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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Ann Louise Gibbs-Hunter and Raymond D. Gibbs, Jr, Plaintiffs, v. Rilion Gracie Greenville, LLC and TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement Dated February 9, 2006, as Amended, Defendants, Rilion Gracie Greenville, LLC, Cross-Claimant, v. TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement Dated February 9, 2006, as Amended, Cross-Claim Defendant	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2024-CP-23-05724 **ORDER ON MOTION FOR SUMMARY JUDGMENT, MOTION TO AMEND AND ORDER TO COMPEL**

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SC Court of Appeals

This matter came before the Court on December 10, 2025. A virtual hearing was held on December 10, 2025. Present at the hearing were Wendell. L Hawkins, Esq. on behalf of RG, Charles Marchbanks, Jr., Esq. appeared on behalf of Plaintiffs, Ann Louise Gibbs-Hunter and Raymond D. Gibbs, Jr (collectively, "Gibbs), and Rachel G. McConoughey, Esq. on behalf of TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown

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Revocable Trust Agreement Dated February 9, 2006, as Amended. The Court heard the motion of Defendant, Rilion Gracie Greenvill, LLC 's ("RG"), for Summary Judgment on Plaintiff's causes of action for Adverse Possession and Presumptive Grant and Plaintiff's Motion to Amend to add a cause of action for Prescriptive Easement. RG had also filed a Motion to Compel, but because of the dispositive nature of the herein Order, the Court finds no need to address the issue and it is considered moot. The Court will address the issues in order.

THE SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004).

Our Supreme Court has recently clarified the standard for a non-moving party to overcome a motion for summary judgment in cases where the standard of proof is a "preponderance of the evidence." In *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), our Supreme Court revisited the "mere scintilla standard." The Court wrote,

> "Rule 56(c) became effective in 1985. Rule 86(a), SCRCP.[5] In most cases applying Rule 56(c), this Court and our court of appeals have applied the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion show a "reasonable inference" to be drawn from the evidence, and we have rejected the "mere scintilla" standard. *See, e.g., Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006) (reversing an award of summary

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judgment and stating "the evidence is susceptible to more than one reasonable inference, and therefore should be submitted to the jury"); *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 219 n.4, 578 S.E.2d 329, 334 n.4 (2003) ("The standard for summary judgment 'mirrors the standard for a directed verdict under Rule 50(a)' [SCRCP]."[6] (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (holding a party opposing summary judgment "must ... 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial*.' " (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986));[7] *Shelton v. LS & K, Inc.*, 374 S.C. 294, 297, 648 S.E.2d 307, 308 (2007) ("The existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." (citing *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (1994))); *462 *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993) (stating "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment") (citing *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214)).[8] *But see* **301 *Anders v. S.C. Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 375, 415 S.E.2d 406, 408 (1992) ("At the summary judgment stage of the proceeding, it was only necessary for the Defendant to submit a scintilla of evidence warranting a determination by the jury." (citing nothing))

Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460–62, 892 S.E.2d 297, 300–01 (2023)

BACKGROUND

On August 7th, 2024 Rilion purchased the following described property:

All that certain piece parcel or lot of land, located on the East Side of N. Main St. and the West side of Earl Street in the City of Greer, County of Greenville, State of South Carolina, being shown and designated as containing 0.901acres, more or less, on a survey entitled "Plat of a Boundary Survey for Rilion Gracie Greenville, LLC" prepared by Burell & Company Land Surveying and Mapping, LLC, dated July 13, 2024 and recorded in Plat Book 1494 at Page 38 in the Register of Deeds Office of Greenville County, South Carolina. Reference to said plat is hereby made for a more complete metes and bounds description thereof. Said Plat is attached hereto.

