three elements must be satisfied: first, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest; second, a causal connection must exist between the injury and the challenged conduct; third, it must be likely that a favorable decision will redress the injury. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014).

Plaintiffs testified that they have never paid anything to fix the road. (*M. McDaniel Dep.* 54:21-55:3); (*K. Brown Dep. Pt. 1* 68:16-18; 73:1-2). No other evidence exists in the record to indicate that Plaintiffs have made any maintenance or repairs to the Alley or have otherwise incurred expense.

Plaintiffs' claim for maintenance apportionment is not a real and substantial controversy that is ripe and appropriate for judicial determination. Accordingly, Defendants are entitled to summary judgment on this issue.

F. PLAINTIFFS ARE ENJOINED FROM BLOCKING OR OBSTRUCTING ANY PORTION OF THE ALLEY AND FROM PREVENTING DEFENDANTS FROM HAVING UNFETTERED AND UNLIMITED USE OF THE ALLEY.

As stated above, Defendants, as do all lot owners adjoining the Alley, have a legal right to use the Alley. The Alley has been used by the owners of lots within Block I for over 60 years. There is no legal authority for Plaintiffs, or any lot owner, to seek to block or obstruct Defendants, or any other adjoining lot owner(s), their heirs, successors, assigns, guests, invitees, and contractors from using the Alley.

Accordingly, the Court permanently enjoins Plaintiffs from blocking or obstructing any portion of the Alley and permanently enjoins Plaintiffs from seeking to prevent, or preventing, Defendants and their heirs, successors, assigns, guests, invitees, and contractors from having unfettered and unlimited use of the Alley. *See Restatement (Third) of Property (Servitudes)* § 8.3 (2000) ("A servitude may be enforced by any appropriate remedy or combination of remedies, which may include declaratory judgment, compensatory damages, punitive damages, nominal damages, injunctions . . .").

CONCLUSION

For the reasons set forth above, this Court grants in full Defendants' amended motion for summary judgment as there are no genuine issues of material fact. The Court rejects Plaintiffs' request to disturb the unfettered use of the Alley, which has been the status quo for over 60 years.

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

A. Defendants' Amended Motion for Summary Judgment is granted in full.

B. Defendants and their heirs, successors, assigns, agents, contractors, guests, and invitees possess an implied easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive, which easement shall run with and benefit title to Lots 1, 3, 4, 5, and 6 and burden Lots 2 and 7 in perpetuity.

C. Defendants Dolan (Lot 6), Defendants Winkler/Peden (Lot 5), Defendants Lamm (Lot 4), their heirs, successors, assigns, agents, contractors, guests, and invitees possess an unrestricted prescriptive easement over, across, and through the Alley for ingress, egress, and access, both vehicular and pedestrian, to and from their respective lots to East Avondale Drive, which easement shall run with and benefit title to Lots 4, 5, and 6 and burden Lots 2 and 7 in perpetuity.

D. Plaintiffs are permanently enjoined from blocking or obstructing any portion of the Alley and permanently enjoined from seeking to prevent, or preventing, Defendants and their heirs, successors, assigns, guests, invitees, and contractors from having unfettered and unlimited use of the Alley.

E. Plaintiffs' Second Amended Complaint as to the moving Defendants is dismissed with prejudice.

AND IT IS SO ORDERED

[Master in Equity's signature page follows]



Greenville Common Pleas

Case Caption: Gregory W Brown , plaintiff, et al vs. David B Richardson , defendant,
et al
Case Number: 2023CP2303629
Type: Order/Summary Judgment

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)