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This action ensued approximately 6 weeks thereafter. The Plaintiffs complain that they are entitled to ownership of the twenty foot (20') driveway (the "Driveway") that sits between the Plaintiffs' two lots, namely 207 and 203 Earle Street in Greer, SC. The Driveway is owned by Defendant and was conveyed to Defendant. Plaintiffs assert that the Driveway extends from Earle Street to some unknown area of termination under their causes of action of (1) Quiet Title under adverse possession (Compl. ¶¶ 23-27); and (2) Presumptive Grant (Compl. ¶¶ 28-31). In fact, the Plaintiff's Complaint identifies the "Subject Property" as the entire tract of Defendant's land (Compl. ¶¶ 4). Plaintiffs claim ownership by nature of the fact that Ann Louise Gibbs-Hunter or her predecessors in title had periodically parked in that driveway area for the statutory period of time. Deposition testimony of the Plaintiffs was taken on October 13, 2025 and the facts revealed as more fully set forth below leave no genuine issue of fact, but that Plaintiffs cannot meet a burden of proof with respect to their claims of Presumptive Grant or Adverse Possession.

DISCUSSION

MOTION FOR SUMMARY JUDGMENT

(The Kitchen Planners Rule)

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled **to** judgment as a matter of law. Rule 56(c), SCRCP; *Hansson v. Scalise Builders of South Carolina,* 374 S.C. 352, 650 S.E.2d 68 (2007); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *BPS, Inc. v. Worthy,* 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields,* 354 S.C.

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Our Supreme Court has recently clarified the standard for a non-moving party to overcome a motion for summary judgment in cases where the standard of proof is a "preponderance of the evidence." In *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), our Supreme Court revisited the "mere scintilla standard." The Court wrote,

> "Rule 56(c) became effective in 1985. Rule 86(a), SCRCP.[5] In most cases applying Rule 56(c), this Court and our court of appeals have applied the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion show a "reasonable inference" to be drawn from the evidence, and we have rejected the "mere scintilla" standard. *See, e.g.*, *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006) (reversing an award of summary judgment and stating "the evidence is susceptible to more than one reasonable inference, and therefore should be submitted to the jury"); *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 219 n.4, 578 S.E.2d 329, 334 n.4 (2003) ("The standard for summary judgment 'mirrors the standard for a directed verdict under Rule 50(a)' [SCRCP]."[6] (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (holding a party opposing summary judgment "must ... 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial*.' " (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986));[7] *Shelton v. LS & K, Inc.*, 374 S.C. 294, 297, 648 S.E.2d 307, 308 (2007) ("The existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." (citing *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (1994))); *462 *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993) (stating "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment") (citing *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214)).[8] *But see* **301 *Anders v. S.C. Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 375, 415 S.E.2d 406, 408 (1992) ("At the summary judgment stage of the proceeding, it was only necessary for the Defendant to submit a scintilla of evidence warranting a determination by the jury." (citing nothing))
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> *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 460–62, 892 S.E.2d 297, 300–01 (2023)

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I. ADVERSE POSSESSION & PRESUMPTIVE GRANT

An adverse possession claim is an action at law. *Miller v. Leaird,* 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992); *McDaniel v. Kendrick*, 386 S.C. 437, 441, 688 S.E.2d 852, 854 (Ct. App. 2009). A claim by adverse possession carries the highest standard of proof of any civil claim. "In order to establish a claim of adverse possession, the claimant must prove by ***clear and convincing evidence*** his possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period." *Millvale Plantation, LLC v. Carrison Fam. Ltd. P'ship*, 401 S.C. 166, 176, 736 S.E.2d 286, 291 (Ct. App. 2012) citing *McDaniel v. Kendrick,* 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct.App.2009). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal*." Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 261, 265, 478 S.E.2d 282, 284 (1996) citing *Middleton v. Johnston*, 221 Va. 797, 273 S.E.2d 800, 802. *Accord Clarke v. Cotton,* 207 Ga.App. 883, 429 S.E.2d 291 (1993).

The Plaintiff has the burden of proof to show it had exercised dominion and control over a disputed tract. *Millvale Plantation, LLC v. Carrison Fam. Ltd. P'ship*, 401 S.C. 166, 176, 736 S.E.2d 286, 291 (Ct. App. 2012) citing *Watson v. Suggs,* 313 S.C. 291, 294, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that "[i]n an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property until the plaintiff proves perfect title"); *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 428, 489 S.E.2d 223, 225 (Ct.App.1997) (holding the burden of proof of adverse possession is on the party relying thereon). *Also see,* SC Code of Laws § 15-67-210.

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A. S.C. Code of Laws § 15-67-210 et seq. Requirements

Whether claiming under S.C. Code of Laws § 15-67-210 et seq. (the "Statute") or under the common law theory of presumptive grant (which is claimed to by abrogated or superseded by the enactment of the Statute), Plaintiffs cannot prove that either of them satisfy the requirements of S.C. Code of Laws § 15-67-250 which provides:

> For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed in the following cases only:
>
> (1) When it has been protected by a substantial enclosure; and
>
> (2) When it has been usually cultivated or improved.

It is uncontroverted that neither of the Plaintiffs are claiming the disputed lands by way of a written instrument, judgment or decree. As such, Plaintiffs must show that the claimed lands were protected by a substantial enclosure ***and*** that the lands were usually cultivated or improved. *Id*. Anne Louise Gibbs-Hunter ("Gibbs-Hunter") testified in her deposition that there was never any sort of fencing that had enclosed the gravel drive area and that the only thing that was in the area was a gravel drive. The excerpts of the deposition are included in the record.

Because the lands claimed by the Plaintiffs were never cultivated or improved and there were no substantial enclosures, the is no genuine issue of material fact that could overcome the Defendant's legal ownership, and Defendant is entitled to summary judgment on Plaintiff's adverse possession claim and presumptive grant claim.

"If a claimant asserts title by adverse possession and his or her occupancy is not under color of title, ***the claimant must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion***." *Millvale Plantation, LLC v. Carrison Fam. Ltd. P'ship*, 401 S.C. 166, 177, 736 S.E.2d 286, 292 (Ct. App. 2012) citing

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Frazier v. Smallseed, 384 S.C. 56, 63, 682 S.E.2d 8, 12 (Ct.App.2009). (emphasis added). ("While the legal owner need not have actual knowledge the claimant is claiming property adversely, the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it.") and *Jones v. Leagan,* 384 S.C. 1, 13–14, 681 S.E.2d 6, 13 (Ct.App.2009). (" There is no existing proof that any legal owner of the Property would by ordinary diligence have known of the Plaintiff's claim.")

B. Hostility Requirement

There is no proof that the Plaintiffs can meet the hostility requirement of an adverse possession claim. In order to constitute adverse possession which results in obtaining title to property, the possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. Claimant's possession must be such as to indicate his exclusive ownership of the property. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, ***but it must be hostile thereto and to the whole world.*** *Mullis v Winchester*, 237 SC 487, 118 SE2d 61 (1961). *Gregg v Moore*, 226 SC 366, 85 SE2d 279 (1954). *Lynch v Lynch*, 236 SC 612, 115 SE2d 301 (1960). (emphasis added).

Mrs. Gibbs-Hunter testified in her deposition (Exhibit E of RG's Memorandum in Support) that until Raymond Gibbs installed a fence at the corner of the Quality Foods Store some time in 2022, the whole world traveled along the paths described in Exhibit E of RG's Memorandum in Support. Mrs. Gibbs-Hunter also testified about the paths that people would take through her property and along the Defendant's property. That Exhibit E is part of the record.

C. Exclusivity

The Plaintiff cannot prove exclusivity. The aerial attached as "Exhibit C" of RG's Memorandum in Support, an Aerial Photograph showing a flight date of February 26, 2016, not

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only shows the lack of Plaintiff's house at 203 Earl St, but more importantly, it shows that the disputed parcel of land has been traversed across by foot traffic accessing the grocery store ("Quality Foods" or "QF") since as late as February 26, 2016.

The lack of exclusivity is also shown throughout the depositions of the neighbors Mary Morrisson and Alice Jasper who have been living beside and across form Gibbs-Hunter for approximately 30 years. Their depositions are replete with evidence of lack of exclusivity and hostility. Mary Morrison who lives beside 207 Earle Street testified; (1) people came across the gravel drive up until Raymond Gibbs put up the fence at Quality Foods (about 2 years ago) because people were walking through his yard (p. 22 line 5 – p. 23 line 23); (2) there was a lot of [foot] traffic and trash (p. 25 – p. 26); (3) she never saw any of the Gibbs confront people walking through the property or tell them to stay off the property (p. 31);(4) there were no barricades, no trespassing signs, and no chains (p.31); and (5) the cars usually parked behind 207 Earle St. (p. 33 line 25 – p. 24 line 3). That testimony can be gleaned from Exhibit F of Plaintiff's Memorandum in Support which is part of the record. Alice Jasper testified that; (1) prior to Raymond Gibbs putting up the fence at the Quality Food Store, people cut through the Defendant's lot every day, sometimes late at night until Quality Foods closed for the night around 9:00 pm taking buggies across the lot and then bringing the buggies back (pp. 7-9); (2) that people cut across the Defendant's lot in all sorts of different ways, but the gravel drive was more convenient and that carried on until Mr. Gibbs put up the fence (p. 11-p. 12), (p. 18 l. 7 -1. 13); (3) there were never any no trespassing signs, the area was never fenced off, nobody stored anything on the lot and it was just dirt (p. 25); (4) the Gibbs never ran anyone off and it the Defendant's lot was sort of like a community park (p.30); (5) the Gibbs grilled on the property and took their grill back home at the end of the day (p. 32); (6) someone from Quality Foods

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kept a path clear for everyone to walk through to the store (p. 37); (7) No one was ever excluded from walking across the property to the store until the fence got put up and nobody ever stopped any one from walking across the property until the fence got put up and there were several people walking across the property until the fence got put up (p. 45); (8) she never had conversations with Ann about strangers walking though the property (9) that the whole world could walk across the property (p. 48 l. 19 – l. 22); and *inter alia* (10) the whole community used the property (p. 52, line 1-16). (*See*, Exhibit G of RG's Memorandum in Support which is part of the record; Deposition of Alcie Jasper)

RAYMOND D. GIBBS , JR's. CLAIMS

A. Raymond D. Gibbs, Jr. has not occupied the "Subject Property" for the Statutory Period of time to Claim by Adverse Possession or Presumptive Grant

Defendant makes reference to its prior arguments and citations regarding the time periods for the continuous occupation periods for both Adverse Possession and Presumptive Grant. Raymond D. Gibbs, Jr. ("RDG") is the nephew of Anne Louise Gibbs-Hunter. He testified that he was born in Greer, but that he moved to Greenville when he was in third grade. (*See*, Exhibit H of RG's Memorandum in Support which is part of the record**;** Deposition of RDG, p. 6, lines 13-14). He lived at 124 Woodmont Cr. in Greenville until the 9th grade until he went to college. (*Id*. at p. 6 lines 22-25). He went to college in 1994 in Columbia, and graduated in 1999. (*Id*. at p. 8 lines 10-21). After college, he moved to Travelers Rest and then lived with a different aunt, then moved to Villa Road Apartments, moved to Rustcraft Drive sometime after 2005, and that he had never lived with the Co-Plaintiff. (*Id.* at p. 13 line 7 – p. 14 line 10). Gibbs-Hunter testified that RDG only began living with her 3-4 times a month at 203 Earle St. sometime after the 203 Earle Street was built. (See, Exhibit C of RG's Memorandum in Support which is part of

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the record; Deposition of Gibbs Hunter p. 6 line 15 – p. 7 line 11). If RDG was never living around the "Subject Premises", no reasonable jury could find that he "occupied the Subject Property" for even the statutory period of requisite time, and the Defendant is entitled to summary judgment as to RDG because there is no issue of material fact on this issue.

B. **Even if the Court Found that the Common Law Theory of Presumptive Grant was a Viable Cause of Action, Raymond D. Gibbs, Jr. is Not ant Heir to Any Person and Cannot Qualify by Descendant Cast to Claim the Subject Property**

There are only six (6) cases in the State of South Carolina that discuss Presumptive Grant and those cases range from the dates of 1882 (*Watts v. Blalock*, 17 S.C 157 (1882)) and the latest being *Sales Intern. Ltd. V. Black River Farms, Inc.*270 S.C. 391, 242 S.E.2d 432 (1978). In *Sales Intern, Ltd.*. An adverse possession commencing prior to the insertion in this section [former Code 1962 § 10-2421] of the ten-year limitation provision, must have continued for the full twenty-year period before it could ripen into a right. *Hodge v Hodge*, 56 SC 263, 34 SE 517 (1899). *Lyles v Roach*, 30 SC 291, 9 SE 334 (1889). *Rehkopf v Kuhland*, 30 SC 234, 9 SE 99 (1889). The presumption stated in this section [former Code 1962 § 10-2421] holds good unless and until someone else goes on the land and occupies it adversely for ten years. *Haithcock v Haithcock*, 123 SC 61, 115 SE 727 (1923). *Love v Turner*, 71 SC 322, 51 SE 101 (1905). It seems, however, that there is really no significant difference between presumptive grant and adverse possession. In *Crotwell v. Whitney*, 229 S.C. 213, 221 (1956) the Court wrote, "[p]laintiffs having established their legal title to the premises, appellant Whitney's claim of title by adverse possession required proof of actual, open, notorious, hostile, continuous and exclusive possession by him, or by one or more persons through whom he claimed, for the full statutory period of ten years, without tacking of possession except by descent cast. Code 1952,

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Sections 10-2421, 10–124; *Ellen v. Ellen*, 16 S.C. 132; *Burnett v. Crawford*, 50 S.C. 161, 27 S.E. 645; *Epperson v. Stansill*, 64 S.C. 485, 42 S.E. 426; *Haithcock v. Haithcock*, 123 S.C. 61, 115 S.E. 727; *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165; *Gregg v. Moore*, 226 S.C. 366, 85 S.E.2d 279. Successive possessions for less than statutory period cannot be tacked, unless by descent cast. *Weston v. Morgan*, 162 S.C. 177, 160 S.E. 436 (1931). "Descent Cast" is the "devolving of ***realty upon the heir on the death of his ancestor intestate***." Black's Law Dictionary (6th Ed. 1990) (emphasis added). Two or more unrelated holdings cannot be united in last occupant to make up holding of ten years' adverse possession. *Weston v. Morgan*, 162 S.C. 177, 160 S.E. 436 (1931). "A party claiming title to land by adverse possession, must show clearly, not only that his possession was adverse, but that it was for the full statutory period. If there be doubt on either of those points, the possessory claim must yield to the legal title." *Id*. at 445 citing, *Abel v. Hutto*, 8 Rich. 42. "Lewis v. Pope, 86 S. C. 285, 68 S. E. 680, 683, wherein the court states: "Before one can succeed in holding lands under a claim of adverse possession, he must prove that he has been in possession for 10 consecutive years, claiming it openly, notoriously, and adversely. He cannot succeed in such claim by living on another tract and cultivating for a few years a small patch on the tract he claims, or by going on such tract and sometimes cutting wood or timber, and hauling it off for use on the tract on which he lives, but he must show that he has been doing that for 10 consecutive years. *Id.* at 445-446. In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such

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action. (S.C. Code Ann. § 15-67-210). Even if Presumptive Grant was still a viable cause of action after the enactment of the adverse possession statute, Raymond Gibbs, is not an heir until someone dies and leaves it to him, so his claims fail. Furthermore, because RDG cannot even plausibly be believed to have occupied the "Subject Property" and because he is not an heir to the Co-Plaintiff's potential claims to the "Subject Property" the Defendant is entitled to Summary Judgment as to RDG.

SUPERSEDURE OF PRESUMPTIVE GRANT

There are only six (6) cases in the State of South Carolina that discuss Presumptive Grant and those cases range from the dates of 1882 (*Watts v. Blalock*, 17 S.C 157 (1882)) and the latest being *Sales Intern. Ltd. V. Black River Farms, Inc.*270 S.C. 391, 242 S.E.2d 432 (1978). In *Sales Intern, Ltd.*. the court stated, "[a]n adverse possession commencing prior to the insertion in this section [former Code 1962 § 10-2421] of the ten-year limitation provision, must have continued for the full twenty-year period before it could ripen into a right." *Hodge v Hodge*, 56 SC 263, 34 SE 517 (1899). *Lyles v Roach*, 30 SC 291, 9 SE 334 (1889). *Rehkopf v Kuhland*, 30 SC 234, 9 SE 99 (1889). The presumption stated in this section [former Code 1962 § 10-2421] holds good unless and until someone else goes on the land and occupies it adversely for ten years. *Haithcock v Haithcock*, 123 SC 61, 115 SE 727 (1923). *Love v Turner*, 71 SC 322, 51 SE 101 (1905).

"Supersede is defined in Black's Law Dictionary as "obliterate, set aside, annul, *replace*, ... [t]o set aside." *Supersede*, *Black's Law Dictionary* (6th ed. 1990). "A rule of statutory construction is that any legislation which is in derogation of common law must be strictly construed and not extended in application beyond clear legislative intent." *Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004). Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318 n.5, 433 S.E.2d 875, 884 n.5 (Ct. App. 1992). In this case, subsection 27-6-20(A)(1), containing the statutory expression of the RAP,

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does not apply to nondonative transfers. Therefore, it cannot supersede or replace the CLRAP with regard to nondonative transfers, which are expressly excluded."

Spring Valley Ints., LLC v. Best for Last, LLC, 444 S.C. 281, 287, 907 S.E.2d 124, 127 (Ct. App. 2024), reh'g denied (Oct. 25, 2024), cert. granted (Apr. 2, 2025).

It appears clear to the Court that because of the legislature's codification of Adverse Possession and omission of previous common law elements, that the legislature intended for the current statute to supersede any common law provisions of "Presumptive Grant" and as such, any theory of claim by Presumptive Grant should be disregarded and dismissed by the court.

For the reasons stated above, RG's Motion for Summary Judgment on Plaintiffs' claims for Adverse Possession and Presumptive Grant is GRANTED.

II. THE GIBBS' MOTION TO AMEND

The Gibbs filed a Motion to Amend their Complaint to add a cause of action for a Prescriptive Easement.

"An easement is a right given to a person to use the land of another for a specific purpose. *Murrells Inlet Corp. v. Ward,* 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct.App.2008). "An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription." *Kelley v. Snyder,* 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct.App.2012). Here, Shirley sought an easement by prescription. "A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner." *Boyd v. BellSouth Tel. Tel. Co.,* 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006).

To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; **170 and (3) use or enjoyment which is either adverse or under claim of right. *Pittman v. Lowther,* 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

Although the elements of a prescriptive easement are well-established, the standard of proof as to these elements has given rise to confusion among the bench and bar. This confusion is understandable as the majority of the prescriptive easement cases in this state do not specifically enunciate the standard. Instead, our state cases: (1) simply outline the elements of a prescriptive easement and identify

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> the claimant as having the burden of proving these elements; or (2) analogize the establishment of a prescriptive easement to that of adverse possession, which requires clear and convincing proof. *See, e.g., Morrow v. Dyches,* 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct.App.1997) ("The party claiming a prescriptive easement has the burden of proving all elements."); *Davis v. Monteith,* 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (stating claimant had the burden of proving adverse possession by clear and convincing evidence); *see* 12 S.C. Jur. *Easements* § 10 (Supp.2015) ("A prescriptive easement is analogous to adverse possession.")."
>
> *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169–70 (2015)

As previously discussed in the analysis of Adverse Possession and Presumptive Grant, it is clear to the Court that the Gibbs cannot show (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; or (3) use or enjoyment which is either adverse or under claim of right. For the foregoing reasons, the Gibbs' Motion to Amend is DENIED.

RG's MOTION TO COMPEL

Because of the dispositive nature of the rulings on RG's Motion for Summary Judgment and the Gibbs' Motion to Amend, RG's Motion to Compel is moot and the Court need not address the matter.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that RG's Motion for Summary Judgment on Plaintiff's claims for Adverse Possession and Presumptive Grant is GRANTED. The Plaintiff's Motion to Amend is DENIED and RG's Motion to Amend is unaddressed as moot. The case shall remain active as to RG's Crossclaims against TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement Dated February 9, 2006, as Amended.

JUDGE'S SIGNATURE PAGE TO FOLLOW

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Greenville Common Pleas

Case Caption: Ann Louise Gibbs Hunter , plaintiff, et al vs. Rilion Gracie Greenville LLC , defendant, et al

Case Number: 2024CP2305724

Type: Order/Summary Judgment

So Ordered

The Honorable Courtney Clyburn Pope